

# UNDER PRESSURE: THE STATE OF TRUCKING IN AMERICA

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(116-21)

## HEARING

BEFORE THE  
SUBCOMMITTEE ON  
HIGHWAYS AND TRANSIT  
OF THE  
COMMITTEE ON  
TRANSPORTATION AND  
INFRASTRUCTURE  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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U.S. House of Representatives  
Washington, DC 20515

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JUNE 7, 2019

**SUMMARY OF SUBJECT MATTER**

TO: Members, Subcommittee on Highways and Transit  
FROM: Staff, Subcommittee on Highways and Transit  
RE: Subcommittee Hearing on “Under Pressure: The State of Trucking in America”

**PURPOSE**

The Subcommittee on Highways and Transit will meet on Wednesday, June 12, 2019, at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony related to “Under Pressure: The State of Trucking in America.” The purpose of this hearing is to learn from stakeholders about current challenges faced by motor carriers, truck drivers, shippers, and brokers; and how these challenges impact safety, operations, jobs, and goods movement on our Nation’s roads. The Subcommittee will hear from representatives of the International Brotherhood of Teamsters, Advocates for Highway and Auto Safety, C.H. Robinson, PepsiCo, the Commercial Motor Vehicle Safety Alliance, the American Trucking Associations, the Owner-Operator Independent Drivers Association, and a truck safety advocate.

**BACKGROUND**

The Subcommittee on Highways and Transit has broad jurisdiction over trucking, including: Federal Motor Carrier Safety Administration (FMCSA) grant programs to States; safety oversight of trucking companies; commercial driver qualifications and operating regulations; commercial vehicle size and weight limits and safety requirements; and cross border transportation.

The FMCSA was created by Congress in 1999 as an independent agency within the United States Department of Transportation. The agency’s primary mission is to reduce commercial motor vehicle-related fatalities and injuries and is directed by Congress to consider “safety as the highest priority” in carrying out its duties. FMCSA sets safety standards for commercial drivers and motor carriers and partners with State law enforcement agencies to administer Federal motor carrier safety regulations throughout the country.

Large truck crashes claimed 4,761 lives in 2017 according to data by the National Highway Traffic Safety Administration<sup>1</sup>. Since 2009, the number of fatalities in crashes involving large trucks and buses has risen, both in absolute terms and when adjusted for vehicle miles traveled.

In 2015, Congress enacted H.R. 22, Fixing America’s Surface Transportation Act (FAST Act; P.L. 114-94), which reauthorized FMCSA programs through Fiscal Year 2020. This legislation and its predecessor, MAP-21 (P.L. 112-141), included a number of provisions to improve motor carrier safety and address challenges in the trucking industry. Background on a range of issues that may be raised in witness testimony is provided below.

**COMMERCIAL DRIVERS**

There are approximately 6 million drivers with active Commercial Drivers Licenses (CDLs) regulated by FMCSA<sup>2</sup>. Drivers are required to hold a CDL if they operate in interstate, intrastate, or foreign commerce and drive a vehicle that meets the definition of a commercial motor vehicle. A driver must be 21 years of age to

<sup>1</sup> <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812663>.

<sup>2</sup> Ibid.

operate in interstate commerce, while States may set lower age thresholds for drivers operating solely intrastate. Congress first established a requirement that commercial drivers must hold a single CDL in the Commercial Motor Vehicle Safety Act of 1986 (P.L. 99-570). The Motor Carrier Safety Improvement Act of 1999 (P.L. 106-159) strengthened the CDL program by, among other provisions, requiring that States verify whether an individual is medically fit to drive in order to obtain a CDL. Congress has made further modifications and improvements to the program in subsequent acts.

#### *Hours of Service and Electronic Logs*

Federal motor carrier safety regulations govern commercial driver hours of service (HOS), or limits on the maximum time that a driver may operate a commercial motor vehicle. FMCSA is expected to release a Notice of Proposed Rulemaking this month, revising HOS rules. This revision is the latest attempt to alter the HOS rules, which over the last 20 years have been modified through rulemakings, legal challenges, and legislation.

The authority to regulate commercial driver hours of service originated under the Motor Carrier Act of 1935 (P.L. 74-255). The Interstate Commerce Commission (ICC) first established qualifications and maximum hours of service for drivers through a rulemaking on December 29, 1937. The regulations provided that, in a 24-hour period, a driver could drive a maximum of 10 hours and must have 8 hours of consecutive rest. The regulations also set a weekly on-duty limit of 60 hours in any 7 consecutive days or 70 hours in 8 consecutive days. When Congress enacted the Fair Labor Standards Act in 1938, the Act exempted commercial drivers from overtime pay rules, since their hours were set by the ICC. The exemption continues to apply.<sup>3</sup>

In 1962, the ICC amended the regulations to eliminate the limitation on driving 10 hours within a 24-hour period. This change allowed, for example, a driver who came on-duty and started driving at midnight through 10 am, followed by 8 hours off-duty, to continue driving from 6 pm until midnight.

These rules remain unchanged until Congress directed DOT to conduct a rulemaking “dealing with a variety of fatigue-related issues pertaining to commercial motor vehicle safety” in the ICC Termination Act of 1995 (P.L. 104-88). FMCSA published comprehensive revisions of the hours of service regulations in a final rule on April 28, 2003, eight years after the mandate. The final rule extended driving time from 10 to 11 hours and extended the daily rest period from 8 to 10 hours. These new rules re-established a fixed 24-hour period for drivers by requiring that once going on duty, a driver had a consecutive 14 hour on-duty window. Prior to the changes, drivers were able to switch to off-duty time while waiting, such as while being delayed or refueling, and subtract that time from their on-duty time, thereby extending the length of their workday. The rule also included a “restart” provision that allowed drivers to restart their weekly hour calculation after they took an off-duty break of at least 34 consecutive hours. A driver who maximized the use of the restart provision could work over 80 hours a week.

The applicability of this rule was in flux over the next decade as it underwent multiple legal challenges. The rule was vacated by the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) on June 16, 2004, on the grounds that it did not consider its impacts on the health of drivers<sup>4</sup>. Congress directed that the 2003 rule would remain in effect until FMCSA issued a new final rule addressing the issues raised by the Court in the Surface Transportation Extension Act of 2004, Part V (P.L. 108-310). On August 25, 2005, FMCSA reissued the rule, with its core provisions intact, and some revisions to provisions governing sleeper-berths<sup>5</sup>. This rule was again challenged, and the DC Circuit vacated the 11-hour driving time and the 34-hour restart provisions on the basis that FMCSA did not comply with the Administrative Procedures Act<sup>6</sup>. On November 19, 2008, FMCSA published a Final Rule that continued the provisions of the 2005 rule without change<sup>7</sup>.

On December 18, 2008, safety groups petitioned FMCSA to reconsider the research and crash data justifying the 11-hour driving rule and the 34-hour restart provision. FMCSA denied the petition. On March 9, 2009, these same groups filed a petition for review of the 2008 rule in the DC Circuit<sup>8</sup>. In October 2009, FMCSA

<sup>3</sup> 29 U.S.C. § 213(b)(1).

<sup>4</sup> *Public Citizen v. FMCSA*, 374 F.3d 1209 (D.C. Cir. 2004).

<sup>5</sup> 70 Fed. Reg. 49978 (August 25, 2005).

<sup>6</sup> *OOIDA v. FMCSA et al.*, 494 F.3d 188 (D.C. Cir. Jul. 24, 2007).

<sup>7</sup> 73 Fed. Reg. 69567 (November 19, 2008).

<sup>8</sup> *Public Citizen, et al. v. FMCSA, et al.* (D.C. Cir. No. 09-1094).

and the petitioners reached a settlement agreement that FMCSA would issue a revised rule<sup>9</sup>.

FMCSA issued a final rule on December 27, 2011, which: retained the 11-hour daily driving limit and the 60- and 70-hour weekly driving limits; retained the 14 consecutive hour on-duty period; modified the restart provision to require at least two periods of rest between 1 am–5 am, and only allowed the restart to be used once during a seven-day period; and required drivers to take a break of at least 30 minutes during their first 8 hours on duty, in order to be able to drive past 8 hours.

Safety groups challenged the additional hour of driving allowed in the rule. Separately, the trucking industry petitioned the DC Circuit to review the 30 minute rest break and consecutive nighttime rest provisions of the final rule<sup>10</sup>. In August 2013, a U.S. district court upheld the majority of the 2011 final rule but struck down the 30-minute rest break requirement only as it applied to short-haul drivers<sup>11</sup>. Subsequently, Congress suspended, then overturned, the nighttime rest requirements under the 34-hour restart provisions contained from the 2011 rule in the Consolidated and Further Continuing Appropriations Act of 2015 (P.L. 113-235), the Consolidated Appropriations Act, 2016 (P.L. 114-113), and the Consolidated Appropriations Act, 2017 (P.L. 115-31). The 30 minute rest break requirement for drivers was retained.

A number of exemptions from HOS limits have been provided to certain industries and in certain circumstances by Congress, including utility workers, certain rail construction workers, and agriculture haulers. FMCSA also has authority to grant exemptions administratively, for a period of five years and subsequent renewal pursuant to a process outlined in statute. Representatives of the motor carrier law enforcement community have raised concerns over both administrative and statutory exemptions to motor carrier safety regulations broadly, arguing that exemptions compromise safety as well as create confusion and inconsistency in enforcement<sup>12</sup>.

In 2018, FMCSA issued administrative guidance that expands the exemption for transporters of agricultural commodities, including livestock and insects. The statute provides an exemption from HOS rules for the transportation of agricultural commodities during planting and harvest season, within a 150 air-mile radius. FMCSA's guidance reinterpreted this provision to mean that a driver can work or drive unlimited hours without maintaining logs within a 150-mile area, and then start toward their limits of 11 hours of driving only apply once the drivers crosses the 150 miles. Time spent working within the 150 air-mile radius does not count toward the driver's daily and weekly limits, thereby allowing a significant and undefined expansion of allowable on duty time for these drivers<sup>13</sup>. In 2018, FMCSA also finalized guidance that allows a driver to move a vehicle, even if laden with cargo, once the driver reaches his or her HOS driving limit, under an exemption known as "personal conveyance". The guidance is open-ended, and does not place any limit on how long or how far a driver can drive claiming personal use<sup>14</sup>.

Commercial driver hours of service have historically been tracked through paper logbooks. In MAP-21, Congress required long-haul truck drivers to use electronic logging devices (ELDs) to record their hours to ensure compliance with HOS regulations and address fatigued driving. ELDs help prevent falsified or inaccurate paper log books by electronically recording the hours that commercial drivers operate. As of December 2017, all long-haul truck drivers (unless they are covered under an exemption) must now use ELDs. The requirement for ELDs in the industry has led to an increased focus by the regulated community on the HOS rules, and an increase in requests to Congress to consider further exemptions and changes to the rules.

### *Driver Training*

Congress first directed DOT to develop training standards for commercial motor vehicle drivers in 1991. A 2004 rule published by DOT was invalidated by the D.C. Circuit Court<sup>15</sup> after safety groups sued the agency because the rule did not include

<sup>9</sup>Settlement Agreement Between the Hours of Service Petitioners and the Federal Motor Carrier Safety Administration and the U.S. Department of Transportation (D.C. Cir. Oct. 26, 2009) (No. 09-1094).

<sup>10</sup>Petition of American Trucking Associations, Inc., (D.C. Cir. 2012) (No. 12-1092).

<sup>11</sup>*American Trucking Associations, Inc. et al. v. FMCSA, et al.*, No. 12-1092 Consolidated with 12-1113 (D.C. Cir. Aug. 2, 2013).

<sup>12</sup><http://cvsa.org/wp-content/uploads/Exemptions.pdf>.

<sup>13</sup><https://www.fmcsa.dot.gov/hours-service/elds/eld-hours-service-hos-and-agriculture-exemptions>.

<sup>14</sup>83 Fed. Reg. 26377 (June 7, 2018).

<sup>15</sup>*Advocates for Highway and Auto Safety v. FMCSA* (D.C. Cir. Dec. 2, 2005) (No. 04-1233).

any requirements related to behind-the-wheel training for drivers. A second attempt to publish the rule in 2007<sup>16</sup> was withdrawn by the Department. MAP-21 required FMCSA to establish minimum training requirements for individuals seeking a CDL, including behind-the-wheel training. In response, FMCSA convened an Entry-Level Driver Training Advisory Committee to complete a negotiated rulemaking with members representing FMCSA, the trucking industry, labor, law enforcement, training institutions, and safety advocates.

The Advisory Committee reached unanimous consensus on a package of recommendations in 2015. FMCSA's proposed rule published in March 2016<sup>17</sup> was based on those recommendations. The approved package of recommendations included a mandate for a minimum number of hours of behind-the-wheel training that a new driver must obtain before being granted a CDL (30 hours or 15 hours, depending on the class of CDL). When FMCSA published its final rule in December 2016<sup>18</sup>, it did not include the requirement that drivers engage in a minimum number of hours of behind-the-wheel training prior to receiving a CDL. The rule instead includes a performance-based standard, which leaves the amount of training required to the discretion of individual trainers.

#### *Drug Testing*

The Omnibus Transportation Employee Testing Act of 1991 (P.L. 102-143) required drug and alcohol testing of safety-sensitive employees. In August 2001, FMCSA published motor-carrier specific rules that apply to safety-sensitive employees who operate commercial motor vehicles requiring a CDL. These rules require drug and alcohol testing under several conditions: preemployment, reasonable suspicion, post-accident, random, return-to-duty, and follow-up. Section 32402 of MAP-21 required DOT to establish a clearinghouse of drug and alcohol test results to assist in identifying violations of Federal testing rules. FMCSA published a final rule in December 2016 to establish the clearinghouse. The FAST Act required the Secretary of Health and Human Services to issue standards within a year of enactment for testing hair samples for the presence of drugs and alcohol. The Secretary of Health and Human Services has yet to issue the standards. Once such standards are issued, the FMCSA will be authorized to allow motor carriers to test hair samples of commercial motor vehicle drivers for drug use in lieu of urinalysis.

#### *Attracting and Retaining Commercial Drivers*

Certain segments of the trucking industry have pointed to Federal rules that do not allow a driver to operate in interstate commerce until 21 years old in the context of ensuring an available pool of qualified drivers in the industry. Under Section 5404 of the FAST Act, Congress authorized a pilot program for individuals between the ages of 18 and 21 to drive such vehicles across state borders but only for those with commercial motor vehicle training in the Armed Services. Congress directed FMCSA to establish the pilot program in consultation with a working group established by the Secretary consisting of representatives of the armed forces, industry, drivers, safety groups, and State licensing officials; and to report to Congress on its findings upon completion of the program. FMCSA issued notices on a proposed pilot program on August 22, 2016 and July 6, 2018,<sup>19</sup> but the program only began accepting driver applications this week, on June 3, 2019. While not yet completing the Congressional mandate to conduct a limited pilot and report on the findings, on May 15, 2019, FMCSA initiated a separate effort and published a Federal Register notice requesting comments on a broader pilot program for drivers ages 18-21 to operate in interstate commerce, without a role for Congress.<sup>20</sup>

There is growing recognition<sup>21</sup> in the industry that driver wages and working conditions are a significant factor in the industry's challenge in attracting and retaining qualified drivers. Most truck drivers in the industry today are paid by the mile or by the load, not by the time it takes to make a delivery. Yet drivers are also subject to HOS limits outlined above, putting a limitation on the time they have to operate. Drivers also have little control over delays, for example, at shipper facilities or due to growing congestion on roads. Section 5501 of the FAST Act directed FMCSA to study and collect data on delays experienced by drivers before loading and unload-

<sup>16</sup> 72 Fed. Reg. 73226 (December 26, 2007).

<sup>17</sup> 81 Fed. Reg. 11943 (March 7, 2016).

<sup>18</sup> 81 Fed. Reg. 88732 (December 8, 2016).

<sup>19</sup> 83 Fed. Reg. 31633.

<sup>20</sup> 84 Fed. Reg. 21895.

<sup>21</sup> [https://www.joc.com/trucking-logistics/us-trucking-firms-rethink-pay-recruit-drivers\\_20180220.html](https://www.joc.com/trucking-logistics/us-trucking-firms-rethink-pay-recruit-drivers_20180220.html).

ing their vehicles and at other points in the pick-up and delivery process. FMCSA has yet to issue the rule to begin the data collection process.

The FAST Act, under Section 5401, also included several provisions to expand opportunities for veterans in the trucking industry by facilitating the transition to a civilian CDL after military service. Section 5506 of the FAST Act also requested the Government Accountability Office to review the administration of CDL skills tests by State licensing agencies and steps that FMCSA is taking to address skills testing delays, to ensure qualified drivers are not delayed in receiving their credentials.

## CARRIERS

### *Safety Oversight*

There are over 543,000 companies registered with FMCSA to operate commercial trucks and buses interstate in the United States<sup>22</sup>. The FMCSA carries out several programs to enforce motor carrier safety regulations intended to improve the safe operations of carriers. The Compliance, Safety, Accountability (CSA) program, initiated in December 2010, is FMCSA's primary tool for evaluating the safety performance of commercial truck and bus companies. CSA relies on a safety measurement system that analyzes safety violations from inspections and crash data to assign each carrier a score, in order to identify high-risk carriers.

The FAST Act mandated a review of the CSA program by the National Academies of Sciences, Engineering, and Medicine (National Academies). The FAST Act required that CSA scores of trucking companies be removed from public view until the National Academies completes its review, FMCSA implements a corrective action plan, and the U.S. Department of Transportation (DOT) Inspector General (IG) certifies that any deficiencies have been addressed. The National Academies released its report in April 2018 and recommended that FMCSA make several improvements to its scoring model. FMCSA submitted a corrective action plan to Congress in July 2018, which is currently under evaluation by the IG. The FY 2020 Transportation, Housing, and Urban Development (THUD) appropriations bill includes a provision directing FMCSA to make an analysis of violations under CSA publicly available within 6 months of enactment, as was the case prior to the FAST Act.

The CSA scoring system was developed as an internal tool for FMCSA to prioritize oversight and interventions for motor carriers exhibiting patterns of safety problems. In order to make its internal analysis useful to the public and others to gauge the safety of a carrier, FMCSA has relied on the assignment of a safety fitness rating. FMCSA currently continues to rely on a system of compliance reviews in which carriers are assigned a satisfactory, conditional, or unsatisfactory safety rating. These ratings are based on detailed investigations and on-site reviews and, because they are resource intensive, FMCSA is only able to review and rate approximately one percent of registered carriers each year.<sup>23</sup> As a result, existing carrier ratings are often outdated. Moreover, the vast majority of carriers (86 percent) do not have a safety rating according to the latest available FMCSA data.<sup>24</sup>

Since the initiation of the CSA program, FMCSA has been working to update the methodology it uses to make Safety Fitness Determination (SFD) ratings, but to date, roadside and other data in CSA has not been incorporated into the process of making these determinations. In January 2016, FMCSA issued a proposed SFD rule that, by the agency's projections, would increase the number of motor carriers rated to 75,000 every month<sup>25</sup>. In March 2017, the Trump Administration withdrew the proposed rule, citing the need to review the National Academies study before deciding how to proceed on company safety ratings<sup>26</sup>.

The lack of a definitive method to interpret violation data under CSA and signal that a carrier is considered safe by regulators has been cited as a source of confusion and concern among stakeholders in the industry. In the past, carriers have expressed concerns about how raw violation data was displayed, and the agency's calculation of "relative" scores, rating carriers in relation to other carriers. Brokers and other third party logistics providers (3PLs) have called for a statutory Federal hiring or selection standard, as 3PLs have been exposed to liability when using carriers with safety violations to move goods. Without FMCSA rules in place for determining

<sup>22</sup> <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/safety/data-and-statistics/413361/fmcsa-pocket-guide-2018-final-508-compliant.pdf>.

<sup>23</sup> For a snapshot of data from 2015-2019 see: <https://ai.fmcsa.dot.gov/SafetyProgram/spRptReview.aspx?rpt=RVFR>.

<sup>24</sup> See figure 3-4, <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/safety/data-and-statistics/413361/fmcsapocket-guide-2018-final-508-compliant-1.pdf>.

<sup>25</sup> 81 Fed. Reg. 3562 (January 21, 2016); <https://csa.fmcsa.dot.gov/WhatsNew/Article?articleId=82776>.

<sup>26</sup> 82 Fed. Reg. 14848 (March 23, 2017).

safety fitness, however, setting a selection standard (and legislatively mandating what data to rely on) is difficult in order to ensure the selection of a safe carrier as well as ensuring fairness among carriers seeking to bid for loads, given that 86 percent of the industry is currently unrated by the agency.

#### *Additional Regulation*

Prior to 1980, the motor carrier industry was heavily regulated, including rate regulations for what a motor carrier could charge to deliver goods over a particular route. Most federal economic regulation of the trucking industry ended when Congress enacted the Motor Carrier Act of 1980. On January 1, 1996, the Interstate Commerce Commission (ICC), which had primary jurisdiction over the remaining economic regulation of the motor carrier industry, was terminated by Congress in the ICC Termination Act (P.L. 104-88). Any remaining requirements, such as registration requirements, are now under FMCSA.

Companies that operate commercial vehicles transporting passengers or hauling cargo in interstate commerce must be registered with FMCSA, obtain operating authority, and have a U.S. DOT Number. Brokers or freight forwarders of property are also required to obtain operating authority from the FMCSA. Operating authority dictates the type of motor carrier operations a company may conduct, the cargo it may carry, and the geographical area in which it may legally operate. Carriers not required to have operating authority include private carriers and carriers that exclusively haul commodities exempt from federal regulations. To obtain operating authority, a carrier must exhibit that the company is fit, willing, and able to provide transportation services and comply with federal regulations.

In addition, carriers must provide proof that they hold a minimum level of liability insurance in order to obtain and maintain operating authority. Congress first directed the establishment of Federal regulations for interstate motor carrier operations to govern “security for the protection of the public” in the Motor Carrier Act of 1935 (Section 215 of P.L. 74-255). In implementing this legislation, the ICC set a minimum level of financial responsibility to be held by motor carriers and brokers. Section 30 of the Motor Carrier Act of 1980 set requirements for property carrying companies at \$750,000 for the transportation of property, and \$1 million to \$5 million for transportation of different classes of hazardous material. These levels have not changed since that time.

Section 32104 of MAP-21 directed the Secretary to issue a report on the adequacy of current minimum financial responsibility requirements and current bond and insurance requirements for freight forwarders and brokers. FMCSA issued this report in April 2014.<sup>27</sup> MAP-21 directed the agency to reevaluate the requirements every four years and to issue similar reports to Congress, but a subsequent report has not been produced. In its April 2014 report, FMCSA concluded that the current financial responsibility minimums warranted a re-evaluation. On November 28, 2014, FMCSA published an advanced notice of proposed rulemaking to consider increasing the minimum levels of financial responsibility a motor carrier must hold, including liability coverage for bodily injury or property damage, and implement financial responsibility requirements for brokers and freight forwarders.<sup>28</sup> This rulemaking was formally withdrawn on June 5, 2017.<sup>29</sup>

#### *Federal Preemption*

In the Federal Aviation Authorization Act of 1994 (P.L. 103-305), Congress enacted a provision specifying that “a State, a political subdivision of a State, or political authority of two or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property.”<sup>30</sup> The law allows States to continue regulating safety, insurance, vehicle size and weight, hazardous materials routings, household goods, and certain tow truck operations.

The Conference Report (H. Rept. 103-677) accompanying the 1994 law discusses that Congress was intending to address direct economic regulation of intrastate trucking by States, through direct actions such as “entry controls, tariff filing and price regulation, and types of commodities carried.” The Conference Report notes that, although the industry was deregulated in 1980, 41 States continued to regulate intrastate prices, routes, and services of motor carriers and 26 States strictly regulated trucking prices. The Report further states that such regulations were usu-

<sup>27</sup> <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Financial-Responsibility-Requirements-Report-Enclosure-FINAL-April%202014.pdf>.

<sup>28</sup> 79 Fed. Reg. 70839.

<sup>29</sup> 82 Fed. Reg. 25753.

<sup>30</sup> 49 USC § 14501(c)(1).

ally designed to ensure that prices “are kept high enough to cover all costs and are not so low as to be ‘predatory’.” Price regulation also involves filing of tariffs and long intervals for approval to change prices.” Nearly 15 years after deregulation, States were still directly dictating the rates and prices motor carriers could charge for movement of goods through the particular State.

The preemption language, as enacted, was added in Conference. The House bill had no provision, and the Senate bill had a provision narrowly tailored to apply preemption to intermodal all-cargo air carriers. The provision was inserted after a legal decision determined that Federal Express (FedEx) was not subject to intrastate economic regulations for motor carriers because FedEx could rely on pre-emption under the Airline Deregulation Act of 1978 as an air carrier.<sup>31</sup> UPS, however, remained regulated as a motor carrier, according to the Conference Report, “putting it at a competitive disadvantage in a number of States.” After the FedEx decision, California and other States began to enact laws extending the preemption to other carriers affiliated with direct air carriers, but some segments of the motor carrier industry, such as owner-operators, were still subject to regulation.

Despite this intent, the preemption provision has been heavily utilized as the basis for litigation over a variety of State and local laws and regulations that go beyond tariffs and price regulation. Hundreds of cases cite the preemption statute in different contexts. Several of these cases have been heard by the Supreme Court. For example, the New Hampshire Motor Transport Association sued the State of Maine over a law attempting to curtail tobacco sales to minors, which required on-line tobacco sales to utilize delivery companies that provide recipient-verification services to confirm the legal age of the recipient. In 2008, the Supreme Court upheld that the requirement for signature delivery violates the Federal preemption statute.<sup>32</sup> This provision of law was also the basis for the American Trucking Association’s suit against the City of Los Angeles over the way the Port of Los Angeles and the Board of Harbor Commissioners attempted to implement a program to reduce truck emissions around the ports. The Board proposed to require motor carriers to enter into a concession agreement in order to service the port. In 2013, the Supreme Court upheld that the City’s plans were preempted by Federal law.<sup>33</sup>

More recently, this provision has been the basis for litigation over State labor laws, including meal and rest break rules. On July 9, 2014, the Ninth Circuit U.S. Court of Appeals upheld the State of California’s meal and rest break laws for all workers, including truck drivers.<sup>34</sup> The Ninth Circuit’s decision found that California’s labor laws, particularly related to intrastate truck drivers in this case, are not preempted under the 1994 preemption provision:

*Although we have in the past confronted close cases that have required us to struggle with the “related to” test, and refine our principles of FAAAA preemption, we do not think that this is one of them. In light of the FAAAA preemption principles outlined above, California’s meal and rest break laws plainly are not the sorts of laws ‘related to’ prices, routes, or services that Congress intended to preempt. They do not set prices, mandate or prohibit certain routes, or tell motor carriers what services they may or may not provide, either directly or indirectly . . . They are normal background rules for almost all employers doing business in the state of California. (Dilts, 769 F.3d at 647.)*

In May 2015, the U.S. Supreme Court denied the petition to hear the case. In the wake of the Supreme Court’s denial, Congress debated, and rejected each time, changes to the preemption statute to preempt State wage and hour laws in six legislative vehicles. These include: the FAST Act; H.R. 4441, the House-introduced “Aviation Innovation, Reform, and Reauthorization Act of 2016;” H.R. 5394, the FY 2017 Transportation, Housing, and Urban Development Appropriations Act; H.R. 3353, the FY 2018 Transportation, Housing, and Urban Development Appropriations Act; H.R. 4, the “FAA Reauthorization Act of 2018;” and H.R. 6072, the FY 2019 Transportation, Housing, and Urban Development Appropriations Act.

In September 2018, the U.S. Supreme Court also denied hearing an appeal in another class action case involving the applicability of California wage and hours laws beyond meal and rest break, including piece-rate pay (or pay by the load).<sup>35</sup> The pre-

<sup>31</sup> See *Fed. Express Corp. v. Cal. Pub. Utils. Comm’n*, 936 F.2d 1075 (9th Cir. 1991), cert denied, 112 S.Ct. 2956 (1992).

<sup>32</sup> *Rowe v. New Hampshire Motor Transp. Assn.*, 552 U.S. 364 (2008).

<sup>33</sup> *American Trucking Assns, Inc. v. City of Los Angeles*, 569 U.S. 641 (2013).

<sup>34</sup> See *Dilts v. Penske Logistics, LLC*, 769 F.3d 637 (9th Cir. 2014), cert. denied, 135 S. Ct. 2049 (2015).

<sup>35</sup> *Ortega v. J.B. Hunt Transp., Inc.*, 694 Fed. Appx. 589 (9th Cir. 2017), cert. denied, *J.B. Hunt Transp., Inc. v. Ortega*, 138 S. Ct. 2601 (2018).

emption provision was also the basis for the challenge by the trucking industry to a California Supreme Court decision<sup>36</sup> that established a new test for whether a driver is considered an employee or an independent contractor. On March 29, 2019, the U.S. District Court for the Eastern District of California dismissed the legal challenge by the Western States Trucking Association.<sup>37</sup>

In 2008, FMCSA denied a request for a determination of preemption by the American Trucking Associations under a separate authority to preempt State law, under 49 U.S.C. 31141. FMCSA concluded that the petition did not meet the threshold for preemption because the California rules are “simply one part of California’s comprehensive regulations governing wages, hours, and working conditions” and that “in no sense” do the California laws regulate “commercial vehicle safety.”<sup>38</sup> FMCSA further found that “there is nothing in the statutory language or legislative history ... that would justify reading into the authority to preempt State laws ‘affecting’ commercial motor vehicle safety”—and that, “[b]ecause the California meal and rest break rules are not ‘regulations on commercial motor vehicle safety,’ the Agency has no authority to preempt them under 49 U.S.C. 31141. Furthermore, that statute does not allow the preemption of other State or local regulations merely because they have some effect on [commercial motor vehicle] operations.”<sup>39</sup>

On October 4, 2018, FMCSA published a request for comments on a petition submitted in 2018 by the American Trucking Associations, seeking a determination that California’s meal and rest break rules do not apply to drivers covered by the agency’s hours of service rules.<sup>40</sup> The petition prompted a significant response from Members of Congress, with over 50 House Members and Senators weighing in via letter with the agency. Representatives and Senators from the affected State of California strongly opposed preemption of California law.<sup>41</sup>

On December 28, 2018, the Trump Administration reversed FMCSA’s position from 2008 and granted the petition and preempted meal and rest break requirements for drivers as enacted by the State of California. On February 7, 2019, the California Attorney General filed a petition with the U.S. Court of Appeals for the Ninth Circuit, seeking reversal of FMCSA’s preemption determination.

On April 18, 2019, the Washington State Trucking Association petitioned FMCSA, seeking a determination that Washington State meal and rest break rules are preempted. The FY 2020 House Transportation, Housing, and Urban Development Appropriations Act includes language prohibiting FMCSA from reviewing or issuing a decision on petitions to preempt State meal and rest break laws.

## COMMERCIAL VEHICLES

### *Truck Size and Weight*

Federal law sets maximum standards for weight on the Interstate System and minimum standards for length of trucks traveling on the Interstate System and the National Network, a system of approximately 209,000 miles of roads. Statutory changes are required to grant a variance or exemption to allow heavier or longer vehicles on any portion of these roads. Beyond the Interstate System and National Network, states have the ability to set their own size and weight limitations on all other roads.

Federal weight limits applicable on the Interstate System are set in section 127 of title 23, United States Code, at 20,000 pounds on a single axle; 34,000 pounds on a tandem axle; and 80,000 pounds gross vehicle weight. Federal law prohibits a state from prescribing weight limits that are more or less than the federal limits unless it has grandfather rights. In addition to the overall weight standards, a state must meet the requirements of the Federal Bridge Formula.

Truck size laws are codified in sections 31111 through 31115 of title 49, United States Code. Federal length and width laws apply on both the Interstate System and the broader National Network. Federal law requires a width of 102 inches to operate on the National Network, and prohibits a State from prescribing standards of more or less than this measurement. There is no federal length limit on the National Network; instead, federal law requires a minimum 28-foot length for trailers in a double combination and 48-foot length for a semitrailer. There is no federal standard for vehicle height.

<sup>36</sup> *Dynamex Operations West, Inc. v. Superior Court*, No. S222732 (Cal. 2018).

<sup>37</sup> *Western States Trucking Association v. Schoorl*, 2:18-cv-01989 (E.D. Cal. 2019).

<sup>38</sup> *Petition for Preemption of California Regulations on Meal Breaks and Rest Breaks for Commercial Motor Vehicle Drivers*, 73 Fed.Reg. 79204, 79206 (2008).

<sup>39</sup> *Id.* at 79206.

<sup>40</sup> 83 Fed. Reg. 50142.

<sup>41</sup> Congressional letters available at: <https://www.regulations.gov/document?D=FMCSA-2018-0304-0726>.

Congress enacted the first federal truck size and weight limits as part of the Federal-Aid Highway Act of 1956 (P.L. 84-627), and these standards were subsequently amended in the Federal-Aid Highway Amendments Act of 1974 (P.L. 93-643) and again in the Surface Transportation Assistance Act of 1982 (P.L. 97-424). Each of these acts contained provisions to allow states to continue existing size and weight standards already in place, known as grandfather rights. In 1991, in Section 1023 of the Intermodal Surface Transportation Efficiency Act (ISTEA; P.L. 102-240), Congress enacted a freeze on the size and weight of longer combination vehicles, defined in the legislation as “any combination of a truck tractor and two or more trailers or semitrailers which operates on the Interstate System at a gross vehicle weight greater than 80,000 pounds.” Subsequent acts of Congress, including SAFETEA-LU in 2005 (P.L. 109-59), MAP-21, the FAST Act, and various appropriations Acts have included State-specific and industry-specific statutory exemptions from the weight standards.

MAP-21 further required DOT to conduct a Comprehensive Truck Size and Weight Study. The Federal Highway Administration (FHWA) released the final study in April 2016.<sup>42</sup> The study did not include any recommended changes to current law governing truck size and weight due to a lack of sufficient data on the impacts of increased truck size and weight on infrastructure and safety.

#### *Commercial Vehicle Safety Standards*

The National Highway Traffic Safety Administration (NHTSA) establishes Federal motor vehicle safety standards (FMVSS) applicable to commercial vehicles. FMCSA issues Federal motor carrier safety regulations (FMCSR) that govern the safe operation of a commercial vehicle.

#### *Speed Limiters*

In September 2016, NHTSA and FMCSA published a joint proposed rule to require heavy trucks and buses manufactured after August 1, 2020, to be equipped with a speed limiting device<sup>43</sup>. This rulemaking was undertaken in response to petitions requesting a rulemaking, filed separately by the American Trucking Associations and Road Safe America. Under the proposal, each speed limiting device would be required to be operational at all times for drivers who operate in interstate commerce. The proposed rule did not specify a maximum speed to which a limiter would have to be set; the agencies indicated a particular speed would be specified in a final rule once comments were reviewed. This rule is listed on DOT’s latest significant rulemaking report as not active, with no further milestones or anticipated dates listed. The FY2018 Transportation, Housing, and Urban Development Appropriations bill, as passed by the House, contained language prohibiting DOT from finalizing the speed limiter rule, but this prohibition was not retained in final legislation.

#### *Underride Guards*

Crashes involving passenger vehicles and large trucks most often result in death or injury to occupants of the passenger vehicle. In 2017, ninety-seven percent of occupant fatalities in large truck-passenger vehicle crashes were those riding in the passenger vehicle<sup>44</sup>. One reason why these crashes can be so hazardous is that an underride may occur during the collision. An underride occurs when the passenger vehicle travels partially or completely under the truck due to the height differential between the two vehicles. Such underride collisions can defeat vehicle crumple zones, prevent air bag deployment, and severely crush the vehicle’s passenger compartment. A 1997 Insurance Institute for Highway Safety (IIHS) study estimated that half of all fatal crashes between large trucks and passenger vehicles involve an underride<sup>45</sup>.

The first Federal underride standard was instituted in 1953. It required tractor-trailers and single-unit trucks to have basic rear guards to block underrides. Currently, heavy trailers are required to be equipped with rear underride guards that meet standards issued by NHTSA in 1996.<sup>46</sup> There is no Federal requirement that trucks or trailers be equipped with side underride guards.

IIHS crash tests have demonstrated that rear guards meeting current standards perform poorly and that stronger rear and side guards currently available on the market provide better protection and have the potential to reduce the risk of injury

<sup>42</sup> <https://ops.fhwa.dot.gov/freight/sw/map21tswstudy/index.htm>.

<sup>43</sup> 81 Fed. Reg. 61942 (September 7, 2016).

<sup>44</sup> Insurance Institute for Highway Safety (2019). *Fatality Facts 2017 Large trucks*. <https://www.iihs.org/topics/fatalitystatistics/detail/large-trucks>.

<sup>45</sup> Insurance Institute for Highway Safety (2019). *Large Trucks*. <https://www.iihs.org/topics/large-trucks#truckunderride>.

<sup>46</sup> 61 Fed. Reg. 2004 (January 24, 1996).

and death in up to three-fourths of underride cases.<sup>47</sup> NHTSA issued a Notice of Proposed Rulemaking on December 12, 2015, in response to several petitioners to upgrade rear underride guards to adopt Transport Canada’s rear underride requirements.<sup>48</sup> NHTSA is determining next steps for this rulemaking, and the agency’s latest rulemaking agenda lists the status of this rule as “long term action”. NHTSA has also conducted research into rear and side underride fatal crashes.<sup>49</sup>

#### *Autonomous Vehicles*

The development and deployment of autonomous vehicle technologies across different levels of automation is likely to have tremendous impacts on the nation’s surface transportation system. The Society of Automotive Engineers International (SAE) has developed six standardized, internationally-adopted definitions to describe levels of automation, from Level 0 (no automation) with incremental increases in automation up to Level 5 (full automation).<sup>50</sup> Autonomous vehicles use cameras, radar, GPS, and other sensors to react to other vehicles on the roadway, and the level depends upon the number of features included on the vehicle.

On October 4, 2018, DOT released updated Federal guidance for automated vehicles, “Automated Vehicles 3.0: Preparing for the Future of Transportation.” This built upon DOT’s previous voluntary guidance for states. The October 2018 guidance indicates FMCSA intends to initiate a rulemaking to, “better understand areas of responsibility between the State and Federal governments in the context of [automated driving system] ADS-equipped commercial motor vehicles and commercial carriers.”<sup>51</sup> While DOT has looked to the future for automation, the Department has not taken steps to require driver assist features on newly-manufactured heavy trucks such as automatic emergency braking, lane departure warning, and collision warning systems, which are considered low levels of automation and widely commercially available today.

The NHTSA guidance also raises the need to evaluate and respond to the workforce impacts of autonomous vehicles. According to NHTSA, “Entities involved in developing and deploying automation technologies may want to consider how to assess potential workforce effects, future needs for new skills and capabilities, and how the workforce will transition into new roles over time. Identifying these workforce effects and training needs now will help lead to an American workforce that has the appropriate skills to support new technologies.”<sup>52</sup>

#### CROSS BORDER

The North American Free Trade Agreement (NAFTA), which took effect in 1994, required the U.S. to grant Mexico-domiciled long-haul trucks the ability to carry goods into the U.S., with reciprocity for U.S. carriers travelling into Mexico. The U.S. initially delayed granting cross-border operating authority due to reports of safety violations on the part of Mexican motor carriers. However, Mexico successfully appealed the delay to a NAFTA arbitration panel in 2000. This prompted Congress to pass Section 350 of the FY 2002 Department of Transportation and Related Agencies Appropriations Act (P.L. 107-87), which implemented 22 preconditions and safety requirements Mexican carriers had to meet before FMCSA could grant them U.S. operating authority.

In 2007, DOT instituted a pilot program for Mexican carriers to begin operating in the U.S., but the initial pilot program announcement did not apply the same safety standards to Mexican carriers and drivers as those in the U.S., such as drug and alcohol testing, new entrant safety audits, hours of service requirements, and English proficiency requirements. In 2009, Congress blocked the pilot program from proceeding in the Omnibus Appropriations Act of 2009 (P.L. 111-8). In response, Mexico imposed retaliatory tariffs against the U.S. In 2011, DOT once again launched a revised pilot program to allow access to Mexican carriers to operate long-haul in the U.S.

In 2018, U.S. negotiators under the Trump Administration secured language in the United States-Mexico-Canada Agreement (USMCA), intended to replace

<sup>47</sup> Insurance Institute for Highway Safety (2019). *Large Trucks*. <https://www.iihs.org/topics/large-trucks#truckunderride>.

<sup>48</sup> 80 Fed. Reg. 78418.

<sup>49</sup> Heavy-Vehicle Crash Data Collection and Analysis to Characterize Rear and Side Underride and Front Override in Fatal Truck Crashes (DOT HS 811 725), March 2013; Analysis of Rear Underride in Fatal Truck Crashes (DOT HS 811 652), August 2012.

<sup>50</sup> <https://www.sae.org/news/press-room/2018/12/sae-international-releases-updated-visual-chart-for-its-%E2%80%9Clevels-of-driving-automation%E2%80%9D-standard-for-self-driving-vehicles>.

<sup>51</sup> See page 12 of <https://www.transportation.gov/sites/dot.gov/files/docs/policy-initiatives/automatedvehicles/320711/preparing-future-transportation-automated-vehicle-30.pdf>.

<sup>52</sup> *Ibid*, page 10.

NAFTA, reserving the U.S.'s right to impose safety and other standards on trucks entering from Mexico, including limiting the operating authority of long-haul trucks entering from Mexico based on impacts to U.S. industry. Congress must pass the implementing legislation for the USMCA before it goes into effect.

#### TRUCK PARKING

Carriers and drivers regularly report a significant shortage of available parking for trucks in parts of the country, and indicate the lack of available parking is a safety problem for drivers. In 2005 under SAFETEA-LU, Congress authorized \$25 million over 4 years for a pilot program to address the shortage of long term parking for commercial motor vehicles on the National Highway System (NHS). Section 1305 of SAFETEA-LU created a discretionary Truck Parking Facilities program, providing \$6.25 million per year beginning in fiscal year 2006. States, metropolitan planning organizations (MPOs), and local governments could use funds awarded under this competitive program for projects on the National Highway System (NHS) to: construct safety rest areas that include commercial vehicle parking; construct commercial vehicle parking facilities adjacent to commercial truck stops and travel plazas; construct turnouts for commercial vehicles; open existing facilities to commercial vehicles; make capital improvements to public commercial vehicle parking facilities to allow year-round use; improve the geometric design of interchanges to improve access to parking facilities; and promote the availability of publicly or privately provided commercial vehicle parking on the NHS using Intelligent Transportation Systems and other means.

In 2015, MAP-21 eliminated the dedicated funding for the Truck Parking Facilities program, but it established eligibility for truck parking under the National Highway Performance Program, the Surface Transportation Program, and the Highway Safety Improvement Program. Section 1401 of MAP-21, referred to as "Jason's Law," also required the Federal Highway Administration (FHWA) to conduct a survey to evaluate the capability of States to provide adequate parking and rest facilities for commercial motor vehicles engaged in interstate transportation. FHWA worked with States and industry members and organizations, including truck drivers and representatives of trucking firms, travel plaza and truck stop owners and operators, and commercial motor vehicle safety contacts in each State. The results of the survey provide States and MPOs with insight into the issues associated with commercial vehicle parking, including shortages in particular geographic regions, to identify parking needs and to encourage improvements and investments. FHWA conducted the survey required by Jason's Law and published the results in August 2015.<sup>53</sup>

#### WITNESS LIST

- Ms. Cathy Chase, President, Advocates for Highway and Auto Safety
- Mr. Chris Spear, President & CEO, American Trucking Associations
- Mr. Todd Spencer, President, Owner-Operator Independent Drivers Association
- Mr. Lamont Byrd, Director, Health and Safety Department, International Brotherhood of Teamsters
- Mr. Jason Craig, Director of Government Affairs, C.H. Robinson
- Mr. Rodney Noble, Senior Director for Transportation Global Procurement, PepsiCo
- Deputy Chief Mark Savage, Colorado Highway Patrol, on behalf of the Commercial Vehicle Safety Alliance
- Mr. Andy Young, Truck Safety Advocate

<sup>53</sup> [https://ops.fhwa.dot.gov/freight/infrastructure/truck\\_parking/jasons\\_law/truckparkingsurvey/jasons\\_law.pdf](https://ops.fhwa.dot.gov/freight/infrastructure/truck_parking/jasons_law/truckparkingsurvey/jasons_law.pdf).



# UNDER PRESSURE: THE STATE OF TRUCKING IN AMERICA

WEDNESDAY, JUNE 12, 2019

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

The subcommittee met, pursuant to notice, at 10 a.m., in room 2167, Rayburn House Office Building, Hon. Eleanor Holmes Norton (Chairwoman of the subcommittee) presiding.

Ms. NORTON. Good morning. I ask unanimous consent that Members not on the subcommittee be permitted to sit with the subcommittee at today's hearing and ask questions.

Without objection, so ordered.

Mr. DAVIS. I regrettably cannot object because he is not here yet, but I would like for the record that Garret Graves did not say please to get put on this.

Ms. NORTON. So noted.

I will now make my own opening statement.

I want to welcome you all to today's hearing. There are some surprising, at least to me, issues to be discussed and current challenges that this committee needs to take under advisement.

As Congress looks to enact changes to trucking policy in the upcoming reauthorization, how to improve safety must be a guiding question, and I must say new questions, new challenges, new statistics need to be explained.

For example, truck crash fatalities jumped nearly 10 percent in 1 year between 2016 and 2017. I would have questions on that. I do not understand it.

And these fatalities have increased 40 percent in the last 10 years, since 2009. We clearly must do more to save lives.

The Federal Government has no—and perhaps this has something to do with it—has no clear safety measurement system, and the public does not have access to safety oversight data.

The U.S. Department of Transportation has worked for over a decade to improve the system of safety oversight of trucking companies, but so far it has not translated the safety data it has collected into a way to measure, some meaningful measure that can help shippers and brokers and insurers and the traveling public understand which companies are safe and which companies are not.

Currently 86 percent of the industry—that is the overwhelming amount of the industry—has no safety rating, and many of the rat-

ings in existence are so outdated that they are obsolete and no one should rely upon them.

Congress needs to take action to get a handle on this problem and direct the U.S. Department of Transportation to finalize a safety fitness determination rule.

We will also hear about an issue that I tried to highlight for years, fixing the glaring omission in licensing rules that allows a new driver to obtain a commercial driver's license without a specific amount of behind-the-wheel training time required.

DOT did issue a training rule in 2016, after 25 years, I should note, in which it had engaged in rulemaking trying to get it right. And still DOT failed to require a minimum number of hours behind the wheel. Why? What is the problem here?

Providing robust training empowers drivers to be safe and confident on the road and is an important way to attract quality drivers, and of course, that is a major problem in the industry.

We will also hear today that the trucking industry is increasingly losing drivers, and obviously for years now it has had trouble attracting drivers. This is not an occupation in which people want to engage, especially young people today, and we need to understand why and what to do about it.

While some in the industry call for lowering the interstate driving age from 21 to 18, this certainly does not solve the underlying factors that thwart the industry from attracting drivers and keeping good drivers. That is probably wages and really the appalling working conditions that come with being a truck driver in our country today.

There is a growing recognition that the way drivers are compensated—by the load or the mile, not by the hour—is a problem. Drivers face increased pressure to deliver goods, although many factors on the routes are beyond their control, for example, congested roads and delays at shipper facilities.

Segments of the industry are seeking exemption requests from Congress for additional on-duty time, but these requests focus on the ability for companies to squeeze more hours into the day. There is no mention that extra hours do not mean extra pay for millions of drivers in the industry.

This, too, is something the subcommittee, which is responsible for oversight of hours-of-service regulation, needs to focus on for a solution finally.

I am eager to hear about the future of the industry, and I particularly look forward to the strides that companies, such as PepsiCo, which is testifying on the panel, have made to electrify and green their truck fleets. Technology and innovation continue to hold great potential to realize safety gains and to improve mobility in goods movement.

But these gains can only be recognized if we find the right balance to protect consumers and drivers and workers in the industry while at the same time compensating innovation. The committee must play a strong role in sustaining—striking, indeed—this balance.

I also know that full automation is not right around the corner, exciting as this notion is. In the immediate term, technology is available to save lives, such as automatic emergency braking and

collision warning systems, although these remain optional on trucks today.

Finally, I would like to welcome Marianne Karth and Lois Durso, who have been dedicated safety advocates. In our audience today is Marianne Karth. I want to thank both of these women for their efforts to turn the tragic loss of their children in truck underride crashes, which we will also hear about today, into a force for good.

I want to thank all of our witnesses. I will look forward to discussion about creative, collaborative solutions that will elevate the state of the industry and improve the safety of trucks in our Nation today.

I now call on the ranking member of the subcommittee, Mr. Davis, for his opening statement.

[Ms. Norton's prepared statement follows:]

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**Prepared Statement of Hon. Eleanor Holmes Norton, a Delegate in Congress from the District of Columbia, and Chair, Subcommittee on Highways and Transit**

Welcome to today's hearing on the state of trucking. I look forward to what I expect will be a lively discussion, on a wide range of topics, from a diverse panel of witnesses. We will hear about current challenges facing the industry, as well as a look ahead to the future.

As Congress looks to enact changes to trucking policy in reauthorization, how to improve safety must be a guiding question. Truck crash fatalities jumped nearly ten percent between 2016 and 2017, and increased over 40 percent since 2009. We must do more to save lives.

SAFETY OVERSIGHT OF COMPANIES

We will hear today that there is no clear safety measurement system in place by the Federal Government, and that the public does not have access to safety oversight data. The U.S. Department of Transportation has worked for over a decade to improve its system of safety oversight of trucking companies, but so far, it has failed to translate the safety data it collects into a meaningful measure that can help shippers, brokers, insurers, and the traveling public understand which companies are safe and which ones are not. Currently, 86 percent of the industry has no safety rating, and many of the ratings are so outdated they're obsolete. Congress needs to take action to get a handle on this problem and direct U.S. DOT to finalize a Safety Fitness Determination rule.

DRIVER ISSUES

We will also hear about an issue that I have highlighted for years—we must fix the glaring omission in licensing rules that allows a new driver to obtain his or her Commercial Driver's License (CDL) without a specific amount of behind-the-wheel training time required. DOT issued a training rule in 2016—after 25 years of rule-making on this issue, trying to get it right—that failed to require a minimum number of hours behind the wheel.

Providing robust training empowers drivers to be safe and confident on the road and is an important way to attract quality drivers. We will also hear today that the trucking industry is increasingly losing drivers and is having trouble attracting new drivers. While some in the industry call for lowering the interstate driving age from 21 years to 18 years, this will do nothing to solve the underlying factors that thwart industry from attracting and keeping good drivers—namely driver wages and working conditions.

There is growing recognition that the way drivers are compensated—by the load or mile, not by the hour—is a problem. Drivers face increased pressure to deliver loads while many factors on their routes are beyond their control such as congested roads and delays at shipper facilities. Segments of industry are seeking exemption requests from Congress for additional on-duty time, but these requests focus on the ability for companies to squeeze more hours into a day. There is never a mention that extra hours do not mean extra pay for millions of drivers in the industry. This

is something this Subcommittee, which is responsible for oversight of hours of service regulations, needs to wrestle with.

#### FUTURE OF TRUCKING

I am eager to hear about the future of the industry. I look forward to hearing the strides companies, such as PepsiCo that is represented on the panel, have made to electrify and green their truck fleets. Technology and innovation continues to hold great potential to realize safety gains and to improve mobility in goods movement. But these gains can only be realized if we find the right balance to protect consumers, drivers, and workers in the industry while supporting innovation. This Committee must play a strong role in sustaining that balance. I also note that full automation is not right around the corner. In the immediate term, technology is available now to save lives—such as automatic emergency braking and collision warning systems—but these remain optional on trucks today.

Finally, I would like commend the work of Marianne Karth and Lois Durso, two dedicated safety advocates. Marianne is in the audience today. Thank you for your efforts to turn the tragic loss of your children in truck underride crashes, which we will also hear about today, into a force for public good.

Thank you to each of our witnesses for being here today and offering your unique perspective. I hope that today's discussion will yield creative, collaborative solutions that will elevate the state of the industry and improve the safety of trucks on our Nation's roadways.

Mr. DAVIS. Thank you, Madam Chair.

I want to welcome everyone to today's hearing.

The subcommittee is continuing to ramp up its efforts to reauthorize the Federal surface transportation programs and policies. So far we have held two hearings to gather stakeholder feedback on possible changes to those programs and those policies.

Today we are turning our attention to the policies and the programs that impact trucking. The trucking industry's contribution to the Nation's economy is very significant. Trucks moved approximately 10.8 billion tons of freight in 2017, and the industry employs over 6 million drivers.

The subcommittee has broad jurisdiction in this area. We are not only responsible for improving the surface transportation system that facilitates freight movement to domestic and international markets, but we are also responsible for the safety of the users of that system and the regulatory environment that the trucking industry operates in.

Each of these responsibilities must be considered in a comprehensive manner. As we proceed with our discussion today, there are a few thoughts that I think we should keep in mind.

Safety has and must continue to be a focus of the surface transportation reauthorization bill. Congress, along with the Department of Transportation, our non-Federal partners and the private sector, has made strides to improve the safety of our surface transportation system, but there is always more that we can do together.

We need to focus Federal resources where they can make the most impact and continue to provide State law enforcement agencies with the tools and the resources they need to effectively enforce Federal regulations.

We must also be careful to not impose burdensome regulations that impeded our ability to move goods or that do not help us achieve our safety objective.

Finally, we must ensure that we make the necessary improvements to our surface transportation system to continue to facilitate the safe and efficient movement of freight.

Our panel of witnesses represents a diverse set of perspectives on this topic and all the topics mentioned before.

With that, I want to thank our witnesses once again for being with us this morning. I look forward to hearing their testimony.

And I yield back the balance of my time.

[Mr. Davis's prepared statement follows:]

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**Prepared Statement of Hon. Rodney Davis, a Representative in Congress from the State of Illinois, and Ranking Member, Subcommittee on Highways and Transit**

The subcommittee is continuing to ramp up its efforts to reauthorize Federal surface transportation programs and policies. So far, we've held two hearings to gather stakeholder feedback on possible changes to those programs and policies.

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We must also be careful to not impose burdensome regulations that impede our ability to move goods or that do not help us achieve our safety objective.

Finally, we must ensure that we make the necessary improvements to our surface transportation system to continue to facilitate the safe and efficient movement of freight.

Ms. NORTON. Thank you, Mr. Davis.

I would like to hear now from the chairman of the full committee, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Madam Chair. Thanks for calling this diverse group of witnesses. I expect we may have some lively interaction on the panel, which I always encourage.

We are at a time where the trucking industry is, I think, reaching a tipping point. The pressures on carriers and drivers are extraordinary these days, and the policies that we enact here in the next surface bill will have a major impact on public safety, carrier operations, truck driver wages, and working conditions.

Carriers have set the expectation they can and will deliver more goods faster at the lowest possible cost, but unfortunately, in many cases drivers absorb the uncertainties of the goods movement and the pressures that are resulting—everything from congestion, wait time at ports, shipper facilities, and fluctuating fuel prices.

Some drivers are compensated only by the mile, not by the hour; they are often faced with the false choice of getting a day's wages or getting adequate rest and following hours-of-service rules.

Even as their days get longer, many truck drivers have not seen their wages increase, and you know, sometimes when States move

forward with progressive laws to provide truck drivers with paid sick leave and paid rest breaks, there is a tremendous attempt by the industry to preempt those rules or laws.

Given these pressures, there is no surprise that rigid, complex legislation, such as hours of service, feel unworkable, but we cannot paper this over. We have got to write rules or mandate rules that make sense. We cannot stretch drivers even thinner or force them to drive unreasonable hours and, therefore, tired and unsafely.

We are going to debate about why there is a driver shortage. It is simple in my mind. If you want to attract and retain quality drivers, you need policies that ensure trucking remains a good job with adequate compensation.

It is also not surprising that safety indicators are moving in the wrong direction, as mentioned by the chair. Large truck fatalities have disturbingly climbed every year since 2009 in real terms and as a percentage of miles traveled, and saving lives is a very, very strong objective of this committee, and having better safety on the highways.

More of the debates recently have all been about productivity, flexibility, and other disagreements, but we need to take positive steps and encourage DOT to take positive steps in this area.

I think it is time for a new approach. I hear a lot from stakeholders, my colleagues, about the unintended consequences of Federal rules. Rather than rendering existing rules worthless through exemptions, let's be intentional.

Let's take a fresh look at a host of things that are not working in our system, goods movements and how they interact. Let's figure out how Congress and the administration can maintain the highest levels of safety with clear and forceful regulations, but in a way that acknowledges the diversity of operations and rapidly changing nature of the industry.

I also want to highlight cross-border trucking. I opposed NAFTA 25 years ago, in good part because it granted broad authority for Mexican carriers to drive on U.S. roads despite the very significant discrepancies in safety standards between the two countries.

And I am pleased that Ambassador Lighthizer and the administration have been listening, and the USMCA includes language that will reinforce the rights of the U.S. to limit grants of operating authority for Mexican carriers if it will harm U.S. companies or drivers.

Now, Mr. Byrd, in your testimony, you lay out troubling ways in which U.S. companies undermine these efforts to protect the domestic labor market and U.S. truck drivers by employing drivers from Mexico through B-1, and I think Congress needs to take a hard look at that.

And, Mr. Spear, you talk about the industry's opposition to tolling, and I share many of your concerns there. Unfortunately, the only concrete proposal we have had out of this administration would be to shift all of the burden to the States to maintain the national system of infrastructure and goods movement, with a proliferation of tolling in the States.

Now, the President himself has rejected that, but unfortunately, that is the only proposal we have seen. So I think this committee

is going to have to look very hard at tolling and congestion pricing because States are moving ahead, and we need to look at what the implications are for the Federal system and the future of the movement of goods and people in this country.

I welcome the witnesses and look forward to your testimony.

Thank you, Madam Chair.

[Mr. DeFazio's prepared statement follows:]

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**Prepared Statement of Hon. Peter A. DeFazio, a Representative in Congress from the State of Oregon, and Chair, Committee on Transportation and Infrastructure**

Thank you, Madam Chair, for holding this aptly titled hearing.

The trucking industry is reaching a tipping point as carriers and drivers face mounting pressure. The policies Congress chooses to enact to relieve this pressure will have real impacts on public safety, carrier operations, and truck driver wages and working conditions.

Carriers have set the expectation that they can and will deliver more goods, faster, and at the lowest possible cost. In many cases, drivers absorb the uncertainties of goods movement—everything from congestion and wait times at ports and shipper facilities to fluctuating fuel prices.

Drivers who are compensated by the mile, not by the hour, face the false choice of getting paid or getting adequate rest. They often do not see their wages rise even as their work days get longer. And when States enact progressive laws to provide truck drivers with paid sick leave or paid rest breaks, most of the industry works to quash these efforts through Federal preemption.

In light of these pressures on drivers, it's no surprise that rigid, complex regulations—such as hours of service—feel unworkable. But we cannot paper over this problem by granting exemptions and stretching drivers even thinner through longer on-duty windows while ignoring the underlying operational realities.

Today, we will hear debate about whether—and why—there is a driver shortage. It's simple—if we want to attract and retain quality drivers, we need to support policies to ensure that trucking remains a good job.

It's also not surprising that safety indicators are moving in the wrong direction. Large truck fatalities have climbed each year since 2009 in real terms and as a percentage of miles travelled. Saving lives requires a strong commitment to safety as a top priority. Unfortunately, in recent years, debates in Congress have focused more on productivity and flexibility needs than safety outcomes. And in the last 2 years, the U.S. Department of Transportation has spent more time stalling and rolling back rules than advancing new safety initiatives.

It's time for a new approach. I hear a lot from stakeholders and my colleagues about the “unintended consequences” of Federal rules. Rather than rendering existing rules worthless through endless exemptions, let's be intentional. Let's take a fresh look at a host of things that are not working in our system of goods movement and how they interact. Let's figure out how Congress and the administration can maintain the highest levels of safety with clear, enforceable regulations, but in a way that acknowledges the diversity of operations and the rapidly changing nature of the industry.

I also want to highlight cross border trucking. I opposed NAFTA 25 years ago, in part because it granted broad authority for Mexican carriers to drive on U.S. roads despite the significant discrepancies in safety standards between the two countries. I am pleased that the recently negotiated United States Mexico Canada Agreement (USMCA) includes language that reinforces the rights of the U.S. to limit grants of operating authority for Mexican carriers if it will harm U.S. companies or drivers.

Mr. Byrd, your testimony lays out troubling ways in which U.S. companies undermine these efforts to protect the domestic labor market and U.S. truck drivers by employing drivers from Mexico through the B-1 visa system. I believe Congress needs to look into this practice in detail.

Finally, I'd like to note that in your testimony, Mr. Spear, you talk about the industry's opposition to tolling. Tolling and congestion pricing are topics that I believe warrant in-depth discussion as we look to surface reauthorization, and I expect we will have the opportunity delve into those at a future hearing.

I welcome each of the witnesses assembled here today. We have quite a diverse set of views on the panel, and I look forward to what I hope will be a lively and productive discussion.

Ms. NORTON. Thank you, Mr. DeFazio or Chairman DeFazio.

I would like to welcome our witnesses. I am going to quickly go down their names. They are many, but that is because of the issues before us today.

Cathy Chase, president, Advocates for Highway and Auto Safety.

Chris Spear, president and CEO, American Trucking Association.

Todd Spencer, president, Owner-Operator Independent Drivers Association.

Lamont Byrd, director of safety and health, International Brotherhood of Teamsters.

Jason Craig, director of government affairs, C.H. Robinson.

Rodney Noble, senior director of transportation global procurement, PepsiCo.

Deputy Chief Mark Savage, Colorado State Patrol, on behalf of the Commercial Vehicle Safety Alliance.

And Andy Young, truck safety advocate.

Thank you all for being here. We look forward to your testimony.

Without objection, our witnesses' full statements will be included in the record. Since your written statement has been made a part of the record, the subcommittee requests that you limit your oral testimony to 5 minutes.

Before we hear from our distinguished panel of witnesses, I recognize Representative Gibbs to introduce Mr. Young.

Mr. GIBBS. Thank you, Madam Chair.

I just wanted to welcome Mr. Andy Young. He is a constituent. It is not every day you get to welcome a constituent to a committee as a witness and also welcome him to Washington, DC.

You can also see in his testimony he is the proud owner of an old, classic Peterbilt 359. Anybody who knows anything about trucks, that is the king of all trucks, right?

So welcome, and I am glad you are here.

Mr. YOUNG. Thank you.

Mr. GIBBS. I yield back.

Ms. NORTON. Thank you very much.

We will now proceed with our witnesses.

President Cathy Chase, Advocates for Highway and Auto Safety, you may begin.

**TESTIMONY OF CATHERINE CHASE, PRESIDENT, ADVOCATES FOR HIGHWAY AND AUTO SAFETY; CHRIS SPEAR, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATIONS; TODD SPENCER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION; LAMONT BYRD, DIRECTOR OF SAFETY AND HEALTH, INTERNATIONAL BROTHERHOOD OF TEAMSTERS; JASON CRAIG, DIRECTOR OF GOVERNMENT AFFAIRS, C.H. ROBINSON; RODNEY NOBLE, SENIOR DIRECTOR OF TRANSPORTATION GLOBAL PROCUREMENT, PEPSICO; DEPUTY CHIEF MARK SAVAGE, COLORADO STATE PATROL, ON BEHALF OF THE COMMERCIAL VEHICLE SAFETY ALLIANCE; AND ANDY YOUNG, TRUCK SAFETY ADVOCATE**

Ms. CHASE. Good morning, Chairwoman Norton, Ranking Member Davis, and Chairman DeFazio, and members of the subcommittee.

I am Cathy Chase, president of Advocates for Highway and Auto Safety. Founded in 1989, Advocates is a coalition comprised of public health, safety, and consumer organizations, and property casualty insurance companies dedicated to reducing crashes, deaths, injuries, and costs on our Nation's roads.

Thank you for holding today's hearing whose title aptly captures that the state of trucking in America has reached a pressure point.

Before today is over, more than a dozen people will be killed and more than 400 will suffer injuries in truck crashes, based on averages. Unfortunately, these numbers are getting worse.

Since 2009, when truck crash fatalities were at the most recent low point, deaths have gone up more than 40 percent. While trucking is a vital, cherished, and necessary part of our country's commerce, we can and must do better.

Last week I had the opportunity to go on a ride-along in a truck on I-95. Spending the day in a cab not only gave me firsthand insight into the pressures faced by truck drivers, but also fortified our position that this subcommittee should advance legislation to improve conditions for truck drivers and, in turn, for all motorists.

Seeing how seamlessly advanced technologies work and that they are available and in trucks was remarkable. The speed limiter, electronic logging device, lane departure warning, and automatic emergency braking, which thankfully did not have to engage during my trip, all provided added safety assurance.

Additionally, these technologies imbued the driver with tremendous pride in his job. Legislation to require these technologies as standard equipment would help ensure all truck drivers have access to these lifesaving systems.

I also witnessed the importance of providing drivers with an opportunity for a break. When was the last time any of us worked 8 straight hours without one, let alone day after day?

The ability to stand up, stretch your legs, grab something to eat or other small tasks we all take for granted are severely limited when driving a truck.

In addition to threats to needed breaks, there are three other proposals we urge you to reject. First, attempts to increase truck size and weights, including State- and industry-specific exemptions,

pilot programs, and a configuration known as double 33s should be denied.

Bigger and heavier trucks mean bigger problems for safety and infrastructure.

Second, attempts to further chip away at rules in place to prevent tired truckers should be opposed. Fatigue is a major truck safety problem, as identified for many years by the National Transportation Safety Board.

Since the ELD rule took effect, driver inspections with an hours-of-service violation have decreased substantially.

And third, efforts to pull teens from carrying books in high school highways to getting behind the wheel on high-speed highways are unsafe and unwise. CMV drivers under age 21 are four to six times more likely to be involved in a fatal truck crash.

During my ride-along, I was particularly struck by the massive amount of responsibility a driver has, in addition to driving.

Conversely, the good news is that commonsense remedies are available and could be saving lives today. I will briefly discuss five innovative and proven solutions.

First, speed limiters, which are currently being used in a majority of trucks could help prevent and mitigate truck crashes. According to Federal data, over 1,000 lives are lost annually on average to speeding CMVs.

Second, automatic emergency braking, also known as AEB, systems alert the driver to an object in front of it, such as a vehicle, and can apply the brakes if the driver fails to respond.

Third, override guards. Standards could save lives in horrific and violent crashes that occur when cars travel under a truck or trailer.

Fourth, entry-level driver training rules must be improved to include a minimum number of behind-the-wheel instruction to obtain a CDL, as the chairwoman noted earlier.

And, fifth, the FMCSA must have the ability to better identify and intervene with high-risk carriers. The safety fitness determination rulemaking should be reinstated and all safety data that is part of the Compliance, Safety, Accountability program should be available to the public.

Lastly, any conversation about autonomous trucks must recognize that at a minimum a driver with a CDL must be in the cab for the foreseeable future.

This technology is not yet ready for prime time. Just last week an article revealed that the CEO of Honda was taking a ride in a GM autonomous prototype when the car's software suddenly turned itself off even as the car kept moving. A safety driver had to take control and bring the car to a halt. I shudder to think about if the vehicle had been an 18-wheeler.

We must also make sure there are performance requirements for new technology and that automated systems are never used as a justification for getting rid of critical safety regulations.

Thank you again for your leadership and holding this hearing and for the opportunity to testify. We look forward to working together with this subcommittee to reverse the upward trend of truck crash fatalities.

[Ms. Chase's prepared statement follows:]

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**Prepared Statement of Catherine Chase, President, Advocates for Highway  
and Auto Safety**

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 composition and its mission of advancing safer vehicles, safer motorists and road users, and safer roads.

LARGE TRUCK CRASH DEATHS CONTINUE TO SKYROCKET

Fatal truck crashes continue to occur at an alarmingly high rate. In 2017, crashes involving large trucks killed 4,761 people.<sup>1</sup> This is an increase of 9 percent from the previous year and an increase of 41 percent since 2009. Additionally, 148,000 people were injured in crashes involving large trucks in 2017. 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.<sup>2</sup> The cost to society from crashes involving commercial motor vehicles (CMVs) was estimated to be \$134 billion in 2016.

Each day on average, 13 people are killed and more than 400 people are injured in large truck crashes. This preventable fatality toll amounts to a major airplane crash every other week of the year. A number of identified and persistent problems are contributing to these crashes, deaths and injuries. However, solutions are available that can help to reverse these grim statistics. Unfortunately, many of these solutions continue to languish and worse yet, certain segments of the industry are relentless in their efforts to roll back, weaken and degrade essential rules and regulations. Now is the time to turn this trend around.

MOUNTING PRESSURE FROM SPECIAL INTERESTS TO ERODE TRUCK SAFETY PROTECTIONS

*Overweight trucks disproportionately damage our Nation's crumbling infrastructure and threaten public safety.* Federal limits on the weight and size of CMVs are intended to protect truck drivers, the traveling public and America's roads and bridges. Yet, provisions allowing larger and heavier trucks that violate or circumvent these federal laws to operate in certain states or for specific industries have often been tucked into must-pass bills to avoid public scrutiny.

According to the 2017 Infrastructure Report Card from the American Society of Civil Engineers, America's roads receive a grade of "D" and our bridges were given a "C+."<sup>3</sup> Nearly 40 percent of our 615,000 bridges in the National Bridge Inventory are 50 years or older, and one out of 11 is structurally deficient.<sup>4</sup> The U.S. Department of Transportation (DOT) Comprehensive Truck Size and Weight Study found that introducing double 33-foot trailer trucks, known as "Double 33s," would be projected to result in 2,478 bridges requiring strengthening or replacement at an estimated one-time cost of \$1.1 billion.<sup>5</sup> This figure does not even account for the additional, subsequent maintenance costs which will result from longer, heavier trucks. In fact, increasing the weight of a heavy truck by only 10 percent increases bridge damage by 33 percent.<sup>6</sup> The Federal Highway Administration (FHWA) estimates that the investment backlog for bridges, to address all cost-beneficial bridge needs, is \$123.1 billion.<sup>7</sup> The U.S. would need to increase annual funding for bridges by 20 percent over current spending levels to eliminate the bridge backlog by 2032.<sup>8</sup>

Raising truck weight or size limits could result in an increased prevalence and severity of crashes. Longer trucks come with operational difficulties such as requiring more time to pass, having larger blind spots, crossing into adjacent lanes, swinging into opposing lanes on curves and turns, and taking a longer distance to ade-

<sup>1</sup> Statistics are from the U.S. Department of Transportation unless otherwise noted.

<sup>2</sup> A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, NHTSA, DOT HS 812 554. (2016 Annual Report).

<sup>3</sup> 2017 Infrastructure Report Card—Bridges, American Society of Civil Engineers (ASCE); 2017 Infrastructure Report Card—Roads, ASCE.

<sup>4</sup> 2017 Infrastructure Report Card—Bridges (ASCE).

<sup>5</sup> Comprehensive Truck Size and Weight Limits Study: Bridge Structure Comparative Analysis Technical Report, FHWA, June 2015.

<sup>6</sup> Effect of Truck Weight on Bridge network Costs, NCHRP Report 495, National Cooperative Highway Research Program, 2003.

<sup>7</sup> 2015 Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance, Chapter 7, p. 7-34, FHWA, 2016.

<sup>8</sup> Id.

quately brake. In fact, double trailer trucks have an 11 percent higher fatal crash rate than single trailer trucks.<sup>9</sup> Overweight trucks also pose serious safety risk. Not surprisingly, trucks heavier than 80,000 pounds have a greater number of brake violations, which are a major reason for out-of-service violations.<sup>10</sup> According to a North Carolina study by the Insurance Institute for Highway Safety (IIHS), trucks with out-of-service violations are 362 percent more likely to be involved in a crash.<sup>11</sup> This is also troubling considering that tractor-trailers moving at 60 mph are required to stop in 310 feet—the length of a football field—once the brakes are applied.<sup>12</sup> 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 adequate working condition.

There is overwhelming opposition to any increases to truck size and weight limits. The public, local government officials, safety, consumer and public health groups, law enforcement, first responders, truck drivers and labor representatives, families of truck crash victims and survivors, and even Congress on a bipartisan level have all rejected attempts to increase truck size and weight. Also, the technical reports released in June 2015 from the U.S. 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.

It is clear that increasing truck size and weight will exacerbate safety and infrastructure problems, negate potential benefits from investments in roads and bridges, and divert rail traffic from privately owned freight railroads to our already overburdened public highways. Despite claims to the contrary, bigger trucks will not result in fewer trucks. Following every past increase to federal truck size and weight, the number of trucks on our roads has gone up. Since 1982, when Congress last increased the gross vehicle weight limit, truck registrations have more than doubled.<sup>13</sup> The U.S. DOT study also addressed this meritless assertion and found that any potential mileage efficiencies from the use of heavier trucks would be offset in just one year.<sup>14</sup>

*Recommendation: Congress should oppose changes to federal truck size and weight limits, including mandating double 33 feet trailers, pilot programs and state or industry specific exemptions.*

*Driver fatigue is a well-known CMV safety problem.* The National Transportation Safety Board (NTSB) has repeatedly cited fatigue as a major contributor to truck crashes and included reducing fatigue related crashes in every edition of its Most Wanted List of safety changes since 2016. Currently, truck drivers are permitted to drive up to 11 hours per day for a total of 77 hours per week. These grueling hours can lead to cumulative fatigue and devastating safety consequences. 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. Yet, certain segments of the trucking industry continue to push for further weakening of hours-of-service (HOS) safety regulations.

One of the most effective tools to help prevent driver fatigue is the use of Electronic Logging Devices (ELDs) to record drivers’ HOS. Paper logs are frequently referred to as “comic books” throughout the industry because of the ease in falsifying actual driving and work time. The FMCSA estimates that requiring ELDs will save 26 lives, prevent over 500 injuries and avoid over 1,800 crashes annually. In addition, the U.S. DOT estimates the annualized net benefits of adopting ELDs to be over \$1 billion. Congress, recognizing the benefits of ELDs, mandated their use as

<sup>9</sup>An Analysis of Truck Size and Weight: Phase I—Safety, Multimodal Transportation & Infrastructure Consortium, November 2013; Memorandum from J. Matthews, Rahall Appalachian Transportation Institute, Sep. 29, 2014.

<sup>10</sup>Roadside Inspections, Vehicle Violations: All Trucks Roadside Inspections, Vehicle Violations (2016—Calendar), FMCSA.

<sup>11</sup>Teoh E, Carter D, Smith S and McCartt A, Crash risk factors for interstate large trucks in North Carolina, Journal of Safety Research (2017).

<sup>12</sup>Code of Federal Regulations (CFR) Title 49 Part 571 Section 121: Standard No. 121 Air brake systems (FMVSS 121).

<sup>13</sup>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.

<sup>14</sup>Comprehensive Truck Size and Weight Limits Study, Federal Highway Administration (June 2015).

part of the Moving Ahead for Progress in the 21st Century (MAP-21) Act.<sup>15</sup> In 2015, the FMCSA delivered on this Congressional directive and issued a rule requiring the use of ELDs which went into effect in December 2017. FMCSA reports that since the implementation of the ELD rule, the percentage of driver inspections with an HOS violation has decreased 39 percent.<sup>16</sup> Despite this compelling evidence, broad support and an 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 to undermine the regulation.

A barrage of legislative and regulatory proposals also continue to target ELDs and HOS rules. For instance, last year FMCSA issued an Advanced Notice of Proposed Rulemaking (ANPRM) that would dismantle several important safeguards in the HOS regulations including the 30-minute rest break provision. Advocates is especially concerned that the FMCSA also eliminated enhanced driver protections for meal and rest breaks by issuing a decision preempting California law. This egregious agency overstep should be reversed. Further, special interests continue to push Congress to expand working and driving limits or create carve-outs under the guise of “flexibility.” These are nothing more than attempts to force drivers to work even more demanding schedules.

Additionally, in 2016, the FMCSA published an 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).<sup>17</sup> 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. In fact, the Federal Aviation Administration (FAA) considers OSA to be a disqualifying condition unless properly treated.<sup>18</sup> 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.<sup>19</sup>

*Recommendation: We urge Congress to reject efforts to diminish the rule requiring the use of ELDs and to further erode HOS regulations. Moreover, Congress should direct the FMCSA to issue a rule to ensure that drivers are properly screened for obstructive sleep apnea during the medical examination and that those diagnosed with the condition are receiving the medical treatment necessary to avoid fatigue while operating a CMV on public roads.*

“Teen Truckers” pose a major safety threat. Some segments of the trucking industry are pushing to allow teenagers to operate CMVs in interstate commerce in order to alleviate the alleged “driver shortage.” A March 2019 U.S. Bureau of Labor Statistics (BLS) study found that “the labor market for truck drivers works about as well as the labor markets for other blue-collar occupations” and “a deeper look [at the truck industry labor market] does not find evidence of a secular shortage.”<sup>20</sup>

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).<sup>21</sup> This alarming reality is not surprising given that generally younger drivers are more likely to be involved in fatal crashes because they lack driving experience and skills, and tend to take greater risks. Development of the brain region vital to decision making, specifically the pre-frontal cortex, may not be fully reached until one’s mid-20s.<sup>22</sup>

Diverse stakeholders including safety groups, law enforcement, public health and consumer organizations, truck drivers, some trucking companies, and truck crash victims and survivors oppose efforts to lower the age to operate CMVs in interstate commerce. Additionally, the public has overwhelmingly rejected lowering the minimum age for interstate truck and bus drivers with 73 percent of respondents in opposition, according to a 2015 public opinion poll conducted by ORC International.<sup>23</sup>

<sup>15</sup> Pub. L. 112–141 (2012).

<sup>16</sup> FMCSA, Electronic Logging Devices: Improving Safety Through Technology.

<sup>17</sup> 81 FR 12642 (Mar. 10, 2016).

<sup>18</sup> Id.

<sup>19</sup> 82 FR 37038 (Aug. 8, 2017).

<sup>20</sup> United States Department of Labor, Bureau of Labor Statistics, Is the U.S. labor market for truck drivers broken? (Mar. 2019).

<sup>21</sup> Campbell, K. L., Fatal Accident Involvement Rates By Driver Age For Large Trucks, *Accid. Anal. & Prev.* Vol 23, No. 4, pp. 287–295 (1991).

<sup>22</sup> Arian, M, et al., Maturation of the adolescent brain, *Neuropsychiatric Disease and Treatment* (Apr. 3, 2013).

<sup>23</sup> ORC International, Road Safety Poll (2015).

Furthermore, in 2001, a petition was filed with FMCSA to lower the age at which a person could obtain a commercial driver's license (CDL) to operate in interstate commerce from 21 to 18. The FMCSA declined to lower the minimum age for an unrestricted CDL because the agency could not conclude that the safety performance of younger drivers was on par with, or even close to, that of older CMV drivers. The public overwhelmingly rejected the idea with 96 percent of individuals who responded opposing the proposal along with 88 percent of the truck drivers and 86 percent of the motor carriers after the petition was posted in the Federal Register.<sup>24</sup>

Advocates strongly opposes the so-called "DRIVE-Safe Act" (H.R. 1374/S. 569) which would severely jeopardize the safety of all road users by putting teenagers behind the wheel of large trucks in interstate commerce. Provisions in the bill that at first glance would seem to be pro-safety actually could be detrimental. Specifically, certain technologies, such as active braking collision mitigation systems and speed limiters, are only required during the scant probationary period. The result is a teen driver would initially learn to drive in a truck fitted with this technology but after the probationary period, s/he could get behind the wheel of a truck without any of the safety technology and its benefits. The teen driver is then at a safety deficit lacking experience in safely operating trucks without the technology. Furthermore, the technology will not account for some mistakes this age group tends to make. Younger drivers exhibit risky behaviors such as increased levels of distraction, following too closely, violating traffic rules, and not using seatbelts.<sup>25</sup> We welcome the confirmation that the recommended technology provides safety benefits and hope the proponents of the bill will join our efforts to accelerate the adoption of proven safety technologies in all trucks.

The training proposals in this bill are woefully inadequate. The first probationary period only consists of 80 hours of behind-the-wheel training which can be completed in a little over one work week while abiding by HOS requirements. Further, the 160 hours of driving time in the second probationary period can be covered in just an additional two weeks. In comparison, the FAA requires pilots working for passenger airlines to have approximately 1,500 hours of flight time. These paltry training requirements also pale in comparison to other less dangerous jobs. For example, Texas requires a journeyman plumber to have 8,000 hours of experience; Oklahoma requires 4,000 verifiable hours of on the job experience for a residential electrical journeyman; and, barbers licensed in Virginia must accumulate 1,100 hours in school.

Additionally, the qualifications for the teen truck driver passing the probationary periods are left entirely to the discretion of the employer who is incentivized to get the driver on the road as soon as possible. No standard tests or evaluations given by an independent party are required. Furthermore, a teen truck driver who is involved in a crash or is given a citation for a moving violation during the probationary periods is not disqualified from continuing to operate a truck.

