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EVALUATING THE EFFECTIVENESS OF DOT'S TRUCK AND BUS SAFETY PROGRAM

(112–104)

HEARING

BEFORE THE

SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

SEPTEMBER 13, 2012

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Committee on Transportation and Infrastructure

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U.S. House of Representatives
Committee on Transportation and Infrastructure

John L. Mica
Chairman

Washington, DC 20515

Nick J. Rahall, II
Ranking Member

James W. Coon II, Chief of Staff

September 7, 2012

James H. Zoia, Democrat Chief of Staff

BRIEFING MEMORANDUM

TO: Members, Subcommittee on Highways and Transit
FROM: Staff, Subcommittee on Highways and Transit
RE: Subcommittee Hearing on "Evaluating the Effectiveness of DOT's Truck and Bus Safety Program"

PURPOSE

The Subcommittee on Highways and Transit will meet on Thursday, September 13, 2012, at 10:00 a.m. in Room 2167 of the Rayburn House Office Building to receive testimony related to the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, Accountability (CSA) program. At this hearing the Subcommittee will review FMCSA's new motor carrier safety enforcement and compliance program and identify issues related to its implementation. The Subcommittee will hear from the Administrator of FMCSA, Co-Founder of Road Safe America, Assistant Chief of the Texas Department of Public Safety, Vice President of Safety and Maintenance of FedEx Ground, Vice President of Colonial Freight Systems, Inc., Director for Carrier Services of C.H. Robinson, and President of Gentry Trailways.

BACKGROUND

FMCSA's Compliance Safety Accountability Program

On January 1, 2000, FMCSA was established through the Motor Carrier Safety Improvement Act of 1999 (P.L 106-159) with the mission of reducing crashes, injuries, and fatalities involving large trucks and buses. In order to manage limited resources, FMCSA created the Motor Carrier Safety Status Measurement System (SafeStat) to target unsafe truck and bus companies (motor carriers) identified through accident records and vehicle and driver violations that result in out-of-service orders. Data collected into SafeStat was combined to create a SafeStat score for a motor carrier. If a score fell below a certain threshold, FMCSA would conduct a comprehensive on-site compliance review of that motor carrier and issue a rating of satisfactory, conditional, or unsatisfactory.

After a 2004 audit by the Department of Transportation's Office of Inspector General that reported significant data problems with SafeStat,[1] FMCSA began to develop CSA. Like SafeStat, the goal of CSA is to intervene with unsafe carriers in order to prevent future crashes. This goal is achieved through CSA's three emphasis areas: measurement, evaluation and intervention.

CSA's Carrier Safety Measurement System (SMS)

In December 2010, FMCSA replaced SafeStat with the CSA program. The main component of CSA is the Safety Measurement System (SMS) that analyzes safety violations from inspections and crash data to identify high-risk motor carriers for compliance reviews and other more-focused interventions to address specific problems. The SMS uses seven safety improvement categories called Behavior Analysis and Safety Improvement Categories (BASIC) to examine a carrier's on-road performance and potential crash risk. The seven BASICs are Unsafe Driving, Fatigued Driving (Hours-of-Service), Driver Fitness, Controlled Substances/Alcohol, Vehicle Maintenance, Cargo-Related and Crash Indicator.[2]

Data from inspections and crash reports are classified into one of these seven BASICs. A carrier's measure for each BASIC depends on the perceived severity of the violation or crash (severity weight), number of adverse safety events), and when the event occurred (time weight).. Severity weights are scaled from 1 to 10, where 1 is the lowest crash risk and 10 is the highest crash risk. After a measurement is determined, the carrier is then placed in a peer group (based on, for example, each carrier's number of power units, vehicle miles traveled, and inspections) and a rank and percentile is assigned. SMS is available on the Internet to the general public.

Concerns Regarding the Effectiveness of SMS

Before implementing CSA, FMCSA conducted the CSA Operational Model Test from February 2008 through June 2010. The goals of the Operational Model Test were to assess the new CSA design, determine whether it was likely to result in improved carrier safety performance, and to identify any features that needed to be adjusted prior to implementation. The Operational Model Test divided motor carriers from four States (Colorado, Georgia, Missouri, and New Jersey) into test groups (utilizing the new SMS) and control (utilizing SafeStat) groups.

In order to evaluate the effectiveness of the Operational Model Test, FMCSA commissioned a study by the University of Michigan's Transportation Research Institute.[3] The study found that motor carriers that exceeded the SMS thresholds, especially in the Unsafe Driving, Fatigued Driver, and Controlled Substance and Alcohol BASICs, have a higher crash risk than motor carriers not exceeding the thresholds. The study concluded that a carrier's BASICs are significantly related to that carrier's safety and future crash risk.

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[1] *Improvements Needed in the Motor Carrier Safety Status Measurement System* (February 13, 2004), U.S. Department of Transportation, Office of Inspector General, MH-2004-034.

[2] http://ai.fmcsa.dot.gov/sms/HelpFiles/SMSMethodology.pdf

[3] University of Michigan Transportation Research Institute, Evaluation of the CSA 2010 Operational Model Test, (2011), http://csa.fmcsa.dot.gov/Documents/Evaluation-of-the-CSA-Op-Model-Test.pdf

Conversely, a study of CSA by Wells Fargo Securities, LLC found no correlation between a carrier's actual accident incidence and the scores for Unsafe Driving, Fatigued Driving, or Driver Fitness BASICs.[4] The study suggests that interested parties should not rely exclusively on a carrier's composite BASIC scores to assess overall risk. Several issues were identified in the study that may contribute to the differing conclusions of the Wells Fargo study and the University of Michigan's Transportation Research Institute study:

- Even though CSA is a Federally administered program, citations are issued and inspections are carried out at the State level. Each State has different enforcement and inspection priorities that may result in a carrier receiving a disproportionate number of violations depending on where the carrier conducts most of its business.

- Each violation of a motor carrier regulation is assigned a severity weight that, according to FMCSA, is indicative of the potential danger of the violation. For example, in the Unsafe Driving categories a severity weight of 7 is given to "not wearing a seatbelt" but "following too close" and "improper lane change" are each assigned a 5. In the Driver Fitness category, severity weight is high for failure to have a valid Commercial Driver License (CDL). However, a driver may not have a valid CDL due to non-driving related infractions that have nothing to do with highway safety – such as missed child support payments. The study concludes some severity weights given to certain violations are illogical.

Another study by the University of Maryland's James Gimpel questions whether there is an adequate amount of data to accurately generate a BASIC score.[5] Variations in data collection from State to State, the exclusion of carriers with no inspection violations, and the lack of a clear statistical relation between some BASIC scores and the number of crashes lead to a weak correlation with a carrier's crash risk. Given that FMCSA only generates data to assess 12 percent of active carriers in a BASIC, the number of inspections can have a significant impact on a BASIC score. Carriers that are inspected infrequently may not have enough data to generate a reliable BASIC score.

The trucking industry has raised concerns over the inclusion of crash data that may not be attributable to a commercial motor vehicle driver. Currently, crash data is included in the BASIC score regardless of who is at fault for the crash. If a motor carrier is involved in a crash where a passenger vehicle is found to have caused the accident, the crash will still be counted "against" the motor carrier in their BASIC score. FMCSA states that there is a concern regarding the consistency of police crash reports and how fault is assessed. However, no progress has been made by FMCSA to address this issue.

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[4] Anthony Gallo & Michael Bushee, Wells Fargo Securities, CSA: Good Intentions, Unclear Outcomes (2011), http://www.ime.org/userfiles/files/Federal%20Agencies/DOT/FMCSA/HMSP/WellsFargo-TRANS110311-120501.pdf

[5] James Gimpel, Statistical Issues in the Safety Measurement and Inspection of Motor Carriers

The DataQ System that allows stakeholders and the public to challenge erroneous data in the SMS has been criticized for being inconsistent, which could result in a carrier being identified as having a high crash risk. An individual can file a claim through a Request for Data Review (RDR). However, some carriers report inconsistent handling of RDRs due to varying jurisdictional procedures on the State level.

Additionally, freight brokers and shippers have raised concerns that BASIC scores may have an impact on vicarious liability. They are concerned that a court may consider BASIC scores in determining liability and negligent hiring claims brought forth by victims of crashes involved with a carrier hired by a broker or shipper. If a motor carrier is sued for damages caused by an accident, the broker can be liable for those damages even though brokers and carriers haven't traditionally been considered to have an employer-employee relationship. It is unclear how a broker should view a carrier that is deemed satisfactory by FMCSA but has a high score in one of the BASICs.

WITNESS LIST

Ms. Anne Ferro
Administrator
Federal Motor Carrier Safety Administration

Mr. Steve Owings
Co-Founder
Road Safe America

Mr. David Palmer
Assistant Chief
Texas Department of Public Safety

Mr. Scott A. Mugno
Vice President, Safety and Maintenance
FedEx Ground

Mrs. Ruby McBride
Vice President, Corporate Systems
Colonial Freight Systems, Inc.

Mr. Bruce Johnson
Director, Carrier Services
C.H. Robinson

Mr. Bill Gentry
President
Gentry Trailways

EVALUATING THE EFFECTIVENESS OF DOT'S TRUCK AND BUS SAFETY PROGRAM

THURSDAY, SEPTEMBER 13, 2012

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

The subcommittee met, pursuant to notice, at 10:00 a.m. in room 2167, Rayburn House Office Building, Hon. John J. Duncan, Jr. (Chairman of the subcommittee) presiding.

Mr. DUNCAN. We are going to go ahead and call this hearing to order today. The subcommittee is convening to receive testimony from the Federal Motor Carrier Safety Administration, the trucking and bus industry, law enforcement officials, and safety advocates on the Administration's Compliance, Safety, Accountability program, or what is commonly referred to as CSA. I think everyone will agree that decreasing fatalities and injuries resulting from truck and bus crashes is the most important goal the Federal Motor Carrier Safety Administration is charged with.

With this goal in mind, FMCSA implemented CSA in December of 2010. CSA was designed to maximize the agency's resources by compiling carrier violations from inspections and crash reports in order to determine the future crash risk of a truck or bus company. This data is used to create a type of safety profile for truck and bus companies so consumers can make educated choices when selecting companies.

However, in July of last year, I spoke to a group that is a member of the Alliance for Safe, Efficient and Competitive Truck Transportation, and I heard numerous people from around the Nation who raised concerns related to the methodology used in CSA, specifically in the Safety Measurement System, or what is referred to as SMS. Some of these concerns arise from the fact that 40 percent of the 500,000 active truck and bus companies generate a score in at least 1 of the 7 SMS categories, which are called "BASICs." The number of companies that generate a score in all BASICs is unknown. A comprehensive understanding of a carrier's safety is difficult to achieve with this lack of data.

In addition, not all States report every violation to FMCSA, so the SMS methodology is only as good as the data flowing into the system. These data problems present a significant challenge for small trucking companies, in particular, which make up the majority of commercial motor vehicles. Since many of these small companies generate little or no data into the SMS, their scores can fluc-

tuate dramatically. And the small companies that generate no score are misconceived sometimes as being unsafe.

Questions have also been raised over the relationship of some violations and whether they are indicators of future crash risk. Scores generated in certain BASICs may not have the core relation to future crash risk, and may inadvertently focus FMCSA's enforcement measures on the wrong carriers. Problems also sometimes result in companies becoming more vulnerable to lawsuits than they should be.

Shippers and brokers are also left wondering how to evaluate the safety fitness of carriers with a score in only one BASIC, or no score at all. Recent court rulings have established duty of reasonable care requirements that brokers and shippers must meet when hiring a carrier in order to avoid negligent hiring lawsuits. Brokers and shippers are now in the position to determine whether a carrier is sufficiently safe to hire, based on incomplete or misleading scores. And this sometimes results in wrong or unfair decisions in that regard.

The intentions behind CSA are good, but it is not a perfect system. We are holding this hearing today to identify where we can improve CSA and how we can reduce fatalities and injuries while keeping the engine of our economy moving. This country could be booming beyond belief today if we would allow it to do so. But in many ways we are holding it back through over-regulation of different types.

I hope this hearing will help Members and interested parties better understand these concerns that have been raised from around the country, and generate proposals to make CSA a more effective tool.

I want to thank all of the witnesses for taking time out of their busy schedules to be here with us today. I want to say on a personal note that in my 24 years in Congress I think I have participated probably in maybe 1,000 hearings, congressional hearings. In only a very small number of those have we had one witness from Tennessee. In this—and only about five or six witnesses have ever been from my particular district. But on this very distinguished panel of seven people I have two witnesses here not only from Tennessee, but two of whom are from my district, and both of whom happen to be personal friends of mine: Ruby McBride and Bill Gentry. And they are both very active in our community and are very respected people, not only in business, but in civic and cultural affairs. And it is certainly an honor and a privilege for me to have two of my most distinguished constituents here. I tell people all the time I have 750,000 bosses. I have got two of my main bosses here today.

With that, we are—I am very pleased and honored—we also have the ranking member of the full committee, my friend Congressman Rahall from West Virginia, here. And I would like to turn to him for any comments he wishes to make at this time.

Mr. RAHALL. Thank you very much, Mr. Chairman, and thank you for conducting this oversight hearing on the Federal Motor Carrier Safety Administration's motor carrier safety program. Certainly advancing safety on our highways is a paramount concern of

all involved, from those who get behind the wheel, to local law enforcement, to Federal regulators.

In this regard, a decision was made during the George W. Bush administration to move away from the resource-intensive and ultimately inadequate strategy of relying on compliance reviews to the development of the compliance, safety, and accountability system—in essence, a technological leap similar to the move away from the corded wall phone to the smart phone.

Today, however, 8 years after CSA started to emerge as a new enforcement and compliance model, the question remains just how smart is GSA—CSA, sorry. While the old adage of "garbage in, garbage out" does not completely apply here, there are questions about the reliability and integrity of the data utilized under CSA's safety management system and the effect of the scores that it assigns to trucking companies and independent truckers with respect to their relationship with freight brokers, shippers, and insurers.

I would also note, in conclusion, that this entire system has been and continues to be developed without formal rulemakings. Collaborative efforts are to be applauded, certainly. But there are some issues which more properly lend themselves to a rulemaking process so that the public has the opportunity to formally comment.

Again, I thank you, Mr. Chairman, for this hearing. And I look forward to the witnesses' testimony today.

Mr. DUNCAN. Thank you very much. I understand Mr. Crawford does not wish to make an opening statement. Mr. Holden doesn't, either. Ms. Richardson, do you want to? Mr.—well, thank you very much. Mr. Cummings, I understand, wants to make a statement——

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I will be brief. Chairman Duncan, Ranking Member DeFazio, for convening—I want to thank you for convening this hearing to examine the safety of commercial vehicles on our Nation's roadways.

Deaths from accidents involving large commercial vehicles have fallen. Administrator Ferro's testimony records the decline as 26 percent from 2006 to 2010. That said, approximately 100,000 people are still injured annually in crashes involving commercial vehicles, while thousands more die in such accidents. Any death or injury is one too many. And, therefore, I look forward to learning today what more can be done to reduce these numbers.

Our hearing will focus on the Federal Motor Carrier Safety Administration's new compliance, safety, and accountability system, which is intended to give the FMCSA a wide and deep overview of safety in the commercial vehicle industry to enable it to identify firms that are not compliant with regulations and that pose a safety risk. This system relies on assessments of a firm's performance in seven categories called the Behavior Analysis and Safety Improvement Categories, or the BASICs. There appears to be ongoing debate about how data is collecting to populate the BASIC assessments, and on how certain data is weighed and scored.

I look forward to the hearing from—I look forward to hearing from today's witnesses on the data collection process can be improved, and how we can ensure that the assessments made through the BASIC process more accurately identify the risks posed by individual carriers. That said, any refinements must be informed by

objective studies and analysis, and must not be allowed to undermine what appear to be the clear benefits of the use of the CSA system, which has demonstrably expanded the FMCSA's reach over the commercial vehicle industry, as well as the extent of the data it is able to assess.

After implementation of the CSA system, violations identified through roadside inspections have fallen, and studies have found that carriers that have unacceptable scores in BASIC assessments such as unsafe driving and fatigued driving have higher crash risks, a finding that confirms the system is able to properly identify those carriers that pose high risks on our Nation's highways.

I look forward to hearing from today's witnesses, particularly Mr. Ferro—Ms. Ferro, the former administrator of the Maryland Motor Vehicle Administration. And with that, I yield back.

Mr. DUNCAN. Thank you very much. Mr. Shuster, would you like to—all right. Mr. Boswell, you wish to make an opening statement?

Mr. BOSWELL. I do want to participate when we get the panel going.

Mr. DUNCAN. All right.

Mr. BOSWELL. But I think I will hold on that so we can move forward.

Mr. DUNCAN. We will be joined by other Members. But we will not have any other opening statements, except for I understand that the ranking member of the subcommittee, Mr. DeFazio, is on his way.

We have a very distinguished panel, and we have Ms. Anne Ferro, who is the administrator of the Federal Motor Carrier Safety Administration; Mr. Steve Owings, who is the cofounder of Road Safe America; Mr. David Palmer, who is assistant chief of the Texas Department of Public Safety; Mr. Scott A. Mugno, who is the vice president of safety for FedEx Ground; Ms. Ruby McBride, who is vice president of corporate systems for Colonial Freight Systems on behalf of the Alliance for Safe, Efficient and Competitive Truck Transportation; Mr. Bruce Johnson, director of carrier services for C.H. Robinson; and Mr. Bill Gentry, who is president of Gentry Trailways, testifying on behalf of the American Bus Association and the United Motorcoach Association.

We appreciate all of you being here, and your full statements will be placed in the record. We do ask that you try to limit your opening statements to 5 minutes. If you run a little bit over, that is all right, but roughly that amount of time.

And we will now be pleased to hear from Administrator Ferro.

TESTIMONY OF ANNE FERRO, ADMINISTRATOR, FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION; STEVE OWINGS, PRESIDENT AND COFOUNDER, ROAD SAFE AMERICA (RSA); DAVID L. PALMER, ASSISTANT CHIEF, TEXAS DEPARTMENT OF PUBLIC SAFETY, ON BEHALF OF THE COMMERCIAL VEHICLE SAFETY ALLIANCE (CVSA); SCOTT A. MUGNO, VICE PRESIDENT OF SAFETY, FEDEX GROUND PACKAGE SYSTEM, INC., ON BEHALF OF THE AMERICAN TRUCKING ASSOCIATIONS (ATA); RUBY L. MCBRIDE, VICE PRESIDENT OF CORPORATE SYSTEMS, COLONIAL FREIGHT SYSTEMS, INC., ON BEHALF OF THE ALLIANCE FOR SAFE, EFFICIENT AND COMPETITIVE TRUCK TRANSPORTATION (ASECTT); BRUCE JOHNSON, DIRECTOR OF CARRIER SERVICES, C.H. ROBINSON, ON BEHALF OF THE TRANSPORTATION INTERMEDIARIES ASSOCIATION (TIA); AND WILLIAM GENTRY, PRESIDENT, GENTRY TRAILWAYS, ON BEHALF OF THE AMERICAN BUS ASSOCIATION AND UNITED MOTORCOACH ASSOCIATION

Ms. FERRO. Chairman Duncan, Ranking Member Rahall, members of the subcommittee, thank you for the opportunity today to discuss how the Federal Motor Carrier Safety Administration's improved compliance and enforcement model is furthering highway safety. That model is known as Compliance, Safety, Accountability, or CSA, for short, as the chairman indicated.

America's roads and highways are safer today than they have ever been. In fact, as Congressman Cummings indicated, truck-related deaths were reduced 26 percent between 2006 and 2010. And this is good news. It is the result of very deliberate action and hard work by a number of stakeholders on this issue, some of whom are here in this room today.

But the fact is our roads can, and they must, be safer. Almost 4,000 people die, and over 100,000 people are injured in large truck and bus crashes each year. While trucks make up 5 percent of all registered vehicles, 10 percent of all vehicle miles traveled, they account for 12 percent of all fatal crashes.

CSA is FMCSA's safety enforcement platform designed to improve compliance and safety in truck and bus operations so crashes can be prevented. It is a safety performance measurement system that analyzes inspection and crash data to help us identify and focus our resources on the higher risk carriers. The purpose of the program is to improve our ability to help all stakeholders prevent crashes and save lives.

CSA is a three-part program. It is a system, a process, and a rule. The system is the safety measurement system that most everybody sees today on our Web site, which uses all inspection and crash data to give priority to high-risk and noncomplying carriers for inspection and investigation. The process element of the program refers to the range of intervention tools we use once we have analyzed and applied the data, so that we can engage more carriers in understanding their compliance and safety performance. It is a process that helps us and carriers get at why a pattern of violations is occurring—not just what is happening—but why it is happening.

And finally, the rule refers to the safety fitness determination rule that we will be proposing early next year that would replace today's compliance review, which is the only way we have today of establishing an official safety rating. The safety fitness rating proposal will incorporate the analysis that is in the SMS today, again, and apply it in a proposed rulemaking standard using certain threshold analyses.

CSA enables FMCSA and its State safety enforcement partners to identify and address compliance and safety deficiencies of a larger segment of carriers. The SMS system, which is, again, the first component of the CSA program, has sufficient data to assess nearly 200,000 companies out of the 525,000 active motor carriers operating on our highways on an interstate basis today. And even more importantly, those 200,000 carriers are involved in 90 percent of all fatal crashes. It is the right group to be looking at.

Since carrying out the first two components of CSA—that is the system and the process—we have seen improvements in truck and bus safety operations. A component of the program known as warning letters, which have been sent to tens of thousands of carriers who have first begun to first show signs of safety problems, are a critical element of the program. It allows a company to take action on their performance matters before any sort of situation gets worse.

Preliminary crash estimates for 2011 show a 4-percent reduction in fatalities in truck and bus crashes over 2010. Also in 2011, as Congressman Cummings indicated, roadside violation rates have decreased dramatically. Eight percent in driver violation rates, and—8 percent for all carriers, 10 percent for driver violation rates. These are unprecedented drops in violation patterns, something we haven't seen in a decade.

Our agency initiated this program over 6 years ago through demonstrating a commitment to listening to stakeholders and building the improved process, to responding to that and being very transparent in our analysis. Just last month we announced modifications based on analysis and testing of recommendations that came from all these various stakeholders: carriers, drivers, the general highway public, brokers, law enforcement, and other stakeholders of this program.

This is a program that we are driven and committed to routinely seek feedback about, and routinely fine tune. But it is a program that is working. It is a program that is here at the right time, doing the right things, and elevating the discussion about safety in commercial vehicle operations like nothing anyone has seen before. And it is a program that carries through on our commitment to be transparent and responsive, all the while driving towards putting safety first in CMV operations on our Nation's highways.

Mr. Chairman, that concludes my remarks, and I thank you for the time.

Mr. DUNCAN. Thank you very much.

Mr. Owings.

Mr. OWINGS. Good morning, Chairman Duncan, Ranking Member DeFazio, and members of the subcommittee. I am Steve Owings, a businessman who became concerned about truck safety through a tragedy. So I am here as president and cofounder, with

my wife, Susan, of Road Safe America. I am speaking today on behalf of RSA, the Truck Safety Coalition, Parents Against Tired Truckers, and Citizens for Reliable and Safe Highways. We all work together on behalf of the tens of thousands of people who have become victims of preventable truck crashes each year, and are committed to improving truck safety and making America's roads safer. Thank you for the opportunity to testify before you today on FMCSA's Compliance, Safety, Accountability, or CSA, program.

The CSA program is a significant improvement over the previous SAFESTAT program, and is enabling the FMCSA to make more efficient and effective use of its very limited resources. It has been credited as inspiring "the start of a cultural change in the industry by forcing carriers to focus on the details of safety management."

As changes continue to be made to improve the CSA program, it is essential that the program continues to be efficient, cost effective, and fair. My testimony will comment on changes being considered to the Crash BASIC, and the need to preserve public access to CSA information.

My family's introduction to our Nation's truck safety challenges began on December 1, 2002, the Sunday after Thanksgiving that year, when our sons, Cullum and Pierce, were hit from behind while stopped in holiday congestion by a tractor trailer truck that was speeding 8 miles per hour over the posted speed limit using cruise control. That evening, Susan and I were waiting to get the call that the boys were safely back at school. But instead, got the call from Pierce, in an ambulance, telling us that his big brother and hero had just died in his arms.

That night Pierce was too upset to speak with the State trooper in charge of the scene, so the trooper spoke only to the truck driver. The truck driver lied about the circumstances leading to the crash, and the trooper took the driver's word, of course. And that is the version of the crash reflected on the police accident report, or PAR. Since Pierce miraculously survived, thank God, the truth was quickly discovered. However, in order to prove Pierce's account of the crash, Susan and I had to hire a private investigator to find other eye witnesses, all of whom verified our son's version. If we had been limited to the PAR, the truth would not have been discovered or proven.

Now, the FMCSA is considering changes to the way the CSA Crash BASIC treats crash data. Currently, all crashes are counted in the crash data because truck crashes, in and of themselves, and regardless of fault, are very effective predictors of future crashes. Studies confirm this, noting that a past truck crash increased the likelihood of a future truck crash by 87 percent.

The change being considered would classify crashes as preventable or nonpreventable, based solely on the PAR. Crashes deemed nonpreventable would then be removed from the carrier's Crash BASIC score. Not only are these changes completely unnecessary to predicting crash risk, they have the potential to corrupt existing crash data. Furthermore, it is disingenuous to say that the current system is unfair and that some trucking companies are being blamed for crashes that they did not cause. Fault is not and never has been a part of this process, a process intended to predict future

crash risk, enabling FMCSA to intervene and prevent another crash from ever happening.

It is also a critical mistake to consider classifying crashes based solely on the PAR. PARs do not even include information on crash preventability. My own family's crash is just one of many examples of how PARs may lack complete and accurate information. A recent Illinois DOT study found that more than 70 percent of crash reports filled out by Chicago police were missing data, and 30 percent had errors.

Now, our police officers do a tremendous job at the scene of crashes. But they are limited in their ability to investigate beyond the BASIC information. Should FMCSA pursue changes to classify crash data as default in spite of all these issues, cost and inefficiency would quickly overwhelm them. The FMCSA simply does not have the resources to develop and maintain a reliable system to do this. My written testimony explains this in more detail.

Finally, continued public access to CSA program information and improvements is essential to maintaining a fair, transparent process. This information is disseminated by public agencies, relates to crashes that occur on public roads, is paid for by taxpayer dollars, and ultimately affects public health and safety. Public access has already resulted—and perhaps CSA's greatest influence. The trucking industry and its safety record have the highest public visibility ever.

Thank you for the opportunity to testify this morning, and thank you for your part in passing the truck safety improvements included in MAP–21, the best legislation for truck safety in the past 30 years.

Mr. DUNCAN. Thank you very much.

Mr. Palmer.

Mr. PALMER. Good morning, Mr. Chairman, Ranking Member Rahall, members of the subcommittee. Thank you for holding this important hearing, and for inviting me to testify. I am Assistant Chief David Palmer of the Texas Department of Public Safety, and the president of the Commercial Vehicle Safety Alliance.

The Alliance represents State, provincial, and local agencies tasked with enforcing motor carrier safety and hazardous material regulations. At the outset I think it is important to say, from the enforcement community's perspective, that CSA program is working much more effectively than the previous approach. Overall, inspectors and investigators are pleased with their experience and, most importantly, the results.

Quite frankly, CSA has brought commercial vehicle safety to the forefront of industry and enforcement like no other program in my time before it. And I would like to commend Administrator Ferro and her team at FMCSA for their transparent and collaborative approach.

CSA is meeting its goals of improved targeting of high-risk operators and increased contact with carriers, which ultimately allows enforcement to leverage its limited resources. The improvement is partly due to the new intervention process, which is comprised of a suite of tools giving enforcement increased flexibility to focus specifically on carrier compliance issues, as well as behaviors that are

factors in crashes, making their contacts with carriers and drivers more effective.

However, we have a few recommendations for improvement. First, CVSA members see a need for additional training and outreach, both for enforcement and industry. It is critical that those using CSA and those being evaluated fully understand how the system functions. Otherwise, it won't matter whether or not CSA works. If people cannot understand and implement it effectively or appropriately, it cannot realize its fully potential.

In Texas, since the CSA launch, we have seen a dramatic increase in phone calls, emails, and questions, as well as requests for our troopers to visit safety meetings to talk about CSA and regulatory compliance. Carriers want to learn more about what CSA means, what the scores indicate, and how to improve them. As a result, we are doing more outreach than ever before. And that is a good thing. It means people are focusing more closely on regulatory compliance and safety, which can only benefit industry and the general public.

All this additional outreach, however, draws on already strained resources. As FMCSA continues to implement CSA, States need the resources to meet the increasing demand for information, not just externally with the regulated community, but internally, as well, so their enforcement personnel have the most current and complete information.

We encourage you to work with your colleagues in Congress and with FMCSA to ensure that the agency has enough funding to create and maintain comprehensive training and outreach programs for inspectors, investigators, drivers, and carriers.

Second, data is the foundation of CSA. And for it to function effectively, that data must be accurate, timely, and complete. Compliance and safety performance data is used to determine where the enforcement community should focus its limited resources. While it is important to note that overall commercial vehicle data quality has improved significantly since 2004, it is imperative that the data entering the system be as accurate as possible.

Our third recommendation deals with the DataQ system, which is the process by which the carrier can challenge a violation they believe is inaccurate. One issue with the DataQ process is the lack of uniformity from State to State in how challenges are reviewed. FMCSA has provided some guidance, but the final process is left up to each State. We believe that feedback from FMCSA on how the DataQ program is working from a national perspective, along with information on best practices, should provide for a more uniform and equitable system.

States are also seeing a high number of incomplete or inappropriate DataQ submissions. FMCSA should provide carriers and drivers with comprehensive, ongoing education about DataQs, focusing on when a challenge is appropriate, and what information should be included.

Third, as CSA is evaluated and improved, it is critical to make sure that regulatory compliance remains a cornerstone of the program. The focus of CSA is to reduce crashes and save lives. And therefore, behaviors that can be linked to crash risks must take precedence. However, CVSA members strongly believe that regu-

latory compliance is also a critical factor. Those in industry who choose to ignore regulations, or perhaps are not in compliance because they do not understand them, pose a risk to highway safety, and CSA must continue to monitor and factor in motor carriers' level of regulatory compliance.

Finally, I would like to mention the issue of crash accountability. Currently, CSA incorporates all crashes that a motor carrier is involved in, regardless of fault. In order to ensure that the scores are most closely tied to high-risk and unsafe operators, CVSA believes it is critical for FMCSA to address the crash accountability issue as quickly and comprehensively as possible.

Again, thank you for holding this hearing and for inviting me to participate, and I am very happy to answer questions.

Mr. DUNCAN. Thank you very much.

Mr. Mugno.

Mr. MUGNO. Good morning, Chairman Duncan, members of the subcommittee. I am Scott Mugno, vice president of safety at FedEx Ground Package System of Pittsburgh, Pennsylvania. Though I am testifying today on behalf of the American Trucking Associations, I would like to note that FedEx Ground currently holds the highest DOT safety rating a company can achieve and maintains an exceptionally favorable crash history.

