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Subcommittee on Surface Transportation and Merchant Marine  
Infrastructure, Safety, and Security  
United States Senate**

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# **FMCSA Oversight and Reauthorization Issues**

**Statement of  
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Chairman Fischer, Ranking Member Booker, and Members of the Subcommittee:

Thank you for inviting me to testify on the Federal Motor Carrier Safety Administration's (FMCSA) oversight programs and on issues impacting the Subcommittee's work on the Agency's reauthorization. As you know, FMCSA is responsible for ensuring a safe U.S. motor carrier industry, which comprises over half a million passenger and commercial carriers and more than 5.6 million commercial motor vehicle drivers. While fatalities involving large trucks and buses have decreased over the last 10 years, they remain high; in 2013, fatalities totaled nearly 4,300, and injuries nearly 83,000.

To improve safety across the vast motor carrier industry, FMCSA launched its Compliance, Safety, Accountability (CSA) program in 2010, which aims to target FMCSA and State enforcement interventions—such as roadside inspections and on-site reviews—to motor carriers that pose a higher risk of violating safety rules. FMCSA has faced significant scrutiny from carriers and industry groups who have expressed concern that relative safety rankings generated by the CSA program, most of which are available to the public, do not accurately reflect safety risk.

My testimony today focuses on (1) the status of FMCSA's CSA program; (2) challenges with addressing reincarnated carriers; and (3) our efforts to complement FMCSA's enforcement program, as well as our ongoing work on motor carrier safety.

## **IN SUMMARY**

FMCSA has taken action to improve CSA data quality and system development, such as enhancing its efforts to monitor and correct State-reported data on crashes and inspections, and implementing a process for deactivating USDOT numbers<sup>1</sup> for carriers with outdated data. However, nationwide implementation of timely and effective enforcement interventions remains a challenge, largely due to delays in contractor development of software for assessing and monitoring interventions. Ensuring compliance with safety regulations also remains a challenge for FMCSA, although continued collaborative efforts with our office and law enforcement partners have proven effective at removing carriers and drivers intent on breaking the law, including reincarnated carriers. Key actions to keep reincarnated carriers off the road include effective vetting of carriers' applications and prosecuting those companies that are caught violating the law. Collaboration has also been a major factor in successfully pursuing household goods carriers and brokers that hold consumer belongings hostage, commercial driver's license fraud, and fraud in drug and alcohol programs.

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<sup>1</sup> Companies that operate commercial vehicles transporting passengers or hauling cargo in interstate commerce must have a USDOT number, which serves as a unique identifier for collecting and monitoring a company's safety information.

## **FMCSA HAS TAKEN ACTION TO IMPROVE ITS CSA PROGRAM, BUT IMPLEMENTATION OF ENFORCEMENT INTERVENTIONS IS INCOMPLETE**

FMCSA has taken several actions we recommended to improve CSA data quality and system development controls, which are fundamental to ensuring this safety initiative achieves its aim—to reduce truck and bus related injuries and fatalities by focusing enforcement efforts on carriers that pose a higher safety risk. However, nationwide implementation of enforcement interventions remains a challenge, largely due to delays in updating software for collecting documentation and monitoring interventions.

### **FMCSA Has Taken Action To Improve Data Quality and System Development**

To identify high-risk carriers, FMCSA evaluates data with the Carrier Safety Measurement System (CSMS)<sup>2</sup> and calculates relative rankings for carriers' on-road performance. Accurate rankings depend, in part, on complete, correct data. Because FMCSA uses certain census data (such as vehicle miles traveled and number of motor vehicles) to calculate carrier performance rankings, missing or outdated data can lead to incorrect computations and, ultimately, hamper safety monitoring and enforcement activities.

In 2006, we reported that more than one-quarter of the over 700,000 existing motor carriers did not update census data every 2 years, as required. While FMCSA stated that it had taken over 2,000 enforcement actions since 2006, such as levying fines, against carriers that did not comply with its census data requirements, we reported in our March 2014 assessment<sup>3</sup> that about half of the roughly 803,000 active interstate carriers had not updated their census data between January 2011 and February 2013.

