

Testimony of

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for

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Before the

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

September 13, 2012

Regarding

*The “Effect” of the Federal Motor Carrier Safety
Administration’s Compliance, Safety, Accountability
Program on the Trucking Industry*

Good morning, Chairman Duncan, Ranking Member DeFazio and distinguished members of the Highways and Transit Subcommittee. I am honored to appear before you today and have the opportunity to speak with you on behalf of ASECTT, (which stands for The Alliance for Safe, Efficient and Competitive Truck Transportation) regarding the effect that the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety and Accountability (CSA) Program has had on the trucking industry. ASECTT is a nonprofit organization composed of interested carriers, brokers, shippers and allied industry participants who are committed to working with the U.S. DOT and FMCSA to enhance highway safety, while confirming that the FMCSA, the Federal agency that certifies carriers as safe to operate on the nation's roadways, affords the regulated carriers due process and the shipping public certainty that the carriers certified as safe by the Agency may be chosen for use by brokers and shippers based upon routes, rates and service, without vicarious liability concerns under differing and inconsistent state law principles.

My name is Ruby McBride. I have 36 years experience in the motor carrier industry. I am Vice President of Corporate Systems for Colonial Freight Systems. My responsibilities include overseeing the Insurance and Safety Department. My husband, Tom McBride, is president of Colonial and he is here with me today.

Colonial is a private family owned business with its corporate office in Knoxville, TN. Colonial was founded by my father-in-law, C. E. McBride, in 1943 (nearly 70 years). C. E. and his wife, Lura, built the business back when it was extremely difficult to obtain operating authority—long before deregulation—when a motor carrier had to interline with multiple other carriers just to get from point “a” to point “b”. Some of you may be old enough to remember the Interstate Commerce Commission (ICC). We currently operate between 250 and 280 power units, primarily independent contractors/owner operators in all 48 states. Many of our contractors have been with us for more than a decade; some, more than 30 years. Many of them have logged over a million miles without a single chargeable accident; some over three million miles without any chargeable accidents. This is more miles than most of us will drive in our entire lifetime. According to the Federal Highway Administration, the average person would take 74 years to drive that distance. (<http://www.fhwa.dot.gov/ohim/onh00/bar8.htm>).

C. E. McBride believed in providing opportunities for owner operators and independent contractors. His philosophy was based upon the principle that if someone had a vested interest, they were more apt to take pride in their equipment, be more conscientious, be a proud face before the shippers and be able to earn more money for their own families. This same philosophy has been carried forward throughout the years and still holds true today.

Colonial is self-insured and has been for more than 25 years. We were one of the first motor carriers in the industry to become self-insured. If my information is correct, there is only one other self-insured motor carrier in the entire state of Tennessee. So, we are unique. We believe in "Safety." Under existing law and regulations, Colonial has an exemplary safety record. Section 385, the governing regulations, provides that on an audit, a carrier, after accounting for non-preventable accidents, will receive an unsatisfactory rating if its number of accidents exceeds 1.5 per million miles driven.

Colonial travels approximately 40 million miles per year (80 million miles in the past 24 months). Our reported crash ratio, including non-preventable accidents, is 0.4 per million miles or less than 28% of the standard required to be found unsatisfactory after audit. When the non-preventability is considered, our accident ratio drops to 0.2 per million or less than 14% of the number of accidents required to receive an unsatisfactory rating under existing law.

Based upon Colonial's experience, as Vice President in charge of safety for a substantial and experienced carrier, I am convinced that the Agency's current CSA/SMS program (1) does not accurately measure carrier safety performance; and (2) that the progressive intervention goals set out as its major benefit are not being realized.

When the FMCSA says its goal is to "*reduce crashes, injuries and fatalities,*" we are in lock step with them. However, the methodology which is being used is flawed. The data used to label and/or brand motor carriers is comprised of significant other factors that have absolutely nothing to do with whether or not a motor carrier or driver should be labeled a "*high safety risk.*"

Although the numerous systemic flaws in CSA/SMS methodology are well known to the Agency, the one that affects us the most is the use of the so-called "Fatigued Driving" BASIC, which the Agency claims is an accurate predictor of safety performance. Colonial's percentile ranking in this BASIC hovers around 80%, 15 percentage points above the artificial threshold established by the Agency for "progressive monitoring."

Our high percentile ranking has nothing to do with fatigue. Colonial, like many other carriers who use independent contractors and paper logs, is grouped for ranking purposes with carriers that are not required to prepare a log and fleets that use electronic logging devices. Over half of the points that feed our percentile ranking in the “Fatigued Driving” or “hours of service” BASIC come from paperwork violations (form and manner or last change of duty violations). These violations, which have no demonstrable effect on fatigue, much less crash scores, set up Colonial for high percentile scores and monitoring. Because the rankings are published and mislead the public into believing we are under some “safety watch” or identified as a “high risk carrier,” we are unfairly branded for loss of business, as well.

This problem of branding by publishing misleading scores prejudices our ability to compete in the open marketplace. Notwithstanding the current statutes and the Agency’s sole obligation for certifying carriers as safe to use, and our satisfactory safety rating, many shippers are being misled into believing that carriers like Colonial are unsafe based on SMS methodology and that they cannot rely upon the Agency’s ultimate safety fitness determination to trump negligent selection suits under state law.

Now, I want to tell you about my own firsthand knowledge of how the CSA program actually worked relative to Colonial. When the CSA program was implemented in December of 2010, we were informed that the FMCSA intervention process would occur in steps. First, a warning letter would be sent notifying the motor carrier of any identified deficiency in a particular BASIC. The motor carrier would have an opportunity to respond and address the deficiency prior to an on-site audit. This is still how the Agency claims SMS methodology works and is almost verbatim to the statement provided by its Deputy Administrator, William Bronrott, before the House Committee on Small Business on July 11, 2012.

Yet, this is NOT what happened with Colonial. We received a call from the FMCSA Nashville field office on Thursday afternoon, August 11, 2011, advising that they would be in our office on Monday morning, August 15, 2011, to begin a focused audit. There was NO warning letter. The first week, the investigator spent four days in our corporate office requesting multiple documents on 19 different drivers. On August 29, 2011, the investigator returned with a second investigator. They remained at Colonial until the audit was completed on September 2, 2011.

When Colonial received the final report, dated September 26, 2011, Colonial's "satisfactory" rating remained unchanged and the report was labeled "*This Review is not Rated.*" To justify the use of SMS methodology, the Agency has said that focused audits not contemplated under the current rules are less time-consuming than compliance reviews which result in safety ratings and require an average of 3 to 4 days. The Agency spent 9 work days auditing Colonial and did not change its satisfactory safety rating. To add insult to injury, the misleading and inaccurate percentile rankings that triggered the audit remain unchanged and we are still branded as a high-risk carrier in that BASIC. We are losing opportunities to transport shipments for shippers frightened by the Agency's pronouncements implying that they can be sued if they do not self-credential each carrier, using SMS rankings.

On the other hand, had Colonial received a "Conditional" or "Unsatisfactory" rating, our 25-year self-insurance program would have been in jeopardy. We would likely have been faced with having to close our doors, after almost 70 years of running one of the safest trucking companies in the industry. This could have resulted in almost 400 jobs lost and many more families added to the unemployment roll, as many of our trucks run team drivers and we employ almost 100 people. We are very thankful that the latter scenario did not happen to Colonial. Yet, we have been told that this has happened to countless other trucking companies throughout the country. We have firsthand experience of the anti-competitive effect of publication of misleading SMS scores in the public declarations by the Agency that SMS methodology should be used by shippers and brokers. We believe Congress should exercise oversight to ensure that efficiency, competition and small businesses are not irrevocably damaged by premature publication and use of SMS methodology. (Please see attached summary of ASECTT's position.)

Thank you for inviting me here today and the opportunity to provide these comments. I will be happy to answer questions.

Before the
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, D.C

September 13, 2012

*Evaluating the Effectiveness of
DOT's Truck and Bus Safety Program*

ASECTT'S POSITION
*regarding the "Effect" of the Federal Motor Carrier Safety
Administration's Compliance, Safety, Accountability Program
on the Trucking Industry*

Submitted by
The Alliance for Safe, Efficient and Competitive Truck
Transportation (ASECTT)

ASECTT'S POSITION

The Alliance for Safe, Efficient and Competitive Truck Transportation (ASECTT) is a 501(c)(4) non-profit association comprised of over 600 carriers, brokers, shippers and freight forwarders involved in the interstate transportation of goods by commercial motor vehicles. ASECTT is committed to encouraging a balanced federal regulatory policy which requires the Federal Motor Carrier Safety Administration ("FMCSA" or the "Agency") to perform its statutory obligations, by efficiently and effectively issuing safety fitness determinations for all interstate motor carriers upon which the traveling and shipping public can rely.

ASECTT's concern is that FMCSA, in its zeal to "raise the safety bar," has lost sight of its other statutory duties and obligations under the National Transportation Policy (49 U.S.C. 13101). These include ensuring an open, competitive and efficient interstate marketplace which allows entrepreneurship and does not prejudice small carriers and new entrants.

ASECTT supports the initial goal of the Safety Measurement System ("SMS") methodology created in the program originally called "Comprehensive Safety Analysis 2010," later renamed "Compliance, Safety, Accountability," and at all times known as "CSA." That goal was to develop an improved monitoring capacity to allow progressive intervention and better use of the Agency's limited resources. Yet, ASECTT submits that what has been delivered to date, and touted as a success by the Agency, does not meet the Agency's original goal. Nor has the program been vetted or approved for the Agency's own use in accordance with the requirements of the Administrative Procedure Act ("APA").

Worse yet, the Agency seems to have walked away from a court approved settlement of an APA-based challenge to SMS in 2011, where FMCSA had stipulated that "[u]nless a motor carrier in the SMS has received an UNSATISFACTORY safety rating pursuant to 49 CFR Part 385, or has otherwise been ordered to discontinue operations by the FMCSA, it is authorized to

operate on the nation's roadways.” Now, without any concern for the economic consequences of its actions, the FMCSA has advised the alarmed shipper and freight broker communities that they can no longer rely upon the Agency to perform its statutory duty of credentialing carriers as safe, but instead must use arbitrary percentile rankings under SMS to self-credential carriers before use in order to protect themselves against potential lawsuits.

The Agency’s abdication of its statutory duties to certify carriers as safe, and its de facto establishment of SMS methodology as an alternative rule for enforcement by a frightened shipping public, culminated in its website publication of “New Resources Available for Shippers, Brokers, and Insurers” of May 16. See <https://csa.fmcsa.dot.gov/resources.aspx?locationid=115>. This Internet release advises the public that unvetted SMS scores are at least as valid indicators of a carrier’s fitness as its official safety rating under the Agency’s longstanding, APA-compliant fitness regulations in 49 CFR Part 385.

At the outset, ASECTT must disclose that it, together with 4 trade associations and 12 other named petitioners, has challenged this Agency action under the Hobbs Act, and its petition for review is pending in the United States Court of Appeals for the District of Columbia, Case No. 12-1305.

Yet, for purposes of Congressional oversight, it is important for the Committee to understand how CSA and SMS, despite 8 years in the developmental stage, still are not fulfilling Congressional mandates, are inflicting adverse consequences on the efficient and competitive transportation system envisioned by motor carrier deregulation, and are imposing disproportionately prejudicial hardships on small businesses. Attached hereto as *Appendix A* is an article by Brandon Fried, the President of the Air Forwarders Association, which explains the economic predicament caused for his members (who use trucks for significant portions of their business) by the Agency’s failure to affirm its statutory mandate.

Background

For over 75 years since the passage of the Motor Carrier Act of 1935, the Federal Government, pursuant to the Commerce Clause, has assumed the sole responsibility for certifying carriers as safe to operate on the nation's roadways, superseding inconsistent state laws and regulations through legal doctrines known as implied and conflict preemption. The deregulation statutes of 1980 through 1995 removed most federal regulations with respect to routes, rates and services, but expressly transferred the regulations governing safety fitness determinations *without change* from the former Interstate Commerce Commission to the U.S. Department of Transportation ("U.S.DOT"). Preemptive federal jurisdiction over safety remained. Congress made clear that deregulation did not create a vacuum for the vicissitudes of state law. It did this by passing an express preemption statute (49 U.S.C. 14501(c)) and, just as importantly, by enacting a National Transportation Policy expressly requiring U.S.DOT (and FMCSA as part of U.S.DOT) to administer its duties giving full consideration to marketplace efficiency, competition and effects on small businesses. See 49 U.S.C. 13101(a)(2).

In 2003, the U.S.DOT's Inspector General, in a report to Congress, was expressly critical of the Agency's publication of SafeStat data (a predecessor of SMS to some extent) and the potential adverse effect it could have on carriers branded as "unsafe" by this data. The Agency was directed to correct this problem. (See *Appendix B.*)

In the 2005 transportation authorization bill known as SAFETEA-LU, Congress directed the FMCSA to overhaul its safety fitness determination regulations and develop a program which would allow the Agency, and only the Agency, to actually make safety fitness determinations for each of the over 600,000 regulated operators of commercial motor vehicles in interstate commerce.

CSA was initiated by the FMCSA in August of 2004. Its goal was “to increase the efficiency and effectiveness of FMCSA’s compliance and enforcement program (73 Fed. Reg., p. 53481, September 16, 2008, emphasis supplied.) CSA was billed as “a new approach for using Agency resources to identify drivers and motor carriers that post safety risks based on crash experience and violations of safety regulations and to intervene to reduce those risks as soon as they become apparent.” Thus, the stated mission was not to publish a percentile rating system of carriers for use by the shipping public in self-credentialing carriers – but that is what CSA/SMS methodology has become.

The outlines of CSA were developed by FMCSA and discussed at “Listening Sessions” in September and October of 2004, November 16, 2006, December 4, 2007, and October 2008. In comparing SMS with the SafeStat system it replaced, the Agency complained that the current regulations, which it still has not yet sought to replace, are labor intensive because each compliance review or “CR” takes an average of 3 to 4 days to complete and as a result, the Agency can perform CRs “at present level of staffing on only a small portion of its over 700,000 interstate carriers listed in the Agency’s census.” (73 Fed. Reg., p. 53485, September 16, 2008.)

The FMCSA said that CSA/SMS would improve the current process for “monitoring, assessing and enforcing the safety performance of motor carriers and drivers.” No mention was made of imposing safety credentialing duties upon shippers or brokers.

Rather than abandoning SafeStat and its percentile rankings of carriers based upon four compliance areas and proposing a simplified annual audit procedure or some other objective alternative, the Agency has spent 8 years trying to perfect compliance data, construct arbitrary peer groups and invent artificial enforcement thresholds to accomplish Congress’ directive.

The stated purpose of the 2008 Federal Register Notice quoted above was to define interim goals for CSA, to roll out the new SMS as a purported successor to SafeStat, and to

propose further “Listening Sessions”. The 2008 notice touted SMS as different from SafeStat in six ways (77 Fed.Reg. at 53485):

(1) It is organized by specific behaviors (BASICS) while SafeStat was organized into four broad safety evaluation areas or SEAs.

(2) SMS coupled with progressive intervention allows the Agency to address specific concerns without a compliance review.

(3) SMS uses all safety based inspections while SafeStat uses only out-of-service violations and selected moving violations.

(4) SMS uses risk based violation ratings while SafeStat does not.

(5) SMS impacts safety fitness determination of an entity while SafeStat has no impact on an entity’s safety rating (yet to be completed).

(6) SMS assesses individual drivers and carriers while SafeStat assesses only carriers.

The key to CSA, as envisioned by the FMCSA in 2008, was to develop SMS methodology to replace 49 U.S.C. 31144 and 49 C.F.R. Part 385, which require an objective compliance review at a carrier’s place of business before making a safety fitness determination, i.e., assigning a safety rating. In particular, the thrust of SMS methodology was to “change the safety fitness rating methodology so that adverse vehicle and driver performance based data alone are sufficient to result in an overall unsatisfactory rating for the carrier.”

On this basis, without any feasibility or effectiveness study or support, the Agency announced a program would be developed to replace the Agency’s current safety fitness rules, including the objective compliance review carriers are guaranteed prior to being placed out of service. The Agency professed to be responding to concerns about the traditional safety rating process both within and outside the Agency. (See, for example, the National Transportation Safety Board recommendations cited with approval by FMCSA at 73 Fed.Reg. 53486.)

Nonetheless, four years after the 2008 Federal Register Notice, and 21 months after the SMS methodology and data were first made public without opportunity for public scrutiny in a rulemaking under the Administrative Procedure Act (“APA”), it has become abundantly clear that SMS percentile rankings and performance based data are not an improvement over traditional safety ratings, and that SMS alone cannot and should not result in an overall unsatisfactory carrier safety rating.

It was during Congressional oversight hearings in June of 2010 that FMCSA Administrator Ferro first told this Committee that SMS scores would be made publicly available in 2010, even though rulemaking would not be complete and the University of Michigan study commissioned by the Agency to validate the SMS methodology would not be finished. Representative DeFazio asked the Administrator on multiple occasions why the data would be made public if not vetted or supported by the University of Michigan study.

Even so, over the objection of 3 trade associations, and after a Small Business Administration Roundtable and SBA sponsored negotiations with the Agency, the Agency remained adamant the data was fit for publishing and that carriers above any of the reported arbitrary thresholds should be publicly branded as under “Alert”.

As a result of the Agency’s December 16, 2010 publication of SMS data on its website, the trade associations instituted a petition for review in the D.C. Circuit (*NASTC v. FMCSA*), which resulted in a mediated settlement under Court auspices in early 2011. As part of the settlement, the Agency represented that SMS data was merely a replacement for SafeStat and adopted the following disclaimer language for use on-line:

The SMS results displayed on the SMS website are not intended to imply any federal safety rating of the carrier pursuant to 49 USC 31144. Readers should not draw conclusions about a carrier's overall safety condition simply based on the data displayed in this system. Unless a motor carrier in the SMS has received an UNSATISFACTORY safety rating pursuant to 49 CFR Part 385, or has otherwise

been ordered to discontinue operations by the FMCSA, it is authorized to operate on the nation's roadways.

Eighteen months after this settlement, the long awaited rulemaking which would afford critics of SMS methodology an opportunity to discuss their concerns has not been forthcoming. SMS methodology remains a work in progress, with the Agency selectively tweaking its severity weightings, its peer groups, its BASIC categories and charging its Motor Carrier Safety Advisory Committee with recommending additional changes.

ASECTT submits that the results are in. As will be shown, SMS methodology, despite all the tweaking which can be done, cannot be perfected to meet Congress' goals. More importantly, the collateral damage done by the Agency's publication of unvetted SMS scores, its touting of SMS methodology and its abdication of its own safety fitness credentialing responsibilities far outweighs any benefit for the reasons shown herein.

Agency's Repudiation of its Statutory Duty to Certify Carriers Creates Chaos for Shipping Public

SMS methodology has not been approved under APA for even the Agency's own use. Under 49 U.S.C. 31144 and 49 C.F.R. Part 385, FMCSA is required to issue safety fitness determinations and to publish the ultimate findings upon which the consumer (shippers, brokers and freight forwarders) can rely with certainty, free from the vicissitudes of state law or higher credentialing duties. The Commerce Clause, the legal doctrines of conflict preemption and field preemption, as well as the language of 49 U.S.C. 14501(c) require no less. Yet, notwithstanding its statutory credentialing obligation and its express settlement in *NASTC. v. FMCSA*, the Agency continues to tout SMS methodology as fit for use by the shipping public in order to "raise the safety bar.". It has undercut the effectiveness of its own safety fitness determinations and attempted to impose a higher and different standard upon the shipping, brokering and forwarding

community under fear of state law tort liability if a carrier they select has an accident while transporting their freight.