However, despite FedEx Ground's high safety rating, favorable crash history, and longstanding commitment to safety, our CSA score in the driver fitness category is above FMCSA's set threshold. Many ATA member carriers with excellent safety records and low crash rates, like FedEx Ground, find themselves singled out due to high CSA scores that erroneously reflect unsafe performance. FMCSA's own analysis confirms that scores in certain CSA measurement categories, including the driver fitness category, do not reliably identify those carriers that are more likely to have future crashes.

ATA has been supportive of the objective of CSA, to reduce commercial motor vehicle crashes, injuries, and fatalities, since the program's inception. However, ATA has significant concerns with the program in its current form. ATA is frustrated by Federal Motor Carrier Safety Administration's unwillingness to acknowledge the program's weaknesses and correct them.

Since the release of FMCSA's analysis, a growing number of researchers and credible organizations, including analysts from Wells Fargo and a researcher from the University of Maryland, have cast further doubt on the relationship between carriers' CSA scores and crash risk. These analyses have led ATA to believe the system creates flawed carrier safety measurement scores that undermine the efficient use of Federal resources to identify and impact unsafe carriers and drive third parties to make improper safety-related business decisions.

The limitations that impact CSA fall into two distinct categories: one, problems with the underlying data that feed the system; and two, problems with the system's methodology used to assign scores.

The principal data weakness is the lack of information upon which to measure carrier safety performance. FMCSA only has adequate data to score 40 percent of active motor carriers in at

least one of the measurement categories, but does not report how few carriers are scored in all or even most categories.

CSA scores are also impacted by a number of methodology problems. Perhaps the single biggest problem is that CSA measures motor carriers on all crashes they are involved in, regardless of fault. In other words, a carrier that is rear ended while stopped at a red light is perceived as being just as unsafe as one that rear ends another motorist. FMCSA should direct its limited resources where they would be most effective in preventing future crashes by focusing on unsafe carriers that are causing them. Doing so would help better meet the objective of CSA, which is to reduce crashes, injuries, and fatalities.

ATA has become increasingly concerned with CSA's serious flaws like this one, and by FMCSA's unwillingness to acknowledge and fix them. Rather than acknowledging that scores often don't relate to crash risk, the agency points to the importance of highlighting compliance with regulations, even those that do not have a statistical relationship to safety. There is no doubt that FMCSA's intent in designing the CSA system was to identify carriers that are less safe.

The current program does not meet that intent. ATA questions the merits of assigning a higher priority to carriers with compliance issues than those that are actually less safe. Since the intent of the system is to prioritize carriers for Government oversight, less safe carriers should be assigned higher scores than safe carriers that have paperwork-related violations that are not safety-related.

While ATA takes issue with certain specific elements of CSA, there is an overarching theme: CSA scores must reflect future crash risk. If they did, ATA would support the system, since it would provide a means for responsible fleets to distinguish themselves from those that do not share their commitment to safety, to properly leverage third parties to drive carriers to invest in safety, and to make better use of Federal enforcement resources.

To achieve these benefits, FMCSA must take three very specific steps. First, FMCSA must acknowledge that CSA scores are often not a reliable predictor of future crash risk. Second, the agency must confirm that CSA's highest priority should be to focus on the least safe carriers. And finally, FMCSA must establish a specific plan to develop and implement the changes necessary to ensure that the system functions as intended.

Mr. Chairman, thank you for the invitation. Thank you for the time today.

Mr. DUNCAN. Thank you very much. We have now been joined by the ranking member, Mr. DeFazio. I earlier announced we would stop and allow him to give an opening statement, if he wished, but he wants to proceed with the panel.

But we also have been joined by several other Members: Mr. Walz, Mrs. Capito, and Mr. Coble. So, we will go ahead with the panel at this time, and Mrs. McBride.

And I earlier said you were here for the American Trucking Association. Mr. Mugno is here for the trucking association. You are here testifying on behalf of the Alliance for Safe, Efficient and Competitive Truck Transportation. Thank you very much.

Mrs. MCBRIDE. Good morning, Chairman Duncan, Ranking Member DeFazio, Congressman Rahall, and members of the subcommittee, thank you for the opportunity to speak on behalf of ASECTT, the Alliance for Safe, Efficient and Competitive Truck Transportation.

ASECTT is a coalition of more than 600 carriers, brokers, shippers, and others concerned about the effect of compliance, safety, and accountability program is having on the trucking industry. We believe FMCSA must afford regulated carriers due process, and the shipping public needs certainty that certified carriers can be chosen based upon routes, rates, and service alone, without vicarious liability concerns.

Colonial is a private, family-owned business based in Knoxville, Tennessee. My father-in-law, C.E. McBride, founded Colonial in 1943. We currently run between 250 and 280 power units, primarily owner-operators, in 48 States. Many of our contractors have been with us for more than a decade. Some more than 30 years. Many of them have logged over 1 million miles without a single chargeable accident. Some over 3 million miles. Colonial is self-insured, and has been for more than 25 years. We were one of the first motor carriers in the industry to become self-insured. Colonial has an excellent safety record.

Current regulations require a carrier, after accounting for nonpreventable accidents, to have fewer than 1.5 accidents per million miles driven in order to keep a satisfactory rating. Colonial travels about 40 million miles per year. Our reported crash ratio, including nonpreventable accidents, is 0.4 per million miles, less than 28 percent of the regulatory limit. When nonpreventability is considered, our accident ratio drops to 0.2 per million. Based on Colonial's experience, I am convinced the CSA program, one, doesn't accurately measure carrier safety performance and, two, its progressive intervention goals aren't being realized.

The FMCSA says its goal is to reduce crashes, injuries, and fatalities. We agree. However, CSA's methodology is flawed. Also, the data used to label motor carriers includes factors having absolutely nothing to do with actual safety risk.

Among CSA's numerous systemic flaws, the one that affects us the most is the so-called fatigued driving BASIC. Colonial's percentile ranking in this BASIC hovers around 80 percent, 15 percentage points above the agency's artificial threshold. This high percentile ranking has nothing to do with fatigue. CSA groups carriers who use paper logs with local carriers and others exempt from that requirement. Over half of the points that feed the percentile ranking in the fatigued driving BASIC come from paperwork violations. These violations have no actual effect on fatigue, much less crash risk.

Notwithstanding the agency's sole obligation to certify carriers as safe to use, and our satisfactory safety rating, published CSA rankings mislead some shippers into believing that carriers like Colonial are unsafe. Some feel they cannot rely on the agency's safety fitness determination to trump negligent selection lawsuits. Our firsthand knowledge of how the CSA program actually works differs from the progressive monitoring the agency purports.

When the CSA program was launched in December of 2010, FMCSA told the industry the intervention process would occur in steps. First, a warning letter would notify a motor carrier of any identified deficiency in a particular BASIC. The motor carrier would then have an opportunity to address the deficiency prior to an on-site audit. This is not what happened with Colonial. The FMCSA Nashville field office called on Thursday afternoon, August 11, 2011, saying they would be in our office on Monday morning, August 15th, to begin a focused audit. There was no warning letter or opportunity to address the concern.

The first week, the investigator spent 4 days in our corporate office requesting multiple documents on 19 drivers. On August 29th, the investigator returned with a second investigator. They remained at Colonial until the audit was completed on September 2nd. The final report dated September 26, 2011, left Colonial's satisfactory rating unchanged. And the report was labeled, "This review is not rated." To justify its methodology, the agency has said that focused audits are less time consuming than compliance reviews, which result in safety ratings and require an average of 3 to 4 days. Well, the agency spent 9 work days auditing Colonial. However, we are still branded as a high-risk carrier in the fatigued driving BASIC. We are losing opportunities to transport shipments because some shippers are frightened by agency pronouncements implying that they can be sued if they don't self-credential each carrier using SMS rankings.

Had Colonial received a conditional or unsatisfactory rating, our 25-year self-insurance program would have been in jeopardy. We would likely have been faced with closing our doors after almost 70 years of running one of the safest companies in the industry. Yet we are thankful this didn't happen. Yet we hear this has happened at countless other trucking companies throughout the country. We have firsthand experience of CSA's anticompetitive effects. We ask Congress to stop FMCSA from publishing the misleading SMS scores, and urging shippers and brokers to rely on them.

Mr. Chairman, thank you again for inviting me today. I am happy to answer questions.

Mr. DUNCAN. Thank you very much, Mrs. McBride.

Mr. Johnson.

Mr. JOHNSON. Thank you. Chairman Duncan, Ranking Member DeFazio, and members of the Transportation and Infrastructure Committee, thank you for the invitation and the opportunity to testify at today's oversight hearing. My name is Bruce Johnson, I am the director of carrier services for C.H. Robinson and a member of the TIA board of directors. My remarks today are geared towards the significant impact the CSA initiative is having on the carrier eligibility process that freight brokers and shippers conduct to ensure the hiring of safe, legally registered, and properly insured motor carriers.

As one of the Nation's largest freight transportation brokerages, C.H. Robinson has seen the risk of negligent hiring lawsuits based on carrier selection grow significantly since 2004. I am here to communicate to you the tremendous confusion exists in the industry about the risks of carrier eligibility and selection, and what the BASIC data and safety ratings mean for those hiring motor car-

riers. This confusion has added cost to the brokers and the industry. In addition, it has added legal risk to any entity that hires a motor carrier.

While the BASIC data is used as a compass to guide enforcement actions by FMCSA, safety rating is widely seen as the safety seal of approval for those who hire trucks. Currently, the BASIC data is not directly linked to the safety rating, and the agency is waiting for a rulemaking to draw clear lines and correlations between the two.

When FMCSA implemented the BASICs in December 2010, many in the industry anticipated that a rulemaking linking BASIC data directly to the safety rating would occur quickly. What was supposed to be temporary, however, continues to be delayed by the agency, and every day that goes by without a fair and accurate safety fitness determination, the transportation industry will continue to be negatively impacted.

We encourage FMCSA to be clear and consistent with shippers and brokers on which carriers and which information should be used to select motor carriers to haul Freight. What the industry needs is a bright line differentiation of which carriers are unsafe.

Since 2004, a series of court cases have established a new interpretation of responsibility for shippers and brokers known as the Duty of Reasonable Care. Subsequent court cases expanded and redefined the responsibilities of parties engaging independent contractors, and settlement and/or jury awards have grown substantially. In almost every case, the motor carrier's public liability insurance is exhausted, the carrier has filed bankruptcy, and brokers or shippers are sought to fill the loss and make the injured person or family whole.

A common theme used by plaintiffs' lawyers is—in most negligent hire cases—is that brokers and shippers should second-guess the FMCSA's decision of which carriers are safe to operate by examining the detailed safety record of each carrier before use. This second-guessing scenario is why the conflicting interpretations of BASIC data and safety rating are of such great importance to freight brokers.

Until FMCSA provides firm guidance on what BASIC thresholds constitute a safe carrier, differing opinions will proliferate, and the courts will arbitrate those opinions. There can be no question that the brokerage industry seeks to promote higher safety standards for our Nation's highways. That being said, the brokerage industry is displeased with the current state of affairs, with the courts holding brokers and shippers to an ever-changing standard in carrier selection.

Congress and the FMCSA can reset this standard to one that is more reasonable and static. It should not be the responsibility of industry stakeholders without having access to all of the information to determine which carriers are safe to operate on American highways. It should be the sole responsibility of the agency charged with issuing licenses to carriers and making sure those carriers adhere to safety standards established by the agency to tell the public which carriers are safe to use and which carriers are not.

The only way to accomplish this task is for the FMCSA to complete the new safety fitness determination rulemaking and fully

link the BASIC data to the safety rating. However, we do not want the FMCSA to develop a safety fitness determination prior to addressing industry concerns regarding the methodology used to evaluate carriers' BASIC scores and percentages.

Until this safety fitness determination rulemaking is developed for public comment and ultimately developed into a final rule, we would recommend the following.

One, that FMCSA should immediately add the current compliance review-based safety rating to all screen shots that display a carrier's BASIC data, so there is no confusion about the two systems.

Two, that FMCSA should remove any language from its Web site and outreach that encourages shippers, brokers, or the public to use the BASIC data for their own purposes.

And, three, that Congress develops legislation that would create a uniform standard against liability without fault by preempting State vicarious liability laws imposing liability on non-negligent transportation brokers and shippers.

In conclusion, we fully support FMCSA and its mission to improve motor carrier safety on the Nation's roadways. TIA and C.H. Robinson look forward to productively working with industry participants, FMCSA, and Congress to ensure that FMCSA publishes a safety fitness determination for all motor carriers that is based on accurate and fair data, and that does not discriminate based on carrier, size, or type. Thank you.

Mr. DUNCAN. Thank you very much.

Mr. Gentry.

Mr. GENTRY. Good morning, Chairman Duncan, Ranking Member DeFazio, and members of the subcommittee. Thank you for this opportunity to testify on behalf of the members of the American——

Mr. COBLE. Mr. Chairman, I am still having difficulty——

Mr. DUNCAN. We are still having trouble hearing some of the witnesses. I guess you will have to put that real close to you, and maybe it will work better.

Mr. GENTRY. Test.

Mr. DUNCAN. Real close. OK.

Mr. GENTRY. All right. Chairman Duncan, Ranking Member DeFazio, and members of the subcommittee, thank you for this opportunity to testify on behalf of the members of the American Bus Association and the United Motorcoach Association. My name is Bill Gentry, and I operate Gentry Trailways in Knoxville, Tennessee. We have operated school bus service for Knox County schools since 1953, and provide charter and tour service with over-the-road motorcoaches. We take great pride in serving our community safely and economically for nearly 60 years.

When CVSA launched, hopes were high that it would afford new tools to better predict the likelihood of the commercial motor vehicle crashes. Unfortunately, at this point, evidence suggests that CSA may fall severely short of its intended goals. We do not believe the current data fed into the CSA program and the current prioritization scheme will result in a significant reduction in crashes.

Studies indicate that vehicle defects are responsible for less than 2 percent of commercial motor vehicle accidents, while driver error is responsible for over 95 percent of the commercial motor vehicle accidents. All of the highest indicators of an increased propensity for an accident relate to basic traffic law enforcement. The industry has urged the enforcement community to issue citations when drivers violate basic traffic laws, and insist that courts avoid reducing or modifying the original charges.

Another issue with CSA is that it does not account for carriers that terminate drivers for poor driving records, as good companies do. CSA scores do not reflect the elimination of the risk when that driver is dismissed. The carrier must endure the punitive scores associated with this violation for 2 years. Meanwhile, the dismissed driver simply finds another carrier that is more tolerant for his traffic infractions. And there is no effect on that carrier's score.

Perhaps CSA's most controversial subject is to issue—is the issue of crashes. Simply stated, all crashes, regardless of accountability, are the number one indicator that a commercial motor vehicle company and/or driver will incur another crash. However, the CSA system contains no information regarding the severity or the accountability of a crash. Unfiltered, this information cannot serve as credible consumer information upon which a carrier selection can be made.

While we believe the crash data serves a critical role in the predicting of carriers' propensity for an accident, the information in its current form is inappropriate and—for consumers, and should be restricted to enforcement in motor carrier views only.

Congress recently passed legislation that would require FMCSA to develop an easy-to-understand writing system for consumers of passenger carrier services. We feel the development of this system should be the highest priority by FMCSA. CSA also fails to recognize the vast differences in the level of State participation for inspection activity. We also have a concern that FMCSA advising States that inspections can occur at the weight stations, where there is not any safe accommodations for the passengers.

The leadership at FMCSA has been responsive to our recommendations on improving CSA, and we applaud their leadership for willingness to listen to the industry. We have two final recommendations for the—improving CSA.

First, we recommend that the GAO encourage the services—or engage the services of the American Academy of Actuaries in an effort to move—effectively explore the links between the most significant causes of motor vehicle crashes and the CSA safety measurement system.

Second, under CSA, carriers are inappropriately placed into peer groups with carriers such as long-haul truckers. Passenger carriers should be rated with other passenger carriers, oranges to oranges, to more readily identify those that need the interventions.

In conclusion, we believe that CSA is well-intended, but has room for significant improvement. And we look forward to working with the committee and FMCSA to achieve its intended goals. On behalf of the members of the American Bus Association and United Motorcoach Association, I appreciate this opportunity to express our views, and am pleased to answer any questions at this time.

Mr. DUNCAN. Thank you very much, Mr. Gentry. And thanks to all the witnesses for their very helpful testimony. And since he was not here to give an opening statement because he had to be on the floor, I am going to turn now to Ranking Member DeFazio for any statement or questions that he wishes to make at this time.

Mr. DEFAZIO. Thank you, Mr. Chairman. I think it is just a little bit more than 2 years since, prior to implementation, we held a hearing in this subcommittee regarding this new system. And at that time we expressed a number of concerns that still endure. The system was implemented before results of a study and concerns about, in particular, the crash issue was raised at that time, and they seem to still be outstanding.

I will probably have a couple of rounds of questions. But first, I want to get to a couple of things.

Mr. Johnson, you raised the issues about TIA and wanting a bright line. I am going to ask Ms. Ferro about that in a moment. But I heard another concern which is that, you know, basically, only about 40 percent of the carriers have some sort of a rating. Sixty percent haven't had a violation or roadside inspection or anything. And I have heard that some of your members are reluctant to utilize people—those people, because they are essentially unknown. I mean—we do know they haven't had a violation, but we don't know much else about them. Is that true?

Mr. JOHNSON. Yes, I believe that is true.

Mr. DEFAZIO. So 60 percent of the carriers out there are, at this point, somewhat disadvantaged by this system because they are not in the system because they haven't had a violation or roadside inspection.

Mr. JOHNSON. Yes. I don't know the exact number or the percentage, but I know there is a significant amount. And it is the smaller carriers that aren't getting any inspection data. So then it is left to the broker or the shipper around how much fare they have, or tolerance for risk in what a court may do to them if someone like that were to have an accident and they would know that they had no data. So there is fear around using those, for sure.

Mr. DEFAZIO. OK. Ms. Ferro, we talked about this the other day, and I suggested some ideas about how we might get people into the system in a benign way. And we sort of speculated—he is saying it is a real problem. And this is 60 percent of the industry. I mean how are we going to deal with this? I mean this is—I mean there are many problems we need to discuss today, but this is one that was new to me.

Ms. FERRO. Well, let me—let's talk real quickly about the database of active carriers. We are all using the standard of a 525,000 active carriers in operation today. About 60 percent of those are private carriers. So there is really—so, right off the bat—now, what I don't have is the breakout on the 200,000. But I do want to clarify that all 325,000 carriers that you just identified as having insufficient data to actually be analyzed within those BASICs, many of those, very many of those, are private carriers. So they wouldn't be in competition for some of the shipping services that Mr. Johnson is speaking about. Because, again, they are moving their own products.

Now, that aside, when it comes to ensuring that as many carriers as possible are touched in some way by an inspector or an investigator to be sure we do have adequate data to monitor their safety performance, we are taking a couple different approaches. One you and I discussed: Is it feasible to allow carriers to go through weigh stations in a cooperative way, as we see happens periodically in Oregon, to get additional inspections?

More importantly, the process that we have been working with the Commercial Vehicle Safety Alliance on is ensuring that when a carrier goes through a weigh station or is inspected at roadside, and the inspector chooses to wave the carrier on because everything looks good, to be sure that we are turning that into an inspection, recorded inspection that is uploaded into the system. Today, out of 3.5 million inspections that are carried out each year, one-third are clean inspections. It is very important that we touch all carriers that are operating on our highways.

Keep in mind one last piece, as well. Of those carriers that are not within the CSA analysis today, they haven't come on our radar because they haven't had a crash, as well. So there are a number of factors indicating that those carriers may be doing very well. Many of them are private carriers. But we also are increasing both the inspection strategies to ensure we are touching everybody, and randomizing some of the automated bypass systems to ensure those with no data are being pulled in for an inspection.

Mr. DEFAZIO. And then the crash which was an issue 2 years ago——

Ms. FERRO. Yes.

Mr. DEFAZIO [continuing]. And still is an issue today, we also discussed that. And it is my understanding that the agency is moving towards some sort of a crash weighting system because—what I still find extraordinary about the data, and I don't know whether the study—you know, what their sample had and, you know, and whether they drilled down to at fault, not at fault, or anything, they just said any kind of a crash is an 88 percent indicator of future problem.

I still find it hard to believe if, you know, one person or one company had one incident where they were legally, properly, you know, stopped, and someone crashed into them, by their entire negligence, that that is an indicator that somehow that person is going to be involved in a future crash. I mean I am still having trouble with that, you know, the validity of that conclusion from that study.

But my understanding, in part, you are going to deal with that with crash weighting. Do you want to address that?

Ms. FERRO. I will. Thank you, thank you, Ranking Member DeFazio.

We are all familiar with instances like you describe, where there seems to be clear evidence that the crash was not preventable on the part of the commercial vehicle operator. But all of our analysis and the American Transportation Research Institute analysis indicates that past crash experience is a strong predictor of future crash risk.

We recognize some of the—that the aggregate number is—includes data such as the example that you just described. And so,

in the first phase of this program, we have kept the crash indicator, which, again, is an indicator for us of potential crash risk, which we need to take into consideration. But we have kept it available to enforcement in the motor carrier community, or the individual motor carrier themselves, not available to the public, again, just on the basis of fairness.

At the same time, we initiated a process to figure out how we could determine whether a crash was or was not preventable, what data could we use to use it, how valuable or valid or uniform and consistent are police accident reports that would provide the foundation of that inquiry, and then how do we set up a process that looks at all 100,000-plus reportable crashes in a fair way, so that we are not doing this on onesies and twosies, and skewing the data outcome and the comparative nature of this program, but actually doing it comprehensively.

So, we did a preliminary analysis of a police accident record report, and how well it can be used to determine preventability, and we are now analyzing the question of how to set up a process that could manage all reportable crashes, analyze preventability in a fair manner. And, at the end of that process, does it, in fact, make CSA a sharper and more focused tool in examining who we need to be looking at? Our premise is that it could, and that it does, but we need to prove it out.

So, we expect to have the results of this study by early summer of next year, 2013. We have got the schedule for the study and the basis and elements for the analysis on our Web site, so it is available to everybody to look at. And, frankly, we look forward to reporting out on the results of that analysis and identifying what our next steps would be with regard to crash weighting. The underlying premise is that a nonpreventable crash would have a very low weighting, a completely preventable crash would have the highest weighting.

Mr. DEFAZIO. OK. You said not available to the public. But do brokers ask shippers to provide—or not shippers—ask the carriers to provide that data sometimes?

Mr. JOHNSON. My company does not ask motor carriers for that. But maybe some of the motor carriers could use their experiences to see if they have been asked that before.

Mr. DEFAZIO. Yes, OK. Anybody—I mean since—I am just wondering. Just because it doesn't appear on the screen or on the rating system as exists, is it being utilized by some of the shippers? Anybody have any experience with that?

Mrs. MCBRIDE. I did speak with someone——

Mr. DEFAZIO. Mrs. McBride, we are still—try the other one, there.

Mrs. MCBRIDE. Is this one on?

Mr. DEFAZIO. Be personal with the microphone.

Mrs. MCBRIDE. OK. I apologize.

Mr. DEFAZIO. Yes.

Mrs. MCBRIDE. I spoke with a carrier last week in my area who did tell me that he had been refused freight because the broker asked for a copy of his crash history.

Mr. DEFAZIO. OK.

Mr. MUGNO. Yes. I can confirm that ATA members have been asked that question by brokers on occasion, without a doubt.

Mr. DEFAZIO. OK. And that is—but that is just now the raw data, where we can't attribute fault or no fault.

Mr. MUGNO. Correct.

Mr. DEFAZIO. OK. All right. Thank you. I will have another round of questions.

Mr. DUNCAN. All right, thank you very much, Mr. DeFazio. We will go first on our side to Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. Good hearing, good panel. You put together a good——

Mr. DUNCAN. Thank you.

Mr. COBLE [continuing]. [Inaudible] today. Ms. Ferro, I am told that there is no impartial appeals process for DataQs challenges. And, if so, that is different from any other administrative penalty system within the Government, where motorists could be hit with a violation, to have the ability to appeal that to an administrative law judge. Why does not the Federal Motor Carrier Safety Administration have such a process in place?

Ms. FERRO. Let me just put it in the context of the population of violations we are talking about. So I mentioned earlier that, through our State law enforcement partners and our commercial vehicle safety grant program, 3½ million commercial vehicle inspections are carried out each year. The number of appeals, as you described, which we call DataQs, number 34,000.

Mr. COBLE. And you call them what?

Ms. FERRO. They are called a data query.

Mr. COBLE. OK.

Ms. FERRO. In effect, an appeal of a violation——

Mr. COBLE. Got you.

Ms. FERRO [continuing]. Or of an inspection. So it is just 1 percent of the total body of inspections that are carried out each year. And that is under the new CSA program. This is not counting prior to CSA, when very few data queries were made.

So, out of those 34,000 queries, there—we have established guidelines. We were very sensitive to the concern that you raised, because these are the result of a sort of a record of inspection of a carrier, they are not taking away a right of any kind. And so they are not in that adjudication process that you described on an appeals—sort of an administrative adjudication appeals process.

But we did set up a DataQs process whereby, when a carrier requests a specific inspection be reviewed, the carrier appeals either the data in that inspection or the validity of the inspection results. It is put through the DataQ process very quickly, reassigned to the State where the inspection was carried out, and the State commercial vehicle enforcement team reviews the inquiry and determines what action needs to be taken, whether to grant it, to correct data, if in fact it was a violation applied to the wrong carrier, or actually remove the violation because of the information and the substance that the carrier reported.

Out of the 34,000 data queries that occurred in 2011, roughly half were actually acted upon. Either data was updated and corrected or removed. But it—so, in fact, what we have provided is a clear set of guidelines for States to follow, to take into account all

information the carrier presents, and be both respectful of the process, respectful of the inspector's work, and give it a fair analysis and make a determination.

Mr. COBLE. I thank you. I thank you for your response.

Mr. Johnson, as a business owner who is obviously concerned about safety, what information could the FMCSA provide that would help you to make good decisions, decisions good for safety, good for your customers, good for the economy in general?

Mr. JOHNSON. What we really need, we just need a clear picture of who is not safe. If FMCSA was able to tell us who is not safe, our industry would not use those motor carriers, and they would fail at that point. But by having very much—many gray areas—and if you ask FMCSA to tell you who is a safe carrier and who is not, they can't really tell you that today, based on their own data. And also, much of the data is not made public.

So, just clear up the confusion. Give us a clear distinction of who is unsafe. And our industry will stop using those carriers.

Mr. COBLE. I thank you, sir. I yield back, Mr. Chairman.

Mr. DUNCAN. Thank you very much, Mr. Coble. And I will save all my questions until everybody else has a chance. But I did want to clear up one thing when you responded to Mr. Coble. Does the—when it—something is appealed, does it go back to the same officer who issued the violation?

Ms. FERRO. It generally goes to that officer's commander, and whatever team or individual the commander has established to analyze those data queries. And that individual generally does ask the officer their perspective. That is absolutely correct.

And we will say we use this process as an improvement process, because there are times—as I said, about half—are acted upon. The other half are preserved, as they——

Mr. DUNCAN. So my staff was wrong when they said it goes back to—the appeal goes back to the same person who issued the violation.

Ms. FERRO. No, your staff is right to the extent that, invariably, the team or the individual officer assigned to handle the data inquiry in the State does ask the officer——

Mr. DUNCAN. But that officer doesn't decide the—make the decision. It goes to—the commander makes the decision, or somebody—is that correct?

Ms. FERRO. If I may suggest that Chief Palmer address that for the specific operation in Texas—in our—in many cases that we see, it goes back to the person responsible for managing the DataQ process, which may be the commander, it may be a staff support person. But not the officers, per se, not the individual officer.

Mr. PALMER. Mr. Chairman, it—in some cases it—in Texas, for example, which is, I think, fairly consistent across the enforcement community, as a general rule in Texas, when we get that DataQ from a motor carrier, then what we do is we put it together and we send that, all the information, the supporting documents, to the—in our case, the captain of that particular district in the State. And then it is that captain's responsibility to look into that DataQ and then make a decision as to what to do. They do speak with the original officer, in case there is additional information that is not included on the inspection report, or, especially in the cases of a

crash report, which can be very complex, then they do speak with them. But the final decision rests with that officer's immediate supervisor.

Mr. DUNCAN. All right, all right. We will go next to Ranking Member Rahall.

Mr. RAHALL. Thank you, Mr. Chairman. Mr. Chairman, I have a statement from Mr. Todd Spencer, the executive vice president, the Owner-Operator Independent Drivers Association, and I ask unanimous consent it be made part of the record.

[No response.]

Mr. DUNCAN. Without objection, so ordered.

[The information follows:]

Statement for the Record of

TODD SPENCER
EXECUTIVE VICE PRESIDENT
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION

Before the

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES

Regarding

EVALUATING THE EFFECTIVENESS OF DOT'S TRUCK AND BUS SAFETY PROGRAM

SEPTEMBER 13, 2012

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On behalf of

Owner-Operator Independent Drivers Association
1 NW OOIDA Drive
Grain Valley, Missouri 64029
Phone: (816) 229-5791
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Good afternoon Chairman Duncan, Ranking Member DeFazio, and distinguished members of the Subcommittee.

As you likely know, the majority of the trucking community in this country is made up of small businesses, as 93 percent of all carriers have 20 or fewer trucks in their fleet and 78 percent of carriers have fleets of just six or fewer trucks. In fact, one-truck motor carriers represent nearly half of the total number of motor carriers operating in the United States.

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 approximately 150,000 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.

OOIDA is pleased to share the experience of it's members with the Federal Motor Carrier Safety Administration (FMCSA)'s Compliance, Safety, and Accountability program, commonly known as CSA. Small trucking companies – the little guys out on the road – have unfortunately experienced the oppressive and punitive nature of CSA in its current form. While FMCSA is making adjustments and improvements to CSA, those changes are not coming fast enough and are not broad enough to prevent negative impact on the livelihood small truckers with histories of safe driving on our nation's highways.

While no one would dispute the fact that SAFESTAT needed to undergo improvements and offer a more accurate reflection of safety in the industry, CSA in its current form is a complicated and far reaching program with wide sweeping implications for the industry beyond safety enforcement. In short, CSA, although well-intended, is today a program with considerable flaws that have real-life implications for motor carriers. We therefore believe that the program overall could have benefited greatly from the rulemaking process, as it seems as if the program was designed to accomplish a wide variety of questionable objectives– including influencing market decisions and offering assistance to insurance companies.

