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COMPREHENSIVE SAFETY ANALYSIS 2010: UNDERSTANDING FMCSA'S NEW SYSTEM OF MOTOR CARRIER OVERSIGHT

(111–123)

HEARING

BEFORE THE

SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

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June 21, 2010

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Highways and Transit

FROM: Subcommittee on Highways and Transit Staff

SUBJECT: Hearing on "Comprehensive Safety Analysis 2010: Understanding FMCSA's New System of Motor Carrier Oversight"

PURPOSE OF THE HEARING

The Subcommittee on Highways and Transit is scheduled to meet on Wednesday, June 23, 2010, at 10:00 a.m., in room 2167 of the Rayburn House Office Building, to receive testimony on the Federal Motor Carrier Safety Administration's (FMCSA) new system to oversee motor carriers and commercial motor vehicle drivers, known as the Comprehensive Safety Analysis 2010 (CSA 2010). The Subcommittee will receive testimony from the Administrator of FMCSA, as well as representatives from the American Trucking Associations (ATA), the Owner-Operator Independent Drivers Association (OOIDA), and the Commercial Vehicle Safety Alliance (CVSA).

BACKGROUND

FMCSA Safety Mission

FMCSA is a modal agency within the U.S. Department of Transportation (DOT) charged with overseeing the safety of the operations of approximately 700,000 truck and bus companies registered with the agency. FMCSA was created as a separate agency by Congress in the Motor Carrier Safety Improvement Act of 1999 (P.L. 106-159). Prior to 1999, motor carrier safety was the responsibility of the Office of Motor Carriers within the Federal Highway Administration.

Congress charged FMCSA with a strong safety mission in the 1999 Act: "(T)he Administration shall consider the assignment and maintenance of safety as the highest priority." Specifically, Congress cited a number of findings in the Act, including:

- "The current rate, number, and severity of crashes involving motor carriers in the United States are unacceptable";
- "The number of Federal and State commercial motor vehicle and operator inspections is insufficient and civil penalties for violators must be utilized to deter future violations"; and
- "Too few motor carriers undergo compliance reviews and the Department's databases and information systems require substantial improvement to enhance the Department's ability to target inspection and enforcement resources toward the most serious safety problems and to improve States' ability to keep dangerous drivers off the roads."[1]

In 1999, then-DOT Secretary Rodney Slater announced a goal to reduce fatalities involving commercial motor vehicles by 50 percent within a decade. In 1999, 5,362 individuals lost their lives in crashes involving large trucks, and an additional 142,000 were injured.[2] In 2008 (the latest year for which final data are available), 4,229 people were killed in crashes involving large trucks, and an additional 90,000 were injured.[3] In 2003, in an effort to provide a more accurate reflection of the roadway conditions and to account for the increase in miles traveled by roadway vehicles, FMCSA shifted its fatality reduction goal for large truck crashes from the total number of fatalities to the rate of fatalities, or the number of fatalities in large truck crashes divided by the number of vehicle miles traveled. In 2000, the fatality rate was 2.57 per 100 million miles traveled. This rate improved to 1.86 per 100 million miles traveled in 2008.[4]

While these statistics reflect reductions in commercial motor vehicle-related fatalities and injuries, these improvements do not meet the 50 percent reduction goal envisioned by Secretary Slater when FMCSA was created.

Current Enforcement and Oversight System

Currently, FMCSA utilizes several tools to target its monitoring and enforcement activities over the motor carrier industry, including roadside inspections and safety audits of "new entrants", or carriers granted new authority to operate, within the first 18 months of their operation. These enforcement tools will remain in place after the implementation of CSA 2010. However, changes will occur regarding the agency's primary use of Compliance Reviews (CR) to assess the compliance of motor carriers with safety and hazardous materials regulations.

A CR is an on-site examination of a motor carrier's records and operations to determine whether the carrier meets Federal safety fitness standards, and whether adequate safety management controls are in place to ensure compliance with safety requirements related to areas such as drug and alcohol testing, commercial driver's licensing, financial responsibility, vehicle safety and

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[1] Section 3 of P.L. 106-159; 49 U.S.C. § 113 note.
[2] National Highway Traffic Safety Administration (NHTSA), *Traffic Safety Facts 1999: Large Trucks* (DOT HS 809 088), http://www-nrd.nhtsa.dot.gov/Pubs/99LargeTrucks.pdf.
[3] NHTSA, *Traffic Safety Facts, 2008 Data* (DOT HS 811 158), http://www-nrd.nhtsa.dot.gov/Pubs/811158.PDF.
[4] FMCSA, Analysis Division, *Large Truck and Bus Crash Facts 2008* (March 2010).

maintenance, hours of service for drivers, record-keeping, and hazardous materials regulations.[5] Because a CR is largely an examination of a carrier's documentation of compliance with safety regulations, it tends to provide a snapshot of a carrier's safety position at one point in time based on a paper review, rather than showing the true safety performance of the carrier on an ongoing basis.

FMCSA cannot conduct CRs of all carriers due to resource constraints; currently, on average the agency conducts a CR of two percent of carriers annually. In 2009, of the 744,809 motor carriers registered with the agency, FMCSA conducted reviews of 9,817 carriers. An additional 6,404 reviews were conducted by State partners. The total of 16,221 CRs represents 2.18 percent of the population regulated by the agency.[6] The number of reviews conducted in recent years is significantly higher than in 1999, when FMCSA conducted only 5,990 CRs.

Under the current system, a carrier must undergo a CR to obtain a safety rating, which determines whether a carrier is permitted to continue to operate. Because FMCSA conducts CRs on a small percentage of the industry, the majority of motor carriers registered with the agency have not been assigned a safety rating.

Based on the findings of a CR, a carrier receives one of three safety ratings: satisfactory, conditional, or unsatisfactory. To arrive at this rating, FMCSA assesses a motor carrier's performance in six general areas or factors: general safety management, driver, operations, vehicle, accident rate, and hazardous materials. Within each factor, FMCSA assesses the carrier's compliance with numerous applicable regulations and categorizes any violations found as "acute" or "critical" based on which regulation was violated. Each factor is assigned a rating of satisfactory, conditional, or unsatisfactory and each factor is weighed equally. For a carrier to receive an overall rating of unsatisfactory, the carrier must either have an unsatisfactory rating in one factor and conditional ratings in two or more additional factors, or unsatisfactory ratings in at least two factors. This means that a carrier can be in violation of all regulations within one factor — such as all driver regulations including hours of service, licensing, and drug and alcohol testing — and still continue to operate with a conditional rating. Due to this regimented formula, very few carriers receive unsatisfactory safety ratings. In 2009, out of 16,221 reviews, only 380 carriers received an unsatisfactory rating.

To determine which carriers will be subject to a CR, FMCSA has utilized an analysis system, the Motor Carrier Safety Status Measurement System, or SafeStat. SafeStat is a model of the relative safety of motor carriers using data submitted from State enforcement authorities on crashes, violations that result in out of service orders,[7] and other information. The SafeStat algorithm weighs these data inputs to automatically generate a numerical score for a motor carrier. The system then ranks carriers relative to each other, to prioritize carriers for a CR.

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[5] A CR is defined at 49 C.F.R. § 385.3.

[6] FMCSA, *Summary Statistics for U.S. DOT Active Motor Carriers* (December 18, 2009), http://ai.fmcsa.dot.gov/International/border.asp?redirect=GenStats.asp.

[7] An out of service order means a carrier is prohibited from continuing operations until a safety deficiency or violation is addressed. This term is defined in 49 C.F.R. § 383.5 as "a declaration by an authorized enforcement officer of a Federal, State, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation, is out-of-service pursuant to §§386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American Uniform Out-of-Service Criteria."

The SafeStat system has been riddled with problems, as highlighted by a 2007 Government Accountability Office (GAO) report.[8] In fact, FMCSA determined that SafeStat was no longer a useful tool for public notification of the true safety record of a particular carrier and stopped posting SafeStat scores on its website several years ago. Among the problems with SafeStat is that the majority of carriers registered with FMCSA have not received a SafeStat score. GAO found that only 23 percent of carriers had been assigned a SafeStat score. Further, FMCSA did not have any crash, roadside inspection, or enforcement data on 58 percent of registered carriers. This lack of data has limited the effectiveness of a model that is based on relative rankings.[9]

Ongoing data quality problems also hampered the full utilization of SafeStat. States have varied greatly in the timeliness, accuracy, and completeness of the data they submit to the agency. GAO found, based on 2004 data, that 21 percent of crashes reported by States were missing information. This prevented the crashes from being linked to specific motor carriers, meaning they could not be used in SafeStat.[10] A 2006 DOT Inspector General report also identified poor data quality and the lack of complete crash reporting as a significant problem, particularly with respect to States not submitting information on non-fatal crashes.[11] In 2005, Congress authorized the Safety Data Improvement Program to provide grants to States to improve data quality.[12] The most recent information provided by FMCSA indicates that significant progress has been made by States to improve data timeliness and accuracy. In the past 12 months, 97 percent of all crash records submitted by States were matched to the appropriate motor carrier, and States submitted crash reports within 90 days, as required by FMCSA, 88 percent of the time.[13] However, data completeness, especially with respect to non-fatal crashes, remains a problem in some States.[14]

A New Model: CSA 2010

To improve motor carrier safety and to reduce the number of crashes and fatalities involving large trucks and buses, in 2004, FMCSA began developing a new enforcement and compliance model known as CSA 2010. The agency has conducted pilot tests of this model in nine States, and currently plans full implementation of this model nationwide by November 2010.

CSA 2010 is designed to allow FMCSA and its State partners to have contact with a larger number of motor carriers than under the current enforcement and monitoring system, to utilize a broader set of data from roadside inspections, to generate safety information on more carriers, and to identify and correct safety deficiencies among a broader population of carriers before they become a serious safety threat. CSA 2010 also relies on an updated algorithm that FMCSA will use to compare and rank the relative safety of carriers. Under CSA 2010, FMCSA plans to use a new

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[8] GAO, *Motor Carrier Safety: A Statistical Approach Will Better Identify Commercial Carriers that Pose High Crash Risks than Does the Current Federal Approach* (GAO-07-585) (June 2007).
[9] *Id.* at 11-12.
[10] *Id.* at 4.
[11] DOT Office of Inspector General, *Significant Improvements in Motor Carrier Safety Program Since 1999 Act but Loopholes for Repeat Violators Need Closing* (MH-2006-046) (April 21, 2006).
[12] See section 4128 of the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (P.L. 109-59).
[13] Technical assistance provided by FMCSA to Committee staff (6/16/2010).
[14] See FMCSA, *All States: Overall State Rating Report* (May 21, 2010), http://ai.fmcsa.dot.gov/DataQuality/DataQuality.asp?redirect=statenewmeasures.asp&i=9.

Safety Measurement System (SMS), in lieu of SafeStat, to prioritize and target motor carriers for enforcement and interventions.

Safety Measurement System

SMS is an analysis system to rate and rank carriers within CSA 2010, to determine which carriers warrant an intervention and possible enforcement action by FMCSA. SMS will utilize the most recent two years of roadside inspection, violation, and crash data on each carrier, as provided by State enforcement agencies. Unlike SafeStat, which only utilized data on violations that resulted in a carrier being placed out of service, SMS will draw on all available data. In other words, a driver pulled over for speeding will be recorded in SMS. Likewise, positive data, such as a carrier that passes an inspection at a weigh station, will be recorded as well.

SMS groups the data provided by States into seven categories, known as Behavior Analysis and Safety Improvement Categories (BASICs). The seven BASICs are as follows:

- Unsafe Driving;
- Fatigued Driving/Hours-of-Service (HOS);
- Driver Fitness;
- Controlled Substances/Alcohol;
- Vehicle Maintenance;
- Cargo-Related (including cargo securement); and
- Crash Indicator.

A carrier will receive a score in each BASIC. FMCSA has identified 884 Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations that can be cited as a violation during a roadside inspection, and grouped them into six of the seven BASICs (the seventh, Crash Indicator, tracks crashes involving a carrier). By far, the largest number of potential violations can be found in the Cargo-Related BASIC (485) and the Vehicle Maintenance BASIC (264). As data comes in from a State, each violation or inspection data point is attributed to a motor carrier in SMS, and then classified into the appropriate BASIC.

To arrive at a carrier's score, FMCSA weighs each violation based on when the violation occurred. Data is retained in SMS for 24 months, and the weight of a particular infraction is higher for more recent violations. FMCSA also weighs each violation based on severity (a scale of 1 to 10, with 10 indicating the most severe). According to the agency, severity ratings for each violation were set based on the statistical association between a violation of a particular regulation and a crash. The stronger the relationship between a violation and the risk of a crash, the higher the severity weight assigned to the particular regulation. For the Crash Indicator BASIC, crashes are assigned severity weights based on their impact. Greater weight is assigned for crashes that result in fatalities or injuries, as well as crashes involving the release of hazardous materials. FMCSA has published a list of violations and their severity weights that were used during the pilot tests of CSA 2010 carried out in nine States.[15] FMCSA has indicated that the specific weights are currently under review and will likely be adjusted prior to full implementation of CSA 2010.

[15] Available as an Excel spreadsheet at http://csa2010.fmcsa.dot.gov/yourrole/fmcsa.aspx under "CSA 2010 Related Materials and Training".

FMCSA developed peer groups to compare carriers with similar levels of activity. For five of the seven BASICs (Fatigued Driving, Vehicle Maintenance, Cargo-Related, Driver Fitness, and Controlled Substances/Alcohol) motor carriers are grouped with carriers that have had a similar number of inspections conducted. For the Crash Indicator and Unsafe Driving BASICs, carriers are grouped with peers based on the number of trucks in a carrier's fleet. FMCSA believes grouping carriers based on inspections and fleet size will ensure similar motor carriers are compared.

A carrier's score in each BASIC is derived as a percentage based on that carrier's performance relative to comparable motor carriers. SMS assigns a percentile ranking for all carriers within each BASIC. Within each peer group, carriers receive a percentile ranking from 0 to 100, with 100 percent indicating the least safe carriers. FMCSA intends to set a threshold within each BASIC above which a carrier will be deemed as having a poor safety record. Carriers scoring above that level will be identified for an intervention.

Progressive Interventions

Once a carrier is identified as a target for enforcement under CSA 2010, FMCSA has established a number of increasingly-stringent interventions. Intervention tools include:

- Warning Letter;
- Targeted Roadside Inspection;
- Offsite Investigation;
- Onsite Investigation – Focused;
- Onsite Investigation – Comprehensive;
- Cooperative Safety Plan;
- Notice of Violation;
- Notice of Claim; and
- Operations Out-of-Service Order.

FMCSA believes that the CSA 2010 intervention model will yield significant benefits compared to the current enforcement model. CSA 2010 will allow the agency to select from among multiple interventions and apply an appropriate intervention commensurate with the level of safety deficiency of a carrier. In other words, the agency does not have to begin with a Warning Letter. If a carrier is identified as having problems in multiple BASICs, FMCSA may conduct an onsite investigation immediately. In addition, by assigning a rating to a carrier in each BASIC, FMCSA and State enforcement partners can assess problems by type of regulation and can review a carrier solely with respect to, for instance, hours of service compliance, rather than having to conduct a full-scale Compliance Review.

CSA 2010 was designed with the goal of allowing FMCSA and States to more efficiently use limited enforcement resources. According to FMCSA, once a carrier gets a Warning Letter or is the subject of an investigation, the agency will monitor the carrier's performance in SMS for a period of time, and if the carrier's performance does not improve, the agency will take subsequent follow-up action. In comparison, after a CR under the current system, very few carriers receive follow-up reviews due to resource constraints and due to FMCSA's practice of giving carriers sufficient time to correct violations before conducting a subsequent review. Under CSA 2010, subsequent follow-up action can include requiring the carrier to develop a Cooperative Safety Plan to identify what the

carrier intends to do to address identified safety problems, or issuance of a formal Notice of Violation or Notice of Claim, which results in penalties issued against the carrier. While this flexible enforcement system is envisioned to provide FMCSA and States the ability to tailor fixes to particular situations, without specific guidelines set forth in regulations, FMCSA and States seem to have significant latitude to determine whether, and if, to move a carrier from one intervention stage to the next.

Assessment of Drivers

In the initial stages of development of CSA 2010, FMCSA contemplated issuing safety ratings to individual drivers, not just motor carriers. At this point, the agency has indicated it does not intend to issue ratings for drivers.[16] Issuing ratings for drivers would likely require legislative changes to grant this agency statutory authority. However, certain violations for which drivers are held responsible will be tracked and linked back to individual drivers in SMS. FMCSA will have the ability to utilize this data to assess individual driver performance, although the agency has indicated it does not plan to prioritize or target drivers for interventions in the same manner as carriers. Instead, driver information will feed into the factors used to assess whether the responsible motor carrier warrants an investigation. FMCSA has developed an internal list of serious driver violations identified at the roadside. FMCSA and State partners will determine whether any such serious violations exist during a carrier investigation, and will have the ability to examine individual drivers as part of an investigation of the employing carrier and to require corrective action by the carrier.[17]

CSA 2010 Pilot Tests

Beginning in October 2008, FMCSA began conducting pilot tests of the CSA 2010 model in several States to test its efficiency and effectiveness. Four states – Colorado, Georgia, Missouri, and New Jersey – were the first States to test the new system. Pilot tests were launched in those States in October 2008, and the motor carrier population domiciled in each State was split equally into two groups: a test group, which was subject to the new CSA 2010 model, and a control group, which remained under SafeStat and subject to CRs. In May 2009, pilot tests were launched in Minnesota and Montana, followed by Delaware, Kansas, and Maryland in September 2009. In these five States, all carriers were subject to the CSA 2010 model (rather than retaining a subset of carriers as a control group).

Data provided to the Committee indicate that in these nine pilot States, FMCSA and State partners had contacts with over 6,300 carriers and initiated over 8,000 interventions. Over 2,700 investigations of carriers were conducted, and of these, 39 percent resulted in follow-up actions by FMCSA or the States.[18] The majority of follow up actions were Cooperative Safety Plans. FMCSA does not yet have results evaluating the impact of CSA 2010 on crashes and fatalities in pilot States.

Development of CSA 2010

FMCSA maintains that the agency has the necessary authority to implement the initial elements of CSA 2010 on a nationwide basis later this year, without statutory changes. Further, the

[16] Technical assistance provided by FMCSA to Committee staff (6/16/2010).
[17] *Id.*
[18] Data provided by FMCSA to Committee staff (6/15/2010).

agency has developed and intends to launch a new carrier targeting system, by replacing SafeStat with SMS, and new carrier interventions to replace CRs, without having conducted a formal rulemaking. However, FMCSA held six listening sessions in the fall of 2004 on CSA 2010 "to solicit ideas and feedback from its stakeholders and all interested parties, including the industry, drivers, insurance groups, safety advocacy groups, and FMCSA's governmental partners, especially States."[19] The agency announced three additional public listening sessions in November 2006, December 2007, and October 2008 to brief participants on the development of the CSA 2010 operational model.[20] A November 2, 2007 *Federal Register* notice provided the first written outline of FMCSA's plans with respect to SMS and proposed interventions.[21] The agency also held two public webinars in December 2009. Finally, in an April 9, 2010 *Federal Register* notice, FMCSA announced that it will replace SafeStat with SMS effective November 30, 2010. In that notice, the agency requested public comments by September 30, 2010.[22] The agency has indicated that based on stakeholder feedback and results from pilot States, the SMS model will likely undergo changes prior to full implementation by the end of the year.

As an additional element of CSA 2010, the agency plans to replace its existing safety fitness determination methodology of rating carriers satisfactory, conditional, or unsatisfactory with a revised approach. FMCSA has indicated its intent to revise carrier safety ratings through a rulemaking, and plans to publish a Notice of Proposed Rulemaking on safety fitness determinations in 2011.

Stakeholder Issues

In general, there appears to be broad support, at least conceptually, for CSA 2010 among affected stakeholders and the regulated community. There appears to also be agreement among the trucking industry, safety advocates, enforcement personnel, and others that the current model of motor carrier oversight needs to be changed to increase effectiveness, to reach more carriers, and to improve safety. However, several stakeholder groups have expressed concerns with certain elements of the proposed CSA 2010 model, including States responsible for enforcement and implementation of the program, as well as the trucking industry.

The success of CSA 2010 will largely be contingent on the work of State law enforcement personnel who conduct roadside inspections. The number of inspections conducted and the quality of data that is transmitted to FMCSA regarding violations identified in such inspections will populate SMS and provide the basis for carrier interventions. States have raised concerns that, to date, FMCSA has not made available additional resources to States to carry out the program. In its FY 2010 budget request, FMCSA requested $20 million in additional funding and 59 additional full time equivalents (FTEs) for the agency, the majority of which will support CSA 2010 deployment at the Federal level. Under the pilot tests, FMCSA did not provide additional funding to the nine participating States to conduct CSA 2010 activities. According to FMCSA, States have not been required to conduct additional inspections; rather, CSA 2010 is intended to improve efficiency so

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[19] *Comprehensive Safety Analysis 2010 Initiative*, 69 Fed. Reg. 51748 (August 20, 2004).
[20] *Comprehensive Safety Analysis 2010 Initiative*, 71 Fed. Reg. 61131 (October 17, 2006); *Comprehensive Safety Analysis 2010 Initiative*, 72 Fed. Reg. 69888 (November 2, 2007); *Comprehensive Safety Analysis 2010 Initiative*, 73 Fed. Reg. 53483 (September 16, 2008).
[21] *Comprehensive Safety Analysis 2010 Initiative*, 72 Fed. Reg. 69888 (November 2, 2007).
[22] *Withdrawal of Proposed Improvements to the Motor Carrier Safety Status Measurement System (SafeStat) and Implementation of a New Carrier Safety Measurement System (CSMS)*, 75 Fed. Reg. 18256 (April 9, 2010).

that State enforcement efforts can reach more carriers with existing resources. FMCSA estimates that in the four pilot States with control groups, each safety inspector conducted up to 35 percent more carrier investigations (which can include offsite and onsite reviews) using the CSA 2010 model than under the system relying solely on CRs.

However, States will likely need additional resources to fully carry out this new initiative, particularly to train law enforcement officers. Specific guidance and standards from FMCSA to States on CSA 2010 will be needed to ensure that law enforcement officers identify and record violations in a uniform manner in all States so that a nationwide comparison of carriers is possible and reasonable.

Further, although FMCSA intends to roll out CSA 2010 nationwide by the end of the year, some States question whether full implementation of all of the elements of CSA 2010, including new safety fitness determinations, will require the enactment of legislation or regulatory changes at the State level. This may significantly affect the timing for full implementation of the initiative. States have argued that FMCSA must set realistic deadlines for implementation to account for the varying ability of States to shift to a new enforcement model. Similarly, although significant progress has been made on improving data quality submitted by States since 2005, unless all States are submitting complete and accurate data in a timely manner, SMS stands to be plagued by some of the same problems that have hampered the effectiveness of the current system.

One of the primary concerns raised by the trucking industry, particularly by the ATA, is the treatment of crashes within SMS. Specifically, in CSA 2010 pilot tests, FMCSA has treated an accident in which a motor carrier or driver is at fault the same as an accident for which the carrier or driver is not at fault. FMCSA has argued that the agency's data analysis has shown that motor carriers involved in a high number of crashes are more likely to be involved in future crashes than other carriers, irrespective of whether or not the carrier was at fault. FMCSA has indicated it is studying the feasibility of a recommendation made by ATA to assess police accident reports submitted by States to determine accountability prior to inclusion of a crash in SMS, and is considering changes to the system before nationwide implementation. As an interim step, FMCSA plans to exclude a carrier's Crash BASIC rating from public dissemination, including on its web site.

Another concern raised by industry is FMCSA's assignment of peer groups in order to compare the relative safety of carriers. Industry argues that, for example, in the Cargo-Related BASIC, a number of the potential violations will disproportionately highlight flatbed carriers (i.e. carriers who haul large items on a flatbed such as logs or steel coils), compared to carriers with closed trailers, since safety inspectors will likely check cargo securement with less frequency if it is not immediately visible. Industry has also challenged whether fleet size is an appropriate measure for peer grouping, and has suggested grouping based on the number of vehicle miles travelled instead. FMCSA grouped carriers based on number of inspections in all but the Crash and Unsafe Driving BASICs, where carriers were grouped based on fleet size. FMCSA has indicated it is currently evaluating approaches to peer grouping that will result in more effective comparison of motor carriers with similar exposure in the Crash and Unsafe Driving BASICs.

Industry has also expressed concerns with the specific weights assigned to each of the over 800 violations to be tracked in SMS. Specifically, for example, industry has highlighted that a cargo securement violation such as a loose or unfastened tiedown (which has a violation severity weight of 10) has seemingly been given the same weight as a driver found to be using or in possession of drugs

(also a severity weight of 10). FMCSA has indicated that weights only reflect the relative importance of each violation within each particular BASIC, and cannot be compared meaningfully across BASICs. For example, a rating of five in one BASIC is not equivalent to a rating of five in another BASIC, it simply represents the midpoint between a crash risk of 1 and 10 within all violations in one BASIC. Further, FMSCA has argued that the specific severity weights are not a major factor in identifying motor carriers with safety problems, because motor carriers with systemic safety problems across multiple inspections are apparent and become clearly identifiable as targets for interventions under SMS. FMCSA is currently reviewing the assigned weights that were used in the pilot tests and will likely adjust the weights prior to full implementation of CSA 2010.

In addition, industry has raised a concern that SMS will track all recorded moving violations from roadside inspections whether or not the driver was issued a citation or simply got a warning. FMCSA indicates that its internal analysis, as well as a study by the American Transportation Research Institute, supports the use of all moving violations, as there is a strong relationship between moving violations and future crash involvement regardless of whether a citation was issued. With respect to speeding violations, the agency plans to amend roadside inspection reporting requirements to require a law enforcement office to designate the severity of a speeding offense (i.e. how many miles per hour over the speed limit). This will allow FMCSA the ability to assign a lower severity weight to less severe speeding violations.

Although FMCSA does not currently plan to issue driver-specific safety ratings, the agency will collect and have the ability to analyze data related to violations by individual drivers. Tracking individual driver data could raise significant privacy concerns, particularly if there is any application in which this information may be made available publicly in the future.

WITNESSES

The Honorable Anne S. Ferro
Administrator
Federal Motor Carrier Safety Administration

Mr. Steve Keppler
Interim Executive Director
Commercial Vehicle Safety Alliance

Mr. Keith Klein
Executive Vice President & Chief Operating Officer
Transport Corporation of America

Mr. Todd Spencer
Executive Vice President
Owner-Operator Independent Drivers Association

COMPREHENSIVE SAFETY ANALYSIS: 2010 UNDERSTANDING FMCSA'S NEW SYSTEM OF MOTOR CARRIER OVERSIGHT

Wednesday, June 23, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:03 a.m., in room 2167, Rayburn House Office Building, Hon. Peter A. DeFazio [Chairman of the Subcommittee] presiding.

Mr. DEFAZIO. The Subcommittee will come to order.

This hearing is on a subject which is very important, an evolutionary change for the better, I believe, in how the Federal Motor Carrier Safety Administration does oversight of motor carriers. I and other Members of the Committee have been concerned, for years, over the understaffing at FMCSA, the small percentage of vehicles that are inspected on an annual basis and how that relates to other problems that are out there. In my opinion this new regime has promise. I think there are a number of legitimate concerns about the timeline for implementation and specific aspects of it which will come out during the hearing, so I look forward to the testimony.

With that, I would turn to the Ranking Member, Mr. Duncan.

Mr. DUNCAN. Well, thank you, Mr. Chairman, for holding this hearing on the Comprehensive Safety Analysis 2010, or the new plan by the Federal Motor Carrier Safety Administration.

It is a top priority of this Committee and all of us to try to do everything possible to improve highway safety, and to improve it for everyone, not just drivers of passenger vehicles, but also for drivers of commercial motor vehicles. The Federal Motor Carrier Safety Administration is charged with regulating the safety of all trucks and buses involved in interstate commerce, and there are nearly 750,000 companies registered with this agency.

In 2008, trucks traveled more than 225 billion miles and transported more than 13 billion tons of goods. In that same year, the number of fatalities and injuries from crashes involving large trucks fell to 4,229 fatalities and 90,000 injuries, their lowest level since the Department of Transportation began keeping statistics. And while it is good to see that progress, we still need to do as much as possible to keep trying to bring those numbers down.

The agency has proposed a new enforcement and compliance model, as I mentioned, the CSA 2010, to further reduce commercial

vehicle crashes, fatalities, and injuries on our Nation's highways. This new program is designed to allow FMCSA, together with its State partners, to target unsafe truck companies and focus limited resources on specific areas of deficiency. This efficient use of resources should maximize Federal and State enforcement efforts to reduce commercial vehicle fatality rates. While this objective is laudable, there are concerns about how this new model will be implemented. We will hear some of these concerns from our witnesses today.

Our panel of witnesses represents the parties responsible for implementing this new program, as well as the industry that will be impacted by it, and I appreciate the witnesses taking time out from their busy schedules to come be with us today and I look forward to their testimony. Thank you very much.

Mr. DEFAZIO. I thank the gentleman. With that, we will proceed to testimony.

TESTIMONY OF ANNE FERRO, ADMINISTRATOR, FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION; STEVE KEPPLER, INTERIM EXECUTIVE DIRECTOR, COMMERCIAL VEHICLE SAFETY ALLIANCE; KEITH KLEIN, EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER, TRANSPORT CORPORATION OF AMERICA; AND TODD SPENCER, EXECUTIVE VICE PRESIDENT, OWNER–OPERATOR INDEPENDENT DRIVERS ASSOCIATION

Mr. DEFAZIO. Administrator Ferro, I appreciate your sitting on the panel. We have some administrators who are a little uptight about sitting on a panel with other folks; but since you are involved with, working with, and regulating some of their members, I think it is very appropriate. But we would also grant you a bit more time, if necessary, to summarize your remarks, and then we will hear from the others, before moving to questions. So I would recognize you first.

Ms. FERRO. Thank you, Mr. Chairman and Ranking Member Duncan, and Members of the Subcommittee. I really do appreciate the opportunity to be here today, and I am always pleased to be part of a panel, particularly a panel of stakeholders and partners.

CSA 2010, as both of you mentioned in your opening statements, is a performance-based, data-driven approach for the FMCSA to carry out its mission to significantly reduce severe and fatal crashes involving large trucks and buses. It upholds our mandate to place safety as our highest priority by strengthening how FMCSA determines motor carrier fitness, and how we target our enforcement efforts against those operating unsafely. The program was developed over 6 years through the hard work of our employees and input from many stakeholders, particularly those at the table here today.

The program rests on three core components: a system, process, and rule. The Carrier Safety Measurement System, or CSMS, will replace the current system, SafeStat. Through the use of all safety violation data, weighted by crash risk, CSMS will give our investigators a more robust tool to use in identifying high-risk carriers for review. It will also be the basis for the selection system roadside enforcement officers use to focus their roadside inspections.

With regard to process, CSA 2010 introduces a new strategy known as interventions, and it frames it at four levels: The comprehensive onsite, much like today's compliance review, focused onsite, offsite, and warning letters. Through a mix of these interventions, combined with roadside activity, we will increase the number of carriers we touch, and catch unsafe behaviors before they lead to a crash. And, finally, to reach its maximum effect, CSA 2010 will rest on a rule commonly referred to as the Safety Fitness Determination Rule. This rule will decouple the carrier safety rating from today's onsite compliance review. The rule will enable FMCSA to propose carrier safety ratings through the carrier safety measurement system, thereby increasing the number of carriers we rate annually tenfold. The NPRM for this rule is expected in early 2011.

This month, the agency completes a 2–1/2-year, nine State field test of the program. Preliminary findings show that we achieved a 35 percent increase in investigations using this approach. In other words, we not only reached more carriers, but we did so with greater efficiency. And we have anecdotal evidence of carriers who examined and changed their practices as a result of a CSA 2010 contact and improved their safety, further confirming the old adage that, what gets measured gets done.

The rollout for CSA 2010 officially began in April of this year with the launch of the data preview for all carriers. The actual safety measurement system will be previewed in late August, followed by full view to the public at the end of the year. The remaining components of the program, warning letters, NPRM, intervention process, and more, will continue throughout the year through the end of fiscal year 2011. By that time, the program will be known only by its initials, CSA, or Compliance, Safety, and Accountability.

Mr. Chairman, thank you again for the opportunity to discuss this important program today. It is a huge step forward in this agency's work to save lives through early intervention, compliance, and crash reduction. And with that, I conclude my remarks, and I will be pleased to answer any questions.

Mr. DEFAZIO. Mr. Keppler.

Mr. KEPPLER. Mr. Chairman, Members of the Subcommittee, thank you for holding this important hearing and for inviting CVSA to testify. I am Steve Keppler, interim executive director of CVSA.

CVSA commends FMCSA for planning, developing, and testing CSA 2010. It is the boldest step taken by the agency since its creation in 2000. We believe it will result in a more efficient and effective use of Federal and State enforcement resources, while at the same time, allowing us to monitor and affect the safety performance of more carriers than we do today. CSA 2010 will proactively target compliance and enforcement activities based upon performance data and crash risk. In addition, it will provide transparent performance data to the industry and others in the safety accountability chain in terms of how, when, and where they can access performance data which, hopefully, will result in carriers proactively identifying and addressing safety problems before they occur. As a result, CVSA expects CSA 2010 to provide measurable reductions in crashes, injuries, and deaths.

CSA 2010 is a significant step in our march towards zero deaths on our roadways. In my written testimony, I have outlined a number of reasons why we believe this to be the case. From a State enforcement perspective, CVSA believes CSA 2010 can be improved by, one, providing additional resources to the States to cover the costs of implementing the program to include items such as training, workforce adjustments, information system upgrades, managing data challenges and adjudication, CVSP and grant-related changes and outreach to the industry.

Just as FMCSA has implementation costs, so do the States. Ensuring a through implementation process, FMCSA is sensitive to State needs—all States, not just the pilot States—with respect to the above items as well as any needed legislative, policy, or regulatory changes. Some States can do this fairly expeditiously through the administrative process, but others have more significant obstacles that will require more time. Again, in my written testimony, I have outlined a number of other recommendations and suggestions with respect to the States.