Driving a truck is already one of the most dangerous occupations, according to the Bureau of Labor Statistics. Allowing teenagers to drive trucks in interstate commerce will only serve to exacerbate the major problems with truck driver working conditions. Instead of tapping into an unsafe driving pool of teenagers, improving upon working conditions should result in current, experienced drivers staying on the job and ideally lead to being healthier and more fulfilled in their profession.

*Recommendation: Attempts to pull teenagers from high school hallways to high speed highways should be rejected by Congress. We urge members to oppose the so-called DRIVE-Safe Act.*

#### CRUCIAL ACTIONS NECESSARY TO IMPROVE TRUCK SAFETY FOR ALL ROAD USERS

*Require speed limiters in large trucks.* 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. In September of 2016, the National Highway Traffic Safety Administration (NHTSA) and the FMCSA issued a joint Notice of Proposed Rule-making (NPRM) to require vehicles with a gross vehicle weight rating (GVWR) of more than 26,000 pounds to be equipped with a speed limiting device.<sup>26</sup> The safety benefits of limiting the speed of a CMV are indisputable and the NTSB has recommended that CMVs be equipped with the technology. The NPRM estimates that

<sup>24</sup>Young Commercial Driver Pilot Training Program, Notice of denial of petition to initiate a pilot program, 68 FR 34467, 34469 (June 9, 2003).

<sup>25</sup>Insurance Institute for Highway Safety, Topics, Teenagers, available at: <https://www.iihs.org/topics/teenagers>

<sup>26</sup>81 FR 61942 (Sep. 7, 2016).

setting the device at 60 MPH has the potential to save almost 500 lives and prevent nearly 11,000 injuries annually.<sup>27</sup> Setting the speed at 65 MPH could save as many as 214 lives and prevent approximately 4,500 injuries.<sup>28</sup> 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.<sup>29</sup> In addition, a 2007 survey of truck drivers by IIHS found 64 percent of drivers were in favor of a truck speed governor requirement.<sup>30</sup>

Although the public safety benefits of requiring speed limiting devices in CMVs are 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 lifesaving safety equipment. 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.

*Recommendation: We urge Congress to require that the U.S. DOT issue a final rule requiring all new CMVs to be equipped with speed limiting devices and for those vehicles currently equipped with the technology to engage this lifesaving device.*

*Require automatic emergency braking to prevent and mitigate crashes.* According to 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. In 2015, Advocates, along with the Center for Auto Safety, the Truck Safety Coalition (TSC) and Road Safe America, filed a petition with 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 GVWR of 10,000 pounds or more. 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. The NHTSA estimates that fleetwide adoption of advanced AEB systems could save 166 lives per year and prevent 8,361 injuries. In addition, the NTSB has recommended that AEB systems be required on all highway vehicles. The agency granted Advocates’ petition in October of 2015 but has not undertaken any further regulatory proceedings.<sup>31</sup> This needless delay is unconscionable when crashes could be prevented and lives could be saved by technology which is available and already in many CMVs.

*Recommendation: We urge Congress to require NHTSA to set a minimum performance standard and issue a rule requiring CMVs be equipped with AEB.*

*Take immediate action to address underride crashes, where a motor vehicle travels underneath the rear or side of a truck trailer.* 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 2019 (H.R. 1511/S.665) introduced by members of this Committee, Representatives Steve Cohen (TN-9) and Mark DeSaulnier (CA-11). 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 to meet the Canadian standard which was issued over a decade ago and is substandard given guards currently available in the marketplace which have been shown to have superior performance capabilities. 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. While requiring retroreflective tape is long overdue, it alone is not a sufficient countermeasure. 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 standards set by the

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Preliminary Regulatory Impact Analysis (PRIA) and Initial Regulatory Flexibility Analysis, FMVSS No. 140, Speed Limiting Devices, p. 28 (NHTSA, Aug. 2016).

<sup>30</sup> Insurance Institute for Highway Safety (IIHS), Speed limiters in trucks would serve 2 purposes, Status Report, Vol. 45, No. 8 (Aug. 21, 2010).

<sup>31</sup> 80 FR 62487 (Oct. 16, 2015).

IIHS in their TOUGHGUARD award 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. Side underride 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. The NTSB has recommended improving comprehensive underride protection. It is time for this lifesaving equipment to finally make its way onto America's roads.

*Recommendation: Congress should swiftly pass the Stop Underrides Act (H.R. 1511/S. 665) which will require the current federal standards for rear underride guards to be upgraded and the installation of side and front guards.*

*To obtain a CDL, a candidate should be required to undergo uniform adequate training.* 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. 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. 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".<sup>32</sup>

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.<sup>33</sup> This 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.

*Recommendation: Congress should direct the FMCSA to amend the ELDT final rule to include a minimum number of BTW training hours to ensure that novice drivers receive adequate training before operating a CMV on public roads.*

*Data on carrier performance must be collected and publicly available.* With fatal truck crashes continuing to occur at an alarmingly high rate unhampered by appropriate accountability, there is insufficient incentive for unsafe carriers to improve their operations. FMCSA's Compliance, Safety, Accountability (CSA) program evaluates the safety and compliance of motor carriers and is designed to identify high risk operations for intervention and improvement. Involvement in previous truck crashes in and of themselves and regardless of "fault" has been found by industry, academia and the government to be an accurate predictor of involvement in future truck crashes. The goal of CSA is to implement more effective and efficient ways for FMCSA, its state partners, and the trucking industry to prevent CMV crashes, fatalities, and injuries.

Unfortunately, some of the CSA data was removed from public view by section 5223 of the FAST Act.<sup>34</sup> 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. The NASEM study concluded that the method was sound and made several recommendations to improve the CSA program including that FMCSA should continue to collaborate with states and other agencies to improve the collection of data on vehicle miles traveled and on crashes as well as certain characteristics of carriers such as turn-over rates.

<sup>32</sup> 81 FR 11944 (Mar. 7, 2016).

<sup>33</sup> 81 FR 88732 (Dec. 8, 2016).

<sup>34</sup> Pub. L. 114-94 (2015).

Relatedly, 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 action to upgrade 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. 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.

*Recommendation: Congress should require that the public availability of CSA scores be immediately reinstated while the improvements recommended by the NASEM study are implemented. The public should once again have access to this important safety data on trucking companies without any further delay. Furthermore, Congress should direct the FMCSA to immediately reinstate and complete the safety fitness determination rulemaking.*

*Promulgate safeguards and regulations to ensure autonomous technology is deployed safely.* Autonomous technology offers the promise of significantly reducing crashes involving CMVs. However, the advent of this technology must not be used as a pretext to eviscerate essential safety regulations administered by the FMCSA. The public safety protections provided by the Federal Motor Carrier Safety Regulations (FMCSRs) become no less important or applicable simply because a CMV has been equipped with an autonomous driving system (ADS). In fact, additional substantial public safety concerns are presented by autonomous commercial motor vehicles (ACMVs).

Autonomous technology is still in its infancy as evidenced by fatal and serious crashes involving passenger motor vehicles equipped with driverless systems. If those incidents had involved ACMVs, the results could have been catastrophic and the death and injury toll could have been much worse. Some of the most pressing safety shortcomings associated with autonomous vehicle technology, which include the ADS properly detecting and reacting to other road users, driver engagement and cybersecurity, are exponentially amplified by the greater mass and force of an ACMV. As such, it is imperative that ACMVs be subject to comprehensive regulations, including having a licensed driver behind the wheel for the foreseeable future. The development and deployment of these experimental vehicles must also be subject to robust safeguards including sufficient data collection and sharing, performance requirements and enhanced operating authorities, at a minimum.

*Recommendation: ACMVs must be subject to robust federal regulations and minimum performance requirements including that a trained commercial driver be behind the wheel at all times. Critical safety regulations that apply to driver HOS, licensing requirements, entry level training and medical qualifications should not be weakened. In addition, carriers using ACMVs should have to apply for additional operating authority and drivers operating an ACMV must have an additional endorsement on their CDL to ensure they have been properly trained to operate an ACMV.*

#### CONCLUSION

Truck crashes continue to occur at an alarmingly high rate. Yet, there is a seemingly unending assault on essential federal regulations that protect public safety. Meanwhile, rulemakings which would result in proven safety benefits by requiring the installation of lifesaving safety systems languish. Advocates urges Congress to require DOT to focus on this unfinished safety agenda as the immediate solution to reducing deaths and injuries caused by CMV crashes.

Thank you for the opportunity to testify before the Subcommittee during this essential hearing. Nearly 5,000 people being killed and 150,000 being injured in truck crashes annually cannot continue to be accepted as a societal norm or a cost of traveling on our roads and highways. Advocates looks forward to working together with the Subcommittee members to both preserve current safeguards and regulations and to advance needed improvements.

Ms. NORTON. Thank you very much, Ms. Chase.

Christopher Spear, president and CEO, American Trucking Associations.

Mr. SPEAR. Madam Chair, Ranking Member Davis, full committee Chairman DeFazio, members of the subcommittee, let me extend my sincerest appreciation for the opportunity to testify

today before the subcommittee on behalf of the American Trucking Associations.

ATA is now in its 86th year as the largest voice of the trucking industry, serving 50 State associations and a vast array of members, including carriers, and their several million drivers, technicians, and valued employees, truck and trailer manufacturers, shippers, suppliers, including technology innovators, and software companies; public and private truck driving schools; employee health and wellness; law firms, as well as insurers, just to name a few.

In short, ATA has presence in every State and congressional district in the country, and it's closely affiliated with national trucking associations throughout the world.

Despite trucks being just 4 percent of the vehicles on our highways and two-thirds of the accidents involving trucks being caused by passenger vehicles, the trucking industry still spends \$9.5 billion conservatively each year on safety, including technology, training, and compliance.

Broadly, trucking employment now exceeds 7.7 million people. That is 1 in 18 jobs in the United States, where a truck driver is the top job in 29 States.

Trucks move more than 71 percent of the domestic freight, and the people that drive, service, load and unload them are to be commended. They are husbands and wives, moms and dads, Democrats and Republicans. They include veterans, the disabled, minorities. They are involved in your local communities, from coaching Little League to raising thousands of dollars for kids with cancer.

And like our men and women in uniform, they are among the most patriotic and hardworking people in America, the first to help those impacted by floods, fires, tornadoes, and hurricanes by delivering food, water, medicine, and comfort, and they are committed to helping others.

They are often the first to respond on the scene of an accident, stopping to help save people that they have never met. This is today's trucking industry. This is an American story, and these are the millions of people ATA proudly represent.

The subcommittee is tasked with the reauthorization of the FAST Act, including a safety title. My members, staff, and I are prepared to help you write a bill that is grounded in data, not rhetoric; that is shaped by facts, not opinions; and relies on reality, not emotion.

To that end, ATA has submitted written testimony for this hearing that provides countless citations, analysis of current issues both in effect as well as proposed, as well as recommendations that address policy and programmatic shortfalls.

ATA also believes it is important that you consider the future of the trucking industry, looking beyond the hood 5, 10, 15 years out and how we can improve safety through innovation, such as connectivity; how we can grow a diverse, trained, and drug-free workforce that shores up the very real and very well-documented shortage of talent; how trucking can generate and invest real money, not fake funding, into our decaying infrastructure; and how trucking can help you shape free and fair trade agreements that make the United States the strongest economy in the world.

In closing, I want to personally underscore ATA's commitment to helping this subcommittee shape this legislation. You deserve testimony and answers that are squarely backed by data, not baseless rhetoric.

ATA also will educate your colleagues in the House, Senate and the administration on why this bill matters. The political environment we all now find ourselves in raises the bar on getting anything passed, and this bill is no exception. This effort will require cooperation and compromise.

Disagreements over policy are expected. Yet ATA will work with you to resolve any differences, build consensus, and advocate passage of a reauthorization bill that improves safety, leverages innovation, and enables our industry to meet the surging demands of our Nation's economy.

Again, I appreciate the opportunity to represent ATA here today and look forward to your questions.

Thank you, Madam Chair.

[Mr. Spear's prepared statement follows:]

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**Prepared Statement of Chris Spear, President and Chief Executive Officer,  
American Trucking Associations**

Chair Norton, Ranking Member Davis, and members of the distinguished subcommittee, thank you for providing the American Trucking Associations (ATA)<sup>1</sup> with the opportunity to testify before you today. I would like to begin my testimony by recognizing your leadership and focus on our nation's crumbling infrastructure. The trucking industry stands ready to work hand-in-hand with this subcommittee, Congress and the Administration to bring an end to the continuing cycle of underinvestment in infrastructure, which results in significant harm to both our economy and the safety of the motoring public. Under your guidance, we remain hopeful that federal action can solve this growing national crisis.

ATA is an 86-year-old federation and the largest national trade organization representing the trucking industry, with affiliates in all 50 states. ATA's membership encompasses over 34,000 motor carriers and suppliers directly and through affiliated organizations. Our association represents every sector of the industry, from LTL to Truckload, agriculture and livestock to auto haulers, and from the large motor carriers to the owner operator and mom and pop one truck operations. In fact, despite the claims by some before you today that ATA only represents the "mega-carriers," 80 percent of our membership is comprised of small-sized carriers, whereas only 2 percent of our membership would be considered large-sized carrier. And, our federation has members in every Congressional district and every community.

Trucking is the fulcrum point in the United States' supply chain. This year, our industry will move 70 percent of the nation's freight tonnage, and over the next decade will be tasked with moving three billion more tons of freight than it does today while continuing to deliver the vast majority of goods.<sup>2</sup> More than 80 percent of U.S. communities rely exclusively on trucks for their freight transportation needs. Trucks haul 100 percent of the freight originating in the District of Columbia, and DC residents and businesses rely on trucks to deliver 98 percent of the goods coming into the District. More than two-thirds of the freight delivered to and from Illinois was loaded onto a truck. In 2017, the goods moved by trucks were worth more than \$10 trillion.<sup>3</sup> The trucking industry is also a significant source of employment, with 7.7

<sup>1</sup> American Trucking Associations [<http://www.trucking.org/>] is the largest national trade association for the trucking industry. Through a federation of 50 affiliated state trucking associations and industry-related conferences and councils, ATA is the voice of the industry. America depends on most to move our nation's freight. Follow ATA on Twitter or on Facebook. Trucking Moves America Forward [<http://truckingmovesamerica.com/>].

<sup>2</sup> *Freight Transportation Forecast 2018 to 2029*. American Trucking Associations, 2018.

<sup>3</sup> *2017 Commodity Flow Survey Preliminary Report*. U.S. Census Bureau, Dec. 7, 2018.

million people working in various occupations, accounting for every 1 in 18 jobs in the U.S.<sup>4</sup> Furthermore, “truck driver” is the top job in 29 states.<sup>5</sup>

Without trucks, our cities, towns and communities would lack key necessities including food and drinking water; there would not be clothes to purchase, and no parts to build automobiles or fuel to power them. The rail, air and water intermodal sectors would not exist in their current form without the trucking industry to support them. Trucks are central to our nation’s economy and our way of life, and every time the government makes a decision that affects the trucking industry, those impacts are also felt by individuals and by the millions of businesses that could not exist without trucks.

With this hearing, we appreciate the subcommittee’s focus on the trucking industry, as it relates to infrastructure, interstate commerce and safety. As Congress looks towards the next surface transportation reauthorization bill, many of the topics addressed today will be key areas of interest and concern, which may shape the drafting of a legislative and regulatory framework that trucking will operate under in the years to come. The hearing’s title rightly recognizes the state of the trucking industry, and that is “under pressure.” Indeed, the trucking industry is in many ways at an operational crossroads.

Madam Chair, the trucking industry is on the cusp of a transformation in the movement of freight, one that you and your colleagues will greatly influence. Radical technological change will, in the near future, allow trucks to move more safely and efficiently, and with less impact on the environment than we ever dared to imagine. Yet we are facing headwinds, due almost entirely to government action or, in some cases inaction that will slow or cancel out entirely the benefits of innovation. Failure to maintain and improve the highway system that your predecessors helped to create will destroy the efficiencies that have enabled U.S. manufacturers and farmers to continue to compete with countries that enjoy far lower labor and regulatory costs and standards.

We are at a critical point in our country’s history, and the decisions made by this subcommittee, Congress, and the Administration over the next few months will impact the safety and efficiency of freight transportation moving forward. For the purpose of this hearing, I will focus my testimony on four key areas that will have the greatest and most immediate impact on the trucking industry: 1) Safety and Technology; 2) Workforce Development; 3) Infrastructure; and 4) Trade. Included in the accompanying Appendix is a comprehensive list of ATA’s Surface Transportation Reauthorization Priorities, provided for your consideration and review.

ATA looks forward to working with this subcommittee, and each and every Member of Congress, as we pursue the legislative and regulatory framework that will ensure our nation’s surface transportation needs are met. That framework must be grounded in safety, science, data and training. We commend you for holding this important hearing, to the benefit of the trucking industry, interstate commerce and the millions of Americans and U.S. businesses that rely on the safe and efficient movement of our nation’s goods.

#### 1) SAFETY & TECHNOLOGY:

The safety of our nation’s roads and bridges, and that of the motoring public, is undeniably of paramount importance. And safety anchors the very foundation of the trucking industry, shaping our core values and decision-making. That is why the trucking industry invests approximately \$10 billion annually in safety initiatives, including truck onboard technologies such as electronic logging devices, collision avoidance systems, and video-event recorders. Investments that also include driver safety training, driver safety incentive pay, and compliance with safety regulations (e.g., pre-employment and random drug tests and motor vehicle record checks). While some of these investments are made to meet a myriad of regulatory requirements, many of them are voluntary, progressive safety initiatives adopted by our members. And, they are paying dividends in highway safety. That being said, there is still more work to be done, and we are committed to the goal of accident and fatality-free highways.

Madam Chair, the below section will briefly highlight the trucking industry’s safety record, and the many ways in which our members continually work to improve upon it. Safety is a process that continually adapts and evolves. Our members persistently work to adopt processes and best practices that will make their fleets even safer. Meaningful improvements will require an acknowledgement of the principal

<sup>4</sup> *American Trucking Trends 2018*, American Trucking Associations.

<sup>5</sup> <https://www.marketwatch.com/story/keep-on-truckin-in-a-majority-of-states-its-the-most-popular-job-2015-02-09>

causes of truck crashes and a commitment to making appropriate countermeasures the highest priority.

*THE TRUCKING INDUSTRY'S SAFETY RECORD:*

Since 1980, when the trucking industry was deregulated, both the number of fatal truck crashes and rate of fatalities have declined dramatically:<sup>6</sup>

- From 1980–2017, there has been a 69 percent decrease in the large truck involved fatal crash rate;
- From 1980–2017, there has been a 71 percent decrease in the combination truck involved fatal crash rate; and
- In 2017, 72 percent of large truck crashes had no truck driver-related factors recorded in multiple-vehicle crashes.

The decline in large truck-involved fatal crashes since 1980 is due, in part, to industry-supported initiatives, many of which were used prior to becoming a mandated federal regulation. For instance, the use of Electronic Logging Devices (ELDs) was prevalent in ATA member fleets dating back to the early 2000s. Now, federally mandated use of ELDs has already had a positive effect on safety. Additionally, ATA members support the use of additional safety initiatives that will improve safety, such as the requirement for states to provide an employment notification system to alert employers of drivers' moving violations and license suspensions in a timely fashion, the use of alternative testing specimens to detect drug use, and vehicle safety technologies that can create a safer environment for all motorists.

*TRUCK CRASH CAUSATION STUDY AND CRASH DATA:*

For the trucking industry to constantly improve our safety record, it is important that more research and attention is focused on the causes of truck-involved crashes, with a resulting emphasis on undertaking the appropriate countermeasures. Specifically, according to multiple studies, data, and other indicators, the vast majority of large truck-involved crashes are the result of driver behaviors and errors. Furthermore, data indicates that other motorists, not the professional truck driver, are more likely to be at fault. According to a Federal Motor Carrier Safety Administration (FMCSA) report, 70 percent of fatal crashes involving a large truck and a passenger vehicle are initiated by the actions of, or are the fault of, passenger motorists.<sup>7</sup> The American Automobile Association (AAA) conducted their own version of this study and found that in truck-related crashes, the critical factor leading to the crash was attributed to the passenger vehicle driver 75 percent of the time.<sup>8</sup> Additionally, the AAA study found that in 10,732 fatal car-truck crash records from 1995–98, the car drivers were more likely to be cited for multiple unsafe acts. The study found that 36 percent of car drivers were cited for two or more unsafe acts, versus 11 percent of truck drivers.<sup>9</sup>

To be effective in reducing commercial motor vehicle crashes, we must first understand the true causes of these crashes. The Motor Carrier Safety Improvement Act of 1999 (MCSIA)<sup>10</sup> mandated a study to determine the cause of, and contributing factors to, crashes involving commercial motor vehicles. In 2006, FMCSA published a report identifying areas that need to be addressed by effective crash countermeasures<sup>11</sup>. With significant improvements made to the Federal Motor Carrier Safety Regulations (FMCSRs), ATA believes that initiating a new Large Truck Crash Causation Study (LTCCS) would be an effective tool in understanding the increase in large truck-involved crashes. A LTCCS should include a large sample size so that all segments of our industry are included, and the data is an accurate reflection of real-world operations. We recognize that recent data indicates that truck-involved crashes are increasing.<sup>12</sup> Our industry does not deny this. We do, however,

<sup>6</sup> *Large Truck and Bus Crash Facts 2017*, Trends chapter, Table 4, page 7, Federal Motor Carrier Safety Administration, Washington, D.C. <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/safety/data-and-statistics/461861/tcbf-2017-final-5-6-2019.pdf>.

<sup>7</sup> *Financial Responsibility Requirements for Commercial Motor Vehicles*, U.S. Department of Transportation, Federal Motor Carrier Safety Administration, January 2013, page xii, footnote 2.

<sup>8</sup> Kostyniuk LP, Streff FM, Zakrajsek J. *Identifying Unsafe Driver Actions that Lead to Fatal Car-Truck Crashes*. Washington DC: AAA Foundation for Traffic Safety, April, 2002.

<sup>9</sup> *Ibid.*

<sup>10</sup> Motor Carrier Safety Improvement Act of 1999, H.R.3419, 106th Cong. (1999).

<sup>11</sup> *Report to Congress on the Large Truck Crash Causation Study*, U.S. Department of Transportation, Federal Motor Carrier Safety Administration, March 2006.

<sup>12</sup> *Large Truck and Bus Crash Facts 2017*, Trends chapter, Table 4, page 7, U.S. Department of Transportation, Federal Motor Carrier Safety Administration, Washington, D.C. <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/safety/data-and-statistics/461861/tcbf-2017-final-5-6-2019.pdf>.

require accurate data that can direct our efforts and resources in appropriately addressing and halting this increase. Understanding the role of driver behavior in crash causation will shed additional light on how FMCSA's use of enforcement funding and resulting activity can be most cost-effective.

Just as a LTCCS will help identify the cause of large truck crashes, unified electronic crash report data will help to provide accurate and timely data on truck-involved crashes. Several states have already adopted electronic collection of crash reports, and many have seen the ability to provide more timely and accurate information to stakeholders. "Real-time" data allows law enforcement and transportation safety professionals to respond more quickly to escalating trends and "hot spots" and helps ensure limited resources are allocated to areas with greatest need. ATA supports federal funding for states to adopt electronic crash report data collection, along with funding support to upgrade existing systems, implement NHTSA's Model Minimum Uniform Crash Criteria data fields and training of staff on new systems.

Crash causation studies and the accurate and timely data reporting on truck-involved accidents will help our industry understand and make targeted and meaningful improvements to road safety. However, I reiterate that our focus on improving safety is not just reactionary in nature, but the core value of trucking. Our industry is proactively taking steps to prevent the crash from occurring in the first place, as evident in the safety processes our members have established—processes that go well beyond what is required by Federal regulations.<sup>13</sup> These investments include safety technologies, safety training and driver safety incentive pay. Many of these investments were industry-supported initiatives that were not mandated at the time. For instance, ATA was an early advocate for mandatory drug and alcohol testing, the commercial driver's license program, a ban on radar detectors in trucks, and the soon to be implemented drug and alcohol clearinghouse.

#### *ELECTRONIC LOGGING DEVICES:*

ATA members have long used ELDs, with many carriers installing this critical safety technology long before the December 2017, Congressionally-mandate implementation. Accordingly, we whole-heartedly support the industry-wide adoption of ELDs, and the significant impact this critical technology has on improving public safety—a technology implementation that was fully litigated, widely debated, congressionally-mandated, and most recently reaffirmed by FMCSA in denying most ELD exemption requests.<sup>14</sup> Compared to the outdated pen and paper methods of tracking driver hours, this modern-day technology is more accurate, easier to enforce, more difficult to falsify, and—most importantly—will save lives.

Efforts in Congress to repeal this important mandate from certain fleets, such as H.R.1697, the Small Carrier Electronic Logging Device Exemption Act, are misguided, supported by misinformation, and an attempt to evade compliance with the existing laws and regulations governing duty hours and driver fatigue. In fact, given that 91 percent of all for-hire motor carriers in the United States operate six or fewer trucks, this legislation would serve only to cripple the ELD rule and give back much of the safety benefit it has brought. Enacting a bill such as this would pave the way for non-compliant carriers to avoid this important safety mandate and evade compliance with existing HOS regulations, which is not in the best interest of public safety.

Opponents of the ELD implementation argue that the device has made highways unsafe by not allowing a driver to rest when tired. ATA, with its core principles rooted in the commitment to highway safety, would adamantly oppose any device that does not allow a driver to rest when tired. The simple fact is that ELDs have not changed the HOS rules that have been in place since the early 2000's. The requirements for how long a driver may operate a commercial vehicle, or the minimum amount of time a driver must be off-duty, were not affected by the implementation of ELDs. ELDs have simply replaced the traditional "paper log" with an electronic version that automatically records a driver's duty status based on electronic data from the vehicle's engine and GPS location data. The argument that an ELD does not allow a driver to rest when tired is simply false, as the device is merely a recordkeeping method to ensure accuracy with a driver's HOS.

There is, however, irrefutable evidence that ELD technology has proven effective in improving safety and increasing compliance. Since the December 18, 2017, ELD implementation date, HOS violations have dropped by more than half, and continue

<sup>13</sup> ATA's Safety Investment Study 2016, <http://www.trucking.org/>.

<sup>14</sup> 83 Fed. Reg. 63194 (December 7, 2018).

to fall.<sup>15</sup> The decline in these violations, such as a driver driving beyond the maximum number of hours allowed, is a direct result of ELDs. Now that the initial ELD compliance date has come and gone, fleets have adopted the required technology and are compliant. FMCSA has stated that since April 1, 2018, less than 1 percent of the nearly 3 million driver roadside inspections have resulted in a driver being cited for not having an ELD.<sup>16</sup> FMCSA's 2014 report titled "Evaluating the Potential Safety Benefits of Electronic HOS Records" quantified the benefits of ELD use, finding that carriers using ELDs saw an 11.7 percent reduction in crash rate and a 50 percent reduction in HOS violations compared to those who had not adopted this safety technology. The study concluded that "the results show a clear safety benefit, in terms of crash and HOS violation reductions for trucks equipped with ELDs."<sup>17</sup> This and other evidence has convinced ATA and the vast majority of safety-focused carriers within the trucking industry, along with law enforcement, Congress, FMCSA, and numerous federal courts, to support the ELD final rule.

#### *HOURS OF SERVICE:*

As the trucking industry has adjusted to the December 2017 implementation of ELDs, concerns have been raised by varying segments of the industry for needed flexibility in commercial motor vehicle operators HOS. While HOS regulations are designed to provide the framework for the safe and efficient movement of goods, there has come to light the need for greater HOS flexibility to provide drivers the ability to adjust to changing road and weather conditions, congestion and sensitive truck loads.

To address those concerns, in August 2018, FMCSA initiated a rulemaking on potential changes to the HOS rules. That rulemaking received over 5,200 comments with input on potential changes. This response has led FMCSA to move forward with issuing a Notice of Proposed Rulemaking (NPRM) which is currently at review with the Office of Management and Budget (OMB) and is expected to be published later this month. ATA—and, other industry stakeholders—continue to provide input to the agency on potential technical corrections to the HOS regulations that will allow greater flexibility for various segments of the industry.

As the agency moves forward with potential adjustments to HOS, those changes must be based on safety data that demonstrates the change will create a level of safety that is equal to or greater than the level of safety that currently exists. Changes that lack the proper data and science supporting a safety benefit should not be considered.

Additionally, while ATA would encourage the subcommittee to exert its oversight role in considering and reviewing FMCSA's forthcoming NPRM, we caution the subcommittee on dangerous and reactive legislation that is not grounded in safety, science or data. Legislation like H.R.487, the Transporting Livestock Across America Safely Act. While the bill's title is well-chosen, the legislation as drafted is a dangerous overreach, more than doubling the number of hours currently deemed safe for continuous commercial motor vehicle operation. While ATA understands and appreciates that livestock and agricultural haulers are a unique sector of the industry facing distinctive HOS challenges that should be reviewed and safely addressed, more than 24 hours of straight driving is not safe in a car, and it is even less so while transporting a trailer filled with livestock. This bill, and others like it, needlessly and recklessly threatens the safety of people traveling our highways, and should be rejected outright by this subcommittee and Congress.

#### *EMPLOYER NOTIFICATION SYSTEM:*

ATA believes the FMCSA should establish a national employer notification system to provide motor carrier employers with timely alerts to driver license actions, such as suspensions, revocations, and convictions for moving violations. Use of this system should be voluntary, at least initially. Under the current process, motor carriers often are not notified about drivers' convictions in a timely manner. Employers are required to check each driver's record once per year, however this record may reveal violations committed up to 11 months earlier. Employees are required to notify their employer of a violation of any State or local traffic law (other than a parking violation) within 30 days of a conviction, and of a license suspension, revocation, or cancellation within one day. However, they are often reluctant to do so because of the potential negative ramifications on their employment. FMCSA estimates that at

<sup>15</sup> Federal Motor Carrier Safety Administration, Electronic Logging Device Hours-of-Service Violation Information Graphic. Retrieved February 28, 2019, from <https://www.fmcsa.dot.gov/files/fmcsa.dot.gov/files/docs/regulations/enforcement/406471/eld-hos-compliance-jan2019.pdf>.

<sup>16</sup> *Ibid.*

<sup>17</sup> 79 Federal Register 27041 (May 12, 2014).

least 50 percent of drivers may not notify employers of convictions and licensing actions within the required time-frames.<sup>18</sup>

In 2007, a pilot ENS program was conducted to assess the feasibility, cost, safety impact, and benefits of such a system; and to assess methods for efficient exchange of driver safety data from existing State systems. The pilot program, tested in Colorado and Minnesota, allowed motor carriers to register, with the driver's expressed permission, to receive timely electronic notifications of convictions and suspensions. The results of the pilot indicated that a nationwide ENS was needed and could have significant safety and monetary benefits for motor carriers. In 2012, the Moving Ahead for Progress in the 21st Century Act (MAP-21) supported FMCSA's plans to develop and implement a national driver record notification system for commercial vehicle operators. ATA supports a standardized ENS approach and is advocating a national ENS system.

*HAIR TESTING:*

An increasing number of motor carriers are conducting pre-employment and random drug tests using drivers' hair as a testing sample. Hair tests provide a better, longer picture of an applicant's past drug use and are more difficult than other testing methods to subvert. However, since urine is the only sample type permitted under DOT regulations, companies that voluntarily conduct hair tests must do so in addition to mandatory urine tests. This duplicated time and expense deters fleets from adopting this more effective testing method. To help eliminate this redundancy and incent more fleets to conduct hair testing, ATA strongly supports the recognition of hair testing as a federally-accepted drug testing method.

The Substance Abuse and Mental Health Services Administration (SAMHSA) has long expressed an interest in recognizing hair testing as a Federally-accepted drug testing method, and has been developing guidelines to recognize hair testing since the early 2000s. Unfortunately, progress has been inexcusably slow. As a result, in 2015, Congress directed the Secretary of the Department of Health and Human Services (HHS) to "issue scientific and technical guidelines for hair testing as a method of detecting the use of controlled substances for purpose of section 31306 of Title 49, United States Code" by December 4, 2016.<sup>19</sup> Unfortunately, this Congressionally-mandated deadline is now more than 2 years overdue. HHS missed this deadline, and continues to ignore the Congressional mandate.

Development of standards by HHS will pave the way for regulated employers to use this testing method and allow them to identify a greater number of safety-sensitive employees who violate Federal drug testing regulations. Additionally, having hair testing as a recognized alternative drug testing method would give motor carriers the ability to report positive hair test results to drivers' subsequent prospective employers through FMCSA's forthcoming Commercial Driver's License Drug and Alcohol Clearinghouse.

Recognizing this unacceptable delay, in March 2018, the President signed H.R. 1625 the TARGET Act with report language to HHS on the Federal Drug Free Workplace Program that, "The agreement strongly encourages the Secretary to expeditiously produce the technical guidelines for the use of hair testing as a Federally-accepted drug testing method."<sup>20</sup> And most recently, H.R. 6 the SUPPORT for Patients and Communities Act, the comprehensive opioids package passed by Congress and signed into law in October 2018, included important oversight and reporting requirements for HHS to follow in completing its work on hair testing. The legislation requires HHS to report to Congress on the status of hair testing guidelines within 60 days of enactment and annually thereafter until final publication. The report will include: (1) the status of the hair testing guidelines; (2) an explanation for why the hair testing guidelines have not been issued; (3) a schedule, including benchmarks, for the completion of the hair testing guidelines; and (4) an estimated date of completion of the hair testing guidelines.

ATA urges Congress and this subcommittee to put further pressure on HHS to pave the way toward adoption of this important safety initiative. Unfortunately, while this country in recent years has seen prescription opioid abuse grow to an epidemic, and an uptick of drug-impaired driving, we continue to wait for these critical technical guidelines to be completed, so that DOT can recognize the use of hair testing as a federally-accepted drug testing method.

<sup>18</sup> *Driver Violation Notification Service Feasibility Study*, U.S. Department of Transportation, Federal Motor Carrier Safety Administration, July 2005, figure 1, page 1.

<sup>19</sup> Fixing America's Surface Transportation Act §5402, (2015).

<sup>20</sup> TARGET Act, H.R.1625, 115th Cong. (2018).

*AUTOMATED AND CONNECTED VEHICLES:*

Madam Chair, I would now like to discuss automated vehicle technologies that we believe will help make our industry and workplace, the roads and bridges crisscrossing this country, safer. Automobile and truck manufacturers have been automating functions of vehicles for decades, such as the antilock braking system and cruise control. As technical solutions have grown, and costs have become more reasonable, policymakers and regulators are trying to catch up to the market-driven innovation and proliferating technologies. Collision avoidance system functionalities are becoming more affordable and standard on new light vehicles, and truck OEMs are on a similar path.<sup>21</sup> New technology companies and traditional equipment suppliers are also developing automated vehicle technology specifically for the trucking industry, further accelerating the development of automated vehicle technologies in the trucking industry.<sup>22</sup>

The safety benefits from advancing automated truck technology also parallels the importance of intelligent transportation systems. Plans of deploying dedicated short-range communication (DSRC) devices on vehicles to enable vehicle-to-vehicle (V2V) and vehicle-to-infrastructure (V2I) communications—collectively known as V2X—have significant future safety benefits to next generation U.S. transportation.<sup>23</sup> Much work has been done by federal and state governments, research institutions, technical standards organizations, and technology companies to develop DSRC-based V2V protocols and applications for single and combination vehicles. Additionally, safety impacts of automated or assisted braking and steering are being studied and will likely show significant improvements in mitigating crashes and injuries.<sup>24</sup> As vehicles are able to communicate with one another, the safety on our roadways can be vastly improved.

Similarly, truck platooning—a DSRC platform technology that utilizes V2V and advanced driver assistive systems—has passed through early stages of testing and development, and may be deployed in the near future. Truck platooning could improve fuel efficiency for commercial vehicles, but more importantly, have added safety benefits as well—allowing the “platoon” of vehicles to instantly react to one another, such as applying the brakes faster than a human reaction. While the full impacts of automated and connected vehicles on workforce training, and labor regulation are not yet clear—as the effect of automation on trucking and logistics operations is still developing along with the technology—ATA does not perceive this technology to be “driverless” for the trucking industry, but instead a vital driver assist tool. We expect that there will continue to be a role for drivers in trucking for the foreseeable future, similarly to pilots who are still in the cockpit of airplanes, fifty years after automation was introduced to aviation. Though the role for automation could certainly be modified and adjusted as the technologies continue to advance. A major role of drivers is responsibility for the security and oversight of the cargo, some of which is heavily regulated, especially hazardous or agricultural loads. More challenges to consider involve hours of service regulations, cybersecurity, insurance liability, roadside events, enforcement and first responder situations.

Connected vehicles continue to be discussed as a potential safety technology. In January 2017, NHTSA published a proposed rule establishing a safety standard to mandate V2V communications for new light vehicles and to standardize the message and format of V2V transmissions.<sup>25</sup> Also, FHWA issued guidance for V2I communications, which help transportation planners integrate the technologies to allow vehicles the ability to communicate to roadway infrastructure.<sup>26</sup> Currently, three con-

<sup>21</sup>(March 8, 2019). *ALL INTERNATIONAL® ON-HIGHWAY TRUCKS TO COME STANDARD WITH BENDIX WINGMAN FUSION*. Retrieved from [https://www.bendix.com/media/documents/press\\_releases/2019/All\\_International\\_On-Highway\\_Trucks\\_To\\_Come\\_Standard\\_With\\_Bendix\\_Wingman\\_Fusion319.pdf](https://www.bendix.com/media/documents/press_releases/2019/All_International_On-Highway_Trucks_To_Come_Standard_With_Bendix_Wingman_Fusion319.pdf)

<sup>22</sup>(January 30, 2019). *Self-Driving Truck Startup Embark Releases Performance Data*. Retrieved from <https://www.ttnews.com/articles/self-driving-truck-startup-embark-releases-performance-data>

<sup>23</sup>Chang, J. (2016, July). *Summary of NHTSA heavy-vehicle vehicle-to-vehicle safety communications research*. (Report No. DOT HS 812 300). Washington, DC: National Highway Traffic Safety Administration.

<sup>24</sup>(May 22, 2019). *Development of Baseline Safety Performance Measures for Highly Automated Commercial Vehicles*. Retrieved from <https://www.fmcsa.dot.gov/research-and-analysis/technology/development-baseline-safety-performance-measures-highly-automated>

<sup>25</sup>(January 12, 2017). *Federal Motor Vehicle Safety Standards; V2V Communications*. Retrieved from <https://www.federalregister.gov/documents/2017/01/12/2016-31059/federal-motor-vehicle-safety-standards-v2v-communications>

<sup>26</sup>(January 19, 2017). *FHWA Announces Vehicle-to-Infrastructure Guidance*. Retrieved from <https://www.transportation.gov/briefing-room/fhwa0317>

nected vehicle pilot programs are underway in Wyoming, Tampa, and New York City.<sup>27</sup>

In addition, some auto manufacturers are seeking cellular V2X (C-V2X) frequency, not DSRC, to be dedicated on some channels of the 5.9 GHz spectrum for vehicle safety communications. As long as the full breadth of 5.9 GHz spectrum is allocated for vehicle safety, then V2X technologies will enter the scene, allowing cars, trucks and infrastructure to communicate with each other. ATA believes that it is vitally important that the 5.9 GHz spectrum that has been reserved by the FCC exclusively for V2V and V2I communications be preserved against encroachment from other uses such as Wi-Fi, otherwise many important promises of automation will be lost. The FCC is anticipated to render a decision about the use of the 5.9 GHz spectrum, and whether it will be allocated to vehicle safety use or divided between that original purpose and unlicensed Wi-Fi users. If the full breadth of the 5.9 GHz spectrum is allocated for vehicle safety, then V2V and V2I technologies will enter the scene in an accelerated manner, better allowing cars, trucks and infrastructure to communicate with each other.

ATA also believes that including the trucking industry in the framework of the development and testing of automated and connected vehicle technologies is crucial. ATA continues to engage with the FCC, FMCSA and other administrations within USDOT as well as other stakeholder advisory groups on automated and connected vehicles to ensure that the trucking industry's perspective is considered as future policies are being developed. ATA continues to work with State Trucking Associations and state legislators and transportation officials as policies, regulations, and research emanate from cities, states, universities, and businesses. ATA has also engaged with other stakeholders to study and address workforce issues related to automated trucks, as a founding member of the Partnership for Transportation Innovation & Opportunity.

#### ADVANCED DRIVER ASSISTIVE SYSTEMS:

Although some automated driving systems and Vehicle-to-Vehicle technologies may be utilized in the near future, ATA member companies presently support and utilize systems to enhance the safety of their fleets. Substantial advancements have been made in vehicle collision mitigation technology through advanced driver assistive systems (ADAS), including advanced radar and LiDAR devices; enhanced camera and vision technologies; improved object detection algorithms, and automated steering and braking. Automated emergency braking (AEB)—a form of ADAS technology—detects an impending forward collision with another object in time to avoid or mitigate the accident. AEB systems, such as dynamic brake support (DBS) and crash imminent braking (CIB), use multiple onboard vehicle sensing technologies to monitor the proximity of approaching objects to warn the driver and/or apply DBS and CIB depending on the relative speed and distance between the host and opposing vehicles that suggest a collision is imminent.<sup>28</sup>

In addition to AEB, commercial vehicles may now be equipped with ADAS such as:

- Adaptive Cruise Control (ACC)—A method for drivers to allow the system to keep a safe space in following traffic while maintaining a set speed through automated braking and accelerating;
- Forward Collision Warning (FCW)—A feature that can complement AEB and can generate audible, haptic and visual alerts when a rear-end conflict emerges;
- Blind Spot Detection (BSD)—A variable amount of sensors for detecting vehicles and vulnerable road users (can be speed dependent) that surround the truck and can warn the driver—or system—during maneuvers;
- Lane Departure Warning (LDW)—A system alert for the driver when the vehicle drifts past lane markings without signal;
- Active Electric Steering (AES)—A combination of automated technology and sensory devices that can adjust the vehicle's heading; preemptively steer away from emergency situations, and maintain driver comfort during harsh environments;
- Lane Keeping Assist (LKA)—An AES feature that positions the vehicle center of its driving lane and can maintain slight turning directions;
- Camera Monitoring Systems (CMS)—Distinct camera devices mounted around the vehicle that enhance driver vision capabilities for blind spot “No Zone” areas and poor sight capabilities. CMS also has the availability to replace conventional truck mirrors for increasing safety and fuel efficiency; and

<sup>27</sup> *Connected Vehicle Pilot Deployment Program*. Retrieved from <https://www.its.dot.gov/pilots/>

<sup>28</sup> *Driver Assistance Technologies*. Retrieved from <https://www.nhtsa.gov/equipment/driver-assistance-technologies>

- Adaptive Driving Beam (ADB) Headlighting—A “smart” vehicle head light safety feature that adjusts the forward lighting brightness automatically through sensing detection technology for reducing glare on surrounding traffic while enhancing the driver or system’s viewing capability in reducing accidents with vehicles and vulnerable road users.

In October 2015, NHTSA granted a petition for rulemaking to establish a safety standard to require ADAS on certain heavy vehicles.<sup>29</sup> The agency is currently conducting research to evaluate real-world performance of these systems through track testing and field operational testing. NHTSA also announced a commitment by majority of the U.S. auto market to make AEB a standard feature on virtually all new light-duty vehicles no later than NHTSA’s 2022 reporting year.<sup>30</sup> Additionally, AEB to be standard on virtually all new light-duty commercial vehicles with a gross vehicle weight between 8,501 lbs. and 10,000 lbs. beginning no later than Sept. 1, 2025. ATA supports AEB for all new vehicles (Class 1–8) through a USDOT voluntary program challenging vehicle manufacturers to standardize AEB on new vehicles, and ATA supports carrier-based programs to expedite ADAS technology adoption.

**MISGUIDED SAFETY TECHNOLOGY MANDATES:**

While discussing safety technologies that our industry utilizes, both mandated and voluntarily, I also urge this subcommittee to use caution and best judgement as you consider technology mandates on the trucking industry that, while well intentioned, may lead to unintended consequences and negative impacts on both the industry and road safety. An example of this can be found in recent legislative attempts to mandate an unproven device known as a “side underride guards” on the trucking industry. Recently introduced in both the House<sup>31</sup> and Senate<sup>32</sup>, the Stop Underrides Act calls for the mandating of these devices on the sides and front of virtually all commercial vehicles, including the retrofitting of already manufactured and in service vehicles.

This legislation, while a response to specific tragedies, seeks to address a certain type of truck involved accident through a highly prescriptive industry-wide mandate. Regrettably, the bill is not based on science, data or safety benefit. Moreover, it ignores potential technical issues a mandate of this nature raises, as well as the other technologies that exist for addressing these and other crashes, such as automatic emergency braking, camera monitoring systems, and adaptive turning assist. And, the bill ignores the diversity of our industry. In trucking, we know that one size does not fit all, and that investments in certain technologies that one company makes may not make sense for another. Standards for new and in-service truck equipment should be based on sound economic and engineering principles that enhance safety, take into account real-world operations, and weigh possible unintended consequences.

The Stop Underrides Act also fails to consider numerous complicating factors such as engineering tradeoffs involving weight, strength, and effectiveness of side guards. Currently, the only testing that has been accomplished involves a closed course staged dry van 53’ trailer with a dummy car speeding perfectly perpendicular at its side underride guard well below highway speed limits. Furthermore, the bill raises significant operational issues related to ground clearance, moveable trailer axles, and the diversity of truck and trailer designs. For example, the ridged specified design of side underrides would not work well with tank and bulk trailers that are cylindrical in size and require underbelly accessibility; flatbed trailers, which unloaded, are naturally curved to suppress weight; and intermodal trailers that are shipped and locked onto specific designed chassis for hauling. Simply put, these glaring operational concerns do not signify real world applicability, nor justify an industry-wide mandate.

Our industry needs to be diligent in directing safety-related resources, leveraging industry investments to result in the greatest potential benefit to highway safety, which is the only way we can hope to achieve the goal of accident and fatality-free highways. Equipping the roughly 3.2 million trailers and semi-trailers pulled by Class 7 and 8 tractors and the overall 35 million commercial trucks (all classes) in the U.S with side and front underride guards will far exceed the \$10 billion the in-

<sup>29</sup> 80 Federal Register 62487 (October 16, 2015).

<sup>30</sup> (December 21, 2017). *Manufacturers make progress on voluntary commitment to include automatic emergency braking on all new vehicles*. Retrieved from <https://www.nhtsa.gov/press-releases/nhtsa-iihs-announcement-aeb>

<sup>31</sup> <https://www.congress.gov/bill/116th-congress/house-bill/1511/all-info>.

<sup>32</sup> <https://www.congress.gov/bill/116th-congress/senate-bill/665>.

dustry currently spends annually on safety.<sup>33</sup> As a result, the Stop Underrides Act would divert a significant amount of NHTSA and industry resources away from important crash avoidance technologies with wide-ranging benefits in all types of crashes to focus on a narrow type of crash and specific countermeasure unproven in real-world applications. Furthermore, the Government Accountability Office (GAO) recently completed a congressionally mandated report researching this very issue. In the report recommendations, the GAO concluded that “The Administrator of the National Highway Traffic Safety Administration should conduct additional research on side underride guards to better understand the overall effectiveness and cost associated with these guards and, if warranted, develop standards for their implementation.”<sup>34</sup>

ATA strongly recommends that Congress and Federal Regulators work collaboratively with the industry to incentivize safety investments, allowing motor carrier to make the right investments that provide the greatest overall benefit the safety of our roads, bridges and motoring public. However, misguided and wrongheaded legislative mandates like the Stop Underrides Act ultimately detract from our shared goal of improved safety.

## 2) WORKFORCE DEVELOPMENT:

### *THE DRIVER SHORTAGE CRISIS:*

According to the Council of Economic Advisers, truck drivers are among the top “infrastructure occupations” that will be needed and in increased demand with expanded investments in infrastructure.<sup>35</sup> However, as confirmed by the International Brotherhood of Teamsters<sup>36</sup> and the Federal Reserve Board,<sup>37</sup> the trucking industry is already facing a severe labor shortage.

Specifically:

- In 2017, the industry was short 50,000 drivers, the highest level on record;<sup>38</sup>
- In July 2018, half of the nation’s twelve Federal Reserve Districts specifically reported trucking capacity and truck driver shortage issues, with many reporting rising freight and manufacturing costs due to the shortage;<sup>39</sup>
- If current trends hold, the shortage could grow to more than 174,000 by 2026; and<sup>40</sup>
- Over the next decade, the trucking industry will need to hire roughly 890,000 new drivers, taking into account retirement and the industry’s aging workforce (whose average age is 7 years older than that of your typical U.S. worker).<sup>41</sup>

This shortage, in turn, threatens to increase the cost of moving freight, and reduce supply chain efficiencies. The driver shortage persists despite the fact that private fleet drivers saw their pay rise to more than \$86,000 from \$73,000—or a gain of nearly 18 percent—from 2014 to 2017.<sup>42</sup> Over the same period, the median salary for a truckload driver working a national, irregular route increased to over \$53,000—for an increase of \$7,000 or 15 percent.<sup>43</sup> These significant bumps in pay are in addition to the thousands of dollars in signing bonuses, health insurance, and retirement benefits that most carriers offer to recruit and retain drivers.<sup>44</sup>

<sup>33</sup> Truck and trailer data from 2017 from ACT Research.

<sup>34</sup> (March, 2019). *Truck Underride Guards, Improved Data Collection, Inspection, and Research Needed* (Report No. GAO-19-264). Retrieved from United States Government Accountability Office: <https://www.gao.gov/assets/700/697585.pdf>.

<sup>35</sup> The Council of Economic Advisers, “The Economic Benefits and Impacts of Expanded Infrastructure Investment,” March 2018, at 26, <https://www.whitehouse.gov/wp-content/uploads/2018/03/The-Economic-Benefits-and-Impacts-of-Expanded-Infrastructure-Investment.pdf>.

<sup>36</sup> U.S. Senate Committee on Commerce, Science, & Transportation Hearing, *Transportation Innovation: Automated Trucks and Our Nation’s Highways*, Sep. 13, 2017, <https://www.commerce.senate.gov/public/index.cfm/hearings?ID=5A988178-CACC-4ADF-8EAC-784DE626B89F>.

<sup>37</sup> The Federal Reserve Board, *The Beige Book: Summary of Commentary on Current Economic Conditions by Federal Reserve District*, July 18, 2018, [https://www.federalreserve.gov/monetarypolicy/files/BeigeBook\\_20180718.pdf](https://www.federalreserve.gov/monetarypolicy/files/BeigeBook_20180718.pdf).

<sup>38</sup> American Trucking Associations, *Truck Driver Shortage Analysis 2017*, <http://progressive1.acs.playstream.com/truckline/progressive/ATAs%20Driver%20Shortage%20Report%202017.pdf>.

<sup>39</sup> The Federal Reserve Board, *supra* note 3.

<sup>40</sup> Truck Driver Shortage Analysis 2017, *supra* note 4.

<sup>41</sup> *Id.*

<sup>42</sup> American Trucking Associations, *UPDATED: New Survey Data Reveals Increases in Driver Compensation*, March 27, 2018, <https://www.trucking.org/article/New-Survey-Data-Reveals-Increases-in-Driver-Compensation>.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

*BIPARTISAN SUPPORT FOR OCCUPATIONAL LICENSING REFORM:*

Given that “truck-driver” was one of the most in-demand jobs in the country with the biggest pay hikes in 2018,<sup>45</sup> why is the industry still under pressure from a driver shortage standpoint?

With the nation’s unemployment rate hovering at historic lows and demand for freight transportation continuing to peak in our growing e-commerce economy, the trucking industry is not able to replenish its aging workforce with younger workers—due in large part to outdated occupational licensing requirements that disproportionately burden entry-level drivers.

As you may be aware, reforming outdated occupational licensing requirements has been a bipartisan priority of the past two administrations.<sup>46</sup> In July 2015, President Obama was able to marshal among a wide array of stakeholders and policymakers support for occupational licensing reform, through the issuance of an eye-opening report by his Council of Economic Advisers, the U.S. Department of Treasury’s Office of Economic Policy, and the U.S. Department of Labor.<sup>47</sup>

In summarizing this report, Jason Furman, Chairman of President Obama’s Council of Economic Advisers, described the many ways in which outdated licensing requirements create barriers to labor market entry or lateral mobility, as follows:

[T]here is evidence that some licensing requirements create economic rents for licensed practitioners at the expense of excluded workers and consumers—increasing inefficiency and potentially also increasing inequality. First, the employment barriers created by licensing raise wages for those who are successful in gaining entry to a licensed occupation by restricting employment in the licensed profession and lowering wages for excluded workers. . . . Second, research finds that more restrictive licensing laws lead to higher prices for goods and services, in many cases for lower-income households, *while the quality, health and safety benefits do not always materialize . . . most empirical evidence does not find that stricter licensing requirements improve quality, public safety or health.* . . . Finally, State-specific licensing requirements create barriers to entry for out-of-State licensed practitioners and so reduce mobility across State lines.<sup>48</sup>

Not surprisingly, there is broad bipartisan support for rolling back these unnecessary barriers that hold back so many Americans, which disproportionately affect African-Americans, Hispanics, military spouses and veterans, returning citizens, and the poor.<sup>49</sup> In recognition of similar challenges that outdated licensing requirements pose for the transportation and infrastructure workforce, Labor Secretary Alex Acosta has advocated for workforce development reforms to be included in an infrastructure package.<sup>50</sup> In particular, Secretary Acosta testified in support of occupational licensing reform.<sup>51</sup>

*OCCUPATIONAL LICENSING REFORM IN THE TRUCKING INDUSTRY:*

For the reasons mentioned above, to help alleviate the truck driver shortage and remove unnecessary barriers to entry, ATA supports the following occupational licensing reforms.

<sup>45</sup>Paul Davidson, The most in demand jobs in 2018 with biggest pay hikes include cashier, truck driver, USA Today, May 22, 2018, <https://www.usatoday.com/story/money/careers/2018/05/22/jobs-biggest-pay-hikes-cashier-delivery-driver/630728002/>.

<sup>46</sup>Nick Sibilla, “Citing Adam Smith and Milton Friedman, Obama’s Economic Advisors Back Occupational Licensing Reform,” *Forbes*, July 31, 2015, <https://www.forbes.com/sites/instituteofjustice/2015/07/31/citing-adam-smith-and-milton-friedman-obamas-economic-advisors-back-occupational-licensing-reform/#411b2aaf582e>; Jared Meyer, “Trump Doubles Down on Licensing Reform,” *Forbes*, July 31, 2017, <https://www.forbes.com/sites/jaredmeyer/2017/07/31/trump-and-obama-agree-on-licensing/#10d91bf9692d>

<sup>47</sup>The Council of Economic Advisers, the U.S. Department of Treasury, Office of Economic Policy, and the U.S. Department of Labor, Occupational Licensing: A Framework for Policymakers, July 2015, [https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing\\_report\\_final\\_nonembargo.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf).

<sup>48</sup>Jason Furman, Chairman, Council of Economic Advisers, *Occupational Licensing and Economic Rents*, The Brookings Institution, Nov. 2, 2015, [https://obamawhitehouse.archives.gov/sites/default/files/page/files/20151102\\_occupational\\_licensing\\_and\\_economic\\_rents.pdf](https://obamawhitehouse.archives.gov/sites/default/files/page/files/20151102_occupational_licensing_and_economic_rents.pdf).

<sup>49</sup>Matthew D. Mitchell, Occupational Licensing and the Poor and Disadvantaged, The Mercatus Center, Sep. 28, 2017, <https://www.mercatus.org/publications/study-american-capitalism/occupational-licensing-and-poor-and-disadvantaged>.

<sup>50</sup>U.S. Senate Committee on Commerce, Transportation, & Science Hearing, Rebuilding Infrastructure In America: Administration Perspectives, March 14, 2018, <https://www.commerce.senate.gov/public/index.cfm/hearings?ID=D68FC40C-36BC-4319-B96F-CAC99129FE3E>.

<sup>51</sup>*Id.*

*Give 18, 19, and 20-year-olds the Opportunity to Choose a Career in Trucking:*

First, ATA supports lowering the minimum age requirement for interstate truck driving from 21 to 18—but only for qualified apprentices that satisfy the safety, training, and technology requirements spelled out in the DRIVE Safe Act (H.R. 1374; S. 569 in the 116th Congress) and the new training requirements of the Obama Administration’s Entry Level Driver Training (ELDT) Final Rule. Currently, 48 states and the District of Columbia allow 18-year-old CDL holders to drive trucks intrastate without any of these additional training and technology requirements. Many of these 18, 19, and 20 year old intrastate drivers outperform their older counterparts when it comes to critical safety measures such as crash rates. Additionally, our nation’s military allows 18, 19 and 20 year old service members to operate heavy duty machinery, equipment and vehicles—demonstrating that good training makes it possible for the average U.S. sailor (younger than 20 years old) to steer a \$4 billion aircraft carrier.<sup>52</sup>

Modern-day vehicle safety technologies have advanced by several orders of magnitude since the current minimum age requirement was promulgated decades ago before the advent of the internet. And research has shown that the technologies that would be required by the DRIVE Safe Act and endorsed by the NTSB—technologies such as active braking, collision avoidance, and event recorders—significantly improve safety performance. Meanwhile, 6.4 million Opportunity Youth in this country are neither employed nor in school, even as the nation is short 50,000 truck drivers. An update to the minimum age requirement is well over-due.

*Eliminate Unnecessary Barriers for Out-of-State Driver Candidates:*

Second, to better connect job-seekers to trucking careers that offer a median salary of \$54,585, health and retirement benefits, in addition to potentially thousands of dollars in signing bonuses, ATA supports efforts to require states to better serve the growing number of truck driver candidates who receive driver training *outside* their state of domicile.

Currently, out-of-state trainees have to travel back and forth to their home state, every time they pass either the CDL knowledge test or skills test—just to obtain the basic occupational licenses necessary to launch their trucking career. This arrangement imposes unnecessary financial burdens on those who can least afford it and exposes them to skill degradation. This problem could be addressed by requiring states receiving federal funds for infrastructure projects to allow such out-of-state trainees to (1) complete all training, (2) take all necessary tests, and (3) obtain all necessary credentials in the state in which they are receiving training—without having to travel back to their home state.

As the Council of Economic Advisers has noted:

Because [occupational] licenses are largely granted by states (rather than being nationally recognized), licensing inhibits the free flow of licensed workers across state boundaries to better match labor supply to labor demand. *Unless the geographic footprint and skill needs of expanded infrastructure investments match the geographic distribution of currently unemployed infrastructure workers, some reshuffling of workers across state lines may be needed.*<sup>53</sup>

In the trucking industry, the geographic distribution of currently unemployed truck driver candidates does not match the geographic footprint of federal workforce development investments. Accordingly, individuals aspiring to become truck drivers are crossing state lines to obtain state-of-the-art training from motor carriers that have the support of federal workforce dollars and have been hiring minorities, veterans, apprentices, and other underrepresented populations at industry-leading rates.

To better facilitate and scale this innovative model of workforce development, ATA supports efforts to require states of domicile to (1) accept the results of an applicant’s CDL knowledge test administered in another state, and to (2) electronically transmit or deliver by mail the relevant credential—be it a CLP or a CDL—to the applicant without requiring him or her to physically come back to the state of domicile.

*Eliminate Skills Test Delays for CDL Applicants:*

ATA supports incentivizing states to administer the CDL skills test within 7 days of application or utilizing 3rd party testers. A low unemployment rate and the stigma surrounding blue-collar work makes it difficult enough to recruit drivers into the

<sup>52</sup>National U.S. Navy Aircraft Carrier Month, 2018, <https://aircraftcarrier.com/wp-content/uploads/2018/10/Talking-Points-2018.pdf>

<sup>53</sup>Council of Economic Advisers, *supra* note 1, at 33 (emphasis added).

trucking industry. States that make applicants wait up to two months to take their skills test contributes to this problem by discouraging applicants from following through. It also invites skills erosion.

**RELATED WORKFORCE PRIORITIES:**

*Support Efforts to Recruit, Train, and Hire from Non-Traditional Communities:*

A growing number of ATA members recruit drivers from inner cities and teach them life-skills such as budgeting and punctuality. These companies are also industry-leaders in hiring veterans, apprentices, and female drivers. Building on these successes, ATA is exploring a pilot project in Baltimore, MD, to help expand our outreach to urban communities. Several large ATA members are also interested in building career entryways for returning citizens, but there are questions about negligent hiring liability and grant funding.

*Support Research on the Workforce Impacts of Automated Vehicles:*

ATA supports the commonsense adoption of automated vehicle technology and data-driven efforts to better understand and optimize the potential benefits of this technology for the American workforce. While we recognize that the widespread adoption of these technologies is decades away, ATA supports increased research that will better equip policymakers and regulators with more data to prepare the next generation of American workers for the future of work in trucking and transportation.

**3) INFRASTRUCTURE:**

**THE COST OF INACTION:**

A well-maintained, reliable and efficient network of highways is crucial to the delivery of the nation's freight and vital to our country's economic and social well-being. However, the road system is rapidly deteriorating, and costs the average motorist nearly \$1,600 a year in higher maintenance and congestion expenses.<sup>54</sup> Highway congestion also adds nearly \$75 billion to the cost of freight transportation each year.<sup>55</sup> In 2016, truck drivers sat in traffic for nearly 1.2 billion hours, equivalent to more than 425,000 drivers sitting idle for a year.<sup>56</sup>

These are impacts that serve as a brake on economic growth and job creation nationwide. Madam Chair, a first-world economy cannot survive a third-world infrastructure system. As such, the federal government has a Constitutional responsibility to ensure that the resources are available to address this self-imposed and completely solvable situation. The Commerce Clause does not represent an antiquated 18th century ideal; it is what binds us as a nation. *E Pluribus Unum*—out of many, one.

Those who support abandoning or curtailing the federal role in surface transportation improvement do so in contempt of the ideals that have made the United States great. They are willing to put aside centuries of precedent in favor of a wager that 50 states will, at their own behest, take the actions that are necessary to prevent further deterioration of a transportation system that binds us together as one nation and allows our economy to thrive. This is especially problematic for low-population, large-area states, which carry large volumes of interstate traffic that benefit the entire nation, but do not have the population base to fund needed improvements. The trucking industry, the backbone of the economy, will not accept this reckless approach, and Congress and this subcommittee should reject it as well.

Most troubling is the impact of underinvestment on highway safety. In nearly 53 percent of highway fatalities, the condition of the roadway is a contributing factor.<sup>57</sup> In 2011, nearly 17,000 people died in roadway departure crashes, over 50 percent of the total.<sup>58</sup> Many of these fatalities result from collisions with roadside objects, such as trees or poles located close to the roadway.

The Highway Trust Fund (HTF), the primary source of federal revenue for highway projects, safety programs and transit investments, is projected to run short of

<sup>54</sup> *Bumpy Road Ahead: America's Roughest Rides and Strategies to make our Roads Smoother*, The Road Information Program, Oct. 2018; *2015 Urban Mobility Scorecard*. Texas Transportation Institute, Aug. 2015.

<sup>55</sup> *Cost of Congestion to the Trucking Industry: 2018 Update*. American Transportation Research Institute, Oct. 2018.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Roadway Safety Guide*. Roadway Safety Foundation, 2014.

<sup>58</sup> *Ibid.*

the funds necessary to maintain current spending levels by FY2021.<sup>59</sup> While an average of approximately \$42 billion per year is expected to be collected from highway users over the next decade, nearly \$60 billion will be required annually to prevent significant reductions in federal aid for critical projects and programs.<sup>60</sup> It should be noted that a \$60 billion annual average federal investment still falls well short of the resources necessary to provide the federal share of the expenditure needed to address the nation's surface transportation safety, maintenance and capacity needs.<sup>61</sup> According to the American Society of Civil Engineers, the U.S. spends less than half of what is necessary to address these needs. As the investment gap continues to grow, so too will the number of deficient bridges, miles of roads in poor condition, number of highway bottlenecks and, most critically, the number of crashes and fatalities attributable to inadequate roadways.

While the cost and scale of addressing highway improvement needs is daunting, it is important to note that much of the congestion is focused at a relatively small number of locations. Just 17 percent of National Highway System (NHS) miles represents 87 percent of total truck congestion costs nationwide.<sup>62</sup> Many of these locations are at highway bottlenecks that are identified annually by the American Transportation Research Institute. ATRI recently released its annual freight bottleneck report, which identifies the top 100 truck bottlenecks around the country.<sup>63</sup> The Washington, DC area had two major bottlenecks, while Illinois had four. While most of the bottlenecks were in large metropolitan areas, the report found trouble spots even in smaller cities like Baton Rouge, LA, San Bernardino, CA, Birmingham, AL, Chattanooga, TN, and Greenville, SC. ATA's highway funding proposal, described below, would adopt a strategy for funding improvements at these costly choke points.

A recently released report<sup>64</sup> by the Transportation Research Board (TRB) requested by Congress focused specifically on the current state and future needs of the Interstate Highway System. This critical network binds our nation together and reaps immeasurable economic and national security benefits for the United States. Most importantly, because interstates are far safer than surface roads, since 1967 its construction has prevented nearly a quarter million people from losing their lives in vehicular crashes.<sup>65</sup> The Interstate Highway System accounts for about one-quarter of all miles traveled by light-duty vehicles and 40 percent of miles traveled by trucks.<sup>66</sup> The TRB report estimates that conservatively, the state and federal investment necessary to address the Interstate system's maintenance and capacity needs will have to double or triple over today's expenditures in the next 20 years.<sup>67</sup>

#### *THE BUILD AMERICA FUND:*

ATA's proposed solution to the highway funding crisis is the Build America Fund. The BAF would be supported with a new 20 cent per gallon fee built into the price of transportation fuels collected at the terminal rack, to be phased in over four years. The fee will be indexed to both inflation and improvements in fuel efficiency, with a five percent annual cap. We estimate that the fee will generate nearly \$340 billion over the first 10 years. It will cost the average passenger vehicle driver just over \$100 per year once fully phased in.<sup>68</sup>

We also support a new fee on hybrid and electric vehicles, which underpay for their use of the highway system or do not contribute at all. We look forward to working with the committee to identify the best approach to achieve that goal.

Under the BAF proposal, the first tranche of revenue generated by the new fee would be transferred to the HTF. Using a FY 2020 baseline, existing HTF programs would be funded at authorized levels sufficient to prevent a reduction in distributed funds, plus an annual increase to account for inflation.

Second, a new National Priorities Program (NPP) would be funded with an annual allocation of \$5 billion, plus an annual increase equivalent to the percentage in-

<sup>59</sup>The Budget and Economic Outlook 2019–2029, January 2019 Congressional Budget Office.

<sup>60</sup>*Ibid.*

<sup>61</sup>2015 *Status of the Nation's Highways, Bridges, and Transit: Conditions & Performance*. USDOT, Dec. 2016; see also 2017 *Infrastructure Report Card*. American Society of Civil Engineers, 2017.

<sup>62</sup>*Ibid.*

<sup>63</sup><https://truckingresearch.org/2019/02/06/atri-2019-truck-bottlenecks/>

<sup>64</sup>*Renewing the National Commitment to the Interstate Highway System: A Foundation for the Future (2018)*. Transportation Research Board, National Academy of Sciences.

<sup>65</sup>*Ibid.*, p. 2–18

<sup>66</sup>*Ibid.*, p. 2–10.

<sup>67</sup>*Ibid.*, p. S–5

<sup>68</sup>Federal Highway Administration, *Highway Statistics 2016*, Table VM–1. Average light-duty vehicle consumed 522 gallons of fuel.

crease in BAF revenue. Each year, the U.S. Department of Transportation would determine the location of the costliest highway bottlenecks in the nation and publish the list. Criteria could include the number of vehicles; amount of freight; congestion levels; reliability; safety; or, air quality impacts. States with identified bottlenecks could apply to USDOT for project funding grants on a competitive basis. Locations could appear on the list over multiple years until they are addressed.

The funds remaining following the transfer to the HTF and the NPP would be placed into the Local Priorities Program (LPP). Funds would be apportioned to the states according to the same formula established by the Surface Transportation Block Grant Program, including sub-allocation to local agencies. Project eligibility would be the same as the eligibility for the National Highway Freight Program or National Highway Performance Program, for highway projects only.

This approach would give state and local transportation agencies the long-term certainty and revenue stability they need to not only maintain, but also begin to improve their surface transportation systems. They should not be forced to resort to costly, inefficient practices—such as deferred maintenance—necessitated by the unpredictable federal revenue streams that have become all too common since 2008. Furthermore, while transportation investment has long-term benefits that extend beyond the initial construction phase, it is estimated that our proposal would add nearly half a million annual jobs related to construction nationwide, including nearly 2,000 jobs in Washington, D.C. and almost 7,000 jobs in Illinois.<sup>69</sup>

The fuel tax is the most immediate, cost-efficient and conservative mechanism currently available for funding surface transportation projects and programs. Collection costs are less than one percent of revenue.<sup>70</sup> Our proposal will not add to the federal debt or force states to resort to detrimental financing options that could jeopardize their bond ratings. Unlike other approaches that simply pass the buck to state and local governments by giving them additional “tools” to debt-finance their infrastructure funding shortfalls for the few projects that qualify, the BAF will generate real money that can be utilized for any federal-aid project.

While some have suggested that a fuel tax is regressive, the economic harm of failing to enact our proposal will be far more damaging to motorists. The \$100 per year paid by the average car driver under this proposal pales in comparison with the \$1,600 they are now forced to pay annually due to additional vehicle maintenance, lost time, and wasted fuel that has resulted from underinvestment in our infrastructure. Borrowing billions of dollars each year from China to debt finance the HTF funding gap—a cost imposed on current and future generations of Americans who will be forced to pay the interest—is far more regressive than the modest fee needed to avoid further blowing up our already massive national debt.

Forcing states to resort to tolls by starving them of federal funds is far more regressive than the \$2.00 a week motorists would pay under our proposal. One needs only look to I-66 in Northern Virginia, where tolls average more than \$12.00 per roundtrip and can sometimes exceed \$46.00, to understand the potential impacts on lower- or middle-income Americans.<sup>71</sup> To put this into perspective, even if motorists only paid the average toll, the cost of a 10-mile trip over an eight day period on I-66 would be equivalent to their cost for an entire year under ATA’s BAF proposal for all roads and bridges.

There is a perception that the fuel tax is no longer a viable revenue source due to the availability of electric vehicles and improvements in vehicle fuel efficiency. This notion is belied by the facts. According to the Congressional Budget Office’s latest estimates, revenue from fuel taxes will drop less than eight percent over the next decade, or about \$3 billion.<sup>72</sup> A modest increase in the fuel tax, or a new fee on alternative fuel vehicles, can easily recover these lost revenues.

Finally, ATA supports repeal of the federal excise tax (FET) on trucking equipment, provided the revenue it generates for the HTF is replaced. This antiquated 12 percent sales tax, which was adopted in 1917 to defray the costs of World War I, is a barrier to investment in the cleanest, safest trucks available on the market. In fact, when the FET was first adopted, it was applied to all vehicles, and now is imposed only on heavy trucks. Income from the FET has varied widely, mostly in response to economic conditions. Over the past decade revenue has ranged between \$1.5 billion during the recession year of 2008 and \$4.6 billion in 2015. This variability contributes to mismatches between federal-aid money authorized and revenue

<sup>69</sup> *A Framework for Infrastructure Funding*. American Transportation Research Institute, Nov. 2017.

<sup>70</sup> *Ibid.*

<sup>71</sup> [http://www.66expresslanes.org/documents/66\\_express\\_lanes\\_january\\_2018\\_performance\\_ereport.pdf](http://www.66expresslanes.org/documents/66_express_lanes_january_2018_performance_ereport.pdf)

<sup>72</sup> Congressional Budget Office, *Budget and Economic Outlook: 2019–2029*, January 2019.

available for appropriation. In fact, the first bail-out of the HTF, in 2008, was necessitated largely by an unanticipated drop in FET revenue.

**TOLLS:**

ATA opposes expansion of Interstate highway tolling authority and highway “asset recycling.” Interstate tolls are a highly inefficient method of funding highways. One study found that converting all Interstate highways into toll roads would cost more than \$55 billion.<sup>73</sup> Tolling also forces traffic onto secondary roads, which are weaker and less safe.

Furthermore, tolls distort the business model for companies that rely on Interstate highway traffic for a significant share of their revenue. Motels, restaurants, truck stops and other roadside establishments would be devastated by the imposition of tolls. Often they are the largest employer in rural areas and small towns, and if they are forced to cut back or close down, this could cause ripple effects through surrounding communities. Nor are the effects likely to be confined to the state that imposes the tolls. Indiana, for example, seriously considered statewide Interstate tolls using a federal exemption that allows tolling of replacement or reconstructed bridges. These tolls would have not only severely hurt businesses in Indiana, but also in neighboring states that rely on Indiana highways for freight services.

In addition, tolls present a strong temptation for states to contrive ways to unfairly shift their revenue burdens disproportionately to out-of-state users to whom they are not politically accountable. Rhode Island’s RhodeWorks program is a case in point: the state legislature abused the federal bridge exemption to the general prohibition on tolling federal-aid highways to transform “bridges” like two-lane overpasses into toll facilities, and authorized imposition of tolls *only* on tractor-semitrailers—precisely the vehicles most likely to be engaged in interstate commerce—while excluding passenger cars and heavy trucks such as construction vehicles and dump trucks that are more likely to come from in-state. Other states have expressed interest in similarly extorting the interstate trucking industry. To be clear, the trucking industry is committed to paying its fair share of highway costs. But to treat the industry as a piggy bank to avoid fairly distributing the burden is unacceptable, and that is why ATA is currently challenging the RhodeWorks program in federal court, as an unconstitutional, discriminatory burden on interstate commerce. But Congress should also act to make clear to states that Rhode Island’s cynical exploitation of the bridge exemption undermines the presumption against tolling federally supported roads, and to expressly prohibit states that choose to toll the channels of interstate commerce from doing so in a way that insulates favored in-state users from the impact.

The exceptions to the federal ban on Interstate tolls have evolved over the decades into a confusing, incoherent mess that serve neither state transportation agencies, nor the public, very well. It is time to establish a rational system that protects the public from the negative impacts of tolls. These reforms are described in greater detail in ATA’s Surface Transportation Reauthorization Priorities document included in the Appendix.

Related to tolls, some have suggested using asset recycling to raise money for infrastructure investment. Asset recycling involves selling or leasing public assets to the private sector. Where asset recycling has been utilized on toll roads in the U.S., toll payers have seen their rates increased, only to subsidize projects with little or no benefit to them. One need only consider the recent 35 percent increase in truck toll rates on the Indiana Toll Road for an example of these abusive practices. The state gets a single tranche of money for road, broadband, airport and other projects that have no direct benefit for toll road users, while the private operator of the highway reaps the profits for the next six decades. This latest increase is on top of the doubling of toll rates prior to the initial lease in 2006, and subsequent annual increases that have resulted in a greater than 300 percent increase in truck toll rates over the past 13 years, with little or no benefit to toll road users. ATA is adamantly opposed to these types of forced subsidies. Please note that our position on asset recycling pertains only to the highway sector.

**THE TRUCK DRIVER PARKING SHORTAGE:**

Research and feedback from carriers and drivers suggest there is a significant shortage of available parking for truck drivers in certain parts of the country. Given the projected growth in demand for trucking services, this problem will likely wors-

<sup>73</sup> *Renewing the National Commitment to the Interstate Highway System: A Foundation for the Future* (2018). Transportation Research Board, National Academy of Sciences, p. 6–13.

en. There are significant safety benefits from investing in truck parking to ensure that trucks are not parking in unsafe areas due to lack of space.

Funding for truck parking is available to states under the current federal-aid highway program, but truck parking has not been a priority given a shortage of funds for essential highway projects. Therefore, we support the creation of a new discretionary grant program with dedicated funding from the federal-aid highway program for truck parking capital projects.

#### 4) TRADE:

##### *TRADE & THE TRUCKING INDUSTRY:*

Trucking is the largest mode of freight transportation in the United States; over 70 percent of all freight tonnage is transported by truck, and when trucks are not the primary mode of transportation, other modes often depend on trucks for final delivery.<sup>74</sup> Nearly everything we buy—from food to clothing to commodities as well as domestically produced goods and imports—has been hauled by truck at least once before ultimately landing in the hands of the consumer. We at ATA like to say that trade is synonymous with trucking because the vitality of the U.S. economy depends on a robust trucking industry to deliver goods throughout the supply chain.

##### *CONGRESSIONAL RATIFICATION OF THE USMCA:*

Trucking dominates cross-border freight movements as well. Every single day, there are 33,000 total truck entries along our northern and southern borders hauling more than \$2 billion of goods. To put this in perspective, in 2018, 12.2 million truck crossings moved approximately \$772 billion of goods across our Canadian and Mexican borders.<sup>75</sup> Trade with our northern and southern neighbors has created or supported tens of thousands of jobs in the United States, with motor carriers, suppliers and shippers, underscoring the benefits of free trade.

While the North American Free Trade Agreement has been a tremendous benefit to the trucking industry, the United States-Mexico-Canada Agreement, or USMCA, is a timely, welcome, and necessary update to the incumbent agreement. NAFTA entered into force on January 1, 1994—long before the advent of e-commerce and digital trade. As technology becomes even more integrated into the supply chain, it is imperative that our North American trade framework follows suit. Simply put, a 21st century trade environment necessitates a 21st century trade agreement, and the USMCA is the best vehicle to propel the U.S. trade economy into modernity.

The United States, Mexico and Canada have been transformed by nearly 25 years of tariff-free trade, generating a level of economic integration that has made North America one of the most competitive and successful trading blocs. The uncertainties regarding the future of this vital relationship have a reverberating effect on the trucking industry, as trucks haul 84 percent of all surface trade with Mexico and 67 percent of all surface trade with Canada.<sup>76</sup> The USMCA is not just a trade agreement—it is the foundation of our economic and broader relationship with our strongest allies that supports the livelihoods of the nearly 90,000 people employed in the U.S. trucking industry,<sup>77</sup> including nearly 60,000 U.S. truck drivers (full-time equivalent),<sup>78</sup> from truck transported trade. Given that Canada and Mexico are our number 1 and number 2 export markets respectively,<sup>79</sup> the trucking industry supports ratification of the USMCA to both maintain market access and to ensure the continuity of cross-border trucking operations. Simply put—trade has benefited blue-collar workers in the trucking industry, and we look forward to working with Congress to make USMCA a reality.

##### *TARIFFS:*

ATA understands the Administration's concern that countries like China are not playing by the same set of rules that the U.S. does when it comes to allowing direct foreign investment, access to markets, and stealing proprietary technologies. ATA also appreciates that the Administration would like to tackle these problems to level the playing field for U.S. interests at home and abroad. However, we do have con-

<sup>74</sup> *ATA U.S. Freight Transportation Forecast to 2029 (2018)*; American Trucking Associations. <https://www.atabusinesssolutions.com/ATA-Store/ProductDetails/productid/4012243>

<sup>75</sup> *Trade Moves North America Forward (2019)*; American Trucking Associations. [https://www.trucking.org/ATA%20Docs/News%20and%20Information/Reports%20Trends%20and%20Statistics/ATA\\_NorthAmericanTrade2018.pdf](https://www.trucking.org/ATA%20Docs/News%20and%20Information/Reports%20Trends%20and%20Statistics/ATA_NorthAmericanTrade2018.pdf)

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> *Top Trading Partners—March 2019: Year-to-Date Exports (2019)*; United States Census Bureau. <https://www.census.gov/foreign-trade/statistics/highlights/toppartners.html#exports>

cerns regarding the use of certain tariffs that can adversely affect U.S. business activity without sending a direct message to unscrupulous actors. For example, with regard to the tariffs proposed in the Federal Register on May 17, 2019,<sup>80</sup> ATA is very concerned that products covered by the 8609.00.00 heading have no domestic alternative for the trucking industry. It is our understanding that included in 8609.00.00 are 53' containers utilized in domestic U.S. intermodal moves, which have no U.S. supplier. The largest suppliers of 53' containers are two companies in China. As a result, U.S. logistics providers, including trucking companies, will have no choice but to continue sourcing 53' containers from Chinese companies and incurring significant costs that they simply cannot avoid. The price of a single container will likely increase by \$3,000 or more as a result of the proposed tariffs.<sup>81</sup>

Additionally, in light of Congress' narrowing timeframe for USMCA consideration, ATA is very concerned about the Administration's proposal to impose 5 percent tariffs on Mexico, the U.S.'s third largest trade partner. While ATA agrees that the migrant crisis should be addressed thoughtfully and comprehensively, we believe that this approach could inadvertently undermine U.S. and Mexican efforts to ratify the USMCA. Keeping our borders open for business for free and fair trade is important to our nation's economy, and is vital for the nearly 90,000 Americans who work in trucking-related jobs supported by cross-border freight movements between the U.S. and Mexico.<sup>82</sup>

**THE CRISIS ALONG THE SOUTHERN BORDER, AND IMPLICATION FOR TRUCKING:**

The crisis along the southern border has escalated to the point of unsustainability. A few weeks ago, U.S. Border Patrol agents from El Paso Sector apprehended 1,036 people—the largest group of illegal aliens ever encountered in a single group—and took them into custody.<sup>83</sup> While the dedicated men and women of the CBP are doing their best to address the unprecedented influx of family units and unaccompanied children, the situation is overwhelming the resources of CBP and has severely impacted the ability of the Department of Homeland Security to secure the U.S. border and enforce the immigration laws of the United States.

