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U.S. SENATE CLIMATE CHANGE TASK FORCE

October 29, 2020

Mr. James Wiley Deck
Deputy Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Deputy Administrator Deck:

I write in response to a recent in-depth investigation by the *Boston Globe*,¹ which reveals how the Federal Motor Carrier Safety Administration (FMCSA) has repeatedly failed to provide proper oversight to America's commercial trucking industry. According to this report, the FMCSA has allowed trucking companies across the United States to operate with minimal to no federal accountability, despite rapid growth in the industry and an estimated 48 percent increase in fatalities from crashes involving large trucks between 2009 and 2019.² These trends are deeply disturbing, and include an estimated 5,005 people killed in crashes involving large trucks in 2019 alone.³ I believe that the FMCSA's well-documented failings demand a strong response from your agency, and I specifically request that you take immediate action to improve the FMCSA's regulatory oversight as well as answer my questions below.

Among the most egregious failures revealed by the *Boston Globe* is the FMCSA's continual resistance to calls to adopt simple procedures for reviewing new trucking companies before granting them permission to operate. These procedures could include, for example, requiring company owners to pass a safety regulations test or inspecting their vehicles.⁴ Instead, the FMCSA merely requires trucking companies to file paperwork that pledges compliance with federal regulations, without ever verifying truthfulness or conducting meaningful, ongoing oversight.⁵ The FMCSA similarly does not have a centralized, comprehensive system to assist companies in conducting background checks for their drivers.⁶

¹ Laura Crimaldi et al., *Blind Spot Part 2: Commercial Trucking*, *Boston Globe* (Aug. 18, 2020), <https://apps.bostonglobe.com/2020/08/metro/investigations/blindspot/part-2>.

² Traffic Safety Facts 2017, National Highway Traffic Safety Administration (NHTSA) (Sep. 2019), DOT HS 812 806; 2018 Fatal Motor Vehicle Crashes: Overview, NHTSA (Oct. 2019), DOT HS 812 826; Preview of Motor Vehicle Traffic Fatalities in 2019, NHTSA, (Oct. 2020), DOT HS 812 021.

³ Preview of Motor Vehicle Traffic Fatalities in 2019, NHTSA (Oct. 2020), DOT HS 812 021.

⁴ Crimaldi, *supra* note 1.

⁵ *Id.*

⁶ *Id.*

Moreover, the FMCSA only initiates scattershot enforcement actions against companies repeatedly caught violating basic safety standards or with exceedingly high crash rates.⁷ In one particularly alarming example, the FMCSA in 2018 allowed almost 17,000 trucking companies to continue operating despite the agency having given them less than satisfactory safety ratings.⁸ Relatedly, I was also dismayed to see the FMCSA withdraw a critical rule in 2017 on Carrier Safety Fitness Determinations.⁹ This rule would have revised carrier safety ratings procedures in light of adoption of the Compliance, Safety, Accountability (CSA) Program, the agency's enforcement program that identifies carriers and drivers in need of intervention.

Given the FMCSA's loophole-ridden and patchwork system of accountability, it is no wonder that the commercial trucking industry is increasingly deadly for all users of the road. Although I recognize that the FMCSA faces resource-limitations, I believe that your agency's failures go well beyond financial or personnel constraints and appear to represent a dereliction of responsibility. I therefore urge you to take immediate action to implement stronger procedures for certifying new trucking companies, conducting regular oversight of the industry, and enforcing federal safety regulations. I also request that, by November 30, 2020, you provide detailed answers to the following questions:

- 1) The National Transportation Safety Board has repeatedly recommended that the FMCSA require testing and auditing of trucking companies before they start operations. However, the FMCSA has continually refused to adopt these procedures and, in January 2019, concluded that they "wouldn't significantly boost safety."¹⁰ Please provide all of the analysis, reasoning, and evidence that the FMCSA considered to arrive at this conclusion, despite evidence that implementing a similar system allowed the Department of Defense to eliminate fatalities for companies that transport military personnel.¹¹
- 2) In the Moving Ahead for Progress in the 21st Century (MAP-21) Act, Congress instructed the FMCSA to issue a rule by October 2014 that would require new motor carriers be given a written proficiency examination on applicable Federal safety regulations and standards. According to the U.S. Department of Transportation's latest significant rulemaking report issued in February 2020, there is still no target date to issue a final rule.¹² Please provide a date for when the final rule will be issued. If this date is not within the next 60 days, please provide a detailed explanation as to the reason for the further delay.
- 3) Under the FMCSA's current regulations, the agency is required to conduct an audit during a motor carrier's first 18 months of operations to evaluate the adequacy of its

⁷ *Id.*

⁸ *Id.*

⁹ 82 FR 14848 (Mar. 23, 2017).

¹⁰ Crimaldi, *supra* note 1.

¹¹ *Id.*

¹² U.S. Department of Transportation, Report on DOT Significant Rulemakings (Feb. 2020), <https://www.transportation.gov/regulations/february-2020-significant-rulemaking-report-1>.

safety management controls.¹³ During 2019, how many new carriers were subject to such an audit within the 18-month deadline? What percentage of new carriers does this figure represent?

- 4) In the Commercial Motor Vehicle Safety Act (CMVSA) of 1986, Congress mandated the creation of the Commercial Driver's License Information System (CDLIS), which is intended to ensure that a commercial driver's license holder has a singular safety record that can be reviewed across states. This law requires states to submit driver violations and other important data about a driver's record to CDLIS. Are states supplying such information in a timely manner, and if not, what action is the FMCSA undertaking in response to such delays?
- 5) Why has the FMCSA resisted calls for the agency to establish a centralized, comprehensive safety database that could assist trucking companies in conducting background checks for their drivers, even though similar systems exist for vehicle operators in other modes of transportation such as pilots of commercial airplanes?
- 6) Please provide the following data points and information regarding the FMCSA's scrutiny of, and enforcement actions against, individual trucking companies:
 - a. For each year over the last ten years, how many trucking companies has the FMCSA inspected or investigated because of regulatory violations, poor safety ratings, or crash records? What percentage of total registered carriers under FMCSA jurisdiction does this figure represent?
 - b. Does the FMCSA require trucking companies to pass any threshold for a number, or level of severity, of safety violations or crash records before initiating enforcement action? If yes, what is it? If no, why not?
 - c. What procedures does the FMCSA follow or require when conducting a safety inspection or audit of individual trucking companies because of violations, poor safety ratings, or crash records? What actions are taken by the agency after the inspection or audit if violations are identified?
 - d. For each year over the last ten years, how many trucking companies has the FMCSA ordered out of service because of regulatory violations, poor safety ratings, or crash records? What percentage of total registered carriers under FMCSA jurisdiction does this figure represent? If the FMCSA did not order a company out of service despite evidence of any of these failings, why is that? What other enforcement actions has the FMCSA taken in such situations?
- 7) To the extent that the FMCSA is limited in its authority to implement stronger procedures for certifying new trucking companies, conducting more regular oversight, and increasing

¹³ 49 CFR § 385.307.

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enforcement of federal safety regulations, what specific legislative changes would be required to empower your agency to better fulfill its responsibilities?

Thank you for your attention to this important matter. If you have any questions about these requests, please contact my office at (202) 224-2742.

Sincerely,

A handwritten signature in blue ink that reads "Edward J. Markey". The signature is written in a cursive, flowing style.

Edward J. Markey
United States Senator