The Agency's actions in this regard are contrary to its Congressional mandate and the requirements of the National Transportation Policy which instructs the U.S. DOT to take a balanced approach to regulation of interstate trucking and to consider efficiency, competition and the effect of its decisions on small carriers (49 U.S.C. 13101(b)(2)). The touting of SMS methodology as fit for use to shippers, brokers and carriers, already frightened by the prospects of vicarious liability or negligent selection suits, threatens commerce and the ability of the over 50,000 carriers above one or more of the arbitrary SMS enforcement thresholds with loss of business, loss of revenue, higher insurance costs and bankruptcy. Current estimates, including one by Morgan Stanley, suggest that at least 55 percent of the shippers and brokers feel compelled to look at SMS percentile scores in making carrier selection -- thus making safety into a competitive game, not an objective standard which all otherwise qualified carriers can meet.

Notwithstanding the settlement in *NASTC et al. v. FMCSA*, and despite the repeated formal and informal expressions of industry concerns to the Agency, FMCSA recently doubled down on its apparent doctrine of SMS *über alles*. On May 16, 2012 the Agency published on its website a package of documents entitled "New Resources Available for Shippers, Brokers, and Insurers". Therein, the Agency made the following statements in the portion of that package entitled "Shipper and Insurer Briefing Memorandum" (emphasis supplied):

Slide 9 Notes:

A motor carrier that has received a compliance review from FMCSA and whose operations were rated at that point in time by FMCSA as Satisfactory or Conditional is authorized to operate in interstate commerce. That rating, with the date of the review, appears in SAFER. **A Satisfactory or Conditional rating does not mean, however, that the public should ignore all other reasonably available information about the motor carrier's operations.** CSA's SMS data, addressed later in this presentation, are one of many possible resources that the public can use to assess a motor carrier's safety performance record.

Slide 10 Language:

What are the limitations of SAFER and safety ratings?

A Satisfactory safety rating does not mean carrier is currently in compliance and operating safely.

Slide 13 Notes:

SMS identifies about the same number of small carriers (7.4%) that SafeStat did (7.1%).

Slide 25 Notes:

Questions that concern private litigation matters, such as claims for vicarious liability and negligent hiring, are outside the scope of FMCSA's area of responsibility. CSA users are reminded, however, that although CSA is a new operational model, the data collected and analyzed in SMS are the same data as were publicly available online for 10 years through SafeStat. The SMS data are not a SFD, do not alter a carrier's safety rating, and do not impact a carrier's operating authority.

From the notes on the last page:

FMCSA believes that an examination of a motor carrier's official safety rating in SAFER and their authority and insurance status on L&I, **combined with their intervention prioritization status in CSA's SMS**, provide users with an informed, current, and comprehensive picture of a motor carrier's safety and compliance standing with FMCSA. **FMCSA encourages the public to use the FMCSA information available to help make sound business judgments.**

The quotations above suggest the Agency has repudiated its obligations under Section 31144 and has elevated SMS methodology to at least co-equal status with a final safety fitness determination. By internet publication it has effectively created a new rule and a new burden on brokers contrary to its broker regulations at 49 C.F.R. 371.

ASECTT submits that the issues posed by the May 16 documents are not just cosmetic tweaks to a perfectible methodology. There are principal issues involving the role of federal regulation and the effectiveness of the Agency's safety fitness determination based upon objective standards in certifying carriers as safe for the public to use for the protection of the shipping as well as the traveling public.

It was for these reasons that ASECTT along with four other trade associations and 12 named petitioners instituted new litigation against the Agency on July 16, 2012 in *ASECTT et al. v. FMCSA* (United States Court of Appeals for the District of Columbia, Case No. 12-1305). That petition was filed within the deadline prescribed by the Hobbs Act in order to challenge the Agency's de facto rule adopted in the above-quoted May 16 pronouncements. This de facto rule was summarily announced without due process to shippers, brokers and insurers. It in effect repudiated the effectiveness of the Agency's statutory duty to certify carriers as safe to operate, exposing the shipping public to the vicissitudes of state law and negligent selection suits. ASECTT maintains that the SMS methodology, in its current form, cannot be approved even for the Agency's own use in certifying carriers as safe. Much less can the Agency be allowed to place a duty on every shipper and broker to make independent safety fitness determinations using SMS methodology under peril of vicarious liability under state law.

Such state-law exposures are precluded by federal preemption under the Commerce Clause of the Constitution of the United States, as well as by statute and regulation. The entire history of federal jurisdiction over interstate commerce confirms that federal law trumps state law. This was made clear as early as 1824 by Chief Justice Marshall, speaking for the United States Supreme Court in *Gibbons v. Ogden*, 22 U.S. 1, who held that the federal government, not the States, was responsible for regulating interstate commerce and credentialing carriers for use.

In the public interest and for the purpose of national uniformity, the FMCSA and its predecessor, the former Interstate Commerce Commission, have been charged with the sole responsibility for determining carrier fitness. Under the doctrines of implied preemption and/or field preemption (through FMCSA's adoption and implementation of comprehensive motor carrier safety regulations), the federal rules are intended to occupy the field of carrier safety and to prevail in any conflict with state law.

Congress did not change the applicable federal statutes governing safe operation of commercial motor vehicles as part of deregulation. In fact, the safety statutes establishing the Agency's sole credentialing obligation remained unchanged, and a 1994 statute (now codified at 49 U.S.C. 14501(c) confirmed with express statutory preemption that freer competition as to routes, rates and services was not intended to limit field preemption or to permit expansion of state law causes of action in the field of commercial motor carrier transportation.

Elsewhere in Title 49 of the U.S. Code, Section 31144 makes clear that FMCSA, through delegation of authority vested in the Secretary of Transportation, is solely responsible for credentialing motor carriers as safe to operate under objective criteria established by regulation. Under section 31144(b) (emphasis supplied), the Agency must “maintain **by regulation** a procedure for determining the safety fitness” of a motor carrier. Under section 31144(a) (emphasis supplied), the Agency must “make such **final** safety fitness determinations readily available to the public.” Thus, the Agency must make a “final” safety fitness determination available to the public as a single-source validation of the carrier's credentials, and this determination must be made pursuant to a “regulation.” Yet, the Agency on May 16 purported to dilute the validity and preemptive effect of its own safety fitness determinations under its existing, APA-compliant regulations, and indeed abdicated its statutory duty as the sole determiner of motor carrier safety fitness.

Systemic Problems and Flaws in SMS Methodology

The following problems, data and statistical flaws in SMS methodology have been presented to the FMCSA in the past, both formally and informally. In the absence of formal rulemaking, the Agency has chosen not to address these issues. In July of 2011, the Agency requested the submission of comments to its Motor Carrier Safety Advisory Committee (“MCSAC”), noting that the Committee was to make only limited changes and was not charged

with “reinventing the wheel.” Attached as *Appendix C* are the Comments filed by ASECTT with MCSAC on July 28, 2011.

While MCSAC’s report, released in December, did not address all of the issues ASECTT raised, it did highlight data quality issues relating to SMS. Page 2 of the report noted that “violation severity weights” in SMS methodology “ should be based on data reflecting the relationships between individual violations and crashes,” stated that the committee “did not have such data,” and warned that “[a]n approach to the assignment of [SMS] severity weights based on observations and opinions may ultimately result in BASIC scores that do not closely correspond to crash risk.”

At a hearing requested by the Small Business Administration on February 14, 2012 , similar problems with SMS methodology were presented to the Agency by several members of ASECTT, and by the Owner-Operator Independent Drivers Association. The Agency listened but no affirmative action was taken.

Ultimately the Agency did recognize the need to review some severity weightings and make other limited adjustments to its methodology in its Docket No. 2012-0074 (opened on March 27, 2012), but it has yet to undertake a comprehensive data quality review of SMS with full public input under APA rulemaking procedures. In response to FMCSA’s request for informal comments in Docket No. 2012-0074, however, ASECTT did file Comments on July 5, pertinent portions of which are attached hereto as *Appendix D*. On August 28, the Agency announced a series of minor “enhancements” to its methodology, some of which will not be effective until December of 2012. Once again, however, the Agency did not address the substantive issues raised by ASECTT and detailed herein.

1. SMS Methodology is Not Comprehensive

As noted earlier, the “C” in “CSA” no longer means “Comprehensive.” This re-labeling of the program by FMCSA speaks volumes. Although Congress directed the Agency to devise a system for establishing a safety rating of all 600,000 carriers – a goal affirmed by the Agency in 2008 – the facts today are that fewer than 100,000 of the 600,000-plus known carriers are publicly measured in even one BASIC, and fewer than 12percent are evaluated in all 5 published BASICs. The Agency professes to have data on 200,000 carriers or approximately one-third of its regulated universe, but that data has not been made public.

2. SMS Percentile Rankings Have No Proven Correlation to Safety. As

Representative DeFazio correctly pointed out two years ago, SMS methodology cannot be used to provide safety fitness determinations unless it is shown to be an accurate predictor of carrier safety. The long awaited University of Michigan study was not published until 5 months after the Agency published its percentile rankings and has been much criticized. Wells Fargo conducted two independent studies and concluded, “Quite simply, we found very little relationship (i.e., not statistically significant) between Unsafe Driver or Fatigued Driver scores and actual Accidents per Power Unit.”

The Iyooob study shows that the Agency’s reliance on statistical averaging of carrier performance at each percentile ranking is an invalid measure of carrier safety performance which is of little or no value in determining carrier safety fitness. See *Appendix D*.

3. SMS Methodology Unfairly Prejudices Small Carriers. The motor carrier industry is a small business success story. The vast majority of registrants, or well over 98%, are small businesses under SBA standards. As a statistical matter, a small carrier that is subject to a limited number of inspections is subject to the “law of large numbers,” under which limited data does not result in an accurate assessment of performance. The Gimpel study (see *Appendix D*)

clearly shows the prejudicial effect of SMS methodology in that regard and has not been challenged by the Agency. The effect of SMS methodology on small businesses has recently been considered by the Small Business Committee and attached as *Appendix E* is a letter to Administrator Ferro from Chairman Graves of that Committee addressing SMS problems in that context.

(a) Grading on a Curve. Under existing law, every carrier is entitled to be assessed on objective, consistent performance standards. SMS percentile rankings grade carriers on a curve under 7 BASICs, each with an arbitrarily determined percentile threshold for performance deemed acceptable by the Agency. The system also assigns carriers to ten peer groups that purportedly are based on type of operation, miles traveled and/or number of inspections. As initially envisioned and promoted by the Agency, the artificial percentile thresholds would be established for the Agency's use in further monitoring, but in effect publication of these percentile rankings with an Alert or now the "golden triangle" symbol ("▲") is intended by the Agency to publicly identify and brand carriers as "high safety risks". Like a game of Survivor or perhaps more precisely, Dancing With The Stars, those carriers who perform poorly in one of the publicly disclosed BASICs are to be voted out of business as a result of non-use by shippers afraid of vicarious liability.

The anti-competitive effect of grading on a curve and publicly failing half of the carriers that are measured is profound when, based upon the SMS methodology, over fifty percent of the carriers currently certified as safe to operate on the nation's roadways by the Agency are nonetheless compromised by the "golden triangle" in soliciting and handling traffic.

(b) Enforcement Anomalies. One of the criteria for challenging the validity of any study in court under the *Daubert* standard cited in *Appendix D* is to show that countervailing factors taint the statistical analysis. SMS methodology is contaminated by geographical and

enforcement anomalies which cannot be easily extricated from the data. The enforcement policies of 50 different States feed the Agency's weighted data bank for SMS, yet for the purposes of statistical ranking, carriers are compared regardless of local enforcement anomalies in their States of operation. For example, SMS data shows that 5 states (Indiana, Michigan, New Mexico, Pennsylvania, and Texas) account for 46 percent of the speeding tickets and warnings which feed the Unsafe Driving BASIC. To the FMCSA's credit, it recently announced that in December of 2012, two years after SMS scores first became public, it will try to compensate for this anomaly by reducing the points for speed warnings, but the solution is imperfect.

Other anomalies still exist and are unaddressed. As one example, Louisiana has a bounty on failing to wear seatbelts and the Driver Fitness BASIC measures so few carriers that 1 or 2 violations can brand a carrier domiciled there as a higher safety risk. As another example, Vehicle Maintenance violations have been selected for heavy enforcement in Texas and Alabama, and the heaviest point accumulators in the Vehicle Maintenance BASIC are non-out of service items for which there is no demonstrable safety impact, yet carriers domiciled in those states are unduly prejudiced in this BASIC.

4. Flawed and Irrelevant Data.

(a) Crash Indicator BASIC. Nowhere is the effect of flawed and contaminated data more apparent as an indictment of SMS methodology than in the "crash indicator" BASIC. While ASECTT agrees that accident data is important in assessing any ultimate correlation between carrier roadside compliance and safety performance, the question is "which accidents?" SMS data includes as part of the carrier profile both preventable and non-preventable accidents. All parties agree that inclusion of non-preventable accidents in raw motor carrier data distorts any assessment of carrier accident culpability by 300% to 400%. Under existing FMCSA rules assigning safety ratings after an audit, a carrier can prove non-

preventability on an accident-by-accident basis and if it reduces its preventable crash ratio below 1.5 preventable accidents per million miles, it will not be placed out of service.

A similar methodology cannot be adopted, however, to call balls and strikes on all crashes involving motor carriers annually. Although the Agency, under extreme pressure from all credible stakeholders, has committed to establish an administrative procedure to accomplish this task, the cost and efficiency of fairly determining all such crashes nationwide has not been calculated. Under current methodology, when SMS methodology is run by the numbers, thousands of small carriers which have never had even a reported fender bender are profiled as high risk carriers and branded as unfit for use. If preventability is ever taken into account there will be even less data to feed the methodology and if SMS methodology alone were used, as the Agency originally proposed, one accident could drive an unsatisfactory safety rating for most small carriers.

(b) Hours of Service Violations. As the charts accompanying the Iyooob study clearly show, the correlation between crash preventability and percentile rankings in unsafe driving or fatigued driving with respect to any particular carrier, belies any argument that these acute BASICs are predictors of future crashes. Over 50% of the points chargeable against carriers in this BASIC result from paperwork errors (either form and manner or last change of duty violations) which only carriers who maintain paper logs can accumulate. Yet carriers which use paper logs are peer grouped with carriers that operate with electronic on-board recorders (EOBRs), and with carriers that are not required to log at all. The resulting anomalies defy any demonstrable correlation between percentile rankings and crash predictability in this Agency-proclaimed “acute BASIC”.

Ironically, if and when all carriers are required to purchase electronic on-board recorders, the number of hours of service violations measured by the SMS system will drop precipitously,

yet under its existing methodology 35% of the carriers measured will still be branded as high safety risks.

5. Due Process and Data Quality. Clearly, the data which feeds SMS methodology is insufficient to accurately measure and rate carrier performance, and the SMS methodology for manipulating this data has not been vetted in accordance with the requirements of the Administrative Procedure Act. On this basis, ASECTT and others have voiced due process concerns concerning the methodology, its enforcement and its appeals process.

(a) Profiling. As a result of SMS methodology, each measured carrier is given a so-called ISSP score which is used by scale house inspectors to profile carriers for inspection. As a result, small carriers who are currently unrated and carriers who exceed a particular threshold are targeted for inspections and identified as potential “bad actors” to be given hard looks and more than a cursory inspection. Because SMS methodology, unlike SafeStat, includes as violations a large number of discretionary non-out of service violations, profiled carriers tend to pick up even more violations than the non-targeted carriers with which they are compared.

(b) Peer Group Creep. In a majority of the BASICs, percentile rankings are established on the basis of safety event groupings. The more inspections a carrier gets, the bigger and more substantial the peer grouped carriers with which it must compete. As a result of this peer group creep, carrier can find their scores increasing 20% to 30% without any additional violations. Small carriers with less than 10 trucks can be stopped at the scales 10 to 15 times more often than larger fleets with lower percentile rankings.

(c) Barriers to Data Challenges. The Agency’s “DataQ” process refers any written petition back to the State for a response. Although a law-enforcement group called the Commercial Vehicle Safety Alliance, to its credit, is working on some efforts at uniformity, a

number of States leave the appeal up to the enforcement officer who, in his or her own eyes, is seldom if ever wrong. ASECTT can further document from several States that DataQ challenges will not be honored even when the carrier is proven not guilty in a court of law for the violation that was cited.

CONCLUSION

Despite eight years in the development stage, SMS methodology has not met its stated goals. In an effort to capture more data to rank more carriers and meet the goals of a “comprehensive” safety analysis, the Agency expanded its number of major metrics from four to seven, including three new metrics or “BASICS” which each measure less than 5% of the carriers the Agency regulates. In the five published BASICS the system can still only measure 100,000 of the 600,000 carriers, and is now contaminated with numerous non-out of service violations with even less proven correlation to safety than the much criticized SafeStat system it replaces.

Small carriers, which make up the vast majority of the regulated carriers, are prejudiced by the methodology due to the law of large numbers, are profiled for extra scrutiny and have been targeted for extra inspection and have been publicly branded by the Agency’s touting of SMS methodology as fit if not required for use by the shipping public.

The principal question asked by Representative DeFazio remains unanswered. How can the Agency publish and advocate a percentile ranking of carriers when there is no credible evidence to support the conclusion that safety performance is actually measured? In its zeal to heighten the safety bar, the Agency has (1) overlooked its important obligation to encourage efficiency, competition and small businesses under the National Transportation Policy; (2) ignored the warnings of its own Inspector General in 2003 as well as its own Motor Carrier Safety Advisory Committee in December of 2011; and (3) has in effect abdicated its

responsibility to make safety fitness determinations under existing law upon which the shipping public can rely.

In response to the anticipated Agency pronouncement that SMS methodology works because deaths involving commercial motor vehicles were down last year, ASECTT submits an article written by its President Tom Sanderson as *Appendix F*. The motor carrier industry consistently performs in a safer manner year after year under existing statutes. Any effort to attribute 2011 results to SMS methodology is misleading and inappropriate.

ASECTT does not oppose the goal of progressive intervention or more efficient use of Agency resources to work with carriers to improve highway safety. The focused audits the Agency proposed in its 2008 Federal Register Notice were portrayed as a more efficient replacement for full-fledged compliance reviews which took 3 to 4 work days. Nonetheless, the focused review of Colonial, a carrier with a crash ratio of less than a third of the ratio which would trigger an Unsatisfactory safety rating under current FMCSA regulations, took 14 work days and is hardly an exemplar that the SMS system meets its goals. See testimony of Ruby McBride prepared for this hearing.

Maybe it is time for the Agency to consider a better alternative, a simple annual or bi-annual audit of all carriers using objective standards, funded by a modest registration fee and conducted by state partners and outside contractors. This, ASECTT submits, is a viable alternative to traditional compliance reviews, but would still allow for an objective detailed audit of carriers found to be most in need of intervention. See *Appendix G*.

This proposal would result in an objective evaluation of all carriers, would restore the confidence of the shipping community in the Agency's ultimate safety fitness determination, and would eliminate the devastating collateral damage that publication of SMS data is causing the surface transportation industry.

APPENDIX A



Brandon Fried is the executive director of the U.S. Airforwarders Association

Credentials for truckers protect forwarders

If a speeding trucker making a pick up for a forwarder gets in a wreck, chances are that not only the motor carrier, but also the forwarder, will be sued.

Highway accident victims are already successfully holding property brokers and shippers liable for the negligent conduct of their selected motor carriers — and forwarders could easily be next. These “negligent-selection” lawsuits often allege that the freight intermediary, when choosing the motor carrier, failed to heed adverse safety data, including scores maintained by the Federal Motor Carrier Safety Administration’s (FMCSA) Compliance, Safety, Accountability program on motor carriers operating trucks in excess of 10,000 pounds.

The scores, derived from traffic citations, crashes, and other roadside inspection data, are reported under seven Behavioral Analysis and Safety Improvement Categories (BASICs), which include unsafe driving, fatigued driving, and driver fitness.