Every day in May 2019, an average of over 4,500 people crossed our border illegally or arrived at ports of entry without documents.<sup>84</sup> In May of 2017, the average was less than 700 people per day.<sup>85</sup> According to CBP, the month of May was on pace to be the highest month in crossings in over 12 years and will significantly surpass the record 109,000 in April 2019.<sup>86</sup>

To address the humanitarian and border security crisis, CBP reconfigured its staffing allocation model.<sup>87</sup> Initially, 545 CBP officers were reassigned from their posts along the southern border to assist the Border Patrol in problematic sectors. As a result, cargo processing and commercial throughput at ports of entry slowed dramatically. We heard reports from ATA members that wait times at certain ports of entry exceeded 11 hours. To mitigate these effects, CBP then transferred 300 officers from the northern border, airports, and seaports to the southern border to partially relieve the 545 officers and enable them to move back to their primary assignments. In May, CBP transferred an additional 186 officers from the northern border, airports, and seaports to supplement the 300 officers who had previously been reassigned to support the Border Patrol. In total, 731 CBP officers were called upon to assist the Border Patrol in their law enforcement functions along the southern border.

Without a solution, the humanitarian and border security crisis will continue to overwhelm CBP's operational capacity at and between ports of entry. The crisis, which has seen hundreds of CBP officers diverted away from trade facilitation du-

<sup>80</sup> 84 FR 22564 (May 17, 2019).

<sup>81</sup> *Cargo Equipment Back in the Tariff Crosshairs (May 20, 2019)*; JOC. [https://www.joc.com/maritime-news/container-lines/cargo-equipment-back-tariff-crosshairs\\_20190520.html](https://www.joc.com/maritime-news/container-lines/cargo-equipment-back-tariff-crosshairs_20190520.html)

<sup>82</sup> *Trade Moves North America Forward (2019)*; American Trucking Associations. [https://www.trucking.org/ATA%20Docs/News%20and%20Information/Reports%20Trends%20and%20Statistics/ATA\\_NorthAmericanTrade2018.pdf](https://www.trucking.org/ATA%20Docs/News%20and%20Information/Reports%20Trends%20and%20Statistics/ATA_NorthAmericanTrade2018.pdf)

<sup>83</sup> *Border Patrol Agents Apprehend Largest Group Ever Encountered (May 30, 2019)*; Department of Homeland Security. <https://www.dhs.gov/news/2019/05/30/border-patrol-agents-apprehend-largest-group-ever-encountered>

<sup>84</sup> *Background Press Call by Senior Administration Officials on the Crisis at our Southern Border (May 31, 2019)*; Office of the Press Secretary. <https://www.dhs.gov/news/2019/05/30/background-press-call-senior-administration-officials-crisis-our-southern-border>

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> CBP hosted weekly teleconferences with the trade community to share updates about CBP commercial operations at ports of entry along the southern border. Information about CBP's staffing allocation was communicated during these teleconferences.

ties in order to humanely and efficiently process thousands of asylum claims, has resulted in dramatic spikes in commercial wait times at U.S.-Mexico land border ports of entry. Such disruptions in trade operations translate to increased costs throughout the supply chain and risk damage to the U.S. economy. ATA strongly supports a supplemental appropriation for the current fiscal year to help the Department of Homeland Security confront the current challenge as the Department assesses its long-term workforce needs and strategy.

#### CONCLUSION:

Chair Norton, Ranking Member Davis, and members of the subcommittee, thank you again for providing ATA with the opportunity to testify before you today. As you recognize in the title of this hearing, the trucking industry is under pressure, and in many ways at an operational crossroads. Too often our federal government is mired in squabbling about yesterday's problems rather than leading the way to addressing tomorrow. Your leadership toward the challenges of today and the future are vital to our continued economic strength and the families and businesses that benefit from it.

The actions of this subcommittee, Congress and the Administration over the next several months could help steer our great industry towards tremendous advancements in safety, efficiency and productivity. Providing the resources and regulatory framework that will make our fleets safer and more connected. Allowing our industry to meet the growing driver shortage head-on, and recruit a workforce for the next generation of trucking. Preventing the continued decay of our infrastructure and sense of national decline, to return the national sense to that of a "shining city on a hill," where the roads to that city are not scarred by potholes and collapsing bridges. And facilitating free and fair trade that will allow the trucking industry to continue driving the economy.

Alternatively, inaction or misguided action will grind the wheels of the trucking industry and the economy to a screeching halt. Making our roads less safe, ceding our global leadership in freight movement to countries that are making the necessary investments in infrastructure, and failing to improve the well-being and quality of life of our citizens and society.

Our unwavering hope is that Congress and the Administration will now roll up their sleeves, make the tough decisions, and work together to support infrastructure, the economy, and the industry that moves it. ATA and the trucking industry stand ready to work with you on these major issues. Under your leadership and guidance, we believe that the important and necessary steps can and will be taken to facilitate and support the continued movement of our economy.

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#### APPENDIX

##### THE AMERICAN TRUCKING ASSOCIATIONS PRIORITIES FOR SURFACE TRANSPORTATION REAUTHORIZATION

[The appendix referenced in Mr. Spear's prepared statement is on pages 149-162.]

Mr. DEFazio [presiding]. Thank you, and thank you for staying within your time.

Now I would move on to Mr. Todd Spencer, president of OOIDA, Owner-Operator Independent Drivers Association.

Mr. Spencer.

Mr. SPENCER. Chairman DeFazio, Ranking Member Davis, and members of the subcommittee, thank you for the opportunity to share the views of our Nation's small business professional truckers here today.

My name is Todd Spencer. I am president and CEO of the Owner-Operator Independent Drivers Association.

OOIDA is a trade association founded in 1973 by real truckers as a result of significant disruptions that occurred in the industry. When I say "real truckers," I mean the men and women that actually deliver our Nation's goods.

All OOIDA officers and directors must come from behind the wheel. My background is from behind the wheel, and I still hold a commercial driver's license.

Small trucking businesses, like those we represent, account for 96 percent of registered motor carriers in the U.S. They are the safest and most diverse operators on our Nation's roads.

Our activities impact all sectors of the American economy on a daily basis. We move everything and anything wherever it needs to go.

I commend the subcommittee for exploring the state of trucking in America today, but I regret to inform you the current condition can only be defined as broken. Unfortunately, trucking has been fundamentally broken for years and can show little sign of improving.

Making a living as an over-the-road driver has never been easy. Our typical member will spend 250 nights or more away from home and family, dealing with way too much traffic and congestion, bad and unpredictable weather every year, and working around the schedules of all others in the supply chain.

I know all of you on this subcommittee have heard about the driver shortage. I have, too, pretty much my entire career in trucking. Guess what. "There ain't one." Simple math tells the story.

When the number you hear is 50,000 or some other number for the shortage, States issue over 400,000 new CDLs every year, every year. What is incorrectly labeled as "shortage" is actually turnover, attrition.

People attracted to driving, trucking with the hopes of doing better for themselves and their family are quickly met with unkept promises and say goodbye to trucking.

Not all of trucking is like this. LTL carriers do not complain about driver shortage, nor do private carriers. The reason is pay, benefits, and working conditions. Much of the growth that occurred in trucking during the past 2 years has come from among small carriers. They treat their drivers better.

I really cannot think of a worse response to the math of the driver shortage than to lower the driving age or reduce the already low standards to get a CDL. This really is a highway safety issue.

What is not a myth is that new drivers crash more often and younger drivers crash more often. There is no substitute for experience when it comes to safety, and doing things that help perpetuate the churn or driver turnover is not only counterproductive to safety, but it undermines the economics for all drivers.

The economic model for paying drivers has been broken for a long time, despite the rhetoric you might hear about boosting pay and bonuses. If driver pay had been pegged to the consumer price index in 1980, most of today's drivers would be bringing home six figures in wages.

They do not make that because their value is set by what they can be replaced for, no matter how good or safe they may be or even how many millions of safe miles they have driven.

Another contributing factor is how they are paid. Most over-the-road drivers are paid exclusively by the mile with nothing for their time. Time stuck in traffic is an issue, to be sure, but the bigger one by far is time detained at shippers and receivers when trying

to get in and out to stay on schedule and to comply with hours-of-service regulations.

For too many drivers this time can amount to 10 to 40 hours per week, and to add insult to this injury of time lost, we even have receivers and sometimes shippers now charging drivers fees of hundreds of dollars for being as little as 15 minutes late.

This has to change if trucking is to attract and retain the good drivers we need to move the goods in the future, but it will not change as long as drivers can be detained and not be paid for their time.

Going hand in hand with this is the exemption from the overtime pay that exists in the Fair Labor Standards Act for drivers operating under DOT regulations. The idea way back in the 1930s when drivers were paid mostly by the hour was to discourage really long workweeks. Now with mileage pay as the norm, it does just the opposite.

Highway safety is a top priority for our members and this committee. Where we are today is that we have never had more regulations. We have never had greater compliance with those regulations, and we have never had more enforcement of those regulations, and the crash rates are going up.

This is just a copy of the regulations that all drivers are required to comply with [indicating “Federal Motor Carrier Safety Regulations Handbook”]. They are trained on virtually none, but they are there because they can be held responsible even when they should have no responsibility.

CSA is a mandate from Congress that at best is only a partial—

Ms. NORTON [presiding]. Mr. Spencer, you are over 5 minutes. Would you summarize your remarks?

Mr. SPENCER. CSA is a mandate from Congress that at best is only a partial measure of compliance. It is a very, very flawed system, and no matter how you may torture that data, that is not going to change.

ELDs, a monstrous mandate on small business truckers in the billions of dollars, realize no safety benefit whatsoever from that, no safety benefit, and if it has a direct impact on safety, it is quite likely a negative one because of the pressures it puts on drivers.

[Mr. Spencer’s prepared statement follows:]

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**Prepared Statement of Todd Spencer, President and Chief Executive Officer, Owner-Operator Independent Drivers Association**

Chairwoman Norton, Ranking Member Davis, and Members of the Subcommittee, thank you for providing me the opportunity to testify today. My name is Todd Spencer and I began my career as a professional truck driver in 1974. In 1978, I was elected to the Board of Directors of the Owner-Operator Independent Drivers Association (OOIDA). In 1992, I was elected Executive Vice President of the association—a position in which I served until the 2018 passing of our long-time leader, Jim Johnston. On April 26, 2018, I was elected to replace Mr. Johnston as President & CEO of OOIDA.

For those unfamiliar with our organization, OOIDA has represented the interests of owner-operators and professional drivers for over 45 years. We were created by truckers to ensure their voices were being heard in Washington and beyond. Decades later, we continue to be led by men and women who make their living behind the wheel. Today, we have over 160,000 members across the United States and Can-

ada. No other organization participating in today's hearing knows truckers like we do.

For those unfamiliar with our industry, small trucking businesses like those we represent account for 96 percent of registered motor carriers in the U.S. We are undoubtedly the safest and most diverse operators on our nation's roads. Our activities impact all sectors of the American economy on a daily basis. We move everything and anything—from agricultural products and household goods to military equipment and energy resources.

I commend the Subcommittee for exploring the state of the trucking industry in America today, but I regret to inform you the current condition can only be defined as broken. Unfortunately, trucking has been fundamentally broken for years and conditions show little sign of improving. While there is no quick and easy solution for remedying the many pervasive problems within the industry, I'm very eager to highlight what can be done to help make a career in trucking more appealing, safe and sustainable.

First, allow me to paint a picture of the current state of trucking from the perspective of an OOIDA member.

Our members typically spend roughly 250 nights on the road each year, keeping them away from family, friends, and the comforts of home. They often work between 60 and 80 hours each week—a demanding schedule that is rarely reflected in their paychecks. Some even make less than minimum wage as a professional driver.

Truckers work in extremely difficult conditions—inclement and unpredictable weather, dangerously congested highways and deteriorating roads add extra stress and volatility to their jobs.

They strive to comply with an outrageously extensive list of federal, state, and local regulations, many of which have nothing to do with highway safety. A prime example is the electronic logging device (ELD) mandate.

They have to contend with shippers and receivers that needlessly detain them for hours on end, dishonest brokers that have no intention of providing them agreed upon compensation, and large motor carriers that subject them to deplorable working conditions.

While the life of every American is intrinsically dependent on the work of truckers, they are widely treated as nuisances by the motorists with whom they share the roads—motorists who are far more likely to be responsible for a crash involving a commercial motor vehicle.

Things that many of us take for granted—such as the ability to access basic amenities, and to park and rest in a safe location—are daily challenges for our members. In fact, few people know the lack of available truck parking has reached a crisis level and is now contributing to a decrease in safety.

Here in Washington, elected officials have long viewed truckers as reckless threats to highway safety, dispensable elements of the supply chain, rolling sources of revenue or all of the above. Very few are aware of the important role truckers play in our economy or the many serious challenges facing those who make their living behind the wheel. Unfortunately, most federal lawmakers mistakenly believe the most significant problem facing our industry is a shortage of drivers.

Immediate acceptance of the driver shortage myth illustrates Congress's troubling lack of understanding involving our industry. Taking a closer look at what's actually occurring in trucking will reveal there is no driver shortage at all. You'll also discover embracing some of the solutions proposed by those peddling the myth will only compound many of the actual problems I've already mentioned.

Consider this reality: there are more than 400,000 new commercial driver's licenses (CDL) issued each year—most for long-haul operations. However, most of these new drivers won't last more than a few months behind the wheel. In fact, some of our nation's largest truckload carriers have driver turnover rates that consistently exceed 90 percent year-after-year. To be clear, high driver turnover is a serious problem in trucking but **THERE IS NO DRIVER SHORTAGE**.

Once you understand the driver shortage is a myth, proposals like the DRIVE-Safe Act are exposed for what they really are—dangerous attempts by large fleets to increase their supply of cheap labor without taking any steps to improve compensation or working conditions. As long as the status quo remains intact, turnover rates will continue to be sky high among large carriers, no matter the age of their drivers.

If Congress is serious about improving the state of trucking in America—and I believe you are—you must start by helping to make careers in trucking more viable. To do so, you must work to create a regulatory environment featuring rules that are proven to enhance safety. With the exception of driver training, you must also limit the implementation of one-size-fits-all requirements that fail to reflect the di-

versity of trucking. Additionally, steps must be taken to improve working conditions and ensure drivers are fairly compensated.

Truckers prioritize safety, but oppose the implementation of costly and burdensome regulations that do nothing to promote it. For example, not enough is known about underride crashes or equipment to justify implementation of a multi-billion dollar mandate for front and side underride guards. The proposed speed limiter mandate would create dangerous speed differentials on American roads, which is proven by empirical third party research to increase crash rates. And proposals to raise trucker's minimum liability insurance coverage to outlandish levels would likely force many of the safest and most experienced drivers out of business.

Truckers will tell you the best way to promote safety is to improve driver training requirements. Too many new drivers enter our industry without the basic skills to safely operate a commercial motor vehicle. While the Entry-Level Driver Training rulemaking—set to go into effect next year—will finally establish national training standards, the regulation does not include any behind-the-wheel instruction necessary for acquiring a CDL. None.

Truckers also want reasonable hours-of-service requirements that reflect the current realities of their profession. Today's standards have done nothing to improve safety, but add unnecessary stress and complexity to a driver's day. Congress must continue to support the administration's efforts to provide truckers greater flexibility and control of their schedules through the modernization of HOS requirements.

Drivers need reliable and safe parking, so they can rest when fatigued or running out of time on their clock. OOIDA is working with members of this panel to draft legislation that will provide dedicated funding for the expansion of truck parking capacity. When developing legislation that invests in America's infrastructure, Congress must prioritize truck parking.

Like all hard-working Americans, drivers want to be appropriately compensated for the work they do. For decades, driver compensation has been stagnant, making careers in trucking less appealing to new entrants and less sustainable for experienced truckers. Today, if the wheels of a truck aren't moving, drivers typically aren't getting paid. However, they are burning more and more hours needlessly detained by shippers and receivers because Congress has failed to address excessive detention time. Drivers are also exempt from over-time pay through the Fair Labor Standards Act (FLSA). This exemption was implemented in the 1930's to prevent drivers from working too many hours, but today, it simply prevents them from receiving adequate compensation for the work they do. The FLSA exemption for truck drivers is outdated and should be repealed.

Truckers are subject to more regulations and greater enforcement than ever before, and while compliance with those regulations has never been higher, crash rates are still moving in the wrong direction. Large motor carriers are pressuring Congress to enact unsafe policies to combat a fictitious driver shortage, while doing nothing to address their precariously high turnover rates. The American economy is stronger than it has been in years, but many drivers are still struggling to make ends meet. The lack of truck parking is becoming a national safety crisis, but few consider it a priority for infrastructure investment. These are the symptoms of an industry that is broken.

Thankfully, trucking is not broken beyond repair, and hosting this hearing is a critical step toward helping repair our industry. However, until Congress understands the most important component in trucking is the driver, very little will change. The next steps you must take are clear—help make trucking an appealing, safe and sustainable career. OOIDA is eager to work you with.

Chairwoman Norton and Ranking Member Davis, thank you for allowing me the opportunity to testify today on behalf of owner-operators and professional drivers. I look forward to answering your questions.

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

Next, Lamont Byrd, director, Safety and Health Department of the International Brotherhood of Teamsters.

Mr. BYRD. Chairwoman Norton, Chairman DeFazio, and Ranking Member Davis, members of the subcommittee, I am Lamont Byrd. I am the director of the Safety and Health Department at the International Brotherhood of Teamsters.

Thank you for inviting me here today to testify about the state of the U.S. trucking industry.

The Teamsters Union represents more than 600,000 members who drive commercial motor vehicles, and “under pressure” is an appropriate description of how they operate on a daily basis.

These pressures come from many sources, and some are related to policies that either do not exist or have not kept pace with the changing transportation system. Specific policy issues relating to infrastructure, driver compensation, hours of service, driver harassment, driver health, driver training and retention, automation, and globalization, all contribute to these pressures.

The failure to improve and maintain the Nation’s infrastructure adversely impacts the trucking industry and its drivers. Traffic congestion fueled by years of delayed highway construction and improvement projects, reroutings caused by reduced weight limits on deteriorating bridges, and the general condition of some highways that cause road and lane closures, all place drivers in a pressure cooker environment of stop and go traffic.

These pressures increase exponentially as companies demand drivers be more productive even if it means violating safety regulations. For example, the union is involved in a case where a driver reported that his cargo shifted en route. Management instructed him to fix the problem and keep working.

He advised management that it was unsafe for him to do so on the roadside and returned to the terminal to properly secure the load and resume making deliveries. Although this driver complied with the safety regulations and the collective bargaining agreement, he was terminated.

We anticipate being able to get this driver reinstated, but the company’s actions send a chilling message to his coworkers.

These non-driving stressors also highlight another major concern, proposals to increase the workday for our members. Proposals to extend the hours-of-service short-haul provision for CDL qualified drivers from a 12-hour workday to 14 hours will lead to more work-related injuries and fatigue-related crashes for drivers and increase worker comp costs for motor carriers.

The trucking industry is one of the most hazardous industries in the U.S. Studies show a correlation between the misuse of opioids and workers employed in high-hazard industries. The last thing we need to do is add more injury-inducing work into a driver’s day, especially when we consider motor carriers already face significant challenges recruiting and hiring qualified drivers.

These recruiting and retention challenges do not occur in a vacuum. The pay and working conditions of drivers is directly tied to the quality of drivers’ day-to-day lives as well. While motor carriers lament the driver shortage, they work behind the scenes to rob drivers of rest and mealtime.

The IBT has fought in Congress against the preemption of State meal and rest breaks for truck drivers. Basic protections like these make the job better and help keep drivers in the industry. Yet the California Trucking Association filed a petition with FMCSA to preempt meal and rest breaks in that State, which the agency erroneously granted.

We expect other State trucking and trade associations will surely follow and recruitment and retention issues to continue.

Some view lowering the minimum driving age for interstate drivers to 18 as another solution to this recruitment problem even though significant evidence shows young drivers are more likely to be involved in crashes. Any effort to lower the driving age before the completion of the congressionally mandated pilot program for the military would be premature.

Truck drivers are also threatened by transnational corporations to circumvent current trade rules and regulations that restrict cross-border trucking. Both U.S. and Mexican carriers have taken advantage of loopholes allowing them to operate using suspect authority which can jeopardize safety and raise questions about who is financially responsible when accidents occur.

I ask that an investigative report prepared by Empower, a Mexico City-based research firm, be entered into the hearing record, and this is a copy. It describes irregular cross-border employment practices finding specific examples of how the B-1 visa program has been taken advantage of by companies seeking to accomplish these goals.

[The information follows:]

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**“Irregular Cross-border Employment Practices of U.S.-domiciled Trucking Companies,” March 2019, by Empower, LLC, Submitted for the Record by Hon. Norton**

The report is retained in committee files and is available online at **govinfo** at <https://www.govinfo.gov/content/pkg/CPRT-116HPRT38932/pdf/CPRT-116HPRT38932.pdf>.

Mr. BYRD. Finally, autonomous vehicle technology holds the potential to improve truck safety and efficiency, but the potential for job degradation or replacement puts our members on edge. Drivers recount how even lower levels of automation, like automatic braking systems, can malfunction and activate with no warning.

Congress should demand proof and accountability for any new autonomous systems that are introduced so that these systems do not add to the incredible pressure drivers are already experiencing.

Thank you, and I welcome any questions you may have.

[Mr. Byrd’s prepared statement follows:]

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**Prepared Statement of Lamont Byrd, Director of Safety and Health,  
International Brotherhood of Teamsters**

INTRODUCTION

Chairwoman Norton, Ranking Member Davis and Members of the Subcommittee: My name is Lamont Byrd, Director of Safety and Health for the International Brotherhood of Teamsters (IBT). Thank you for inviting me here today to testify about the state of the U.S. trucking industry. The Teamsters Union represents more than 600,000 members who turn a key in a truck to start their workday. Whether they drive a tractor trailer, a concrete truck, deliver beer or bakery goods, or drop a package at your door, “Under Pressure” is a very appropriate description of how truck drivers must operate on a daily basis.

These “pressures” come from a variety of sources, some obvious, others not so obvious. But a recurring theme pushing drivers sometimes to their limit is a need by carriers for flexibility and greater efficiency. There are many reasons that put the trucking industry and its drivers under the gun. And a lot of it has to do with policy or lack thereof that hasn’t kept pace with an ever changing transportation system. Specific policy issues relating to infrastructure, driver compensation, Hours-of-Serv-

ice regulations and exemptions from other safety regulations, detention time, out-right driver harassment, driver health, driver training and retention, automation and globalization all contribute to these pressures and are discussed at length in our testimony that follows. It's a fact that a truck driver operates in a very regulated arena. From the time he/she obtains a Commercial Driver's License (CDL), the driver is subject to medical certification, drug testing, and dozens of safety regulations. Drivers for the most part are paid by the mile, work the longest hours in any industry (60 to 70 hours per week) and don't receive overtime pay. They make money by delivering a product on time, and the odds right now are stacked against them in doing so by many factors.

#### INFRASTRUCTURE

The failure to invest and improve the nation's infrastructure impacts the trucking industry, its drivers and consumers in many adverse ways. The explosion of on-line shopping coupled with consumer demands of "I have to have it tomorrow" and an even greater emphasis on just-in-time delivery have put more trucks on the road and more pressure on carriers and drivers to deliver the goods quickly. But there are several "roadblocks" in their way caused by infrastructure deficiencies. Traffic congestion fueled by years of delayed highway construction and improvement projects, weight limits on deteriorating bridges that necessitate re-routings, and the general condition of some highways that cause road closures and detours all put truck drivers behind the wheel longer than they need to be and in a "pressure cooker" environment of stop and go traffic. Traffic jams alone cost the U.S. \$87 billion in lost productivity in 2018 according to data analyzed by the research firm INRIX. Our hope is that this Administration can return to the table and partner with Congress to move forward on rebuilding America's highways, bridges, ports, and other much needed infrastructure projects.

#### GLOBALIZATION/TRADE/CROSS-BORDER TRUCKING

Globalization and international trade agreements have opened new challenges to the American worker, including truck drivers'. Ever since the North American Free Trade Agreement (NAFTA) entered into force in 1994, the Teamsters Union has fought to ensure that highway safety is paramount in implementing the NAFTA provision that permitted Mexican domiciled carriers to perform long haul trucking operations beyond the commercial border zones.

After completion of a three-year pilot program in October 2014, the objective of which was to test the safe operation of Mexican motor carriers in long-haul trucking throughout the U.S., the DOT moved forward, despite flawed and inadequate data, in approving operating authority for additional Mexico-domiciled carriers for long-haul operation into the U.S. The agency took this action ignoring the findings of the DOT Inspector General (IG).

In May 2017, President Trump announced the renegotiation of NAFTA, which presented an opportunity to revisit the Mexican Cross-Border Trucking issue. The Teamsters, working with the United States Trade Representative, were successful in having language inserted in the services chapter of the new United States Mexico Canada Agreement (USMCA) that not only reinforces cabotage protection for movement of freight within the United States, but also allows the United States to adopt and maintain limitations on grants of operating authority of Mexico-domiciled carriers, if there is evidence of material harm or the threat of material harm to U.S. suppliers, operators or drivers. We will continue to work with the Administration and the Congress to ensure that these protections will be enforced in the USMCA implementing legislation.

Despite the promise of these new protections, American truck drivers are threatened in new ways from transnational corporations and the Mexican trucking industry, which have figured out ways around the current trade rules and regulations that restrict cross-border trucking. For example, Mexican carriers have set up shop in U.S. border cities to take advantage of loopholes in the Enterprise carrier program that allows Mexican-owned but U.S. domiciled carriers to game the system and continue operating on authority that in many cases is suspect. In some instances, operating authority has not even been properly renewed. In others, multiple carriers use the same address, right down to the Suite # in the same building, as their place of business in the U.S. These practices require greater scrutiny.

Yet another harmful practice is occurring when U.S. firms set up subsidiaries in Mexico for the sole purpose of recruiting Mexican drivers using B-1 work visas to haul freight from Mexico anywhere in the U.S. using American flagged equipment. While this practice may not be illegal on its own, the result has been violations of U.S. cabotage laws by Mexican drivers, putting Mexican drivers on U.S. roads with-

out English proficiency to properly understand instructions and road signs, and a spider's web of ownership that has called into question what carrier or company is liable when an accident occurs.

The Teamsters Union and Owner-Operator Independent Drivers Association (OOIDA) recently engaged EMPOWER, a Mexico City-based research firm, to investigate these widespread practices that harm the American workforce and threaten highway safety; and EMPOWER's report (which we will submit for the hearing record) reinforces several of the concerns that we hope will be addressed by the USMCA's implementing legislation. We realize that this committee does not have jurisdiction on immigration matters and driver wages, but you should be concerned about Mexican carriers conducting business in the U.S. without the proper operating authority and this documented influx of B-1 drivers who in some cases do not have English proficiency, and carriers who shield themselves from liability. B-1 drivers interviewed by EMPOWER admitted that, although they are permitted to transport cargo from Mexico into the United States, they are often picked up in Mexico, transported across the border and only then given a truck to drive a load between points in the U.S., violating our cabotage laws. This is despite the fact that U.S. Customs and Border Protection (CBP) holds workshops with major B-1 employers about expedited border crossing programs and U.S. cabotage law.

More relevant to the committee's jurisdiction is the issue of financial responsibility. Let me give you a real-life example to illustrate the convoluted ownership and hiring practices that are permitting U.S. companies to avoid liability. That's the business plan of Transportation Services International (TSI) as exposed in and ongoing Kentucky wrongful death case, *White v. TSI, et al.* According to the discovery in that case, TSI, headquartered in Romulus, Michigan, set up TSI-Logistica Fronteriza, S.de R.L. de C.V. (TSI-LF) in a small office in Santa Rosa, Mexico "as a freight transportation arrangement company that leases international commercial drivers to American trucking companies, under the terms of the North American Free Trade Agreement (NAFTA)." TSI-LF hires B-1 visa drivers who are then leased to TSI that "do not in any way have a relationship or responsibilities of civil, commercial, labor, fiscal or any other nature of the Fronteriza staff".

Under the facts of this unfortunate case, two B-1 visa drivers were operating a tractor trailer for TSI on the evening of August 6, 2016 traveling northbound on Interstate 69, they overran their exit, #108 near Madisonville, Kentucky. Rather than proceed to the next exit and turn around, the TSI-LF driver stopped the truck on the highway and attempted to back it up without employing any warning signal or device. In the process, he apparently jackknifed the trailer obstructing the interstate's left and right northbound lanes. A mother, Krystal Brook White, and her daughter were travelling northbound and under-rode the trailer fatally injuring Ms. White. With the car impacted at its underside, the TSI-LF driver drove the eighteen-wheeler another 180 feet before coming to a stop. Ms. White died that evening. When law enforcement arrived, the drivers were unable to converse in English and an interpreter via telephone was required for law enforcement to conduct an initial investigation.

To avoid liability, TSI-LF has argued that it merely loans/leases drivers to other companies such as TSI, and exercises no control over the drivers. On the other hand, TSI claims that the drivers are not their employees and that it should not be held liable either. This case goes to trial this month. There are at least two other negligence cases that we know of filed in Texas involving B-1 visa drivers.

As the EMPOWER Report points out, the use of B-1 drivers is on the verge of de facto institutionalization. These cases illustrate the need for Congress to review financial responsibility statutes to ensure that responsible parties are held liable for their actions. As well, FMCSA should review its enforcement mechanisms to ensure that foreign drivers meet the English proficiency requirements of driving in the United States, and review operating authority of enterprise carriers to ensure that they are travelling legally in the US.

#### COERCION/HARASSMENT

Companies are increasing pressure on drivers to be more productive even if it means violating safety regulations. For example, the Union is involved in a case where a driver/member reported that the cargo he was transporting via truck was loaded with melons on the bottom of pallets and improperly secured and consequently shifted while en-route. It should be noted that the driver was unable to thoroughly inspect the load prior to leaving the terminal because the truck was fully loaded when he picked it up. After reporting that the load had shifted and he could not safely deliver the cargo, he was instructed by management to unload the truck on the road side, organize the cargo, reload the truck and continue on his route.

When he advised management that he could not safely perform these job tasks as he did not have load securing equipment (load bars—the ones that he had were damaged as a result of the shifting freight; no straps and shrink wrap) and to do so on the roadside would place him in danger. He would have also been at significant risk of work-related injury, having to climb up and down a small set of stairs to enter and exit the trailer while carrying cargo. This is a union shop where in addition to regulations and company policies that preclude the drivers from performing such dangerous work, there is language in the collective bargaining agreement that empowers the drivers to refuse to perform dangerous and illegal work. Yet, this driver was summarily terminated when he returned a short distance to the terminal for assistance. Although we anticipate being able to get this driver reinstated at his job, this practice not only adversely affected him, it sends a chilling message to other drivers who are aware of this situation.

#### HOURS OF SERVICE/DRIVER'S HEALTH

There are efforts to revise the Hours of Service—Short Haul Provision for Commercial Driver's License qualified drivers from a 12-hour work day to 14 hours. The IBT anticipates that the proposed extension of the 12-hour exception to 14-hours, will result in short-haul drivers spending additional time loading trailers, staging freight, and making more deliveries. Therefore, it is reasonable to expect that these drivers will experience an increase in the incidence of occupational injuries and illnesses. Consequently, motor carriers will experience higher worker compensation costs and may experience an increase in the costs associated with fatigue-related crashes.

The trucking industry ranks among the industries having the highest occupational illness and injury rates in the United States and the worker's compensation costs to motor carriers are tremendous. According to Bureau of Labor Statistics (BLS) data for 2017, the non-fatal occupational incidence rate for truck transportation, nationally, was 4.2 injuries per 100 workers as compared to 2.8 injuries per 100 workers for private industry.<sup>1</sup> Several studies show that the majority of work-related injuries occurring among truck drivers result from non-driving work activities.<sup>2</sup> When researchers further investigated these findings they found that the types of injuries experienced by truck drivers varied by industry sector but were generally associated with falling from heights, trips, slips, falls, and overexertion due to manual materials handling.

Drivers who are involved in short-haul operations experienced occupational injuries primarily while performing three activities: "(1) Operating the truck; (2) lifting/ cranking; and (3) maneuvering into/out of truck cab."<sup>3</sup> Chandler, et. al., in further describing the injuries indicated that incidents that occurred while operating the truck, included losing control of the truck, being struck from behind by another vehicle, and musculoskeletal injuries associated with extended routine driving. With respect to lifting/cranking related injuries, the researchers found that drivers were injured while manually handling cargo, connecting dollies, and lifting/ adjusting ramps to the trailers. Researchers also reported that drivers experienced injuries due to trips, slips, and falls as they entered or exited the truck cab and trailer.

Commercial drivers, including short-haul drivers, disproportionately experience musculoskeletal injuries and illnesses. The National Institute for Occupational Safety and Health (NIOSH) conducted a review of over forty studies that investigated the relationship between low-back pain/disorders and determined that there is strong evidence that correlates physical workplace factors such as heavy physical work, lifting, bending and twisting, whole body vibration (WBV), and static work postures with low back pain/disorders.<sup>4</sup> All of these contributing factors to low-back pain/disorders are present in commercial driving, particularly in short-haul operations. This is critical when one considers that according to the American Industrial Hygiene Association (AIHA) a survey conducted by the organization in 2003, MSDs costs the trucking industry approximately \$4 billion dollars each year.<sup>5</sup> The Bureau of Labor Statistics reported that workers in truck transportation experienced work-

<sup>1</sup> Bureau of Labor Statistics, 2018.

<sup>2</sup> Friswell, Williamson, *Accident Analysis and Prevention*, 2010 Nov; 42(6): 2068–74.

<sup>3</sup> Chandler, M., Bunn, T.L., Slavova, S., *International Journal of Injury Control and Safety Promotion*, 2017, Vol. 24, No. 1, 120–130.

<sup>4</sup> <https://www.cdc.gov/niosh/docs/97-141/pdfs/97-141.pdf?id=10.26616/NIOSH PUB97141>

<sup>5</sup> American Industrial Hygiene Association, 2003, "American Industrial Hygiene Association position statement on ergonomics [online]. Available from: <http://www.aiha.org/1documents/GovernmentAffairs/P-ergonomics091403.pdf>

related musculoskeletal disorders at a rate of 62.3/10,000 workers as compared to 28.6/10,000 for private industry.<sup>6</sup>

Short-haul drivers will experience increased fatigue as a result of having to work an extended number of hours and concurrently experience more fatigue-related occupational injuries and crashes. The National Institute for Occupational Safety and Health (NIOSH) published a report that summarized over 50 studies that investigated the impact that long working hours have on illnesses, injuries, health behaviors, and job performance.<sup>7</sup> Studies showed that workers who worked long shifts, i.e., 12 or more hours, each day and more than 40 hours per week experienced an increase in occupational injuries and “a pattern of deteriorating performance on psychophysiological tests.”<sup>8</sup> This is of significant concern when considering the fact that short-haul commercial drivers perform safety-sensitive job functions such as operating large trucks in oftentimes congested areas that are shared with passenger vehicles and pedestrians.

In 1996, NIOSH conducted an ergonomic study for drivers in the soft beverage delivery industry during which the researchers evaluated drivers over a four month period.<sup>9</sup> Researchers found that drivers had to routinely lift products that exceeded the recommended weight limit per the NIOSH Lifting Criteria.<sup>10</sup> In addition, researcher collected data on the driver’s heart rates to estimate metabolic output and determined that such drivers worked in a job that required a high level of energy. Drivers in this physically demanding job also experienced twice as many lost work days when compared to workers in general manufacturing jobs. Although the study was conducted over twenty years ago, members of the Teamsters Union who have high tenure in the industry reported that not much has changed and that the changes that have occurred are generally not an improvement. For example, these drivers reported that traffic conditions are much worse; parking for large vehicles is more limited; they continue to have to manually deliver large quantities of heavy products such as cases and kegs while negotiating stairs, curbs, ramps, narrow entrances and exits to buildings, and having to perform these job tasks in inclement weather (heat, cold, ice).

The current Hours of Service Regulation for non-CDL qualified commercial drivers who use the short-haul exception are allowed to work 14 hours each day, extend the work day to 16 hours two times each week and drive up to 11 hours each day. According to BLS data these drivers have a higher rate of injury and severity of injury (based on the number of lost work days per injury) than other commercial drivers, i.e., non-CDL drivers who do not use the Short-Haul provision and CDL qualified drivers. It should be noted that CDL qualified drivers operate larger trucks that are able to carry more freight that is larger and heavier than what is typically transported and delivered by non-CDL drivers. Therefore, one can reasonably expect injury rates to increase among CDL qualified short-haul drivers if the number of hours that they are permitted to work increases.

The Massachusetts Department of Public Health released a report<sup>11</sup> concerning the misuse of opioids among workers who are employed in industries, such as trucking, that has a high rate of occupational injuries. Drivers are very concerned about their risk of suffering a work-related injury, being prescribed pain killers such as opioids, and the possibility that the use of such drugs could result in not only adverse health outcomes, but also the chance of becoming medically disqualified to operate commercial motor vehicles.

The Teamsters will oppose any efforts to expand the short-haul exemption for CDL-qualified drivers through legislative or regulatory actions.

#### RECRUITING/RETAINING DRIVERS/YOUNG DRIVERS

Motor carrier employers face significant challenges recruiting and hiring qualified drivers. Increasingly long work hours, difficult work, the need for a clean driving record, and a drug/alcohol testing record that is free from positive results, creates additional hiring challenges for motor carriers. As a result of increases in the demand for goods, the Bureau of Labor Statistics (BLS) projects that between 2016 and 2026, there will be a need for 108,400 additional drivers in heavy truck trans-

<sup>6</sup> Bureau of Labor Statistics, 2018.

<sup>7</sup> <https://www.cdc.gov/niosh/docs/2004-143/pdfs/2004-143.pdf>

<sup>8</sup> *Ibid*, p. 27

<sup>9</sup> <https://www.cdc.gov/niosh/docs/96-109/pdfs/96-109.pdf?id=10.26616/NIOSH/PUB96109>

<sup>10</sup> <https://www.cdc.gov/niosh/docs/94-110/pdfs/94-110.pdf>

<sup>11</sup> <https://www.mass.gov/news/department-of-public-health-taking-steps-to-keep-job-related-injuries-from-leading-to-opioid>

portation.<sup>12</sup> It should be noted as an aging driver workforce retires from the industry, there will be an even greater need for qualified drivers. According to 2018 data from the BLS over 21 percent of the current driver population will reach 65 years of age in the next ten years, with over 46 percent reaching 65 within next 20 years.<sup>13</sup>

There are some in the trucking industry who view lowering the minimum driving age for commercial drivers to 18 as one solution to the increasing demand for qualified drivers. The Teamsters Union is particularly concerned about this issue as there is significant evidence showing young drivers are more likely to be involved in crashes. In the previous highway bill, the FAST Act, Congress instructed DOT to study this topic using only younger drivers who had gained driving experience during their time in the military. The purpose of that pilot was to better gauge the potential for younger individuals to drive in interstate commerce, while also attempting to minimize risks to the public by only using drivers with behind-the-wheel training who were also likely to be more responsible than your average teenager. We believe there are serious safety risks inherent in using any teenage drivers in interstate commerce, including in any pilot program. But we recognize the desire to see where the facts would lead in this situation. However, we believe that any effort to lower the driving age, or conduct broader pilot programs before the Congressionally-mandated military pilot program is complete, would be a mistake.

Another issue that affects retention is driver compensation. Teamster Union drivers are among the highest paid in the industry, with good health benefits and pensions, which is why the retention rate is much higher among unionized truck drivers. Our National Master Freight Agreement also addresses the issue of detention time—that period of time where a driver is kept waiting for his truck to be loaded or unloaded. Teamster Union drivers are paid for this time that they are waiting, which is why the practice is not prevalent in our industry sector. Paying drivers for wasting their valuable on-duty time gives motor carriers and shippers an incentive to have a load ready when a driver arrives at the loading dock. It will also prevent drivers from making up for lost time and possibly violating safety regulations in the process. Congress should take the necessary steps to mandate that drivers be paid for this detention time.

#### GIVE 'EM A BREAK!

It is difficult if not impossible to discuss driver retention without examining the day-to-day working conditions of drivers, and what the trucking industry is doing or not doing to improve those conditions. The Teamsters Union has fought in Congress for several years against the preemption of state meal and rest breaks for truck drivers. Congress, rightly so, on several occasions has rejected the American Trucking Association's numerous attempts to pass legislation to preempt these breaks. While motor carriers lament about the driver shortage and what needs to be done to recruit more workers into the industry, they work behind the scenes to rob drivers of rest and meal time. Having not succeeded in the legislative arena, the ATA's state affiliate, the California Trucking Association (CTA), filed a petition with the FMCSA to preempt meal and rest breaks in that state. The FMCSA, reversing its previous stance on the issue, decided that these breaks are preempted by federal law. The Washington State Trucking Association and The American Bus Association have "copy-catted" the CTA's petition and we expect other state trucking and trade associations to follow. These short 10-minute rest breaks and 30-minute meal breaks are afforded to all workers in the states that mandate them, not just to truck drivers. This issue is now in the courts, and the Teamsters Union will continue to fight for the rights of drivers to take these breaks. Fatigued drivers jeopardize highway safety for all of us.

#### TRUCK SIZE AND WEIGHT

Certain industry stakeholders continue to call for increases in truck size and weight. Whether it's increasing the weight limit on federal highways to 90,000 lbs. or expanding the use of the twin 33' trailer configuration, the Teamsters Union opposes any increase in the current Federal weight limits for trucks and the current size of double trailers traveling on the National Highway System. Our Interstates and other major highways are in serious disrepair and half of our bridges are more than 40 years old with one in four being structurally deficient or functionally obsolete. Increasing truck size and length will put further stress on an already deteriorating

<sup>12</sup> <https://www.bls.gov/ooch/transportation-and-material-moving/heavy-and-tractor-trailer-truck-drivers.htm>

<sup>13</sup> Ibid.

rating infrastructure system. While a properly deployed 6th axle can mitigate weight increases on road surfaces, the same cannot be done on bridges. In addition, our highways are not designed for longer combination vehicles. Our merge lanes and entrance and exit ramps are not designed for eighty-four foot long vehicles. Longer and heavier trucks take more time to get up to speed and require greater stopping distances. From a driver's perspective, our roadways are congested like never before. Reaction times are pushed to the limit as drivers attempt to maneuver big rigs and avoid quick changing lanes or slowed down vehicles. The claim that increasing truck lengths and weights will result in fewer trucks on the road is unfounded. Historically, each time increases have occurred truck traffic has grown as shippers take advantage of cheaper rates and divert freight from rail to highways. Currently, 39 states prohibit twin 33-foot trailers on their highways, and there is no justification to allow them to operate on our interstate highways.

According to FMCSA's *Large Truck and Bus Crash Facts*, "the number of large trucks involved in fatal crashes increased 10 percent from 4,251 to 4,657, and the large truck involvement rate (large trucks involved in fatal crashes per 100 million miles traveled by large trucks) increased 6 percent, from 1.48 to 1.56." Deaths from large truck crashes reached their highest level in 29 years in 2017, according to National Highway Traffic Safety Administration data. Fatalities from big truck crashes rose even though the overall traffic fatality rate declined. Large truck fatalities rose 9 percent to 4,761, an increase of 392 lives lost over the prior year. Congressionally-approved exemptions to weight and length limits based on a specific section of highway or a specific industry should be rejected. Piecemeal approaches undermine federal transportation policy and further jeopardizes safety on our nation's highways.

#### SAFETY-ASSIST TECHNOLOGY AND AUTONOMOUS VEHICLES

Autonomous vehicles have the potential to reshape the entire transportation industry, not just the trucking industry. While some of this technology holds the potential to improve truck safety and efficiency in the short term, the threat of self-driving trucks replacing or degrading millions of truck driver jobs has many of our members on edge. We believe that the trucking industry will have the need for skilled drivers for decades to come. But some of that relies on this committee making sure we aren't forced down a self-destructive path of unsafe and job-killing automation before the proper protections are put in place.

As this hearing examines pressure points impacting drivers, the threat of automation is one that cannot be ignored. Drivers feel like disposable cogs in a machine when some members of this body talk gleefully about the prospects of automating away their jobs. What's worse, many drivers' only interaction with lower levels of automation have actually deepened their mistrust of these new technologies. Our members have reported dangerous malfunctions of automatic braking systems being used in trucks right now. These systems are supposed to make a driver's life easier, and we would gladly support them if they did. But drivers tell us stories of these automatic braking systems often detecting things like snow or an oncoming overpass as an obstacle, and mistakenly slamming on the brakes with no warning. The driver is then the only thing stopping the truck from jack knifing or skidding off the road. Imagine surviving that incident and then having to show up to work the next day and drive a truck with the same technology on board? No one should have to feel like they are taking their life into their own hands just by showing up to work. That is the pressure drivers today are under. Congress must bring a healthy dose of skepticism whenever you are approached with a piece of automation technology that is being touted as improving safety or that will make a driver's life easier. It may not live up to closer scrutiny.

#### SUPPLY CHAIN ACCOUNTABILITY

Our union has taken great pride in the work we have done to improve the trucking industry for drivers and all other road users. But changes to the industry since deregulation have hampered those efforts. The rise of independent contractors, the ability of carriers to avoid liability by closing up shop and reorganizing under a new name after they are caught breaking the law, the increase in subcontracting even by union employers, have all negatively impacted our ability to make sure that the trucking industry is a safe and responsible business.

A new focus of our union is "supply chain accountability". We believe that everyone who uses the current transportation system; shippers, brokers, consumers, retailers, and others, all have a duty to help us make sure that the trucks who haul that company's goods employ business practices that are aboveboard. Drivers at the ports of LA and Long Beach provide a good example of how this can be accomplished.

Last year, California passed SB 1402. This bill created a system that shippers can use to identify which port trucking companies have outstanding labor violations on their records, such as unpaid fines and unsatisfied judgments, before choosing to contract with them to ship their goods. This brings important transparency to the system. It empowers shippers to hire only responsible port trucking companies, and in turn helps us ensure the drivers who are hauling their goods are safe drivers and well-treated employees. If they don't, and these shippers willingly choose to contract with low-road trucking companies who misclassify their employees, they will be held liable for the future labor violations incurred by that contracted trucking company. We believe this sort of transparent and free market-based system represents an important step in helping us uplift drivers who have been among the most abused in our country, while also increasing safety and security at the ports.

The current system has allowed trucking companies who flaunt existing laws to have a competitive advantage over other employers that play by the rules. That must change. We are pleased to see this unfair advantage now melting away, thanks in large part to the fearless activism of port truck drivers and the leadership of local elected leaders that has given other supply chain users the tools to make this change possible. We call on Congress to take this model nationally and help us create a safe trucking industry that all system users can be proud of.

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

Next will be Jason Craig, director of government affairs, C.H. Robinson.

Mr. CRAIG. Thank you, Chair Norton and Ranking Member Davis.

As one of the Nation's largest freight brokers and the original third-party logistics provider, C.H. Robinson has a unique view of how goods flow through our Nation.

Our employees in Phoenix, Eden Prairie, Chicago, and more than 130 offices across 40 States send their warm greetings.

Our role within freight transportation has been described as a travel agent for goods, although that is simplistic. Our industry is often referred to as the third-party logistics or 3PL industry and is represented by the Transportation Intermediaries Association.

While my colleagues have expertise in the operations of the physical truck, I wish to focus on how motor carriers are selected. Congress has given FMCSA many tools to remove unsafe trucks from the roads. These include assigning carriers an unsatisfactory safety rating and declaring carriers an imminent hazard, among others.

C.H. Robinson has a thorough and consistent qualification process that includes reinforcing all of these actions and denies freight to any carrier declared out of service.

However, from time to time, mostly in tragic and severe accidents, our carrier qualification process is challenged in court. A common theme in negligence selection cases is that brokers and shippers should check more than the credentials that allow motor carriers to operate, but there has been no guidance as to what additional data should result in denial of business beyond the tools Congress has provided.

I have been involved in and monitoring the Compliance, Safety, Accountability program since 2006. While the original goal of replacing an audit-based safety fitness determination with one that is data-based is laudable and necessary, in practice, it has become extremely difficult to complete.

In 2012, C.H. Robinson testified before this committee regarding then publicly available BASIC data and the confusion it created. This data was intended to help prioritize enforcement actions and carry the following warning: readers should not draw conclusions

about a carrier's overall safety condition simply based on the data in this system.

Unless the motor carrier has received an unsatisfactory safety rating or has otherwise been ordered to discontinue operations, it is authorized to operate on the Nation's roadways. That warning is still in place, and the SFD linking the data with the safety rating is still not complete.

In 2014, CVSA wrote Administrator Darling to express concern about the public display of data. They wrote, "SMS scores are a poor indicator of an individual fleet's propensity to be involved in a future crash, their utility in providing the public with information about fleet's safety performance is limited."

In 2016, FMCSA released a draft SFD rule that would have established a new safety rating process. However, that rule was withdrawn in 2017 for very legitimate reasons around data consistency and correlation to crash risk.

Congress mandated a study of the correlation between data and crash risk as part of the FAST Act. Part of the study was specifically to look at, quote, "how members of the public use the SMS information."

In addition, parts of the BASIC data were removed from public view.

When the National Academy of Sciences submitted its study in 2017, they recommended that FMCSA, quote, "should undertake a study to better understand the percentile ranks to support decisions regarding the usability of public scores."

We were tremendously disappointed that the NAS study recommended yet another study. The experts at the NAS, quote, "were unable to recommend to FMCSA whether to make all percentile ranks public."

While we agree that the use of data is an effective tool to identify groups of at-risk carriers, data without context has and is being used inappropriately. In some cases, brokers and shippers have been made to take legal responsibility for gauging the safety carriers when there is no clear regulatory system in place for us to reliably check.

This confusion is especially damaging to smaller carriers who may not have extensive data available in their profile.

Currently, there is no requirement to check any safety status. A selection standard will improve truck safety by more quickly eliminating business to those who should not be operating.

A recent story perfectly describes the situation. In 2017, CVSA added an inactive U.S. DOT number to the out-of-service criteria. Our regulators did not announce this change broadly. Many in the industry remain unaware of this.

We want to ensure the carriers we select are safe to operate. We look forward to amplifying FMCSA decisions regarding who should be authorized to operate on the Nation's roadways when Congress clearly establishes a motor carrier selection standard we can rely on. Thank you.

[Mr. Craig's prepared statement follows:]

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**Prepared Statement of Jason Craig, Director of Government Affairs, C.H. Robinson**

Chairman DeFazio, Ranking Member Graves, Chair Norton, Ranking Member Davis, and members of the Subcommittee on Highways and Transit, thank you for the opportunity to testify at today's hearing. As one of the nation's largest freight transportation brokers and the original third party logistics provider, C.H. Robinson has a unique view of how goods and commerce flow through our nation's infrastructure from manufacturer to consumer. Our customers and transportation providers represent the entire cross section of freight transportation stake holders however, approximately 70 percent of our revenue is derived from truckload or less-than-truckload services. I intend to provide you insights into what supply chain vice presidents and directors need Congress to accomplish to improve trucking safety while maintaining our globally leading supply chain efficiency.

INTRODUCTION OF JASON CRAIG

I serve as the Director of Government Affairs for C.H. Robinson. I joined C.H. Robinson in 1996 in operations, managing the export movements of hardwood lumber from Northern Minnesota to Asia. Over the course of my career at C.H. Robinson I have managed operations across modes and service lines for a wide range of shippers. I am also currently the vice-chair of the Minnesota Freight Advisory Committee.

INTRODUCTION OF C.H. ROBINSON

C.H. Robinson was founded in 1905 and has grown to over 15,000 employees globally. We are the 7th largest publicly held company headquartered in Minnesota, and we have offices across the United States. Our employees in Phoenix, Kansas City, Eden Prairie, Chicago, and more than 130 other offices across 40 states send their warm greetings. Our role within freight transportation has often been described as similar to that of a travel agent for goods, although that is a simplistic description. I prefer to think of ourselves as an outsourced freight transportation department which companies utilize in many different ways as their needs and our value dictate.

We do not own any commercial trucks ourselves, but rather build technology platforms and logistics services that allow us to streamline complex transportation management on behalf of our customers. A freight property broker is legally defined and regulated by the Federal Motor Carrier Safety Administration under Title 49 of the Code of Federal Regulations. Our industry is commonly referred to as the third party logistics or 3PL industry and is represented by the Transportation Intermediaries Association (TIA), which has over 1,700 companies as members.

C.H. Robinson is the original 3PL and we have seen our industry overall thrive as investments in technology, analysis, and visibility has led to greater value to both our customers and transportation providers. FMCSA lists 17,966 registered property brokers in 2017 as part of the "2018 Pocket Guide to Large Truck and Bus Statistics", a 30 percent increase since 2013.

CONFUSION CREATED BY FMCSA PUBLICLY AVAILABLE DATA

While my colleagues have expertise in the operation and enforcement of the physical truck, I wish to focus on how motor carriers are selected and assigned to loads and how the committee can improve this process to increase safety and end confusion in this area.

Congress has given FMCSA many tools to remove unsafe motor carriers from the roads. These include assigning the carrier an unsatisfactory safety rating, declaring the carrier an imminent hazard, and withdrawing the carrier's operating authority for failing to respond to a new entrant safety audit among other things. These tools are compiled annually in the Commercial Vehicle Safety Alliance's "North American Out-of-Service Criteria" guide, at the carrier level, specifically the administrative out-of-service chapter IV.

C.H. Robinson has established a detailed, thorough and consistent carrier qualification process that includes rapidly re-enforcing all of FMCSA's actions and denies freight to any carrier that FMCSA has declared out-of-service freight. However, from time to time, mostly in tragic and severe accidents, our carrier qualification process is challenged in court. A common theme in most negligent selection cases is that brokers and shippers should check more than the licenses and authorities that allow motor carriers to operate on the nation's highways, but there has been no guidance or direction provided as to what data and what thresholds are impor-

tant enough to deny offering freight to a motor carrier beyond the tools Congress has provided FMCSA to take carriers off the roads.

I have been involved in and monitoring the Compliance, Safety, and Accountability or CSA program since approximately 2006. While the original goal of replacing an audit based Safety Fitness Determination (SFD) system with one that is data based is laudable and necessary, as many know, in practice it has become extremely difficult to complete. In September of 2012, C.H. Robinson testified before this committee regarding the then publicly available BASIC data and the confusion created by the BASIC data.<sup>1</sup> This data was intended to help FMCSA prioritize inspections and enforcement actions and carried the following warning:

*Readers should not draw conclusions about a carrier's overall safety condition simply based on the data displayed in this system. Unless a motor carrier in the SMS has received an UNSATISFACTORY safety rating pursuant to CFR Part 385, or has otherwise been ordered to discontinue operations by the FMCSA, it is authorized to operate on the nation's roadways.*

That warning is still in place today and the SFD linking the data with the safety rating is still not complete. In January 2016, FMCSA released a draft SFD rule that would have established a new safety rating process, however that rule was withdrawn in March 2017, for some very legitimate reasons primarily around data consistency and correlation to crash risk. As part of the Federal Register notice regarding the withdrawal, our comments were mentioned: "Specifically, C.H. Robinson noted it has long recommended a two-tiered structure that more clearly signals to shippers and other industry stakeholders, which carriers should not be hired due to safety concerns."

In 2014, CVSA wrote then Administrator Darling to express concern about the public display of motor carrier BASIC data. CVSA Executive Director at the time, Steve Keppler wrote "SMS (BASIC) scores are a poor indicator of an individual fleet's propensity to be involved in a future crash, their utility in providing the public with information about fleet's safety performance is limited."<sup>2</sup>

In response to feedback from across the freight transportation industry regarding the BASIC data, Congress mandated a study of the correlation between BASIC data and crash risk as part of the FAST Act. Part of the study was specifically to look at "how members of the public use the SMS and what effect making the SMS information public has had on reducing crashes and eliminating unsafe motor carriers from the industry." In addition, Congress required FMCSA to remove certain parts of the BASIC data from public view.

When the National Academy of Science submitted its correlation study in June of 2017, they responded to the issue of the public use of the data by recommending that FMCSA "should undertake a study to better understand the statistical operating characteristics of the percentile ranks to support decisions regarding the usability of public scores." We were tremendously disappointed that the NAS study recommended yet another study. While the experts at the National Academy of Science undertook a very detailed, 183 page mathematical study regarding the entirety of the BASIC data model, they "were unable to recommend to FMCSA whether to make all percentile ranks public."

Even though a large amount of data has been hidden from public view, other motor carrier data remains,<sup>3</sup> without guidance from Congress or FMCSA regarding which data should be used by shippers and brokers to properly select motor carriers. While we wholeheartedly agree that the use of appropriate motor carrier data is an effective tool to identify groups of potentially at-risk carriers compared to previous eras of solely audit based decisions, data without context has and is being used inappropriately. In some cases, brokers and shippers have been made to take legal responsibility for gauging the safety of carriers when there is no clear regulatory system in place for us to reliably check. This is a significant unintended consequence of the almost decade long delay by FMCSA and Congress to provide clear guidance regarding which carriers should be safe to tender loads to.

Is a carrier with an unsafe driving score of 81 more dangerous than one with a score of 78? If that is true, then why not use only carriers with a score below 60 and shut all the other carriers down? A relative safety system is fine for internal inspection prioritization by FMCSA, but is damaging to market participants when made public without proper context, especially damaging to smaller carriers who may not have extensive data available in their profile.

<sup>1</sup>BASIC data is also referred to as the Safety Measurement System or SMS. BASIC stands for Behavior Analysis and Safety Improvement Categories.

<sup>2</sup>See letter attached as Appendix A.

<sup>3</sup>See screenshot of current SMS data in Appendix B.

Currently there is no requirement to validate any authority or safety status when selecting and tendering a load to a motor carrier. We feel strongly that the establishment of a motor carrier selection standard that mirrors the tools Congress has given FMCSA to take carriers off the road will improve truck safety by more quickly eliminating freight opportunities to motor carriers who have their authority pulled or are otherwise placed into an administrative out-of-service status at the carrier level.

A recent story perfectly describes the situation. In April of 2017, CVSA added an inactive US DOT number to the administrative out-of-service criteria.<sup>4</sup> This means that when law enforcement stops a carrier operating under an inactive US DOT number, they are to be placed out-of-service immediately. Neither CVSA nor FMCSA announced this change broadly to those who select motor carriers. There is no clear, consolidated screenshot that aggregates all the information that allows a motor carrier to operate on the nation's roads, although they have slowly been making improvements. The only place shippers and brokers could see this change was by ordering the full North America Standard Out-Of-Service Criteria Guide for \$35 on the CVSA website. Even today, many in the industry are unaware that an inactive or suspended US DOT number is not only a separate process than suspending operating authority, but also an administrative out-of-service criteria. If Congress would establish a motor carrier selection standard that allowed industry to reliably re-enforce FMCSA administrative out-of-service criteria, carriers who should be denied freight opportunities will more quickly be pulled off the road.

Instead, by publishing a myriad of motor carrier data with little clear guidance on its use (which even the experts at the National Academy of Science are unable to recommend if they should be used by the public or not) many shippers and brokers do not check any federal qualifications. Other shippers may be using unrelated or less important data with no correlation to crash risk which results in lost business opportunities for motor carriers whom FMCSA fully licenses and authorizes to operate.

C.H. Robinson, other brokers, and shippers are important stakeholders when it comes to motor carrier safety. While we are not as critical to motor carrier safety as those who operate, maintain and drive trucks, we can and want to ensure that the carriers we select have been deemed safe to operate on the nation's roadways by FMCSA. We look forward to being able to amplify and re-enforce the expert decisions at FMCSA regarding who should be authorized to operate on the nation's roadways when Congress clearly establishes a motor carrier selection standard we can rely on.

#### OTHER ISSUES OF SAFETY IMPORTANT TO C.H. ROBINSON

##### TRUCK PARKING

The current availability of truck parking in our country is insufficient. In fact, when weather events challenge truck drivers, some of our customers have begun opening their yards not just to drivers on loads for their own freight, but for all truck drivers. They recognize that there is simply no place for these drivers to go. We are encouraged by provisions included in MAP-21 and the FAST Act to address truck parking and we look forward to additional solutions to this issue that will make America's supply chain safer and more competitive.

##### INFRASTRUCTURE INVESTMENT

Outdated and poorly designed infrastructure is a safety risk to all. C.H. Robinson wholeheartedly supports a robust investment in the nation's freight roadways that will also improve safety and reduce truck crashes. Properly designed and maintained ramps, merges and sight lines help keep us all safe. We would refer committee members to the National Association of Manufacturers infrastructure blueprint titled "Building to Win" that was recently released and included the following:

*Unsound infrastructure puts lives at risk. Businesses and manufacturers are cutting into their bottom lines with wasted time and money. According to the NAM's quarterly survey, manufacturers consider rising transportation costs a top business concern. The United States desperately needs a targeted, substantial investment in revitalizing the nation's infrastructure. Congress should legislate identifying and prioritizing projects of national and regional significance requiring federal investment and vision to revitalize the nation's infrastructure.*

<sup>4</sup>See Appendix C from the CVSA 2017 North American Out of Service Criteria Report.

## FREIGHT ADVISORY COMMITTEES

This committee should also be aware that many supply chain professionals feel very disconnected from the policy making process. If they do have a local need or issue, they have trouble connecting in a timely manner with the right agency or official who can address the issue. Sometimes a supply chain professional may have a need in Missouri, but controls the freight from their office in Atlanta. We see the same frustration from state and local officials who try to engage the freight community. The establishment of state Freight Advisory Committees as part of the FAST Act has provided shippers an opportunity to more directly connect with state infrastructure planners. We see tremendous potential for these committees to be incubators of policy and expertise for both state, regional, and national freight transportation planners. One example of how this structure is working successfully is how a proposal by U.S. Customs to adjust hours at a border crossing in northern Minnesota was vetted through the Minnesota Freight Advisory Committee and stakeholders were quickly identified to provide input and execute a solution that worked for all public and private stakeholders. Congress should continue to bolster this program and provide more opportunities for these Freight Advisory Committees to add their voices to the freight infrastructure planning process.

## APPENDIX A



## Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

November 14, 2014

Secretary Anthony Foxx  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Secretary Foxx:

I am writing to you on a matter of tremendous importance to commercial motor vehicle law enforcement, the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, Accountability (CSA) program. The Commercial Vehicle Safety Alliance (CVSA) is aware that a number of stakeholder groups recently wrote to you expressing their concerns about CSA, including the public display of CSA Safety Measurement System (SMS) scores. CVSA would like to offer its views on these matters given their importance and relevance to law enforcement.

CSA is a very good program with tremendous potential to improve commercial motor vehicle (CMV) safety. Already, CSA has raised awareness of the importance of safety and has caused motor carriers to devote more attention and resources to safety initiatives than ever before. Of course, CVSA strongly supports the goal of CSA, which is to implement more effective and efficient ways for FMCSA, its State partners, and the trucking industry to reduce CMV crashes, fatalities, and injuries.<sup>1</sup>

CVSA recognizes and appreciates the concerns recently raised by some stakeholders. For instance, some have pointed out that differences in enforcement practices from one jurisdiction to the next can affect motor carriers' SMS scores. These differences in enforcement practices are necessary to address the varying safety challenges that exist in different jurisdictions. However, since SMS scores are based on comparative performance, the environment (i.e., jurisdiction) in which carriers operate can impact the accuracy of their measurements.

Stakeholders have also raised concerns about the relationship between certain violations, carriers' scores and crash risk. Law enforcement has an obligation to enforce all laws and regulations regardless of their statistical relationship to crash risk. For this reason, law enforcement agencies must identify fleets that exhibit patterns of non-compliance. While all non-compliance should be considered, CVSA believes fleets that commit violations shown to have a strong correlation to crash risk should be identified and appropriately prioritized for intervention.

As you are aware, a recent report from the Government Accountability Office (GAO) found CSA SMS scores to be unreliable predictors of individual fleet crash propensity. Specifically, GAO found that (during the period they studied) FMCSA identified many carriers as "high risk" that were not later

<sup>1</sup> Safety Measurement System Methodology Version 3.0, March 2012, Federal Motor Carrier Safety Administration, Washington, D.C.

involved in a crash.<sup>2</sup> In contrast, FMCSA research showed that carriers identified as high risk have higher future crash rates than other active carriers, suggesting that the SMS is effective enforcement prioritization tool.<sup>3</sup>

These findings alert us to an important distinction. FMCSA's analysis focused on the collective crash rate of carriers in groups (e.g., all carriers with a particular BASIC percentile score), not individual carrier scores. FMCSA acknowledged that "this collective crash rate is not a prediction of the actual crash rate of an individual carrier. In fact, 93 percent of the carriers in the model had no crashes in the post-identification monitoring period."<sup>4</sup>

This distinction leads us to an important conclusion. Since the collective crash rates of fleets with SMS scores above thresholds are higher than those below, the SMS is useful as an enforcement prioritization tool. In short, enforcement agencies can focus on these fleets to conduct further investigations and determine which of them are truly risky. On the other hand, since the SMS scores are a poor indicator of an individual fleet's propensity to be involved in a future crash, their utility in providing the public with information about fleets' safety performance is limited.

Given the value of the SMS as an enforcement prioritization tool and law enforcement's obligation to enforce compliance with all laws and regulations, CVSA feels strongly that law enforcement's access to SMS data must not be limited. To help further ensure that law enforcement resources are used most efficiently, FMCSA should strive to improve the program so as to better identify those individual fleets that pose the greatest risk of causing future crashes. FMCSA should also take these steps to eventually arrive at scores that are strong measures of an individual fleet's safety performance. Until these improvements are made, however, CVSA echoes stakeholders' call to remove SMS scores from public view.

Your consideration of CVSA's views on these important issues is greatly appreciated. If you have further questions or comments, please do not hesitate to contact me by phone at [REDACTED] or via email at [REDACTED].

Sincerely,

[REDACTED]  
Stephen A. Keppler  
Executive Director

Cc: Scott Darling, Acting Administrator, FMCSA

<sup>2</sup> United States Government Accountability Office, *Federal Motor Carrier Safety: Modifying the Compliance, Safety, Accountability Program Would Improve The Ability to Identify High Risk Carriers*, GAO-14-114, February 2014.

<sup>3</sup> *The Carrier Safety Measurement System (CSMS) Effectiveness Test by Behavior Analysis and Safety Improvement Categories (BASICs)*, Federal Motor Carrier Safety Administration, January 2014.

<sup>4</sup> *Ibid.*

APPENDIX B: CURRENT SMS (BASIC) SCREENSHOT

The screenshot displays the FMCSA Safety Measurement System (SMS) interface for a Public Property Carrier. The top navigation bar includes the FMCSA logo, a search bar, and the slogan "Working Together for Safety." Below this, the "SMS" section is active, with tabs for "ALL", "CSA", "SMS", "OVERVIEW", "TOOLS", "HELP", and "SEARCH". A "QUICK SEARCH" box is also present.

On the left sidebar, there are utility icons for "SEE YOUR SMS", "CONTACT US", "DOWNLOADS", and "PRINT".

The main content area is divided into several sections:

- Safety Rating & OOS Rates:** Shows a "SATISFACTORY" rating as of 06/05/2019. The rating date is 03/11/2004. Below this is a table for "Out of Service Rates":
 

Type	DCS %	National Avg %
Vehicle	14.5	23.7
Driver	1.7	5.5
Hazmat	4.5	4.5
- Licensing and Insurance:** Shows the carrier is "Active For the Authority". A table lists various types:
 

Type	Yes/No	NCS/RCR
Property	Yes	
Passenger	No	
Household Goods	No	
Broker	No	
- BASIC Status:** Labeled as "Public Property Carrier View". It includes a "How does SMS relate to crashes?" link and a note that the data is based on a 24-month record ending April 26, 2019.
- BASIC Categories:** A row of seven icons representing different BASIC categories: UNSAFE DRIVING, CRASH INDICATOR, Not Public, HOURS OF SERVICE COMPLIANCE, VEHICLE MAINTENANCE, CONTROLLED SUBSTANCES AND ALCOHOL, and NOT PUBLIC HAZARDOUS MATERIALS COMPLIANCE. A note below states: "Select a BASIC icon above to get details, or view your Complete SMS Profile."
- Summary of Activities:** Provides a summary of the 5 most recent investigations and 24 months of inspection and crash history. It lists:
  - Most Recent Investigation: 3/9/2004 (Compliance Review)
  - Total Inspections: 114
  - Total Inspections without Violations used in SMS: 64
  - Total Inspections with Violations used in SMS: 50
  - Total Crashes\*: 10
 A note explains that crashes listed represent a motor carrier's involvement in reportable crashes, regardless of the carrier's or driver's role. A link "Continue for more Crash, Inspection & Investigation Details" is provided.
- Carrier Registration:** Includes three links: "Carrier Registration Details", "Subject to Hazmat Threats", and "Update Registration Info".
- Enforcement Cases:** States "No penalties found" for the six-year period as of 06/05/2019.
- Tools/Resources:** Lists several resources with expandable arrows: "SMS Methodology", "How to Improve", "Request a Data Review", "Complete SMS Profile", and "Carrier History".

**PART IV****NORTH AMERICAN STANDARD ADMINISTRATIVE  
OUT-OF-SERVICE CRITERIA****\*POLICY STATEMENT**

The purpose of this part is to identify violations that prohibit the motor carrier from operating the commercial motor vehicle until the condition is corrected. The violations in this section are important aspects of the motor carrier's ability to operate lawfully and to help in maintaining uniformity across the industry.

The necessity for all enforcement personnel to implement and adhere to these standards is: (1) a matter of law; (2) perceived as necessary by the society we are charged with protecting; and (3) a professional obligation if substantial enhancement in the safety of commercial motor vehicle operators is to be achieved.

Except where state, provincial, territorial or federal laws preclude enforcement of a named item, motor carrier safety enforcement personnel and their jurisdictions shall comply with these out-of-service violation standards.

**OUT-OF-SERVICE VIOLATION:** Violations under this category preclude further operation of a commercial motor vehicle by the carrier for a specified period of time or, for some violations, until a specific requirement has been complied with.

**1. OPERATING AUTHORITY**

Operating a commercial motor vehicle without the required operating authority or beyond the scope of the motor carriers' operating authority. (Authority Required - 392.9(a)(1) or Beyond Scope - 392.9(a)(2)) **Declare vehicle out of service until the proper operating authority is obtained.**

**\*2. INACTIVE/NO USDOT NUMBER****\*a. Inactive USDOT Number**

When required to have a USDOT number, operating a commercial motor vehicle with a "de-activated" or "inactive" USDOT number. (392.9(b)) **Declare vehicle out of service until USDOT number is "active."**

**\*b. No USDOT Number**

Operating a commercial motor vehicle with no USDOT number when required and a history of operating a commercial motor vehicle with no USDOT number when required. (392.9(b)) **Declare vehicle out of service until a USDOT number has been obtained.**

**\*3. MEXICO DOMICILED CARRIERS OPERATING IN THE U.S.**

A Mexico-domiciled carrier (USDOT X Number) granted provisional operating authority pursuant to 49 CFR 365 operating a commercial motor vehicle in the United States that does not display a current CVSA decal on the power unit. (385.103(c)) **Declare vehicle out of service until the vehicle satisfactorily passes an inspection and a CVSA decal is issued.**

**\*4. U.S. FEDERAL OUT-OF-SERVICE ORDERS**

Operating a commercial motor vehicle while an existing motor carrier out-of-service order, issued by the Federal Motor Carrier Safety Administration (FMCSA) is in effect. (Choose from the list of fourteen Sections of the Federal Motor Carrier Safety Regulations (CFRs) listed below. **Declare vehicle out of service until such time as the motor carrier out-of-service order issued by FMCSA has been satisfied.**

Description	Section
Failure to Pay Fine - Private Carrier	386.83(a)(1)
Failure to Pay Fine - For-Hire Carrier	386.83(a)(1)
UNSAT/UNFIT - Placarded HM	385.13(a)(1)
UNSAT/UNFIT - Passenger Carriers	385.13(a)(1)
UNSAT/UNFIT - Property Carriers	385.13(a)(2)
New Entrant - Failure to Respond to Expedited Action Notification	385.308(d)
New Entrant - Failure of Safety Audit	385.325(c)
New Entrant - Refusal of Audit/No Contact	385.337(b)
Imminent Hazard - Motor Carrier	386.72(b)(4)
Imminent Hazard - Intermodal Equipment Provider	386.72(b)(4)
MX Carrier - Inadequate Corrective Action	385.105(b)
MX Carrier - UNSAT/UNFIT	385.111(a)
MX Carrier - Suspended Operating Authority for UNSAT Rating or Failed Safety Audit	385.111(c)(1)
MX Carrier - Revoked Operating Authority	385.111(c)(2)

**Enforcement Guidance:** All out-of-service orders must be confirmed. Vehicles shall only be declared out of service after online or telephonic verification of the motor carrier's out-of-service order.

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

Next, we will hear from Rodney Noble, senior director of transportation global procurement, PepsiCo.

Mr. NOBLE. Thank you. Good morning.

Chairwoman Norton, Ranking Member Davis, and Chairman DeFazio, and members of the subcommittee, I am Rodney Noble. I have been handling transportation for PepsiCo for over three decades.

PepsiCo is pleased to be here today to discuss our efforts to improve truck safety and reduce emissions. We own the largest independently owned fleet of trucks in the U.S. We have over 70,000 assets, including 36,000 trucks, and we employ over 25,000 drivers. Needless to say, we are experienced in transportation.

First some background on PepsiCo. PepsiCo is the largest food and beverage company in the United States. Our portfolio includes Pepsi-Cola, Frito-Lay products, as well as Aquafina, Lipton, Tropicana, Gatorade, and Quaker Oats. These brands and others are enjoyed by our consumers over a billion times a day around the world.

With our franchise bottlers, we employ and support the jobs of nearly 140,000 Americans in all 50 States, the Virgin Islands, as well as the District of Columbia.

We have 94 U.S. manufacturing sites, many in your districts, like our Quaker plant in Cedar Rapids, Iowa, our Pepsi plant in Cheverly, Maryland, our Frito-Lay facilities in Canton, Ohio, Jonesboro, Arkansas, and Dallas, Texas.

PepsiCo is committed to reducing our absolute greenhouse gas emissions by 20 percent by 2030. We have made significant improvements in our fleet efficiencies by broadening our fuel use.

We currently operate 1,500 alternative fuel vehicles. More specifically, PepsiCo owns one of the largest commercial fleets of electric vehicles in the U.S. and is exploring more use of electric power across our fleets.

Frito-Lay has increased the use of our renewable natural gas, allowing us to cut diesel fuel by 30 percent. We are on track to cut conventional fuel by 50 percent by 2020.

We have improved our truck routings that has reduced the miles that we have traveled. This not only cuts emissions, but it enhances safety because reducing miles reduces a chance of accidents.

Safety is paramount at PepsiCo, and we have created a culture around our driver training programs. We have also invested in technology beyond what is needed to meet the government requirements.

Our written statement includes more on our safety investments, as well as our training programs.

While PepsiCo is proud of our ability to innovate, we believe more can be done, but we are constrained by the outdated Federal laws like the current 80,000-pound gross vehicle weight limit that was set in 1983.

They say a picture is worth a thousand words. I would like to call your attention to the screen, if you would.

[Slide.]

If you look, you can see the standard 53-foot trailer that is generally limited to 80,000 pounds in the U.S. that operates on five

axles. The other vehicle has six axles, not five, and in Canada where the industry operates these at 102,500 pounds, we analyzed 5 years of our operation in Canada. These vehicles collectively traveled roughly 13 million miles, and we have had zero fatality accidents.

PepsiCo is a member of the SHIP Coalition, which supports a pilot program to allow single trucks on the interstate at 91,000 pounds, with the requirement of the six-axle. PepsiCo believes that this modest increase, subject to important safety and infrastructure protection conditions, would reduce road wear, emissions, and increase safety.

Under this proposal, our products can move with fewer trucks. This leads to fewer miles, reducing the chance of accidents. This pilot would help reduce emissions and address the nationwide commercial driver shortage.

The Federal Government can also address this issue by passing the DRIVE-Safe Act, which I detail in my written statement.

In conclusion, PepsiCo is committed to improving our transportation operations. I have been doing this job 30 years, and what keeps me up at night is what a lot of the folks here talked about. It is the safety of our drivers, the operational efficiency, but also attracting the next generation of drivers to the business.

This hearing could not be more timely, and we look forward to working with you to address these critical challenges.

Thank you for the time to be here today.  
[Mr. Noble's prepared statement follows:]

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**Prepared Statement Rodney Noble, Senior Director of Transportation  
Global Procurement, PepsiCo**

Chairwoman Holmes Norton, Ranking Member Davis, Chairman DeFazio, Ranking Member Graves, and Members of the Subcommittee, I am pleased to appear before you today on behalf of PepsiCo to share our perspective on important issues impacting the trucking industry.

My name is Rodney Noble and I am Senior Director of Transportation Global Procurement. I have been with PepsiCo for 33 years and in my current role I am responsible for strategy development and capacity procurement for all modes of purchased transportation/freight as well as North America Fleet procurement for PepsiCo. This role is a mixture of transportation execution, centralized strategy, planning, technology, integration and procurement of freight and fleet solutions for PepsiCo across North America.

My testimony will outline our efforts to improve truck safety and reduce emissions from trucking as part of our continuous efforts to improve our transportation and logistics systems. But first I'll provide some important context.

PEPSICO AND ITS LOGISTICS NETWORK

PepsiCo is the largest food and beverage Company in the United States and our portfolio includes our iconic Pepsi-Cola and Frito-Lay products, as well as brands such as Aquafina, Lipton, Tropicana, Gatorade, Quaker Oats, Sun Chips and Sabra hummus. PepsiCo sources over six million metric tons of potatoes, grains, fruits, vegetable oil and more in the U.S., from growers of all sizes. Along with our franchise bottlers, we employ and support the jobs of nearly 140,000 Americans in all 50 states and the District of Columbia. We have a total of 94 manufacturing sites across the United States with many of these facilities located in your Congressional districts; like our Quaker plant in Cedar Rapids, Iowa, our Pepsi plant in Hyattsville, Maryland, or our Frito-Lay facilities in Canton, Ohio, Jonesboro, Arkansas or Dallas, Texas. PepsiCo considers itself part of these communities with our employees living in small towns and large cities, and contributing through hard work and volunteer efforts.

Although you may be familiar with our brands, you may not know of PepsiCo's logistical network. Through our transportation subsidiaries, PepsiCo owns the largest independently-owned fleet of trucks in the United States. We own over 36,000 trucks and a total of over 70,000 assets including over 11,000 tractors, 12,300 vans and 8,300 service support vehicles. PepsiCo employs over 25,000 drivers, all of whom are integral to the success of our logistics network to make sure our product gets from the farm to your grocery store shelf in a safe and environmentally responsible manner. Now knowing the scope of our fleet, you can imagine the impact that well maintained infrastructure and smart transportation policies can have on our day-to-day operations.

#### ENVIRONMENTAL LEADERSHIP; REDUCING EMISSIONS FROM TRUCKING

Earlier this year PepsiCo adopted a new corporate vision, Winning with Purpose, which conveys our belief that sustainability can be an even greater contributor to our success in the marketplace. We are committed to reducing our absolute greenhouse gas emissions across our supply chain by at least 20 percent by 2030. Our fleet operations adopt sustainability in their everyday practices and long-term business plans by reducing emissions through efficient, new technology and the sharing of best practices. For a number of years, we have made significant improvements in fleet efficiency. One way is diversifying the types of fuels we use; PepsiCo operates over 1,500 alternative fuel vehicles and in 2018 our fleet logged over 64.5 million alternative fueled miles.

These changes have not come without their challenges, even for a company the size of PepsiCo; incorporating emerging technology requires additional training for our mechanics so they have the technical skillset and expertise to operate and maintain these highly technical systems. It also requires PepsiCo to remain current with our diagnostic software and update our site and maintenance facilities, including our refueling infrastructure. Despite these challenges, we believe these investments are right for the environment and give us the ability to contain current and future transportation costs, which means that your constituents will continue to be able to purchase our products at an affordable price. Here are some quick facts on our fleet:

- PepsiCo owns one of the largest commercial fleets of electric vehicles in the U.S.
- PepsiCo is working to increase the volume of renewable natural gas (RNG) used in our freight trucks. Within the Frito-Lay division alone, the fleet reduced its diesel fuel usage by more than 30 percent. We are now on track to cut conventional fuel use from our fleet by 50 percent by 2020, compared to a 2008 baseline.
- PepsiCo is an industry leader in investing in compressed natural gas (CNG) tractors and advanced diesel technology. Forty two percent of our Frito-Lay over-the-road fleet has been converted to compressed natural gas and in 2018 our CNG fleet drove 56.3 million miles.
- PepsiCo made an initial reservation for 100 all-electric semi-trucks. This investment represents part of our broader strategy and gives us an opportunity to explore electrification across all our vehicle classes.
- With a grant from the California Air Resources Board, Frito-Lay will replace all of its diesel equipment in Modesto, CA with Zero emissions or Near Zero emissions equipment in the next two years.

