Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

STATEMENT OF

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PRESIDENT

COMMERCIAL VEHICLE SAFETY ALLIANCE

BEFORE THE

HIGHWAYS AND TRANSIT SUBCOMMITTEE

OF THE

HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

ON

"The Impacts of the DOT's Commercial Driver Hours of Service Regulations"

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Mr. Chairman, Ranking Member, Members of the Subcommittee, thank you for holding this important hearing and for inviting the Commercial Vehicle Safety Alliance (CVSA) to provide input on the pending Hours of Service requirements, set to take effect July 1, 2013.

My name is Major Mark Savage, with the Colorado State Patrol and I am testifying here today in my role as the President of CVSA. I am also responsible for the Commercial Vehicle Safety and Enforcement Program for the state of Colorado. The troopers who work for me will be enforcing these new regulations starting July 1. CVSA is an international organization representing state, provincial, and federal officials responsible for the administration and enforcement of commercial motor carrier safety laws in the United States, Canada and Mexico. We work to improve commercial vehicle safety and security on the highways by bringing federal, state, provincial and local truck and bus regulatory, safety and enforcement agencies together with industry representatives to solve problems. Every state in the United States, all Canadian provinces and territories, the country of Mexico, and all U.S. territories and possessions are CVSA members. The ultimate objective of what CVSA strives for is to save lives.

Before I go further, I want to briefly describe the process that the states and CVSA go through to implement any new regulation:

1. The states enforce state law, so when FMCSA establishes a new regulation, the states need to go through a process to adopt it into their state law or regulation. Technically speaking, the states have up to three years to adopt any new regulatory change(s).
2. CVSA evaluates the rule change to determine what impacts, if any, it has on the inspection process and roadside enforcement.
3. If there are impacts, changes to North American Standard Inspection Procedures, operational policies, software/IT systems, and training are considered and made as appropriate.
4. Changes to the *North American Standard Out-of-Service Criteria* are considered and if warranted, changes are made and guidance is distributed to the states and FMCSA.
5. There are approximately 13,000 CVSA-certified inspectors across North America. Once all the above has been completed, these officers in the field are made aware of the changes and are trained appropriately.
6. Once the enforcement community is fully trained and well versed in the regulations, inspectors begin conducting educational outreach to industry and the courts to ensure that they understand the new rules as well. When industry and enforcement understand the regulations, compliance increases.

I want to first say that, regardless of our opinion on any given regulation, CVSA members will enforce the rules and requirements set forth by Congress and FMCSA. Secondly, we appreciate FMCSA's efforts on the development of this rule to balance safety and commerce. The Hours of Service regulations are a critical component to commercial vehicle safety, and it is very difficult to create rules that will please

everyone with a stake in their outcome. However, as we indicated in our February 2011 comments to the Agency's Notice of Proposed Rulemaking on the matter, the commercial motor vehicle enforcement community believes portions of the new requirements create more opportunity for a driver to falsify their records of duty status, therefore making the new Hours of Service rules more challenging to enforce.

There are four key principles that should guide the crafting of any regulation and its impact on safety:

- **Uniformity** – Uniformity in regulations facilitates reciprocity and equitable treatment to industry across jurisdictional boundaries; provides a better means with which to measure the impacts on safety and enforcement programs; results in more straightforward and effective training of enforcement personnel; and, provides a better means with which to share and implement best practices among the various enforcement jurisdictions.

- **Clarity** – Overly complicated regulations lead to inconsistencies in interpretation and enforcement. Clear, concise regulations are easier to enforce uniformly, easier to train enforcement personnel on and easier for industry to understand. Clarity in regulations eliminates confusion and subjectivity.

- **Enforceability** – Having regulations does no good if they are not enforceable roadside. All regulations should be developed with their practical application in mind. Further, the enforcement community must have the tools they need to enforce the regulations effectively.

- **Science-based/data driven** – It is imperative that any regulation be based on objective science-based research on factors such as driver fatigue, health, workload, safety performance and crash reduction.

