



Commercial Vehicle Safety Alliance

Improving uniformity in commercial motor vehicle safety and enforcement

**WRITTEN STATEMENT OF
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BEFORE THE

**SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT
MARINE INFRASTRUCTURE, SAFETY, AND SECURITY**

OF THE

**U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE, &
TRANSPORTATION**

ON

“Continuing to Improve Safety on Our Nation’s Highways”

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Introduction

Chairman Fischer, Ranking Member Booker and Members of the Subcommittee, thank you for holding this important hearing and for inviting me here today to discuss the future of safety on our nation's highways.

My name is Chris Turner, I am a captain with the Kansas Highway Patrol, and I currently serve as vice 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 commercial motor vehicle (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.

The topic of today's hearing, "Continuing to Improve Safety on our Nation's Highways." is a critical one. I would like to thank the subcommittee for holding this hearing to discuss the future of safety on our roadways. As the commander of commercial motor vehicle inspectors in Kansas, my testimony will focus on how to improve safety related to commercial motor vehicles.

As we work to implement the Fixing America's Surface Transportation (FAST) Act of 2015 and begin to consider the next round of improvements for CMV safety, it is critical that Congress and the administration provide states with the resources necessary to effectively take unsafe drivers and vehicles off the roads, shut down motor carriers that do not comply with the safety requirements, and continue our education and outreach programs. This testimony will focus on the challenges facing the CMV enforcement community and our recommended solutions. Simply put, CVSA is asking Congress to provide the states with the tools we need to effectively run our programs and save lives. We need reliable funding that is commensurate with the work load; clear, enforceable regulations; and access to all sectors of the motor carrier industry.

Stable, Long-Term Funding

The federal government entrusts the states with the responsibility of enforcing the Federal Motor Carrier Safety Regulations (FMCSRs) and the Hazardous Materials Regulations (HMRs). To meet that responsibility, 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 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.

The good news is the program works. Effective enforcement of the FMCSRs and HMRs helps save lives every day, keeping dangerous vehicles, and unqualified and unsafe drivers off the nation’s roads. The benefits of MCSAP are well documented, and every dollar invested in the state programs yields a big return for taxpayers. According to research and figures from the Federal Motor Carrier Safety Administration (FMCSA), CVSA estimates that MCSAP has an estimated benefit to cost ratio of 20:1. Every roadside inspection conducted yields an estimated \$3,281 in safety benefits.

Unfortunately, the program now faces a lack of reliable, long-term funding, which could force states to scale back or even end their CMV enforcement programs entirely. In the FAST Act, states were tasked with a number of new safety initiatives under MCSAP. New and expanded responsibilities mean improvements in safety, but only to the extent the states have the resources to effectively implement those policies. In recognition of this fact, the bill also included higher funding levels for the MCSAP grants, ensuring that funding levels kept pace with the growing workload. States, in turn, relied on that commitment of more federal funding to maintain current enforcement activities, programs, staffing levels and purchase equipment necessary for the performance of their CMV safety responsibilities. However, because Congress is operating under a series of continuing resolutions for fiscal 2017, states are receiving less in federal funds to do more work. This is not a sustainable model for the states.

The issue is further complicated because the current continuing resolution was drafted using the pre-FAST Act funding model. The FAST Act consolidated nine grant programs into four. This new grant structure went into effect in 2017. Because the December continuing resolution was not updated to reflect the new grant structure, it inadvertently funds several grants that no longer exist while failing to fully fund the MCSAP formula grant and the revamped High Priority grant programs. This means, although Congress has already allocated the money, if this issue is left unresolved FMCSA will not be able to disburse nearly \$112 million in fiscal 2017 funds to the states for critical safety, enforcement activities and educational outreach. As a result, not only are states *not* receiving the full funding level authorized in the FAST Act for fiscal 2017, but they could, in fact, receive less in fiscal 2017 than they did in fiscal 2016, severely curtailing critical CMV enforcement and inspection activities funded by MCSAP and potentially putting the future of some state programs at risk. The table below shows the various funding scenarios for the MCSAP formula and High Priority grants.