We believe there is more to energy efficiency than just our equipment alone. We continually look for other ways to achieve excellence in operations to accomplish our sustainability and productivity goals. This includes incorporating everything from driver training, the latest in safety technology and more efficient routing as important components of our strategy.

#### SAFETY IS PARAMOUNT

At PepsiCo we make a point of celebrating safety within our fleet. One example is Frito-Lay's annual Million Mile award ceremony where we recognize our drivers that have driven one million miles without an accident. This past April we celebrated 78 U.S. and Canada based over-the-road drivers from more than 30 sites who drove one, two, and three million accident-free miles. To put that in perspective, it takes Frito-Lay drivers approximately 10-12 years to reach the one million mile mark. Needless to say, we are extremely proud of these drivers and their incredible safety record.

Over the last few years, PepsiCo has created a culture around driver-training programs, training thousands of drivers to help reduce fuel use through their driving habits. From avoiding unnecessary braking and eliminating idling to gentler accel-

eration and leveraging cruise control, our programs encourage best practice sharing and tracking to improve fuel mileage.

PepsiCo knows how important safety is and we have made decisions to go above and beyond current federal and state safety regulations. The majority of our new vehicles are outfitted with features including: collision mitigation, lane departure, blind spot detection, LED headlights, back-up cameras, antilock brakes, traction control and electronic stability control. We are also adding forward facing cameras and lane departure devices to our existing fleet, while continuing to leverage telematics for proactive driver training on safe driver behaviors. As a pioneer in the safety space, we also work to influence manufacturers to bring the latest technologies to market to benefit the industry as a whole, wherever possible.

The key to our fleet strategy is spending the time and effort to procure equipment that is best suited to the business, allowing us to employ the most efficient trucks for our operations. For example, PepsiCo Beverages North America is accelerating a new and innovative delivery system, which replaces segmented bulk and bay delivery trucks with specially designed and specified trailers that are pre-loaded at the warehouse. This helps ensure the right quantity and assortment of product reaches the retail customer in a more efficient and timely manner while saving time for route delivery drivers and fuel by eliminating overlapping delivery vehicles.

To date, approximately 44.1 percent of routes have been converted to this new system, resulting in a 15 percent reduction in the number of truck days and total miles from the system. Reducing miles improves safety because it translates into fewer exposures for our drivers and decreases the chances of crashes.

#### LEGISLATION CAN ADVANCE OUR SAFETY AND ENVIRONMENTAL EFFORTS

We are very supportive of Congress getting started on legislation to improve our nation's road infrastructure. Better bridges and highways will help reduce wear and tear on our fleet and improve driving conditions for our trucks, all of which will benefit our industry. While PepsiCo is proud of our ability to innovate around the current challenges facing our trucking fleet, we believe more can be done to advance safety, reduce emissions, and protect infrastructure; but we are constrained by antiquated federal laws.

For example, the current 80,000 pound gross vehicle weight (GVW) limit for five axle trucks operating on Federal Interstate System highways was set in 1983, since that time the transportation industry has seen significant safety improvements like the standardization of anti-lock brakes. In the intervening decades a majority of States now allow trucks over 80,000 pounds on state and local roads but the Federal GVW limit for the Interstate System remains stubbornly stuck at 80,000 pounds. What does this mean for PepsiCo? Since many of our products are heavy, we often hit the 80,000 pound limit and our trucks are only partially full, which leads to more trucks on the road and carbon emissions than if we were able to fill our trucks to their optimal capacity.

To begin addressing this, we support Congress authorizing a pilot program for a limited number of States to allow a modest increase in the gross vehicle weight (GVW) of trucks on the Interstate Highway System. PepsiCo is a member of the Safer Hauling and Infrastructure Protection Coalition, or SHIP Coalition, which believes modestly higher truck weights, subject to important conditions for safety and infrastructure protection, would reduce road wear and tear and greatly reduce greenhouse gas emissions, all while being carried out safely. We know it can work because our company is already safely operating six-axle vehicles at over 80,000 pounds in Canada; just one of the many developed nations with higher GVW limits.

They say a picture is worth a thousand words and I'd like at this time to call the Subcommittee's attention to the photo on the screen and attached to our prepared testimony. You will see a standard 53-foot trailer that, with tractor, is generally limited to 80,000 pounds GVW in the U.S. and operates on 4-5 axles. The other vehicle is equipped with 6 axles, not 5, and in Canada we are operating these at a GVW even higher than 91,000 pounds. Before this hearing we checked back five years and found zero fatalities in our operation of these vehicles in Canada, even though they cover an average of 2.6 million miles annually.



In the U.S. we believe that, by allowing more cargo to be carried in fewer vehicles, this pilot program would reduce the growth in the number of trucks on the road.

By allowing a given amount of cargo to be carried in fewer vehicles, this pilot program will help: reduce congestion on roads, lower fuel consumption, and mitigate exhaust emissions. USDOT estimated that a 6-axle/91,000 pound configuration reduces CO<sub>2</sub> and NO<sub>x</sub> emissions, with NO<sub>x</sub> being a particulate matter pollutant precursor.

In addition, by reducing miles to move a given amount of cargo, exposures on the road are also reduced, which decreases the chances of crashes.

The additional axle comes with additional wheels and brakes, increasing braking power. DOT found the 91,000 pounds GVW, six-axle vehicle stopped one-foot shorter than the conventional 80,000 pounds 5-axle vehicle. Importantly, this ten-state pilot program would facilitate shifting truck traffic away from lower classification roads that often pass by schools and shopping centers and through neighborhoods with pedestrians. Instead, trucks would be able to use the Interstate Highway System, found by the Transportation Research Board in a 2019 report to be the safest and best suited roads for trucks.

In addition, States that opt in to the voluntary pilot program would have to collect certain data regarding the GVW of a truck in the pilot program in the event of a crash. The lack of data on the loaded weight of a truck at the time of a fatality or injury was noted in 2015 and 2016 by the U.S. Department of Transportation (DOT) as a critical data gap. PepsiCo is an industry leader in telematics, data collection, and analysis—and we are particularly well equipped to provide valuable feedback data to the program.

By requiring an additional axle the proposed pilot also addresses concerns on potential road wear and tear. With the additional axle, the weight transferred to the pavement is lower per axle at 91,000 pounds GVW than a five-axle 80,000 pounds GVW vehicle. USDOT found this six-axle configuration would reduce, not increase, life-cycle pavement costs, with savings of 2.4 to 4.2 percent.

Another advantage of the SHIP pilot proposal is it would help alleviate the pressure PepsiCo and the trucking industry at large is feeling from the nationwide commercial driver shortage. With the current shortfall of drivers only expected to increase, the ability to more efficiently move our product would go a long way in enabling us to continue to take the time needed to attract the highest quality drivers.

Another way the Federal government could help to address the commercial driver shortage is by passing the Developing Responsible Individuals for a Vibrant Economy Act also known as the “Drive Safe Act”. We believe this legislation would help establish a pipeline for drivers by allowing 18-21 year olds that already have a commercial driver’s license to drive interstate pending completion of a 400 hour apprenticeship program with an experienced driver. Right now, young adults coming out of high school who might be interested or even just considering a career in the trucking industry are choosing a different occupation because they can’t afford to wait until they are 21 to be hired and we are losing access to a valuable pipeline

of potential talent. We also believe it is important that the legislation ensures that vehicles used in the program would be required to have the latest safety technology.

In conclusion, PepsiCo is deeply committed to efforts to continuously improve our truck, transportation and logistics operations, particularly as to safety and emissions reductions. We look forward to working with Congress to help advance sensible transportation policies that will help improve our nation's trucking infrastructure for the next generation.

Thank you, again, for the opportunity to be here today and I will be happy to respond to any questions.

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

Next, Deputy Chief Mark Savage, Colorado State Patrol on behalf of the Commercial Vehicle Safety Alliance, and, yes, please proceed.

Mr. SAVAGE. Good afternoon, Chairwoman Norton, Ranking Member Davis, full committee Chair DeFazio, and members of the subcommittee.

Thank you for inviting me to participate in today's important discussion on the state of the trucking industry.

As deputy chief of the Colorado State Patrol, I oversee our State's CMV enforcement program. Under the Motor Carrier Safety Assistance Program, today I am here representing the Commercial Vehicle Safety Alliance where I serve as a past president. CVSA represents State agencies who enforce motor carrier safety regulations in the United States, Canada, and Mexico.

CVSA has a number of recommendations aimed at improving CMV safety. I am sure many of them will be included in the discussion today.

However, from our perspective, it all boils down to one thing, providing the motor carrier industry and the enforcement community with a regulatory framework that is clear, safety driven, and enforceable.

Every day across the country, CVSA members work with industry and FMCSA to reduce crashes and save lives. At the same time, the trucking industry continues to grow and becomes more sophisticated every day. Finding solutions that ensure the safe transport of goods is, needless to say, complicated.

We need a regulatory framework that can keep pace with the changing industry. Unfortunately, regulatory activity at the agency—one of FMCSA's basic responsibilities—has come to a near standstill, and the necessary work to maintain regulations is suffering.

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 utility hours-of-service exemption.

CVSA petitioned the agency in May of 2017 to update those regulations to reflect this decision. Last March, the agency granted our petition. Yet we are still waiting for this simple definition change to be completed.

This may seem like a small thing, but it is just one example of a number of similar scenarios that build upon one another.

In addition, high-profile initiatives like rolling out the ELD rule consume the agency's resources, especially when they are met with a high volume of exemption requests. As a result and in place of actual regulatory action, the agency has come to rely heavily on interpretations, personalized letters, informal electronic communica-

tions, enforcement guidance, frequently asked questions, and other means providing enforcement and industry with clarity on issues that arise with the expectations that the regulations will be updated in the future.

Unfortunately, that update often never takes place, resulting in an inconsistent understanding of the requirement.

When the regulations lack clarity, they are ineffective, creating confusion and inconsistencies in enforcement, which in turn leads to unnecessary conflict between enforcement and industry and ultimately it erodes the CMV community's trust in the regulatory process.

This lack of clarity in the regulations is further complicated by the growing list of exemptions being listed by various segments of the industry. While we understand the motor carrier industry is diverse, the motor carrier safety regulations are just that, safety regulations, and any exemption granted should be based on the clear critical need, not merely because it would be more convenient for the industry.

This is not to say we oppose all exemptions. We recognize that there are times where granting exemptions is appropriate. In those instances, FMCSA has a process in place to allow for the review of exemption requests based on the applicant's ability to demonstrate need and the ability to maintain an equivalent level of safety.

We encourage Members to point their constituents to this established process rather than incorporating exemptions into legislation. Exemptions not only have the potential to undermine safety, but they complicate the enforcement process and confuse inspectors, drivers, and the industry alike.

While one individual exemption may not seem like such a big deal, they add up and result in confusing, contradictory and inconsistent enforcement of the regulations. To address these concerns, we encourage Congress to impress upon FMCSA the importance of the agency conducting its regulatory responsibilities in a timely manner and ensure the agency has the necessary resources, technical staff, authority, and time to do so.

In addition, we encourage Members to minimize the number of exemptions written in legislation and to consider the practical impacts of any new requirements or programs to the enforcement community's ability to conduct our critical lifesaving activities.

Those of us in the enforcement community, including FMCSA, as well as those in the regulated industry, cannot achieve our mutual goal of reducing crashes and saving lives without clearly written safety regulations that are based on unbiased data and designed with safety as the top priority.

We look forward to working with all of you to address these challenges.

Thank you.

[Mr. Savage's prepared statement follows:]

**Prepared Statement of Deputy Chief Mark Savage, Colorado State Patrol,  
on behalf of the Commercial Vehicle Safety Alliance**

INTRODUCTION

Chairman Norton, Ranking Member Davis and Members of the Subcommittee, thank you for holding this important hearing and for inviting me here today to discuss the state of the trucking industry in America.

My name is Mark Savage, I am deputy chief of the Colorado State Patrol, and I currently serve as a past 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 responsible for the administration and enforcement of commercial motor carrier safety regulations in the United States (U.S.), Canada and Mexico. We work to improve commercial motor vehicle 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 members of CVSA.

As Congress begins work on the next surface transportation bill, this timely hearing will hopefully provide members with valuable insight into the incredibly complex world of regulating the trucking industry to ensure safety, while also providing for the efficient flow of goods across the country. My testimony will highlight areas of concern for the Alliance, as well as recommendations on how best to move forward to meet our shared goal of preventing crashes, injuries and fatalities related to commercial motor vehicles on our nation's roadways. While a number of issues will be discussed during the hearing, from our perspective, it all boils down to one thing: providing the motor carrier industry and enforcement community with a regulatory framework that is clear, safety-driven and enforceable. The trucking industry continues to grow and become more sophisticated every day. We need a regulatory framework that can keep pace with the changing industry.

CLARITY IN THE REGULATORY FRAMEWORK

Clear, enforceable rules are the cornerstone of an effective regulatory framework designed to ensure safety on our roadways. It is imperative that those subject to the Federal Motor Carrier Safety Regulations (FMCSRs) understand their responsibilities and that those tasked with enforcing those safety regulations can do so effectively to ensure the quality and uniformity of the more than four million roadside inspections conducted annually throughout North America. Over time, additional regulatory authority, coupled with changes to the industry and technological advancements can result in inconsistent, outdated and redundant regulatory language. To address this continued evolution of the program, the Federal Motor Carrier Safety Administration (FMCSA) is tasked with maintaining the regulations.

Unfortunately, regulatory activity at the agency—one of FMCSA's basic responsibilities—has come to a near standstill, and the necessary work of maintaining the regulations is suffering. High profile initiatives, such as implementation of the electronic logging device rule, can consume the agency's resources, especially when those efforts are met with a high volume of exemption requests.

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 utility' hours-of-service exemption. After learning of the letter, in May of 2017, CVSA petitioned the agency to update the regulations to reflect this decision. In March of last year, the agency granted the petition, but to date we are still waiting for the rulemaking to be initiated.

In an effort to address the growing backlog and delays, the agency has come to rely heavily on the use of regulatory guidance to address necessary clarifications to the regulations, using 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 evolved between written regulation, regulatory guidance, interpretations and FAQs.

As a result, unintentional inconsistencies and contradictions have worked their way into the regulatory framework. These inconsistencies can lead to confusion

among both the regulated and enforcement communities. Recently the Office of the Secretary of Transportation published a notice asking stakeholders to review all existing regulatory guidance and make recommendations on which documents should be incorporated into regulation, what can be eliminated and what other guidance may be necessary. While this is a good start, the request was too broad in nature, seeking comment on all existing guidance to any regulation under the department's purview, not merely the FMCSRs overseen by FMCSA. Asking for input on all existing regulatory guidance is an enormous task and one that is not achievable in such a short time frame. Instead, such a review should be conducted in a methodical and organized manner. FMCSA should conduct a review of each Part of Title 49 of the FMCSRs on an individual basis, rather than all at once. As a part of this review, FMCSA should examine all informal guidance that has been issued and adopt the updated informal guidance as official regulatory guidance.

This process, once complete, will help clarify a number of inconsistencies in regulation, helping those who are subject to the FMCSRs 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. However, it is not enough for the agency to do this one review. This process must be conducted on an ongoing basis, in order to keep pace with ongoing changes and developments. Continued review and updates to guidance are necessary to remove redundancies, reflect recent changes, correct errors and eliminate contradictions provides both the law enforcement community and motor carrier industry with clearer guidelines to follow. Regulatory guidance should be reviewed and updated on a regular basis to ensure accuracy and clarity.

As noted, there are a number of factors that contribute to the growing delay in regulatory action at FMCSA. We recognize that many of these factors are outside the agency's control. The result is that the agency is struggling to meet one of its basic responsibilities, which is to maintain the FMCSRs, something only the agency can do, in order to keep pace with industry and ensure that motor carriers are being held to a standard that will ensure the safe operation of vehicles on our nation's roadways. FMCSA must be given the resources and support to allow the agency 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 the motor carrier industry and the enforcement community and undermines the agency's efforts to improve safety.

#### EXEMPTIONS

The growing lack of clarity and inconsistency in the regulations is further compounded by the growing number of regulatory exemptions being issued. The federal safety regulations are designed to 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 drivers and motor carriers must abide. The states, in partnership with FMCSA, work to enforce those regulations consistently and correctly. In order to become a commercial motor vehicle 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 in-service/refresher training courses and receive ongoing training updates as a result of various regulatory updates or changes. Significant training and continuing education are geared towards ensuring inspectors and roadside enforcement officials fully understand and effectively communicate the regulations they enforce.

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 number of exemptions continues to grow. Particularly problematic are those exemptions issued through legislation. Issues begin with the adoption of exemptions themselves. While the exemptions are made effective at the federal level upon enactment of the bill, that is not necessarily the case at the state level. The states cannot enforce federal laws and regulations, and instead adopt or incorporate federal regulations into their own state laws, regulations and codes. 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 commercial motor vehicle size and weight limits included in the Fixing America's Surface Transportation (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 the motor carrier industry and the enforcement community wondering how the exemptions would work in the meantime and at times created 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 scheduled to be trained on the changes. Practically speaking, this takes time. This guidance and the subsequent training are 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. Currently, no such provision exists on the legislative side. Moving forward, CVSA encourages Congress to consider including an implementation window or some other mechanism that allows 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, the motor carrier 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.

#### HOURS-OF-SERVICE REVISIONS

One area of the regulations that presents a significant challenge for the enforcement community is the hours-of-service requirements. Recently, and motivated partially by the electronic logging device (ELD) requirement, there has been a lot of discussion about the need for additional 'flexibility' in the hours-of-service rules. CVSA does not have expertise in fatigue data and will not weigh in on all the proposed changes being discussed. However, it should be noted that the federal hours-of-service requirements exist to help prevent and manage driver fatigue. While sleep cannot be regulated, the hours-of-service rules set forth a framework that, if followed, allow drivers to get the rest necessary to operate their vehicles safely. It is important that the hours-of-service requirements continue to focus on fatigue management and safety, factoring in the best available fatigue data. Recognizing that the motor carrier industry is diverse, it is critical that the regulations account for significant variances within segments of the industry, while keeping exemptions to a minimum, in order to ensure uniform enforcement.

#### *ELDs and the North American Fatigue Management Program*

Moving forward, CVSA would encourage that any new exemptions from the hours-of-service requirements or any changes that provide additional flexibility come with two requirements. First, we believe an electronic logging device should be required. Electronic logging devices are a valuable tool designed to help inspectors verify compliance with hours-of-service requirements. This will be even more important as the rules become more complicated. Hours-of-service violations continue to be some of the most frequently found violations by enforcement. What this tells us is that too many drivers and motor carriers either don't understand the hours-of-service rules or are intentionally violating them—and, as a result, drivers are likely driving fatigued. Deployment of electronic logging devices helps address both of these issues.

For those drivers and motor carriers who don't understand the intricacies of the hours-of-service requirements and for those who make the occasional mistake when using their paper log, electronic logging devices remove the guess work and the risk of human error. This results in better compliance with fewer violations being identified, resulting in improved motor carrier safety ratings. For those who were using their log books to find 'wiggle room' in the hours-of-service regulations, electronic logging devices make it easier for inspectors to identify violations and take unsafe,

noncompliant drivers off the roadways. The devices also save time for both inspectors and drivers, leading to more efficiency. For those in industry who demonstrate the need for additional flexibility in the hours-of-service requirements, it would be beneficial to require an electronic logging device in order to help ensure compliance.

Similarly, any motor carrier or sector of industry that is seeking authorization to drive longer hours should be required to participate in the North American Fatigue Management Program. The North American Fatigue Management Program is a joint effort by Canada and the United States to provide a comprehensive approach for managing fatigue, enhancing a motor carrier's ability to effectively deal with the challenges of fatigue in a highly competitive, widely dispersed and rapidly changing industry.

#### *Personal Conveyance*

Another hours-of-service issue that is related to the regulatory guidance matter discussed above is the "personal conveyance" designation under the hours-of-service rules. In June of 2018, FMCSA published new guidance providing a new interpretation of how to apply and use the "personal conveyance" designation. To be able to log personal conveyance time as off-duty, commercial motor vehicle drivers must meet several conditions as outlined in the regulatory guidance. These include being relieved of all on-duty activities and responsibilities and ensuring that the off-duty trip is personal in nature. While these conditions present certain parameters to drivers and enforcement, the guidance it offers is incomplete because it does not provide a maximum distance and/or time that a driver can travel under the "personal conveyance" designation.

Under the revised guidance, a driver could, in theory, drive hundreds of miles over the course of several hours all under the designation of "personal conveyance". This presents the opportunity for increased driver fatigue and risk on our roadways, as drivers may decide to travel hundreds of miles in order to strategically relocate to an alternate location after driving a full day. When combined with the ability to operate under personal conveyance while laden, this new guidance provides an opportunity for drivers to abuse personal conveyance time in order to circumvent the hours-of-service regulations. Further, the allowance of laden vehicles for personal conveyance use makes it much more difficult for a roadside inspector to determine the intent of a driver at the time of inspection. Inspectors are consistently seeing blatant abuse of this designation and we have heard feedback from drivers and motor carriers who indicate they are receiving pressure from shippers to use the designation incorrectly in order to deliver loads faster.

CVSA has petitioned the agency to provide a clear, set distance that is permissible under the personal conveyance designation. In setting clear guidelines on the use of personal conveyance, CVSA recommended that FMCSA look to the standard set in Canada, which allows drivers to use a vehicle for personal conveyance purposes for a maximum of 75 km per day (approximately 46 miles), unladen. FMCSA should set a quantifiable distance that drivers are allowed to log as personal conveyance, in addition to the parameters already offered for § 395.8.

#### SAFETY TECHNOLOGY

Given the growing size and complexity of the trucking industry, jurisdictions do not have the resources necessary to inspect every vehicle, driver and motor carrier operating on our roadways on a regular basis. In order to maximize resources, jurisdictions use a combination of methods to identify vehicles, drivers and motor carriers for intervention and enforcement. As a result, inspectors interact with only a small fraction of the commercial motor vehicles currently operating on our roadways. However, technologies exist today that would allow enforcement to identify nearly all commercial motor vehicles electronically, while those vehicles are in motion. If this concept were universally deployed, it would revolutionize the way commercial motor vehicle roadside monitoring, inspection and enforcement are conducted.

Requiring a universal electronic vehicle identifier on all commercial motor vehicles would, in time, eliminate the need to stop a commercial motor vehicle to review driver information and inspect the vehicle, improving efficiencies for the enforcement community and the motor carrier industry. It would improve the effectiveness of enforcement programs while reducing costs, for both enforcement and industry, all while improving safety. CVSA has petitioned the National Highway Traffic Safety Administration (NHTSA) and FMCSA to require all commercial motor vehicles to be equipped with technology that allows them to be identified electronically by enforcement. Deployment of this technology would revolutionize the way commercial

motor vehicle roadside monitoring, inspection and enforcement are conducted, exponentially growing the program and improving roadway safety.

While many questions still exist surrounding this concept, establishing a universal electronic vehicle identifier requirement for all commercial motor vehicles will have tremendous benefit. Jurisdictions will save time and see improved efficiencies as inspectors are able to more accurately target vehicles, drivers and motor carriers in need of an intervention while allowing safe, compliant vehicles to deliver their freight more quickly and efficiently. Most importantly, establishing a universal electronic vehicle identifier requirement for all commercial motor vehicles would benefit the public by improving safety, helping to take unsafe vehicles, drivers and motor carriers off the roadways. As industry continues to grow and more people take to the roads, it is imperative that we leverage technology where possible to improve the efficacy of our enforcement programs.

Further, the need for a universal electronic vehicle identifier becomes more critical as the industry moves forward to implement driver assistive truck platooning, increasingly advanced driver assistance systems, and partially or fully automated driving systems, which will require new methods and levels of safety checks. As driver assistive technologies evolve in commercial motor vehicle use, the proper identification and monitoring of these commercial motor vehicles becomes increasingly necessary. No matter the method, this proposed requirement would enable efficient identification and inspection/screening of vehicle systems to help ensure safe operation of commercial motor vehicles, including those being operated with or without a human operator on board.

The trucking industry continues to grow more complex every day and technology plays a huge role in the ongoing evolution of the motor carrier industry. In particular, impressive advancements are being made in the realm of safety technology. As the industry moves ahead with deployment of automated driving system technology and other technologies and as Congress and the administration consider mandating certain systems, it is important that consideration be given to the practical aspects roadside. It is imperative that federal agencies and lawmakers keep pace with technical developments by consulting with industry and the enforcement community to determine the necessary guidelines for safe operation on public roadways. In particular, a dialog with the enforcement community is needed on the requirements and capabilities of this technology to self-monitor vehicle systems' safety status and interact with law enforcement. Each new requirement in the regulations will come with a corresponding item on the roadside inspector's checklist. If a vehicle is required to have a particular component or piece of technology, thought must be given to how the enforcement community will effectively inspect the component or function, and in the pursuit of maintaining safety on our public roadways, ensure compliance with that requirement. Regulations should be clearly written and enforceable. With appropriate federal standards in place, these technologies have great potential to increase roadway safety.

#### MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

In order to ensure compliance by the motor carrier industry, Congress provides funding to the states through the Motor Carrier Safety Assistance Program (MCSAP). 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 commercial motor vehicle safety issues. The funds are used, in part, to pay the salaries of more than 12,000 full and part-time commercial motor vehicle safety professionals. These people conduct more than 3.5 million commercial motor vehicle roadside inspections, 34,000 new entrant safety audits and 6,000 compliance reviews each year.

##### *Program Performance*

The FAST Act included a number of provisions dealing with MCSAP, making significant organizational and programmatic changes, intended to reduce the administrative burden for both FMCSA and the states. 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 commercial motor vehicle safety pro-

gram 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, 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.

#### *New MCSAP Grants Formula*

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. The group's recommendations were finalized in April of 2017 and the agency is currently in the final stages of publishing the recommendations in the "Federal Register" for comment. Once that process is complete, 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.

#### *Funding Delays Impact Program Efficacy*

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's "2018 Pocket Guide to Large Truck and Bus Statistics," the agency regulates 543,061 motor carriers, 6.1 million commercial drivers and 12.5 million commercial motor vehicles. The state and local agencies that receive MCSAP funding are responsible for ensuring those motor carriers, vehicles and drivers operate safely. Furthermore, the commercial motor vehicle enforcement landscape is constantly evolving and changing as Congress and FMCSA work to refine and improve the FMCSRs and Hazardous Materials Regulations (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 commercial motor vehicles operating on those roads.

One challenge the states face is an ongoing delay and lack of consistency in the timing of funding disbursement, which prevents many state from being able to implement long term plans and programs. 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 has become more and more delayed each year. If the process worked as it should, appropriations for the fiscal year would be finalized 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. 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 enforcement 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.

## INTERNATIONAL HARMONIZATION

Finally, 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 commercial motor vehicle safety regulations among the three nations will help support this flow of people and goods. CVSA supports improved international coordination, with respect to commercial motor vehicle safety regulations, through increasing efforts between the U.S., Canada and Mexico to advance regulatory reciprocity and uniformity.

## CONCLUSION

As this committee considers the state of the trucking industry and begins development of the next surface transportation bill, we encourage you to give strong consideration to the role the enforcement community will play in any policy changes or new programs. As outlined in my testimony, the purpose of the Federal Motor Carrier Safety Regulations is to provide a regulatory framework for motor carriers to comply with and is designed to ensure the safety of those who travel alongside commercial motor vehicles on our nation's roads. As the trucking industry continues to advance and grow, it becomes more critical that industry and enforcement are provided with a clear set of requirements. Inconsistencies in the regulations lead to confusion among industry and enforcement and eventually works to erode the commercial motor vehicle community's trust in the regulatory process. FMCSA must be provided with the tools to meet its responsibility of maintaining the federal regulations, while also addressing evolution within the industry. We encourage Congress, the administration and our industry partners to work together to help shape a framework that prioritizes safety.

Ms. NORTON. Thank you very much, Deputy Chief Savage.

Finally, Andy Young, truck safety advocate.

Pleased to have you.

Mr. YOUNG. Good morning, Chair Norton, Ranking Member Davis, Chair DeFazio as well, and members of the subcommittee, and good morning to my own Member, Representative Bob Gibbs. I appreciate the warm welcome.

I also want to recognize all staffers that are in the back of the room and standing along the sides of the room. Without your support, this country would have some difficulty. So I appreciate all of the effort that you put forth.

My belief is that many of the initiatives that we discuss today will not only save lives, but also truck driver livelihood. I am here in the truck safety advocate capacity, and all in this room are here because of the jobs they chose or the choices they have made.

Several people in this room are here not because of the job they chose, and they did not choose to be here, and they are the victims and survivors of truck crashes. I would like to recognize them.

Christa Hammack lost her daughter, Erin Alexander. She is here with Abigayle.

Marianne Karth lost her daughters AnnaLeah and Mary. Jerry Karth could not be here. Neither could Lois Durso, but they are here in spirit.

Marianne Karth is here with her daughter Rebekah Chojnacki.

I would like to recognize survivor Morgan Lake.

Also Steve and Sue Owings, who lost their son, Cullum.

I would also like to mention Laurie and Randy Higginbotham, who lost their son, Representative Cohen's own constituent, in an underride crash.

I am here because I belong to the truth on the issue of underride. No matter how safe the car may actually be, the safety features of a car are only effective if there is a good structural interaction—vehicle crash compatibility—between collision partners.

There must be a geometrical matchup of the crush structure of both the striking vehicle and the vehicle being struck. The bumpers must match up. Otherwise the lower profile car physically goes underneath the higher profile commercial motor vehicle. This is known as a truck underride.

The first point of impact is beyond the hood and into the glass windshield. The second point of impact literally becomes the heads, faces, neck, spine, and chest of the lower profile car's occupants.

The same holds true when the truck rear-ends a passenger car. Often the front bumper of the truck goes over the back bumper of the car. The truck then climbs on top of the car, crushing the back seat and the occupants.

I would like to show a video to show side underride. Pay attention to the airbags and the seatbelts on how they are ineffective in the side underride crash.

[Video.]

This is at 35 miles an hour. The bottom one is with a guard. Airbags, seatbelts work with the guard. Without a guard, they do not.

I submit to you if the car manufacturers came before you today and said, "Hey, we want a car without airbags or seatbelts," this body would say, "No way."

And in the same vein, we have crashes in situations where airbags and seatbelts do not work. Energy-absorbing bumpers, crumple zones, do not work. Next week I am scheduled to meet with a mother who lost her only child, a recent 18-year-old high school graduate. A week ago yesterday was her funeral. Her body, her head included, was covered at the funeral. These are the closed casket injuries. The only part of her exposed was her right hand for her mother to hold.

Truck safety initiatives such as the Stop Underrides Act of 2019, speed limiters and automatic emergency braking, all serve to allow better interaction between cars and trucks. It is adding equipment to these trucks that actually protect the truck driver, too.

When the truck driver is at fault, he or she suffers with a career-ending criminal vehicular homicide charge, frequently resulting in jail time. The truck company then likely encounters a civil lawsuit. The fatalities and catastrophic injuries associated with underride crashes typically produce seven- to eight-figure verdicts, all exceeding minimum insurance coverage and requirements.

The truck companies are thereafter saddled with paying judgments in excess of insurance coverage. Smaller truck companies must sell assets or file for bankruptcy. Everyone loses in an underride truck crash, the truck company and truck driver included.

Just simply making the car bumpers match up with the truck's side, front, and rear is the only way for car safety features and all the data and science that goes into protecting the occupants. And the data and science exists, and I submit to you if we look at it from the right perspective, the underride guard is required, the costs also.

We heard today as well about CSA and public scores. Chair Norton mentioned several groups of people who rely on those public scores. One group that was not mentioned was the truck driver. If the truck driver is applying for a job, they need to know that the company they are working for is safe. They need to have access to this data.

We heard from C.H. Robinson talking about the data is confusing. The out-of-service percentage rates are not confusing; they are very clear. If the companies exceed the national averages in out-of-service percentages, then they should not be hired.

The Federal Motor Carrier Safety Administration has performed an analysis that 10 percent of the motor carriers represent nearly 50 percent of the crashes. And it is those 10 percent that are the bad apples that spoil the bunch for us.

I love trucks, I love the trucking industry, and I particularly love the truck driver. I represent many truck drivers who are harmed in these crashes. But we need to make sure that these truck drivers are protected and have a job that is worth going to, and also have a job that can pay the rent and pay the mortgage.

Both speed limiters and AEBs and underride guards will protect that truck driver. I have driven a truck with an underride guard; never felt more comfortable knowing that that guard was there. I want to look at how all these issues not only save lives but save truck driver livelihoods.

And I thank the chair for the opportunity to testify before you today, and I am pleased to answer any questions, and the most challenging ones as well. Thank you.

[The prepared statement of Mr. Young follows:]

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### Prepared Statement of Andy Young, Truck Safety Advocate

#### ABBREVIATION GUIDE

AEB—Automatic Emergency Braking  
 ATA—American Trucking Associations  
 CMV—Commercial Motor Vehicle  
 FARS—Fatality Analysis Reporting System  
 FCAM—Forward Collision Avoidance Mitigation  
 FMCSA—Federal Motor Carrier Safety Administration  
 FMVSS—Federal Motor Vehicle Safety Standards  
 FUP—Front Underride Protection  
 GAO—Government Accountability Office  
 IIHS—Insurance Institute for Highway Safety  
 NHTSA—National Highway Traffic Safety Administration  
 NTSB—National Transportation Safety Board  
 OEM—Original Equipment Manufacturer  
 OOIDA—Owner-Operators Independent Drivers Association  
 PCI—Passenger Compartment Intrusion  
 RIG—Rear Impact Guard  
 SUG—Side Underride Guard  
 SUT—Single Unit Truck  
 TSC—Truck Safety Coalition

#### INTRODUCTION AND BIOGRAPHY OF ANDY YOUNG

Good morning Chairwoman Norton, Ranking Member Davis and Members of the Subcommittee and good morning to my own Representative Bob Gibbs (R-OH-7), also a Member of this Subcommittee.

My name is Andy Young and I am a truck driver holding an active, interstate, Class A Commercial Driver's License and owner of an old classic Peterbilt 359 that

regularly hauls a much newer 45-foot car hauler trailer. I am also an attorney and one of the founding partners of Young & McCarthy LLP, based in Northern Ohio. My law practice focuses on representing victims and survivors of truck crashes throughout the country. Many of my clients are truck drivers who have been hurt or killed by other unsafe truck drivers and truck companies. I have successfully represented people catastrophically injured in underride truck crashes as well. I have been published in numerous publications and I lecture throughout the country on truck safety, truck litigation, and trial tactics. The Insurance Institute for Highway Safety (IIHS), The Truck Safety Coalition, and AnnaLeah & Mary for Truck Safety invited me to serve as a moderator for two industry Truck Underride Roundtables hosted at the IIHS crash test facility in Ruckersville, Virginia. I also served on the Organizational Committee for these two events. I recently helped team-drive a 2016 International LoneStar and a 53-foot Hyundai trailer to Washington, D.C. for a DC Underride Crash Test. I also served as the event MC and moderator for a speaker panel at this event. I would like to thank Chairman DeFazio, Chairwoman Norton and Representative Cohen for sending Congressional Staff to this important event.

As both a member of the Owner-Operators Independent Drivers Association (OOIDA) and a past-chair of the Ohio Association for Justice's Truck Safety Section, I have provided hearing testimony before the Ohio Senate Transportation Committee on truck size and weight legislation. I am currently the President of Ohio's Lorain County Bar Association and serve as an Executive Officer of the American Association for Justice's Truck Litigation Group. My volunteer work has resulted in awards in both organizations. I regularly consult with truck safety advocates and attorneys across the country on truck safety, trial, and truck crash litigation tactics. I also currently serve on the City of Cleveland's Vision Zero Task Force. I firmly believe that underride guards and the other truck safety topics to be discussed at this Hearing will keep drivers from facing possible jailtime due to vehicular homicide criminal charges and keep smaller motor carriers from 8-figure verdicts that could bankrupt them. I am here as a Truck Safety Advocate. I frequently volunteer my time for the Truck Safety Coalition and AnnaLeah & Mary for Truck Safety. My motivation for testifying is my belief that many of the initiatives discussed today will not only save lives, but also save truck driver livelihoods.

#### A TRUCK DRIVER IS "UNDER PRESSURE" EVERY MILE OF EVERY DAY

*Saving lives and truck driver livelihoods can be accomplished with the passage of many of the safety initiatives that will be discussed at today's Hearing "Under Pressure: The State of Trucking in America."*

As someone who drives a tractor-trailer and represents victims and survivors of truck crashes, I know all too well about the "pressure" that a truck driver must contend with daily. Much of the pressure comes straight from the customer (shipper / broker / receiver) demanding that their products arrive on time and without any damage. Often the customer does not realize the complexity and inherent dangers of driving a big rig. The customer does not understand this concept because the customer usually is not subject to the Federal Motor Carrier Safety Regulations and the industry safety standards that must be obeyed every mile of every run of every day. The customer can wield great power over truck safety by choosing to hire and pay for a safe and responsible truck company to haul the customer's goods. To give them (the broker or shipper) a pass on liability would only increase "pressure" on "the state of trucking in America." The shipper and broker should not and must not be allowed to hire a cheaper, less safe truck company, simply for the sake of transporting goods at the cheapest freight rates possible. *Safety must not be sacrificed for cheaper freight rates.*

The most catastrophic consequences can result when an 80,000 pound CMV collides with a 4,000 pound car. The truck driver knows that protecting the motoring public is his or her responsibility. The trucking companies employing the truck drivers know this, too. Yet they are pressured by the conflict between the cost of safety and the desire to reduce operating costs and remain competitive. Gambling on unsafe practices can lead to increased wages for the driver (frequently paid by the mile) and increased revenues for the truck company—at least until a catastrophic crash occurs with its financially ruinous consequences. While there will always be this tension, this Committee can help level the playing field between the responsible truck companies and the irresponsible truck companies, and every one of us—our families, friends, constituents—can benefit.

Ironically, car passengers are not the only ones who are at risk. Even though their rigs are huge, truck drivers all know that their own lives are on the line at least in part because their truck company employers engage in unsafe practices and pres-

sure their drivers into engaging in unsafe practices. Tragically, truck occupant deaths have increased to over 800 fatalities in 2017.<sup>1</sup>

#### SAFETY INITIATIVES CAN BENEFIT EVERYONE

Often when someone is injured by a truck driver or truck company error, society in some way or another picks up the pieces. This occurs through motor vehicle liability insurance spreading the risks of the loss among car and truck insurance companies. Liability insurance often is insufficient. Private and government health insurance programs fill the gaps, as do other government welfare programs for people who can no longer work as a result of their injuries at great societal expense. It is not right that all of these programs should pay all of these inordinate costs when the implementation of simple and relatively inexpensive safety initiatives can markedly reduce the risk of catastrophic injuries in the first place.

Safety initiatives like Automatic Emergency Braking and Speed Limiters benefit the truck driver and everyone else on the road. Safety initiatives like Underride Guards can both save lives for pedestrian and automobile occupants and prevent criminal responsibility for truck drivers who make unfortunate mistakes. It is unlikely that a truck driver will be prosecuted for vehicular homicide when their mistakes do not lead to the death of someone else. Increasing Broker/Shipper Liability will encourage customers to choose safe motor carriers to transport their goods creating positive competition for good outcomes. Increasing Minimum Insurance Limits improve the quality of truck driver training and truck company operations. All of these initiatives together will help America's 3.4 million truck drivers do their jobs and reduce fatalities to the "Vision Zero" that is sought by all.

#### STOP UNDERRIDES ACT OF 2019 (H.R. 1511/S. 655) AND VEHICLE CRASH COMPATIBILITY—HEIGHT MISMATCHES RESULT IN DEATHS

Late in 2018, I gave a talk as the Keynote Speaker to the State Bar of Texas at their "Prosecuting & Defending Truck and Auto Collision Cases" seminar. My topic was "Underride Guards for Trucks to Avoid 8-Figure Jury Verdicts." Underride crashes are the most horrific of all highway crashes. Why? Because a car and its passengers fare much better hitting a concrete wall than hitting a commercial truck.

No matter how safe the car may actually be, the safety features of a car are only effective if there is good structural interaction (vehicle crash compatibility) between collision partners. There must be a geometrical match up of the crush structure of both the striking vehicle and the vehicle being struck (the bumpers must match up). Otherwise, the lower profile passenger car physically goes underneath the higher profile commercial motor vehicle ("CMV"). This is known as a truck underride crash. The first point of impact is beyond the hood and into the glass windshield. The second point of impact then literally becomes the heads, faces, neck, spine, and chest of the lower profile vehicle's occupants. The same holds true when a truck rear ends a passenger car: often the front bumper of the truck goes over the back bumper of the car. The truck then climbs the backseat of the car, frequently crushing children in the back seat.

Most people truly do not understand what is involved in an underride crash until they have suffered the loss of a loved one in one of these crashes or they have seen videos or photos of one of these crashes. I welcome all reading this testimony to go to [www.youtube.com/watch?v=jHNIhh8NsFs](http://www.youtube.com/watch?v=jHNIhh8NsFs) to watch crash tests performed by the IIHS on March 30th and March 31st of 2017. The IIHS crashed cars into the side of a trailer both without an underride guard on the truck and with an underride guard on the truck to prove the safety differences. The results are truly remarkable and speak for themselves. I further recommend going to [www.annaleahmary.com](http://www.annaleahmary.com) or [www.stopunderrides.org](http://www.stopunderrides.org) to see the three crash tests performed right here in Washington, D.C., a few months ago, on March 26, 2019. All of these videos show crash tests at 35 mph or under. The video of those tests without an underride guard show the devastating consequences that must be addressed today and hopefully fixed by Subcommittee Members with the passage of the Stop Underrides Act of 2019.

As can be seen in these videos, air bags do not deploy because the lower profile vehicle's bumpers and air bag sensors are not triggered. Energy absorbing bumpers and crumple zones, all designed to keep the passenger compartment intact, become irrelevant. The load path from the crash results in energy that does not initially strike the intended engineered crush structure of the passenger car. With no air bag

<sup>1</sup>Truck driver fatalities increased in 2017 to the highest number since 2003 according to the Department of Labor's Bureau of Labor Statistics. NHTSA reported that there were 841 occupants of large trucks killed in crashes in 2017.

and the vehicle traveling underneath the opposing vehicle, (even at low speeds), the occupant compartment is pierced, resulting in a passenger compartment intrusion (“PCI”). Literally, the car windows and then the heads of the occupants are smashed into the CMV.

*Without Underride Guards—We Have Closed-Casket Fatalities*

With passenger compartment intrusion, the seatbelts restraining the occupants fail to prevent catastrophic injury or deadly consequences as the energy from the collision is absorbed directly by the human body. The car’s occupants then suffer the most horrific crash consequences: death by blunt trauma; decapitation; open skull fractures; traumatic brain injuries; degloving of the face; spinal cord injuries; paraplegia; or quadriplegia. Those families who lose a loved one in an underride crash often suffer even further through a closed casket funeral because the faces of their loved ones are literally obliterated. This is reality and not mere conjecture or rhetoric. Just last week, I saw a picture of an 18-year-old recent high school graduate killed in a truck crash where her entire body was covered at the funeral with only her hand sticking out from underneath the blanket. This teenager was an only child and all her mother had to hold onto prior to her burial was her hand. The consequences of these crashes will continue if the Stop Underrides Act of 2019 is not passed. But, it does not stop with the victims or survivors. Why? Because the truck driver and truck company also become victims of an underride crash.

*Truck Driver and Truck Companies Are Victims of Underride Crashes Too*

When the truck driver is at fault, he or she suffers with a career-ending criminal vehicular homicide or felony vehicular assault criminal charges. These charges frequently result in jailtime. If the truck driver is the financial provider for his or her spouse and children, the economic consequences to the truck driver’s family can lead to poverty and dependency.

If the truck driver is lucky enough not to be found at fault, the truck driver still often suffers the mental health consequences and psychological trauma associated with being an integral part of such a horrific crash. This, too, may result in the end of a professional driving career for the truck driver with unfortunate economic consequences to the driver and family.

The truck company then likely encounters a civil lawsuit. The fatalities and catastrophic injuries associated with underride crashes typically produce seven to eight figure verdicts, all exceeding minimum insurance requirements. Truck companies are thereafter saddled with paying judgments in excess of insurance coverage. Smaller truck companies must sell assets and/or file for bankruptcy. Everyone loses in an underride truck crash, the truck company and truck driver included.

I would like to recognize and commend House Representative, Subcommittee Member, Steve Cohen (D-TN) for introducing the Stop Underrides Act on March 5, 2019 which has been assigned to this very important Committee and Subcommittee. I’d like to also recognize each of the co-sponsors and urge others to become a co-sponsor of this bill. I am equally grateful to Senators Kirsten Gillibrand (D-NY) and Marco Rubio (R-FL) for introducing the Senate version (S. 665). This bill will save lives and truck driver livelihoods. I am hopeful that the content of my written and oral testimony will open hearts and minds of trucking industry stakeholders allowing for a new perspective on why this bill makes common sense and is a simple fix to saving lives. This debate began over 60 years ago and arguably longer than that. This decades long problem deserves a fair and open discussion allowing for an end with passage of this bill.

*Science and Data Exists to Support Passage of the Stop Underrides Act*

The ATA wrote a March 15, 2019 letter to this Committee about this bill stating that it is “committed to the goal of accident and fatality-free highways.” The ATA further states that this bill “is not based on science, data or safety benefit.” I submit to you that ATA is NOT accurate with this statement and fails to consider *all* of the science, data and safety benefit that underride guards provide. I welcome this particular topic as a point of debate during the panel question and answer session during this Hearing to truly explore *all* of the science, data, and safety not considered by the ATA’s statement.

Specifically, the goal of the Stop Underrides Act is to allow for “vehicle crash compatibility” between cars and trucks. Again, vehicle crash compatibility is the academic speak that the bumpers of the two vehicles (car vs. truck or truck vs. car) must match up! Why? So that an ordinary car’s energy absorbing bumpers and crumple zones can actually do the job that they were intended to do when original equipment manufacturers’ engineers and design teams go to NHTSA or the IIHS to have the vehicles tested for crash worthiness. If we all pause to consider how much money has gone into the research and development of vehicle crash worthiness

ness, including seatbelts and airbags, then we come to the clear conclusion that the science and data exists.

Moreover, the *true* science and data that must be considered when discussing this bill is *all* of the science and data extracted from every single crash test performed weekly over the past decades. For instance, when the IIHS gives a “good rating” a “top safety pick” or determines a car has “superior-rated front crash prevention” it presumes one very important fact, that the bumpers match up. Most all of the crash tests performed are into a barrier or another car presuming the bumper will be the first point of impact. If we were to take each of the “top rated” safety picks for vehicles and performed crash tests of those same vehicles into the side of a commercial trailers, then we will all see that the science and data that has gone into protecting the occupants of the car will literally and figuratively go out the window producing gruesome results. I respectfully recommend that this Subcommittee invite all of the scientists and engineers that work for auto manufacturers to come here to discuss the millions, if not billions of dollars, cumulatively spent to design the safest passenger vehicles in the world. At that hearing you should ask how their safest vehicles will perform in a low-speed underride crash test into the side of a commercial trailer. I have no doubt that those scientists and engineers will tell you that the science and data does exist and mandates the passage of the Stop Underrides Act of 2019.

Interestingly, the ATA issued a “A Brief Look at the Far Horizon” Technology & Maintenance Council report in 2002, *seventeen years ago*, predicting “underride regulations for single-unit trucks (“SUTs”) by 2005 and “frontal aggressivity regulations and side underride regulations” by 2006.<sup>2</sup> Here we are now, in 2019 and SUTs are still under the woefully inadequate 1953 regulation and front and side underride regulations have not yet been realized (see further historical discussion below and Appendix A). In addition, the NTSB has recommended front, side, improved rear underride regulations for single-unit trucks as well as tractor trailers.<sup>3</sup> In fact, Europe, Australia, Japan, India, and Saudi Arabia all have Front Underrun Protection (“FUP”) standards. Many U.S. truck manufacturers have an international presence—installing FUP on trucks purchased in other countries, but not in our country. Why is that?

#### *Twelve Million Unsafe Trailers*

In 2016, trailer OEMs reported that “[n]ew trailer orders in the United States reached 315,000, the second-highest annual total” and that orders were down in comparison to “2014’s record total” of more than 356,000 new trailers.<sup>4</sup> Trailer orders are projected to have a record-setting year for 324,000 trailers in 2019, up from 323,000 trailers in 2018.<sup>5</sup> All of these new commercial trailers were added to the 11.7 million registered trailers in existence as reported by the Federal Highway Administration in 2012.<sup>6</sup> Combining all new trailer orders with currently registered trailers puts the total number of commercial trailers in the United States at well over 12 million.<sup>7</sup> This represents over 12 million potential opportunities for an underride crash.

The Interstate Highway System is 46,875 miles long.<sup>8</sup> When one calculates the number of registered trailers per mile of the Interstate Highway System, this equates to over 250 registered commercial trailers for every mile of Interstate High-

<sup>2</sup>The American Trucking Associations, Technology & Maintenance Council (TMC), Future Truck Committee Information Report: 2002-1, *A Brief Look at the Far Horizon—An Exploration of What’s to Come for Trucking*, Issued November 2002.

<sup>3</sup>National Transportation Safety Board, Office of Highway Safety, *Heavy Truck Aggressivity*, Office of Research and Engineering. [https://www.nts.gov/news/events/Documents/hampshire\\_il-Heavy%20Truck%20Aggressivity.pdf](https://www.nts.gov/news/events/Documents/hampshire_il-Heavy%20Truck%20Aggressivity.pdf)

<sup>4</sup>The American Trucking Associations, Transport Topics, *Trailer Shipments Set Record as 2015 Orders Stay Strong*, by Roger W. Gilroy, Page 1, Week of February 1, 2016.

<sup>5</sup>FreightWaves, *Truck Trailer Orders Down in February, but Analysts Predict Another Record Year*, <https://www.freightwaves.com/news/trucking/trailer-orders-drop-for-third-straight-month>

<sup>6</sup><https://www.fhwa.dot.gov/policyinformation/statistics/2012/mv11.cfm> See also the American Trucking Associations’ February 5, 2016 Comment on the pending NPRM Docket No. 2015-0118 Rear Impact Guards, Rear Impact Protection. Note: as referenced in the ATA comment, many of these trailers are not used on a regular basis.

<sup>7</sup>According to the U.S. Census, the State of Ohio has a population of 11,594,163. The State of Pennsylvania has a population of 12,787,209. The population of these states provides a basis of comparison to show the magnitude of what the number of registered trailers in the United States truly represents.

<sup>8</sup><https://www.fhwa.dot.gov/interstate/faq.cfm#question3>

way. Average daily truck volume reaches up to 50,000 trucks on much of the Interstate Highway System East of the Mississippi River.<sup>9</sup>

With roughly 300,000 new trailers being produced annually and with 12 million registered trailers in existence, this tells you the life of a trailer is inordinately long. Most in the industry will likely agree that the life of a new trailer can exceed 15 years. Each year we wait to mandate underride guards, the more the danger of catastrophic underride crashes will exist for decades to come.

According to the recent study published by the U.S. Government Accountability Office, a truck underride crash likely happens more often than the Department of Transportation's data suggests.<sup>10</sup> The GAO recommends, among other things, that NHTSA "conduct additional research on side underride guards to better understand the overall effectiveness and cost associated with these guards, and if warranted, develop standards for their implementation."<sup>11</sup> A simple analysis, as is performed below, demonstrates that indeed the costs are low and implementation is warranted.

#### *Approximately 60 Cents/Day/Trailer Cost for Underride Protection*

The cost argument raised by the ATA, OOIDA and others in opposition to the Stop Underrides Act of 2019 must be taken into perspective. By way of example, an AngelWing Side Underride Guard, manufactured by AirFlow Deflector, costs about \$2,900.00, which includes shipping anywhere in the US or Canada. The total cost of a new trailer is roughly \$50,000.00. The new cost of a trailer with an underride guard, at the upper limit, is an additional 6% of the total cost of the trailer. I state that this cost is at the upper limit because this is the cost for an aftermarket underride guard. If the guard were mass produced with the trailer, the cost is likely a lot less. Keep in mind that depreciation tax incentives take care of the cost for the new equipment for the purchaser, too. Consider the cost offset with the savings brought with the fuel efficiency because the trailer guard also comes with a fuel-efficient skirt.<sup>12</sup> Consider also the cost offset that insurance underwriters should credit to a truck company for having underride protection a trailer.

We must consider the life of a trailer. As discussed above, the life of a trailer is at least 15 years. Consider the \$2,900.00 cost of an aftermarket side guard and then divide it by 15 years, or 5,475 days, representing the number of days the trailer is in operation. The result is a cost of less than 60 cents per day, per trailer.

#### *Revenue/Mile Versus Cost Analysis*

To put this into further perspective, revenue generated while the trailer is hauling freight covers the cost of the Underride Guard in the first mile the trailer is hauling goods. This past week, I asked my neighbor who runs and owns a freight broker company, what is "the cheapest" rate to run freight from the East Coast to the West Coast? His response was a very low charge for a brokered "van" type trailer is \$1.15 to \$1.20 per mile. The average revenue for a brokered flatbed is \$1.90 per mile. Keep in mind this is a broker rate, so the customer is likely paying more.

A truck company with direct customer relationship (no broker or middle person) has revenue for vans of at least \$2.00 per mile. A good day's revenue on a truck and trailer is between 400-500 miles of driving in one drive period. Regardless of the number of miles the trailer is driven in one drive period, the underride guard cost at 60 cents a day pays for itself with the revenue earned in the first one-half mile of driving each day. Essentially, the trailer guard is paid for on each daily run before it is conceivably driven from a shipper's doorstep to the nearest highway.

#### *Revenue/Week Versus Cost Analysis*

If an underride guard costs 60 cents per day, that equates to \$4.20 per week. A truck company looks to earn revenue for a van type trailer of \$3,500.00 per week. Doing the math further, the cost of an underride guard is 1/100th of 1% of the total weekly revenue for a trailer.

<sup>9</sup> U.S. Department of Transportation, Federal Highway Administration, Office of Freight Management and Operations, Freight Analysis Framework, "Estimated Average Annual Daily Truck Traffic." [https://ops.fhwa.dot.gov/freight/freight\\_analysis/nat\\_freight\\_stats/docs/06factsfigures/index.htm](https://ops.fhwa.dot.gov/freight/freight_analysis/nat_freight_stats/docs/06factsfigures/index.htm)

<sup>10</sup> U.S. Government Accountability Office, "Truck Underride Guards: Improved Data Collection, Inspections, and Research Needed." <https://www.gao.gov/product/GAO-19-264>, April 15, 2019.

<sup>11</sup> Id. at [https://www.gao.gov/product\\_recommendations/GAO-19-264](https://www.gao.gov/product_recommendations/GAO-19-264)

<sup>12</sup> We see fuel efficiency skirts on most trailers on the highway now. Make no mistake, there is no barrier or robust structure behind these fuel efficiency skirts. They are flimsy and a car can easily go without resistance through them, much as a dog goes through a dog door.

*60 Cents vs. Another 60 Years Without an Underride Guard Mandate*

At one time, the public seemed oblivious to the dangers of underride truck crashes. Fortunately the IIHS crash test videos and videos from other underride crash tests have been utilized by television media and social media bringing greater public awareness to this issue. The threat of underride crashes to the public is now becoming known. For decades, government regulators, original equipment manufacturers and the trucking industry have remained idle on this issue without meaningfully addressing it. The websites of Marianne Karth and Lois Durso, which are dedicated to their daughters' memory, reflects the astonishment and disbelief that not much has been done to protect against the horrors associated with underride truck crashes.<sup>13</sup> Their astonishment now turned into action here on Capitol Hill leading to this day and a consideration of all truck safety issues, including the Stop Underrides Act of 2019. Marianne Karth's efforts and Lois Durso and Jennifer Tierney and the memory of their loved ones, will hopefully be realized by an open understanding that this is a cheap and easy way to achieve the "Vision Zero" goal of reducing fatalities on our nation's roadways.

In addition to legislative action by Members of this Congress, the National Highway Traffic Safety Administration (NHTSA) has the regulatory authority to mandate that adequate protective guards be installed by OEMs. NHTSA is well aware of the problems presented by vehicle crash incompatibility and the need to prevent underride crashes as evidenced by its study focused on occupant compartment deformation and occupant injury.<sup>14</sup> However, NHTSA remains slow to enact meaningful regulation, whereas *the European Union and many other nations (United Kingdom, Brazil, Japan, Australia, and China) have surpassed the U.S. in regulatory requirements for rear guards, front underride protection, and side underride guards.*<sup>15</sup>

The U.S. first enacted rear underride guard standard on CMVs in 1953. This standard mandated rear guards for trucks manufactured after December 31, 1952.<sup>16</sup> This early standard required rear guards to have maximum ground clearance of 30 inches. Guards were not required if the rear axle/wheel setback was 24 inches or less from the rear of the CMV's cargo bed. This regulation mandated rear guards for *both* single-unit trucks and combination tractor-trailers. This standard included *no strength testing requirements* for the rear guards. So, as a result, the rear bars simply existed visually and easily folded under in a crash without really preventing underride or PCI.

Single-unit trucks ("SUTs"), more commonly known as "box trucks" or "straight trucks," likewise present the risk of an underride truck crash due to the higher vehicle profile. These trucks are not a "combination" of a tractor and a trailer with an articulating section that requires more space for turning and backing. SUTs are typically found in construction and/or urban settings because they are shorter and allow for tighter maneuverability. Urban settings also present more challenges, not only with greater vehicle congestion, but more bicycle and pedestrian traffic. 360 degree lower-profile protection / guards are necessary on all CMVs to protect bicyclist, motorcyclists, pedestrians and to prevent vehicle underride.

Forty-five years after the 1953 rule, NHTSA promulgated an updated rear underride guard standard that became effective in 1998. The new rule required the following: rear guard ground clearance to be no more than 22 inches and strength testing requirements. Guards are not required if rear wheel setbacks are no more than 12 inches from the end of the cargo bed. The 1998 standard is *for combination tractor-trailers only*.<sup>17</sup> Meaningful regulations have yet to become standard for SUTs which still operate under the 1953 standard. Please see *Appendix A* for a com-

<sup>13</sup> <https://www.annaleahmary.com>

<sup>14</sup> Eigen, A.M.: Glassbrenner, D., Mathematical Analysis Division, National Center for Statistics and Analysis, U.S. Department of Transportation, National Highway Traffic Safety Administration. *The Relationship Between Occupant Compartment Deformation and Occupant Injury*, DOT HS 809 676, November, 2003.

<sup>15</sup> United Nations Economic Commission for Europe ECE Regulation No. 73, Lateral Protection; United Nations Economic Commission for Europe ECE Regulation No. 93, Front Underrun Protection; and United Nations Economic Commission for Europe ECE Regulation No. 58 for Rear Underrun Protection. <http://www.unece.org/trans/main/wp29/wp29regs41-60.html>

<sup>16</sup> Blower, D. Woodroffe, J., Page, O., University of Michigan Transportation Research Institute; on behalf of the U.S. Department of Transportation, National Highway Traffic Safety Administration, Office of Applied Vehicle Safety, *Analysis of Rear Underride in Fatal Crashes*, 2008, DOT HS 811 652, August, 2012.

<sup>17</sup> NHTSA, FMVSS: Rear Impact Protection; Final rule. *Federal Register*; Vol 61, p. 2004, January 24, 1996. Federal Motor Vehicle Safety Standards 223 and 224: 49 C.F.R. Section 571.223 Standard No. 223; Rear impact guards. 49 C.F.R. Section 571.224 Standard No. 224; Rear impact protection.

prehensive historical chronology addressing the issues of truck underride regulation.<sup>18</sup>

#### REPEATED CALLS FOR UNDERRIDE PROTECTION

As can be seen in the decades long chronology for addressing truck underride, both the Insurance Institute for Highway Safety (“IIHS”) and the National Transportation Safety Board (“NTSB”) have repeatedly called upon NHTSA to implement better underride protection standards. In the past eight (8) years, a 2011 crash-test analysis by the IIHS demonstrated that underride guards on tractor-trailers continue to fail in low-speed crashes in spite of the 1998 regulatory standard.<sup>19 20</sup> In 2011, IIHS petitioned NHTSA for improvements for underride protection.<sup>21</sup>

In a letter dated April 3, 2014, the NTSB urged NHTSA to take action by improving rear underride protection systems. The NTSB letter even went one step further, requesting that newly manufactured trailers be equipped with “*side underride* protection systems that will reduce underride and injuries to passenger vehicle occupants.”<sup>22</sup>

On May 5, 2014, Marianne Karth and the Truck Safety Coalition (“TSC”) hand-delivered a petition for rule making which asked NHTSA to improve the safety of rear underride guards on trailers and SUTs. Marianne Karth and TSC also requested rulemaking to prevent side underride and front override truck collisions. On July 10, 2015, NHTSA granted, in part, the petition and planned on issuing two separate notices—“an advanced notice of proposed rulemaking pertaining to rear impact guards and other strategies for single unit trucks, and a notice of proposed rulemaking on rear impact guards on trailers and semitrailers.”<sup>23</sup>

#### *2015 Rulemaking for Single Unit Trucks*

On July 23, 2015, NHTSA issued the “Advanced Notice of Proposed Rulemaking Underride Protection of Single Unit Trucks.”<sup>24</sup> The agency’s summary confirms that this rulemaking would respond to Marianne Karth and the Truck Safety Coalition’s petition and also, in part, respond to the earlier petition for rulemaking by the Insurance Institute for Highway Safety.<sup>25</sup> A Google search of “Docket ID: NHTSA-2015-0070” can easily allow for a review of the rule and the seventy-three (proponent and opponent) comments made by various interested parties.

OEMs and several trade associations are among the strongest opponents, citing arguments that many SUTs need to have “good off road mobility at construction sites” or “hitch connections” and therefore cannot have rear impact protection. Specifically, a rear guard would interfere with the work the truck must perform.<sup>26</sup> A review of the Federal Register suggests that NHTSA seems to adopt the opposition arguments that underride guards would not be cost effective on SUTs.

Based upon my own research and travel (twice) overseas to “The Commercial Vehicle Show” in Birmingham, England, opposition against rear underride guards on SUTs must be met with severe skepticism. In 2015, I personally took photographs of many European CMVs that have rear underride guard protection on trucks like dump trucks and box trucks with lift gates. I am happy to share these photographs

<sup>18</sup>This historical chronology addressing Truck Underride from 1953 to present was put together by Andrew R. Young (who served as a Moderator of the May 5, 2014 Underride Roundtable and as a Moderator of the August, 2017 Underride Roundtable II) in collaboration with IIHS representatives and the Executive Director of the Truck Safety Coalition.

<sup>19</sup>The American Trucking Associations, Transport Topics, *Insurance Group Cites Concerns on Underride Guards*, March 1, 2011.

<sup>20</sup>Brumbelow, M.L. and Blonar, L., “Evaluation of US Rear Underride Guard Regulation for Large Trucks Using Real-World Crashes.” *Stapp Car Crash Journal* 54:119-131, 2010.

<sup>21</sup>Insurance Institute for Highway Safety, 2011, “Petition for Rulemaking; 49 C.F.R. Section 571 Federal Motor Vehicle Safety Standards; Rear Impact Guards; Rear Impact Protection.” Arlington, VA [https://www.iihs.org/laws/petitions/pdf/petition\\_2011-02-28.pdf](https://www.iihs.org/laws/petitions/pdf/petition_2011-02-28.pdf) The petition requested, among other things, a lower guard clearance from 22 inches and an inclusion of SUTs

<sup>22</sup>Hersman, Deborah A.P., Chair, National Transportation Safety Board, *Safety Recommendations, H-14-001 through -007*, letter to the Honorable David J. Friedman, Acting Administrator, National Highway Traffic Safety Administration, page 14.

<sup>23</sup>Department of Transportation, National Highway Traffic Safety Administration, *Grant of Petition of Rulemaking; 49 C.F.R. Section 571 Federal Motor Vehicle Safety Standards; Rear Impact Guards; Rear Impact Protection*, Federal Register Number 2014-16018. <https://www.regulations.gov/#!documentDetail;D=NHTSA-2014-0080-0001>.

<sup>24</sup>Department of Transportation, National Highway Traffic Safety Administration, *Docket No. NHTSA-2015-0070, Rear Impact Protection, Lamps, Reflective Devices, and Associated Equipment, Single Unit Trucks*. <https://www.regulations.gov/#!docketBrowser;pp=25;po=25;dt=PS;D=NHTSA-2015-0070>

<sup>25</sup>Id.

<sup>26</sup>Id.

with Members at the conclusion of the Hearing. There was even a vendor at this trade show who displayed rear impact bars that allow for manual adjustment of the guard so that it can be moved up and down as needed. I also videoed this vendor demonstrating how one of the guards can be manipulated and locked into upward and downward positions. By manually adjusting the guard upward, it allows for a construction vehicle to encounter low ground clearances or lift the guard out of the way so that it does not interfere with a tow hitch when towing a trailer with equipment or materials. Likewise, other photos taken show how rear guards can easily be integrated with lift gates.

The U.S. lags far behind other developed nations. Hopefully, this Congress and NHTSA are not too easily swayed by opposition to allow for meaningful regulations for rear impact protection on SUTs. I submitted the aforementioned photographs and many of the same arguments in a “public comment” in support of the rulemaking.<sup>27</sup> T3The agency just withdrew this regulatory action this month. This is confounding and unconscionable.

#### *2015 Rulemaking to Update Rear Guards on Tractor-Trailers*

On December 16, 2015, NHTSA issued the “Notice of Proposed Rulemaking Upgrade Underride” to enhance strength testing requirements of the 1998 standard to improve rear impact protection for trailers and semitrailers.<sup>28</sup> Again, the agency’s summary confirms that this rulemaking would respond, in part, to petitions filed by IIHS, the Truck Safety Coalition, and Marianne Karth.<sup>29</sup> A Google search of “Docket ID: NHTSA-2015-0118” will allow for a review of the rule and the thirty-four public comments, virtually all of which are in support.

Within the rulemaking summary, the agency states that the new rule would upgrade the Federal Motor Vehicle Safety Standards that address rear underride protection in crashes into semitrailers.<sup>30</sup> More specifically, the stated goal of this rulemaking is to harmonize the U.S. standard with the existing 2004 Canadian underride guard strength testing requirements (from 30mph crash protection to 35 mph crash protection).<sup>31</sup>

A review of the comments demonstrates very little opposition because OEMs already meet the 15-year-old Canadian standard. The lack of opposition highlights the fact that NHTSA is seemingly not interested in challenging OEMs to come up with a better and safer underride solution, such as a guard that protects against a 40 mph crash. *The agency has taken no further regulatory action.*

#### *2016 Truck Underride Roundtable & the “ToughGuard” Award*

To help incentivize underride protection beyond regulatory minimums, the IIHS, TSC, and Anna Leah & Mary for Truck Safety hosted the first ever “Truck Underride Roundtable” on May 5, 2016. IIHS’s Vehicle Research Center in Ruckersville, Virginia served as the host facility.

The aftermath of the first Truck Underride Roundtable motivated trailer manufacturers to offer improvements to rear guards. As of October 1, 2018, all eight (8) major trailer manufacturers have passed IIHS tests exceeding regulatory standards and passed the IIHS 30% overlap, 35mph test.<sup>32</sup>

<sup>27</sup>The photographs I took can be found with my public comment to the rulemaking at this link, <https://www.regulations.gov/#!documentDetail;D=NHTSA-2015-0070-0075>

<sup>28</sup>Department of Transportation, National Highway Traffic Safety Administration, Docket No. NHTSA-2015-0118, NPRM Upgrade Underride. <https://www.regulations.gov/#!docketBrowser;pp=25;po=0;det=PS;D=NHTSA-2015-0118>

<sup>29</sup>Id.

<sup>30</sup>Department of Transportation, National Highway Traffic Safety Administration, Docket No. NHTSA-2015-0118, NPRM Upgrade Underride. <https://www.regulations.gov/#!documentDetail;D=NHTSA-2015-0118-0001>

<sup>31</sup>Id.

<sup>32</sup>The test performed was a “30% overlap, offset at 35mph” crash test. 100% “overlap” no “offset” is when 100% of the car’s bumper from the right side to the left side, interacts squarely with 100% of the back of the rear guard, again from right to left. In a real-world crash, however, the driver often attempts to steer away from the truck at the last minute. Assuming the car driver steers left, then only 50% or 30% of the right side of the passenger car’s bumper interacts (“overlaps” or “offsets”) with 50% of or 30% of the left portion of the rear guard. Past IIHS testing showed the majority of trailer manufacturers failed to prevent underride in offset crashes. Passenger compartment intrusion would occur along just one side of the car. Frequently, occupants not effected by the passenger compartment intrusion (particularly at lower speeds) can suffer no injury at all while those effected by the PCI can produce fatal consequences or catastrophic injuries. Trailer manufacturer engineers have worked toward preventing PCI even in these “offset” impacts.

IIHS announced the “ToughGuard” award and presented this accolade to each trailer manufacturer that passed the test.<sup>33</sup> The “ToughGuard winners have rear guards that prevent underride of a midsize car in three test modes: full-width, 50 percent overlap and 30 percent overlap.”<sup>34</sup> Stoughton Trailers, LLC has taken it a step further and announced a retroactive kit that is now available for purchase and meets IIHS requirements. This aftermarket kit can be installed on its trailers dating back to 2007.<sup>35</sup>

Shortly after the announcement of the “ToughGuard” award, trailer manufacturers Hyundai Translead, Utility Trailer Manufacturing Co., and Strick Trailers, LLC approached the IIHS to set up crash tests to prove that their trailers likewise meet IIHS rear impact guard (“RIG”) standards. IIHS publicly announced on September 27, 2018 that Strick Trailers, LLC was the last of the three remaining trailer manufacturers to pass the IIHS RIG standards. All eight (8) major trailer manufacturers represent approximately 80% of the trailers on U.S. roadways.<sup>36</sup>

#### *2017 Truck Underride Roundtable 2 & the AngelWing SUG*

For the first time, on March 30, 2017, IIHS tested a Side Underride Guard (“SUG”). The SUG inventor is Perry Ponder, a mechanical engineer from Tallahassee, Florida. The SUG brand name is the AngelWing. The company promoting the AngelWing is AirFlow Deflector with its principal place of business in Montreal, Canada. The March 30th 35 mph test with the SUG was a success. The very next day, on March 31, 2017, the IIHS performed a 35 mph test without the SUG. This test showed catastrophic results, sheering the top of the mid-size Chevy Malibu off the length of the vehicle all the way to the backseat. I personally attended both tests.<sup>37</sup>

On August 29, 2017, “Truck Underride Roundtable 2” was held and sponsored by the same entities as the first Truck Underride Roundtable. Those in attendance witnessed a 40 mph test of the AngelWing SUG. The test was a success. I participated as a member of the organizing committee for both Truck Underride Roundtables and as a Moderator at both as well. The focus of this Underride Roundtable was on SUGs, instead of the previous year’s focus on rear impact guards. It was hoped that information from this event and the results of the SUG crash test would similarly encourage trailer manufacturers in the direction of adding side SUGs to their trailers. Wabash did introduce a prototype trailer with a lighter weight and cheaper SUG, but it is unknown if this is available for consumer purchase. I hope that Wabash and others trailer manufacturers have approached the IIHS to test their SUGs. At worst, the entire trucking industry can no longer feign ignorance of the catastrophic consequences of a collision resulting in occupant compartment intrusion. If trailer manufacturers are so keen to go beyond minimum compliance to protect the rear of the trailer from an underride, then why not the sides too?

#### *Conclusion on Comments on the Stop Underrides Act of 2019*

Truck drivers and truck companies should demand meaningful underride guards from trailer manufacturers. When the first point of impact is a car’s windshield and thereafter the occupants’ bodies inside, then the insurance minimums are incapable of protecting the truck company and truck drivers from potential exposure beyond insurance limits. Legislators must join safety advocates to encourage a demand for safer underride protection or help to push meaningful legislative or regulatory change that can finally put to rest the over 60 years of inaction by the industry. *Vehicle crash compatibility (making the car bumpers match up with the truck’s side, front, and rear) is the only way for a car’s safety features to protect occupants when that car collides with a heavy commercial motor vehicle.* I urge all Subcommittee Members join in supporting the Stop Underrides Act of 2019 to end 60 years of these preventable crashes.

<sup>33</sup> Press Release, Insurance Institute for Highway Safety, Highway Loss Data Institute, “IIHS Recognizes Semitrailers with Good Underride Guards,” by Russ Rader, Senior Vice President, <http://www.iihs.org/iihs/news/desktopnews/iihs-recognizes-semitrailers-with-good-underride-guards>

<sup>34</sup> Id.

<sup>35</sup> Stoughton’s improved rear guard probably saved the life of Terry S. Rivet on March 2, 2017. The tractor trailer jackknifed on slippery conditions on Interstate 90, and his car hit the rear of the trailer when that happened, but it prevented passenger car intrusion and the head injuries and deaths that otherwise would have occurred. Stoughton is an American owned company that builds its trailers in America.

<sup>36</sup> Press Release, Insurance Institute for Highway Safety, Highway Loss Data Institute, “All Major Trailer Makers Earn IIHS Award for Good Underride Protection,” by Russ Rader, Senior Vice President, <https://m.iihs.org/mobilenews/all-major-trailer-makers-earn-iihs-award-for-good-underride-protection>

<sup>37</sup> Please go to this link to watch these test <https://www.youtube.com/watch?v=jHNIhh8NsFs>

## TRUCK DRIVERS BENEFIT FROM AN INCREASE IN INSURANCE MINIMUMS

The primary threat to a truck driver's life on the road is an unsafe or negligent truck driver. A 4,000 pound car hitting a truck will likely not cause the truck driver to lose his or her life. However, an 80,000 pound truck that causes a truck versus truck crash can cause the loss of a truck driver's life. As aforementioned, truck occupant deaths increased significantly over the last reported year. In fact, I just recently settled a case on behalf of a truck driver's family. The truck driver unfortunately burned alive and died in his truck cab because another truck driver was doing something incredibly and admittedly unsafe. Fortunately, the offending truck driver and truck company were from Canada and had enough insurance to net a \$3.5 Million U.S. Dollar result for my truck driver client's family. Increasing insurance minimums will protect the truck driver and his family because the limits from 1980 are truly not enough to protect those catastrophically killed or injured in a truck crash. Moreover, increasing insurance minimums will also protect the taxpayer. In the 8-figure type catastrophic scenario, someone has to pick up the medical costs for anything beyond the insurance minimums. The negligent truck company's insurance should be that party, not the public, because that will directly incentivize safer trucking operations.

Interestingly, the Owner-Operators Independent Drivers Association ("OOIDA") represents members that belong to one of two groups. The majority of the membership are the true Owner-Operator, someone who simply owns a tractor only. This Owner-Operator cannot hold himself or herself out as a for-hire motor carrier without motor carrier authority. As such, the majority of OOIDA's members are leased-on to a larger motor carrier under FMCSR 376.12. It is the larger motor carrier that must provide the insurance when the leased-on Owner-Operator is hauling freight in either the motor carrier's own trailers or a customer's trailer. The Owner-Operator then benefits when he or she is leased-on to a motor carrier that has more than the minimum insurance. Not only is he or she protected, but his or her equipment is protected under the blanket of a larger insurance policy. Similarly, and not aforementioned, the Owner-Operator would also benefit if the leased-on motor carrier's trailer has override guards. Both the costs of the override guard and the increased insurance does not fall on the back of the Owner-Operator, but onto the motor carrier to whom he or she is leased-on.

OOIDA's other group of members are smaller truck companies with motor carrier authority. These people are particularly vulnerable to civil liability verdicts that exceed insurance minimums because they are "mom and pop" type operations without deep pockets or significant assets. They typically do not have the ability to pay for catastrophic claims in the event that one of their drivers causes an override crash, catastrophic injury, or fatality that exceeds minimum insurance. Increasing insurance minimums will further protect them from financial ruin. I doubt that we will hear OOIDA take this stance because OOIDA writes insurance policies typically just above the insurance minimum at \$1,000,000.00. OOIDA also profits from writing these policies. OOIDA's insurance arm likely does not want increased insurance minimums. I am hopeful that Subcommittee Members will address this topic during the question answer session so that OOIDA's representative and I can have a friendly debate on this issue. I hope to persuade OOIDA to change their stance in opposition to insurance minimums and that Subcommittee Members will keep in mind the various hats that the OOIDA representative wears when providing testimony on this issue on behalf of its varied membership.

The minimum insurance level set in 1980 for general freight motor carriers is \$750,000.00 per accident. This insurance minimum, untouched since the Motor Carrier Act of 1980 was enacted by Congress, has *never* been adjusted to keep pace with inflation and is now completely inadequate. Had the \$750,000 limit automatically increased each year for inflation, today minimum insurance coverage for trucking operations would be about \$2,400,000.00.<sup>38</sup> Most truck companies have not increased their insurance coverage with inflation and, instead, carry about \$1,000,000.00 in coverage. That is not enough. While responsible companies and drivers carry much more than \$1,000,000.00 in coverage, too many companies do not. The insurance minimum covers all persons injured in the crash, and the current \$750,000.00 is woefully inadequate in cases involving serious medical injury. This is especially true in crashes involving multiple vehicles which can result in catastrophic injuries and even deaths.

Take into consideration an unsafe truck driver that causes a multi-vehicle crash that results in four (4) fatalities or more. The minimum insurance does very little

<sup>38</sup> Determined using the Department of Labor, Bureau of Labor Statistics "CPI Inflation Calculator" at <https://data.bls.gov/cgi-bin/cpicalc.pl>

for these innocent victims' families. In fact, broker/shippers then shoulder the burden of these multi-fatality crashes because the truck driver who killed these four people was presumably an unsafe driver or driving for an unsafe company that should not have been hired. Moreover, the public CSA data likely showed this company held Out-of-Service rates that exceeded national averages, so the broker/shipper had no business hiring such a truck company in the first place, unless they had an economic incentive to do so.

In 2014, the FMCSA released a report to Congress that examined the adequacy of the current financial responsibility requirements for motor carriers. The conclusion was clear: today, the costs of injuries and fatalities arising from crashes far exceeds the minimum insurance levels interstate operators are required to carry. These costs are real and are often in the form of the cost of medical care, which in the case of a catastrophic injury is shifted from the negligent wrongdoer to the taxpayer funded programs such as Medicare or Social Security Disability. Worse yet, when there is insufficient compensation, families, including truck drivers, are forced to declare bankruptcy or rely on government programs after being financially drained.

Lastly, raising the trucking insurance minimums will give insurance companies real incentives to enforce safety, with the effect of providing crash victims better compensation for their injuries. This includes truck drivers who I have repeatedly stated are victims of truck crashes too!

I 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. Or, as an alternative, members of the Subcommittee can direct the Secretary of Transportation to take immediate action to index the minimum level to inflation, which can be accomplished without a rule-making.

#### A "NATIONAL HIRING STANDARD" FOR BROKER/SHIPPERS IS MISLEADING

As the title of this Hearing indicates, truck drivers and the trucking industry are "Under Pressure." In reality, while the proposed national hiring standard sounds like it is pro-safety, it is deceptive and dangerous and will neither enhance interstate commerce nor truly create a "national hiring standard." It disguises the indemnification of broker/shippers as the creation of a national safety standard. The "standards" offered contain no safety performance data and restrict those who have been adversely impacted in a truck crash, including truck drivers.

An increase in "pressure on the State of Trucking in America" would be to create a "national hiring standard" that further insulates broker/shippers from the responsibility of making sure their freight is shipped safely. A cheap motor carrier offers lower freight rates simply because they are skimping somewhere to keep their profit margins. Skimping anywhere usually implies safety is the first to be sacrificed. They use worn out equipment, undertrained drivers, and dangerous drivers. It is frequently the demands of the brokers/shippers to get freight to its destination "on time" that creates the pressures discussed at this Hearing. All of us in this room and all of the constituents represented by the Members of this Subcommittee are somewhat guilty of hitting the "next day shipping" button on the website vendor's payment and shipment page, further putting pressure on truck drivers and truck companies. Insulating broker/shippers from liability will increase the danger on the roads by allowing them to put further pressure on trucking companies to reduce costs and race to the delivery point in time without having any responsibility for choosing the cheapest, fastest carriers. This perpetuates the risks to the truck driver and the motoring public. Broker/shippers are not subject to the FMCSRs the same way as a truck driver and motor carrier. It is unfortunate as many truck drivers and truck companies violate the FMCSRs just to keep the relationship with the broker/shippers. In this scenario, "the customer is always right" does not apply. It is frequently the broker/shippers that ask, encourage, or coerce truck drivers and truck companies to violate safety policy. If the trucking company will not compromise its safety practices with cheaper equipment, cheaper drivers and faster driving, the broker/shipper just picks a competitor who will—which spirals safety on the roads downward and puts responsible trucking companies at an unfair competitive disadvantage. We cannot encourage broker/shippers by immunizing them from liability which would allow them to push truck drivers and truck companies even harder to haul freight unsafely.

