



Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

**STATEMENT OF
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**BEFORE THE
HIGHWAYS AND TRANSIT SUBCOMMITTEE
OF THE
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
ON
“EVALUATING THE EFFECTIVENESS OF
DOT’S TRUCK AND BUS SAFETY PROGRAM”**

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Mr. Chairman, Members of the Subcommittee, thank you for holding this important hearing and for inviting the Commercial Vehicle Safety Alliance (CVSA) to testify today.

I am Assistant Chief David Palmer, with the Texas Department of Public Safety and I am testifying here today in my role as the President of CVSA. CVSA is an international organization representing 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 and territories, the country of Mexico, and all U.S. territories and possessions are CVSA members.

This testimony will focus on the performance of the Compliance, Safety, Accountability (CSA) program to date and areas of the program that could be enhanced, including:

1. Data Collection & Uniformity
2. Data Measurement
3. Safety Evaluation
4. Intervention Process
5. Outreach
6. Purpose and Use of CSA

Before addressing possible improvements to the program, it's important to note that, from the enforcement community's point of view, CSA is working. When the program was rolled out in 2010, the Federal Motor Carrier Safety Administration (FMCSA) hoped that the new model would allow for contact with more carriers and drivers, through an improved system to evaluate data, more effectively target carriers that pose a higher safety risk with respect to non-compliance and crashes, and provide enforcement with a better range of intervention tools to address problematic behavior in a more proactive manner, all while making more efficient use of agency resources. It is our opinion that the program is performing reasonably well on all accounts.

I'd also like to commend FMCSA for the openness and transparency with which they have approached the deployment and refinement of the CSA program. Officials at FMCSA have made it clear that they are willing and eager to listen to concerns expressed by all interested parties. During the development and testing phase of CSA, FMCSA worked closely with its state partners to build and test the program. More recently, we were especially pleased to see the Administrator announce the formation of a CSA subcommittee as part of the Motor Carrier Safety Advisory Committee. We believe the subcommittee will provide another vehicle for useful, thoughtful discussion regarding possible improvements and adjustments to the CSA program.

According to the 2011 “Evaluation of the CSA 2010 Operational Model Test,” conducted by the University of Michigan Transportation Research Institute (UMTRI), the new Safety Measurement System (SMS) is a “significant improvement” over the previous system, SafeStat. A recent survey of the enforcement community, conducted by the American Transportation Research Institute (ATRI) and CVSA, indicates that 70 percent of officers surveyed believe that the Inspection Selection System (ISS), which is used to guide enforcement in making decisions on which vehicles to inspect, is becoming “increasingly effective” in targeting carriers as a result of the new approach. This means state agencies are making better use of their limited commercial motor vehicle (CMV) enforcement resources.

Further, the CSA program allows FMCSA to ‘touch’ a greater percentage of carriers; and those interactions are of a higher quality. The new intervention model provides enforcement with a wider range of tools and greater flexibility to specifically address a carrier’s problem areas – a vast improvement over the previous ‘one-size-fits-all’ intervention approach. In fact, according to the ATRI survey results, 100 percent of inspectors surveyed believe that the program is performing as well as or better than they expected.

As Congress works with FMCSA to continue to improve the CSA program, we offer some thoughts for consideration. This testimony has been structured to mirror the current CSA model – Data Collection, Data Management, Safety Evaluation, and Intervention. Our suggestions are therefore not presented in any particular order of priority.

1. Data Collection & Uniformity

Accurate, timely, and complete data are the foundation of the CSA program. Compliance and safety performance data are collected, applied to the seven performance categories, known as Behavior Analysis and Safety Improvement Categories (BASICs), then analyzed and used principally to determine where the motor carrier enforcement community should focus its limited resources to best improve commercial vehicle safety. Therefore compliance and safety performance data is critically important, because it serves as the foundation of the entire program. Unless and until FMCSA addresses the issues outlined in this section, the efficacy of improvements and changes to other parts of the system, in our view, will not be fully realized. Most importantly, the data being entered and maintained in the system must be accurate for CSA’s SMS to produce accurate scores and to be fully effective.

DataQs

One area of improvement for enforcement and industry alike is the DataQs system – the process by which a motor carrier can challenge a violation they believe is inaccurate, requires further clarifying information, or is mistakenly assigned to them. Carriers submit a Request for Data Review (RDR)

through the DataQs system to FMCSA, who then assigns it to the appropriate state or local agency for review. The challenge and any supporting documents are then reviewed and a determination is made regarding the disposition of the challenge or the violation(s). Inaccurate or inappropriate data or violations are then removed from the carrier's record.