Some say that more than half of the carriers have concerning scores in at least one of these categories. One carrier’s representative recently described the situation as “rocket fuel” for plaintiffs’ attorneys. Forwarders may find themselves defending negligent selection claims as a result of a trucker’s excessive scores.

A lawsuit recently filed by the Alliance for Safe, Efficient and Competitive Truck Transportation, together with numerous other plaintiffs, challenges the federal government’s use of its own agency publication describing available resources for shippers, brokers and insurers. The publication includes FMCSA’s Safety Measurement System (SMS) as a resource, and the organization has previously recognized and affirmed its statutory duty to make a safety fitness determination upon which brokers and shippers could rely. The plaintiffs contend, then, that FMCSA is abdicating its safety fitness obligations to the shipper and broker community, and they have no concern for the re-

sulting prejudicial effect on safe carriers branded under SMS methodology.

Critics of the SMS methodology contend that there is no proven correlation between traffic violations — warnings and citations, on the one hand, and safety, on the other. In fact, a recent report issued by Wells Fargo could not find a meaningful statistical relationship between a carrier’s actual accident incidence and the BASIC scores.

Attorneys Daniel R. Barney and Nathaniel G. Saylor recently wrote that because the courts are nonetheless allowing SMS information into evidence, forwarders selecting motor carriers to perform pick ups, deliveries or long-haul ground moves should “strongly consider adopting motor carrier selection criteria.” They contend that establishing a reasonable selection protocol could go a long way toward protecting forwarders and their 3PL

Highway accident victims are already successfully holding property brokers and shippers liable for the negligent conduct of their selected motor carriers — and forwarders could easily be next.

counterparts from liability.

Any selection protocol, they say, should also check for a carrier’s active operating authority, FMCSA “Satisfactory” safety rating (which exists separately from the CSA scores), and liability insurance.

The government has an inherent responsibility to credential motor carriers, airlines and other public utilities for our safe use. Deputizing forwarders, third-party intermediaries and shippers to assist in the obligation undermines the mandate by forcing them to make fitness determinations using a potentially flawed and unproven scoring system. This drags freight transportation purchasers into a risk-laden situation, where picking the wrong option could render them and our nation’s commerce losers in the process.

Still, until the U.S. Congress corrects the situation, forwarders can and should help themselves limit their exposure to potentially devastating lawsuits by adopting reasonable carrier-selection protocols. **ACW**

APPENDIX B

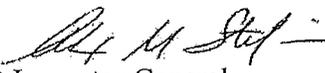


Memorandum

U.S. Department of
Transportation
Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION:** Audit Report on Improvements Needed
in the Motor Carrier Safety Status Measurement
System
Federal Motor Carrier Safety Administration
MH-2004-034

Date: February 13, 2004

From: Alexis M. Stefani 
Principal Assistant Inspector General
for Auditing and Evaluation

Reply to
Attn. of: JA-40

To: Federal Motor Carrier Safety Administrator

This report presents the results of our audit of the Motor Carrier Safety Status Measurement System (SafeStat). An executive summary of the report follows this memorandum.

Our objectives were to determine whether the:

- SafeStat model is valid and whether the scores calculated are consistent with the model's design.
- data used by SafeStat are complete, consistent, accurate, and timely.
- data quality control systems are adequate to ensure information quality for intended uses.

We found that SafeStat generally calculated scores consistent with its design, and a 1998 study supported the model's validity. However, the model needs to be revalidated because changes have occurred since the earlier study, and more sophisticated analysis, not previously conducted, would optimize the model's effectiveness. Moreover, we found material weaknesses in the SafeStat data reported by states and motor carriers and with the Federal Motor Carrier Safety Administration's (FMCSA) processes for correcting and disclosing data problems. Consequently, while SafeStat is sufficient for internal use, its continued public dissemination and external use require prompt corrective action. Improvements in the model are important, but getting better data is essential.

A draft of this report was provided to FMCSA on December 10, 2003. In its comments, FMCSA agreed with our concerns for improving data quality and cited a number of improvements already implemented or ongoing to address the recommendations in the report. The improvements reported included:

- hiring a contractor to conduct a new study to revalidate the SafeStat model;
- implementing an improved system for tracking public challenges to the accuracy of SafeStat data;
- providing SafeStat users with comprehensive information on data limitations;
- assigning staff to review monthly state reports that address state data quality issues and to work with the states to resolve them;
- establishing goals for completeness, accuracy, and timeliness of data; and
- making state grant funding contingent on participation in certain data quality programs.

In commenting on the findings in the draft report, FMCSA did not agree with all of our assertions as to the impact of data quality problems on SafeStat. Specifically, FMCSA commented that the language in the draft report overstated the problem of out-of-date census data on SafeStat. FMCSA also disagreed with any implication in the report that some motor carriers who are categorized by SafeStat as high risk, may be categorized as high-risk carriers only because of the existing data problems.

We appreciate FMCSA's positive response to our recommendations and have revised the final report to recognize corrective actions that have been taken or that are ongoing. We do not agree that the language in the draft report overstated the problem with out-of-date census data, and we have provided additional information on the issue in this final report.

On the question of whether some carriers may be categorized as high-risk only due to the existing data quality problems, we agree with FMCSA that data quality problems are more likely to make a high-risk carrier look good. However, we continue to maintain that the opposite situation can also occur. Because SafeStat scoring involves a relative ranking of one carrier against another, *missing data may place a lower-risk carrier in a deficient category because data for a higher-risk carrier is not included in the calculation.* Missing crash data were most significant with six states failing to report any crashes for the 6 months analyzed. Nationwide, estimates for the underreporting of large trucks involved in crashes varied in magnitude with some states underreporting by 60 percent or more and other states underreporting by less than 20 percent.

The existing data quality problems should not prevent FMCSA from using SafeStat as an internal decisionmaking tool. However, while the data used for SafeStat calculations are sufficient for internal purposes, if public dissemination of SafeStat results is to continue, the data must meet higher standards for completeness, accuracy, and timeliness.

We request that within 30 days FMCSA provide clarifications and target completion dates for several planned actions, as noted in the attached report. In instances where we are in agreement on the corrective actions and target completion dates are provided, the recommendations are considered resolved subject to the follow-up provisions of Department of Transportation Order 8000.1C.

We appreciate the courtesies and cooperation of representatives from FMCSA, the Volpe Transportation Systems Center, state government offices, and motor carrier companies during this audit. If you have any questions concerning this report, please call me at (202) 366-1992 or Debra Ritt, Assistant Inspector General for Surface and Maritime Programs, at (202) 493-0331.

Attachment

#

cc: National Highway Traffic Safety Administrator

APPENDIX C

July 28, 2011

Comments to the Motor Carrier Safety Advisory Committee

COMES NOW, the Alliance for Safe, Efficient and Competitive Truck Transportation (ASECTT) the undersigned and files this its comments to the Motor Carrier Safety Advisory Committee (MCSAC) based upon the Notice which appeared in Transport Topics on July 4, 2011 and states as follows:

Petitioner's Interest

The Alliance for Safe, Efficient and Competitive Truck Transportation is a nonprofit corporation formed for the purpose of ensuring a balanced regulatory approach to highway safety, ensuring that efficiency and competition is not sacrificed due to over-regulation which has no demonstrable safety benefit.

ASECTT is composed of interested carriers, brokers, shippers and allied industry participants which are committed to working with the U.S. DOT and the FMCSA to enhance highway safety while confirming that as the regulating body, the Federal Government certifies carriers as safe to operate on the nation's roadways, affording regulated carriers due process and the shipping public certainty that carriers certified as safe by the Agency may be chosen for use based upon routes, rates and services, and without vicarious liability concerns under differing and inconsistent state law principles.

ASECTT calls for a critical analysis of the FMCSA's so-called CSA 2010/SMS methodology prior to its implementation in accordance with the statutory requirements of the Administrative Procedure Act. Its members are concerned that while SMS methodology is a work in progress, portions of it have been released to the public without proper vetting, including but not limited to, the most basic scientific and statistical studies necessary to justify a nexus between the compliance violations measured in each of the so-called 7 BASICs and crash predictability.

ASECTT questions the viability of replacing objective safety standards applied after compliance reviews with percentile rankings and artificial peer groups as a satisfactory safety rating methodology.

ASECTT questions whether any system which arbitrarily concludes that a significant portion of the motor carrier industry should be labeled as marginal should be affirmed, particularly in light of the effect of SMS methodology on efficiency and competition and job creation.

ASECTT is committed to a thoughtful and critical review of SMS methodology through the administrative process, in the court of public opinion and through Congressional oversight of the Agency's mandate under the National Transportation Policy with a view to ensuring that the benefits of heightened competition envisioned by deregulation of the motor carrier industry are not damaged as an unintended consequence of an unproven activist safety methodology.

Background

Attached hereto as Appendix A is the article which appeared in Transport Topics to which this official comment is directed. Therein, it is reported that the MCSAC has been tasked by the Agency "to make sure that the points the Agency assigns to dozens of violations under the [CSA] program are fairly weighted so they are an accurate predictor of carriers' crash risk. The committee is expected to report back to the FMCSA by the end of August."

MCSAC has been asked by the Agency "not to reinvent the wheel" but to "redefine the CSA's controversial carrier safety measurement system and help the agency gain industry support for the system that went into operation in December."

Petitioners submit the MCSAC has been charged with an impossible task. Petitioners submit that SMS methodology is systemically flawed and that the MCSAC cannot be charged with designing an effective safety fitness determination system in two months simply by removing the most obvious warts in the severity weighting schema.

Adjusting Severity Weightings

MCSAC has been tasked with the impossible job of adjusting severity weightings to reflect carrier safety fitness. The long awaited University of Michigan Study which the Agency has touted from the outset as the basis for the alleged safety compliance/crash causation link has yet to be released and there is no scientific predicate or basis for MCSAC to make informed decisions.

Some things are obvious, though, even to the untutored. To the Agency's credit it recognizes that, notwithstanding its "sophisticated" "statistical regression computer analysis and expert review," its violation weighting system remains untethered from any realistic measure of safety. After working on violations and algorithms for two years, the Agency made 800 changes last August to its safety weighting procedures. Scores fluctuated wildly and upon public release of the methodology in December, the flaws in the weighting mechanism have become readily apparent and include:

1. Identifying Crash Preventability. MCSAC cannot correct this glaring error. The Agency's attempt to use DataQ is not feasible given its budget because the obvious necessity of calling balls and strikes, with due process, involving hundreds of thousands of accidents yearly. How do you avoid crippling overhead and distinguish between preventable and non-preventable crashes while establishing due process?

2. Measuring Paperwork Compliance, Not Fatigue. In the so-called fatigued driving BASIC, half of the accumulated points arise from form and manner violations in preparing paper logs resulting in improper comparisons of carriers with EOBRs and carriers with manual logs. Is MCSAC to recommend that form and manner violations be excluded from the Agency's algorithms with respect to fatigued driving, both prospectively and retroactively?

3. Enforcement Anomalies in the Unsafe Driving BASIC. In the unsafe driving BASIC, state enforcement anomalies and the probable cause effect results in improper peer group comparisons which cannot be eliminated by merely restructuring the points assigned for speeding. Ameliorating the severity of speed warnings does not address the inequity of grouping carriers in probable cause states with carriers in jurisdictions which write ten times fewer tickets.

4. Absence of Driver Qualification Data. This BASIC presents wild swings in carrier peer group rankings and is predicated largely on the failure of a driver to have a medical card on his person - hardly an accident causing event. CVSA is scheduled to vote on making failure to have a medical card in a driver's possession an out of service event! Is failure to have a medical card in a driver's possession, if the driver is medically qualified, a measure of crash likelihood?

5. Severity Weighting in Vehicle Maintenance Does Not Reflect Critical Safety Issues. In the vehicle maintenance BASIC, non-out of service violations are significant point accumulators. On what basis is MCSAC to determine whether missing light bulbs on trailer running lights cause crashes?

Systemic Flaws Which MCSAC Cannot Address

Petitioners submit that SMS methodology is systemically flawed and cannot be remedied by cosmetic changes to severity ratings within artificially created BASICS. Among the systemic flaws in SMS methodology, MCSAC cannot address the following:

(1) Artificial Peer Groups. Carriers are placed into arbitrarily created peer groups for the purposes of ranking. No correlation or justification for arbitrarily grouping carriers by size, number of miles, or number of incidents for purposes of percentile rankings has been shown or justified. (In artificially creating five separate peer groups for carriers with 30% straight trucks in August, many OTR carrier scores were substantially reduced while regrouped OTR carriers placed in the local "non logging" class saw their scores jump over the limbo bars without a single additional infraction.)

Petitioners submit that safety fitness determinations cannot be made by "grading on a curve" using a statistical system which arbitrarily assigns unsatisfactory or "marginal" safety ratings to carriers regardless of their individual performance or improvement. Petitioners submit that such a system can garner neither industry nor court approbation.

(2) Artificially Constructed Limbo Bars. SMS methodology is based upon 7 defined BASICS, none of which has been shown to have any substantial correlation to safety. Furthermore, artificial enforcement thresholds based upon percentile rankings have been established which have no proven correlation to safety. It is capricious on its face to conclude that a carrier at a 66 percentile ranking in a given BASIC should be rated as "marginal" while a carrier rated at 64 percentile in the same BASIC is given a "continue to operate" rating.

(3) Due Process Concerns. SMS methodology is based upon citations, not convictions, and upon total number of crashes without reference to preventability. In order to assure data accuracy under the Data Quality Act, it is imperative that there be a uniform administrative adjudication process if unscrubbed violations are to ultimately result in determining whether a carrier can continue to operate. DataQ does not accomplish this result with consistency or predictability. In some instances, adjudication of citations are not even considered by state officials.

(4) State Law Enforcement Anomalies. Although the harshness of state law enforcement anomalies may be ameliorated by downgrading warnings and citations, no system which assigns safety ratings based on comparing carriers which operate under different state regimes can be justified as equal treatment under the law.

(5) Profiling and Peer Group Creep. In order to obtain sufficient data to rank more and more carriers and to selectively target carriers for increased inspections using SMS, the Agency has targeted carriers labeled as "bad actors" under its unproven methodology for additional inspections. These additional inspections of carriers shifts carriers from one peer group to another, resulting in wild swings in carrier percentile rankings which have little to do with the actual points accumulated. This systemic flaw cannot be ameliorated by changing point allocations.

(6) Insufficient Data. The Agency is charged with measuring and rating 483,000 carriers. SMS measured approximately 97,000 carriers in at least one BASIC when implemented in December and the numbers for March suggest that the Agency has sufficient data to measure at most 19% of the carriers it regulates in any BASIC (vehicle maintenance) and less than 5% of the carriers it regulates in 4 of the remaining BASICs (cargo, driver fitness, crash and substance abuse). See chart at Appendix B. Nothing MCSAC can suggest will address this under-reporting problem or result in a comprehensive safety analysis for the missing unscored and unmonitored motor carriers left out of the SMS system.¹

(7) The Law of Large Numbers. An elemental principle of statistics is that conclusions about general performance trends can only be accurately predicted based upon a large number of reported incidents. No trend lines are possible under SMS methodology when predicting carrier performance based upon only a handful of inspections, violations or incidents. Over 95% of the carriers regulated by the FMCSA are small business enterprises operating less than 5 trucks which are inspected only a handful of times per year. In many of the BASICs there are simply no recorded violations and a single violation such as the absence of a medical card can result in huge percentile leaps. The Agency's own data and the absence of sufficient data to measure the vast majority of carriers in the BASIC areas proves that the system devised by the Agency is simply statistically inadequate to perform the intended task of providing a safety rating, much less a statistically accurate one, of all of the half million carriers regulated by the FMCSA.

¹ The attached scores for John Davis Trucking Company, Inc., the 67 unit DOT authorized carrier who hit the train in Nevada demonstrates poignantly the inadequacy of the Agency's collected data. See Appendix C.

Changing violation points will not result in filling in the lacuna of data necessary to statistically measure carriers or accurately predict performance. When a single additional violation in the small carrier grouping can result in 20 or 30 point jumps or going from unrated to marginal or unfit as the result of a single incident, the system is tragically flawed and cannot be remedied.

Maybe the SMS Wheel Does Need Reinventing

SMS methodology is not the law. Existing regulations under 49 C.F.R. 385 remain in place and the motor carrier industry has the enviable record of reducing highway fatalities to their lowest numbers in 35 years. SMS methodology has yet to be justified as consistent with the National Transportation Policy. No consideration to its effect on efficiency and competition has been offered. The correlation between compliance and safety has not been demonstrated with respect to the systemic structure of SMS methodology, much less the violation ratings.

The MCSAC should not be used as a lobbying group to convince industry of the merits of SMS.

In Executive Order 13563, President Obama put a freeze on any new rules until the effect upon small businesses and competition was analyzed. Moving ahead with SMS methodology without this analysis is improper and inconsistent with the Administrative Procedure Act. The angst within the shipper and broker community over the vicarious liability implications of SMS, although abated by the settlement in *NASTC et al. v. FMCSA* is real and has yet to be addressed by the MCSAC.

In conclusion, Petitioners submit that adoption of SMS methodology as a new safety fitness rating is not a fait accompli which can be cosmetically altered to result in a sound, efficient, fair and effective safety rating methodology for 500,000 regulated motor carriers. Unmeasured and as yet unconsidered is the effect of the intended program upon competition and efficiency within the industry, the shipping public and the mandates of the National Transportation Policy. The ambitious deadlines established by the Agency for submitting SMS methodology to OMB, and release for public comment strongly suggest that the Agency has not fully considered the issues raised in these comments or the devastating collateral damage which implementation of SMS methodology will have on the motor carrier industry, the shipping public, and small businesses in particular. Please see the attached statements by industry members in support of Petitioners' position.

MCSAC cannot don judicial blinders, ignore these fatal defects and conclude that with minor alterations SMS methodology is fit for its intended purpose. It is often charged with reflecting the concerns of the industry and assisting the Agency in making good policy.

APPENDIX D

**Comments in Response to
“Improvements to the Compliance, Safety, Accountability (CSA)
Motor Carrier Safety Measurement System (SMS)”**

Docket No. FMCSA 2012-0074

Submitted by the Alliance for Safe, Efficient and Competitive Truck
Transportation (ASECTT)

July 5, 2012

SELECTED PORTIONS

SMS Methodology is Systemically Flawed

Why CSA/SMS Methodology is Not a Significant Improvement Over SafeStat

**Why SMS Methodology is an Inaccurate Reflection of Carrier Safety Performance and
Prejudices Small Carriers**

Three Studies:

Wells Fargo, “CSA: Another Look With Similar Conclusions” (July 2012)

Inam Iyob, “BASIC Scores are Not Valid Predictors of Crash Frequency”

**James Gimpel, “Statistical Issues in the Safety Measurement and Inspection of Motor
Carriers”**

IV. Why SMS Methodology is Systemically Flawed

The systemic flaws in SMS methodology and its percentile rankings of carriers are well known yet unaddressed by the Agency. At the Agency's request, comments on this methodology were submitted to its handpicked Motor Carrier Safety Advisory Committee last summer by numerous parties, including ASECTT.¹ At the Small Business Administration Roundtable held on February 14, 2012, representatives from OOIDA and ASECTT identified substantial issues as well.²

These unaddressed issues beg careful, well reasoned answers the following questions:

1. **LACK OF OBJECTIVE STANDARD.** Why should the Agency abandon an objective audit, and the due process procedures afforded carriers under current statutes, to embrace a safety fitness determination that grades carriers on a curve using percentile rankings – thereby branding innocent carriers as increasingly “high safety risks” regardless of their objective performance?
2. **DATA NOT COMPREHENSIVE.** How can SMS methodology be touted as a “comprehensive safety analysis” when, just as in SafeStat, the vast majority of the carriers the Agency oversees have too few data points (infractions or inspections) to be ranked?
3. **ARBITRARY ENFORCEMENT PERCENTILES.** Do the intervention threshold percentiles have any value in establishing whether a carrier is ultimately safe or unsafe to operate on the nation's roadways?
4. **CRASH PREVENTABILITY IGNORED.** Whether the Agency's inability or unwillingness to address crash preventability so taints SMS methodology and its evaluation of carrier performance that, absent a carrier's right to contest preventability, the direct or indirect use of unscrubbed crash data to measure carrier performance is statistically invalid.
5. **LAW OF LARGE NUMBERS.** Whether, as Professor Gimpel suggests, the data available for use in SMS methodology is insufficient to permit an adequate analysis of small carriers.
6. **NO PROVEN PERCENTILE RANKINGS/SAFETY NEXUS.** Should percentile rankings be used in whole or in part to decide a carrier's fitness in light of the Wells Fargo study and Dr. Iyoob's more comprehensive analysis of individual carrier crash ratios by percentile?
7. **GEOGRAPHICAL ANOMALIES.** How can SMS possibly be touted as a reliable nationwide indicator of comparative safety performance when SMS data is no better than the widely varying enforcement practices of 50 different States plus the District of Columbia? (E.g., 5 states account for 43% of the violations recorded in the “Unsafe Driving” BASIC.)

