



Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

**STATEMENT OF
CAPTAIN STEVE DOWLING
PRESIDENT
COMMERCIAL VEHICLE SAFETY ALLIANCE**

**BEFORE THE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT**

**"IMPROVING AND REFORMING THE NATION'S SURFACE TRANSPORTATION
PROGRAMS"**

MOTOR CARRIER SAFETY PROGRAMS

MARCH 29, 2011

House T&I Committee: CVSA Written Testimony Filed With the Subcommittee on Highways and Transit

Chairman Duncan, Ranking Member Rahall, and Members of the Subcommittee, thank you for holding this hearing as well as the many listening sessions throughout the country the last two months. We commend you and all of the committee members for the work you are doing in your effort to write a new surface transportation reauthorization bill.

I am Captain Steve Dowling from the California Highway Patrol. I am testifying here today in my role as President of the Commercial Vehicle Safety Alliance (CVSA). CVSA is an organization of state, provincial and federal officials responsible for the administration and enforcement of commercial motor carrier safety laws in the United States, Canada and Mexico. We work to improve commercial vehicle safety and security on the highways by bringing federal, state, provincial and local truck and bus regulatory, safety and enforcement agencies together with industry representatives to solve problems and save lives. Every state in the United States, all Canadian provinces, the country of Mexico, and all U.S. Territories and Possessions are CVSA members.

I will address six major issues in my testimony:

- 1) Flexibility and Streamlining of Motor Carrier Safety Grant Programs
- 2) Bus Safety
- 3) Carrier Exemptions From Motor Carrier Safety Regulations
- 4) Truck Size and Weight
- 5) Motor Carrier Safety Technologies
- 6) Carrier Registration, Credentialing and Data Integrity

1. Flexibility and Streamlining of Motor Carrier Safety Grant Programs

The core commercial vehicle, driver and motor carrier state safety grant program, the Motor Carrier Safety Assistance Program (MCSAP) was created in the 1982 surface transportation authorization bill and funded from the Highway Trust Fund. At that time it was administered by the Office of Motor Carriers (OMC) within the Federal Highway Administration (FHWA) until 2000 when a separate new modal agency, the Federal Motor Carrier Safety Administration (FMCSA) was created. Thus, for the eighteen years it was administered by the OMC, the program criteria and formulas, funding matches, and Maintenance of Effort (MOE) requirements naturally reflected those of the federal aid highway program. Motor carrier safety enforcement--- its approach, its programs, and its federal-state partnership have evolved in decidedly different ways since 1982. Vestiges of a rigid, categorical grant approach still remain in how the funding is made available and administered to the states. Our recommendations to make the safety grant programs more flexible and to streamline the

House T&I Committee: CVSA Written Testimony Filed With the Subcommittee on Highways and Transit

administrative and delivery processes represent an effort to reflect the reality of today rather than nearly 30 years ago.

At the same time, let me also say that we are keenly aware that FMCSA and its grant programs are still funded out of the Highway Trust Fund, as they should remain, and thus will continue to require fiscally sound stewardship and a truly performance based, results oriented outcomes. As state partners with the FMCSA we are committed to doing this.

Today, there are ten separate state motor carrier safety grant programs administered by the FMCSA. The core grant program, the Motor Carrier Safety Assistance Program, has five separate takedowns:

Basic MCSAP

- **Incentive**
- **High-Priority**
- **New Entrant**
- **Training and Administration**
- **5% cap on expenditures for Traffic Enforcement against cars driving aggressively in the vicinity of trucks**

Other state safety grant programs:

- **Commercial Driver's License (CDL)**
- **Border**
- **PRISM**
- **Commercial Vehicle Information Systems Networks**
- **Safety Data Improvement**
- **Commercial Driver's License Information System (CDLIS) Modernization**

We believe that each of these programs contributes to the mission of reducing truck and bus fatalities and crashes. We also believe there is a better way to align these program grants and, more importantly, to allow the states more flexibility in allocating the grant money to achieve the desired results.