In summary, CSA 2010 will be successful if, and only if, it is a partnership effort between FMCSA, the States, and industry. We believe FMCSA is working hard in this regard to listen to us, and we appreciate their willingness to work with us and our members on these issues. We certainly hope and expect that this will continue.

This concludes my remarks, Mr. Chairman. More details have been provided in my written statement. Thank you again for the opportunity to be here and participate in this hearing. We remain optimistic CSA 2010 will have a tremendous impact on driver, vehicle, and motor carrier safety into the future. I am happy to answer any questions at this time.

Mr. DEFAZIO. Thank you. Mr. Klein.

Mr. KLEIN. Chairman DeFazio, Representative Duncan, Members of the Subcommittee, my name is Keith Klein, and I am executive vice president and chief operating officer of Transport America. Today I will testify on behalf of the American Trucking Associations, or the ATA.

Mr. Chairman, as you likely know, ATA is a strong advocate of highway safety. In 2008, the most recent year reported, the truck-involved fatality and injury rates fell to their lowest level since USDOT began keeping statistics. Today I will speak about our support for CSA 2010, some of the ATA's substantive concerns with CSA 2010, and how these flaws will profoundly impact the industry and highway safety if not corrected.

ATA supports CSA 2010 since it is based on safety performance, not paperwork requirements, it focuses limited enforcement resources on specific areas of deficiency, and it will eventually provide real-time updated safety performance measurements. However, ATA has a number of serious concerns with how CSA 2010 will work that, if not addressed, will have a dramatic impact on motor carriers and on highway safety.

Our principle intent in raising these concerns is to ensure that unsafe carriers are properly identified and selected for interventions. We are particularly concerned with the following three issues:

First, CSA 2010 considers all crashes, including those for which the motor carrier could not reasonably be held accountable. Hence, a carrier involved in a number of crashes for which it is not responsible is seen as just as unsafe as a like-sized carrier who is involved in the same number of crashes but caused them.

I would like to show you a brief video clip which illustrates the problem. If you notice, on the right-hand side, as the truck comes across, you have got to watch the car that is right to the right of the truck.

[video was played.]

Mr. KLEIN. Obviously, in this instance, neither the trucking company nor the driver were responsible for the crash; however, CSA 2010 counts this crash in measuring the company's safety performance the same as it would if the company had caused the crash. FMCSA has signaled its intention to eventually consider only those crashes for which the motor carrier could reasonably be held accountable; however, it appears this change will not be made before the initial implementation date just a few months from now.

Our second major concern is that CSA 2010 measures carrier risk exposure by using a count of each carrier's trucks rather than the total number of miles that the vehicle has traveled. As a result, carriers who employ greater asset utilization will have more true exposure to crashes and other safety related events, but will be compared to carriers who have less exposure though the same number of trucks. FMCSA has acknowledged that this approach can create an inequity for some motor carriers and seems willing to consider mileage data at least in part as an exposure measure. However, the agency has not yet published a revised exposure formula.

Our third major concern is that CSA 2010 counts both citations and warnings for moving violations and assigns them the same weight. This presents several problems. First, since these are merely warnings, there is no due process procedure for carriers or drivers to challenge the alleged violations. Regardless of their validity, they stay on the carrier's record and are used to measure the carrier's related safety performance.

Second, in some States, law enforcement officers must have probable cause in order to stop a truck and conduct a vehicle inspection. In these States, we believe it is common for enforcement officials to stop trucks for trifling offenses and issue warnings as justification to conduct inspections. As a result, carriers operating in these States are disproportionately impacted and likely have worse driver violation scores.

While these three issues reflect our primary concerns with the CSA 2010 methodology, we have other concerns as well. ATA respects that no system will be perfect; however, these systemic flaws will have a pronounced impact on the motor carriers and highway safety.

Again, ATA supports the objectives of CSA 2010, but any system that is based on evaluating motor carrier safety comparatively must be grounded in sound data, sound math, and consistent measurements to be both equitable and effective. In short, there is a fundamental difference between using inconsistent data and an imperfect methodology for enforcement workload prioritization and

publicly displaying the results of the imperfect system to leverage additional scrutiny and economic consequences.

Thank you for the opportunity to testify on this important issue.

Mr. DEFAZIO. Thank you. Mr. Spencer.

Mr. SPENCER. Good morning, Chairman DeFazio, Ranking Member Duncan, and distinguished Members of the Subcommittee. My name is Todd Spencer, and I have been involved with the trucking industry for more than 30 years, first as a driver and an owner-operator. I currently serve as the executive vice president of the Owner-Operator Independent Drivers Association, representing the interests of small business truckers and professional drivers.

OOIDA believes that the CSA 2010 initiative has the potential to be a major step in the right direction for FMCSA's safety and enforcement efforts. For far too long, FMCSA's enforcement priorities focused almost exclusively on targeting truck drivers and really didn't go much farther at all. This has been an upside down effort of drivers being held responsible for just about anything and everything related to trucking, a particularly absurd notion considering that drivers are not required to be trained on the vast majority of operator and equipment regulations for which they are being held responsible.

Drivers often are not the principle decision makers in the movement of goods. The idea of shared responsibility for safety represents a more accurate reflection of how the industry should function. While motor carriers are subject to tremendous pressures to meet unrealistic demands from the shipping community, they are in a far better position to control factors that may result in regulatory noncompliance than are truck drivers.

We have heard all the horror stories about CSA 2010. OOIDA doesn't share the "sky is falling" Chicken Little view that this is going to put hundreds of thousands of drivers off the road. We do think it will interject a level of accountability that has been sorely needed and has been missing. We share some of the concerns over warning tickets and at-fault accidents. This program, like any program, really gets down to the devil is in the details, and we look forward to working with FMCSA to address those issues and make this program truly effective and improve highway safety.

Mr. DEFAZIO. Thank you for that succinct testimony.

We will begin the first round of questions.

Administrator Ferro, I am a bit puzzled as to timing and implementation. I have a number of questions about that. The University of Michigan Transportation Research Institute, I think they are scheduled to report their findings on the program in December. And I am wondering, you have had pilots, which are a way we are supposed to work out kinks and/or problems and modify our proposals and look toward broader implementation, and now we have an evaluation of those pilots that we are not going to see until December; yet, you are proposing essentially a rollout of this program contemporaneous with the receipt of the evaluation and/or critique. Why wouldn't you be informed by that which may lead to some changes before you would go to a broader implementation beyond the pilot States?

Ms. FERRO. Mr. Chairman, certainly a fair question. With a 30-month pilot or operations model test under way since early 2008,

and the extensive work done in contacting and communicating with stakeholders, we have accumulated an enormous amount of information by testing this system and testing the validity of the correlation between the violations, the safety violations, the groupings of those safety violations into BASICs and their correlation to crash risk throughout this process.

And in many cases, as we have come towards the end of the study period or the operations model period, we have been able to use some of the preliminary findings both to identify the effectiveness as well as the efficiency improvements in this new CSA process. We have also had, with the elements of the algorithm itself that underlie the safety management system for the carrier, those elements and those algorithms have been tested, the correlations have been tested, and they have been available through a transparent process—both our Web site as well as our kind of iterative Webinars for public comment and for feedback.

And so at this point, we have a strong confidence in the system and the validity behind the system and continue to work with the input that we are receiving on fine-tuning some of the weightings behind portions of the algorithm. So in terms of the first phase, we are very confident that this is the step to take this year.

Mr. DEFAZIO. But you have got 41 States who aren't in the system. You heard Mr. Keppler say that some of those States may have potential legal barriers. None of those, I am not aware that there has been any, other than having Webinars or a transparent system, there has been any meaningful engagement with those States and/or a timetable to those States and/or instructions to those States in terms of how they are going to have to change their existing systems in order to meaningfully gather and integrate their data the way the pilot States have done over the last 3 years between now and January 1st. And these are States that are under unbelievable stress, many of them are cutting personnel. And there will be no Federal assistance forthcoming. So I am not certain this is a realistic timeline. Could you comment on that?

Ms. FERRO. Yes, I will clarify again. The process of submitting violation data to the FMCSA's data base does not change under this system. The difference is that we are now using the violation data in a more robust and detailed manner than we have had before.

Mr. DEFAZIO. Though we have had some problems historically with some States' meaningful and on-time comprehensive reporting of the data.

Ms. FERRO. And that, in fact, has been the attention of IG reports in the past and as well as Congressional action, and as a result, we have been for the past 5 years undertaking a concerted effort to improve data quality working closely with CVSA through training, through grants, through our annual commercial vehicle safety planning effort with the States. So the data improvement quality has been a consistent path forward to the point at which we now receive, again, over 95 percent of crash reports, fatal crash reports within the time frame, which is 90 days, and about that many in terms of violation or inspection reports within the 21-day time frame, and the accuracy of the data has proven to be quite good as we continue to improve it.

It is a continuous improvement process, there is no doubt about it. And CVSA put together a workgroup last year to work closely with us on continuing that very focused effort.

Mr. DEFAZIO. But, Mr. Keppler, you raised the specter of two things. One, you said there may be some potential legal barriers. And then toward the end of your testimony, you questioned whether or not—answer that while I find your other quotation here. Oh, yes. On page 11: Another issue that has been brought to our attention is whether FMCSA will be able to implement the information systems and software changes to support field operations in a timely manner. So you have got a concern about information system software and legal authority. Do you think all that can be addressed by December 31? In my State, the legislature isn't in session at that time.

Mr. KEPPLER. Mr. Chairman, those are good questions. Through the Motor Carrier Safety Assistance Program, the regulatory changes, there is 3 years to adopt regulatory changes. Many of the changes that are anticipated with CSA 2010 don't necessarily need a regulatory change, are using the data differently. Because of the issue with the pilot States not necessarily knowing all the impacts yet, what our members have told us is they are in a kind of wait and see mode. They are supporting the program. They don't fully know all the anticipated changes on the software and information system side and, as a result, they will have to make changes to their State systems. So many of the changes the Feds make, that FMCSA makes, the States need to make those changes as well.

So there are some concerns. It is really more the unknown at this point. I know that FMCSA has been working very closely with the pilot States and have spent a considerable amount of time outreaching to the other States, but I think there are still some unknowns that we are hopeful will continue to work with FMCSA to get some clarity on what those implementation issues are and put a time line in place to address them.

Mr. DEFAZIO. I come from a probable cause State, and 43 percent of our inspections are conducted by the State police only after probable cause has been established. Now, the probable cause obviously results in either a warning or a citation. In Oregon, we conduct the other 57 percent of our inspections at weigh stations. But it seems to me there is a valid point here—a number of valid points—about some of the scoring system and the data we are putting in, the difference between what is being sent in as violations from a probable cause State in terms of volume and/or the gravity of those violations versus other States who don't need that. Then there is the issue of a citation that has been successfully challenged in court but would still be scored, and then there is the issue raised by both representatives of the industry here, the at-cause or at-fault accidents. And these seem to be all issues and/or problems that have validity and need to be worked out.

Administrator Ferro, how are you going to define the program to work those issues out, and what is the time line given the compressed schedule that you are on?

Ms. FERRO. Sure. Let me clarify first. The component that we are rolling out this year is the system we use to prioritize our work on carriers we look at as well as allow the roadside inspector to focus

their inspection as they are pulling trucks over. So this is a work tool for us much like SafeStat.

In terms of elements of those violations, the violation data itself is already being put into the system. That is not a new process. The method of interpreting that data and actually turning it into a carrier safety rating depends upon the adoption of the safety fitness determination rule, which is going to be an NPRM early next year. So that process, that opportunity to identify system interface and things will continue and be a very open and public and a longer term process than rolling out this initial tool this year.

With regard to the specific reference to crash indicator, we recognize the issue of crash accountability. Our data continues to compel us, as we have always used it, to identify crashes regardless of fault as being an indicator of future likelihood of a crash, or likelihood of a future crash. That is just what the data says. And so to that——

Mr. DEFAZIO. What would the data say about what we saw on the video? The data would say that that driver who was rammed and tried to avoid the vehicle causing a crash is more likely to cause another crash because someone, some jerk rammed him? I mean, it tracks jerks or something?

Ms. FERRO. The way we will treat that data, again, I think is the core here; that data will only be listed as a crash. It will not be rated. It is an indicator on the system only, just as we use it today.

Should a carrier safety fitness rating be impacted or be ready to be determined as unfit, any crashes in that carrier's record will be assessed and analyzed for accountability before they are utilized to weigh in on that carrier safety rating. It is the process we use today. Now, going forward—we interestingly enough, parallel to ATA—also analyze a crash accountability process before we reveal this indicator as an actual measurement to the public.

So that is an analysis that, as we have already discussed with some of Mr. Klein's colleagues, is a process that we also have identified as a valid one. It has been a longstanding issue for FMCSA. It is not a new issue. It is one we are very determined to come up with an appropriate resolution for, for purposes of fairness and transparency, as you indicate. We won't have that ready this year. But, again, that process and analysis is absolutely underway.

Mr. DEFAZIO. One last question. I have exceeded my time. There is some difference of opinion, it seems to me, between the associations on the public availability of this data. I would like everybody to comment on that. Mr. Klein, you raised the concern. You might summarize your concern. Then Mr. Spencer might respond, and then Ms. Ferro and Mr. Keppler.

Mr. KLEIN. Thank you, Mr. Chairman.

My concern is until we get the data to be accurate and reflective of the true performance of a carrier, by making it public it misrepresents those carriers that are safe and might get a false positive in identifying them as being unsafe; or, even worse, having unsafe carriers operating that don't get flagged in the system as being unsafe and therefore no consequences associated with it.

Mr. DEFAZIO. Mr. Spencer.

Mr. SPENCER. I guess the concern that we will perhaps share is that we are concerned with the accuracy of the data and certainly

how that data is interpreted. We don't have any specific issues with accidents. I mean, accidents are actually made available now until the SafeStat issue was questioned. But what is wrong with designating total accidents and at-fault accidents—have a distinction? It seems to make sense to us.

We think the focus of safety is better served focusing exclusively on accidents. Having said that, the vast majority of accidents that take place on the road are not DOT reportable. Our members' trucks are crashed into at truck stops on a regular basis by many of the companies that simply turn out, churn out untrained, unqualified drivers simply to fill seats. You have all heard about these chronic driver shortages we have. Well, this is nothing more than the industry's propensity to churn, burn up drivers, great, great big turnover. Those guys do have lots and lots of crashes. Those things need to somehow be reflected, and they do represent an overall reflection of how a carrier will operate.

Mr. DEFAZIO. Briefly, Administrator Ferro, whoever wants to.

Mr. KEPPLER. Thank you, Mr. Chairman. First, I would take issue with my distinguished panelist on the accuracy of the data. As Ms. Ferro indicated, 95 to 100 percent of the data is accurate. One of the things FMCSA did when they launched this program is do an analysis of the existing data in the system. That analysis showed the data is valid, accurate, and uploaded in a timely fashion. As she indicated, it is being uploaded in a timely fashion. Yes, several years ago it was an issue. But through millions of dollars of grants, through the safety data improvement program to the States, they have made enormous strides in terms of ensuring accuracy and timeliness of the data.

On the public availability of the data, that portion of your question, we think that is a valuable approach to take, because having that information available to the public helps encourage other people in the safety accountability chain to view that data and take actions to impact safety. So we think that is an important aspect of the program.

Mr. DEFAZIO. OK. Quickly, Administrator Ferro.

Ms. FERRO. Thank you. And I would reinforce Mr. Keppler's point. Again, this program is about compliance, safety, and accountability, and public view of the data is part of that accountability measure.

I do want to point out, though, carriers have had the opportunity to preview their data since April of this year, and we encourage everybody constantly to do so. By the end of August, carriers will be able to preview their data based on the measurement system. The public won't have view of it until the very end of the calendar year. So, again, we want to be sure that carriers have ample opportunity to look at their data where they have questions about violations, to push it through the DataQ process, which is the process that pushes it out back through the State, and questions the validity in cases where they may have questions or uncertainty or challenge the accuracy of the violation itself. So there is a process itself already in place.

Mr. DEFAZIO. Thank you. I turn now to Ranking Member Duncan.

Mr. DUNCAN. Well, thank you, Mr. Chairman. And yesterday I met with my staff and they told me many good things about this new system. But let me tell you about a concern I have by telling you what I am going through with another safety administration within the Department of Transportation.

About 12 days ago, I was contacted by a company in Knoxville, ARC Automotive, that makes air bags and uses the chemicals that make the air bags explode, and for many, many years they have been getting a permit to use this chemical from the Pipelines and Hazardous Materials Safety Administration. And in the past, they tell me that it always just took seven to ten days. They basically just got it done with a phone call. They have never had a safety violation. But the safety administration recently went to a new system that supposedly was more online, and then on their Web site they said it is going to be simpler, easier, more efficient, and so forth.

So they filed a renewal application on May 1. And their permit that they had ran out ran out May 31, and they didn't worry about it, because they thought that in the past it had been done so quickly and this new system was supposed to be better and quicker and so forth. Well, now they have had to lay off a third of their workforce, over 100 people, and they can't get any response from this administration. And I sent down 12 days ago a letter, hand delivered to the administrator, emergency, to try to get these people back to work.

And so now I hear about your coming in with a new system that is supposed to be better and so forth, and yet I am also told that it is more data driven, more data intensive, more information, and all that. And I am just wondering, when I chaired the Aviation Subcommittee, I used to hear complaints from the FAA inspectors that what the FAA cared more about was making sure they had all the paperwork in place and in order than they did about actually fixing real problems. And so I am just wondering, is this going to create more paperwork because it is getting more information, or is it—I liked what Mr. Spencer said about what we need to be concentrating on is actual accidents and the companies that are having the most accidents. So, do you understand why I am a little bit skeptical at this time?

I remember a few years ago reading a column by a nationally syndicated columnist, Charley Reese, and he said that the computers had created a lot more paperwork now because he said that in the old days, if he were going to send a copy to somebody, he would put a piece of carbon paper in and he would send one copy. But now, he can push a button and send it to 20 or 200 or 2,000 people. It has created a lot more paperwork for the Congressional offices, I know that. But I am just wondering about all that, particularly because I am going through a problem right now with this other safety administration at this time.

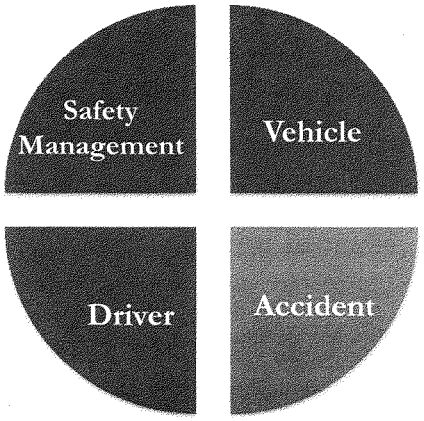
Ms. FERRO. I appreciate that concern, and I am sorry for the problem today that ARC is experiencing particularly with regard to the employees.

This might be an appropriate time to put up a slide that shows two pie charts, I think it is slide two.

[The information follows:]

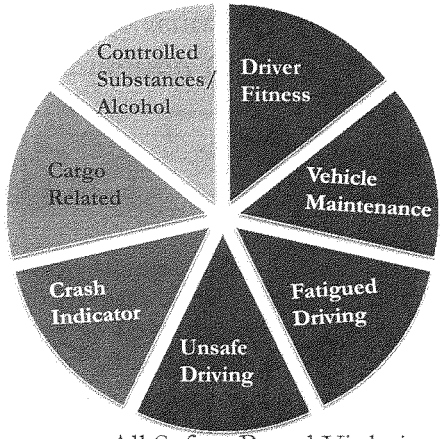
★ Current Measurement System vs. New

SafeStat Safety Evaluation Areas (SEAs)



- Out-of-Service Violations
- Certain Moving Violations
- Crash Reports

SMS Behavior Analysis Safety Improvement Categories (BASICs)



- All Safety Based Violations
- Weighted to Crash Risk
- Crash Reports

Specifically, the difference—to sum it up, this is not new paper. CSA 2010 takes existing violation data that carriers already receive through their inspection reports, and uses the data to assess the carriers' performance by grouping it into seven BASICs.

So if we looked at the current system, which would be on your left, the current system—and this is for our internal prioritization tool to identify which carriers we are going to go look at, as well as what roadside inspectors are going to be looking for. So our current system groups out of service data and crash data into four broad categories, and you have to have a deficient rating in two of the four for us to come take a look.

Now we are taking the same inspection forms on out of services, but going beyond to any other violations that that inspection may have identified or an inspection report that is all clean, and we are using all of that data to analyze it into seven BASIC groupings that again is not new.

Mr. DUNCAN. I am not trying to overlook you. I have a bigger view of it right behind me.

Ms. FERRO. So it is on your right, the sort of granularity that the new way of sorting the violation data achieves. So this is not new paper for a carrier.

With regard to ARC as a hazardous materials carrier, you indicated that they have a very strong safety record. If a carrier is safe today, they are probably safe tomorrow under CSA 2010. But, again, under the new program it is our analysis of the data and the presentation of that data on the carrier's screen through us, the CSA 2010 Web site, that enables the carrier to also look at where they see a deficiency in any one of those seven BASICS on the pie chart on the right, as opposed to this sort of averaged grouping of the four elements on the left.

So, again, it is not new paperwork. It is a better analysis of current performance data that comes from regular inspection activity already happening at the roadside.

Mr. DUNCAN. I have got some other questions, but I will wait until other Members have a chance.

Mr. DEFAZIO. Representative Walz.

Mr. WALZ. Thank you, Mr. Chairman and the Ranking Member. And thanks to each of you for being here today to help us with this. And I want to echo what the Chairman said, Administrator Ferro. I do think it is important you are sitting at the table with these folks because that is the way you are approaching this, and I appreciate all of you being here.

Safety is obviously the number one concern for all of us and trying to get it right in a way that still gives economic viability to our truckers that are out there. I heard an interview with a gentleman a couple years ago that I think sums this up. He was working at Los Alamos Laboratories as a high energy particle physicist, and he was leaving that career because he wanted a greater challenge and he went into highway safety. And it was the truth. He said it had become too easy to deal with quantum physics; that he needed something where all the variables were unimaginable.

So we are dealing with a very difficult situation. We are dealing with a lot of those variables. So I am very appreciative. And what we are trying to get at here is that sweet spot between a new pro-

gram that improves safety, but doesn't pose the burden or an unfair nature onto our carriers. So just a couple questions. I also think it is very interesting today, I certainly wish there were more members here to hear what is happening. Colorado is here, Maryland is here, New Jersey is here, Minnesota is here. Pilot project States are aware of this. And I have been hearing this and been out there at Smith Trucking and others, and we are getting that. That is the way it should be. Pilot programs should be here. I guarantee that you have this after implementation, and this room will be full, of trying to get it right, because Mr. Spencer was right, the devil is in the details. So we appreciate everyone here. But I just had a few questions coming down on those types of things.

I am concerned on, I guess, on several things. Maybe—and I don't want to get too much into the theoretical—but there is a due process issue here that I feel like our carriers may be subject to: warnings. You don't have a due process right to go in and appeal a warning. It is a warning and it is weighted and it is on, unlike a citation that might be there. And probable cause States, as the Chairman kept bringing up, I think this poses a huge issue with the validity of your data and the burden that is falling on certain carriers on how they are being weighted. So a couple of questions.

The first, I would go through this. Administrator, have you looked at the correlations between actual crash risk, the correlation, paper violations as opposed to warnings as opposed to speeding tickets or whatever? What is the formula for that? And I guess I would also—my concerns are, all in the best interest of safety, you are getting feedback on this. I think we are finding obvious glitches in this. But we are already reporting and putting some people's reputation on the line out there. The University of Michigan hasn't reported yet. Why not wait until we get that? And if you can answer, I know it is a double-fold question, how you are weighting that? And why the time line?

Ms. FERRO. Sure. So with regard to the weightings. First and foremost, yes, the safety violations that are utilized and sorted into those seven BASICs that I put up on the slide before are all identified, analyzed, and correlated to crash risk. And in fact, within each of those categories relative to the violations in those categories, they are weighted based on their severity of leading to that crash. In the case of HAZMAT it is more, what is the outcome of the crash if it happens on HAZMAT and load securement.

That being said, with regard to violations, warnings, and citations, studies show, both our own analysis as well as one done by ATRI, the American Transportation Research Institute, that patterns of violation, patterns of moving violation convictions, or patterns in our case of violations do form an indicator of crash risk going forward.

Mr. WALZ. Did you weight in there probable cause States with warnings? Your chance of getting one of those is greatly enhanced. And if that is going into a weighting, it seems like the validity of the question for those carriers or those operators is at risk.

Ms. FERRO. Well, two things again. Weighting is reduced based on the timing of the violation or the aging of the violation, the severity as it leads to crash risk. We do not distinguish between warnings or violations today or warnings issued without a convic-

tion. I will say, however, that based on some of our work with CVSA, we certainly have identified that there are thresholds on speed, for example, as a violation, over by 1 to 5 miles an hour, 5 to 10, 10 to 15, and so on. And we are, with CVSA's very clear assistance, identifying and——

Mr. WALZ. What about a citation that is dismissed in court? Does that just go away?

Ms. FERRO. Now, that is a matter that is under review. I will tell you, I was just in Indiana and that State will remove that violation if the charge is dropped.

Mr. WALZ. Should it not? Because wouldn't it, in our legal system, indicate that that person was innocent no matter that they went through the process? Are you using a crystal ball to define what their intent was? That is my concern.

Ms. FERRO. I will affirm to you that that matter is definitely under review in our organization.

Mr. WALZ. The last thing I would ask, my time is up. I would ask our two carriers, Mr. Klein and Mr. Spencer, what does this do for the number of safety specialists you have got to put on board with your companies? And how does an independent operator handle that in terms of compliance to get there with this?

Mr. SPENCER. Most of our members are individuals that own the truck they drive. Nobody has to be looking over their shoulder, shaking their finger, saying: Drive safe. Because not only is it their life, but their livelihood is on the line. And, as such, this particular group of people have exemplary safety records, and that shows on the highway. In the instance of—and those that they are going to generally employ are going to have similar traits, similar characteristics and mannerisms, because the closer you are to the boss, the easier it is for him to get a hold of you and make sure you are on the straight and narrow.

Mr. WALZ. How do these guys keep up with all the paperwork? Or maybe there isn't that much. That is what I am asking. What is going to happen in a company? Mr. Klein?

Mr. KLEIN. In our organization, we have probably 10 people focused on safety right now. And that was prior to CSA 2010 pilot implementation as well. It has redirected their resources and where they are spending time. They are focused on things beyond the scope of accidents and other things that they did focus on before. And I think a lot of the smaller businesses, the smaller trucking companies will have to add safety resources in order to support the efforts under CSA 2010.

Mr. WALZ. I yield back. Sorry about going over time, Mr. Chairman. Thank you all.

Mr. DEFAZIO. No problem. Those are good questions.

We are going in the order in which people were recorded by staff. So I have plausible deniability. And Mr. Sires would be next.

Mr. SIRES. Thank you, Mr. Chairman. And thank you for holding this meeting and thank you for being here.

I listened to all this data that you are collecting and everything else. I was just wondering, since the trucking business is made up basically of small business owners or self, how is all this implementation impacting small businesses? Is it sort of positive or is it negative? I know you said you agree with some of this stuff, but—

Mr. SPENCER. Well, obviously we are very optimistic that we can work with the agency and keep the focus in a direction that actually measures and assesses what are the real safety issues.

Mr. SIRES. From the information that you have now, because I keep hearing all this information that we collect, have you made a determination?

Mr. SPENCER. Well, we still have concerns over how tickets are recorded, warnings versus real tickets. We have concerns over accident causation. As we saw in the film, and actually the numbers show, over and over and over the truck driver is going to be the least likely to have caused the accident.

Mr. SIRES. And I come from New Jersey. I am sure you collected a lot of good information. Do you share, do you sit down with the other pilot States and compare the data and see if there is a pattern? You know, do you do all this before you go on to some of the other States? Do you share with the new States that are coming in?

Ms. FERRO. Yes. And Mr. Keppler might want to join in on this as well. We absolutely do. Our administrators throughout the country have been working with their peers in the test States and have been meeting both with industry representatives at drivers meetings, primarily with their State law enforcement partners, talking about the program. As I say this has been under development for upwards of 6 years. So the conversation has been constant and ongoing. It is getting very fine tuned now because we are so close to everything happening, and so folks are paying more attention. There are absolutely change management elements to this process. There is no doubt about it. We are taking violation data we have been collecting for years and actually using it to assess performance, and that is the big difference.

But, yes, the conversation with the State partners has been constant. New Jersey has been a big help. They have been a pilot State. They have been a big part of that conversation with their other State colleagues. And we do meet as regions, we meet nationally, and then we meet locally when we are developing commercial vehicle safety plans and absolutely in developing this program.

Mr. SIRES. How do you share the information with, say, New Jersey, the State troopers are the ones, basically.

Ms. FERRO. Yes. Mr. Keppler might want to speak to that process from his perspective.

Mr. KEPPLER. That is exactly right. This program, we have been working very closely with FMCSA, the pilot States. Our members are the organizations. New Jersey State Police is our member. So this has been an ongoing process for a number of years. At every one of our meetings, our conferences, constant interaction on the good parts of the program, how we can improve it.

One other thing I did want to note to clarify, that the warning and citation information does not go and is not accounted for in the whole safety measurement system. Those are separate enforcement actions that do not get compiled in the whole data analysis part of the program. I want to make sure people understand that. Only the violation information. So it is a separate process, so that in terms of the violation's clarity and severity, the citation and warning data does not count towards the motor carriers.

Mr. SIRES. Do you want to add anything?

Mr. SPENCER. The only thing that I was going to add, and I should have said it a while ago, is that one of the reasons that we are positive about this program is that for the first time it is actually going to require the motor carrier industry to belly up to the bar and actually assume—not only assume responsibility, but that responsibility is going to engage them on the real need to fix some of the situations that create unsafe atmospheres for drivers, dealing with shippers and receivers and loading and detention time, some of these things that have just been lumped off on drivers; and if the driver doesn't do right, you fire him and even replace him with somebody else. That doesn't improve safety. That just sort of perpetuates what has problems.

Mr. SIRES. Thank you very much.

Mr. KLEIN. Just to give some data relative to my organization. Because it is not public, I don't see other companies, but I can talk about our data.

In our unsafe driving BASIC, over 65 percent of our points come from speeding violations; and of that, only 25 percent of those were actually citations that were issued to our drivers. 75 percent of those points were coming from it being flagged on an inspection as a warning, as an opportunity to pull somebody over. So over 45 percent of our points, almost half of the points in unsafe driving come from warnings according to the system. In addition to that, half of those come from three States which are probable cause States.

Mr. SIRES. You don't want to mention the States?

Mr. KLEIN. I can provide a list of the probable cause States.

Mr. SIRES. Thank you very much.

Mr. DEFAZIO. I thank the gentleman. We would now go to, I guess it would be Ms. Edwards.

Ms. EDWARDS. Thank you, Mr. Chairman. And thank you all for your testimony. I am from the State of Maryland, and I just have a couple of questions related to training and guidance, Administrator Ferro. In your testimony, you indicated that prior to pilot testing there had been testing of CSA 2010, that you developed training for safety investigators on the new SMS and the CSA 2010 interventions. Do you plan to train each of the remaining States as they are coming on line and for scheduled implementation in those States?

Ms. FERRO. We will be training all of the States. Not all of it will be on site in the individual States; however, there is a strong on-site presence by our division offices and division administrators that complement the training that may come through, in some cases, Webinar; in some cases, off site with teams of enforcement officers at our training centers across the country or at training sites. But our goal is to do the first component of that training in person.

Ms. EDWARDS. The reason I ask is because, Mr. Keppler, I think it was in your testimony where you indicated that there is such, I think, wide variation among the States around enforcement. And if there isn't some sort of standard set of training that goes, how can you actually expect the States to clear up that variation and to make certain that at least from a long haul driver my uncle in

Nebraska, if he is driving across the country with his independent company, that there is the same set of standards across the country, and that investigators and inspectors understand that. And he can expect the same kind of enforcement in Nebraska when he arrives delivering his cargo in Maryland?

Mr. KEPPLER. The core reason for our organization's existence is uniformity and reciprocity. We have been working for almost 30 years now to ensure that we promulgate standards from the roadside inspection process, the training. You are right, there is a lot of work. But I think what we have been doing over the last couple of years is putting in place, with FMCSA's help, understanding as we are going through this process, what are those key pieces that we need to fold into the whole training program to ensure when we do roll this out we have got consistency and uniformity across not just U.S. but also Canada and Mexico? And it has been something we have been working very hard on with them. Yes, it is still a challenge, but I think we have got the pieces in place to make sure we can make it happen.

Ms. EDWARDS. And Mr. Spencer, before we get on to that, do you have some sense, though, especially for some of your independent operators as well as the larger companies that they will understand that uniformity, that they will understand what those standards are and that violations are recorded in a similar way from one State to the next?

Mr. SPENCER. The consistency and the quality of data has been a frustration in our industry, and I know with States, with the entire enforcement community, for decades. We have to be really, really optimistic that it can improve. But what this sort of underscores is the need for having a way to correct the record if violations or citations or warnings are written that should not have been. There needs to be a real meaningful way that an objective overview can take place and purge the record if that is what is required. Now, that is going to be key for the small person. Obviously, you don't want to start out with ten points against you from day one. So we know from our experience that individual owner-operators are going to be the safest on the road. So they shouldn't start out in the hole.

Ms. EDWARDS. Did you have something to add, Ms. Ferro? And then I believe my time is about to expire.

Ms. FERRO. I just wanted to clarify that we do develop and deliver uniform training through our Motor Carrier Safety Assistance Program across the country and have been for some years, and, in fact, that is the originating purpose of our training center. So that uniformity in training is a standard practice for us.

Ms. EDWARDS. I just have one last question, and it has to do with things like in the metropolitan Washington area, particularly in Maryland, we reserve our left lane so that trucks, particularly those carrying hazardous materials, can't use that left lane. But it is not totally clear to me whether things like that actually contribute overall to safety. Do you all have any comments about that?

Ms. FERRO. I don't. I will follow up with Federal Highways, though, and come back to you with a clear response for the record. It is a fair question.

Ms. EDWARDS. Mr. Klein?

Mr. KLEIN. I can give you a little anecdote from our organization. We govern our trucks at a top speed of 62 miles an hour and strongly train and encourage our drivers to run the right lane, because lane changes create an opportunity for an accident to happen. So I believe having car traffic in a further left lane is a good idea.