¹ See Exhibit 2 attached hereto, “Comments to the Motor Carrier Safety Advisory Committee.”

² See Summary of ASECTT issues presented at that time attached as Exhibit 3.

18. DUE PROCESS ISSUES. Whether carriers are denied due process when state enforcement officials refuse to acknowledge court dismissal of reported violations by removing them from records underlying the BASIC scores.

19. CIRCUMVENTION OF RULEMAKING. Whether the Agency can ignore the current statutes and regulations requiring it to make a safety fitness determination under uniform and objective standards, and instead publish "Guidance" to shippers and brokers repudiating the effectiveness of the Agency's own safety fitness determination.

20. PREEMPTIVE EFFECT OF SFDs UNDER SECTION 31144. Whether the Agency's safety fitness determination was intended by Congress to have preemptive effect, and whether the Agency can waive its statutory duties by implicitly suggesting to shippers and brokers that they must make independent safety fitness determinations using SMS methodology under peril of suits under state law for vicarious liability and negligent selection.

21. ARBITRARY AND CAPRICIOUS CRITERIA. Whether the monitoring thresholds and peer groups established by the Agency behind closed doors are arbitrary and capricious.

22. STATISTICAL FLAWS. Whether the use of "inspection values" at roadside targets carriers for inspections, thereby destroying any comparison of carrier performance based upon a random statistical analysis.

23. WIDE MONTHLY FLUCTUATION OF SCORES. Whether wildly fluctuating scores due to peer group anomalies permit any meaningful use of percentile rankings by the Agency or shippers and brokers in making a safety fitness determination.³

24. EFFECT OF COMPLIANCE REVIEW. Whether a satisfactory safety rating based upon a compliance review should render any SMS score based upon prior violations irrelevant.

25. DATA QUALITY ACT ISSUE. Whether the Agency can release percentile rankings based on flawed and inaccurate data such as nonpreventable accidents which it knows are substantively inaccurate.

26. EFFECT ON SMALL CARRIERS. Whether the Agency should be touting SMS as a fait accompli when it has not analyzed the compliance cost or the effect on efficiency or competition.

³ ASECTT can show that a single safety event can result in a 40% increase in a BASIC for a 400 truck fleet, the adding or subtracting of a truck can result in a 20 point fluctuation in Unsafe Driving, and that small fleets with no SMS scores can go from unrated to 80% based upon a single inspection.

VI. ARGUMENT - LEGAL AND FACTUAL ANALYSIS

D. Why CSA/SMS Methodology is Not a Significant Improvement Over SafeStat

On February 13, 2004, the Office of Inspector General of DOT issued a report entitled "Improvements Needed in the Motor Carrier Safety Status Measuring System."⁴ This report, which identified critical flaws in the SafeStat system, was prepared at the request of Congressman Petri, Chair of the House Subcommittee with jurisdiction over the FMCSA, and resulted in Congress' directive in SAFETEA-LU that a new comprehensive safety analysis program for certifying safety fitness be instituted.

Eight years in development, the unvetted CSA/SMS methodology made public by the Agency, while attempting to remedy the flaws noted by the IG Study in SafeStat, is in reality no more comprehensive in its scope or better in accurately predicting high risk carriers. It contains the same systemic problems as SafeStat.

1. The IG Study "found material weaknesses in the SafeStat data reported by states and motor carriers and with the [FMCSA's] processes for collecting and disclosing data problems."⁵

ASECTT has pointed out similar material weaknesses and data flaws including geographical anomalies, under-reporting, profiling, peer group anomalies and inconsistent treatment by states of DataQ issues which has similarly not been addressed prior to release of SMS methodology.

2. The Inspector General concluded, "While SafeStat is sufficient for internal use, its continued public dissemination and external use require prompt corrective action. Improvements in the model are important but getting better data is essential."⁶

In this regard, ASECTT submits that SMS methodology gets more data, but arguably less valid data, than SafeStat. SafeStat measured carriers in four areas – Crashes, Driver, Vehicle, and Safety Management.

SMS methodology has added three additional areas of measurement but its efforts to get more comprehensive data have proven counterproductive. Driver Qualification, Drug and Alcohol and the soon to be replaced Securement BASIC each measure less than 5% of the Agency's census and have no proven strong correlation to safety fitness performance.

Moreover, the IG's directive that "getting better data is essential" has not been carried out. SafeStat was predicated on out-of-service violations, yet SMS methodology is based largely on non-out of service violations with less of a proven safety nexus. Here are other specific examples of ongoing data quality problems:

⁴See Executive Summary of Report MH2004-034 attached as Exhibit 9.

⁵ See U.S. DOT Office of Inspector General Memorandum dated February 13, 2004 attached as Exhibit 10.

⁶ Exhibit 10, p. 3.

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audit] if public dissemination of SafeStat results are continued, the data must meet higher standards for completeness, accuracy and timeliness.”⁸

The Agency has made SMS methodology publicly available and touted its efficacy even though shippers, brokers and carriers have shown how publication brands innocent carriers as unfit for use.

In court pleadings and its settlement of NASTC, *supra*, the Agency initially appeared mindful of the IG’s position when it represented that SMS methodology would be used for its own internal purposes and was not a new or different safety credentialing standard intended for use by the shipping public. However, the Agency’s May 16th guidance to shippers and brokers stands in stark contradiction to the IG’s directive that higher standards for completeness, accuracy and timeliness are required.

SMS methodology has not even been tested under the APA to meet the standard for the Agency’s own use. It certainly does not meet the “highest standard” set by the IG Study for public dissemination.

ASECTT can demonstrate that since SMS methodology went public, 51.3% of the carriers branded as a high safety risk under SMS methodology have received satisfactory safety ratings under existing law and regulations.

4. Issues as to completeness of the data persist with CSA/SMS. The IG study found 645,551 active interstate carriers of record in 2003 and that the Agency had sufficient data to compute a value in 1 of 4 safety areas for 170,000 carriers. Thus under SafeStat the Agency could measure 26% of carriers in at least one of four safety evaluation areas. Eight years later, even after adding hundreds of new non-out of service violations as point accumulators, the Agency currently computes a value in one or more of the five reported BASICs on only 91,000 carriers (or 12% of its census).

Arguably, SMS measures fewer carriers than SafeStat using less credible violations. Yet, the branding of carriers is more pronounced.

The Inspector General concluded,

“Consequently, while SafeStat is sufficient for internal use, its continued public dissemination and external use require prompt corrective action.” (Executive Summary, p. 3.)

“Because carrier safety data and the model’s ranking are publicly disclosed, a higher standard of quality must be met to ensure fairness to motor carriers who may lose business or be placed at competitive disadvantage by inaccurate SafeStat results. FMCSA will need to demonstrate timely improvements if it is to continue to publicly disclose carrier results across all SafeStat categories.” (Executive Summary, IV.)

⁸ See Memorandum, Exhibit 10, p. 3.

determination of all carriers. ASECTT suggests that the alternative set forth in Section set forth in the Gobbell Affidavit attached as Exhibit 7, is an idea whose time has come.

E. Why SMS Methodology is an Inaccurate Reflection of Carrier Safety Performance and Prejudices Small Carriers (Three Studies)

1. SMS methodology has no proven correlation to safety

The efficacy of SMS methodology must stand or fall on the Agency's ability to demonstrate a provable nexus between its intricate algorithms and imperfect measurement of roadside compliance and safety predictability.

In advising shippers and brokers to use SMS methodology, the Agency concludes:

“Internal, external, and independent (University of Michigan's Transportation Research Institute) evaluations have all shown that, of the six BASICS based on regulatory compliance (the Crash Indicator BASIC is based on actual crashes), the Unsafe Driving BASIC and the Fatigued Driving (HOS) BASIC have the strongest relationships to future crash risk.”

This conclusion has not been proven. The University of Michigan study which the Agency repeatedly cites (1) is based on now stale data; (2) only attempts to find a correlation to safety in two of the measured BASICS; and (3) is itself predicated on crash data which has a crash error ratio of over 60% due to the inclusion of non-preventable accidents in carrier statistics. Until the Agency can effectively scrub non-preventable accidents from its database, no statistical analysis will have any credibility.

In a separate study by Wells Fargo, the 200 largest carriers for which there is actually sufficient data were measured. No perceptible correlation between safety and SMS percentiles was noted in Unsafe Driving or in Fatigued Driving, the two BASICS the Agency proclaims as most definitive. The Wells Fargo Study concluded, “Quite simply, we found very little relationship (i.e., not statistically significant) between Unsafe Driver or Fatigued Driver scores and actual Accidents per Power Unit.”

Months after release of the Wells Fargo study, the Agency attempted to re-substantiate the University of Michigan study in a paper devoted largely to touting the benefits of progressive intervention entitled “Review of Wells Fargo Equity Research Report on Compliance, Safety, Accountability.” Its defense of that study is based upon two charts which average the crash ratios of all rated carriers at each percentile level. Although the Agency claims the result contains data on all measured carriers, in fact, it shows an average trend line which is no predictor of the crash susceptibility of *individual* carriers. Conclusions about individual carrier performance cannot be reached by percentile averaging of averages.

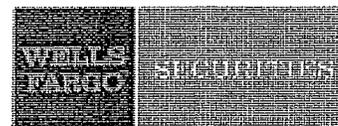
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Hence usage of SMS data for carrier selection will unduly favor some and penalize others, and thus should be avoided.”

Appendix C is a paper entitled, “Statistical Issues in the Safety Measurement and Inspection of Motor Carriers” by James Gimpel, PhD, University of Maryland, which seriously challenges the efficacy and usefulness of SMS percentile rankings to predict carrier safety. Professor Gimpel’s study is the first serious treatment of the structure of SMS methodology, its collection methods, systemic statistical errors and variables ignored in previous analyses. Importantly, the Iyob and Gimpel studies substantiate and reconfirm the Wells Fargo conclusions across the broad population of small carriers measured under SMS methodology. These studies poignantly demonstrate the absence of sufficient, adequate and reliable data for the vast majority of small business enterprises which make up the motor carrier industry. The resulting wide variations in individual crash ratios at each percentile ranking for the two reported acute BASICs is fatal to the use of SMS methodology as anything more than a heuristic tool for monitoring by the Agency. It does not result in a system which either the Agency or a deputized shipper and broker community can or should consider in making safety fitness determinations.

July 2, 2012

Equity Research



CSA: Another Look With Similar Conclusions

An Expanded Dataset And Another Look Highlights CSA Problems

Sector Rating: Airfreight & Logistics, Market Weight

Sector Rating: Trucking & Intermodal, Market Weight

Company Name	Rating	Price		FY EPS		FY P/E	
		07/02/12	2012E	2013E	2012	2013	
Airfreight & Logistics							
FedEx Corp. (FDX)	1	\$91.54	\$6.45	A	\$7.24	14.2x	12.6x
United Parcel Service, Inc. (UPS)	2	78.69	4.88		5.39	16.1x	14.6x
Trucking & Intermodal							
Arkansas Best Corp. (ABFS)	3	12.31	(0.08)		0.53	NM	23.2x
C.H. Robinson Worldwide, Inc. (CHRW)	2	60.85	2.85		3.24	21.4x	18.8x
Con-way Inc. (CNW)	2	35.62	2.35		2.73	15.2x	13.1x
Heartland Express, Inc. (HTLD)	2	14.32	0.85		0.94	16.8x	15.2x
Hub Group, Inc. (HUBG)	2	35.74	1.92		2.28	18.6x	15.7x
J.B. Hunt Transport Services, Inc. (JBHT)	1	59.13	2.68		3.19	22.1x	18.5x
Knight Transportation, Inc. (KNX)	1	15.99	0.95		1.14	16.8x	14.0x
Landstar System, Inc. (LSTR)	2	51.85	2.78		3.10	18.7x	16.7x
Old Dominion Freight Line, Inc. (ODFL)	1	44.42	2.82		3.20	15.8x	13.9x
Ryder System, Inc. (R)	2	35.31	3.71		4.12	9.5x	8.6x
Swift Transportation Co. (SWFT)	1	9.71	0.82		1.10	11.8x	8.8x
Werner Enterprises, Inc. (WERN)	1	23.92	1.61		1.85	14.9x	12.9x

Source: Company data and Wells Fargo Securities, LLC estimates 1= Outperform, 2= Market Perform, 3= Underperform, V= Volatile, NA= Company is on the Priority Stock List, NC= No Change, NE= No Estimate, NM= Not Meaningful

- We continue to find the FMCSA's Compliance, Safety, Accountability (CSA) safety program problematic. Based on our research, we do not believe stakeholders should rely on CSA BASIC scores as an indicator of carrier safety performance or future crash risk. Following our 11/4/11 report ("CSA: Good Intentions, Unclear Outcomes") and a formal response from the FMCSA (they disagree with many of our findings), we have expanded our carrier dataset to the 4,600 largest North American (NA) trucking companies from the 200 we used in our 11/4/11 report. This 4,600 carrier dataset includes companies with a minimum of 25 trucks and those that have received a minimum of 50 inspections. In our view, this dataset enables us to capture both large and smaller carriers as well as to ensure that the prescribed regulatory measures are represented and analyzed. In summary, the findings from the larger dataset strengthens our conviction in our earlier findings (i.e., there is no meaningful statistical relationship between "poor" BASIC scores and accident incidence) and also demonstrates even greater dispersion in the intended results and unintended consequences of the CSA methodology.
- While most of the carriers in our coverage universe are in compliance, in our analysis, we identified several important inconsistencies. We found a wide and somewhat unexplainable range of inspection frequency among carriers. In turn, because inspection frequency affects productivity and since only one-third of vehicle inspections are free of violations, a potential "negative feedback loop" may be created. Lastly, while surveys suggest that both large and small carriers have applied resources towards CSA compliance, it is difficult for us to assess how shippers, drivers, insurance providers, etc. are treating the vast number of carriers without a BASIC score. We are left to wonder if non-rated carriers will be "shunned" and thereby benefitting our universe, or will stakeholders seek to avoid the ambiguities of the prescribed ranking methodology and punish our carriers?

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Please see page 18 for rating definitions, important disclosures and required analyst certifications

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Together we'll go far



No Meaningful Statistical Relationship In Our Larger Dataset

We increased our dataset from the 11/4/11 report to more closely align with regulatory agencies demonstrated sample sizes, although we wanted to remain cognizant of the nature of our analysis. We are trying to assess if the new regulatory methodologies are, in fact, indicative of crash/safety performance. We recognize that investors are interested in carrier safety as it relates to costs, reputation and market share implications. Smaller carriers tend to be heavily represented in our 4,600 carrier dataset, which reflects the fragmented nature of the trucking industry.

The FMCSA refers to attempts at identifying and resolving “systemic” safety problems, which we believe is most important considering our trucking coverage universe and investor profile. While there is a tremendous amount of individual driver data available because of the fragmented market, there is a much smaller set of data available for carriers with 50 or greater inspections and a minimum of 25 vehicles in the fleet. We chose these mitigating variables to first ensure that there were enough inspections to accurately represent a carrier’s safety and also to identify if “systemic” issues are identified (25 power units seems like a reasonable fleet size to incorporate “systemic” safety programs and also gave us a large enough sample set).

In our view, “too few” inspections (either favorable or unfavorable) attached to a single carrier represented insufficient data to accurately assess a methodology. Indeed, data with fewer than 20 observations is often not considered reliable for statistical analysis. Limiting our data to those mitigating variables yielded a 4,600 carrier dataset, which we feel is comprehensive enough to make broad-based market assertions, particularly as it pertains to our coverage universe and investor focus.

In the FMCSA dataset as of March 2012, there were roughly 326,000 carriers of which 90,000 carriers had an SMS percentile score. However, there were 235,000 carriers who had zero scores and only roughly 42,000 who had 20 or more inspections. In other words, only approximately 13% of the carriers had the number of inspections (at least 20) that provide a sufficient number of observations (statistically speaking). This is a certain problem that stakeholders may have with CSA; only a small portion of the carrier population is rated.

Number of Carriers with Inspections and BASIC Scores for Nationwide Carrier Fleet, March 2012				
Inspections	Carriers	# with Scores	% with Scores	No Scores
1	79,713	95	0.1%	79,617
2	46,254	84	0.2%	46,170
3	32,190	815	2.5%	31,375
4	23,651	1,392	5.9%	22,259
5	18,254	2,734	15.0%	15,520
6	14,488	3,560	24.6%	10,928
7	11,761	3,963	33.7%	7,798
8	9,680	4,191	43.3%	5,489
9	8,010	4,108	51.3%	3,902
10	6,608	3,865	58.5%	2,743
11	5,714	3,638	63.7%	2,076
12	4,916	3,413	69.4%	1,503
13	4,416	3,249	73.6%	1,167
14	3,666	2,832	76.8%	854
15	3,396	2,695	79.4%	701
16	2,939	2,435	82.9%	504
17	2,570	2,143	83.4%	427
18	2,426	2,102	86.6%	324
19	2,113	1,868	88.4%	245
20+	43,555	41,991	96.4%	1,564
Totals	326,340	91,174	27.9%	235,166

Source: FMCSA

CSA: Another Look With Similar Conclusions

CSA Correlation Comparison		Accidents per Million Miles	Accidents per 100 Power Units	Unsafe Driving BASIC
Overall	Correlation	0.116	0.116	0.116
	R ²	0.013	0.013	0.013
	Correlation	0.122	0.122	0.122
	R ²	0.015	0.015	0.015
Above/ Below (Vehicle)	Correlation	0.111	0.111	0.111
	R ²	0.011	0.011	0.011
	Correlation	0.111	0.111	0.111
	R ²	0.011	0.011	0.011
Above/ Below (Carrier)	Correlation	0.111	0.111	0.111
	R ²	0.011	0.011	0.011
	Correlation	0.111	0.111	0.111
	R ²	0.011	0.011	0.011

Note: Values are statistical median
Source: FMCSA, Wells Fargo Securities, LLC

Data Collection And Scoring

In the 3/14/12 FMCSA report, a UMTRI analysis is cited as showing a high statistical relationship between crash rates (per 1,000 power units) and Unsafe Driving BASIC (R²=0.6609) and Fatigued Driving Basic (R²=0.8276). We do not have access to the underlying data and we note the data was from a larger dataset than ours although from years 2008 and earlier. Moreover, it appears the correlation analysis was run *after* a carrier was first grouped with other carriers who had similar percentile rankings. Accordingly, the UMTRI dataset of 42,595 carriers in the Fatigued Driver BASIC was reduced to a final dataset of 100. Simply, a carrier that was close to the 1% mark was put in the "1% grouping", and so on. We could not find any statistical rationale for grouping carriers into percentiles. Indeed, the purpose of regression analysis is to explain variation. Conversely, we ran our analysis using each individual carrier's BASIC scores against each individual carrier's crash rates. We found very low R² results and no meaningful relationships. A study by Inam Iyoub (PhD in Engineering; Director of Engineering at Transplace.com) based upon the underlying data (i.e., not the consolidated percentiles) from the UMTRI study obtained from FMCSA, was also not able to find a correlation. In the Transplace study, the UMTRI correlations did not hold when the carriers were ungrouped from percentile rankings.

