



Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

**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

**“Intermodal and Interdependent: The FAST Act, the Economy,
and Our Nation’s Transportation System”**

July 12, 2016

Introduction

Chairman Fischer, Ranking Member Booker, and Members of the Subcommittee, thank you for holding this important hearing and for inviting the Commercial Vehicle Safety Alliance (CVSA) to discuss the Fixing America's Surface Transportation (FAST) Act.

My name is Major Jay Thompson, with the Arkansas Highway Police, and I am testifying today in my role as the president of 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 13,000 men and women responsible for the administration and enforcement of commercial motor carrier safety laws 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 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 is the FAST Act and our nation's economy and transportation system. My testimony will cover CVSA's perspective on implementation of the FAST Act to date, as well as future challenges.

The federal government entrusts the states with the responsibility of enforcing the Federal Motor Carrier Safety Regulations (FMCSRs) and the Hazardous Materials Regulations (HMRs). States receive funding through the Motor Carrier Safety Assistance Program (MCSAP) to help support those efforts. The states use MCSAP funds to conduct enforcement activities, train enforcement personnel, purchase necessary equipment, update software and other technology, and conduct outreach and education campaigns to raise awareness related to CMV safety issues. The funds are used, in part, to pay the salaries of 13,437 full- and part-time CMV safety professionals. These people conducted 3.4 million CMV roadside inspections, 31,951 new entrant safety audits and 15,417 reviews in 2014.¹ The goal of these programs, which are administered by the Federal Motor Carrier Safety Administration (FMCSA), is to reduce CMV-involved crashes, fatalities and injuries through consistent, uniform and effective CMV safety programs. The programs seek to identify vehicle safety defects, driver deficiencies and unsafe motor carrier practices, and remove dangerous vehicles and drivers from the nation's roadways.

The good news is the program works. 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 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. And, of course, effective enforcement of the FMCSRs and HMRs helps save lives every day, keeping dangerous vehicles and unqualified drivers off the nation's roads.

In 2001, the number of registered large trucks and buses was just over 8.6 million. Since then, that number has grown 35 percent, to 11.6 million in 2010. Despite this increase, the number of fatalities due to crashes involving large trucks and buses has gone down 27 percent. The number of CMV crash-related injuries also decreased over

¹ "2015 Pocket guide to Large Truck and Bus Statistics." Federal Motor Carrier Safety Administration. April 2015.
<http://www.fmcsa.dot.gov/safety/data-and-statistics/commercial-motor-vehicle-facts>

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that time frame by 30 percent.² These improvements in CMV safety were achieved, in large part, through investments made by the states and the federal government.

While the program is effective, there are a number of challenges the states are dealing with that diminish the effectiveness of the program. The FAST Act, however, included a number of requirements that, once completed, will improve motor carrier safety and CVSA looks forward to working with Congress, DOT, industry and other stakeholders on implementation.

Implementation of the FAST Act

Motor Carrier Safety Assistance Program Consolidation

A major provision within Title V of the FAST Act is the consolidation and reorganization of the Motor Carrier Safety Assistance Program. The bill completely rewrites Sections 31102, 31103, 31104 and 31313 of Title 49 of U.S. Code (USC), which are the sections dealing with MCSAP, making a number of organizational and programmatic changes. The goal of the consolidation and reorganization is 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 are effective beginning in fiscal year 2017, will provide states with additional flexibility in how they spend their MCSAP grant funds, streamline the grant application process, eliminate redundancies between overlapping programs, and reduce 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.

Implementing these changes is going to be a long and involved undertaking. FMCSA has already begun making the necessary changes in preparation for fiscal year 2017, notifying the states of the new configuration and program requirements at the 2016 MCSAP Planning Meeting in March. Because the changes are so significant and impact every facet of the program, it is imperative that CVSA, the state jurisdictions and FMCSA work together to identify potential issues as they arise and identify the best working solution for all parties. CVSA looks forward to continuing our ongoing dialogue with the agency and will report back to the Committee as implementation progresses.

MCSAP Formula Working Group

In addition to the major changes to the MCSAP structure, the FAST Act included a requirement that FMCSA convene a group to evaluate the current MCSAP allocation formula. The group is tasked with recommending a new formula that will better allocate MCSAP funds to where they are most needed.

