

**STATEMENT OF
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UNDER SECRETARY FOR POLICY
U. S. DEPARTMENT OF TRANSPORTATION**

BEFORE THE

**COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES**

*Agency Progress Implementing
Executive Order 13563, Improving Regulation and Regulatory Review and
Executive Order 13610, Identifying and Reducing Regulatory Burdens*

MAY 8, 2013

Chairman Graves, Ranking Member Velázquez, and Members of the Committee, thank you for inviting me to testify today on the subject of agency progress implementing President Obama's Executive Order (EO) 13563, *Improving Regulation and Regulatory Review*, and EO 13610, *Identifying and Reducing Regulatory Burdens*.

I am grateful for the opportunity to present the work of the U.S. Department of Transportation (DOT), under the leadership of Secretary Ray LaHood, in the area of regulatory reform and what our Agency is doing to reduce the burdens and costs of compliance for small businesses.

Through our ongoing review and revision of DOT's rules and regulations under those two executive orders, we have been able to save American businesses significant time and money over the last two years, while continuing to improve safety throughout our Nation's transportation system, reduce the environmental impacts of transportation, and provide important consumer protections for the traveling public.

We are proud of the work we have done on behalf of the American people, and that the U.S. has one of the safest transportation systems in the world, but we know that we can always do better in the regulatory arena, and I thank the Committee for their interest. We hope to work with you to address the ongoing challenges we face.

DOT has, by some measures, one of the largest rulemaking responsibilities in the Federal Government. Some of its modes, like the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), and the Federal Transit Administration (FTA) combine regulatory duties with other programs such as infrastructure development; others, like the National Highway Traffic Safety Administration (NHTSA), the Federal Motor Carrier Safety Administration (FMCSA), and the Pipeline and Hazardous Materials Safety Administration (PHMSA), focus primarily on safety regulations and enforcement.

The rulemaking and enforcement environment is extremely important – done right, it helps to prevent crashes and save lives, mitigate environmental damage, reduce carbon emissions, and provide consumer protection in a cost-beneficial way. The regulatory process has produced some of DOT’s and the Obama Administration’s most important accomplishments, including raising Corporate Average Fuel Economy (CAFE) standards, overhauling pilot rest requirements, improving pipeline, auto, bus and truck safety enforcement, and strengthening aviation consumer protections.

And we have done so with robust public and private sector participation, the best science and economic modeling available, a commitment to using plain, understandable English, and seeking non-regulatory and pragmatic solutions that minimize burdens and costs for American businesses wherever we can.

The regulatory process is incredibly detailed—building upon decades of legislative history – contentious, and often litigious, since it affects the operations and costs of the regulated industries, such as airlines and aircraft manufacturers, automobile manufacturers, commercial truck and bus operators, railroads, pipelines, and transit systems.

And we know this Committee has a special charge to evaluate how our rules and regulations affect America’s small businesses. At DOT, we too are continuously mindful of the burdens small businesses we regulate can face. We constantly seek opportunities to reduce these burdens—as discussed later in my testimony—while advancing our statutory safety, environmental, and consumer protection missions.

Congress itself plays a very large role in the regulatory area. While all of DOT's regulatory agenda is authorized by statute, a large portion of it is not self-generated but is either specifically statutorily-mandated by Congress or in direct response to recommendations of the National Transportation Safety Board (NTSB), the Government Accountability Office (GAO) or the Inspector General (IG). The vast majority of statutorily mandated regulations originate from regular authorizing legislation for our operating administrations.

For example, last summer Congress reauthorized our Nation's highway and transit programs in the "Moving Ahead for Progress in the 21st Century Act" or MAP-21. The bill, which passed with strong bipartisan support, contained approximately 100 statutory mandates for DOT, which we estimate will result in 50-60 separate rulemakings in a two-year period of which over half are assigned to FMCSA.