Regardless, OOIDA remains supportive of the program's overall goal to improve highway safety, although we greatly question the correlation between much of the data collected and its impact on highway safety – including arbitrary severity weightings and a fundamentally flawed ranking system. FMCSA urges shippers and brokers to use carriers who have been inspected and are therefore reflected in the CSA system versus those who have not been inspected. However, an inspection will only be identified if there is a violation. It seems counter

intuitive to the program's goal to encourage carriers to receive violations, although that is precisely the case in a post CSA world. Also, brokers and shippers feel as if they will be liable if they do not use carriers with positive CSA rankings, something only achievable if a carrier undergoes lots of clean inspections. Small carriers are less likely to be inspected as often as a carrier who has hundreds, if not thousands, of trucks, so it is difficult for them to show a score, much less the positive scores demanded by shippers and brokers.

Moreover, once a carrier is in the system, they are compared among a peer group and assigned a percentile ranking. Carriers then compete for safety rankings, as you are not judged on your individual safety record but assigned a score according to a "grading curve". Therefore you are only as bad or as good as the next motor carrier in the system. In essence, for one carrier to succeed, another carrier must fail. How does encouraging carriers to fail improve highway safety? As a goal we should want all motor carriers to be striving for perfect safety records.

Curing a negative ranking also offers a particular problem for small carriers as, as previously stated, they are simply have less exposure to inspections because of their small operations. All along the way it seems as if small carriers are punished in this system. Once a small carrier gets into the system, roadside inspections are highly subjective, and law enforcement can be over-zealous at times. Just a few minor violations can send a score sky rocketing, putting the carrier nearly out of business as it becomes evident no one no one will employ your services because the system shows you are a risk, even though you operate safely. Small carriers do not have the resources to fight citations and violations in court continuously, and even if they are successful, overturned adjudications are irrelevant to the CSA system anyway, as citations are reflected as safety violations in the system even when they are overturned in court.

OOIDA also finds issue with CSA's failing to allow truckers their day in court as "alleged" violations are reported in the system. Procedurally, FMCSA provides only one way to dispute or challenge violations under CSA, the DATA Q system. This is true whether or not a citation versus a warning is issued or if that citation is upheld by a court of law – under CSA these are all considered violations. And under DATA Q, even if you win in court, the violation still remains in CSA's database. Complaints in the DATA Q system simply go back to the state police officer who wrote up the violations at the roadside - as is FMCSA policy to follow state

procedure. The citing officer then becomes judge and jury in the Data Q process any complaints. Needless to say, the bulk of alleged violations still stand after the Data Qs review.

It is important to remember that these are **"alleged violations"** because a citation is issued at roadside and that citation may be challenged in court with the opportunity for it to be overturned. However, within the CSA system, the individual is assumed guilty at the time of the roadside citation, and it is at that time it is reported as a CSA safety violation, which is separate from a citation issued under state law.

Often small business truckers do not have the resources or time to continuously fight roadside citations in court – despite the fact that many citations may be egregious or arbitrary in nature and many are overturned in court. Large carriers, on the other hand, have legal departments and budgets that allow them to fight violations while keeping their drivers on the road. Take for example when a driver who may have no control over the equipment, is cited for an equipment violation, such as sleeper birth on a company-owned truck not meeting the size requirements under the law. That driver will likely decide that he has no way to fight the citation in court because he cannot afford to take time away from trucking in order to appear in a courtroom hundreds of miles away from his home or where business takes him on the court date.

However, even if the trucker takes the citation to court and wins, will still appear on the CSA system as a violation. The driver's only option is then to fight the CSA violation through the DATA Q system, which FMCSA uses to send the challenge back to the state for determination.

CSA is also flawed because its scoring system, which is centered around Behavior Analysis and Safety Improvement Categories, or BASICs, is prejudicial, arbitrary, or otherwise (as in the case of the "Crash Indicator BASIC") awaiting implementation – yet the impacts of this partial system are far reaching and disproportionately punish small businesses.

In the CSA system, higher scores under each BASIC correlate with the perception of "unsafe" practices. Violations and citations issued at the state level are inputted into the system and they are assigned a severity weighting to then place drivers into percentile rankings based on a range of 0 to 100. The higher the percentile, the more unsafe a driver or carrier is considered to be and hence, considered more likely to crash.

The experience of an OOIDA member is important to see as an illustration. The small three truck carrier saw a period of violations that led their Fatigue Driving BASIC to go from 0 to 79 in a matter of weeks. The carrier inquired with FMCSA on how to improve his score, and the answer they provided him with was to obtain more "clean" inspections. The carrier then underwent a number of inspections, all of which came back clean. However, under CSA, the score under the Fatigue Driving BASIC bizarrely went up to over 80 without any justification and stayed that way for more than a year since the initial violations. This is exactly the opposite result of what should have happened according to information provided by FMCSA on CSA.

However, for a medium to large size carrier, the same three violations during a two week period are likely to hardly cause a blip in their BASIC scores. And for these larger carriers, it does seem that clean inspections do have a far-greater impact in reducing their CSA scores. But why should this only work for larger carriers? Further, for larger carriers a series of violations is likely to point at a systematic problem across the carrier, where the same thing for a small carrier is more likely to be something that is easier to correct. However, under CSA, the small carrier gets little to no credit for taking the corrective action and getting the clean inspections that FMCSA tells us we need to improve our scores.

In addition to the lack of "due process" safeguards, the severity weights used in CSA are arbitrary and assign accountability based on no correlation to increased crash-risk. This is especially true in the Fatigue BASIC, where a large percentage of the violations captured are not true hours of service safety violations, but are rather "form and manner" or administrative violations (e.g. the driver forgot to write down a bill of lading number rather than exceeding a daily driving limit). According to FMCSA, approximately 35% of all hours-of-service violations are simply form and manner violations and not a result of exceeding allotted driving or on-duty hours. For example, a driver who is cited for failing to sign his Daily Vehicle Inspection Report (DVIR) is assigned a severity weighting of 4 under the Fatigue BASIC– despite the fact that the signing of this report has nothing to do with fatigue or safety. It is simply a paperwork violation associated with an innocent mistake, yet the severity level assigned by FMCSA for this violation is only slightly lower than that assigned to a violation resulting from not keeping a current record of duty status.

Another primary problem with CSA revolves around the Crash Indicator BASIC. Under CSA, crash data is collected without any determination of fault, despite the fact that police

reports collect this information for use throughout the criminal justice process. Just to be clear, FMCSA relies heavily on police input, but inconsistently does not in the aspect of fault determination. Whereas in DATA Q FMCSA defers completely to law enforcement to judge their own inspections, FMCSA does not rely upon law enforcement when it determines that a truck driver is not at fault in an accident. This means that without the fault determination, any truck involved in an accident is indistinguishable from another in FMCSA databases, and that has significant prejudicial impact on both driver and motor carrier safety profiles.

For example, nearly 20% of all crashes or other "negative interactions" with trucks involve another vehicle rear-ending a moving truck. However, CSA displays this type of crash without any indication that the trucker was not at fault. An OOIDA member serves as probably the most significant example of the impacts of this failure to address crash fault. The member's truck that was hit by multiple vehicles as part of a 50-vehicle accident. Despite the fact that the trucker was able to stop his truck and not hit anyone, the seven fatalities that resulted from this major accident are all listed in the trucker's record under CSA with no distinction or notation about what really happened. With this flawed data publicly available to freight brokers and shippers, incomplete and false CSA data is being used to essentially red-line carriers. As illustrated with my example, regardless of fault or control, once a small carrier receives a negative score, it is nearly impossible to cure before your business is put in serious jeopardy.

FMCSA has stated that accident involvement is a reliable indicator in predicting future accidents and therefore is relevant. This line of thinking, regardless of what the research indicates, is repugnant to our fundamental philosophies of justice. Under this line of thinking, truck drivers are being tried and convicted for crimes that haven't even occurred or may never occur. It's simplistic and flawed reasoning that fails to take multiple things into account. For example, a driver who spends forty years of his life on the road has been exposed to greater risk and real world scenarios than a driver who has held a CDL for 6 months. Who is to say how many accidents the veteran driver has avoided because of his experience and training? Fault in accidents matters – simply because the police may not have a good system for reporting fault should not automatically mean that therefore the driver must be punished. In addition, the concept that accident involvement can predict future accidents should be seriously questioned.

CSA replaced SafeStat as FMCSA's safety management and performance system in December of 2010. We are now a year and a half into the new system and its flaws are

becoming more obvious. In short, CSA, while well meaning, in its incomplete form is having real-life impacts on motor carriers.

Given the significant role that CSA is primed to play in FMCSA's future enforcement and regulatory activities, it is important that the agency get the system right. Unfortunately, there are still major hurdles it must overcome.

Mr. RAHALL. Then, quoting from that testimony, I have a question for Administrator Ferro. According to Mr. Spencer's testimony—and I quote—"Small carriers are less likely to be inspected as often as a carrier who has hundreds, if not thousands, of trucks, so it is difficult for them to show a score, much less the positive scores demanded by shippers and brokers."

And this question follows up on concerns raised earlier by Mr. DeFazio, and that is it almost seems like one must commit a crime and then receive a full pardon just to get into the system. Your thoughts on that?

Ms. FERRO. My immediate response would be that is not the case, that is not correct. Let me again walk through the numbers.

Out of the 525,000 active carriers, 85 percent are 5 trucks or fewer. We have such a significant impact on small business, we are very sensitive to it. That is about 425,000 to 450,000 carriers out of the 525,000. Those numbers are well represented within the 200,000 carriers on whom we have data, because there is only 75,000 others with 6 or more trucks in that mix, and actually, a far fewer number of really large carriers.

The reason large carriers have a high number of inspections is they generally are operating far more equipment and have a higher exposure rate on our highways. We do work very hard to ensure that we are also inspecting—law enforcement across the country works on inspecting all vehicles that identify a risk to them that come their way, for one reason or another, either there is a weight issue or they have pulled it in through some of the randomized systems that we have identified through the inspection selection process.

So, while—do all small or owner-operators—have all of them had an inspection? Maybe not in the past 2 years. Probably yes, some time in the past several years, if they are operating. But this system works off of 2 years of data.

Mr. RAHALL. OK. Let me ask you another question, another concern expressed by OOIDA. They have expressed concerns over alleged—how alleged violations are handled under CSA. A citation issued at roadside is reflected in CSA, even though it may be challenged and overturned in court. How does CSA handle these type of situations?

Ms. FERRO. In our guidance to the States on the DataQ process, we identify the matter of a State charge along with a violation and the State charge being dropped, and to again recommend to the commanding officer or the DataQ contact in that State that they take into account whatever information the individual driver or company owner presented to the court that resulted in the decision of dismissing the particular case, and to use their best judgment in making their final decision. We do not today direct States to drop a violation if, in fact, a State charge was dropped.

This is a matter that continues to be of real importance to the carrier community and the enforcement community. And one of the ways we have ensured that we are going to have an ongoing forum to have these kinds of discussions and address these kind of issues is we created a CSA subcommittee within the Motor Carrier Safety Advisory Committee, just created last month when the Motor Carrier Safety Advisory Committee met. And I feel fairly certain that

the CSA subcommittee is going to have this—actually, I know that it is already on their list of issues that they want to discuss, this matter of how do you handle a violation in the DataQ process if the State conviction has been dropped, or the State charge. So that one I think will continue to get some attention, and probably some additional recommendations.

Mr. RAHALL. Any other member of the panel wish to comment on either question?

[No response.]

Mr. RAHALL. OK. Thank you, Mr. Chairman.

Mr. DUNCAN. Thank you very much. We are always honored to have a former chairman of the full committee. And, Mr. Young, I don't know whether you want a few minutes to catch your breath, or do you have something you wish to say at this point, or—you just got here, so——

Mr. YOUNG. Mr. Chairman, I never have to catch my breath.

[Laughter.]

Mr. YOUNG. Mr. Chairman, first let me say I appreciate having this hearing, because—and for the chairman, Ms. Ferro, and the rest of you at this table, the reason we have these hearings—we are beginning to get complaints. And my biggest concern, Mr. Chairman, is I have watched over the years agencies that lose contact with what they are trying to do through—I call it gobbledygook. I love that word, gobbledygook.

Bureaucrats that have a paycheck which really don't understand why they get it, but they are doing it because they can, and that disturbs me. And I just—that is my comment.

Now, questions. And, by the way, Mr. Chairman, I do believe I will ask you respectfully to have an audit of the CSA and see where they arrived at the decisions they have arisen at. You know, the formula—let me give you an example. The formula they used in CSA was written by the FMCSA. And is that correct, that is what was—that is the formula, right?

Ms. FERRO. The analysis——

Mr. YOUNG. I can't hear you, by the way.

Ms. FERRO. Pardon me. Yes.

Mr. YOUNG. Oh, it was written—so that means the chicken was telling the fox what they are supposed to do. Or vice versa. It is my understanding that these formulas mean that scores were reduced based on time passed since the violation, the number of clean inspections since that violation. Is that correct?

Ms. FERRO. Could you repeat that question? I am not understanding——

Mr. YOUNG. It was the—it is my understanding that the formula means that scores are reduced based on time passed since the violation and a number of clean inspections since the violation was—the violation. Is that correct?

Ms. FERRO. Well, let me clarify. This is not a scoring system. It is a set of algorithms and analysis that was developed with the assistance of the Volpe Transportation Center and with input from all of these stakeholders here over the course of 6 years.

Mr. YOUNG. Was their input listened to?

Ms. FERRO. Absolutely.

Mr. YOUNG. Oh, absolutely.

Ms. FERRO. Absolutely.

Mr. YOUNG. There may be difference of opinion on that. So, let's say a large carrier has hundreds of trucks, and we will see their score go down faster than a small carrier with one or two trucks. Simply by nature, they are going to see more inspections. Is that correct?

Ms. FERRO. That is not correct. Again, the system uses clean inspections, as well as inspections with violations over the course of a 2-year period.

Mr. YOUNG. So you think your formula is good?

Ms. FERRO. We have a very sound system. Is it perfect? No, and I——

Mr. YOUNG. Then why are we having this hearing if it is so sound? Someone doesn't think it is sound. Mr. Chairman, is that correct?

Mr. DUNCAN. There is a lot I can say about that, Mr. Chairman—I mean we have been getting a lot of complaints around the Nation. And I was going to get into this later, but you——

Mr. YOUNG. Well, that is what I am saying. Madam Chairman—and just cool it for a while, OK? I am not hostile yet. I can get hostile. I guarantee you that. But I am—as I mentioned in my opening statement, there are complaints. I have complaints. And there is a reason those complaints are coming forth.

Now, you may not be hearing it. It may be just from your staff alone. That is why I do think, Mr. Chairman, if you don't do it, I will ask for a GAO report, just to make sure that there is some understanding where we are going in this program.

I think that, you know, this is supposed to be a working program, work together. And I have always been one to try to make sure you understand just because you get a paycheck, that you have a responsibility to those you are serving, to make sure it works correctly, not because you have an illusion on how it should work. You have to listen to those that you serve on the bureaucratic system.

That is wrong with our Government today, Mr. Chairman. We are not being run by a legislative process. We are being run by bureaucrats. The President. Not just this President, all Presidents. And it is our responsibility to review, find out if there is a problem. And if there is a problem, you will fix it. If you don't, we will. That is very simple.

Mr. Chairman, I have no other questions at this time. I may have some later on.

Mr. DUNCAN. All right. Thank you very much. Mr. Holden.

Mr. HOLDEN. Thank you, Mr. Chairman. Administrator Ferro, in addition to the CSA program, your agency administers the HMSP program, which covers less than a half percent of the estimated 525,000 active carriers on the agency's roll. And this program operates as a fitness determination standard for this universe of motor carriers.

Congress included provisions in MAP–21 to prompt rulemaking addressing flaws in the CSA program. It is my understanding that your agency has stated that the HMSP rulemaking must wait publication of the CSA safety fitness determination final rule.

I believe that lessons learned from the hazmat safety program would be helpful to your goal to transition CSA into the agency safety fitness determination standard. Would it not be a better course of action to perfect the hazmat safety program with its smaller client base first, then use that to—template to anticipate the larger CSA population?

Ms. FERRO. It very well could, just as you describe, because again, the hazardous material operators in many ways already demonstrate, by virtue of their obligations and their cargo, a high degree of safety in operations.

There is a challenge within our rules themselves that sets the safety fitness determination as driven by, today, a compliance review. That element of the rules that we operate under needs to be changed first, before we can incorporate these performance elements in the CSA program into a safety fitness rating. But we will go back and again examine if there is a way that we can carve out a smaller piece. In the meantime we are pressing forward. We understand the importance of putting a safety fitness determination rule on the street, and we are very eager to have a proposed rule published early next year. But we will absolutely go back and examine the approach that you described.

Mr. HOLDEN. OK. Thank you. Thank you, Mr. Chairman.

Mr. DUNCAN. Thank you. Mr. Boswell?

Mr. BOSWELL. Well, thank you, Mr. Chairman, and for having this hearing.

I guess I would first like to start off with a compliment. It is a good panel, good discussion. The time is right we need to be doing this. And I thank all of you for participating. I think you came with a desire to participate and appreciate that. The criticism is I would like to see somebody on the panel in the future from the—as Mr. Rahall just made a comment about the Owner-Operator Independent Drivers Association. If they represent 90 percent of the carriers out there, those 1, 2, 3-truck owners, I would like to have one on the panel. And I would just like to leave that for your consideration.

I took some interest in the comments made by some of the panel—well, all of you, in fact—but some of the comments made by Mr. Mugno about the small trucking firms. I thought a very good point was made by Mr. Rahall. In order for that individual trucker to receive a score, he must first receive a violation. And in order to receive a violation, you must be inspected. And to—a bad score, obtaining as many clean scores as possible is the objective. Small carriers are off the radar, and those who have negative scores have little opportunity to cure. I think it points out a problem. And we ought to really try to do something about it. And I trust that is what we will try to do. So I am going to encourage we do that.

I think it has been brought out—it would be redundant for me to repeat what Mr. DeFazio said, and Mr. Rahall, or others. And we see a need. And I ask that, one, we put members of the Owner-Operators on panels in the future, if we possibly can. I wouldn't know why not. I would like to be able to ask him or her that is out there trying to make a living and do something you like to do and something I used to do a little bit. And I have a lot of small operators, one or two rigs, in my district that haul grain and farm

supplies and all those things that go with it. And I would like to include them in the process more.

I appreciate the fact that, Mr. Mugno, that you kind of referred to those folks, and thank you for doing that. Appreciate it, Mr. Johnson and others. And they are very part of our economy and we need to take them into mind.

So, with that, I will just yield back and anticipate what we can do to, as you said, Ms. Ferro, make it better. That is what we are all about. I don't know why we didn't have opportunities when we went through the process to have a little more time, but I think we are doing the right thing. But we got to do it right, and I think we have opportunity to do it better. And I will encourage that. I yield back.

Mr. DUNCAN. Thank you very much. Mr. Walz?

Mr. WALZ. Well, thank you, Mr. Chairman. And again, I want to thank all of you for being here. It is obvious that everybody here's goal is the same of working toward zero deaths and safety amongst all, and making sure our operators are able to do what they need to do to create those jobs that are so important. So I am very grateful for that.

I spent August at several carriers, got out in preparation to talk about this issue, went out and talked to our folks. I represent a rural agricultural district. This time of year it gets pretty busy on our roads. Lots of things moving. And people are very cognizant of this. And I can tell you, in every one of those carriers, safety is the top concern for them. Their families are on the road. Their kids are going to school in the morning. They understand this probably more so than those of us who might be blissfully ignorant of some of the gaps that are there. So, I think it is there, and I have no doubt that the Administration wants to do everything possible to this.

I just had several questions. I mean it seems like it always comes down to this. The vast majority of our good actors end up getting caught up for what the bad actors do, and everybody gets caught in that same net. And we are not necessarily doing what we all want to do, is to reduce specifically where those problems are.

And I think Mr. Gentry brought up a really good point that we have to focus on. The issue many times comes down to drivers. It is not necessarily equipment. We have done much on that. We had many hearings in here on wetlines, on the transport of fuel and flammable materials, and how some of that happens.

I just had a question on this. This is one of the things—this is for you, Mr. Ferro—that my carriers ask me if it is possible to do. They want to hire the best drivers, but they believe—they don't have access—and I am very cognizant of personal privacy and everything else, but they want access to that driver safety record, including access to drug/alcohol testing, and the driver's accident history. They believe if that could be maintained by you, accessed by them prior to hiring practices, they would be better off.

I know this is a big can of worms. But they are convinced that, if all the things we do, if they have that opportunity—they are being accountable for the liability of that driver. If that knowledge is out there, someone has it, and it impacts their performance, can you explain to me maybe the legal—or the concerns with that? And

I say that because they are very honest about this. They want to follow the rules, but they think the biggest thing stopping them is that they don't have that.

Ms. FERRO. Yes. Well, so, quick things. It is all about the driver. And 9 out of 10 crashes are the result of something a driver did or didn't do. Consequently, out of the seven BASICs, really, four of them are very specific to driver behavior: unsafe driving, driver fitness, drug and alcohol compliance, and hours of service compliance. That is CSA. Your constituents are right on target. They need a tool to prescreen before they make a hiring decision.

We have a program that we rolled out about the same time as CSA that was mandated by Congress called the pre-employment screening program, or PSP. And it provides employers access to a driver's violation history for 5 years, a 5-year period—actually, 3 years on violations, 5 years on crashes. And an employer, with the sign-off from a perspective employee, can access the system, obtain that violation history record, and use it in their pre-employment decisionmaking. And many employers are using that today. It has been a very——

Mr. WALZ. And the thought is if the person didn't allow them to sign off, that there was a reason they weren't allowing them to sign off?

Ms. FERRO. That would be an indicator. And I think most drivers who are applying for a job with a company will sign off on that acknowledgment. It is not a new acknowledgment requirement on any kind of a record access. So that is one important piece.

The second piece you mentioned: drug and alcohol compliance. And we are proceeding with a proposed rule on—to establish a drug and alcohol clearinghouse that would allow employers to determine if a driver-applicant or a current driver, actually, has tested positive somewhere else, either with another job they had applied for, or while they were working part-time somewhere else while under that individual's employ.

We are fairly close in completing a proposed rule, in terms of it still has to go over to OMB. But—and at the same time—again, Steve Owings mentioned MAP–21. MAP–21 includes a mandate for us to put forward a drug and alcohol clearinghouse rule and system. And so we are very excited about that. We are pressing forward on it.

Mr. WALZ. For some of the carriers I have just a little bit of time left. Is this a legitimate concern they are talking about—that help you, if there is more access to those records before you make hiring decisions? I don't know if anybody wants to tackle that. Mr. Gentry?

Mr. GENTRY. Yes, sir. Absolutely. It is almost like it would be good if you had a eligibility roster on the Federal level to where somebody comes in my door and they are asking for a job, I can go online, I can look and see if they are eligible. Because if they have been fired from another position, from another job, if they had failed drug screens or if they had accidents and they were fired, see, there is nothing that protects——

Mr. WALZ. Right.

Mr. GENTRY. Well, let me put it this way. They can leave my company and, as bad as the need is for drivers, somebody is going

to hire that person if they are breathing and they have got their CDL.

Mr. WALZ. Yes.

Mr. GENTRY. As long as they pass their pre-employment drug screen, they pass their background check. But it doesn't tell us that they were just involved in, you know, three crashes that were last week or——

Mr. WALZ. Yes, I feel very strongly about that. I think that is right, because they want to make the right decision. And I would have to say, Ms. Ferro—and I certainly know the commandment to getting this right—but I think Mr. Young is right. I am certainly hearing this out there. And it is not done in a combative manner, it is done in a "We want to be your partners in making this safe, but please listen to us when we tell you some of the things that aren't working." So I am very appreciative of all of you here expressing that. And I yield back.

Mr. DUNCAN. Thank you very much. I didn't know Mr. Barletta had come back a few minutes ago. But Mr. Barletta?

Mr. BARLETTA. Thank you, Mr. Chairman. Ms. Ferro, could you please explain to me the connection that exists between crash risk and violations like having an inoperative license plate light or the sleeper berth not having a blanket?

Ms. FERRO. The—let's walk through the BASICs. The seven elements of analysis in the CSA system are not all highly correlated to crash risk. The ones that are the strongest are unsafe driving, which would not incorporate the two items that you identified, the crash indicator, and hours of service compliance—today known as the fatigue BASIC, but will soon be the hours of service compliance BASIC.

The others are all indicators of compliance, and compliance is a core component of ensuring not just that you are following the Federal Motor Carrier Safety Regulations, but that you are demonstrating the behaviors to be a safe carrier. That is why those rules are in place and established through Federal mandate and the rulemaking process.

What we have found, and what our analysis shows, is that on those BASICs that are compliance-specific, say in some of the vehicle maintenance areas, there is a—generally, three out of four carriers that are high in one of the compliance BASICs, specifically the driver fitness—three out of four of those carriers are going to have another BASIC where they are exceeding a threshold and is an indicator that we need to go and look at them.

But each of those violations, those violations you mentioned, probably have lower weights than others, because they are an indicator of compliance or lack of compliance, but not necessarily that safety risk that you identified. The system together is what we utilize for making decisions.

Mr. BARLETTA. Do you think, for example, not wearing a seat belt gets a weight of seven, but following too close or improper lane change is a five. How do you justify that?

Ms. FERRO. Not wearing a seat belt is a high indicator of a problem, if you are in a crash, not just for that driver—seat belts save lives—but the fact that a seat belt also keeps you in place if that—if you start losing control of that vehicle and you are not belted.

Mr. BARLETTA. How about improper lane change, though? If you are driving on the mountains of Pennsylvania, I could tell you if I had to choose between somebody not wearing a seat belt, a truck driver, or an improper lane change, 10 out of 10 of us are going to say an improper lane change is a much more severe violation than not wearing a seat belt, or following too close.

You know, I am all for truck safety. My family was in the trucking business and construction business. But, you know, I think if we look at this practically, I don't know if there is anybody here would say that an improper lane change is less severe than not wearing a seat belt.

Ms. FERRO. Well, if I could just—I mean your point is very well taken. And the whole concept of listening to the concerns that have come forward is very relevant to us. We had the Motor Carrier Safety Advisory Committee last year look at the weightings for this very reason, because, again, the concerns came up early in the process. We want to address them.

So, it is part of the analysis that we have undertaken. The Advisory Committee recommended some changes to the weighting system. And we just announced in August, when we rolled out some of the changes, that the next round of changes we are analyzing include the weights and the relationship of weights to——

Mr. BARLETTA. I just think it makes more sense to——

Ms. FERRO. Yes.

Mr. BARLETTA [continuing]. Really focus on driver error and driver abuse.

Mr. Mugno, what are the biggest problems FedEx has experienced with CSA, and how do you recommend fixing the problem?

Mr. MUGNO. As I indicated in my statement, it is the lack of a relationship between the carrier's CSA score and crash risk. It is the underlying data that we have a concern with, and its inconsistency. And then it is the system's methodology. Almost got through today without pronouncing that word correctly.

Mr. BARLETTA. Sorry about that.

Mr. MUGNO. What happens with those, then, it creates these symptoms that result from those. And it is an inefficient use of resources, not just for the agencies, State or Federal, but, quite frankly, for in-house safety programs of ATA carriers, as well. We too have to prioritize, we too have resources that we have to try to maximize as much as possible.

And, obviously, we would like to put them where the priorities are. And, as we stated today, we think the priority ought to be on future crash risks, and reducing those as best we can. It is the use of the flawed scores by either the agencies—even ourselves—and focusing on that to change that, because that is what everybody is focused on, and/or these third parties that we are talking about, as well.

And then, finally, one of the other symptoms that really bothers us—and it was talked about here today—is the DataQ system, the appeal process, and the amount of time and resources and efforts that go on there, the lack of consistency that is going on with those.

I do want to also, though, say that there is—we want to end on a high note and good note here on this. We are very much in favor and positive on the CSA principle, in and of itself. Again, carriers

are very supportive of that. We like the additional focus that has been put on this. We like the additional dialogue that we are having with law enforcement agencies, the agency itself, others, drivers, carriers, and all that. That is working. That is what attracted ATA and its members—for me, personally, when I went to my very first CSA 2010 stakeholder meeting about 6-plus years ago, I guess it was, now. And doing that. So, I mean, all those things remain positive.

The problem, obviously now, is that the new channel of dialogue is more focused, unfortunately, on these issues that we are talking about today, as opposed to, in our opinion, getting—taking care of the future crash risk that we really want to get to.

Mr. BARLETTA. Thank you.

Mr. DUNCAN. Thank you very much. Ms. Ferro, Administrator Ferro, the Wells Fargo study said there is no meaningful statistical correlation between BASIC scores and actual accident incidents. And Dr. Gimpel of the University of Maryland said for many carriers, the association between crash risk and the BASIC scores is so low as to be irrelevant. And Mr. Mugno earlier said scores don't relate to crash risk.

Now, what do you say about those three different—that is coming at you from three different directions, all saying the same thing.

Ms. FERRO. The analysis approach on CSA differs among the different parties doing the analysis. Our analysis that, again, validates this model, this model which uses inspection data—folks have been carrying out inspections for 30 years, but much improved inspection data in the past 5 and 6 years—utilizing current inspection data to analyze and help us determine a company's performance so we can prioritize our resources. That is the underlying principle. And we have analyzed it across the entire body of carriers and inspection data.

The two studies you mentioned use smaller populations of data, smaller populations of carriers, and not necessarily the full database that included smaller companies, as well. We have found—because we met with the Wells Fargo analyst—that we are coming at the analysis from different directions, which is OK, because if we keep talking we can continue to challenge ourselves in understanding how this model works, and reinforcing where it is working and how it is working well.

So, in terms of our analysis on crash risk and compliance risk, we go back in time. We look forward at carriers that have had crashes, and go back in time with their compliance and inspection history, and determine where there is a corollary or a correlation in outcomes. In terms of the studies that you just described, they are using today's data to determine today's crash date, which is not one and the same. The whole focus of our work is to make sure we are intervening with carriers, where carriers are looking at their own information and taking the right actions before a crash occurs.

So, from this perspective that it is both—it is a relative system but it is all driven on a preventative concept, that the warning letter concept, the focused review that Mrs. McBride mentioned, are all geared to have the conversation with the carrier where trends are going the wrong way to avoid something happening down the

road, so that they can take the actions, understand the why, and perhaps modify their behavior.

Mr. DUNCAN. What do you say to Mr. Gentry when he says he thinks it is unfair to keep on a Web site a violation by a company where they have fired a driver, and it is still on there 2 years later? What do you say about that?

Ms. FERRO. I say that has been an ongoing discussion for all of us.

Number one, we don't know when a company has or has not fired a driver, because we don't have drivers recorded with company. We can only tell after an inspection has happened through our PSP database what company they might be with on the day of that inspection. So we don't know when you have hired or fired a driver, to begin with.

But also, the whole focus is on patterns. It is not a single violation that is going to put you in a threshold or above a threshold. It is patterns of violations. And firing a single driver may not be an indication that the company is changing its hiring practices. And that is why the data stays on for 2 years. It ages over time.

And if it is of the severity or a pattern that prompts us to actually do a review with the company, it is going to result in a discussion as to what is the company doing, or what has the company done to modify its overall hiring practice, if there was a pattern. If it was a unique instance with that driver and they fired him and we are doing a safety rating review, it will probably be reflected in the safety rating.