² "Large Truck and Bus Crash Facts 2010: Final Version," FMCSA-RRA-12-023. Federal Motor Carrier Safety Administration. August 2012. <http://www.fmcsa.dot.gov/facts-research/LTBCF2010/LargeTruckandBusCrashFacts2010.aspx#chap1>

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Members for the MCSAP Grants Working Group were selected in March and the agency has since held two meetings, with a third in-person meeting scheduled for August. The Working Group's goal is to finalize recommendations for the Secretary by the end of the year, in an effort to meet the deadline set by Congress in the FAST Act. Once the Secretary has reviewed the recommendations, the new proposed formula must also be published in the "Federal Register" for public comment.

Petition Reform

Section 5204 of the bill makes changes to the petitions process at FMCSA. The section requires the agency to publish petitions received publically, as well as set up a process for responding to and prioritizing those petitions. This provision 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.

FMCSA quickly responded 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.

Guidance Reform

FMCSA has also initiated work addressing the requirements in Section 5203, which directs the agency to reform its regulatory guidance process. At times, the agency issues guidance documents 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. As a result, a disconnect has developed between written regulation, regulatory guidance and interpretations. To help address these inconsistencies, the FAST Act requires FMCSA to conduct a regular review of active guidance documents and routinely incorporate appropriate guidance into the regulations in a timely manner.

In June, FMCSA held a meeting of the Motor Carrier Safety Assistance Committee 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 Federal Motor Carrier Safety Regulations 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.

Inspector Certification

Currently, FMCSA develops a set of roadside inspector certification standards that conflict with CVSA's standards. This creates an issue for inspectors who now have two separate, but similar standards they have to try to meet. To address this issue, Section 5205 directs FMCSA to adopt by reference inspector certification standards set by

CVSA, which will help eliminate redundant work being conducted by FMCSA and eliminate 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.

Beyond Compliance

Section 5222 of the bill calls for the creation of a Beyond Compliance Program, which would provide carriers with recognition for investments in safety technology, implementation of safety programs and other standards set by the Secretary that are deemed improvements to safety.

FMCSA has already begun work on this requirement. Earlier this year, the agency issued a proposed Beyond Compliance framework and has held several listening sessions to receive stakeholder input. CVSA looks forward to reviewing the agency's final recommendation, once complete.

FAST Act Studies

The FAST Act included a number of studies and reports of interest to CVSA, including issues like school bus safety; information technology and data quality; Compliance, Safety, Accountability (CSA); the New Entrant Safety Audit Program; and motorcoach safety.

Work has already begun on a number of the studies and is being conducted by a number of entities, including FMCSA, the Government Accountability Office and the Office of the Inspector General.

Hardcoding and Smart Logic

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 hard coding 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. CVSA looks forward to working with the agency to implement this provision as quickly as possible.

Looking Ahead to Future Challenges

While the FAST Act includes many provisions that will have a direct impact on improving CMV safety and enforcement, there is still more work to do.

Statutory Prohibition

One provision included in the FAST Act that CVSA has concerns with is Section 5302 – Statutory Rulemakings – which requires FMCSA to prioritize completion of rules required by legislation, such as the Entry-Level Driver Training Rule, prior to initiating other rulemakings. While CVSA understands the need to complete outstanding rulemakings, it is possible that this section may inadvertently prevent the agency from completing work on other

important, but less high-profile issues. Often CVSA and other industry stakeholders petition the agency to make small, technical changes to the regulations, either to update them to better reflect the state of the industry or to correct discrepancies or unclear language. Section 5302 could be interpreted to prohibit the agency from completing other smaller, more technical and noncontroversial rules that would have a direct impact on improving the clarity and enforceability of the FMCSRs. Rules mandated by statute are often very large issues that can be controversial and, therefore, time consuming. CVSA encourages the Committee to consider clarifying that FMCSA can and should continue to respond to stakeholder petitions in a timely manner, while also addressing the larger scale initiatives.

Exemptions

CVSA is generally opposed to the inclusion of exemptions in legislation. We recognize that there may be instances when exemptions could be appropriate and not compromise safety; however, overall, CVSA believes that exemptions have the potential to undermine safety, while also complicating the enforcement process. Every new exemption is an opportunity for confusion and inconsistency in enforcement, diverting scarce resources from other activities and undermining the program's effectiveness. The FAST Act contained a number of legislative exemptions. While CVSA has no specific opposition to many of the exemptions on an individual basis, complications have already surfaced regarding the implementation of the exemptions.