MAP-21's statutorily mandated rulemakings cover areas that all of us would likely agree are important priorities – new safety responsibilities, especially in transit, pipelines and motor carriers, environmental streamlining to save project sponsors time and money, and moving to a more performance-based transportation system. But some of these rulemakings will add further complexity to our existing regulatory scheme and possibly burdens to small entities, while some we believe will streamline it.

And we know that one of the most active areas of regulation has been under the Federal Motor Carrier Safety Administration, which does have a large impact on the bus and trucking industry, particularly small and independent carriers, which are essential partners with DOT in moving people and goods throughout the country.

To that end, we have been extremely proactive in our regulatory review efforts since the President's signing of EOs 13563 and 13610, with FMCSA leading the charge. One such effort is a proposal¹ under development to rescind the requirement that truck drivers submit, and

¹ Proposed rulemaking entitled: "Inspection, Repair, and Maintenance; Driver-Vehicle Inspection Report: (RIN #2126-AB46).

trucking companies retain, burdensome paper driver-vehicle inspection reports when there are no actual vehicle defects found.

FMCSA estimates that rescinding this requirement will save the trucking industry about \$1.5 billion per year, without adversely affecting safety. The savings from each report is modest, but when you consider it provides almost daily savings for millions of drivers it has a large impact.

Additionally, the Agency developed this proposal in response to a request from industry to rescind the requirement on a much smaller population of carriers. The Agency decided it was appropriate to seek public comment on a rulemaking proposal to apply this regulatory relief to a much larger segment of the motor carrier industry. Since many motor carrier operations are small businesses, this is precisely the type of regulatory review that provides a direct improvement to the bottom line of many small businesses. This rule is currently under internal review at DOT.

FMCSA has also implemented key provisions in MAP-21 that reduce the regulatory burden on small farmers, by expanding an hours-of-service (HOS) exemption for farm-related operations during the planting and harvesting seasons as well as exemptions from other operating regulations for certain farmers. They published guidance on October 1 to ensure our State partners were aware of the regulatory relief provisions in MAP-21 so that farmers could take full advantage of the statutory exemptions.² The guidance was followed up by a final rule published in March of 2013.

Also, as directed by the Regulatory Flexibility Act, DOT routinely seeks out ways to reduce the effects of its regulations on small businesses. Two examples of this are (1) indexed hazardous materials carrier registration fees, which allow small businesses to pay a lower rate than their larger counterparts, that saved small businesses \$54 million dollars last year and (2) allowances for small railroads to use abbreviated safety procedures, in recognition of the lower level of risk inherent in their operations.

² Notification of statutory exemptions: “Statutory Amendments Affecting Transportation of Agricultural Commodities and Farm Supplies” <http://www.gpo.gov/fdsys/pkg/FR-2012-10-01/pdf/2012-24106.pdf>

The President's signing of EO 13563 and EO 13610 successfully institutionalized many of the regulatory practices that the Department has long embraced. In addition to our efforts under EO 13563 and EO 13610, DOT has long recognized the importance of regularly reviewing its existing regulations to determine whether they need to be revised or revoked and has had a system in place to do so for almost 35 years. In order to carry out President Obama's executive orders, the Department took swift action and developed an aggressive implementation plan seeking broad input from all our key stakeholder groups and the American public on our plan for identifying and reviewing existing rules that might be outmoded, ineffective, insufficient, or excessively burdensome.

Our results were encouraging. We held a Department-wide public meeting that had about 200 participants, and we received roughly 150 comments as a result of our outreach, all of which were placed into a public docket for review. Commenters ranged from large industry and labor groups to State Departments of Transportation, to small businesses such as owner-operator motor carriers. The comments received from these groups were just as varied as the sources—ranging from detailed critiques of our prior regulatory analyses, to suggestions to improve the grant management process.

In addition to the Department-wide public outreach, FMCSA recently tasked its Motor Carrier Safety Advisory Committee (MCSAC) to provide FMCSA with ideas and concepts to make its reviews under the Regulatory Flexibility Act more effective for both the Agency and the private sector. MCSAC provided its recommendations in April, and they suggest ways of increasing the level of public engagement to ensure we fully address the concerns of small businesses.