As one of our state enforcement agency members describes it, "In our (large city) metro area, 87% of our crashes are caused by drivers following too closely, speeding, and unsafe lane changes by both the car and the truck or bus. In rural (areas of the state), the crash picture is heavily influenced by fatigued driving. If we had the flexibility, we would address these problems within the (basic MCSAP) grant and focus the necessary resources on the problem." This member also tells us that the 5% cap on expenditures

House T&I Committee: CVSA Written Testimony Filed With the Subcommittee on Highways and Transit

for Traffic Enforcement on non-CMV's operating unsafely around commercial vehicles is too restrictive for their state enforcement program. However, there may be other states that do not reach or need the 5% cap. Ideally, there should be no limit, but at the very least, this percentage allowance should be increased to be used at the state's discretion. Approximately 75 percent of all large truck fatalities are multi-vehicle crashes between cars and large trucks, and flexibility in the use of funds is critical to target problems.

The new entrant program is also another example of where changes could enhance the program, as well as the basic MCSAP. Currently, there is a \$29 million new entrant takedown under MCSAP. This is the total amount available for the program for all of the states which, when divided up has in some cases been inadequate for many of them. As with the Traffic Enforcement program, the states should be able to allocate as little or as much as it needs to meet its safety goals. We recommend that the new entrant program should be self-sustaining by charging every new entrant a fee to cover costs for vetting the carrier, outreach, training, equipment, and to conduct their initial safety audit to make sure they are fit to operate. By taking the pay-go approach, this would free up the \$29 million takedown to be channeled back into the basic MCSAP program to be used for enhancing truck and bus safety and enforcement efforts and to assist in implementing various rulemakings such as the Electronic Onboard Recorder rule.

FMCSA, in the President's FY 2012 Budget Proposal, has recently released a draft of their proposed outline to "rearrange" the safety grant programs under three new umbrella grant programs:

Compliance, Safety and Accountability Grants (CSA)

- **MCSAP**
- **New Entrant**
- **High Priority**
- **Border**
- **Administrative and Training Takedown**

Driver Safety Grants

- **CDL**
- **Driver Training**
- **Administrative and Training Takedown**

Data and IT Grants

- **Performance and Registration Information Systems Management (PRISM)**
- **Commercial Vehicle Information Systems Networks (CVISN)**
- **Administrative and Training Takedown**

House T&I Committee: CVSA Written Testimony Filed With the Subcommittee on Highways and Transit

We support the designation of the three new umbrella grants. We particularly like the idea of the new CSA umbrella grant which reflects a major new initiative at FMCSA that we support. It will allow us to collect better data and do more targeted enforcement against motor carriers that have serious safety issues. As with any new enforcement initiative, it results in added enforcement costs to carry out in the form of training, IT programs and Data Quality activities, equipment, and increased personnel. In particular, CSA has greatly increased the data challenges that must be adjudicated by the states, and increased funding will help the states in managing this issue. Therefore, when this Committee looks at the level of funding for CSA that includes the core MCSAP program, we hope you will take this into consideration.

We would recommend that under the CSA umbrella that the new entrant and border grant programs be rolled into MCSAP with flexible allocations for the states. We also recommend that the new entrant and border programs to the extent that the states need to use them, be funded at 100% as they have been under SAFETEA-LU. We would also suggest that the amount for the Administrative and Training takedowns be re-examined in light of increasing costs to carry out the activities of the program.

It appears that FMCSA would propose to fund the CDL program at 80/20. We would suggest that a 50/50 match would be more appropriate. Most of this funding likely will be directed to the state licensing agencies that administer the CDL program, and a significant portion of their revenue comes from licensing, registration and associated fees. Enforcement agencies have no such source of revenue.

With respect to the Maintenance of Effort requirement for MCSAP, as I mentioned earlier, while we understand its purpose, the current formula still basically reflects conditions and circumstances that were of concern to FHWA in 1982, and may still be, with respect to the federal-aid highway program. However on the motor carrier safety side, the MOE formula provided for in SAFETEA-LU operates as a disincentive to the states to expand existing programs and create new and innovative approaches to motor carrier safety. In recent years, with the passage of each new reauthorization bill and authorization of new funds for motor carrier safety, the time period for which the MOE formula is based continues to be moved forward and has become a significant burden and in some cases a punitive measure on the states. Despite more overall federal funding provided in each reauthorization bill, the states can't ever get ahead because their MOE keeps going up and is increasing at a level that is outpacing the federal funds.