Broker/shippers are third-party intermediaries responsible for hiring the companies and the drivers who transport goods on our highways. The broker/shippers do not own the goods that are being transported, nor do they physically transport the goods. Instead, the broker/shipper facilitates and coordinates the shipment of goods

in various capacities, including hiring the truckers providing transport. In many instances, the broker/shipper will choose the cheapest option, hiring independent contractors and fly-by-night companies with horrible safety records. These contractors frequently disappear or declare bankruptcy when a lawsuit is filed. Immunizing the third-party broker/shipper, which is sometimes the only party that can be held responsible for any wrongdoing in the shipping process, shifts responsibility to the underinsured truckers and leaves motorists hurt or killed on the road without sufficient remedy or recovery. This arrangement shifts the burden of the loss onto the taxpayers through government programs or increased health insurance rates.

The broker/shippers have been asking Congress to establish a so-called “national hiring standard.” This would be a mistake, essentially providing immunity to the broker/shipper who meets a meaningless set of criteria with respect to hiring a trucking company. The criteria are meaningless because they are already required by law and because the safety fitness determination program is seemingly non-existent. The “national hiring standard” proposal does not create any new standards to determine if trucks are safe, but instead uses the old FMCSA standards that are “outdated” to avoid liability.

Indeed, no process exists right now for a safety determination rating because the FMCSA rulemaking that would have established the standard has been dropped. This makes the public information on the Compliance, Safety, Accountability/Safety Measurement System, FMCSA website, all the more relevant. Congress should not bury a motor carrier’s safety score from public view. Instead, the public and broker/shippers should easily be able to see a motor carrier’s true scores and make wise decisions based on them. Moreover, if a truck driver is intending to apply for a job with a motor carrier, he or she should also be able to see the public safety scores of the truck company he or she is applying to work for so he or she can make an informed choice to choose to work for a safe trucking company. The safe trucking companies, which are the majority, should also encourage CSA/SMS scores to remain public for all of these same reasons.

The so-called “national hiring standard” does not increase safety standards or ensure that trucks are safe. Instead it’s an immunity provision that further erodes public safety.

#### SPEED LIMITERS REDUCE CRASH RISK AND SAVES MONEY

Since truck drivers are typically paid by the mile, there is a strong incentive to drive too fast. In my home State of Ohio, Legislators are incorporating into the budget a possible increase of the speed on Ohio’s highways to 75 mph. Of note, it has been reported that the Ohio Trucking Association is behind the push for the speed limit increase. Why? Because the new electronic logging device (“ELD”) mandate makes it harder to distort on hours-of-service (“HOS<sup>39</sup>”) requirements. Per mile compensation always encouraged unsafe truck drivers to falsify logs and go farther and get the extra pay by mile. Now that it is harder to distort the HOS with the ELD mandate, unsafe truck drivers are incentivized to make up the difference by driving faster to achieve more miles and more pay.

High speeds are a significant contributing factor to high fatality rates on our nation’s roads. Consider the fact that NHTSA and the IIHS only crash test vehicles at 45 mph or less. The human body cannot sustain crashes at higher speeds. Just ask NHTSA and IIHS why they do not crash test at higher speeds? Their answer will likely be similar. An increase in speed limits on highways does not make any sense because even the safest vehicles will not protect occupants. Yet state by state speed limits are increasing throughout the country. With increased speeds on our nation’s roadways, we have 80,000-pound trucks driving at increased speeds too. Unfortunately, I regularly see truck drivers tweet photographs onto social media platforms showing their truck’s speedometer topping out above 80 mph. Not only is the truck driver speeding, he or she is recklessly taking photographs and tweeting about it too!

My truck is an older, classic Peterbilt. I have it deliberately governed at a maximum speed that is less than the 70 mph Ohio’s highways allow. I will tell you from a truck driver’s perspective, there is no reason to go 70 mph or greater unless there is an economic incentive to do so. Unfortunately, that equates to a disincentive for the safety of the truck driver and the motoring public.

On September 28, 2016, both the FMCSA and NHTSA filed an NPRM requiring the installation of speed limiting devices in heavy vehicles.<sup>39</sup> A comment period elicited over 2,250 comments debating the merits of the proposal and to garner feed-

<sup>39</sup>Department of Transportation, National Highway Traffic Safety Administration, Docket No. NHTSA-2015-0188, <https://www.regulations.gov/docket?D=NHTSA.2016-0087>

back as to whether speeds should be limited to 60, 65, or 68 mph.<sup>40</sup> The rulemaking was a response to petitions from the ATA and Roadsafe America. It is estimated that limiting truck speeds will prevent 1,115 fatal truck crashes annually.<sup>41</sup> *Both agencies have taken no further regulatory action.*

There is no cost to speed limit a truck. In fact, most larger truck companies have already figured out that a speed limited truck at a lower speed saves exponentially on fuel and adds to the bottom line. Speed limiters improve a truck company's profitability and safety. Please mandate speed limiters to protect truck drivers, particularly the younger and newer truck drivers, from going at speeds that will get them and likely others killed.

#### AUTOMATIC EMERGENCY BRAKING WILL SAVE LIVES

The top three causes of truck crashes are rear end collisions, lane departures, and rollover accidents.<sup>42</sup> OEMs continue to introduce safety technology to prevent each of the top three causes of crashes, including automatic emergency braking, lane departure warning, and electronic stability control systems, the latter of which is already mandated. Rear end collisions are listed as the top cause of truck crashes annually, accounting for approximately 33,000 or 23.1% of all truck wrecks.<sup>43</sup> Automatic Emergency Braking ("AEB") technology is proving to have great success at preventing rear-end collisions. It is anticipated that once this Subcommittee's Members mandate automatic emergency braking, rear end collisions will no longer top this list.

#### *18 Years of Forward Collision Avoidance Technology*

Early collision warning systems have been in existence for well over a decade. Penske Logistics announced on September 18, 2001 (almost 18 years ago) that it was installing collision warning system equipment on its entire tractor fleet.<sup>44</sup> At that time, Penske Logistics' Vice President of Safety, Paul Pentazer, was quoted as stating, "we feel so strongly about the benefits . . . we now include it as standard equipment on all new tractor orders."<sup>45</sup> This older technology did not include automatic emergency braking. Forward collision warning technology (without automatic braking) simply emits an urgent audible alert with a driver display to warn the driver of an impending collision or that the driver's following distance is unsafe.

Collision Warning/Mitigation encompasses three related technologies: 1) Forward Collision Warning/Alert Systems; 2) Adaptive Cruise Control; and, 3) Collision Mitigation Systems.<sup>46</sup> Forward Collision Warning is the most basic, simply alerting drivers (both audibly and visually, on an in-cab display) that a rear end collision is imminent. Adaptive Cruise Control allows a truck to maintain a set time-gap between it and a vehicle in front of it, by automatically decelerating if the other vehicle slows down and re-accelerating (up to a set speed) if the other vehicle speeds up or switches lanes. The most advanced systems alert drivers to potential conflicts with objects and automatically initiate emergency braking to stop the commercial vehicle from causing a rear-end collision or, at a minimum, reduce the severity of the crash.

On-board radar is mounted in the front bumper to detect vehicles up to 500 feet in front of the truck.<sup>47</sup> Earlier radar systems could only track metallic vehicles and had a tendency to miss smaller vehicles such as motorcycles and bicycles. Radar systems were unable to detect pedestrians. Technology evolved allowing for camera-

<sup>40</sup>"Suggesting 60-68 mph, FMCSA, NHTSA propose truck speed limiters" FleetOwner, August 26, 2016, [www.fleetowner.com/regulations/suggesting-60-68-mph-fmcsa-nhtsa-propose-truck-speed-limiters](http://www.fleetowner.com/regulations/suggesting-60-68-mph-fmcsa-nhtsa-propose-truck-speed-limiters)

<sup>41</sup> Department of Transportation, National Highway Traffic Safety Administration, Docket No. NHTSA-2015-0188, <https://www.regulations.gov/docket?D=NHTSA-2016-0087>

<sup>42</sup> James Hedlund and Daniel Blower, *The Large Truck Crash Causation Study (LTCCS) Analysis Series: Using LTCCS Data for Statistical Analyses of Crash Risk*, January 2006, Office of Information Management, Publication #: FMCSA-RI-05-037, "Table 4—Estimated Number of Truck Crashes by Crash Type."

<sup>43</sup>Id.

<sup>44</sup>"Penske Logistics to Install Eaton Vorad Collision Warning System Throughout Tractor Fleet Following Successful Pilot Program with Whirlpool Corporation." Published September 18, 2001, <https://www.prnewswire.com/news-releases/penske-logistics-to-install-eaton-voradr-collision-warning-system-throughout-fleet-followign-successful-pilot-program-with0-whirlpool-corporation-72060747.html> Note to Reader: The Vorad from Eaton was acquired by Bendix Commercial Vehicle Systems, LLC (an Elyria, Ohio based company) in 2009.

<sup>45</sup>Id.

<sup>46</sup>2014 Freightliner Cascadia's Driver's Manual, Publication Number STI-478-6 (2/13), Part Number STI 478, Page 6.1, Daimler Trucks North America, LLC

<sup>47</sup>Meritor WABCO "OnGuard", <http://www.meritorwabco.com/Product,2,15,2,OnGuard%e84%a2-Collision-Safety-Systems-.aspx>; Bendix "Wingman Advance", [http://www.bendix.com/en/products/acb/wingmanadvanced\\_\\_1.jsp](http://www.bendix.com/en/products/acb/wingmanadvanced__1.jsp)

based systems with enhanced detection capabilities that will also detect pedestrians and bicyclists.<sup>48</sup> Fleet acquisition managers now have the option to install both of these advanced technologies for the safest overall operation.<sup>49</sup>

Going too fast and not allowing for a safe stopping distance are primary causes of rear end collisions. In 2016, advanced camera-based technology was introduced that reads and compares the posted speed limit to the truck's real-time speed.<sup>50</sup> An audible alert is issued to the truck driver when the truck is more than 5 mph over the posted speed limit. If the truck is more than 10 mph over the speed limit, the audible alert is accompanied with a one-second speed reduction (automated engine throttle reduction) to slow down the truck and refocus the driver's attention.<sup>51</sup>

#### *Choosing to Stop Short of a Collision with Automatic Emergency Braking*

The choices made by a truck company's fleet acquisition personnel demonstrate whether a truck company prioritizes crash avoidance. FCAM technology with AEB is currently available as a market option when purchasing equipment from an OEM. By choosing to install FCAM technology, a trucking company's purchasing decision can dramatically reduce the number of preventable rear end collisions or at the least, reduce crash severity, likely preventing a fatality.

Bendix Wingman Advance and Meritor WABCO's OnGuard are the two leading FCAM options available to install on fleet equipment.

According to Dean Newell, Vice President of Safety, Maverick USA, "we have seen a clear downward trend in rear end incidents since we started putting OnGuard systems on our trucks . . . our rear end accidents were at a rate of 0.09 per million miles in 2008, and they went down to 0.06 per million miles in 2011."<sup>52</sup> Jim Boyd, manager of fleet technical services at Southwester Freight (a 3,000 unit motor carrier), utilizes both Bendix and Meritor WABCO collision avoidance systems, giving them a positive review. He has been quoted as saying the systems "might not completely help you avoid a crash, but they certainly can take some of the speed out of a crash. We feel like our success with the systems has already made a positive impact on accident reduction."<sup>53</sup> An FMCSA study found that between 8,597 and 18,013 rear end crashes could be prevented annually with the use of Forward Collision Warning systems.<sup>54</sup>

#### *Automatic Emergency Braking Mandate Needed*

NHTSA along with the Virginia Tech Transportation Institute completed a year-long test of trucks equipped with collision avoidance systems. The test was a success and involved 150 trucks, more than 100 drivers from 7 unidentified motor carriers traveling and producing 3 million miles of data, with no rear end crashes.<sup>55</sup> NHTSA reported that fleet safety managers should recommend crash avoidance system technology with new fleet acquisitions.<sup>56</sup>

On October 16, 2015, NHTSA granted a petition submitted by truck safety advocates "to establish a safety standard to require automatic forward collision avoidance and mitigation systems on certain heavy vehicles."<sup>57</sup> The ATA's former Director of Engineering publicly proclaimed that, "ATA strongly believes that preventing rear-end crashes is a far better strategic goal than mitigating them and strongly

<sup>48</sup>"Development of a Camera-Based Forward Collision Alert System" General Motors Company and Mobileye Vision Technologies, Ltd.; <http://www.mobileye.com/technology/applications/vehicledetection/forward-collision-warning/>.

<sup>49</sup>"Freightliner Detroit Assurance Suite of Safety Systems" <https://freightliner.com/demand-detroit/detroit-assurance-suite-of-safety-systems/>

<sup>50</sup>"Bendix Takes Wingman Collision Avoidance Tech To Next Level, Includes Auto Slowdown for Speeding." Overdrive Magazine, <http://www.overdriveonline.com/bendix-takes-wingman-collision-avoidancetech-to-next-level-includes-auto-slow-down-for-speeding/>

<sup>51</sup>Id.

<sup>52</sup>The American Trucking Associations, Transport Topics, *Anti-Crash Systems Proliferate as Fleets See Safety Benefits*, January 23, 2012.

<sup>53</sup>The American Trucking Associations, Transport Topics, *Collision Avoidance Systems Succeed in NHTSA Field Test*, page 23, June 20, 2016.

<sup>54</sup>"Benefit-Cost Analyses of Onboard Safety Systems," by Amy Houser (MC-RRT), February 2009, Federal Motor Safety Administration Office of Analysis, Research and Technology.

<sup>55</sup>The United States Department of Transportation, National Highway Traffic Safety Administration, "Field Study of Heavy-Vehicle Crash Avoidance Systems" DOT HS 812 280, June 2016; The American Trucking Associations, Transport Topics, *Collision Avoidance Systems Succeed in NHTSA Field Test*, page 1, June 20, 2016.

<sup>56</sup>Id.

<sup>57</sup>The United States Department of Transportation, National Highway Traffic Safety Administration, Grant of Petition for Rulemaking, "Federal Motor Vehicle Safety Standard; Automatic Emergency Braking." DOCKET NO.NHTSA-2015-0118. <https://www.regulations.gov/document?D=NHTSA-2015-0099>.

recommends that all vehicles (light and heavy) be equipped with forward collision warning and mitigation braking technology.”<sup>58</sup>

All too often the bad apple spoils the bunch and we hear about a truck driver who is drowsy, distracted, drunk or drugged causing a collision resulting in multiple fatalities. For example, on June 25, 2015, truck driver Benjamin Brewer was reported to have been awake 55 hours straight and on methamphetamine when he caused six fatalities after rear ending seven vehicles that had stopped in a construction zone.<sup>59</sup> Truck driver John Wayne Johnson was charged with a rear-end crash that took the lives of five Georgia Southern University nursing students and severely injured two others in an April 2015 crash.<sup>60</sup>

AEB is a proven technology endorsed by many in the trucking industry. A mandate for AEB on all new trucks will clearly ease the pressure on “the State of Trucking in America.” Unfortunately, in spite of various studies, the granting of a petition, and the support of many in the industry, NHTSA has taken no further regulatory action on this issue. How many more people need to die before a mandate? It is imperative that Members require NHTSA to take immediate action on this issue. The European Union mandated all new trucks to be equipped with AEB beginning in 2015. We are now several years beyond that. Why is Europe protecting its motoring public and we are not?

#### CONCLUSION

The fact that truck drivers are victims of crashes is an important point to consider. Not only are they on the receiving end of truck vs. truck crashes, but they suffer lifelong consequences when they are on the giving end. Speed Limiters are a simple fix, cost no money, and will protect truck drivers and the motoring public from harm. Speed limiters are supported by many in the industry as being cost effective, efficient, profitable and safe. AEB is also a simple fix. Mandating this technology will clearly reduce crashes and fatalities and is supported by many in the trucking industry.

Nearly 40 years is too long to keep insurance minimums from increasing, especially considering the effect of inflation and the huge increase in truck volume and traffic. Victim truck drivers and the motoring public deserve to have their families protected with increased insurance minimums.

Lastly, 60 years is far too long to ignore the very real problems of vehicle crash incompatibility. We need to have override guards that allow the safety engineering of passenger cars to interact with safety features of trucks, so that all of those features can work together to protect vehicle occupants. The fact that many catastrophic injuries and deaths are easily and affordably preventable, yet nobody is doing anything to prevent them, is simply unconscionable.

Each of the items discussed here will help achieve the “Vision Zero” initiatives all over the country. I hope Members of this Subcommittee sense and realize the urgency needed to fix these issues without further delay.

I would like to recognize those in this room that are not here today because their choice in a job have led them to this Hearing. They are the family members of victims of truck crashes. Christa Hammack (lost her daughter, Erin Alexander in a side underride in Texas on May 4, 2018) is here with her younger daughter, Abigayle. Marianne Karth (lost her daughters AnnaLeah and Mary in a rear underride in Georgia on May 4, 2013) is here with her daughter Rebekah Chojnacki (pronounced Hoy Not Ski). Unfortunately, her husband Jerry Karth could not be here, but needs recognition and thanks as well. Also, Lois Durso could not be here today, but has been tirelessly working with Marianne to raise underride awareness here in DC after losing her daughter Roya Sadigh in a side underride on November 24, 2004. These individuals, in particular, have more courage than anyone I have ever met and deserve thanks and recognition for their work to prevent others from experiencing the same grief they have felt since the fateful day their loved ones perished.

<sup>58</sup> Ted Scott, Director of Engineering, American Trucking Associations, February 5, 2016 Public Comment on NHTSA Federal Motor Vehicle Safety Standards: FMVSS No. 223 and 224 Rear Impact Guards, Rear Impact Protection, DOCKET NO. NHTSA-2015-0118. <https://www.regulations.gov/document?D=NHTSA-2015-0118-0015> Please note that Ted Scott has since passed away, may he rest in peace.

<sup>59</sup> Shelly Bradbury and Alex Green, “Death on the Highway: Six People Died When A Tractor-Trailer Slammed Into Traffic on June 25—But the Crash Was One of Many, And It Will Happen Again,” *Chattanooga Times Free Press*, December 20, 2015.

<sup>60</sup> American Trucking Associations, *Transport Topics, Driver, Company Indicted in 2015 Truck Crash That Killed Five*, page 23, June 20, 2016.

“Under Pressure: The State of Trucking in America” needs to have the pressure relief valve released. These safety initiatives help. They help your constituents, the motoring public, and the truck driver. Help the truck drivers of America by co-sponsoring the Stop Underrides Act of 2019 and move forward these other initiatives! No longer can Congress, NHTSA, FMCSA, and the trucking industry sit idle on these important issues. Your decisive action is desperately needed to save lives and truck driver livelihoods. I thank you all for the opportunity to testify before you today and I welcome any and all questions, even the most challenging ones. Thank you again!

## APPENDIX A

### TRUCK UNDERRIDE PREVENTION ATTEMPTS

#### HISTORICAL CHRONOLOGY

- 1953* First federal standard requires underride guards for both combination tractor-trailers and single-unit trucks, but includes no strength testing requirements.
- 1967* Actress Jayne Mansfield dies in a rear underride truck crash.
- 1969* National Highway Safety Bureau (precursor to NHTSA) proposes guards on combination tractor-trailers and single-unit trucks with 18-inch max clearance; predicts side guards will be added after further research.
- 1971* NHTSA abandons 1069 rulemaking.
- 1972* NTSB recommends NHTSA require energy-absorbing underride and override barriers.
- 1976* IIHS crashes Ford Granada into tractor-trailer with improved, prototype guard that prevents underride. Same test with federally compliant guard results in severe underride.
- 1977* IIHS petitions NHTSA for a new rear underride standard.
- 1981* NHTSA issues proposal to upgrade underride protection requirement.
- 1986* IIHS study shows rear guards designed to prevent underride work well on British rigs.
- 1996* NHTSA issues new standard effective 1998, covering combination tractor-trailers and requiring 22-inch max clearance and strength testing. The standard does not affect single-unit trucks. They remain under the 1953 standard.
- 2004* Transport Canada issues standard after crash tests show U.S. standards is insufficient. Canadian rule approximately double strength requirements.
- 2010–12* IIHS testing shows guards can fail in 35 mph impacts. Guards on Manac trailers are the only one from the 8 largest manufacturers to prevent severe underride in 30% overlap test.
- 2011* IIHS petitions NHTSA for improvements to standard for rear underride protection.
- 2013* NHTSA releases study, “Heavy-vehicle crash data collection and analysis to characterize rear and side underride and front override in fatal truck crashes.”
- April 3, 2013* NTSB urges NHTSA to take action to improve underride guards, including side underride guards.
- May 5, 2014* Marianne Karth and the Truck Safety Coalition submit their own petition for underride rulemaking.
- July 23, 2015* In an advanced notice of proposed rulemaking, NHTSA suggests rear underride guards would not be cost effective on single-unit trucks.
- Dec. 16, 2015* NHTSA proposes adopting Canadian underride guard requirements for combination tractor-trailers only.
- May 5, 2016* IIHS, AnnaLeah & Mary for Truck Safety, and Truck Safety Coalition host industry-wide, Underride Roundtable to identify solutions to this six decade long concern.
- March 1, 2017* IIHS announces and presents its ToughGuard Award to five (5) national trailer manufacturers. Trailers that qualify for the ToughGuard Award have rear guards that prevent underride of a midsize car in three test modes—full-width, 50 percent overlap, and 30 percent overlap at 35 mph
- Mar. 30, 2017* IIHS performs a successful 35 mph crash test of a Chevy Malibu into the side of a semi-trailer with an aftermarket side guard crash attenuator named AngelWing Underride Protection. The test was performed with the

AngelWing inventor, Perry Ponder, and Robert Martineau, CEO of AirFlow, a Side Guard Manufacturer.

- Mar. 31, 2017* IIHS performs a similar test as the day before, however this test was performed without the Side Guard demonstrating the catastrophic and fatal consequences of underride truck crashes.
- Aug. 29, 2017* IIHS, AnnaLeah & Mary for Truck Safety, and the Truck Safety Coalition host the 2nd Underride Roundtable to further identify solutions to the issues associated with side underride and passenger compartment intrusion. IIHS performed a successful 40 mph crash test of a Chevy Malibu into the side of a semi-trailer with an aftermarket AngelWing Underride Protection side guard.
- Dec. 12, 2017* “Stop Underrides Act of 2017” was introduced into both the House and Senate.
- Sept. 29, 2018* IIHS announces all eight (8) major trailer manufacturers have earned the ToughGuard Award for rear underride guards, exceeding FMVSS standards.
- March 5, 2019* “Stop Underrides Act of 2019” was introduced into both the House and Senate.
- Mar. 26, 2019* AnnaLeah & Mary for Truck Safety host in Washington, D.C. three (3) grassroots crash tests into the sides of trailers, two with side underride guards, and one without a side underride guard.
- June 2019* NHTSA *withdraws* the advanced notice of proposed rulemaking to amend the FMVSS to single-unit trucks to be equipped with improved rear guards.
- June 12, 2019* The House Committee on Transportation and Infrastructure’s Subcommittee on Highways and Transit hold a hearing titled, “Under Pressure: The State of Trucking America” to allow for testimony on safety initiatives including the Stop Underrides Act of 2019.

Ms. NORTON. Thank you very much, Mr. Young. We want to proceed now with questions from Members. Each Member will have 5 minutes. And I will begin by recognizing myself.

Just leading off, Mr. Young, where you left us, let me again thank those who are here who have had loved ones lost in crashes of various kinds. This hearing is first and foremost about finding answers. I heard your testimony about underride guards, Mr. Young.

Let me ask Mr. Spear because prior to being at ATA, he was with Hyundai. And I would be very interested in your response, whether you think vehicle crash compatibility is an issue and requires additional considerations on the part of the companies, and how you would respond.

Mr. SPEAR. Thank you, Madam Chair. This is a real issue. The opportunity to meet with a number of the advocates of the side underride legislation—not Mr. Young, unfortunately, yet—but a number of the others in the room, and I admire them for their passion and opening up this debate. I do think we have a difference of opinion on how best to improve safety. And I think—

Ms. NORTON. Your view is what on that.

Mr. SPEAR. I think compatibility between cars and trucks is possible. I think Hyundai is a good example. I am not longer on the payroll, so I think I can say this candidly. They are the only OEM that actually manufactures cars and truck trailers. So they are unique. I do not know of any other OEM in the world that does both.

And I am very well aware that they are doing connectivity tests that can utilize automated emergency braking in the vehicle. Two-thirds of the accidents that involve trucks are caused by passenger

vehicles, largely from speeding and texting. People are paying less attention to what they are doing on the road, and they are hitting the truck. It is a fact.

And I think technology has a role to play. Connectivity—

Ms. NORTON. So the truck must be prepared to defend itself.

Mr. SPEAR. Well, I think connectivity could solve a lot of the problem. If the brakes are applied, even if the driver is not aware, the car will not hit the trailer. This legislation assumes that an accident is going to happen. The equipment that was shown in the videos at 35 miles an hour, it is my understanding it is not effective beyond 35 miles an hour.

Studies at GAO even recommended to you that more study needs to be done on this. The added weight, the structural integrity of the trailer, is it compromised? These are valid questions that I think need to be fleshed out before you proceed with something like this and apply it to all trailers, as proposed in the testimony.

Ms. NORTON. Thank you very much. It was important to hear from somebody from the industry.

I have to ask this question. Ms. Chase, of course, testified about—she said a dozen people would be killed before the end of the day. Now, what bothers me is I am used to—I am an American. I am used to things getting better, not worse.

I said in my opening testimony that there was a 10-percent increase in 1 year, between 2016 and 2017, and a 40-percent increase in 10 years, in truck crash fatalities. We have got to understand why this is happening in order to get to a remedy.

And so I need some feedback from those of you on the panel. Why are we going the wrong way, and what can be done about it?

Mr. SPEAR. I think you would get a number of answers from this panel. I will begin in brief. I think there are a lot of factors that contribute to the increase. We do not deny it. It is happening. The overall trend over several years, it is going down, but this recent uptick is very alarming.

Ms. NORTON. It is 10 years.

Mr. SPEAR. Yes. I am going back further, the overall. But I will say the uptick is alarming. I think it is caused because the economy is strong. There are more people at work. There are more people commuting. And quite frankly, the Federal Government is not investing in infrastructure. There is less room. There are a lot more accidents out there happening as a result of the lack of infrastructure investment in this country.

And we are still out there moving freight. Seventy-one percent of the domestic freight in this country is moved by truck. Those demands do not go away, so we have to find ways to be safer, given the current decaying infrastructure that we are being dealt.

Ms. NORTON. Anybody else? Yes, sir?

Mr. SPENCER. Yes. I would jump in on this. Realistically, what looking at the data shows is there is a disconnect between compliance with the regulations and improved safety outcomes. See, most of the regulations that are in force that make up CSA do not have anything to do with safety. But that has been the entire focus.

The operating environment for drivers, truck drivers, has become much, much more stressful. The one thing the ELD did was make drivers feel like they are constantly under pressure, being watched

every minute. It exacerbated the shortages of places to park, for truckers to park, that we have had for 20 years.

Those are the kinds of things that are essential to actually improving commercial vehicle safety. You have to have experience, knowledgeable drivers. The other net effect of many of the regulations is more and more drivers have suddenly said, "There are other things that I could do." They have retired. They have left our industry. They will be replaced with some level of new people that will be less skilled and more likely to be involved in crashes.

Ms. NORTON. That is for sure. No specific time yet behind the wheel to get a CDL license.

Thank you very much. My time is expired. I go to our ranking member, Mr. Davis.

Mr. DAVIS. Thank you, Madam Chair. Thank you again to the witnesses. Mr. Craig, thank you for your hospitality for a couple of tours of your facilities up in the Chicagoland area. Please offer my best to the team at C.H. Robinson.

Mr. Spear, I am going to come to first. But I do want to note, this subcommittee has 56 Members on it. It is probably the most geographically diverse committee or subcommittee in this entire Congress. While I can appreciate the urban needs of Chairwoman Norton, my district is mostly rural. My district has many rural roads where many of your carriers are moving freight all around.

As a matter of fact, I have got about 7,750 farms producing almost \$450 million in grain exports every single year. These farmers obviously rely upon our Nation's infrastructure and rely upon our transportation to get their commodities to the marketplace and get them out into the global marketplace.

My question is: What can we as policymakers do to ensure our farmers continue to have access to the markets that they need? So that being said, I want to drill it down a little bit further.

Mr. Spear, I notice that ATA's priorities for a surface reauthorization bill, that in your priorities you believe motor carriers should be allowed to conduct marijuana testing of operators. In Illinois, the State legislature just recently signed into law the legal use of recreational marijuana. So there is no doubt that this is a concern for the industry and a concern for this committee.

Can you expand on the intersection of marijuana consumption and the trucking industry, and what we can do at the Federal level to improve safety?

Mr. SPEAR. We fall under the Federal requirements for drug testing, not States. And obviously, the use of marijuana, impairment from marijuana, opioids, these are all concerns to our industry and are added headwind in terms of attracting talent in.

And nine States plus the District, as well as Canada, now legalizing recreational marijuana is going to put added strain, added pressure, on the industry and its ability to hire people that are drug-free. We simply cannot have that in this industry. You cannot have people that are using controlled substances, that are impaired, operating 80,000-pound equipment, or tanks full of chemicals or petrol. OK? It is a problem that the States, we do not believe, are taking into consideration.

And there is no technology out there that allows you, an officer, to pull someone over and test for an impairment of marijuana as they do for alcohol. You can do a breathalyzer, instantaneously.

Mr. DAVIS. Are you aware of any—

Mr. SPEAR. That technology does not exist yet for marijuana.

Mr. DAVIS. So you are not aware of anyone testing any technology that would be able to do that, like a breathalyzer does for alcohol?

Mr. SPEAR. I think it is coming. It probably may be 3, 5 years out, from what I am told. But the best we can do right now is on the front-end screening, when hiring, hair testing should be a viable means in lieu of urinalysis. It gives you a better picture to see if that individual is a user.

And that conversation should happen before that driver is hired. And it is something that you all put into the FAST Act. It has been sitting over at HHS for 3 years. They have not kicked out their requirements so that DOT can move forward.

DOT is ready to move forward on this. It is an alternate. It is not a mandate. You can do either/or. And I think as we move in this direction where we are legalizing recreational marijuana, we have got opioid use in every community in the country, it seems. Our industry has to operate safe, and we need the tools to do it.

So we put it back on you to help us with that. Get on HHS. Get this thing done and out. We will work with innovators to come up with immediate ways to test. This is a problem that is not going away.

Mr. DAVIS. Are you seeing in the States that have already legalized recreational use of marijuana even more of a shortage of drivers being willing to take some of the opportunities that are available in the industry?

Mr. SPEAR. Absolutely. We have several carrier members that pay the extra expense to do hair testing in addition to the urinalysis, and when the driver comes in and applies and they know they are going to have to take a hair test, a lot of them just walk right out the door. They are using marijuana. They do not even go forward with the test. So we know this is a problem.

Mr. DAVIS. Well, thank you. I just want to also note something. I do not expect anybody to be able to have to answer this. But earlier this week I had a constituent in my office. He is a civil engineer. He conducts friction tests on pavement in the Chicagoland area up along the tollways.

And to complete these tests, he has to drive his Ford F-350 with a trailer, about 1,200 pounds, 3 hours to get to the Chicago area, sits around for about 7 hours waiting for traffic to die down, and by the time he gets out onto the workplace, he has only got about 4 hours, because of the hours-of-service rules, that he can actually do his job.

I do not think the rules that we pass in this committee, the bills that we pass and sign into law, ever intended for somebody like that to be impacted the way he is. I think it is something that this committee and subcommittee needs to take a look at in the future, and I certainly hope that the panelists would agree.

Thank you very much. I yield back no time because I have none, Madam Chair.

Ms. NORTON. Thank you, Mr. Davis.

I recognize the chair of the full committee, Mr. DeFazio.

Mr. DEFAZIO. Thanks, Madam Chair. I would just like to delve into whether or not we have a shortage of truck drivers or people willing to undertake truck driving. Or is it problems within the industry that are causing tremendous turnover, which make it appear that we have a shortage?

So as I understand, the Teamsters in their master agreement have essentially detention time?

Mr. BYRD. Yes. Yes, we do.

Mr. DEFAZIO. OK. So what kind of turnover do you have?

Mr. BYRD. We have—and thank you for the question. We have very low turnover, certainly less than 10 percent. I think it is largely related to compensation and having very good working conditions relative to the industry.

Mr. DEFAZIO. OK. Mr. Spencer, would you comment on the independent truck driver's experience with detention time and whether or not that is causing a problem for entrants or people moving out of the industry?

Mr. SPENCER. It is a monstrous problem that has actually cost trucking specifically as much as \$3 billion a year and society over \$5 billion. But the way it plays out is it means driver workweeks are always going to be 70 to 80 hours and sometimes longer.

Now, they are not always working all of those hours. But their time is being controlled by others, and the biggest bandits on that deal are going to be shippers and receivers. And I should point out that these folks even now in some instances have the gall to actually charge drivers for late deliveries.

Mr. DEFAZIO. And how tightly are they scheduling people? That is the first time I have heard about that.

Mr. SPENCER. Well, actually, Walmart started doing it more than a year ago. Made quite a noise doing it. Having said that, the dilemma that drivers have, they are asked to work around everyone else's schedules. They voluntarily choose to try to stay out of traffic congestion as much as they possibly can to accommodate everyone. They do not have their time. The rigidity of the regulations sometimes forces them to do things that they do not want to do.

Mr. DEFAZIO. All right.

Ms. CHASE. Mr. Chairman?

Mr. DEFAZIO. Yes.

Mr. YOUNG. Can I jump—

Mr. DEFAZIO. Yes. Go ahead.

Mr. YOUNG. The detention time is really key. The shippers and the receivers are not regulated like the truck driver. So ultimately, the shippers and receivers can abuse the entire Federal Motor Carrier safety regulatory code and then ultimately try to escape liability, which would not be a good thing because they are the ones that have put the pressure on these poor truck drivers.

And it is really important that the shippers and receivers hold onto some of that responsibility, and it starts with detention time. We need to eliminate some of these late fees with just-in-time shipping, eliminate detention time. With ELDs, we should know and be able to figure out which are the major abusers. Thank you for the time.

Ms. CHASE. Mr. Chairman?

Mr. DEFAZIO. OK. Yes?

Ms. CHASE. May I add a comment to that? It struck me as I went on the ride-along that I mentioned earlier that while we were sitting there waiting for the load both to arrive and to be loaded, that I was getting paid but the truck driver was not, which there was some irony in that.

I also just wanted to mention—and ask for your permission, Madam Chairwoman—for this study to be submitted to the record.

Ms. NORTON. So ordered.

[The study referred to follows:]

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**Stephen V. Burks and Kristen Monaco, “Is the U.S. labor market for truck drivers broken?” Monthly Labor Review, U.S. Bureau of Labor Statistics, March 2019, Submitted for the Record by Hon. Norton**

The report is retained in committee files and is available online at <https://doi.org/10.21916/mlr.2019.5>.

Ms. CHASE. Thank you. There is a study from March of 2019 from the Bureau of Labor Statistics. And Advocates does not have an independent economist, but we rely on the studies of everyone else. And I just wanted to mention this quote:

“While we do use ATA data to identify one segment of the trucking labor market, long-distance truck load motor freight, that has experienced high and persistent turnover rates for decades, the overall picture is consistent with a market in which labor supply responds to increasing labor demand over time, and a deeper look does not find evidence of a secular shortage.”

So I found that study to be completely telling.

Mr. DEFAZIO. Thank you.

To the Pepsi testimony on the 102,000-pound truck, I think, in Canada, that truck, I do not believe, even with six axles, would meet our bridge formula in the U.S. Do they have different bridges?

Mr. NOBLE. Correct. In our proposal, we are only proposing the 91,000-pound, not the 102,500-pound. Now——

Mr. DEFAZIO. OK. What would be the comparison of a stopping distance of a 91,000-pound, six-axle truck to an 80,000-pound, five-axle truck?

Mr. NOBLE. When we looked, the study shows that with adding the extra axle adds the extra brake. It is a 1-foot-shorter stopping distance on that vehicle.

Mr. DEFAZIO. OK. Now, of course, one issue here is reaction time, and without automated braking. Do you support the idea that we should move to automated systems to get the braking going faster?

Mr. NOBLE. At PepsiCo, obviously, all the safety features that we have—safety is paramount. So it is not just in conjunction of just reaction, but we have got to do more, and we have done more, to add to our trucks all the different safety features, just like the collision mitigations, the lane departures, blind spot, the headlights, backup cameras, antilock brakes, traction control, stability control, and driver training.

So I think all of that in conjunction enables a safer fleet. But it cannot be just one or the other.

Mr. DEFAZIO. OK. Thank you, Madam Chair. My time is expired.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. Gibbs.

Mr. GIBBS. Thank you, Madam Chair.

Mr. Spencer, the FAST Act required that, regarding the analysis of violations and other safety data under the Compliance, Safety, Accountability, the CSA, program be removed from public view until the deficiencies identified by the National Academy of Sciences study were addressed.

To your knowledge, have the recommendations of the National Academy of Sciences been fully implemented, the report? Can you comment what is the status, Mr. Spencer?

Mr. SPENCER. I understand that those issues are being addressed and tweaked now. As I said in my earlier comments, what we see is the big connect between relying on these particular regulations and actually safety. The regulations track compliance but they do not really measure or actually identify safe/unsafe, and that has been mentioned several times here today.

We are optimistic it can get a little bit better, but we think there needs to be a different focus on what we enforce. And again, about the last thing that we want to be doing is causing experienced drivers to leave trucking, and we have that right now for lots of reasons.

Mr. GIBBS. No. I agree with you. I do not think they should be made public until we have fixed that system or changed it or whatever because I think it has not been fair to the drivers. And you concur at that. Right? It should not be made public, no doubt?

Mr. SPENCER. All the way along, no one can rely on that data, that information, as an indicator of safety. In fact, early on some of the basics were compared with crashes, and FMCSA identified those that had more violations had fewer crashes. That has not been fixed.

Mr. GIBBS. Yes. Mr. Young, you noted in your testimony regarding the motor carrier selection standard, that it is really pointless. And you are concerned about providing cover to the brokers and shippers. Can you expound a little bit on that?

Because my understanding is we have got 1,700 or so brokers and shippers and 3 to 4 million carriers. And what this legislation would do is it would require that—to make sure that when the brokers are hiring carriers that they meet some minimum standards, like they have insurance, they have a good safety record. And in your testimony, you said it was pointless. So can you expound on that so I understand that a little bit better?

Mr. YOUNG. Yes. You missed the comments earlier. But I want to thank you for your warm welcome. Again, I am proud to be one of your constituents.

Very briefly, the way that the current system is set up is that the brokers and shippers need to be looking at the driver's scores and the motor carrier's scores, and particularly the out-of-service percentages, in my opinion, not just simply the basics, the behavioral analysis, safety improvement categories, and those 640 infractions that are part of those categories.

But if the out-of-service percentages are exceeding the national averages, the brokers should not be allowed to hire those particular folks or escape liability from hiring those particular folks when they are involved in a crash.

As I indicated also in my oral testimony, 10 percent of the motor carriers represent close to 50 percent of all the crashes. So the brokers and the public needs to know what these scores are in these safety scores in order to avoid those 10 percent bad apples so that they do not hire them.

And if they do not have a rating because, as we heard from Chair Norton, about 86 percent do not have ratings, or if the ratings do not exist or there is not enough information available, then the brokers and shippers should take it upon themselves.

C.H. Robinson used to have a safety questionnaire and audit that was included as part of their survey in order to get a motor carrier to sign on with them. It is my understanding that that is no longer part of their overall system. So it is really important that the brokers and shippers are not hiring these 10 percent bad apples spoiling the bunch or creating multiple fatality situations.

Mr. GIBBS. Now, this data you refer to, is this separate from the CSA? Or—

Mr. YOUNG. Yes. It is both, quite frankly. So the brokers and shippers were trying to escape liability in this last Congress, in the session, and it is anticipated that it is going to come up again. And it is important to not allow shippers and brokers to escape liability, particularly when they are the ones perpetuating cheaper freight rates. So safety must not be sacrificed for cheaper freight rates.

So really, it is these 10 percent of bad apples and motor carriers that the broker and shipper needs to be aware of. And quite frankly, it is the broker and shipper that puts the pressure on the industry. So if the broker and shipper—

Mr. GIBBS. I have only got 10 seconds, but I was just concerned—

Mr. YOUNG. Oh, my apologies.

Mr. GIBBS. That is fine. On the CSA, where do you come down on that? Is that a broken system? Has it been unfair? Has it been fair? What do you see in that?

Mr. YOUNG. I think it is a good system from the standpoint that it helps provide something as opposed to nothing.

Mr. GIBBS. My time is up and I yield back. Thank you.

Mr. YOUNG. Thank you.

Ms. NORTON. Thank you very much.

Mr. Cohen.

Mr. COHEN. Thank you, Madam Chair. I appreciate you and Ranking Member Davis holding this important hearing, and thank the witnesses for being here.

One important issue that I have worked on, and would like to return to—I know it has been discussed—is truck underride crashes, circumstances wherein all the passenger safety mechanisms placed in passenger vehicles are effectively rendered null and void when striking the rear, side, or front of a semi-truck tractor-trailer.

Sadly, in 2014, Randy and Laurie Higginbotham of my community lost their 33-year-old son Michael to an accident of this type, as thousands of others have. And it was unnecessary. Unfortu-

nately, this is an issue that has been on the industry's radar for decades, yet little action has been taken. Policies to prevent this are long overdue.

Ms. Chase, I know you discussed this earlier. You mentioned in your testimony in 2017 large truck crash fatalities took 4,761 lives, a 9-percent increase from the previous year, and an increase of 41 percent since 2009. That same year, 2017, there were 148,000 individuals injured in large truck crashes. Of those injuries, some of the most debilitating came because of truck underride crashes.

Can you expound on your testimony and suggest what Congress can do to effectively cure this problem?

Ms. CHASE. Yes. Thank you for your question, Congressman. And thank you also for your leadership on the underride issue. We are very grateful that you have introduced legislation to help eradicate this horrific and violent type of crash.

I think that the video that Mr. Young showed was very telling. There is just no escaping the laws of gravity and of physics. And when there is a proven solution such as an underride guard, we would really encourage Congress to require the Department of Transportation to issue a final rule, a performance standard, that would require this problem to be solved. We have the solutions. We just need the leadership to make it happen.

In addition, I also outlined a couple of other technologies that are proven and on the roads today, such as automatic emergency braking; a few of the other witnesses also mentioned it. That should be standard technology in all cars.

Mr. COHEN. Thank you so much. And I appreciate your mention of my "leadership." It is unfortunate that I have that leadership. It is not because of any particular study or knowledge. It is because constituents had their lives changed when their son was killed. And it could have happened to anybody in this committee. And if it would have happened to anybody in this committee, they would be in favor of changing this law as well. It just has to come home.

Mr. Young, based on your unique experience as an Owner-Operator Independent Drivers Association member and an attorney, do you believe the industry will voluntarily self-regulate for the sake of safety on this matter, or do you believe they need to be brought to the table?

Mr. YOUNG. I believe there needs to be a mandate. This has been a 60-year-old problem that began in 1953, and it still has not been solved. While the industry protects the back of a semi-trailer, why not the sides as well? We have the entire open sides, and we are talking about crumple zones, airbags, energy-absorbing bumpers, and seatbelts.

There is a ton of safety and data that has gone into the crash-worthiness of cars and protecting those occupants. But the bumpers have to match up in order for that to work. I do not see the industry doing this without a mandate.

Mr. COHEN. Thank you, sir.

An additional issue I have worked on and would like to bring to the attention and ask some questions is about double-deck livestock trailers that transport horses in interstate commerce. This remains largely legal in this country. Double-deck trailers with horses crammed inside have tipped over and been implicated in accidents,

in part because the animals cannot retain their balance—they have enough trouble at Santa Anita when they are running—and leading to dangerous situations on the road.

In one particularly gruesome accident in Illinois, 59 horses were being transported in a double-deck trailer. It crashed. Numerous horses were left dead while authorities worked for hours to rescue surviving animals from the wreckage. Simply no reason to put the safety of other drivers and passengers on the road at risk, as well as the welfare of the horses being transported in these conditions, when trailers are specifically designed for and can accommodate horses.

Mr. Young, once again, based on your experience—attorney, owner-operator group—do you think this is a worthy issue for inclusion in the highway safety and transportation laws?

Mr. YOUNG. I believe it is a worthy issue because we are talking about the high center of gravity. My truck company used to run scrap-hauling boxes with a power takeoff unit, and those scrap-hauling boxes have such a high center of gravity that when I went to OI to ask for insurance on it, they said, “Well, we do not even insure high-center-of-gravity boxes like that, or the power takeoff unit for those scrap-hauling boxes.”

So when you are talking about something with a high center of gravity like the horse trailers, then that is definitely a safety initiative. And if our goal is to get to Vision Zero and truly get to Vision Zero, then yes, it needs to be included.

Mr. COHEN. Thank you. Appreciate the panel, and I yield back the balance of my time.

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

Mr. Massie.

Mr. MASSIE. Madam Chair, I yield my time to the gentleman from Florida, Mr. Webster.

Ms. NORTON. Mr. Webster is recognized for 5 minutes.

Mr. WEBSTER. Thank you, Madam Chair. Thank you, Mr. Massie, for yielding.

Let’s see. Mr. Noble, were you the one with the slide that showed the trailers with their weight?

Mr. NOBLE. Yes, sir.

Mr. WEBSTER. Does the weight, the 80,000 pounds, does that include the weight of the trailer and the cargo?

Mr. NOBLE. Yes, it does.

Mr. WEBSTER. OK. So Mr. Noble—well, no, Mr. Spear. Let me ask you, is there anyone in your arena—I know you also cover the trailer manufacturers—are they working on anything that would make a lighter trailer? I have done a lot of study for resilient construction dealing with composites, but it did not have to do necessarily with building trailers. It had to do more with possibly using them for I-beams on bridges and so forth.

But if you had a lighter trailer, you could carry more weight. Is that correct? And still have the same weight?

Mr. SPEAR. The weight of the vehicle, generally, as the rules are written, discount the weight of the trailer and truck. So that is not counted against the capacity. When it is 80,000 pounds, it is 80,000 pounds of what you are carrying. There are always investments in the trailer to make it stronger, lighter. There are limits to that, ob-

viously; you do not want to compromise the integrity of the trailer either. There are standards that it has to uphold to, that it has to meet.

Mr. WEBSTER. Yes. Whether the same size I-beam, that's a composite, is stronger than steel. So that would not be the problem.

So would that not, though, be a case for proving that if you had a lighter trailer, it seems like the idea of trailer weight and so forth, if it is not included, then the cargo itself could be more even though you are going beyond the capacity. You would not be adding anything to the weight on the road. Is that correct?

Mr. SPEAR. Yes.

Mr. WEBSTER. Is there any thought of that?

Mr. SPEAR. Well, certainly. Obviously, size and weight, length and weight, have not been changed federally since 1982. So you have a mix-match now since that time of States that have been given exemptions, so you have a various degree of weight and length configurations throughout the country. It is just a quilt of limits that are permitted.

So if you are a manufacturer, you have got to meet a Federal limit. Obviously, we are interstate commerce, so we are jumping State to State all the time. So if you go from one State that allows it to another that does not, that equipment is not going to be as useful to the carrier.

So they are generally designing standards that are interstate-based unless you are running regional. Like in the West, you can run a number of configurations to weight as well as length. You have got Rocky Mountain doubles. You have got triples. Triple 28s. Those are not uncommon equipment used in various States.

So you have to take into account the patchwork of configurations that State laws now permit. The manufacturer now has to work with the carrier to design equipment that meets their customer needs. Does that make sense?

Mr. WEBSTER. Yes, that makes sense. However, we do not do State to State. We do give waivers, I assume. But the point is, if the trailer and the cargo weight were combined, which it probably should be if you are talking about what is going to tear up the roads or be unsafe or whatever, it seems like those two combinations should add up to really what weight we allow on the roads.

And the point is, if you did much investment possibly in a lighter trailer with composite material, you could get to a point where you would be able to have more cargo, really the same impact on the road, though. Do you think that is true?

Mr. SPEAR. Yes. I think there is evidence to show that, without compromising safety. I think the stoppage distance is exhibited in previous answers to questions. It is well documented. It is well tested.

Mr. WEBSTER. I mean, the stoppage distance is going to be governed by the overall weight no matter what. Even if we do not count that as the weight of the trailer, as part of the weight that you can carry on the road, still when you come to stopping you have got to include that into whatever calculation you are making in whatever time you can stop.

Do you know what the weight of a trailer is? I do not know. Do you?

Mr. SPEAR. It varies. There are so many configurations—28s to 48s to 53s. You got tank. Flatbed. It depends on what you are hauling.

Mr. WEBSTER. OK. Well, if you are not hauling anything, it is just—do you know?

Mr. NOBLE. Yes. If I may, we have been working on lightweight trailers because, obviously, our products with Pepsi are heavy. So we have been lightweighting our trailers for many years so trailers around that 15,000 pounds. So any more cargo—but we still have empty space on the trailer.

So one of the ideas that we have proposed in the SHIP Coalition is by putting more cargo, allowing more weight on that single trailer—we are not asking for length, more length on the trailer, but on that single trailer—then we can move more product with less miles, less accidents.

So when we look at the weight—and still be bridge-compliant. So all the efforts that you are talking about, lightweighting trailers to increase the cargo space and move it safely, is what we are looking to do.

Mr. WEBSTER. Thank you very much. I yield back.

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

Mr. Johnson.

Mr. JOHNSON. Thank you, Madam Chair, and thank you, Ranking Member Davis, for hosting this very salient hearing today. And thank you to the witnesses for your testimony.

The American trucking industry is rapidly evolving and complex. As this Congress looks to pass sweeping surface transportation legislation and a robust infrastructure package, we are tasked with considering both the effects of trucking on our roads, jobs, economy, and more, as well as Federal and regulatory input on the trucking industry.

More than ever, as our trucks are getting larger and heavier, more technologically advanced, and seek to travel further distances, we must ensure that those behind the wheel and those who share the road are optimally safe. I look forward to engaging the bevy of transportation professionals here today to achieve safer roads and regulations for all.

Mr. Spencer, your testimony illuminates the concern that heavy regulation on truck drivers may color the trucking industry, that it could get an undeserved reputation as a field with unappealing and unsafe work. With retention rates already under threat, there is valid concern that entry to the trucking workforce may be hindered.

How can we improve working conditions to attract and retain drivers in a rapidly evolving industry?

Mr. SPENCER. The reason drivers stay is because of pay, benefits, and working conditions. The reasons they leave are for the lack thereof. Many of the regulations that are on the books today hold drivers accountable for everything that could possibly go wrong, but none of those really address the frustrations and the lost time that drivers will spend in shipping and receiving facilities.

Again, we are talking about anywhere from 10 to as much as 45 hours a week, every week. That puts a workweek for a truck driver at 80, sometimes more, hours per week. When somebody is consid-

ering an occupation, a career, do they take one that involves work 40 or 45 hours a week where you are home, or one that is 80 hours or more and you are away from home and you do not make more money?

I do not think that is a real tough decision. People are going to make the decision that works best for them, and who can blame them? We have to address the economic issues for drivers, how they are paid, and the quirks that allow them to actually work unlimited hours without any kind of overtime compensation.

The market cannot fix that kind of stuff if drivers are paid nothing for their time and the vast majority are paid nothing for their time right now.

Mr. JOHNSON. Are you seeing any indication that younger drivers are eager to enter the trucking workforce?

Mr. SPENCER. Actually, I have never really seen instances in my career in trucking where this was immediately attractive to young people. And trucking is not—I entered trucking in my mid-20s. I became a truck owner at 26. Generally, people that enter trucking today are doing it because of issues with another job, another career they had. They look for something better.

In theory, a trucking career is appealing because it is all about productivity, and if you are willing to work, you should—a reasonable person would assume they will get ahead. What too many figure out really, really quick is that everybody is working their tails off and they are not getting ahead and it does not look like it is ever going to change.

Mr. JOHNSON. Would you say that there are specific protections that should be put in place for 18- to 21-year-old drivers?

Mr. SPENCER. I am not a—we, our organization, is not a proponent of lowering the permissible driving age for commercial drivers below 21. And everything about this committee is about safety. When we look at the numbers of crashes, of where crashes take place, and the drivers, you do not take that age down. You take it up. You take it up to at least 25, which is largely what it was back in the 1970s when I entered trucking.

Mr. JOHNSON. Let me ask Mr. Byrd this. Would you agree with that?

Mr. BYRD. I would agree that we do not support lowering the age for drivers in commercial trucking. One of the approaches that we have used to attract young workers to the trucking industry is establishing an apprenticeship program. So we recruit candidates who are 18, 19 years old, and we teach them about the trucking industry, the transportation industry, working on the dock, and working various other aspects of the trucking industry—shifting, working in the yard.

And as they approach 21 years old, we have by that time given them significant seat time on ranges and taught them how to properly drive and prepare them for working in the industry. So that has been our approach.

Mr. JOHNSON. All right. Mr. Spear, you are raising your hand?

Mr. SPEAR. I would like to give, if time permits, Madam Chair, just an alternative view to this question. Eighteen- to twenty-one-year-olds are already legally allowed to drive a class 8 in 48 States. OK? It is current law. I would love to know where the opponents

on this panel were when those 48 States passed those laws. I did not hear anything from them. But they are quick to point out that federally, we should not do it. We should not do it.

Bottom line, the DRIVE-Safe Act, the reason one-quarter of the House and Senate, bipartisan, Members like Ms. Jackson Lee, understands why cosponsoring this matters—because it is safer. Four hundred hours of apprenticeship-based training, of which 240 of those hours have to have an experienced driver in the cab with the 18- to 21-year-old.

It has to have speed governors, cameras, anticollision mitigation systems. None of the 48 States have any of that currently. This is a step towards safety, not away. And I would love to know where the Members and the opponents of this bill, 18- to 21-year-olds, are on our military. I was just on the *Abraham Lincoln*. It is over in the gulf now. Over 5,000 sailors on that aircraft carrier, Madam Chair, and the average age is 19.

When I was up on the captain's deck, he gave an order for a 20 degree right rudder. And I heard a 19-year-old female sailor at the helm take that order, "Right degree, aye, sir." Nineteen years old she was, steering a \$4 billion aircraft carrier. Ninety aircraft were \$30 million apiece. Two nuclear reactors. And 104,000 tons of displacement.

I think if we can teach somebody to steer an aircraft carrier, I am pretty sure we can teach them how to cross State lines in a class 8.

Mr. JOHNSON. Thank you. I yield back.

Ms. NORTON. Thank you very much. Your time is expired. I should note that a military pilot test is going on as I speak. I appreciate your raising that, and your note about 48 States or 47 States should indicate that they can only drive in the State. And the issue for us is across the States, where we still have work to do.

Mr. Babin. Put on your microphone, please.

Dr. BABIN. I am sorry. OK. Thank you, Madam Chair.

Under the Trump administration, FMCSA has rightfully withdrawn rulemakings related to sleep apnea, safety fitness determination, and minimum insurance limits. The agency has also categorized the speed limit or mandate as a long-term action, which essentially places it on the back burner.

I wanted to ask you the first question, Mr. Spencer. Do you and your members support these types of actions, and are there additional regulatory—or, rather, deregulatory—actions that the Federal Government could take to help make trucking a more viable career without jeopardizing safety, such as modernizing today's rigid and convoluted hours-of-service requirements?

Mr. SPENCER. Thank you, Congressman. I can tell you that our members, small business truckers, the small business trucker industry, really embraces the idea of regulatory reform. Most of the—as I mentioned in my testimony earlier, we see a tremendous disconnect between the regulations and actual safety.

But the focus is on enforcing regulations, and some of those are clearly counterproductive. You mentioned sleep apnea specifically, and I know some are focused on that as the big bugaboo now. But it does not cause drivers to crash trucks. And what happened when

we had increased focus, increased enforcement—and this was all economically driven—we put a lot of those guys out of trucking. And as a result, we believe that is a contributor to fatalities on the road going up.

We, our organization, would like to see a wholesale review of all of the truck safety regulations. And if there is not a connection to crashes, why are we wasting time, money, and effort on enforcing it? Focus on those things that do have something to do with crashes. We will get a better bang for our buck. And we are tickled the administration is pursuing that.

Dr. BABIN. OK. Well, thank you very much.

And then secondly, Mr. Spear had mentioned veterans and Active Duty personnel. In my district, a truck driver that does not have a transportation worker identification credential, or a TWIC card, is essentially no truck driver at all. Drivers need this card to gain access to the Port of Houston, which I represent, and all of the petrochemical facilities that I represent, the highest concentration in the United States.

As we face a nationwide truck driver shortage, any backlog and delay in the TWIC card approval process is only exacerbating the problem. And I am introducing a bill this very day to allow TSA to provide provisional temporary TWIC cards within a day or so of application to honorably discharged veterans while their background checks are being processed so that they do not have to wait potentially months before they can drive.

Surely if these veterans recently passed rigorous security screening so they could drive trucks on bases in Afghanistan, they should not be waiting months for approval for a TWIC card. Now, these are veterans who have had driver experience.

And I would ask if anyone on the panel today thinks that it is a dangerous or bad idea for an honorably discharged veteran with truck-driving experience to qualify to get a provisional TWIC card on the day they apply. And does anyone believe that this idea will help address driver shortages and veteran unemployment rates, among other issues?

I guess, Mr. Spear, I am going to ask you first.

Mr. SPEAR. Well, thank you for dropping the bill. I can tell you right now, from your description, we would be first in line to support it. I have testified on this issue before in the Senate. It has been 18 years since 9/11. Eighteen years. And our own TSA cannot produce a common access card like DoD has.

DoD recognizes the TWIC card. If you are a driver with a TWIC card, you can get on any military base in the country.

Dr. BABIN. That is right.

Mr. SPEAR. But you go to any other facility that is hazardous, it is not recognizable because TSA has not come out with a standard. They keep changing the rules. Administration to administration, I could point fingers at both sides of this. It is absolutely certain. The burden that comes back to our drivers to have to obtain a TWIC card, the cost associated with it, the time associated with it, it is ridiculous.

I testified in the Senate. I served in a couple war zones, Iraq included. And I am amazed that in the Green Zone in Baghdad, the Iraqi Government can come up with an ID that is almost identical

to the DoD common access card. Now, Iraq is not known as a bastion of efficiency. But if these guys can come up with a common access card and our own TSA cannot do it in 18 years' time, what does that say? I applaud you for the bill.

Dr. BABIN. Thank you. Thank you very much. And I see my time is expired, but I will—

Mr. YOUNG. Representative Babin, I would like to chime in on the speed limiters and sleep apnea issue. My Peterbilt 359 actually has a speed limiter. It is under the 70 mile an hour in the State of Ohio.

My physique required my medical card physician to require me to take a sleep test. Fortunately, I passed it. I do not need to have it. It is really not sleep apnea that causes the accidents. It is the fact that sleep apnea causes folks to be drowsy and not get enough sleep to remain alert behind the wheel.

There is a lot of medicine behind this and medical doctors that support it, including my own doctor who said, "Hey, if you have sleep apnea, it is better for your heart condition to make sure that you have a CPAP, et cetera." And I think the drivers that have CPAPs subscribe to it, like it, and agree that it makes them more alert behind the wheel. So thank you.

Ms. NORTON. Thank you very much. Mr. Babin's time has expired.

Mr. García.

Mr. GARCÍA. Thank you, Chair Norton and Ranking Member Davis, for organizing this hearing.

Two thousand seventeen was a record for Chicago and the Nation for roadway fatalities. I want to ask a question about emergency braking, but I would like to preface it with some statistics. According to the Federal crash data from the National Highway Traffic Safety Administration, from 2009 to 2017 truck crashes in which a truck rear-ended a passenger vehicle increased by 50 percent, despite the availability of new safety technologies like forward collision warning systems and automatic emergency braking that help prevent such crashes.

For example, Schneider National saw a 68-percent decrease in rear-end crashes and a 95-percent reduction in rear-end collision claims since it began equipping collision mitigation systems in 2012. Another company, Conway, conducted an internal study, which reviewed AEB electronic stability control and lane departure warning. They found a 71-percent reduction in rear-end collisions and a 63-percent decrease in unsafe following behaviors with the safety features.

In fact, some of the most popular truck models, like Volvo VNL 760, the Peterbilt 579, the Freightliner Cascadia, the Mack Anthem, and every new international truck, now include AEB as standard. Mr. Young and Ms. Chase, briefly, please, do the Truck Safety Coalition or the Advocates for Highway and Auto Safety support requiring original equipment manufacturers to manufacture new trucks with AEB technology?

Ms. CHASE. Thank you for the question, Congressman. Yes, we absolutely support automatic emergency braking as standard equipment. In fact, in 2015, Advocates, together with the Truck Safety Coalition and some organizations, petitioned the Depart-

ment of Transportation to conduct a rulemaking that would require FCAM, also now known as AEB, in all trucks. This is technology that has been proven to be successful, and there is no reason that it should not be in all trucks today.

Mr. GARCÍA. Mr. Young?

Mr. YOUNG. Yes. While the manufacturers indicate that they have made them standard, there is a delete credit. So if a dealer tells the motor carrier who is purchasing a vehicle, "Hey, I can make it cheaper for you just to delete the AEB," that is why we need an AEB mandate. Because the original equipment manufacturers have made it standard does not mean it is getting on these trucks. And these will truly prevent crashes along with speed limiters and many of the other issues we are talking about.

Mr. GARCÍA. And again, to both of you, would your organization support legislation that would require all motor carriers to require their trucks be equipped with AEB to use this crash prevention and mitigation technology?

Mr. YOUNG. Absolutely, because of the fact that you have this front override or front underride, this, and along with the underride bill, will prevent these crashes. So it is an "and both" type of a scenario.

Mr. GARCÍA. Thank you. Ms. Chase?

Ms. CHASE. Yes. Absolutely, we would support that.

Mr. GARCÍA. OK. Thank you.

Changing gears to trucking insurance minimums, to both of you again, the cost of medical care and other expenses has increased in the last 40 years, as has inflation. Still, no change in four decades has been made to trucking insurance minimums since 1980, and the current insurance cap is \$750,000. Is that correct?

And do you think that the current level of insurance is sufficient to fully compensate families and ensure safety in the event of a crash involving a truck? And would your organizations support adjusting truck insurance minimums?

Mr. YOUNG. Thank you for the question. The insurance minimums are grossly inadequate. As you indicated, it has been nearly 40 years, so it was originally set in 1980. If we adjusted to inflation, the minimum insurance should be \$2.4 million.

In addition to that, the money that is the premium is for the first million dollars, or the lower level. It is not a double in the coverage in order to get double the coverage. So you do not have to pay double the premium to get double the coverage.

So an increase in insurance minimum will protect families in particular, even truck drivers who are killed by other negligent truck drivers. And then when you have a situation where there are multiple fatalities, which we hear about on a regular basis, there is not enough insurance for all the folks there. So then the taxpayer gets saddled with having to take care of these people through Medicare or Medicaid and Social Security disability if there are injuries.

Mr. GARCÍA. Thank you. Ms. Chase, very briefly?

Ms. CHASE. As our board is comprised half of insurance companies, we do not take a position on this issue.

Mr. GARCÍA. OK. Thank you.

And lastly, Mr. Byrd from the Teamsters, in your statement you mentioned that the potential expansion of the short-haul exemption from 12 hours to 14 hours is a problem. Can you tell us why expanding it would be bad for workers?

Mr. BYRD. Thank you for question. Well, drivers, CDL-qualified drivers, they are driving larger trucks. They are delivering more freight. They are delivering heavier freight than, say, for short-haul operators that are driving vehicles that weigh less than 25,001 pounds.

So what that is going to result in, we believe, is that these drivers will work longer hours. They will handle more freight. They will handle heavier freight, and it will put them at increased risk of experiencing musculoskeletal disorders, for example.

And one of our big concerns is that along with that, we have an aging driver workforce among our membership. So you have got older drivers who would be called upon to do more work, to do heavy work, and we are concerned that it could have an adverse impact in terms of them experiencing injuries.

Ms. NORTON. Thank you.

Mr. GARCÍA. Thank you. I yield back, Madam Chair.

Ms. NORTON. Mr. García's time has expired.

Mr. LaMalfa.

Mr. LAMALFA. Thank you, Madam Chair.

I got a lot of car drivers that want to ask me this one here. Does California have a specific 55.1 mile-per-hour speed limiter when trucks are on the four-lane freeway passing each other doing those 4-mile-long turtle races? You do not have to answer that, but there is a lot of frustrated car drivers getting behind those turtle races when they are going 55.1 for about 4 miles.

Anyway, what I am going to jump to here is the FET tax and a repeal we are working on. The FET on new trucks is 12 percent, which is higher than alcohol and tobacco sin taxes in most States. This tax has been around 100 years. It was in place to help pay for World War I. It does not really generate that much money, and it adds about \$20,000 in costs to new trucks.

And so when we are trying to incentivize people to get newer, cleaner burning, more safe trucks, that seems like that is an opposite effect. It is really going to be huge for jobs and for injecting more into the truck builders economy as well as putting safer and nicer rigs on the highway.

So Mr. Noble and Mr. Spear, do you think repealing this tax would lead to an increase in purchases of these cleaner, safer, nicer trucks?

Mr. NOBLE. I do not necessarily have an opinion on if the tax is repealed, how that would affect. Again, from a PepsiCo standpoint, emissions, it is not about necessarily the expense of the equipment. It is the right thing to do from an emission reduction and investing in the technology for the right business reasons.

Mr. LAMALFA. All right. No opinion?

Mr. NOBLE. No opinion.

Mr. LAMALFA. OK.

Mr. SPEAR. Yes. We would favor repealing it. As you said, it is from 1917. And of those taxes that were put forward at that time for World War I funding, this is the only one that still stands as

law. All the others went away. I do not know what the history is behind that and why ours is the only one that still remains intact. But it is not just and it is an inhibitor of buying new, safer, more environmentally friendly equipment. And it is a serious number. If you are purchasing a truck brandnew, this is an issue.

So we would strongly recommend that it be repealed. We also understand that you are working under requirements to offset. We get the budgetary restraints that Congress is under. We would also work with you when funding an infrastructure bill to find ways to do that because I think this would be a really good step forward.

Mr. LAMALFA. Yes. We are certainly looking at offsets on that, too. But Congress, over the decades, has kind of turned it on and off over time.

But, Ms. Chase and Mr. Spencer, based on what you know about these newer trucks, do you think they are safer and more efficient for our network?

Ms. CHASE. I do think that newer trucks have the capability to be safer. And most certainly they should be equipped with the technologies that I mentioned earlier, such as speed limiters, automatic emergency braking, lane departure warning. And when I just did a ride-along last week, I experienced firsthand how safe a truck can be.

And so I think that all trucks should be required to be as safe as the one I was in.

Mr. LAMALFA. Yes, the laws—the speed limiter is not stuck on 55.1 on California freeways, right?

[Laughter.]

Mr. LAMALFA. Mr. Spencer?

Mr. SPENCER. Specific to California, you know, the point that you make over and over and over is speed-limited trucks, whether they are speed limited through technology or through artificially low speed limits, simply serve as impediments, barriers to other people trying to drive down the road.

And I think it is really, really interesting, too, that we have proponents for making tougher, rear-end underride equipment on trailers when we have policies that actually have the net effect of causing more cars to rear-end trucks. I think it is somewhat ironic that we do that.

Your question is specifically to the Federal excise tax. That is money right now that goes into the Highway Trust Fund that has been short for a number of years. As small-business truckers, we would like to see the Highway Trust Fund fully funded through user fees. Simply picking off the user fees that go into the—now we think it's sort of shortsighted public policy.

We are optimistic that at some point Congress will make the decision—

Mr. LAMALFA. Yes, I got you.

Mr. SPENCER [continuing]. To fully fund it.

Mr. LAMALFA. So, you know, I appreciate that. Well, let's shift real quick, Mr. Spencer, to ELDs, and flexibility that people are looking for on that.

Do you think they are really improving the safety of trucks? You kind of alluded to that before. Are they really improving safety, or

is the flexibility actually making people do strange things on ELDs?

Mr. SPENCER. Again, my background is trucking. I did it myself. When I drove, I drove when I felt like driving. I drove to accommodate—whether I drove to accommodate shippers and receivers. And it wasn't always in blocks of 10 or 11 or 14.

Again, what ELDs have done has created the stress level for drivers. But what they have pointed out is the problems that we have with existing hours-of-service regulations, which there is broad agreements that we need to modify them to provide drivers' flexibility.

Mr. LAMALFA. Yes, especially with livestock or hazardous materials. The way I see it, if you got—you know, you need to get that extra hour, or you need to get this material somewhere it isn't—oh, got to take a break, I am in the middle of I-80, between San Francisco and wherever. It doesn't seem to provide sensible flexibility.

Ms. NORTON. Thank you, Mr.—

Mr. LAMALFA. Thank you, ma'am.

Ms. NORTON [continuing]. LaMalfa. Your time has expired.

Ms. Davids?

Ms. DAVIDS. Thank you, Chairwoman, Ranking Member, and to all of the witnesses who are here today. I represent the Third Congressional District in Kansas, which is the Kansas side of the Kansas City metro area. And I am sure some of you know that KC is the largest—the second largest intermodal shipping hub in the United States. And a lot of that is because of the agricultural commodities that we transfer from rural parts of Kansas all over the country.

And these are, actually, the very rural areas that Ranking Member Davis was speaking about earlier, which—you know, I would like to suggest that the urban-rural divide is maybe not as vast as we might think it is. And when rural Kansas does well, urban Kansas does well, and the entire country benefits.

So I spent a little bit of time at DOT, and I had the chance to work on autonomous vehicle policy while I was there. And the development of the various types of technologies is something that is really interesting to me. The safety of drivers and of passengers is always of primary concern, as many of you have stated today.

I am also really concerned about making sure that folks aren't being left out of the conversation about automation, that people are still able to make a living. And so I would like to ask some of our witnesses today if you can talk to me a little bit about what you think intentional implementation of autonomous systems looks like, whether that be the braking systems, or other types of autonomous implementation.

So I would like to ask Mr. Spear, Spencer, Byrd, or Mr. Noble, depending on the time, all of you, what does that look like to you? What does intentional autonomous vehicle policy look like, so that we are taking care of everyone?

Mr. SPEAR. Well, I think—and I have served on the Federal Advisory Committee at DOT on this issue, and representing trucking interests—and I am glad for that, because I felt for the longest time—and I have worn the auto hat, as well, at Hyundai—that

trucking was not included in this discussion. And I think we need to be.

We are moving 71 percent of the freight, we are paying half the tab into the trust fund. We have got skin in this game. And nothing to slight my friends in the autos, but we are not going to hand the whole playbook to them and the DOT to write. We have to be at the table to accommodate what the future is going to look like.

Now, that really gets to the heart of it, because I think levels 2, 3, driver-assist technology, it is here, it is going to continue to grow. But to go to level 5 with no steering wheel, no pedals, driverless, I get really bullish on this, because I see people reporting on it all the time, that we are going to go driverless. And if you are trying to recruit somebody into this industry, if they think their job is going to be gone in 5 years, they are probably going to move on to something else.

First of all, it ain't happening. We are not going driverless tomorrow, not 5, not probably even 50 years out. It will come someday. But we have pilots in planes for a reason. I kind of like that. But not just passenger planes. We have pilots in cargo planes. So you are going to have drivers in trucks for a long time. They are hauling 80,000 pounds. A lot of them are hauling petrol, chemicals. In this secure environment, I don't think you want that driverless.

I think you are going to see cars evolve quicker, and they should; two-thirds of the accidents that involve trucks are caused by passenger vehicles speeding and texting. And that is where AEB coming online.

And connectivity, that 5.9 gigahertz the National Safety Council and ATA are advocating at FCC, you connect the truck and the trailer with the car, the brake hits, you are not going to be hit in the trailer. It is a different way to get at the side underguards and the rear guards. I would like to take an approach where the accident doesn't happen at all. That technology assumes you are going to hit the trailer. So connectivity, I think, could solve a lot of the problem, and lower the fatality rate in getting us to zero.

Mr. SPENCER. My perspective of small-business truckers, or at least certainly of our organization, is that we recognize the potential for automated systems to tremendously improve highway safety, the potential. But we struggle to separate reality from what are simply marketing claims.

And I heard some statistics thrown out a while ago for a big carrier that reports marvelous results with the use of different technologies. Well, I had heard that stuff before, and I have had our fellows look at the safety data that gets reported at FMCSA, and we don't see any difference in real road safety.

So we would like for small business to be in a position where you have confidence that you can invest in technology that actually really will work.

Ms. DAVIDS. Thank you. And can I ask that you submit additional comments to the record for our review? Because my time has expired. But I just want to—I love you bringing up that truckers have not been at the table for the conversations, because everyone should be included in the conversation about this.

Thank you, I yield back.

Ms. NORTON. Thank you, Ms. Davids.

Mr. Westerman?

Mr. WESTERMAN. Thank you, Madam Chair.

I would also like to thank all the witnesses for being here today. As I listen to your testimony, and talking about the vastness of the trucking industry, how it touches all parts of our country, I couldn't help but think about all of our transportation systems here, and how they are so interwoven. And I know with rail and waterways and ships and trucks and planes, we have it all in this country, and it, overall, I think works quite well, probably better than any place else in the world.

And you know, with the vastness of it, and just in trucking by itself, I think it is great to have all of the different views at the table. And as a matter of fact, as you all gave your testimonies, I started taking notes of where there seemed to be disagreement on issues.

You know, I wrote down there is a driver shortage, there is not a driver shortage; ELDs have improved safety, ELDs have worsened safety; automated and autonomous technologies are good, automated and autonomous technologies are bad; we need more flexibility in hours of service, flexibility in hours of service is unfair and unsafe; we have an aging driver workforce, and we are forcing experienced drivers out, yet we shouldn't allow younger drivers or apprenticeship programs; we have too many regulations, we need more regulations; making site-specific or industry-specific weight exemptions are increasing truck volume, but not weight, would reduce the number of trucks on the road, improving safety and reducing emissions. Increasing weights and volumes or making any exceptions damages infrastructure and decreases safety.

So there is no—and I could have taken a lot more notes. There is no end of competing ideas at the table today.

And just talking about the reality of the world outside of DC, and how we sometimes see things here, I know I can take you to Arkadelphia, Arkansas, in my district. It has got a little two-lane road running right between two college campuses. And they get several hundred log trucks that go down that road because they can't get out on the interstate for just a little ways to get around the town. Now, to me, that is a safety issue. But if there is no room for exemptions or common sense, then we will continue running the log trucks down a two-lane road between two college campuses.

So my question—and this is open to anyone who would dare take it—can any of you suggest a safety regulation, a policy change, or an initiative that would improve safety that you think everyone else at the table today would agree with?

Mr. CRAIG. I can certainly take that question. I think establishing a motor carrier selection standard would.

Mr. Young's suggestion that we use out-of-service rules, and eliminate—and not use everybody who is more than 50 percent above the national average indicates the confusion in that area. Right?

If that is true, then we wouldn't be able to use 50 percent of the truckers out there. I don't think anybody agrees with that. But the question is the confusion—because there is no selection standard—is that—where do we draw the line? Is it 20? Do we eliminate 25

percent of the carriers? Do we not hire 5 percent? Do we not hire 8 percent?

If Congress established a motor carrier selection standard, the rules that are enforced now would be enforced across the network, across the transportation freight network by shippers and brokers evenly, and exactly like FMCSA and CVSA intended. We would be able to take those carriers off the road.

Mr. YOUNG. Mr. Craig confuses the testimony that was given. Ten percent of the motor carriers, just 10 percent of all motor carriers, make up a near 50 percent of the crashes. And if you look at the out-of-service percentage ratings, which are very clear, if the out-of-service percentage ratings exceed national averages, then you need to look at that carrier a lot closer. You got to give them the strict scrutiny.

So you are not accidentally hiring one of these 10 percent bad apples that ultimately cause these multifatality crashes, that these folks can't be compensated because minimum insurances are inadequate, or because we don't have vehicle crash compatibility with the override guards.

So he did not point out one that we don't—we disagree on this issue.

Mr. CRAIG. I think it shows the confusion in this area, and establishing a standard would help, because right now you don't have to check anything.

Mr. YOUNG. As long as the standard does not take away or create an immunity for brokers or shippers, because they are the ones that are really pressuring the truck drivers. They are the ones that are putting the late penalties and fines on these folks. The just-in-time shipping, they are the ones not regulated, where the truck driver is accountable. The brokers and shippers need to remain accountable if they are hiring those bad apples. Because cheaper freight should not sacrifice safety.

Mr. CRAIG. And there is a coercion rule already in place for exactly what Mr. Young is talking about. And the insinuation that cheaper rates equal less safety, 2018 should have been the most safe year on record, because rates were at their absolute highest.

Mr. WESTERMAN. I am out of time, Madam Chair.

Ms. NORTON. Thank you, Mr. Westerman.

Mr. SPENCER. I—

Ms. NORTON. The witness may answer.

Mr. SPENCER. I think there would be broad consensus that improved driver training would have a positive outcome, and I think there would be broad consensus on this panel that that could be positive.

Ms. NORTON. Thank you. The gentleman's time has expired.

Mrs. Napolitano?

Mrs. NAPOLITANO. Thank you, Madam Chair. I have some concerns that are not being covered yet with the growing problem, the misclassification of port truck drivers, especially in my two biggest ports in the area, in Los Angeles and Long Beach, where hundreds of drivers are being forced by unscrupulous trucking companies into working as independent operators as a way for the companies to pay drivers below minimum wage, and then they deny them benefits, creating an unlivable wage for them and their families.

These truck drivers are forced to lease trucks at prices they can't afford. A common example is a truck driver being paid \$200 a day, but having to pay lease fees of \$190 a day, leaving \$10 a day. Some of the drivers are actually making less than the leasing costs, and they are in debt. And if a truck driver misses one payment, that truck is appropriated, taken from them.

It is unthinkable that companies continue to get away with a scheme to underpay truck drivers, who are hardworking people, who—and so, consequently, when there is a shortage of truck drivers, you wonder why they leave the type of employment and go somewhere else to get a better coverage for their families.

Mr. Spear, what is the American Trucking Associations doing to stop these bad actors?

Mr. SPEAR. I appreciate the question, Congresswoman. You and I discussed this at length previously. I promised you I was going to go to the Port of L.A. I did that. I visited all seven terminals, spent a lot of time there, looking at the situation.

We have also canvassed our members on this issue. I am unaware of any of our members that are abusing that. I do not deny, however, that it is happening.

And I think, for any bad actor that is pressuring drivers into a situation that is not sustainable, that they can't afford the equipment, they are pigeon-holed into it, and they can't get out, that is a situation that needs to be remedied. How widespread it is, I honestly, from that visit and those discussions, still do not have a conclusive idea of how widespread this problem is.

I think it is fairly isolated. Nonetheless, it is a problem. If it is existing, it needs to be dealt with. And I think working with our Federal regulators, as well as State, definitely need to coordinate this and understand how it could be remedied.

Mrs. NAPOLITANO. It is not—

Mr. YOUNG. Representative, every lease-purchase program is that bad situation. It is not just in California. Every time a truck driver gets roped into one of these lease-purchase programs, where they are promised, "Hey, we are going to give you keys to a truck, come drive for our company," the next thing you know all of the money they earned goes into the equity of that truck, and these poor people, these poor truck drivers, are then saddled with not being able to take any money home to pay their mortgage or their families.

I would love to get ATA on record saying that they are against the lease-purchase programs for the entire industry. I would love to get that right now.

Mrs. NAPOLITANO. Or hopefully get banks or—to purchase for them the trucks without having to pay big interest rates.

Mr. Noble, Mr. Craig, what are the business community and the broker community doing in your industries to not contract with the trucking companies that use abusive labor practices and misclassify their workers?

Mr. NOBLE. Obviously, at PepsiCo, we have our own private fleet. So we try to put as much of our freight on our own private fleet, but we know the actors. We know the safety records. We know we have the control.

But as you mention, 50 percent of our freight moves with carriers. And we do contract with our friends at C.H. Robinson on that. And so we do depend—and we make sure that we are picking the right partner, carrier partner, that is selecting the right carrier to move our freight safely.

Mrs. NAPOLITANO. Mr. Craig?

Mr. CRAIG. Yes, I would actually point to the new California rule around checking if a carrier has had a judgment against them on an employment law. That is a great example of how good regulation will work to have the effects on the industry that you are talking about. We check the list that the Department of Labor of California publishes frequently, to make sure that we are not hiring those carriers. So—

Mrs. NAPOLITANO. We have a good enforcement attorney general, Mr. Becerra.

Mr. CRAIG. But the key there is the clear indication of who to hire and who not, and to be able to reinforce the decisions of the California Department of Labor. Absolutely.

Mrs. NAPOLITANO. Mr. Byrd, do you have any comment, concern over this misclassification?

Mr. BYRD. Yes. I know that we have a port division that works tirelessly to work closely with drivers to ensure that they are properly classified. And it is my understanding that there may have been some litigation and other activities surrounding properly classifying drivers.