First, there is an issue 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 on the state level. The states cannot enforce federal laws and regulations, and instead adopt federal policy into their own state law and code. Some states adopt federal rules by reference, allowing them to automatically adopt and reflect federal changes. However, many states do not adopt by reference and must go through either a legislative or regulatory process to make the federal changes effective at the state level. This process takes time, especially in states where the legislature does not meet every year.

Even in states where adoption is automatic, there is still a delay in the practical implementation of an exemption. First, 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 this year, which left industry and enforcement wondering how the exemptions would work in the meantime.

Finally, once the exemption has been analyzed and guidance has been provided, state enforcement personnel must be trained on the new exemptions. Inspectors have to be pulled off the road 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 the federal agencies enough time to provide any necessary guidance on the exemption and the states enough time to adopt the changes and train inspectors. 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 enforcement of the regulations.

Motorcoach Safety

One issue that was not addressed in the FAST Act pertains to motorcoach safety. With any given trip, the carrier and, more importantly, the driver are responsible for the safe delivery of the vehicle's cargo, which in the case of a passenger-carrying CMV can be as many as 80 passengers. The state agencies responsible for overseeing the passenger-carrying industry need to have at their disposal as many effective tools as possible. Passenger-vehicle certified inspectors are specially trained commercial vehicle enforcement personnel equipped to inspect both the vehicle and the driver, while also taking responsibility for the safety of passengers. However, passenger-vehicle certified inspectors are presently restricted on when and where they can examine a passenger-carrying CMV. Currently, inspections can only be conducted at a scheduled, planned stop and en route stops are prohibited. This restriction allows those seeking to avoid scrutiny and circumvent safety requirements to plan around inspections. Furthermore, because of current restrictions, there is an entire segment of the industry, known as "curbside carriers," that is largely out of the reach of inspectors.

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. However, it is important that the enforcement community be able to reach the entire industry to ensure motor carriers are operating in compliance with the federal requirements set by Congress. CVSA is looking forward to working with Congress and our industry partners to identify a solution to this issue.

Funding

Finally, the FAST Act included an increase in funding for MCSAP, which will help the states better meet the growing demand of the program and industry. However, given the focus of this hearing, "The FAST Act, the Economy, and Our Nation's Transportation System," it is necessary to say a word about the need for adequate, reliable funding. According to FMCSA, the agency regulates 532,024 motor carriers, 5.7 million commercial drivers and 11.5 million commercial motor vehicles.³ 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. However, MCSAP will only continue to be successful if

³ "2015 Pocket guide to Large Truck and Bus Statistics." Federal Motor Carrier Safety Administration. April 2015.
<http://www.fmcsa.dot.gov/safety/data-and-statistics/commercial-motor-vehicle-facts>

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it is adequately funded. New and expanded responsibilities mean improvements in safety, but only to the extent the states have the resources to effectively implement those policies. It is critical that Congress and FMCSA ensure that, as new programs are created and new responsibilities are assigned, funding is provided to the states, avoiding any unfunded mandates. Otherwise, funds are spread thinly across programs, reducing effectiveness across the board.

We recognize the issue of funding for the federal transportation program is a complicated one, with no easy solutions. 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. Failure to identify a long-term funding solution could result in a reduction in MCSAP funding in the future. When states see a reduction in their MCSAP funding, jobs are lost, programs are reduced, and fewer inspections, compliance reviews and safety audits are conducted, reducing the safety benefit of previously mentioned activities and undermining years of improvement in CMV safety.

Conclusion

The motor carrier portion of the FAST Act included a number of provisions that will improve motor carrier safety. Increased funding means states can improve their programs and reach more in industry. Changes to MCSAP will cut out unnecessary administrative burdens and help focus funds where they will be most effective. Changes to the regulatory process will help streamline the regulations, providing additional clarity and transparency. Improvement to data quality and information technology systems will ensure states and FMCSA have the information they need to continue to improve the effectiveness of MCSAP.

However, we still have work to do. A long-term funding mechanism must be identified to ensure MCSAP continues to grow with the industry. Enforcement and industry must come together to identify a responsible, practical approach to exemptions and we must address deficiencies related to passenger carrier enforcement in order to keep our roadways safe for the people traveling on them. CVSA commends the Committee and staff for their work on the FAST Act and we look forward to continuing to work on CMV safety issues moving forward.