Fiscal 2017 Funding Level Scenarios – MCSAP Formula and High Priority		
FAST Act 2017	Current Continuing Resolution WITH Anomaly	Current Continuing Resolution WITHOUT Anomaly
\$334 million	\$285 million	\$171 million

In addition, certain CMV enforcement and inspection activities critical to national security are also impacted. For example, because the Border Enforcement Grants Program (BEG) was incorporated into the new MCSAP grant structure in the FAST Act reorganization, the current misalignment in the fiscal 2017 continuing resolution means that despite Congress having allocated the money for BEG, FMCSA will not

be able to disburse the funds to the states, severely limiting resources used to ensure that foreign carriers coming into the United States are compliant with the U.S. safety regulations.

When States realize a reduction in their MCSAP funding, their programs are reduced and fewer inspections, compliance reviews, safety audits and education programs are conducted, reducing the safety benefits discussed above and undermining years of improvement in CMV safety. Reductions in funding also mean lost jobs. According to a report completed for FMCSA in 2007, the average 'cost' (including wages and benefits) of a state safety inspector was estimated at \$66,052.51.¹ This means that for every \$1 million invested in the MCSAP, 15 jobs are created or maintained. Conversely, every \$1 million reduction in MCSAP funding results in lost jobs or positions eliminated at the state level. And once those positions are eliminated, it can be very difficult to bring them back.

It is imperative that states be able to rely on long-term funding at levels that match their efforts. The consequences of not addressing this funding issue are grave and extend well beyond this single fiscal year. In the short-term, state agencies may be forced to drastically cut programs and downsize their workforce in order to absorb the funding reductions. However, uncertainty for states could also lead to enforcement personnel being transferred out of CMV enforcement units, endangering drivers and the general welfare of the motoring public when important traffic enforcement activities are reduced or eliminated altogether due to a lack of reliable resources and manpower. Even if funding in fiscal 2018 returns to authorized FAST Act levels, it will be difficult for states to rebuild these critical safety programs, as it requires significantly more time to re-hire and re-train enforcement and inspection personnel, and state governments may be unwilling to recommit funds and manpower to a program with unreliable long-term funding. Once those state resources are redirected to other activities within the state, it will be incredibly difficult to bring them back to CMV safety-focused activities. This means a reduction in enforcement on the motor carrier industry while all reports indicate that the number of trucks and buses on our nations roadways will only continue to grow and recent crash and fatality numbers show an alarming trend upwards.

To address this issue, CVSA encourages Congress pass a full appropriations bill realizing the FAST Act's promise of increased funding levels for MCSAP. If Congress is unable to pass a transportation appropriations bill and instead must pass a continuing resolution through the end of the year, it is imperative that the continuing resolution include an anomaly requested by the U.S. Department of Transportation's FMCSA to correct the misalignment of funds in the current continuing resolution, which expires April 28.

However, this is only a short-term patch. The larger issue of 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

¹ Roadside Inspection Costs. Federal Motor Carrier Safety Administration. October 2007.
<http://www.fmcsa.dot.gov/facts-research/research-technology/report/Roadside-Inspection-Costs-Oct2007.pdf>

levels. Recognizing that future funding for the 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 to find a way to provide states with steady, reliable funding at the authorized levels.

Exemptions

Another challenge facing the enforcement community is inconsistency in the regulations. 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 level of inspections each year to maintain their certification. Inspectors must also attend annual refresher training and are trained after every regulatory update or change. This is all geared towards ensuring that inspectors and roadside enforcement officials fully understand and effectively communicate the regulations they are enforcing.

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. These inconsistencies also have a direct impact on data quality. Senator Fischer, Ranking Member Booker and the Members of this Committee recognized these facts by including provisions in the FAST Act to improve the regulatory process, for which the enforcement community is grateful.

Unfortunately, however, the FAST Act also included a number of legislative exemptions from the safety regulations. CVSA is generally opposed to the inclusion of exemptions in legislation. We recognize that there may be instances when exemptions are appropriate and do not compromise safety; however, overall, CVSA believes that 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 enforced 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.

