



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

“FAST Act Implementation: Motor Carrier Provisions”

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Introduction

Chairman Graves, Ranking Member Norton and Members of the Subcommittee, thank you for holding this important hearing and for inviting me here today to discuss progress being made by the implementation of the Fixing America's Surface Transportation Act of 2015 and the future of commercial motor vehicle (CMV) safety.

My name is Chris Turner, I am a captain with the Kansas Highway Patrol, and I currently serve as 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 tasked with the responsibility for the administration and enforcement of commercial motor carrier safety regulations in the United States (U.S.), Canada and Mexico. We work to improve CMV 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 CVSA members.

I would like to thank the subcommittee for holding this hearing to discuss the future of CMV safety on our roadways. The topic of today's hearing, implementation of the motor carrier FAST Act, is a timely one, as we are now halfway through the life of the bill and work is beginning in preparation for the next highway bill.

I would also like to take a moment to commend Administrator Martinez. I've had the opportunity to speak with him a number of times since he joined the Federal Motor Carrier Safety Administration (FMCSA) and we at the Alliance are very encouraged by his leadership and look forward to working with him as we move ahead.

The FAST Act included a number of requirements that, once completed, will improve motor carrier safety. The bill included a major overhaul of and increased funding for the Motor Carrier Safety Assistance Program (MCSAP), which is the grant program through which Congress provides funds to the states to enforce the Federal Motor Carrier Safety Regulations (FMCSRs) and ensure that the motor carrier community is complying with federal safety requirements. In addition, the bill included a number of changes to the regulatory processes at FMCSA, directives to reduce redundancies and improve information systems, and a number of necessary studies on relevant CMV-related issues. While significant work has been done in a number of areas, a great deal remains to be done before the bill expires in 2020 and debate begins on the next round of policy and program changes. My testimony will highlight key areas of accomplishment, as well as items that have not yet been completed, and recommendation from the Alliance on how best to move forward.

Motor Carrier Safety Assistance Program Changes

Congress provides funding to the states through the Motor Carrier Safety Assistance Program to support regulation of the motor carrier industry and enforcement of FMCSRs and the Hazardous Materials Regulations (HMRs). 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 CMV safety issues. The funds are used, in part, to pay the salaries of more than 12,000 full and part time CMV safety professionals. These people conduct more than 3.4 million CMV roadside inspections, 34,000 new entrant safety audits and 6,000 compliance reviews each year.

Perhaps the most significant provision within Title V of the FAST Act were the changes made to MCSAP. The bill completely rewrote Sections 31102, 31103, 31104 and 31313 of Title 49 of U.S. Code, which are the sections dealing with MCSAP, making a number of organizational and programmatic changes. The goal of the consolidation and reorganization was to reduce the administrative burden for both FMCSA and the states by reducing the number of grant programs and focusing the bulk of the program in the formula grant, which is more quickly administered and more stable than competitive grants. Fewer grant programs means fewer applications for the states to submit and report on and for FMCSA to review and administer, cutting down on unnecessary paperwork and streamlining the grant process.

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 CMV 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, and 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.

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. Members for the MCSAP Grants Working Group were selected in March of 2016 and the group met regularly in person and by phone over the course of a year. The group's recommendations were finalized in April of 2017 and submitted to the agency for review. Once the Department of Transportation has completed its review of the recommendations, Congress required that the new proposed formula must also be published in the "Federal Register" for public comment.

Since the group's recommendations were submitted to the agency over a year ago, it is our understanding they have been under review first by FMCSA leadership and then the Secretary's office, but no further progress or updates have been made. Given the significant work that went into this effort, the long process that remains once the Department of Transportation completes their review and the tremendous impact the final formula changes will have on the states, we are very eager to see this process move forward as swiftly as possible. 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.

Motor Carrier Safety Assistance Program Funding

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, the agency regulates 524,058 motor carriers, 5.9 million commercial drivers and 12.1 million commercial motor vehicles.¹ The state and local agencies that receive MCSAP funding are responsible for ensuring those motor carriers, vehicles and drivers operate safely. Furthermore, the CMV enforcement landscape is constantly evolving and changing as Congress and FMCSA work to refine and improve the FMCSRs and 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 CMVs operating on those roads. New and expanded responsibilities mean improvements in safety, but only to the extent the states have the resources to effectively implement those policies. Recognizing this, Congress included in the FAST Act higher levels of funding for MCSAP and other CMV-related grants. I'd like to take a moment, on behalf of CVSA and its membership, to thank the Members of this Committee for recognizing that fact and for helping to ensure the higher funding levels in the FAST Act.

¹ "2017 Pocket Guide to Large Truck and Bus Statistics." Federal Motor Carrier Safety Administration. February 2018.