We believe one of the main challenges is that CSA is a Federal program but violations and inspections are completed at the State level. We have found that States have a wide variety of enforcement and inspection protocols and an individual carrier's exposure to particular States has the distinct possibility of influencing the BASIC scores, in our view. Moreover, the quality of State reporting on inspection data and crash reporting varies to such a degree that the FMCSA actually rates States as "Good", "Fair" or "Poor" on the completeness, timeliness, accuracy and consistency of State-reported crash and roadside inspections. The UMTRI data was from the CSA Op-Test Model using 2008 and earlier data from four test States (Colorado, Georgia, Missouri, and New Jersey). Montana and Minnesota were added later. A February 2008 "snapshot" listed 26 States as "Good" (including the original test State of Colorado), 14 States as "Fair" (including the original test States of Georgia and Missouri) and 8 States "Poor" (including the original test State of New Jersey).

We find several aspects of the crash reporting particularly troubling. First, is the admission by FMCSA that States have varying degrees of "completeness, timeliness, accuracy and consistency" of crash reporting. Crash data seems like the most important piece of information in the entire CSA equation. Secondly, carrier crashes are recorded for purposes of CSA whether or not the carrier was at fault. We do not have access to the data that shows the large truck at-fault rate per se. However, looking at other data suggests that large trucks are often not at fault. According to a 2009 review of large truck crashes, the FMCSA notes that collisions with another transport vehicle was behind 75% of fatal crashes and 67% of nonfatal crashes involving large trucks. Notably, in rear-end fatalities passenger vehicles struck large trucks approximately four times more often than large trucks struck passenger vehicles. In head-on fatal crashes the passenger vehicle crossed the center line at nearly five times the rate that the large trucks did. We do not mean to imply that a passenger vehicle is necessarily at fault when they rear-end a large truck. Rather, we think it is at least plausible to assume that an

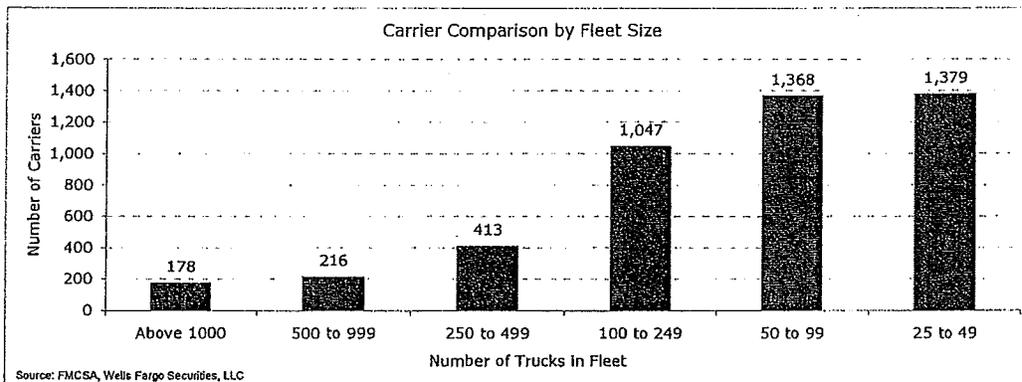
CSA: Another Look With Similar Conclusions

scores could potentially discriminate against certain carriers due to that carrier BASIC scores. We note that States with sea ports tend to have higher inspection rates as compared to non-port States, such that a carrier operating in a port area may tend to have scores that are not directly comparable to a carrier operating in a less inspection intensive State.

Further, insurance companies are using BASICS as benchmarks for risk evaluation and assigning premiums based on scores. Fundamentally, we support a safety monitoring system and the insurance implications one would bring, unfortunately we feel the CSA methodology is problematic as it stands by inaccurately assigning poor scores to otherwise safe carriers.

Finally, the direct and indirect costs associated with compliance tend to favor larger more sophisticated carriers and appears to be somewhat inequitable to the smaller operators. We note that in our 4,600 carrier dataset "small" carriers (less than 100 power units) tended to be inspected at twice the rate as larger carriers. While we do believe safety and risk management are at the forefront of trucking manager's focus, the introduction of Pre-Screening Programs and other regulatory initiatives have both a direct dollar cost and labor/hour commitment. Given the fixed cost nature of the programs and the much higher expense/employee characteristics of the smaller carrier, a distinct advantage is offered to the large carrier as the costs and labor/hours can be accrued to both a larger fleet and larger employee base.

Lastly, we believe that the FMCSA has put significant resources behind the CSA program and substantial efforts have been put forth to improve highway safety. However, our analysis of the data continues to suggest that CSA BASIC scores may not be a reliable indicator of carrier safety or future crash risk.

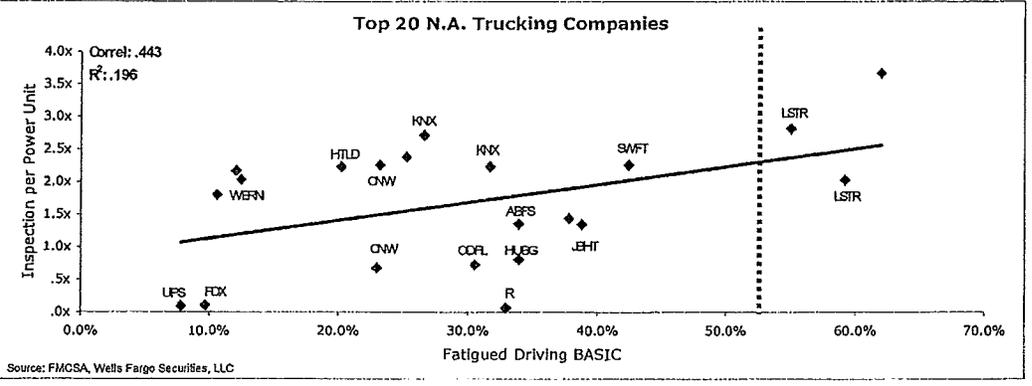
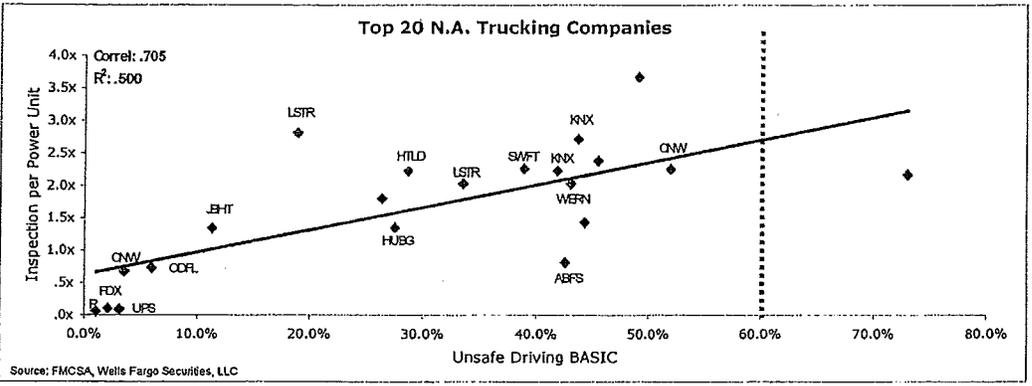
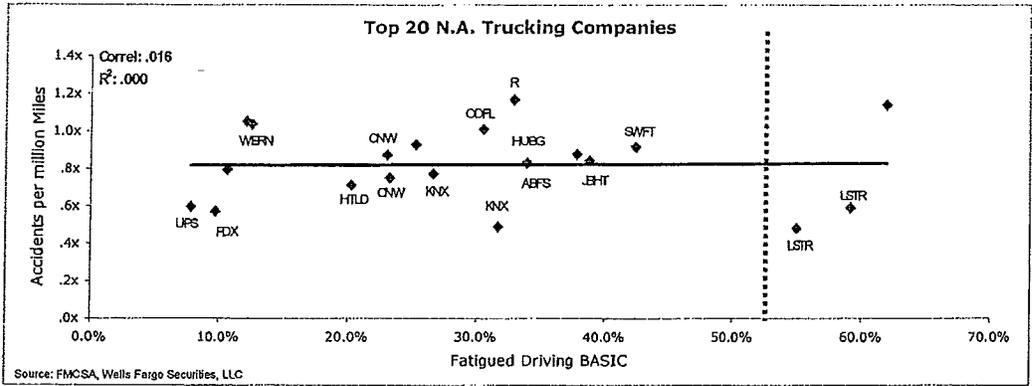


Fleet Size Comparison		Median		
	Number of Carriers	Number of Power Units	Inspection per mm miles	Inspection per Power Unit
169%	178 Above 1000		1.205x	.589x
	216 500 to 999		1.509x	.876x
	413 250 to 499		1.645x	1.026x
82%	1,047 100 to 249		1.892x	1.225x
	1,368 50 to 99		2.095x	1.529x
	1,379 25 to 49		2.930x	2.292x
Total:	4,601	Median:	2.193x	1.587x

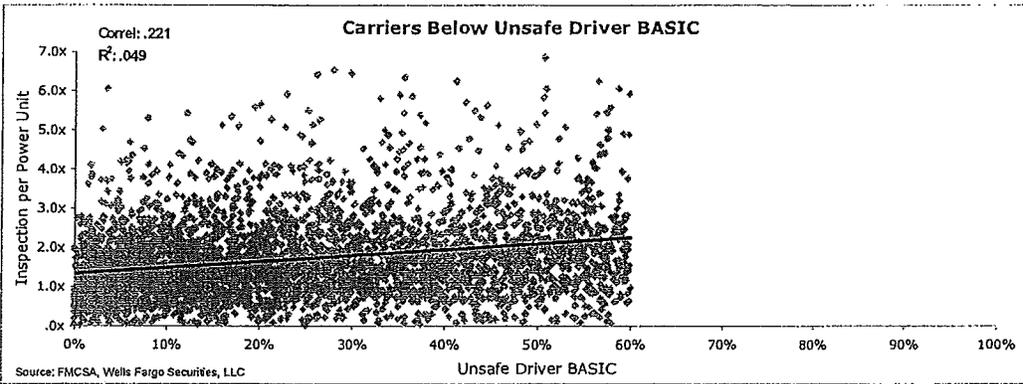
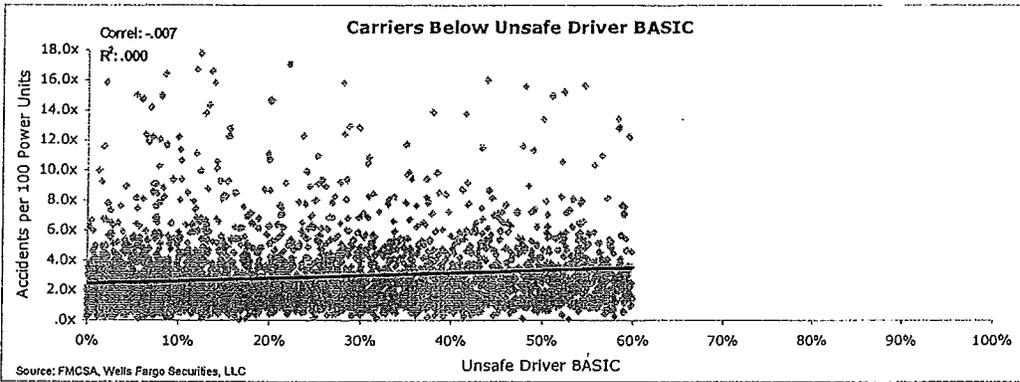
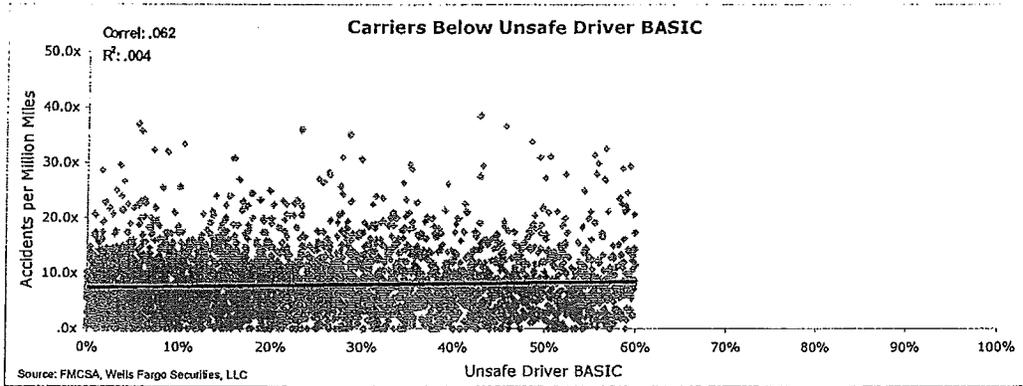
Source: FMCSA, Wells Fargo Securities, LLC

CSA: Another Look With Similar Conclusions

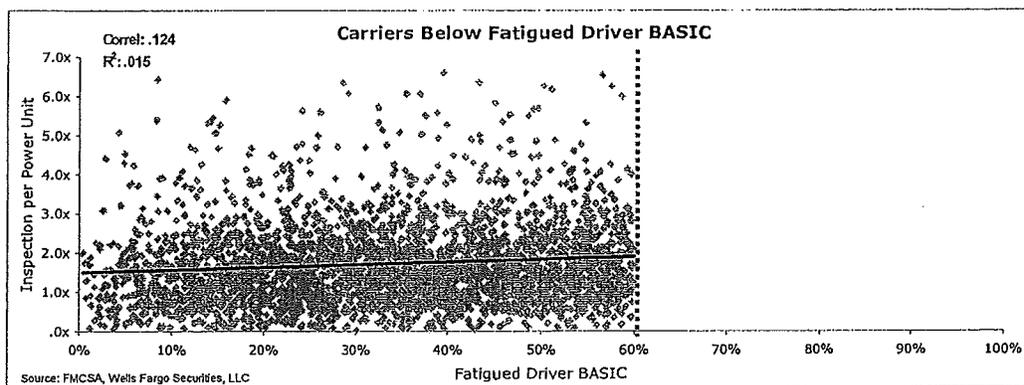
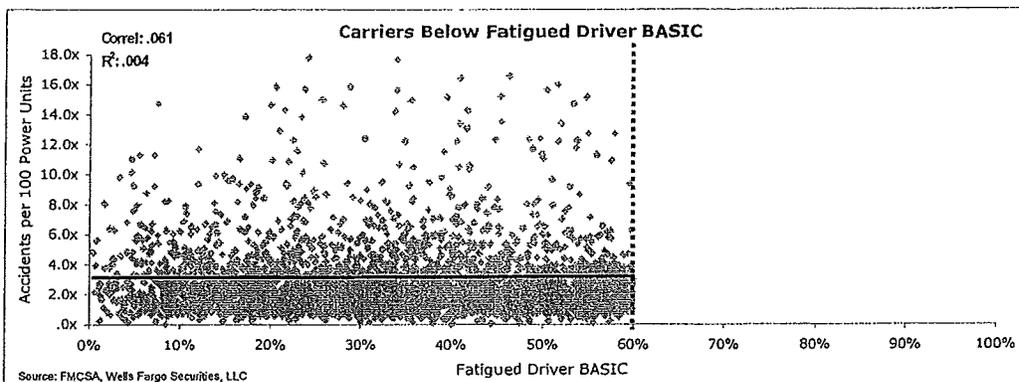
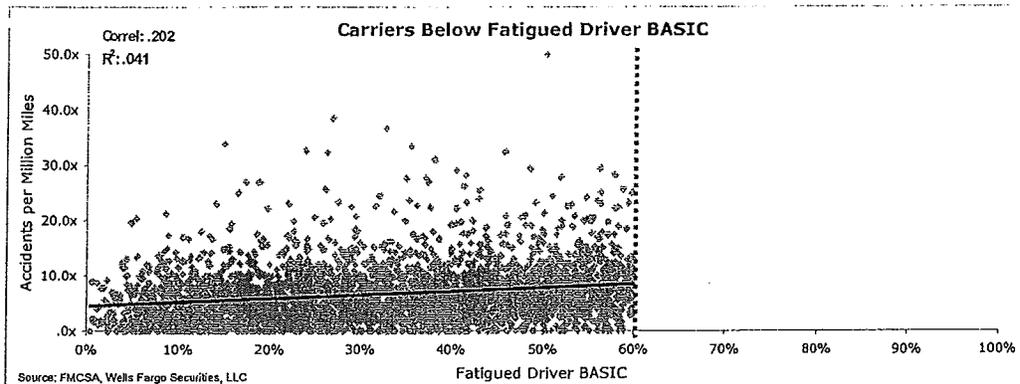
In the chart below we highlight that two of LSTR's operating companies were above the "Fatigued Driving BASIC" threshold but LSTR companies have among the lowest crash rates among peers.