CVSA is not equipped to comment on the science behind the rules; however, we are hopeful that as we get experience with these rules we will see an increase in safety and compliance. We certainly anticipate that FMCSA will continually monitor this issue so the affected constituencies are able to understand their impacts. From CVSA's standpoint, while we see the new rules as fairly straightforward, we do believe that several provisions will create enforceability challenges. The three major regulatory changes; the 34-hour restart provision, the 30-minute rest break requirement, and the new definition of 'on-duty' time, provide greater opportunity for concealment and misrepresentation of Hours of Service by drivers and carriers who are so inclined. These changes have the effect of shortening the driver's work day and work week, creating more incentive for some to falsify. Furthermore, the new rules will require more time and effort from the enforcement community to identify inconsistencies and concealed hours within a driver's record of duty status. The new Hours of Service rules will be more difficult to enforce roadside because the rules expand, rather than reduce,

opportunities for concealing hours. In my testimony, I will present several examples to demonstrate where enforcement will have challenges with the new rules.

34-Hour Restart Provision

Within the new 34-hour restart provision, there is a requirement that, when taking advantage of the restart, drivers must be off-duty for at least 34 hours, which must also include two separate and consecutive 1:00 a.m. to 5:00 a.m. periods. When it goes into effect, this provision will be difficult to enforce; however, once the electronic logging device mandate included in Moving Ahead for Progress in the 21st Century Act is implemented, an inspector could access the vehicle activity logs, through the electronic logging device, and see that, while the driver has indicated that they were 'off-duty' and resting, the vehicle was operated within the restart period, and the inspector could note the violation. Without that device, which would register the movement of the vehicle, the inspector would have a difficult time verifying whether or not the driver was truly 'off-duty' and resting during that restart period. In addition, the inspector, in some cases, will have difficulty verifying compliance with the restart provision due to the limitation at the roadside of only being able to view the current day and previous seven days of records of duty status. FMCSA has indicated that this can be verified during a Compliance Review.

30-Minute Rest Break Requirement

The new Hours of Service requirements state that a driver may not drive after having been on-duty for eight consecutive hours without taking a 30-minute rest break. This requirement seems fairly straightforward, but again allows for potential falsification of a driver's records of duty status. In this scenario, the driver sees that she is approaching her eight hour limit and a 30-minute rest break will be required. The driver then pulls into a truck stop and changes her duty status to 'off-duty' to reflect that she is taking the required rest break. However, during this time, the driver fuels up and checks her tie-downs for proper cargo securement. These activities are actually considered 'on-duty, not driving', but the driver records the time as 'off-duty', allowing her to say she has met the 30-minute rest break requirement. However, the driver did not use the time as intended – for a rest break. In this case, the electronic logging device would show the vehicle as parked, not moving, so there is no opportunity to detect the falsification. However, in this scenario, tighter supporting document requirements would benefit enforcement. Currently, there is a requirement for motor carriers to retain supporting documents at their place of business, but no requirement for them to be available on the vehicle for review at the roadside by enforcement officials. If the driver were required to provide the inspector with her supporting documents, a fuel receipt, time-stamped during the 30-minute period the driver had marked as 'off-duty', would indicate to the inspector that the driver was using the rest break period to conduct work-related tasks and the violation would be detected. While it's true that this sort of falsification of Hours of Service exists today, the new provision provides another opportunity and

incentive to conceal hours and another point in the inspection process where inspectors will have to examine the records of duty status and search for the concealment of hours.

On-Duty Time Definition

The new definition reads:

> *"(4) All time in or upon a commercial motor vehicle, other than:*
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> *(i) Time spent resting in or on a parked vehicle, except as otherwise provided in § 397.5 of this subchapter;*
>
> *(ii) Time spent resting in a sleeper berth;*
>
> *(iii) Up to 2 hours riding in the passenger seat of a property-carrying vehicle moving on the highway immediately before or after a period of at least 8 consecutive hours in the sleeper berth."*

In this scenario, a driver pulls up to his delivery location at 6:00 p.m. after driving/working all day, just after the business closes, due to being stuck in traffic caused by an unforeseen crash. The vehicle does not have a sleeper berth. Under the new definition, the driver can claim he was sitting in the parked vehicle until 8:00 a.m. the next day when the business re-opens and claim 14 hours 'off-duty' time for the night. The driver could then continue on with a regular work day, without ever getting a full, restful night's sleep, as the regulation intends.