<http://www.fmcsa.dot.gov/safety/data-and-statistics/commercial-motor-vehicle-facts>

While the states are appreciative of the higher funding levels, states experience an ongoing delay and lack of consistency in the timing of funding disbursement, which prevents many from being able to fully capitalize on the increases. 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, as you know, has become more and more delayed each year. If the process worked as it should, appropriations for the fiscal year would be finalized long 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. The issue is further complicated by the fact that many states do not follow the federal fiscal calendar (most start July 1), which impacts their reporting and tracking process. 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 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. Recognizing that future funding for MCSAP is directly tied to the long-term solvency of the Highway Trust Fund, CVSA supports ongoing efforts to identify sustainable, long-term revenue sources to address the Highway Trust Fund solvency, in order to ensure stability for MCSAP. In addition, we look forward to working with the Members of this Committee and FMCSA to find a way to reduce funding delays caused by the appropriations process and the agency's review in order to provide the states with steady, timely and reliable funding at the authorized levels.

Regulatory Guidance Reforms

Another significant change included in the FAST Act addressed reforms to the agency's regulatory guidance process. Specifically, Section 5203 directs the agency to reform its regulatory guidance process. At times, the agency issues 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 developed between written regulation, regulatory guidance, interpretations and FAQs.

To help address these inconsistencies, the FAST Act required FMCSA to conduct a regular review of active guidance documents and routinely incorporate appropriate guidance into the regulations in a timely manner, a requirement that was supported by CVSA. In June of 2016, FMCSA held a meeting of the Motor Carrier Safety Assistance Committee (MCSAC) and tasked the group with reviewing existing regulatory guidance and making recommendations on which documents should be incorporated into regulation,

what can be eliminated and what other guidance may be necessary. This process, once complete, will help clarify a number of inconsistencies in regulation, helping those subject to the FMCSRs to 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. Unfortunately, the recommended changes have not yet been published for notice and comment.

In addition to the recommendations from MCSAC, a number of petitions from CVSA calling for various corrections, updates and adjustments to the FMCSRs sit before the agency, unaddressed. While we recognize that the agency has a number of competing priorities and that many positions have, until recently, been left unfilled, the fact remains that maintenance of the federal safety regulations is FMCSA's core responsibility. Clarity, consistency, uniformity and enforceability are the cornerstones of an effective regulatory framework. FMCSA must find a way 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 industry and the enforcement community and undermines the agency's efforts to improve safety and regulatory compliance.

Petition Reforms

Section 5204 of the bill made changes to the petitions process at FMCSA. The section required the agency to publish petitions received publicly, as well as set up a process for responding to and prioritizing those petitions. CVSA supported the inclusion of this requirement and we would like to commend the agency for quickly responding to the requirements of this section. The agency's website has been updated to include a page for tracking petitions and processes have been put in place that will allow the agency to respond more quickly to petitioners.

These changes will add a new level of transparency to the petition process at FMCSA, allowing CMV stakeholders the opportunity to follow the requests FMCSA is receiving prior to the agency initiating a rulemaking. This will result in better communication among the CMV community and will allow interested parties to weigh in with the agency, either in support of or in opposition to a certain recommendation earlier in the process, giving the agency more information with which to make a rulemaking determination. While we are pleased the agency has followed the requirements, we would encourage more timely maintenance of the site's content. It can take some time for the page to be updated and this lag in information can make it more difficult for other stakeholders to respond, undermining the intent of the Congressional requirement.

Information Technology Programs and Data Quality Improvements

While technology cannot take the place of a robustly funded program built on a clear, sound regulatory framework, it is a critical tool in our efforts to improve safety and, ultimately, reduce crashes, injuries and fatalities on our roadways. As technology and data collection continues to advance and improve, our state programs will only grow in their reliance on data. Congress recognized this fact and included a number of

provisions in the FAST Act having to do with improving FMCSA's information technology (IT) systems and data quality.

Section 5504 of the bill directed the Comptroller General to conduct a comprehensive analysis of FMCSA's IT and data collection and management systems and to make recommendations on how to improve both the functionality of the systems and the quality of the data collection and analysis. We are pleased that work has recently begun on this initiative in earnest and we look forward to an ongoing dialogue with the agency on this critical initiative.

Another critical component of the FAST Act that should be implemented as quickly as possible is the hardcoding and smart logic requirement in Section 5224. Motor carrier violation data is used to help prioritize enforcement and shape state safety programs. It is imperative that the roadside inspection and enforcement data be as uniform and accurate as possible. While the vast majority of the roadside inspection data collected is sound, implementing the hardcoding and smart logic requirements will help eliminate errors and further ensure uniformity in the roadside inspection and enforcement data collection process. The bill directs FMCSA to develop the necessary functional specifications in consultation with the states. This includes implementing both hardcoding of violations and smart logic within FMCSA's data programs. The specifications must be made available to both public and private developers and must utilize uniform data standards. Unfortunately, to date, little to no progress has been made on this requirement. We are hopeful that under Administrator Martinez's leadership, the agency can complete this task quickly.