Therefore, we recommend that the MOE formula be tied to a stationary period, specifically, the 3 fiscal years preceding the date of enactment of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). The MOE would also be indexed for inflation. MCSIA created FMCSA and provided a significant increase in safety grant funding. In addition we recommend that the Secretary of Transportation undertake a

House T&I Committee: CVSA Written Testimony Filed With the Subcommittee on Highways and Transit

study to analyze the effects of MOE over the years the MCSAP has been in effect and to look at the feasibility of measuring MOE in a performance-based context, with the ultimate goal of establishing a formula that works for the states in today's environment.

Again, we understand the need for MOE and support measures to make sure the state is contributing their fair share to motor carrier safety. Most states contribute significantly more to commercial vehicle safety than the federal funds that they receive, and in some states, it is more like 20/80 (fed/state) than 80/20. MOE is a significant problem that must be changed. We believe there is a better way to do it than what is in place today.

2. Bus Safety

The number of high-profile bus crashes have occurred in the last several years, and especially the terrible crash in New York City a few weeks ago, raise a number of safety issues that need to be addressed. The Secretary's Motorcoach Safety Action plan has a number of good initiatives in it and the modal agencies are making reasonable progress on some fronts, but more needs to be done. CVSA agrees with the need to conduct a safety audit and compliance review of all interstate passenger carriers and the ongoing requirement of annual safety inspections of inter-city passenger carriers. Each state should also have a roadside bus inspection program that is appropriate for the needs in their state. Such efforts are resource intensive and call for increased funding for the MCSAP program and for FMCSA.

While on the subject of bus safety, I want to suggest a very specific step that would immediately help the states enhance passenger carrier safety. It is to remove the current restriction in SAFETEA-LU prohibiting roadside bus inspections except in the case of an imminent or obvious safety hazard. Most of the inspections done now are planned and are done at points of origination and destination. While these inspections are important elements in a states' overall bus safety program, states need the ability to randomly inspect buses just as they do with trucks. Bus inspections are able to be done at a fixed site or other locations that are a safe distance away from highway traffic and with facilities for passengers if necessary. Had the bus that was traveling from the Connecticut casino back to New York City been required to enter a Connecticut inspection station, the accident might not have happened and 15 lives might have been saved. More must also be done on curbside and "low-budget" operators. These types of operations have seen tremendous growth in recent years and rarely are exposed to any type of enforcement oversight.

On crashworthiness and passenger protection issues, CVSA does not profess to speak with expertise. However, we do believe that if technologies are proven, no further studies are needed. CVSA supports the mandatory use of seatbelts on buses.

House T&I Committee: CVSA Written Testimony Filed With the Subcommittee on Highways and Transit

Finally, unlike trucks, inter-city passenger carriers have been exempt from any hours-of-service changes that have occurred in recent years. Based on the fact that driver fatigue seems to have been a contributing factor in a number of recent bus crashes, FMCSA should study whether the current hours of service rule for bus drivers are adequate, and if warranted, to propose changes necessary to accommodate new and changing patterns of inter-city bus travel.

3. Exemptions from Motor Carrier Safety Regulations

Exemptions from motor carrier safety regulations, such as hours-of-service, at both federal and state levels, are eroding uniformity of enforcement and are negatively impacting safety. They take more time for inspector to validate at roadside and increase enforcement costs.

In particular, utility and agricultural interests sought and received special hours of service statutory exemptions in SAFETEA-LU rather than following the regulatory and application process as outlined in Section 31315 of Title 49 of the U.S. Code. This section, among other things, requires that the exemption provide a level of safety greater than, or at least equal to the level of safety without the exemption.

