



Commercial Vehicle Safety Alliance

Improving uniformity in commercial motor vehicle safety and enforcement

**WRITTEN STATEMENT OF
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**BEFORE THE

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

OF THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE**

**ON

“Under Pressure: The State of Trucking in America”**

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Introduction

Chairman Norton, Ranking Member Davis and Members of the Subcommittee, thank you for holding this important hearing and for inviting me here today to discuss the state of the trucking industry in America.

My name is Mark Savage, I am deputy chief of the Colorado State Patrol, and I currently serve as a past president of the Commercial Vehicle Safety Alliance (CVSA). CVSA is a nonprofit association comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. We represent the state agencies responsible for the administration and enforcement of commercial motor carrier safety regulations in the United States (U.S.), Canada and Mexico. We work to improve commercial motor vehicle safety and uniformity by bringing truck and bus regulatory, safety and enforcement agencies together with industry representatives to solve highway transportation safety problems. Every state in the U.S., all Canadian provinces and territories, the country of Mexico, and all U.S. territories and possessions are members of CVSA.

As Congress begins work on the next surface transportation bill, this timely hearing will hopefully provide members with valuable insight into the incredibly complex world of regulating the trucking industry to ensure safety, while also providing for the efficient flow of goods across the country. My testimony will highlight areas of concern for the Alliance, as well as recommendations on how best to move forward to meet our shared goal of preventing crashes, injuries and fatalities related to commercial motor vehicles on our nation's roadways. While a number of issues will be discussed during the hearing, from our perspective, it all boils down to one thing: providing the motor carrier industry and enforcement community with a regulatory framework that is clear, safety-driven and enforceable. The trucking industry continues to grow and become more sophisticated every day. We need a regulatory framework that can keep pace with the changing industry.

Clarity in the Regulatory Framework

Clear, enforceable rules are the cornerstone of an effective regulatory framework designed to ensure safety on our roadways. It is imperative that those subject to the Federal Motor Carrier Safety Regulations (FMCSRs) understand their responsibilities and that those tasked with enforcing those safety regulations can do so effectively to ensure the quality and uniformity of the more than four million roadside inspections conducted annually throughout North America. Over time, additional regulatory authority, coupled with changes to the industry and technological advancements can result in inconsistent, outdated and redundant regulatory language. To address this continued evolution of the program, the Federal Motor Carrier Safety Administration (FMCSA) is tasked with maintaining the regulations.

Unfortunately, regulatory activity at the agency – one of FMCSA's basic responsibilities – has come to a near standstill, and the necessary work of maintaining the regulations is suffering. High profile initiatives, such as implementation of the electronic logging device rule, can consume the agency's resources, especially when those efforts are met with a high volume of exemption requests.

For example, in 2016, FMCSA sent a letter to a member of the broadband service industry indicating that wireless and broadband services qualify under the 'public utility' hours-of-service exemption. After learning of the letter, in May of 2017, CVSA petitioned the agency to update the regulations to reflect this decision. In March of last year, the agency granted the petition, but to date we are still waiting for the rulemaking to be initiated.

In an effort to address the growing backlog and delays, the agency has come to rely heavily on the use of regulatory guidance to address necessary clarifications to the regulations, using guidance documents or frequently asked questions (FAQs) to correct technical errors in published rules or to clarify vague regulatory language within the safety regulations while improvements to the regulations make their way through the rulemaking process. However, the number of full rulemakings that can make it through the agency in any given year is limited by staff and funding, and a number of higher profile rules tend to push simple technical changes back in the queue, some never to be published. As a result, a disconnect has evolved between written regulation, regulatory guidance, interpretations and FAQs.