But again, it stays in the data because it is an element of looking for patterns. And those do age over time, if that—when that company—if, in fact, that was a unique or stand-alone instance.

Mr. DUNCAN. What about his suggestion that you have an actuarial study done on this?

Ms. FERRO. I like that. I wrote that one down. That is the—I think a very valuable discussion.

Mr. DUNCAN. I want—before Chairman Young has to leave, I want Mrs. McBride to—we were having a little trouble with your microphone and he wasn't here, but you—your company, you said, started 70 years ago. And it has operated all that time, and has been one of the most respected, successful companies in the industry. And you said you have an accident rate of—was it—that was your fault, was it .02 of—per million? Would you repeat that, exactly what that was?

Mrs. MCBRIDE. 0.2, yes, sir. Basically——

Mr. DUNCAN. We are having a lot of trouble with your particular microphones. I do not understand why. But anyway——

Mrs. MCBRIDE. I apologize.

Mr. DUNCAN. That—now we can hear you.

Mrs. MCBRIDE. Much better, much better. Yes, sir. It is 0.2. Wow.

Mr. DUNCAN. Per million?

Mrs. MCBRIDE. Per million miles.

Mr. DUNCAN. And yet they came in with two inspectors who spent 9 days, is that correct?

Mrs. MCBRIDE. That is correct.

Mr. DUNCAN. And they were there full-time in all that time.

Mrs. MCBRIDE. They spent 9 business days at——

Mr. DUNCAN. Nine business days.

Mrs. MCBRIDE [continuing]. At our office. Yes, sir.

Mr. DUNCAN. And what—and tell Chairman Young about that.

Mrs. MCBRIDE. They conducted a focused audit, and at the end of the time Colonial's satisfactory rating remained unchanged.

I would like to, if I could, get into——

Mr. DUNCAN. But before you go on, though—but you said that you would have—you came close to—you would have had to shut down, though, or almost. Explain that part, about your self-insurance and so forth, what you said a while ago.

Mrs. MCBRIDE. Colonial is self-insured, and has been for the past 25 years. And it is our understanding from the FMCSA, had we received a conditional or unsatisfactory rating, that our self-insurance program would have been in jeopardy. And this could have caused us to have to close our doors.

Mr. DUNCAN. After 70 years.

Mrs. MCBRIDE. After 70 years.

Mr. DUNCAN. Anyway——

Mrs. MCBRIDE. That is correct.

Mr. YOUNG. Mr. Chairman, if I may just follow through on that.

Madam Chairman, where do these guys come from? They go in to an outfit that has gone that long and spend 9 days. Did someone complain about them?

Ms. FERRO. It is actually a great example of how the process works. The data showed that this company in particular had a very high rate of noncompliance relative to companies that had a similar number of inspections.

Mr. YOUNG. After 70 years? And what was the percentage, Mrs. McBride, .02?

Mrs. MCBRIDE. Yes.

Mr. YOUNG. Of a million miles? Now, there is people that do better than that?

Ms. FERRO. So, again, it was hours of service. Hours-of-service violations have a high correlation to crash risk. But here is where our investigators went in, they—the company data, their own records, their own performance, demonstrated their strong safety practices. It was an unrated review. They have got their satisfactory rating and we move on. But again, it was—we hope that the result of that discussion is that the company also is looking more closely at driver violations on their log books.

Mr. YOUNG. Again, if I can say, this is a classic example of an agency that doesn't answer to anyone.

Mr. Chairman, again, this is what is wrong with our country. I want to ask all of you here. Let's say you are the trucking companies and I am a CDL holder. I drive a truck once in a while. I have to haul the nonsense out I create all the time. But having said that, I do not create the accident for the company I work for. Someone else creates it. Does that affect your rating?

Mrs. MCBRIDE. Yes.

Mr. YOUNG. It does affect—even though the driver is not at fault, but it goes on their record and stays as an accident of your company?

Mrs. MCBRIDE. Yes, sir. It does.

Mr. YOUNG. Now, even in the insurance company that doesn't happen. How come you can do that?

Ms. FERRO. Well, to clarify, the accident—the crash actually does not affect her company's safety rating.

Mr. YOUNG. But it is registered. It is on the record.

Ms. FERRO. It absolutely is on the system and the database——

Mr. YOUNG. Why?

Ms. FERRO [continuing]. As a recordable crash.

Mr. YOUNG. Why?

Ms. FERRO. Well, that is part of transparency in Government——

Mr. YOUNG. Transparency? When it is not their fault? And yet someone sees that record?

Ms. FERRO. Well, down the road we are looking at this whole concept of preventability and nonpreventability. But that answer isn't with us today. But the crash event itself, the crash report, is on our database, and has been for many years.

Mr. YOUNG. Again, I go back. I drive a truck. It is not my accident. Some idiot is on a cell phone, drives under my truck, which has happened, and it is my fault? And it is my company's fault? Now, where is the rhyme behind that? Where is the logic?

See, I have got a new idea, Mr. Chairman. I am a quasi-inventor. I am going to invent a logic pill. And I am going to require every bureaucrat—and even every congressman; I will fit us in there—to take one logic pill a day or they can't serve. Logic. Solves problems, not adversarial position.

Mr. Chairman, I have had enough of this. Thank you.

Mr. DUNCAN. All right. Let me ask this. Mr. Palmer, if a carrier has a dismissed violation, I am told that that continues to be listed on the SMS as a violation. Is that correct?

Mr. PALMER. When they have received a citation and it was dismissed, sir?

Mr. DUNCAN. Yes.

Mr. PALMER. In some cases it could. It is typically—and it is the Commercial Vehicle Safety Alliance's position and—typically enforcements that—what we do is just because a violation is dismissed, we don't automatically say that it needs to come off. What we do is we still look at it, and we determine whether, based on its merit, whether or not it should still remain on that inspection report. If there is supporting documentation, if there is support to show that it should be off, then we absolutely take it off.

But what we try to avoid is taking a violation off of an inspection report solely because of a technicality or some other reason. So we try to use—to Mr. Young's point, we try to use logic in that process.

Mr. DUNCAN. All right. Let me ask this, and I will go back to Mr. DeFazio.

Mr. Johnson, you all came and met with me, and you said that your company had the—was it $25 million in a lawsuit where you had hired a truck or something? Tell me about that.

Mr. JOHNSON. Correct.

Mr. DUNCAN. We didn't get into details about that in our meeting.

Mr. JOHNSON. Correct. We had a juried judgment against us a couple of years ago for $25 million for a motor carrier accident with some passenger vehicles. And C.H. Robinson was found to be liable

for the excess amounts beyond the carrier's insurance limit, and their ability to pay, just because it was the vicarious liability argument. So because we had hired the truck, or the motor carrier, we were found that they acted as an agent of ours. So it changed the whole independent contractor scenario for motor property brokers like ourselves.

If you think about it, it is kind of similar to if you get in a taxi cab and you ask him to take you somewhere, if he hits a pedestrian along the way, should you, as the passenger, be found liable for those damages? Because you were the one that was telling him where to go. So——

Mr. DUNCAN. Right. Mr. DeFazio?

Mr. DEFAZIO. Thank you, Mr. Chairman. Administrator Ferro, let me see if I can—because Congressman Young raised the same concerns I raised earlier about at-fault crashes. And we discussed—I think he wasn't here at that point—that you are looking at working toward a rating system for fault, at fault.

I think if you, you know, got from Congressman Young, there is a lot of focus and concern around this. And, you know, I raised it 2 years ago. And I mean it is not going to go away. You know, I think we have got to find that there is going to be a system that will work, that will attribute fault, no fault, and that—you know, otherwise it really is an unfair burden, I think, even though there may be some study that says there is a correlation when your truck is parked and, you know, you are sleeping, and someone crashes into it, that you are more likely to have a crash in the future, I just don't—I would question the basis for that.

Anyway, so when—it is my understanding you are developing a—you know, there is going to be a final conclusion here. Mr. Johnson talked about they want a bright line. Are we going to have a bright line, or are we going to have the existing system, which is a—three part, which is, you know, satisfactory, conditional, unsatisfactory? What are we going to end up with? Are we going to end up with a safe, unsafe? What are you finally looking at? And you are going to go through a rulemaking when you come to that final point. Is that correct?

Ms. FERRO. That is correct.

Mr. DEFAZIO. OK. Could you tell us—is it going to be—are we going to get a bright line, or are we going to get, you know, two lines and a gray area? Or what are we going to get?

And I guess three-part question, because I—you know, the—there is—I am having—you know, I mean, obviously ending fatalities and deaths and unsafe driving is our ultimate objective, which I think is shared, despite some differences here. But is this ultimately a program whose objective is to really try and move people towards safer practices and companies towards safer practices, a self-help system? Or is it ultimately just going to be a rating system? Or is it going to be all things, somehow?

Ms. FERRO. Well, let me go back to the question about the safety fitness determination process and rule, the proposal itself.

Number one, absolutely. For us to change the way we establish a safety rating, we must go through a rulemaking process. Today the safe—the satisfactory—conditional, unsatisfactory are tied to an on-site compliance review. A full compliance review, not the fo-

cused, as was described by Mrs. McBride. That rulemaking is what we call a safety fitness determination rule. It should be—we expect it to be an NPRM on the streets for extensive comment next year, really in the first quarter of next year.

Without going too far—I am a little bit in that cone of silence period with the rulemaking—but I can say one of the aspects of the rule will be that it will establish thresholds. Today, the SMS system which we use to prioritize our work, law enforcement uses to prioritize inspection work, is a relative measure. You are compared to others in your same grouping, and you are relatively good or bad or above or below, depending on it.

Under the safety fitness determination rule concept, there will be thresholds, so a company really knows. Am I above or below? In terms of the actual ratings, that is the part that I won't move on to today, because that is still part of the rule under development.

Mr. DEFAZIO. And that goes to another concern that has been expressed about how today you can have a static record. You know, you have been rated. But other people's performance changed. And then you move. You know, I mean it seems to me that somehow we ought to be able to—and I think you just addressed that, you said it is—now it is relative, i.e., you know, you can move up and down, you can end up below the threshold all of a sudden, even though you didn't have any further violations—that this will have something that is more stable.

I mean I know you said you can't be specific, but will it be more stable, or are we still going to be rating everybody against everybody?

Ms. FERRO. The safety rating itself——

Mr. DEFAZIO. Within category.

Ms. FERRO [continuing]. Will have a set threshold. And we think, yes, there will be that stability that comes along with am I in the right spot or am I not in the right spot. That we absolutely——

Mr. DEFAZIO. Right.

Ms. FERRO. Keep in mind where we came from. We are tied to a compliance review process today that allows us to do about 16,000 safety ratings a year. We probably have only about 50,000 carriers out of the 525,000 today that have a safety rating—satisfactory, conditional, unsatisfactory—because resources are so limited. And it is the very reason why Congress, over the years, has—and GAO—has said, "Use the data you are collecting, performance data"—stakeholders have said the same—"to really hone in on where your resources can best be applied, and try and utilize that data to establish a broader method of rating carriers."

So, that is what that safety fitness determination rating capability will do, it will take us from rating 16,000 companies a year to rating 200,000 companies in a year. And we need to be sure it is a very fair process, that the NPRM gets lots of room for comment, and that there are some clear thresholds for carriers, so they know—because that is a big change from what we are doing today.

Mr. DEFAZIO. We did hear some testimony about—I mean we are focusing on how you are going to use the data that you receive. We have also discussed a little bit about the quality of that data. But in Mr. Mugno's testimony he said that 15 percent of States report less than 75 percent of their crashes.

Is that—Mr.—do you want to give us a citation on that, or—I mean where you are—and then I could ask her to—is that accurate? That is what I believe was in your testimony.

Mr. MUGNO. I can't——

Mr. DEFAZIO. Yes, can't find it right now. I know. Whenever you——

Mr. MUGNO. I am sorry, I can't put my fingers on it right now, but we will certainly submit that——

Mr. DEFAZIO. But does that sound right?

Mr. MUGNO. It does.

Mr. DEFAZIO. OK. All right. How are we dealing with that?

Ms. FERRO. We are dealing with it—through—actually, I think the number is much higher now. That is an older number. And we will provide a followup, for the record, to the—access to the data, which is on our Web site today.

The safety data improvement process was started because of a number of concerns over the timeliness and accuracy of data that States were reporting on inspection reports, on crash reports. The process was started—the grant program was started under SAFETEA–LU, and it provides $3 million a year for States to apply for money to improve their reporting systems and their training for their reporting systems.

And over the course of the 6 years that the program has been in place, we have seen a significant improvement in the quality of data and the timeliness of data, including fatal crash reporting. Injury crash reporting is still an area where there are some gaps, and that is why we have highlighted it in this past year for States, in terms of kind of, again, raising the bar on the quality and integrity and timeliness of the data. So, again, we—Mr. Mugno will also provide kind of the source of the data, and the distinctions that we are drawing.

Mr. DEFAZIO. OK. That would be helpful. And then, the—that sort of basic question, because we did discuss a little bit about now we are finally getting the—you know, we are moving toward the drug, alcohol testing clearinghouse. We apparently now have an integrated database so someone who has had their license suspended or revoked in one State can't go to another without—you know, that these—we now are—we have—basically dealing with those problems.

So the question becomes why wouldn't we be looking at a system that rates drivers individually, as opposed to aggregate companies? I mean maybe you need to do both.

Ms. FERRO. And we have discussed doing both. We want to get the carrier measurement system in place before we take the next step in rating drivers. We have an internal mechanism we use when we are going out to look at a company that does give us—one of the indicators may be a highlight, a driver measurement system using, again, the violation data I discussed earlier. But there is no project today, or plan today, to put a driver safety measurement system in place. It is absolutely something that we are very interested in.

There was some component in our technical assistance that requested some clarification in our authorizing language to be sure we had the authority to do that. It wasn't adopted. But again, we

will be pleased to report back as we move forward. But our first and primary goal is to put the carrier safety determination rating system in place on the heels of the SMS system.

Mr. DUNCAN. OK——

Mr. DEFAZIO. Well, thank you. Thank you, Mr. Chairman, for the generous amount of time.

Mr. DUNCAN. Thank you, Mr. DeFazio. We were joined a few minutes ago by Mr. Hanna. And I certainly want to give him a chance to make any statement or ask any questions.

Mr. HANNA. How can you do one without the other? In a State like I live in, in New York—and I was in heavy equipment business for many years—how can you separate, when we have third-party liability rules that are directly related to acts of an individual?

I suggest to you that it is more important to do the individual than the trucking company, that you ought to think about that. And I don't think you can do one without the other. I mean every person that ever fell off a ladder knew what he was doing when he went up that ladder. And everybody who gets into a truck that has had drug—or has a drug or alcohol problem puts himself out there at a risk to the owner of the company, yet the company accepts the liability for that.

So, I just throw this out as a comment, that I think you can't do one, even nearly correctly, without doing the other at the same time.

Ms. FERRO. And if I may, I absolutely respect that point of view, and it is built into the CSA program today. It is why the majority of the analysis groups that we call BASICs are actually reflective of driver behavior.

Companies have a very clear influence on what a driver can or can't do. They—and the level of support a driver has to do things the right way. And so, the first component of the system is moving towards how a carrier is handling the violations that drivers are incurring. But we absolutely incorporate driver behavior through the unsafe driving BASIC, again, the driver fitness BASIC, whether they have a license, proper medical qualifications, the drug and alcohol compliance BASIC. All of those do really reflect on how much a driver impacts that carrier's business.

Mr. HANNA. No, I appreciate that. I would say, just from my own experience, the problem was always enforcement. All the liability and all the expenses and all the responsibility falls back on the owner of the vehicle. And there is precious little opportunity, other than threat of loss of your job, to control what individuals do, so that the information that you might accumulate over time—I suggest to you that can drive the outcome more for the company than how they actually do what they have control over. It is just a thought.

But thank you, Chairman. I yield back.

Mr. OWINGS. Mr. Chairman, may I jump in and say a couple of things on behalf of the safety community?

Mr. DUNCAN. Sure.

Mr. OWINGS. We heard a lot of talk about a couple of things. First of all, this whole fault issue. Again, the Crash BASIC is intended to be predictive of future crashes. The science says that if you count all of the crashes, they are predictive. And we have

talked about fault versus nonpreventable. Those are two different things. They are not synonymous. We have civil courts that do a lot of work to try to figure out fault. Figuring out nonpreventable, which means the driver couldn't have made a reasonable decision or move to possibly prevent the crash, is a whole higher level of scrutiny. And the FMCSA does not have the resources to address that.

Now, the second thing I would like to address is there has been a lot of discussion in here about the small businessmen who have trucking companies. I am a small businessman. And let me suggest that the most important thing that could be done to improve road safety in this country where trucks are concerned is to pay truck drivers like the professionals they are expected to be. They should not be paid by the hour, which incentivizes dangerous behavior. It is common sense, or—and the way they should be paid is an hourly wage or a salary for every hour they work, whether or not their truck is moving, and regardless at what speed.

Mr. HANNA. Ma'am——

Mr. DUNCAN. Mr. Hanna? Go ahead.

Mr. HANNA. Thank you, Chairman. The way you work things is basically a bell curve, right?

Ms. FERRO. That is correct.

Mr. HANNA. I would suggest to you that you ought to be dealing with something that looks more like an algorithm. The whole process is much more complicated, and there are much more—many more factors, and many of them that people are graded on a bell curve, like the truckers, don't have control over. But I know you know that, it is just——

Ms. FERRO. Well, and I appreciate that perspective. And we would be pleased to come and brief you. There are a host of algorithms underlying this system, and I think there are some opportunities to peer review it, so more extensively, again, following the discussion today. And we will be happy to brief you on it, if you have some time——

Mr. HANNA. Thank you, ma'am. I yield back.

Ms. FERRO. Thank you.

Mr. DUNCAN. All right. Well, thank you very much. Let me see if I can sum up on a couple things.

Number one, there is nobody who wants less to have a crash or an accident than the owners of the trucking and bus companies, because, first of all, they wouldn't have some goal to go out and hurt people, because there would be much easier, less expensive ways to do it than to crash trucks or buses into them. Secondly, they don't want to ruin their equipment. They don't want to unintentionally harm anybody. And above all, they know that they are likely to be sued.

But, having said all that, we do need to have an agency like Administrator Ferro's. And I can tell you while there has been—I have been pleased that there have been four Members here today—Chairman Young and Mr. Rahall, Mr. DeFazio, and Mr. Coble, all of whom are more senior than me—I have been on this committee for 24 years. I can tell you that whether it has been led by Republicans or Democrats, while we have been concerned about the in-

dustry and various things that go on in this country, our number one concern for this committee has always been safety.

Now, we have two witnesses, as I mentioned at the start—very unusual—from my home town of Knoxville. And I am pleased to have them here. But if I thought this was just a Knoxville problem or a Tennessee problem, I would have never even agreed to have this hearing. I would have thought there was some other way to settle this thing. But I heard about this—I started hearing complaints from people all over the Nation before I heard about anybody from Tennessee having a problem with this. In fact, I still haven't met with Mr. Gentry about problems that he has had. I did have a meeting with Mrs. McBride and some other trucking company people, and they told me about some problems.

We have got these studies saying there is problems with it. We have heard people testify here today there is problems with it. Nothing is perfect. It is not all bad. But it seems to me that there needs to be a little more flexibility in this program, Administrator Ferro, and there needs to be a quicker, easier, simpler way for a company to tell their side. If they get put on—listed as an unsafe company, there needs to be a quicker, easier, simpler way for them to defend themselves with you and your agency.

So, I hope that over these next few months—I hope you won't punish—number one, most of all, I hope you won't try and do something to Mrs. McBride's wonderful company—because I can tell you they are a great company—because they have had the guts to come here and testify. We run into that sometimes. Some companies, they don't want to come testify, because they are afraid that they will get hit harder by these administrative agencies. But there needs to be a way for these companies to get delisted if they have been listed unfairly.

And then too, you know, these violations—Mr. Barletta said something about a violation because a blanket wasn't in a cab. We need to not have things like that.

But I thank everybody for coming. You want to kind of close out, Mr. DeFazio?

Mr. DEFAZIO. Well, thank you, Mr. Chairman. First, a specific random question, again, on our data is only as, you know, so good. And this is from another hearing I held. I am pleased to see we are moving toward a drug-alcohol clearinghouse. But have we done anything to clean up the abuses in the testing system? And we had ample testimony on that, a Web site that we found that would sell you Whizzinators and things so you could cheat on the tests. And I mean, you know, it—there was no controls over the testing system, whatsoever.

Have we done anything to improve the testing system? Because if we establish a database, you know, there is a question of the validity of the data that is in it.

Ms. FERRO. I would like to respond as a followup on that one.

Mr. DEFAZIO. OK.

Ms. FERRO. I do not have specifics for you today.

Mr. DEFAZIO. Sure, OK.

Ms. FERRO. I will have to respond for the record.

Mr. DEFAZIO. That was the——

Ms. FERRO. Thank you.

Mr. DEFAZIO [continuing]. Subject of another hearing. Well, I would just like to observe that, I mean, I think that the one common ground here is we have a common objective, and that is we want to improve the safety of the system, of the traveling public. And we—there is some questions about, you know, particulars of this approach. And I can only hope that, you know, some of the concerns that have been raised here will be taken to heart as you move into an actual rulemaking, where people will be able to formally comment, and there will be other additional scrutiny applied to how we finally establish the criteria, and how we apply the criteria, and then, hopefully, how the criteria might or might not be used.

But also dealing with, you know, the issues of if we have only captured a part of the universe, that—you know, which I raised early on—that has to be thoughtfully approached, also. Because if you are going to establish a rating system that ultimately, through a rulemaking, people feel is valid and will be routinely used to determine who gets carriage and who doesn't, we have got to have a way to include everybody in it. And there was—you know, at one point you said that they were including clean inspections, but at another point you said we have got to make sure that they send along the data of clean inspections. Because many times they don't bother.

And so, I mean, we—there is, I think, a lot yet to be done here. So that is—thank you, Mr. Chairman, for holding this hearing.

Mr. DUNCAN. Well, thank you. I guess just to put in a plain, down-to-earth kind of way, east Tennessee way, we want the bad companies acted on, but we don't want good companies treated like they are bad companies. And most of the trucking and bus companies out there are good companies and doing good things for this country.

Thank you very much. That will conclude this hearing. And I would like to ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing, and unanimous consent that the record remain open for 15 days for any additional comments and information submitted by Members or witnesses to be included in the record of today's hearing.

[No response.]

Mr. DUNCAN. Without objection, so ordered.

Thank you again to all the members of the panel. That will conclude this hearing.

[Whereupon, at 12:10 p.m., the subcommittee was adjourned.]

OPENING REMARKS OF U.S. REP. NICK J. RAHALL, II
Ranking Member, Committee on Transportation & Infrastructure
Before the Subcommittee on Highways and Transit
September 13, 2012

Mr. Chairman, thank you for conducting this oversight hearing on the Federal Motor Carrier Safety Administration's motor carrier safety program.

Certainly, advancing safety on our highways is a paramount concern of all involved, from those who get behind the wheel to local law enforcement to federal regulators.

In this regard, a decision was made during the George W. Bush Administration to move away from the resource intensive and ultimately inadequate strategy of relying on Compliance Reviews to the development of the Compliance, Safety and Accountability system.

In essence, a technological leap similar to the move away from the corded wall phone to the Smartphone.

Today, however, eight years after CSA started to emerge as a new enforcement and compliance model, the question remains: Just how smart is CSA?

While the old adage of 'garbage in garbage out' does not completely apply here, there are questions about the reliability and integrity of the data utilized under CSA's Safety Management System, and the effect of the scores it assigns to trucking companies and independent truckers with respect to their relationship with freight brokers, shippers and insurers.

I would also note that this entire system has been and continues to be developed without formal rulemakings. Collaborative efforts are to be applauded, certainly. But there are some issues which more properly lend themselves to a rulemaking process so that the public has the opportunity to formally comment.

Again, Mr. Chairman, thank you and I look forward to hearing some of the testimony today.

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

BEFORE THE

HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

SEPTEMBER 13, 2012

Mr. Chairman, Ranking Member DeFazio, and members of the Subcommittee on Highways and Transit, thank you for the opportunity to appear before you today to speak about the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, Accountability (CSA) Program. CSA is FMCSA's compliance model to improve commercial motor vehicle safety and ultimately reduce large truck and bus crashes, injuries, and fatalities on our nation's highways. CSA enables the Agency to identify high risk motor carriers and achieve improved levels of compliance with Federal commercial motor vehicle safety and hazardous materials regulations. Additionally, through increased operational efficiencies, CSA is enabling FMCSA and its State safety enforcement partners to identify and address compliance and safety deficiencies of a larger segment of the motor carrier industry than we did previously with less interruption to motor carriers' business operations.

Core Priorities

FMCSA has a number of initiatives and programs underway aimed at achieving our core safety mission. We have set a strategic framework in which to prioritize our responsibilities and

clearly focus our efforts and resources on a vision of eliminating crashes involving commercial vehicles. FMCSA aims to:

1. Raise the safety 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.

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:

- Even with continued growth in all vehicle miles traveled, and an 8 percent increase in miles traveled by commercial motor vehicles from 2000 to 2010, fewer fatalities from crashes involving large trucks and buses occurred in the past 2 years than in any other 2-year period since fatal crash data collection began in 1975.
- Fatalities from large truck and bus crashes have declined 26 percent since 2006 (5,347) to 2010 (3,944).
- Safety improvements have been realized not only in terms of fatal crashes, but also in injury crashes. In 2010, 106,000 people were injured in crashes involving large trucks and buses, the second-lowest number of persons injured in these crashes since 1988, the first year of injury crash data collection.

- According to Federal Highway Administration data, the number of people injured in large truck and bus crashes declined 16 percent from 2006 to 2010 and declined 36 percent from 2000 to 2010.1

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 made great progress, but nearly 4,000 fatalities and more than 100,000 injuries in large truck and bus crashes each year, 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?

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 large trucks and buses. A CR is a comprehensive, on-site 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. If a carrier's safety fitness is determined through a CR to be unsatisfactory, FMCSA may prohibit it from operating.

The CR is very effective in changing unsafe behavior; however, it can also be very time consuming and labor intensive for both the motor carrier and safety investigators. It limits the

[1] The VMT and registration data can be found in the Federal Highway Administration (FHWA) Highway Statistics report (Highway Statistics 2010, 5.2.1 Vehicle-miles of travel, by functional system, 1980-2008 VM-1). The crash data comes from NHTSA's Fatality Analysis Reporting System, General Estimates System (Fatality Analysis Reporting System General Estimates System 2010 Data Summary).

Agency and its State partners' to evaluate the safety performance of less than 3percent of the approximately 525,000 active carriers each year. Moreover, our current regulations for issuing statutorily-required safety fitness determinations for motor carriers is tied to the CR, meaning the Agency cannot incorporate on-road performance to issue a safety fitness determination on a carrier, no matter how far a motor carrier's on-road performance may have slipped or improved.

To address these shortcomings, the Agency worked to improve its ability to improve safety and compliance, resulting in the CSA program we have today.

The Three Components of CSA

CSA consists of three components: (1) the system, (2) the process and (3) the rule. The system is the Safety Measurement System (SMS), which uses all available inspection and crash data to assist the Agency in prioritizing motor carriers for review. The process refers to the Agency's intervention tools, designed to allow the Agency to reach more carriers with its limited resources. Finally, the rule refers to the Safety Fitness Determination rulemaking that would allow the Agency to utilize all available roadside inspection data in conjunction with on-site investigative data to rate the safety performance of motor carriers, and to determine whether they are fit to continue to operate. The Agency plans to issue a notice of proposed rulemaking on the Safety Fitness Determination early next year.

Throughout the process of developing and rolling out CSA, FMCSA has involved all of our stakeholders and actively sought out comments and input from all interested parties.

For example, last month the Agency established a CSA subcommittee within the Motor Carrier Safety Advisory Committee (MCSAC) to provide concepts, ideas, and recommendations on the program. This MCSAC subcommittee will be another avenue for the Agency to receive

input regarding CSA from an established forum of representatives from across the spectrum of safety and other motor carrier stakeholders.

Additionally, the Agency also announced last month its latest round of improvements to CSA, which incorporate public comments received from a preview of proposed changes to the Agency's SMS website. These changes to the CSA program follow public input and demonstrate the Agency's commitment to a program of continuous improvement and transparency, and reflect our commitment to regularly invite and consider concerns of our stakeholders.

The Safety Measurement System

SMS is the tool FMCSA uses to allocate its resources toward the highest risk motor carriers to improve safety. The SMS analyzes compliance and safety violations discovered during roadside inspections along with data gathered during investigations and reportable crashes to measure a carrier's performance in seven Behavior Analysis Safety Improvement Categories, or BASICS. The BASICs 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. The BASICs group violations into specific and distinct categories related to unsafe or non-compliant behavior, providing the Agency a more comprehensive, robust and granular view of the specific performance and compliance issues of individual motor carriers. SMS has sufficient performance data to make an intervention prioritization assessment in at least one BASIC for nearly 200,000 of the approximately 525,000 active interstate or intrastate hazardous materials motor carriers for which FMCSA has safety oversight

responsibilities. More importantly, analysis reveals that those same 200,000 motor carriers are involved in approximately 93 percent of the crashes reported to FMCSA by our State partners.

Additional analysis by FMCSA and the University of Michigan Transportation Research Institute (UMTRI) shows that SMS is an effective tool to identify the motor carriers at highest risk of crashes. In fact, UMTRI found SMS is a significant improvement over the prior SafeStat system in identifying carriers with high crash rates and FMCSA effectiveness testing has demonstrated that motor carriers designated as high-risk by SMS BASICs have future crash rates that are more than double the crash rates of all active carriers. With respect to the individual BASICs, both FMCSA and UMTRI analyses show particularly strong associations between high scores in the Unsafe Driving and Fatigued Driving (Hours-of-Service) BASICs and future crash rates.

FMCSA has been transparent in explaining that analysis does not suggest an association between some BASICs and future crash rates. What we have seen, however, is a relationship between non-compliance in one BASIC and non-compliance and unsafe behaviors in other areas. For example, three out of four motor carriers that are above FMCSA's intervention threshold in the Driver Fitness BASIC are also above our intervention threshold in at least one other basic. FMCSA uses such correlating information to optimize its resources by placing more emphasis on those BASICs where non-compliance has a stronger statistical association with future crashes, for example, speeding and driving over allowable hours. At the same time, FMCSA holds motor carriers accountable for BASICs that measure compliance with important safety regulations such as ensuring their drivers are properly licensed and medically qualified.

FMCSA's deployment of SMS has significantly raised safety awareness throughout the motor carrier industry. In calendar year 2011, the public website that provides a motor carrier's status in the SMS prioritization system hosted nearly 30 million user sessions, up from 4 million user sessions under the prior public SafeStat system in calendar year 2010. FMCSA continues to receive feedback that this increased awareness and transparency has raised the status of safety within corporate cultures and we are seeing this increased awareness in improved safety compliance and performance data. For example, violations per roadside inspection were down by 8 percent in 2011, and driver violations per inspection were down by 12 percent. This is the most dramatic improvement in violation rates in the last 10 years.