In response to recommendations we made last March, FMCSA has taken action to improve the data used by CSMS. Specifically, FMCSA enhanced its efforts to monitor and correct State-reported data on crashes and inspections. This included revised guidance on its data correction process, including treatment of dismissed violations. To respond to longstanding concerns about missing and inaccurate carrier-reported census data, FMCSA began to automatically deactivate USDOT numbers for carriers that do not update their census data every 2 years. By mid-April 2014, 20,500 USDOT numbers were deactivated.

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<sup>2</sup> CSMS analyzes carrier data uploaded monthly from roadside inspections, crash reports from the last 2 years, and investigation results. It also uses self-reported census information about the carriers' operations.

<sup>3</sup> OIG Report MH-2014-032, *Actions Are Needed To Strengthen FMCSA's Compliance, Safety, Accountability Program*, Mar. 5, 2014. OIG reports are available on our Web site at: [www.oig.dot.gov](http://www.oig.dot.gov). The Government Accountability Office (GAO) reported separately on the effectiveness of CSA's algorithm: GAO Report GAO-14-114, *Modifying the Compliance, Safety, Accountability Program Would Improve the Ability to Identify High Risk Carriers*, Feb 3, 2014.

Our March 2014 review also determined that FMCSA had limited documentation demonstrating that it followed information technology system development best practices<sup>4</sup> and Federal guidance—which emphasize thorough documentation of information technology system components and controls—while developing and testing CSMS. Specifically, FMCSA’s documentation of key processes—such as validation and testing—was incomplete. For example, FMCSA lacked documentation to show that it conducted testing for four of the changes made to the system since its nationwide implementation in 2010. Insufficient documentation impedes FMCSA’s ability to maintain effective control of the system in the event of staff turnover and further changes made to the system. In response to our recommendations, FMCSA developed complete system requirements and a configuration management plan for properly recording testing and validation results.

### **Timely and Effective Implementation of CSA Enforcement Interventions Nationwide Remains a Challenge**

While FMCSA has made progress to improve data quality and improve system development, implementation of CSA enforcement interventions remains a concern, largely due to delays in developing updated Sentri software for collecting documentation and monitoring interventions.<sup>5</sup> At the time of our report, only 10 States (which were part of FMCSA’s pilot or already had software) had fully implemented all interventions,<sup>6</sup> and FMCSA does not expect to complete nationwide implementation until 2016. Without full implementation of all of CSA’s interventions, FMCSA and its State partners cannot monitor and correct as many high-risk carriers as it otherwise could.

Because of the incomplete implementation of enforcement interventions to date, we have not fully assessed the interventions’ effectiveness. However, based on our initial observations, FMCSA faces two key challenges to fully implement CSA interventions in the remaining 40 States and the District of Columbia: (1) developing and deploying software training for the States in a timely manner and (2) working with its Division Offices and their State partners to ensure States effectively apply the interventions.

To fully implement CSA enforcement interventions, we recommended that FMCSA develop a comprehensive plan that includes an estimated completion date and milestones for releasing Sentri software, developing and delivering training, and using the

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<sup>4</sup> Because CSMS is a Department of Transportation information technology system, industry best practices and Federal internal control standards are applicable to its development, testing, and validation. These best practices and standards include the Department’s Integrated Program Planning and Management Governance and Practitioners Guides and guidance from the National Institute for Standards and Technology and GAO.

<sup>5</sup> Sentri is the Safety Enforcement Tracking and Investigation System, and its primary users are FMCSA field officials and enforcement officials. The next version of Sentri is intended to combine roadside inspection, investigative, and enforcement functions into a single interface and replace all other legacy systems.

<sup>6</sup> All States have implemented seven of the nine interventions except for off-site investigations and cooperative safety plans.

enforcement interventions. While FMCSA currently expects to receive the software from the contractor by November 2015, its release has been postponed several times. More than 3 years have passed since the first estimated release date.