Ms. EDWARDS. Thank you, Mr. Chairman.

Mr. DEFAZIO. Now Mr. Schauer.

Mr. SCHAUER. Thank you, Mr. Chairman. I will allow Mr. Spencer to respond.

You wanted to respond to Ms. Edwards?

Mr. SPENCER. Well, I did actually. It has been our experience, and, again, I am a former driver, all lane restrictions ever really do is cause higher concentrations of vehicles in those particular lanes, and they are generally all driving as fast as they can go, bumper to bumper. It sort of discourages what we see as intelligent driving, meaning if you need to go around a slower vehicle, you pass on the left and you move to right.

These are sort of the rules of the road that ought to be second nature to old drivers, to all new drivers. Those kind of lane restrictions, and having different speed limits, too, just sort of works to obstruct and make it harder to change lanes.

Mr. SCHAUER. Mr. Chairman, thank you for the opportunity. Thanks for holding this hearing on the comprehensive safety analysis approach.

First, my district is in Michigan, so it was good to see the University of Michigan's leadership role in transportation safety. Many of their people live in my district.

I have heard from some local businesses who question what is meant by driver fitness, and I wonder, Ms. Ferro, if you could start by talking about that. I am not sure they understand what this new safety analysis approach actually means. Maybe if you could talk about any rulemaking that might address driver fitness. I want to make sure they understand.

I will specifically tell you, and this is sort of is where the rubber meets the road, I hear from a small business, they haul scrap tires, and he hears from one of his sort of peers in the business that drivers are going to be taken off the road because they weigh too much, not the vehicle, but they themselves. So talk about driver fitness and driver fitness within that.

Ms. FERRO. A very interesting topic.

Mr. SCHAUER. And if you could tell me the facts versus fiction so I can tell them what is actually going on.

Ms. FERRO. Thank you for the context, because I was still on my regulatory fitness mode.

With regard to determining safety fitness, FMCSA is obligated for motor carrier, for vehicle, for driver, so it is across a range of entities or elements that are part of that commercial vehicle traveling on the highway.

Specifically, it gets to the safety of that carrier, that vehicle or that driver, both with regard to—specific to driver, the driver's violation data; with regard to unsafe practices, what you heard, lane changing, speeding, improper record with regard to their medical fitness and so on.

Now, there is a physical fitness component of being a commercial driver. There is a tough qualification standard with regard to blood pressure, with regard to any persistent specific types of disabling diseases. So that is, in fact, a component of driver fitness and is why unfit—or driver fitness is one of those carrier BASICS in terms of the DOT physical record. So your constituent isn't too far off.

With regard to the myth that this program will take drivers off the road because of their physical fitness, there is no change in the way we will treat drivers' qualifications to be operating commercial vehicles under this program. It is just that we will be using more current violation data that has been determined at a roadside inspection or other stop.

Mr. SCHAUER. Mr. Spencer, I want to hear from you in a second, and I will ask this as a follow-up. Is there any limit in terms of how much a driver can physically weigh as part of these standards?

Ms. FERRO. There is not a weight limit. There are, however, conditions with regard to blood pressure, with regard to diabetes conditions, with regard to other elements that may contribute to a driver's abilities to operate that vehicle safely.

Mr. SCHAUER. Thank you.

Mr. Spencer?

Mr. SPENCER. Our organization, I would say, shares the concerns that maybe you have that have been conveyed to you in that we see a tremendous unfounded focus on looking at things like neck sizes or weight of truck drivers and somehow making a correlation between that and highway safety. When we talk to numerous millions and millions of miles safe drivers, we know the correlation to safety isn't there, but they are certainly attempting to, in essence, sell this disease that you got and they got the cure.

We think it can take drivers off the road, and we certainly hope that our lawmakers and policymakers will recognize snake oil when it is offered to them.

Mr. SCHAUER. Are you addressing your concerns to Ms. Ferro and her agency? I am sort of trying to read between the lines here.

Mr. SPENCER. At every opportunity.

Mr. SCHAUER. Including this morning.

Thank you, Mr. Chairman.

Mr. DEFAZIO. Thank you.

We will go to Ms. Richardson.

Ms. RICHARDSON. Thank you, Mr. Chairman.

First I am going to give more of a comment to you, Ms. Ferro. In terms of the progressive interventions, I would be really concerned with starting with a warning letter. I would tell you after what we have all lived through, unfortunately, now with the spill and many other things that have happened, I think inspections, if we know there is a problem, we need to go directly to the source. So my personal comments would be to that.

For those of you who may not know me, I represent the Long Beach-Los Angeles area where over 45 percent of the entire Nation's cargo goes through. So one of my questions is, how did you determine your pilot States? I am a little surprised that you didn't include that area, since almost half of the Nation's cargo, half of

the trucks, are going through that area. I was just a little curious why you didn't include port communities, except for New Jersey?

Ms. FERRO. And Maryland.

Ms. RICHARDSON. Well, I am not going to get into a tussle with my colleague, but I will venture to say port communities in size—I am talking about a real—I am going to leave it at that, because this is my buddy over here. You are not going to get me in trouble.

Ms. FERRO. I am a Marylander. My apologies.

So with regard to the selection of the pilot States, I am afraid ignorance is no excuse, but I was not on board at the time those were selected. In some cases it was a matter of our division administrators and our project team reaching out to States who wanted to be part of the pilot. However, I will follow up with you with specifics, if, in fact, California was contacted and for some reason we didn't pursue.

Ms. RICHARDSON. Well, I would just say in terms of rolling out the program, it is going to become very difficult when you are piloting more smaller States who don't have some of the unique challenges that we have. One of the biggest problems, on any given day we have a jackknifed truck, all kinds of things are going on on the 710 Freeway. So it would just seem if we are going to be able to get at some of those issues, it would really help to test if, in fact, the system is going to be able to work in terms of some of the inspections and other things that are part of your program.

Ms. FERRO. Well, if I may, with regard to California, one of the exciting components for us is that the incoming chair of CVSA, the organization that actually has all of its membership as State law enforcement officers, is Captain Dowling from California, who heads up the commercial vehicle law enforcement efforts in California. He has been an effective and very engaged member of the CSA 2010 discussion. So it is a very well discussed topic among California law enforcement, and very much part of our audience.

If I could comment real quickly on your warning letter comment as well, if I may?

Ms. RICHARDSON. If I could get through a couple of my others, and then we will—hopefully we be able to come back.

One, I wanted to concur with the ATA that you would have the same rate for a driver whether the accident was at their fault or not. It just seems to me kind of basic. Why would you give the same rating if it wasn't their fault? I mean, it is not their fault. So that didn't really make sense.

Then coming from local government, I am really concerned about having adequate funding to be able to roll out this program. What we don't need is another unfunded mandate. So my question to you would be what are you going to do to make sure there is adequate funding, and how are you working with the administration to make sure that it is the case?

Ms. FERRO. Would you like me to speak to the crash component as well?

Ms. RICHARDSON. Sure. In about 30 seconds.

Ms. FERRO. OK. Well, we are examining crash accountability and identifying a process for determining before we get to the point of actually making crashes a measurement on the public system. So

that is point number one. We will continue to use it for prioritization purposes, but not as a measurement.

With regard to resources, I think that is an ongoing discussion. I think Mr. Keppler put that on the table. We have, the agency, in our fiscal year 2011 budget, requested an additional about 50 people for the field specific to this program. In addition, we support our State law enforcement through the Motor Carrier Safety Assistance Program, a nationwide grant program that funds vehicle enforcement around the country.

Ms. RICHARDSON. Well, I think it would be really important to know how you plan on utilizing those people, because, as I said, in my area alone we could stand to use 20 people. So if you could supply that information to the Committee.

Then, finally, Mr. Spencer, if you could get at least one of your key points that you wanted to have included in the CSA 2010, what would that be?

Mr. SPENCER. I guess it would really be a matter of placing the appropriate people and holding them accountable and responsible. I think it is curious, you are from L.A. and Long Beach where problems with port trucks specifically have been growing, have been bad for a long, long, long time, and those problems existed, whether they are safety, mechanical condition of the vehicles or environmental, mainly because the carriers that actually operated those trucks weren't responsible, and they were not held responsible. Hopefully this CSA 2010 program will bring that accountability that is sorely needed.

Ms. RICHARDSON. Thank you, sir.

Mr. Chairman, could I get an additional 5 seconds for her to answer the question on the warning letter?

Mr. DEFAZIO. An additional 5 seconds.

Ms. RICHARDSON. I already asked it. She just has to answer.

Ms. FERRO. Thank you very much for that consideration.

In short, the warning letter is one of several measures we will use to give a carrier either an indication that we are coming to see them or a heads up that they are trending into an area of marginal safety. It is not a linear path on which we will take those actions. A carrier that has a sufficient poor rating in the area of, say, driver fatigue, we may do a targeted on-site investigation of them immediately. We wouldn't wait for a warning letter. The warning letter is really getting at carriers who are sort of in the middle of that bell curve that we are not even touching today to say, hey, you are starting to trend in some areas you better be looking at.

Ms. RICHARDSON. Thank you, Mr. Chairman.

Mr. DEFAZIO. Thank you.

I turn now to the Ranking Member Mr. Duncan.

Mr. DUNCAN. Administrator Ferro, your agency contracted with the University of Michigan to do a study. How much did you pay them for that study?

Ms. FERRO. I do not know the answer to that question, but I can get it while I am here, or I can follow up with you, either way.

Mr. DUNCAN. I am just curious. What I am really wondering about is, that study is not going to be completed until December of this year, is my understanding. How much—did they just send you a card there?

Ms. FERRO. Two hundred fifty thousand dollars.

Mr. DEFAZIO. I understand it is not going to be completed until December, but it seems like everything is being done on this before you even get the results of that study. What do you say about that?

Ms. FERRO. We have an obligation to use the most current data to improve our process of identifying carriers that are putting everybody else at risk on the highways, and the process of using our violation data came about through a very broad and open and transparent discussion that has been taking place and has been analyzed through our contractors in terms of their correlation to crash risk for some time.

So in terms of our obligation as an agency to put safety as the highest priority and use our resources in the most effective way possible, as well as our law enforcement partners, it makes a great deal of sense for us to take a tested system and put it in place to identify and prioritize carriers we are going to look at either on site or through the roadside inspection.

With regard to the Michigan study, which is an important element of this program, number one, there are preliminary indications from our work in the pilot States through the study that this program makes sense today, and it achieves efficiencies in change management in using this performance data in the system that we have developed.

However, the additional information we will receive from the study will get closer to the question of what impact did it have on crashes in those pilot States, what impact did it show in terms of specific carriers—I don't want to say and I think it won't get to the specific carrier change in behavior, but the correlation between where that carrier is today relative to where they were prior to CSA 2010—so I think it gives us a more robust set of information to work with as we move into the process of the NPRM on the safety fitness determination rule itself.

But building a system to prioritize and focus our work makes a great deal of sense to us today. Again, it has been in a very open method, so everybody has been seeing the process under way.

Mr. DUNCAN. Thank you.

Mr. Keppler, in your testimony you said the pilot States have been able to contact more motor carriers, and the quality of the interaction has improved. What did you mean by saying that the quality of the interaction has improved, and this has resulted in more effective corrective measures and so forth? What did you mean by that? And also, are there any barriers that you believe are there for the States to just automatically adopt this new enforcement model?

Mr. KEPPLER. To answer your first question, quality interaction has a lot to do with the interventions that are being put in place with CSA 2010. Under the previous process, it was a one-size-fits-all approach with the compliance reviews. So the interventions have been designed based upon the data on the carrier and driver performance. So the actual reason for the intervention in the first place is because we have got an identified safety problem. So when that investigator is in visiting with the carrier, they already know where their issues are, and they can design how they are going to interact with that carrier to help point those problems out, but also

give them, OK, here is the types of things you ought to do to change for the future.

So to Administrator Ferro's point, change management, it is not an audit anymore. It is not going in and checking paperwork. It is giving feedback back to the carrier saying, look, here are some things you can do to improve your safety performance, and here is what the data is showing us. So that is in terms of quality of the interaction, and it is, generally speaking, a shorter timeframe than what has been in the past.

So these different interventions, it is shorter, it is quicker, it is to the point, it is in and out. So they are getting to touch more carriers, the quality is better, and the end result hopefully is sustained behavior over time.

Mr. DUNCAN. Mr. Klein, what do you say about that? Has this system, have these interventions become more helpful to your members of the American Trucking Association? And also I am curious, what percentage of your companies' accidents would you estimate that the company is accountable for causing? We have heard Mr. Spencer say that most of these trucking accidents aren't caused by the truck drivers.

Mr. KLEIN. That is true.

I will answer the second part of that first. In our organization we don't even look at cause, we look at preventability, which is a higher standard than just even cause. So could our driver have prevented that crash? In that case, last year, 26 percent of our crashes were preventable, so almost 75 percent were nonpreventable crashes.

On the second part of your question—I apologize, I have lost the second part.

Mr. DUNCAN. Well, Mr. Keppler is indicating that the quality of the interaction has improved, and he seems to think that this is making the system more helpful to the trucking companies and to drivers and so forth. Have you found that to be the case, and what has been done on this so far in the pilot States?

Mr. KLEIN. In talking to the members of the Minnesota Trucking Association, I think you would get mixed reviews on the helpfulness of the process. I think some people feel that they had interventions and, based upon the audit, came out clean and felt it wasn't a good use of government resources. I think other folks did learn some stuff through that process.

Mr. DUNCAN. So, it is mixed.

Mr. KLEIN. So it is a mixed feedback at this point.

Mr. DUNCAN. Mr. Spencer, in your testimony you state that this new system shifts the focus from the driver to other stakeholders in the industry and recognizes that drivers are often not the principal decisionmakers in the shipment of goods. How do you think this focus will improve the level of safety in the trucking industry? Do you think that the company is more responsible and administrative decisions are more responsible for these accidents, or what do you mean by that exactly?

Mr. SPENCER. Well, I have been chastised before for making a statement, but the safety culture that generally exists in trucking is it is the driver, and you are on your own. Obviously, the focus of virtually all enforcement, we cite the driver; he is going to be

the person that goes to jail. Yet generally drivers in their environment, they work around everyone else's schedule. Drivers are not paid—or seldom, if ever, paid anything whatsoever for their time that is wasted, squandered in numerous situations by virtually everyone in the supply chain, and simply because no one else has to place a value.

Now, that isn't right, and I recognize the limits of FMCSA's jurisdiction, but at a minimum what this program, we believe, will do is it will drag the motor carrier kicking and screaming into this situation, saying, look, you have got to help resolve the situation; whether it is hours of service or any number of other things, you have to help resolve it, because you can't simply pass the buck to the driver and say, we fired him, problem solved.

Mr. DUNCAN. All right.

Thank you very much, Mr. Chairman.

Mr. DEFAZIO. Thank you.

I recognize the Chairman of the Full Committee Mr. Oberstar.

Mr. OBERSTAR. Thank you very much for holding this hearing and for the work that you and the staff have invested in the update on the motor carrier oversight.

When we initiated the Federal Motor Carrier Safety Administration, it was during the first years of the Republican Majority in the House and during the early part of the Clinton administration, and the proposal was to elevate the motor carrier safety oversight function from an office, a bureau in the Federal Highway Administration to the level of an administration with equal standing with the other modal administrations.

At that point I said that "We are going to make a real change, and it ought to be substantive, and we ought to use aviation as a model." So the opening paragraph of the new Act reads, "The administration shall consider the assignment and maintenance of safety as the highest priority."

I drew that language from the opening paragraph of the FAA Act of 1958, when the Eisenhower administration moved from the Civil Aeronautics Authority to the Federal Aviation Administration. They realized we are on the eve of the jet age, about which few people knew anything; didn't know what challenges jet aircraft would pose for pilots, for passengers and for airports, and they thought it was important to put in the law that safety shall be the highest priority.

I thought at the outset of this change, which we need to make, that we ought to have a similar goal and standard. And shortly after that, Secretary Slater set as a goal reducing fatalities by 50 percent over a period of time, and that was a responsible and a reasonable approach. Secretary Pena— previous to Slater—had set a zero death goal in aviation, and while certainly that is our goal, should be our objective, zero in 5 years seemed beyond reach, and so has the 50 percent reduction. While the injuries involving large trucks are down from 142,000 in 1999 to 90,000 in 2008, that is injuries, fatalities have gone down less than 20 percent, maybe 15 percent.

So, I look at the work accomplished. I think there is movement in the right direction. I think the new agency under new management is moving in the right direction. But what I am concerned

about is your shifting—and, Ms. Ferro, thank you for taking on this job. Welcome to the world of conflict in motor carrier safety. Welcome to the Committee. We will have more hearings on this. You will be here as a frequent visitor, I hope.

But the agency before your tenure shifted from the actual numbers of fatalities to rate per 100 million miles traveled. How do you justify that? How do you know how many hundred million miles have been traveled? You don't have your own independent data. The industry does not maintain it. Only 2 percent of trucks are being inspected. You don't have the personnel. States don't have the personnel. How can you determine how many hundred million miles have been traveled when there aren't on-board recorders to tell how many miles are on an individual truck? Where did this number come from?

Ms. FERRO. I believe the data is through our Federal highway and actually NHTSA processes. I will tell you under the leadership of Secretary LaHood, he formed a safety council of the modal administrators of the USDOT. We are all a part of it. High on our list of areas to address is the commonality, currency, and appropriateness of how we are reporting our data as well as the analysis of that data. And the use of both the rate based on exposure, vehicle miles traveled, as well as actual people, because that is finally who we are talking about, are two very important components when we are identifying and measuring and reviewing our performance in the area of achieving great safety gains. So I will tell you certainly it is a point of vigorous discussion in the Department.

Mr. OBERSTAR. See, on the one hand, I have been at this for a very long time, and on the one hand, the industry would like to make it appear that the accident fatality rates are being mitigated because there are more miles traveled; therefore, the incidence of fatalities and injuries is less. You are traveling more, but you are still killing nearly 5,000 people a year, still over 90,000 injuries involving trucks.

The goal should not be to—it is like the clean water program. In the early answer to pollution, it was to dilute the pollution. A large body of water, toxics and nitrogen and phosphorus and others, put it in, and it will be diluted, so the effect will not be so great as if it were in a smaller body of water. Five thousand fatalities over several billion miles traveled looks a lot less injurious to the public and less a threat than 5,000 fatalities over maybe 100 million miles traveled.

What I am getting at is you are watering down the effect of fatalities, you are watering down the number of fatalities with that. I have never seen a document justifying accidents per miles traveled because you have no database that is reliable for miles traveled.

Ms. FERRO. Well, I can tell you in our daily work at the agency, and I have traveled around the country to try to meet with as many of our employees as possible, we don't think in our daily work about rates. We think about people. We think about the people who are getting to go home each night. We think about the people making it to their places of work, who are making it to their families.

Our focus is saving lives through the significant reduction in crashes with commercial vehicles, and I set that work in a core framework of raising the bar to enter, maintaining a high standard to stay in, and ensuring high-risk behaviors are removed from the roadway. And that applies whether it is a motor carrier, a driver, or a vehicle, household goods mover, you name it. We have got to do every element of that. And CSA 2010 is a core component of ensuring that anyone we credential and allow to stay credentialed maintains a high standard to stay operating on the road, and it also identifies tools to get the high-risk behaviors off the road.

So, again, I appreciate, I respect your perspective on rates, but I just want to say our focus on a daily basis is lives, not rates. And I can speak for our employees throughout the organization nationwide when I say that, because I have met with many of them.

Mr. OBERSTAR. Well, I welcome that response and the change in spirit. It reflects an attitude, a culture of safety in the agency that that opening paragraph is intended to create, and that is the goal that I have, that we had. And I will say even when we went to conference with the Senate, John McCain was the lead negotiator in the other body, and he embraced that concept. So it is bipartisan, it is bicameral. But I want to see it reflected. I welcome your statement, and I hope that you convey that all the way through the agency.

Now, what else do we need? You need more personnel. States need more personnel.

Mr. Keppler, do you want to respond to that?

Mr. KEPPLER. Yes, Mr. Chairman. I think if you look at our written testimony, back to Administrator Ferro's point, we look at it in lives saved. In 2007, the activities funded through the Motor Carrier Safety Assistance Program, roadside inspections, traffic enforcement and compliance reviews, on the order of $300 million, returned $5 billion in safety benefits just from the 866 lives that were saved in 2007. We think it is a very good investment of tax money. We are getting a higher return on our investment.

So to your point on increased resources, we need to continue to fund those things that are working, and those things are working. And those are all key components of CSA 2010. All those activities are fueling the data that is providing all these interventions and all the outputs that we are trying to achieve.

Mr. OBERSTAR. In your review of safety, Ms. Ferro, are you also incorporating the information from the National Driver Register?

Ms. FERRO. In the incorporation of data on CSA 2010, utilizing our violation data? You know what, I will have to follow up on that.

Mr. OBERSTAR. I would urge you to do that.

I think the National Driver Register is a valuable tool, vital resource on drivers of multiple records of bad driving, where they have had their license suspended or revoked or otherwise affected from bad driving in one State can go to another State and try to get a license.

Ms. FERRO. I will speak to that. The NDR is not part of the CSA violation measurement system. It is part of clearly what States use before issuing either a new CDL or a transferred CDL from another State. It is a vital part of our system for just what you say, to kind of close those loopholes on those drivers moving from State

to State and where their convictions appear not to be following. My apologies.

Mr. OBERSTAR. In the interest of full disclosure, it was my language in the 1982 authorization, highway authorization. It wasn't my initial idea, it was that of John Rhodes of Arizona, later the Minority Leader of the House, which, following a fatality involving a neighbor of ours out here in Washington whose daughter was killed, rear-ended by a truck, where the family pulled well off the traveled roadway. This driver had his license revoked in one State, got a license in a second State, had it suspended, and then got a third valid driver's license in a third State. And the family said, we can't bring Kammy back to life—she had been a babysitter for our two younger girls—but we want something to be done so that others don't have this tragedy visited upon them.

I found the National Driver Register and crafted language to update it, computerize it, and funding for it to expand it. It is an extremely valuable tool. You ought to incorporate it. We have made it available in aviation for those who want to be airline pilots as part of their background check. So incorporate that.

I will withhold further questions at this time.

Mr. DEFAZIO. I thank the gentleman.

I have got just a couple of final observations and questions.

We have anecdotal evidence from some State DOTs that because of the concern that this data is going to be used in a different manner, after you go through your rulemaking next year, other than directing efforts at targeting companies that need some focus for safety issues to the ratings, that State DOTs are experiencing a tremendous number of appeals of citations.

I would ask anybody, but, Mr. Keppler, has that been reported to you?

Mr. KEPPLER. Yes, sir, Mr. Chairman. In the pilot States there has been an increase in the data challenges that have been submitted, and we are anticipating that to increase through CSA 2010. And I think it is an important aspect of moving forward, ensuring that appropriate resources are available to handle all of those and adjudicate them appropriately.

Mr. DEFAZIO. And how are those appropriate resources going to be made available in States that are dramatically slashing their budgets?

Mr. KEPPLER. That is a very good question, sir. We are hopeful working with FMCSA that they have put additional money in their budget request. We are hopeful we can help assist the States where appropriate with providing additional resources through the MCSAP program and through other means to increase those resources, sir.

Mr. DEFAZIO. Administrator Ferro, I note there was a modest increase requested. The budget crystal ball in appropriations is very cloudy at the moment. But I wasn't aware that any large amount of that was to go to the States to help with problems like this.

Ms. FERRO. This is very much a problem that we identified early on in my tenure with the agency, an awareness of the DataQ impact, or I should say the process of challenging a particular violation on our State partners.

We have looked within our MCSAP grant process and identified whatever leverage we have to allow for additional overtime to be used for DataQ processes. We are also developing a very clear guideline that we can—as well as from my perspective we need time frames so that we can minimize frivolous DataQs, but ensure the equity and fairness of the DataQ process so that States are, in fact, acknowledging where there is a legitimate change that needs to be made, it needs to be made. But that workload is certainly a very valid concern and one we are attuned to and working with our State partners on.

Mr. DEFAZIO. Do either of the associations have a comment on this phenomenon?

Mr. SPENCER. Obviously we would certainly like to see additional Federal funding available, although we know it is not likely to happen in the immediate future anyway. But it kind of gets down to refocusing your priorities, refocusing, channeling your money where you get the largest payback.

We think CSA 2010 has the potential to do a lot of good. We look at other programs, for example, the new entrant safety audit that is out there now that is required, that is funded at some level, and we saw no justification for a special audit of every new entrant when this initiative got off the ground. But we still question that in that the logical person would say, wait a minute, if we are going to give somebody approval authority to go operate across the country, shouldn't we already have satisfied any safety concerns we had? So we think focusing those kinds of dollars in a more productive way would be better.

Mr. DEFAZIO. Mr. Klein, any comment?

Mr. KLEIN. Mr. Chairman, we support increased funding for not only the rollout amongst the States, but also to make sure there is an appropriate data challenge process available. We think any credible process requires to have the data challenge option available, and, if resources are an issue, would support additional resources there.

Mr. DEFAZIO. I doubt it is going to happen. I am very concerned about this phenomenon, how we are going to deal with it.

Mr. Keppler, you reference how CSA 2010 will impact safety rating reciprocity and data exchange with Canada and Mexico. I guess I would direct both to you and the Administrator, I can envision that perhaps we are having meaningful data exchange with Canada. I am not aware that we are having any meaningful data exchange with Mexico, or that there is any meaningful data down there to exchange with us regarding safety. So I would like you both to comment on that. Perhaps Administrator Ferro—well, Mr. Keppler, you raised it. You can go first.

Mr. KEPPLER. Thank you, Mr. Chairman.

Several years ago FMCSA signed an MOU with Canada on safety-rating reciprocity. Canada has a different safety-rating process to some degree, different things, nuances, than we do in the U.S., and the CSA 2010 process obviously is going to change the whole rating scheme, how the data is treated, how it is handled, and how that impacts on a motor carrier's safety fitness determination. So the reason we raised that issue is because Canada obviously wants

to work collaboratively in that process to ensure that there is equitable treatment across the border.

From the Mexico perspective, I do know recently they have stepped up their efforts on the enforcement side. For example, we do an annual road check program that we did 2 weeks ago, and Mexico submitted more data in terms of inspections than they have ever done before. So it is helpful.

Mr. DEFAZIO. Real inspections? We have a problem here where we have probable cause-driven—I mean, generally most things in Mexico are bribe-driven. So I am not aware—we have just heard horror stories about their enforcement regime down there. I don't give it any credibility, if they are sending us data that we can verify that data or that data is verifiable.

They have no meaningful commercial driver's license registering, they have no meaningful hours of service enforcement—well, they have no hours of service, and they have no hours of service enforcement. So what sort of safety data are we getting from Mexico about this driver, who doesn't have hours of service requirements, was meeting his requirement to not have hours of service requirement? Or the one where this driver who isn't subjected to drug testing wasn't subjected to drug testing? Or this driver who was stopped and paid a bribe? What are we talking about here?

Mr. KEPPLER. Well, in terms of the data exchange, I am not seeing that, because they are exchanging that information at the Federal level, so we don't see that on a day-to-day basis.

Mr. DEFAZIO. OK. Then let's ask the Administrator what meaningful, verifiable and/or fact-checked data we are getting out of Mexico where we have actually sent inspectors down there to see that these activities are ongoing and are meaningful?

Ms. FERRO. Well, the exchange exists today on the driver's licensing fees. I will say I am very weak on the details with regard to this specific question, but I will happily follow up for the record. But with regard to anybody traveling in this country, any activity in the trade zone area, all of those carriers receive violations, inspections and violations, just like any other carrier.

Mr. DEFAZIO. That is within the U.S.

Ms. FERRO. And that is part of the rating process. Should any of that change such that carriers are operating long haul in the United States, any carrier under the old pilot program, if you recall, there was a very extensive—and it is required by law—on-site review and examination of any carrier that could do more than they are doing today.

So, again, I would like to come back specifically with our current activity with regard to any data exchange, if I may, for the record, but reinforce that carriers operating in those trade zones today will also be rated clearly as part of CSA 2010.

Mr. DEFAZIO. Right. And we would encourage you within that 20-mile zone to continue those activities robustly. I don't think you are going to have to worry about the long haul.

Then I would reflect, you talked about driver fitness. We held a hearing a couple of years ago on drug testing, which was rife with extraordinary problems, and also on the physical exams, which also had some similar problems in terms of phony input data or meaningless data coming in, and I am not aware what strides we have

made in those areas. I would be interested in talking about that. But I would just say unless things have changed a lot, I don't think we are having a meaningful oversight of those fitness activities, unless we have corrected the problems. Hopefully we have. But I would be interested in hearing more about that.

Finally, just on, again, a difference between Mr. Klein and Mr. Spencer, but everybody can chip in on this one, because FMCSA is proposing that—well, ATA has proposed drivers—if drivers who have a bad performance record or violations are dismissed, that you get some sort of partial credit for that. You might just want to expand on that, Mr. Klein, and we will have Mr. Spencer and then the others comment.

Mr. KLEIN. Thank you, Mr. Chairman. With regard to that, I can give an example of our organization.

We had a driver who we dismissed this past year who had an issue with alcohol in the vehicle and got pulled over, and there was alcohol found in the vehicle. We terminated.

We went back and looked at that situation to say, OK, what could we have done differently in the process of hiring, training, inspecting that individual, or coaching, to create a different outcome so we could have caught that earlier. We did the background check. We had the preemployment screening done. That individual actually went through a random drug test 2 years before this incident. And through our processes, we couldn't find anything to say we could identify that we had a bad apple in our organization any earlier than the time that the inspection took place. But with our policies, as soon as that was identified, that individual was terminated from employment from our organization.

So therefore, we believe there should be some credit given to have a process that allows you to take credit in those situations where you make the right business decision. We didn't choose to keep that individual on. We chose to terminate at that point.

Mr. DEFAZIO. Mr. Spencer?

Mr. SPENCER. I think it actually has sort of been the history of deregulation was spurn or no longer focus on veteran drivers. We are going to search out the new guy. We are going to train them or not train them the way we want them. We are going to turn them loose and ask the taxpayers to keep an eye on the people that we turn loose as drivers.

That sort of has been the history of MCSAP, the history of trucking since deregulation. And, you know, the problem is, again, one driver that gets fired, that loses his license, is simply replaced with another identical or maybe even less trained and less qualified.

So the problems of drugs and alcohol, obviously trucking is going to be one of the least likely professions to have those kinds of problems. But you can hire those things. And again, I mentioned earlier, by turnover, this constant quench to find new people, lower-paid drivers to fill truck seats comes with its own set of problems.

Simply firing somebody that is a problem, that you hired, and you asked taxpayers to actually keep an eye on for you and do background checks and all those things, somehow or another that doesn't rise to the category of a reward to me.

Mr. DEFAZIO. Ms. Ferro?

Ms. FERRO. Chairman DeFazio, this program, CSA 2010, is about accountability, it is about compliance, it is about safety and crash reduction. So to the extent that a carrier—that drivers associated with a specific carrier demonstrate patterns of unsafe behavior enables us to then focus our look at that carrier when we go in to look at them.

The focus is to get the carrier to say what in our business practices is prompting that unsafe behavior. It may be practices and pressures within the company itself, dispatch. In Mr. Klein's case, clearly they have got a very rigorous process. It is an isolated instance. It will be treated as an isolated instance. You need an accumulation of violations in a particular area for that to actually count against that rating, three or more. That would be treated for just what it is.

This is a process of looking at patterns, using performance data, identify patterns, and help that motor carrier identify what in their business practices may be driving those patterns.

In the case where they have drivers that are good drivers, but have had a problem or an instance of a problem, they have an opportunity to detect, remediate and retain. If it is a high-risk driver and a pattern of high-risk driver, they do well, and they reward themselves, frankly, and their ratings down the road, and their insurance view down the road, and their shipper view down the road by taking care of that driver appropriately with dismissal.

So that to us is kind of that reward system, the opportunity to measure, and identify, and detect and analyze. Again, if it is an isolated instance, it is not going to count against the rating. It will be lost in the averaging.

Mr. DEFAZIO. Mr. Keppler?

Mr. KEPPLER. Yes, Mr. Chairman. I would actually echo everything Administrator Ferro said. I think that the thing that—Mr. Klein obviously has a very responsible safety program. The purpose behind SMS within CSA 2010 is to look for patterns. We see anomalies and violations—and I am sure this is the exception and not the rule in his company— it will get lost, and it wouldn't negatively affect the long-term safety fitness of his company.

Mr. DEFAZIO. OK. The bells are ringing. We are summoned to cast some trivial votes on some hortatory resolutions. That is all we do around here these days.

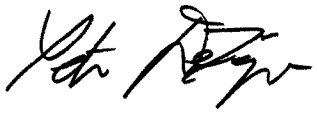
Does anybody have anything that they weren't asked and wanted to say? I am not encouraging this. Just if there is something you really want to say or do, raise your hand.

OK. If not, I want to thank you all for your time. I think this helped open up this process and demystify it a little bit. I think it is a work in progress, and I think the Administrator recognizes that.

I want to thank Helena on my staff. I don't usually do this, but I was reading her memo on the plane yesterday. And I did have to read it twice, but it gave me a much greater understanding of the issues and the program, and I recommend it to anybody in the audience who wants to try to figure out what the heck it is we were talking about here today.

Anyway, with that, the Committee stands adjourned.

[Whereupon, at 11:50 a.m., the Subcommittee was adjourned.]



STATEMENT OF THE HONORABLE PETER A. DEFAZIO
CHAIRMAN
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

HEARING ON
COMPREHENSIVE SAFETY ANALYSIS 2010: UNDERSTANDING FMCSA'S
NEW SYSTEM OF MOTOR CARRIER OVERSIGHT

June 23, 2010

While fatalities from large truck or bus crashes have reduced in recent years with a decline of 15 percent from 2006 to 2008, even one life lost is one life too many. We must continually seek to improve the safety of our highways and provide oversight of Federal efforts to increase the safety of our roadways. This will continue to be a priority of this Subcommittee as we move forward with a surface transportation authorization bill.