Inspector Certification Standards

One requirement we are pleased to say FMCSA addressed very quickly is the requirement in Section 5205 that the agency adopt by reference inspector certification standards set by CVSA. Prior to the FAST Act, FMCSA developed a set of roadside inspector certification standards that conflicted with CVSA's standards. This created an issue for inspectors who had two separate, but similar standards they were required to meet. Requiring FMCSA to adopt CVSA's inspector certification standards helps eliminate redundant work being conducted by FMCSA and reduce confusion. Following passage of the FAST Act, FMCSA acted quickly to meet this requirement and in December 2015 issued a memo addressing the certification policy.

Other FAST Act Studies

In addition to the IT study previously mentioned, the FAST Act included a number of studies and reports of interest to CVSA. Section 5304 required the agency to conduct a review of the efficacy of the New Entrant Safety program. The study has been completed and CVSA is currently reviewing the document and working to determine what next steps and recommendations are appropriate. Section 5306, meanwhile, called for the creation of a working group to evaluate current post-accident reporting requirements and make recommendations on how to improve post-accident reporting, including what additional data elements should be required. The working group was quickly formed and has completed

its work and CVSA looks forward to working with the agency on next steps. To that end, CVSA has recently formed a new technical committee focused on crash data reporting and analysis.

CVSA has concerns, however, regarding the study conducted to meet the requirements in Section 5510. Congress instructed FMCSA to conduct a study regarding the safety impacts of operating a double-decker motorcoach equipped with an additional exterior baggage compartment on the back of the vehicle. The study, completed in January of this year, included problematic and unrealistic assumptions having to do with the weight of the vehicles when fully loaded and other technical aspects, which we believe undermines the credibility of the study's conclusions. We strongly caution Congress against making any policy decisions based on the results of that study, which does not include real world scenarios and is therefore not realistic in terms of its conclusions.

Exemptions

Another challenge facing the enforcement community is inconsistency in the regulations caused by exceptions, exemptions and waivers. The federal safety regulations help 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 motor carriers must abide. The states, in partnership with FMCSA, work to enforce those regulations consistently and correctly. In order to become a CMV 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 refresher training and are trained after every regulatory update or change. Significant training and continuing education ensure inspectors and roadside enforcement officials fully understand and effectively communicate the regulations they enforce.

Clarity, consistency, uniformity and enforceability are the cornerstones of an effective regulatory framework. Confusion and inconsistencies create more work for the enforcement community and industry. 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 FAST Act included a number of legislative exemptions from the safety regulations. CVSA is generally opposed to the inclusion of exemptions in legislation. We recognize there may be instances when exemptions are appropriate and do not compromise safety; however, overall, CVSA believes exemptions have the potential to undermine safety and complicate enforcement. Every new exemption is an opportunity for confusion and inconsistency in enforcement, diverting scarce resources from other activities and undermining the program's effectiveness. While CVSA has no specific opposition to many of the exemptions on an individual basis, complications have already surfaced regarding their implementation.

Problems begin with the adoption of exemptions. While the exemptions were 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 federal regulatory policy into their own state law and code. 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 CMV size and weight limits included in the 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 industry and the enforcement community wondering how the exemptions would work in the meantime and at times creating 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 brought into the classroom to be trained on the changes. Practically speaking, this takes time. This guidance and the subsequent training is 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. Moving forward, CVSA encourages Congress to consider including an implementation window or some other mechanism that allows other 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, 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.

International Harmonization

Finally, while not specifically addressed in the FAST Act, 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 CMV safety regulations among the three nations will help support this flow of people and goods. CVSA supports improved international

coordination, with respect to CMV safety regulations, through increasing efforts between the U.S., Canada and Mexico to advance regulatory reciprocity and uniformity.

Conclusion

The FAST Act included a number of changes that will have a positive impact on the nation’s roadway safety and work has been completed or is currently underway to implement a majority of those requirements. This has included a great deal of work on the agency’s part and we want to thank them for their ongoing outreach and collaboration as they’ve completed their work.

As discussed above, while FMCSA has accomplished a number of tasks required by the FAST Act, progress on many of the bill’s critical provisions has been slowed by external factors. Implementation of the electronic logging device (ELD) requirement consumed a disproportionate amount of the agency’s time and resources. It is an initiative that CVSA fully supported and we worked closely with the agency on implementation. However, the fact remains the agency had little time for other, equally important efforts. We also recognize that the change in administrations resulted in a good amount of turnover in key leadership positions and some work was stalled as vacancies were filled and newcomers were brought up to speed. Now that the initiative is complete and Administrator Martinez is in place, we are hopeful FMCSA will be able to turn its full attention to implementing the remaining FAST Act requirements. As the state agencies responsible for CMV enforcement, we look forward to working with the Members of this Committee, FMCSA, our industry partners and other stakeholders to continue working towards our shared goal of preventing deaths, injuries and crashes on the nation’s roadways. We are committed to meeting our mission.