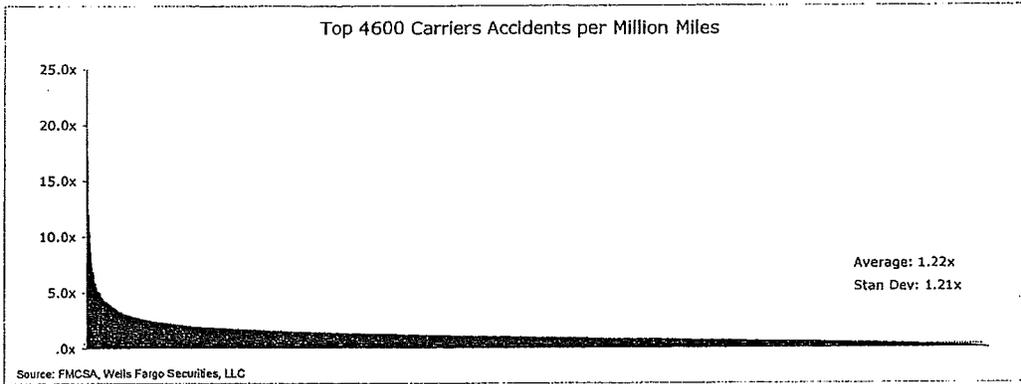
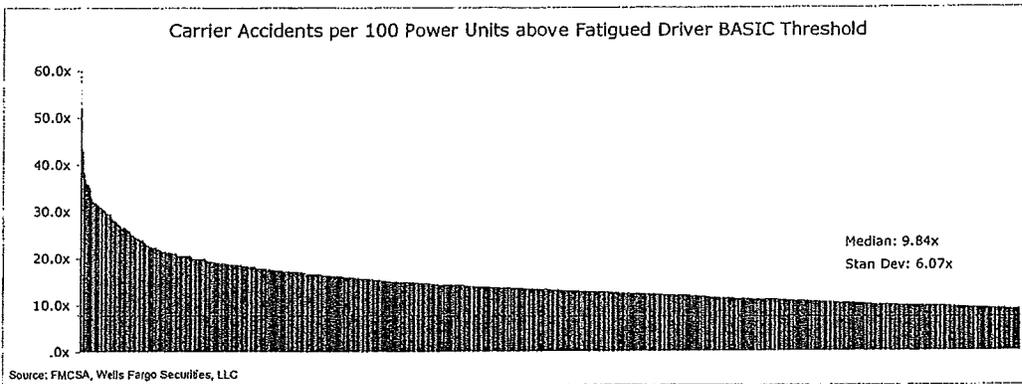
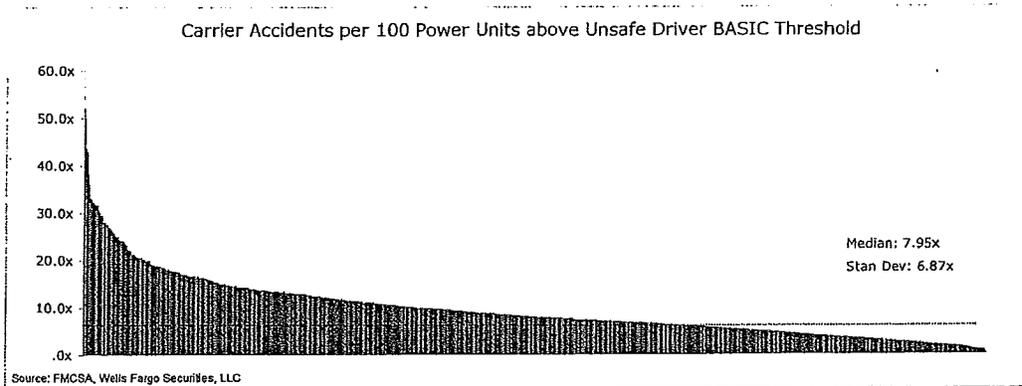
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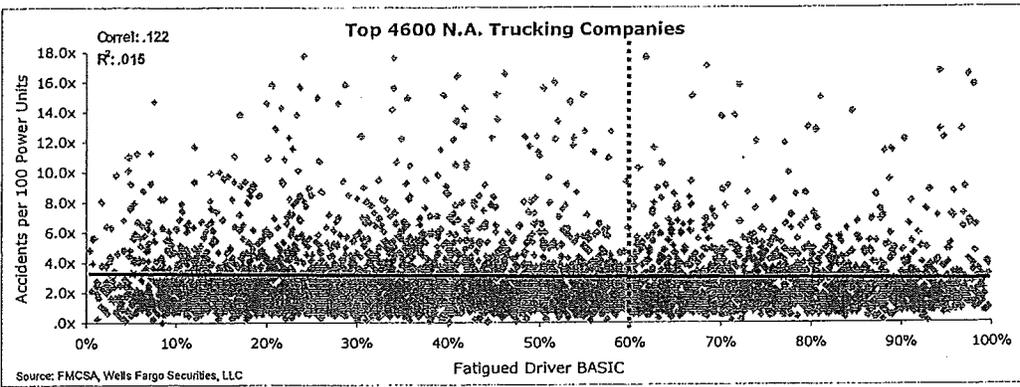
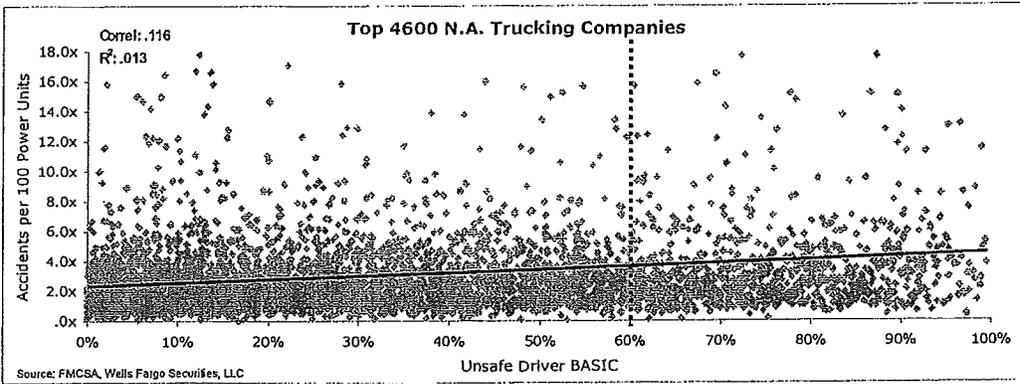
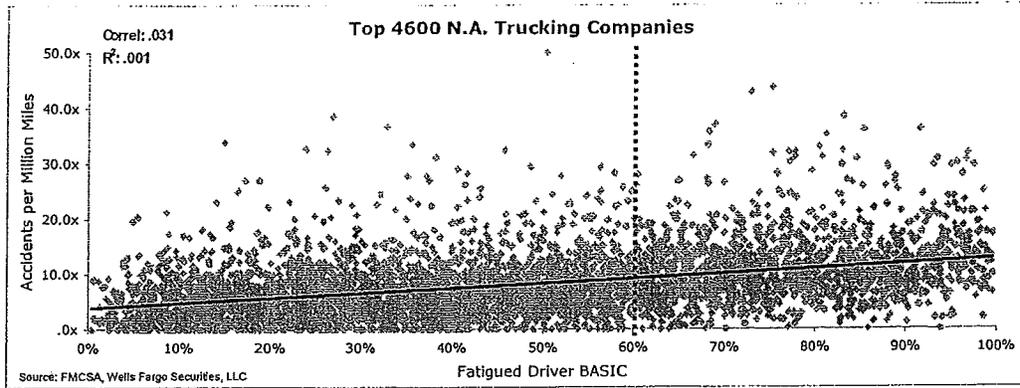
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CSA: Another Look With Similar Conclusions



CSA: Another Look With Similar Conclusions



CSA: Another Look With Similar Conclusions

- Wells Fargo Securities, LLC maintains a market in the common stock of Knight Transportation, Inc., Heartland Express, Inc., J.B. Hunt Transport Services, Inc., Swift Transportation Co., Old Dominion Freight Line, Inc., Werner Enterprises, Inc., Con-way Inc., Arkansas Best Corp., FedEx Corp., United Parcel Service, Inc., C.H. Robinson Worldwide, Inc., Landstar System, Inc., Hub Group, Inc.
- Wells Fargo Securities, LLC or its affiliates managed or co-managed a public offering of securities for Ryder System, Inc. within the past 12 months.
- Wells Fargo Securities, LLC or its affiliates intends to seek or expects to receive compensation for investment banking services in the next three months from Ryder System, Inc., United Parcel Service, Inc., FedEx Corp., Arkansas Best Corp., Old Dominion Freight Line, Inc., Swift Transportation Co.
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- Wells Fargo Securities, LLC and/or its affiliates, have beneficial ownership of 1% or more of any class of the common stock of Landstar System, Inc., C.H. Robinson Worldwide, Inc., Arkansas Best Corp., United Parcel Service, Inc.
- Ryder System, Inc. currently is, or during the 12-month period preceding the date of distribution of the research report was, a client of Wells Fargo Securities, LLC. Wells Fargo Securities, LLC provided investment banking services to Ryder System, Inc.
- Ryder System, Inc., FedEx Corp., Arkansas Best Corp., Knight Transportation, Inc. currently is, or during the 12-month period preceding the date of distribution of the research report was, a client of Wells Fargo Securities, LLC. Wells Fargo Securities, LLC provided noninvestment banking securities-related services to Ryder System, Inc., FedEx Corp., Arkansas Best Corp., Knight Transportation, Inc.
- Swift Transportation Co., Old Dominion Freight Line, Inc. currently is, or during the 12-month period preceding the date of distribution of the research report was, a client of Wells Fargo Securities, LLC. Wells Fargo Securities, LLC provided nonsecurities services to Swift Transportation Co., Old Dominion Freight Line, Inc.
- Wells Fargo Securities, LLC received compensation for products or services other than investment banking services from Old Dominion Freight Line, Inc., Swift Transportation Co., Knight Transportation, Inc., Arkansas Best Corp., FedEx Corp., Ryder System, Inc. in the past 12 months.
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As of: July 2, 2012

49% of companies covered by Wells Fargo Securities, LLC Equity Research are rated Outperform.

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SMS BASIC Scores are Not Valid Predictors of Crash Frequency
Inam Iyoob, PhD
Director of Engineering, Transplace

I am the Director of Engineering for Transplace and am a data analyst and mathematical expert with a PhD in Engineering from the University of Arkansas and a Masters in Engineering degree from Oklahoma State University. I have 12 years of work experience with Transplace.

In advising shippers and brokers to use SMS methodology, the Agency concludes: "Internal, external, and independent (University of Michigan's Transportation Research Institute) evaluations have all shown that, of the six BASICs based on regulatory compliance (the Crash Indicator BASIC is based on actual crashes), the Unsafe Driving BASIC and the Fatigued Driving (HOS) BASIC have the strongest relationships to future crash risk."

In a separate study by Wells Fargo, the 200 largest carriers, for which there is actually sufficient data, were measured. No perceptible correlation between safety and SMS percentiles was noted in Unsafe Driving or in Fatigued Driving, the two BASICs the Agency proclaims as most definitive. The Wells Fargo Study concluded, "Quite simply, we found very little relationship (i.e., not statistically significant) between Unsafe Driver or Fatigued Driver scores and actual Accidents per Power Unit."

Months after release of the Wells Fargo study, the Agency attempted to re-substantiate the University of Michigan and Volpe National Transportation Systems Center studies in a paper devoted largely to touting the benefits of progressive intervention entitled "Review of Wells Fargo Equity Research Report on Compliance, Safety, Accountability" published March 16, 2102.

At the request of ASECTT, I have reviewed the FMCSA's defense of SMS methodology as a valid predictor of carrier safety.

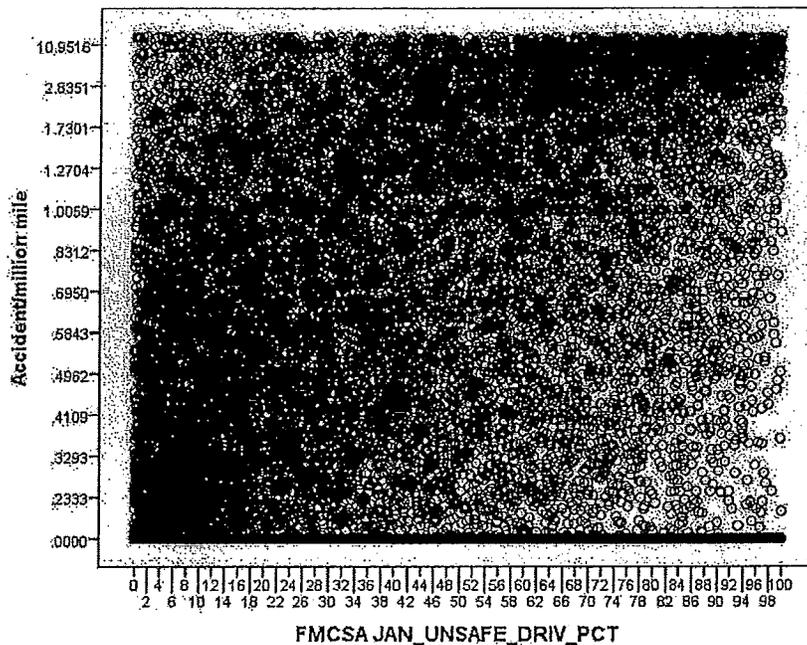
In refutation of the Wells Fargo conclusion, the Agency has submitted the two graphs shown below (Figures 1 and 2) arguing that the older 2009 Volpe National Transportation Study is more accurate than the Wells Fargo's study because it effectively measures 29 and 43 thousand carriers, not just the largest 200.

An examination of the study demonstrates that FMCSA's data cannot be used to predict the crash performance of individual carriers, even though the FMCSA claims SMS scores are correlated to the average crash frequency of hundreds of carriers at each percentile integral. Consumers of freight transportation do not select "average" carriers, they select individual carriers and the Agency study offers no proof that SMS methodology is a predictor of individual carrier safety performance at any percentile level.

Based upon data obtained from the FMCSA's own data bank, I was asked to perform a detailed study of individual carrier percentile rankings and crash frequency correlations.

That study resulted in the graphs shown in Figures 3 and 4. The study clearly shows that with respect to individual carriers, percentile rankings of carriers both above and below the arbitrary "monitoring thresholds" indicated with the ▲ are not valid predictors of crash frequency. Regression analysis shows that SMS percentile scores account for less than one percent of the variation in crash frequency for each of these BASICS.

Figure 3: Unsafe Driving – Plot of 26,435 Carriers



Statistical Issues in the Safety Measurement and Inspection of Motor Carriers

James Gimpel
University of Maryland

The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) has developed a Safety Measurement System (SMS) for gauging the safety of individual motor carriers traveling U.S. highways. The methodology of the SMS is detailed in a January 2012 report prepared by the John A. Volpe National Transportation Systems Center in Cambridge, MA (Volpe Center 2012). The key aspect of this new measurement system is the inspection of motor carriers by federal and state officials using established criteria for determining the safety of vehicles and the fitness of drivers.

Specifically, seven safety areas are identified by FMCSA as of critical: Unsafe Driving, Fatigued Driving, Driver Fitness, Controlled Substances and Alcohol, Vehicle Maintenance, Cargo-Related security, and Crash Indication assessment. The stated purpose of ranking carriers by percentile with this system is to target firms for progressive interventions to promote safety improvement and prevent accidents, injuries and fatalities on the national roadway network.

The goal of the FMCSA inspection and scoring system is surely a worthy one and there is no constituency for more accidents. Truck operators themselves are commonly the victims of traffic accidents, some of them fatal. This report documents some concerns and problems with the methodology of the SMS, and the data on which it is founded.

Data Generation Process

The data on which the SMS is based originate from inspection records from on-road safety inspections of Level III or higher and crash records reported by state government agencies. The inspections data are made available for study in the Motor Carrier Management Information System (MCMIS) database and are accompanied with motor carrier census data containing information about firm location, fleet size, and number of drivers.

From a statistical standpoint, is important to note how these inspections are carried out, and therefore how the data are generated. The data collection process is predisposed by design toward recordkeeping only on problems or violations, but not on the problem-free carriers and drivers. In this respect, one very significant feature of the data collection process is the decision to include carriers among the observations only following a violation. A firm or driver could have a series of clean inspections and never have these data points included, basically meaning that the data are badly censored, biasing any subsequent data analysis. The censoring of the data injects selection bias quite aside from the additional bias that results from the common complaint in the industry that clean inspections frequently go uncounted even after a firm has had a violation and is included in the MCMIS data. The data collection process by design is tantamount to the naïve research error of "selecting on the dependent variable" -- constraining variation toward high values of inspection violations and leaving out low (clean inspection) values. As pointed out below, this fundamental flaw has serious implications for the entire system.

regulatory regime. Findings based on the data are dubious due to the atypical or unusual nature of the sample.

The problem of sample selection bias cannot be dismissed by FMCSA on the grounds that it is only interested in the carriers who are sampled in the inspection process. After all, it is not merely external validity, or the generalization to non-sampled carriers, that is called into question by the bias in data. Key statistical relationships thought to be causal are misconstrued as well (Heckman 1976; 1979; Goldberger 1981). For instance, regression analysis based on the partial data will exhibit bias in the coefficients in much the same way as excluding important explanatory variables produces bias. Relationships between independent and dependent variables are not properly represented even for those carriers that have been subject to inspection and are included in the MCMIS system.

Unsafe Driving Scores and Crashes

One example of where the present data can mislead regulators is in relationships found between specific inspection violations and crash risk. What is true of that relationship among the highly overrepresented large and frequently inspected carriers in the data may not be true of the poorly represented mid-sized and small carriers, or of the population of carriers writ large. This variation in safety practices across the population of firms could result from a number of causes, including the important fact that the small carriers are frequently self-employed owner-operators, and confront different incentives for safety as well as costs associated with regulatory penalties than drivers who are employed by someone else.

Even using the data provided by FMCSA the variability in the relationship between the BASIC score for unsafe driving and the score for crash rates can be made evident if we apportion it by the number of inspections as determined by the agency's Combo Segmentation Safety Event Grouping (Volpe 2012, 3-4). Such a division creates 5 groups of trucking firms by inspection frequency: Combo Segment 1 with between 3-8 inspections; Combo 2 with 9-21 inspections; Combo 3 with 22-57 inspections; Combo 4 with between 58-149 inspections; and Combo 5 with 150 or more. The less frequently inspected carriers in the first two segments are usually smaller firms, and their BASIC scores for unsafe driving are largely unrelated to crash risk.

On the following pages appear three scatterplots (Figures 1, 2 and 3) showing the nature of the relationship between the BASIC percentile scores for unsafe driving and the crash rate drawing upon data from Spring 2012. The first plot exhibits the bivariate relationship for carriers in the second safety event group (inspections=9-21), the second plot is for the third safety event group (inspections=22-57), and the third plot captures the relationship for the largest and most frequently inspected carriers (>150 inspections). Note that these cut points in the number of inspections follow the agency's specifications and are not equal sized groups. Also, the number of carriers with particular BASIC scores varies considerably by the type of score, and is usually lower for some event group segments than for others.

Due to implausibly extreme values in the crash ratings from some outlying observations in the right tail of the distribution of those values, 84 cases were deleted as inaccurate. The resulting regression coefficients reveal that for the second combo group, the bivariate linear relationship is weakly positive but explains little of the variation in the scatter of points. Specifically the unsafe driving BASIC score explains a mere 2 percent of the variation in crash risk for carriers in the second event safety group ($r=.14$). Using the unsafe driving scores as a predictor of crash risk for these small carriers is little better than guessing, which is surprising given what these scores are supposed to indicate and how the data are generated with a bias toward violations. For trucking operations with larger numbers of inspections (see Figures 2 and 3), the linear relationship is positive but only slightly stronger. Specifically, for firms in combo segment 3 with between 22 and 57 recorded inspections ($N=8,998$), the wide variation displayed in the plotted values suggests that many other factors are at play in determining accident risk. The extent of explained variation in accident risk rises to about 3 percent ($R^2=.028$).

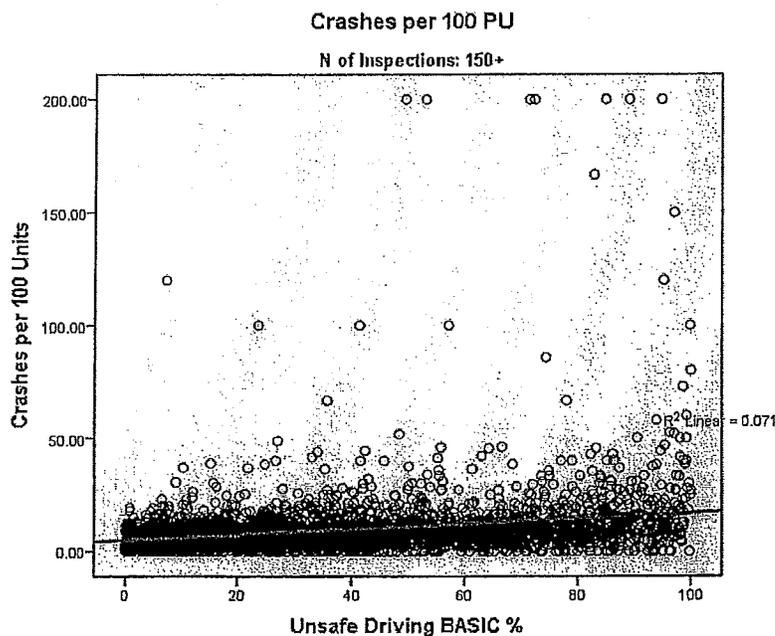


Figure 3. Bivariate Relationship between Unsafe Driving Scores and Crashes per Power Unit, Combo Group 5, N=3,351

Among the largest firms, experiencing high numbers of inspections ($N=3,351$), the relationship is also positive, showing an increase in the accident rate of 1.2 ($p \leq .001$) for every 10 point increase in the unsafe driving BASIC score ($R^2=.07$). Here, the positive association approximates that found in the Wells-Fargo Equities research study on the largest 200 firms in the industry (Wells-Fargo 2011, 6-7). But like the Wells-Fargo research, the errors around the regression line indicate that the amount of variation in accident risk explained by the unsafe driving score for large firms is modest at best (see Figure 3). As Wells-Fargo indicated, because it is intuitive that this relationship should be positive and clear-cut, there is either something wrong with the SMS measurement of unsafe driving, or something wrong with the sample of carriers in the MCMIS data.