Motorcoach Safety

Motorcoach safety is another issue the enforcement community sees challenges with going forward. The issue of bus and motorcoach safety has been thrust into the spotlight over the past several years due to a series of high profile, fatal crashes. According to FMCSA data and findings by the National Transportation Safety Board (NTSB), from 2005 to 2010, 262 people died in motorcoach crashes, and another 9,062 were

injured. Meanwhile, travel by bus or motorcoach is growing. Since 2005, annual growth rates for intercity motorcoach service ranged from 5.1 to 9.8 percent between 2006 and 2010.²

The passenger carrier industry is relatively small, with approximately 12,000 companies, in comparison to approximately 525,000 property-carrying motor carriers in the United States. And, nationally, there are fewer CVSA-certified North American Standard Passenger Vehicle inspectors than there are CVSA-certified truck inspectors. Yet, approximately 750 million passengers board a bus or motorcoach each year. Enforcement agencies conducted nearly 122,000 inspections of passenger-carrying CMVs in 2015; that's compared with 3.2 million inspections of property-carrying CMVs in the same year.³ Part of this is attributable to the fact that there simply are more trucks on the road than buses. However, passenger vehicle certified inspectors are currently restricted on when and where they can examine a passenger-carrying CMV, which also contributes to the vastly lower inspection numbers. Inspectors are only permitted to stop a loaded bus when they observe a traffic law violation, such as speeding or unsafe driving, or if the inspector can see a visible vehicle violation that creates an imminent hazard.

While the vast majority of motor carriers and drivers are committed to safety, this restriction allows those seeking to avoid scrutiny and circumvent safety requirements to plan around inspections. Furthermore, because of the current restrictions, there is an entire segment of the industry, known as curbside carriers that are largely out of the reach of inspectors. These are generally intercity carriers operating under a business model where they pick up and drop off at a curbside location, rather than at a set facility. This model allows flexibility to meet the changing needs of customers, but opens the opportunity for carriers to choose to avoid the scheduled origin/destination inspections that carriers using the conventional fixed facility service receive. While curbside operations represent a smaller segment of the overall passenger-carrying industry, according to the NTSB report, curbside carriers have higher fatal accident and death rates and higher serious driver violations rates than conventional carriers.⁴

The ability to inspect a passenger-carrying CMV en route is an extremely important tool for effective enforcement. Much like random drug testing, the possibility of an unscheduled inspection en route helps ensure that carriers and drivers comply with safety regulations. Under the current restrictions, inspectors do not have authority to pull over a passenger-carrying CMV for an inspection unless there is a visible imminent hazard. But what if the imminent hazard present is one associated with the driver that is not visible? Research shows that most crashes are caused by driver-related factors. A driver could be

² Report on Curbside Motorcoach Safety. Special Report NTSB/SR-11/01. National Transportation Safety Board. 2011. <http://www.nts.gov/doclib/safetystudies/SR1101.pdf>

³ Motor Carrier Safety Progress Report (as of 9/30/16). Federal Motor Carrier Safety Administration. 2017. <https://www.fmcsa.dot.gov/content/motor-carrier-safety-progress-report-september-30-2016>

⁴ Report on Curbside Motorcoach Safety. Special Report NTSB/SR-11/01. National Transportation Safety Board. 2011. <http://www.nts.gov/doclib/safetystudies/SR1101.pdf>

operating their passenger-carrying vehicle without being medically qualified, without the proper class of license, without the proper license endorsement(s), driving despite a suspended or revoked license, and/or exceeding his or her allowable hours of service. However, unless the unlicensed, fatigued or otherwise seriously impaired driver is observed making an imminently hazardous traffic infraction, the first indication to inspectors of an imminent hazard may be when the driver falls asleep and crashes. As long as there is no visible problem, that hazardous driver will not be detected.

Proponents of the restriction will argue that it was put in place for the safety of the passengers, so they do not end up stranded on the side of a busy highway. However, traffic enforcement officers (who may or may not be passenger vehicle certified) may already stop a bus or motorcoach for traffic violations—such as speeding or other dangerous behavior. So, the potential for being delayed due to enforcement does exist. However, this unnecessary restriction makes traffic enforcement stops, sometimes on the roadway shoulder, the only viable option to stop and check passenger-carrying vehicles and their drivers. But waiting for unlawful behavior by the driver does not prevent the risk to passengers, which is the purpose of the passenger-carrying CMV inspection in the first place. Certified inspectors are trained to make inspection stops in safe locations—preferably escorting the vehicle to an exit and a safe inspection site. Once subject to inspection, the inspector is responsible for the safety and security of the passengers, including the driver.