When this process works effectively, everyone benefits. Carriers are not penalized for inaccurate violations or inappropriate data. Inspectors can be confident that the information they are using is leading them to the highest-risk carriers on the roads, helping them meet their goals of increasing safety and preventing motor vehicle crashes.

While some in industry may argue that the CSA model lacks due process, statistics from the DataQs process shows this is not the case. According to FMCSA, in 2011, there were approximately 3.6 million inspections conducted. From those inspections, FMCSA received approximately 34,000 RDRs. This translated to RDRs representing less than 1 percent of the inspection records in 2011 – over 99 percent of violations were not challenged by motor carriers. Of the RDRs filed, changes were made to approximately 63 percent of them. This demonstrates that carriers challenge inspection data less than 1 percent of the time and, when RDRs are filed, the requests are being reviewed and corrective action is taken when appropriate. The system is working. However, we believe there is some room for improvement.

In order to improve the process, we feel Congress and FMCSA should consider providing more resources and training to the states, which will assist in providing for a more uniform and equitable system. FMCSA has provided the states with a guidance document on managing the DataQs process. However, each state is able to establish their own approach. Some states have put in place comprehensive, tiered review processes that ensure that RDRs are being reviewed as objectively and fairly as possible, while other states have less developed systems. In order to further encourage uniformity and effective best practices, FMCSA should provide the states with more feedback and evaluation on how the system is working from a national perspective, as well as additional training based upon this evaluation.

In addition, FMCSA should better inform industry of how to submit proper RDRs. Often, legitimate RDRs are filed without the necessary supporting documentation. Without the appropriate supporting documentation, the inspecting agency cannot conduct a comprehensive evaluation.

Finally, FMCSA should provide more instruction to the motor carrier industry in terms of what constitutes a legitimate basis for an RDR. Our members have seen examples of motor carriers challenging every violation received, even if they have not provided any basis or explanation for the challenge, hoping perhaps, that those reviewing them will be so overwhelmed by the volume that they'll overturn violations that should not necessarily be removed. This floods the state agency with illegitimate challenges, consuming limited state agency time and resources and hindering the process

for the legitimate challenges in the system. This obstruction can taint the user's view of the system and lead to frustration. To prevent this, FMCSA should provide carriers and drivers with comprehensive, ongoing education about the DataQs process, focusing on when a challenge is appropriate and what information should be included. For our part, CVSA has been working with our members to share best practices in DataQs and RDR adjudication processes.

Data Transfer

Another opportunity for improving the flow of data into the system lies with the transfer of roadside inspection data from the states to FMCSA's Motor Carrier Management Information System (MCMIS). MCMIS is the centralized repository for inspection and other data from the states. MCMIS pulls data on an ongoing basis from the state field enforcement systems, which are used to gather inspection data. For example, an inspector will enter inspection information, including all violations, into whatever field enforcement system is used in that state. Aspen is an example of a field enforcement system used by many states, but there are others. Once the information is entered into the state field enforcement system, that data will be transferred to the MCMIS system, where it is fed into the SMS and used to calculate CSA BASICs scores. However, MCMIS and field enforcement systems, such as Aspen, are not aligned to share data as effectively and accurately as possible. For example, violation codes made available to an inspector roadside in Aspen do not necessarily match those in MCMIS, resulting in unnecessary DataQs. In order to minimize data inaccuracy and error, MCMIS must mirror the field enforcement systems employed by the states.

Additional Data

FMCSA's 2006 Large Truck Crash Causation Study shows that most CMV crashes are caused, at least in part, by driver behavior. Driver behavior violations can range from inattention or speeding to reckless driving, distracted driving or driving under the influence. Safe, healthy drivers are critical to CMV safety and it's important for inspectors and investigators to have all relevant information available to them when assessing a CMV driver and their employing carrier's record. However, currently some driver violation and/or conviction information is not available for inclusion. We see this as an opportunity.

Under the current CSA model, inspection reports, compliance reviews, crashes and other reports generated by CMV inspectors and investigators supply the data that are processed and converted into CSA scores. On the other hand, general traffic law violations and/or convictions (i.e. speeding, illegal lane change, etc.) issued to drivers while operating a CMV that are issued by a non-CMV enforcement officer, or as adjudicated through a court proceeding, are not captured anywhere in a coordinated fashion to potentially be considered by FMCSA as part of CSA or for any other purpose to advance safety. While non-CMV officers are not trained to conduct a North American Standard Inspection, they are certainly qualified to issue violations for traffic offenses. We believe this concept is worth exploring further and would suggest that FMCSA investigate the feasibility and potential benefits and challenges of incorporating this data into the safety assessment process.