## **DESPITE PROGRESS, CHALLENGES REMAIN WITH ADDRESSING REINCARNATED MOTOR CARRIERS**

A longstanding safety concern in the motor carrier industry is the practice of reincarnated carriers—carriers that attempt to operate as different entities in an effort to evade FMCSA’s enforcement actions. To circumvent out-of-service orders, these carriers often assume aliases or use different business addresses. Key actions to keep reincarnated carriers off the road include effective vetting of carriers’ applications and taking meaningful civil enforcement actions against carriers who continue to violate the law. The Office of Inspector General’s (OIG) criminal investigations bolster FMCSA’s enforcement efforts.

We are seeing an increase in criminal cases of carriers blatantly disregarding safety laws and regulations, including attempts to reincarnate. In one particularly egregious case, a Georgia man continued to drive trucks for a company that had been issued an out-of-service order following a fatal crash that killed seven in Alabama. The man was sentenced to 6 months incarceration and 12 months supervised release for his participation in the conspiracy to violate the out-of-service order. In another case, the owner of a Tennessee trucking company continued commercial motor carrier operations under the name and authority of a second company after FMCSA issued an out-of-service order for unacceptable safety practices. Subsequently, FMCSA categorized the second company as a continuation of the first and placed it under an out-of-service order as well. The owners of the trucking companies pleaded guilty to out-of-service order violations.

Prosecuting carriers that attempt to evade FMCSA’s out-of-service orders can be challenging. While a number of our investigations of alleged reincarnated carriers have prompted legal action, there are some legal and procedural barriers to prosecuting cases. For example, one reincarnated carrier case was recently declined for prosecution because the criminal penalties under Title 49 U.S.C. Section 521 contain only a misdemeanor provision, which is less likely to result in jail time. In the Tennessee case, a District Court Judge similarly ruled that violating an out-of-service order under Title 49 U.S.C. Section 521, was a civil—not a criminal—offense. Finally, we have started to see on the West Coast that third parties are completing applications for DOT authority and falsely representing that the applicant has no prior affiliation with another carrier. This practice not only violates FMCSA’s instructions for completing the Application for Motor Carrier Property Carrier and Broker Authority form but complicates the Department of Justice’s ability to prosecute bad actors. Criminal prosecution of these cases can send a strong message that blatant disregard of FMCSA enforcement actions or out-of-service orders will not be tolerated.

Thoroughly vetting applicants for Federal operating authority is key to detecting high-risk carriers before they reincarnate. To help focus investigative resources on the highest risk passenger carriers, FMCSA established a screening tool initially used only for vetting new passenger carrier applicants. The tool identifies matches between applicants' data and suspect carriers<sup>7</sup> and generates a score based on the matches. Theoretically, the higher the score, the greater the likelihood that an applicant and a suspect carrier are a match, warranting further review by FMCSA staff. However, as we reported in April 2012,<sup>8</sup> the tool produced unreliable scores and, in some cases, assigned low scores to carriers who were likely to be reincarnations.

Upon discovering this flaw, FMCSA began manually reviewing all applicants with matches to pre-existing carriers. Since then, FMCSA has made progress in developing an effective, more automated screening tool. In June 2013, FMCSA tested a data-driven, risk-based prototype screening methodology—which it plans to phase in and fully implement this year for all new applicants—and centralized the vetting process within a new office, the Office of Registration and Safety Information. After testing, FMCSA identified some flaws with the methodology, but it plans to continue screening tool development and potentially incorporate it into its new electronic, online registration system, the Unified Registration System, by October 2015.

FMCSA plans to roll out its enhanced vetting process to all motor carriers—commercial as well as passenger—but the process is not yet fully implemented. Given that passenger carriers make up a small portion of the companies regulated by FMCSA, expanding use of the tool to all motor carriers will pose a significant challenge. FMCSA has the authority to detect, deter, and implement vigorous enforcement actions against carriers that seek to reincarnate.<sup>9</sup> To carry out this authority, FMCSA established procedures for issuing out-of-service orders to reincarnated motor carriers. The procedures provide for an administrative review of carriers with a history of failing to comply with statutory or regulatory requirements before an out-of-service order takes effect. The rule also establishes a process for consolidating FMCSA records of reincarnated companies with their predecessor entities. Carriers can no longer unilaterally terminate an enforcement proceeding by making full payment of the civil penalties levied without an admission of liability. Timely implementation of targeted and risk-based actions like these will help FMCSA more efficiently identify carriers that pose safety risks and keep them off the road.