Proponents of the restriction will also argue that the restriction is necessary, so that carriers can maintain their tight schedules and meet pick-up and drop-off commitments to their customers. However, the trucking industry, which operates on the same tight timetables and under similar conditions on the roadways, has been able to incorporate roadside inspections into their business model effectively.

CVSA respects that the motorcoach industry operates on a tight time schedule and that a stop en route has the potential to delay schedules, inconveniencing passengers; and, certainly, the comfort of passengers is a necessary consideration. We also recognize that the majority of carriers and drivers operate safely. However, it is important that the enforcement community be able to reach the entire industry to ensure all motor carriers are operating in compliance with the federal requirements set by Congress. CVSA supports striking the en route prohibition from the regulations entirely.

In addition, while the CMV size and weight discussion often focuses on property-carrying CMVs, it is important to understand that all CMVs, including passenger-carrying CMVs, are subject to the same weight laws and regulations. As the bus and motorcoach industry has evolved, new requirements have been issued mandating additional equipment—for example, handicapped passenger accessories to satisfy Americans with Disabilities Act requirements or diesel emissions equipment to satisfy Environmental Protection Agency requirements—that have added to the empty/tare weight of the vehicle, effectively reducing the passenger weight capacity margin. In addition, the average weight of a passenger today is

likely higher than the decades-old design assumption of 150 lbs per passenger.⁵ Heavier passengers, the advent of high seating capacity double decker buses and the weight of required additional equipment result in the higher likelihood that a bus will be loaded above its allowable weight. Safe carrying capacity of a bus or motorcoach is determined by the manufacturer's design, in which all component specifications play a part—frame/body, axles, steering components, bearings, and wheels—and particularly brakes and tires. Overloading a vehicle or any of its components increases the risk to passengers and those operating around the vehicle. According to FMCSA, an overloaded tire is more likely to overheat and fail, which could result in a blowout and crash.⁶

To help ensure that passenger-carrying vehicles and components are not being overloaded, inspectors need to be able to weigh the vehicle, and have the capability to inspect the condition of the components, as necessary. Enforcement personnel who have identified passenger-carrying CMVs exceeding manufacturers' designs will take the necessary steps to minimize the impact on the passengers and their trip. This could include the states coordinating with the motorcoach industry to establish uniform procedures providing for passenger needs, including identifying alternative transportation options, ensuring that at the end of the day everyone who travels on our highways arrives home without incident. CVSA supports giving states the authority to require that passenger carrying CMVs report to an open weigh station while en route, specifically for weight enforcement purposes. Standard procedures will need to be put into place to provide for passenger needs when an overloaded vehicle is identified. We look forward to working with Congress and our industry partners to identify a solution to this issue.

Conclusion

The FAST Act includes a number of changes that will have a positive impact on the nation's roadway safety, but those positive results will only be realized if the states are given the funding necessary to implement comprehensive, robust safety programs, as envisioned in the bill. And there remains work to be done. While the bill included a number of provisions that will result in more clear, enforceable regulations, the practice of including exemptions from the safety regulations will continue to hamper enforcement and potentially impact safety. In addition, the bill made little progress in the area of motorcoach safety and enforcement. 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 and ask only that we be given the tools we need to do it effectively.

⁵ § 567.4 – Requirements for manufacturers of motor vehicles. Federal Motor Vehicle Safety Standards.
http://cfr.regstoday.com/49cfr567.aspx#49_CFR_567p4

⁶ Motorcoach Safety Advisory Bulletin: Exceeding Tire Load Ratings. Federal Motor Carrier Safety Administration.
http://www.fmcsa.dot.gov/documents/alerts/Motorcoach_Safety_Advisory_Bulletin_Exceeding_Tire_Load_Ratings.pdf