These exemptions, along with others, need to be repealed and the industry groups should reapply for the exemptions through the process outlined in Section 31315 that is evaluated and monitored by the appropriate regulatory agency which in this case is FMCSA. We recommend that the process be amended to include proper monitoring and tracking of the drivers, vehicles, and carriers operating with such an exemption. Such monitoring and tracking should include permitting and/or a credentialing requirement to ease the burden on enforcement. Picking up on the theme of this afternoon's hearing, the exemption process must be streamlined and made more efficient AND effective at maintaining safety and uniformity.

A study conducted for FMCSA by the Volpe National Transportation Systems Center for the years 2005 (the year the SAFETEA-LU exemptions went in effect) through 2008 shows an increase in crashes for the utility industry (57%) that received a total hours-of-service exemption. The crash data during this same period for agricultural carriers receiving an hours-of-service exemption for operations within 100 air miles of their place of business was a little more mixed, but did show a 2008 increase in crashes. However the out-of-services rate for agricultural carriers exempted during this period were higher than carriers operating outside of the exemption and reflected poorer performance in the areas of driver performance and fitness, vehicle maintenance and cargo loading and securement. In both of these cases an equivalent level of safety was not maintained as prescribed in Section 31315, yet FMCSA and the states have no authority to take action on this as the exemptions are statutory.

House T&I Committee: CVSA Written Testimony Filed With the Subcommittee on Highways and Transit

Hours-of-service exemptions in some cases may call for a modified and different solution. Consideration could be given to requiring certain exempted carriers to adopt a fatigue management program much along the lines of the recently issued requirement of the FAA for air carriers. While this is not our preferred option, this approach would have at least some level of oversight and management of driver fatigue. Today there is none.

4. Truck Size and Weight

A comprehensive study and analysis of the United States' truck size and weight regulatory, policy and permitting framework to include an updated analysis of the federal-aid highway bridge formula is long overdue. We know of this Committee's interest in improving truck productivity. When CVSA looks at this issue, the link between truck size and weight and safety is in the forefront of our minds. Thus far, motor carrier, driver and vehicle safety data has been a missing element in this dialogue. Strong safety criteria for drivers, vehicles, and carriers that would potentially use increased size and weight allowances along with a safety monitoring, tracking and data collection must be put in place first and tested before consideration is given to changing current federal size and weight standards. A key component of looking at any increases is to conduct proper evaluation and performance testing of various vehicle configurations to ensure that safety in the operating environment they will be in can be preserved, as well as the impacts to the bridge and highway infrastructure.

We are familiar with the recommendations of various groups that are working to change current policy. We recommend pilot be considered before any change in national policy. Some groups are recommending a policy that would give states the option to use new productivity laws in making their own determinations on this issue, but without strong federal involvement and oversight such a policy in our view will not work. Our concern here is that this could result in greater proliferation of differing state regulations, place an added burden on enforcement and will compromise safety.

5. Motor Carrier Safety Technologies

CVSA believes that incentives should be provided to motor carriers to invest in proven safety technologies such as collision avoidance, lane departure warning, stability control, and brake stroke monitoring systems. These technologies have been shown to work and can save lives and reduce injuries. We agree with the approach recommended by former National Transportation Safety Board Chairman, Mark Rosenker, that tax incentives be used to help minimize the upfront capital investment for carriers to invest in these technologies. Using this approach can have an immediate impact as carriers could take advantage of this right away, the day the bill is signed. Mandates take years to finalize and implement.

House T&I Committee: CVSA Written Testimony Filed With the Subcommittee on Highways and Transit

We support a universal mandate of Electronic-On-Board Recorders (EOBRs). Despite the pending rulemakings at FMCSA on this issue, we believe legislation is still needed to ensure certain uniform design and performance standards are addressed that are not in the current rules so that both enforcement and industry can take full advantage of this technology to ensure hours-of-service compliance and driver safety. I would also like to say at this point CVSA believes that EOBR technology should be fully implemented before consideration being given to making any changes to the current hours-of-service rules. EOBR implementation also will require enforcement to expend more resources and we ask the committee for your consideration in this regard.