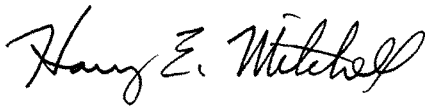
In the past, FMCSA's approach to oversight of the motor carrier industry has been deficient. A lack of sufficient resources has led to FMCSA and its State partners physically inspecting only 2 percent of the motor carrier industry annually. This means the majority of the motor carrier industry is not physically inspected in any meaningful way and most do not have a Federal safety rating. For those reasons and others, FMCSA has piloted a new program, Comprehensive Safety Analysis (CSA) 2010, to address those deficiencies.

CSA 2010 is only in the pilot phase, but FMCSA plans a full roll out of this new program nationwide by the end of the year. It is incumbent upon this Subcommittee to provide oversight of those efforts.

Over the past few months I have heard largely positive comments about this new effort, though I have heard some concerns from motor carriers and drivers about how certain infractions will be handled and catalogued.

This hearing is meant to be a forum to explore what CSA 2010 will do to improve oversight of the motor carrier industry and improve the safety of our roads, and to hear any constructive concerns from the motor carrier and enforcement communities.

I thank our witnesses for being here today and look forward to their testimony.



Statement of Rep. Harry Mitchell
House Transportation and Infrastructure Committee
Subcommittee on Highways and Transit
6/23/10

Thank you, Mr. Chairman.

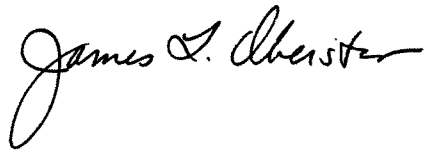
As you know, the Federal Motor Carrier Safety Administration (FMCSA) is tasked with overseeing the safety of the operations of approximately 700,000 truck and bus companies registered with the agency.

In order for the agency to comply with its strong safety mission, it is critical to ensure that that FMCSA has effective tools at its disposal to monitor and enforce safety standards within the motor carrier industry.

Today we will discuss the Comprehensive Safety Analysis 2010 (CSA 2010), FMCSA's new system to oversee motor carriers and commercial motor vehicle drivers.

I look forward to hearing more from our witnesses about the CSA 2010 and what other steps FMCSA can take to increase safety.

At this time, I yield back.



STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
HEARING ON COMPREHENSIVE SAFETY ANALYSIS 2010:
UNDERSTANDING FMCSA'S NEW SYSTEM OF MOTOR CARRIER OVERSIGHT
JUNE 23, 2010

- I want to thank Chairman DeFazio and Ranking Member Duncan for scheduling today's hearing to better understand the Federal Motor Carrier Safety Administration's (FMCSA) new safety initiative to reduce the number of accidents and fatalities involving large trucks.

- I would especially like to welcome Administrator Anne Ferro. This is your first appearance before this Committee, and we look forward to hearing your vision for improving motor carrier safety.

- Advancing safety on our nation's transportation systems is among the most important responsibilities of this Committee. In 1999, Congress established FMCSA as a separate modal agency to oversee commercial motor vehicle safety within the U.S. Department of Transportation (DOT), and charged the new agency with an unmistakable safety mission: "(T)he Administration shall consider the assignment and maintenance of ***safety as the highest priority***."

- When FMCSA was created, then-DOT Secretary Rodney Slater announced a goal to reduce fatalities involving commercial motor vehicles by 50 percent within a decade. In 1999, 5,362 individuals lost their lives in crashes involving large trucks, and an additional 142,000 were injured. In 2008 (the latest year for which final data are available), 4,229 people were killed in crashes involving large trucks, and an additional 90,000 were injured.

- While these statistics reflect significant reductions in fatalities and injuries, these improvements do not come close to the goal set forth when FMCSA was created. Every life lost is a tragic reminder that we can, and must, do more to enhance safety on our roads.

- In FMCSA's founding legislation, Congress cited a number of problematic findings related to oversight of the motor carrier industry, including that the number of commercial motor vehicle and driver inspections is insufficient and that the system of motor carrier oversight requires "substantial improvement" to target inspection and enforcement resources toward the carriers with the most serious safety problems.

- Unfortunately, over the last decade, progress toward addressing these deficiencies has been inadequate and the agency has failed to aggressively attack the formidable safety challenges in the motor carrier industry.

- Today, we will hear about the Comprehensive Safety Analysis 2010 (CSA 2010), FMCSA's proposed new system to monitor motor carrier safety. The Agency envisions that CSA 2010 will allow FMCSA to enforce safety regulations over a larger number of carriers. CSA 2010 will include updated data systems to identify motor carriers for enforcement actions, and expand the number of interventions available to FMCSA and State safety inspectors.

- Under the current model, which relies on full on-site Compliance Reviews of a carrier's operations, FMCSA is only able to reach approximately **two percent** of carriers annually to verify compliance with safety regulations. The ultimate goal of CSA 2010 is to correct safety deficiencies among a broader population of carriers before they become a serious safety threat.

- We will hear some concerns over specific elements of CSA 2010 and its implementation from witnesses today. Yet despite these concerns, there is strong support for the program and broad agreement among stakeholders that

change is desperately needed to improve safety on our roads. I am eager to hear how CSA 2010 will effect this change.

- I commend FMCSA for getting serious about addressing large truck and bus safety. Highway users deserve to share the road with safe carriers that employ well-qualified drives and utilize a fleet of well-maintained vehicles.

- I welcome each of the witnesses, and look forward to your testimony.

Congresswoman Laura Richardson

Statement at Committee on Transportation and Infrastructure
Hearing, Subcommittee on Highways and Transit
"Comprehensive Safety Analysis 2010: Understanding FMCSA's New System of Motor Carrier Oversight"

2167 Rayburn House Office Building

Wednesday, June 23, 2010

10:00 AM

Mr. Chairman, I want to thank you for convening this hearing to discuss the Federal Motor Carrier Safety Administration's (FMCSA) new system to oversee motor carriers and commercial motor vehicle drivers, known as the Comprehensive Safety Analysis 2010 (CSA). This important innovation can be a tool to enforce safety standards and ultimately save lives.

FMCSA has provided value since its inception 11 years ago. While safety improvements mandated by FMCSA has assisted in saving lives, we still have a long way to go. More than nine times as many people were killed in 2008 in accidents with large trucks than died in Afghanistan and Iraq combined, 4,229 to 448. These sobering statistics

show that this is clearly still an area that needs federal attention and funding.

Over 40% of goods coming into this country travel through my district. Naturally, this means the roads and highways in my district are often a sea of trucks. Therefore truck safety could not be any more important to me or my constituents. This is why I have cosponsored so many bills that improve highway safety, including H.R. 1618, the Safe Highways and Infrastructure Preservation Act, and H.R. 3994, the Distracted Driving Prevention Act of 2009.

I applaud the efforts of FMCSA, which began developing the new enforcement and compliance model known as CSA 2010 (Comprehensive Safety Analysis) in 2004. I believe that CSA 2010 is essential to improving the safety of our nation's highways, vehicles, and the people who use them.

While I recognize the importance and value CSA 2010, the testimony today demonstrates impediments still exist towards the implementation of the system and the subsequent major reductions in crashes, injuries, and fatalities.

Goods movement and trucking are essential to the economic health of our nation. We must ensure that safety standards are implemented and penalties are assessed in a fair manner.

For instance, when a driver's ticket is rescinded, or a crash is not found to be the driver's fault, neither the driver nor the carrier should be penalized for the incident.

We must also be sure we are not instituting an unfunded mandate on the State which is sure to undermine the implementation of the new system. States will likely need additional resources to fully carry out this new initiative, in particular to train law enforcement officers. And specific guidance and standards from FMCSA to States on CSA 2010 will be needed to ensure that law enforcement officers identify and record violations in a uniform manner. We need to inspect more vehicles and ensure standards are uniform across the country. This will make a nationwide comparison of carriers possible.

I'd like to thank the Chairman again for calling this timely hearing and thank the witnesses for appearing before us today and I look forward to hearing their statements.

Thank you, Mr. Chairman

STATEMENT OF
ANNE S. FERRO
ADMINISTRATOR
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
U.S. HOUSE OF REPRESENTATIVES

COMPREHENSIVE SAFETY ANALYSIS 2010: UNDERSTANDING FMCSA'S NEW SYSTEM OF MOTOR CARRIER OVERSIGHT

JUNE 23, 2010

Good morning Mr. Chairman, Ranking Member Duncan and Subcommittee members. Thank you for this opportunity to speak to you today about our Agency's major new safety initiative, Comprehensive Safety Analysis (CSA) 2010.

CSA 2010 is an improved way for the Federal Motor Carrier Safety Administration (FMCSA) to carry out its important safety mission of reducing large truck and bus crashes, injuries, and fatalities on our nation's highways. It is a business model by which the Agency can better target high risk motor carriers for early intervention and achieve improved levels of compliance with Federal safety and hazardous materials regulations. Additionally, through increased operational efficiencies, CSA 2010 will enable FMCSA and its State partners to address the safety deficiencies of a much larger segment of the motor carrier industry than we currently do.

Starting in April, the Agency began a phased implementation of this important program. CSA 2010 represents a great opportunity for FMCSA and its State partners to work to fulfill our obligation to the American people to find new solutions to our safety challenges.

Core Priorities

FMCSA has a number of initiatives and programs underway aimed at achieving our mission. As the new Administrator, it is my job to set a strategic framework in which to prioritize our responsibilities and clearly focus our efforts and resources on a vision of eliminating severe and fatal crashes involving commercial vehicles. FMCSA must:

1. Raise the bar to enter the industry;
2. Require operators to maintain high safety standards to remain in the industry; and
3. Remove high-risk operators from our roads and highways.

This strategic framework applies to companies, drivers, brokers, and service-providers alike. To achieve the best outcome within this framework, FMCSA must improve its program and rule-development processes, its stakeholder relationships, and the health of the organization. While recognizing the important safety work that remains to be accomplished, I would like to point to some of the recent improvements in motor carrier safety:

- Total miles traveled by all vehicles has grown significantly over the past 10 years, most significantly for large trucks and buses - there has been a 16 percent increase in miles traveled by these vehicles from 1998 to 2008. In addition, the number of large trucks and buses registered has increased 17 percent over this time period.
- Even with the continued growth in commercial vehicle traffic, the most recent data available show that our Nation's highways experienced their lowest number of fatalities (4,525 in 2008) from crashes involving large trucks and buses since fatal crash data collection began in 1975.
- Fatalities from large truck or bus crashes have dropped for three years in a row, a decline of 15 percent from 2006 to 2008.
- Safety improvements have been realized not only in terms of fatal crashes, but also in injury crashes. In 2008, 113,000 people were injured in crashes involving large trucks and buses, the lowest number of persons injured in these crashes since 1988, the first year of injury crash data collection.

- The number of people injured in large truck and bus crashes declined 10 percent from 2006 to 2008.[1]

The reduction in severe and fatal crashes involving commercial motor vehicles comes about through the dedication and hard work of many people represented by the stakeholders in this room. We have broadened the participation of these stakeholders on our Motor Carrier Safety Advisory Committee (MCSAC) to improve the transparency of the input we receive about our programs. However, we can and must do more. FMCSA's employees are passionate about saving lives. With clear priorities and productive stakeholder relationships, I assure this Committee and the public that we are on a path to increase the effectiveness of our safety oversight of the motor carrier industry.

Why CSA 2010?

Since 1986, the Compliance Review (CR) has been the primary intervention and investigative tool used by FMCSA to compel compliance and determine the safety fitness of commercial motor vehicles and passenger carriers. A CR is a comprehensive assessment of a motor carrier's records by one of FMCSA's (or a State's) safety investigators at the carrier's principal place of business. While our experience has shown the comprehensive CR to be very effective in changing unsafe behavior, it is also very time consuming and labor intensive. A CR can take one of our safety investigators up to a week or more to complete, depending on the size of the carrier and the complexity of violations found. This can be problematic because the comprehensive CR is effectively the only tool at the disposal of our safety investigators to begin the process of compelling improved compliance. Moreover, our current regulation for determining the safety fitness of motor carriers of property and passengers is tied to the comprehensive CR. Based on the findings of comprehensive CRs, motor carriers are issued a safety rating of Satisfactory, Conditional, or Unsatisfactory. However, these ratings cannot change without conducting an additional CR, no matter how far a motor carrier's on-road performance may have slipped. The

[1] The VMT and registration data can be found in the FHWA Highway Statistics report (Highway Statistics 2008, 5.2.1 Vehicle-miles of travel, by functional system, 1980-2008 VM-202).
. The crash data comes from NHTSA's Fatality Analysis Reporting System, General Estimates System (Fatality Analysis Reporting System General Estimates System 2005 DATA SUMMARY).

end result of these limitations is that FMCSA can address the safety deficiencies and rate only a small fraction of the industry – between two and three percent of the carrier population annually.

In the face of a growing industry (there are currently approximately 500,000 active, registered commercial motor carriers and 7 million commercial driver licensees operating in interstate commerce), and limited resources, FMCSA senior leadership commissioned a Compliance Review Work Group (CRWG) to develop recommendations for improving the efficiency of the Agency's compliance and enforcement program. This was soon after FMCSA became a stand-alone Federal agency in 2000. Members of the Work Group consisted of FMCSA headquarters and field staff. The CRWG's major recommendation was the CSA 2010 concept – a more performance-based business model for compelling compliance and determining the safety fitness of motor carriers. In 2004, FMCSA held six public listening sessions at different locations around the country to gather input on the CSA 2010 concept. The result was general consensus among our partners and stakeholders that a more performance-based approach to compelling compliance and determining safety fitness would be a better and fairer approach.

Subsequently, in May 2005, the FMCSA Administrator commissioned the CSA 2010 Team to develop the concept into a working business model for the Agency, and to facilitate its implementation. Like the CRWG, the CSA 2010 Team consists of FMCSA headquarters and field staff, but was expanded to include State partner representatives as these partners are critical to the success of the CSA 2010 initiative in improving motor carrier safety. Throughout the entire process of developing CSA 2010, FMCSA has been and continues to be as transparent as possible. The Agency has held a total of eleven public listening sessions to seek feedback from our partners and stakeholders. I assure you that we will continue to consider and incorporate such feedback as much as possible, consistent with our mission to ensure large truck and bus safety on our nation's highways.

How CSA 2010 Will Improve Compliance and Enforcement

From May 2005 through 2007, the CSA 2010 Team developed the major components of CSA 2010. These components improve upon the Agency's current method of doing business in three important ways.

First is the new Safety Measurement System (SMS), which will replace the Agency's current measurement system, SafeStat. Today, SafeStat, using certain carrier roadside inspection and crash data, serves as a pointer system to identify high risk and other motor carriers on which to conduct CRs. It measures the relative safety performance of motor carriers in four broad categories, called Safety Evaluation Areas (SEAs). These are: (1) Driver, (2) Vehicle, (3) Crash, and (4) Safety Management. The data which feed the Agency's measurement system are the violations discovered through the over three million roadside inspections conducted annually by our State partners, as well as the motor carrier crash reports they provide. In measuring a motor carrier's safety performance, SafeStat looks at only those roadside violations that result in Out-of-Service Orders, even though many more safety checks are conducted. Also included are certain moving violations and crash reports. None of the violations are weighted based on their relationship to crash risk.

In contrast, the new SMS looks at all safety violations discovered at roadside, weights each one based on its crash risk, and measures safety performance in seven unsafe behavioral areas, called BASICs – Behavior Analysis Safety Improvement Categories. These are: (1) Unsafe Driving, (2) Fatigued Driving (Hours-of-Service), (3) Driver Fitness, (4) Controlled Substances/Alcohol, (5) Vehicle Maintenance, (6) Cargo-Related, and (7) Crash Indicator. By looking at all of the safety violations and grouping them into more categories related to unsafe behavior, SMS provides a much more comprehensive, robust and granular view of the specific violations incurred by motor carriers and individual drivers. It enables FMCSA to get a better picture and more readily identify high risk carriers, as well as other motor carriers with violations that are not identified today through SafeStat. SMS shows FMCSA when to begin to intervene with a motor carrier and because of its specificity, enables the Agency to apply more efficient interventions. The end result is that under CSA 2010, both motor carriers and drivers will have to be more alert to their roadside safety performance.

The second major component that improves upon the Agency's current way of doing business is the broader array of compliance interventions developed under CSA 2010. Simply stated, through CSA 2010, FMCSA has more tools in its tool box from which to choose in response to a

motor carrier's safety performance. These include interventions that are more efficient and less labor intensive than the CR but which are focused on the specific problems a carrier has.

As I mentioned earlier, the new SMS enables FMCSA to identify a whole new set of motor carriers with violations or limited on-road performance deficiencies that are not identified today through SafeStat. The CSA 2010 operational model provides a broader array of less resource intensive interventions to improve compliance. With the new SMS and interventions, a safety investigator's focus in the field will shift from conducting comprehensive CRs to assessing broad overall compliance and assign a new safety rating every time, by applying the most efficient intervention tool to fix the motor carrier's demonstrated on-road performance deficiencies and moving on to another carrier. In other words, this performance based approach is designed to compel compliance and remedy demonstrated on road performance deficiencies with a greater segment of the motor carrier population than can be reached with comprehensive CRs alone. For example, for those motor carriers with just one or two deficient BASICs identified by the SMS, FMCSA may conduct an offsite investigation from one of our field offices, or an onsite focused investigation. Again, because the new SMS provides a much more comprehensive and granular view of the specific violations, our safety investigators do not have to spend time looking for violations in areas where the data suggest the carrier does *not* have a safety performance problem. Additionally, for a motor carrier that has not demonstrated past safety deficiencies, but is beginning to do so, FMCSA will send a warning letter. The warning letter advises the carrier of its deficiency and that corrective action is warranted. Further monitoring of the carrier's performance through roadside data could result in improved compliance, or the need for further intervention.

At the same time, I want to assure you that FMCSA will conduct comprehensive onsite compliance reviews on those motor carriers that demonstrate safety deficiencies across multiple BASICs, as well as on passenger carriers and certain hazardous materials carriers, because of their inherent risk. In addition, the Agency will continue to fully meet its Congressional mandate with respect to high risk motor carriers by requiring that this population receive onsite investigations of their safety practices.

Under CSA 2010, we are training safety investigators to identify the root cause of the safety deficiency. For example, with hours-of-service violations the root cause could be training and communication, or a lack of internal oversight policies, practices and procedures on the part of the motor carrier. We believe that by taking a few extra minutes with those motor carriers that demonstrate a willingness to correct their safety deficiencies, identifying the root cause not only facilitates quicker corrective action, but corrective action that will be more sustainable over time.

The third major CSA 2010 component that will improve the Agency's current way of doing business is a new methodology for determining property and passenger carrier fitness.

The new CSA 2010 safety fitness methodology would decouple the onsite CR from the safety rating. Thus, FMCSA could propose adverse safety ratings through the new SMS without necessarily having to go onsite to a motor carrier's place of business. This ultimately would allow FMCSA to assess the safety performance of a much larger segment of the motor carrier industry. When the relative safety performance of a motor carrier was poor enough to exceed a specified threshold in SMS for a given BASIC or combination of BASICs, the carrier would be issued a proposed adverse safety rating.

In addition to roadside performance, the new methodology would emphasize certain fundamental violations that would immediately trigger a proposed Unfit notice, such as not having a drug and alcohol testing program in place. The ratings under consideration are Continue Operation, Marginal, or Unfit in contrast to the current ratings of Satisfactory, Conditional, or Unsatisfactory. The new Continue Operation label would allow FMCSA to move away from the Satisfactory label which has sometimes led to requests for review of safe motor carriers, so that we can concentrate more directly on motor carriers with safety deficiencies and removing unsafe operators from the road.

This new methodology will be implemented through notice and comment rulemaking. FMCSA is drafting a notice of proposed rulemaking (NPRM), which proposes to revise the current safety fitness process. The Agency's target for NPRM publication is FY 2011, which reflects a revised

schedule to allow updates to the new SMS methodology based on feedback from our partners and stakeholders, as well as lessons learned from our nine-State field test

This rulemaking also is intended to address the intent of a long-standing National Transportation Safety Board recommendation, H-99-006: "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."

Nine-State Field Test

In January 2008, FMCSA and its State partners initiated a thirty-month field test to measure the efficiency and effectiveness of the new SMS and intervention components of the CSA 2010 model. The test concludes at the end of this month. It began with four States – Colorado, Georgia, Missouri, and New Jersey. Motor carriers domiciled in each State were randomly divided into two groups equal in size - a test group and control group. The goal was to provide a comparison between CSA 2010 and the current FMCSA business model. Motor carriers in the test group were assessed using the new SMS, and the CSA 2010 interventions were applied. Those in the control group were assessed using SafeStat, and the current CR was used for intervention. These original four test States were chosen based in part because there were CSA 2010 Team members from those States, at either the Federal or State level. In addition, the Agency wanted to have one State from each of its four Service Centers to represent the four major quadrants of the country. Because of the relationships the CSA 2010 Team members already had in place with those States, they were supportive of being the first to participate in the pilot test.

Leading up to the start of the test, the CSA 2010 Team developed training for safety investigators on the new SMS and CSA 2010 interventions. This enabled both Federal and State personnel to take the training together, which further strengthened the existing partnership. Once the test began and results started coming in, positive communication about CSA 2010 spread, and the CSA 2010 Team began to receive requests from other States expressing their desire to join the test.

In the spring and fall of 2009, the Agency added five more States to the test – Delaware, Kansas, Maryland, Minnesota, and Montana. FMCSA and its State partners have applied the new SMS and CSA 2010 interventions to all of the motor carriers in those States. The goal was to learn of any operational issues, prior to a nationwide rollout, arising from use of the CSA 2010 model on all motor carriers in a State.

FMCSA has contracted with the University of Michigan Transportation Research Institute (UMTRI) to conduct an independent, formal evaluation of the test results. The UMTRI report on its findings is due in December 2010. At the same time, the Agency has been informally monitoring the results from the test, and they are very encouraging. These results indicate that CSA 2010 will enable FMCSA and its State partners to effectively reach a greater number of motor carriers through the new SMS and more efficient interventions.

Since the test began, the Agency has sent out more than 5,500 warning letters to motor carriers in the test, and the letter has proven effective. Approximately fifty percent of all carriers receiving a warning letter have logged onto the FMCSA website to review information on their deficient BASIC. In addition, FMCSA has received letters of response from some of these carriers in which they thank the Agency for bringing to their attention information on the deficient BASIC, and describe their corrective action to address the safety problem.

Likewise, the efficiency of the offsite and onsite focused investigations has proven effective in enabling FMCSA to reach more carriers. Results to date indicate that individual FMCSA and State partner safety investigators in the test group are able to conduct up to thirty-seven percent more investigations. In addition, enforcement actions against individual drivers are higher in the test group, in part because of the specificity with which the new SMS is able to identify violations among drivers as well as carriers. The efficiencies are further demonstrated in the types of investigations that have been conducted in the test States:

- Offsite Investigation – 25 percent
- Onsite Focused Investigation – 45 percent
- Onsite Comprehensive Investigation – 30 percent

FMCSA has continued to remain strong on enforcement throughout the test States. Enforcement actions have been taken as a result of offsite as well as onsite investigations. In addition, the Agency has continued in the test States to meet its Congressional mandate by addressing high risk motor carriers through onsite CRs. FMCSA has also continued to intervene with passenger carriers and certain hazardous materials carriers through comprehensive onsite investigations.

Implementation Plans for CSA 2010

Implementation plans are based on valuable feedback and knowledge received from its partners and stakeholders through public listening sessions, the nine-State field test, and written comments to the CSA 2010 public docket. Some of the issues that are still under consideration include refinements to methods of measuring exposure to violations and crashes, motor carrier peer grouping, and violation severity weights.

In the fall/winter of 2010, FMCSA plans to: (1) replace its current measurement system, SafeStat, with SMS; (2) send warning letters nationwide; and (3) implement a revised nationwide Inspection Selection System for roadside inspectors that is based on SMS rather than SafeStat. All motor carriers, including high risk carriers, will be targeted for intervention using the new SMS. In addition, motor carrier safety performance in each BASIC will be publicly displayed in the same manner that the SEAs are displayed under SafeStat today.

With regard to the Crash BASIC, only the raw crash data will be displayed publicly. This is consistent with SafeStat today, because the crash reports do not include information on preventability or accountability. FMCSA will explore the feasibility of using police accident reports to determine accountability before the crash reports are entered into SMS to ensure we have the most accurate information available for assessing carriers' safety fitness.

After the Operational Model test concludes this month, all nine test States will carry out the full array of CSA 2010 interventions. For the remaining forty-one States and the District of Columbia, the CSA 2010 interventions will be phased in beginning in the fall of 2010 and extending into 2011. While the safety fitness determination rulemaking is in process, FMCSA

will continue to issue safety ratings in accordance with its current safety fitness regulation, 49 CFR Part 385 – Safety Fitness Procedures.

On April 12, 2010, FMCSA began a data preview period during which motor carriers can view their performance data online, sorted by BASIC, as it will appear in SMS. For the first four months – mid-April through mid-August 2010, motor carriers will see their violations categorized by BASIC. Beginning in late August and running through November 2010, after any refinements to the SMS methodology are completed, motor carriers will be able to see the SMS assessment of their violations through CSA 2010. The purpose of this data preview period is to provide individual motor carriers the opportunity to view their data from the CSA 2010 perspective, and to use the time to identify and take actions to correct deficiencies in their operations which are leading to unsafe behavior.

CONCLUSION

In summary, during the last few years, there has been significant progress made in developing and testing a new business model for FMCSA's enforcement program. Through our efforts to examine the way we do business, and to reach out to our State partners and stakeholders, we have come up with a new SMS to monitor safety performance. We will continue the momentum later this year with the release of the SMS scores and the implementation of new interventions to address unsafe operators. And, finally, next fiscal year, we will seek public comment on the new safety fitness determination process that will enable us to take more unsafe carriers off the Nation's highways than we are able to do under the current rules.

Thank you for inviting me to discuss the FMCSA's current work and future programs. I would be pleased to respond to any questions you may have.

Questions for the Honorable Anne S. Ferro
Administrator
Federal Motor Carrier Safety Administration
Highways and Transit Subcommittee Hearing
June 23, 2010

Questions from Chairman DeFazio

1. *During the hearing, you mentioned FMCSA's plans to conduct a notice and comment rulemaking for a new safety fitness determination process to support CSA 2010. When do you expect this rulemaking to be completed? When will all of the pieces of CSA 2010 be in place and fully operational?*

   FMCSA Response: FMCSA expects to publish its Notice of Proposed Rulemaking (NPRM) concerning the new safety fitness determination process to support CSA 2010 in early 2011. The schedule for FMCSA's significant rulemakings is posted on the Department's rulemaking web site at http://regs.dot.gov and includes a monthly report of all the Department's significant rulemakings.

   After the NPRM is published, there will be a public comment period during which time all interested parties can respond to the proposal. The Agency will then analyze the comments, make any changes, and prepare a Final Rule. The Agency anticipates that it will receive a large volume of substantive public comments which will require a significant period of time to carefully consider and analyze. Accordingly, the Agency projects that the Final Rule will not be published before early 2012.

   With regard to having all the pieces of CSA 2010 in place and fully operational, the implementation of the Final Rule is the last operating component of CSA 2010. The Final Rule will put into place the new safety fitness determination process that enables the Agency to rate carriers and prohibit those with serious safety violations from continuing operations. The Final Rule, combined with the new Safety Measurement System (SMS), is to be implemented in late 2010, provide the tools necessary for identifying high-risk carriers and other carriers with safety deficiencies. The Final Rule will enable FMCSA and its State partners to begin using the new safety fitness determination process to propose "conditional" and "unsatisfactory" ratings.

2. *Does FMCSA plan to seek legislative changes or additional authority to support any future part of CSA 2010, and if so, will this affect the timing of full implementation?*

   FMCSA Response: FMCSA is not seeking any legislative changes or additional authorities to implement CSA 2010 Interventions, Safety Measurement System (SMS), Safety Fitness Determination (SFD), or Inspection Selection System (ISS). However, in the future FMCSA may seek additional authorities as the need for additional authorities are identified.

3. *During the hearing, you indicated that the remaining 41 States and the District of Columbia that did not participate in the pilot testing of CSA 2010 will begin to phase in implementation of the program later this year. Please provide the Committee with a specific timetable for when each State is expected to begin participating in CSA 2010.*

   FMCSA Response: FMCSA is phasing in CSA 2010 beginning December 5, 2010, along with key integration components of the Operational Model Test into the current compliance Review (CR) program to include the new Safety Measurement System (SMS), Warning Letters capability, and new Inspection Selection System (ISS). All remaining 41 States will participate in this phase-in. Full intervention rollout begins August 2011 with the estimated completion by the end of November 2011.

4. *In the FY 2010 President's Budget, FMCSA requested an additional $20 million to support 59 additional Full Time Equivalents (FTEs). Most of these resources would help support CSA 2010. Do you expect to be able to roll out CSA 2010 by this winter if this additional funding is not made available?*

   FMCSA Response: The funding and authority for additional 59 FTE in FY 2011 is not just for CSA 2010, it is our Agency's total request for new FTE. FMCSA is asking for an additional $2.9 million and 25 FTE specifically to support CSA 2010 to carry out the required monitoring and enforcement activities, such as reviewing the data from the new Safety Measurement System and preparing preliminary carrier assessments for Safety Investigators (SIs) in the Division Offices. Lower graded FTEs directly support SIs as they conduct their investigations by providing background information on the motor carriers to be investigated, scheduling interviews with carrier officials, and gathering information from carriers during off-site investigations. The SIs need this level of support so they can accomplish their primary function of conducting investigations, which already currently consumes a significant percentage of their time devoted to safety investigations. The CSA 2010 rollout would not be impacted if FMCSA did not receive these additional resources; however, not having these resources would adversely impact CSA 2010's efficiency and effectiveness to assess more carriers.

5. *Will any additional funding be made available to States to implement CSA 2010 in FY 2011? Will FMCSA request additional funding for grants to States in future years?*

   FMCSA Response: In FY 2010, FMCSA awarded $165.4 million in Motor Carrier Safety Assistance Program (MCSAP) Basic and Incentive funds to State MCSAP lead agencies to support their core CMV safety and enforcement programs. A portion of those funds was utilized by the nine Operational Model Test States for CSA 2010 implementation as they moved to partially or completely adopt the CSA 2010 model in lieu of their traditional enforcement program. In FY 2011, FMCSA has requested an additional $3 million in MCSAP grant funds to support the States' MCSAP programs, including implementation of CSA 2010. A portion of the $15 million in anticipated FY 2011 MCSAP High Priority (HP) Program funds will also be made available to States that need assistance implementing CSA

2010. Implementation costs are eligible expenses under both the Basic/Incentive and HP programs. Also, FMCSA has requested a realignment of $3 million from its Commercial Driver's License Information System grants to its MCSAP New Entrant (NE) Program, which will result in additional MCSAP funding being available to support CSA 2010 implementation costs.

6. *Your written testimony cites that under CSA 2010, FMCSA will have more interventions from which to choose in response to a motor carrier with an identified safety problem. You specifically state that a safety investigator will apply "the most efficient intervention tool to fix the motor carrier's demonstrated on-road performance deficiencies." Who determines what intervention is most efficient – FMCSA, each State, or each individual inspector? Has FMCSA developed specific guidance on what criteria or test to use to determine an appropriate intervention? If not, will you develop guidance before CSA 2010 is rolled out nationwide?*

   FMCSA Response: FMCSA has established standards to guide the selection of the most appropriate interventions based on the type and breadth of safety deficiencies, factoring in a carriers' prior intervention history and investigation findings. By considering current Carrier Safety Measurement System (CSMS) results and compliance, intervention history and prior investigation findings, FMCSA provides initial guidance through its guidance documentation and information systems, on what is recommended to be the most effective intervention to address carriers' individual safety deficiencies. Managers in FMCSA Division Offices and State Partner organizations assign carriers and specific interventions to their respective SIs, who then executes the interventions.

   The application of the guidance by field management staff results in an intervention assignment for an SI. However, if at any point during an intervention an SI feels that the intervention type is not effective or efficient, he or she can discuss escalation of the proposed intervention with management staff who will decide the best course of action..

7. *During the hearing, you indicated that a warning letter "is really getting at carriers who are sort of in the middle of that bell curve" that FMCSA does not have interaction with under the current system. Under CSA 2010, it is my understanding that only those motor carriers that score above a certain threshold level in each BASIC will be targeted for any intervention. Will warning letters really reach these carriers in the middle of the safety spectrum? Will anything be done to target or reach the motor carriers that score below the threshold percentage, especially those carriers that are above the average or median score in a BASIC but below the threshold percentage for agency enforcement action?*

   FMCSA Response: The Carrier Safety Measurement System (CSMS) and intervention thresholds are used in conjunction to assess carrier safety performance and prioritize limited FMCSA resources. The thresholds for each BASIC were selected to target the population of carriers with known regulatory compliance issues, as well as higher than average crash rates. Therefore, such thresholds allow FMCSA to focus its resources on those carriers that pose the greatest risk to public safety. The design of the CSA 2010 Operational Model also allows the

Agency staff to perform more interventions with existing resources, contact more carriers and reach further into the industry population than under the current model. This results in interventions being performed on a new population of carriers, previously not addressed, that are closer to the middle of the bell curve. FMCSA prioritizes interventions on carriers with the poorest performance (i.e., higher percentiles and multiple deficient BASICs) above those carriers with better performance, given analysis results on the relationship to crash risk. However, the model as a whole is designed to extend FMCSA's reach beyond the carriers traditionally seen under the current enforcement model, and therefore to raise the bar for safety performance. Continued improvement of the efficiency and effectiveness of the model or increased resources would, in turn, allow FMCSA to reach further into the carrier population.

8. *Your written testimony states that results from the pilot tests showed that "enforcement actions against individual drivers are higher in the test group" than the control group. What specific actions did safety investigators take against individual drivers in the pilot test States? Are there any new enforcement actions against drivers FMCSA is utilizing under CSA 2010? Are violations and enforcement actions against drivers also counted as violations on the record of the driver's employing or affiliated motor carrier?*

FMCSA Response: Monetary fines (Notice of Claim) and Notice of Violations (an informational mechanism to cite compliance deficiencies) against individual drivers have been levied throughout the Operational Model Test based upon violations discovered during motor carrier investigations. Enforcement violations cited are generally limited to driver-based violations, such as operating a CMV after testing positive for controlled substances or knowingly and willfully exceeding the hours of service regulations. This approach to individual driver enforcement is a longstanding FMCSA policy and is not new or unique to the CSA 2010 initiative, although the development and availability of improved driver-based information systems provides for increased focus on driver performance. Enforcement actions against individual drivers do not impact the safety assessments of the employing motor carriers.