Mrs. NAPOLITANO. Mr. Spear—

Ms. NORTON. I thank you very much. Mrs. Napolitano's time has expired.

I want to call on Mr. Gallagher. A vote has been called. I ask Mr. Gallagher for 5 minutes.

Mr. GALLAGHER. Thank you. I appreciate that. And I know we have had some talk about six axles, and I know this is bound up in a broader debate we are having about just how to fix funding issues of the Highway Maintenance Trust Fund, to fix our roads and bridges.

I would highlight the fact that the Minnesota Department of Transportation found that the addition of a six-axle reduces wear and tear on roads by 37 percent. This allows for an increase in truck weight at the same time—at the same overall dimension as current trucks.

USDOT has said they don't have enough information to know the impact of increased truck weight with a six-axle on our roads, which is why I joined with many of my colleagues in asking for Congress to authorize a pilot program, so we can simply get that information.

But a question for Mr. Noble. In Canada I understand that PepsiCo is already safely operating 91,000-pound, six-axle trucks. Have there been any safety concerns with operating that truck configuration?

Mr. NOBLE. Thanks for the question. When we look at Canada we are hauling over the 91,000 that we are proposing with the SHIP Coalition in Canada. Obviously, with that six-axle does come with the extra braking power that allows it to stop with that six-axle.

We also run that configuration in other countries, as well. And most of the developed markets have higher weight limits than what we have, that were established in 1983 here in the U.S.

Mr. GALLAGHER. So just to follow up on that, we do have a comprehensive size and weight study from USDOT that says a 91,000-pound, six-axle truck would have a 1.2 billion reduction in annual vehicle miles traveled on U.S. roads. How would that reduction—I mean, if you believe that analysis—in vehicle miles traveled impact PepsiCo?

Mr. NOBLE. Any miles that we can save by filling up the capacity on our vehicles—not just at PepsiCo—but any capacity that is wasted—we have talked about driver shortage, or driver retention, or whatever. If we can eliminate the miles, then we can retain—and a better safety record by eliminating that mile.

But when you look at the proposal, that—again, when we—we want the—the States have heavier weight limits in most States. What we are asking for is allow the 91,000-pound to get off of those local and State roads, and put them on the access of the interstate, where they are designed more to do. And that way you—obviously, you are running in much more—you are not running the route miles when you are running State roads and highways, and you are not bypassing the colleges the other congressman was talking about. You are putting them on the safer roads, bypassing the State and local roads, and allowing it to be more safer, less miles.

Mr. GALLAGHER. Sure. In addition to safety, I think one of the promising positive externalities of this approach would be the reduction of greenhouse gas emissions, as someone who is concerned about climate change. And so I just would hope that we could move forward with the pilot program, with the idea that it would result in safer roads, and also a healthier climate.

I know that my colleague, Mr. Westerman, talked about the ability to allow logging trucks, in particular, access to Federal highways so that they don't have to go on roundabouts and local roads, which itself presents a safety concern. I have a bill that would authorize such a program, and I just would encourage my colleagues on the committee to consider that. I know it is not a silver bullet to our problems, but I think it is one small way where we can authorize pilot programs like this. And giving those logging trucks the ability to navigate on safer routes, I think, would again increase safety and also result in a more efficient use of fuel for that truck.

Mr. NOBLE. That is a perfect example of what we are trying to accomplish with the coalition, with other members like Home Depot, Tyson, that are members of the coalition. Because, again, if you can take those heavier-weight trucks onto the interstate, where they belong, and where it is designed more for, then you can do that.

Every mile you reduce—talking about emissions, every mile is a reduction, and it saves 2.5 pounds of carbon. You know, so obviously, with our emissions that we are trying to save at PepsiCo, not just with electric, but also going to alternative fuels—CNG in our tractors—but also it comes down—the best mile to drive is the miles you don't have to. And eliminating the miles is the best way.

Mr. GALLAGHER. Well, I am out of time. Thank you.

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

We have a vote on. We understand there is one vote, so we are recessing this committee and asking Members to return immediately after that vote.

This hearing is recessed.

[Recess.]

Mr. LOWENTHAL [presiding]. Good, we are going to reconvene the hearing. Unfortunately, there has been another motion on the floor that we are going to have to leave. So I am going to ask one question, and then we are going to recess again, adjourn the hearing again. And so I thank the panel for putting up with us. But we are not doing too well, you know? So—but let me begin.

At our April hearing I raised the issue of obstructive sleep apnea, and the critical importance of combating driver fatigue. As Members know, as we all know, the NTSB has for years recommended that the FMCSA issue clear guidelines to screen for sleep apnea. But the Administration withdrew the rulemaking in 2017 to improve this screening.

So the first question I have is for Ms. Chase. Can you talk about the risks posed to highway users by untreated sleep apnea?

Ms. CHASE. Yes, thank you for the question. Fatigue is one of the largest problems facing the trucking industry right now. In fact, the National Transportation Safety Board has repeatedly included it on its Most Wanted List, addressing the issue of driver fatigue. And it is particularly troublesome when there are ways to combat it, such as, to your point, the diagnosis of sleep apnea, and then the treatment.

And the fact that the Administration withdrew that rulemaking is problematic, and we would encourage this subcommittee to move forward with legislation that would direct a final rule on the issue.

It is not that we don't want truck drivers with this inflection driving, it is just that we want it treated, and especially when there are ways to treat it.

Mr. LOWENTHAL. Thank you. And I raise the issue because one night, my wife awakened me and said, "You are not breathing."

I said, "What are you talking about, I am not breathing? I am breathing. I am fine." And it turns out—I then went to GW Hospital, did all the tests, and I found out that I have serious sleep apnea, which I was completely unaware of. I had some fatigue during the day, but I just attributed that to the normal aging process. I think that—I was treated, and I am doing quite well.

And it is not a major treatment, but it is—but I also don't want to create extra out-of-pocket expenses for truck drivers. I appreciate that this can be somewhat of an expense. Now, I am lucky, I have both my own insurance, and I am covered here by being part of the health insurance that is offered to Members, in terms of our attending physician. But drivers, I think—people in many places, when their employers don't pick it up, are stretched to the limit.

So the question really is how do we screen—if anybody has any ideas: How do we screen for sleep apnea, without creating additional costs for the drivers? What are we going to do about this now, given the fact that some—you know, I can only say, "Well, we really need"—making sure that everybody's health insurance cov-

ers all of this, and we don't have that now with—we are in a battle right now.

The courts—actually, there is cases before the courts to get rid of all of the Affordable Care Act.

So I am just kind of asking why we haven't done it. And is there something that Congress needs to do about ensuring that truck drivers do not have to be burdened with additional costs? So any thoughts about this? Because I think it is a serious issue.

Mr. Spencer?

Mr. SPENCER. I will speak on behalf of truck drivers, in that sleep apnea is a medical condition—

Mr. LOWENTHAL. Yes.

Mr. SPENCER [continuing]. That we believe drivers—if anyone has it, if it is a concern to you, you should seek treatment for that.

And also—but looking at the crash data, I would take considerable issue with those that claim that sleep apnea is causing crashes, because all sleep apnea is is something that causes you not to get the quality of sleep that you may need. Whether or not you crash a vehicle, whether it is a car or a truck, has to do with driving when you are sleepy, driving when you are drowsy, something that no driver should do.

But, you know, one of the key things, one of the key dilemmas that professional truck drivers have, is that they don't have places to park to get off the road, where they actually can get—it might be a break or it might be a long 8- or 10-hour restorative sleep. But, I mean, that is the biggest challenge that virtually all in trucking deal with right now, and it is not a new challenge. It has been an issue for 20 years.

And we talk about infrastructure. We talk about safety. The environment that drivers in transportation have prided in has to come with some way for people to get off the road when they need it. So I hope that can be a focus, an ongoing focus, going forward, because it is certainly sorely needed.

Mr. LOWENTHAL. Thank you. I am going to yield back.

Shall we continue? We have only, I believe, 6 minutes and 46 seconds left to go and vote. What a crazy system this is.

So does Mr. Lipinski not want—fine.

Then we are going to recess this hearing one more time. This hearing has been recessed.

[Recess.]

Ms. NORTON [presiding]. We are going to have to proceed, notwithstanding this mischief from the other side, or else we will never get this done. And I am pleased that Mr. Pence is here. And I am going to recognize Mr. Pence for 5 minutes.

Mr. PENCE. All right. I am going to sit here and still sweat.

Thank you, Madam Chair, Ranking Member Davis, thank you all for being here. I was a perpetual truck owner, started companies, sold companies, so I really like the trucking business.

In the interest of your time, I am going to ask two quick questions. And if each of you can, just give me a quick answer.

And the first, you know, driver safety is paramount to me. Running trucking companies, making money, was number two. Turn-over was always the most expensive thing.

And I think, as you mentioned, Mr. Spencer, new drivers are the most dangerous. And I am not quite quoting you exactly.

And Mr. Spear, you mentioned that the economy, it is booming, and there is a greater demand.

So, number one, what can we do about driver turnover? What is the number-one thing you—each of you think we can do about driver turnover? Take—

Ms. CHASE. Thank you for the question. Oh, should—I am sorry.

Mr. YOUNG. I didn't know which end we were going to start from.

Ms. CHASE. Should I go?

Mr. PENCE. Yes, ma'am.

Ms. CHASE. OK, thank you for the question. I think one of the things that we should do, from a safety perspective, is make the job safer. Right now truck driving is one of the most dangerous professions. And if you include the equipment that I mentioned earlier such as speed limiters, automatic emergency braking, and lane departure warning, just to name a few, that would make the turnover rate decrease.

Mr. PENCE. They would feel safer. Thank you.

Ms. CHASE. Yes.

Mr. SPEAR. For turnover, I would say pay. It is going up. It should go up.

Mr. PENCE. It is. I have got, in my district, some 125,000 propane haulers, 95,000 Fortune 500 day deliveries, and they have driver shortages. Do you think we are just going to keep going up?

Mr. SPEAR. No, I think it will plateau at some point. It is not sustainable, you know, to continue to go up. But I think it has to go up to a certain level, but I also think, to earlier comments to questions, it is a combination of things. It is the work environment. Are you doing long-haul versus, you know, local, regional. There are different conditions that drive someone's decision to be in trucking.

And so it has to fit each person's lifestyle. It is added pay, it is added benefits. These things culminate into a reason for being in trucking.

Mr. PENCE. Thank you.

Mr. SPENCER. Actually, the easy—the quick one is pay, benefits, working conditions.

Having said that, there is actually more to it in that most people that enter trucking as a career really have no idea what the lifestyle is, what the job is.

And again, I lamented about the lack of any real meaningful driver training, from the standpoint of safety. But, you know, realistically, we turn people loose and we expect them to know how to do all kinds of really, really important things, including descending mountains with loaded trucks, and they are not prepared, and they are not comfortable, and they don't stick around.

Mr. PENCE. Thank you.

Mr. BYRD. I thank you for the question. I think, again, compensation, including benefits, improving working conditions. I think improving the infrastructure that would allow drivers to not encounter so much congestion, so that they are better able to complete their runs efficiently, I think, would—are things that would—also could help—

Mr. PENCE. Thank you.

Mr. CRAIG. The one aspect I would add is truck parking. We routinely hear about a lack of truck parking and inadequate truck parking from our carriers—

Mr. PENCE. Thank you.

Mr. NOBLE. I agree with the—you know, what we have done with the equipment, adding the safety features, and the ergonomics in the tractors, I think, has done a lot for the drivers, as well as I agree with—and I am a shipper, and we need to do more to continue to generate velocity and not tie up the driver's time at the dock, versus driving.

And I think that gets to a lot of respect that we need to have for drivers.

Mr. PENCE. All right, thank you.

Mr. SAVAGE. Thank you for the question, sir. I think a lot of drivers, when I talk to them, they are concerned about the safety aspects of trucking. And so I think making regulations clear, concise, easily understandable is going to save lives on our—

Mr. PENCE. This was mentioned, yes. Thank you.

Mr. YOUNG. Safer trucks, including underride guards, having those drivers know that no car is going to ever get underneath that trailer, and they are not going to deal with a fatality, or have to deal with potential jail time.

Mr. Spear mentioned earlier that that was a 35-mile-an-hour test. IIHS did test at 40 miles per hour, the angel wing, and the inventor of that test tested at 47 miles per hour.

Pay, driving conditions, and I was going to talk about truck driver parking. Mr. Craig and I agree on that—

Mr. PENCE. All right, thank you. One, yes or no—time to look at a third dedicated truck lane? Yes or no? Right down the way.

Ms. CHASE. I don't have a comment on that one.

Mr. SPEAR. It is not free and it is not cheap.

[Laughter.]

Mr. SPENCER. No, not dedicated just truck.

Mr. BYRD. No, not just truck.

Mr. CRAIG. I would defer to my experts on the equipment side on this.

Mr. NOBLE. No opinion.

Mr. SAVAGE. No, due to speed differences between the two.

Mr. YOUNG. No, the infrastructure should go to truck driver parking.

Mr. PENCE. Thank you.

Thank you, Madam Chair.

Ms. NORTON. And thank you, Mr. Pence.

Mr. Lipinski for 5 minutes.

Mr. LIPINSKI. Thank you, Madam Chair. Mr. Byrd, I want to start off—can you elaborate on your testimony that Mexican carriers are taking advantage of loopholes in the enterprise carrier program that allows Mexican-owned but U.S.-domiciled carriers to game the system? How is this harming American workers?

Mr. BYRD. Well, many Mexican long-haul carriers—primarily the enterprise and certificate carriers—were supposed to meet a November 2003 deadline to renew their operating authority for long-haul operations beyond the commercial zone.

It is our understanding that a lot of carriers didn't do that, and that, although the Federal Motor Carrier Safety Administration has authority to take their operating authority away, that was not enforced, due to, I think, some staffing issues and some budget issues.

Mr. LIPINSKI. Thank you. I am going to move on to a question that I want to have Mr. Byrd and also Mr. Spear speak to.

I know, Mr. Byrd, in your testimony you mentioned that you believe the trucking industry will have the need for skilled drivers for decades to come, even though autonomous trucks are being developed right now.

And Mr. Spear, your testimony agrees, and you make the parallel to the aviation industry, which still has pilots 50 years after automation of the cockpit.

So I want to ask both of you. I guess let me start with Mr. Spear.

What role do you foresee drivers will play in the future of increasingly automated driving?

Mr. SPEAR. I am a bit bullish on this. I think it is driver-assist, not driverless. I think technology has a role to play. I think you are going to see more of it in trucks. I think there is going to be more connectivity between trucks, trailers, and cars. Just the 5.9 gigahertz that I mentioned, I think if FCC were to give seven channels of that to safety, you could really dramatically reduce the number of fatalities each year. That AEB kicks in, the car is going to see it based on the frequency, even if the driver doesn't.

So I think driver-assist is a huge catalyst in the safety debate, and we need to embrace it, not be afraid of it. But I am very bullish against this idea that we are going to be driverless. I mean you will see it in cars before you see it in trucks, for the same reasons we have pilots in planes. So I am just not buying it.

I also think, though, that the tech element of the industry is going to evolve, and you are going to see not only drivers, but technicians have more of a technology background. They are going to have more of a software headset. And I think a lot of that could attract a younger generation of talent into the industry that is more tech-savvy. And we are seeing it on new equipment. It is very prevalent. I have toured several OEMs, and I have seen in multiple cubicles 25-, 30-year-olds writing software for the OEMs. I mean this is where we are going. And it is coming, I just don't view it as driverless.

I think it is a way to equip the driver to make them safer, more productive, better rested. There are a lot of good takeaways from this that I think are worthy of our attention.

Mr. LIPINSKI. Yes, Mr. Byrd, how do you see—

Mr. BYRD. Yes, I would echo many of Mr. Spear's comments. I will focus, however, on—I do agree, I think it will be driver-assist. It is the last mile.

I think that there will be quite a bit of autonomous vehicles, that type of technology, operating on our highways. But once we get to that last mile, that delivery in that urban type environment, I see the drivers still playing quite a significant role, as far as that is concerned.

Mr. LIPINSKI. And Mr. Spear, you agree with that? Is that the way you envision it?

Mr. SPEAR. I do. I think you look at the dynamic of each sector of the industry, and you probably see long-haul where there are less cars around the truck. Concepts like platooning are certainly being tested. But we are seeing a lot of technology enter in that makes that driver better rested, better equipped, could multitask.

We have seen testing out on our highways in various States and localities that is proving fruitful. But I think in an urban environment, particularly, you are going to need that driver. I mean there are so many variables that, you know, no algorithm that we see can—

Mr. LIPINSKI. Let me—

Mr. SPEAR [continuing]. Can handle all that.

Mr. LIPINSKI. Let me ask in the brief time, Mr. Byrd, what do you see as workforce investments that we are going to need to make in drivers, so that they can—for this new situation.

Mr. BYRD. In terms of—I am sorry?

Mr. LIPINSKI. Workforce investments, such as training, that we are going to have to do.

Mr. BYRD. I think this is absolutely important that we have training, very robust training for drivers, especially as we move forward with adding technologies into the vehicles.

And as I have noted in my testimony, we have an aging driver workforce, so we anticipate that there will be younger drivers entering the workforce. So it will be necessary for them to get proper training and seat time to operate safely.

Mr. SPEAR. Ours is multipronged. But, really quickly, we need to take care of our own, those that are in the workforce. Cessation programs, wellness programs, really taking care of those that want to drive for a long period of time. You know, companies have to step up to the plate and take care of their workforce.

We need more urban hiring, minorities, women. That workforce is out there, and we need to leverage our Federal, State, and local resources to attract that talent into the industry that may not even be aware that our industry exists. Veterans, exiting service people from the military that have that skill set.

And as we have talked at length, 18- to 21-year-olds. It is legal in 48 States. That works pretty good from Redding, California, to San Diego, not so good from Providence, Rhode Island. I can be at the border in 20 minutes. So that kind of logic doesn't make any sense.

And there is no training, there is no technology requirements in any of those 48 States. That is why this bill is so powerful and bipartisan in both chambers, is because it makes sense. It is grounded in training and technology, something that doesn't exist in those 48 States.

I think you have to do all of those things simultaneously to address our next steps toward growth, as an industry.

Ms. NORTON. Thank you. And Mr. Lipinski's time has expired.

Mr. Stanton?

Mr. STANTON. Thank you very much, Madam Chair, for holding this hearing. I want to thank our distinguished witnesses for your great testimony here today, and your patience, as we took a short break to vote on a couple of adjournment motions.

The movement of freight and goods is key to our country's economic future and maintaining our global competitiveness, growth over the last 20 years. Improvements in the manufacturing process and new technology are placing an ever-greater strain on the capacity to move goods. And this growth is only expected to continue increasing.

In fact, USDOT estimates that freight volumes will increase 45 percent by 2045. With more than 80 percent of the U.S. communities relying exclusively on trucks for their freight transportation needs, it is important for this Congress to make the investments needed to ensure a well-maintained and reliable road network in order to reduce congestion and improve safety.

I know all of the members of the panel agree. My first set of questions are for Mr. Craig from C.H. Robinson.

Thank you for being here today, and I really enjoyed my visit to C.H. Robinson's facility in the Phoenix area, back in April.

When a shipper or broker like C.H. Robinson hires a carrier, the Federal Motor Carrier Safety Administration has regulations in place to guide that process. What does the agency currently require a shipper or broker to assure before they hire a motor carrier?

Mr. CRAIG. So right now there is technically no standard. But FMCSA does have a series of licenses and authorizations. Some of those include—CVSA has published that in chapter 4 of their out-of-service guide. Those include having a valid authority, not being placed out of service, not being declared an imminent hazard, things like that. And again, they are compiled in chapter 4 of the out-of-service guide.

Mr. STANTON. And can you elaborate more on some of the issues that C.H. Robinson has encountered when utilizing information from the agency to hire a motor carrier?

Mr. CRAIG. Sure. While I mentioned in my testimony that we have got a qualification process, that often gets challenged. Folks can take any data that is published out there, and make a carrier look poorly. I have included appendix B, which is a screenshot of the CSA website. And this carrier, you can poke holes in various different parts of the data here to make this carrier look bad.

So a variety of different data is used to say that our decision was—could have been negligent.

Mr. STANTON. And you advocate for the establishment and implementation of a motor carrier selection standard. In your view, how would the establishment of such a standard impact safety on our roads? Obviously, every panelist has talked about the importance of safety, and I do want to hear comments from Mr. Byrd, Mr. Young on the same topic. Please.

Mr. CRAIG. Sure. As I demonstrated in the testimony, the—a great example was in 2017 CVSA added the inactive USDOT number to their out-of-service criteria. However, because there is no standard right now, and nothing that people can rely on, often-times people overlook this. Many in the industry were completely unaware of that.

So the carriers that did have an inactive DOT number, they were allowed to get freight from other brokers. That is one thing that we do check now. But I know many in the industry don't check that on a regular basis.

Mr. STANTON. Thank you very much.

Mr. Young, Mr. Byrd?

Mr. YOUNG. Yes, please. What C.H. Robinson is proposing, or—and what the legislation proposes is the bare minimum. Even a chameleon carrier can change its stripes and switch from a bad company into a new DOT number, and then ultimately be qualified under that criteria.

The criteria that should be used is the third-party Intermediaries Association's published criteria that is currently—I don't know if it is currently published, but we certainly have it. It is a three-page criteria that has a laundry list of issues and items that are available. I don't believe you were here when I indicated before 10 percent of the motor carriers represent near 50 percent of all crashes. The idea is to identify these 10 percent. Out-of-service percentage ratings, all the detail and the information on CSA allows some of that information to be there.

To go the extreme to the bare minimum would just be detrimental, and then ultimately allow selecting carriers based on unsafe ratings, and ultimately create a bigger problem in a bigger pool of these bad apples that are going to create more crashes.

Mr. STANTON. Thank you so much.

Mr. Byrd?

Mr. BYRD. Yes, we would agree. We have great concern that allowing shippers to waive any liability would be a huge concern. We believe that all players in the transportation supply chain should share in a liability, and that carriers that are hired should have good safety records.

Mr. STANTON. Thank you very much.

Mr. Craig? Please.

Mr. CRAIG. Can I make one quick point, that a motor carrier standard, establishing that, would not allow any broker to waive liability? In fact, if you didn't adhere to the standard, you would almost be negligent by—you know, by default.

Mr. STANTON. All right. Thank you very much. I am out of time, so I will not be able to ask Mr. Spear about the big, bold infrastructure package, but will at a future time.

I yield back.

Ms. NORTON. Thank you very much, Mr. Stanton. There being no other Members here, I want to thank all of you for giving what has been very, very helpful testimony, making the subcommittee understand the dilemmas in which we find ourselves, and I hope we will unravel in the 2020 bill we are in the process of preparing.

I thank all the Members who attended and asked such challenging questions.

I ask unanimous consent that the record of 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 any additional comments and information submitted by Members or witnesses to be included in the record of today's hearing. Feel free to submit further information as you see fit.

And without objection, so ordered.

Thank you very much for attending. The subcommittee stands adjourned.

[Whereupon, at 1:32 p.m., the subcommittee was adjourned.]



## SUBMISSIONS FOR THE RECORD

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### **Prepared Statement of Hon. Sam Graves, a Representative in Congress from the State of Missouri, and Ranking Member, Committee on Transportation and Infrastructure**

Thank you, Chairwoman Norton and thank you to our witnesses for being here today.

I also want to welcome Mr. Todd Spencer—a fellow Missourian who’s testifying on behalf of the Owner-Operator Independent Drivers Association. Todd’s been advocating—passionately, I might add—for small business truckers for over 40 years. I’m glad to see him back before the Committee again.

Enacting a long-term surface transportation reauthorization bill is a top priority of mine.

In order to be successful, we must work together to develop a bill that has robust bipartisan support as well as strong stakeholder support.

Today’s hearing is an integral part of our process to develop that bill.

The trucking industry is important to our Nation.

It creates jobs and helps spur economic growth by serving as a vital mode of transportation for American products.

It is particularly important to rural America.

According to the USDA, trucks carry 70 percent of agricultural products, helping our farmers to compete in the global marketplace.

A few of my objectives in this area for the bill are:

- Ensuring that we have the necessary infrastructure to move our goods domestically and internationally;
- Incorporating technological advancements into our system to improve safety and efficiency; and
- Providing a regulatory environment that addresses safety needs and allows U.S. businesses to thrive.

I look forward to hearing from today’s witnesses and the important discussion that follows.

I yield the balance of my time.

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### **Prepared Statement of Hon. Eddie Bernice Johnson, a Representative in Congress from the State of Texas**

Thank you, Madam Chairwoman.

I am pleased that the Chairwoman is holding this hearing today, as it allows us to examine the current priorities and issues within the trucking industry in our nation. I am eager to hear from the stakeholders serving on the panel today about the challenges faced by motor carriers, truck drivers, shippers, and brokers—and how these challenges impact the safety, operations, jobs, and movement of goods in this industry. Regarding the current state of trucking, my interests are specific to how we as a legislative body can adequately address the promotion of road safety; the development, deployment, and impact of autonomous vehicles on the transportation workforce; and the necessity of investment in workforce advancement.

My district is a major hub for trucking and is a site of noteworthy innovations in transportation. With the significance of this industry in my district, I am dedicated to addressing trucking’s imminent and long-term concerns.

According to the National Highway Traffic Safety Administration, large truck crashes claimed 4,761 lives in 2017—this number of fatalities has followed an upward trend for crashes involving large trucks and buses since 2009. This is of significant concern to me, as the Federal Motor Carrier Safety Administration has disclosed that Texas has one of the highest averages in the nation of fatal large truck and bus crashes between 2014 and 2016. I welcome the panel’s comments on how

our legislative body can best support the wellbeing of our trucking workforce and protect the safety of our constituents.

In my home state of Texas, the Permian Basin is experiencing tremendous growth in the energy sector. This growth has had a significant impact on our roads and bridges, as oversized and overweight trucks are facing difficulty in clearing bridges and are prematurely wearing out highway pavement. The Texas Department of Transportation (TxDOT) is working to improve freight infrastructure design, improve grade separation, and widen two-lane roads. Last year, Texas was awarded two BUILD grants to improve the infrastructure in the Permian Basin used to address some of these issues. A greater commitment is needed at the national and state levels to improve highway infrastructure. As the cost of construction is rising and infrastructure continues to deteriorate, funding sources must be identified and allocated to expand and improve highway infrastructure.

The importance of the truck driving industry in the delivery of goods cannot be overstated, therefore drivers must have access to adequate parking to comply with federally mandated regulations, including hours-of-service (HOS) compliance. If no available parking location is nearby as drivers are running out of HOS, this places the driver in a difficult situation. In the North Central Texas region, as in other large metropolitan areas across the nation, the lack of available truck parking is a significant issue. TxDOT is working on a study to assess and address truck parking needs with practical, innovative, and cost-effective strategies through partnerships with the private sector. The goal is to improve safety on the roadways and mitigate community impacts associated with truck parking.

For my district, the development and deployment of autonomous vehicle technologies has quickly emerged as a prominent and complex issue. This expansion in the various technologies across different levels of automation will undoubtedly have tremendous effects on our nation's surface transportation system and our workforce. This is already evident in Dallas, where a pilot program has been completed this year which engaged self-driving trucks to deliver mail between distribution centers in two different states.

These developments in autonomous vehicles have significant implications for the trucking workforce, as displacement is a substantial concern. It is due to these specific concerns that I have previously introduced and am currently updating the Transportation Workforce Modernization Act. My legislation will direct the Secretary of Transportation to establish a program to provide grants to retrain transportation workers. It will also commission a study by the Comptroller General of the United States to identify the impact of driverless vehicle adoption on our nation's workforce; trucking, freight, and personal transportation industries; wages; job losses; and creation of new jobs. With my legislation, I join the efforts of this Congress to meaningfully address the contemporary concerns and priorities of our nation's trucking industry.

Thank you. I yield back.

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**Prepared Statement of Hon. Carol D. Miller, a Representative in Congress  
from the State of West Virginia**

My district of Southern West Virginia is the cross roads of transportation for trade and trucking, connecting the eastern seaboard and inland America. The highways of West Virginia are essential for our nation's goods and products to reach consumers and to be exported around the world. West Virginia produces some of the finest natural resources and manufactured goods. Unfortunately, our highway system does not meet that same standard. In the past, we have faced crumbling infrastructure and uncompleted highways, such as the King Coal Highway and Tulsa Highway, but this is starting to change. For example, the road connecting my district's famous "Bridge to Nowhere" to the airport is finally under construction. West Virginia is getting back on track. Finishing these projects could cut travel times in half, boost economic output, improve driver safety, and save lives, just as many on our panel today have highlighted in their testimony. It is one of my main priorities to connect West Virginia with the rest of the country, by focusing on our infrastructure and promoting economic development.

**Statement of Lane Kidd, Managing Director, Alliance for Driver Safety & Security (The Trucking Alliance), Submitted for the Record by Hon. Norton**

THE TRUCKING ALLIANCE

The Alliance for Driver Safety & Security, commonly known as the Trucking Alliance, is a coalition of interstate freight transportation and logistics companies. A select number of insurance and technology businesses also support the work of the Trucking Alliance.

The Trucking Alliance is solely focused on advancing safety reforms to:

- Improve the safety and security of commercial drivers;
- Reduce the number of large truck accidents; and
- Eliminate all large truck crash fatalities.

This statement reflects the unanimous position of the Trucking Alliance Board of Directors.

MEMBER COMPANIES

Trucking Alliance carriers affiliate by invitation. Companies agree to adopt specific safety and operating standards that exceed federal regulations.

Two member carriers are in the top five largest trucking and logistics companies in the United States. The other member carriers are among the 200 largest US trucking firms. These companies collectively employ 82,000 professional drivers and logistics personnel. Thousands of independent owner-operators are contracted to these companies. Collectively, Trucking Alliance member companies own and operate 70,000 large tractors, and more than 220,000 semitrailers and intermodal containers, to serve supply chain networks, both domestically and internationally. More information about the Trucking Alliance can be found here [<https://truckingalliance.org/>].

THE TRUCKING INDUSTRY MUST REDUCE LARGE TRUCK CRASHES

The subject of the House T&I Subcommittee hearing is “Under Pressure—The State of Trucking in America.” There should be no greater pressure on the trucking industry than to reduce large truck crash fatalities and injuries.

In the last reportable year (2017), there were more than 415,000 large truck accidents on our nation’s highways. These large truck crashes tragically killed 4,761 people, including more than 600 truck drivers. Another 148,000 people were injured. These statistics should alarm every trucking company employer, whose drivers share the road with millions of motorists every day.

LARGE TRUCK CRASH FATALITIES CAN BE ELIMINATED

Steve Williams, Chairman and CEO of Maverick USA in Little Rock, Arkansas, is a co-founder of the Trucking Alliance and serves as the coalition’s president. Williams is a former chairman of the American Trucking Associations and has served on numerous industry stakeholder boards and commissions, including the Transportation Research Board. “*The trucking industry is indispensable to the US economy,*” Williams recently said. “*But the industry has too many accidents. More truck drivers lost their lives in 2017, than in any year in the previous 10 years. We must aggressively address these tragic figures.*” Williams believes a first step is to reverse the industry priorities. “*Support progressive safety reforms that make sense for our country and citizens first, our industry second, and our companies third.*”

Yet several trucking-specific bills before the House Transportation & Infrastructure Committee would propose the opposite—legislation to benefit companies first, the trucking industry second, and our country and citizens, third. This committee must adopt safety reforms to reduce large truck crashes and reject legislation that would appease special interests but sacrifice public safety in the process.

The trucking industry should strive to achieve the same safety performance record as the US airline industry. For example, the Trucking Alliance fully supports the work of the *Road to Zero Coalition*. Announced in October 2016, this coalition has more than 900 cities, corporations, and government agencies. The Trucking Alliance serves as one of 21 organizations on the Road to Zero Steering Group, the only stakeholder from the trucking industry.

The *Road to Zero Coalition* plans to fully eliminate all highway accident fatalities within 30 years. If progressive safety reforms and emerging technologies are adopted, the trucking industry can eliminate all large truck crash fatalities much sooner. This subcommittee can have an integral role in achieving these objectives.

The House T&I Subcommittee on Highways and Transit should consider the following safety priorities, to reduce large truck crashes, injuries and fatalities:

*1. No Industry Segment Should Be Exempt from Installing Electronic Logging Devices (ELDs)*

In 2012, Congress required *all* interstate commercial trucks to install an ELD, as part of the “Moving Ahead for Progress in the 21st Century Act.”

ELDs are recording devices. The devices are engaged to the truck’s engine. ELDs verify when and for how many hours a truck driver operates a commercial vehicle. ELDs verify if a truck driver exceeds the maximum number of on-duty hours allowed by law, thereby reducing truck driver fatigue, a major factor in large truck crashes.

Rather than embrace ELDs for the safety benefits they will achieve, certain industry segments want an exemption from ELDs. H.R. 1673 and H.R. 1698 would allow thousands of truck drivers to operate ‘off the grid’ and without a reliable way to verify whether they are in compliance with on-duty regulations. These bills would compromise public safety. The T&I Subcommittee should reject these two bills, outright.

Another bill, H.R. 1697, would allow any motor carrier that operates 10 or fewer trucks to operate without an ELD. Hundreds of thousands of truck drivers could operate their trucks without an ELD, and presumably, utilize the paper logs that ELDs replaced. Paper log books are easily falsified. H.R. 1697 should be rejected.

ELDs should be required in all large commercial trucks, regardless of how many trucks are owned, the commodity being hauled, length of trip, or whether the truck driver operates in interstate or intrastate commerce.

*2. Thousands of Commercial Truck Drivers are Illicit Drug Users*

The Omnibus Transportation Employee Testing Act of 1991 requires drug and alcohol testing of “safety-sensitive” transportation worker occupations. These occupations require performance in the public sector. Drug use is strictly prohibited. Truck driving is considered a safety sensitive occupation, along with other transportation workers in aviation, rail, pipeline, transit, and other transportation modes.

The US Department of Transportation (USDOT) administers the 1991 law, incorporating drug test guidelines approved by the US Department of Health and Human Services (HHS). USDOT currently recognizes one drug test method—a urinalysis. USDOT allows employers to require additional drug test methods, as part of the employer’s hiring practices.

A growing number of trucking company employers, including Trucking Alliance carriers, require a second drug test, a hair analysis, as part of their pre-employment truck driver hiring policies. The Trucking Alliance recently submitted data to USDOT, showing compelling evidence that thousands of habitual drug users are manipulating federal drug test protocols and obtaining jobs as commercial truck drivers.

This survey data compared the pre-employment drug test results of 151,662 truck driver applicants, who were asked to submit to two drug tests—a urinalysis and a hair analysis. Almost all applicants held an active commercial driver license. Ninety-four percent (94%) of the truck driver applicants tested drug-free. However, thousands of applicants failed either or both drug tests.

Alarming, the urinalysis, the only method recognized by USDOT, and relied on by almost all trucking company employers, actually failed to identify most drug abusers. The urinalysis detected drugs in 949 applicants, about 1% of the population. However, 8.6%, or 8,878 truck driver applicants, either failed or refused the hair test. Put another way, *the urinalysis missed 9 out of 10 actual illicit drug users*. The most prevalent drug was cocaine, followed by opioids and marijuana. Applicants who failed or refused the hair test were disqualified for employment at these companies, but likely obtained the same job elsewhere, at companies that administer only a urinalysis.

This survey is the first of its kind in the trucking industry. The results represent a statistically valid sample. According to the American Trucking Associations, there are 3.5 million commercial truck drivers. The survey can project with a 99% confidence level, and a margin of error of <1%, that *301,000 commercial truck drivers would fail or refuse a hair analysis today, for illegal drug use*.

The survey results are compelling evidence that thousands of habitual drug users are skirting a system designed to prohibit drug use in transportation. Thousands of drug abusers are obtaining jobs as truck drivers, despite their drug use.

The T&I Subcommittee can intervene to mitigate this problem. Urge HHS to expeditiously complete its hair test guidelines, so USDOT can quickly recognize hair testing for DOT pre-employment and random drug test protocols. Further, until

USDOT recognizes a hair analysis, no employer will be allowed to submit hair test failures into the pending USDOT Drug and Alcohol Clearinghouse. This will make it virtually impossible for another employer to know if a person applying for a truck driver job has previously failed a drug test.

Drug use in the trucking industry is a public safety crisis. This survey can project as many as 301,000 commercial drivers would fail or refuse a hair test. These illicit drug users must be identified and taken out of commercial trucks and off the nation's highways. The trucking industry has no greater safety issue, than to aggressively address illegal drug use among commercial truck drivers.

### *3. Truck Drivers Should Be 21 Years or Older to Operate Commercial Trucks in Interstate Commerce*

Federal regulations require a person to be at least 21 years of age before operating a commercial vehicle in interstate commerce. The Trucking Alliance supports this age restriction.

Most states allow teenagers between the ages of 18-21 to operate commercial trucks within their state boundary. While statistics are lacking, anecdotal evidence suggests these teenage truck drivers operate lighter weight, short trucks, such as delivery vans and straight or panel trucks.

Few teenagers actually operate Class 8 tractor-trailer combinations within their state. These big rigs carry a laden weight of 80,000 pounds. These are the tractor trailers used in interstate commerce. Operating these tractor trailer combinations requires elevated skills, considerable experience, maturity and self-discipline.

State restrictions that allow teenagers to operate some types of trucks in intrastate commerce, can serve as the proper framework for gaining experience. These teenagers are essentially in an apprenticeship. They operate smaller trucks, make local deliveries, return to their place of work each day. They are always under close, constant, and daily supervision, unlike the working environment experienced by long-haul commercial drivers.

Supporters of teenage truck drivers in interstate commerce use the analogy that 18-21 years old kids are allowed to serve in the military. But teenagers serving in the military are also under daily, highly regulated, constant, and strict supervision. There are many job occupations, for which serving in the military doesn't provide an automatic qualification. Current state restrictions offer teenagers an opportunity to gain a limited, highly supervised introduction to the trucking industry.

Statistics are lacking on the overall safety performance of local teenage truck drivers. But the industry's property and liability insurance rates, for incurring the additional risk of teenage truck drivers in interstate commerce, would assuredly go up.

For these reasons, the House T&I Committee should reject H.R. 1374. This legislation would allow teenagers to operate Class 8 tractor trailer combinations in an unsupervised environment and in interstate commerce, after only 10 weeks of training. The nation's public highways should not be used as a proving ground to determine if teenagers can operate Class 8 tractor trailer combinations safely. Current restrictive state provisions allow teenagers an apprenticeship to the industry. H.R.1374 could compromise public safety and should be rejected.

### *4. Large Trucks Should Adhere to a Reasonable Maximum Speed of 65-mph*

The Trucking Alliance supports a new federal safety standard that would require all large commercial trucks to maintain a maximum speed limit of 65 mph on the nation's highways.

According to NHTSA, in 2017, speeding was one of the factors for almost 27% of motor vehicle crash deaths. The World Health Organization's "Report on Road Safety" estimates that for every 1% increase in mean speed, there is a 4% increase in the fatal crash risk and a 3% increase in the serious crash risk. The top speed of large tractor trailer combinations should be limited.

The trucking industry has historically supported truck speed limiters. Most trucking companies already utilize truck speed limiters, usually setting the trucks to operate at maximum speeds between 62 and 68 mph. As far back as 2006, the American Trucking Associations submitted a petition to NHTSA, requesting that truck manufacturers install truck speed limiting devices. The National Transportation Safety Board (NTSB) estimates that setting a truck speed limiter at 65 mph, could save as many as 214 lives and prevent approximately 4,500 injuries from large truck crashes each year.

Slowing the top speed of tractor trailers will greatly reduce the number of fatalities and the severity of injuries from large truck crashes. Congress should support legislation that would direct the Secretary of Transportation to issue a final rule re-

quiring truck speed limiting devices and for those commercial vehicles currently equipped with the technology to engage the devices.

*5. Collision Mitigation Systems Should Be Required on New Commercial Trucks*

Collision mitigation systems installed in commercial trucks can reduce large truck crashes.

The Trucking Alliance supports the conclusions of a 2017 study by the AAA Foundation for Traffic Study. The study, entitled “Leveraging Large Truck Technology and Engineering to Realize Safety Gains”, researched four truck safety technologies, all of which can greatly reduce injuries and fatalities in large truck crashes:

1. *Lane Departure Warning Systems*, which detect when the vehicle drifts out of its lane and warns the driver;
2. *Video-based Onboard Safety Monitoring*, which utilizes in-vehicle video cameras and sensors;
3. *Automatic Emergency Braking Systems*, which detect when the truck is in danger of striking the vehicle in front of it and brakes automatically, if needed; and
4. *Air Disc Brakes*, which will eventually be superior to traditional drum brakes, as these systems are continually improved.

The Trucking Alliance supports the deployment of these Advanced Safety Technologies (ASTs) and other technologies in new commercial trucks. ASTs are not limited however, to the four technologies in the AAA Foundation report. In fact, the Trucking Alliance endorses a wide variety of ASTs that are now deployable or under development for large trucks.

These ASTs include, but are not limited to:

- Forward Collision Warning Systems
- Adaptive Cruise Controls
- Automatic Emergency Braking Systems
- Lane Departure Warning Systems
- “Blind Spot” Warning Systems
- Electronic Stability Control
- Roll Stability Control
- Speed Limiters
- Video-based Onboard Safety Monitoring systems
- Kinematic-based Onboard Safety Monitoring Systems
- Vehicle-to-vehicle Communication
- Air Disc Brakes (ADB)
- Brake Stroke Monitoring Systems; and others.

Some ASTs, such as Roll Stability Control Systems, have been in operation by fleets for a decade. Other technologies, such as video and kinematic-based onboard safety monitoring systems and “Blind Spot” mirror replacement systems are newer technologies that carriers are testing in the field.

For these reasons, the Trucking Alliance endorses ASTs and its member carriers have agreed to pursue the testing and deployment of these ASTs, as they are more fully developed, tested, and the safety benefits are confirmed through these field tests.

In the meantime, the Trucking Alliance urges Congress to require NHTSA to set a minimum performance standard and issue a final rule requiring that commercial motor vehicles are equipped with automatic emergency braking systems, as standard equipment.

CONCLUSION

Thank you for the opportunity to submit this statement before the Subcommittee and its hearing on the state of trucking in America.

**Letter from Cian Cashin, Director of Government Affairs, American Association of Motor Vehicle Administrators, Submitted for the Record by Hon. Norton**

*Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC.*

DEAR CHAIRMAN HOLMES NORTON AND RANKING MEMBER DAVIS:

The American Association of Motor Vehicle Administrators (AAMVA) thanks you for holding its June 12th hearing entitled, “Under Pressure: The State of Trucking in America.” AAMVA supports the role of the Subcommittee in its oversight of commercial vehicle safety and its important role in facilitating interstate commerce.

As part of that hearing, AAMVA noted the testimony of trucking industry officials with respect to commercial driver testing. AAMVA takes this opportunity to go on record regarding state safety obligations with respect to motor vehicles and the states' previous and ongoing efforts to facilitate driver availability.

AAMVA supports the role of its industry partners, but finds recent proposals related to commercial driver's license (CDL) testing problematic. With the understanding that Congress may see the proposal again, AAMVA specifically cites legislation introduced in the last Congress (HR 4719) as the basis for potentially problematic changes to the commercial testing system. On behalf of our members, we hope the following describes some of these challenges, and illustrates the proactive steps the association is taking to mitigate the issues communicated by industry—without the need for additional legislation.

#### BACKGROUND

AAMVA appreciates HR 4719's intent to expand the labor pool for an in-demand, economically beneficial labor force. It is critical that these new drivers are prepared to safely operate large commercial vehicles. For their safety and the safety of the entire motoring public, state motor vehicle officials must only provide *qualified* drivers with a CDL. State authorities' core mission lies in public safety, not in applicant volume and private certification graduation rates. One of the key issues facing CDL skills test wait times is the repeated testing of the same applicant. In many of those cases, rather than prepare for a one-time, successful test, individuals are repeatedly taking a time-consuming test to “learn what they don't know” so that they can fill those knowledge gaps between scheduled retesting. Whether the applicant passes the test or not, state (and third-party) CDL skills testing administrators must allocate each applicant the entire amount of time predicated upon successful completion of the full test.

AAMVA cites that numerous steps are currently underway to improve the success of first-time applicants. This includes FMCSA's work on an “Entry-Level Driver Training” program as established through a final rule published in December, 2016 (81 FR 88732). This program will establish new minimum training standards for certain individuals applying for their commercial driver's license for the first time; an upgrade of their CDL; or a hazardous materials (H), passenger (P), or school bus (S) endorsement for the first time. These individuals are subject to the entry-level driver training (ELDT) requirements and must complete a prescribed program of instruction. AAMVA fully believes this course of action will assist in uniform curriculum delivery and limiting the instances of unprepared applicants repeatedly monopolizing the CDL skills testing schedule.

AAMVA members have proactively addressed the issue by reviewing all aspects of the CDL testing process for improvement of the testing model. The objective of this effort is to better align CDL testing procedures with current industry practices and the CMVs being developed. Utilizing metrics such as common crash causation and CVSA and citation data, our goal is to align testing practice with the modern commercial environment. The effort includes:

- Modifications to the Vehicle Inspection (VI) portions of the skills test which has contributed to high failure rates
  - This includes a significant reduction in the number of vehicle inspection items required as part of the skills test
- Revisions to the CDL Skills Test score card
- Review and evaluation of the road test for modernization based on CMV crash causation factors and evolving equipment technologies
- Modernization of the knowledge test item pool based on updates to the CDL Test System
- Modernizing the test system to accommodate rapidly evolving technologies

AAMVA is currently field testing the modified testing method to ensure it keeps pace with new technology, industry standards, training practices, jurisdictional needs and driver competencies. Testing results will be collected and analyzed by an independent third party to ensure the proposed changes are valid and reliable.

Specific to HR 4719, AAMVA cites the following concerns with the legislation:

*The legislation mandates sanctions on states without providing any potential solution.*

While this legislation cites adherence to “program requirements,” the legislation provides no effective solution other than mandating submission of report data with respect to the status of skills testing for individuals applying for a CDL. The mandated reporting data includes wait time, the number of qualified CDL examiners, and the number of available CDL skills testing sites in the states. AAMVA stresses that the Federal Motor Carrier Safety Administration

(FMCSA) *has already been mandated by Congress* to conduct a report on this exact same data through Section 5506 of the Fixing America's Surface Transportation Act (P.L. 114-94). This previously mandated report should effectively serve as a survey of the national CDL skills testing environment. Potentially sanctioning state governments over redundant reporting is excessive and unnecessary.

*The legislation represents the potential for forced or coerced privatization of state agency resources.*

This legislation's amendments to 49 USC 31305 includes the stipulation that compliance with "the program" is dependent on whether or not a "State prohibits or currently does not authorize public and private commercial driving schools, or independent CDL testing facilities, from offering a CDL skills test as a third-party tester." However, any skills testing issues in a State that currently authorizes third-party testing environments are essentially exempt from sanctions even if they result in skills testing delays. Potential sanctions are therefore not based on the performance of the state, but instead are applicable only to those states that do not privatize their agency functions to third parties. Any preconception that the states have not already considered third-party testing as a viable safety alternative are erroneous. All states have considered this option at one time or another, and to force or coerce privatization of state authorities without direct knowledge of the exact legal and resource issues they face is presumptuous.

*The legislation commandeers priority national safety systems for simple reporting transactions.*

Amended Section (e)(3) would mandate the United States Department of Transportation add appropriate data fields concerning a CDL skills test location for the purpose of reporting CDL skills test information. The systems cited for reporting data include the Commercial Driver's License Information System (CDLIS) and the Performance and Registration Information Systems Management (PRISM) program. AAMVA can advise, as operator of CDLIS on U.S. DOT's behalf, that modification of national safety systems to carry simple reporting data is unnecessary and excessively expensive. CDLIS is a national networking system, which means that modification of CDLIS to carry any additional data would require modification of every single state's motor vehicle records system. The reporting data mandated by this Act will have nothing to do with active safety records of any individual driver, but will be used exclusively to analyze the current status of testing. Further, the provisions would require extensive expansion of the number of inconsequential records associated with these systems—both at the state and federal level. Each applicant, whether they are ultimately awarded a CDL or not, would require a record be created to carry their testing wait times—not their driver safety record. Costs for modifying every single state's base system of records and the CDLIS central site is prohibitive and the legislation's proposal to modify these systems to carry simple reporting data is misplaced. AAMVA also emphasizes that the Commercial Skills Test Information Management System (CSTIMS) has already been established for this purpose.

*The definition of "skills test delay" is problematic.*

The legislative definition of "skills test delay" is based on the period "beginning on the date an individual is certified by a training provider to sit for the CDL skills test and ending on the date the individual completes the test." Verification of the "date an individual is certified by a training provider to sit for the CDL skills test" will be difficult (if not impossible) to verify without defining who constitutes a "training provider" and how certification can be recognized. Further, defining "delay" as the inability to schedule and retest within a period of 7 days from the date of certification or the failure of a previous test seems unreasonable for any type of professional license. Even in terms of non-commercial license retesting, many states mandate a required remedial wait time between tests so that the applicant can further practice in a safe, controlled environment and further study the rules of the road before subjecting the public to an unproven driver in a unfamiliar vehicle.

AAMVA believes the ultimate solution to any perceived issues with the commercial licensing testing model is best resolved without legislation. The states have been proactive in realizing the changing environment of commercial transport and have actively engaged various stakeholders (including industry) in developing solutions.

As partners in protecting the national interest, AAMVA thanks the Committee for its continued emphasis on safety, and looks forward to continued collaboration as this and other issues arise.

Respectfully,

CIAN CASHIN  
AAMVA Director of Government Affairs

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**Letter of June 17, 2019, from Cal Dooley, President and CEO, American Chemistry Council, Submitted for the Record by Hon. Norton**

JUNE 17, 2019.

Hon. ELEANOR HOLMES NORTON  
*Chair*

*Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC.*

Hon. RODNEY DAVIS  
*Ranking Member*

*Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC.*

RE: June 12 Hearing, "Under Pressure: The State of Trucking in America."

DEAR CHAIRMAN NORTON AND RANKING MEMBER DAVIS,

The American Chemistry Council (ACC) is pleased to submit this statement for the record of the Subcommittee's June 12, 2019, hearing, "Under Pressure: The State of Trucking in America." We appreciate the Subcommittee's focus on improving truck safety while addressing transportation challenges that impact U.S. manufacturers and consumers alike.

ACC represents the leading companies in the business of chemistry. ACC members provide innovative products and services that make people's lives better, healthier and safer. As a \$526 billion enterprise, the business of chemistry is a key element in the nation's economy and a large customer of the U.S. trucking system. The U.S. chemical industry is growing, and is increasingly reliant on the U.S. trucking system. A recent analysis conducted by PwC shows that with more than \$200 billion in announced new capital investments, an estimated 60 million metric tons of additional chemical and plastics production capacity is expected to come online by 2022. This will require over 900K additional truck shipments each year. ACC is concerned that constraints in the trucking industry may hinder our future growth and investments in the U.S. economy.

A recent survey of ACC members revealed that 81% of companies have experienced significant challenges due to constraints in the trucking industry. These challenges include service deterioration, delays, and missed shipments, resulting reduced productivity, increased transportation costs, and lost business. The United States needs smart transportation and infrastructure policies to confront these challenges.

ACC supports several specific policy proposals discussed by witnesses during the hearing. In particular:

- We support the DRIVE Safe Act that would create an apprenticeship program for commercial drivers under the age of 21. This would provide much needed relief for the nation's truck driver shortage, while imposing appropriate requirements on drivers and employers to protect public safety.
- We support efforts to safely modernize America's truck weight limit on Interstate Highways. This includes allowing trucks with a 6-axle, 91,000 lbs. configuration, thereby reducing road congestion, fuel consumption, emissions, and infrastructure costs.

Thank you for your consideration of this submission to the hearing record.

Sincerely,

CAL DOOLEY  
President & CEO

cc: The Honorable Peter DeFazio  
The Honorable Sam Graves

—————

**Statement of the Associated General Contractors of America, Submitted for  
the Record by Hon. Norton**

AGC believes the current hours of service rules should not apply to construction industry drivers and recommends a broad construction industry exemption from current hours of service rules. Congress and the Federal Motor Carrier Safety Administration have recognized the unique and safe driving conditions that construction industry drivers operate by providing a variety of exemptions to construction drivers from various parts of the regulations. AGC believes a broad exemption to the hours of service rules for construction industry drivers is necessary and justified based on the record of safe operation that the industry has demonstrated under the exemptions already provided.

CONSTRUCTION INDUSTRY DRIVERS ARE FACED WITH UNIQUE CIRCUMSTANCES

Construction industry truck drivers operate in unique circumstances that make the hours of service restrictions particularly onerous. Consider the following:

A road cannot be built on frozen ground. And, in many states across the country the construction season is limited to spring and summer months. Similarly, because roads cannot be constructed during rain events, there is an extremely limited period in which road construction projects can be completed. Further complicating the situation, the daily window for road construction and maintenance services is tight because state transportation agencies (DOTs) must balance the convenience of the motoring public with the ability to construct or maintain a roadway. Generally, active road construction activities may last for up to 12 or 14 hours per day.

As a result, construction companies must utilize every minute of every day available to complete these projects. Unnecessary restrictions placed on CMV drivers associated with construction projects chew into those precious available hours during this fixed season.

Drivers in the construction industry transport perishable materials such as concrete and asphalt. These products must be transported and applied within tight time limits or are unusable and wasted.

Typically, construction industry drivers spend much of their time not actually driving but waiting to pick-up or deliver materials or load/unload equipment.

Construction companies must obtain permits and pre-approved routes to operate longer trailers that can transport asphalt drums and silos, for example. These tractor-trailers can be up to 120 feet long, 16 feet wide and weigh over 240,000 lbs. While transporting these pieces of large construction equipment short distances, drivers are *not allowed to deviate* from the pre-approved routes identified to avoid low bridges and weight restricted areas. The permitted routes can easily increase what would normally be a 75-mile drive to 200 miles—often triggering a 30-minute break requirement. Complying with the current 30-minute break requirement would be unsafe and difficult or impossible to accomplish considering the load size. Finding a location and releasing a driver from all on-duty responsibilities associated with that type of construction material load is impractical, inefficient, and creates additional safety problems.

Many companies who operate in multiple adjoining states run a central equipment shop and dispatch center to more efficiently move equipment, materials, and employees to various projects throughout their area of operation-saving time and precious daylight hours. Under the current construction exemptions, companies that operate in these areas frequently travel more than 50 or 100 air-miles and are “on-duty,” although not driving for periods of time. Nonetheless, the 30-minute break requirements are triggered, and they are disqualified from the 24-hour restart exemption.

Example: A truck driver drives 55 air miles from the work reporting location to Site A to deliver a piece of equipment, immediately excluding the construction exemption for a 24-hour restart. Once the driver employee arrives at Site A, the equipment is unloaded, and the driver employee begins to perform work-related duties (on-duty but not driving). After a few hours, the employee drives the empty truck another 50 air-miles, away from its start location, to pick up another piece of equipment at Site B. At Site B, the driver works (on-duty but not driving) and loads the equipment onto the truck before returning to his work reporting location and unloading the equipment. Because the driver has exceeded the 100 air-mile radius, the short haul exemption is similarly voided, and the driver is required to take a 30-minute break prior to any 8 hours on duty—even though those hours were not continuously spent driving behind the windshield.

## LIMITED EXEMPTIONS GRANTED

Congress and the FMCSA have both recognized these characteristics of construction industry driving practices as different from long haul drivers and therefore should be provided some relief from HOS restrictions. Currently there are a variety of exemptions and exceptions, as follows:

Construction industry drivers transporting construction materials and equipment that drive within a 75 air-mile radius from their work reporting location are allowed a 24-hour reset/restart to the driver's 70 hour/8 day on duty clock.

Short haul construction industry drivers that stay within a 100-mile radius of their normal work reporting location are exempt from requirements to maintain a log, including ELD requirements. Under this short haul exemption ready-mix concrete truck drivers and asphalt delivery drivers have a 14 hour on-duty allowance to still stay within the short haul exemption. However, the ready-mix exemption only includes trucks that have a mixer drum agitator and does not include dump trucks and other trucks critical to concrete paving operations. While the asphalt exemption includes the delivery truck, water truck, tack distributor, equipment hauler, pickup sweeper and attenuator truck, other trucks are not included.

Ready mix and asphalt delivery drivers can also count time waiting to deliver their product to meet the 30-minute rest period during an eight-hour shift. Additionally, while the definition of asphalt includes "related materials and equipment," it is not clear if this definition would include aggregates, sand and other trucks used in asphalt paving.

## SAFETY RECORD IN TACT

The construction industry has welcomed this relief and demonstrated strong compliance with the hours of service regulations in the past. The record shows that the Congressionally mandated 24 hour reset provision has not been detrimental to public safety nor has it had adverse effects on driver health. AGC also believes this provision has benefitted the nation by allowing the delivery of vitally needed infrastructure in a timely and cost-effective manner.

In providing this exception in 1995, Congress recognized that the hours-of-service regulations were too restrictive on several industries, including the construction industry. In granting this exception in the National Highway System Designation Act of 1995 (section 345) Congress also directed the Secretary of Transportation to ensure that granting the construction industry exemption would be in the public interest and would not have a significant adverse impact on the safety of commercial motor vehicles. If at any time the Secretary determined that this was not the case, the Secretary could "prevent the exemption from going into effect, modify the exemption, or revoke the exemption." Now, more than twenty years after the rules' implementation, no specific adverse impact has been identified.

## UNIFORM CONSTRUCTION INDUSTRY EXEMPTION MAKES SENSE

While the exemptions that have been granted to the construction industry are helpful, they are limited, do not address all the industry's needs and are confusing to administer and enforce. On any given construction site, some trucks and products are exempt from some HOS requirements while others are not. The fundamental reasoning behind granting the existing exemptions applies more broadly across all construction industry trucking operations. Asphalt and paving operations do not occur with only the vehicles that are delivering those specific materials to the job-site. Aggregate must be placed on the road bed before either concrete or asphalt can be placed. Water and oil must be applied, attenuators put in place to protect workers, debris removed, equipment transported, and an array of other operations that are essential to completion of a road, bridge, runway and other transportation facilities. For these reasons, AGC believes it is essential to provide a uniform construction industry exemption.

The simplest and most straightforward approach would be an exemption from all of the provisions of 49 CFR Part 395 for drivers of vehicles in the construction industry, similar to the exemptions for drivers of USVs as defined in 49 CFR § 395.2 and transporters of agricultural commodities in 49 CFR § 395.1(k).

A wide variety of trucks and materials involved in transportation construction include: liquid asphalt, hot mix, concrete, aggregates, clay, water, oil, various types on construction equipment (pavers, excavators, backhoes, compactors, etc.), striping, and numerous others. It is not feasible for FMCSA to identify which of these construction trucking operations or material deliveries should be covered and which should not. Therefore, a broad exemption is necessary.

In addition to transport of materials, the exemption should also clarify that vehicles owned or operated by a company under contract for the construction or reconstruction of a highway or other transportation facility when operated within the immediate construction project as described in the contract.

A construction exemption would recognize local nature of these operations and the fact that non-uniform requirements and piecemeal exemptions increase the risk of crashes by increasing exposure.

#### ALTERNATIVE APPROACH

If a full construction exemption is not granted, AGC supports the changes that would mitigate some of the impacts of HOS restrictions on construction industry drivers, as follows:

##### EXPAND SHORT HAUL EXEMPTION

Since many construction operations are local in nature, the short haul exemption has been helpful but limited. Expansion of the short haul to 150 miles would significantly reduce the impact of HOS on the construction industry.

The short haul exemption should allow for an additional 2 hours of on-duty time. These additional 2 hours are crucial due to the seasonal nature of construction, and the fact that drivers in this industry are so frequently waiting at a jobsite—which we classify as “on duty not driving”.

AGC supports providing one set of HOS rules for short-haul operations, wherein a CDL driver would be exempt from the requirements if the driver operates within 150 air-miles of the work reporting location and completes the work day within 14 hours. Expanding the rule to a uniform 150 air-mile standard would make the rule uniform for all CMV drivers and give additional flexibility to CDL drivers.

In addition, since drivers in the construction industry are so frequently either loading materials, waiting to be loaded, unloading, or waiting to unload, the 30-minute rest break just is not necessary. Drivers operating under the short-haul exemption and transporting construction materials and equipment should be allowed to count this waiting time as an alternative to a 30-minute rest break.

##### ELIMINATE THE RETURN TO WORK REPORTING LOCATION REQUIREMENT FOR THE SHORT-HAUL RULE

The current short-haul exceptions require the driver, whether in a CDL or non-CDL vehicle, to return to the driver’s normal work reporting location and be relieved from duty with 12 hours to be eligible for the exemptions in 49 CFR § 395.1(e)(1) or (2). AGC supports the Coalition proposal that FMCSA revise the rule to eliminate the requirement that a driver must return to the normal work reporting location and be relieved from duty within the time limit to be eligible for the exemption.

There is nothing magical about a normal work reporting location. Going back to the same origin point every day does not necessarily promote safer driving habits. Many drivers begin their duty period from home, or from different jobsites, or motels on the road. Construction operations can be mobile. The construction job location is always changing. With modern telecommunications between drivers and management, it is not necessary for the driver to be physically present at a work reporting location to be relieved from duty in person. Drivers often now communicate with dispatchers and managers electronically daily, often exclusively, with no diminution in safety.

AGC supports the Coalition suggestion that the rule simply require the driver to establish the origin point for that duty period, using GPS or some equivalent means, and be relieved from duty within 14 hours. Drivers can notate their origin for the day in order to establish the 150 air-miles radius. If they are relieved from duty by the end of the 14-hour duty period, they would be exempt under § 395.1(e)(1) or (2).

##### ADVERSE DRIVING CONDITIONS

AGC calls for expanding the exception in 49 CFR § 395.1(b)(1) to allow drivers to drive for an additional two hours beyond the 14 hour daily on-duty limit in addition to the 11-hour driving limit. This approach would provide an additional margin of safety for drivers. For example, in rare instances drivers get caught in inclement weather in which they must stop and put chains on their vehicles. Because these drivers do not drive more than a few hours per day on average, providing an exception to the 11-hour driving limit does not offer any relief. But allowing them an extra two hours beyond the 14-hour daily driving window would provide some addi-

tional relief and give them an opportunity to return to a safe haven within the regulations.

SLEEPER BERTH FLEXIBILITY

Finally, AGC calls for additional flexibility for drivers using the sleeper berth rules to divide the minimum 10 hours off duty into two separate periods. Presently, drivers must take at least 8 consecutive hours of the 10-hour off duty period in the sleeper berth as required by 49 CFR § 395.1(g)(1)(ii)(A)(1). Yet the consensus among motor carriers using this provision that few, if any, drivers, can generate sufficient rest with 8 consecutive hours of more confined in the sleeper berth compartment. The Coalition supports an approach that would allow drivers to take two periods of fewer than 8 consecutive hours in the sleeper berth while still accumulating 10 hours off duty.

This flexibility is important for construction industry drivers for scheduling time critical operations. It is especially important particularly in rural areas or remote projects. Liquid asphalt delivery is an example of how this flexibility is necessary. In many areas asphalt terminals can be long distances away from the project location. In some states there may be only one liquid asphalt terminal. For the liquid asphalt to be delivered on a time critical schedule a driver may need to pick up product the evening before and drive to the project location and be ready to deliver the next morning. A sensible split sleeper berth rule, instead of the current requirements for splitting the required 10 hours off duty, could resolve many of the scheduling problems. AGC urges FMCSA to revert to the previous sleeper berth rules.

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**Letter of June 12, 2019, from Shailen P. Bhatt, President and CEO, Intelligent Transportation Society of America, Submitted for the Record by Hon. Norton**

JUNE 12, 2019.

Hon. ELEANOR HOLMES NORTON  
*Chair*

*Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC.*

Hon. RODNEY DAVIS  
*Ranking Member*

*Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC.*

DEAR CHAIR HOLMES NORTON AND RANKING MEMBER DAVIS:

In anticipation of the Subcommittee on Highways and Transit upcoming hearing entitled “Under Pressure: The State of Trucking in America,” the Intelligent Transportation Society of America (ITS America) writes to underscore how new and developing Vehicle-to-Everything (V2X) technology that depends on the 5.9 GHz band can dramatically reduce truck fatalities and crashes. Vehicle-to-Vehicle (V2V), Vehicle-to-Infrastructure (V2I), and Vehicle-to-Pedestrian (V2P)—collectively referred to as V2X—have incredible potential to dramatically improve the safety, accessibility, and operational performance of our roads and truck safety.

According to the U.S. Department of Transportation’s National Highway Traffic Safety Administration (NHTSA), 70% of crashes involving trucks happened in situations that could be addressed by V2V systems. V2V deployments available today include systems that provide emergency braking. Another benefit of connected vehicles is their ability to be the “eyes and ears” of other vehicles. Non-Line-of-Sight awareness means that drivers and vehicles will be able to see around corners and receive information about hazards in the roadway, even if they cannot see the hazard. V2V communications help move traffic more efficiently with demand responsive traffic signaling and allow emergency response vehicles to preempt signals.

The concept of V2I is to provide the vehicle and the driver information about infrastructure operations—weather and pavement condition, how signals are directing traffic, and even the location of potential hazards at intersections and other critical road safety hotspots. V2I applications include red light violation warnings, reduced speed zone warnings, curve speed warnings, and spot weather impact warnings. V2I soon will support other applications that will disseminate the condition of the infrastructure, such as bridge integrity, and may even collect data from vehicles that describe pavement condition. According to NHTSA, V2I technology helps drivers safely negotiate intersections and could help prevent 41 to 55 percent of intersection crashes. Another connected vehicle safety application that helps drivers with left turns

at intersections could help prevent 36 to 62 percent of left-turn crashes, according to NHTSA.

Public sector agencies can also reap the benefits of V2X. Tens of millions have already been invested in this effort, including incorporating connected vehicle (CV) technologies into infrastructure. Through the combined efforts of the public and private sectors, hundreds of millions have been invested in development, rigorous testing, and deployment of today's V2X solutions. A majority of states and dozens of cities are deploying or planning to deploy CV technology. Wyoming Department of Transportation (WYDOT) is deploying CV technology along the 402 miles of I-80 where winter wind speeds and gusts result in trucks blowing over and often lead to road closures. WYDOT's CV pilot focuses on commercial vehicle operators by developing applications to support advisories, including roadside alerts, parking notifications, and dynamic travel guidance. WYDOT is equipping 400 vehicles, a combination of fleet vehicles and commercial trucks with on-board units (OBUs). Of the 400 vehicles, at least 150 would be heavy trucks that are expected to be regular users of I-80. In addition, of the 400 equipped-vehicles, 100 WYDOT fleet vehicles, snowplows, and highway patrol vehicles will be equipped with OBUs and mobile weather sensors.

Driver-assistive truck platooning enabled by V2V and Vehicle-to-Cloud (V2C) communications links the active safety systems, braking, and acceleration between pairs of trucks. Using connected vehicle technology, trucks and their drivers benefit from shared safety and awareness, and the trucks can safely operate at closer distances to form a 'platoon.' This kind of connected "cooperative" automation improves safety and driver teamwork as well as fuel efficiency and emissions. Since 2018, a number of truck OEMs and technology companies have been running commercial trials of truck platooning, working with major trucking fleets. These systems combine best-available truck safety systems with V2V, making trucks much safer in both individual operation and when paired in platoons. Truck platooning systems using V2V have been developed in the U.S. by companies such as Kenworth, Peterbilt, Volvo Trucks, Navistar, and Peloton Technology. In addition, in the E.U., all six European truck OEMs have developed truck platooning systems enabled by V2V and the same is true for top OEMs in Asia. Currently, truck platooning systems using V2V continue to move freight on a daily basis in the U.S. as part of ongoing fleet activity, setting the stage for growing commercial use of platooning.

V2X will enable us to deploy safety solutions that protect vulnerable users of the system, which will be transformational. V2P is an important component of communications. In Colorado, where the largest increase was in vulnerable users of the system, fatalities increased from 484 in 2014 to nearly 700 in 2017. By allowing vehicles to communicate with these users through sensors or vehicle to device communication, we can significantly reduce the number of pedestrians killed on our roadways.

V2X technologies can also enhance automated driving systems, which can provide numerous economic, environmental, and societal benefits, such as decreased congestion and fuel consumption, and increased access for older adults and people with disabilities.

However, V2X communications are by no means guaranteed. The 5.9 GHz band for V2X is being targeted by cable companies and their supporters who are seeking additional spectrum for WiFi and are aggressively pressuring the FCC to force V2X to share that spectrum with unlicensed consumer broadband devices. Under this threat to the V2X band, wisely reserved by the FCC to allow for common-standard, cooperative vehicle safety that the marketplace cannot provide on its own, now is the time for national leadership to put public safety ahead of entertainment—particularly given that cable/WiFi solutions can expand into other areas of available spectrum.

Speed matters when safety information is involved. Sharing the band could compromise the speed and put lives at risk. What if a driver knew, in fractions of a second, that an airbag deployed in a vehicle in front of him/her? Alternatively, that the vehicle in front, around the next curve, was sliding on black ice? Or a pedestrian is around the next corner? Thanks to V2X technology, that driver would react—and avoid a crash. It is crucial to note that V2X can do things that are impossible for the best active safety systems or even automated vehicles: V2X enables vehicles and their drivers to see around corners, over hills, and perceive the status, non-visible characteristics and operational intent of surrounding vehicles. This allows for cooperative safety applications that cannot be achieved in other ways—dramatically improving safety for all vehicles and roadway users. Notably, V2X provides solutions that will allow for safer interaction between vehicles operating at all levels of automation—from traditional human-driven to driverless. Deploying life-saving technologies that allow cars, buses, trucks, bicycles, pedestrians, motorcycles,

streetlights, and other infrastructure to talk to each other will ensure more people arrive home safely. With roadway fatalities and injuries growing each year, even while individual vehicles themselves have been made safer than ever before, it is clear we are facing a major national health crisis. Given the unique safety solutions that can only be provided by V2X and which will strongly complement future advanced vehicle safety systems and automation, it would be a tremendous mistake by the U.S. Government if the 5.9 GHz band, which it wisely reserved for transportation safety, is not firmly preserved and protected.

ITS America supports prioritizing the entire 5.9 GHz band for existing, new, and developing V2X technologies. We want to make sure all three phases of testing for the 5.9 GHz band are complete in a timely manner before the FCC rules on whether the spectrum can be shared between V2X operations and unlicensed devices like WiFi. Any unlicensed use in the band should be done without harmful interference to the incumbent technology or other intelligent transportation systems technologies. Furthermore, any protocols and solutions that are allowed to make use of the 5.9 band must adhere to common-sense fundamentals that allow for effective operations of V2X safety solutions across the nation: allowing for interoperability and backward-compatibility with systems already deployed today on vehicles and infrastructure.

Building on extensive government-industry collaboration over the past years, V2X deployment has been underway and is growing. As a key part of taking on the national health crisis of growing fatalities and injuries on our roads, now is the time to move past the current period of damaging regulatory uncertainty and accelerate the deployment of life-saving V2X transportation technologies.

Sincerely,

SHAILEN P. BHATT

*President and CEO, Intelligent Transportation Society of America*

cc: House Subcommittee on Highways and Transit  
Ron Thaniel, ITS America Vice President of Legislative Affairs

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**Statement of Phil Hunt, Executive Vice President, Uline, Submitted for the Record by Hon. Norton**

FOSTERING INNOVATION IN THE TRUCKING INDUSTRY

On behalf of Uline, I wish to submit to the Committee written testimony as related to the adoption of Twin 33-foot trailers and addressing the commercial vehicle driver shortage.

Uline is a family owned business leading the nation in selling and distributing shipping, industrial and packaging materials. We have seven distribution centers across the United States, spanning from coast to coast and 6,000 employees. Our business model is based on guaranteeing next day delivery of any of our 34,000 plus inventory items if ordered by 6 PM.

For years, the infrastructure in the United States has steadily deteriorated and Congress has failed to pass a comprehensive infrastructure package to improve our roadways and foster innovation within the trucking industry. At the same time, the trucking industry has continued to grow as our nation's population and subsequent consumer demand for shipping increases. The adoption of Twin 33' (T-33) trucks will allow the trucking industry to meet consumer demands while reducing the number of trucks on the road, safety concerns, CO2 emission, fuel consumption and road wear and tear per ton of freight. Additionally, the adoption of T-33 trucks will help alleviate the ongoing issue of driver shortages within the trucking industry. The industry must continue to adapt and adopt innovative changes to ensure efficient and safe shipping throughout the nation and facilitate our nation's economic growth.

TWIN 33 TRAILERS

A modest five-foot increase to twin 28' trailers maintains the same maximum total vehicle weight while increasing cargo volume capacity by almost 20 percent, which subsequently reduces the number of required trips and vehicles on the road. T-33s would be used to facilitate Less-than-Truckload (LTL) operations, which include cargo packages and relatively small shipments. LTL operations heavily rely on twin trailers.

*Twin 33s in Action:* Currently, T-33s are permitted to operate on certain highways in up to 20 states—the trucks are prohibited from local roads, as are twin 28' trucks. To date, there have been no reports of crashes related to the use of T-33s.

## FUEL &amp; CO 2 EMISSIONS

According to the EPA, Carbon Dioxide (CO<sub>2</sub>) emissions via transportation sources account for around 34 percent of total “human activity caused” CO<sub>2</sub> emissions. Increases in CO<sub>2</sub> emissions over the past twenty years from fossil fuel combustion are influenced by many factors including population growth and economic growth—which are among the same factors that have increased shipping needs and demands. The most effective way to reduce CO<sub>2</sub> emissions is to reduce the consumption of fossil fuels.

Less trips results in less fuel consumption and in turn less CO<sub>2</sub> emissions. The utilization of T-33s could reduce trucking fuel consumption by around 200 million gallons per year which would result in a reduction of about 4.4 billion carbon emissions.

## INFRASTRUCTURE &amp; ROADWAY CONGESTION

According to a 2018 study by transportation consulting firm, INRIX, congestion cost our nation billions of dollars in 2017 alone. This figure, among other factors, reflects lost productivity, increased costs of delivery via transportation due to congested roads, and wasted fuel. Our nation’s roads and bridges have many structural issues that are exacerbated by continuous vehicle congestion.

Due to T-33s increased cargo volume capacity, less trips are required. If T-33s were adopted nationally the number of vehicles that are on the road would be reduced providing some relief from the constant strain on the roadways and the burdens of delayed traveling. The Department of Transportation has estimated that a shift to T-33s would have reduced traffic delays by more than 50 million vehicle-hours in 2011.

## LOWERED SHIPPING COSTS

Consumer demand continues to grow, especially with the booming online shopping market. An estimated 96 percent of Americans now shop online—requiring an increased number of packages that must be delivered by truck. This trend is only going to increase as a reported 23 percent of Americans say they shopped more online in 2018, and 11 percent say they plan to increase their online shopping in 2019. No longer does a consumer expect to wait a week for delivery, they want their products as quickly as possible. For example, our successful business model is based on guaranteeing next day delivery of any of our 34,000 plus inventory items if ordered by 6 PM.

Now more than ever, the trucking industry must employ innovative means of shipping to reduce shipping costs for both retailers and consumers and meet consumer needs. T-33s require less trips, less drivers and less fuel, which in turn reduces helps keep shipping costs down for the retailer and consumer while also reducing roadway congestion.

According to Americans for Modern Transportation (AMT), T-33s would lower costs for carriers if more freight can be carried per truckload resulting in about \$2.6 billions dollars saved in shipping costs.

## SAFETY

While some opponents of T-33s have claimed that the larger the truck the more likely accidents will occur, according to AMT by increasing the length of the trailers, the truck’s high-speed dynamics are improved which results in less roll-overs and jackknives. Moreover, the less trucks on the roadways reduces the likelihood of a crash or malfunction.

Notably, as stated by the Coalition for Efficient and Responsible Trucking (CERT), the increased length limit on twin trailers for LTL shipment does not increase the overall maximum weight limit nor the axle or bridge formula limits.

According to AMT:

Several significant dynamic safety performance characteristics are improved by increasing twin trailer lengths from 28’ to 33’ while keeping vehicle weight constant:

*Rearward Amplification* is the increased side force or lateral acceleration acting on the rear trailer because of rapid steering in articulated vehicles. Rearward amplification increases the risk of trailer rollover. A controlled comparison shows that rearward amplification under controlled conditions is reduced by 20 percent in T-33 configurations.

*Load Transfer Ratio* is the proportion of load on one side of a vehicle transferred to the other side during a transient maneuver. When load transfer ratio reaches a value of one, rollover occurs. Lower values are better. Controlled sim-

ulations show an 11 percent lower load transfer ratio for T-33s compared to T-28s.

*High-Speed Transient Offtracking* occurs when rear wheels track outside the front wheels during an avoidance maneuver. T-33s offtrack 13 percent less than T-28s during the same avoidance maneuver, making lane edge excursions and associated incidents less likely.

As mentioned earlier, there have been no reports of crashes related to the use of T-33s. Safety is and should always be of top priority and T-33s are capable of improving trucking operations while keeping everyone on the roadways safe.

#### DRIVER SHORTAGE

Commercial Motor Vehicle driver shortages are an ongoing and critical issue for the trucking industry and affects the entire supply chain, resulting in more frequent shipping delays and higher inventory carrying costs. According to AMT, if the current industry trends continue, the trucking industry could be short 174,000 drivers by 2026. This is a major issue for both private carriers including Uline whose customers rely on our next day delivery guarantee, and particularly for over-the-road or long-haul for-hire truckload segments who face the highest rate of shortages.

Permitting the use of T-33s nationally would increase route efficiency requiring less delivery trips for drivers. This will help reduce the growing issue of driver shortages and the coupled issue of driver burn out and the issue of “churning” which results in the frequent route and job changes by drivers.

Additionally, it is important to note that shortage rates continue to increase, in part, due to the existing barriers-to-entry for new drivers, including age requirements. While there are many industry-wide changes that must be made in order to drastically reduce driver shortages, lowering the driving age requirement and expanding the pool of potential drivers will be a critical part of the ultimate shortage solution. Currently, 48 states allow drivers to obtain a commercial driver's license (CDL) at age 18 years old to transport freight for intrastate purposes but are then prohibited from driving in interstate commerce until they are 21 years old. The FMCSA's pilot program aimed at recruiting and training younger drivers may help alleviate the ongoing issue of CMV driver shortages by introducing an entire new population—upwards of 13 million—of potential drivers to the industry that has been inaccessible until now.

In order for the pilot program to be successful, FMCSA must ensure that adequate safety measures are taking during the testing and training process. Uline supports the program requiring an entry-level driver training (ELDT) course prior to the (CDL) skills exam and an additional apprenticeship program prior to being qualified as a CMV interstate driver.

The apprenticeship program will allow drivers 18-21 years old to ease into the industry safely by mastering the skills acquired through then ELDT course and CDL skills exam alongside an experienced driver. The apprenticeship program should require at least 400 hours of “on duty” time, which should include at least 240 hours of actual driving time. The “on duty” requirement should only be viewed as a minimum requirement and performance benchmarks should be established throughout the apprenticeship prior to graduating from the program.

In an effort to further reduce any potential safety concerns, the trucks that will be used in the program should be equipped with the latest safety technology. As proposed in the DRIVE-Safe Act, the trucks used in the program should be outfitted with active braking collision avoidance systems, forward-facing event recording cameras, speed limiters set at 65 miles per hour or less and automatic or automatic manual transmissions. This technology, coupled with the supervision of an experienced driver, will instill upon the young driver a level of safety that is not currently required by CDL interstate drivers above the age of 21. This pilot program will establish a safe and consistent driving record from an early age.

#### SUPPORT THE ADOPTION OF T-33S

On behalf of Uline, I respectfully urge Congress to adopt the use of T-33s nationwide.

Uline, like many others in the industry, are eager to reduce congestion, CO2 emissions, fuel consumption, driver shortages and shipping costs while increasing safety and delivery capabilities.

Shipping demands do not remain stagnant and neither should the industry's means of delivery.

**Letter of June 25, 2019, from Heidi K. McAuliffe, Esq., Vice President, Government Affairs, American Coatings Association, Submitted for the Record by Hon. Graves of Missouri**

JUNE 25, 2019.

Hon. ELEANOR HOLMES NORTON  
*Chairwoman*  
*House Subcommittee on Highways and Transit, Washington, DC.*

Hon. RODNEY DAVIS  
*Ranking Member*  
*House Subcommittee on Highways and Transit, Washington, DC.*

RE: June 12 Hearing, "Under Pressure: The State of Trucking in America."

DEAR CHAIRWOMAN NORTON AND RANKING MEMBER DAVIS,

The American Coatings Association (ACA) is pleased to submit this statement for the record of the Subcommittee's June 12, 2019, hearing, "Under Pressure: The State of Trucking in America." On behalf of the paint and coatings industry and the professionals who work in it, I write to you to express our strong support for the Drive Safe Act (H.R. 1374 & S. 569).