2. Data Measurement

The Safety Measurement System (SMS) is the model used to quantify the safety performance of carriers and drivers. This helps enforcement prioritize carriers for interventions and helps identify specific areas where improvement is needed. SMS uses data from roadside inspections, including commercial vehicle inspection violations, results from compliance reviews, state-reported crashes, and the federal motor carrier census to quantify performance into the BASICS. After accurate and timely data collection, accuracy in structuring the SMS is critical to the effectiveness of the CSA program.

CVSA members strongly believe that the new SMS is an improvement over the previous system, SafeStat. The previously mentioned UMTRI evaluation bears this out. The SMS model is, overall, more accurate when it comes to identifying crash risk and provides more flexibility to better target specific safety concerns for a motor carrier, rather than the ‘one-size-fits-all’ approach under the previous program. The SMS approach also allows FMCSA and the states to ‘touch’ a larger portion of the industry. However, as with any program, there is room for improvement.

Safety Measurement System (SMS)

In order to ensure that the SMS algorithm identifies the carriers most likely to present a safety hazard, the point values, weightings, and peer groupings used must be balanced correctly. FMCSA needs to continually evaluate the violation weightings and peer groupings to ensure that the process is balanced, can be substantiated in terms of their linkage to safety, is equitable across the diversity of the industry, and will ultimately help FMCSA meet its goal of improving commercial vehicle safety.

For example, until recently, hours of service (HOS) violations were weighted differently for carriers using electronic logging devices than those using traditional paper records of duty status, or logs. FMCSA recognized that the violation is the same in either case and that the method of retaining data should not impact the weight of the violation in the SMS model. FMCSA adjusted the SMS to account for paper log and electronic logging device HOS violations in the same manner.

Another example deals with peer groupings. As an example, there generally are two types of carriers dealing with hazardous materials (hazmat) loads – those who specialize in hazmat loads as their main course of business and those who, on rare occasions due to the nature of their operation, find themselves responsible for a hazmat load. FMCSA should consider the question of whether or not these types of operations should be peer grouped together.

Regulatory Compliance

When considering the weighting of various violations within the SMS, CVSA members strongly believe that regulatory compliance must be taken into account. Some have suggested that the purpose of CSA is to prevent crashes and therefore the SMS should point directly, and only, to crash risk. We agree

that factors shown to have a high correlation to crash risk are, obviously, very important. However, compliance with regulations is also a critical factor in terms of CMV safety.

For example, some may say that HOS records that do not include items like location changes of duty status or list miles driven are simply 'paperwork' violations, with no tie to regulatory compliance or driver or carrier safety performance. However, to an inspector, these violations are indicators that a driver could be concealing major violations, such as exceeding HOS driving time or on-duty time limits. Another example is that of a driver not having a valid Commercial Driver's License. Not having a valid license in and of itself does not necessarily pose a crash risk, but no one can argue that this noncompliance issue is not a safety risk.

A motor carrier's habit of noncompliance with any safety regulation, whether tied directly to crash risk or not, indicates either a lack of understanding or a disregard for that particular regulation or set of regulations. A carrier that does not understand, or actively chooses to disregard, certain regulations is not one with a strong safety culture. Keeping track of these trends helps inspectors and investigators identify where bad habits may exist and enables corrective action to bring the carrier back into compliance.

Crash Accountability

Another major issue for Congress and FMCSA to consider when looking at the CSA program is the issue of 'crash accountability'. Currently, any and all collisions involving a CMV are entered into the SMS and reflected in the motor carrier's Crash BASIC. That means that if a CMV driver is driving too fast and collides with the vehicle in front of it that collision is reflected on the motor carrier's score. However, other incidents, such as an inattentive non-CMV driver colliding with a parked or slowed CMV would also go on the motor carrier's score, regardless of whether or not the CMV driver was at fault or even in the vehicle at the time.

In order to ensure that the results from the SMS are most closely tied to unsafe drivers and motor carriers, CVSA believes it is critical for FMCSA to address the crash accountability question as quickly and comprehensively as possible. FMCSA, in consultation with the states and industry, should determine the degree to which fault is an indicator of future crash risk and how best to account for fault in the CSA Program. We believe that when fault in a crash involving a CMV can clearly be determined and is not assigned to the CMV driver, that crash should be weighted less in the Crash BASIC than a crash where the CMV driver is found to be at fault. FMCSA also needs to address issues associated with crash data collection and reporting. We understand FMCSA is looking into this issue more closely in the coming year and we look forward to the results of their research.