As a result, unintentional inconsistencies and contradictions have worked their way into the regulatory framework. These inconsistencies can lead to confusion among both the regulated and enforcement communities. Recently the Office of the Secretary of Transportation published a notice asking stakeholders to review all existing regulatory guidance and make recommendations on which documents should be incorporated into regulation, what can be eliminated and what other guidance may be necessary. While this is a good start, the request was too broad in nature, seeking comment on all existing guidance to any regulation under the department's purview, not merely the FMCSRs overseen by FMSCA. Asking for input on all existing regulatory guidance is an enormous task and one that is not achievable in such a short time frame. Instead, such a review should be conducted in a methodical and organized manner. FMCSA should conduct a review of each Part of Title 49 of the FMCSRs on an individual basis, rather than all at once. As a part of this review, FMCSA should examine all informal guidance that has been issued and adopt the updated informal guidance as official regulatory guidance.

This process, once complete, will help clarify a number of inconsistencies in regulation, helping those who are subject to the FMCSRs better understand their responsibilities and allowing those tasked with enforcing the regulations to do so effectively. This, in turn, will help improve the quality and uniformity of the more than four million roadside inspections conducted annually throughout North America. However, it is not enough for the agency to do this one review. This process must be conducted on an ongoing basis, in order to keep pace with ongoing changes and developments. Continued review and updates to guidance are necessary to remove redundancies, reflect recent changes, correct errors and eliminate contradictions provides both the law enforcement community and motor carrier industry with clearer guidelines to follow. Regulatory guidance should be reviewed and updated on a regular basis to ensure accuracy and clarity.

As noted, there are a number of factors that contribute to the growing delay in regulatory action at FMCSA. We recognize that many of these factors are outside the agency's control. The result is that the agency is struggling to meet one of its basic responsibilities, which is to maintain the FMCSRs, something only the agency can do, in order to keep pace with industry and ensure that motor carriers are being held to a standard that will ensure the safe operation of vehicles on our nation's roadways. FMCSA must be given the resources and support to allow the agency to prioritize the day to day maintenance of the regulations, while also meeting obligations set forth by Congress. Allowing this critical responsibility to lapse does a disservice to both the motor carrier industry and the enforcement community and undermines the agency's efforts to improve safety.

Exemptions

The growing lack of clarity and inconsistency in the regulations is further compounded by the growing number of regulatory exemptions being issued. The federal safety regulations are designed to reduce or prevent truck and bus crashes, fatalities and injuries by establishing minimum credentialing and vehicle mechanical fitness requirements to ensure interstate motor carriers and drivers operate safely. The regulations are developed in consultation with enforcement, industry and subject matter experts, and are intended to establish a clear set of rules by which all drivers and motor carriers must abide. The states, in partnership with FMCSA, work to enforce those regulations consistently and correctly. In order to become a commercial motor vehicle inspector, an individual must go through rigorous training. Once certified, an inspector must conduct a minimum number of inspections each year to maintain their certification. Inspectors must also attend annual in-service/refresher training courses and receive ongoing training updates as a result of various regulatory updates or changes. Significant training and continuing education are geared towards ensuring inspectors and roadside enforcement officials fully understand and effectively communicate the regulations they enforce.

Inconsistencies and exceptions within the regulations require more training and create more opportunities for mistakes, which in turn require additional resources to correct. Unfortunately, however, the number of exemptions continues to grow. Particularly problematic are those exemptions issued through legislation. Issues begin with the adoption of exemptions themselves. While the exemptions are made effective at the federal level upon enactment of the bill, that is not necessarily the case at the state level. The states cannot enforce federal laws and regulations, and instead adopt or incorporate federal regulations into their own state laws, regulations and codes. Some states adopt federal rules by reference, allowing them to automatically adopt federal changes immediately. However, many states do not adopt by reference and must go through either a legislative or regulatory process to make the federal regulatory changes effective at the state level. This process takes time, especially in states where the legislature does not meet annually.

Even in states where adoption is automatic by reference, there is still a delay in the practical implementation of an exemption. Jurisdictions must be made aware of the change and its impacts. In many cases, interpretations and guidance from the federal agency on the parameters and definitions of

the exemption are necessary. For example, a number of the exemptions to commercial motor vehicle size and weight limits included in the Fixing America's Surface Transportation (FAST) Act required guidance from the Federal Highway Administration (FHWA). FHWA worked quickly to provide the guidance to the states, but even so, the document was not circulated until February of 2016, which left the motor carrier industry and the enforcement community wondering how the exemptions would work in the meantime and at times created conflicts during roadside inspections.