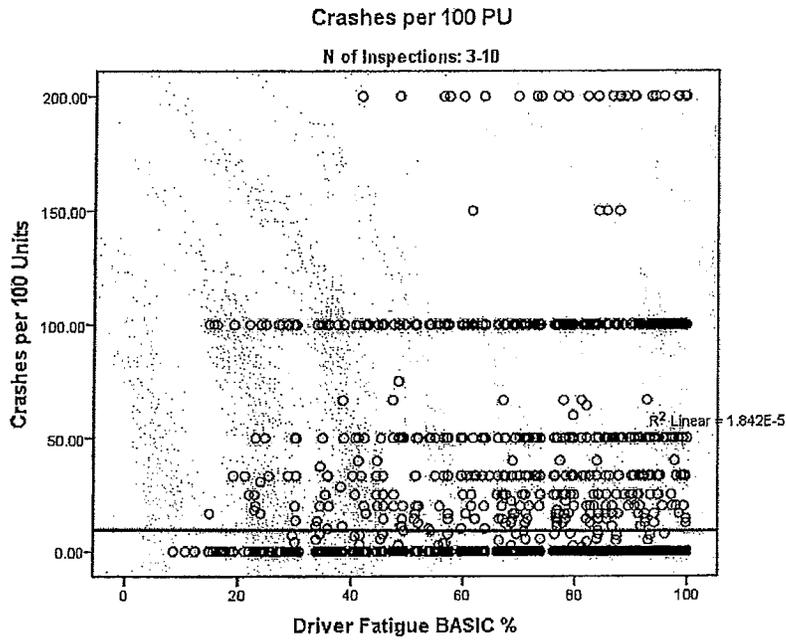
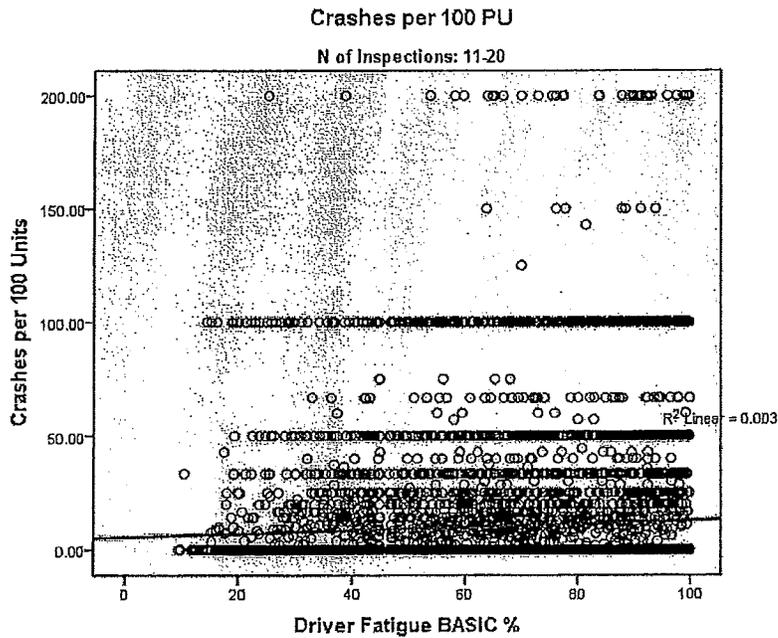


Figure 4. Bivariate Relationship between Driver Fatigue Scores and Crashes per Power Unit, Group 1, N=6,598



render them unreliable. For many carriers in the MSMIS data, the association between crash risk and the BASIC scores is so low as to

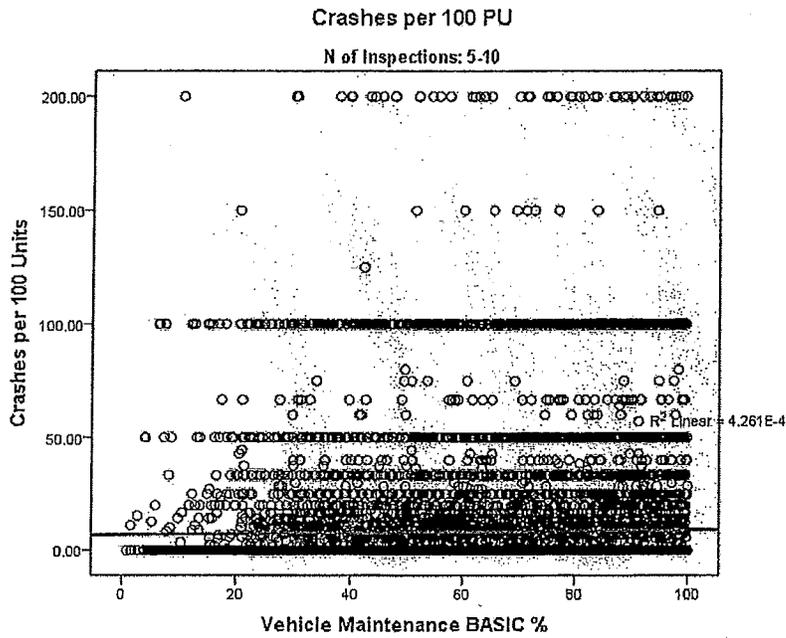
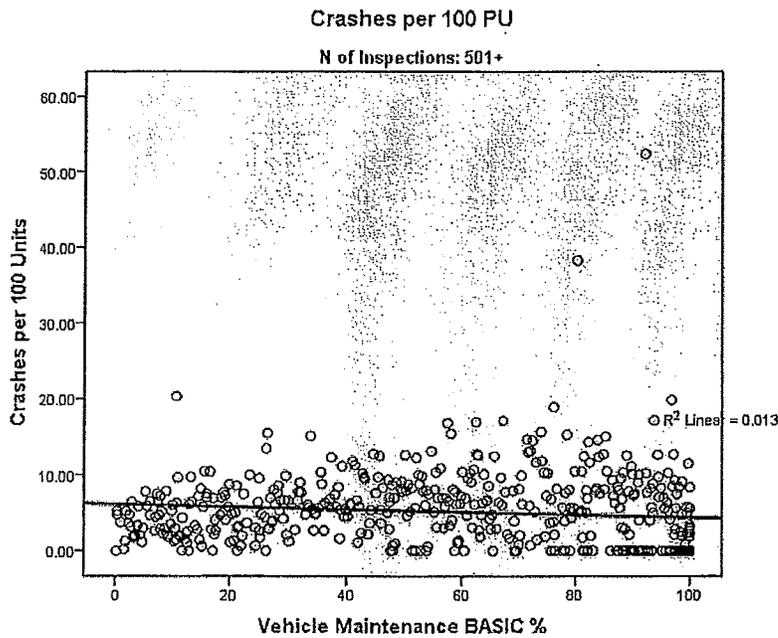


Figure 7. Bivariate Relationship between Maintenance Scores and Crashes per Power Unit, Group 1 N=17,014



numerator. In a single 24 month period, however, many firms may have only five, six or eight inspections. As Table 1 shows, many more have even fewer than that.

Table 1. Number of Carriers with Inspections and BASIC Scores for Nationwide Carrier Fleet, March 2012

Inspections	Carriers	N with Scores	% with Scores	No Scores
1	79,713	96	0.1	79,617
2	46,254	84	0.2	46,170
3	32,190	815	2.5	31,375
4	23,651	1,392	5.9	22,259
5	18,254	2,734	15.0	15,520
6	14,488	3,560	24.6	10,928
7	11,761	3,963	33.7	7,798
8	9,680	4,191	43.3	5,489
9	8,010	4,108	51.3	3,902
10	6,608	3,865	58.5	2,743
11	5,714	3,638	63.7	2,076
12	4,916	3,413	69.4	1,503
13	4,416	3,249	73.6	1,167
14	3,686	2,832	76.8	854
15	3,396	2,695	79.4	701
16	2,939	2,435	82.9	504
17	2,570	2,143	83.4	427
18	2,426	2,102	86.6	324
19	2,113	1,868	88.4	245
20+	43,555	41,991	96.4	1,564
Totals	326,340	91,174	27.9	235,166

Source: FMCSA, <http://ai.fmcsa.dot.gov/SMS/Data/Downloads.aspx>, accessed May 16, 2012

Small changes in the number of violations per inspection have a substantially larger effect when the number of total inspections is small than they do when the number of total inspections is larger. Suppose XYZ Freight Company moves from 200 points in violations to 260 points between inspection 5 and inspection 6. That moves the raw score on which the BASIC percentile is constructed from 40 to 43. But an identical change in violation points from 600 to 660 for OP Corporation between inspection 39 and 40 moves the raw score from 15 to 16.5, having *half* the impact.

Rates based on a small number of inspections are highly variable and for that reason unreliable as measures. When rates are unstable it is virtually impossible to distinguish random fluctuation from true changes in the underlying risk of crashes or accidents. Comparisons of firms based on unstable rates can lead to spurious conclusions about safety risks.

By way of statistical background, the notion that high variability is associated with small numerators can be understood through reference to *the law of large numbers*. In statistical terms, as the number of samples increases, the average of these samples is likely to reach the mean of

instrument. Consequently, statistical relationships detected in the MSMIS data are not only a cloudy reflection of the true population, but may well be flat wrong.

The relationship between the Unsafe Driving BASIC measure and crash rates the low inspection safety event groups is particularly weak. This could point to a substantively significant attribute of small as compared to large carriers, it could also be an artifact of the small number of inspections among this group of carriers, and finally it could be the result of the censoring of the data by design of the data collection. Whatever the case, the absence of relationship calls the reliability of the BASIC scores into serious question.

Accidents are very poorly predicted by the BASIC scores in the MCMIS data and this is especially astounding given that the data generation process selects specifically on carriers supposedly at risk for accidents, not even including carriers until they have a violation. It is important to ask why the relationships are so weak. Certainly it is intuitively plausible that unsafe driving, poor vehicle maintenance and driver fatigue would be positively related to crash risk. There are a litany of systematic biases that are contaminating the SMS methodology, from the irregular data collection practices across geographic areas and agencies, to inappropriate definitions of the measures themselves.

Nearly every credible study of traffic accidents involving large trucks finds them to be difficult to predict because multiple forces are involved, with the behavior of a single vehicle operator explaining only a small share of accident occurrences or severity (Zhu and Srinivasan 2011; Khorashadia et al. 2005; Chang and Mannering 1999; Polus and Mahalel 1985). Circumstances including traffic dynamics, weather conditions, and the geometry of roads have found to be relevant, and many accidents are the fault of drivers other than the truck operator. In this connection, economists have long known that the addition of every driver on the road increases the total of other people's insurance costs. The upshot is that even truck drivers with clean inspection records will have accidents, but the systematic exclusion of clean inspection data by the SMS system eliminates these important cases from consideration in statistical modeling. Because accidents are usually the product of a complex interaction of human factors and environmental conditions, measures intended to predict and explain them have to be as free of noise as possible. But the SMS methodology designs noise into the BASIC scores rather than taking pains to eliminate it.

Vehicle inspections may prevent accidents, but only if the appropriate aspects of driver behavior and vehicle maintenance are being monitored and inspected. Why the BASIC scores for unsafe driving are so weakly associated with crash risk across the entire MCMIS sample is most likely the consequence of including safety-irrelevant aspects of operator behavior in the measure. The measures require thorough reconsideration after their reliability is assessed. For example, trucking industry sources suggest that the vast majority of violations falling within the fatigued driver BASIC category involve minor infractions associated with recordkeeping, and therefore do not precisely capture aspects of driver disposition or vehicle roadworthiness that serve the interest of accident prevention, such as driving longer hours than safety standards allow. If the scoring for fatigued and unsafe driving were focused on those violations actually germane to common understandings of those concepts, the statistical relationships between measures and outcomes would surely be stronger.

Zhu, X. and S. Srinivasan. 2011. "A Comprehensive Analysis of Factors Influencing the Injury Severity of Large Truck Crashes." *Accident Analysis and Prevention* 43: 1: 49-57.

APPENDIX E

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2301 Rayburn House Office Building
Washington, DC 20515-6315

August 31, 2012

Ms. Anne S. Ferro
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Administrator Ferro:

I appreciate the willingness of the Federal Motor Carrier Safety Administration (FMCSA) to permit Deputy Administrator Bill Bronrott and Mr. Joseph DeLorenzo of the agency's Office of Enforcement Compliance to participate in the July 11, 2012 Small Business Committee hearing on the effects of the new Compliance, Safety and Accountability (CSA) program on small businesses. Because you were not able to participate in the hearing, I am writing to summarize the major concerns with the CSA program that were raised by the witnesses and Members of Congress at the hearing.

Since the FMCSA began implementation of the CSA program, a growing number of industry stakeholders and third-party researchers have raised concerns that the program, as currently designed, may not only have limited utility as a crash predictive tool, but in many cases may identify safe carriers as a crash risk. Of particular concern to the Committee is the potential for the Safety Measurement System (SMS) to disproportionately assign negative Behavior Analysis Safety Improvement Category (BASIC) scores to small carriers based on a handful of inspections, citations or warnings.

Below are the most common concerns raised by the private sector witnesses that testified on the second panel at the hearing.

I. Issues with Data Quality and the SMS Methodology

As addressed at the hearing, industry stakeholders and third-party researchers have identified a number of issues with the underlying data and SMS methodologies that call into question the system's ability to identify carriers at risk of causing a future accident and which may result in carriers, particularly small carriers, receiving negative safety scores. These methodological concerns are primarily related to: disparities in inspection frequency and emphasis between

states; the inclusion of citations and violations that have little or no correlation with crash risk; the severity weights assigned violations; the sufficiency of the data FMCSA uses to calculate BASICs; and FMCSA's decision to base scores on a carrier's relative performance to peers, rather than as an absolute.

Inspection Frequency: A number of independent studies have found that differences in inspection frequency could result in disproportionate and disparate outcomes for carriers operating in high inspection frequency states. The studies also documented that the negative consequences of these outcomes could be exacerbated in cases where states emphasize enforcement of certain regulations, particularly those that bear little relation to crash risk.

Additionally, the studies question whether the SMS will be able to achieve its primary purpose: identify carriers at risk for a future crash. For example, studies by Wells Fargo Securities¹ found no positive correlation between certain high BASICs and heightened crash risk. A separate study by Dr. James Gimpel at the University of Maryland² reached similar conclusions. Even the University of Michigan Transportation Research Institute (UMTRI) Evaluation of the Op Model Test³ commissioned by your agency discovered discrepancies between FMCSA's claims that high BASICs score in all categories are correlated with higher crash risk.

At the hearing, Deputy Administrator Bronrott noted that FMCSA has taken exception to the findings of Wells Fargo Securities 2011 study of CSA, noting that the study examined a relatively small sampling of the carrier universe, some 200 of the nation's larger carriers, presumably those with the most SMS data. Subsequently, Wells Fargo Securities has conducted a new study examining 4,600 carriers – which includes a substantial number of the small carrier universe – that it claims verifies the results of its previous study.

Does FMCSA plan on responding to the new Wells Fargo Securities and Gimpel studies? How does FMCSA account for the fact that multiple separate analyses of the program – the Wells Fargo Securities studies, the Gimpel study, and the Op Model Evaluation found weak or no correlations between certain high BASICs scores and crash risk and still stand by the statements made by FMCSA that all high BASICs scores are correlated with heightened crash risk? And, since the Op Model Evaluation was based on older data collected prior to full CSA implementation, does FMCSA plan to seek an independent analysis using all individual carrier scores in the CSA database?

Assignment of Severity Weights: At the hearing, a great deal of discussion involved the SMS's assignment of severity weights. A number of industry witnesses questioned the appropriateness

¹ ANTHONY GALLO & MICHAEL BUSHCE, WELLS FARGO SECURITIES, CSA: ANOTHER LOOK WITH SIMILAR CONCLUSIONS (2012); ANTHONY GALLO & MICHAEL BUSHCE, WELLS FARGO SECURITIES, CSA: GOOD INTENTIONS UNCLEAR OUTCOMES 2 (2011).

² JAMES GIMPEL, STATISTICAL ISSUES IN THE SAFETY MEASUREMENT AND INSPECTION OF MOTOR CARRIERS, DRAFT 3 (undated).

³ UNIVERSITY OF MICHIGAN TRANSPORTATION RESEARCH INSTITUTE, EVALUATION OF THE CSA 2010 OPERATIONAL MODEL TEST ii, (2011).

of severity weights assigned to certain infractions, especially for violations that appear to have little, if any, correlation to crash risk.

Even the UMTRI study, often cited by FMCSA as demonstrating the efficacy of the SMS program in identifying carriers with a high crash risk, questioned the appropriateness of certain severity weights by noting “no rationale or justification for the weights are given” in the documentation explaining SMS.

Absent an explanation, the severity weights appear to be arbitrary determinations with no connection to the goal sought by FMCSA – safe roads. What is FMCSA’s plan to review the severity weights assigned to specific violations? When will FMCSA better explain and justify each severity weight’s correlation to crash risk, and adjust these severity weights accordingly?

In addition, the current SMS assigns the same severity weights to violations that result in a warning by law enforcement as it does those that result in an actual citation. In issuing a warning, the officer is acknowledging that the severity of the infraction is relatively minor and not severe enough to warrant a formal citation. However, the system rates all infractions equally, regardless of the actual severity of the infraction. I strongly encourage FMCSA to consider whether severity weights should acknowledge this distinction.

Data Quality: Finally, a number of industry stakeholders and third-party researchers have questioned whether FMCSA has attained enough data to ensure that the SMS is accurate and reliable. For example, the study by Dr. James Gimpel determined that FMCSA has too little data on small firms to generate accurate BASICs scores. The study also found that your agency’s paucity of data on small carriers could result in disparate effects on smaller carriers as small changes in the number of violations per inspection have a substantially larger effect when the total number of inspections is smaller than they do when the total number of inspections is higher.

As Mr. DeLorenzo testified at the hearing, concerns about the quality of SMS data and the effects this issue has on carrier BASICs scores are one of the top concerns expressed by small trucking company operations. These concerns have been buttressed by ample third-party research that also question the adequacy and reliability of the data upon which SMS will assign scores to carriers. Therefore, what is FMCSA’s plan to address the small amount and, in some cases, the lack of data for the majority of carriers? Also, how many carriers currently have enough data in the CSA system to generate a score in each of the seven BASICs? If data sufficiency is a long-term challenge, will the agency modify the SMS to take into account these limitations?

II. The Need for a Crash Accountability Process

Accidents that are not the fault of a commercial motor vehicle operator should not be included in a carrier’s BASICs score. The inclusion of such incidents not only violates the principles of fairness and due process, it undermines public and commercial confidence in the accuracy of the data SMS uses to calculate BASICs scores while contributing nothing to the goal of promoting

greater safety behavior on the part of commercial motor vehicle operators in order to reduce crash risk.

I was troubled to learn at the hearing that the agency is only now beginning to study the appropriateness of using police reports in a crash accountability system. FMCSA had promised to conduct this study more than two years ago during the initial implementation of the SMS. We understand from stakeholders that FMCSA may have conducted prior research in this area in 2010. What was the outcome of that research, and why is additional research on police reports necessary at this juncture?

III. Shortcomings of the DataQs System

During his testimony, Deputy Administrator Bronrott highlighted the ability of carriers to challenge incorrect information in their records. However, even the FMCSA has acknowledged the difficulties that carriers experience in receiving timely corrections to these records. Many small trucking companies are concerned that the DataQs process is not working as well as it should. All too often DataQs Requests for Data Review are not handled consistently or in a timely manner and continue to include dismissed or dropped citations.