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<sup>7</sup> A suspect carrier is a carrier who is applying for new operating authority but whose owner's name, address, or some other information matches with a carrier put out of service or facing other major violations.

<sup>8</sup> OIG Report MH-2012-087, *Timely and Targeted FMCSA Action Is Needed To Fully Address National Transportation Safety Board Recommendations for Improving Passenger Carrier Oversight*, Apr. 17, 2012.

<sup>9</sup> 49 Code of Federal Regulations § 386.73.

## **OIG ACTIONS TO COMBAT FRAUD AND ADDRESS CONGRESSIONAL MANDATES SUPPORT FMCSA EFFORTS TO OVERSEE THE MOTOR CARRIER INDUSTRY**

OIG remains dedicated to complementing FMCSA's enforcement program through criminal investigations of egregious violators of FMCSA's regulations. In addition, our audit efforts continue to identify opportunities to improve the effectiveness and efficiency of motor carrier safety programs. We have had success in the past and continue to partner with FMCSA to prevent household goods fraud, commercial driver's license fraud, and fraud in drug and alcohol programs. We also have work under way to address congressional mandates concerning FMCSA's hours-of-service restart study and high-risk carrier investigative practices.

### **Combating Household Goods Fraud**

According to FMCSA, approximately 5,000 moving companies transport the household goods of 1.6 million Americans each year, and FMCSA receives about 3,000 consumer complaints annually regarding household goods movers. Our investigations target complaints of egregious offenses, particularly those involving suspect household goods brokers and carriers that hold customers' belongings hostage while attempting to extort significantly greater sums of money above the original quotes than are legally permissible. To carry out this extortion, brokers and carriers engage in other illegal activities that include conspiracy, wire fraud, mail fraud, money laundering, and falsification of bills of lading and shipment weight documents.

While FMCSA is responsible for the civil enforcement of the consumer protection and economic regulations governing interstate household goods transportation, combating household goods fraud to protect consumers from rogue companies is an OIG investigative priority. In addition to actions FMCSA has taken to protect consumers—including requiring moving companies to provide customers with FMCSA's booklet on consumer rights and responsibilities when they move—OIG investigations, and the resulting criminal prosecutions and sanctions, are strong deterrents to violators who consider civil penalties simply a cost of doing business.

The vast majority of the allegations against rogue household goods companies we investigate have come from FMCSA and Operation Boxed Up, a proactive, cooperative initiative that OIG launched in March 2011 to target groups of carriers and brokers engaged in household goods fraud schemes. By analyzing databases from FMCSA's household goods regulatory program, we identified consumer complaints on the most egregious actions by these carriers and brokers. In the past 5 years, we have opened 38 investigations, and have conducted 21 arrest warrants and 20 search warrants. Our work has resulted in 20 indictments, 22 convictions, over 45 years of jail time, and approximately \$2.8 million in financial recoveries. The lion's share of these results has come from our Operation Boxed Up initiative.

In conjunction with Operation Boxed Up, we launched a Wanted Fugitives Web page in September 2012 to make the public aware of individuals with active arrest warrants who have fled the court's jurisdiction. The site currently identifies 37 defendants charged with transportation-related crimes—all but 1 of which involves household goods fraud. In April 2014, the first fugitive was captured after more than 2 years on the run. Wanted on charges related to a large-scale household goods fraud scheme in Texas and under increasing pressure, the defendant turned himself in at the Federal Courthouse in Philadelphia, PA. He and his two accomplices used 11 different company names to defraud dozens of customers. The three men were sentenced collectively to 30 years imprisonment and over \$470,000 in restitution to their victims.

### **Other Efforts To Combat Fraud and Help Ensure Motor Carrier Safety**

We continue to partner with FMCSA to combat commercial driver's license and drug and alcohol testing fraud.