Finally, once the exemption has been analyzed and guidance provided, state enforcement personnel must be trained on the new exemptions. Inspectors must be taken away from important enforcement and education efforts and scheduled to be trained on the changes. Practically speaking, this takes time. This guidance and the subsequent training are critical to ensuring the exemption is interpreted and enforced uniformly.

Recognizing these challenges, FMCSA has a policy in place that allows states three years to adopt changes to the FMCSRs. While states work hard to adopt the changes as quickly as possible, the three-year window allows enough time for the states to go through their process and for inspectors to be properly trained. Currently, no such provision exists on the legislative side. Moving forward, CVSA encourages Congress to consider including an implementation window or some other mechanism that allows federal agencies enough time to provide any necessary guidance on the exemption and the states enough time to adopt the changes and train inspectors and enforcement personnel. We understand the exemptions are intended to relieve industry of a certain burden, but if the exemption cannot be implemented correctly and consistently, the motor carrier industry and the enforcement community both suffer. CVSA looks forward to working with Congress and our partners in the motor carrier industry to identify a solution to this issue that meets the industry's needs while also allowing for clear, uniform application and enforcement of the regulations.

Hours-of-Service Revisions

One area of the regulations that presents a significant challenge for the enforcement community is the hours-of-service requirements. Recently, and motivated partially by the electronic logging device (ELD) requirement, there has been a lot of discussion about the need for additional 'flexibility' in the hours-of-service rules. CVSA does not have expertise in fatigue data and will not weigh in on all the proposed changes being discussed. However, it should be noted that the federal hours-of-service requirements exist to help prevent and manage driver fatigue. While sleep cannot be regulated, the hours-of-service rules set forth a framework that, if followed, allow drivers to get the rest necessary to operate their vehicles safely. It is important that the hours-of-service requirements continue to focus on fatigue management and safety, factoring in the best available fatigue data. Recognizing that the motor carrier industry is diverse, it is critical that the regulations account for significant variances within segments of the industry, while keeping exemptions to a minimum, in order to ensure uniform enforcement.

ELDs and the North American Fatigue Management Program

Moving forward, CVSA would encourage that any new exemptions from the hours-of-service requirements or any changes that provide additional flexibility come with two requirements. First, we believe an electronic logging device should be required. Electronic logging devices are a valuable tool designed to help inspectors verify compliance with hours-of-service requirements. This will be even more important as the rules become more complicated. Hours-of-service violations continue to be some of the most frequently found violations by enforcement. What this tells us is that too many drivers and motor carriers either don't understand the hours-of-service rules or are intentionally violating them – and, as a result, drivers are likely driving fatigued. Deployment of electronic logging devices helps address both of these issues.

For those drivers and motor carriers who don't understand the intricacies of the hours-of-service requirements and for those who make the occasional mistake when using their paper log, electronic logging devices remove the guess work and the risk of human error. This results in better compliance with fewer violations being identified, resulting in improved motor carrier safety ratings. For those who were using their log books to find 'wiggle room' in the hours-of-service regulations, electronic logging devices make it easier for inspectors to identify violations and take unsafe, noncompliant drivers off the roadways. The devices also save time for both inspectors and drivers, leading to more efficiency. For those in industry who demonstrate the need for additional flexibility in the hours-of-service requirements, it would be beneficial to require an electronic logging device in order to help ensure compliance.

Similarly, any motor carrier or sector of industry that is seeking authorization to drive longer hours should be required to participate in the North American Fatigue Management Program. The North American Fatigue Management Program is a joint effort by Canada and the United States to provide a comprehensive approach for managing fatigue, enhancing a motor carrier's ability to effectively deal with the challenges of fatigue in a highly competitive, widely dispersed and rapidly changing industry.