9. *CSA 2010 does not provide for a separate BASIC related to Hazmat; rather, hazmat violations are built in to each BASIC. Why did FMCSA not separate out hazmat into a separate BASIC? For hazmat violations tracked in SMS, does FMCSA plan to share this data with the Pipeline and Hazardous Materials Safety Administration (PHMSA)?*

FMCSA Response: Hazardous Materials (HM) violations impact the Cargo-Related Behavior Analysis Safety Improvement Category (BASIC) of the CSA 2010 CSMS. FMCSA developed the BASICs under the premise that CMV crashes can ultimately be traced to the behavior of motor carriers and drivers. In other words, a premise of the BASICs is that they are "behavioral" areas that lead to crashes. During early deliberations, FMCSA considered the development of a separate HM BASIC rather than including HM violations in the Cargo-Related BASIC. Ultimately, however, FMCSA deployed the CSMS for testing purposes without an HM BASIC. The FMCSA's rationale for this approach was that HM violations generally do not increase the risk of a crash but instead contribute to the

consequences if a crash occurs. Furthermore, testing of the CSMS revealed that motor carriers with a pattern of roadside HM violations would still be identified for intervention as deficient in the Cargo-Related BASIC. Due to the potential impact on public safety, FMCSA has lowered the intervention threshold for HM carriers in all BASICs thereby holding HM carriers to a higher standard of performance.

Moving forward after national implementation, FMCSA will revisit the merits of a separate HM BASIC to perhaps better account for the inherent risk associated with transporting HM. Yes, this data will be shared with PHMSA in the same manner and for the same purposes that we now share hazardous materials violation and enforcement data.

10. *How does FMCSA plan to objectively measure the impact of CSA 2010 on motor carrier safety once it is fully implemented? What metrics will be used to show the impact of CSA 2010, and how will you be able to show that CSA 2010 was a major reason for safety improvement?*

FMCSA Response: FMCSA will objectively measure the CSA 2010 impact on motor carrier safety through data analysis and program evaluations, including ensuring the Agency can assess the true impact of these new countermeasures. FMCSA has developed metrics that will measure the impact of CSA 2010's effectiveness on achieving our goal of reduced crashes, injuries, and fatalities.

11. *In April, FMCSA published a final rule on Electronic On-Board Recorders. Starting in 2012, carriers found with 10 percent or more Hours-of-Service violations during a Compliance Review will be required to install EOBRs in all their vehicles for a minimum of two years. Will this EOBR mandate change with the implementation of CSA 2010? If the agency is doing Compliance Reviews on fewer carriers (or pursuing other interventions in lieu of Compliance Reviews), how will this rule be affected?*

FMCSA Response: The implementation of FMCSA's April 2010 Final Rule on EOBRs will not change. The "trigger" for the EOBR remedial directive, i.e., mandatory use of the device, is a motor carrier's hours-of-service violation rate as determined through a compliance review. Both on-site focused or targeted and on-site comprehensive interventions under CSA 2010 would meet the definition of "compliance review" for the purpose of determining whether a remedial directive should be issued. If FMCSA determines through either a targeted or comprehensive compliance review that a motor carrier's hours-of-service violation rate meets or exceeds the threshold established by the EOBR Final Rule, FMCSA will issue the motor carrier a remedial directive requiring the installation and use of EOBRs on all of the commercial motor vehicles operated by the motor carrier.

To some extent, we expect motor carriers to realize that the new compliance system will be more effective in pinpointing specific operating deficiencies, leading them to focus more on their safety performance record. This, in turn, we expect to translate into a reduced need to conduct compliance reviews. The Agency notes that with the introduction of a targeted or focused compliance review looking at only the safety performance problems observed through

roadside inspection, investigation, or crash data, it is likely that more remedial directives, rather than fewer, may be issued as a result of CSA 2010. The targeted or focused compliance reviews would be less labor intensive and time consuming than the comprehensive reviews and therefore enable investigators to conduct reviews on more carriers by zeroing in on documented violations under the CSA 2010 Fatigue Basic (concerning hours of service violations) rather than expending additional time and resources by including in the investigation areas where the safety performance data indicate the carrier has appropriate safety management controls.

12. *Your written testimony states that "the Agency will continue to fully meet its Congressional mandate with respect to high risk motor carriers by requiring that this population receive onsite investigations of their safety practices." Section 4138 of SAFETEA-LU requires FMCSA to conduct a Compliance Review whenever a carrier is rated as a category A or B under SafeStat for two consecutive months. What is the equivalent standard that FMCSA will apply under SMS to identify equivalent carriers to fulfill this requirement?*

FMCSA Response: Beginning on November 30, 2010, FMCSA plans to implement the new CSMS to identify high-risk motor carriers and to meet the intent of SAFETEA-LU section 4138. Effectiveness testing of the CSMS reveals that it identifies as many high-risk motor carriers, with more crashes and higher crash rates, and more precisely identifies their specific performance problems than our current method. Furthermore, FMCSA operational policies will continue to require onsite comprehensive investigations of the highest-risk motor carriers, i.e., ones with multiple BASIC deficiencies. FMCSA therefore believes that its planned action of implementing a more effective method of identifying high-risk motor carriers, and continuing to require on-site investigations of these motor carriers is fully consistent with section 4138 of SAFTEA-LU.

As FMCSA stated in its April 9, 2010, Federal Register Notice entitled "Withdrawal of Proposed Improvements to the Motor Carrier Safety Status Measurement System (SafeStat) and Implementation of a New Carrier Safety Measurement System (CSMS)," (75 FR 18256):

> In section 4138 of SAFETEA-LU Congress emphasized the importance of directing compliance review resources toward high-risk motor carriers as follows:
>
> > The [FMCSA] shall ensure that compliance reviews are completed on motor carriers that have demonstrated through performance data that they pose the highest safety risk. At a minimum, a compliance review shall be conducted whenever a motor carrier is rated as category A or B for 2 consecutive months.
>
> The Conference Report for SAFETEA-LU further clarified Section 4138 as follows:
>
> Senate Bill:
>
> > The Senate bill requires the Secretary to ensure that safety compliance reviews of motor carriers are completed for carriers that have demonstrated that they pose the

highest safety risk. A single compliance review is required for any motor carrier that is rated as category A or B for two consecutive months.

Conference Substitute:

The Conference adopts the Senate provision with a modification to clarify that multiple compliance reviews are not required for carriers that are rated as category A or B for more than two consecutive months.

H. Conf. Rpt. No. 109-203, at p. 1003 (2005).

The term "SafeStat" is not specifically mentioned in the statute or conference report. However, the SafeStat-related terminology, "rated Category A or B" is used. Although it does identify those motor carriers that "pose the highest safety risk" consistent with section 4138, the new CSMS is not designed to generate alphabetized lists of motor carrier safety performance categories. In FY 2009, the Senate Committee on Appropriations recognized in its report accompanying the Transportation, Housing and Urban Development, and Related Agencies Appropriations bill, 2009, that FMCSA is developing a new means to identify high-risk motor carriers and expressed support that the initiative will improve the Agency's performance:

As the Committee noted last year, the agency is undertaking a comprehensive overhaul of all of its systems in order to better target its resources on the riskiest carriers. The agency is also seeking ways to reach more carriers through its inspection efforts by employing interventions that are less resource intensive than a full-scale compliance review. The Committee agrees that the agency's systems and procedures for conducting oversight need to be dramatically improved, and hopes that this initiative will improve the agency's performance.

* * *

The Committee notes that the agency has already completed several tasks including the development of the Behavioral Analysis and Safety Improvement Categories [BASICs] for carriers and drivers. These will be important in identifying and targeting risky carriers for intervention.

13. *Please provide the Committee with additional information on what specific data FMCSA currently exchanges with Canada and Mexico on both U.S.- and foreign-domiciled carriers; an assessment of the quality of the data received from Canada and Mexico, including whether the U.S. has any way to verify if the data is accurate; and any reciprocity agreements in place with respect to safety ratings with either country. Do you foresee any of these agreements or systems needing to change in light of implementation of CSA 2010?*

FMCSA Response: FMCSA has worked cooperatively with Mexico and Canada over the years to build the information systems and infrastructure to facilitate the exchange of safety information and help ensure that carriers, drivers, and vehicles engaged in cross-border

operations are safe and compliant with safety and operating requirements.

Regarding data exchange with Canada, FMCSA and the Canadian jurisdictions are currently exchanging license identification and status information through the Commercial Driver's License Information System (CDLIS) and the Canadian Interprovincial Record Exchange systems to verify the validity of commercial driver licenses (CDL). Additionally, FMCSA is conducting data quality assessments of Canadian inspections and crashes on U.S. motor carriers to evaluate completeness and attribution to U.S. motor carrier records in its Motor Carrier Management System.

FMCSA and the Canadian Council of Motor Transport Administrators signed a safety rating reciprocity agreement in September 2009. It provides for reciprocal recognition of motor carrier safety ratings and the exchange of commercial motor vehicle inspection, crash and conviction data. FMCSA is planning to incorporate the Canadian inspection, crash, and conviction data on U.S. motor carriers and drivers as part of the CSA 2010 system implementation when we ascertain the data meets our data quality standards. Jurisdictions from both countries are prepared to respond to and address any data inaccuracies that may be occasionally discovered.

Regarding data exchange with Mexico, FMCSA also exchanges license identification and status information with Mexico's Secretaría de Comunicaciones y Transportes (SCT) through CDLIS to verify the validity of CDLs. Mexico provides motor carrier and vehicle registration identification and status information of Mexican carriers to FMCSA, and FMCSA provides Mexico with information on U.S. convictions of Mexican commercial drivers and U.S. inspections of Mexican motor carriers. FMCSA is also working with Mexico to establish electronic access to Mexico's commercial motor vehicle inspection, crash, and violations data maintained by SCT. Until this electronic access to Mexico's commercial vehicle inspection, crash, and violations data is obtained, FMCSA has the ability to obtain paper copies of any records we need on Mexican carriers from the Government of Mexico.

In 2002, the DOT Office of Inspector General (OIG) determined that Mexico's CDL and registration databases were accurate and integrated. The OIG noted that during its April 2002 visit to Mexico's SCT, it verified that Mexico's CDL database, the Licencia Federal Information System, and its vehicle registration database were sufficiently accurate. The OIG validated the accuracy of the information entered into the CDL and vehicle registration databases by reviewing and tracing automated records for CDLs and permits issued to source documents and found information in both databases to be sufficiently accurate. For example, names, addresses, birthdates, medical information, and license status were recorded correctly in the CDL database (OIG Report Number MH-2002-094, June 25, 2002).

While our systems are continually being evaluated and upgraded to enhance our ability to effectively implement CSA 2010 as well as all other safety initiatives, we do not anticipate any major changes needed to either the systems or the agreements that are in place that would delay the implementation of CSA 2010.

14. *Your written testimony also indicates that later this year, FMCSA will implement a "revised nationwide Inspection Selection System for roadside inspectors that is based on SMS rather than SafeStat". A number of States deploy electronic truck screening systems through private vendors, such as PrePass, and utilize FMCSA data to select trucks for inspections. How will the revisions to the Inspection Selection System affect the selection of trucks for screening under such private electronic screening systems? Is FMCSA going to require States to apply certain criteria to select trucks for screening under such systems, to be consistent with CSA 2010?*

    FMCSA Response: While third party contractors do indeed use FMCSA data to screen commercial motor vehicles, the Agency does not mandate any specific screening methodology. Screening contractors in collaboration with individual States, rather than FMCSA, determine the specifics of the methodology used by each State. Therefore, the impact on how a vehicle is selected for screening will depend upon the criteria established by each State and its contractor.

    At this time, FMCSA is evaluating the current use of these screening systems to ensure that they are compatible with CSA 2010 and emphasize safety as the most critical element in screening.

15. *Currently, a carrier with a strong safety record is not likely to be targeted for an inspection at a weight station under the Inspection Selection System. Is this likely to change under the proposed revision? Is there a way for a carrier with a high safety rating to opt-in to an inspection, if such a carrier wanted to increase its inspection results for inclusion under SMS?*

    FMCSA Response: During roadside inspection operations, motor carriers are often screened before being selected for inspection. Those with strong safety records and no deficiencies would typically not be inspected. However, motor carriers with past deficiencies in one or more BASIC can certainly request an inspection to improve their safety assessment. FMCSA will encourage the States to record good inspections so that carriers can improve their roadside safety performance assessment.

Question from Chairman Oberstar

1. *In 2003, FMCSA shifted its fatality reduction goal for large truck crashes from the total number of fatalities to the rate of fatalities, or the number of fatalities in large truck crashes divided by the number of vehicle miles traveled. My understanding is that this includes miles traveled by all vehicles, including passenger cars, not just large trucks. Please provide the Committee with specific information about how the data on vehicle miles traveled is calculated for this rate, which agency within the Department of Transportation collects this information, and how often it is updated. Do you believe calculating a large truck crash rate based on all vehicle miles traveled is appropriate and provides a true measure of truck safety?*

    FMCSA Response: As I stated during the hearing, we at the FMCSA think about people first

and foremost. We think about the people who are trying to get home every night. We think about the people who are trying to reach their places of employment and see their families. Our focus is saving lives through the significant reduction in crashes with commercial motor vehicles.

To that point, the Agency changed to large truck and bus fatalities per 100 million vehicle-miles of travel in the FY 2008 Budget submission. The Agency responded to the "One-DOT" initiative and aligned its individual Large Truck and Bus goal under the DOT Safety strategic objective and performance target to reduce fatalities to no more than 1.0 highway fatalities per 100 million vehicle-miles of travel by the end of 2011. Each year, staff in the DOT surface modes meet and discuss the annual target.

The National Highway Traffic Safety Administration (NHTSA) provides motor vehicle traffic safety data from its Fatality Analysis Reporting System (FARS). The FARS database (http://www-fars.nhtsa.dot.gov/Main/index.aspx) is updated through State police crash reports and other fatality data.

The large truck and bus performance measure includes occupant and non-occupant fatalities involving a bus with a passenger capacity of 15 or greater or a for-hire bus with a passenger capacity of 9 or greater. The large truck and bus computation includes fatalities that involve interstate and intrastate vehicles.

The Federal Highway Administration (FHWA) estimates annual VMT from its Highway Performance Monitoring System (HPMS). The data are provided by the States and cover travel by all motor vehicles on public roadways within the 50 States and Washington, D.C. http://www.fhwa.dot.gov/policyinformation/statistics/vm02.cfm.

Monthly VMT is available from Traffic Volume Trends (TVT), which is a monthly report from the FHWA based on hourly traffic data from over 4,000 permanent traffic counting sites with the HPMS as a baseline.

The large truck and bus performance measure equation is presented below:

$$\textit{Truck and bus fatalities per 100 million VMT} = \frac{\textit{Number of truck and bus highway fatalities}}{\textit{(Total VMT/100 million)}}$$

The calculation is certainly appropriate when considering DOT's goal to eliminate all highway fatalities regardless of the mode of transit (passenger car, truck, bus or motorcycle). In this case, all vehicles contribute miles, and become the denominator. The large truck and bus component becomes the numerator in order to isolate the large larger truck and bus component.

The "true measure" of truck safety actually has always been a combination of measures The number of fatalities, for example, need to be considered along side a measure on injures, a measure of crashes, and/or a measure on safety compliance. Another factor in using Total

VMT instead of just commercial vehicle VMT is that data for isolating truck mileage is unreliable.

Questions from Representative Richardson

1. *How were the States in the pilot program selected, and why were States with major ports excluded?*

FMCSA Response: Shortly after the Agency's inception in 2000, FMCSA senior leadership established a Compliance Review Work Group to develop recommendations for a better compliance model. The Work Group's major recommendation was the CSA 2010 concept – a more focused performance-based business model for compelling compliance and evaluating the safety fitness of motor carriers. In May 2005, the FMCSA Administrator commissioned the CSA 2010 Team to further develop the concept into a working business model, test concept, and to facilitate Agency implementation. The CSA 2010 Team originally consisted of FMCSA headquarters and field staff and was expanded to include State representatives, who are critical partners soon after the Team was established. In January 2008, FMCSA and its State partners initiated a thirty-month field test in 4 States to measure the efficiency and effectiveness of the components of the CSA 2010 model that do not require rulemaking to implement – a new measurement system to identify high-risk motor carriers, and a broader array of interventions to compel compliance. The Agency chose the original four test States (CO, MO, GA and NJ) for the following reasons:

- FMCSA wanted geographic diversity in the test population to reflect a cross-section of the motor carrier industry and a State from each of our four Service Center areas: West, South, Midwest, and East;

- FMCSA initially gave consideration to States that were connected with CSA 2010 team members in order to take advantage of the team members working relationships with their home States in order to facilitate training and State implementation of the program. In 2009, FMCSA expanded the CSA 2010 Operational Model Test to include five additional States: MT, MN, KS, MD, and DE. These States were chosen based largely on the States' interest in participating in the CSA 2010 Field Test. In the case of DE, it was added because MD and DE enforcement staff of the FMCSA routinely work together and MD had come forward and requested they be part of the test. The port issue did not figure into our selection criteria.

2. *How will the 50 new staffers be deployed, and will areas with significant truck traffic, such as those surrounding a port, receive significant personnel upgrades?*

FMCSA Response: FMCSA has requested in its FY 2011 budget request authority to add 51 new positions over the next two years, approximately one FTE per State, to support CSA 2010 activities. This additional staffing will handle the required monitoring and enforcement activities, such as reviewing the data from the new SMS and preparing preliminary carrier

assessments for SIs in the FMCSA Division Offices. This work will include providing background information on the motor carriers to be investigated, scheduling interviews with carrier officials, and gathering information from carriers during off-site investigations. Some of the lower-level FTEs will support the SIs by handling the more routine administrative tasks, leaving the SIs free to continue to focus the majority of their time on their primary investigative mission.

Questions from Ranking Member Duncan

1. *In your hearing testimony, you stated that CSA 2010 "is a process of looking at patterns using performance data to identify patterns, and help that motor carrier identify what in their business practices may be driving those patterns." As a result of the preliminary data you have received, including from the University of Michigan Transportation Research Institute, have you identified any categories in the BASICs (i.e.; in the Drug and Alcohol BASIC) where a carrier may be found deficient because of a single violation or a few violations that amount to less than a pattern of behavior?*

   FMCSA Response: One of the principal goals of the CSA 2010 CSMS is to identify patterns of poor performance across multiple inspection categories. For all BASICs except Controlled Substances and Alcohol, multiple violations across multiple inspection areas are required before a motor carrier would be deemed deficient and identified for intervention. In the Controlled Substances and Alcohol BASIC, a single violation from a roadside inspection could potentially result in a small motor carrier with minimal inspection activity being flagged for a closer look through the intervention process. This approach is taken because the use or possession of controlled substances in a commercial motor vehicle is a very serious safety violation but roadside inspections revealing these violations are rare events. In fact, during fiscal year 2009, the over 3.5 million inspections reported to FMCSA resulted in fewer than 2000 violations recorded for use or possession of drugs or alcohol in a CMV. As articulated in public listening sessions related to CSA 2010, FMCSA's anticipated safety fitness determination process will be proposed in a forthcoming notice of proposed rulemaking (NPRM).

2. *Has FMCSA been presented with any information or evidence to suggest that CSA 2010 can sometimes erroneously label otherwise safe carriers (e.g., low accident rates, "Satisfactory" DOT safety ratings) as safety deficient?*

   FMCSA Response: FMCSA recognizes the importance of providing fair and accurate ratings of the entities we regulate. Based on the Operational Model Test data and feedback from stakeholders, including both law enforcement and industry, FMCSA identified some areas in which the CSMS methodology and its ability to assess carrier safety performance could be improved. As a result, the CSA 2010 Team refined the CSMS methodology with respect to methods of measuring exposure, peer grouping, and violation severity weighting. The Team is continuing to test and refine the methodology to ensure that it meets our goal of identifying carriers with potential safety deficiencies. The Agency intends to make the

refined CMS methodology available upon rollout of the CSMS Data Preview in mid-August 2010. Thus far, testing indicates that modifications to the methodology have improved the effectiveness and accuracy of CSMS in identifying carriers with safety deficiencies: Our goal is to significantly enhance FMCSA's confidence to make accurate safety assessments, prioritize resources and identify the highest risk carriers.

3. *If the CSA 2010 data becomes public, what will be the impact of potentially erroneous labels on motor carriers in terms of the "public accountability" component of the program as you mentioned in your oral responses?*

FMCSA Response: FMCSA believes that making the CSMS results available to the public increases awareness and accountability, improves overall safety consistent with our overriding goal of reducing commercial motor vehicle crashes and is fully consistent with the Administration's Open Government Initiative. Our April 9, 2010, Federal Register Notice informed the public that CSMS results were scheduled to become publicly available beginning in late 2010. SafeStat results, the predecessor system to CSMS, have been available to the public for nearly a decade. In 2009, FMCSA's Analysis and Information Online website, which provides access to SafeStat results, recorded nearly four million user sessions. The vast majority of the persons accessing the Safestat results represent carriers, shippers, insurers and others reviewing SafeStat information. FMCSA, therefore, believes that public demand for current and regularly updated assessments of motor carrier performance clearly exists. By responding to the public demand for information, FMCSA is able to garner the support of shippers, insurers, and other interested stakeholders in ensuring that motor carriers remain accountable for sustaining safe operations. Dissemination of this type of safety data also raises awareness of the importance of roadside performance data generated by FMCSA and our State partners, thereby further accelerating the shared goal of improvements in data quality.

FMCSA also intends to ensure that public display of the CSMS performance data will be presented in a manner that informs the user on the meaning and limitations of this type of statistical data. During the data preview period that began in April, the motor carrier industry was granted access to its own CSMS results in advance of the public. Beginning in August 2010, carriers will be allowed to see their percentile rankings. At that time, the format and content of the website will be similar to the format and content that will be used for public display later in 2010. FMCSA welcomes suggestions to improve the presentation of the website before or after public rollout to minimize inadvertent misinterpretations of the data.

4. *You commented that, for now, CSA 2010 is a workload prioritization tool and the process of interpreting the data and turning it into a safety "rating" will depend on a future safety fitness determination rule. Prior to the completion of that rulemaking, do you believe the public will perceive carriers' BASIC scores and "deficient" labels as safety ratings of some sort? How will the public accountability component impact these carriers?*

FMCSA Response: As stated above, FMCSA believes that making the CSMS results

available to the public increases awareness and accountability, improves safety overall, consistent with our goal of reducing commercial motor vehicle crashes, and is fully consistent with the Administration's Open Government Initiative. As indicated in our April 9, 2010 Federal Register Notice, public display of CSMS results is scheduled to begin in late 2010. The results of the predecessor system to the new CSMS, SafeStat, have been available to the public for nearly a decade. In 2009, the Analysis and Information Online website, which provides access to SafeStat results, recorded nearly four million user sessions, the vast majority of which were carriers, shippers, insurers and others reviewing SafeStat information. FMCSA, therefore, believes there is clearly public demand for current and regularly updated assessments of motor carrier performance. This public demand allows FMCSA to leverage the support of shippers, insurers, and other interested stakeholders to ensure that motor carriers remain accountable for sustaining safe operations over time. It also raises awareness of the importance of roadside performance data generated by FMCSA and our State partners, thereby further accelerating the shared goal of improvements in data quality.

FMCSA also believes, however, that the public display of the CSMS performance data should be presented in a manner that makes it clear to users what the data mean and do not mean and the limitations of the data in terms of public accountability. During the latter part of the data preview period that began in April, the motor carrier industry will have access to its own CSMS results in advance of the public. This period is scheduled to begin in August 2010. At that time, the format and content of the website will be similar to the format and content that will be used for public display at rollout later in 2010. FMCSA welcomes suggestions to improve the presentation of the website before or after public rollout to minimize potential misinterpretations and misuse of the data.

As stated in the response to question 3 above, FMCSA believes that the public display of data should be presented in a manner that makes it clear to users what the data means and the limitations of the data in terms of public accountability.

5. *How was crash risk assessed for each safety violation in the SMS system? Does FMCSA believe that all violations have some correlation to crash risk, even paperwork violations?*

FMCSA Response: One of the principal goals of the CSMS is to identify patterns of poor performance across multiple inspections. The roadside violation severity weights assigned are designed to help fine tune the CSMS by differentiating varying degrees of crash risk associated with specific violations.

FMCSA understands that the individual violation weights assigned at this time have drawn considerable attention and focus from both motor carriers and individual drivers, and that they warrant further explanation of how they were derived. There is also a misconception that severity ratings are equally "weighted" among BASICS. First, applicable safety-based violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and the Hazardous Materials Regulations (HMRs) were distributed into the appropriate BASIC. For example, tire violations were put in the Vehicle BASIC and driver medical qualification violations were put into the Driver Fitness BASIC. Next, similar violations in each BASIC were grouped

together. For example, the Vehicle BASIC has Tire and Brake groupings, among others. Within each BASIC, the violation groups are assigned severity weights that reflect the violation group's statistical association with crash occurrence. This association was established through a driver based analysis conducted by the Research and Innovative Technology Administration's VOLPE National Transportations Systems Center. The stronger the relationship between a violation group and crash risk, the higher its assigned weight. The violation severity weights for each violation group have been converted into a scale from 1 to 10, where 1 represents the lowest crash risk and 10 represents the highest crash risk relative to the other violations in the BASIC. Since the weights reflect the relative importance of each violation within each particular BASIC, they cannot be compared meaningfully across the various BASICs. In other words, a rating of 5 in one BASIC is not equivalent in severity or weight to a rating of 5 in another BASIC, but it does represent the midpoint between a crash risk of 1 and 10 within the same BASIC. This statistical analysis was then supplemented by crash consequence analysis (i.e., putting additional weight on violations that increase crash consequence rather than risk), effectiveness testing, and input from subject matter experts.

Irrespective of the approach used to assign severity weights to the roadside violation groups, the overall response to the CSMS from Federal and State enforcement personnel – the individuals dealing directly with drivers, vehicles, and carriers -- in the CSA 2010 Operational Model Test States has been positive. Put simply, the CSMS is an improvement over the current SafeStat system and is directing enforcement resources to the right high risk motor carriers with patterns of safety violations across multiple inspections using the current severity weights.

FMCSA, however, also readily acknowledges that other approaches to determining violation severity weights may yield results that are just as effective, or potentially more effective, in terms of identifying motor carriers with systemic safety problems. As a result, FMCSA will continue to welcome input to the violation severity weights.

6. *In response to a question during the hearing, you commented that the timeliness and accuracy of the data FMCSA receives from the States has improved and that 95 % of the crashes that get reported are transmitted in the expected time-frame. What percentage of qualifying crashes actually are reported by the States to FMCSA? Do some States report crashes that do not meet the qualifying criteria?*

FMCSA Response: The quality of crash data reported to FMCSA has improved significantly over the past few years. Using the National Highway Traffic Safety Administration's Fatality Analysis Reporting System (FARS) data to evaluate completeness of reporting of fatal large truck and bus crashes to FMCSA, States now report 104% of large truck and bus fatal crashes as compared to FARS. While this appears to be over-reporting, the additional crashes are due in part to definitional differences in the classification of cargo body type and vehicle configuration. FMCSA has developed a matching tool that assists the States in identifying cases that should be reported and allows States to indicate what criteria are used, helping to identify why differences exist in the number of fatal crashes reported to the two

systems.

There are no databases which allow FMCSA to benchmark the total number of nonfatal crashes that should be reported by the States to FMCSA. A statistical model is under development to predict the total number of non-fatal reportable crash involvements nationally. The non-fatal crash completeness measures produced by the model are intended to serve as a guideline to assess whether a State's non-fatal crash reporting falls within an expected range. Based on the current FMCSA model, an estimated three-quarters of non-fatal crashes are reported to FMCSA. FMCSA continues to refine the model and expects to have a new non-fatal crash completeness predictor by the end of the year.

7. *We understand that FMCSA contracts with UMTRI to evaluate crash data reporting and has found very different reporting rates from State to State. Please summarize and submit relevant UMTRI State crash report evaluation data.*

FMCSA Response: UMTRI has found different reporting rates from State to State. This difference in reporting is the result of a number of factors, including:

- States do not clearly understand or have the ability to report the appropriate injury crashes to the FMCSA,
- Some States report large qualifying trucks better than they report small qualifying trucks,
- Trucks are often reported better than buses or vehicles carrying hazardous materials,
- Interstate trucks are generally reported at a higher rate than intrastate trucks,
- Reporting rates vary by reporting agency, and
- Computer program logic used by States to query reportable FMCSA crashes from State databases sometimes is flawed.

Identifying these factors has allowed FMCSA to target areas in the States where improvements need to be made.

8. *In your view, could motor carriers operating in States with more robust reporting systems be flagged as safety deficient in CSA 2010 more frequently than motor carriers operating in low reporting States, simply because the crashes do not get reported?*

FMCSA Response: FMCSA fully understands the importance of promoting uniform and complete crash reporting as well as a uniform and consistent roadside inspection program as variations in inspection or crash reporting may result in carriers not being identified that should be identified for interventions. However, FMCSA believes those carries identified for interventions using existing reporting levels should be prioritized for further examination. FMCSA, in conjunction with our State partners, has made significant improvements in the reported crash and inspection data used to assess motor carrier performance. FMCSA utilizes a State Safety Data Quality tool to evaluate State safety programs of the States, including accuracy and timeliness of crash reporting. Our most recent National data regarding crash reporting accuracy indicate that 97% of all crash records during the last 12 months were

matched to the appropriate company in the FMCSA Motor Carrier Management Information System. In the past 12 months eighty-eight percent of the States' crash reports were submitted within the required 90-day period.

Working collaboratively with the Commercial Vehicle Safety Alliance (CVSA) and our State partners, FMCSA established a Data Uniformity Ad-hoc committee at the fall 2008 CVSA annual meeting. The committee's principal objectives include improving consistent documentation of roadside inspection and violation data, increased awareness of high level goals of the inspection program, and uniform inspection selection processes. An additional effort related to Data Uniformity includes standardized processes for responding to requests for data reviews.

9. *You encouraged motor carriers to review and challenge erroneous data through the DataQs system. Can carriers challenge crash accountability through this system? If so, are States encouraged to remove crashes that the carrier did not cause or could not have prevented?*

FMCSA Response: Carriers can, and occasionally do, submit requests for review of accident reports in the DataQs system where the carrier feels it was not accountable or that the incident does not qualify as a reportable crash. No changes have been made to the DataQ system, however, which currently will consider crash reportability, but does not review accountability or preventability, although there is a project underway to identify a workable and competent crash accountability process.

10. *What is FMCSA's timeline to have a CSA 2010 process in place for making crash accountability determinations?*

FMCSA Response: FMCSA has been working on this issue with the National Highway Traffic Safety Administration and the Research and Innovative Technology Administration's VOLPE National Transportations Systems Center. Thus far, the focus has been on determining the feasibility of using police accident reports for determining large truck and bus crash accountability. FMCSA has been gathering information to determine the best way to implement such an approach, using police accident reports. The Agency plans to request public comment on this issue in the upcoming CSA 2010 safety fitness determination NPRM. The NPRM is currently scheduled to be published in early 2011. FMCSA is hopeful that recommendations through public comment will enable the Agency to implement the best possible approach for determining crash accountability, both from a cost and operational perspective, and within the constraints of any resource limitations.

FMCSA data analysis has historically shown that motor carriers involved in a disproportionately high number of crashes are more likely than other motor carriers to be involved in future crashes. Simply put, FMCSA analysis indicates that past crashes are a good predictor of future crashes irrespective of accountability. Therefore, until a viable long-term solution can be instituted to determine accountability of State reported crashes, FMCSA will continue to use all recordable crashes in the CSA 2010 CSMS to identify motor carriers for

workload prioritization purposes. FMCSA believes this approach, coupled with not displaying CSMS crash assessments on public websites, and considering crash accountability before issuing adverse safety fitness ratings, is the most prudent position at this time. It balances valid stakeholder concerns with FMCSA's mission to protect the motoring public using the best performance data currently available.

11. *You mentioned that to address the impact of warnings issued for minor speeding violations, FMCSA will attempt to distinguish between major and minor offenses (1-5 mph over the limit; 5-10 mph over the limit, etc.). What steps will FMCSA take to address warnings issued for other minor moving violations?*

FMCSA Response: The Unsafe Driving Behavior Analysis Safety Improvement Category (BASIC) of the CSMS uses recorded moving violations without regard to whether a citation (i.e., a ticket) is issued to the driver. These recorded moving violations in which a citation is not issued have been characterized as "warnings."

FMCSA has conducted effectiveness testing on the Unsafe Driving BASIC as it is currently calculated, using all recorded moving violations without regard to whether a citation was issued. Put in simple terms, the analysis demonstrates there is a strong relationship between high scores in the Unsafe Driving BASIC and future crashes. Furthermore, FMCSA is aware of an additional study by the American Transportation Research Institute (ATRI) titled "Predicting Truck Crash Involvement: Developing a Commercial Driver Behavior-Based Model and Recommended Countermeasures." That study also established a relationship between moving violations recorded on roadside inspections (including speeding violations) and future crash involvement, without regard to whether a citation was issued.

As indicated in your question, FMCSA understands the concern that all speeding violations currently receive the same weight, regardless of severity, and the Agency is taking steps to distinguish severity with respect to speeding violations in the future.

Examples of moving violations other than speeding that may impact the Unsafe Driving BASIC include following too closely, improper lane change, reckless driving, and improper turn. At this time, FMCSA does not have plans to assign lower weights to these violations on the basis that a citation may not have been issued to the driver in conjunction with the moving violation.

Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

Statement of

Stephen A. Keppler

Interim Executive Director

Commercial Vehicle Safety Alliance

Before the

Committee on House Transportation and Infrastructure
Subcommittee on Highways and Transit

"Comprehensive Safety Analysis 2010: Understanding FMCSA's New System of Motor Carrier Oversight"

June 23, 2010

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Mr. Chairman, Members of the Subcommittee, thank you for holding this important hearing and for inviting CVSA to testify.

I am Steve Keppler, Interim Executive Director of CVSA.