While FMCSA recognizes the clear safety benefits from being transparent and making carrier prioritization status in the SMS largely available to the public, FMSCA is also cognizant of the need to provide proper context to the data and to be responsive to stakeholder concerns. To that end, FMCSA clearly states on its SMS public website that SMS data only prioritizes motor carriers for safety interventions and do not constitute formal safety ratings. The Agency also encourages the public to use all available safety data, including not only SMS, but Licensing and Insurance information, and formal safety ratings.

We recognize that FMCSA's use of crash data in SMS is a concern for some of FMCSA's stakeholders, particularly, the fact that the State-reported crash data utilized by the Agency does not distinguish crashes based on whether they are the responsibility, or "fault," of the motor carrier. We acknowledge the perception of unfairness of a system that uses data from crashes that are not the fault of the carrier in question. However, FMCSA utilizes crash history data because repeated analyses have shown that crashes -- regardless of the carrier's role in the crash -- are a strong predictor of future crashes. The Agency has clearly stated that the crash

data are based on crash involvement, without determination of responsibility. In addition, the Crash BASIC itself is not shown to the public.

FMCSA is looking at various options to best use crash data to identify carriers that have the greatest risk of future crashes. As part of this effort, FMCSA is pursuing a program called "crash weighting." The premise of the program is to identify crashes for which a carrier had greater responsibility, and consider weighting them differently than other crashes in the SMS. Earlier this year the Agency presented its draft proposal to the Motor Carrier Safety Advisory Committee (MCSAC). Based on questions from MCSAC members following the presentation, it became clear that our proposal warranted further study to ensure that the Agency develops the most effective, efficient and fair process to address the approximately 130,000 crashes that are reported each year.

Two months ago, the Agency released the scope and schedule for a crash weighting study. As part of this study, the Agency is reviewing the uniformity and consistency of police accident reports; the process for making "final" crash determinations; the process for accepting public input; and the actual effect on SMS's ability to better identify carriers that have a high crash risk. As part of this effort, the Agency released the results of a report that analyzed the coding accuracy and consistency of Police Accident Reports for consideration as a potential source of information for determining a motor carrier's role in crashes. While this study provided useful information, it did not address key questions that will be examined as part of our study, including whether or not the carrier's role in the crash is a better indicator of future crash risk and what other information including public input should be used in a comprehensive crash weighting system. FMCSA intends for this study to guide the Agency in determining if crash weighing makes SMS a better, sharper tool, and if so, what demands would be placed on the

Agency to administer such a system. The Agency intends to release the results of this study in the summer of 2013. Based on the results, FMCSA will develop the Agency's plan forward for determining a carrier's role in a crash and the potential use of this new information in the Agency's safety programs – including SMS.

FMCSA is committed to continuously improving the SMS. Throughout the life of the program, we have carefully considered constructive feedback from the motor carrier industry, drivers, enforcement personnel, safety advocates, and other stakeholders in making data-driven and analysis-based refinements. In fact, FMCSA recently announced improvements to CSA that incorporate public comments received from a preview of proposed changes to the Agency's SMS website. The changes are the latest round of improvements to the CSA program and will address longstanding concerns and include the creation of a new Hazardous Materials Compliance BASIC, to increase the focus on violations that can lead to severe consequences of a crash involving hazardous materials. Other changes that were included address longstanding concerns of the industry, while aiming to improve the effectiveness of SMS to identify carriers with poor safety and compliance histories. The Agency also has recently addressed the relative weighting of suspended license violations, to focus resources on drivers that are suspended for safety related reasons. In a future effort we are going to continue the process of improvement by assessing the impact of adjusting the unsafe driving and crash basic denominator for higher fleet utilization and analyzing the weights applied to certain high-volume violations as well as considering the MCSAC's recommendation to simplify the violation severity weighting system.

The key to SMS is quality data. In addition to the 130,000 reported crashes annually, the SMS utilizes data from 3.5 million roadside inspections conducted by our State partners each year. It is worth noting that one-third of these inspections have no violations, which shows it is possible for carriers to improve their SMS scores with clean inspections. To manage our Data Quality initiatives, the Agency has developed the "DataQs" system to allow individuals and carriers to submit challenges to correct erroneous data in the system. The challenges are routed to the issuing State for review. Currently, of the 3.5 million inspections, less than one percent is challenged and the States have been responsive to those requests.

We continue to work with the States to ensure uniformity and consistency in the handling of DataQs requests. For example, the Agency has prepared a detailed guidance manual for State DataQs analysts, which is also posted on our website.

We are committed to continually working with our enforcement stakeholders, including the States and the Commercial Vehicle Safety Alliance to improve the quality of data submitted to SMS to ensure the SMS is the most effective tool possible.

Interventions

The Agency's second major component of CSA is the intervention process. As stated above, prior to CSA, the Compliance Review (CR) was the primary intervention and investigative tool FMCSA used to compel compliance and to determine the safety fitness of large truck and bus companies. The CR is labor intensive and, in turn, limits the number of carriers with problem-indicators that FMCSA can investigate. The FMCSA now has more tools in its toolbox from which to choose in response to a motor carrier's compliance and safety performance. These include warning letters and focused and comprehensive investigations.

Additionally, the Agency is in the process of preparing to deploy off-site investigations in all States.

The interventions approach is designed to compel compliance and remedy demonstrated on-road performance deficiencies early, before a crash occurs. A motor carrier that has not demonstrated past safety and compliance deficiencies, but is beginning to do so, will receive a warning letter from FMCSA highlighting the specific BASICs that may require attention. This letter serves to notify the carrier of the SMS results and provides them an opportunity to address any safety management practices prior to a more significant intervention taking place. UMTRI analysis of this intervention tool indicates that 83 percent of carriers that receive a warning letter and no further interventions had resolved the identified safety or compliance problem within twelve months of receiving the letter. The Agency monitors a carrier's performance following the warning letter, and should the carrier's compliance improve, the carrier is no longer identified for further intervention.

The Agency has received various responses from industry regarding these warning letters, with some carriers expressing appreciation for the early notification and opportunity to make changes in safety management practices prior to a more significant and time consuming intervention.

The SMS BASICs provide specific measurement of a motor carrier's compliance and allows the Agency to conduct a "focused intervention." By focusing on specific problems and highlighting the area of concern, the Agency interventions are more strategic and less labor intensive than the CR and more efficient for the carrier. This focused intervention model ultimately improves compliance behavior, and reaches more carriers while being less intrusive

and time consuming for all parties. Smaller motor carriers and owner operators subject to focused investigations or offsite investigations will spend less time in the office working with the safety investigator, and more time on the road in operations. Analysis of the 30-month CSA Operational Model Test, demonstrated an overall 35 percent increase in the number of carriers reached per safety investigator, in comparison to the prior SafeStat / CR model and these focused interventions take less time and cost approximately 53 percent less than CRs.

CSA has changed the investigative process as well. Federal and State safety investigators are trained not just to identify violations, but also to identify the root cause of the safety deficiency and review these root causes with carrier officials. This approach is known as the Safety Management Cycle. As an 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 working 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. Later this year the Agency will begin performing offsite investigations nationwide. In an offsite investigation, the carrier submits documentation to a division office for review, without the need for a safety investigator to visit the motor carrier's place of business.

Analysis of the CSA Operational Model test indicated that the CSA focused investigation, incorporating the Safety Management Cycle, can be more effective than the traditional compliance review. The Agency will continue to conduct comprehensive onsite investigations 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. As discussed below, until an Agency rulemaking is completed, the on-site investigation will remain the Agency's method for issuing safety fitness determinations under current rules.

In summary, by leveraging SMS and more focused interventions, the CSA program improves safety performance, provides less resource- and time-consuming interventions for both the Agency and motor carriers, and allows the Agency to reach more carriers. These interventions are more effective and designed to identify compliance problems early, before crashes occur.

Safety Fitness Determinations Rulemaking

The third component of the CSA model is a revision to the Safety Fitness Determination (SFD) methodology specified under current regulation. This proposed new methodology will be published for notice and public comment in a Notice of Proposed Rulemaking early next year. The proposed new SFD would be designed to replace the current labor-intensive process in which the Agency may propose and issue a safety rating only following an onsite CR investigation. With current resources, the Agency is limited to issuing safety fitness ratings through the approximately 18,000 onsite reviews conducted each year, on a population of 525,000 active carriers. The new SFD process would propose use of all available data in the system to make this determination. The SFD rulemaking also would address a long-standing National Transportation Safety Board recommendation, H-99-006, to "Change the safety fitness rating methodology so that adverse vehicle and driver performance-based data alone are sufficient to result in an overall unsatisfactory rating for the carrier."

Conclusion

I would like to thank you for the opportunity to provide these comments. I feel strongly that over the last few years, FMCSA has made significant progress in implementing CSA and improving the efficiency and effectiveness of our program. The net result is improved safety in commercial motor carrier operations. We are continuing to build on these successes as we finalize the program, through data-driven decision making and processes as transparent and inclusive as possible.

Thank you again for this opportunity to appear before you today.

House Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
"Evaluating The Effectiveness of DOT's Truck And Bus Safety Programs"
September 13, 2012

Questions from Chairman John J. Duncan, Jr.

1. **FMCSA claims that CSA has sufficient data to score 40% of active carriers (200,000 of the roughly 500,000 active carriers) in at least one category. What percentage of carriers is FMCSA able to score in all or even most categories?**

Response: FMCSA has sufficient data to assess over 17,000 motor carriers, or 3 percent of all active motor carriers in all Safety Management System (SMS) categories. As is correctly stated, FMCSA's analysis shows there are approximately 200,000 motor carriers with sufficient data to be assessed in at least one Safety Measurement System (SMS) Behavior Analysis Safety Improvement Category (BASIC). Most importantly, these carriers are involved in over 90 percent of the crashes that are reported to FMCSA by our State partners, which clearly demonstrates that the Agency is focusing on the correct motor carriers. Furthermore, the approximately 50,000 motor carriers above FMCSA's intervention threshold in at least one BASIC make up less than 10 percent of all active motor carriers, but are responsible for 45 percent of the crashes reported to FMCSA by our State partners.

FMCSA's principal mission is to reduce crashes, injuries and fatalities involving large trucks and buses. The SMS effectively identifies motor carriers with demonstrated performance and compliance problems for intervention, thereby furthering FMCSA's mission to improve safety. SMS also allows FMCSA to maximize its limited resources. The table below summarizes different categories of motor carriers based on their standing in the SMS. Active motor carriers with insufficient data to be assessed by SMS are responsible for less than 10 percent of reported crashes.

Category	Approximate Number	Percentage of Uploaded Carriers
Carriers with recent activity "pulse" in last three years	525K	100%
Carriers with insufficient data	325K	8%
Carriers with sufficient data to be assessed in at least one BASIC	200K	92%
Carriers with sufficient negative information to have a percentile assigned	92K	83%
Carriers with at least one BASIC above FMCSA intervention threshold	50K	45%

2. **In your testimony you pointed to a 2005 American Transportation Research Institute (ATRI) study which found that drivers involved in a crash were 87% more likely to be involved in a future crash. Naturally, the risk of crash involvement is often a function of exposure (i.e. carriers operating in urban environments are at greater risk of crash involvement, past and future). Does FMCSA have any data to show the likelihood that a carrier involved in a crash will cause a future crash?**

   Response: As indicated in our testimony, ATRI, FMCSA, and the University of Michigan Transportation Research Institute (UMTRI) studied past crash involvement as a predictor of future crash involvement. The studies show that crashes, regardless of the carrier's role in the crash, are a strong predictor of future crashes. The FMCSA, therefore, uses this information to prioritize motor carriers for intervention.

   Regarding the impacts of a driver's role in a crash as a predictor of future crashes, in July 2012, the Agency released the scope and schedule for a crash weighting study. As part of this study, FMCSA is determining if a carrier's role in the crash is a better predictor of future crash risk. The Agency intends to release the results of this study in the summer of 2013.

3. **FMCSA claims to have sufficient data to score carriers involved in 93% of the crashes reported to FMCSA. However, according to FMCSA's website, 15 states report fewer than 75% of the non-fatal crashes that occur in their states to FMCSA's database. If all non-fatal crashes were reported, how would this 93% figure change?**

   Response: The FMCSA has no reason to believe that the crashes that are not reported would be distributed among the motor carrier industry differently than the crash reports we do receive. Therefore, we do not believe that this lack of crash reporting would change the 93 percent figure in any significant way.

   The statistics cited are from a series of reports produced by the UMTRI. This work took place from 2003 through 2010 and evaluated the percent of reporting of large truck and bus crashes to the Motor Carrier Management Information System (MCMIS) crash file. This analysis was conducted and presented to the States to be used to identify needed data reporting improvements. These analytical reports became the basis for the new Non-Fatal Crash Completeness (NFCC) measure.

Utilizing the NFCC, only 3 States and the District of Columbia are considered poor reporting States according to the NFCC measure. Detailed information on States reporting is available at the following link: http://ai.fmcsa.dot.gov/DataQuality/improve/overall.aspx?ns=N&i=9

Questions from Rep. Sam Graves

1. **On November 14, 2011, FMCSA acknowledged deficiencies in the Hazardous Materials Safety Permit (HMSP) program and accepted a petition for rulemaking to correct these deficiencies. However, in accepting the petition, FMCSA stated that it could not begin this rulemaking until the agency finalized the safety fitness determination rule under the CSA program. Some permit holders have proposed providing interim relief by establishing an alternative way to demonstrate their safety fitness other than waiting to "age out" of disqualifying out-of-service (OOS) violations that are not linked to crash causation. This alternative approach would allow HMSP holders to request a full review of their safety management controls and an opportunity, if appropriate, to file a corrective action plan prior to denying them an HMSP. What would it take to get FMCSA, either through administrative discretion or interim final rule, to promptly act to institute such a procedure?**

   Response: The FMCSA acknowledges concerns regarding the current regulatory process that does not allow a carrier to file a corrective action plan as a remedy for regulatory violations or crashes that result in a denial, suspension, or revocation of a HMSP based on its crash or out-of-service rates. Section 33014 of MAP-21 requires, however, that the Agency conduct a study of the HMSP program prior to instituting any changes. FMCSA intends to conduct the required study and identify necessary program reforms, including changes to the HMSP process.

Questions from Rep. Bill Shuster

1. **There have been incidents with drivers who were inside their own homes and had their tractors parked on their own private property when a drunk driver hit the truck. That accident counts against the company's CSA score. How is including this accident, where the driver wasn't even in the truck, in the company's CSA score an accurate reflection of carrier safety? How is this productive to the goals of improving carrier safety? Does FMCSA plan to address this issue? If so, how? If not, why not?**

   Response: The Federal Motor Carrier Safety Regulations (FMCSRs) define an accident as an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in: (1) a fatality; (2) bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or (3) one or more motor vehicles incurring disabling damage as a result of the

accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

An accident in which a commercial motor vehicle that is legally parked on private property and not engaged in interstate or intrastate commerce does not meet the definition of an accident and should not be included in a motor carrier's SMS Crash BASIC.

2. **The CSA website has a disclaimer advising customers that the BASIC scores are not meant to be used by customers to draw conclusions about carrier safety. From the disclaimer – "Readers should not draw conclusions about a carrier's overall safety condition simply based on the data displayed in this system." Regardless of the disclaimer, customers are drawing conclusions anyway. Morgan Stanley estimates 55% of shippers will not use carriers with what they believe to be "elevated" CSA scores. According to carriers in my district, shippers are ignoring the disclaimer and adding CSA and BASIC provision in their contracts, which can result in CSA/BASIC being used in litigation. If the carrier doesn't sign the contract with the CSA language, it looks bad to the customer and they may refuse to do business with the carrier. How is FMCSA planning on addressing this issue?**

Response: The FMCSA has taken great care to inform the public how FMCSA uses CSA Safety Measurement System (SMS) data. In addition to informing SMS users that they should not draw conclusions simply based on the data displayed, the disclaimer informs users that SMS data are used to prioritize motor carriers for intervention. Importantly, the disclaimer clearly states that the data are not safety ratings and further explains that "unless a motor carrier has received an UNSATISFACTORY safety rating or has otherwise been ordered to discontinue operations by the FMSCA, it is authorized to operate on the nation's roadways." The FMCSA will continue to provide this clear guidance to public users of SMS data through ongoing outreach efforts and online.

Statement of Steve Owings, Father of Cullum Owings,

Killed in a Truck Crash Involving an Inattentive and Speeding Trucker

And

President and Co-Founder, Road Safe America (RSA)

Before the Subcommittee on Highways and Transit

Committee on Transportation and Infrastructure

United States House of Representatives

September 13, 2012

Good morning Chairman Duncan, Ranking Member DeFazio, and Members of the Subcommittee on Highways and Transit, of the Committee on Transportation and Infrastructure. I am Steve Owings, President and Co-Founder, with my wife Susan, of Road Safe America (RSA) which we formed after our son Cullum was killed in a crash caused by a speeding tractor trailer in 2002. I also serve as a member of the Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Safety Advisory Committee (MCSAC) along with representatives from the motor carrier industry, safety organizations, and the law enforcement sector. I am speaking today on behalf of Road Safe America, the Truck Safety Coalition (TSC), Parents Against Tired Truckers (P.A.T.T.), and Citizens for Reliable and Safe Highways (CRASH). These safety organizations are committed to improving truck safety and making America's roads safer. Together with surviving families and friends, we all work on behalf of the tens of thousands of people who become victims of preventable truck crashes each year. Thank you for the opportunity to testify before you today on the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, Accountability (CSA) Program.

Introduction and Support for CSA Program

The CSA Program was created to address the need to utilize all data more quickly to focus the FMCSA's limited resources on intervention with high risk carriers in order to prevent truck crashes and the resulting deaths and injuries. It is a significant improvement over the previous SafeStat Program which it replaced in December 2010. As changes continue to be considered and made to hone the CSA Program, it is essential that the Program retains the ability to efficiently analyze data for timely intervention, that it is cost effective given FMCSA's limited resources, and that it remains fair to truck crash victims and their surviving family and friends. Our volunteers have first-hand experience with the devastating consequences of truck crashes

and appreciate the truck safety improvements resulting from the CSA Program. We support the CSA Program and FMCSA's ongoing efforts toward fulfilling its Congressional mandate to save lives and prevent injuries by improving the safety of commercial motor vehicles.

In a recent MCSAC meeting, CSA benefits were discussed and committee members noted that the system "is dispensing more data and giving the agency the ability to reach more carriers without a dramatic increase in resources" and inspiring "the start of a cultural change in the industry by forcing carriers to focus on the details of safety management" (http://www.truckinginfo.com/news/news-detail.asp?news_id=77855). Independent analysis indicates MCSAC's assessment is accurate and that the CSA Program is a significant improvement over the prior system. Several key points from FMCSA's own evaluation include:

- CSA is effectively monitoring the industry with an interventions model that demonstrates an overall 35 percent increase in the number of carriers reached per Safety Investigator;
- From the CSA rollout in December 2010 until the end of 2011, violations per roadside inspection declined by eight percent and driver violations per inspection declined by 12 percent;
- Compliance improved while being less intrusive and time-consuming for all motor carriers (both large and small); and,
- An overwhelming majority (93 percent) of small carriers do not score poorly in any area of the CSA Safety Measurement System (SMS), supporting the CSA Program's lack of bias against small carriers (FMCSA Testimony, House Small Business Committee, July 11, 2012).

These results show the most significant improvement in violation rates in the last 10 years. The advances achieved with the CSA program are necessary and long overdue and should not be modified in ways that will hinder their effectiveness. My testimony will comment on changes being considered to crash data maintained within the CSA Crash BASIC, thresholds for intervention and the intervention process, greater transparency, and the necessity of preserving public access to information.

Cullum and Pierce Owings' Truck Crash

My family's involvement in truck safety advocacy began on December 1, 2002. Susan and I went to church and then to the Waffle House for breakfast with our sons Cullum and Pierce who were home from college for Thanksgiving. At breakfast, we talked with the boys about things they could do to be safe, knowing they would be leaving to return to school on the busiest travel day of the year. After breakfast, we went home and the boys loaded up their car and

started their drive from our home in Atlanta to their school in Virginia. They were within three miles of arriving there when they were stopped in traffic and were hit from behind by a speeding truck with the cruise control set at eight miles per hour over the posted speed limit. That evening, when Susan and I were waiting to get a call that the boys were safely back at school, we instead got the call from Pierce telling us that his big brother and hero had been killed.

Right after the crash, Pierce was too upset to speak with the state trooper in charge of the crash scene. Consequently, the trooper only spoke to the truck driver. He told the trooper that Cullum and Pierce's car had been in the right lane and, at the very last moment, pulled in front of the truck, causing the truck to hit their car. The truck driver reported that both vehicles then continued into the median of the highway, ending up between the road and the embankment in the median. Although there were many witnesses, the trooper did not interview any of them or record any of their names. Therefore, the resulting police accident report (PAR) reflected only the truck driver's false statements about how the crash happened.

Since Pierce miraculously survived the crash, the truth was quickly discovered. The boys' car had always been in the left lane and was stopped there. When Cullum looked in his rearview mirror and realized that a truck was bearing down on them fast, he had to make a split-second decision to flee or to stay where he was and take his chances. Cullum had done exactly what we had trained him to do; he had stopped with enough maneuvering room in front of him and looked in his rear-view mirror and then he chose to flee. He drove onto the median which is where the crash occurred, not in the left lane as the truck driver had stated. At the last second, the truck driver realized that he was not going to be able to stop and he drove the truck into the median, hitting one car, my son's car, instead of many.

Based on the truck driver's statement, the trooper in charge at the scene believed that if it had not been for Cullum's decision to pull into the left lane in front of the truck, there would have been no injuries that night, let alone a death. The trooper did recognize that the truck driver was driving too fast for the conditions and charged him with reckless driving. The state trooper, I'm sure was doing his best and, after hearing the truck driver's story, probably didn't see the need to interview other witnesses. My younger son Pierce, was too distraught to give a statement at the scene, and the trooper had other responsibilities to take care of at the crash scene. Yet, the bottom line is that the trooper took the truck driver's word about what happened, and this is the only version of the crash reflected in the PAR. However, in advance of the truck driver's trial, Susan and I had to hire a private investigator to find other eye witnesses, all of whom came forward and corroborated Pierce's version of the crash. As a result of this eyewitness testimony, the truck driver was convicted of reckless driving, but served only 30 days in jail for killing our son.

If we were limited only to the version of the crash recorded in the PAR, and Pierce had not survived, or if Susan and I lacked the means to pay for an additional investigation, the truth would not have been discovered or proven. We would have lived the rest of our lives not only with the loss of our son, but also with the devastating belief that he had caused his own demise by not being attentive on the road. Our family is haunted to think about how many parents, spouses, and loved ones of victims of truck crashes erroneously think just that and lack the knowledge or the financial resources to take the steps to find the truth.

Changes Being Considered to CSA Crash BASIC

The FMCSA is considering changing the way the CSA Crash BASIC handles crash data. Currently, all crashes, regardless of fault, are counted in the crash data. The FMCSA uses this data because past crash history is an accurate predictor of future crash involvement. The change being considered would classify crashes as "preventable," "non-preventable," and "undetermined," based solely on the PAR. Crashes deemed "non-preventable" would then be removed from the carrier's Crash BASIC score. These changes are not only unnecessary, but have the potential to compromise the data integrity short term when it is used for intervention and compliance, as well as when it is used in longer term studies. The Crash BASIC is working as intended to successfully identify high risk carriers for intervention, and the data should not be manipulated.

It is well established within the truck research community that crashes, in and of themselves and regardless of fault are effective predictors of future crashes. A 2005 American Transportation Research Institute (ATRI) study determined that a past truck crash increased the likelihood of a future crash by 87 percent (http://www.atri-online.org/research/results/One-Pager%20CMVE.pdf). Past crashes are indicative of future crash risk irrespective of a finding of "fault" or "preventability" in a particular crash and support FMCSA's process of including all crash data.

It is a tremendous mischaracterization to say that this process is unfair and that some trucking companies are being blamed for crashes that they did not cause. Fault is not, and never has been, a part of this process. FMCSA's materials and public display of crash data clearly state that the crash data is based on crash involvement without determination of responsibility (FMCSA Testimony, House Small Business Committee, July 11, 2012). The crash data is used solely as an analytical tool to identify motor carriers that can benefit prospectively from intervention by the agency. Additionally, with all companies being held to the same standard of inclusion, the playing field is level and fair.

Another critical issue with classifying crashes is that the determination would be based solely on information contained in the PAR. My own family's crash is but one of many examples of how PARs may lack complete and accurate information and cannot be used to determine truck

crash preventability. Indeed, PARs do not even include information on crash preventability. Moreover, missing and incomplete information on PARs is an unavoidable consequence of truck crashes in which 97 percent of the injuries and deaths are suffered by car passengers who cannot speak for themselves at the scene of the crash. A recent study conducted by the Illinois Department of Transportation found that more than 70 percent of crash reports filled out by Chicago Police Department officers were missing data and 30 percent had errors (http://articles.chicagotribune.com/2012-04-23/classified/ct-met-getting-around-0423-20120423_1_crash-reports-red-light-cameras-data). Our police officers do a tremendous job at the scene of crashes, but they are necessarily limited in their ability to investigate beyond basic information. Their extensive duties at a crash scene include: securing the scene; managing traffic to prevent further collisions; checking for injuries; providing basic care to the injured if necessary; and, identifying immediate hazards such as fires and summoning assistance as necessary (http://www.theiacp.org/LinkClick.aspx?fileticket=6LEWIkF%2BafU%3D&tabid=87). The information in a PAR is inadequate to answer questions of why or how a crash occurred above what is reported by the conscious and able survivors, and cannot provide a reliable basis for such a determination.

Should FMCSA pursue changes to classify crash data, in spite of issues with maintaining data integrity and PAR inadequacy, cost and inefficiency would quickly overwhelm the process. In order to proceed in a fair and comprehensive manner, FMCSA would need to undertake a massive investment in qualified personnel to first develop a system to determine preventability and then to staff and monitor a separate department to provide determinations of fault or preventability in a manner that would provide the public and the industry with sufficient confidence in accuracy and integrity of the system. A fair and thorough system would require that all pertinent crash information, including any subsequent crash investigation or accident reconstruction report, be included in the review, that only qualified and experienced crash reconstruction personnel evaluate the relevant information, and that parties involved in the crash be allowed to participate in the review and submit evidence and eyewitness and expert testimony. The failure to establish a fair and transparent procedure will doom the enterprise. Moreover, the FMCSA simply does not have the resources to properly develop and maintain a system which would require investigation, documentation, evaluation and the expertise necessary to prove fault and determine preventability in truck crashes. After all, that is the function of the criminal and civil courts and, again, fault assignment is not pertinent to predicting future crashes (the intent of the Crash BASIC) via CSA.

The FMCSA's resources are better spent expanding the CSA Program in ways to reach more carriers who could benefit from intervention - and current SMS data shows that there is room for improvement. The CSA Program is intervening with approximately 50,000 carriers who are involved in 45 percent of known crashes while it has data on 200,000 carriers who are involved

in 92 percent of known crashes (FMCSA presentation to MCSAC, August 2012). Expanding a working system to reach a greater percentage of carriers who are involved in crashes but have not crossed a threshold for intervention is a much better use of limited agency resources than creating an expensive, time consuming bureaucratic process with little possibility of producing a reliable result or an identifiable improvement.

CSA BASIC Thresholds for Intervention

The setting of thresholds for intervention, within the CSA BASIC categories, is an area that warrants examination to improve efficiency and increase effectiveness. For example, carriers are currently rated using a comparison or "benchmark" approach in each BASIC category. This type of approach allows acceptance of poor or mediocre safety performance, since a carrier is only measured against other carriers. If a large portion of carriers are performing poorly in a particular BASIC category, this allows a poorly performing carrier below the threshold to avoid intervention. The carrier is not performing well, and may not necessarily be safe, but it is just performing better than other poorly performing carriers. In other words, they are being graded on a curve. Since the tragic airline crash in Buffalo, NY on February 12, 2009, which caused the deaths of 50 people, more than 12,000 people's lives have been lost in large truck crashes. Rather than accepting an average and sometimes poor performance from carriers, our goal must be to aggressively reduce this devastating, high level of truck crash related fatalities and injuries.

This system could and should be improved by determining a safety rating reflective of safe practices and good performance and requiring carriers to achieve that rating in order to avoid intervention. It is likely that more carriers would then be targeted for intervention more quickly. Even when carriers have exceeded the threshold level for a BASIC, they will most likely only get a letter in the mail, with the assurance that no further action will be taken for 12 months unless they do something drastic that forces the agency to take real action. These carriers, that are performing badly enough to exceed the threshold, can then continue to operate for a year without making improvements before the agency will consider any additional action. The combined effect is that the agency is tolerating a situation in which tens of thousands of motor carriers are allowed to continue to operate at a persistently poor and substandard level of safety. Improvements within these areas are necessary as well as increasing transparency as to how the agency determines the threshold levels in each BASIC, and how and when the agency determines what type of intervention or enforcement action should be undertaken within those threshold levels.

Public Access to Information

Public access to CSA Program information, data, and improvements is essential to maintaining a fair and transparent process. The information and data FMCSA collects for its CSA Program comes through public agencies, regarding crashes that occur on public roads, paid for by tax-payer dollars and ultimately affecting public health and safety. FMCSA Administrator Anne Ferro has said, "CSA is raising the bar for truck and bus safety." This bar is being raised because bad actors within the industry are being held accountable in the public venue for their safety practices and rightly judged as unsafe when failing to meet standards. Perhaps the greatest influence is that the trucking industry and its safety record have a higher visibility. Doing business safely must be reinforced, especially considering that the trucking industry is adding approximately 75,000 new carriers each year (FMCSA Data). Public access to safety information is essential to attaining and perpetuating safe roadways.

Conclusion

FMCSA's CSA Program is a positive step in the right direction. It has already yielded significant improvements to truck safety and should not be changed in ways to diminish or dilute its effectiveness. We urge preservation of CSA's practice of including all crashes in its Crash BASIC because it is an efficient, highly effective predictor of future truck crashes. In addition, transparency, regarding the methodology and logic behind the threshold settings being employed is essential, as well as ensuring public access to safety rating information.

Unlike the Federal Aviation Administration (FAA) whose budget to promote safety within its industry is very large compared with the number of deaths and injuries that occur each year in plane crashes, the FMCSA's budget is extremely small and must be used with great purpose and efficiency to prevent as many of the tens of thousands of deaths and injuries caused by truck crashes every year as possible. The FMCSA should have resources commensurate with the size and scope of the industry it attempts to monitor and make safe. Unfortunately, while the FMCSA is responsible for an industry significantly larger than the aviation industry, it has only a fraction of the FAA's resources.