Personal Conveyance

Another hours-of-service issue that is related to the regulatory guidance matter discussed above is the "personal conveyance" designation under the hours-of-service rules. In June of 2018, FMCSA published new guidance providing a new interpretation of how to apply and use the "personal conveyance" designation. To be able to log personal conveyance time as off-duty, commercial motor vehicle drivers must meet several conditions as outlined in the regulatory guidance. These include being relieved of all on-duty activities and responsibilities and ensuring that the off-duty trip is personal in nature. While these conditions present certain parameters to drivers and enforcement, the guidance it offers is incomplete because it does not provide a maximum distance and/or time that a driver can travel under the "personal conveyance" designation.

Under the revised guidance, a driver could, in theory, drive hundreds of miles over the course of several hours all under the designation of "personal conveyance". This presents the opportunity for increased

driver fatigue and risk on our roadways, as drivers may decide to travel hundreds of miles in order to strategically relocate to an alternate location after driving a full day. When combined with the ability to operate under personal conveyance while laden, this new guidance provides an opportunity for drivers to abuse personal conveyance time in order to circumvent the hours-of-service regulations. Further, the allowance of laden vehicles for personal conveyance use makes it much more difficult for a roadside inspector to determine the intent of a driver at the time of inspection. Inspectors are consistently seeing blatant abuse of this designation and we have heard feedback from drivers and motor carriers who indicate they are receiving pressure from shippers to use the designation incorrectly in order to deliver loads faster.

CVSA has petitioned the agency to provide a clear, set distance that is permissible under the personal conveyance designation. In setting clear guidelines on the use of personal conveyance, CVSA recommended that FMCSA look to the standard set in Canada, which allows drivers to use a vehicle for personal conveyance purposes for a maximum of 75 km per day (approximately 46 miles), unladen. FMCSA should set a quantifiable distance that drivers are allowed to log as personal conveyance, in addition to the parameters already offered for § 395.8.

Safety Technology

Given the growing size and complexity of the trucking industry, jurisdictions do not have the resources necessary to inspect every vehicle, driver and motor carrier operating on our roadways on a regular basis. In order to maximize resources, jurisdictions use a combination of methods to identify vehicles, drivers and motor carriers for intervention and enforcement. As a result, inspectors interact with only a small fraction of the commercial motor vehicles currently operating on our roadways. However, technologies exist today that would allow enforcement to identify nearly all commercial motor vehicles electronically, while those vehicles are in motion. If this concept were universally deployed, it would revolutionize the way commercial motor vehicle roadside monitoring, inspection and enforcement are conducted.

Requiring a universal electronic vehicle identifier on all commercial motor vehicles would, in time, eliminate the need to stop a commercial motor vehicle to review driver information and inspect the vehicle, improving efficiencies for the enforcement community and the motor carrier industry. It would improve the effectiveness of enforcement programs while reducing costs, for both enforcement and industry, all while improving safety. CVSA has petitioned the National Highway Traffic Safety Administration (NHTSA) and FMCSA to require all commercial motor vehicles to be equipped with technology that allows them to be identified electronically by enforcement. Deployment of this technology would revolutionize the way commercial motor vehicle roadside monitoring, inspection and enforcement are conducted, exponentially growing the program and improving roadway safety.

While many questions still exist surrounding this concept, establishing a universal electronic vehicle identifier requirement for all commercial motor vehicles will have tremendous benefit. Jurisdictions will save time and see improved efficiencies as inspectors are able to more accurately target vehicles, drivers

and motor carriers in need of an intervention while allowing safe, compliant vehicles to deliver their freight more quickly and efficiently. Most importantly, establishing a universal electronic vehicle identifier requirement for all commercial motor vehicles would benefit the public by improving safety, helping to take unsafe vehicles, drivers and motor carriers off the roadways. As industry continues to grow and more people take to the roads, it is imperative that we leverage technology where possible to improve the efficacy of our enforcement programs.