Alternative Compliance

Finally, CVSA members believe that FMCSA should consider looking more closely into a 'carrot and stick' approach when it comes to CSA. The current model, in our view, does not do all it can to

encourage carriers to develop and sustain a robust safety culture. Clearly, the first order of business is for the carrier to stay in compliance and avoid crashes. Under the CSA model, carriers that remain in compliance and have a robust safety program should not have any significant issues.

The goal needs to be to avoid having violations entered into the system in the first place. Once a violation is recorded, it stays on a carrier's record for two years. This can be problematic for smaller carriers who, because of their size, are less likely to experience a roadside inspection and may not be inspected enough during the CSA data retention period to have a significant impact on their scores. Currently, the only opportunity for a carrier to 'improve' their score is to receive violation-free, or 'clean', inspections and/or time since the violations are all time weighted. While some in the industry will say that there are very few 'clean' inspections entered in the system, this simply is not the case. In 2011 there were approximately 1.1 million 'clean' roadside inspections entered into the federal database, which is roughly 1/3 of the total inspections conducted in the United States that year.

A concept called 'alternative compliance' encourages carriers to strive for excellence in compliance and safety performance. One of the original goals of the CSA program was to encourage compliance and best practices for safety. CVSA believes that providing carriers with the opportunity to improve their scores through a demonstrated safety commitment and performance improvement would benefit the CSA system and overall CMV safety. We believe this concept will provide a more accurate snapshot of a carrier's attitude towards safety and will show demonstrated safety improvements, allowing inspectors to better target their enforcement efforts on those who need it. Further, giving carriers credit for employing best practices and demonstrating a commitment to safety on an ongoing basis is an excellent way to facilitate non-regulatory compliance by industry and promote proven safety solutions.

CVSA is currently working with a group of like-minded organizations to make recommendations on how best to pursue the alternative compliance concept. We would be happy to provide the Committee with additional details.

3. Safety Evaluation

The third step in the CSA process is the Safety Evaluation, which is the process FMCSA uses to determine how to address carriers with poor safety performance.

Scoring

Currently, to help enforcement personnel and agencies target the most egregious safety risks, the CSA program uses a bell curve approach, with all carrier scores being relative to one another. This approach can be useful for enforcement, as it helps shine a light on carriers who require the most attention and helps to improve resource management. However, with this type of approach, scores are not entirely

under a carrier's control. Improvements or deterioration of safety performance by one carrier can have an impact on another carrier's score.

For example, if several carriers receive violation-free roadside inspections, lowering their scores, other carriers, who have not received any additional roadside inspections, or violations, could still see their scores increase due to the relative nature of the SMS. Likewise, a series of bad inspections for one or two carriers could improve another carrier's score, without any improvements internally. Another factor is peer grouping. How a carrier is classified and therefore what group of carriers is used for its score comparison is referred to as the 'peer grouping'. A carrier's score depends, in part, on which peer grouping it is assigned to.

We suggest that FMCSA continue to look at this issue and the performance of carriers under CSA in preparation for its Safety Fitness Determination Rulemaking. Clearly the UMTRI evaluation shows at the macro level that the CSA model is targeting those carriers that are presenting the greatest risk to crashes; however, continual evaluation of the model and its results will assist the agency in determining whether this approach is providing the desired results for the long term.

Safety Fitness Determination

Another issue for consideration is the release of FMCSA's Safety Fitness Determination (SFD) Notice of Proposed Rulemaking (NPRM), expected early next year. As FMCSA prepares to issue the NPRM, CVSA recommends that the agency consider whether or not all violations should factor into a carrier's SFD, as well as the weightings that are assigned to the violations.

Currently, violations are grouped into three categories by FMCSA when the agency is determining a carrier's Safety Rating – 'acute' regulations, 'critical' regulations, and a third group of violations, which do not factor into a carrier's Safety Rating at all.

FMCSA might consider a using similar process when developing the new SFD. Violations could be divided into four categories: those directly tied to crash risk; acute regulations; critical regulations; and, all other regulatory violations. FMCSA, through the rulemaking process, will be able to gather additional feedback and research and seek comments from industry and enforcement on how best to categorize the violations, using, perhaps, the current list of acute and critical regulations used to determine a carrier's Safety Rating as a starting point.

4. Intervention Process

The final step in the CSA program is the Intervention Process. Using the data entered into the SMS, carriers are selected for an intervention using the Safety Evaluation. Interventions can range from

warning letters to onsite comprehensive investigations and can result, if warranted, in enforcement actions and out of service orders.

