

STATEMENT OF JENNIFER TIERNEY
TRUCK SAFETY COALITION
BOARD MEMBER, CITIZENS FOR RELIABLE AND SAFE HIGHWAYS (CRASH)
ON
“FAST ACT IMPLEMENTATION: MOTOR CARRIER PROVISIONS”
BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

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Introduction

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

Truck Safety is Declining at an Alarming Rate

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safety initiatives that could both mitigate and prevent truck crashes continue to languish or even worse - have been withdrawn.

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

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

- **Finalize Rulemakings:**
 - Automatic Emergency Braking
 - Heavy Vehicle Speed Limiters
- **Reinstate Rulemakings:**
 - Increasing Minimum Insurance Levels
 - Sleep Apnea Screening and Testing
- **Modify Rules:**
 - Entry Level Driver Training
- **Promulgate Rulemakings:**
 - Strengthen Rear Underride Guards
 - Require Side Underride Guards
 - Study Front Underride Guards
- **Fully Implement Final Rules:**
 - Electronic Logging Devices
 - Drug and Alcohol Clearinghouse
- **Reject Policies:**
 - Increase Truck Size
 - Increase Truck Weight
 - Limit Shipper and Broker Liability

Finalize Rulemakings:

Automatic Emergency Braking

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

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

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

In 2012, the European Union (EU) mandated all new trucks to be equipped with AEB beginning in 2015. This was just one more step towards safety that the U.S. can and should take to achieve similar truck safety improvements to the EU. In 2009, the EU experienced roughly 1,600 more annual fatalities resulting from large truck crashes than the U.S., but by 2015, the EU saw approximately 200 fewer people dying in these types of crashes on their roads. Clearly, policymakers are doing something right in the EU to experience such drastic reductions in truck crash deaths.

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

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

Heavy Vehicle Speed Limiters

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

Moreover, this life-saving technology has been a standard component in most trucks’ engine control modules since the 1990s because so many other countries already mandate their use on commercial motor vehicles (CMVs). As a result, most trucks would not require a retrofit but would instead simply need to have their speed limiter set. It should also be noted that numerous American companies use speed limiters voluntarily because it improves their profitability,

operational efficiency, and safety. Additionally, speed governed trucks save motor carriers significant money on fuel, and on maintenance costs for tires and brakes, which last longer by limiting excessive speeding that can exacerbate normal wear and tear.

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

Reintroduce Rulemakings:

Increasing the Minimum Level of Insurance

The minimum level of insurance of \$750,000 has not been increased in the U.S. in nearly 40 years. The fact of the matter is that nothing costs the same today as it did back in 1980, which is why it is absurd that the minimum level of insurance required by trucks per incident has not been increased since then. It has not been adjusted for inflation or, more appropriately, for medical cost inflation. The results of these decades of inaction are devastating. Families must face the financial impact of under-insured truckers along with the emotional and physical destruction that is wrought by their crashes.

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

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

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

Sleep Apnea Screening and Testing

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

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

Modify Rules:

Entry Level Driver Training

Truck driving is one of the most dangerous occupations, according to the Department of Labor. Currently there is no minimum requirement for behind-the-wheel (BTW) training hours; therefore, the agency is not be able to ensure that commercial driver license (CDL) applicants have had actual time behind-the-wheel to learn safe operations of a truck. Requiring a set number of hours to ensure that a licensee is sufficiently educated in his or her profession is common for far less deadly and injurious jobs, such as barbers and real estate agents. Other transportation-related professions, like commercial pilots, are required by the Federal Aviation Administration to complete more than 250 hours of flight time – their version of “BTW” training.

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

Promulgate Rulemakings:

Rear and Side Underride Guards

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

We are incredibly grateful to Subcommittee Member Representative Steve Cohen (D-TN) for introducing the Stop Underrides Act (H.R. 4622) and to the other Representatives on the Subcommittee who are cosponsors. We are similarly thankful to Senators Kirsten Gillibrand (D-NY) and Marco Rubio (R-FL) for introducing the Senate version, S. 2219. This lifesaving

legislation will strengthen rear underride guards, mandate side underride guards, and require proper maintenance of these guards. The Truck Safety Coalition and our volunteers call on all Members of Congress to join this bipartisan effort to reduce the unnecessary deaths and injuries that occur because of truck underride collisions.

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

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

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

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

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

Fully Implement Final Rules

Electronic Logging Devices (ELD)

An electronic logging device (ELD) is critical safety technological device to ensure compliance of the federal hours of service (HOS) rules. In 2018, the requirement that all trucks took effect.

Unfortunately, some special interests are arguing that ELDs are cost prohibitive. However, the reality is that they are less expensive than replacing a few truck tires. These attempts to delay, weaken, or reverse the ELD rule should be swiftly and soundly rejected. Similarly, efforts to allow exemptions for specific industries or special interests will adversely affect safety in the short-term and long-term.

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

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

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

Drug and Alcohol Clearinghouse

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

CMV drivers who have violated drug and alcohol testing are currently a major risk to everyone with whom they share the road. Under the soon-to-be-replaced system of self-reporting, many employers were unable to access the necessary information to avoid hiring problem drivers. The establishment of this new drug and alcohol clearinghouse that requires employers to check current and prospective employees will be a significant step forward for safety.