Further, the need for a universal electronic vehicle identifier becomes more critical as the industry moves forward to implement driver assistive truck platooning, increasingly advanced driver assistance systems, and partially or fully automated driving systems, which will require new methods and levels of safety checks. As driver assistive technologies evolve in commercial motor vehicle use, the proper identification and monitoring of these commercial motor vehicles becomes increasingly necessary. No matter the method, this proposed requirement would enable efficient identification and inspection/screening of vehicle systems to help ensure safe operation of commercial motor vehicles, including those being operated with or without a human operator on board.

The trucking industry continues to grow more complex every day and technology plays a huge role in the ongoing evolution of the motor carrier industry. In particular, impressive advancements are being made in the realm of safety technology. As the industry moves ahead with deployment of automated driving system technology and other technologies and as Congress and the administration consider mandating certain systems, it is important that consideration be given to the practical aspects roadside. It is imperative that federal agencies and lawmakers keep pace with technical developments by consulting with industry and the enforcement community to determine the necessary guidelines for safe operation on public roadways. In particular, a dialog with the enforcement community is needed on the requirements and capabilities of this technology to self-monitor vehicle systems' safety status and interact with law enforcement. Each new requirement in the regulations will come with a corresponding item on the roadside inspector's checklist. If a vehicle is required to have a particular component or piece of technology, thought must be given to how the enforcement community will effectively inspect the component or function, and in the pursuit of maintaining safety on our public roadways, ensure compliance with that requirement. Regulations should be clearly written and enforceable. With appropriate federal standards in place, these technologies have great potential to increase roadway safety.

Motor Carrier Safety Assistance Program

In order to ensure compliance by the motor carrier industry, Congress provides funding to the states through the Motor Carrier Safety Assistance Program (MCSAP). The states use these funds to conduct inspection and enforcement activities, train enforcement personnel, purchase necessary equipment, update software and other technology, and conduct outreach and education campaigns to raise awareness and improve commercial motor vehicle safety issues. The funds are used, in part, to pay the salaries of more than 12,000 full and part-time commercial motor vehicle safety professionals. These

people conduct more than 3.5 million commercial motor vehicle roadside inspections, 34,000 new entrant safety audits and 6,000 compliance reviews each year.

Program Performance

The FAST Act included a number of provisions dealing with MCSAP, making significant organizational and programmatic changes, intended to reduce the administrative burden for both FMCSA and the states. CVSA strongly supported the changes to MCSAP implemented in the FAST Act. The changes, most of which were effective beginning in fiscal 2017, have provided states with additional flexibility in how they spend their MCSAP grant funds, streamlined the grant application process, eliminated redundancies between overlapping programs and reduced the administrative burden on states, allowing them to spend more time doing the work of the program and less time on administrative activities. This flexibility is critical, giving states the ability to design a comprehensive commercial motor vehicle safety program that utilizes creative solutions to address issues unique to each state, while also meeting all program requirements.

We are just a few years into the reorganization and some pieces of it, such as the move to a multi-year commercial vehicle safety plan, are not yet completed. The states and agency are both still adjusting and adapting to the new structure, processes and requirements, so it is too early to tell if additional changes are necessary. However, overall, feedback to date has been largely positive. In particular, states are pleased with the additional time given to spend funds after they are awarded by the agency, particularly given the ongoing delays in the appropriations and grant approval processes, which results in states receiving the bulk of their funds as late as June or August in some fiscal years.

Until the overhaul is completely implemented and states have had some time to get used to the new model and evaluate its effectiveness, we are not able to say with certainty if the changes were successful or if additional adjustments are necessary. So many of the components are interrelated and it's not possible to evaluate the whole program with some of the pieces left incomplete.