Since the SMS uses all inspection violations the FMCSA claims include a safety component to calculate BASIC scores, the DataQs challenges should be handled consistently and expeditiously. The Administrative Procedures Act was enacted to prohibit such ad hoc and inconsistent decision making.

IV. Negligent Hiring, Vicarious Liability and the Safety Fitness Determination Rulemaking

The FMCSA is sending a mixed and confusing message to shippers, brokers, carriers and the public. The agency includes a disclaimer on the SMS website stating that the symbol for “exceeds intervention threshold” is not a safety fitness rating, but the agency has encouraged shippers, brokers and insurers to use the information in the SMS, including BASICs scores, to make business decisions. Brokers and shippers are concerned that the BASICs scores will be viewed as de facto safety ratings because the FMCSA is encouraging private industry to rely on them and courts may consider BASICs scores in determining the viability of vicarious liability and negligent hiring claims. Nevertheless, the FMCSA’s continues to rollout changes to the SMS which indicates that the system is still a work in progress and has weaknesses.

This is problematic for several reasons. First, the FMCSA currently has a safety fitness rating system. Second, the FMCSA is required to go through the rulemaking process to revise its safety fitness rating system. Third, the FMCSA intends to use SMS-generated scores to determine if carriers are unfit to operate. Finally, the proposed rulemaking to update the safety fitness rating system has been delayed by several years due to changes made to the SMS.

While industry is eager to see FMCSA move forward with the Safety Fitness Determination rulemaking, the agency should not preempt that rulemaking by suggesting that shippers, brokers,

and carriers use BASICs scores for carrier selection. Furthermore, the agency should not move forward with the rulemaking until the concerns regarding the underlying data and SMS methodologies, particularly those related to the relationship between BASICs scores and crash risk, are addressed.

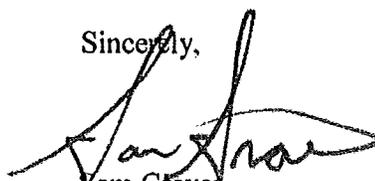
V. Conclusion

As I noted at the hearing, I believe the CSA program is well intentioned and has the potential to improve FMCSA's ability to more efficiently use and focus its resources on problem drivers and carriers in order to improve highway safety and reduce crashes caused by commercial motor vehicle operators. However, small business concerns related to the accuracy and reliability of the current SMS raises questions not only as to its ability to accurately identify potentially dangerous carriers, but also about the program's potential to misidentify those carriers who are not at risk of causing crashes.

In addition, the differences between the former SafeStat system and the SMS are significant. While FMCSA may have been under no legal obligation to put the program up for notice and comment rulemaking, the scope of the changes and the concerns identified by small businesses suggest that the agency and public would benefit from additional stakeholder input into the design of SMS methodologies. I appreciate that the FMCSA announced changes that it believes will improve the CSA program in August, but I am troubled that the changes do not address the concerns summarized above.

For these reasons, I urge the FMCSA to seriously consider what changes should be made to ensure that CSA portrays the safety records of small commercial motor carriers accurately and treats them fairly. Please provide a response to the Committee addressing the concerns raised in this letter by September 28, 2012 and explain what future steps you will take to ensure that small businesses are treated fairly under the CSA program. I look forward to your productive actions to remedy these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Graves", written over a horizontal line.

Sam Graves
Chairman

APPENDIX F



(<http://www.joc.com>)

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Commentary: Industry, Not Government, Drives Truck Safety

Aug 31, 2012 2:42PM GMT

Tom Sanderson

Source:

The Journal of Commerce Online

Anne Ferro, administrator of the Federal Motor Carrier Safety Administration, in early August shared with the audience at the PeopleNet User Conference that fatalities in truck- and bus-related crashes fell nearly 5 percent in 2011. This is great news, but Ms. Ferro proceeded to attribute the reduction to the Compliance Safety Accountability program, which took effect in December 2010.



"This (crash reduction) is a very solid demonstration of success in our efforts," she said. "CSA is a strong enforcement program. The good news is that CSA is working. We are seeing the results from the process change we are all undertaking."

But I'd like to pose this question to Ms. Ferro: If the federal government's CSA program is to be credited with a 5 percent reduction in fatalities in 2011, who gets the credit for the 12 percent decline in 2008 and 20 percent decline in 2009 before CSA's implementation? One may be tempted to credit the recession, but although miles traveled declined 7.3 percent in 2009, miles were actually up 2.2 percent in 2008. Fatalities per million miles, which is a better measure of safety, declined 14 percent in 2008 and 15 percent in 2009.

The government isn't responsible for the decline in truck-related fatalities. The credit rightfully belongs to the trucking industry and professional truck drivers who are responsible for the tremendous safety improvements going back to the beginning of deregulation of the trucking industry. The difference is evident, as noted in the following statistics drawn from the National Highway Traffic Safety Administration's Fatality Analysis Reporting System, Federal Highway Administration and the FMCSA:

The trucking industry, despite operating 83 percent more trucks running 163 percent more miles, was involved in 43 percent fewer fatalities claiming 45 percent fewer lives and an astounding 79 percent fewer fatalities per million miles. Fatalities per 100 million miles declined by a 4.8 percent compound annual rate between 1979 and 2010.

Year 1979: The last year before deregulation

# of Large Trucks	# of Miles	Fatal Crashes	Lives Lost	# of Fatalities per 100M miles
5.9 Million	109 Billion	5,604	6,702	6.15

Year 2010

# of Large Trucks	# of Miles	Fatal Crashes	Lives Lost	# of Fatalities per 100M miles
10.8 Million	287 Billion	3,261	3,678	1.28

Neither Ms. Ferro nor CSA saved those lives. The trucking industry and professional truck drivers saved those lives, and they will continue to improve highway safety with or without CSA. Falsely claiming credit for safety improvements to justify a highly flawed and criticized program is undignified, inappropriate and easily disqualified as incorrect information.

The fact is there is no correlation between CSA-Safety Measurement System scores and individual carrier accident frequency. CSA's flawed methodology and data unfairly labels more than half of measured carriers as less-than-safe, and the publication of the SMS scores is hurting many safe truckers and increasing confusion and liability for shippers. SMS scores should not be published. They should be used as originally intended: an internal tool of the agency for deciding how to allocate its enforcement resources.

Tom Sanderson is CEO of Dallas-based logistics and technology provider Transplace.

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Source URL: <http://www.joc.com/commentary/commentary-industry-not-government-drives-truck-safety>

APPENDIX G

Its time, the FMCSA needs an objective alternative to CSA/SMS methodology to credential and certify as safe to operate motor carriers of property and passengers.

June 22, 2012

After my initial support of CSA/SMS, I can no longer support this program as being overall effective in identifying un-safe or high risk carriers. My opinion is based 32 ½ years' experience in government service in motor carrier safety compliance, performance and enforcement. And for the last five years I have worked as a motor carrier safety consultant.

My government safety service includes more than twelve years as a field investigator and 20 years in management positions at the former Interstate Commerce Commission, the Federal Highway Administration, and at Federal Motor Carrier Safety Administration. I concluded my government service as a Division Administrator for the Federal Motor Carrier Safety Administration responsible for insuring that motor carriers based in my assigned areas were conducting their operations in a safe and responsible manner.

I will always support FMCSA and 95% of everything it does. But I can no longer support its CSA/SMS program.

I believe the time has come to create a more credible, effective and efficient alternative to this controversial program.

During my government service years I was both involved and managed numerous programs that we believed at the time to be new and exciting and developed, implemented and amended to reduce crashes. I was there when we man of these programs were scrapped after being determined to be ineffective. Programs with names like Commercial Accident Prevention Evaluation (CAPE), Essential Element Examination (EEE vehicle inspections), Selective Compliance and Enforcement (SCE), and Accident Countermeasures (AC).

Of course there have been others that have worked to some degree such as the Performance Registration and Information Systems Management (PRISM), Commercial Vehicle Information System Networks (CVISN) and certainly the former SafeStat system. All of these programs are designed to identify high risk carriers and be able to initiate some type of intervention to improve their operations and compliance performance. I was at FMCSA during the early years of the development of CSA/SMS and believed at the time that it was an improvement in over the SafeStat program and was probably the most effective program that I had seen in my many years of service at the agency to reduce crashes.

My loss of confidence comes after I have seen large number of carriers being publically branded as unsafe by CSA that are not unsafe motor carriers.

I have seen far too many good, well established motor carriers with long histories of safe operations identified as "High Risk" by CSA/SMS that are simply not "High Risk Carriers".

Some recent examples are where FMCSA recently spent 5 weeks at a 60 year old motor carrier with 250 trucks conducting what it calls a Focused Audit. This carrier had a crash rate of .40 per million miles traveled and had maintained that low crash rate for many years. I was involved in another 11 week Focused Audit on a very old carrier, well established carrier that too had a very low crash rate and had maintained that low crash rate for many years. And yet one more, just last week a good safe 30 truck carrier that has been in business 25 years, again with a very low crash rate was again subjected to a long and extensive audit where no significant safety issues were discovered.

All of the above carriers had at the time of FMCSA audit a crash rate below .50 recordable crashes (both preventable and non-preventable) per million miles traveled for many many years.

FMCSA considers a motor carrier with a crash rate of 1.5 or higher to be Un-Satisfactory in the Safety Rating Methodology Crash factor. I see far too many carriers with crashes rates at or below 1/3 of what FMCSA considers unacceptable by its own rules (49 CFR 385 (Appendix B) tagged as High Risk Motor Carriers and prominently branded to the public as unsafe carriers. Carriers that are have excellent safety records and are simply not a high risk to the traveling public.

CSA/SMS percentile rankings is a flawed system that is harming far too many good carriers in order to get to the bad ones. FMCSA seems to think that this is ok. That it is just collateral damage and that their means justifies their end.

One of the serious flaws to the CSA/SMS system is that points are assigned to all violations whereas the old SafeStat system only measured "Out of Service" violations. Many of the CSA/SMS violations, in my opinion, have little if any risk of resulting in or contributing to a crash. Yet these violations, again and again, single out and identify good safe carriers as a higher risk. Motor carriers understand serious violations (Out of Service Violations) but struggle with small technical violations that have never been identified as a cause or contributor to crashes (see the only study ever conducted on crash causation by FMCSA (2006 Large Truck Crash Causation Study).

The public and especially the shipping public sees CSA/SMS as a safety rating system, regardless of the all the disclaimers FMCSA puts out to the contrary. In fact, some at FMCSA, through its convoluted presentations presents CSA/SMS to the public in this manner. Perception in the public's eyes is that CSA/SMS is a rating system. In our world perception is reality.

If CSA/SMS is the right thing to do it is worth doing the right way. Let's run it through rulemaking, let everyone have their fairly weighted and equal say. Let's consider all the available studies relating to this subject and include everyone's ideas and opinions as we do in

rulemakings. This has not been the way CSA/SMS has been developed, implemented and the many changes made to it.

In summary, FMCSA has expended millions of dollars in developing CSA/SMS. I know as well as anyone that FMCSA has limited resources and that it is both expected and required to utilize those resources in the most effective manner possible to reduce commercial motor vehicle crashes.

I think that FMCSA is utilizing far too much of its limited resources on safe motor carriers that pose little if any risk to the traveling public. These are resources that not only could but should be utilized on unsafe carriers. Utilization of these precious resources on carriers with current and historically excellent safety records is simply a waste of our limited highway trust fund's fuel tax dollars and a risk to the traveling public.

Alternative Program:

I believe that there is a serious lack of confidence in the current CSA/SMS system by the motor carrier industry. I believe that the time has come to start over and develop some type of system that is effective in identifying carriers that pose a real risk to the public and intervene on those carriers as early as possible.

Let's develop and implement something that works.

Suggestions:

I believe the time has come for a Pay to Play program. A program where every motor carrier that has been issued a US-DOT number is required to pay an annual fee to maintain that number in an active status.

The payment of such a fee which I believe could be as little as \$300 for a small carrier, to keep its DOT number active, will create FMCSA a credible database of active carriers and sufficient funding to administer the program I am suggesting.

At this time we don't know how many active motor carriers FMCSA has. This number floats from 780,000 to 500,000 carriers, depending on which number best serves FMCSA at the time.

I see the need for a "Safety Screening Program" for FMCSA to that can truly identify and prioritize carriers that have serious safety problems for further intervention.

I see such a program as operating somewhat similar to its 34,000 audits conducted each year under its New Entrant Audit Program. Or similar to its Annual Statistical Analysis Drug and Alcohol testing program. I see the program working similar to the US Department of Defense, DuPont, insurance companies and Consolidated Safety Services motor coach audit programs.

I believe that with the fees collected, either FMCSA, its State Partners or even outside contractors could conduct some abbreviated type of Safety Performance Evaluation on every motor carrier that has an active DOT number every so many years, on a random basis and or on a prioritization basis.

Pre-screening Safety Evaluations audit data could be provided to FMCSA, who would then be able to more accurately identify carriers that pose serious safety risk and immediately initiate some type of intervention.

Since my retirement from the FMCSA, my company has been conducting a variety of Safety Evaluation Audits including mock DOT Compliance Reviews, Focused Compliance Reviews and New Entrant Audits. We also conduct custom audits as requested by our clients.

What we have learned is that we can conduct desktop type audits remotely via phone, fax and e-mails at a very reasonable cost to our clients. If our desktop audit identifies systemic safety issues, or breakdown in safety management controls, we simply relay these findings to our clients and recommend that a more thorough evaluation of the problems areas discovered be conducted, possibly on site.

These audits are conducted using the same driver and vehicle records sampling procedures as FMCSA thus only reviewing a limited number of drivers and vehicle records. Most of the time we can conduct these audits in about a week and can conduct several simultaneously.

I see a program of this nature as a very effective tool for FMCSA so that its limited resources can be more targeted and effectively utilized on motor carriers with possible serious problems.

This would in my mind, clearly remove the waste of resources FMCSA is currently expending on safe and responsible motor carriers, provide FMCSA with a credible safety performance pre-screening program where its limited resources could be much more effectively utilized. And more so than not, eliminating the hurting of good and safe motor carriers in the process.

I believe that FMCSA, as we do, can conduct such screening audits for about \$300 for small carrier (10 or less trucks). The yearly registration fee could and should be increased for larger carriers proportionally.

The time has come, let's get serious about safety. Let's quit the preverbal dancing around the hat and go to work and create a safety certification program that is credible to both the public and the motor carrier industry.

Let's quit hurting good carriers just to get to the bad.

It's the right thing to do and the right time to do it.

Submitted by Rick Gobbell, President Gobbell Transportation Safety LLC June 22, 2012

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:

RUBY L. MCBRIDE

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

ASECTT (Alliance for Safe, Efficient + Competitive Truck Transportation)

(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:

NONE

Ruby McBride
Signature

9/4/12
Date

CURRICULUM VITAE

for

RUBY L. McBRIDE

TELEPHONE:

EMPLOYMENT:

1998 – Present – **Colonial Freight Systems, Inc.**
Knoxville, TN

- 2006 – Present – Supervisor of Insurance and Safety Department. Responsible for overseeing litigation matters in all states. Assumed title of Vice President of Corporate Systems in 2007. Oversee Compliance Department. Work closely with corporate attorney and all outside defense counsel in managing claims. Personally travel to accident scenes and investigate all potentially serious accidents. Investigate Workers Compensation Claims.
- 2003 – Present – Negotiate employee benefit contracts.
- 2002 – 2004 – Worked with Sales Department in renegotiating customer contracts involving pallet exchange. Pallet department was losing \$250k per year. Within two years the pallet exchange program began to break even.
- 1998 – Present – Negotiate all communication contracts.

1985 – 2006 – **McBride Trucking Company, Inc.** – Agency/Brokerage
Knoxville, TN – Owned and operated. McBride Trucking contracted to various carriers (large and small) to provide transportation services.

- 1985 – 1992 – Commissioned Agent for Mason & Dixon Lines, Inc. (Corporate office Kingsport, TN) Operated Knoxville, TN terminal. Primary customer was Alcoa Aluminum. Also moved heavy and specialized freight requiring over dimensional permits. Responsible for establishing customer base, booking freight, dispatching freight, leasing Owner Operators, Orientation and Contractor Settlements. Worked accidents that occurred in immediate area.
 - 1992 – 2006 – Commissioned Agent for Dallas and Mavis Specialized Carriers (Corporate office Kenosha, WI) Operated Knoxville, TN terminal. Primary customer was Alcoa Aluminum. Also moved heavy and specialized freight requiring over dimensional permits. Responsible for establishing customer base, booking freight, dispatching freight, leasing Owner Operators, Orientation and Contractor Settlements. Worked accidents that occurred in immediate area.
 - 1992 – 2006 – Contracted with United Parcel Service to assist in supplying teams drivers for expedited freight between Thanksgiving and Christmas (which included ground freight, 3-day select and next day air shipments). Also, provided additional team drivers and equipment during times of extenuating circumstances, i.e. airports fogged in or train derailments. Assisted with providing team drivers during the flood of 1993 when trains were unable to travel between Kansas City and Chicago due to flooded railroad tracks.
- 1983 – 1985 – **A. J. Metler Hauling and Rigging** – Knoxville, TN. Established Tele-Marketing Department. Responsible for in-house sales. Worked with dispatch in locating backhauls for trucks in areas where freight was scarce. Also made sales calls on corporate accounts.
- 1981– 1983 – **Colonial Freight Systems, Inc.** – Knoxville, TN – Dispatcher. Responsible for working with terminals in booking freight for my division of approximately 50 trucks.
- 1979 – 1981 – **Gulf Atlantic Warehouse** – Leland, NC. Yarn and staple warehouse for DuPont. Data processing paperwork documents for export shipments.
- 1976 – 1979 – **Eck Miller Transportation** – Corporate office Owensboro, KY. Opened terminal in Knoxville, TN – Began as salaried terminal manager then switched to Commissioned Agent. Responsibilities included locating outbound freight for domiciled trucks as well as inbound trucks. Established customer base; increased domicile truck base; dispatched freight and worked to locate inbound freight to get drivers back home.
- 1976 – **Ligon Heavy and Specialized Hauling** – Corporate office – Owensboro, KY. Worked approximately ten months as clerk in Knoxville, Tennessee terminal.

Established relationships with customers and drivers, which propelled my career in the transportation industry.

- 1973 – 1976 – Worked multiple jobs. – Knoxville, TN
- Dixie Plaza Truck Stop – Shift Manager – Evening shift 3 p.m. -11 p.m., sometimes 11 p.m. to 7 a.m. Often worked double shifts.
 - Hairdresser.
 - Kingston Pike Marine – Completed contracts for boat sales – credit checks, etc.

OTHER BUSINESS VENTURES:

- 1995 – **McBride Travel Service** – Founder and Owner - Obtained ARC accreditation (Airlines Reporting Corporation). Operated Travel agency until Airlines stopped paying commissions for airline tickets.
- 1990 – 1992 – Founder and owner of **United Owner Operators** – Formed co-op of Owner Operators and Independent Contractors – Obtained contracts with Pilot Oil, Sears (truck tires and batteries) and AT&T. Obtained monthly rebates from Pilot Oil – reimbursed 80% of rebates to Contractors – All members were able to purchase discounted tires & batteries from Sears by showing their UOO membership card. AT&T provided discounted phone services to UOO members.
- 1989 – 1991 – Founder and co-owner of **Heavenly Bodies, Inc.** – (Exercise and Tanning Salon) Sold in 1991.

EDUCATION:

- Attended Claiborne County High School – Tazewell, TN - Freshman – Senior (1969 – Jan-1973)
- 1973 – Graduated High School – Morristown Hamblen West, Morristown, TN. (Jan 1973 – Graduation) – Graduated at 16-years-old.
- 1973 – Completed 1500 hours Cosmetology vocational training. Obtained license after passing state board exam in 1973. Still retain Cosmetology License.