These few scenarios help to demonstrate how the new rules will further complicate enforcement and provide additional opportunity for the concealment of hours and falsification of records of duty status.

As noted above, the implementation of electronic logging devices will help to alleviate some of the concerns regarding the enforceability of the new rules. While it's true that a persistent driver might find a way to trick or beat the device, the provision in MAP-21 calls for more stringent certification and tamper resistance requirements, which will make cheating the devices more difficult. CVSA continues to support the requirement for electronic logging devices for Hours of Service compliance for all commercial vehicle drivers. The devices, once deployed, will help improve the enforceability of a number of the existing and new requirements, including the change to the definition of 'on-duty' time, the 30-minute rest break requirement and the 34-hour restart provision.

However, electronic logging devices will likely not address all the enforcement gaps. In order to more effectively enforce Hours of Service rules, drivers should be required to maintain supporting documents in the vehicle, not just at the motor carrier's place of business, so the documents can be reviewed roadside by enforcement personnel and compared with the information being recorded in the records of duty status or the electronic logging device. With no current regulation regarding

maintaining supporting documents on the vehicle, the ability for inspectors to check the validity of records of duty status roadside is compromised.

It is true that some of these violations can be detected and addressed later, during a Compliance Review. However, a major purpose of the roadside inspection program is to be proactive and help to identify dangerous vehicles and drivers, and to get them off the road before there is a crash. If an inspector cannot detect an Hours of Service violation roadside, a driver who has exceeded his/her hours could be permitted to continue driving. Furthermore, only a small percentage of the industry is subject to a Compliance Review, which means violations undetectable roadside may continue to go undetected. The Compliance Review is an investigation of a motor carrier's compliance with the safety regulations that is conducted onsite at the carrier's place of business. It is a comprehensive review of records that is based on the prior history of the motor carrier. Further complicating the matter is the fact that priority for conducting Compliance Reviews is set, in large part, by results from previous roadside inspections. If violations are not discovered roadside, because the inspector has limited ability to verify or refute the information, then that motor carrier might not be flagged for a review. In addition, enforcement personnel should be equipped with all the tools they need in order to effectively enforce the Hours of Service requirements, but without regulations addressing supporting documents to be maintained on the vehicle, they do not.

One additional point I would like to make has to do with challenges created by continuous changes to the rules. The Hours of Service regulations have changed frequently over the past decade. Each new iteration of the rules requires a tremendous amount of work to implement, as I outlined earlier. Thousands of inspectors have to be retrained, industry has to learn to comply with the new rules, court personnel have to be trained and software has to be updated. This is a significant task, which requires time and resources to accomplish. An important aspect to any rule change is providing enough time to educate both enforcement and industry with respect to the changes. Additionally, an adequate amount of time must be allowed to pass with the rules in place to effectively evaluate their impacts on compliance and safety. During the time period the previous Hours of Service rules have been in place, we have experienced significant drops in commercial vehicle crashes. While we do not know what relationship this drop may have to those changes to the Hours of Service regulations, to our knowledge this was not studied.

In summary, while CVSA members will enforce the rules to the best of our ability, we believe the pending Hours of Service changes will continue to make enforcement more difficult, especially for those drivers and carriers who choose to not comply. While the Hours of Service regulations are designed to help the driver to obtain quality rest, each of the three new rules can easily be disguised or falsified. The rules have shortened the work period for some drivers, thus increasing the temptation to falsify their records of duty status. While we will not know for some time what impacts this ultimately

will have on safety, we do know that without additional tools in the toolbox such as electronic logging devices and supporting document requirements to be maintained on the vehicle, roadside enforcement's job will continue to be challenging and those who seek to break the rules will have more opportunities to do so. Each year, there are approximately 3.5 million roadside inspections conducted in the United States versus about 18,000 Compliance Reviews. The Compliance Review program certainly is effective and has its place in the implementation of an effective safety oversight regime; however, it is an after-the-fact review and assessment of performance. The roadside inspection program is a complement to the Compliance Review program and is designed to be a proactive mechanism to identify high-risk operators and remove them from the road ***before*** a crash occurs. If we do not have regulations designed properly or provide roadside enforcement with the appropriate tools to be effective at their work, the anticipated safety impacts will not be realized to their full potential.