Thank you for the opportunity to testify this morning. Our organizations look forward to working with the Subcommittee and the full Committee Members to continue to make improvements to truck safety. We urge you to support the CSA advances that are changing the culture within some of the trucking industry to engender a competitive safety environment that benefits all drivers on our roadways.

Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

STATEMENT OF

ASSISTANT CHIEF DAVID L. PALMER

PRESIDENT

COMMERCIAL VEHICLE SAFETY ALLIANCE

BEFORE THE

HIGHWAYS AND TRANSIT SUBCOMMITTEE

OF THE

HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

ON

"EVALUATING THE EFFECTIVENESS OF DOT'S TRUCK AND BUS SAFETY PROGRAM"

SEPTEMBER 13, 2012

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

I am Assistant Chief David Palmer, with the Texas Department of Public Safety and I am testifying here today in my role as the President of CVSA. CVSA is an international organization representing state, provincial, and federal officials responsible for the administration and enforcement of commercial motor carrier safety laws in the United States, Canada and Mexico. We work to improve commercial vehicle safety and security on the highways by bringing federal, state, provincial and local truck and bus regulatory, safety and enforcement agencies together with industry representatives to solve problems and save lives. Every state in the United States, all Canadian provinces and territories, the country of Mexico, and all U.S. territories and possessions are CVSA members.

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

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

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

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

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

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

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

1. Data Collection & Uniformity

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

DataQs

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

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

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

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

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

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

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

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

Data Transfer

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

Additional Data

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

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

2. Data Measurement

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

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

Safety Measurement System (SMS)

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

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

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

Regulatory Compliance

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

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

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

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

Crash Accountability

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

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

Alternative Compliance

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

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

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

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

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

3. Safety Evaluation

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

Scoring

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

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

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

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

Safety Fitness Determination

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

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

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

4. Intervention Process

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

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

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

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

5. Outreach

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

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

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

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

6. Purpose and Use of CSA Data

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

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

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

Conclusion

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

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

Written Statement of

American Trucking Associations, Inc.

Before the

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

HEARING

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

September 13, 2012

American Trucking Associations
950 N. Glebe Road, Suite 210
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Introduction

Chairman Duncan, Ranking Member DeFazio, and members of the Subcommittee, my name is Scott Mugno and I am the Vice President of Safety for FedEx Ground Package System, Inc. (FedEx Ground), a nationwide provider of small-package delivery services, headquartered in Pittsburgh, PA. I am testifying today 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 are comprised of more than 37,000 motor carrier members representing every type and class of motor carrier in the country.

ATA is a strong advocate for highway safety and has a long history of supporting safety initiatives. While I am testifying on behalf of the ATA, I note that FedEx Ground currently holds the highest DOT safety rating a company can achieve and maintains an exceptionally favorable crash history. However, despite FedEx Ground's high safety rating, favorable crash history, and longstanding commitment to safety, our Compliance, Safety, Accountability (CSA) score in the *Driver Fitness* measurement category is above the FMCSA's set threshold. Many ATA member carriers with exemplary safety records and low crash rates, like FedEx Ground, find themselves singled out by the agency due to high CSA measurement category scores. Yet, these scores erroneously reflect unsafe performance since the data and methodology supporting some of the CSA measurement categories are flawed.

CSA, as currently structured, often focuses FMCSA enforcement resources on the wrong carriers. As discussed below, FMCSA's own analysis confirms that scores in certain measurement categories of CSA, including the *Driver Fitness* category, do not reliably identify those carriers that are more likely to have future crashes. In fact, in the *Driver Fitness* category, the analysis concluded that there appeared to be no difference in crash rates for carriers with scores exceeding the FMCSA intervention threshold to carriers whose scores did.[1] FMCSA should be focusing on companies that present a crash risk, rather than on those carriers, like many ATA members, that have a record of safe operations yet a high score in a CSA category that does not reliably reflect crash risk. This would be a more appropriate use of Federal resources in contrast to FMCSA's current approach.

Before discussing the CSA program in more detail, I want to reiterate that ATA supports efforts to improve motor carrier safety and has been supportive of the objective of CSA, to reduce commercial motor vehicle crashes, injuries and fatalities,[2] since the program's inception. By design, CSA leverages performance-based data to provide real-time measures of safety performance. In doing so, CSA is intended to focus FMCSA's limited enforcement resources on the least safe carriers. Through its streamlined intervention process, CSA helps FMCSA "touch"

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[1] Federal Motor Carrier Safety Administration, *Evaluation of the Comprehensive Safety Analysis 2010 Operational Model Test*, Federal Motor Carrier Safety Administration, August 2011, available at http://csa.fmcsa.dot.gov/Documents/Evaluation-of-the-CSA-Op-Model-Test.pdf, at 33, 42.

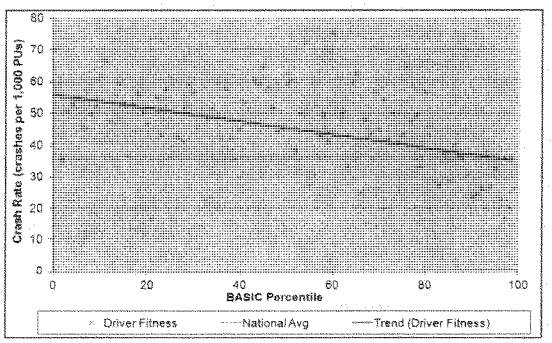
[2] CSA is an FMCSA "initiative to improve large truck and bus safety and ultimately to reduce crashes, injuries, and fatalities that are related to commercial motor vehicles." *See* http://csa.fmcsa.gov/about.

more carriers annually. Finally, CSA has the potential to provide meaningful information to third parties (e.g., shippers, insurers) in their efforts to make safety-based business decisions.

CSA Concerns

Though supportive of the objective of CSA, ATA has significant concerns with the program in its current form. Specifically, ATA is troubled by the low reliability, accuracy and significance of CSA scores, especially the lack of a relationship between carriers' scores and their future crash risk. Moreover, ATA is frustrated by FMCSA's unwillingness to acknowledge these weaknesses and correct them before making carriers' scores public and implying that they are measures of safety performance.

Prior to implementing CSA nationwide, FMCSA conducted a test of the system in nine states, called the *Comprehensive Safety Analysis 2010 Operational Model Test*, and gathered data on the program's effectiveness. A subsequent evaluation of this test, sponsored by FMCSA and conducted by the University of Michigan Transportation Research Institute (UMTRI), found that scores in some measurement categories did not have a strong relationship to future crash risk, if any. In fact, the FMCSA/UMTRI analysis concluded that scores in the *Driver Fitness* category have an inverse relationship to crash risk. That is, as carriers' *Driver Fitness* scores get higher, their crash risk actually drops.[3] Yet, even after this report was published, FMCSA issued written guidance to shippers and others saying that all BASICs "are important to safety performance."[4] A chart depicting the relationship between crash rates and *Driver Fitness* scores is below.



[3] Federal Motor Carrier Safety Administration, *Evaluation of the Comprehensive Safety Analysis 2010 Operational Model Test*, Federal Motor Carrier Safety Administration, August 2011, available at http://csa.fmcsa.dot.gov/Documents/Evaluation-of-the-CSA-Op-Model-Test.pdf, at 42.

[4] Federal Motor Carrier Safety Administration, *Just the Facts About SMS*, May 2012, available at http://csa.fmcsa.dot.gov/Documents/FMC-CSA-12-013_SMS_Just_Fact-508.pdf.

Since the release of the FMCSA/UMTRI evaluation, a growing number of researchers and credible organizations have conducted analyses casting further doubt on the relationship between carriers' scores and crash risk. For example, in November 2011 Wells Fargo Securities conducted an analysis of the scores belonging to the 200 largest carriers in the North America.[5] In doing so, they were unable to find any "*meaningful statistical relationship between poor BASIC scores and accident incidence.*"[6] In order to validate their findings, Wells Fargo conducted an additional study in July 2012 using a broader data set – 4,600 motor carriers. This more recent study also failed to find a meaningful statistical relationship between most CSA BASIC scores and actual crash rates.[7]

More recently, Dr. James Gimpel, a statistician and professor in the Department of Government and Politics at the University of Maryland, published his analysis of the statistical validity of the CSA scoring methodology. In particular, he focused on the system's efficacy in identifying and prioritizing the least safe carriers and the relationship between carrier's scores and crash risk. In short, he also found that the statistical association between crash risk and BASIC scores was "*so low as to be irrelevant.*"[8] In one measurement category, he found the use of CSA scores as a predictor of crash risk as "*little better than guessing.*"[9] In another, he found the relationship between CSA scores and crash risk to be negative.[10] In other words, as carriers' scores got worse, their crash risk improved. He went on to say that "*There are serious problems with the design of these instruments themselves that render them unreliable.*"[11]

These findings lead ATA to draw two important conclusions. First, the system creates flawed measurements of carriers' relative safety performance. These measurements undermine the efficient use of Federal resources to identify and impact unsafe carriers, as well as drive third parties relying on CSA data to make improper safety-related business decisions. Second, this lack of a statistical relationship between compliance measures and safety performance confirms that motor carriers bear an unnecessary regulatory burden. In short, CSA measures regulatory compliance but also shows that non-compliance with certain regulations does not correspond to crash risk.

The limitations that impact CSA fall into two distinct categories:

1) Problems with the underlying data that feed the system; and
2) Problems with the methodology used to assign motor carrier's safety performance scores.

A discussion of these problems follows.

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[5] Anthony P. Gallo & Michael Bushce, Wells Fargo Securities, *CSA: Good Intentions, Unclear Outcomes*, November 4, 2011.
[6] Anthony P. Gallo & Michael Bushce, Wells Fargo Securities, *CSA: Another Look with Similar Conclusions*, June 2, 2012, at 1.
[7] *Id.*
[8] James Gimpel, University of Maryland, *Statistical Issues in the Safety Measurement and Inspection of Motor Carriers, at 9-10.*
[9] *Id.* at 5.
[10] *Id.* at 6.
[11] *Id.* at 8-9.

Data Problems

The effectiveness of CSA is plagued by a variety of data problems. The principal data weakness is the fundamental lack of information upon which to measure carrier safety performance. FMCSA acknowledges that it only has adequate data to score 40% of active motor carriers in at least *one* of the measurement categories, but does not report how few carriers are scored in *all* or even most categories.[12] In short, critical safety data for the vast majority of motor carriers is not generated or, when it is generated, not reported to FMCSA. Because the foundation of CSA is measurement of carrier performance relative to others, this lack of data represents a substantial weakness, and impacts the accuracy and relevance of CSA scores. Carriers with "poor" scores are measured relative to only those carriers for whom the FMCSA has adequate data from which to draw a comparison, not against the entire industry.

The shortage of data has a particularly profound effect on small trucking companies. Due to a lack of exposure (e.g., few roadside inspections), many small companies do not generate adequate data to produce CSA scores. Those carriers that do generate scores are then perceived to be less safe, simply because they have scores, when compared against other carriers that are not scored. Also, given the small amount of data on which small carrier performance is often measured, just a few events (e.g., violations/crashes) can cause a small carrier's scores to change dramatically. As the aforementioned Gimpel study pointed out "*smaller trucking firms are subject to few inspections, meaning that whatever BASIC scores they generate, high or low, are not reliable indicators of these firms' propensity to operate safely and in compliance with regulatory standards.*"[13]

Other data problems hamper CSA as well. For instance, some states engage in vastly disproportionate enforcement of certain regulations.[14] As a result, carriers in these states are far more likely to be cited for these infractions. These fleets appear to be less safe when compared to carriers operating in other states - not because they are less safe, but because they travel in states with more robust enforcement programs. This problem more profoundly impacts small carriers operating in these states.[15]

Also, a number of states fail to report many of the commercial motor vehicle crashes occurring on their roadways to FMCSA's database. In fact, according to UMTRI[16] and FMCSA[17] analyses,

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[12] FMCSA has adequate data to score roughly 200,000 of the estimated 500,000 estimated active carriers in at least one measurement category. See *CSA: Proposed Changes to Improve on a Solid Foundation. June 2012*, slide 5, available at http://csa.fmcsa.dot.gov/resources.aspx

[13] Gimpel, University of Maryland, *Statistical Issues in the Safety Measurement and Inspection of Motor Carriers, at 12.*

[14] *Id.* at 2, 12.

[15] The impact to large carriers is mitigated because data from a single state only represents a small portion of their total data (since they often operate in many states). Conversely, a small carrier may operate in only a few states.

[16] Daniel Blower & Anne Matteson, *Evaluation of 2008 Mississippi Crash Data Reported to the MCMIS Crash File, January 2010, available at* http://www.umtri.umich.edu/content/Mississippi2008_final.pdf, at 8.

15 states report less than 75% of their crashes to the database. Interestingly, FMCSA attempts to minimize its lack of CSA violation data by pointing out that it has adequate information to score the carriers involved in 92% of crashes reported to the agency.[18] Yet, this argument is circular since many crashes do not get reported to FMCSA.

Methodology Problems

The accuracy and significance of CSA scores are also impacted by a number of methodology problems. One of the most significant of these problems is the assignment of "points" or severity weights to various violations in the system. By design, each violation is supposed to be assigned a weight on a scale of 1- 10 based on its relative severity (relationship to crash risk). However, many of the weights are illogical or, as UMTRI called them in its evaluation of the program, *"arbitrary."* Other methodology issues impact scores as well. For instance, warnings issued for moving violations bear the same weight as citations and, in many cases, citations dismissed in court bear the same weight as convictions.

Perhaps the single biggest problem with the CSA methodology is that it measures motor carriers on all crashes they are involved in, regardless of fault. Intuitively, at-fault crashes are the best measures of safety performance. However, FMCSA measures carriers based on these crashes and those they did not cause nor could have prevented. In other words, a carrier that is rear-ended while stopped at a red light is perceived as being just as safe/unsafe as one that rear ends another motorist or crosses a median and strikes another vehicle head-on.

For more than three years, ATA has been calling on FMCSA to establish a process to evaluate crash accountability and modify the CSA methodology accordingly. In mid-2010, the agency conducted a study of the reliability of police accident reports (PARs) in making crash accountability determinations. Researchers found that those tasked with reviewing the reports were able to make consistent crash accountability determinations in 93% of the instances tested. Subsequently, FMCSA developed a process to make crash accountability determinations and was prepared to implement it, but in March 2012 reversed course saying the issue needed further study.

Just over a month ago, FMCSA announced that it would be spending another year studying the issue before developing a corresponding solution and that solution may not be implemented until months afterwards, if at all. While ATA appreciates FMCSA responding to calls for a timeline of next steps, our members are frustrated by the delays in resolving this fundamental flaw in the system. It now appears that FMCSA may not be poised to even propose a solution, let alone implement one, until three years after the agency first began studying the issue.

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[17] As reported by the FMCSA, Nevada, New Mexico, Mississippi and Florida have a crash reporting rating of "poor." A rating of "poor" means that less than 50% of non-fatal crashes were reported to the FMCSA. *See* http://ai.fmcsa.dot.gov/DataQuality/improve/nfcc.aspx?i=6&ns=N .

[18] FMCSA's Response to Public Comments of Safety Measurement System Changes, 77 Fed. Reg. 52110 at 52111 (Aug. 28, 2012).

Naturally, ATA recognizes that it will be difficult to make accountability determinations with respect to some crashes. However, there are others, such as when a motor carrier is rear-ended while stopped at a red light, that are very straightforward. In ATA's view, it is unnecessary to complete 12 months of research to conclude that a carrier involved in such a crash should not be labeled as unsafe and subsequently prioritized for enforcement. Accordingly, FMCSA should establish a near-term process to address these crashes where accountability is so plainly evident.

FMCSA contends that it is appropriate to score carriers based on all crashes, not just preventable ones, because its analysis reflects that past crash involvement, regardless of fault, is a strong predictor of future crash involvement. This conclusion may be true, however crash involvement is not an indicator of a fleet's likeliness to *cause* crashes but rather a consequence of the environment in which it operates. Fleets operating in urban and congested areas have more crashes than fleets operating in rural areas, but that does not mean they are any more prone to *causing* them.

In fact, FMCSA's current safety rating methodology acknowledges the role exposure plays in crash risk. Specifically, FMCSA sets a higher threshold for acceptable crash rates for those carriers operating exclusively in urban environments. The language in the safety rating methodology reads as follows:

> *Experience has shown that urban carriers, those motor carriers operating primarily within a radius of less than 100 air miles (normally in urban areas), have a higher exposure to accident situations because of their environment and normally have higher accident rates.*[19]

For most carriers, FMCSA has established a threshold of 1.5 crashes per million miles as acceptable performance. Carriers with crash rates above that threshold are assigned a rating of "Unsatisfactory" in the *accident factor* of the safety rating methodology and, as a result, are unable to obtain an overall safety rating better than "Conditional." However, for urban carriers the acceptable threshold for measuring safe performance is 1.7 crashes per million miles.

Rather than devoting attention to carriers that endure greater exposure due to their operating environment, FMCSA should direct its limited resources where they would be most effective in preventing future crashes – by focusing on unsafe carriers that are *causing* them. After all, doing so would help better meet the objective of CSA, which is to reduce crashes injuries and fatalities.[20]

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[19] *See* 49 C.F.R Part 385 *Appendix B- Explanation of Safety Rating Process, B. Accident Factor.*
[20] *See* note 1.

Acknowledgement of the Program's Limitations

Though an early advocate of the CSA program, ATA has become increasingly concerned with CSA's serious flaws. Moreover, ATA is troubled by FMCSA's unwillingness to acknowledge CSA's limitations and fix them.

A good example of this approach is FMCSA's continued use of the *Driver Fitness* measurement category. As discussed above, the UMTRI evaluation found that there appeared to be no difference in crash rates between carriers with *Driver Fitness* scores exceeding the FMCSA intervention threshold and carriers whose scores do not exceed the threshold.[21] In other words, the *Driver Fitness* category measures a fleet's compliance with regulations, but not its propensity to actually be involved in a crash. For example, a common *Driver Fitness* violation occurs when a driver fails to keep a medical certificate in his/her possession while operating a commercial motor vehicle. While the driver's failure to carry a medical certificate on his or her person is a violation of the Federal Motor Carrier Safety Regulations, the failure to carry this type of paperwork does not make the driver any more likely to be involved in a crash.[22] Rather than acknowledging this problem and working to correct it, the agency points to the importance of highlighting compliance with regulations, even those that do not have a statistical relationship to safety.

There is no doubt that FMCSA's intent in designing the CSA system was to identify carriers that are less safe - in other words, those more likely to have crashes. For instance, the CSA methodology says the goal of CSA is *to reduce commercial motor vehicle (CMV) crashes, fatalities, and injuries.* Consistent with this goal, FMCSA's intent (according to its document outlining the process for assigning violation severity) was to assign weights to violations based on their statistical correlation to crash incidence and crash severity.[23] FMCSA has repeatedly acknowledged that the objective of the program is to yield 'the greatest *safety* benefits' (emphasis added).

FMCSA is now perpetuating this flaw by making modifications to the program. In a few months the agency will implement a new measurement category to rank carriers that haul hazardous materials. FMCSA candidly acknowledges that the goal of this category "*...is not to predict future crash risk.*"[24] Instead, FMCSA says the category better identifies carriers that are more likely to commit future hazardous materials violations. The agency points to the importance of identifying such carriers since hazardous materials can increase the consequences of a crash, but presents no data to show that HM carriers have crashes with worse outcomes as a result of hazardous materials violations.

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[21] University of Michigan Transportation Research Institute, *Evaluation of the Comprehensive Safety Analysis 2010 Operational Model Test*, at 42.
[22] Notably, drivers still receive this violation even though they are properly qualified to drive by a medical examiner.
[23] *Carrier Safety Measurement System (CSMS) Violation Severity Weights*, Federal Motor Carrier Safety Administration, November 2009.
[24] *Safety Measurement System Changes*, Federal Motor Carrier Safety Administration, June 2012, at 7.

While compliance with regulations is important, ATA questions the merits of assigning a higher priority to these carriers than those that are actually less safe. If, as FMCSA contends, the intent of the system is to *prioritize* carriers, then less safe carriers should be assigned higher scores than safe carriers that have patterns of violations that are not safety-related. Intuitively, this is the most efficient and effective use of Federal resources.

The inability of the system to identify the least safe carriers impacts more than FMCSA's enforcement prioritization program. CSA scores are used by third parties to make business decisions as well. The following paragraph from FMCSA's CSA methodology explains that:

> *In addition to supporting the CSA Operational Model, the Safety Measurement System (SMS) results can provide other stakeholders, such as insurers and shippers, with valuable safety information. The SMS results will be easily accessible via the Internet to encourage improvements in motor carrier safety. Findings from the SMS will allow the evaluated carriers an assessment of their weaknesses in various safety areas. In turn, the SMS will empower motor carriers and other stakeholders involved with the motor carrier industry to make safety-based business decisions.*[25]

The implication, of course, is that the CSA scores are a measure of safety – not compliance. Of course, as mentioned above, the system sometimes measures compliance with regulations which, according to the FMCSA/UMTRI, Wells Fargo and Gimpel analyses, do not have a statistical correlation to crash risk. CSA scores, therefore, can lead stakeholders such as shippers and insurers to believe that safe carriers are unsafe. This is simply poor public policy.

As an example, the chart below reflects CSA scores from several large, national motor carriers as of May 2012. The data indicate that these carriers' high scores in the *Hazardous Materials* category are inconsistent with their performance in all other categories. Most importantly, their *Crash Indicator* scores are all in the top 30th percentile, meaning that they perform better in this category than 70% of like carriers.

	Unsafe Driving	Fatigued Driving*	Driver Fitness	Controlled Substances/ Alcohol	Vehicle Maintenance	Hazardous Materials**	Crash Indicator
Carrier A	6.9	39.5	24.7	N/A	58.4	**78.2**	25.6
Carrier B	33.1	39.2	41.5	0.4	51.7	**91**	21.9
Carrier C	21.5	12.1	40.4	2	62.8	**91.7**	**29.8**
Carrier D	3.4	22.8	26.5	0.1	24.1	**86.9**	**29.3**

[25] *Safety Measurement System (SMS) Methodology*, Version 2.2, Federal Motor Carrier Safety Administration, January 2012, available at http://csa2010.fmcsa.dot.gov/documents/smsmethodology.pdf, , at 1-2.

* FMCSA has indicated in that the *Fatigued Driving* BASIC will be renamed the *Hours of Service Compliance* BASIC in December 2012.

** FMCSA has indicated that this category will be the named the *Hazardous Materials Compliance* BASIC in December 2012.

Conclusion

ATA supports the laudable objective of CSA, to reduce commercial motor vehicle crashes, injuries, and fatalities. CSA is a potentially powerful tool to achieve this objective. However, data and methodology problems undermine the effectiveness of the system. Ultimately, these problems hamper the system's ability to accurately measure relative safety performance. As a result, FMCSA is less effective at targeting unsafe carriers for enforcement and third parties are encouraged to make business decisions based, in part, on erroneous safety measurements.

While ATA takes issue with certain specific elements of the CSA methodology, there is an overarching theme: CSA scores must reflect future crash risk. If they did, the system would provide a means for responsible fleets to distinguish themselves from those that do not share their commitment to safety, to properly leverage third parties to drive carriers to invest in safety, and to make better use of Federal enforcement resources. To achieve these benefits, FMCSA must take three very specific steps.

First, FMCSA must acknowledge that the system does not accurately and reliably identify unsafe carriers. In other words, CSA scores are not a reliable predictor of future crash risk. Second, the agency must confirm that, since the goal of the program is to reduce crashes, injuries and fatalities, CSA's highest priority should be to focus on the least safe carriers, not merely those carriers that have compliance problems. And finally, FMCSA must establish a specific plan to develop and implement the data and methodology changes necessary to ensure that the system functions as intended. Only then will CSA reach its fullest potential as a tool to improve highway safety.

Testimony of

Ruby L. McBride

Vice President of Corporate Systems

for

COLONIAL FREIGHT SYSTEMS, INC.

KNOXVILLE, TN

Before the

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

September 13, 2012

Regarding

The "Effect" of the Federal Motor Carrier Safety Administration's Compliance, Safety, Accountability Program on the Trucking Industry

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Before the

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

September 13, 2012

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

ASECTT'S POSITION

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

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

ASECTT'S POSITION

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

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

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

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

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

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

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

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

Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> *Slide 9 Notes:*
> A motor carrier that has received a compliance review from FMCSA and whose operations were rated at that point in time by FMCSA as Satisfactory or Conditional is authorized to operate in interstate commerce. That rating, with the date of the review, appears in SAFER. **A Satisfactory or Conditional rating does not mean, however, that the public should ignore all other reasonably available information about the motor carrier's operations.** CSA's SMS data, addressed later in this presentation, are one of many possible resources that the public can use to assess a motor carrier's safety performance record.

Slide 10 Language:
What are the limitations of SAFER and safety ratings?
A Satisfactory safety rating does not mean carrier is currently in compliance and operating safely.

Slide 13 Notes:
SMS identifies about the same number of small carriers (7.4%) that SafeStat did (7.1%).

Slide 25 Notes:
Questions that concern private litigation matters, such as claims for vicarious liability and negligent hiring, are outside the scope of FMCSA's area of responsibility. CSA users are reminded, however, that although CSA is a new operational model, the data collected and analyzed in SMS are the same data as were publicly available online for 10 years through SafeStat. The SMS data are not a SFD, do not alter a carrier's safety rating, and do not impact a carrier's operating authority.

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

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

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

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

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

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

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

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

Systemic Problems and Flaws in SMS Methodology

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

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

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

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

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

1. SMS Methodology is Not Comprehensive

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

2. SMS Percentile Rankings Have No Proven Correlation to Safety. As Representative DeFazio correctly pointed out two years ago, SMS methodology cannot be used to provide safety fitness determinations unless it is shown to be an accurate predictor of carrier safety. The long awaited University of Michigan study was not published until 5 months after the Agency published its percentile rankings and has been much criticized. Wells Fargo conducted two independent studies and concluded, "Quite simply, we found very little relationship (i.e., not statistically significant) between Unsafe Driver or Fatigued Driver scores and actual Accidents per Power Unit."

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

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

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

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

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

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

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

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

4. Flawed and Irrelevant Data.

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

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

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

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

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

APPENDIX A

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

Credentials for truckers protect forwarders

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

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

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

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

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

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

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

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

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

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

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

APPENDIX B

Memorandum

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

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

Date: February 13, 2004

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

Reply to Attn. of: JA-40

To: Federal Motor Carrier Safety Administrator

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

Our objectives were to determine whether the:

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

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

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

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

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

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

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

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

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

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

Attachment

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cc: National Highway Traffic Safety Administrator

APPENDIX C

July 28, 2011

Comments to the Motor Carrier Safety Advisory Committee

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

Petitioner's Interest

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

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

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

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

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

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

Background

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

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

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

Adjusting Severity Weightings

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

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

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

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

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

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

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

Systemic Flaws Which MCSAC Cannot Address

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

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

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

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

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

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

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

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

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

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

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

Maybe the SMS Wheel Does Need Reinventing

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

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

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

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

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

APPENDIX D

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

Docket No. FMCSA 2012-0074

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

July 5, 2012

SELECTED PORTIONS

SMS Methodology is Systemically Flawed

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

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

Three Studies:

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

Inam Iyoob, "BASIC Scores are Not Valid Predictors of Crash Frequency"

James Gimpel, "Statistical Issues in the Safety Measurement and Inspection of Motor Carriers"

IV. Why SMS Methodology is Systemically Flawed

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

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

1. LACK OF OBJECTIVE STANDARD. Why should the Agency abandon an objective audit, and the due process procedures afforded carriers under current statutes, to embrace a safety fitness determination that grades carriers on a curve using percentile rankings -- thereby branding innocent carriers as increasingly "high safety risks" regardless of their objective performance?

2. DATA NOT COMPREHENSIVE. How can SMS methodology be touted as a "comprehensive safety analysis" when, just as in SafeStat, the vast majority of the carriers the Agency oversees have too few data points (infractions or inspections) to be ranked?

3. ARBITRARY ENFORCEMENT PERCENTILES. Do the intervention threshold percentiles have any value in establishing whether a carrier is ultimately safe or unsafe to operate on the nation's roadways?

4. CRASH PREVENTABILITY IGNORED. Whether the Agency's inability or unwillingness to address crash preventability so taints SMS methodology and its evaluation of carrier performance that, absent a carrier's right to contest preventability, the direct or indirect use of unscrubbed crash data to measure carrier performance is statistically invalid.

5. LAW OF LARGE NUMBERS. Whether, as Professor Gimpel suggests, the data available for use in SMS methodology is insufficient to permit an adequate analysis of small carriers.

6. NO PROVEN PERCENTILE RANKINGS/SAFETY NEXUS. Should percentile rankings be used in whole or in part to decide a carrier's fitness in light of the Wells Fargo study and Dr. Iyoob's more comprehensive analysis of individual carrier crash ratios by percentile?

7. GEOGRAPHICAL ANOMALIES. How can SMS possibly be touted as a reliable nationwide indicator of comparative safety performance when SMS data is no better than the widely varying enforcement practices of 50 different States plus the District of Columbia? (E.g., 5 states account for 43% of the violations recorded in the "Unsafe Driving" BASIC.)

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[1] See Exhibit 2 attached hereto, "Comments to the Motor Carrier Safety Advisory Committee."
[2] See Summary of ASECTT issues presented at that time attached as Exhibit 3.

8. IRRELEVANT PAPERWORK VIOLATIONS. Does the Fatigued Driving BASIC actually reflect driver crash susceptibility when over 50% of the points result from paperwork violations (form and manner and last change of duty status) which are not incurred by peer grouped carriers that are not required to maintain paper logbooks?

9. NON OUT-OF-SERVICE VIOLATIONS. Does the Vehicle Maintenance BASIC accurately measure carrier crash susceptibility when over 50% of the accumulated points are assigned to non-out of service items such as trailer lights, brakes and tires?

10. PROPOSED INCLUSION OF FLAWED DATA. Can the dubious validity of the Vehicle Maintenance BASIC be improved by including unscrubbed points formerly incurred in the securement BASIC, which even the University of Michigan has concluded did not have any correlation to safety?

11. UNTESTED NEW BASIC. Is it proper to develop and include a new seventh BASIC for "Hazardous Materials" without thoroughgoing analysis and rulemaking?

12. PEER GROUP ANOMALY IN HAZMAT. Whether the proposed Hazmat BASIC unfairly brands general commodity and intermodal carriers as high safety risks due to minor paperwork infractions, without capturing the actual performance of carriers transporting more dangerous toxic, flammable, explosive and radioactive material.

13. LACK OF EVIDENCE TO SUPPORT MINOR BASICS. Whether the failure of the Agency through the Volpe Center or the University of Michigan to present a study showing any strong compliance safety component in Vehicle Maintenance, Driver Qualification, Drug and Alcohol or Securement/Hazmat, destroys the marginal utility of measuring these BASICs.

14. INSUFFICIENT DATA. Whether the Driver Qualification and Drug and Alcohol BASICs measure too few carriers to be statistically relevant.