New MCSAP Grants Formula

One provision in particular that remains incomplete that will have a tremendous impact on the efficacy of the new MCSAP structure is the new MCSAP formula. The FAST Act included a requirement that FMCSA convene a group to evaluate the current MCSAP allocation formula. The group was tasked with recommending a new formula that will better allocate MCSAP funds to where they are most needed. The group's recommendations were finalized in April of 2017 and the agency is currently in the final stages of publishing the recommendations in the "Federal Register" for comment. Once that process is complete, FMCSA will need time to adjust their programs accordingly and states will need to be able to plan for any changes in funding levels based on the new formula. States are currently receiving funds based on an interim formula, which was intended to serve as a short-term place holder. As such, many jurisdictions are reluctant to make longer-term changes to their programs before they know what funding will look like in the future. As a result, innovative programs and technology deployments are being placed on hold.

Funding Delays Impact Program Efficacy

The states' work through MCSAP saves lives every day, keeping dangerous vehicles and unqualified and unsafe drivers off the nation's roads. According to FMCSA's "2018 Pocket Guide to Large Truck and Bus Statistics," the agency regulates 543,061 motor carriers, 6.1 million commercial drivers and 12.5 million commercial motor vehicles. The state and local agencies that receive MCSAP funding are responsible for ensuring those motor carriers, vehicles and drivers operate safely. Furthermore, the commercial motor vehicle enforcement landscape is constantly evolving and changing as Congress and FMCSA work to refine and improve the FMCSRs and Hazardous Materials Regulations (HMRs). Despite these challenges, MCSAP, as administered by the states, has been successful in reducing crashes, injuries and fatalities on our nation's roadways, in spite of a steady increase in the number of commercial motor vehicles operating on those roads.

One challenge the states face is an ongoing delay and lack of consistency in the timing of funding disbursement, which prevents many state from being able to implement long term plans and programs. There are a number of factors that contribute to these delays and result in complications for the states. Allocation of MCSAP funds are tied to the annual appropriations process, which has become more and more delayed each year. If the process worked as it should, appropriations for the fiscal year would be finalized before October 1 of each year and FMCSA would have time to run the formulas and award funds, in full, at the start of each fiscal year. Instead, continuing resolutions force the agency to disburse the funds in phases until a final bill is approved and the remaining funds can be released. When funds do become available, the grant review and approval process takes far too long, further delaying receipt of funds for safety programs. It can take weeks and sometimes months for the agency to get the necessary approvals to award the funds to the states. This unpredictable, piecemeal approach to funding makes planning and management of state enforcement programs difficult.

Relying on the appropriations cycle to determine funding levels on a year-to-year basis does not allow the states to plan long-term. State agencies will be reluctant to fill positions, continue enforcement programs or engage in bold new initiatives if they cannot be confident that federal funds will come in a timely manner, at the approved levels.

International Harmonization

Finally, CVSA encourages Congress to promote a higher level of collaboration between the U.S. and its North American neighbors. Many motor carriers who are headquartered in the U.S. also have operations in Canada and Mexico, and many foreign motor carriers have operations here in the U.S. Efficient, safe movement of people and goods between the three countries is critical to our economic success. Reciprocity and uniformity of commercial motor vehicle safety regulations among the three nations will help support this flow of people and goods. CVSA supports improved international coordination, with respect to commercial motor vehicle safety regulations, through increasing efforts between the U.S., Canada and Mexico to advance regulatory reciprocity and uniformity.

Conclusion

As this committee considers the state of the trucking industry and begins development of the next surface transportation bill, we encourage you to give strong consideration to the role the enforcement community will play in any policy changes or new programs. As outlined in my testimony, the purpose of the Federal Motor Carrier Safety Regulations is to provide a regulatory framework for motor carriers to comply with and is designed to ensure the safety of those who travel alongside commercial motor vehicles on our nation's roads. As the trucking industry continues to advance and grow, it becomes more critical that industry and enforcement are provided with a clear set of requirements. Inconsistencies in the regulations lead to confusion among industry and enforcement and eventually works to erode the commercial motor vehicle community's trust in the regulatory process. FMCSA must be provided with the tools to meet its responsibility of maintaining the federal regulations, while also addressing evolution within the industry. We encourage Congress, the administration and our industry partners to work together to help shape a framework that prioritizes safety.