We are also committed to using plain English so that small business owners and the general public can understand what we are proposing, understand our methods for estimating the costs, and understand how to respond to us in a way that allows us to consider other alternatives for addressing the safety challenge, at a lower cost. All of our proposed rules and communications

with the public incorporate a robust effort to make sure they are understandable. Our guidance on this can be viewed at our plain language website.³

To make certain our rules are reviewed in accordance with these requirements, DOT publishes a plan listing all of our regulations and assigns each to a particular year for review over a 10-year period⁴. We then update the plan each Fall, including brief reports on the progress made on the reviews.

In addition to the motor carrier rules mentioned earlier, I would like to outline for you some specific rules that we identified in our most recent *Retrospective Regulatory Review Report* that may have implications for small businesses.⁵ That report lists 89 rulemaking actions that are underway in response to EO 13563, including at least 20 that will have a positive effect on small business. These include, among others, the following:

- FMCSA will propose a rulemaking⁶ concerning e-signatures that would amend various sections of the Federal Motor Carrier Safety Regulations to enable the use of e-signatures in support of electronic recordkeeping. This would save the industry millions of dollars each year by explicitly allowing electronic records and electronic signatures in place of the more burdensome paper records.
- PHMSA is evaluating comments and developing a final rule⁷ that would allow for the certification of fireworks by government-approved laboratories, similar to the process that the Consumer Product Safety Commission uses. It is intended to maintain the current level of safety in certification, but would greatly speed the process, freeing PHMSA's resources from the certification process and saving money for the private sector through quicker certification decisions, potentially saving the industry up to \$19 million per year.

³ <http://www.dot.gov/regulations/plain-language>

⁴ http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201210/Preamble_2100.html

⁵ The report can be accessed at: http://www.dot.gov/sites/dot.dev/files/docs/january-2013-dot-rrr-report-final_0.pdf

⁶ Proposed rulemaking entitled: "Electronic Signatures" (RIN# 2126-AB47).

⁷ Notice of Proposed Rulemaking entitled: "Hazardous Materials: Revision of Requirements for Fireworks Approvals" (RIN # 2120-AC41).

- FAA has proposed a rulemaking⁸ to update, simplify and streamline rules of practice and procedure for filing and adjudicating complaints against airports, including small business complaints. It would improve efficiency by enabling parties to file submissions with the FAA electronically, and by incorporating modern business practices into how the FAA handles complaints. Small businesses, including general aviation operators and aviation service businesses who are often involved in complaints, would benefit from this rule because it would decrease time spent and volume of paper documents needed to process complaints by allowing parties to file electronically.
- FRA is also developing a proposed rule⁹ to take advantage of advancements in technology, which would allow small and commuter railroads to use electronic recordkeeping to maintain the records for review, without submitting them to FRA, which would reduce recordkeeping burdens by approximately 200,000 hours annually for the regulated railroads.

These are only a few of the regulations that we have reviewed in order to carry out our duties under the relevant EOs and the statutory requirements that mandate agency retrospective regulatory review. We invite the Committee to view the entire report, which will give you a much better sense of the breadth of our continuing efforts in this regard, and we stand ready to provide more information or a face-to-face briefing as needed. The January 2013 report can be found on DOT's website:

http://www.dot.gov/sites/dot.dev/files/docs/january-2013-dot-rrr-report-final_0.pdf¹⁰

In conclusion, let me once again thank the Committee for its interest in the Administration's and DOT's work in reviewing and reducing regulatory burdens on small businesses. We share your desire to continuously improve the safety, environmental quality, and consumer protection of our

⁸ Notice of Proposed Rulemaking entitled: "Rules of Practice for Federally--Assisted Airport Enforcement Proceedings" (RIN# 2120-AJ97).

⁹ Proposed rulemaking entitled: "Hours of Service Recordkeeping Amendments" (RIN# 2130-AC41).

transportation system in a sensible, scientific, and cost-beneficial way while ensuring that American businesses – large and small – are treated fairly so that they can grow and thrive.

I am happy to take your questions.