15. ISOLATED OCCURRENCES' EFFECT ON SCORES. Whether the most often cited violations in Driver Qualification (no medical card in possession, driving on suspended license for non-safety reasons, and drug and alcohol testing of missed random test of particular driver due to inadvertence) are violations with any proven correlation to safety.

16. SPECIAL PEER GROUP ISSUES. Whether intermodal drayage carriers' scores can possibly be considered accurate in the Vehicle Maintenance BASIC due to profiling and the inability of the Agency to hold Intermodal Equipment Providers (IEPs) accountable for proper preventive maintenance.

17. PROFILING AND PEER GROUP CREEP. Whether SMS methodology affords carriers due process given the effect of profiling through the targeting of carriers under inspection and resulting peer group creep.

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

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

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

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

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

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

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

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

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

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

VI. ARGUMENT - LEGAL AND FACTUAL ANALYSIS

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

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

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

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

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

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

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

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

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

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[4] See Executive Summary of Report MH2004-034 attached as Exhibit 9.
[5] See U.S. DOT Office of Inspector General Memorandum dated February 13, 2004 attached as Exhibit 10.
[6] Exhibit 10, p. 3.

(a) The problem of bad crash data has not been addressed – Over 60% of the reported crashes are not the carrier's fault, yet are included in each carrier performance data.

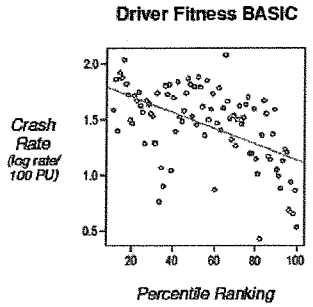
(b) Unsafe Driving – with the inclusion of speed warnings and the geographical anomaly (5 states write 46% of the violations), the data quality issue in this BASIC remains unaddressed.

(c) Fatigued Driving – Under SMS methodology, over 50% of the accumulated points are form and manner or other paperwork violations which are not out of service issues or evidence of exceeding the hours of service or fatigue.

(d) Vehicle Maintenance – Non out of service issues such as tires, brakes and trailer lights account for 50% of the points.

(e) Driver Fitness – An ATA white paper issued in June 2012 concluded of this BASIC:

> "Agency officials point to merits of identifying carriers with patterns of violations in the [category of Driver Fitness] even though these violations don't bear a relationship to further crash risk."[7]



3. While the FMCSA did not agree with the IG's assertion as to the impact of data quality problems on SafeStat, the IG has continued to maintain that data quality issues should be addressed before data of this type is made public:

> "The existing data quality problems should not prevent FMCSA from using SafeStat as an internal decision making tool. However, while the data used for SafeStat calculations are sufficient for internal purposes [i.e. determining who to

[7] ATA White Paper, 6/20/2012.

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

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

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

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

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

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

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

The Inspector General concluded,

> "Consequently, while SafeStat is sufficient for internal use, its continued public dissemination and external use require prompt corrective action." (Executive Summary, p. 3.)
>
> "Because carrier safety data and the model's ranking are publicly disclosed, a higher standard of quality must be met to ensure fairness to motor carriers who may lose business or be placed at competitive disadvantage by inaccurate SafeStat results. FMCSA will need to demonstrate timely improvements if it is to continue to publicly disclose carrier results across all SafeStat categories." (Executive Summary, IV.)

[8] See Memorandum, Exhibit 10, p. 3.

The Agency has repeatedly refused to consider the consequences of unfairly publicly branding carriers under SMS methodology even though carriers' percentile rankings are subject to wild fluctuations which have little or nothing to do with the carrier's safety performance. Under SMS methodology, carriers do not control their destiny. One member of ASECTT which operates over 500 trucks states:

> "Last month, the only change in our crash records resulted from a non-preventable accident when a car ran into the back of our truck which was stopped at a red light. Our scores in "Unsafe Driving" went up 25 points."

ASECTT can document numerous other examples involving large as well as small carriers where a single misplaced medical card, one missed child support payment, or the addition or deletion of a single truck from its census has resulted in radical percentile increases or branding under published rankings.

Clearly, the premature publication of unvetted CSA/SMS methodology together with the Agency's publication of its May 16th guidance has exacerbated the problems of SafeStat and has not addressed the "competitive disadvantages," "elemental fairness" and "loss of business issues" which in large part sank SafeStat in Congress' mind.

SafeStat identified 7,821 carriers for potential audit on the Agency's A and B list. SMS brands approximately 53,000 carriers (or over half the carriers it can rank) as in need of "further monitoring" based on an unvetted methodology not certified under the APA as fit for even the Agency's own use.

Worst of all, the Agency has now ignored the IG expressed concerns about SafeStat and has doubled down on the fears of industry. By telling the shipper and broker community that SMS methodology has the same merit as its safety fitness determinations, the Agency has placed 53,000, over 6 times as many carriers at a "competitive disadvantage" threatening each with "loss of business." The Agency "continues to publicly disclose carrier results across five SMS BASICs without demonstrating any improvement, Data Quality Act compliance or APA approval.

It has ignored the warnings of the IG report and substituted a new standard to be enforced by shippers and brokers abandoning the objective safety fitness standard the Agency is required to issue and publish by statute.[9]

In conclusion, after 8 years of development, SMS methodology is not a material improvement over SafeStat. It still unfairly brands carriers and its premature publication does not answer the concerns noted by the Inspector General in directing that SafeStat be modified or replaced. It is time for the Agency to consider some objective new proposal which would meet Congress' goal of a "Comprehensive Safety Analysis" and allow the Agency to make an objective safety fitness

[9] See article by Paul Stewart, "A Commentary: The Perfect Storm: Schramm Decision, FMCSA, and an Impossible Duty for Brokers and Third Party Logistics Companies," published in the Journal of Transportation Management, Vol. 22 No. 2 Fall/Winter 2011 attached as Exhibit 11 (reprinted with permission).

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

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

1. SMS methodology has no proven correlation to safety

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

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

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

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

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

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

2. Three recent studies challenge SMS methodology

Whether under rulemaking, under the APA, or in a judicial proceeding under *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), a proponent of any hypothesis relying upon statistical data must submit the studies and design plan for peer group review and criticism. In its interactive program to create rulemaking by consensus, the Agency has ignored the criticism of its own Motor Carrier Safety Advisory Committee with respect to the prejudicial branding of carriers by SMS methodology and has not properly submitted its data and conclusions for critical review and assessment.

Attached as Appendices A, B and C are three statistical analyses which call into question the Agency's basic premise that its complicated methodology accurately predicts carrier safety performance. Unlike the UMTRI, Volpe and Agency generated studies, these three documents focus on the effect of SMS methodology on individual carriers, not percentile averages and trend lines.

Appendix A is a second Wells Fargo study released July 2, 2012 entitled "CSA – Another Look With Similar Conclusions" which reconfirms the findings of the earlier Wells Fargo study based upon a more extensive analysis of carriers measured under SMS methodology. The fact that the Wells Fargo studies could not verify the underlying assumptions of SMS methodology is fatal to any possible ratification of the program under the Administrative Procedure Act.

Appendix B is a study performed for ASECTT by Inam Iyoob, PhD entitled "BASIC Scores are Not Valid Predictors of Crash Frequency" which shows the distribution of crashes per vehicle mile using the Agency's database for individual carriers in the two acute BASICs of "Unsafe Driving" and "Fatigued Driving".

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

> "I can't see any useful purpose in averaging the crash data of hundreds of carriers in each of 100 different percentiles and then calculating a regression of the average values. *** The purpose of regression analysis is to explain variation. Averaging hundreds of carriers at each percentile eliminates most of the variation in the data. It is not statistically accurate to say the SMS methodology and BASIC percentile scores are an accurate predictor of carrier safety predicated upon the crash data the Agency uses to justify its conclusions.
>
> "Logically, unsafe driving and driver fatigue do impact crashes. However, the way the SMS BASICs **Unsafe Driving** and **Fatigued Driving** are captured, calculated and interpreted by FMCSA does not show any correlation to crashes.

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

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

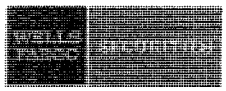
THREE STUDIES

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

Inam Iyoob, "BASIC Scores are Not Valid Predictors of Crash Frequency"

James Gimpel, "Statistical Issues in the Safety Measurement and Inspection of Motor Carriers"

July 2, 2012



Equity Research

CSA: Another Look With Similar Conclusions

An Expanded Dataset And Another Look Highlights CSA Problems

Sector Rating: Airfreight & Logistics, Market Weight
Sector Rating: Trucking & Intermodal, Market Weight

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

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

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

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

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Together we'll go far

Background

The Federal Motor Carrier Safety Association (FMCSA) introduced the nationwide CSA (Compliance, Safety, Accountability) safety program in December 2010. We believe the intent of the program was to reduce crashes, injuries and fatalities by utilizing a broader and more comprehensive data set to measure carrier and driver safety. In turn, this data could be used by FMCSA and carriers to take corrective action and to allow FMCSA to focus its resources on the more troublesome carriers and drivers. We believe the idea was to identify behaviors that were thought to lead to accidents and to proactively address those behaviors before accident occurrence.

The FMCSA collects data in order to assign a composite score in seven categories, five of which are made public. Each category has numerous subcategories that are each prescribed severity weights. The aggregate of these weights results in a BASIC (Behavior Analysis and Safety Improvement Categories) score for each category. Each BASIC has a corresponding "limit" threshold whereby, if a carrier breaches, corrective actions must be taken to remedy the violations. Serious or persistent violations can result in enforcement actions against either carriers or drivers. There are as many as 695 possible violations that CSA can capture.

In our 11/4/11 report, we examined the correlation between BASIC scores and accident incidence, which we measured on the basis of number of power units and million miles driven. We found no meaningful statistical correlation between BASIC scores and accident incidence. In that report we made several assertions as to why we believed BASIC scores may not be a good indicator of carrier safety and why there was little correlation between actual accident incidences. On 3/16/12, the FMCSA issued a report directly addressing the findings in our report. We believe the report can be accessed at http://csa.fmcsa.dot.gov and we encourage readers to understand FMCSA's position on these important matters. Further, now that the program has been implemented and running for some time, we would welcome a thorough independent statistical review of all the carriers in the FMCSA database that goes beyond our 4,600 carrier dataset.

Another Look And Similar Conclusions

In an effort to ensure authenticity of our previous results and in light of some disagreement with our assessment, we felt it was important to broaden our dataset. Moreover, we increasingly find shippers, the legal and insurance professions, among others, struggling to understand how they should or could use CSA in their unique capacities. In our view, investors should understand the implications of this dynamic.

The FMCSA grants carriers regulatory authority to operate; there are no regulations that require shippers to utilize CSA in carrier selection. The FMCSA continues to publish Carrier Safety Ratings as "Satisfactory", "Conditional" or "Unsatisfactory". In theory, therefore, it should be simple enough for a shipper to make a carrier safety decision based on the three FMCSA categories. Nonetheless, we find that shippers are using CSA in their carrier assessments even as they struggle to understand the legal implications of this. We note that a Q2 2012 Quarterly Expectations Survey by Transport Capital Partners found that 72% of their survey respondents reported at least some of their customers were concerned about CSA scores, which seems to confirm our observations. However, we find shippers and brokers struggling with the legal implications of using a carrier with, for example, a "Satisfactory" Carrier Safety Rating but an "Above Threshold" "Unsafe Driving BASIC". What are the ramifications if that carrier is subsequently involved in an accident?

Overall, we find the CSA program and BASIC scoring methodology troubling for the following several reasons;

1. We do not find any meaningful statistical correlation between BASIC scores and actual accident incidence measured on the basis of miles driven or number of power units in our 4,600 carrier dataset,
2. We find several aspects of data collection and BASIC scoring flawed, or potentially misleading,
3. We find it rather ambiguous of the FMCSA to assign percentile rankings and threshold maximums to carriers in several BASIC categories but then leave open the interpretation of the carrier's overall safety performance to stakeholders (drivers, shippers, insurance providers, shareholders, employees),
4. Systems such as the Inspection Selection System (ISS) prompt more frequent inspections for carriers with high BASIC scores but two-thirds of inspections result in violations potentially creating a "negative feedback loop". More troubling, in our view, is the disparity between State enforcement protocols.

Given the above, and because a large number of carriers are not even scored in the BASIC system or are only scored in one BASIC category, we are left to wonder if non-rated carriers will be "shunned" thereby benefitting the larger carriers in our research universe, or will the reverse occur as stakeholders seek carriers with no BASIC scores and therefore less ambiguity?

No Meaningful Statistical Relationship In Our Larger Dataset

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

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

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

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

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

Inspections	Carriers	# with Scores	% with Scores	No Scores
1	79,718	90	0.1%	79,628
2	46,254	84	0.2%	46,170
3	29,450	815	2.8%	28,635
4	23,651	1,392	5.9%	22,259
5	18,234	2,714	14.9%	15,520
6	14,488	3,560	24.6%	10,928
7	11,761	3,963	33.7%	7,798
8	9,680	4,191	43.3%	5,489
9	8,010	4,108	51.3%	3,902
10	6,608	3,865	58.5%	2,743
11	5,744	3,668	63.9%	2,076
12	4,916	3,413	69.4%	1,503
13	4,416	3,249	73.6%	1,167
14	3,686	2,832	76.8%	854
15	3,396	2,695	79.4%	701
16	2,939	2,435	82.9%	504
17	2,570	2,143	83.4%	427
18	2,426	2,102	86.6%	324
19	2,113	1,868	88.4%	245
20+	43,555	41,991	96.4%	1,564
Totals	**326,340**	**91,174**	**27.9%**	**235,166**

Source: FMCSA

In the 3/14/12 FMCSA, report a University of Michigan Transportation Research Institute (UMTRI) finding is cited showing a crash rate of 4.94x for carriers exceeding "any BASIC" compared to 2.09x for carriers exceeding "no BASIC". However, based on the chart above we have a strong suspicion that the 428,966 carriers with "no BASIC" violation in the UMTRI study very likely had too few inspections to register a BASIC. In other words, they were not necessarily safer. It is more likely they had just not received enough inspections to register a BASIC score. A lack of inspection data and a statistically valid rate of inspections (i.e., at least 20) causes us to doubt the validity of the assertion that carriers above "Any BASIC Thresholds" were much more likely (4.94x vs. 2.09x) to have accidents as compared to carriers "Exceeding No BASICs". While it may be easy to compare 4.94x to 2.09x, we think the conclusion is misleading unless there were statistically sufficient inspection rates across the observable BASIC behaviors.

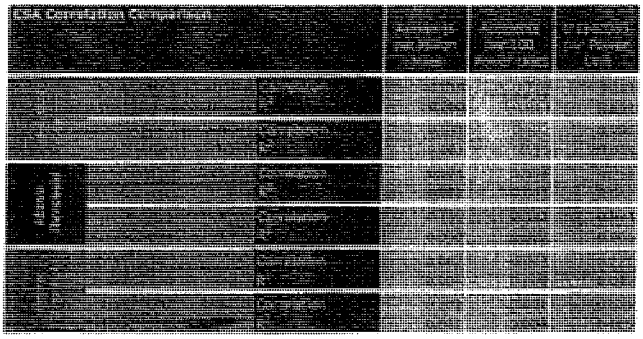
If CSA BASIC scores were measuring the correct behaviors we would expect an identifiable relationship with crash rates and threshold CSA BASIC scores. We have not found those relationships. In the chart below we summarize the results of our carrier study. In the Unsafe Driving and Driver Fitness BASICs we observe only negligible differences between accident rates between "Above Threshold" and "Below Threshold" carriers. In the Vehicle Maintenance and Fatigued Driving BASICs we see a higher rate of accident incidences between "Above" and "Below" carriers. This suggests to us that the underlying components of Vehicle Maintenance and Fatigued Driving may have more relevance to safety than those in the Unsafe and Fitness categories. However, we do not believe they are meaningfully different as it relates to crash rate predictability.

Note: Values are statistical median

Source: FMCSA, Wells Fargo Securities, LLC

Inspections tend to be triggered by a number of events. First, there are post-accident inspections. Second, enforcement agencies use systems such as ISS and the Aspen roadside inspection programs to identify carriers that have a violation history. Alternatively, in States such as California and New York that do not use Aspen, inspections are often prompted by either "observable defects" or "probable cause", such as speeding or following too close. As we discuss later in this report, "probable cause" restraints appear to prompt certain behaviors at the enforcement level.

We also ran a correlation analysis between the four BASIC categories and accident incidence on a mileage and per power unit basis. In the chart below we summarize our findings. We found the correlation between scores and crash rates to be weak or nonexistent in each of the categories. In other words, "above threshold" carrier rankings did not offer a statistically different view on crash rates when compared to "below threshold" carriers.



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

Data Collection And Scoring

In the 3/14/12 FMCSA report, a UMTRI analysis is cited as showing a high statistical relationship between crash rates (per 1,000 power units) and Unsafe Driving BASIC (R^2=0.6609) and Fatigued Driving Basic (R^2=0.8276). We do not have access to the underlying data and we note the data was from a larger dataset than ours although from years 2008 and earlier. Moreover, it appears the correlation analysis was run ***after*** a carrier was first grouped with other carriers who had similar percentile rankings. Accordingly, the UMTRI dataset of 42,595 carriers in the Fatigued Driver BASIC was reduced to a final dataset of 100. Simply, a carrier that was close to the 1% mark was put in the "1% grouping", and so on. We could not find any statistical rationale for grouping carriers into percentiles. Indeed, the purpose of regression analysis is to explain variation. Conversely, we ran our analysis using each individual carrier's BASIC scores against each individual carrier's crash rates. We found very low R^2 results and no meaningful relationships. A study by Inam Iyoob (PhD in Engineering; Director of Engineering at Transplace.com) based upon the underlying data (i.e., not the consolidated percentiles) from the UMTRI study obtained from FMCSA, was also not able to find a correlation. In the Transplace study, the UMTRI correlations did not hold when the carriers were ungrouped from percentile rankings.

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

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

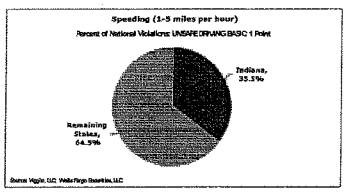
important percentage of the crash incidences captured in CSA are not the fault of the large truck. We note that the crash rates in the UMTRI study did not exclude no-fault accidents; thereby indirectly assigning 100% of the fault to the large truck.

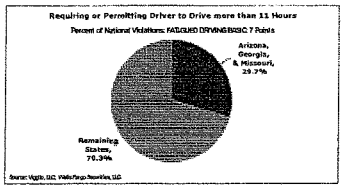
Truck driver and carrier behaviors have been assigned certain severity weights that were derived by quantitative analysis based on historical crash and roadside data. But the crash data is surely not the fault of the carrier 100% of the time, and therefore, we have to question the validity of the weighting. This may be at the very heart of the problem. If trucking behaviors were modeled against crashes and not all of the crashes were the fault of the driver or the carrier, we wonder how the behavioral assessment can be accurate. This may explain why BASIC violations have not corresponded to crash rates, in our view.

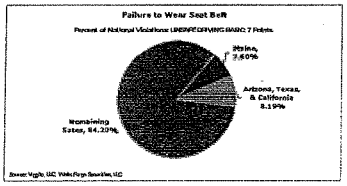
Crash Type	Fatal Crashes	[illegible]	[illegible]	[illegible]	[illegible]
Large Truck Rear-Ending Passenger Vehicle	73	36	49.3%	33	45.2%
Passenger Vehicle Rear-Ending Large Truck	290	49	16.9%	224	77.2%
Large Truck Crossing Center Median (Head-On)	50	29	58.0%	23	46.0%
Passenger Vehicle Crossing Center Median (Head-On)	288	18	6.3%	276	95.8%
Large Truck Striking Passenger Vehicle (Other)	504	123	24.4%	403	80.0%
Passenger Vehicle Striking Large Truck (Other)	419	99	23.6%	345	82.3%
Other Collision	85	22	25.9%	72	84.7%
Total	1,709	376	22.0%	1,376	80.5%

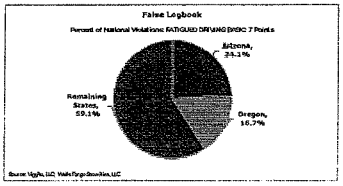
Source: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (FARS)

As we discussed in our 11/4/11 report, we found disparity among inspection protocols and enforcement behaviors that vary by State and are unexplainable by measures such as traffic density or even carrier behaviors. For example, Vigillo LLC, a leading consulting firm in the field, found that Indiana accounts for 35.5% of all nationwide "Unsafe Driving BASIC" violations for exceeding the posted speed by 1-5 miles per hour. As we understand it, Indiana requires "probable cause" for an inspection. In another example, within the "Fatigued Driving BASIC" Arizona and Oregon captured 40.7% of the nationwide occurrences of "false logbook" violations. Other examples are highlighted below. We highlight the severity weights of each.









Collateral Damage

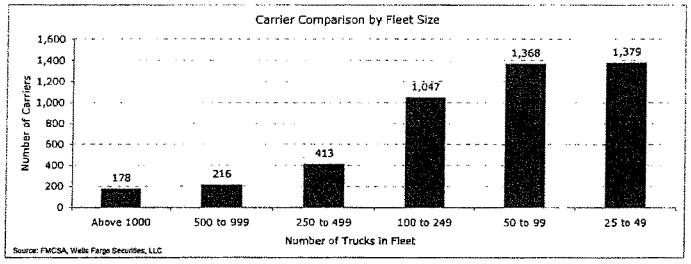
While we believe continuous safety improvements should remain a primary focus of the freight transportation industry, particularly highway safety, the unintended consequences of CSA should also be addressed. We find commercial relationships are being affected and direct and indirect costs are increasing. We have already concluded that increased inspections may lead to higher BASIC scores because only one-third of all inspections are violation free. We worry that shippers making carrier selection decisions based on publicly available BASIC

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

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

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

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



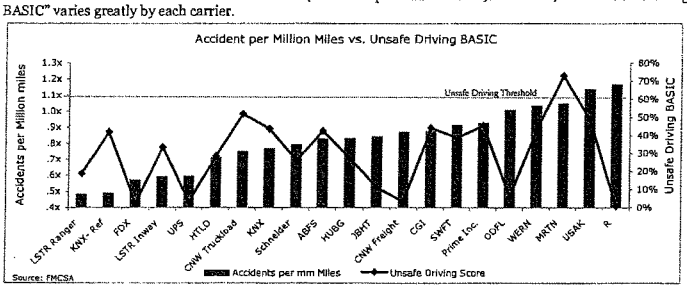
Fleet Size Comparison — Median

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

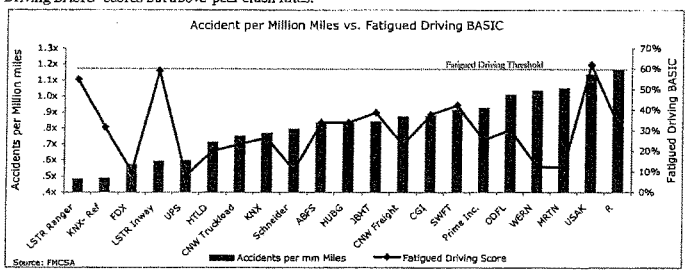
Source: FMCSA, Wells Fargo Securities, LLC

Supporting Charts

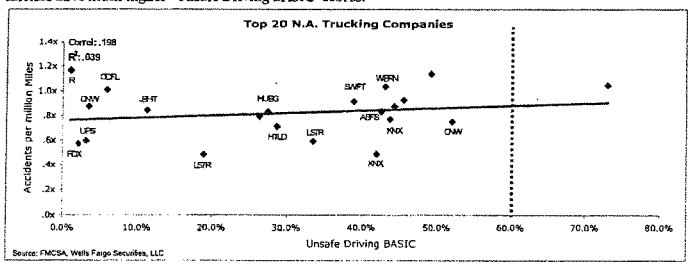
As an example of the problems that we found with CSA BASIC scores, in the chart below we note that ODFL, WERN and MRTN each of similar crash rates (accidents per million miles). However, the "Unsafe Driving BASIC" varies greatly by each carrier.



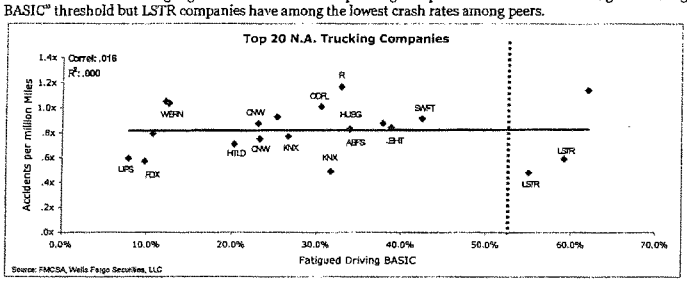
Using the same three carriers in the example below, we note WERN and MRTN have relatively low "Fatigued Driving BASIC" scores but above-peer crash rates.

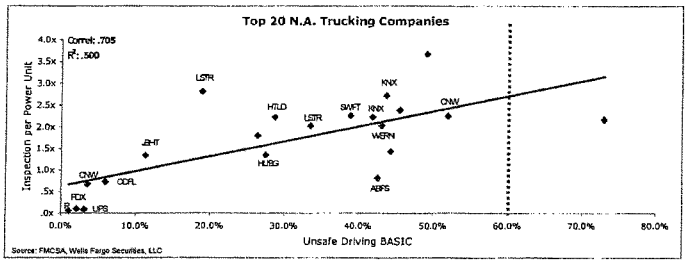


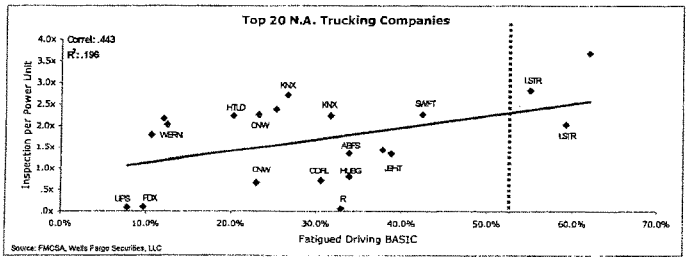
In the chart below we note that JBHT has a crash rate modestly above ABFS and KNX yet the latter two carriers have much higher "Unsafe Driving BASIC" scores.

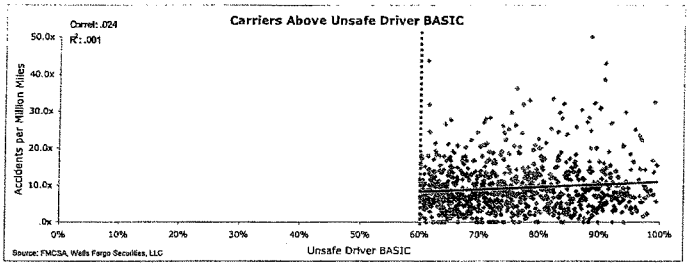


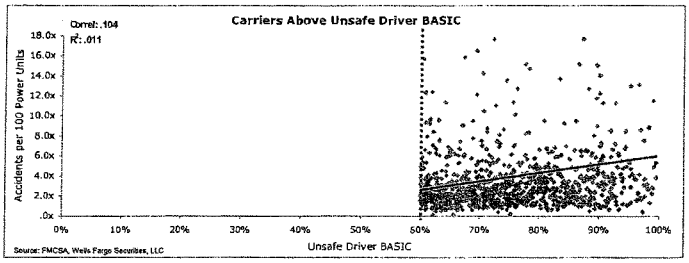
In the chart below we highlight that two of LSTR's operating companies were above the "Fatigued Driving BASIC" threshold but LSTR companies have among the lowest crash rates among peers.