The ACA is the premier trade association for manufacturers of paints and coatings and their raw material suppliers. The majority of our raw materials and finished goods are transported via highway and America's trucking industry, joining the nearly 71% of total freight the industry is responsible for moving in the United States. Not only is the trucking industry imperative to America's economic stability and growth, but it is vital for our members, their manufacturing needs, and consumer satisfaction. The Drive Safe Act will not only provide relief from the severe driver shortage the coatings industry is facing, but it will also effectuate safer roads and highways.

The Drive Safe Act would create an apprenticeship program for commercial drivers under the age of 21 and thereby rid the trucking industry of arbitrary regulations that prevent it from fully utilizing the drivers it can already hire. Currently, 48 states allow 18-21-year-olds to procure a commercial driver's license and operate a commercial vehicle in intrastate commerce after simply passing a written exam and a driver's test. Thereafter, an 18-year-old Texas driver would be able to drive over 700 miles from Houston to El Paso to deliver raw materials to a coatings manufacturer, but it would be illegal for an 18-year-old Virginia driver to drive 14 miles from Springfield to Washington D.C. to move paint between two retail suppliers. The Drive Safe Act will not only allow the trucking industry to fully utilize a demographic it can already hire, but it will rid the industry of arbitrary regulations that confine a national industry with state borders.

The Drive Safe Act implements a rigorous 400-hour apprenticeship program that requires a minimum of 240 hours be spent driving with an experienced commercial driver. This extensive training will not only actively teach the apprentice safe truck operation techniques but will also guarantee the apprentice is prepared to safely perform all aspects of a trip, including fueling, weighing loads, and other procedures. This universal training will better support safe roads and highways when compared to the minimum amount of testing that is currently used.

As the trucking industry continues to embrace vehicle automation, telematics, and other technological advances that are beneficial to our manufacturers and their suppliers, full use of the 18-21-year-old demographic takes advantage of a key talent pool and also helps alleviate the driver shortage. Properly trained drivers should not be confined by state borders and arbitrary regulations. The Drive Safe Act will provide for safer, better educated, and better equipped apprentice drivers, as well as provide an additional pool of drivers for the coatings industry to transport finished products and raw materials.

The American Coatings Association looks forward to working with Congress to advance this important legislation.

With Kind Regards,

HEIDI K. MCAULIFFE, ESQ.  
*Vice President, Government Affairs*

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**Letter of June 27, 2019, from Chris Spear, President and Chief Executive Officer, American Trucking Associations, Submitted for the Record by Hon. Graves of Missouri**

JUNE 27, 2019.

Hon. DANIEL WEBSTER  
*U.S. House of Representatives, Washington, DC.*

DEAR REPRESENTATIVE WEBSTER:

During the June 12 hearing before the Subcommittee on Highways and Transit you asked me a question on the subject of truck weights. I would like to take this opportunity to clarify my response to your question in order to make sure that you have complete and accurate information. I would also like to request that this letter be made part of the hearing record.

Your question pertained to the potential for increasing the payload of a truck by reducing the weight of the equipment (i.e. the tare weight). My response implied that the tare weight of the vehicle is not counted when determining whether the truck is in compliance with the 80,000 pound federal gross weight limit. In fact, the combined load and weight of the equipment is counted against the weight limit. I regret any confusion my initial response may have caused; and trust the additional information provided here more fully answers your question.

Thank you for the opportunity to correct the record and I look forward to working with you to improve the safety and mobility of our Nation's roadways. If you have further questions please do not hesitate to contact me or my staff.

Sincerely,

CHRIS SPEAR

*President & CEO, American Trucking Associations*

cc: Chair Eleanor Holmes Norton  
Ranking Member Rodney Davis

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**Letter of June 10, 2019, from Randy Mullett, Executive Director, The Americans for Modern Transportation Coalition, Submitted for the Record by Hon. Graves of Missouri**

JUNE 10, 2019.

Hon. ELEANOR HOLMES NORTON  
*Chair*

*Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC.*

Hon. RODNEY DAVIS  
*Ranking Member*

*Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC.*

DEAR CHAIR NORTON AND RANKING MEMBER DAVIS:

Thank you for your leadership in the effort to improve our nation's infrastructure and safety on roadways. As you examine the pressure the trucking industry faces, we hope you will consider the benefits identified by The Americans for Modern Transportation Coalition. Our solution will reduce congestion with no cost to the taxpayer, increase safety, maximize efficiency and increase environmental gains by updating an outdated rule to allow *a modest five-foot increase to twin 28' trailers*. Increasing the national twin trailer standard from 28 feet to 33 feet will bring immediate and meaningful improvements to our nation to reduce some of the pressures the industry currently faces:

- Improved Safety on Our Roads—The reduction in the number of trucks on our roads would have tangible safety benefits. Additionally, Twin 33' trailers perform better than many other truck configurations on four critical safety measures, including stability and rollover. Research shows that the adoption of Twin 33' trailers would result in 4,500 fewer truck accidents annually, and 53.2 million hours saved due to less congestion. Furthermore, the following additional safety features on Twin 33s will enhance safety as they travel on the existing national highway network in a Twin 33 configuration:
  - Automatic emergency braking system
  - A speed limiting device capped at 68 miles per hour
  - Electronic stability control

- On-board safety video recorder
- Economic Benefits—Twin 33’ trailers can move the same amount of freight with 18% fewer truck trips, allowing consumers and businesses to realize \$2.6 billion annually in lower shipping costs and quicker delivery times. As times are good for the economy; freight movement also is increased and drives private investment.
- Longer Life Cycle for Our Roads and Bridges—The implementation of Twin 33’ trailers will result in 3.1 billion fewer truck miles traveled each year, greatly reducing the impact on roads and bridges with less congestion at no cost to taxpayers.
- Environmental Gains—The efficiency gains from the adoption of Twin 33’ trailers would equate to 255 million fewer gallons of fuel and 2.9 million fewer tons of CO2 emissions.

The private sector continues to make investments in our workforce, new technologies, and existing equipment to ensure that our fleets are as safe, efficient and sustainable as possible. We need the same forward-looking effort from our partners in federal, state and local governments so that all Americans have access to the full promise enabled by a modern transportation system.

As we know, investments today will have residual future benefits. The 116th Congress has a unique opportunity to lay the foundation for a modern American infrastructure system, and we are encouraged that the House Committee on Transportation & Infrastructure has been full steam ahead on debating solutions. Infrastructure reform requires smart investments, consistent with the fundamental federal role, and leveraging resources from all levels of government and the private sector. We urge the Committee to support the types of investments and commonsense policies that will enhance safety as well as spur economic growth and job creation.

We look forward to continuing to work with the House Transportation and Infrastructure Committee to seize this opportunity to usher the country into a new era of safety and infrastructure investment.

Sincerely,

RANDY MULLETT

*Executive Director, The Americans for Modern Transportation Coalition*

cc: Chairman, Ranking Member and Members of the U.S. House Committee on Transportation and Infrastructure

## Our Proposal Would

- Modernize outdated regulations to allow Twin 33s to operate on the existing national highway network.
- Make trucking more efficient and safer with enhanced safety features.





**Letter of June 12, 2019, from Marc Scribner, Senior Fellow, Competitive Enterprise Institute, Submitted for the Record by Hon. Graves of Missouri**

JUNE 12, 2019.

DEAR CHAIR NORTON, RANKING MEMBER DAVIS, AND MEMBERS OF THE SUBCOMMITTEE,

Thank you for the opportunity to supplement the record of your hearing with our views on trucking policy. Broadly, we encourage members of the Subcommittee to focus on technologies, practices, and policies that show the most promise in improving the safety and performance of trucking in the United States.

As freight volume continues to grow at a faster rate than highway lane-miles, Congress should examine solutions that can improve operations without costly additional physical capacity expansions. One proposal that deserves serious consideration is permitting the operation of twin 33-foot trailers throughout the Interstate Highway System and National Network.

Today, space in truck trailers is often underutilized. Due to the geometry of 28-foot trailers and the freight they carry, 28-foot twin trailers generally “cube out” before they “weigh out”—that is, become filled to practical capacity well before reaching highway gross vehicle weight limits.

Allowing twin-33s in all 50 states would allow fewer vehicles to transport the same volume of freight. This would save fuel and time, but would also save lives by reducing the number of trucks on the road and thereby reducing the probability of dangerous truck-car interactions. A smaller commercial motor vehicle fleet would also be easier and cheaper to outfit with the latest safety technologies.

In a constrained infrastructure funding environment with great uncertainty surrounding the future of motor vehicle technology, Congress should focus on low-cost, “no regrets” policies that can deliver more bang for the buck by making better use of existing infrastructure and other resources. Allowing twin-33s to operate nationwide would be a positive step in that direction.

Sincerely,

MARC SCRIBNER

*Senior Fellow, Competitive Enterprise Institute*

**Appendix to Prepared Statement of Chris Spear, President and Chief Executive Officer, American Trucking Associations**

THE AMERICAN TRUCKING ASSOCIATIONS PRIORITIES FOR SURFACE TRANSPORTATION REAUTHORIZATION

MAY 16, 2019

PREAMBLE—The American Trucking Associations supports a federal surface transportation program that makes our highways safer, reduces fossil fuel use and lowers emissions, and helps the trucking industry to become more productive. In

order to meet these goals, the next reauthorization bill should provide the resources necessary to bring the highway system to a state of good repair and address severe and growing highway congestion. Through a combination of regulatory flexibility and financial incentives, the legislation should promote the use of safer, cleaner, more cost-effective and more energy-efficient commercial trucks.

ATA SUPPORTS THE FOLLOWING REFORMS TO THE FEDERAL-AID HIGHWAY PROGRAM:

*I. PREVENT THE HIGHWAY TRUST FUND FROM GOING BANKRUPT AND ENSURE THAT THE FUND HAS THE SUFFICIENT, SUSTAINABLE REVENUE NECESSARY TO ADDRESS SURFACE TRANSPORTATION SYSTEM DEFICIENCIES*

- Funding
  - Increase the federal fuel tax by 20 cents per gallon, to be phased in over four years. The fee will be indexed to both inflation and improvements in fuel efficiency, with a five percent annual cap.
  - Establish a new fee on electric vehicles to ensure that all who benefit from transportation investments contribute their fair share.
  - Establish a glide-path for a new user fee based revenue source for the Highway Trust Fund to supplement and ultimately replace the fuel tax over the next decade.
- Expenditures
  - The first tranche of revenue generated by the new fee will be transferred to the HTF. Using a FY 2020 baseline, existing HTF programs will be funded at authorized levels sufficient to prevent a reduction in distributed funds, plus an annual increase to account for inflation.
  - \$5 billion will be dedicated to a new National Priorities Program (NPP) administered by the U.S. Department of Transportation. The NPP is a grant program designed to address the most critical highway bottlenecks.
  - All remaining revenue will be placed into a Local Priorities Program (LPP) and distributed by formula to the states. Project eligibility is the same as the eligibility under the National Highway Freight Program or National Highway Performance Program, for highway projects only.

*II. ENSURE THAT THE FREIGHT PROGRAMS CREATED UNDER THE FAST ACT EFFECTIVELY ADDRESS THE MOST CRITICAL FREIGHT DEFICIENCIES*

With the creation of two new freight funding programs, the 2015 FAST Act legislation recognized the critical role that the federal government plays in facilitating the efficient movement of freight in interstate commerce, a role memorialized by the U.S. Constitution. Both the Nationally Significant Freight and Highway Projects Program (AKA INFRA) and the National Highway Freight Program provided dedicated funds for projects that improved traffic flow and safety on transportation facilities with significant freight volumes. These programs should be continued. In addition, ATA recommends the following reforms:

NATIONALLY SIGNIFICANT FREIGHT AND HIGHWAY PROJECTS PROGRAM (AKA INFRA)

- Maintain 10 percent cap on non-highway projects. Trucks move 70 percent of freight tonnage and are key to the efficient movement of intermodal freight. Furthermore, trucks are the only freight mode that contribute directly to the Highway Trust Fund and should not be forced to further subsidize modes that do not contribute.
- Maintain 10 percent cap for lower cost projects. Federal funding should focus as much as possible on those high-cost projects that state and local governments have difficulty funding, yet are crucial to interstate freight mobility.
- Increase funding to ensure federal prioritization of freight mobility (i.e. interstate commerce).
- Maintain current eligibilities. Expanding eligibility would create a loss of focus on the most important parts of the freight transportation network.
- Prohibit USDOT from making either the state/local match or the use of private financing a criteria for project selection.
- Give priority to projects that address freight bottlenecks identified under 49 USC 70102(b) (4).

NATIONAL HIGHWAY FREIGHT PROGRAM

- Maintain 10 percent cap on non-highway projects.

- Increase funding to ensure federal prioritization of freight mobility (i.e. interstate commerce).
- Eliminate 50 percent transferability to other apportioned programs in order to ensure that all available resources are used for their intended purpose.

### III. REFORM FEDERAL INTERSTATE TOLLING AUTHORITY

While restrictions on the authority to toll Interstate highways have been imposed since the inception of the Interstate Highway System in 1956, over the years a patchwork of exceptions has been created. Federal law governing where, how and under what circumstances a state may toll existing, general-purpose lanes of the Interstate system is now a confusing, contradictory mess that serves neither state or local transportation agencies nor highway users very well.

ATA believes that Interstate tolls are highly inefficient compared with many other funding options and the diversion created by tolls causes needless safety, congestion, environmental and quality of life problems. However, we recognize that many in Congress would like to maintain some level of tolling flexibility. On the other hand, we believe it is important to have a tolling regime that is easily understood and is tied to federal policy considerations that take into account fairness and equity for highway users, safety, interstate commerce and the environment, as well as states' desire to use tolls as a tool to address congestion and fill their transportation funding gaps.

Currently, there are three options for states to toll existing general purpose lanes on the Interstate System:

- Tolling a replacement or reconstructed bridge or tunnel;
- The Interstate System Reconstruction & Rehabilitation Pilot Program, which allows up to three states to toll a single Interstate highway; and
- The Value Pricing Pilot Program, which allows up to 15 jurisdictions (generally states) to toll an unlimited number of Interstate miles as part of a demonstration of the concept of congestion pricing.

We believe that Congress desires to maintain tolling flexibility for the states to address congestion through pricing of highways and to fund very costly bridge and tunnel projects. However, the interests of highway users must also be protected. Therefore, ATA proposes replacing the current three options above with the following:

States may toll existing, general purpose lanes of the Interstate System if they meet the following criteria through application to the Secretary of Transportation:

- Congestion Pricing—States must demonstrate that the pricing of highways (not the projects funded by tolls) by themselves significantly alleviate congestion and improve air quality in a highway corridor, including on alternative routes.
- Bridge/Tunnel reconstruction or replacement—Eligible projects are those with a total project cost of at least \$2 billion. These are single facility costs, not network costs.

General requirements:

- A state must conduct an Environmental Impact Statement for each project.
- When conducting an EIS for a network of tolls, an EIS must determine the effects of both individual toll locations and the collective network effects of a proposal.
- Revenue generated by the tolls can only be used for financing costs and project costs related to the facility or Title 23 eligible highway or transit projects that directly benefit the users of the tolled facility. This requirement should apply to existing tolls on Interstate highways as well. Revenue from the lease or sale of an Interstate toll facility should also be subject to this requirement.
- The maximum toll rate for any vehicle class may not exceed any other toll rate by more than five times.
- Any toll discounts must be offered to all users, regardless of residency or the state a transponder was purchased from. This requirement should apply to existing tolls on Interstate highways as well.
- At a minimum, the State's application, either through an EIS or separate documentation, should demonstrate the following:
  - There is a net congestion reduction, taking into consideration mobility on both the tolled route and any routes to which traffic diverts. There is also a net reduction in vehicle emissions on these routes.
  - The number and severity of crashes is not likely to increase.
  - If additional maintenance or capacity improvements on diversion routes are anticipated, the state must document these improvements and include a plan to implement them within a reasonable timeframe.
  - Environmental justice impacts of tolls and mitigation measures.

- A cost-benefit analysis that includes the impacts of tolls on roadside businesses, commercial vehicle operators, and the impacts on businesses and consumers affected by tolls, both inside and outside the states where the tolls are located.
- A determination with regard to whether the location of tolls or the toll rate structure discriminates against interstate commerce.
- The state is required to submit a report to the Secretary every five years with an analysis of the above, and the Secretary is to determine whether the state continues to meet the requirements.

#### IV. PROVIDE DEDICATED FUNDING FOR FREIGHT INTERMODAL CONNECTORS

Freight intermodal connectors—those roads that connect ports, rail yards, airports and other intermodal facilities to the National Highway System—are publicly owned. While they are an essential part of the freight distribution system, many are neglected and are not given the attention they deserve given their importance to the nation's economy. Just nine percent of connectors are in good or very good condition, 19 percent are in mediocre condition, and 37 percent are in poor condition.<sup>1</sup> Not only do poor roads damage both vehicles and the freight they carry, but the Federal Highway Administration (FHWA) found a correlation between poor roads and vehicle speed. Average speed on a connector in poor condition was 22 percent lower than on connectors in fair or better condition.<sup>2</sup> FHWA further found that congestion on freight intermodal connectors causes 1,059,238 hours of truck delay annually and 12,181,234 hours of automobile delay.<sup>3</sup> Congestion on freight intermodal connectors adds nearly \$71 million to freight transportation costs each year.<sup>4</sup>

One possible reason connectors are neglected is that the vast majority of these roads—70 percent—are under the jurisdiction of a local or county government.<sup>5</sup> Yet, these roads are serving critical regional or national needs well beyond the geographic boundaries of the jurisdictions that have responsibility for them, and these broader benefits may not be factored into the local jurisdictions' spending decisions. While connectors are eligible for federal funding, it is clear that this is simply not good enough. Congress should set aside adequate funding for freight intermodal connectors identified by FHWA to ensure that these critical arteries are given the attention and resources they deserve. Furthermore, FHWA should add connectors to major military installations to the list of eligible roads in order to address deficiencies on arteries that are critical to national defense.

#### V. ADDRESS THE SHORTAGE OF PARKING FOR TRUCK DRIVERS

Research and feedback from carriers and drivers suggest there is a significant shortage of available parking for truck drivers in certain parts of the country. Given the projected growth in demand for trucking services, this problem will likely worsen. There are significant safety benefits from investing in truck parking to ensure that trucks are not parking in unsafe areas due to lack of space.

Funding for truck parking is available to states under the current federal-aid highway program, but has not been a priority given a shortage of funds for essential highway projects. Therefore, we support the creation of a new discretionary grant program with dedicated funding from the federal-aid highway program for truck parking capital projects. ATA recommends that FHWA conduct a nationwide study, with biennial updates, to determine specific locations with the most critical truck parking shortages. Congress should set aside at least \$100 million per year for a FHWA administered grant program to address the truck parking shortage, with preference given to projects that address the shortages identified by FHWA. Eligibility should be the same as for Sec. 1401 of MAP-21 (i.e. Jason's Law).

#### VI. ELIMINATE THE FEDERAL EXCISE TAX ON TRUCKING EQUIPMENT

Repeal the federal excise tax (FET) on trucking equipment, provided the revenue it generates for the HTF is replaced. This antiquated 12 percent sales tax, which was adopted in 1917 to defray the costs of World War I, is a barrier to investment in the cleanest, safest trucks available on the market. In fact, when the FET was first adopted, it was applied to all vehicles, and now is imposed only on heavy trucks.

<sup>1</sup> *Freight Intermodal Connectors Study*. Federal Highway Administration, April 2017.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *An Analysis of the Operational Costs of Trucking: 2018 Update*. American Transportation Research Institute, Oct. 2018. Estimates average truck operational cost of \$66.65 per hour.

<sup>5</sup> *Ibid.*

Income from the FET has varied widely, mostly in response to economic conditions. Over the past decade revenue has ranged between \$1.5 billion during the recession year of 2008 and \$4.6 billion in 2015. This variability contributes to mismatches between federal-aid money authorized and revenue available for appropriation. In fact, the first bail-out of the HTF, in 2008, was necessitated largely by an unanticipated drop in FET revenue. Based on Congressional Budget Office projections, approximately \$5 billion per year will be required for replacement.

#### VII. REINSTITUTE THE VEHICLE INVENTORY AND USE SURVEY

The Census Bureau and the Department Transportation should reinstitute a Vehicle Inventory and Use Survey (VIUS). The latest VIUS data is from 2002, which is extremely outdated. The VIUS gathered information on the physical and operational characteristics of trucks as part of the U.S. Economic Census conducted every five years, in years ending in 2 and 7. The 2002 report surveyed about 136,000 trucks and collected data on features such as make, model, and age; miles per gallon, distance traveled and area of operation; trailer configuration; and goods hauled by weight, commodity, and presence of hazardous material.

There is no alternate source for most of the data the VIUS provided. It is the only source of physical and operational characteristics of heavy-duty trucks, including fuel use. Sound policies to address energy use and environmental impacts of trucks need to reflect the distribution of trucks among weight classes, body types, and usage patterns.

VIUS data is also fundamental to understanding how we use and manage our highways, including issues such as highway cost allocation and roadway safety. In addition, as the Census Bureau states in its summary of the 2002 VIUS data release: “The Department of Transportation uses the data for analysis of cost allocation, safety issues, proposed investments in new roads and technology, and user fees. The Environmental Protection Agency uses the data to determine per mile vehicle emission estimates, vehicle performance and fuel economy, and fuel conservation practices of the trucking industry. The Bureau of Economic Analysis uses the data as a part of the framework for the national investment and personal consumption expenditures component of the Gross Domestic Product.” Census also wrote: “Tire manufacturers use the data to calculate the longevity of products and to determine the usage, vocation, and applications of their products. Heavy machinery manufacturers use the data to track the importance of various parts distribution and service networks. Truck manufacturers use the data to determine the impact of certain types of equipment on fuel efficiency.”

VIUS data is essential to industry, policymakers, and researchers and should be reinstated as a regular part of the economic census.

#### VIII. SUPPORT LIMITED, COMMON-SENSE REFORMS TO FEDERAL TRUCK SIZE AND WEIGHT LAWS

1. Give automobile transporters a 5 percent increase in gross and axle weight limits on Interstate highways and reasonable access routes. This is necessary to accommodate the significant increase in heavier light trucks and hybrid/electric vehicles. It would substantially reduce the number of trucks on the road.

##### *Legislative language:*

OPERATION OF CERTAIN SPECIALIZED HAULING VEHICLES ON THE INTERSTATE.—

“(1) IN GENERAL.—A State may not prohibit the operation of an automobile transporter with a gross weight of 84,000 pounds or less on—

“(A) Any segment of the Interstate System (except a segment exempted under section 31111(f) of title 49); or

“(B) those classes of qualifying Federal aid primary highways designated by the Secretary under section 31111 (e) of title 49.

“(2) REASONABLE ACCESS.—A state may not enact or enforce a law denying reasonable access to automobile transporters, to and from highways described in paragraph (1), to loading or unloading points or facilities for food, fuel, repair, or rest.

“(3) AXLE WEIGHT TOLERANCE.—A State shall allow an automobile transporter a tolerance of no more than 5 percent on axle weight limitations set forth in subsection (a).

“(4) AUTOMOBILE TRANSPORTER DEFINED.—In this subsection, the term ‘automobile transporter’ has the meaning given that term in section 31111(a) of title 49.”

2. Authorize the operation of triple-trailer trucks in Washington State

Triple-trailer trucks (i.e. three 28'6" trailers) have operated safely throughout the western U.S. and on certain eastern routes for decades. Washington State is surrounded by states that allow triples, including Oregon, Idaho and Montana. Authorizing the use of triples in Washington would close an important gap in the Pacific Northwest truck freight network, creating greater efficiencies throughout the region. Triples would reduce truck vehicle miles traveled, reducing crash risk and lowering truck emissions output.

3. Eliminate overall length limits for triple-trailer trucks without increasing trailer length

The 1991 ISTEA freeze on longer combination vehicles (LCVs) froze not only the length, weight and routes of operation for LCVs, but also any other state regulations pertaining to LCVs. The comprehensive nature of the freeze gives states almost no flexibility to make changes, even when they make sense and are consistent with Congress' larger objective of ensuring that LCVs do not operate beyond their current dimensional, weight or geographic limits.

The legal length limits for Montana and Oregon, as codified under 23 CFR 658, Appendix C, place an overall length limit on triples (i.e. from the front of the tractor to the rear of the last trailer). For Montana the limit is 110' for a conventional tractor and 105' for a cabover. In Oregon, the overall length limit is 105'. Federal law also imposes overall length limits in South Dakota and Ohio.

In Oregon's case, the length limit forces carriers to use cabover tractors, which are not sold in the U.S. and have to be special ordered from other countries. Length limits prevent the use of the most modern, driver-friendly equipment.

ATA supports an exemption to federal law that allows states, at their option, to eliminate overall length limits while retaining current trailer length limits.

*Legislative language:*

"If a State statute or regulation in effect on or before June 1, 1991 placed a limitation on a vehicle's overall length, nothing under Section 1023(b) of P.L. 102-240 would prevent a state from authorizing the use of a longer tractor, even if such change results in an increase in the vehicle's overall length, provided the State does not also authorize an increase in the cargo-carrying length of the vehicle."

4. Increase weight limits on the Massachusetts Turnpike to match the New York Thruway; modernize trailer length limits for LCV doubles

Interstate 90 is an important freight artery serving Upstate New York and Massachusetts. Both routes (the New York Thruway and Massachusetts Turnpike) have for decades allowed the operation of twin 48 foot trailer trucks under permit. However, federal weight limits in each state differ, creating costly inefficiencies for carriers and their customers. In Massachusetts, the gross weight limit for these vehicles is 127,400 pounds, while the limit in New York is 143,000 pounds for a 9-axle truck and 138,400 pounds for an 8-axle truck. Federal law should be amended to authorize Massachusetts to increase its weight limit for tandem trailer trucks to match New York limits. Furthermore, federal law should be amended to allow both New York and Massachusetts to authorize the use of 53 foot trailers in tandem operations, to reflect modern equipment specifications and state law governing trailer length limits for single trailer operations.

5. Allow Kansas to modify its Interstate highway weight limit to match weight limits on non-Interstate highways

Kansas law allows heavier trucks to operate off Interstate than is allowed under federal law to operate on the Interstate system. This proposal would allow Kansas to create uniform limits for all highways. Specifically, it would authorize the following weight limits on the state's Interstate system:

- Any truck may operate on the Kansas Interstate system at a maximum gross weight of up to 85,500 pounds, provided it complies with the federal bridge formula. No permit is required.
- A truck carrying agricultural commodities may operate on the Kansas Interstate system at a maximum gross weight of 85,501-90,000 pounds, provided it is equipped with 6 axles and complies with the bridge formula. A permit is required.

6. Allow Wyoming to modify its Interstate highway weight limit for LCVs to match weight limits on non-Interstate highways

Wyoming law allows heavier LCVs to operate off Interstate than is allowed under federal law to operate on the Interstate system. This proposal would allow Wyoming to create uniform limits for all highways. Furthermore, surrounding states allow heavier Interstate weight limits, creating regional inefficiencies. Specifically, the proposal would allow LCVs in Wyoming to operate on Interstates above the current

117,000 pound gross weight cap, provided they meet axle and bridge formula requirements.

*IX. PROVIDE GRANTS FOR THE ADOPTION AND UPGRADE OF AUTOMATED SIZE AND WEIGHT PERMITTING SYSTEMS*

Some commercial motor vehicles and some military vehicles exceed standard size and weight limitations for operating on public highways and must apply for and receive oversize/overweight (OS/OW) permits from the states in which they need to operate. These types of vehicles are uniquely and vitally important to expeditious military and emergency relief operations. However, timely issuance of OS/OW permits across multiple states is inconsistent, even during normal business hours. Reliability of timely permit issuance is particularly concerning during nights, weekends and holidays when states' offices issuing the permits are generally not open. This results in trucks having to park on the state border, greatly increased cost of service, and adds hundreds of unnecessary miles and critical hours getting to destination with urgently needed supplies.

Some states have successfully addressed this issue by automating their permit-issuing system for OS/OW loads traversing highways that are appropriate for those vehicles. The Federal Highway Administration issued a report, Best Practices in Permitting Oversized and Overweight Vehicles, demonstrating that states that automate their OS/OW permitting systems improved highway safety, protected infrastructure, reduced overhead, and increased state revenues. However, mostly due to budget constraints, several states do not have these systems, or their systems are inadequate.

ATA recommends providing federal grants of up to \$2 million per state for the purpose of creating or upgrading automated permitting systems. While these expenses are eligible under FMCSA's High Priority Innovative Technology Deployment (ITD) Program, this program is over subscribed. ATA and the Specialized Carriers and Rigging Association propose to set aside funds from the ITD program for automated permitting systems, provided it receives sufficient additional funds to ensure that funding for other important programs is not affected.

ATA SUPPORTS THE FOLLOWING REFORMS TO IMPROVE THE SAFETY OF THE TRUCKING INDUSTRY:

*I. ENSURE THE INCLUSION OF ORAL FLUID TESTING AND ANY ADDITIONAL ALTERNATIVE TESTING SPECIMENS INTO TESTING PROGRAMS FOR OPERATORS OF COMMERCIAL MOTOR VEHICLES*

In the FAST Act, Congress expanded the Secretary of Transportation's authority on the use of hair testing as an acceptable alternative to urine drug testing. ATA would like to ensure that the use of alternative specimens, such as oral fluid, outlined in HHS federal workforce testing programs, be deemed acceptable for use in testing programs for operators of CMVs.

*Legislative Language:*

Amend 49 U.S.C. 31306(b)(1)(B) to read:

(iii) to use any alternative specimen for testing outlined by Department of Health and Human Services scientific and technical guidelines.

*II. ENSURE THAT MOTOR CARRIERS, IN THE INTEREST OF SAFETY, ARE PERMITTED TO TEST FOR MARIJUANA*

In 1987, 16 people died and 164 people were injured in an Amtrak train collision outside the Chase community in eastern Baltimore County, Maryland. That day, the locomotive crew violated several signal and operating rules, and marijuana use was deemed a contributing factor in the crash. In 1991, prompted in large part by the 1987 Amtrak crash, Congress authorized mandatory drug testing for employees in safety-sensitive positions in transportation modes regulated by the U.S. Department of Transportation. ATA believes that in the interest of safety, to prevent crashes like the 1987 Amtrak crash, motor carriers should be allowed to conduct testing of commercial motor vehicle operators for the use of marijuana.

*Legislative Language:*

Add to 49 U.S.C. 31306(b)(1)(B):

(iv) to conduct preemployment, reasonable suspicion, random, and post-accident testing of commercial motor vehicle operators for the use of marijuana.

Amend 49 U.S.C. 31306(b)(1)(C) to read:

(C) When the Secretary of Transportation considers it appropriate in the interest of safety, the Secretary may prescribe regulations for conducting periodic recurring

testing of operators of commercial motor vehicles for the use of alcohol, marijuana, or a controlled substance in violation of law or a Government regulation.

*III. ENSURE THAT EMPLOYERS OF EMPLOYEES INVOLVED IN MAINTAINING HIGHWAY SAFETY ARE ALLOWED TO PROHIBIT MARIJUANA USE AS A CONDITION OF EMPLOYMENT*

Many states prohibit employers from discriminating against prospective employees solely for medical marijuana use. Additionally, many states are looking to adopt similar employment protections for recreational use and some are looking to eliminate an employer's ability to conduct pre-employment drug tests for marijuana as a condition of employment. However, ATA believes that employers have an obligation to ensure all employees are in a safe working environment free from hazards. Employers understand that to maintain a safe working environment they must maintain a drug-free environment. Due to marijuana's unique metabolic process, the ability to maintain a drug-free working environment for employees involved in maintaining highway safety often includes pre-employment and random drug testing to deter use. ATA supports federal preemption of state laws that prohibit testing for marijuana use in employees involved in maintaining highway safety.

*IV. SUPPORT A FEDERAL MANDATE FOR ELECTRONIC CRASH REPORT DATA COLLECTION*

In states that have adopted electronic collection of crash reports, many have seen the ability to provide more timely and accurate information to stakeholders. "Real-time" data allows law enforcement and transportation safety professionals to respond more quickly to escalating trends and "hot spots" and helps ensure limited resources are allocated to areas with greatest need. ATA supports federal funding for states to adopt electronic crash report data collection, along with funding support to upgrade existing systems, implement NHTSA's MMUCC data fields and training of staff on new systems.

*V. SUPPORT THE DEVELOPMENT OF NEW LARGE TRUCK CRASH-WORTHINESS STANDARDS*

ATA supports NHTSA, along with the support of FMCSA, to develop ways to improve crashworthiness standards for newly manufactured class 7 and 8 trucks, and a relative scale against which to measure a truck's crashworthiness.

*VI. SUPPORT CREATION OF A NATIONAL EMPLOYER NOTIFICATION SYSTEM*

An employer notification system (ENS) is a term for programs that allow trucking companies to register their drivers with state licensing agencies which, in turn, notify the trucking company when a truck driver receives a traffic violation, conviction or change in commercial driver's license status. This notification process allows trucking companies to take timely action to address unsafe driving behaviors. Currently, over 16 states have separate and distinct ENS-type programs, in addition to third-party, for-profit companies that offer an ENS program service for motor carriers to enroll in. The Federal Motor Carrier Safety Administration has previously conducted an ENS pilot program and needs statutory authority and direction to establish a national ENS. ATA supports a standardized ENS approach and is advocating a national ENS system.

*VII. ENSURE A UNIFIED NATIONAL FRAMEWORK TO FACILITATE THE DEVELOPMENT, TESTING, AND DEPLOYMENT OF AUTOMATED VEHICLES*

ATA shares DOT's perspective that the integration of automation across the transportation system holds great potential for improving safety, enhancing mobility and facilitating the movement of freight. ATA supports the development and deployment of automated vehicle technology for all vehicle types. The U.S. transportation industry is in an era of technological evolution that promises increased safety and efficiency for highway vehicles and a safer environment for vulnerable road users. Automated driving systems are peaking in research and development, and are guided through regulatory activities in driving market utilization. It is important to recognize that roads are shared with commercial vehicles and should be included in laws that govern transportation safety and national travel. Bills and regulatory actions that govern the deployment of vehicle technology or fund technology research should not exclude commercial vehicles.

*VIII. SUPPORT A NATIONAL STANDARD FOR SURFACE TRANSPORTATION CONNECTED VEHICLE SAFETY COMMUNICATIONS AND DEPLOYMENT OF TRUCK PLATOONING*

Much work has been done by the federal government, state governments, research institutions, technical standards organizations, technology companies and vehicle manufacturers to develop national Vehicle-to-Vehicle (V2V) protocols and applications that ensure interoperability for on-road vehicles. NHTSA has estimated that just four V2V applications—which communicate on the 5.9 GHz spectrum—could avoid or mitigate 89 percent of vehicle crashes, and this will have benefits for all road users. Also, truck platooning that can utilize V2V has increased fuel economy benefits by decreasing the distance of following trucks for improved aerodynamics. Currently, the 5.9 GHz band is reserved for vehicle safety communications, but pending FCC action could result in degradation of V2V technology deployment. ATA supports adoption of V2V and Vehicle-to-Infrastructure (V2I) technology—collectively known as Vehicle-to-Everything (V2X)—for the purpose of improving traffic safety. ATA recommends that Congress should take action to preserve the entire 5.9 GHz spectrum for connected vehicle safety communications for the improvement of transportation safety and efficiency.

*IX. INSTRUCT DOT TO GRANT ATA'S PETITION ON AMENDING NATURAL GAS CONTAINER INSPECTION INTERVALS*

Current safety standards require a visual inspection of natural gas containers on motor vehicles every 36,000 miles or 36 months, whichever comes first. ATA submitted a petition to NHTSA on April 13, 2016, recommending that the requirement be revised to once every 36 months, with no mileage interval. Commercial vehicles were not considered in this standard and already require an annual inspection to meet DOT compliance, exceeding the time inspection interval. The inspection is extremely burdensome, taking natural gas commercial vehicles out of service for an average of four days a year at an annual cost up to \$2,500 per vehicle, affecting up to 175,000 vehicles, according to NGV America. Natural gas vehicles produce cleaner emissions and can be less expensive on fuel costs. Congress has an opportunity to relieve this costly and unnecessary burden by instructing USDOT to initiate a rulemaking.

*X. SUPPORT AN INCENTIVE PROGRAM TO EXPEDITE ADVANCED VEHICLE SAFETY SYSTEMS*

Vehicle safety systems have improved greatly and are increasingly being developed beyond regulatory requirements. For example, vehicle manufacturers have voluntarily committed to making automated emergency braking (AEB) standard on virtually all automobiles by 2022. ATA supports extending this voluntary commitment to all new vehicles, including trucks, and commends commercial vehicle fleets for choosing to equip collision avoidance systems (CAS), like AEB, improving on-road traffic safety. The FAST Act (Section 5222) requested a Beyond Compliance Program that would reward motor carriers in these areas, which has not been enacted. ATA seeks the deployment of a Beyond Compliance Program and stands ready to work with DOT to create a carrier-based incentive program to expedite CAS technology adoption, and encourages Congress to support enhancing traffic safety in such way.

*XI. IMPROVE DISTRACTED DRIVING LAWS AND ENFORCEMENT*

Congress should adopt federal distracted driving laws for all vehicles that mirror FMCSA's regulations for commercial drivers. ATA also supports increased funding for law enforcement and detection systems to reduce distracted driving in all vehicles.

*XII. SUPPORT THE SWIFT ADOPTION OF FEDERAL GUIDELINES FOR HAIR TESTING*

ATA strongly supports the recognition of hair testing as a federally-accepted drug testing method. Hair testing is a validated, proven, effective method for detecting illegal drug use that has been widely embraced by private industry and many governments worldwide. Development of standards by the Department of Health & Human Services (HHS) will pave the way for regulated employers to use this testing method and allow them to identify a greater number of safety-sensitive employees who violate Federal drug testing regulations. Additionally, having hair testing as a recognized alternative drug testing method would give motor carriers the ability to report positive hair test results to drivers' subsequent prospective employers through FMCSA's Commercial Driver's License drug and alcohol clearinghouse.

In 2015, Congress mandated that HHS must develop scientific and technical guidelines for hair testing within one year. HHS missed this deadline and continues

to ignore the Congressional mandate. ATA urges Congress to put further pressure on HHS to pave the way toward adoption of this important safety initiative.

**XIII. REDUCE THE REQUIREMENT FOR CDL DRIVERS TO INCLUDE 10 YEARS OF EMPLOYMENT HISTORY TO 3 YEARS IN APPLICATIONS FOR EMPLOYMENT**

Under statute, motor carriers are required to verify 10 years of employment history for CDL drivers seeking employment. However, motor carriers are only required to verify CDL violations, accident history and drug testing violations from the applicant's previous employers going back three years. This is because this information is often irretrievable after three years. Motor carriers that wish to verify employment status beyond the required three years should be allowed to do so, but, given the dearth of information available and the inefficiency of gathering it, this should not be required.

*Legislative Language:*

Amend 49 U.S.C. 31303(c)(2) to read:

(2) The Secretary of Transportation shall prescribe by regulation the period for which notice of previous employment must be given under paragraph (1) of this subsection. However, the period may not be less than the ~~10~~ [3]-year period ending on the date of the application.

**XIV. RECOMMENDED RESEARCH**

1. New Large Truck Crash Causation Study (LTCCS)—The Motor Carrier Safety Improvement Act of 1999 (MCSIA) mandated a study to determine the cause of, and contributing factors to, crashes involving commercial motor vehicles. In 2006, FMCSA published a report identifying areas that need to be addressed by effective crash countermeasures. With significant improvements made to the FMCSRs, ATA believes that initiating a new LTCCS would be an effective tool in understanding the increase in large truck involved crashes.
2. Study on Single Vehicle Large Truck Crashes—In 2017, single-vehicle crashes made up 20 percent of all fatal large truck crashes. However, they accounted for 59 percent of large truck driver fatalities. ATA recommends that FMCSA look at the causes of single-vehicle crashes and develop recommendations to reduce the severity.
3. Study on Adaptive Speed Control systems for CMVs—In FMCSA's Large Truck Crash Causation Study from 2006, "traveling too fast for conditions" was cited as the critical pre-crash event 18 percent of the time (weighted estimate). This was the single most frequently cited factor in crashes where trucks were assigned a critical reason. With new technology being adopted on adaptive speed controls, ATA recommends that FMCSA review the potential safety benefits of adaptive speed control systems.
4. GAO Report on FMCSA's Driver Medical Exemption Program for Vision, Hearing, and Seizure standards—FMCSA issues hundreds of driver exemption for vision, hearing, and seizures annually. ATA would like GAO to review FMCSA's exemption program to investigate the safety of drivers that are unable to meet the minimum medical qualifications in §391.41 but have been given an exemption by FMCSA.
5. Study on Automated Detections Systems for Distracted Driving Prohibitions—In 2017, 3,166 people were killed in motor vehicle crashes involving distracted drivers reported by NHTSA. Additionally, NHTSA has reported that it estimates at any given time about 5 percent of drivers are either visibly holding a device to their ear or visibly manipulating a handheld device. ATA believes that automated detection systems similar to speed or red-light cameras could be deployed nationwide to reduce distracted driving crashes.
6. Study Looking at Operational Factors of Non-internal Combustion Engine Commercial Motor Vehicles—Non-internal combustion engine commercial motor vehicles (NICE CMVs) pose unique challenges to highway safety. ATA would like to recommend a study to look at what safety standards and regulations are unnecessary for NICE CMVs; what challenges for first responders in identifying and controlling NICE CMV incidences, and how lower levels of NICE CMV sound impact drivers and the surrounding environment
7. GAO Report on State Highway Safety Data and Traffic Record Systems—Federal statute requires states certify that "an assessment of the State's highway safety data and traffic records system was conducted or updated during the preceding 5 years" to qualify for a State traffic safety information system improvements grant, per. 23 U.S.C. §405(c). ATA recommends GAO assess whether state traffic records system are complete, accurate, and timely traffic safety

data is collected, analyzed, and made available. Additionally, GAO should review the process for states self-certifying their programs.

ATA SUPPORTS THE FOLLOWING REFORMS TO REDUCE THE TRUCKING INDUSTRY'S ENVIRONMENTAL FOOTPRINT:

*I. ESTABLISH FINANCIAL INCENTIVES FOR INSTALLATION OF EMISSIONS/FUEL REDUCTION EQUIPMENT*

ATA strongly supports the goal of reducing carbon emissions, achieving cleaner air by reducing idling, and promoting energy conservation technologies for heavy-duty on-road diesel vehicles. The trucking industry consumed 39.2 and 15.7 billion gallons of diesel and gasoline respectively in 2017. To expedite the purchase and integration of all energy conservation technologies, ATA supports measures to make such equipment affordable to all fleets in the way of tax credits and the elimination of federal excise taxes on such purchases.

*II. ALTERNATIVE FUEL INFRASTRUCTURE BUILD-OUT INCENTIVES*

In order to expand the nation's alternative fueling infrastructure build-out for the use of cleaner-burning fuels, ATA supports federal tax incentives for this infrastructure to help expedite the introduction and deployment of new truck engine technologies.

*III. ALTERNATIVE-FUELED VEHICLE PURCHASE INCENTIVES*

The development and deployment of zero and near-zero emission trucks have the potential to significantly reduce the industry's carbon footprint and overall emissions profile. However, these new vehicles can be significantly more expensive to purchase. To help expedite the introduction of these next-generation vehicles, ATA supports federal tax credits and other innovative funding mechanisms to help transform the future of goods movement in the trucking sector.

*IV. SUPPORT REAUTHORIZATION AND ADDITIONAL FUNDING FOR THE DIESEL EMISSIONS REDUCTION ACT*

The Diesel Emissions Reduction Act (DERA) provides grants and rebates to incentivize equipment and vehicle owners to install retrofit technologies on existing heavy-duty diesel vehicles and engines, or replace engines and equipment, reducing emissions, often by more than 90 percent. EPA has estimated that from 2009 to 2013 the program upgraded nearly 73,000 vehicles or pieces of equipment and saved over 450 million gallons of fuel. This reduced total lifetime emission reductions by 14,700 tons of particulate matter (PM) and 335,200 tons of oxides of nitrogen (NOx) and yielded up to \$12.6 billion in estimated health benefits.

Because of the long-lived nature of diesel vehicles and equipment, particularly heavy-duty off-road equipment, more than two-thirds of the legacy fleet in the U.S. still does not meet the most current emission reduction standards adopted in 2010 or later, even though they met the standards in effect when the equipment was sold. Since implementation, DERA has become one of the most cost-effective federal clean air programs. EPA's most recent estimates are that every \$1 in federal assistance is met with another \$3 in non-federal matching funds, including significant investments from the private sector, and every federal dollar generates between \$5 to \$21 in health and economic benefits. ATA seeks reauthorization of DERA through 2024 and requests annual funding levels of \$100 million, in order to continue the significant health and environmental gains achieved under this program.

*Legislative language: See S. 747*

ATA SUPPORTS THE FOLLOWING REFORMS TO ADDRESS THE TRUCKING INDUSTRY'S SHORTAGE OF QUALIFIED DRIVERS:

*I. GIVE YOUNGER DRIVERS THE OPPORTUNITY TO CHOOSE A CAREER IN TRUCKING*

ATA supports lowering the minimum age requirement for interstate truck driving from 21 to 18—but only for qualified apprentices that satisfy the 400 hours of supervised training and vehicle safety technology requirements spelled out in the DRIVE Safe Act, as well as the new training requirements of the Entry-Level Driver Training Rule that will take effect in 2020. Driver training and vehicle safety technologies have advanced by several orders of magnitude since the current minimum age requirement was promulgated decades ago. Meanwhile, 6.4 million Opportunity Youth in this country are neither employed nor in school, even as the nation is short 50,000 truck drivers. An update to the minimum age requirement is well over-due.

*Legislative Language: See DRIVE Safe Act: S. 569, H.R. 1374*

## **II. ELIMINATE UNNECESSARY BARRIERS FOR OUT-OF-STATE DRIVER CANDIDATES**

ATA supports an increase in the CDL Improvement Grant Program by an amount necessary for states to implement changes to their IT systems so that states can better serve the growing number of driver candidates who receive training outside their state of domicile. This will allow drivers to (1) complete all training; (2) take all necessary tests; and (3) obtain all necessary credentials in one state—without having to travel back to their home state. Currently, out-of-state trainees have to travel back to their home state every time they pass either the CDL knowledge test or the CDL skills test just to obtain the basic occupational licenses necessary to launch their trucking careers. This imposes unnecessary financial burdens on those who can least afford it and exposes them to skills degradation.

## **III. ELIMINATE SKILLS TEST DELAYS FOR CDL APPLICANTS**

ATA supports incentivizing states to administer the CDL skills test within 7 days of application or utilizing 3rd party testers. A low unemployment rate and the stigma surrounding blue-collar work makes it difficult enough to recruit drivers into the trucking industry. States that make applicants wait up to two months to take their skills test contributes to this problem by discouraging applicants from following through. It also invites skills erosion.

## **IV. SUPPORT RESEARCH ON THE WORKFORCE IMPACTS OF AUTOMATED VEHICLES**

Automated and connected vehicle technologies have the potential to dramatically impact nearly all aspects of the trucking industry. These technologies can bring benefits in the areas of safety, environment, productivity, efficiency, and driver health and wellness. Automated driving technology is the next step in the evolution of the safety technology currently available, and will help to further improve driver safety and productivity, as well as the safety of other motorists and road users. Automated technology comes in many levels that will assist the driver and in some cases, handle the driving task. The application of automated and connected vehicle technology in the trucking industry will center on solutions in which there remains a role for drivers, recognizing the duties and requirements drivers have beyond operating the vehicle.

For these reasons, ATA supports the commonsense adoption of automated vehicle technology and data-driven efforts to better understand and optimize the potential benefits of this technology for the American workforce. While we recognize that the widespread adoption of these technologies is at least 25 to 30 years away, ATA supports increased research that will better equip policymakers and regulators with more data to prepare the next generation of American workers for the future of work in trucking and transportation.

### **ADDITIONAL ISSUES:**

#### **I. ORDER A GAO STUDY TO ASSESS COMPETITIVE CONDITIONS AT PORTS AND THE EFFECTS ON INTERMODAL CHASSIS**

ATA is concerned about commercial activities around ports that impact American workers, companies and the families and businesses supplied by global trade. Foreign shipping companies that move containers between foreign and US ports operate with limited antitrust immunity to allow for the smooth flows of trade in a complex, multimodal operation. There are many examples of unreasonable commercial behavior by some of these foreign shipping companies, dictating equipment and non-negotiable pricing of equipment and activities to American trucking companies who haul containers from ports that employ thousands of workers. In some ports, there are reports of some foreign shipping companies forcing American trucking companies to use a designated chassis provider at a non-negotiable cost and non-negotiable interchange terms. This example of a lack of competitive market also reduces the incentive for chassis leasing companies to maintain the most safe and roadworthy equipment for the motor carriers that are forced to lease it at a price they can't negotiate.

ATA urges Congress to order a General Accountability Office study of competitive conditions in ports and the fees charged to American trucking companies for chassis used to move foreign shipping company containers. It should include analysis of the market for chassis, "street turns," per diem fees, and demurrage. This example of a lack of competitive market not only arbitrarily raises supply chain costs with no offsetting benefits, but also reduces the incentive to equip the chassis with the latest safety technology including radial tires, LED lights, and anti-lock brakes. This report should be made to Congress within 180 days of enactment."

## II. IMPROVE INFRASTRUCTURE AT PORTS OF ENTRY

Land Ports of Entry (POEs) along the northern and southern borders are in dire need of repair, upgrades, and additional infrastructure to accommodate increasing commercial traffic between the U.S., Mexico, and Canada. Since the enactment of the North American Free Trade Agreement (NAFTA), border crossings have increased dramatically, and in 2018, there were nearly 12.2 million truck entries combined on the Canadian and Mexican borders. Moreover, trucks haul 84 percent of all surface trade with Mexico and 67 percent of all surface trade with Canada. Existing POEs are, on average, over 40 years old and were not constructed with the foresight to support and facilitate this significant amount of cross-border traffic. Moreover, most POEs along the U.S. land border with Mexico and Canada were built to support the distinct and independent operations of pre-Department of Homeland Security components, such as the Customs Service; the Animal and Plant Health Inspection Service; and the Immigration and Naturalization Service. As a result, many POEs feature insufficient or outdated infrastructure that make it difficult for U.S. Customs and Border Protection (CBP) to deploy necessary, modern security technology or to deploy sufficient personnel to move people and goods in a timely manner.

Improvements are desperately needed at POEs along our northern and southern land borders to enhance trade facilitation and to reduce wait times. Examples of necessary enhancements include:

- Construction of additional commercial lanes (HTF)
- Renovations for aging bridges that support commercial motor vehicles (HTF)
- Redesigning existing commercial lanes to improve efficiency (HTF)
- Construction of bypass roads to reduce commercial traffic (HTF)
- Infrastructure modifications to ensure the accessibility of Free and Secure Trade (FAST) lanes for Customs-Trade Partnership Against Terrorism (CTPAT) participants (HTF)
- Infrastructure to connect highways with POEs (HTF)
- Technology that can be adapted to handle more volume, increase efficiency, and improve accuracy of detection efforts (GF)
- Construction of additional facilities to enable Customs and Border Protection (CBP) and other Partner Government Agencies (PGAs) to carry out the functions of commercial operations, including accepting entries of merchandise, collecting duties, and enforcing the customs, immigration, and trade laws of the United States (GF)

HTF: Funded from the Highway Trust Fund

GF: Funded from the federal General Fund

While SAFETEA-LU set aside money for many of these types of projects, Section 1437 of the FAST Act simply made border infrastructure an eligible expense under the Surface Transportation Block Grant program. Given the clear needs and federal interest in ensuring the efficient flow of people and goods across our land borders, ATA recommends restoring a dedicated funding program, with money apportioned among the northern and southern border states.

### ATA OPPOSES THE INCLUSION OF THE FOLLOWING ITEMS:

1. *Language creating a mandatory vehicle miles traveled (VMT) fee or truck-only VMT fee.* These types of fees require substantially more testing before they can be implemented on a widespread basis.
2. *Expanding the authority to toll Interstate highways.* Tolling existing Interstate highways causes significant problems related to traffic diversion to alternative routes, including greater crash risk, congestion and additional maintenance costs. It also has significant negative consequences related to environmental justice.
3. *Incentives to encourage highway asset recycling (i.e. the lease or sale of public highways and bridges).* Asset recycling is an abusive practice that forces motorists on the affected highway to subsidize projects and programs from which they derive little or no benefit.
4. *Devolution of federal responsibility for highway funding.* The federal government provides an average of 50 percent of states' highway capital budget, and this revenue cannot be easily replaced. The federal government has a constitutional and practical duty to ensure that highways, which are the conveyor belts for 70 percent of the nation's freight, effectively meet the country's interstate commerce requirements.
5. *Expanding the eligibility of Highway Trust Fund funded programs to additional non-highway projects.* The vast majority of both people and freight move

on the highway system and pay federal highway user fees for that privilege. The user pays, user benefits concept should not be degraded by siphoning HTF revenue for additional non-highway purposes. Furthermore, the percentage of HTF revenue that is dedicated to non-highway projects or programs should not increase.

6. *Rolling back weight and dimensional limits.* Reducing the capacity of trucks would increase the number of trucks on the road. This would create additional crash exposure, increase congestion and emissions, and make everything shipped by trucks more expensive.
7. *Underride Guard industry-wide mandate (See STOP Underrides Act).* Underride guard mandates seek to address a certain type of truck-involved accident through a highly prescriptive industry-wide mandate, ignoring the diversity of our industry and potential technical issues, as well as the other technologies that exist for addressing these and other crashes, such as automatic emergency braking, camera monitoring systems, and adaptive turning assist.
8. *ELD Exemption Language (See Small Carrier ELD Exemption Act, Ag Business ELD Exemption Act).* Electronic Logging Devices (ELDs) have not changed the hours-of-service (HOS) rules that have been in place since the early 2000's. The requirements for how long a driver may operate a commercial vehicle, or the minimum amount of time a driver must be off-duty, have not changed, nor have the requirements for when a driver must rest. The argument that an ELD does not allow a driver to rest when tired is simply false, as the device is merely a recordkeeping method to ensure the accuracy of a driver's HOS.
9. *Changes to HOS not grounded in safety and data (See TLAASA).* HOS changes should be based on safety data that demonstrates the change will create a level of safety that is equal to or greater than the level of safety that currently exists. Changes that lack the proper data supporting a safety benefit should not be considered.
10. *Removal of new trailer fuel consumption requirements under the December 2016 EPA/NHTSA Phase 2 Greenhouse Gas Emissions and Fuel Efficiency Standards (Phase 2).* USDOT determined that trailers pulled by combination tractors are part of a vehicle and are within its authority to regulate for fuel consumption. Beginning in 2021, new trailers will be subject to NHTSA standards for fuel consumption for the very first time and see increased stringency levels in both 2024 and 2027. ATA member fleets assisted in the development of the Phase 2 trailer standards and seek to ensure full implementation of such requirements.

## APPENDIX

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QUESTIONS FROM HON. ELEANOR HOLMES NORTON FOR CATHERINE CHASE,  
PRESIDENT, ADVOCATES FOR HIGHWAY AND AUTO SAFETY

*Question 1.* Ms. Chase, the Federal Motor Carrier Safety Administration announced last month its intent to pursue a pilot program to allow drivers ages 18-21 to operate commercial vehicles interstate. This is in addition to a pilot program that Congress authorized in the FAST Act for drivers under 21 with military driver training—which is not yet operational. Congress specifically authorized this pilot with requirements for the agency to report back on the findings and results, including safety impacts.

Do you believe it would be irresponsible for Congress to make any permanent changes in statute to the driver age before these pilot programs have concluded and the agency and Congress have evaluated the results?

*ANSWER.* Lowering the age for interstate trucking operations is not only irresponsible but would also severely jeopardize public safety. In fact, data shows that commercial motor vehicle (CMV) drivers aged 18 to 20 are four to six times more likely to be involved in fatal crashes compared to CMV drivers 21 and older. Generally, young drivers lack experience and skills as well as tend to take greater risks and as such are more likely to be involved in fatal crashes. Moreover, brain development in the region vital to decision making, the pre-frontal cortex, may not be fully reached until one's mid-20s.

Recognizing that the safety performance of younger drivers was not on par with, or even close to, that of older drivers, the Federal Motor Carrier Safety Administration (FMCSA) has previously declined to lower the minimum age for drivers to obtain an unrestricted commercial driver's license (CDL). Furthermore, in response to the petition to lower the age, the public overwhelmingly rejected the idea with 96 percent of individuals opposing the proposal along with 88 percent of truck drivers and 86 percent of motor carriers commenting.

Also during the hearing, a point was raised that members of the military who are of teenage years are permitted to be at the helm of a naval aircraft carrier and thus, should be allowed to operate a truck in interstate commerce. This assertion is an apples to oranges comparison. First, a young person at the helm would have had a significant amount of naval training that would include at least eight weeks of intensive boot camp and six weeks of boatswains mate school. In sharp contrast, proposed legislation (DRIVE-Safe Act, H.R. 1374) requires a potential teen truck driver to undergo approximately three weeks of behind the wheel training. Second, a young person on an aircraft carrier would be under the supervision and *direction* of a Captain. Not only are orders such as turning a vessel directed by the Captain, the Captain's decision to instruct such a maneuver would be supported by a chain of command of officers and enlisted men and women involved in navigation of the ship through radar, sonar and numerous other functions. Moreover, trucks are not equipped with highly sophisticated radar and other navigational systems, are not staffed with specialists to monitor each system, and do not have the movements of the driver directed by a team of support staff constantly overseeing operations. Third and fourth, ships operate most often in open waters and at speeds not exceeding 30 knots (less than 35 miles per hour), which stands in stark contrast to densely traveled highways and roads where trucks can operate at speeds up to 80 mph.

Advocates has opposed the establishment of the pilot program authorized in the FAST Act as well as the additional program announced by FMCSA in May due to the significant safety concerns associated with the high crash rates of younger drivers as noted above. Nonetheless, Advocates has urged FMCSA to establish the programs in such a manner as to protect public safety as well as capture enough relevant and useful data on participating drivers.

QUESTIONS FROM HON. ANGIE CRAIG FOR CATHERINE CHASE, PRESIDENT, ADVOCATES FOR HIGHWAY AND AUTO SAFETY

*Driving Training Standards*

*Question 2.* Do you support the current training standards for the ELDT 2020 training program?

*ANSWER.* Advocates for Highway and Auto Safety (Advocates) supports many provisions of the entry-level driver training (ELDT) 2020 rule, including the requirements that trainers register with the Federal Motor Carrier Safety Administration (FMCSA) and the establishment of uniform curriculum for students. However, Advocates strongly opposes the failure to include a requirement that candidates receive a minimum number of hours of behind-the-wheel (BTW) training in the final rule issued in December 2016.

In 2015, FMCSA convened the Entry-Level Driver Training Advisory Committee (ELDTAC) to draft federal training requirements for candidates seeking a commercial driver's license (CDL). The ELDTAC reached a consensus that would have required candidates seeking a class A CDL receive 30 hours of BTW training and candidates receiving a class B license receive 15 hours BTW training. There is ample support for the consensus reached by the ELDTAC on this important safety issue. The leading CDL training schools as well as many states already require that students complete a minimum number of hours of BTW training. In addition, numerous experts including a majority of FMCSA's Motor Carrier Safety Advisory Committee (MCSAC) have recommended that CDL candidates receive a minimum number of hours of BTW training. Mandating that candidates complete a minimum number of hours to enter a profession is a widely accepted practice throughout transportation modes including commercial airline pilots. States require entrants of other occupations such as plumbers, electricians and barbers gain practical experience before earning a license. Despite the abundance of evidence of the benefits of requiring a mandatory number of BTW hours training, FMCSA failed to include such a provision in the final rule. This egregious error should be corrected by Congress.

*Question 3.* Do you support current standards that do not require a minimum BTW (Behind The Wheel) time?

*ANSWER.* Advocates does not support current standards that do not require a minimum number of hours of BTW training for the reasons stated above. During the ELDTAC negotiations, diverse stakeholders including members of the Committee representing safety groups, training schools, law enforcement, the motorcoach industry and individual drivers all supported requiring a minimum number of BTW hours.

Relatedly, Advocates has long supported graduated driver licensing (GDL) laws for novice drivers of motor vehicles that include a minimum number of hours of supervised driving behind-the-wheel before s/he can earn a full or unrestricted license. Motor vehicle crashes are the number one killer of American teens. The Insurance Institute for Highway Safety (IIHS) notes that "teenagers' lack of experience behind the wheel makes it difficult for them to recognize and respond to hazards." As such, nearly every state and the District of Columbia have enacted these laws which reduce overall crashes among teen drivers of about ten to thirty percent, according to IIHS.

*Question 4.* Do you believe that truck drivers should demonstrate their driving capabilities on the streets and highways rather than in parking lots?

*ANSWER.* Yes. During the work of the ELDTAC, Advocates strongly supported a requirement that part of the BTW training include a minimum number of hours spent operating a truck on public roads. Such a requirement was included in the consensus reached by the committee. Ensuring that a candidate spends time operating a CMV on public roads with an experienced instructor encountering safety critical, real-world situations is essential to enhancing the ability of an inexperienced driver to operate a truck safely and to avoid crashes.

QUESTIONS FROM HON. ROB WOODALL FOR CATHERINE CHASE, PRESIDENT, ADVOCATES FOR HIGHWAY AND AUTO SAFETY

*Question 5.* While you gave your opening remarks, I was keeping tabs on each of the issues that you, on behalf of the Advocates for Highway and Auto Safety, both support and oppose. For example, I've noted that you support the use of speed limiters, automatic emergency braking, underride guards, and driver training improvements, just to name a few, while you oppose increasing truck weight and size, allowing younger truckers to operate commercial motor vehicles in interstate commerce, and increasing flexibility in Hours of Service (HOS) regulations. Now, while I cer-

tainly recognize that there are issues out there that the trucking industry itself remains divided on, I'm curious to learn more about whether you believe opportunities exist for the trucking industry and safety advocates to work together on moving the needle forward in the name of achieving both safety and efficiency.

If so, could you please provide a list of issues that could potentially be paired together?

*Question 5.a.* Such pairings might not get either party all of what they'd like to achieve, but could instead be a step in the right direction for both parties. I look forward to learning more about whether you believe opportunities exist, along with some examples, and if you believe they do not, I would ask that you please elaborate as to why that might be the case. I ask this question because I would be more than happy to work with you on any such proposals that could stand to benefit both parties, and I do hope we can find some common ground to work together on tackling these big issues.

*ANSWER.* Advocates for Highway and Auto Safety (Advocates) has a long and successful history of working with members of the trucking industry on important safety advances. Notably, in the Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L. 112-141), Advocates joined with several industry stakeholders to advance the requirement that trucks be equipped with an electronic means to ensure compliance with hours of service rules (now known as electronic logging devices or "ELDs"). This important safety victory, which took effect in December 2017, is helping ensure that "tired truckers" are kept off the roads as evidenced by the 53 percent reduction in the percentage of driver inspections with an hours of service violation. We have also joined forces with industry groups in our efforts to oppose exemptions to this lifesaving rule as well as any legislative or regulatory proposals that would further rollback or weaken hours of services rules. Advocates has partnered with many of these same representatives to advance much-needed safety technology such as speed limiting devices and collision avoidance systems.

Furthermore, we are aligned with a number of companies and industry stakeholders in our staunch opposition to truck size and weight increases. Bigger trucks are broadly opposed by not only Advocates and other safety groups but also many of the Nation's largest trucking companies, truck drivers and independent operators.

Additionally, we remain committed to defeating any proposals that would lower the age to obtain an interstate commercial driver's license (CDL) from 21 to 18. Our position is shared by a number of industry stakeholders including those that represent truck drivers, owner independent operators and large motor carriers. Advocates also shares the concerns of many in the trucking industry that the entry level driver training to obtain a CDL is severely lacking. It is our hope that we can come together in support of a proposal to improve training and give drivers the experience they need to ensure they are safe when they hit the road.

Advocates' sole mission is advancing safety by reducing crashes, deaths, injuries and associated costs on our roads. Thank you for your question and we welcome the opportunity to work with you and to collaborate with anyone who shares that goal including continuing our long-standing relationships with our trucking industry allies.

*Question 6.* Thinking more specifically about regulations and compliance, I, too, want as many people covered by such regulations to be operating in accordance with them. But unfortunately, we all know too well that definitions used to apply regulations don't always keep pace with industry. And unfortunately, the turfgrass industry in my state has found themselves in such a scenario where the state recognizes turfgrass in a different manner than does the Federal Motor Carrier Safety Administration (FMCSA). To complicate things even further, the FMCSA recognizes "agricultural commodities" differently than does the U.S. Department of Agriculture, the Environmental Protection Agency, and numerous other federal and state agencies, which all recognize horticultural and aquaculture products as an agricultural commodity. To fix this discrepancy, I'm the cosponsor of a bill, H.R. 1673, the "Agricultural Trucking Relief Act," which would provide clarity for the definition of an "agricultural commodity" as it relates to transportation policy and compliance with new Electronic Logging Device (ELD) and HOS rules and regulations. Again, I absolutely believe that we must work to ensure that our regulations are clear and concise so that individuals are able to easily comply with them, and I'd hope that you'd agree with me on that goal.

But in the process of working to ensure that our shared goal is achieved, do you find that you are opposed to efforts that work to update and harmonize definitions so that operators can ensure compliance rather than having to second guess?

*ANSWER.* Advocates remains opposed to legislative proposals that would result in additional carve-outs for certain industries, sectors or states from truck safety rules.

Under current federal law (49 U.S.C. 31136 (note)), drivers transporting agricultural commodities from the source of the agricultural commodities to a location within a 150 air-mile radius from the source during planting and harvest periods (as determined by each state) are already exempt from hours of service (HOS) regulations. For the purpose of this exemption, agricultural commodities are currently defined as any agricultural commodity, non-processed food, feed, fiber, or livestock and insects. This exemption already provides a significant amount of flexibility for drivers. Moreover, given that the term “agricultural commodities” is being used as an umbrella for exemptions to truck safety rules, we have already seen a number of other attempts by certain segments to be included in the definition and have serious concerns about such proposals.

Aquacultural products can include such varied materials as fish, crustaceans, molluscs, aquatic plants, algae, and other organisms. Horticultural work encompasses the growing of flowers as well as of plants for ornament and fancy. Floricultural activities involve the cultivation of flowering and ornamental plants for the floral industry. None of the materials listed above would fall under the well-defined, commonsense definition of an agricultural commodity included in the current regulation. The items that could fall under this new definition are seemingly limitless as anyone could attempt to make a case that their product is sensitive to temperature or climate and at some risk of perishing in transit simply to seek the exemption from HOS rules. Drastically expanding the exemption to include these additional non-agricultural industries will result in an untold number of commercial motor vehicle (CMV) drivers not having to comply with the HOS regulations at a time when fatigue is a major safety issue in the trucking industry.

The National Transportation Safety Board (NTSB) has repeatedly cited fatigue as a major contributor to truck crashes and included reducing fatigue related crashes in every edition of its Most Wanted List of safety changes since 2016. Additionally, 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. Many of the recent efforts to weaken the HOS rules by expanding exemptions to the regulation result from the implementation of the electronic logging device (ELD) rule that went into effect in December 2017. The ELD rule in no way altered or changed the HOS regulations. In addition, since the implementation of the ELD rule, driver inspections with an HOS violation have decreased by 53 percent, thereby demonstrating its effectiveness.

QUESTIONS FROM HON. PETER A. DEFAZIO FOR CHRIS SPEAR, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATIONS

*Question 1.* Mr. Spear, in your testimony, you specifically mention H.R. 487, the “Transporting Livestock Across America Safely Act”, which provides additional exemptions from hours of service rules for livestock haulers. You call the bill a “dangerous overreach, more than doubling the number hours currently deemed safe” that will “needlessly and recklessly threaten the safety of people traveling on our highways” and that it “should be rejected outright”. Livestock haulers currently can operate without an Electronic Logging Device to track their hours, and their drivers can already operate far longer than other industries based on recent US DOT guidance.

Can you elaborate on why you oppose this bill?

*ANSWER.* The ATA believes H.R. 487, the Transporting Livestock Across America Safely Act, is dangerously mistitled, as the bill would not create an environment where livestock is transported “safely”. This legislation, if enacted, would undermine the safety of our roads and bridges, providing an environment where commercial motor vehicle (CMV) drivers could operate more than 24 hours straight, without rest, for the purpose of transporting livestock and insects. While ATA understands and appreciates that livestock and agricultural haulers are a unique sector of the industry, facing distinctive hours-of-service (HOS) challenges that should be reviewed and carefully addressed, this bill would not safely do so. Currently, Federal Motor Carrier Safety Administration (FMCSA) regulations allow a driver a maximum of 11 hours driving before requiring a 10 hour off-duty break. If enacted, this legislation would provide a driver with the ability to drive more than 24 hours straight, over double the current regulation. Driving 24 hours straight in any vehicle, let alone a commercial vehicle weighing 40 tons, is not a safe practice.

ATA previously outlined these, and other concerns in a letter to members of the U.S. Senate Committee on Commerce, Science and Transportation and U.S. House Committee on Transportation and Infrastructure.

<https://www.trucking.org/ATA%20Docs/What%20We%20Do/Hill%20Report/ATA%20letter%20opposing%20TLAASA%205.2.19.pdf>

QUESTIONS FROM HON. ELEANOR HOLMES NORTON FOR CHRIS SPEAR, PRESIDENT  
AND CHIEF EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATIONS

*Question 2.* Mr. Spear, certain proposals to attract younger drivers to the industry call for more robust training, and advanced safety technologies such as collision mitigation and speed limiters, but only for teenage drivers and only during their initial probationary period.

Does ATA support enhanced training and safety technologies for all new drivers to the industry, not just younger drivers?

*ANSWER.* It is important to note that the DRIVE Safe Act’s training and technology requirements do not apply “only for teenage drivers.” Rather, under the bill, professional apprentices who have reached the age of 20—and are no longer in their teens—are covered by the same training and technology requirements that apply to professional apprentices aged 18 and 19. In addition, those requirements of the bill do not apply “only during their initial probationary period.” Rather, those requirements apply for the entire duration of the apprenticeship—across two probationary periods—which consists of a minimum of 400-hours of training.

Having clarified the training and technology requirements of the DRIVE Safe Act, the ATA also wishes to make clear our support of the following enhanced training and safety technology requirements that have already been mandated by Congress and by FMCSA:

- *The Entry Level Driver Training (ELDT) Final Rule:*<sup>1</sup> Mandated by MAP-21 and finalized in December 2016 during the Obama Administration, the ELDT Final Rule was the result of a negotiated rule-making process that involved a compromise achieved among a broad array of stakeholders from labor, safety advocates, truck driver training schools and industry, including:<sup>2</sup>
  - Advocates for Highway and Auto Safety
  - Truck Safety Coalition
  - Citizens for Reliable and Safe Highways
  - International Brotherhood of Teamsters
  - AFL-CIO (Amalgamated Transit Union)
  - AFL-CIO (American Federation of Teachers)
  - AAMVA
  - CVSA
  - NAPFTDS
  - CVTA
  - ATA
- *Electronic Logging Devices (ELDs):*<sup>3</sup> Initially proposed as an agency rule in 2007, finalized in 2020, and finally effectuated by bipartisan Congressional action in MAP-21, ELDs have been legislated, promulgated, and litigated—with Congress voting three times from 2012 to 2017 in favor of this requirement and a federal court rejecting a challenge to the rule. ATA fully supports the replacement of decades-old, burdensome paper logs that consume countless hours and are susceptible to fraud. ELDs put the safety of all motorists first, and the benefits of the rule exceed the costs by more than \$1 billion, making it a rule that ATA can firmly support and easily adopt.

With respect to other vehicle safety technologies, ATA supports the development and testing of cost-effective onboard systems for all motor vehicles in an effort to enhance the safety of all roadway users and the use of those systems which have a proven significant safety benefit. However, ATA believes incentives should be provided to encourage their adoption. In this regard, enactment of the DRIVE Safe Act would be an effective incentive that would result in the increased adoption of safety technologies in fleets, as carriers are granted access to a broader pool of potentially qualified, safe, and professional interstate drivers aged 18, 19, and 20.

<sup>1</sup>81 Fed. Reg. 88732 (Dec. 8, 2016) <https://www.govinfo.gov/content/pkg/FR-2016-12-08/pdf/2016-28012.pdf>.

<sup>2</sup>80 Fed. Reg. 7814, 7814-7815 (Feb. 12, 2015) <https://www.federalregister.gov/documents/2015/02/12/2015-02967/minimum-training-requirements-for-entry-level-drivers-of-commercial-motor-vehicles-negotiated>.

<sup>3</sup>ATA Hails Arrival of ELD Mandate Effective Date, Dec. 18, 2017, <https://www.trucking.org/article/ATA-Hails-Arrival-of-ELD-Mandate-Effective-Date>.

QUESTIONS FROM HON. ANGIE CRAIG FOR CHRIS SPEAR, PRESIDENT AND CHIEF  
EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATIONS

*Question 3.* It's graduation season right now and students are weighing their options for various careers and trades. Facilitating a path forward to a career in trucking is a worthy pursuit, but we must also ensure that truck driving will be a good job, as the industry undergoes rapid transformation.

You represent a spectrum of trucking operations. How can we improve industry conditions in order to ensure good-paying, sustainable careers for the next generation of drivers?

*ANSWER.* 18,350 trucking companies are located in Minnesota; primarily small, locally owned businesses, served by a wide range of supporting businesses. With 137,530 trucking industry jobs in Minnesota as of 2017, trucking accounted for 1 in 18 jobs within the state. Total trucking industry wages paid in Minnesota during 2017 exceeded \$7.0 billion, with an average annual trucking industry salary of \$50,627.

Nationally, according to USA Today, "truck-driver" was one of the most in-demand jobs in the country with the biggest pay hikes in 2018.<sup>4</sup> According to an ATA study, private fleet drivers saw their pay rise to more than \$86,000 from \$73,000—or a gain of nearly 18%—from 2014 to 2017.<sup>5</sup> Over the same period, the median salary for a truckload driver working a national, irregular route increased to over \$53,000—for an increase of \$7,000 or 15%.<sup>6</sup> These significant bumps in pay are in addition to the thousands of dollars in signing bonuses, health insurance, and retirement benefits that most carriers offer to recruit and retain drivers.<sup>7</sup>

For many 18-year-old Minnesotans, the ability to activate one's earning capacity immediately upon high school graduation while receiving health and retirement benefits offers a better pathway to the middle class than the student-debt-laden-four-year-college route, particularly since nearly half of all students who begin college do not graduate in six years.<sup>8</sup>

Unfortunately, blue-collar professions are still stigmatized in our society and culture that place a disproportionate emphasis on four-year-degree colleges at the expense of vocational schools or the skilled trades. Unlike other blue-collar professions, however, the trucking industry faces yet another barrier to entry in FMCSA's regulations that require an individual to be at least 21 years old in order to operate a CMV in interstate commerce. This means that other blue collar industries essentially get at least a three year head start in advance of the trucking industry in the ability to recruit, hire, and train straight out of school the already-limited subset of students who for a variety of reasons decide to forego a four-year-degree.

What is more, unlike other blue-collar professions, there are many barriers to entry for new truck drivers beyond the minimum age requirement, such as CDL testing standards, strict drug and alcohol testing regimes, and safe and clean driving records. If motor carriers could reach potential truck driver candidates straight out of high school, the trucking industry would be in a better position to help develop candidates develop skills, habits, and attitudes necessary for a long and satisfying career in the trucking industry. Specifically, connecting young professionals to trucking careers earlier would help divert individuals away from the path of controlled substances—which, once taken, would render that individual practically unemployable for our industry. Reaching these individuals earlier and acculturating them through the hiring and training process would lower the risk of that person ever taking drugs.

Significantly, even though the minimum age for interstate driving is 21, the reality is that the average age of entry-level drivers enrolling at private truck driver training schools is actually 35.<sup>9</sup> This means that many drivers entering our industry may be on the back end of their second, third, or fourth careers. They may also be at a point in their lives where they have accumulated unsafe driving habits as driv-

<sup>4</sup>Paul Davidson, The most in demand jobs in 2018 with biggest pay hikes include cashier, truck driver, USA Today, May 22, 2018, <https://www.usatoday.com/story/money/careers/2018/05/22/jobs-biggest-pay-hikes-cashier-delivery-driver/630728002/>.

<sup>5</sup>American Trucking Associations, *UPDATED: New Survey Data Reveals Increases in Driver Compensation*, March 27, 2018, <https://www.trucking.org/article/New-Survey-Data-Reveals-Increases-in-Driver-Compensation>.

<sup>6</sup>*Id.*

<sup>7</sup>*Id.*

<sup>8</sup>U.S. Department of Education, Fact Sheet: Focusing Higher Education on Student Success, July 27, 2015, <https://www.ed.gov/news/press-releases/fact-sheet-focusing-higher-education-student-success>.

<sup>9</sup>Commercial Vehicle Training Association, 2018 Legislative Agenda, <https://cvta.org/wp-content/uploads/CVTA-Legislative-Agenda-2018.pdf>, at 3.

ers of passenger vehicles. Mid-30's is also when many individuals start families and have young children at home, but, truck drivers—unlike other blue collar professions—are often away from home for long stretches as part of the job. The away-from-home aspects of the job may be easier to deal with for drivers aged 18, 19, and 20, rather than someone who is 35 years old.

For these reasons, to better connect Minnesotans and Americans to middle-class jobs in the trucking industry and to improve industry conditions in order to ensure good-paying, sustainable careers for the next generation of drivers, ATA supports the following reforms:

#### *I. GIVE YOUNGER PROFESSIONALS THE OPPORTUNITY TO CHOOSE A CAREER IN TRUCKING*

ATA supports lowering the minimum age requirement for interstate truck driving from 21 to 18—but only for qualified apprentices that satisfy the 400 hours of supervised training and vehicle safety technology requirements spelled out in the DRIVE Safe Act, as well as the new training requirements of the Entry-Level Driver Training Rule (EDLT) Final Rule that will take effect in 2020. Driver training and vehicle safety technologies have advanced by several orders of magnitude since the current minimum age requirement of 21 was promulgated decades ago.

48 states and the District of Columbia allow 18, 19, and 20-year-olds to operate CMVs in intrastate commerce, and many of these drivers already achieve safety levels equivalent to, if not greater than, that of their 21, 22, 23, and 24-year-old counterparts—even without the benefit of having trained under the enhanced training standards of the ELDT Final Rule, without the minimum 400 hours of training required by the DRIVE Safe Act, and without the safety technology requirements of the DRIVE Safe Act. Despite this level of safety performance, however, 18, 19, and 20 year old truck drivers are somehow prohibited from driving 1.5 miles from Texarkana, TX into Texarkana, AR—even though they can drive hundreds of miles throughout Texas.

In addition, our nation's military currently allows 18, 19, and 20-year-old service members to operate heavy duty machinery, equipment, and vehicles—demonstrating that properly-designed training can enable U.S. sailors (whose average age is younger than 20 years old) to operate a \$4 billion aircraft carrier.<sup>10</sup> Further, according to the Council on Foreign Relations, 20 percent of the Marine Corps is under 21, while 10 to 15 percent of the 1.29 million active duty members of the U.S. military overall is also under 21.<sup>11</sup>

Meanwhile, 6.4 million Opportunity Youth in this country are neither employed nor in school, even as the nation is short 50,000 truck drivers. The DRIVE Safe Act would allow trucking industry employers to connect these young professionals-in-waiting to jobs that pay a national median salary of \$54,585, in addition to offering potentially thousands of dollars in signing bonuses, health insurance, and retirement benefits.

Additionally, connecting young professionals to trucking careers earlier would help divert individuals away from the path of controlled substances—which, once taken, would render that individual practically unemployable for our industry. Reaching these individuals earlier and acculturating them through the hiring and training process would lower the risk of that person ever taking drugs.

An update to the minimum age requirement is well over-due.

Legislative Language: See DRIVE Safe Act: S. 569 [<https://www.congress.gov/bill/116th-congress/senate-bill/569/text>], H.R. 1374 [<https://www.congress.gov/bill/116th-congress/house-bill/1374/text>]

#### *II. ELIMINATE UNNECESSARY BARRIERS FOR OUT-OF-STATE DRIVER CANDIDATES*

ATA supports an increase in the CDL Improvement Grant Program by an amount necessary for states to implement changes to their IT systems so that states can better serve the growing number of driver candidates who receive training outside their state of domicile. This will allow drivers to (1) complete all training; (2) take all necessary tests; and (3) obtain all necessary credentials in one state—without having to travel back to their home state. Currently, out-of-state trainees have to travel back to their home state every time they pass either the CDL knowledge test or the CDL skills test just to obtain the basic occupational licenses necessary to

<sup>10</sup> National U.S. Navy Aircraft Carrier Month, *2018 Talking Points*, <https://aircraftcarrier.com/wp-content/uploads/2018/10/Talking-Points-2018.pdf>, at 5.

<sup>11</sup> Council of Foreign Relations, *Demographics of the U.S. Military*, <https://www.cfr.org/article/demographics-us-military>.

launch their trucking careers. This imposes unnecessary financial burdens on those who can least afford it and exposes them to skills degradation.