**CDL Fraud:** States are responsible for developing a knowledge and skills test that confirms drivers understand and can follow Federal motor carrier safety laws. However, weaknesses in the CDL program continue to allow individuals and third-party testers to exploit the program, resulting in hundreds of fraudulently issued licenses. In 2011, FMCSA issued new regulations to tighten controls over CDL testing. Historically, however, FMCSA has had difficulty ensuring States swiftly and effectively implement new regulations. Since 2011, our office has opened 10 CDL fraud investigations in 6 States. In a recent case, the owner-operators of a driving school pleaded guilty to a test-taking scheme to provide answers to an estimated 500 New York State CDL applicants on the written exam. In a separate case, multiple individuals pleaded guilty, including New York Department of Motor Vehicle (DMV) employees, in a CDL test-taking conspiracy involving five DMV test centers in the New York City area. The investigation revealed that CDL applicants paid facilitators between \$1,800 and \$2,500 in return for CDL test answers and assistance through DMV processes. Fraud schemes included the use of pencils containing miniaturized encoded test answers and the use of a Bluetooth headset as a communication device to relay CDL test answers.

**Drug and Alcohol Testing Fraud:** Since the early 1990s, FMCSA and its predecessor agency have established drug and alcohol testing rules and regulations for employees who drive commercial trucks and buses that require a CDL. These regulations identify who is subject to testing, when they are tested, and in what situations. Our agents' investigations of parties who have fraudulently circumvented these regulations have resulted in recent convictions. In one case in Pennsylvania, the owner of a drug testing company pleaded guilty to defrauding several commercial motor carrier employers and drivers by using the signature of a medical review officer who had not worked for the drug testing company for many years to certify test results. In another case in California, the owner of a drug testing company was charged in a scheme to defraud 80 trucking companies that employed commercial drivers in conjunction with the provision of

random and pre-employment drug testing services by allegedly falsifying specimen tests results required by and provided to FMCSA.

## **Ongoing Efforts To Address Recent Congressional Mandates**

Congress recently directed us to assess FMCSA's hours-of-service restart study and its high-risk carriers' investigative practices. We have work under way to respond to these congressional mandates to improve motor carrier safety.

**Hours-of-Service Study:** To keep fatigued drivers off public roadways, FMCSA requires drivers of large, heavy trucks to comply with its hours-of-service regulations, which limit when and how long drivers can operate.<sup>10</sup> Effective in 2013, FMCSA required drivers to comply with a revised 34-hour restart rule to reset the weekly driving limit. The revised rule required a driver to be off duty for 34 consecutive hours, which must include two 1 a.m. to 5 a.m. periods. After the rule went into effect, concerns were raised about the rule's unintended consequences, such as increased congestion during daytime traffic hours. In the Consolidated and Further Continuing Appropriations Act of 2015, Congress suspended FMCSA's enforcement of the 34-hour restart rule and required the Agency to conduct a study of the rule's operational, safety, health, and fatigue impacts. The act mandated that we review FMCSA's plan for conducting the study, as well as the study's final results, to determine whether they comply with the requirements of the act. FMCSA has provided us its plan for the restart study, which we will brief out mid-March. We will issue our findings on FMCSA's final report 60 days after its issuance, as required by the act.

**High-Risk Carriers:** FMCSA conducts on-site reviews of motor carrier compliance with safety rules—such as those related to vehicle maintenance and inspection, commercial driver qualifications and licensing requirements, drivers' hours of service, financial responsibility, hazardous materials transport, and other transportation safety rules—as well as reviews any accident records. These compliance reviews may be conducted in response to a request to change a carrier's safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations, and may result in enforcement actions. Concerned that unsafe carriers may be operating on our roadways due to untimely investigations, Congress directed us to assess FMCSA's mandatory compliance review process to ensure motor carriers flagged for investigation are being investigated in a timely manner and to determine whether the type of investigations FMCSA conducts is adequate to detect violations.

This concludes my prepared statement. I will be happy to answer any questions you or other members of the Subcommittee may have.

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<sup>10</sup> The hours-of-service regulations are found in Part 395 of the Federal Motor Carrier Safety Regulations. States may have identical or similar regulations.