6. Carrier Registration, Credentialing and Data Integrity

Current enforcement strategies and techniques are more data-driven than they ever have been before. Data is the foundation on which CSA is built. A critical component to ensuring that the proper entities are being targeted for interventions is to have an accurate and up-to-date census, with accurate demographic data on the regulated population. Additionally, there is a significant problem occurring with “chameleon carriers”, where certain carriers are exploiting loopholes in the system to recreate themselves to avoid enforcement.

There are several strategies that would help in this regard. The first being the establishment of a single point or “portal” for registration to help facilitate several required credentials. By having a single location to collect required data, it would help streamline the process for carrier, broker and freight forwarder credentials and create uniformity and currency in how the data is collected and maintained. Such a portal should include the following credentials:

- UCR registration
- MCS-150 form to obtain a U.S. DOT number
- Carrier, broker and freight forwarder registration as required
- Hazardous Materials Safety Permit
- IFTA and IRP registration
- Proof of Licensing and Financial Responsibility

In addition, FMCSA must be provided the appropriate authorities to deny, suspend, or revoke credentials. A key element in the policing of such a system will be providing resources for FMCSA to properly vet registrants to identify fraud. The vetting process FMCSA has implemented on passenger carrying and household goods operators has proved to be successful and needs to be expanded to ALL entities under their control. An administrative fee is suggested to help conduct the vetting as well as to build, use, staff and maintain the portal system.

**House T&I Committee: CVSA Written Testimony Filed With the Subcommittee on
Highways and Transit**

In closing, we believe FMCSA and the states are making progress in moving towards zero deaths on our highways. Through targeted investments we can improve upon our successes and provide the necessary tools for enhancing enforcement's ability to remove the unsafe operators from the road. We appreciate the opportunity to speak with you on some of the significant opportunities we see for advancing commercial vehicle safety in the United States.

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
Truth in Testimony Disclosure

Pursuant to clause 2(g)(5) of House Rule XI, in the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include: (1) a curriculum vitae; and (2) a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redaction to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(1) Name: Capt. Steve Dowling

(2) Other than yourself, name of entity you are representing:

Commercial Vehicle Safety Alliance

(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?

YES

If yes, please provide the information requested below and attach your curriculum vitae.

NO

(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing:

Attached.

Signature

Steve Keppler

Date

3.25.11

**Federal Grants and Contracts Received for the
Fiscal Year Ended September 30, 2010**

| <u>Agency</u> | <u>Program Name</u> | <u>Amount</u> |
|------------------------------|--|---------------|
| Department of Energy | Level VI Inspection and Industry Awareness | \$247,500.00 |
| Department of Transportation | Operation Air Brake | \$73,778.76 |
| Department of Transportation | Operation Safe Driver | \$83,945.51 |
| Department of Transportation | Operation Safe Driver | \$10,713.65 |
| Department of Transportation | PBBT Activities | \$83,009.64 |
| Department of Transportation | Violation Documentation | \$36,571.62 |
| Department of Transportation | Guardian | \$13,676.11 |
| Department of Transportation | NAIC Pittsburg/Guardian | \$276,494.73 |
| Department of Transportation | Operation Safe Driver | \$7,448.00 |
| Department of Transportation | PBBT | \$12,420.92 |

Captain Steve Dowling, Commander of the California Highway Patrol's Commercial Vehicle Section, is the current President of the Commercial Vehicle Safety Alliance. He has 21 years law enforcement experience, 12 of which have been in commercial vehicle enforcement. His responsibilities include oversight of statewide policy and procedures for the management of the commercial enforcement, hazardous materials and commercial and passenger vehicle related training within the state of California. Additionally, he completed a one year assignment under the Interagency Personnel Agreement program with FMCSA's State Programs unit. This unit is responsible for oversight of the MCSAP grant applications throughout the United States and has provide him with a unique insight into both the state and federal perspective of improving highway safety through the cooperative efforts of federal and state resources. Mr. Dowling holds a Bachelor of Science in General Studies and a Master of Arts in Organizational Management.