CVSA is pleased to say that for a number of carriers, the intervention process is working. Often times, the first level, a warning letter detailing the problems and possible consequences of leaving the issues unaddressed, is enough to prompt a response from the carrier. According to the UMTRI study, 83 percent of carriers who received a warning letter as their first intervention made improvements to address safety issues. This is particularly true for smaller carriers, who may not have realized there was a problem in the first place. In other instances, an onsite investigation can help address the issues.

Other findings from the UMTRI study indicate that other aspects of the intervention process, such as the focused onsite review, are allowing investigators to streamline the process and allowing them to reach more carriers, address the specific safety performance problems of the carrier, and be more efficient. In practice, enforcement feels the interventions are moving the ball forward with respect to safety impacts, but has mixed feelings on whether the interventions are operating at maximum effectiveness. We believe that this could be due, in part, to the relative newness of the intervention component.

5. Outreach

One trend we see throughout all facets of the CSA program is the need for additional training and education. Inspectors, drivers, and carriers all need to fully understand the program and how the individual mechanisms work towards FMCSA's goal of reducing crashes and fatalities involving commercial vehicles.

From the survey recently conducted by ATRI and CVSA, we have learned that nearly three-quarters of respondents believe that more CSA training is needed for inspectors. In particular, inspectors are interested in receiving 'refresher' training courses on the program, as well as timely updates on relevant methodology changes.

In order to fully realize the goals of CSA, a well trained workforce is critical. Based on feedback we have received from the states, additional resources and training courses may need to be made available through FMCSA to train state inspectors and investigators on an ongoing basis. The CSA program will continue to evolve; new inspectors and investigators will need to receive training; and states will need assistance as they continue to deploy the relatively new Intervention Process. Further, Congress should work with FMCSA to ensure that the states are receiving adequate funding to process incoming DataQs efficiently and effectively.

Consideration should be given to the allocation of more resources to create and implement ongoing driver and carrier training programs so that the regulated industry has a better understanding of CSA, which will help ensure that those being evaluated by the CSA program understand how the system works and how their actions impact their driving record and the company performance.

6. Purpose and Use of CSA Data

CSA was established as a tool for enforcement, operating under limited resources, to identify and target those motor carriers that pose the greatest risk to safety. However, the program is being used for more than simply enforcement screening and prioritization. The public has begun to access the data and is using it to make decisions on which carriers to use, which drivers to hire, etc. This is not, in and of itself, a bad thing. For some carriers, the fines and compliance reviews currently in place are simply not enough to motivate them to come into compliance and improve their safety performance. However, if poor safety records result in lost business, those less inclined to maintain an adequate level of safety may change their minds. An informed public could, in fact, drive industry to improve.

Another twist to the Intervention Process is evolving as more information has been made available to the public. Essentially, before the Intervention Process can play out, the public is using the SMS scores made available online to make determinations regarding carriers. In other words, the court of public opinion is creating a new aspect to the “Intervention Process” by interpreting the scores and using it for various purposes. Unfortunately, though, the general public is not currently informed enough to understand and evaluate the information presented to them. Many do not understand how the system works, what the scores mean, that the ratings are relative and that they can shift often. This lack of understanding is having real world impacts. There are some entities using the CSA data in ways that it was not originally designed for or intended. Further, concerns over data quality, weightings, peer groupings, and point values addressed in this testimony become more of an issue if they are contributing to a score that is being used by the public to make business decisions.

Making carrier safety performance data available to the public is not a new concept. It has been done, in some form, for more than a decade, and CVSA is supportive of this practice. A number of benefits can be derived from empowering consumers and the general public to make more informed decisions. However, we recommend that FMCSA continually work with the states and industry to determine how best to portray the CSA data to benefit both enforcement and the public to ensure that the ultimate goal of highway safety is being met. It also is critically important that it is clear to those who are viewing the information what it represents so it is not misinterpreted. There needs to be a better explanation of what the data means, as well as what it is intended for and its limitations.

Conclusion

The bottom line is that CSA is working. FMCSA should be commended for all the effort they have put into trying to change the paradigm in how we collectively view CMV safety in this country. The CSA program has shown already to have had a number of positive impacts with changing behavior and helping to instill a more robust safety culture in the motor carrier industry. The program is still somewhat new and FMCSA is continuing to work out the bugs and fine tune the program; and industry and enforcement continue to adapt to the new system.

CSA is a significant improvement over the previous approach. That said, there are some fundamental areas that need strengthening, and there are improvements that can be made, such as changing how the data is presented and adding ways to improve a carrier's score. These improvements will create a more effective system and will result in better industry buy in to the program, which will, in turn, benefit FMCSA and the program itself and ultimately improve safety and reduce crashes.