All too often, a history of repeated drug and alcohol violations is not discovered until a catastrophic crash occurs and a comprehensive investigation ensues. The FMCSA issued a final rule, which will take effect in 2020, and we urge all Subcommittee members to ensure this rule is fully implemented so this will no longer be the case.

Reject Policies

During a time when truck safety is in serious decline, increasing truck size and weight or limiting shipper and broker liability would be steps in the wrong direction.

Truck Size Increase

Increasing the length of double tractor-trailers by five feet per trailer would result in a configuration that is approximately the size of an 8-story building. These massive configurations would be more difficult to operate. For example, double 33s require an additional 22 feet to stop compared to existing twin-trailer configurations. Making it more challenging to brake in a vehicle that requires the length of a football field to stop when traveling 60 mph will not help address the 45 percent increase in truck occupant fatalities. If anything, it may cause that number to rise even more precipitously.

Proponents of the Double 33 proposal have been misleading lawmakers about the costs and consequences of longer tandem trailers. As with past size and weight increases -- coupled with less intermodal efficiencies and increases in freight -- we would likely start to see a greater number of larger trucks on our roads. Our roads and bridges will also suffer from longer and heavier trucks because these bigger trucks will result in greater wear and tear on our already-crumbling infrastructure.

Truck Weight Increase

Those lobbying for pilot programs, state/industry exemptions, or nationwide increases to permit heavier trucks are likewise disseminating questionable claims about how a weight increase will improve safety, reduce congestion, or diminish wear and tear on our roads and bridges. Pilot programs are a piecemeal approach that makes enforcement and compliance more difficult while compelling states with reasonable truck size and weight limits to succumb to pressure for higher weights and longer trucks. The addition of an extra axle will do nothing to mitigate the damage to bridges resulting from the operation of heavier trucks. Moreover, in the event a heavier truck is involved in a crash, the crash severity could be much greater and inflict more damage to the infrastructure.

Shipper Broker Liability

Members should reject all legislative attempts “to enhance interstate commerce by creating a national hiring standard for motor carriers, and for other purposes.” Despite sounding pro-safety, this deceptive and dangerous policy will neither “enhance interstate commerce,” nor truly “[create] a national hiring standard.” In actuality, this policy is a Trojan horse: it disguises the indemnification of shippers and brokers as the creation of a national safety standard. Yet, these “standards” offered contain no safety performance data and unfairly restrict other parties who may have been adversely impacted in a truck crash.

The entire supply chain must be accountable to accomplish safety. The required actions identified by this proposal set a standard for shippers and brokers at such a very low threshold

that it would actually serve to reduce safety accountability. The three actions required are so easily attained that many high-risk and chameleon carriers would qualify under this set of criteria.

Per language that has been introduced as an amendment to H.R. 4, the FAA Reauthorization bill, an entity will “be deemed to have made the selection of the motor carrier in a reasonable and prudent manner” if they ensure that the carrier is:

1. registered with and authorized by FMCSA to operate as a motor carrier or household goods motor carrier, if applicable;
2. has the minimum insurance coverage required by Federal regulation; and,
3. does not have an unsatisfactory rating under the current rating or any future safety fitness determination rule.

Policymakers cannot accept bare minimum compliance as standard of safety lest they intend to promote a race to the bottom. None of the criteria specified above reflect on the current safety performance of a carrier. Consequently, this will lead to low-cost, unsafe carriers being selected, exposing the public to physical and financial risk. It is in everyone’s best interest for the safest companies to earn the business.

A carrier or driver that has been given a satisfactory rating at one point in time or has not yet been prohibited from operating cannot be assumed to be currently upholding safe operating practices, especially considering that many ratings are more than 10 years old. Based on the amendment’s language, however, a shipper or broker could ignore a carrier’s recent performance based data during the selection process so long as that carrier does not have an unsatisfactory rating.

Conclusion

Over the past year, it has become clear that the U.S. Department of Transportation, the current Administration, and even some Members of this Congress have no intention of producing meaningful mandates that will “solve current problems,” and every intention of removing regulations for the sake of removing regulations.

As it pertains to the Executive branch, the DOT has not offered a single solution to address the rising number of truck crashes or the fact that driving a truck is constantly one of the deadliest jobs in America. At the same time, this Administration has already withdrawn two rulemakings and delayed four rulemakings – all of which could have improved truck safety.

Concerning Congress, actions thus far belie any sense of urgency to improve truck safety. Bills to allow teenage truck drivers, who have been proven less safe than more experienced drivers, to operate across state lines are this body’s “best” response to a perceived driver shortage rather than reforming entry-level driver training or moving away from a pay-per-mile structure. Anecdotes about the effects of ELDs have been given the same stock as data collected by large carriers over several years. Technologies that have been proven through extensive use to improve operational safety of a truck are continually delayed in the rulemaking process, while lawmakers

invite lobbyists to pen themselves provisions permitting bigger, more difficult to operate trucks into must-pass spending bills.

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