CVSA is an organization of state, provincial and federal officials responsible for the administration and enforcement of commercial motor carrier safety laws in the United States, Canada and Mexico. We work to improve commercial vehicle safety and security on the highways by bringing federal, state, provincial and local truck and bus regulatory, safety and enforcement agencies together with industry representatives to solve problems and save lives. Every state in the United States, all Canadian provinces, the country of Mexico, and all U.S. Territories and Possessions are CVSA members.

Why is CSA 2010 Needed?

First, there is some good news to report. The large truck fatality rate dropped by 12.3% in 2008, and is down 20.8% since 2005. There were more than 1,000 fewer deaths in 2008 from large truck crashes than there were in 2005. I believe significant credit for this goes to the more than 12,000 commercial vehicle safety inspectors and law enforcement officers in North America who are working hard each and every day. Credit for this success also goes to the many responsible members of the truck and bus industries who are mindful every day of the need to keep our highways safe.

However, there still were 4,229 deaths in trucks and 307 in buses in 2008, so we still have plenty of work to do in our march towards zero deaths on our roadways.

The downturn in the economy certainly has played a role in this, and my fear is that as it begins to recover, as thankfully it looks to be the case, we will not have adequate resources to maintain these numbers, much less improve upon them.

A critical step for ensuring there are adequate resources in place today and in the future for increasing safety on our highways is for the Congress to pass a long term Transportation bill as soon as possible. For the CSA 2010 Program to be successful it requires a long-term and sustained federal investment, and needs to be appropriately resourced at both the federal and state levels. This can only happen through a significant increase in funding and the passage of a long-term Bill. A glimpse of the additional resources needed at the federal level for CSA 2010 is evidenced by the President's request for an additional $20 million beyond SAFETEA-LU authorized limits for his Fiscal Year 2011 budget for the purpose of rolling out CSA 2010.

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In our view, CSA 2010 is necessary for a number of key reasons:

1. **Further reduce large truck and bus related crashes and fatalities;**
2. **Employ a wider set of intervention strategies with motor carriers based on the nature and scope of their safety problems;**
3. **Be more proactive at identifying problems and implementing effective countermeasures at an earlier stage of non-compliance;**
4. **Interact with more motor carriers than what is being done today;**
5. **Use more robust safety data in conducting a motor carrier's safety fitness determination;**
6. **Continually measure driver and carrier safety performance and compile the motor carrier's safety fitness determination based on performance data and intervention results; and**
7. **Maximize the limited federal and state enforcement resources to ensure they are focused on high-risk operators.**

In the remainder of my testimony I will further expand on each of these seven points, as well as offer some of our observations and recommendations for enhancing the program as it moves from design to testing to deployment.

1. Further reduce large truck and bus related crashes and fatalities.

While the number of deaths associated with truck and bus crashes continues to decrease, any death is unacceptable. While we have seen good and steady progress over the last few years, we need to pursue all avenues to further reduce the number of deaths. Our goal should be zero.

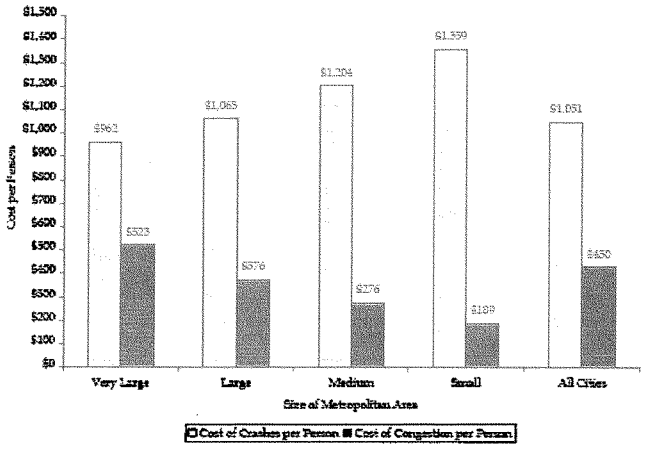
Most Americans, and in particular those employed in the truck and bus industries, are very conscious and concerned about the congestion that many of us live with and how it impacts our lives and commerce. What most do not realize; however, is that the cost of safety far outweighs the costs of congestion.

Traffic congestion is not only exasperating, it is costly. In Optimizing the System[1], the American Association of State Highway Transportation Officials (AASHTO) references the 2001 Texas Transportation Institute report examining the costs of congestion in America's 85 largest urban areas. "An astronomical 3.5 billion hours of people's time and 5.7 billion gallons of fuel were wasted in 2001 because of congestion. The cost of these squandered resources is a staggering $69.5 billion," the report noted. However the AASHTO report goes on to say, "But as bad as this is, there's an immeasurably more costly and tragic measure of the system's performance: the human toll. Every year, more than 43,000 people are killed and nearly 3 million are injured in

[1] AASHTO, (2004). *Optimizing the System*. American Association of State Highway and Transportation Officials, Washington, D.C., Publication No.: OTS-1.

crashes on our nation's roads and highways. The economic cost of vehicle crashes annually is over $230 billion dollars."[2]

Figure ES.1 Per Person Cost of Crashes and Congestion [2]
Cost of Crashes includes Fatality and Injury Costs and excludes Property Damage Only (PDO) Crashes



This is important to note because all too often those of us in the safety business fail to adequately explain to political leaders and the public the importance of our jobs and reducing crashes and how it impacts on people's lives as well as their economic situation, not to mention some of the other benefits such as reducing congestion, pollution, fuel usage and health care costs.

In order to continue this recent progress in reducing deaths on our highways we need to have a better understanding of what is working and what is not in order to implement innovative strategies targeted at the key parts of the safety challenge. In our view, a critical tool in the toolbox is CSA 2010. Its focus on the Safety Management Cycle process has and will continue to provide additional capabilities to many of the key individuals that have a direct and indirect influence on the safe operations of motor carriers, drivers and vehicles.

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[2] AAA, (2008). *Crashes vs. Congestion, What's the Cost to Society?* Prepared for AAA by Cambridge Systematics, Inc. Bethesda, MD.

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2. Employ a wider set of intervention strategies with motor carriers based on the nature and scope of their safety problems.

In today's compliance and enforcement environment, there are four primary tools at the disposal of state and federal agency personnel: Roadside Inspections, Traffic Enforcement, Safety Audits and Compliance Reviews. Each of these functions are critical components in the toolbox to help ensure compliance with the Federal Motor Carrier Safety and Hazardous Materials Regulations, as well as their resulting impacts on crashes and saving lives.

As evidence of this fact, the programs listed above had the following impacts:

The Roadside Inspections conducted in 2007[3]:

- Helped to avoid 10,210 total crashes;
- Helped to avoid 6,581 injuries; and
- Saved 387 lives.

The Traffic Enforcement conducted in 2007[3]:

- Helped to avoid 9,761 total crashes;
- Helped to avoid 6,292 injuries; and
- Saved 370 lives.

The Compliance Reviews conducted in 2007[3]:

- Helped to avoid 2,860 total crashes;
- Helped to avoid 1,866 injuries; and
- Saved 109 lives.

Based only on the benefits of the lives saved in 2007 (866) from these three programs, the benefit accrued in 2007 was $5.0 Billion[4]. This benefit far outweighs the federal and state resources being expended through the Motor Carrier Safety Assistance Program (MCSAP) and therefore is an excellent return on investment for the taxpayers. In addition, this is very conservative as it does not even take into account benefits from the crashes and injuries avoided.

Clearly, we need to conduct more of these basic program activities, as well as augment their importance. CSA 2010 will do this and in particular, will create additional strategies for intervening with a motor carrier based on their performance and safety history and the performance of the drivers who work for them. The enhanced intervention strategies provide a number of safety and resource allocation benefits over what is being done today.

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[3] FMCSA's Program Effectiveness Research; http://ai.fmcsa.dot.gov/pe/Home.aspx.
[4] Based on OMB's economic value of a statistical life of $5.8 Million.

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Current CR Process	CSA 2010 Intervention Process
Broad one-size-fits-all investigation	Array of interventions can be tailored to address extent and scope of specific safety deficiencies
Resource intensive for enforcement agencies and time consuming for carrier/fewer carriers contacted	Less resource intensive for enforcement agencies and less time consuming for carrier/more carriers contacted
Focuses on broad compliance based on rigid set of acute/critical violations	Focuses on improving behaviors that are linked to crash risk
Discovers what violations exist at that time	Discovers what safety problem(s) are, why they exist, and how to correct them
Major safety problems result in fines (Notice of Claim (NOC))	When problems found, major focus on carrier proving corrective action; significant problems continue to result in fines
Focuses on carrier	Expands focus to driver violations

Based on feedback we have received from the nine CSA 2010 pilot test states they view the additional intervention tools as tremendously beneficial for focusing their energies and skills where they are most needed and enabling them to be more efficient and "surgical" in the process. They also view the varied interventions as providing an appropriate level of attention to the motor carriers based on the nature and scope of the problems which trigger the interventions.

3. Be more proactive at identifying problems and implementing effective countermeasures at an earlier stage of non-compliance

Just as the varied interventions are structured such as to provide an increasing level of attention to the motor carrier based on safety performance and crash risk, so are the follow on corrective actions that can result from the interventions. One of the key benefits that has resulted from CSA 2010 in the Pilot States thus far is many of the motor carriers exposed to the less-intrusive interventions (e.g. warning letter and/or offsite investigation) have taken proactive steps to become more familiar with the safety regulations and have improved their safety management controls and performance — with minimal investment of time and resources of state personnel. Enforcement levels

with the CSA 2010 pilot states have remained the same as what was the case prior to CSA 2010 implementation in those states.

In addition, much of the experience thus far through the pilot states has proven to be beneficial to both the motor carriers and the state personnel in that the carriers feel they are getting more out of the contact, and the enforcement personnel feel their time is being well spent and is having a positive impact.

4. Interact with more motor carriers than what is being done today.

One of the major objectives of CSA 2010 was having the ability to contact more carriers than what is being done today. With approximately 725,000 motor carriers registered with FMCSA and 16,000 Compliance Reviews done annually, nearly 98 percent of the motor carrier population is going untouched. While there are a significant number of Roadside Inspections (3.5 million in 2009) and Safety Audits (38,000) being conducted annually, as evidenced by the data above there still is a need to interact with more drivers, vehicles and motor carriers if we are going to make significant safety gains. The experience with CSA 2010 thus far has indicated that indeed the pilot states are able to "contact" more motor carriers. An important aspect of these contacts; however, is not just the volume increase but also the quality of the interaction has been improved, thus enabling for more effective and sustained corrective measures to be implemented by the motor carriers. All of the State's participate in the FMCSA New Entrant Safety Audit Program. It is possible that a CSA intervention will be necessary with some of these carriers prior to the scheduled Safety Audit. The Safety Audit process is 100% FMCSA funding. The State's should be funded 100% with these carriers when a CSA intervention is necessary in advance.

5. Use more robust safety data in conducting a motor carrier's safety fitness determination.

The key factor in CSA 2010 that is driving the transformative effects it is having on compliance and enforcement activities and motor carrier actions is how the data is being used in all aspects of the Safety Management Cycle. There are five major reasons for this:

- ALL roadside inspection results and crash reports are being integrated into the Safety Measurement System;
- The data is being used to drive which intervention strategies are conducted and when;
- The motor carrier's safety rating will be decoupled from the Compliance Review thereby allowing for ongoing safety fitness determinations based on performance data as it is created and uploaded;
- Driver-based performance data will be directly tied to carrier performance; and

- The Safety Fitness Determination will be time and severity weighted based on performance data and crash-risk.

We are a strong supporter of taking this approach and in particular, incorporating the roadside inspection data into this process to provide a more rich and complete picture of the safety fitness of the driver, vehicle and motor carrier's performance. Given the clear link between roadside inspections and traffic enforcement with crash reduction, it is logical to incorporate this data in to the process.

CSA 2010, along with other critical traffic safety improvement initiatives in the U.S., Canada and Mexico are built on the foundation of effective roadside inspections and traffic enforcement. We recognize that a key success factor for CSA 2010 is data quality, timeliness and completeness. Furthermore, as more advanced technology and targeting techniques are deployed at the roadside and in a motor carrier's place of business, it becomes even more important that the underlying data resulting from roadside actions is accurate and timely. Additionally, in the near future international agreements between the United States and Canada will allow the use of this roadside enforcement data to measure carrier safety fitness and to formally recognize each other's work through safety rating reciprocity. As a result, the importance of the data being produced from these activities is critical.

The Carrier Safety Measurement System (SMS) and proposed Safety Fitness Determination (SFD) methodology that have been developed under CSA 2010 both rely heavily on roadside inspection and violation data. The SMS uses roadside inspection results to identify a motor carrier's specific safety problems and select the appropriate intervention strategy, in a method similar to how SafeStat results are used today. However, in the CSA 2010 Operational Model these roadside inspection and violation results are an input into the SFD process and may directly impact a motor carrier's safety rating.

If these data are not effectively monitored for quality control and enhanced when necessary it will result in significant consequences such as lost time and misdirected resources for enforcement agencies and industry alike.

As a result, for more than a year CVSA and our member jurisdictions have been working very closely with FMCSA and the industry on several key aspects of data quality, timeliness and completeness:

- Revising the DataQs process;
- Establishing recommended best practices and procedures for due process and adjudication of data challenges;
- Revising procedures and policies for properly documenting violations to ensure they are being done consistently and uniformly across North America;

- Making recommendations for changes to roadside inspection software programs to help ensure consistency and uniformity in documenting and uploading inspection results; and
- Improving the awareness and understanding of the need for consistent driver/vehicle inspections and inspection selection policies.

I am happy to report that we are making progress on all of these fronts. We still have plenty of work in front of us, but we remain focused on the end goal and are working diligently to get there.

6. Continually measure driver and carrier safety performance and compile the motor carrier's safety fitness determination based on performance data and intervention results.

One of the valuable changes that will be brought to bear with CSA 2010 is the implementation of the Safety Measurement System, which when implemented will replace SafeStat for identifying high-risk motor carriers requiring interventions and will assess safety performance in the seven BASICS on a monthly basis. A key component of the SMS will be the Driver Safety Measurement System (DSMS), which will enable enforcement personnel to assess individual drivers in the BASICs across all of their employers and use these results during the course of their investigations of employing motor carriers.

As important will be the changes envisioned in the new Safety Fitness Determination process whereby the new SFD will be more nimble, data-driven and performance based to more accurately reflect a motor carrier's safety posture at any point in time. The major differences that are expected to result with the new SFD process versus the existing process are indicated below.

New Proposed Safety Fitness Determination	Existing Safety Fitness Determination
Not exclusively tied to onsite reviews	Only to be issued or revised via an onsite review
Updated regularly	Provides a snapshot of compliance only on the date of the most recent compliance review (CR)
Based on violations of all safety based regulations	Based only on critical and acute violations
Labels carriers under consideration as Unfit, Marginal, or Continue to Operate	Labels carriers Unsatisfactory, Conditional, or Satisfactory

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7. Maximize the limited federal and state enforcement resources to ensure they are focused on high-risk operators.

Our members are continually being asked to do more with less by their political leaders. State budgets are tight and in some cases are shrinking. Many of the states are furloughing public safety employees and not filling vacancies. In a few instances layoffs are occurring. This has been particularly acute of late given the downturn in the economy over the last two years, and no end in sight at least with respect to the economic outlook in the states. This is exacerbated by the fact that the freight growth by truck in the U.S. is expected to double between 2002 and 2035[5].

One of the core values of CSA 2010 in our view is maximizing the safety impact for the minimal resource investment. Allowing performance data to do the work in terms of helping to identify high-risk operators and the appropriate intervention strategies has helped and we believe will continue to help in resource allocation for enforcement.

However, as previously indicated it is vital that Congress pass a new Transportation Bill soon – and we believe key considerations need to be given not only to increasing resources to the states for the MCSAP and other related commercial vehicle safety programs, but also to modifying the match on the basic program from 80/20 to 90/10 as well as modifying the current Maintenance of Effort (MOE) requirements. MOE is problematic because it is based upon the financial resources of a state versus the performance of that state relative to the execution of duties under the MCSAP. The current MOE system promulgated through SAFETEA-LU is no longer viable and must be fixed. Making adjustments on these three issues will go a long way in helping to alleviate some of the financial burden being experienced by the states.

While CSA 2010 offers tremendous opportunity in terms of focusing resources on where they need to be placed, to do so without making some of these needed changes will not result in the desired effect.

Observations and Recommendations

CVSA strongly supports the CSA 2010 concept and we give credit to FMCSA and State partners involved in the process for moving it forward. It offers significant promise to transform compliance and enforcement activities to be more surgical in nature and to allow for more proactive safety interventions with motor carriers, which will ultimately save more lives. It also is consistent with one of CVSA's major reauthorization priorities — to streamline the compliance review process to make it more effective, as well as to establish a better safety rating process for motor carriers.

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[5] U.S. Department of Transportation, Federal Highway Administration, Office of Freight Management and Operations, Freight Analysis Framework, version 2.2, 2007.

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The CSA 2010 experience thus far through the nine pilot states shows that is it having a positive impact and is being received well by both enforcement and industry. We fully understand why FMCSA recently announced that they are modifying their timelines for implementing this program and fully support their doing so. A program of this size and scope needs careful planning, as well as input from all affected parties. Throughout this process FMCSA has been listening to us and others, and we appreciate them doing so. While we understand that schedules and timelines must be set to allow for proper planning and budgeting, we do not believe timelines should be set for the sake of timelines. We need to be realistic about what our expectations are and communicate them to all who have a need to know.

We fully understand and support FMCSA's request for an additional $20 million beyond SAFETEA-LU authorized limits for its Fiscal Year 2011 budget for rolling out CSA 2010. However, CSA 2010 will also require the states to expend more resources for implementation just as it has required the FMCSA to do so. In this regard, we see several key issues that are at hand and need to be resourced appropriately:

1. Training.
2. Work force adjustments.
3. Information Technology changes/upgrades.
4. Data challenges and adjudication.
5. CVSP and Grant related changes.
6. Outreach to Industry.

One of the concerns our members have expressed to us is the non-pilot states are not being provided with as much information on a number of aspects related to the program as they feel they should be. In particular, the states would like to be more informed on items such as implementation, program funding and impacts, and schedule, deliverables and timelines. We understand FMCSA is implementing a peer-to-peer program to help with this; however, a key piece of the puzzle is to ensure the FMCSA Division Offices in the field are communicating effectively with their state counterparts.

Another issue that has been brought to our attention is whether FMCSA will be able to implement the information systems and software changes to support field operations in a timely manner.

Other comments our members have offered are:

- Ensure that training is conducted in a timely manner for those impacted by the program, and providing a schedule so they can plan accordingly;
- They would like to have a forecasting tool to be able to anticipate and plan for resource impacts;
- Provide more information to the states so they can explain it to the industry in their jurisdictions;

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- They would like to see a detailed explanation of the implementation plan and schedule so they can properly plan for what they need to do in the states;
- Allow for more input from state personnel;
- Provide a better understanding of the methodology and the weightings in the Safety Fitness Determination so it can be explained to their staff and to the industry;
- Making sure they are aware of what policy, procedural and regulatory changes may be necessary to implement the various interventions;
- Ensure that the implementation plan and rollout is sensitive to the legislative regulatory, policy, IT and training needs of the states;
- The potential increase in DataQs challenges and the impacts on staffing is a concern;
- Ensuring that the roadside inspector understands how important their role is in making CSA 2010 a success;
- Making sure to investigate how the changes will impact on safety programs, safety rating reciprocity and data exchange with Canada and Mexico and put a plan in place to address this;
- There is some question as to how CSA 2010 will impact those states who conduct intrastate Compliance Reviews;
- We would suggest that consideration be given to having all intrastate motor carriers have a US DOT number, which a number of them already do. Many states, such as Missouri, are working to develop a CSA 2010 program for intrastate motor carriers in order to further reduce fatalities, injuries and crashes; and
- CSA 2010 implementation with the states needs to be a partnership and not a directive.

In summary, we remain optimistic about the potential for saving lives through CSA 2010. Part of this optimism is fueled by what has been happening already in the pilot states and across the industry. While we have some reservations on certain issues related to implementation of CSA 2010 and its potential impacts on the states (some of which will not be known for some time), we believe many of these issues can be worked through with FMCSA and the industry in a methodical and systematic way. With a program of this size and scope there are bound to be some bumps along the road. The key to success will be to keep an open line of communications and for FMCSA to work together with the states, industry and other affected parties to ensure they are fully aware of what is happening and when.

As important is to make sure appropriate resources are made available and flexibility is provided to the states for implementation. Just as CSA 2010 is evolving how our safety programs are going to be delivered in the future, so should how they are being funded and accounted for. As mentioned previously for an example, the Maintenance of Effort requirements as they exist today are a crushing disincentive to states which if left alone could cause the state MCSAP programs to collapse under their own weight. We need to evolve our funding and administrative approach such that we are doing a better job of

incentivizing and rewarding innovation and success so the states can help deliver on the promise of CSA 2010.

Mr. Chairman, we appreciate you holding this hearing today and for inviting CVSA to testify. We would be happy to answer any questions at this time.

Highways and Transit Subcommittee Hearing
June 23, 2010
Written Question for the Record
Witness: Steve Keppler, Interim Executive Director, Commercial Vehicle Safety Alliance

Answers to Questions from Chairman DeFazio

1. *Your written testimony cites several areas key to the success of CSA 2010 that need to be "resourced appropriately", including training for States and "work force adjustments". What do States need in terms of training resources (both monetary and otherwise)? Does CVSA predict that States will need additional safety inspectors to carry out this program? If so, do you have any estimates for how many?*

   It is well known that most, if not all of the states, are operating under severe budget constraints affecting all state programs including motor carrier safety. In the state of Maryland alone, the motor carrier enforcement division is 40 inspectors short. If all of the states were operating at their optimum levels, the necessary resources to implement CSA 2010 would be much less of an issue. In fact, to be very candid, what is really needed on the part of the states to ensure full implementation of CSA 2010 are the additional resources that would provided by the passage of a long term Transportation bill. CVSA's reauthorization policy recommends that with respect to the MCSAP grant program as well as other state safety grant programs, a change in the basic match formula from the current 80/20 to 90/10 is needed along with a revised and more equitable maintenance of effort requirement. These changes are just as important, in fact, more important, than just increasing the overall authorized amount for these programs. The maximum authorized limit under SAFETEA-LU is $310 million. State legislatures, and Governors as well, are very reluctant to initiate new hires under a program such as motor carrier enforcement unless the federal funding portion will be consistent for a period of years. Right now it is difficult for states to precisely measure what resources they will need for CSA 2010, when they are trying with great difficulty just to keep a basic safety enforcement program functioning. The success of CSA 2010 can only be assured by a new Transportation Authorization bill. Continued extensions of SAFETEA-LU along with the uncertainty of the Appropriations process resulting in a series of Continuing Resolutions are currently the biggest challenges for the states.

2. *During the hearing, there was discussion of States that require "probable cause" to stop a commercial motor vehicle. Please provide the Committee with a list of States where this is the case. In his testimony, Mr. Klein claimed that law enforcement officers tend to issue warnings to drivers stopped in these States, rather than citations, typically for speeding, in order to justify the stop to conduct an inspection. Does CSVA have data from States to verify whether probable cause States do in fact issue a higher number of warnings?*

   CVSA does not have data from States to verify whether probable cause States issue a higher number of warnings. It is possible that FMCSA may have information relating to this issue. We are attaching a list of Probable Cause states (*Attachment 1*) developed through the cooperative efforts of ATA, FMCSA and CVSA.

Answers to Questions from Ranking Member Duncan

1. *In your hearing testimony, you agreed with Administrator Ferro that the purpose behind the Safety Measurement System within CSA 2010 is to look for patterns. As a result of the preliminary data you have received, have you identified any categories in the BASICS (i.e.; in the Drug and Alcohol BASIC) where a carrier may be found deficient because of a single violation or a few violations that amount to less than a pattern of behavior?*

   CVSA does not have the data that would enable us to answer the question whether carriers have been found to be deficient because of a single, or very few violations in any of the BASIC categories. Again, it is possible that FMCSA may have information relating to this issue.

2. *What, if any, barriers are there for the States to automatically adopt the new enforcement model required by CSA 2010?*

   To the extent that CSA 2010's new enforcement model will require states to adopt new operational Federal Motor Carrier Safety Regulations, the timetable and process by which the states can adopt the new rules varies by states and U.S. Territories. This issue is not specific to just CSA 2010, but is applicable to any new rule promulgated by FMCSA, such as hours-of-service regulations. A specific breakdown of the state (and U.S. Territories) processes is as follows: 23 states can automatically adopt the rule; 13 states require an administrative process; 10 states require both administrative and legislative process; and 9 states require the legislative process only. When the state legislative process applies, the state may have up to 3 years to comply.

   Again, we would like to point out there are many challenges to the states in adopting the enforcement model required by CSA 2010. We would not characterize them as barriers. All of the states want to cooperate and make CSA 2010 successful but need time to evaluate all aspects of the new program beyond just making regulatory changes. There are other policy changes each must make involving training and information systems upgrades. There are some states that have made remarkable progress in reducing crashes and fatalities in the last few years and therefore will need time to integrate the new elements of CSA 2010 into their state enforcement plans. This particularly holds true where an enforcement agency has to go before the state legislature seeking approval for changes required by CSA 2010 when that state legislature has in the past provided strong support for the state's successful motor carrier enforcement program.

3. *CSA 2010 will require extensive data input from State enforcement personnel as well as consistency across the States. What has CVSA done to ensure that States will be able to meet these data requirements and improve data consistency, uniformity, and reliability when CSA 2010 is implemented nationwide?*

   In the fall of 2008, CVSA founded the Roadside Data Uniformity Ad-hoc committee whose sole purpose was to improve data consistency, uniformity, and reliability. A summary of the Ad-hoc committee work is attached (*Attachment 2*) as provided by Major Mark Savage, of the Colorado State Patrol, who served as Chairman of the Ad-hoc committee.

4. *Industry witnesses have expressed concern about the wide variance in State enforcement given that FMCSA intends to label carriers as deficient based on comparative safety performance. What has CVSA done to improve the consistency in State enforcement?*

If we were to point out the most important reason for CVSA's existence, it is uniformity and reciprocity of state motor carrier safety enforcement actions along with those of Canada and Mexico. This has been the common purpose and theme of all CVSA programs, especially training, for the nearly 30 years of its existence, well before the advent of CSA 2010. Starting with CVSA's basic Level 1 inspection, whether it is conducted in Nebraska, Florida, or in any of the Canadian Provinces, it is conducted in exactly the same manner. This is due to a rigorous ongoing training program that all of CVSA's member jurisdictions participate in that includes every state in the United States. In order for a state to receive its annual MCSAP grant, a state's motor carrier safety regulations must be compatible with the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations. In addition, CVSA has developed a recommended a maximum state fine schedule that it encourages each state to adopt. CVSA's efforts to ensure consistency, uniformity, and reliability of data have been detailed in an answer to an earlier question. However, an organization like CVSA can only do so much in working various state and provincial governments, especially on such issues as penalties and sanctions where CVSA makes its best efforts to minimize these differences among the states through outreach and education.

It should also be pointed out that when each jurisdiction (includes every state in the U.S.) joins CVSA, as a condition of membership, it signs a Memorandum of Understanding that it agrees to abide by CVSA's inspector certification and training process as well as agreeing to use CVSA's standard Out-of-Service Criteria in the roadside inspection process.

In addition, one of the projects undertaken by CVSA's Roadside Data Uniformity Ad-hoc Committee, referred to above in question 3,has resulted in a revision of the existing ASPEN/SafetyNet information system ensuring uniform and consistent descriptions of each roadside violation uploaded into the system.

Attachment #1

STATES THAT REQUIRE PROBABLE CAUSE (PC) TO CONDUCT TRUCK INSPECTIONS

July 2010

Must a law enforcement officer have probable cause before stopping a commercial motor vehicle to conduct a roadside inspection?

STATE	FINDINGS	ADDITIONAL INFORMATION
Alabama	No	
Alaska	No	
Arizona	Other	PC is not required by statute, but AZ DPS policy requires PC to make a stop. Other agencies in the state select randomly or use ISS score criteria.
Arkansas	No	
California	Other	The California Highway Patrol (CHP) can set up a truck inspection lane at any time and in such instances, does not need PC to stop CMVs for inspection. In other circumstances (e.g. observing a vehicle traveling on a freeway) PC is required.
Colorado	No	
Connecticut	No	
Delaware	*Yes*	
Florida	Other	Florida DOT Motor Carrier Compliance Officers are not required to have PC. With few exceptions, the Florida Highway Patrol (a non-MCSAP agency) must have PC.
Georgia	No	
Hawaii	No	
Idaho	Other	CVSA certified officers are not required to have probable cause but all other enforcement officers must have PC.
Illinois	No	
Indiana	No	
Iowa	No	
Kansas	No	
Kentucky	No	
Louisiana	No	
Maine	Other	CVSA Level 1 certified sworn troopers attached to Troop K may stop without PC. All other enforcement officers must have PC.
Maryland	No	
Massachusetts	No	
Michigan	*Yes*	
Minnesota	Other	Minnesota statutes 169.771 allows spot checks to be conducted randomly, but not more than once in a 90-day period on any given vehicle unless PC is present.
Mississippi	No	
Missouri	Other	Missouri statute 304.230 states that only authorized CMV enforcement officers may conduct random inspections. All others must have PC.
Montana	No	
Nebraska	No	
Nevada	No	
New Hampshire	No	
New Jersey	No	
New Mexico	*Yes*	
New York	*Yes*	
North Carolina	No	
North Dakota	Other	PC is not required by state law to stop and inspect a CMV at an inspection site but North Dakota Highway Patrol policy requires PC in other circumstances.
Ohio	No	
Oklahoma	No	

STATE	FINDINGS	ADDITIONAL INFORMATION
Oregon	*Yes*	
Pennsylvania	Other	MCSAP certified Officers within Pennsylvania can stop and inspect a CMV without PC as long as they are engaged in a systematic inspection effort. All other Officers (non-MCSAP) must have PC.
Rhode Island	No	
South Carolina	No	
South Dakota	No	
Tennessee	No	
Texas	No	
Utah	No	
Vermont	No	
Virginia	No	
Washington	No	
West Virginia	No	
Wisconsin	No	
Wyoming	No	

Attachment #2

CVSA Roadside Data Ad-hoc Committee

By Major Mark Savage- Colorado State Patrol

As CVSA members, we are all aware of the importance of roadside enforcement data and how this data is critically important for member jurisdictions, FMCSA, industry and many other stakeholders. Specifically, in the case of enforcement agencies, we understand that data collected at the roadside is the foundation of all data-driven traffic safety initiatives. We understand that the roadside data generated from inspection and crash reports is used to allocate and focus limited enforcement resources.

FMCSA also understands the importance of this data, as they are using the data we generate as the foundation of CSA 2010. Furthermore, FMCSA may propose to use this roadside data in the calculation of a carrier's safety fitness rating as proposed in the proposed Safety Fitness Determination rule.

As a result, the importance of our data cannot be understated, as it has strong implications to not only CSA 2010 and potential future rulemakings, but all of our traffic safety programs. Therefore, while CVSA members affirm that our current roadside data is fundamentally sound, valid and usable, it can be enhanced. To accomplish this, FMCSA, CVSA and member jurisdictions have worked collaboratively on several data enhancements and a concurrent effort to increase stakeholder knowledge about the need to further enhance this data.

This effort began in the fall of 2008, at the Commercial Vehicle Safety Alliance's annual meeting. At that meeting CVSA founded the Data Uniformity Ad-hoc committee to develop strategies to improve data uniformity and consistency. When work began, the ad-hoc committee identified the following primary activities intended to enhance our roadside data:

- Identify shortcomings in the collection and documentation of roadside inspection and enforcement data.
- Develop and promote solutions that improve the uniformity, reciprocity, accuracy and timeliness of roadside data.
- Develop suggested standardized processes for handling challenges to roadside inspection and enforcement data.
- Improve awareness and understanding of the need for consistent driver/vehicle inspections and inspection selection policies.
- Examine possible metrics for measuring data quality.

In the last two years, the ad-hoc committee has taken those original goals and developed four core components of roadside data uniformity. The same four components then became the foundation for the collective efforts of the committee. Those four components are:

1. Consistent documentation of roadside inspection and violation data
2. Standardized processes for challenging data
3. Increased awareness of high level goals of the inspection program
    a) Good inspections can support systematic enforcement program

b) Screening vs. Inspection

4. Uniform inspection selection processes

Over the same time frame, work has commenced on all of the above components of the committee and much has been done to accomplish these objectives. While much has been done to accomplish our objectives, there is still more to be done and the work of the committee is ongoing. Therefore, it is important to provide, not only the membership, but all stakeholders with an update on the important work of the committee.

- **Consistent documentation of roadside inspection and violation data**- Through a FMCSA-funded high-priority grant, in the Spring of 2009, CVSA staff and subject matter experts from the various committees began work on guidance that promotes the consistent documentation of roadside inspection and violation data. This group met several times in the Summer of 2009 and recently held its final meeting in January of 2010. The effort was ably led by CVSA staff member Collin Mooney.

  The finished product, in the form of violation pick lists for Aspen, was presented to FMCSA in early March. At this meeting, CVSA asked FMCSA to implement these violation pick lists into Aspen for use by the roadside inspector. The intent is to use the violation pick lists as operational guidance in the way of hard coded violations to promote the consistent documentation of roadside violations across jurisdictional lines.

  At the same time, the committee has asked that FMCSA implement concurrent software design changes be made to Aspen to support the "How to Document a Violation Guidance Document" that was guided by Collin Mooney and produced by many of the same CVSA subject matter experts. FMCSA supports this work and is currently trying to prioritize this extensive project within its current responsibilities.

  Once both of these initiatives are accomplished, future work on this important project will include outreach and training to all stakeholders about the work product from the CVSA and FMCSA.

- **Standardized processes for challenging data**- This initiative will provide procedural guidance on the management of the roadside data challenge process through our Data Q's management system. FMCSA and several state partner subject matter experts formed a group in the Spring of 2009 to develop standardized procedures for the data challenge process. A sub-committee of their group is also reviewing carriers' due process rights as they progress through the appeals process.