### *III. ELIMINATE SKILLS TEST DELAYS FOR CDL APPLICANTS*

ATA supports incentivizing states to administer the CDL skills test within 7 days of application or utilizing 3rd party testers. A low unemployment rate and the stigma surrounding blue-collar work makes it difficult enough to recruit drivers into the trucking industry. States that make applicants wait up to two months to take their skills test contributes to this problem by discouraging applicants from following through. It also invites skills erosion.

### *IV. SUPPORT RESEARCH ON THE WORKFORCE IMPACTS OF AUTOMATED VEHICLES*

Automated and connected vehicle technologies have the potential to dramatically impact nearly all aspects of the trucking industry. These technologies can bring benefits in the areas of safety, environment, productivity, efficiency, and driver health and wellness. Automated driving technology is the next step in the evolution of the safety technology currently available, and will help to further improve driver safety and productivity, as well as the safety of other motorists and road users. Automated technology comes in many levels that will assist the driver and in some cases, handle the driving task. The application of automated and connected vehicle technology in the trucking industry will center on solutions in which there remains a role for drivers, recognizing the duties and requirements drivers have beyond operating the vehicle.

For these reasons, ATA supports the commonsense adoption of automated vehicle technology and data-driven efforts to better understand and optimize the potential benefits of this technology for the American workforce. While we recognize that the widespread adoption of these technologies is at least 25 to 30 years away, ATA supports increased research that will better equip policymakers and regulators with more data to prepare the next generation of American workers for the future of work in trucking and transportation.

*Question 4.* Have you given thought to how we can equip drivers with additional certifications (such as mechanical aptitude) that could increase their pay meanwhile driving down overall costs in the supply chain?

*ANSWER.* ATA has been evaluating a number of proposals involving industry-recognized, nationally-portable certifications and would welcome the opportunity to explore ideas like this further with you and your staff.

#### *Our Roads Our Safety*

*Question 5.* Are you supportive of FMCSA's program Our Roads Our Safety?

*ANSWER.* ATA is a proud founding member of the Our Roads, Our Safety program alongside FMCSA, the American Bus Association and AAA. As the first trucking industry representative in the Our Roads, Our Safety partnership, ATA contributed time and resources to the program's first effort, which was a three-part animated video series on wide right turns, blind spots, and long stopping distances. Over the past three years, ATA has advised FMCSA on safety messages, shared Our Roads, Our Safety content with our membership digitally and at ATA conferences, solicited new association coalition members, hosted Our Roads, Our Safety meetings at the ATA office, served as judges for the Road Safety Art Contest, and worked closely with FMCSA to execute campaign projects. Most recently, Our Roads, Our Safety released a truck safety video featuring former ATA Chairman Kevin Burch as an advocate for highway safety. ATA continues to support Our Roads, Our Safety in order to promote highway safety related to large trucks and buses to the trucking industry as well as the motoring public.

*Question 6.* How can this program be expanded to help truck drivers and the public to understand how to operate around large trucks and buses?

*ANSWER.* ATA believes the Our Roads, Our Safety team at FMCSA has done a tremendous job of targeting messages to specific audiences in states and cities that have disproportionate rates of large-truck involved crashes. Moreover, we believe the program should continue to use innovative digital media advertising practices on YouTube and other social media platforms to spread safety messages to the general public. Additionally, using outdoor advertising opportunities like well-placed bikeshare dock ads, billboards in high-traffic areas, and advertisements at professional sporting events have all proven to be effective mediums to reach the right audiences. Our Roads, Our Safety should continue to have a presence at major trucking industry trade shows like the Great American Truck Show, Mid-America Trucking Show, ATA's MCE annual meeting, and the National Truck Driving Championships, as well as other large, industry-centric events.

ATA also believes FMCSA and commercial motor vehicle industry stakeholders must continue to think beyond standard marketing practices to engage new audiences, specifically young, emerging passenger-vehicle drivers. ATA's Share the Road program visits dozens of high schools each year to perform truck safety demonstrations for tens of thousands of students. The program uses professional truck drivers as authentic safety advocates to establish credibility among an increasingly distracted demographic and allows students to receive hands-on experience with tractor-trailers. Other Our Roads, Our Safety partner organizations have similar outreach programs in order to educate young drivers. Our Roads, Our Safety can support such efforts by compiling best practices among truck safety advocates like ATA to produce curricula or guidelines for other industry stakeholders, state trucking associations or community groups looking to implement similar programs at a grassroots level. Our Roads, Our Safety could serve as an intermediary between schools looking for highway safety demonstrations and OROS partner organizations who have the trucks, professional drivers and resources to perform such demonstrations.

QUESTIONS FROM HON. SAM GRAVES OF MISSOURI FOR CHRIS SPEAR, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATIONS

*Question 7.* During the hearing, the article entitled "Is the U.S. labor market for truck drivers broken?", by Stephen V. Burks and Kristen Monaco, which appeared in the March 2019 issue of the *Monthly Labor Review*, U.S. Bureau of Labor Statistics, was referenced.

What is ATA's position on the conclusions reached by the authors?

*ANSWER.* ATA does not agree with the conclusions reached by Mr. Burke and Ms. Monaco that there is no systemic driver shortage. But before correcting the authors clear misunderstandings about the trucking industry, ATA would like to address statements made by other witnesses regarding the *Monthly Labor Review* article in submitted written testimony and during the hearing as well. In both written testimony and answers provided during the question and answer portion of the hearing, the article was characterized as an official Department of Labor (DOL) publication, and Bureau of Labor Statistics (BLS) study. In fact, the article written by Mr. Burke and Ms. Monaco is not an official opinion, study or report from BLS or DOL, but instead the sole opinion of the authors. Acting BLS Commissioner Bill Wiatrowski confirmed as much to ATA Chief Economist Bob Costello in an email this past March, stating that "the opinions in all articles, including the recent trucking article, do not represent official positions of the BLS or the DOL," and that "any opinions are strictly those of the authors." Claims that this article is an official study or position is patently false and incredibly misleading.

With respect to the article written by Mr. Burks and Ms. Monaco, as noted above, it demonstrates some basic misunderstandings about the trucking industry generally, and how we at ATA and in the industry discuss the driver shortage. First, the trucking industry is large and diverse—with many types of carriers, services, jobs and career paths for drivers. ATA has long recognized this when we discuss the driver shortage—repeatedly emphasizing that the shortage is generally contained to one segment of our industry: the over-the-road or long-haul for-hire truckload segment. The authors go out of their way to say their data could not tell the difference between drivers in this segment and other drivers—this error is compounded by the fact that some of the data utilized in the analysis is nearly two decades old.

Second, this work ignores ATA's long-standing contention that at the heart of the shortage is the need for qualified drivers. Unlike other "blue collar" jobs the authors compare truck drivers to—motor carriers cannot simply hire anyone to do the job. There are many barriers to entry for new drivers: age requirements, CDL testing standards, strict drug and alcohol testing regimes and, perhaps most importantly for many fleets, safe and clean driving records.

Carriers repeatedly say it isn't that they don't have enough applicants for their open positions—they do. What they do not have is enough applicants who meet the demanding qualifications to be hired. In some cases, carriers must reject 90% of applicants out of hand because they fail to meet at least one of the prerequisites to drive in interstate commerce.

Finally, the authors ignore the most critical difference between driving a truck and other "blue collar" jobs: unlike their blue collar brethren, truck drivers are often away from home for long stretches as part of the job. Not adjusting their conclusions for something as important as work-life balance leads the authors to make some ill-founded claims.

In addition to this clear misunderstandings about trucking, the authors' own concession that wages are going up significantly, as motor carriers are unable to hire

quality drivers, undercuts their own conclusions. This alone suggests there is a systemic issue with getting enough labor in the for-hire truckload driver market.

*Safety*

*Question 8.* What is ATA's position on H.R. 1511, the "Stop Underrides Act"?

*ANSWER.* ATA remains opposed to H.R. 1511, the "Stop Underrides Act". The Stop Underrides Act is not based on sufficient science, data or demonstrated overall effectiveness. Moreover, it disregards the significant technical issues a mandate of this nature raises, as well as the other proven technologies that exist for addressing these and other crashes, such as automatic emergency braking, camera monitoring systems, and adaptive turning assist. The bill also ignores the diversity of our industry, failing to take into account that trucking is not a one size fits all industry, and that investments in certain technologies that one company makes may not make sense, or be safe, for another. Standards for both new and in-service truck equipment should be based on sound economic and engineering principles that enhance safety, take into account real-world operations, and weigh possible unintended consequences.

The need for sufficient data and research is not only ATA's positions, but also a recommendation made by The Government Accountability Office (GAO). At the request of members of Congress, the GAO published a report reviewing the topic of underride crashes. Through a yearlong investigation, including numerous interviews with State and Federal Government, Local Police Departments, Foreign Governments, and over 29 industry groups, including those supportive of this mandate, GAO concluded that more study should be conducted by DOT on this issue—study that can examine the possibilities of unintended consequences that no parties involved with this issue wants to see. ATA agrees with GAO's findings and recommendation for additional research on side underride guards. Our industry's unwavering commitment to safety should not be impeded by hastily mandating a technology that government experts report requires greater study.

GAO's recommended study can further investigate the real-world outcomes of crashes with trailers equipped with side underride guards. Study that should analyze the crash outcomes beyond testing that has previously been conducted on closed courses. To date, ATA is only aware of testing that has been completed on a closed course, at well below highway speeds of 35 and 40 M.P.H., during perpendicular side impact crashes into a stationary trailer. With national highway speed limits of 65 and 70 M.P.H. on the rise, we do not know what may happen in a crash during a realistic highway scenario—at highway speeds, with a moving truck and trailer, and with other traffic present. Beyond the unknown effects of highway crashes, concerns still remain as to the long-term structural integrity of trailers if side underride guards were added to trailers. In comments filed with the National Highway Traffic Safety Administration (NHTSA) in May 2016, the Truck Trailer Manufacturers Association (TTMA) noted a European trailer manufacturer's experience with trailer failures due to the increased rigidity in the trailer structure from added frame supports for side underride guards. The trailers were less flexible when operated over uneven road surfaces or on surfaces that produced twisting forces, which led to the trailers becoming disabled during highway use and thereby creating a safety hazard for other motorists. To promulgate legislation or rulemaking without knowing these safety impacts would be irresponsible and would go against the goal of all stakeholders involved in highway safety.

Furthermore, a mandate of this nature would indisputably divert industry safety resources away from crash avoidance technologies with wide-ranging benefits in all types of crashes to focus on a narrow type of crash and very specific countermeasure unproven in real-world applications. In the written testimony provided by Andy Young, a fellow witness at June 12, 2019 "State of Trucking In America", Mr. Young states that there are 11.7 million registered trailers in existence, as reported by the Federal Highway Administration in 2012. The testimony further states that trailer orders, in 2019, are projected to reach 324,000 trailers. By these projections, the testimony concludes that "combining all new trailer orders with currently registered trailers puts the total number of commercial trailers in the United States at well over 12 million." Equipping the estimated 12 million trailers with a side underride guard, identified in Mr. Young's testimony as costing approximately \$2,900 including shipping, would equate to approximately \$34.8 billion spent on underride guards. That staggering figure would result in what is likely the largest unfunded mandate on a private sector industry in U.S. history. Furthermore, when combined with the expected cost of labor in installing these guards, which would need to take into account the time a trailer is out of service while installation takes place, would exceed the industry's annual net revenue, essentially putting trucking out of business, and grinding our economy to a screeching halt.

Additional information regarding ATA's opposition to the "Stop Underrides Act" can be found here:

- <https://medium.com/@TRUCKINGdotORG/side-underride-guards-what-we-know-about-them-and-what-we-have-yet-to-learn-e54dbcb0afd2>
- <https://www.trucking.org/ATA%20Docs/ATA%20Stop%20Underrides%20Act%20Follow%20Up%20Opposition%20Letter%206.19.19.pdf>
- <https://www.trucking.org/ATA%20Docs/ATA%20letter%20Opposing%20the%20Stop%20Underrides%20Act.pdf>

*Question 9.* What policy proposals should Congress consider to ensure the safety of the Nation's roadways and prevent the types of crashes that are the focus of this legislation?

*ANSWER.* ATA continues to believe that the most effective improvements to road safety should be directed at preventing the crash from happening in the first place. The Stop Underrides Act focuses on mitigation after the crash has already taken place. Our focus should be on crash avoidance that can be achieved by enhancing vehicle-to-vehicle (V2V) connectivity. As such, ATA has been a leading member of the Safety Spectrum Coalition, which includes the National Safety Council, in the effort to preserve the 5.9 GHz spectrum for vehicle safety use, which will have significant implications for connectivity crash avoidance. In NHTSA's January 2017, V2V Notice of Proposed Rulemaking for light-duty vehicles, the Agency estimates that four safety applications enabled by the proposed rule could avoid or mitigate 89% of light-duty vehicle crashes. NHTSA is currently also conducting research on V2V for heavy vehicles, and estimates that 70% of crashes involving trucks occurred in scenarios that could be addressed by V2V systems.

Specifically related to "underride crashes", ATA has long supported efforts to strengthen rear underride guards, based on data from years of study by NHTSA and the experiences of our members. Because NHTSA is currently examining the potential benefits and problems with side underride guards, ATA believes the agency should be allowed to proceed with its efforts to improve underride guards without having the outcome predetermined by legislation.

QUESTIONS FROM HON. TROY BALDERSON FOR CHRIS SPEAR, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATIONS

*Question 10.* There are proposals to lower the minimum age requirement for interstate truck drivers from 21 to 18. Congressman Hollingsworth's DRIVE-Safe Act (H.R. 1374) allows for this change, if candidates who already have a CDL complete an approved 400-hour apprenticeship program that includes in-truck training and experience. The candidates must be accompanied by an experienced CDL holder during this apprenticeship program.

Do you believe that the 400 hours of additional training is enough time to ensure younger drivers will be capable and responsible on the roads?

*ANSWER.* As with all entry-level drivers, individuals aged 18, 19 and 20 will vary in the number of hours each needs to master the skills necessary to operate a CMV safely in interstate commerce. This is why the training requirements of the DRIVE Safe Act was designed to require the satisfaction of 10 performance benchmarks, along with a minimum of 400 hours of training. In other words, under the bill, apprentices must train until they can demonstrate competencies and skills enumerated in each of those 10 specific benchmarks, even if it takes longer than 400 hours of training to do so.

Significantly, the bill defines an apprentice as an individual under the age of 21 who holds a CDL. This means that all of the training and technology requirements of the bill are post-CDL requirements. Accordingly—because the bill would not be effective until one year after enactment—even if the bill became law today, all of the training and technology requirements of the DRIVE Safe Act would be required on top of the Entry Level Driver Training (ELDT) Final Rule going into effect in February 2020, which are all pre-CDL requirements.

Beginning on February 7, 2020, all entry level drivers—including those age 18, 19, and 20—seeking to obtain a Class A CDL must first obtain training from a provider approved and certified by FMCSA in its training registry. Specifically they must complete a Class A CDL curriculum that covers a minimum of 49 topics specifically enumerated in Appendix A of the Final Rule: 30 specifically enumerated topics as part of the Theory Instruction portion of the curriculum and 19 specifically enumerated topics as part of the Behind-the-Wheel portion of the curriculum.

The combined effect of the ELDT Final Rule and the DRIVE Safe Act, if enacted, would mean that 18, 19, and 20 year olds seeking to become interstate drivers would have to do the following:

- a) Complete a curriculum of CDL Class A Training with an FMCSA approved training provider that covers a minimum of 30 topics as part of the Theory Instruction portion of training;
- b) Pass the CDL Knowledge test; obtain a Commercial Learner's Permit (CLP);
- c) Complete a curriculum of CDL Class A Training with an FMCSA approved training provider that covers a minimum of 19 topics as part of the Behind the Wheel portion of training.
- d) Hold a CLP for a minimum of 14 days;
- e) Pass the CDL skills test;
- f) Obtain a CDL; and
- g) Complete a minimum of 400 hours of supervised training across two probationary periods (including 240 hours of driving time with an experienced driver seated in the cab of the truck) and satisfy 10 performance benchmarks outlined in the DRIVE Safe Act, before being permitted to operate CMVs solo in interstate commerce.

*Question 11.* Can you expand on the importance of being able to provide good job opportunities to 18-year-olds upon graduating high school?

*ANSWER.* According to USA Today, "truck-driver" was one of the most in-demand jobs in the country with the biggest pay hikes in 2018.<sup>12</sup> According to an ATA study, private fleet drivers saw their pay rise to more than \$86,000 from \$73,000—or a gain of nearly 18%—from 2014 to 2017.<sup>13</sup> Over the same period, the median salary for a truckload driver working a national, irregular route increased to over \$53,000—for an increase of \$7,000 or 15%.<sup>14</sup> These significant bumps in pay are in addition to the thousands of dollars in signing bonuses, health insurance, and retirement benefits that most carriers offer to recruit and retain drivers.<sup>15</sup>

For many 18-year-olds, the ability to activate one's earning capacity immediately upon high school graduation while receiving health and retirement benefits offers a better pathway to the middle class than the student-debt-laden-four-year-college route, particularly since nearly half of all students who begin college do not graduate in six years.<sup>16</sup> In addition, connecting young professionals to trucking careers earlier would help divert individuals away from the path of controlled substances—which, once taken, would render that individual practically unemployable for our industry. Reaching these individuals earlier and acculturating them through the hiring and training process would lower the risk of that person ever taking drugs.

From an industry perspective, younger drivers are sorely needed to not only address the truck driver shortage which reached a record high of 50,000 by the end of 2017, but also to replenish the industry's aging workforce.<sup>17</sup> As you may be aware, the median age of an over-the-road truck driver is 49—7 years older than the average U.S. worker—whereas the median age of private fleet drivers is even higher at 52.<sup>18</sup> In addition, 55% of the trucking workforce is over the age of 45.<sup>19</sup> Only 4 percent is between the ages of 20 and 24.<sup>20</sup>

In addition, please see the response to Question 12, below.

*Question 12.* What are some of the difficulties you face in trying to recruit new truck drivers to the profession when they have been out of high school for 3 years?

*ANSWER.* With the nation's unemployment rate hovering at historic lows, employers across the country are having enormous difficulty recruiting new workers. On top of this difficulty, blue-collar professions are still stigmatized in our society and culture that place a disproportionate emphasis on four-year-degree colleges at the expense of vocational schools or the skilled trades. Unlike other blue-collar professions, however, the trucking industry faces yet another barrier to entry in FMCSA's regulations that require an individual to be at least 21 years old in order to operate

<sup>12</sup>Paul Davidson, The most in demand jobs in 2018 with biggest pay hikes include cashier, truck driver, USA Today, May 22, 2018, <https://www.usatoday.com/story/money/careers/2018/05/22/jobs-biggest-pay-hikes-cashier-delivery-driver/630728002/>.

<sup>13</sup>American Trucking Associations, *UPDATED: New Survey Data Reveals Increases in Driver Compensation*, March 27, 2018, <https://www.trucking.org/article/New-Survey-Data-Reveals-Increases-in-Driver-Compensation>.

<sup>14</sup>*Id.*

<sup>15</sup>*Id.*

<sup>16</sup>U.S. Department of Education, Fact Sheet: Focusing Higher Education on Student Success, July 27, 2015, <https://www.ed.gov/news/press-releases/fact-sheet-focusing-higher-education-student-success>.

<sup>17</sup>American Trucking Associations, Truck Driver Shortage Analysis 2017, <http://progressiveL.acs.playstream.com/truckline/progressive/ATAs%20Driver%20Shortage%20Report%202017.pdf>.

<sup>18</sup>*Id.*

<sup>19</sup>*Id.*

<sup>20</sup>*Id.*

a CMV in interstate commerce. This means that other blue collar industries essentially get at least a three-year head start in advance of the trucking industry in the ability to recruit, hire, and train straight out of school the already-limited subset of students who for a variety of reasons decide to forego a four-year-degree.

What is more, unlike other blue-collar professions, there are many barriers to entry for new truck drivers beyond the minimum age requirement, such as CDL testing standards, strict drug and alcohol testing regimes, and safe and clean driving records. If motor carriers could reach potential truck driver candidates straight out of high school, the trucking industry would be in a better position to help develop candidates develop skills, habits, and attitudes necessary for a long and satisfying career in the trucking industry. Specifically, connecting young professionals to trucking careers earlier would help divert individuals away from the path of controlled substances—which, once taken, would render that individual practically unemployable for our industry. Reaching these individuals earlier and acculturating them through the hiring and training process would lower the risk of that person ever taking drugs.

Significantly, even though the minimum age for interstate driving is 21, the reality is that the average age of entry-level drivers enrolling at private truck driver training schools is actually 35.<sup>21</sup> This means that many drivers entering our industry may be on the back end of their second, third, or fourth careers. They may also be at a point in their lives where they have accumulated unsafe driving habits as drivers of passenger vehicles. Mid-30's is also when many individuals start families and have young children at home, but, truck drivers—unlike other blue collar professions—are often away from home for long stretches as part of the job. The away-from-home aspects of the job may be easier to deal with for drivers aged 18, 19, and 20, rather than someone who is 35 years old.

Responsibly lowering the minimum age requirement to 18 for qualified apprentices who satisfy the requirements of the DRIVE Safe Act would allow the industry to access and build up a pipeline of younger workers necessary to replenish the industry's aging workforce. As you may be aware, the median age of an over-the-road truck driver is 49—7 years older than the average U.S. worker—whereas the median age of private fleet drivers is even higher at 52.<sup>22</sup> In addition, 55% of the trucking workforce is over the age of 45.<sup>23</sup> Only 4% is between the ages of 20 and 24.<sup>24</sup>

QUESTIONS FROM HON. CAROL D. MILLER FOR CHRIS SPEAR, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATIONS

*Question 13.* My district of southern West Virginia was one of the hardest hit by the recession and is still recovering from the war on coal, which caused so many to lose their jobs.

How has the trucking industry tried to recruit new drivers and what can Congress do to promote hard working Americans to become truck drivers?

*ANSWER.* According to USA Today, “truck-driver” was one of the most in-demand jobs in the country with the biggest pay hikes in 2018.<sup>25</sup> According to an ATA study, private fleet drivers saw their pay rise to more than \$86,000 from \$73,000—or a gain of nearly 18%—from 2014 to 2017.<sup>26</sup> Over the same period, the median salary for a truckload driver working a national, irregular route increased to over \$53,000—for an increase of \$7,000 or 15%.<sup>27</sup> These significant bumps in pay are in addition to the thousands of dollars in signing bonuses, health insurance, and retirement benefits that most carriers offer to recruit and retain drivers.<sup>28</sup>

With 35,810 trucking industry jobs in West Virginia as of 2017, trucking employs 1 in 15 jobs within the state. 5,420 trucking companies are located in the state—primarily small, locally owned businesses. The average annual trucking industry salary in West Virginia in 2017 was \$43,749. For many West Virginians, trucking

<sup>21</sup> Commercial Vehicle Training Association, 2018 Legislative Agenda, <https://cvta.org/wp-content/uploads/CVTA-Legislative-Agenda-2018.pdf>, at 3.

<sup>22</sup> American Trucking Associations, Truck Driver Shortage Analysis 2017, <http://progressiveL.acs.playstream.com/truckline/progressive/ATAs%20Driver%20Shortage%20Report%202017.pdf>.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Paul Davidson, The most in demand jobs in 2018 with biggest pay hikes include cashier, truck driver, USA Today, May 22, 2018, <https://www.usatoday.com/story/money/careers/2018/05/22/jobs-biggest-pay-hikes-cashier-delivery-driver/630728002/>.

<sup>26</sup> American Trucking Associations, *UPDATED: New Survey Data Reveals Increases in Driver Compensation*, March 27, 2018, <https://www.trucking.org/article/New-Survey-Data-Reveals-Increases-in-Driver-Compensation>.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

could offer a pathway to the middle class as the demand for freight transportation grows in our e-commerce economy.

To better connect West Virginians and Americans to jobs like these, Congress could do the following:

*V. GIVE YOUNGER PROFESSIONALS THE OPPORTUNITY TO CHOOSE A CAREER IN TRUCKING*

ATA supports lowering the minimum age requirement for interstate truck driving from 21 to 18—but only for qualified apprentices that satisfy the 400 hours of supervised training and vehicle safety technology requirements spelled out in the DRIVE Safe Act, as well as the new training requirements of the Entry-Level Driver Training Rule (EDLT) Final Rule that will take effect in 2020. Driver training and vehicle safety technologies have advanced by several orders of magnitude since the current minimum age requirement of 21 was promulgated decades ago.

48 states and the District of Columbia allow 18, 19, and 20-year-olds to operate CMVs in intrastate commerce, and many of these drivers already achieve safety levels equivalent to, if not greater than, that of their 21, 22, 23, and 24-year-old counterparts—even without the benefit of having trained under the enhanced training standards of the ELDT Final Rule, without the minimum 400 hours of training required by the DRIVE Safe Act, and without the safety technology requirements of the DRIVE Safe Act. Despite this level of safety performance, however, 18, 19, and 20 year old truck drivers are somehow prohibited from driving 1.5 miles from Texarkana, TX into Texarkana, AR—even though they can drive hundreds of miles throughout Texas.

In addition, our nation's military currently allows 18, 19, and 20-year-old service members to operate heavy duty machinery, equipment, and vehicles—demonstrating that properly-designed training can enable U.S. sailors (whose average age is younger than 20 years old) to operate a \$4 billion aircraft carrier.<sup>29</sup> Further, according to the Council on Foreign Relations, 20 percent of the Marine Corps is under 21, while 10 to 15 percent of the 1.29 million active duty members of the U.S. military overall is also under 21.<sup>30</sup>

Meanwhile, 6.4 million Opportunity Youth in this country are neither employed nor in school, even as the nation is short 50,000 truck drivers. The DRIVE Safe Act would allow trucking industry employers to connect these young professionals-in-waiting to jobs that pay a national median salary of \$54,585, in addition to offering potentially thousands of dollars in signing bonuses, health insurance, and retirement benefits.

Additionally, connecting young professionals to trucking careers earlier would help divert individuals away from the path of controlled substances—which, once taken, would render that individual practically unemployable for our industry. Reaching these individuals earlier and acculturating them through the hiring and training process would lower the risk of that person ever taking drugs.

*I. ELIMINATE UNNECESSARY BARRIERS FOR OUT-OF-STATE DRIVER CANDIDATES*

ATA supports an increase in the CDL Improvement Grant Program by an amount necessary for states to implement changes to their IT systems so that states can better serve the growing number of driver candidates who receive training outside their state of domicile. This will allow drivers to (1) complete all training; (2) take all necessary tests; and (3) obtain all necessary credentials in one state—without having to travel back to their home state. Currently, out-of-state trainees have to travel back to their home state every time they pass either the CDL knowledge test or the CDL skills test just to obtain the basic occupational licenses necessary to launch their trucking careers. This imposes unnecessary financial burdens on those who can least afford it and exposes them to skills degradation.

*II. ELIMINATE SKILLS TEST DELAYS FOR CDL APPLICANTS*

ATA supports incentivizing states to administer the CDL skills test within 7 days of application or utilizing 3rd party testers. A low unemployment rate and the stigma surrounding blue-collar work makes it difficult enough to recruit drivers into the trucking industry. States that make applicants wait up to two months to take their skills test contributes to this problem by discouraging applicants from following through. It also invites skills erosion.

<sup>29</sup> National U.S. Navy Aircraft Carrier Month, *2018 Talking Points*, <https://aircraftcarrier.com/wp-content/uploads/2018/10/Talking-Points-2018.pdf>, at 5.

<sup>30</sup> Council of Foreign Relations, *Demographics of the U.S. Military*, <https://www.cfr.org/article/demographics-us-military>.

### III. SUPPORT RESEARCH ON THE WORKFORCE IMPACTS OF AUTOMATED VEHICLES

Automated and connected vehicle technologies have the potential to dramatically impact nearly all aspects of the trucking industry. These technologies can bring benefits in the areas of safety, environment, productivity, efficiency, and driver health and wellness. Automated driving technology is the next step in the evolution of the safety technology currently available, and will help to further improve driver safety and productivity, as well as the safety of other motorists and road users. Automated technology comes in many levels that will assist the driver and in some cases, handle the driving task. The application of automated and connected vehicle technology in the trucking industry will center on solutions in which there remains a role for drivers, recognizing the duties and requirements drivers have beyond operating the vehicle.

For these reasons, ATA supports the commonsense adoption of automated vehicle technology and data-driven efforts to better understand and optimize the potential benefits of this technology for the American workforce. While we recognize that the widespread adoption of these technologies is at least 25 to 30 years away, ATA supports increased research that will better equip policymakers and regulators with more data to prepare the next generation of American workers for the future of work in trucking and transportation.

*Question 14.* In your testimony, you highlight the difficulties that our Customs and Border Patrol Officers face on the Southern Border, and the dire economic impact this crisis is causing the trucking industry.

What steps does the ATA support to help facilitate important international trade?

*ANSWER.* U.S. Customs and Border Protection is responsible for a variety of functions at and between ports of entry, including customs, immigration, border security, and agricultural protection. All of these responsibilities are crucial to facilitate the legitimate flow of international trade and travel. However, the crisis along the southern border has forced CBP to redistribute resources to accommodate for the unprecedented influx of migrants at and between ports of entry (POEs). This reallocation of resources has severely impacted the trucking industry, as approximately 33,000 truck crossings occur every day along our northern and southern borders.

To date, CBP has reassigned 731 Officers—245 from POEs along the southern border; and 486 from airports, sea ports, and POEs along the northern border—to assist the Border Patrol with migrant processing and asylum seekers. When CBP reallocates resources and personnel, it is important to recognize that the Officers are being removed from posts that are critically important for trade facilitation, such as cargo processing and agricultural inspections. The resulting personnel deficit has had a direct impact on commercial wait times at the border, with wait times reaching 7-10 hours for commercial trucks at the peak of the crisis. Every single day, trucks haul more than \$2 billion worth of goods across our northern and southern borders, and increased wait times and irregular POE operations take a toll on the vitality of our industry as well as the U.S. economy. As such, ATA supports initiatives that help CBP address both economic security as well as physical security at POEs. We kindly ask that you consider the following suggestions:

- a) Construction of additional commercial lanes (HTF)
- b) Renovations for aging bridges that support commercial motor vehicles (HTF)
- c) Redesigning existing commercial lanes to improve efficiency (HTF)
- d) Construction of bypass roads to reduce commercial traffic (HTF)
- e) Infrastructure modifications to ensure the accessibility of Free and Secure Trade (FAST) lanes for Customs-Trade Partnership Against Terrorism (CTPAT) participants (HTF)
- f) Infrastructure to connect highways with POEs (HTF)
- g) Technology that can be adapted to handle more volume, increase efficiency, and improve accuracy of detection efforts (GF)
- h) Construction of additional facilities to enable Customs and Border Protection (CBP) and other Partner Government Agencies (PGAs) to carry out the functions of commercial operations, including accepting entries of merchandise, collecting duties, and enforcing the customs, immigration, and trade laws of the United States (GF)

HTF: Funded from the Highway Trust Fund

GF: Funded from the federal General Fund

While SAFETEA-LU set aside money for many of these types of projects, Section 1437 of the FAST Act simply made border infrastructure an eligible expense under the Surface Transportation Block Grant program. Given the clear needs and federal interest in ensuring the efficient flow of people and goods across our land borders,

ATA recommends restoring a dedicated funding program, with money apportioned among the northern and southern border states.

*Question 15* Finally, Mr. Spear, what changes can Congress make to have the most immediate impact on improving highway infrastructure across the United States?

What steps does the ATA support to help facilitate important international trade?

*ANSWER.* The most critical immediate step Congress can take to facilitate nationwide improvement in highway infrastructure is to provide states with sufficient, long-term, dedicated revenue. According to multiple analyses, nationwide spending on highways is roughly half of what is needed to maintain highways and bridges, and to make the improvements necessary to address safety and mobility needs. Given that, on average, the federal-aid highway program represents half of states' highway capital budget, without a significant infusion of federal funds highways will continue to deteriorate. West Virginia relies on federal funds for 60 percent of its capital spending. Furthermore, the uncertainty that states have had to deal with since 2008, when the Highway Trust Fund nearly went bankrupt—an episode that has repeated several times since—prevents states from addressing the most serious highway deficiencies. ATA has proposed a 20 cent increase in the federal fuel user fee. This will raise an average of \$34 billion annually over the next decade. It will provide the states with the predictable funding streams they need to address the massive backlog in highway funding that is preventing states from saving lives, lowering freight transportation costs and improving quality of life for every American.

QUESTIONS FROM HON. ANGIE CRAIG FOR TODD SPENCER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION

*Question 1.* It's graduation season right now and students are weighing their options for various careers and trades. Facilitating a path forward to a career in trucking is a worthy pursuit, but we must also ensure that truck driving will be a good job, as the industry undergoes rapid transformation.

You represent a spectrum of trucking operations. How can we improve industry conditions in order to ensure good-paying, sustainable careers for the next generation of drivers?

*ANSWER.* There are several ways to make a career in trucking more appealing and viable for the next generation of drivers. First and foremost, drivers must be properly compensated for ALL the time they spend completing a freight movement. Currently, most drivers are only paid when the wheels of a truck are moving, rather than on an hourly basis. Unfortunately, an increasing amount of a driver's on-duty time is spent excessively detained at a shipper or receiver, or stuck in traffic caused by growing highway congestion. Both situations consume valuable time in driver's day, but result in no compensation. Congress can take steps to better ensure all drivers are compensated during excessive detention time at loading and unloading docks. Not only would this result in more sustainable wages for truckers, but it would improve efficiency at a shipper or receiver, which benefits consumers. Congress must also repeal an exemption within the Fair Labor Standards Act (FLSA) that prevents drivers from receiving over-time pay. This exemption is outdated and prevents truckers from receiving adequate compensation.

*Question 2.* Have you given thought to how we can equip drivers with additional certifications (such as mechanical aptitude) that could increase their pay meanwhile driving down overall costs in the supply chain?

*ANSWER.* Drivers are responsible for complying with a dizzying list of FMCSA regulations and are primarily liable for any violations incurred. Braking systems, lighting equipment and cargo securement regulations generate the most out-of-service violations issued today, but few drivers entering our industry have the basic training to properly identify and resolve these safety problems. Large motor carriers favor the cheapest and quickest training possible, which typically results in drivers only being taught about the handling of a commercial motor vehicle. More robust training standards—including requirements involving the maintenance and repair of vehicle components—would expand the skills and capabilities of new drivers, which traditionally leads to higher levels of compensation.

*Question 3.* Mr. Byrd's testimony highlights that Teamster drivers are among the highest paid in the industry with good health benefits and pensions, which is why the retention rate is much higher. He also notes that Teamster contracts require pay for drivers if they are detained, or kept waiting by shippers, for a truck to be loaded or unloaded and that "paying drivers for wasting their valuable on duty time gives motor carriers and shippers and incentive to have a load ready."

Mr. Spencer, is this the typical experience of OOIDA members? (Owner-Operator Independent Drivers Association)

*ANSWER.* Some OOIDA members have been successful in including detention time compensation into contracts they've negotiated with shippers, brokers and motor carriers. These drivers are typically the most experienced on the road, which gives them unique leverage in reaching such agreements. However, even those operating under such contracts often find the entities responsible for payment will avoid upholding their end of the agreement when it comes to detention time. It is important to note there is also strength in numbers when negotiating for detention time compensation. Large fleets and the Teamsters union have significantly more leverage than a single-truck operator at the negotiating table. As a result, most drivers remain unpaid when the wheels of the truck are not moving, especially owner-operators and those new to the industry.

*Driving Training Standards*

*Question 4.* Do you support the current training standards for the ELDT 2020 training program?

*ANSWER.* OOIDA supports thorough training for all entry-level drivers and the ELDT final rule that goes into effect next year is a step in the right direction. However, more can be done to ensure drivers are receiving the best possible training to fully prepare them for the challenges of operating a commercial motor vehicle at the safest levels. Congress should consider the new ELDT requirements a good starting point, but continue to work to develop more robust training standards.

*Question 5.* Do you support current standards that do not require a minimum BTW (Behind The Wheel) time?

*ANSWER.* The lack of any BTW minimum requirement is a critical deficiency within the ELDT final rule. The lack of any meaningful BTW standards fails to ensure new entrants are adequately trained for the conditions they will face on the road, jeopardizing the safety of the driver and those with whom he shares the road. OOIDA was extremely disappointed no minimum BTW requirements were included in the ELDT final rule, despite the fact a vast majority of industry stakeholders engaged in the negotiated rulemaking agreed it was necessary. Congress must take steps to ensure BTW training is compulsory.

*Question 6.* Do you believe that truck drivers should demonstrate their driving capabilities on the streets and highways rather than in parking lots?

*ANSWER.* Yes, absolutely. Beyond demonstrating their proficiency in daily driving conditions, new drivers should be trained to safely operate a commercial motor vehicle in adverse weather conditions, extreme congestion and diverse terrain.

QUESTIONS FROM HON. PETER A. DEFAZIO FOR LAMONT BYRD, DIRECTOR OF SAFETY AND HEALTH, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

*Question 1.* Mr. Byrd, your testimony refers to a report you will submit for the record that looks at the state of trucking operations across the U.S.-Mexico border, and labor practices where U.S. companies effectively use drivers with B-1 Temporary Business Visitor visas to deliver loads. You refer to this as a "spider's web of ownership", which has impacts on U.S. jobs.

What impact is this model having on the domestic labor market and U.S. truck drivers?

*ANSWER.* As our testimony indicated, the Teamsters Union employed EMPOWER, LLC, a Mexico City-based research firm to investigate irregular employment practices of U.S. domiciled trucking companies and their use of B-1 visa truck drivers. The EMPOWER report confirmed that in the last ten years, there has been rapid growth of the use of tractor-trailer operators with B-1 Temporary Business Visitor visas who are working exclusively on long-haul operations in the U.S. While it is difficult to quantify the exact number of carriers and drivers involved in this practice, it was found that the B-1 job market in Nuevo Laredo is on the verge of de facto institutionalization.

While we have considerably more investigative work to do to quantify this practice, the effect on U.S. driver wages and the "theft" of work through cabotage violations is real. The Mexican Social Security Institute estimated in 2017 that tractor trailer operators in Mexico earn an average of USD 758.73 per month. This represents a significant savings to U.S. carriers that utilize these outsourced B-1 driver fleets. According to the U.S. Department of Labor's Bureau of Labor Statistics, the median hourly wage for U.S. truck drivers is \$21.00/hour with an annual wage of \$43,680. The union wage scale is considerably higher than that. The use of B-1 visa drivers represents a significant savings to U.S. carriers, both unionized and non-union, that set up these outsourced driver fleets. While EMPOWER was not able

to obtain reliable data about the total size of the labor market for B-1 drivers, it did find several Facebook groups that serve as forums for them, with thousands of members each. Online recruiting forums are used by small and large carriers alike and also by independent employers. The largest had over 11,000 members, leading us to believe that the use of B-1 drivers is growing significantly and has a negative impact on the job market for U.S. drivers.

In addition to the inequity in pay, it was found that cabotage violations are required by many, if not most, B-1 employers. These B-1 visa truck drivers are required by law to leave from the Mexican side of the border, but many companies have been found to require drivers to leave from Laredo or some other U.S. city. The consequence, if caught, can mean the loss of the driver's B-1 visa, but the practice appears to be fairly common. The U.S. Customs and Border Protection (CBP) holds workshops with major B-1 visa employers, part of which is to emphasize the U.S. cabotage law, but interviews with drivers confirm this practice of violating the law. Every cabotage violation is work lost by a U.S. driver. The Teamsters Union is in the process of reaching out to CBP to obtain data about cabotage violations. Apparently, enforcement is spotty and varies greatly by region at the border. Once that information is received and quantified, we will be in a better position to inform the Committee of impacts on U.S. jobs. In addition, we are continuing to investigate the overall use of B-1 visa drivers in the long-haul industry so we can better quantify the effects of this practice on the domestic labor market. When that information is gathered, we will be pleased to pass it on to the Committee.

QUESTIONS FROM HON. ANGIE CRAIG FOR LAMONT BYRD, DIRECTOR OF SAFETY AND HEALTH, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

*Question 2.* It's graduation season right now and students are weighing their options for various careers and trades. Facilitating a path forward to a career in trucking is a worthy pursuit, but we must also ensure that truck driving will be a good job, as the industry undergoes rapid transformation.

You represent a spectrum of trucking operations. How can we improve industry conditions in order to ensure good-paying, sustainable careers for the next generation of drivers?

*ANSWER.* The first step in protecting driver wages and job quality is by addressing rampant worker misclassification and ensuring that drivers are paid for all the hours that they work. Similar to other sectors of the economy, trucking companies have spent the past several decades looking to shed costs at the direct expense of drivers, often by misclassifying them as independent contractors. This practice has led to an increasing number of drivers who enter into sham leasing agreements and become responsible for a majority of the operational costs of their business, costs that lead to them earning terrible wages and working long hours. This practice is also illegal. These costs should be borne by their employer, but we do not have a proper legal framework in this country to hold companies who break these laws accountable. Until these issues are addressed, drivers will continue to suffer. This system also impacts workers who are properly classified as employees, as law-abiding companies are often undercut by their law-breaking competitors. As a result, employee-drivers often face the threat of having their work subcontracted out to misclassified drivers so that their employers can remain competitive in certain markets. This system creates a destructive cycle that is bad for all truckers and must be addressed.

Driver wages in all sectors must also improve to make this industry competitive in recruiting and retaining talent. One step is to ensure that drivers are paid for all hours that they work. Many drivers are only paid when "the wheels are turning" leading to them eating the costs for any traffic delays or time spent held up by a shipper. Shippers and other entities in the transportation supply chain are directly responsible for this situation. Anyone who contributes to delays in picking up or delivering loads should be brought to the table and if necessary, forced to improve their turn times. Mandating payment for the time drivers spend waiting to pick up or drop off a load is one way to address this problem. Doing so would ensure that it is no longer cost-effective for shippers to force drivers to wait hours to pick up a load and move onto their next location. Addressing these issues are crucial, these delays cost the drivers both valuable working hours and opportunities for other compensation and should not be tolerated.

The quality of the driving profession is also directly tied to the regulations FMCSA does (or doesn't) put out. FMCSA should stop issuing exemptions to the Hours of Service regulations that extend a driver's work day and make the job even less attractive to new applicants. FMCSA should also promulgate a comprehensive entry-level driving training curriculum that is consistent with the draft negotiated

rule that was developed by stakeholders who were involved in the negotiated entry-level driver training rule, including a minimum of 30 hours of behind-the-wheel training time.

Finally, our crumbling infrastructure further exacerbates driver stress and delays in delivering loads and must be addressed.

*Question 3.* Have you given thought to how we can equip drivers with additional certifications (such as mechanical aptitude) that could increase their pay meanwhile driving down overall costs in the supply chain?

*ANSWER.* Our focus has been to ensure that we have driver/members who are highly competent in all aspects of commercial driving. It should be noted that LTL drivers who are Teamster members typically possess not only the Commercial Driver's License, but also several endorsements, e.g., hazardous materials, tank vehicle, air brakes, double trailers, and triple trailers (in some jurisdictions). These drivers are also proficient in dock operations that include OSHA certification for operating powered industrial trucks, loading trailers, unloading trailers, load segregation, load securement, connecting and disengaging various trailer configurations, and basic hazardous materials/emergency response. Much of the same could be said for long-haul drivers.

Commercial drivers work a very tough job, being tasked with working very long hours (10 to 16 hours per day/60 to 70 hours per week) while being responsible for ensuring that they obtain sufficient rest to operate heavy vehicles safely, complying with health/medical standards that are increasingly rigorous, being subjected to drug and alcohol testing, etc. In addition, many of these drivers have family responsibilities that occupy the minimal time that they have remaining in a typical work week. It is not likely that this group of working men and women will have time or in some cases, the resources to pursue additional certifications.

*Question 4.* Mr. Byrd, your testimony highlights that Teamster drivers are among the highest paid in the industry with good health benefits and pensions, which is why the retention rate is much higher. You also note that your contracts require pay for drivers if they are detained, or kept waiting by shippers, for a truck to be loaded or unloaded and that "paying drivers for wasting their valuable on duty time gives motor carriers and shippers and incentive to have a load ready."

I'm a strong supporter of our nation's unions like the one you represent. What can Congress do to ensure Teamster benefits are more common in all segments of the industry?

*ANSWER.* Hurdles to union organizing must be addressed. Our nation's laws are stacked against workers who want to exercise their legal right to form a union. In trucking, the nature of the industry makes it particularly susceptible to illegal union-busting tactics, as drivers are often spread out, and on the road in isolation for a significant portion of their workday. Unionization is the only way to ensure the benefits that Teamster members have fought for are enjoyed by a greater segment of the population.

The plague of worker misclassification mentioned earlier must also be addressed. In addition to the terrible and often unsafe working conditions most misclassified drivers faced, they are also prevented from joining a union because of their independent contractor status. This must also be addressed for there to be meaningful change across the industry.

QUESTIONS FROM HON. PETER A. DEFAZIO FOR RODNEY NOBLE, SENIOR DIRECTOR OF TRANSPORTATION GLOBAL PROCUREMENT, PEPSICO

*Question 1.* Mr. Noble, PepsiCo is an industry leader in electrification, owning the largest commercial fleet of electric vehicles in the U.S. as well as investing in all-electric semi-trucks to add to your fleet.

Do you believe the Federal Government has a role in ensuring that adequate charging infrastructure exists for electric vehicles on long distance routes to support this investment by your company and others?

*ANSWER.* Chairman DeFazio, thank you for your question. PepsiCo is adopting sustainability in our everyday practices and long-term business plans by reducing emissions through efficient, new technology and the sharing of best practices. For a number of years PepsiCo has made significant improvements in fleet efficiency and we are proud to have over 1,500 alternative fuel vehicles in our fleet; including a significant number of electric vehicles. PepsiCo has a long history of investment in electric vehicles and its associated charging infrastructure. Part of our strategic plan in building our electric fleet included updating our site and maintenance facilities, including our refueling infrastructure and planning our routes to ensure our electric vehicles remain adequately charged. PepsiCo has made significant invest-

ments and will continue to do so in developing its own private, on site charging infrastructure. As of right now, PepsiCo's belief is that most of our current and future charging needs for both delivery and over the road transport electric vehicles can be met through charging infrastructure installed at our own facilities.

QUESTIONS FROM HON. ANGIE CRAIG FOR RODNEY NOBLE, SENIOR DIRECTOR OF  
TRANSPORTATION GLOBAL PROCUREMENT, PEPSICO

*Question 2.* It's graduation season right now and students are weighing their options for various careers and trades. Facilitating a path forward to a career in trucking is a worthy pursuit, but we must also ensure that truck driving will be a good job, as the industry undergoes rapid transformation.

You represent a spectrum of trucking operations. How can we improve industry conditions in order to ensure good-paying, sustainable careers for the next generation of drivers?

*ANSWER.* Representative Craig, thank you for the question and we agree with the sentiment behind the question and believe it is important to provide good working conditions for all our employees at PepsiCo, including our drivers. We believe a critical component of good working conditions for our drivers is safety. To that end, PepsiCo goes above and beyond current federal and state safety regulations. The majority of our new vehicles are outfitted with features including: collision mitigation, lane departure, blind spot detection, LED headlights, back-up cameras, antilock brakes, traction control and electronic stability control. We are also adding forward facing cameras and lane departure devices to our existing fleet, while continuing to leverage telematics for proactive driver training on safe driver behaviors.

In addition to safety we believe incorporating efficiencies for our drivers can also lead to a better working environment. PepsiCo is working to procure equipment that is best suited to the business, allowing our drivers to have the most efficient trucks for our operations. For example, PepsiCo Beverages North America is accelerating a new and innovative delivery system, which replaces segmented bulk and bay delivery trucks with specially designed and specified trailers that are pre-loaded at the warehouse. This helps ensure the right quantity and assortment of product reaches the retail customer in a more efficient and timely manner while saving time for our route delivery drivers and fuel by eliminating overlapping delivery vehicles. To date, approximately 44.1 percent of routes have been converted to this new system, resulting in a 15 percent reduction in the number of truck days and total miles from the system. Reducing miles also improves safety because it translates into fewer exposures for our drivers and decreases the chances of crashes.

Finally, PepsiCo believes creating a robust pipeline of talent coming into the professional is critical to allow individuals to have long-term careers in trucking. PepsiCo supports the Developing Responsible Individuals for a Vibrant Economy Act also known as the "Drive Safe Act" and believes this legislation would help establish a pipeline for drivers by allowing 18-21 year olds that already have a commercial driver's license to drive interstate pending completion of a 400 hour apprenticeship program with an experienced driver.

*Question 3.* Have you given thought to how we can equip drivers with additional certifications (such as mechanical aptitude) that could increase their pay meanwhile driving down overall costs in the supply chain?

*ANSWER.* We have internal training for our drivers interested in learning new skills and believe this is an area that could be further developed.

#### *Our Roads Our Safety*

*Question 4.* Are you supportive of FMCSA's program Our Roads Our Safety?

*ANSWER.* At PepsiCo we are supportive of any education and training efforts to ensure drivers of different sized vehicles know how to safely share the road and as we understand it, this is a key component of Our Roads Our Safety campaign. Additionally, PepsiCo has invested in our own internal safety, maintenance and driver training programs.

*Question 5.* How can this program be expanded to help truck drivers and the public to understand how to operate around large trucks and buses?

*ANSWER.* To the extent that funds are available, FMCSA could consider providing information in places that it hasn't yet reached, be it senior citizen centers, rest stops or other areas where they can help get the message out to drivers.

QUESTIONS FROM HON. PETER A. DEFazio FOR DEPUTY CHIEF MARK SAVAGE, COLORADO STATE PATROL, ON BEHALF OF THE COMMERCIAL VEHICLE SAFETY ALLIANCE

*Question 1.* Mr. Savage, last year, the US Department of Transportation issued guidance that allows a driver to drive beyond daily or weekly hours of service limits under "personal conveyance", even if the driver is laden with cargo. The agency also significantly expanded the amount of time transporters of agricultural products can drive as part of the guidance. Mr. Savage, you state that drivers will be able to "abuse" this allowance, since there is no time or distance limit placed on it, to get around hours of service rules. This seems to be an example of this Administration making decisions to maximize flexibility and productivity for carriers, but seemingly without consideration of driver fatigue and the impacts on safety.

When granting administrative exemptions DOT has to demonstrate that any change will not negatively impact safety. Do you believe this allowance to drive indefinitely will result in an equal level of safety on our roads?

*ANSWER.* Simply allowing commercial motor vehicle drivers to operate over longer hours and distances without any additional safety considerations or requirements cannot possibly result in an equivalent level of safety. The personal conveyance and agricultural commodity guidance are and will continue to have a negative impact on safety, providing drivers who are so inclined with the ability to operate well beyond the authorized number of hours. Under the revised personal conveyance guidance and agricultural commodities guidance, a driver could, in theory, drive hundreds of miles over the course of several hours all under the designation of either personal conveyance or agricultural commodity hauling. This presents the opportunity for increased driver fatigue and negatively impacts safety. While it's true that we cannot regulate sleep, the hours-of-service rules set forth a framework that, if followed, allows for drivers to get the rest necessary to operate their vehicles safely. While operating under the personal conveyance allowance drivers may decide to travel hundreds of miles in order to strategically relocate to an alternate location after driving a full day. When combined with the ability to operate under personal conveyance while laden, this new guidance provides an opportunity for drivers to abuse personal conveyance time in order to circumvent the hours-of-service regulations. Similarly, under the agricultural commodity guidance, as long as a driver is transporting an agricultural commodity, they could drive indefinitely within 150 air-miles of their source, providing no limits on their driving time and greatly exposing them to fatigue.

CVSA inspectors routinely see abuse of the personal conveyance designation roadside, with drivers traveling hundreds of miles and several hours beyond the hours of service limits in order to advance their current load or reposition better for their next load.

Further, our inspectors are hearing from drivers that some are being forced to use the personal conveyance designation, either by the motor carrier or the shipper, in order to deliver the load more quickly. Driver coercion is occurring as a result of this new guidance and efforts to level the playing field and force all drivers to operate in conjunction with the rules are being eroded by this loophole. Attached to the document, please find a list of examples of personal conveyance abuse found roadside.

*Question 2.* Has it been challenging to enforce this guidance given the complete lack of parameters?

*ANSWER.* Both the personal conveyance guidance and agricultural commodity guidance present challenges to enforcement of the hours-of-service requirements. The allowance of laden vehicles for personal conveyance use makes it much more difficult for a roadside inspector to determine the intent of a driver at the time of inspection. Given that there is not an established maximum distance or time that personal conveyance can be used, it is very difficult for a roadside inspector to determine if the driver is appropriately using the designation. To alleviate this confusion, CVSA has submitted the attached petition to FMCSA to set a quantifiable distance or time that drivers can log as personal conveyance. A clear, maximum time or distance for the use of personal conveyance would give both industry and enforcement clear guidelines and reduce the abuse of this provision. The agricultural commodities guidance not only increases safety risks due to fatigue, but also creates excessive burden on enforcement officials. The guidance provides various options of how drivers can record their time within 150 air-miles of their source. The varying options create challenges for enforcement officials that must determine if the electronic logging devices have the appropriate annotations and accurately reflect the status of the off-duty time or unassigned driving miles. With this variance and lack of detail in the guidance, the burden falls on state agencies and roadside inspectors to interpret how to enforce the regulations, posing a threat to uniformity.

QUESTIONS FROM HON. STEVE COHEN FOR DEPUTY CHIEF MARK SAVAGE, COLORADO STATE PATROL, ON BEHALF OF THE COMMERCIAL VEHICLE SAFETY ALLIANCE

*Question 3.* How can the footprint of the enforcement program be expanded to improve safety?

*ANSWER.* Given the size of the motor carrier industry, jurisdictions do not have the resources necessary to inspect every vehicle, driver and motor carrier operating on our roadways on a regular basis. To maximize resources, states must prioritize enforcement activities and utilize technology to continue to increase enforcement program efficiency. For example, technology exists today to identify a commercial motor vehicle electronically, while the vehicle is in motion. This eliminates the need to stop a commercial motor vehicle to review driver information and inspect the vehicle, improving efficiencies for the enforcement community and the motor carrier industry. To allow for the wide deployment of this technology, all new commercial motor vehicles should be equipped with a universal electronic vehicle identifier that allows them to be identified electronically by enforcement. Deployment of this technology would revolutionize the way commercial motor vehicle roadside monitoring, inspection and enforcement are conducted, exponentially growing the program and improving roadway safety.

*Question 4.* In your statement you mention that regulatory activities have stalled out at FMCSA. Can you expand on what you mean by that?

*ANSWER.* Regulatory activity at the agency—one of the Federal Motor Carrier Safety Administration's (FMCSA's) basic responsibilities—has come to a near standstill, and the necessary work of maintaining the regulations is suffering. High profile initiatives, such as implementation of the electronic logging device rule, can consume the agency's resources, especially when those efforts are met with a high volume of exemption requests. In addition, certain policies currently in place, such as the Administration's requirement that two regulations be removed for everyone new one put into place, impede the agency's ability to move forward with important safety improvements; such as, clarifying and updating outdated regulatory language.

As mentioned in my written testimony, 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 utility' hours-of-service exemption. After learning of the letter, in May of 2017, CVSA petitioned the agency to update the regulations to reflect this decision. In March of last year, the agency granted the petition, but to date we are still waiting for the rulemaking to be initiated.

In an effort to address the growing backlog and delays, the agency has come to rely heavily on the use of regulatory guidance to address necessary clarifications to the regulations, using 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 evolved between written regulation, regulatory guidance, interpretations and FAQs. This disconnect has caused unintentional inconsistencies and contradictions to work their way into the regulatory framework. These inconsistencies can lead to confusion among both the regulated and enforcement communities.

It is imperative that FMCSA be given the resources and support to allow the agency 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 the motor carrier industry and the enforcement community and undermines the agency's efforts to improve safety.

*Question 5.* In your testimony you refer to the need to ensure that regulations are enforceable. What do you mean by that?

*ANSWER.* Clear, enforceable rules are the cornerstone of an effective regulatory framework designed to ensure safety on our roadways. Regulations must be written and maintained in a way that they provide clear guidelines to the regulated industry and law enforcement officials.

For example, the current hours-of-service regulations require that drivers take a 30-minute break within the first eight hours of beginning their day. This provision is difficult to effectively enforce, as the inspector has no way of verifying whether or not the driver was legitimately off duty during that time or if he/she used the time to perform other work-related duties, such as fueling, inspection, or loading and unloading times. This provision gives problem drivers, and motor carriers, an opportunity to falsify their record of duty status (RODS) in an attempt to disguise,

or conceal, on-duty hours. Enforcing this proposed rule is impossible without supporting documents to either verify, or refute, such entries.

Or, consider the regulation that says drivers may not operate a vehicle on an underinflated tire. While it is relatively simple to determine when a tire is flat, because of a number of variables, it is much more difficult to determine if a tire is 'underinflated' roadside. When inspecting tires for the correct tire inflation pressure, inspectors must read the tire markings to determine tire size, determine the axle load, calculate tire load, check the tire pressure, and then adjust for cold or warm tire condition. They must then find the appropriate Load Limit Table (generally not available to them at roadside) in order to determine if the tire is under inflated or not.

These are two examples of regulations that may have been well intended but are not practically enforceable roadside. Regulations must be specific, not leaving open room for interpretation and maintained in a way that, as they are updated, they do no conflict with other regulations or regulatory guidance. Unclear regulations that cause room for interpretation challenge uniformity of enforcement and make it more difficult for the motor carrier industry to comply with a requirement. It is imperative that those subject to the Federal Motor Carrier Safety Regulations (FMCSRs) understand their responsibilities and that those tasked with enforcing those safety regulations can do so effectively to ensure the quality and uniformity of the more than four million roadside inspections conducted annually throughout North America. Unfortunately, regulatory activity at the agency has come to a near standstill, and the necessary work of maintaining clear, enforceable regulations is suffering.

*Question 6.* In your testimony you mention challenges with discrepancies in regulatory guidance. Has the agency taken any steps to correct this issue?

*ANSWER.* U.S. DOT recently published a notice in the federal register for feedback on regulatory guidance. However, it was a review of all regulatory guidance at U.S. DOT. We, along with other stakeholders from across all the transportation modes submitted comments. While this was a good start, FMCSA should publish a part by part review of each section of the FMCSRs to allow for a more thorough review. In addition, the agency should conduct a review of informal regulatory guidance that has been issued like interpretations, electronic communications and FAQs, and officially adopt them as regulatory guidance. This process, once complete, will help clarify a number of inconsistencies in regulation, helping those who are subject to the FMCSRs 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. However, it is not enough for the agency to do this one review. This process must be conducted on an ongoing basis, in order to keep pace with ongoing changes and developments. Continued review and updates to guidance are necessary to remove redundancies, reflect recent changes, correct errors and eliminate contradictions in order to provide both the law enforcement community and motor carrier industry with clearer guidelines to follow. Regulatory guidance should be reviewed and updated on a regular basis to ensure accuracy and clarity.

#### ATTACHMENTS TO MR. SAVAGE'S RESPONSES

##### EXAMPLES OF ABUSE OF PERSONAL CONVEYANCE

The examples below provide a snapshot of personal conveyance abuse that is being seen by inspectors when checking hours-of-service compliance.

##### *Commonly reported abuse:*

- Using personal conveyance for up to 10 hours between dropping off loads and going to the next pick up.
- Driving over 2 hours claiming they are looking for a place to park when there are open spaces along the 2-hour drive.
- Using personal conveyance to make up for time lost at loading docks.
- Switching to personal conveyance time just before violating the 11 or 14-hour rules.

##### *Specific examples of abuse found:*

1. A driver drove over 200 miles in the direction of his destination under personal conveyance. When asked the driver claimed he was headed to visit family along his route.

2. A driver utilized personal conveyance to avoid violations of the 11-hour rule. The driver often switched into personal conveyance shortly before exceeding 11 hours of drive time.
3. A driver used personal conveyance to reposition for a new load and avoid a 14-hour rule violation.
4. A driver drove approximately 132 miles under personal conveyance from Florida to Georgia to reposition and pick up a load in Georgia.
5. Within the provided logs, a driver operated several different times under personal conveyance to reposition and pick up a new load.
6. A driver operated under personal conveyance to move their load forward. When asked, the driver indicated that the motor carrier instructed him to continue to drive in personal conveyance.
7. A driver traveled for 1 hour and 28 minutes under personal conveyance to avoid a 14-hour rule violation and continue their trip.
8. A driver utilized personal conveyance several times to avoid a 14-hour rule violation. The first time the driver drove 106 miles towards their destination under personal conveyance and on second occurrence the driver drove 157 miles towards their destination under personal conveyance. When asked, the driver admitted that he used personal conveyance when he is going to run out of time.
9. A driver drove 2 hours and 30 minutes under personal conveyance, stating he was trying to find a place to sleep. After the 2 hours and 30 minutes he parked illegally on the side of the road. The inspector was aware of several safe, legal parking locations that the driver passed within that 2 hours and 30 minutes of personal conveyance time.
10. A pickup truck pulling an empty BigTex gooseneck trailer was stopped. The driver had dropped a load in Westlake, LA. At the time of inspection, the ELD indicated he was driving under personal conveyance for the last 10 minutes. Prior to that it had been turned off for about 24 hours but recorded that the vehicle was on and moving in the direction of the point of inspection. The driver said he was going to urgent care in Houston, where he was also picking up a load. The driver was from Georgia, did not appear to be sick, and passed several urgent care facilities along his route.
11. During an off-site audit, logs showed travel from Denver to Eastern Kansas in an off-duty status. The carrier was stopped in Kansas and cited for not having a log. The driver was an owner operator and stated he was driving under personal conveyance to pick up a trailer he had purchased in Kansas. When questioned about the use for the trailer, the carrier stated that it was for business use. This was a violation of personal conveyance because he was completing this trip for the furtherance of the business.
12. A driver of an unladen dry bulk concrete tanker was stopped while driving between Idaho and Texas under personal conveyance. The driver stated that she was operating under personal conveyance because she had dropped her load in Idaho and was returning to her home in Texas. The driver was attempting to utilize personal conveyance for the entire return trip and not take required breaks.
13. A driver drove from Chicago, Illinois, to Tennessee with an empty trailer with the intent of picking up a load in Tennessee. The driver drove for 12 hours under personal conveyance.
14. A driver used personal conveyance to further his load and meet a significant portion of his required off-duty time. The driver had 4 hours left to finish his trip and switched into personal conveyance just before exceeding the 14-hour window. After completing the trip, he only took 6 hours of off-duty time, utilizing the 4 of personal conveyance drive time to make up his required 10 hours off-duty.

DECEMBER 17, 2018.

Hon. RAYMOND P. MARTINEZ  
 Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, 6th Floor, West Building, Washington, DC 20590-9898

RE: Petition for Rulemaking—Add a Definition of Personal Conveyance to Title 49 C.F.R. § 395.2 and Remove all Interpretative Guidance from § 395.8 and the Agency

DEAR ADMINISTRATOR MARTINEZ,

Pursuant to Title 49 Code of Federal Regulations (C.F.R.) § 389.31, the Commercial Vehicle Safety Alliance (CVSA) is petitioning the Federal Motor Carrier Safety Administration (FMCSA) to amend § 395.2 by adding a definition of the term “per-

sonal conveyance.” To adequately clarify what the agency means by “personal conveyance,” the following term needs to be defined: the maximum distance and/or time a driver may operate for personal conveyance.

CVSA is a nonprofit association comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. The Alliance aims to achieve uniformity, compatibility and reciprocity of commercial motor vehicle inspections and enforcement by certified inspectors dedicated to driver and vehicle safety. Our mission is to improve commercial motor vehicle safety and uniformity throughout Canada, Mexico and the United States, by providing guidance and education to enforcement, industry and policy makers.

#### JUSTIFICATION

FMCSA guidance for § 395.8, Driver’s record of duty status currently states:

*Question 26: Under what circumstances may a driver operate a commercial motor vehicle (CMV) as a personal conveyance?*

*Guidance:*

*A driver may record time operating a CMV for personal conveyance (i.e., for personal use or reasons) as off-duty only when the driver is relieved from work and all responsibility for performing work by the motor carrier. The CMV may be used for personal conveyance even if it is laden, since the load is not being transported for the commercial benefit of the carrier at that time. Personal conveyance does not reduce a driver’s or motor carrier’s responsibility to operate a CMV safely. Motor carriers can establish personal conveyance limitations either within the scope of, or more restrictive than, this guidance, such as banning use of a CMV for personal conveyance purposes, imposing a distance limitation on personal conveyance, or prohibiting personal conveyance while the CMV is laden.*

To be able to log personal conveyance time as off-duty, commercial motor vehicle drivers must meet several conditions as outlined in the regulatory guidance on the agency’s website and noted above. These include being relieved of all on-duty activities and responsibilities and ensuring that the off-duty trip is personal in nature. While these conditions present certain parameters to drivers and enforcement, the guidance it offers is incomplete because it does not provide a maximum distance and/or time that a driver can travel under the “personal conveyance” designation.

In reference to the revised FMCSA guidance, the term “reasonable and safe location” is used in the “Federal Register” response to comments to describe travel under personal conveyance. This lack of definitive language leaves it up to the inspector’s interpretation to determine compliance. Individual inspectors will likely have different interpretations of what is “reasonable,” resulting in inconsistencies in enforcement. This will result in some commercial motor vehicle drivers being cited for hours-of-service violations while other drivers, who are traveling similar distances, are avoiding such citations.

More importantly, the published guidance does not address the underlying issue of setting a limit on how far a driver may travel under the personal conveyance designation. Under the revised guidance, a driver could, in theory, drive hundreds of miles over the course of several hours all under the designation of personal conveyance. This presents the opportunity for increased driver fatigue and risk on our roadways, as drivers may decide to travel hundreds of miles in order to strategically relocate to an alternate location after driving a full day. When combined with the ability to operate under personal conveyance while laden, this new guidance provides an opportunity for drivers to abuse personal conveyance time in order to circumvent the hours-of-service regulations. Further, the allowance of laden vehicles for personal conveyance use makes it much more difficult for a roadside inspector to determine the intent of a driver at the time of inspection.

FMCSA should provide a clear, set distance that is permissible under the personal conveyance designation. In setting clear guidelines on the use of personal conveyance, FMCSA may look to the standard set in Canada, which allows drivers to use a vehicle for personal conveyance purposes for a maximum of 75 km per day (approximately 46 miles), unladen. FMCSA should similarly set a quantifiable distance that drivers are allowed to log as personal conveyance, in addition to the parameters already offered for § 395.8.

By establishing a maximum allowed distance for personal conveyance, FMCSA will not only eliminate confusion and inconsistent enforcement among inspectors on this issue but will also ensure safer roads as commercial motor vehicle drivers are on notice that personal conveyance time cannot be used as a safe harbor for driving hundreds of miles after exhausting their hours of service.

CVSA made a similar request in response to the agency's request for comments on the proposed guidance in early 2018 (Docket Number FMCSA-2017-0108). The agency indicated in its response that such a change would be outside the scope of the regulatory guidance and would require a formal rulemaking proceeding. CVSA requests the agency address the Alliance's request for a maximum travel distance and/or time under personal conveyance as part of the rulemaking that is underway to make changes to existing hours-of-service regulations (Docket Number FMCSA-2018-0248).

CVSA works to closely monitor, evaluate and identify potentially unsafe transportation processes and procedures as well as to help facilitate and implement best practices for enhancing safety on our highways. CMV safety continues to be a challenge and we need the involvement of all affected parties to help us better understand these issues and put into place practical solutions. We appreciate the agency's commitment to safety and stakeholder involvement.

If you have further questions or comments, please do not hesitate to contact me by phone at [redacted] or by email at [redacted].

Respectfully,

COLLIN B. MOONEY, MPA, CAE  
*Executive Director, Commercial Vehicle Safety Alliance*

DECEMBER 17, 2018.

Hon. HEIDI KING  
*Deputy Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-9898*

RE: Petition for Rulemaking—Require Commercial Motor Vehicles to be Manufactured to Wirelessly Broadcast a Universal Electronic Vehicle Identifier

DEAR DEPUTY ADMINISTRATOR KING,

The Commercial Vehicle Safety Alliance (CVSA) petitions the National Highway Traffic Safety Administration (NHTSA) to publish an advance notice of proposed rulemaking (ANPRM) in regards to amending the Federal Motor Vehicle Safety Standards (FMVSS) found in Title 49 Code of Federal Regulations (C.F.R.) Part 571 to explore the benefits and feasibility of establishing a new FMVSS requirement for the remote electronic identification of heavy-duty vehicles, truck tractors, buses and semi-trailers being operated in the United States and to inform the original equipment manufacturers (OEMs) and facilitate the early voluntary adoption of such technology.

CVSA is a nonprofit association comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. The Alliance aims to achieve uniformity, compatibility and reciprocity of commercial motor vehicle inspections and enforcement by certified inspectors dedicated to driver and vehicle safety. Our mission is to improve commercial motor vehicle safety and uniformity throughout Canada, Mexico and the United States, by providing guidance and education to enforcement, industry and policy makers.

#### REQUEST

CVSA petitions NHTSA to initiate an ANPRM in order to facilitate a discussion among stakeholders regarding the advantages and associated benefits of amending the FMVSS to require all heavy-duty vehicles, truck tractors, buses and semi-trailers to be manufactured with the capability for quick remote identification of a commercial motor vehicle for inspection and enforcement purposes. There are a number of technology options through which this could be achieved. For example, the electronic identifier could be communicated through the proposed dedicated 5.9 GHz spectrum, or other related communication platforms, surrounding the advancement of automated driving systems (ADS) in conjunction with automated and connected commercial motor vehicles as part of the basic safety message. This immediate electronic identification of a commercial motor vehicle will aid in establishing the vehicle to enforcement (V2E) connectivity necessary for the wireless inspection of an automated or connected commercial motor vehicle without impeding commerce by stopping and delaying automated or connected commercial motor vehicles and advance the vision and guiding principles outlined in *Preparing for the Future of Transportation: Automated Vehicles 3.0 (AV 3.0)*. Publishing an ANPRM would initiate much needed discussion on this crucial step forward in commercial motor vehicle safety technology.

## JUSTIFICATION

The federal government entrusts the states with the responsibility of enforcing the Federal Motor Carrier Safety Regulations (FMCSRs) and the Hazardous Materials Regulations (HMRs) through the Motor Carrier Safety Assistance Program (MCSAP). The states use funds through the MCSAP to conduct enforcement activities, targeting vehicles, drivers and motor carriers that present a safety risk to the driving public. According to FMCSA, the agency regulates 524,058 motor carriers, 5.9 million commercial drivers and 12.1 million commercial motor vehicles. Given the size of the industry, the states do not have the resources to inspect every vehicle, driver and motor carrier operating on our roadways on a regular basis. In order to maximize resources, the states use a combination of methods to identify vehicles, drivers and motor carriers for intervention and enforcement.

Currently, inspectors use screening technology programs and tools, as well as inspection selection procedures and inspector observation to identify inspection targets to be examined during a roadside inspection. Third party screening technologies that are currently in use help to increase the number of vehicles, drivers and motor carriers that enforcement community comes into contact with; however, some of these technologies are used voluntarily and others are deployed with varying degrees of effectiveness. Since technologies exist today that would allow automated roadside identification of nearly all commercial motor vehicles, if this proposed concept were universally deployed, this would revolutionize the way commercial motor vehicle roadside monitoring, inspection and enforcement are conducted. It would improve the effectiveness of enforcement programs while reducing costs, for both enforcement and industry, all while improving safety. In order to move forward with full deployment, however, enforcement must have a universal mechanism for electronically identifying all commercial motor vehicles. We believe this can be accomplished with minimal cost and disruption, and we believe the safety and economic benefits will be substantial for the enforcement community, motor carrier industry and driving public.

While many questions still exist surrounding this concept, establishing a universal electronic vehicle identifier requirement for all commercial motor vehicles will have tremendous benefit. Jurisdictions will save time and see improved efficiencies as inspectors are able to more accurately target vehicles, drivers and motor carriers in need of an intervention while allowing safe, compliant vehicles to deliver their freight more quickly and efficiently.

Most importantly, establishing a universal electronic vehicle identifier requirement for all commercial motor vehicles would benefit the public by improving safety, taking unsafe vehicles, drivers and motor carriers off the roadways. As industry continues to grow and more and more people take to the roads, it is imperative that we leverage technology where possible to improve the efficacy of our enforcement programs.

It is important to note that establishing a universal vehicle identifier requirement within the FMVSS creates no additional regulatory burden for the motor carrier. Further, for the regulated motor carrier industry, there are no credible privacy concerns. The universal vehicle identifier, potentially tied to the vehicle identification number (VIN), would transmit only information that is already required to be displayed or made available by regulation. All this requirement would do is change how that information is presented to the enforcement community.

Further, the need for a universal vehicle identifier becomes more critical as the industry moves forward to implement driver assistive truck platooning and increasingly advanced driver assistance systems and partially or fully automated driving systems, which will require new methods and levels of safety checks. NHTSA's vehicle to vehicle (V2V) and vehicle to infrastructure communications (V2I), which we understand is planned for medium and heavy vehicles, is an ideal platform upon which to achieve this electronic identification and for our vehicle to enforcement (V2E) initiative to become a reality. As driver assistive technologies evolve in commercial vehicle use, the proper identification and monitoring of these commercial motor vehicles becomes increasingly necessary. No matter the method, this proposed requirement would enable efficient identification and inspection/screening of vehicle systems to help ensure safe operation of commercial motor vehicles, including those being operated with or without a human operator on board.

CVSA works to closely monitor, evaluate and identify potentially unsafe transportation processes and procedures as well as to help facilitate and implement best practices for enhancing safety on our highways. Commercial motor vehicle safety continues to be a challenge and we need the involvement of all affected parties to help us better understand these issues and put into place practical solutions. We appreciate the agency's commitment to safety and stakeholder involvement.

If you have further questions or comments, please do not hesitate to contact me by phone at [redacted] or by email at [redacted].

Respectfully,

COLLIN B. MOONEY, MPA, CAE  
Executive Director, Commercial Vehicle Safety Alliance

cc: The Honorable Raymond P. Martinez, Administrator, Federal Motor Carrier Safety Administration

QUESTIONS FROM HON. MARK DESAULNIER FOR ANDY YOUNG, TRUCK SAFETY  
ADVOCATE

*Technology Applications for Rural Communities*

Mr. Young, NHTSA reported that large truck rear impacts comprised 22 percent of fatal two-vehicle collisions between large trucks and passenger vehicles during 2017. The Insurance Institute for Highway Safety (IIHS) crash tests demonstrated that the rear underride guards mandated for trailers by NHTSA in 1998 performed poorly.

*Question 1.* Given that eight out of the top 10 leading trailer manufacturers have developed rear underride guards that qualify for the IIHS ToughGuard Rating, which greatly exceeds the proposed federal standard, doesn't it make sense to mandate rear guards now for all trailers?

*ANSWER.* Yes! The eight (8) major trailer manufacturers that have received the IIHS ToughGuard Rating sell approximately 80 percent of all trailers on U.S. Roadways. These trailer manufacturers are Great Dane LLC, Hyundai Translead, Manac Inc., Stoughton Trailers LLC, Strick Trailers LLC, Utility Trailer Manufacturing Co., Vanguard National Trailer Corp, and Wabash National Corp.<sup>1</sup> A mandate remains necessary because many of these trailer manufacturers have not made the IIHS ToughGuard rated rear impact guards *standard* on all new trailer purchases. Many of the manufacturers simply sell the IIHS ToughGuard rated rear impact guards as *optional* equipment. A motor carrier working with a retail dealer may unknowingly purchase a trailer that has an inadequate, less safe, rear impact guard. Whereas, if NHTSA mandated the IIHS ToughGuard rated rear impact guards, then purchasers of trailers will be guaranteed to have the safest available and technologically feasible rear impact guards. A mandated federal standard will ensure that 100 percent of new trailers purchased will have the safest rated rear impact guards saving countless lives in the future.

QUESTIONS FROM HON. ANGIE CRAIG FOR ANDY YOUNG, TRUCK SAFETY ADVOCATE

*Driving Training Standards*

*Question 2.* Do you support the current training standards for the ELDT 2020 training program?

*ANSWER.* Yes, but the proposed training standards need to include a minimum number of behind-the-wheel (BTW) hours. Driving a commercial motor vehicle is a safety-sensitive function. It is frequently referred to as such in the Federal Motor Carrier Regulations. As I indicated in my hearing testimony, I am a truck driver who actively drives a semi-tractor pulling a 45-foot trailer. I am keenly aware of the complexities and challenges behind driving AND backing a tractor-trailer. Not only is a truck driver responsible for the safety of all motorists on the road, he or she is responsible for their own safety too. Without a doubt, the knowledge and skills required to drive a tractor-trailer requires advanced training.

The Entry-Level Driver Training (ELDT) Final Rule specifically states that this rule "enhances the safety of commercial motor vehicle (CMV) operations on our Nation's highways by establishing more extensive entry-level training (ELDT) requirements." The ELDT further responds to a Congressional mandate already imposed under Section 32304 of the "Moving Ahead for Progress in the 21st Century Act" (MAP-21). Presently, most anyone can simply take and pass the various written and skills tests, completely self-taught, and obtain a Class A CDL without ANY actual training. This is downright scary! Ask any experienced truck driver if ELDT should be mandated and each one will likely respond with a resounding, "Yes!"

*Question 3.* Do you support current standards that do not require a minimum BTW (Behind The Wheel) time?

<sup>1</sup>Press Release, Insurance Institute for Highway Safety, Highway Loss Data Institute, "All major trailer makers earn IIHS award for good underride protection," by Russ Rader, Senior Vice President, <https://www.iihs.org/news/detail/all-major-trailer-makers-earn-iihs-award-for-good-underride-protection>

*ANSWER.* No! Minimum behind-the-wheel time must be required. Commercial trucks can weigh up to 20 times the weight of an ordinary passenger car. It takes a much greater distance to stop a commercial truck than to stop an ordinary car. The size, weight, and length of these trucks make driving them very complex requiring more driving skill than an ordinary car.<sup>2</sup>

Earlier this month, I was driving my tractor-trailer with a young man sitting as a passenger. This young man is 22-years old and wants to obtain his Class A Commercial Driver's License later this year. As I was driving, I was pointing out to him the importance of managing space ahead of the truck and keeping a significant following distance behind other motorists. The most important space for a truck driver is the space he or she is driving into. A truck driver must be able to comfortably stop in the distance he or she is able to see. This means controlling speed, knowing when to take your foot off the accelerator, when to brake, and comfortably downshift allowing the engine to help brake the truck too. Hard braking and evasive maneuvers should never happen if a truck driver is alert, paying careful attention, driving defensively and responsibly.

I was also talking with my young passenger about defensive driving concepts, such as being mindful of the "stale green light" and looking for environmental clues that might present hazards. This young man was surprised to learn that I was able to spot and predict behaviors of other motorists before the other motorists acted. I talked him through the various clues that I saw with traffic that allowed me to predict and anticipate other drivers' behavior and actions. I explained to him that a truck driver must always give the right-of-way as opposed to simply taking it, regardless of the situation. A truck driver must not present a hazard to other motorists forcing them to suddenly brake or take evasive action. Behind-the-wheel training and experience will ensure that a new truck driver will not be put into perilous situations that require choices likely resulting in reckless decision making. Mandatory behind-the-wheel training with an experienced truck driver as a trainer will certainly save lives. Again, ask any experienced truck driver, particularly those who have earned a "1 million safe miles" driver award, if there should be a mandatory minimum behind-the-wheel time and they will respond with a resounding, "Yes!"

*Question 4.* Do you believe that truck drivers should demonstrate their driving capabilities on the streets and highways rather than in parking lots?

*ANSWER.* Yes! Just driving a tractor-trailer in a parking lot or controlled environment does not give a trainee the experience required to react responsibly to car drivers that are driving irresponsibly. Within minutes of driving on a highway, a truck driver sees how dangerous many motorists are on our roadways. Many car motorists drive distracted, aggressively or without the requisite patience. Ordinary motorists frequently present hazards to a truck when that motorist is both merging on and off highways. Many motorists will cut-off or drive erratically around a much larger and slower moving semi-truck. Unless a truck driver trainee has training actually driving on real-world streets and highways, a new truck driver will not know how to properly respond to other motorists, putting all the motoring public at risk of a catastrophic or fatal crash. Not meaning to sound redundant, ask any experienced truck driver if it is important for truck drivers to demonstrate responsible driving capabilities on streets and highways rather than parking lots, and again each one will likely respond with a resounding, "Yes!" A closed course does not provide real-life situations. How a new truck driver responds to the pressures of real-life driving is imperative to evaluating their ability as a safe truck driver.

I thank both Representative DeSaulnier and Representative Craig for these important questions. I hope that my answers have adequately responded to their questions. Each of the items discussed here will help achieve the goal of "vision zero" initiatives all over the country. I am grateful for the opportunity to have this response be put into the Congressional record. These important issues will not only save lives, but also save truck driver livelihoods.

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<sup>2</sup>The Commercial Driver's License Manual, Section 6.1 "Driving Combination Vehicles Safely."