  The goal of this initiative is to enhance the data challenge process by providing consistency and transparency for our stakeholders. A draft version of the group's recommended guidance is currently being vetted internally by the group with a final work product to be available to all stake holders in the near future.

- **Increased awareness of high level goals of the inspection program**- This component of the roadside data uniformity initiative focused on the increased importance of the roadside violation data and an understanding of how the data will be used. Our goal is to ensure that the processes that are used in the collection of the roadside data are validated and promote the integrity of the programs that employ the data. This

educationally-based initiative will target all stakeholders from roadside inspector to program managers with specific training and outreach materials advertising the importance of the roadside data and specifically how it will be used. The goal is to broaden the understanding that every inspection counts and that there is a direct relation between the collection of the data and the end use of the data. This training-based initiative will roll-out in conjunction with CSA 2010 in the winter of 2010-11.

- **Uniform inspection selection processes**- CVSA has approved a change to its operational policies that encourages member jurisdictions to review and formalize their current policies that govern when and how vehicles should be selected for an inspection. The goal is to raise awareness that implementing a valid and consistent vehicle and driver inspection selection process operated within the scope of a jurisdiction's rules and policies is the critical foundation upon which the integrity of our programs rest.

Over the course of the two years, several members of the Commercial Vehicle Safety Alliance have dedicated numerous hours to the enhancement of our roadside enforcement data. Along the way we have ensured that our processes are sound and our goals are realistic and obtainable. We have worked to improve the consistency and quality of the data that is the foundation of effective crash reduction strategies that will result in saving lives on our highways. In the future, we will continue these critical data enhancement efforts so that CVSA member jurisdictions, FMCSA and all other stakeholders have continued faith in the validity and consistency of the data we all use on a daily basis.

Statement of

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& CHIEF OPERATING OFFICER
TRANSPORT CORPORATION OF AMERICA

On Behalf of
American Trucking Associations, Inc.

Before the

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON
TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

HEARING ON
COMPREHENSIVE SAFETY ANALYSIS 2010:
UNDERSTANDING FMCSA'S NEW SYSTEM OF MOTOR CARRIER OVERSIGHT

JUNE 23, 2010

AMERICAN
TRUCKING
ASSOCIATIONS

Driving Trucking's Success

American Trucking Associations
950 N. Glebe Road, Suite 210
Arlington, VA 22203-4181

Introduction

Chairman DeFazio, Representative Duncan, members of the Subcommittee, my name is Keith Klein and I am the Executive Vice-President & Chief Operating Officer of Transport Corporation of America (Transport America), located in Eagan, Minnesota. Transport America is a truckload motor carrier comprised of more than 1,100 trucks and drivers operating in the 48 contiguous states. Safety is our cornerstone value at Transport America. In our view, nothing we do is worth endangering the motoring public or ourselves.

Today I am testifying on behalf of the American Trucking Associations (ATA). ATA is the national trade association for the trucking industry and is a federation of affiliated State trucking associations, conferences, and organizations that together have more than 37,000 motor carrier members representing every type and class of motor carrier in the country. Thank you for the opportunity to testify.

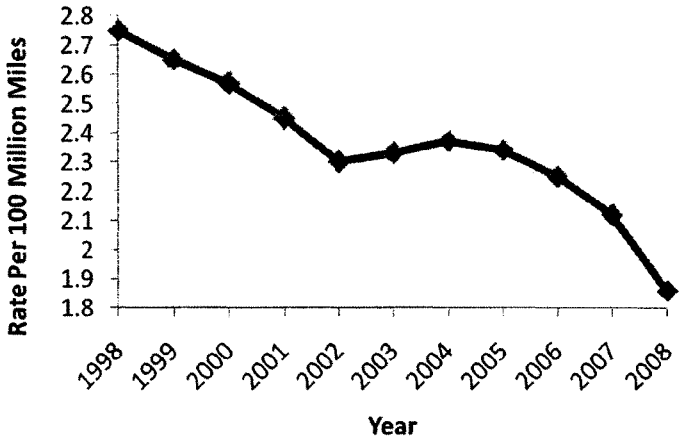
The Industry's Safety Record

Mr. Chairman, as you well know, ATA is a strong advocate of highway safety initiatives. Our 18 point safety agenda calls for a variety of programs and initiatives to make highways safer for all motorists. For instance, ATA supports increased use of red light cameras and automated speed enforcement, graduated licensing in all states for teen drivers and more stringent laws to reduce drinking and driving. We have a history of supporting such initiatives that have since become reality such as the Motor Carrier Safety Assistance Program, the Commercial Drivers License (CDL), mandatory drug and alcohol testing, and FMCSA's new Pre-Employment Screening Program.

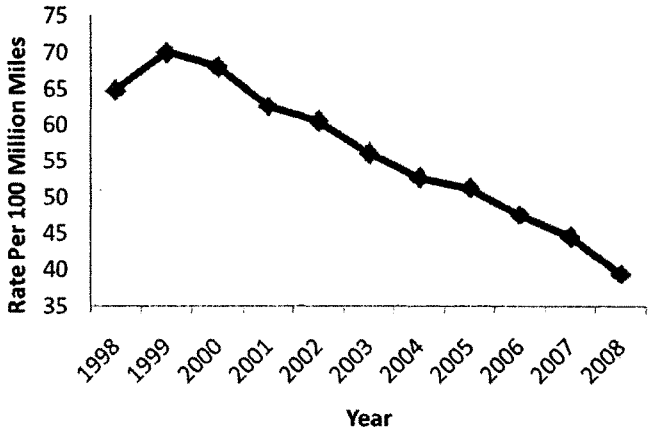
The trucking industry's commitment to safety is also evident in its impressive safety record. In short, the trucking industry is the safest it has ever been and continues to get even safer. For example:

- The truck-involved fatality rate has decreased 66 percent since 1975, the first year the USDOT began keeping records.
- Over the past decade alone, the truck-involved fatality rate has dropped by 32 percent.
- In actual numbers, there were 1,166 fewer fatalities in 2008 than in 1998—remarkable progress in light of the trucking industry operating 1.3 million additional trucks and 31,000,000,000 more miles in 2008 (compared to 1998).
- The truck-involved injury rate has decreased 58 percent since 1988, the first year USDOT began keeping records.
- Over the past decade alone, the truck-involved injury rate dropped by 39 percent.
- In 2008, the truck-involved fatality and injury rates fell to their lowest levels since USDOT began keeping statistics.
- **More importantly, in 2008 the number of injuries and fatalities in truck-involved crashes reached their lowest levels since USDOT began keeping records.**

LARGE TRUCK FATALITY RATE
PER 100 MILLION VEHICLE MILES TRAVELED
1998-2008



LARGE TRUCK INJURY RATE
PER 100 MILLION VEHICLE MILES TRAVELED
1998-2008



ATA's Support For CSA 2010

Mr. Chairman, today I will speak about the trucking industry's support for CSA 2010 and its goal of targeting unsafe operators so as to change their behavior. I will also explain some of ATA's substantive concerns with the current design of CSA 2010 and how these flaws will profoundly impact the industry and highway safety, if not corrected. Finally, I will offer some suggestions for ways that CSA 2010 can be improved so that FMCSA and ATA can more effectively achieve our mutual objective of removing unsafe operators from the highway and making our roads safer for everyone.

ATA supports the CSA 2010 initiative since:

1) It is primarily based on safety performance rather than compliance with paperwork requirements;
2) It focuses limited enforcement resources on specific areas of deficiency (rather than comprehensive on-site audits); and
3) It will eventually provide real-time, updated, safety performance measurements.

All three of these attributes address long-standing problems with FMCSA's current monitoring and enforcement program.

Under the current process, carrier safety fitness is based solely on the results of on-site compliance reviews, which focus on carrier records. In contrast, CSA 2010 will be based largely on performance measures such as roadside inspection violations and crashes.

Also, under the current process, FMCSA addresses carrier deficiencies by conducting comprehensive on-site audits of all areas of a carrier's operation, not just those that are thought or known to be deficient. In contrast, CSA 2010 calls for targeted interventions focused on known deficiencies.

In addition, the hope is that CSA 2010 will eventually be able to provide real-time, updated safety performance measurements regularly (e.g., monthly). Under the current process, a carrier's safety rating is assigned indefinitely following an on-site compliance review and is not updated until FMCSA conducts a subsequent review, which can literally be decades later.

Finally, I would like to point out that FMCSA deserves to be applauded for its development and implementation of CSA 2010 to date. Clearly, the architects of the program put a great deal of thought and research into it. For example, a core component of CSA 2010, weighting violations based on their relationship to crashes, represents a good first step in the right direction. Also, the agency has gone to great lengths to test the program in several states, developed and implemented an extensive outreach/education program, and has demonstrated a willingness to accept stakeholder input.

ATA's Primary Concerns

However, ATA has a number of serious concerns relating to how CSA 2010 will work that, if not addressed, will have a dramatic impact on motor carriers and on highway safety. We are particularly concerned with the three issues outlined below since we believe they will have the greatest impact on motor carriers and highway safety in general. Our intent in raising these concerns is two fold: the first is a matter of safety, to ensure that unsafe carriers are selected for interventions, and the second is a matter of equity, to ensure that relatively safe carriers are not selected for interventions.

Crash Accountability
Our first primary concern is that in measuring safety performance, CSA 2010 considers all DOT-defined crashes - including those for which the motor carrier could not reasonably be held accountable. This is problematic since many truck accidents are two vehicle crashes that are caused by the driver of the other (non-commercial) vehicle involved. Accordingly, a carrier involved in a number of crashes for which it was not responsible is seen as just as unsafe as a like-sized carrier who was involved in the same number of crashes – but caused them.

FMCSA has signaled its intention to revise the methodology to consider only those crashes for which the motor carrier could reasonably be held accountable. In order to do so, FMCSA will need to review thousands of crash reports and make determinations based on each. We are grateful for FMCSA's willingness to take on this large - albeit necessary - task. However, it is clear that this change will not be made before the planned initial implementation date, just a few months from now. Also, since CSA 2010 is based on 24 months of historical data, we are doubtful that FMCSA will be able to review the entire two-year backlog of crash records and correct the system's *Crash Indicator* scores accordingly.

It is important to acknowledge that given the inherent problems with underlying crash data, FMCSA has pledged to redact each motor carrier's *Crash Indicator* scores from public view. However, unless the data are corrected before the initial implementation date, FMCSA will continue to use this flawed data to prioritize and target carriers for enforcement interventions. This should concern everyone interested in truck safety, government, and industry.

Exposure Measurement – Power Unit Count vs. Vehicle Miles Traveled
Our second primary concern is with respect to how CSA 2010 measures carrier exposure for the purposes of evaluating each carrier's relative performance in several categories. Specifically, under the current methodology FMCSA uses a count of each carrier's power units (or trucks) as the measure of risk exposure rather than the total number of miles these vehicles travel. As a result, carriers who employ greater asset utilization will have more true exposure to crashes and other safety related events, but will be compared to carriers who have less exposure – though the same number of trucks. This problem is especially acute for motor carriers that utilize team and longer-haul operations since their vehicles travel more miles and, as a result, have more exposure to adverse safety events.

In response to ATA's concerns, FMCSA has acknowledged that the sole use of power units as a measure of exposure can create an inequity for some motor carriers. Accordingly, the agency seems willing to consider mileage data, at least in part, as an exposure measure. However, FMCSA has not yet published a revised formula. As the CSA implementation date draws nearer, ATA grows increasingly concerned that whatever formula the agency chooses to use will not have been tested for its effectiveness, or its equity.

Warnings for Moving Violations
Our third major concern is that CSA 2010 counts all moving violations reported on roadside inspection reports, regardless of whether or not a citation was ultimately issued to the driver for the violation. This presents several problems for the industry.

First, since these are merely warnings, there is no due process procedure for carriers or drivers to challenge these violations. Regardless of their validity, they stay on the carrier's record and are used to measure the carrier's relative safety performance.

Second, in some states law enforcement officers must have probable cause in order to stop a truck and conduct a vehicle inspection. In these states, it is common practice for enforcement officials to stop trucks for trifling speeding offenses (e.g., 3 mph over the limit), and issue warnings as justification to conduct inspections. As a result, carriers operating in these states are disproportionately impacted and likely have worse driver violation scores than carriers who operate elsewhere (see chart attached). For example, based on data we obtained from one large, national motor carrier, trucks operating in Indiana – a probable cause state – are four times more likely to receive a warning for speeding than carriers operating in non-probable cause states.

Additional Concerns

While these three issues reflect our primary concerns with the CSA 2010 methodology, I must point out that we have a number of other concerns as well. Specifically, these issues are:

- How the severity weights for violations are assigned;
- Measuring carriers based on violations committed by drivers who have since been terminated;
- Measuring carriers based on citations that have been dismissed in a court of law;
- Inequitable measurement of open deck/flatbed carriers;
- Overly broad peer groups; and
- Inconsistent State enforcement practices.

How Severity Weights For Violations Are Assigned

One fundamental component of CSA 2010 is the assignment of severity weights to various violations. In short, the system assesses a weight of between 1 and 10 to each possible violation such as inoperable lights, improper load securement, etc. These weights were assigned – in theory – based on each violation's relative relationship to crashes.

On the surface this method seems logical and appropriate. However, in the absence of good data tying particular violations to crashes, FMCSA assigned weights by grouping all violations of a particular type into broad categories without regard for the variance in crash relationship between violations within the category. As a result, many of the assigned severity weights are nonsensical and inappropriate.

For instance, because load shift has a strong relationship to crash risk, all load securement violations bear the maximum weight –10 – in the system. While it may make sense to assign a weight of 10 for failing to "properly secure a load," - especially if that load is exceptionally large and hazardous - it does not make sense to assign the maximum weight to some other violations in that group, such as "failing to red flag a load" that extends beyond the bed of the vehicle.

In contrast, some violations in other groups bear relatively little weight, though intuitively they should bear more. For instance, "Improper Transport of Explosives" bears a weight of 2, and "Inadequate Brakes" bears a weight of 4.

An additional concern in this area is the nature of the relationship between certain violations and crashes. While it is logical to evaluate the relationship between violations and crashes, it is important to consider whether or not the relationship is causal or correlational. For instance, load shift may be a consequence of a crash, not the cause of it, especially when the truck driver is forced to take an evasive maneuver because of a critical error made by the driver of another vehicle.

Another example of the illogical assignment of severity weights is overweight violations. Currently, all such violations bear the same weight in the system, without regard to the severity of the offense (be it 100 pounds or 10,000 lbs over the limit). However, one would think that more severe overweight violations would have a stronger tie to crash risk.

The assignment of overweight violations is indicative of another fundamental flaw with the methodology – the assumption that all violations have a relationship to crashes. For example, some overweight laws exist to prevent pavement damage - not because carrying heavier weights on these roads makes a crash more likely. Similarly, some purely paperwork violations, such as a driver's failure to write his employer's address on his daily log, count against the motor carrier in the system.

Continued Use of Violations Committed By Drivers Who Have Been Terminated
An additional area of concern is CSA 2010's continued use of violations committed by drivers who have since been terminated. In effect, FMCSA still counts these violations against the carrier, even if the carrier took steps to remove the driver from service. FMCSA's perspective is that it is appropriate to do so since the violations are a reflection on the carrier's screening, training, and management controls. However, motor carriers are eager to point out that the driver's termination is evidence that the motor carrier has an effective, functioning, safety management control in place, specifically: a progressive disciplinary program.

In short, failing to give the motor carrier at least partial credit for terminating problem drivers does not give motor carriers the additional incentive to do what is in the shared interest of industry and government: removing unsafe drivers from the road. FMCSA would be better served by evaluating each motor carrier's current safety culture in measuring future crash risk. In doing so, the agency would be adopting a strategy employed by leading safety professionals, insurers and others who are taking a progressive approach to safety management.

ATA agrees that it is inappropriate to suggest that violations committed by these drivers be completely erased from the carrier's record upon termination. However, they should be weighted less. Alternatively, carriers should be give positive credits for terminating problem drivers.

Continued Use of Dismissed Citations
ATA has a similar concern with the use of dismissed citations. If an alleged violation cited against a driver or motor carrier is ultimately dismissed by a court of law, CSA 2010 continues to count the violation against the motor carrier. Here's an example:

A driver working for a Minnesota-based carrier was cited in Texas for moving a permitted load half an hour before official sunrise, which is a violation. However, both the truck driver and the pilot car escort driver documented the time of the movement and that the time was legal. Subsequently, the citation/ticket was dismissed in court. The motor carrier then challenged the inspection record through FMCSA's data correction system, *Data Qs*. However, the issuing agency refused to remove the violation from the carrier's record and it continues to count toward the carrier's CSA 2010 score. This practice is commonplace in other states; agencies justify retaining such violations in the system as "a record of the investigating officer's observations."

This is a glaring example of some of the illogical and fundamental inequities in the CSA 2010 methodology. When a driver and/or motor carrier is vindicated in a court of law, the alleged violation should not count against the motor carrier in any way.

Inequitable Treatment of Flatbed Carriers
An additional concern is the disproportionate impact of CSA 2010 on flatbed and other open deck carriers. These carriers have a far higher risk than other carriers of being cited for load securement violations since the violations are more evident (visible) and because they typically have far more load securement requirements. This problem is especially acute given the fact that, as mentioned earlier, all load securement violations bear the maximum severity weight in the scoring system.

Because open deck carriers are placed in peer groups with van bodied carriers, their relative performance is often seen as worse - simply because they comply with tougher requirements and because their violations are more evident. There is a very simple way to address this clear inequity; in order to measure their relative safety performance these carriers should be placed into a peer group of like-type carriers.

Peer Groups
On that note, ATA strongly suggests that FMCSA consider modifying peer groups so that each carrier's relative safety performance is compared against others carriers with similar exposure. This approach would correct an inequity in the system – that carriers with great disparity in exposure to inspections and violations are compared against each other. For instance, long haul carriers are frequently inspected since inspection stations are common in their operating environment, though local pick up and delivery carriers are not. As a result, carriers who are rarely inspected may appear to be safer, since they have less opportunity to be found in violation.

Inconsistent State Enforcement
A pivotal problem with CSA 2010 is that it is based on data provided by state and local enforcement agencies with widely varying enforcement and reporting practices. For instance, one of our motor carriers calculated that two states were responsible for reporting 47% of its violations in the CSA 2010 data system, but only 19% of the carrier's miles were operated in those same states. Another motor carrier has provided us with data showing that officers in Indiana are four times more likely than neighboring states to report a speeding violation.

The same inconsistency holds true for the reporting of accidents. FMCSA struggles with obtaining timely, complete, crash reports from states and local jurisdictions. While the quality and timeliness of these reports have improved, there are still large gaps in accident reporting. For instance, according to the University of Michigan Transportation Research Institute, Kansas reports more than 80% of its qualifying crashes in the system, but fewer than 40% of qualifying crashes in Mississippi get reported.[1]

The problems with inconsistent reporting are especially profound when you consider that CSA 2010 is a system that measures carriers based on relative safety performance. It is undoubtedly illogical and inappropriate to consider one carrier safer than another, simply because it predominately operates in the state of Mississippi.

We recognize that there is no easy or near term solution to this problem. We also applaud the efforts that FMCSA and CVSA are undertaking to improve the consistency, uniformity and

[1] University of Michigan Transportation Research Institute, Evaluation of 2008 Mississippi Crash Data Reported to the MCMIS Crash File. Blower, D., Matteson, A. (2010). http://www.umtri.umich.edu/content.php?id=2468&i=1&t=3S3Y9pULqBKqJyEDI

reliability of state reported data. But is it important that FMCSA acknowledge and consider ways to address the wide variances in state enforcement if the agency intends to publicly label carriers as deficient based on comparative safety performance, especially when some carriers are measured in a harsher environment.

The Impact of CSA 2010's Flaws

ATA respects that no system will be perfect. We must stress, however, the pronounced impact that the aforementioned systemic flaws will have on motor carriers and on highway safety. From an enforcement perspective, these problems will cause FMCSA to wrongly target some carriers for intervention. While that presents an inequity for relatively safe carriers, it also presents a more important risk to highway safety - that some less safe carriers will escape scrutiny.

It is important to point out, though, that this impact is not limited to FMCSA interventions. Shippers, brokers, insurers and juries in highway accident cases will all use the system to make erroneous judgments about motor carriers.

Brokers, for instance, are especially sensitive to CSA 2010 scores. This sensitivity was heightened when an Illinois jury recently awarded a $23.7 million judgment against freight broker C.H. Robinson Worldwide and other defendants for a fatal crash that occurred in April 2004. The plaintiffs successfully argued that C.H. Robinson should be liable for damages because they tendered a load to an unsafe carrier. Similar claims have been made against shippers for alleged negligent retention of unsafe motor carriers.

Brokers and shippers, to protect their own liability interests, could be very cautious to engage the services of a motor carrier labeled as "deficient" in some of the six publicly viewable categories measured in CSA 2010. This could be the case, even if the methodology is flawed or based on unsound data, because brokers will be fearful of their inability to educate juries on CSA 2010's shortcomings.

Highway accident litigation carries enormous financial exposure for motor carriers. An erroneous description of a motor carrier as having systemic safety problems can literally cost motor carriers millions of dollars in unfounded damage awards.

For years, FMCSA has made such safety data publicly available. The agency's reasoning is that doing so allows "...FMCSA to leverage the support of shippers, insurers and other interested stakeholders to ensure that motor carriers remain accountable for sustaining safe operations over time."[2] However, it compounds the certain impact of the system to employ the leverage of shippers, insurers and others based on a methodology that the agency has admitted needs fundamental improvement. Moreover, it is inconsistent with FMCSA's position that the primary purpose of CSA 2010 is to identify motor carriers for workload prioritization purposes.[3]

In addition, FMCSA has not yet initiated a rulemaking that will propose to assign safety fitness determinations (i.e., safety ratings) based on CSA 2010 scores. We anticipate that the rulemaking, slated to be published early next year, will set forth a standard for determining what constitutes an unfit, conditional, or marginal motor carrier. Absent this standard, third parties

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[2] Letter from FMCSA Administrator Ferro to John Hausladen, President, Minnesota Trucking Association, June 8, 2010.
[3] Ibid.

will make their own arbitrary judgments about motor carriers based on an incomplete understanding of the system.

FMCSA has, in the recent past, defended some of the flaws in the system by pointing to trend data showing that, more often than not, certain violations have a relationship to crashes. In short, the agency claims that there is predictive value in looking at certain violations, without regard to a causal relationship between the violations and crashes.

ATA agrees that such an approach is appropriate for the purpose of efficiently prioritizing agency enforcement resources. During an intervention, an investigator will be able to determine if the predictors were accurate and if the carrier really is safety deficient. But conversely, ATA believes it is inappropriate for FMCSA to publicly label a specific carrier as unsafe without such verification, based purely on trend data.

Conclusion

As stated at the outset, ATA fully supports the objectives of CSA 2010: targeting unsafe operators, changing their behavior, and removing the most egregious actors from the road. Moreover, a system that assesses each carrier's relative safety posture based on performance data is conceptually good. However, in practice, a system that is based on inconsistent data and a flawed scoring methodology will not achieve its objectives. Instead, it will create inequities for some safe carriers, and inappropriately allow some unsafe carriers to avoid scrutiny and consequences. In order to correct these problems, FMCSA must take two important steps.

First, the University of Michigan Transportation Research Institute (UMTRI) is currently in the process of conducting an evaluation study of CSA 2010 under contract to FMCSA. However, the report is not due to be submitted to FMCSA until December 2010, after the first stage of CSA 2010 is due to be implemented. Logically, CSA 2010 should be implemented after FMCSA has an opportunity to review this study's findings and recommendations, and the agency makes changes and improvements it believes are warranted.

Second, FMCSA should make the corrections based on ATA's three primary concerns before the initial implementation of CSA 2010 and before making the information publicly available. Using a system to target carriers for interventions, or worse - labeling carriers as safety deficient based on a methodology that the agency itself has acknowledged must be improved – is not good public policy.

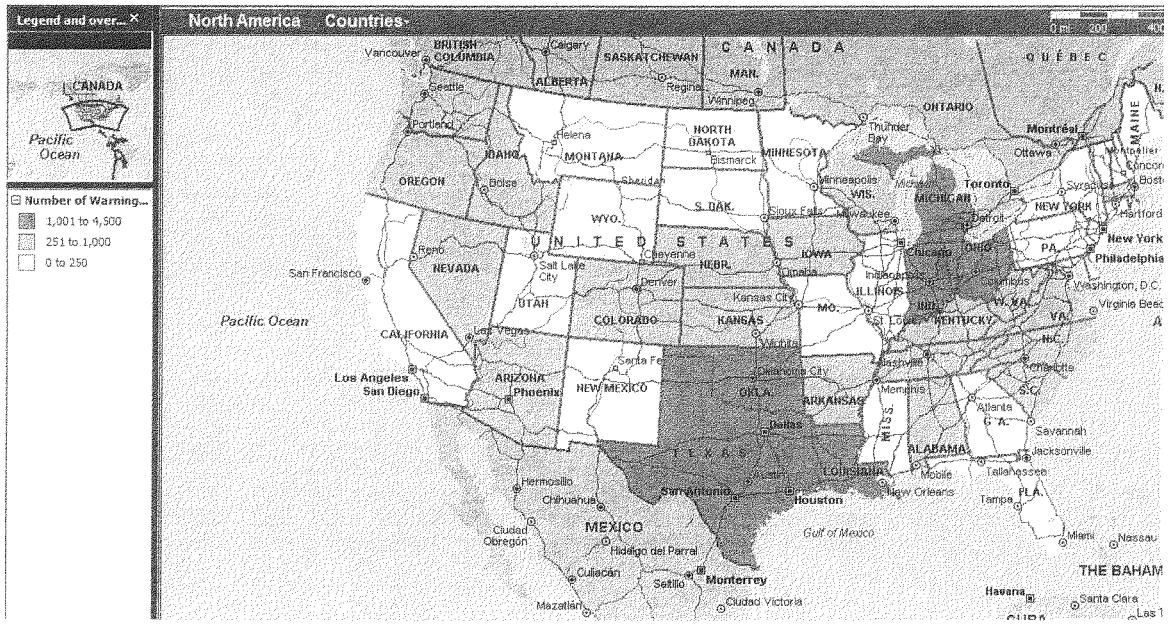
Failing to take these two important steps would have a substantial impact on motor carriers and highway safety. In effect, FMCSA would use the flawed methodology and data to target some of the wrong carriers. Further, if the data and scores are made public, third parties would use the system to make inappropriate business decisions.

In short, any system based on evaluating motor carrier safety comparatively must be grounded in sound data, sound math, and consistent measurements to be both equitable and effective.

Thank you for the opportunity to testify on this important issue.

NUMBER OF WARNINGS ISSUED FOR MOVING VIOLATIONS BY STATE

Provided By Vigillo. LLC May 2010



Responses From Mr. Keith Klein
Executive Vice -President & Chief Operating Officer
Transport Corporation of America

Highways and Transit Subcommittee Hearing
June 23, 2010

Questions from Chairman DeFazio

1. ***During the hearing, one of the points of discussion was the ability to challenge data prior to it being input into SMS. Since under CSA 2010 every violation stands to affect a carrier's record, do you anticipate the trucking industry will challenge more violations through FMCSA's DataQs process?***

Yes. The new, dynamic model underpinning the CSA 2010 system will employ data not only to target carriers for future agency attention, as the current SafeStat system does, but also to establish each carrier's safety fitness determination (i.e., safety rating). Given the heightened consequences of erroneous data, carriers likely will be far more likely to validate their safety data and challenge erroneous records.

Also, because CSA 2010 will count every violation, not just out-of-service violations as the current SafeStat system does, carriers will certainly challenge far more violations through the DataQs process. OOS violations only account for less than 20% of all violations, so it is reasonable to assume that DataQs challenges could rise significantly when all violations are counted.[1] Since FMCSA manages the DataQs process, we suspect the agency has meaningful data from the Op-Model test states that will show the true increases in DataQs requests. If not, this is an important indicator that FMCSA should gather and review.

2. ***In conjunction with the changes associated with CSA 2010, is your company offering incentives for drivers with a low number of violations? Conversely, are you instituting sanctions for drivers with a high number of violations? Are other ATA Member companies implementing incentives or sanctions?***

Yes. Consistent with industry practice, at Transport Corporation of America we offer a number of incentives for safe driving and the following sanctions for unsafe behavior:

Currently, we celebrate drivers who achieve certain milestones of safe driving with special apparel that identifies them as our premier safe drivers. In addition, we reward drivers who receive "clean" roadside inspections. For drivers that do not demonstrate strong safety practices, we implement employee improvement plans. If we do not see behaviors changing, this progressive plan can ultimately lead to driver termination.

Now that we have a year's worth of history using CSA 2010, we are evaluating additional incentives for drivers. These include safety bonuses tied to the seven BASICS of CSA 2010, pay rate progression based upon safety performance, and additional awards for drivers achieving certain CSA 2010 metric milestones.

For decades it has been standard practice in the trucking industry to offer drivers bonuses for safe driving and impose progressive discipline for committing unsafe actions. Not only is promoting safe driving the right thing to do, it makes good business sense. Safe driving improves productivity by keeping trucks on the road and reduces costs through lower insurance rates.

CSA 2010 raises the need for robust incentive and progressive disciplinary programs. Under this new system, carriers will be more keenly evaluated on the granularity of their ability to control driver behavior. Given the nature of the industry (e.g., drivers operating without direct, in-person supervision), robust safety incentive and progressive disciplinary programs - along with proper training and driver screening/selection - are important components of a functioning, effective safety management program.

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[1] Based on FY2009 data. See http://www.fmcsa.dot.gov/facts-research/art-safety-progress-report.htm for FMCSA inspection, violation, and OOS order statistics.

3. ***Has your company, or other carriers in pilot test States, observed any change in the behavior or expectations of shippers and other customers in response to CSA 2010? Is the pressure on carriers to accept tight delivery timelines and deal with delays still common?***

No, we have not seen a change in shippers' expectations; it is still common for carriers to be pressured to accept tight delivery timelines and deal with delays. Because FMCSA has no authority over shippers, these practices will not change under CSA 2010.

FMCSA's safety regulations, and the penalties for violating them, incent carriers to insist on proper safety practices. Regardless of which safety measurement system being utilized, violating these regulations can carry significant monetary penalties as well as other operating costs, such as being placed Out of Service. However, carriers facing this dilemma have little leverage; shippers (their customers) can simply opt to do business with a carrier that is willing to violate the law and accept the risk.

4. ***Given that all violations will be linked to an individual driver, as well as the employing motor carrier, drivers may take greater care to examine equipment in their pre-trip inspections. Do you anticipate that CSA 2010 will have any impact on pre-trip inspections? Does your company allow sufficient time for a driver to conduct such an inspection prior to hauling a load?***

Yes, since many vehicle violations will impact the driver's own record in the DSMS, drivers will likely exercise more care in conducting pre-trip inspections. Our company, as do other responsible carriers, allows drivers ample time to perform pre-trip inspections. In fact, as a routine part of our safety management oversight, we verify that each driver logs at least 15 minutes conducting a pre-trip inspection at the beginning of each shift on his/her record of duty status.

Question from Representative Sires

1. ***Can you provide a list of probable cause States?***

Please find the attached list of probable cause States developed through the cooperative efforts of ATA, FMCSA, and CVSA.

Questions from Ranking Member Duncan

1. ***Does CSA 2010 make a distinction in crash accountability between companies who have crashes for which they cannot be held responsible and crashes for which they are held responsible? If FMCSA is going to shield the Crash Indicator BASIC scores from public view, why doesn't this address your concerns?***

Presently, FMCSA does not differentiate between crashes that a carrier was accountable for and those that it was not. This is problematic because, according to a 2006 Virginia Tech analysis of two studies conducted for the Department of Transportation, 78 percent of car/truck crashes are caused by passenger car drivers.

As FMCSA has acknowledged, shielding the *Crash* BASIC scores from public view is important because that data suffers from timeliness and accuracy reporting issues. According to analysis conducted by the University of Michigan Transportation Research Institute, some states report fewer than 40% of their truck crashes to FMCSA's database.

While redacting *Crash* BASIC scores data from public view is important, it does not alleviate all of my concerns. FMCSA still intends to make all crash data (details of each carrier's crashes) available for public review. Also, this incomplete data will continue to be used by FMCSA as a tool to target motor carriers for intervention. Due to the aforementioned problems with the crash data (culpability, accuracy,

completeness), the system could target the wrong carriers for review. As a result, safe carriers operating in States with strong reporting programs will be subject to interventions while comparatively unsafe carriers operating in States where reporting is lax will avoid scrutiny.

I am encouraged by the Administrator's assurance that the Agency will eventually employ a team to make accountability determinations on crash reports before entering them into the system. However, I am concerned that this change will not be implemented before CSA 2010 becomes publicly available in November.

2. ***In your testimony you have expressed concern with the consistency, uniformity, and reliability of State reported data. Have FMCSA and CVSA done enough to improve data quality prior to implementation of CSA 2010?***

FMCSA has worked diligently to promote the uniformity, consistency and reliability of State reported data. FMCSA monitors the data quality reporting of the various States on its website and has also contracted the University of Michigan's Transportation Research Institute (UMTRI) to examine the data reporting quality of the various states.[2] As the FMCSA and UMTRI reports have shown, the quality, accuracy and timeliness of this data has improved over the last decade.

However, not enough has been done. There are still large variations in enforcement and reporting practices among the various states and other reporting jurisdictions. Because CSA 2010 seeks to measure *comparative* performance, it is important that carriers be measured in similar environments. Given the disparity between States' enforcement programs and reporting practices, it is only natural that carriers are concerned about this system's fairness.

3. ***What percentage of your company's moving violations in the* Unsafe Driving *BASIC are a result of warnings? In your experience do some states issue warnings more than others?***

We recently conducted an analysis of the violations reflected in our *Unsafe Driving* BASIC score and found that 75% of the moving violations were the result of warnings rather than citations. These moving violation warnings accounted for over 40% of our total Unsafe Driving BASIC score. In our experience, some states disproportionately issue warnings for moving violations. Typically, these are states that require officers to have probable cause to conduct truck inspections. It is our sense that officers stop our vehicles for minor moving violations as justification to conduct subsequent truck inspections, and issue warnings for the minor infractions that were the basis for the stops.

Attachments:
List of Probable Cause States
Vigillo Report on Warnings Issued, by State

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[2] FMCSA's Data Quality reporting can be viewed online at http://ai.fmcsa.dot.gov/DataQuality/dataquality.asp. The University of Michigan's Transportation Research Institute's online library houses the various State reporting studies. They can be found online in its searchable library at http://deepblue.lib.umich.edu/handle/2027.42/13914.

Attachment #1

STATES THAT REQUIRE PROBABLE CAUSE (PC) TO CONDUCT TRUCK INSPECTIONS

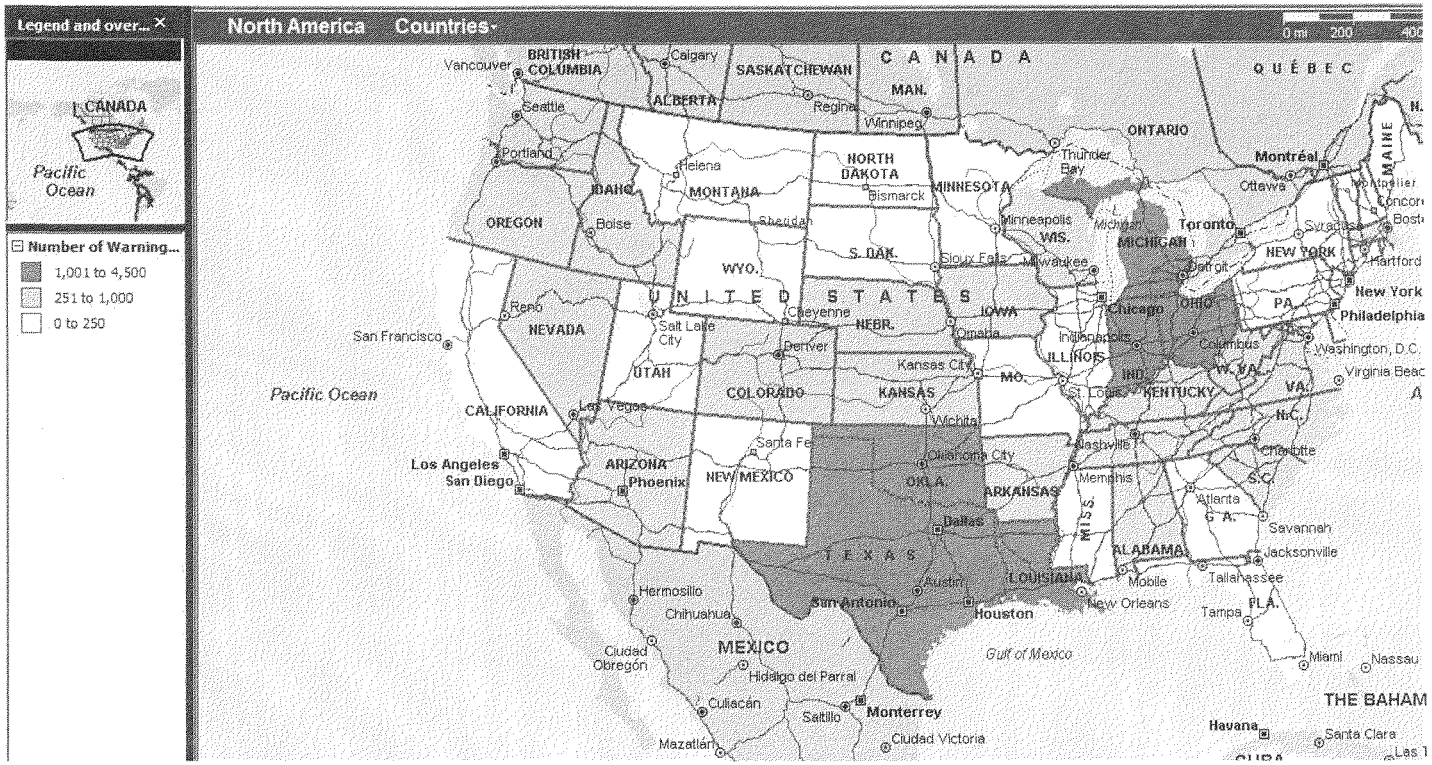
July 2010

Must a law enforcement officer have probable cause before stopping a commercial motor vehicle to conduct a roadside inspection?

STATE	FINDINGS	ADDITIONAL INFORMATION
Alabama	No	
Alaska	No	
Arizona	Other	PC is not required by statute, but AZ DPS policy requires PC to make a stop. Other agencies in the state select randomly or use ISS score criteria.
Arkansas	No	
California	Other	The California Highway Patrol (CHP) can set up a truck inspection lane at any time and in such instances, does not need PC to stop CMVs for inspection. In other circumstances (e.g. observing a vehicle traveling on a freeway) PC is required.
Colorado	No	
Connecticut	No	
Delaware	*Yes*	
Florida	Other	Florida DOT Motor Carrier Compliance Officers are not required to have PC. With few exceptions, the Florida Highway Patrol (a non-MCSAP agency) must have PC.
Georgia	No	
Hawaii	No	
Idaho	Other	CVSA certified officers are not required to have probable cause but all other enforcement officers must have PC.
Illinois	No	
Indiana	No	
Iowa	No	
Kansas	No	
Kentucky	No	
Louisiana	No	
Maine	Other	CVSA Level 1 certified sworn troopers attached to Troop K may stop without PC. All other enforcement officers must have PC.
Maryland	No	
Massachusetts	No	
Michigan	*Yes*	
Minnesota	Other	Minnesota statutes 169.771 allows spot checks to be conducted randomly, but not more than once in a 90-day period on any given vehicle unless PC is present.
Mississippi	No	
Missouri	Other	Missouri statute 304.230 states that only authorized CMV enforcement officers may conduct random inspections. All others must have PC.
Montana	No	
Nebraska	No	
Nevada	No	
New Hampshire	No	
New Jersey	No	
New Mexico	*Yes*	
New York	*Yes*	
North Carolina	No	
North Dakota	Other	PC is not required by state law to stop and inspect a CMV at an inspection site but North Dakota Highway Patrol policy requires PC in other circumstances.
Ohio	No	
Oklahoma	No	

STATE	FINDINGS	ADDITIONAL INFORMATION
Oregon	*Yes*	
Pennsylvania	Other	MCSAP certified Officers within Pennsylvania can stop and inspect a CMV without PC as long as they are engaged in a systematic inspection effort. All other Officers (non-MCSAP) must have PC.
Rhode Island	No	
South Carolina	No	
South Dakota	No	
Tennessee	No	
Texas	No	
Utah	No	
Vermont	No	
Virginia	No	
Washington	No	
West Virginia	No	
Wisconsin	No	
Wyoming	No	

Attachment #2


Legend and over...
CANADA
Pacific Ocean
Number of Warning...
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251 to 1,000
0 to 250
North America
Countries
0 mi
200
CANADA
QUÉBEC
BRITISH COLUMBIA
ALBERTA
SASKATCHEWAN
MAN.
ONTARIO
MAINE
UNITED STATES
OREGON
IDAHO
MONTANA
NORTH DAKOTA
MINNESOTA
WIS.
MICHIGAN
NEW YORK
WYO.
S. DAK.
NEVADA
UTAH
COLORADO
NEBR.
IOWA
ILLINOIS
IND.
OHIO
PA.
CALIFORNIA
KANSAS
MO.
KENTUCKY
W. VA.
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ARIZONA
NEW MEXICO
OKLA.
ARKANSAS
TENN.
MISS.
ALABAMA
GA.
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TEXAS
LOUISIANA
MEXICO
THE BAHAMAS
Vancouver
Calgary
Seattle
Portland
Helena
Bismarck
Winnipeg
Regina
Thunder Bay
Montréal
Ottawa
Toronto
Minneapolis
Milwaukee
Chicago
Detroit
Boise
Sheridan
Sioux Falls
Reno
Salt Lake City
Cheyenne
Omaha
Denver
Kansas City
Indianapolis
Columbus
Philadelphia
New York
Hartford
Washington, D.C.
Virginia Beach
San Francisco
Las Vegas
Wichita
St. Louis
Nashville
Charlotte
Los Angeles
San Diego
Phoenix
Santa Fe
Oklahoma City
Memphis
Atlanta
Savannah
Jacksonville
Dallas
Austin
Mobile
Tallahassee
Hermosillo
Chihuahua
San Antonio
Houston
New Orleans
Tampa
Miami
Nassau
Ciudad Obregón
Hidalgo del Parral
Culiacán
Saltillo
Monterrey
Ciudad Victoria
Mazatlán
Havana
Santa Clara
Pacific Ocean
Gulf of Mexico

Testimony of

TODD SPENCER
EXECUTIVE VICE PRESIDENT
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION

Before the

UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

Regarding

"COMPREHENSIVE SAFETY ANALYSIS 2010: UNDERSTANDING FMCSA's NEW SYSTEM OF MOTOR CARRIER OVERSIGHT"

JUNE 23, 2010

****

Submitted by

Owner-Operator Independent Drivers Association
1 NW OOIDA Drive
Grain Valley, Missouri 64029
Phone: (816) 229-5791
Fax: (816) 427-4468

Good morning Chairman DeFazio, Ranking Member Duncan and distinguished members of the Subcommittee. Thank you for inviting me to testify this morning on the Federal Motor Carrier Safety Administration's Comprehensive Safety Analysis 2010 initiative. To say the least, that program is of great interest to the small business trucking professionals and professional truck drivers that comprise the membership of the organization I am here to represent.

My name is Todd Spencer. I have been involved with the trucking industry for more than 30 years, first as a truck driver and an owner-operator, and then as a representative for small-business trucking professionals. I am currently the Executive Vice President of the Owner-Operator Independent Drivers Association (OOIDA).

OOIDA is a not-for-profit corporation established in 1973, with its principal place of business in Grain Valley, Missouri. OOIDA is the national trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small-business truckers. The more than 156,000 members of OOIDA are small-business men and women in all 50 states who collectively own and operate more than 200,000 individual heavy-duty trucks. The Association actively promotes the views of small business truckers through its interaction with provincial, state and federal regulatory agencies, legislatures, the courts, other trade associations and private entities to advance an equitable business environment and safe working conditions for commercial drivers.

The majority of trucking in this country is small business, as 96% of all carriers have less than 20 trucks in their fleet and 86% of carriers have fleets of just 6 or fewer trucks. In fact, one-truck motor carriers represent nearly half of the total number of motor carriers operating in the United States. These small business motor carriers have an intensely personal and vested interest in highway safety as any safety-related incident may not only affect their personal health, but also dramatically impact their livelihood. As such, OOIDA sincerely desires to see further improvements in highway safety and significant progress towards the highway safety goals of the Subcommittee and the U.S. Department of Transportation.

OOIDA believes that the Comprehensive Safety Analysis 2010 (CSA 2010) initiative has the potential to be a major step in the right direction for FMCSA's safety and enforcement efforts. As the program is currently being proposed, we believe it will help the agency to identify motor carriers whose operations are not in line with appropriate safety practices and to apply necessary corrective actions.

For too long, FMCSA's enforcement priorities focused primarily on targeting truck drivers at roadside inspections. This has been an upside down effort of drivers being held responsible for just about anything and everything related to a trucking operation – a particularly absurd notion considering that drivers are not required to be trained on the vast majority of operator and equipment regulations for which they are being held responsible. While truck drivers certainly should be held accountable for their actions, roadside enforcements alone will not raise the level of safety in the trucking industry. Under CSA 2010, the agency is shifting its main focus from the driver to other stakeholders in the

industry and recognizing that drivers often are not the principal decision makers in the shipment of goods. The idea of shared responsibility for safety represents a more accurate reflection of how the industry should function. While motor carriers are subject to tremendous pressures to meet unrealistic demands from the shipping community, they are in a far better position to control factors that may result in regulatory noncompliance than are truck operators. By expanding the focus of enforcement activities to hold motor carriers more accountable, positive changes in the industry are certain to occur. CSA 2010 has the potential to help bring about these changes.

Unfortunately, numerous myths have been circulating within the trucking community concerning CSA 2010 and the supposed dire effect it will have on drivers, motor carriers and the industry as whole. For example, some in this room may have heard the popular myth that more than 200,000 drivers will lose their jobs as a result of the program's implementation. OOIDA does not share this Chicken Little "sky is falling" concern. However, we do believe as with any new initiative the devil will be in the final details and that there is room for improvement. That said, FMCSA should be commended for their genuine efforts to work with stakeholders and to keep those stakeholders fully informed of the developing details of the CSA 2010 program.

Headed in the right direction

For motor carriers who choose to continue with a "business as usual" attitude by insufficiently training newly hired drivers and failing to implement adequate preventive maintenance programs on equipment, CSA 2010 will quickly bring them under scrutiny and further differentiate those who truly care about safety from those who are indifferent. This is a significant improvement over the current system which really amounts to a "catch me if you can" or "catch and release" enforcement model. Currently, motor carriers may face a compliance review as infrequently as once in a decade or two, if at all. Annually, FMCSA only conducts complete compliance reviews on fewer than 2% of the regulated motor carrier population. FMCSA only issues a safety fitness determination after a complete compliance review is conducted. The chances of a motor carrier being audited and having its operating authority revoked are very slim. That fact helps to foster indifference toward a meaningful safety culture within some carrier operations.

Once CSA 2010 is fully implemented, a motor carrier's safety fitness determination will be automatically tied to actual data from roadside inspections and accidents. It will be adjusted monthly based on the collected data. This is a significant game changer for our industry. Increasingly, shippers, receivers and freight brokers are beginning to stipulate that they will not contract with motor carriers with less than a "satisfactory" rating. We look forward to this becoming the industry standard. In order for FMCSA to alter how they designate a safety fitness determination, the agency will need to go through the rulemaking process and they have indicated to industry that we can expect that process will begin later this year.

In its current status of development CSA 2010 does have some problems, however FMCSA has altered its timeline for implementation in an attempt to not only gain more

support from the industry, but to also to "work out the bugs" before the program is fully implemented. We applaud FMCSA's diligence in this matter and believe the implementation timeline should not be set in stone, but rather reflect when the program is truly ready for its full implementation. Otherwise, it will be a failed attempt and create more chaos, mistrust, and animosity in an already stressed industry. If the program is launched before the agency and the industry are truly ready, we could lose an opportunity to achieve the significant safety improvements the program has the potential to foster.

While CSA 2010 promises to finally hold motor carriers to a much greater level of accountability, as it currently stands it also contains some flaws that can unfairly penalize both a driver and a motor carrier for incidents beyond either's control.

Accident determination.

The CSA 2010 initiative is supported by a new Safety Measurement System (SMS) which is made up of six Behavior Analysis and Safety Improvement Categories (BASICs) and a Crash Indicator. Data, collected from inspections and crashes, is first processed through the SMS which then applies an algorithmic calculation to assign the motor carrier a numerical and percentile ranking amongst a peer group of similar motor carriers. However, the old saying "garbage in, garbage out" can apply to improperly vetted data and unfairly affect a motor carrier's business. For example, if a driver has properly stopped his truck at a stop light, but is then rear-ended by another vehicle resulting in a tow-away, injury or fatality, under FMCSA's current methodology, all parties would be entered into the system regardless of fault. Absent proper accountability for accident causation, the innocent are convicted alongside the guilty solely because of their involvement. This deficiency will have significant consequences for both the driver and the motor carrier including potential loss of transportation contracts, loss of employment opportunities and an increase in insurance costs.

Without an "at fault" designation, it is highly probable that drivers involved in crashes, regardless of fault, will not be able to obtain future work. This is a major issue for our industry, an industry that according to the government's own data has never been safer[1]. Crashes unfortunately happen, however, the trucking industry is often unfairly blamed for accidents in which the truck driver was not at fault. In fact statistics show that truck drivers are not at fault in the overwhelming number of accidents in which they are involved.

Challenging incorrect data.

Because CSA 2010 relies upon information retrieved during roadside inspections, it must be a priority that all information entered into the system is timely and accurate. In an attempt to ensure data integrity, FMCSA makes the DataQ system available to drivers and

[1]The key metric, fatalities per hundred million miles traveled has steadily declined from a peak of over 5 in 1980 to 1.86 in 2008. Source: Federal Highway Administration and "Large Truck and Bus Crash Facts – 2007" provided by U.S. DOT Analysis Division.

motor carriers so that inaccuracies may be challenged. This system is necessary and should be further developed as OOIDA has reviewed many instances where drivers have received invalid violations. For instance, we have seen drivers cited for hours-of-service violations (falsification) because their logs did not match the time zone they were operating in. Under the regulations (§395.8(8)(i)), a driver's "duty status record shall be prepared, maintained, and submitted using the time standard in effect at the driver's home terminal." While it is necessary to have a system allowing for data challenges, the current problem with the DataQ system is that the challenge is referred back to the police agency that originally issued the violation and if that agency refuses to correct a mistake there is no additional appeals process to remove erroneous violations from the public record.

Warnings versus citations.

The concern by some in the industry is that CSA 2010 will change the current law enforcement system which relies on the issuance of "warnings" to drivers during inspections in favor of a system where citations are issued regularly even for the most minor and routine violations. Under the current system, many law enforcement officers issue a warning as a way to document the stop or inspection although technically they have the right to issue citations for any infraction. Officers typically exercise their discretion with an understanding that issuing citations for every penalty is excessive and unnecessary. However, CSA 2010 documents both the issuance of warnings and the issuance of citations. A warning cannot be appealed, whereas a citation can disappear from public record through due process. Therefore, warnings will stay in the system in perpetuity while citations at least have the potential to be purged. On its face this seems inequitable but the fear is that officers, who need to document the stop, will issue a citation in an effort to at least allow for an appeal. CSA 2010 should differentiate between warnings and citations.

Trucking community myths about CSA 2010

As previously mentioned, FMSCA should be applauded for attempting to dispel myths running rampant through the industry about their initiative. The agency has reached out to stakeholder organizations, distributed flyers such as "CSA 2010: Just the Facts"[2] and engaged in a media campaign in an effort to get correct information in the hands of drivers and trucking companies. Despite their efforts some myths continue to circulate in the trucking community.

Establishing a driver safety rating system.

One of the biggest fallacies surrounding CSA 2010 implementation is that drivers have already been assigned a specific safety rating by FMCSA that will be publically available, similar to carrier SafeStat scores. This is patently false and has spawned an entire cottage industry of software providers purporting to be able to predict how a driver will rank. Many motor carriers are using these software programs to "rate" drivers, which is not

[2] *See*: http://csa2010.fmcsa.dot.gov/documents/JustTheFacts.pdf

accurate because there is not a database of drivers nationwide. A motor carrier can certainly develop a driver rating profile applicable to their own company, but not based on the entire driver pool. While CSA 2010 does contain a Driver Safety Measurement System, this is not a ranking system. Moreover, FMCSA lacks the authority to establish such a safety rating system of commercial truck drivers. If Congress ever pursued granting FMCSA with the authority to create such a system, OOIDA would certainly oppose for a variety of reasons including personal privacy. Drivers and motor carriers are being misinformed about this mythical rating system and further efforts should be made to put an end to that misplaced fear.

Conclusion

There has been much misinformation communicated within the trucking industry concerning FMCSA's Comprehensive Safety Analysis 2010 initiative or "CSA 2010." Much of the information seems to have purposely distorted the basic goal of this initiative – improving highway safety.

For too long, drivers seem to have been the sole focus of enforcement at roadside. The large motor carrier community actually encouraged this one dimensional view because it allowed them to shirk their shared responsibility for having adequate safety management practices in place.

CSA 2010 will hold a motor carrier immediately responsible for actions of their drivers on the highway. Once the initiative is fully implemented, motor carriers' safety ratings will be tied to actual data from roadside inspections as opposed to the current practice where they may face an introspective review of their safety practices once in a decade – if even then.

For motor carriers that choose to continue with business as usual through insufficient training of their new drivers and failure to implement genuine preventive maintenance programs on equipment for which they own, CSA 2010 will very quickly be able to determine their indifference to good safety management practices. This is a significant improvement over the current system which really amounts to a "catch me if you can" enforcement model.

Thank you for this opportunity. I will be happy to respond to any questions.

Questions for the Record for Mr. Todd Spencer
Executive Vice President
Owner-Operator Independent Drivers Association

Highways and Transit Subcommittee Hearing
June 23, 2010

Questions from Chairman DeFazio

1. *Have OOIDA members operating in pilot test States observed any change in the behavior or expectations of shippers and other customers in response to CSA 2010? Is the pressure on carriers to accept tight delivery timelines and deal with delays still common?*

Answer

OOIDA is unaware of any behavioral changes on the part of shippers or receivers in relationship to CSA 2010 thus far. However, we continue to receive complaints from drivers regarding unconscionable and predatory loading and unloading practices that endlessly delay them. In fact, there seems to be an increasing trend of drivers paying "fines" to receivers for late arrivals for which they have no control. Many shipments have multiple stops requiring the scheduling of multiple delivery appointments. Our members are savvy enough to schedule their appointments accounting for appropriate unloading times. Unfortunately, many receivers have little concern for either honoring appointment times or unloading in a timely manner. For multiple stop shipments this causes a cascading effect where every appointment scheduled afterwards will be late. While a driver's time currently does not represent a cost to either the shipper or receiver, shippers and receivers clearly value their time by assessing charges to drivers for items ranging from a shipper stacking product on sub-par pallets to the driver being late for an appointment (*see attachment for example*).

Questions from Ranking Member Duncan

1. *In your testimony you state that motor carriers are in a far better position to control factors that may result in regulatory noncompliance than are truck drivers. Why is this the case?*

Answer

In the vast majority of instances, motor carriers are the entities that have an economic relationship with shippers and receivers, not the truck driver or the owner-operator who is hauling the freight. With few exceptions that relationship is valued far more highly than the motor carrier's relationship with the truck driver particularly in today's cut throat marketplace. Shippers and receivers are well aware of the fact that they do not currently fall under the Federal Motor Carrier Safety Regulations. They also know that if a motor carrier is unwilling to abide by their wishes, regardless of whether those wishes negatively impact a driver or a driver's regulatory compliance, they can easily find another motor carrier who will haul their freight. Truck drivers are simply pawns in this dysfunctional game.

The fact remains that the demands and expectations of shippers, receivers, brokers and motor carriers on truck drivers for each load they take are far more pervasive than any inspection scheme, schedule of fines or enforcement actions that either Congress or FMCSA can devise.

2. *According to your testimony, you believe that the implementation timeline of CSA 2010 should not be set in stone, but rather reflect when the program is truly ready for its full implementation. Do you think CSA 2010 will be ready for implementation by the end of the year? What are the indicators that the program is ready?*

Answer

We have a significant concern with proper accountability for how accidents are reported. Currently, FMCSA does not distinguish between "at-fault" and "not-at-fault" in DOT reportable accidents contained within its databases. While FMCSA has indicated it "may not" make the accident basic available to the public, we believe it should never be made available publicly until proper accident accountability can be determined. To do otherwise can have profound and negative consequence for both drivers and motor carriers alike as many shippers, receivers, potential employers, brokers and insurance companies will use the erroneous data to unfairly increase or deny insurance coverage or employment opportunities, deny transportation contracts, or unfairly terminate employment.

OOIDA is also concerned that the DATA Q challenge system does not have an appeals process that conforms to basic principles of American jurisprudence. When data entered into the system is challenged, the challenge always reverts to the originating law enforcement agency. Oftentimes, the very officer who noted a violation will be the person who gets to decide whether a ticket or violation he wrote was valid or not. We've seen clear examples of where the charge was incorrect but the officer was unwilling to make the necessary adjustment. What can be more disconcerting is where an original charge is adjudicated and either dismissed or reduced to a different charge and the original violation cited remains on a driver or motor carrier profile.

FMCSA has been responsive to industry concerns and as recently as August 16, 2100 issued new SMS Methodology that made adjustments in-line with industry recommendations. FMCSA is aware that the CSA 2010 model will need "tweaks" as it goes live late this fall and we're optimistic that the agency will be responsive to industry concerns.

3. *In your testimony you have expressed concern with the ability to challenge incorrect data. What should FMCSA do to address these concerns?*

Answer

Under CSA 2010 it is likely that FMCSA will face a torrent of DATA Q challenges simply because of the severe consequences to both a driver and/or the motor carrier for incorrect data. Anecdotally, we are

already discovering data quality errors in what is being reported in our member's profiles maintained in databases by FMCSA, and we are very troubled at the long, drawn-out process necessary to "attempt" to correct erroneous data.

Without an effective appeals process, drivers and motor carriers are denied an important "due process" protection. We are aware of a budding initiative within the Commercial Vehicle Safety Alliance (CVSA) to "possibly" establish some sort of appeals process.

Attachment #1

Attachment

[redacted] Distributors Non-Compliance Table

The following non-compliance table shows the rates that will be charged, if [redacted] elects to take the load, for all loads:

Any Carrier that attempts to deliver a PO with no appointment. (work in fee)	$150.00
Any missed appointment greater than 1 hour (re-schedule or pay work in fee). [redacted] retains the right to refuse and reschedule if deemed necessary.	$100.00
Restack due to bad pallet	$30.00
Restack due to damage cases	$30.00
Restack due to bottom layers un-stable	$30.00

STATEMENT FOR THE RECORD

RICHARD P. LANDIS
PRESIDENT AND CEO
HEAVY VEHICLE ELECTRONIC LICENSE PLATE, INCORPORATED

TO

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
OF THE COMMITTEE ON
TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES

HEARING ON
COMPREHENSIVE SAFETY ANALYSIS 2010:
UNDERSTANDING FMCSA'S NEW SYSTEM OF MOTOR
CARRIER OVERSIGHT

JUNE 23, 2010

HEAVY VEHICLE
ELECTRONIC
LICENSE
PLATE,
INCORPORATED

Suite 2275
101 North First Avenue
Phoenix, AZ 85003

Heavy Vehicle Electronic License Plate, Incorporated (HELP) is a not-for-profit partnership of 29 states that offer the PrePass truck screening system to assist state commercial vehicle enforcement personnel in identifying those vehicles most in need of inspection.

Our 29 states rely on electronic screening to manage the growing volume of trucks in and around commercial vehicle inspection facilities. By allowing motor carriers with current credentials, acceptable weight and a good safety history, to comply electronically and "bypass" inspection facilities, PrePass reduces major causes of truck accidents by minimizing

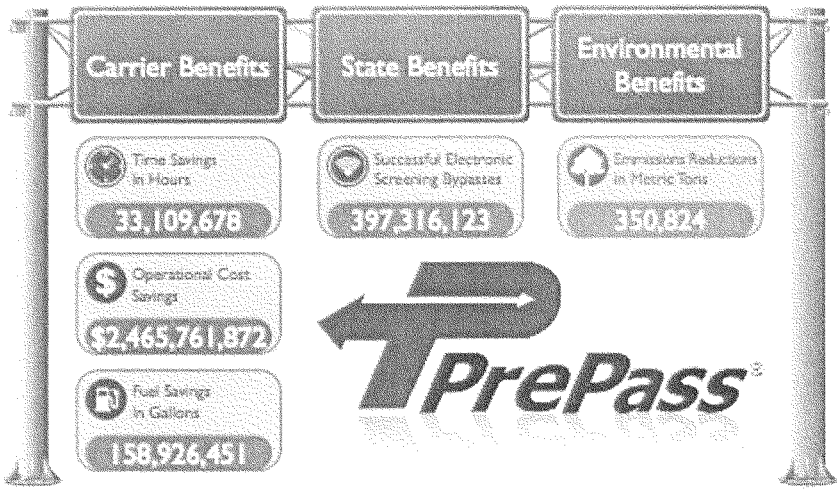
- Lane changing and highway entry and egress,
- The queuing of trucks onto the mainline, and
- The number of compliant vehicles that officers must manually process.

In addition, by eliminating truck queuing, PrePass reduces the need for new and incremental investment in longer inspection facility ramps.

Although PrePass is predominantly a tool to assist officers in selecting trucks most in need of attention at the roadside, it has played a very significant role in bolstering the sustainability of transportation through reduced fuel consumption and related greenhouse gas emissions.

Trucks have successfully complied electronically nearly 400 million times with state safety requirements using PrePass. As a result of this system, the motor carrier industry has saved more than 158 million gallons of fuel, over 33 million hours of driver time and nearly $2.5 billion in operational savings.

According to Doug Donscheski, MCSAP Manager for the Nebraska State Patrol and the chairman of HELP Inc's operations committee, "Based on data from the Environmental Protection Agency, PrePass reduced greenhouse gas emissions by over 350 thousand metric tons. Although safety is our core mission, the fact that PrePass helps improve Nebraska's air quality is a well-documented fact recognized by many thought-leaders in our state."



CSA 2010 Support and Concerns

The current Inspection Selection System (ISS) now used by the states is a good tool for portraying the overall picture of a carrier's safety performance.

CSA 2010 holds the potential to be an even better tool. This is not, however, guaranteed.

HELP Inc. fully supports the overall goals of CSA 2010 and believes that when fully implemented, and with all BASICs populated, the new system could have a

potent impact on commercial vehicle safety if several shortcomings of the ISS system are avoided.

In addition to addressing shortcomings associated with ISS, HELP Inc. joins with the Commercial Vehicle Safety Alliance in recognizing that a critical step for ensuring CSA 2010's success is in providing long-term and sustained federal resources for the system and support for state enforcement efforts to supply adequate and correct data to the system.

Five Specific Concerns

First, the ISS system arbitrarily designates half of the carriers as safe and the other half as unsafe. This mistake should be corrected in the development of the CSA 2010 measure.

Because of limited resources of both personnel and infrastructure, the roadside selection system needs to target the worst carriers. The ISS system used today, and as is proposed in CSA 2010, selects half of the carriers for inspection.

This creates overloaded weigh station queues, causing trucks to back unsafely on to the mainline and forcing inspection personnel to direct all trucks to bypass facilities without any review.

Instead of arbitrarily prejudging half of the carriers are unsafe, CSA 2010 should establish objective criteria by which carriers are judged as safe or unsafe.

Second, while the ISS score provides a good overall measure of safety performance, that score is not a good tool for use in carrier selection at the

roadside. CSA 2010 should develop a tool specifically for roadside selection.

For roadside screening, the 29 PrePass states have dissected the ISS aggregate score and reassembled it in a manner that minimizes those aspects about which commercial enforcement officers can do nothing. The resulting PrePass Safety Algorithm (PSA) therefore more accurately identifies those trucks with deficiencies that can be addressed at the roadside than the aggregate ISS score.

This PSA has been voluntarily adopted by all 29 PrePass states and is used to screen about 180,000 commercial motor vehicles each day.

According to Col. Terry Maple, superintendent of the Kansas Highway Patrol and member of the HELP executive committee, "Rather than taking the easy way out, the PrePass states developed a screening mechanism that does a better job than ISS of identifying the variables that can be enforced at the roadside. Although the PSA can be confusing to some roadside officers because it can conflict with the aggregate ISS score, it offers a superior selection tool for identifying those vehicles most in need of attention at weigh stations and ports of entry."

The PSA minimizes the safety management and crash Safety Evaluation Areas (SEAs) for roadside screening, instead focusing on the vehicle and driver SEAs. "PSA offers an important lesson for FMCSA as they finalize the CSA 2010 program: What's good for terminal inspection and compliance review targeting is not necessarily the right tool for the roadside," said Rick Clasby, director of motor carriers for the Utah Department of Transportation and the vice chairman of HELP Inc.

Third, CSA 2010 considers all DOT-defined crashes – including those for which the motor carrier could not reasonably be held accountable. The

score should only include those crashes for which the carrier is accountable.

Carriers involved in a number of crashes for which they were not responsible will be rated by CSA 2010 the same as like-sized carriers involved in the same number of crashes – but who caused them.

While the total crash history of a motor carrier can be an indicator for future crashes, PrePass states believe that identifying those crashes in which the carrier is at fault is a better indicator and measure for determining the safety of a carrier. As a result of numerous discussions among PrePass states, the PSA was established. PrePass assists the states by analyzing safety and credential information identified by the states, determining which carriers will be permitted to participate in the program, and (on an individual event basis) which will be permitted to bypass. This approach is consistent with both the PrePass and CVSA mission of promoting highway safety.

Although FMCSA has indicated its intention to consider only those crashes for which the motor carrier could reasonably be held accountable, it is implausible for FMCSA to review thousands of crash reports and make determinations based on each before the planned initial implementation date just a few months from now.

Fourth, ISS's measures of exposure should be changed for CSA 2010.

HELP Inc. joins with the American Trucking Associations and a host of other groups in strongly suggesting that FMCSA consider modifying peer groups so that each carrier's relative safety performance is compared against others carriers with similar exposure.

This approach would correct an inequity in the system – that carriers with great disparity in exposure to inspections and violations are compared against each

other. For instance, long haul carriers are frequently inspected since inspection stations are common in their operating environment, though local pick-up and delivery carriers are not. As a result, carriers who are rarely inspected may appear to be safer, since they have less opportunity to be found in violation.

In addition, ISS uses a count of each carrier's power units as the measure of risk exposure rather than the total number of miles these vehicles travel, which would be a more accurate measure of exposure and is available on the FMCSA's MCS-150 form.

Fifth and finally, CSA 2010 does not provide a means for carriers regarded as "good" to get inspections.

Roadside enforcement is based on the concept of selective enforcement, which focuses on carriers with probable defects rather than random selection. As a result, carriers with good reputations receive fewer inspections than others. The impact is that one bad inspection has a greater impact on their overall score because of the low number of overall inspections.

FMCSA should strive to find a means that enables these carriers to get more frequent inspections, e.g. a level commensurate with the fleet size and exposure.

Conclusion

HELP Inc. fully supports the objectives of CSA 2010: targeting unsafe operators, changing their behavior, and removing bad drivers and unsafe trucks from the road.

We believe that if our five primary concerns are addressed, the new CSA 2010 system can have the desired impact.

We are concerned, however, that little time remains until implementation and to date, the 29 PrePass states have not yet been given adequate information on how the carriers using their state roads will be rated. Some state officials are concerned that the new system's scores could bring in many trucks now complying electronically and "bypassing" sites and swamp inspection facilities.

Accordingly, we respectfully request that FMCSA continue to support the 29 PrePass states by ensuring ISS data remain available for up to one year, or until the CSA 2010 screening mechanism's impact can be fully reviewed, its impact on inspection facilities assessed, and a separate roadside screening mechanism be developed and adopted, if necessary.

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