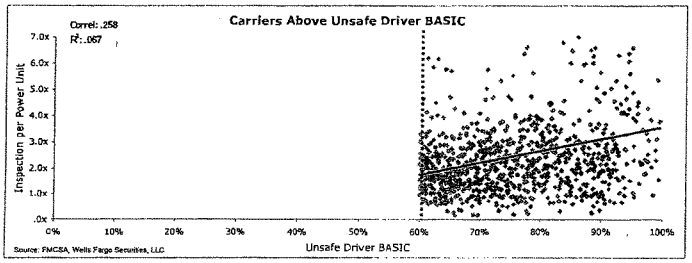


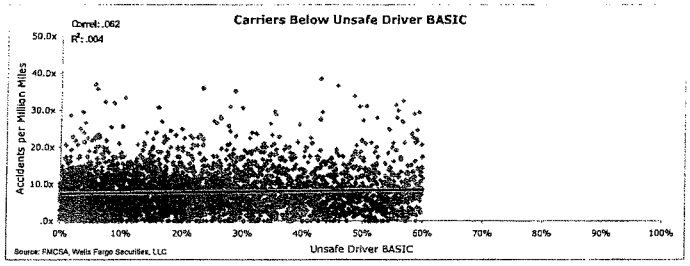


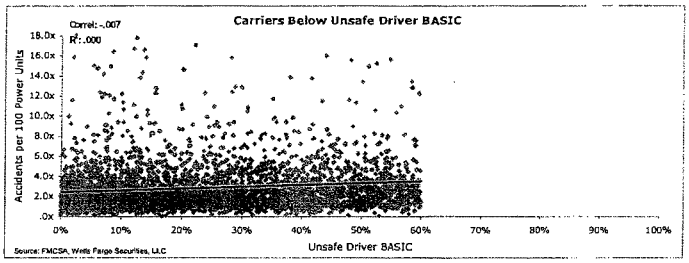


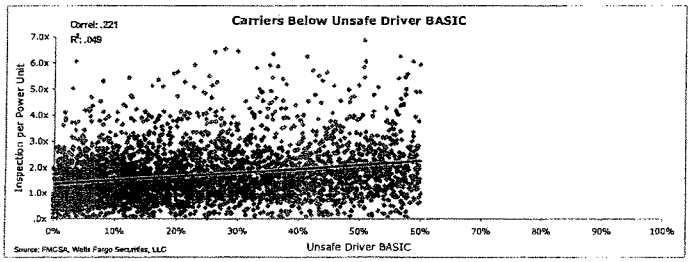

Carriers Above Unsafe Driver BASIC
Correl: .024
R²: .001
Accidents per Million Miles
50.0x
40.0x
30.0x
20.0x
10.0x
.0x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Unsafe Driver BASIC
Source: FMCSA, Wells Fargo Securities, LLC

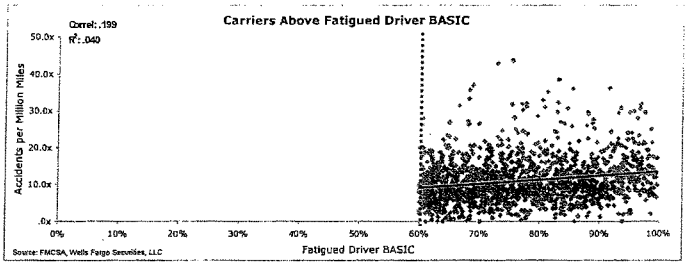

Carriers Above Unsafe Driver BASIC
Correl: .104
R²: .011
Accidents per 100 Power Units
18.0x
16.0x
14.0x
12.0x
10.0x
8.0x
6.0x
4.0x
2.0x
.0x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Unsafe Driver BASIC
Source: FMCSA, Wells Fargo Securities, LLC

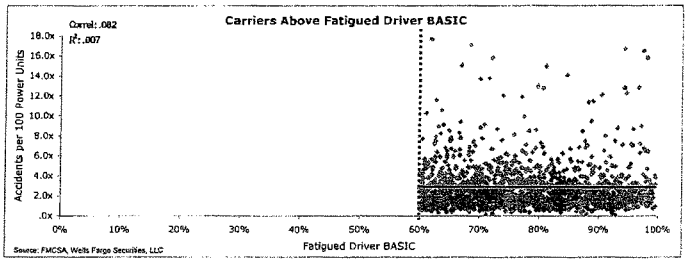

Carriers Above Unsafe Driver BASIC
Correl: .258
R²: .067
Inspection per Power Unit
7.0x
6.0x
5.0x
4.0x
3.0x
2.0x
1.0x
.0x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Unsafe Driver BASIC
Source: FMCSA, Wells Fargo Securities, LLC

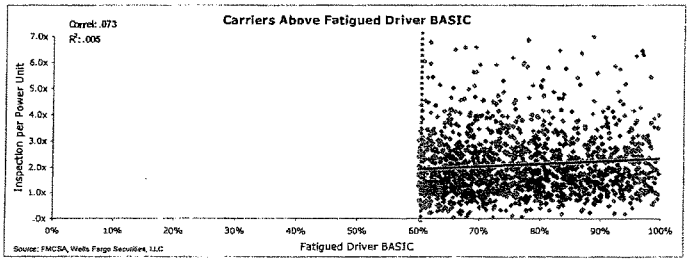

Carriers Below Unsafe Driver BASIC
Correl: .062
R²: .004
Accidents per Million Miles
50.0x
40.0x
30.0x
20.0x
10.0x
.0x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Unsafe Driver BASIC
Source: FMCSA, Wells Fargo Securities, LLC

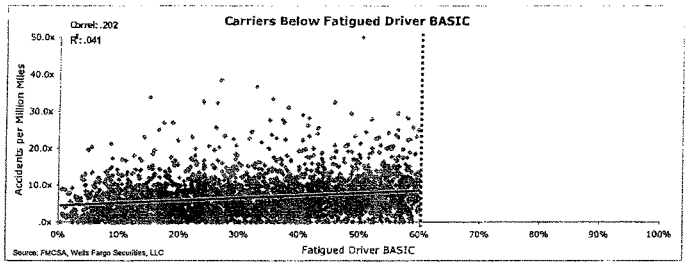

Carriers Below Unsafe Driver BASIC
Correl: -.007
R²: .000
Accidents per 100 Power Units
18.0x
16.0x
14.0x
12.0x
10.0x
8.0x
6.0x
4.0x
2.0x
.0x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Unsafe Driver BASIC
Source: FMCSA, Wells Fargo Securities, LLC

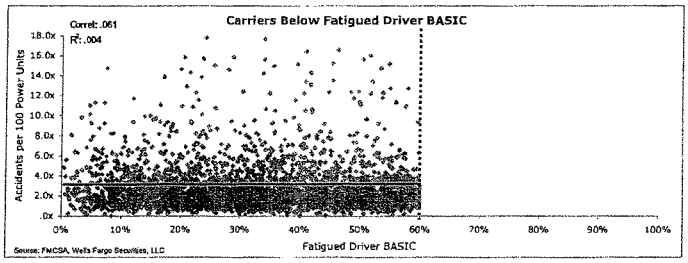

Carriers Below Unsafe Driver BASIC
Correl: .221
R²: .049
Inspection per Power Unit
7.0x
6.0x
5.0x
4.0x
3.0x
2.0x
1.0x
.0x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Unsafe Driver BASIC
Source: FMCSA, Wells Fargo Securities, LLC

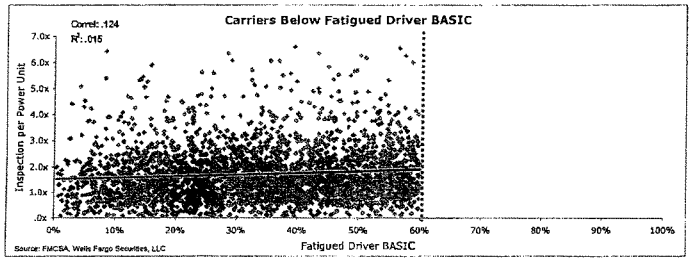

Carriers Above Fatigued Driver BASIC
Correl: .199
R²: .040
Accidents per Million Miles
50.0x
40.0x
30.0x
20.0x
10.0x
.0x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Fatigued Driver BASIC
Source: FMCSA, Wells Fargo Securities, LLC

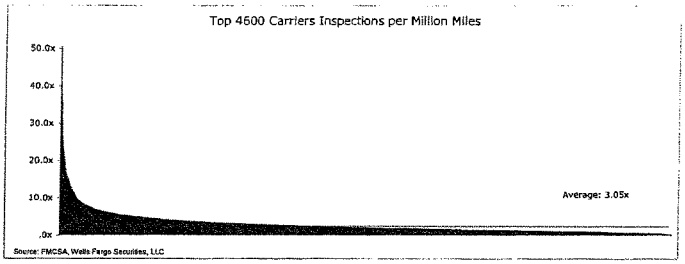

Carriers Above Fatigued Driver BASIC
Correl: .082
R²: .007
Accidents per 100 Power Units
18.0x
16.0x
14.0x
12.0x
10.0x
8.0x
6.0x
4.0x
2.0x
.0x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Fatigued Driver BASIC
Source: FMCSA, Wells Fargo Securities, LLC

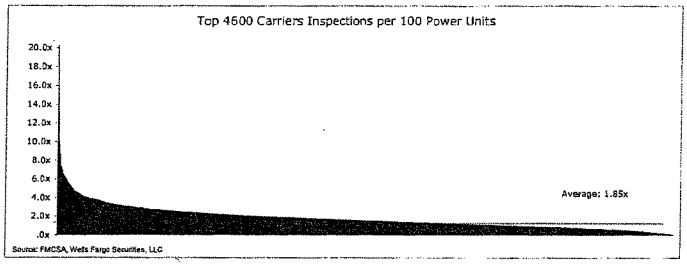

Carriers Above Fatigued Driver BASIC
Correl: .073
R²: .005
Inspection per Power Unit
7.0x
6.0x
5.0x
4.0x
3.0x
2.0x
1.0x
.0x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Fatigued Driver BASIC
Source: FMCSA, Wells Fargo Securities, LLC

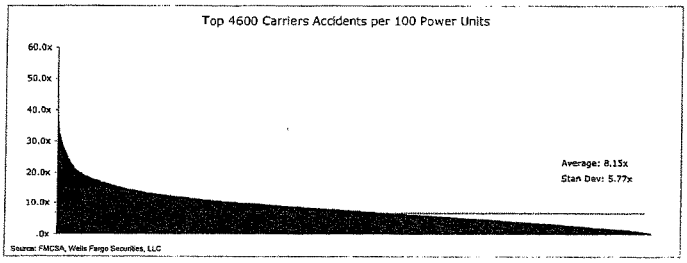

Carriers Below Fatigued Driver BASIC
Correl: .202
R²: .041
Accidents per Million Miles
50.0x
40.0x
30.0x
20.0x
10.0x
.0x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Fatigued Driver BASIC
Source: FMCSA, Wells Fargo Securities, LLC

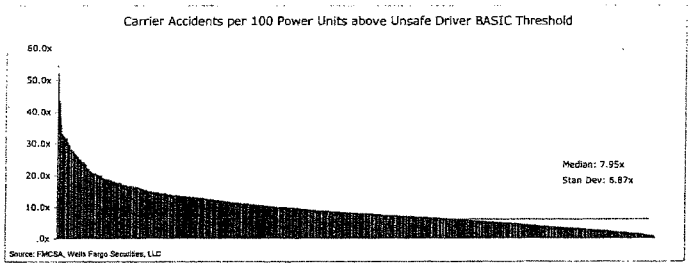

Carriers Below Fatigued Driver BASIC
Correl: .061
R²: .004
Accidents per 100 Power Units
18.0x
16.0x
14.0x
12.0x
10.0x
8.0x
6.0x
4.0x
2.0x
.0x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Fatigued Driver BASIC
Source: FMCSA, Wells Fargo Securities, LLC

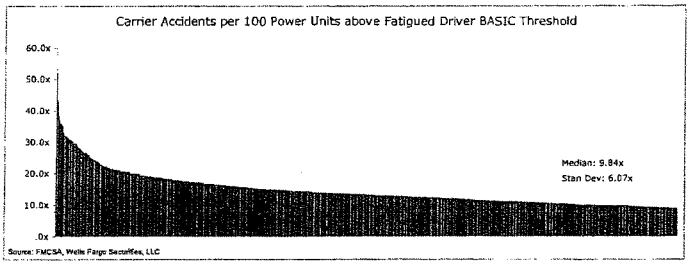

Carriers Below Fatigued Driver BASIC
Correl: .124
R²: .015
Inspection per Power Unit
7.0x
6.0x
5.0x
4.0x
3.0x
2.0x
1.0x
.0x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Fatigued Driver BASIC
Source: FMCSA, Wells Fargo Securities, LLC

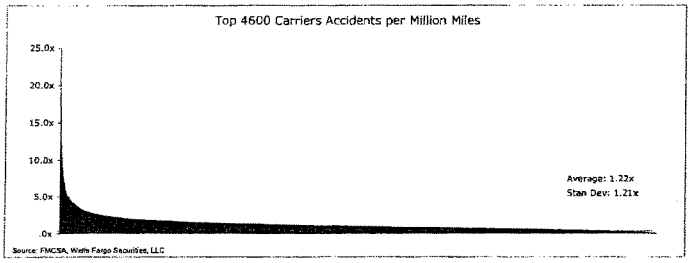

Top 4600 Carriers Inspections per Million Miles
50.0x
40.0x
30.0x
20.0x
10.0x
.0x
Average: 3.05x
Source: FMCSA, Wells Fargo Securities, LLC

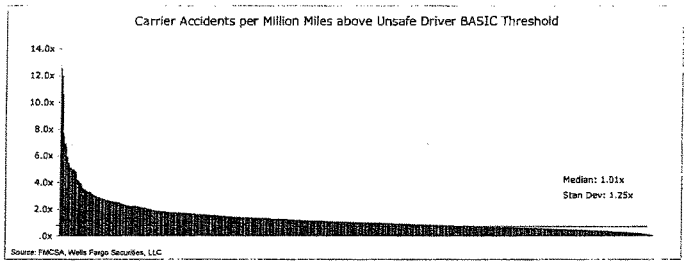

Top 4600 Carriers Inspections per 100 Power Units
20.0x
18.0x
16.0x
14.0x
12.0x
10.0x
8.0x
6.0x
4.0x
2.0x
.0x
Average: 1.85x
Source: FMCSA, Wells Fargo Securities, LLC

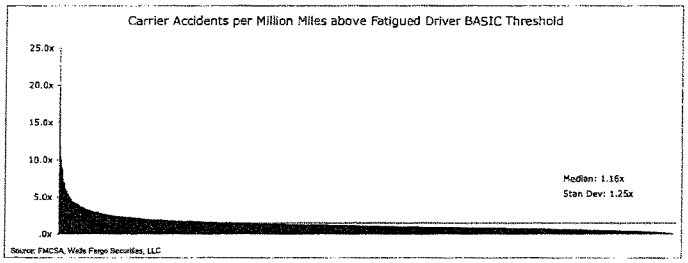

Top 4600 Carriers Accidents per 100 Power Units
60.0x
50.0x
40.0x
30.0x
20.0x
10.0x
.0x
Average: 8.15x
Stan Dev: 5.77x
Source: FMCSA, Wells Fargo Securities, LLC

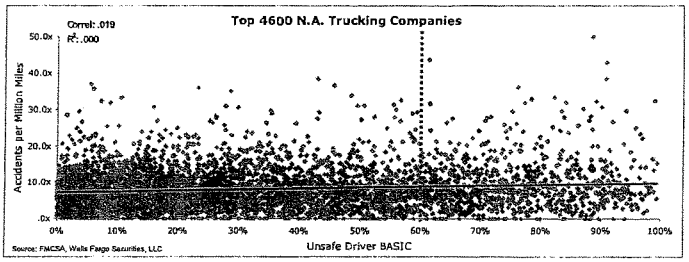

Carrier Accidents per 100 Power Units above Unsafe Driver BASIC Threshold
60.0x
50.0x
40.0x
30.0x
20.0x
10.0x
.0x
Median: 7.95x
Stan Dev: 5.87x
Source: FMCSA, Wells Fargo Securities, LLC

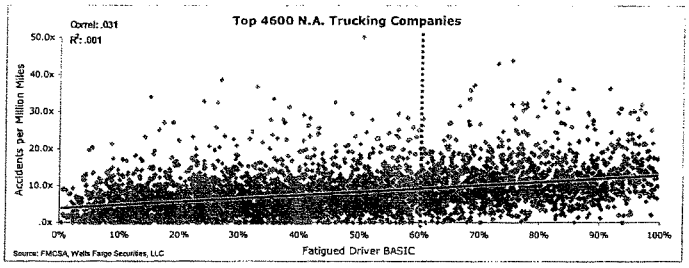

Carrier Accidents per 100 Power Units above Fatigued Driver BASIC Threshold
60.0x
50.0x
40.0x
30.0x
20.0x
10.0x
.0x
Median: 9.84x
Stan Dev: 6.07x
Source: FMCSA, Wells Fargo Securities, LLC

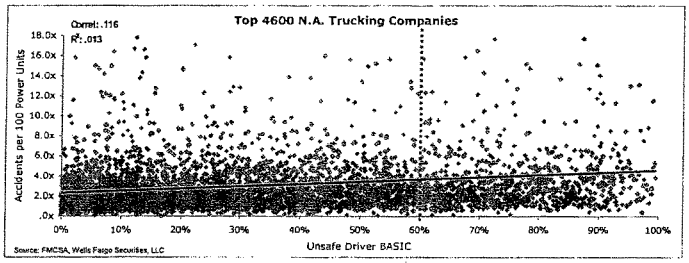

Top 4600 Carriers Accidents per Million Miles
25.0x
20.0x
15.0x
10.0x
5.0x
.0x
Average: 1.22x
Stan Dev: 1.21x
Source: FMCSA, Wells Fargo Securities, LLC

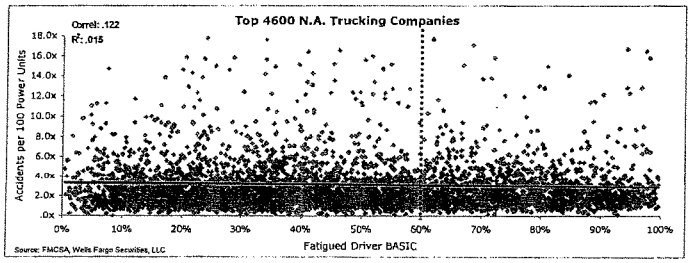

Carrier Accidents per Million Miles above Unsafe Driver BASIC Threshold
14.0x
12.0x
10.0x
8.0x
6.0x
4.0x
2.0x
.0x
Median: 1.01x
Stan Dev: 1.25x
Source: FMCSA, Wells Fargo Securities, LLC

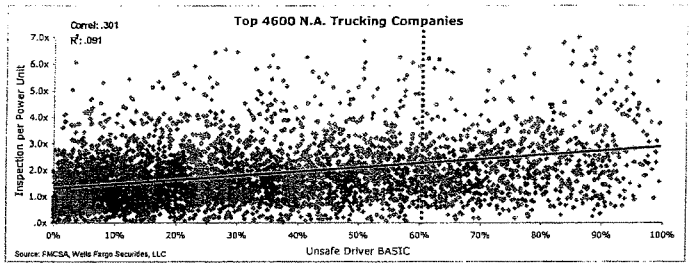

Carrier Accidents per Million Miles above Fatigued Driver BASIC Threshold
25.0x
20.0x
15.0x
10.0x
5.0x
.0x
Median: 1.16x
Stan Dev: 1.25x
Source: FMCSA, Wells Fargo Securities, LLC

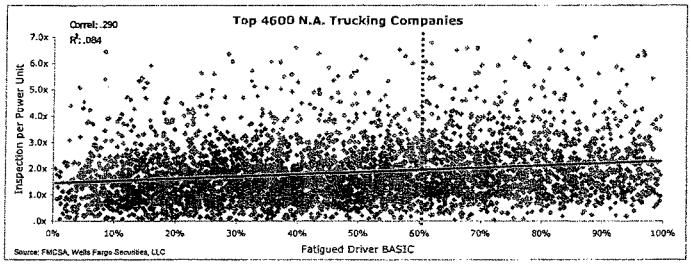

Top 4600 N.A. Trucking Companies
Correl: .019
R²: .000
Accidents per Million Miles
50.0x
40.0x
30.0x
20.0x
10.0x
.0x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Unsafe Driver BASIC
Source: FMCSA, Wells Fargo Securities, LLC


Top 4600 N.A. Trucking Companies
Correl: .031
R²: .001
Accidents per Million Miles
50.0x
40.0x
30.0x
20.0x
10.0x
.0x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Fatigued Driver BASIC
Source: FMCSA, Wells Fargo Securities, LLC


Top 4600 N.A. Trucking Companies
Correl: .116
R²: .013
Accidents per 100 Power Units
18.0x
16.0x
14.0x
12.0x
10.0x
8.0x
6.0x
4.0x
2.0x
.0x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Unsafe Driver BASIC
Source: FMCSA, Wells Fargo Securities, LLC


Top 4600 N.A. Trucking Companies
Correl: .122
R²: .015
Accidents per 100 Power Units
18.0x
16.0x
14.0x
12.0x
10.0x
8.0x
6.0x
4.0x
2.0x
.0x
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Fatigued Driver BASIC
Source: FMCSA, Wells Fargo Securities, LLC





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ABFS: Our estimates are premised on a recovery in pricing in 2012. Absent an improvement in pricing our estimates will not likely be achieved. ABFS has a higher cost structure than union and non-union peers, which could keep the company at a competitive disadvantage.
CHRW: Our outlook suggests that truckload pricing will continue to increase into 2012 due to persistent capacity constraints. Periods of tighter capacity can create challenge for brokers like CHRW in the event they can not pass along higher costs to their customers in a timely manner. We believe CHRW valuation reflects above-cycle growth expectations that may not be realized.
CNW: Our estimates are premised on a recovery in pricing in 2012. If pricing does not improve as we expect, our earnings estimates would not likely be achieved. CNW appears to be at the early stages of a turnaround but further productivity improvements are needed to achieve our estimates.
FDX: Our estimates are premised on yield improvement in Express and Freight, which have historically been cyclical. FDX volumes are susceptible to global trade and international airfreight activity. Further, broad fuel prices swings can have a material effect on earnings.
HTLD: Our estimates are premised on improved in pricing in 2012 and modest fleet expansion. HTLD's customer concentration may create hurdles to achieve pricing gains. If pricing does not improve as we expect, our earnings estimates would not likely be achieved.
HUBG: Our estimates are premised on a recovery in pricing in 2012. If pricing does not improve as we expect, our earnings estimates would likely not be achieved. HUBG's truck brokerage margins tend to be adversely affected during periods of tightening capacity, which the industry appears to be now facing. HUBG's recent brokerage acquisition entails various integration risks.
JBHT: Our estimates are premised on a pricing recovery in 2012. If pricing does not improve as expected, our estimates and valuation range would not likely be achieved. Our estimates are also reliant on operational progress and intermodal margins stabilizing, which may not occur.
KNX: Our estimates are premised on continued price recovery in 2012. If pricing recovery does not continue, our earnings estimates would not likely be achieved. KNX has been making strategic investments in related business which may or may not achieve desired results.
LSTR: LSTR's relatively high exposure to the industrial sector can present a risk or an opportunity depending upon the rate of recovery. LSTR must continue to recruit and retain high-production agents in order to achieve our revenue and earnings growth forecasts.
ODFL: Our estimates are premised on continued pricing gains in 2012. If pricing does not improve as we expect, our earnings estimates would not likely be achieved, placing downward pressure on the shares. ODFL faces encroachment in its core market by a variety of competitors who often use price as a means to capture market share.
R: Despite the contractual nature of the business, Ryder is still subject to cyclical swings in customer volumes. As such, Ryder would not likely achieve our estimates if cnstomer volumes turn down. Ryder must renew 16-20% of its lease fleet annually, which is subject to cyclical market conditions.
SWFT: Our estimates are dependent on improved pricing in 2012. If industry capacity constraints ease of if shipment demand were to contract our estimates would not likely be achieved. SWFT maintains above-peer financial leverage, which may place limitations on expansion opportunities.
UPS: Our estimates are premised on continued yield improvement above cost inflation, modest volume growth, and relatively stable fuel prices. The proposed TNT acquisition is subject to regulatory approval and various integration risks.
WERN: Our estimates are premised on a recovery in pricing in 2012. Further, recent cost-cutting efforts appear to have reduced cyclical exposure. If these cost-cutting efforts turn out to be unsustainable, our estimates would not likely be achieved.

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3=Underperform: The stock appears overvalued, and we believe the stock's total return will be below the market over the next 12 months. SELL

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SMS BASIC Scores are Not Valid Predictors of Crash Frequency

Inam Iyoob, PhD
Director of Engineering, Transplace

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

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

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

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

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

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

Figure 1: FMCSA Regression of Averages – Unsafe Driving

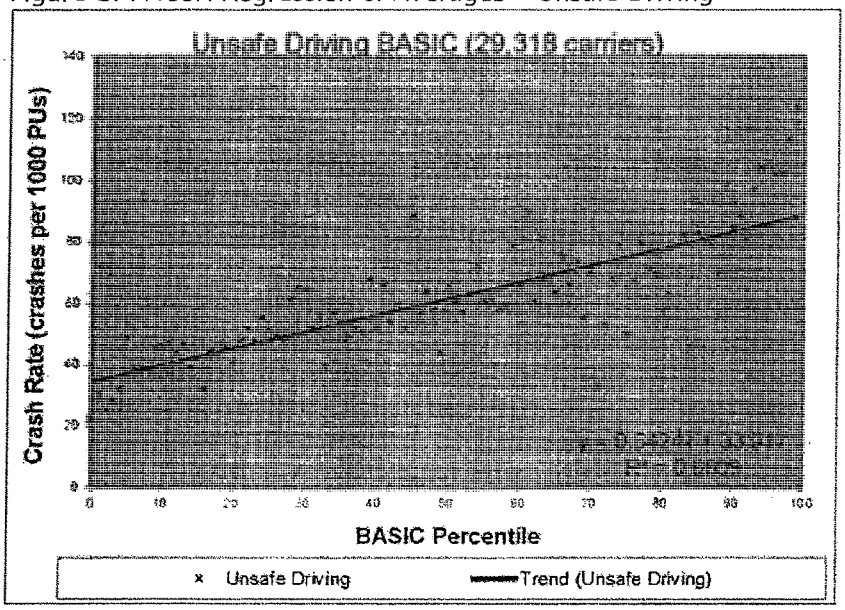
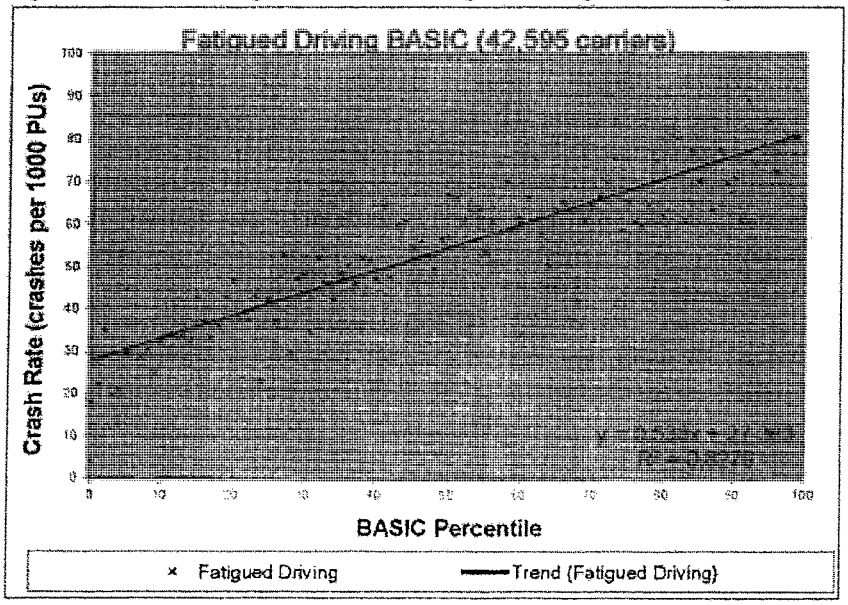


Figure 2: FMCSA Regression of Averages – Fatigued Driving



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

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

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

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

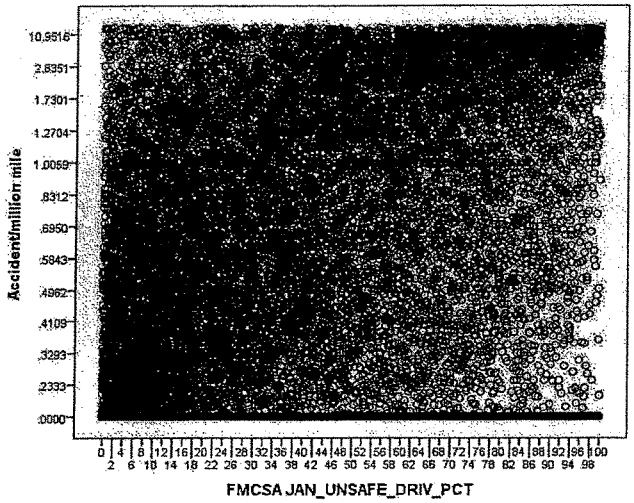
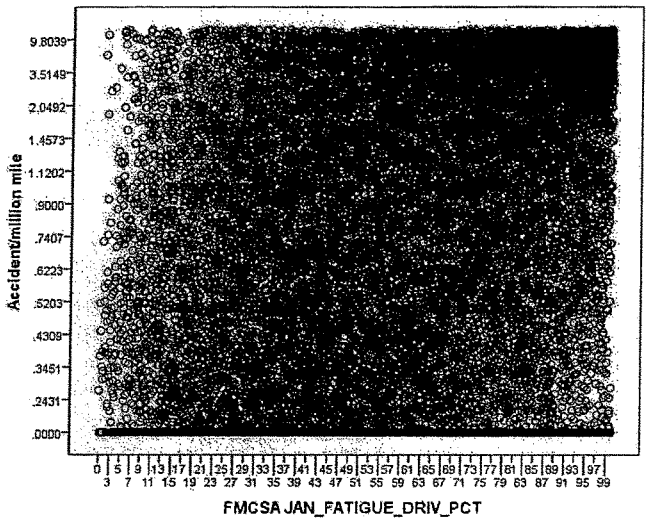


Figure 4: Fatigued Driving – Plot of 35,933 Carriers



I can't see any useful purpose in averaging the crash data of hundreds of carriers in each of 100 different percentiles and then calculating a regression of the average values. The purpose of regression analysis is to explain variation. Averaging hundreds of carriers at each percentile eliminates most of the variation in the data. It is not statistically accurate to say the SMS methodology and BASIC percentile scores are an accurate predictor of carrier safety predicated upon the crash data the Agency uses to justify its conclusions.

Logically, unsafe driving and driver fatigue do impact crashes. However, the way the SMS BASICs **Unsafe Driving** and **Fatigued Driving** are captured, calculated and interpreted by FMCSA does not show any correlation to crashes. Hence usage of SMS data for carrier selection will unduly favor some and penalize others, and thus should be avoided.

Statistical Issues in the Safety Measurement and Inspection of Motor Carriers

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University of Maryland

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

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

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

Data Generation Process

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

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

The bias only begins at the design stage. Other sources of bias occur as the measurement system is implemented. While an inspection can occur almost anywhere, historically inspections have most frequently occurred at roadside inspection stations throughout the 50 states. This has changed as states now carry out more mobile inspections at rest stops, truck stops and other roadside sites. The recorded data originate from where these inspections take place. The locations of inspection stations, their times and hours of operation, are neither random nor uniform across the highway system. Inspection records are not likely to be reflective of the traffic volume of the nationwide carrier fleet, or the geographic location of firms, but instead the idiosyncratic practices of state regulators. For instance, recent data are highly sensitive to the high number of inspections carried out in California, Arizona and Texas, and the relative dearth of inspections in much of the Northeast.

What local regulators choose to focus on in terms of enforcement emphasis is also highly variable. Current data (Spring 2012) on BASIC percentile scores show that firms operating out of Montana and North Dakota exhibit far lower scores on the Unsafe Driving BASIC than firms physically located in Kentucky, West Virginia, New Hampshire and Massachusetts. This is an enforcement pattern that cannot be explained away by traffic density or road conditions. The Fatigued Driver BASIC scores are highest for carriers operating out of Florida, Georgia and Idaho, and just across the border from Idaho, considerably lower in Washington state – reflecting the vagaries of local enforcement -- not safety attributes of carriers operating in these regions. Vehicle maintenance BASIC violations are highest in Florida, Texas, South Carolina and Connecticut, but lower on carriers based in Hawaii, Pennsylvania, Delaware and Maryland – variation that cannot be explained by traffic or population density measures. From a statistical standpoint, the problem is the extraordinary level of heterogeneity in measurements resulting not from the characteristics of firms, drivers, and road conditions, but due to the application of the measuring instruments by data gatherers. The biases injected at the implementation stage prevent the BASIC indicators from assessing what they are intended to evaluate.

Because the data generation process is a highly imperfect reflection of the nature and quality of operator activity, the data are not a reflection of a representative cross-section of the carrier operators who are directly responsible for fleet safety – the responsible parties. Based on straightforward comparisons with trucking censuses, the data vastly over-represent the firms with very large fleets, while vastly under-representing the impressive number of small carriers operating two, three, or perhaps only a single vehicle. Larger carriers are not even responsible for hauling the vast majority of cargo, so the data collection cannot be justified on the basis of representing freight quantity or miles travelled. Moreover, because it is operators who are subject to inspection and penalty, they should be represented in any competent study.
Since the data are an inferior representation of the nationwide population of motor carriers and their safety habits, it is fundamentally unsound to generalize from any of the information contained in the data on inspected vehicles to the broader population of all carriers. Any data analysis carried out by any entity based on the inspections data, including data contained in the remainder of this report, should be accompanied with the caveat that it represents only the particular cases contained in the data. Nothing can be extrapolated from it, and its external validity is in doubt. In summary, using data generated only by happenstance of where inspections occur, based on idiosyncratic local enforcement practices, introduces selection bias, providing a misleading picture of important statistical relationships that inform essentials of the

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

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

Unsafe Driving Scores and Crashes

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

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

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

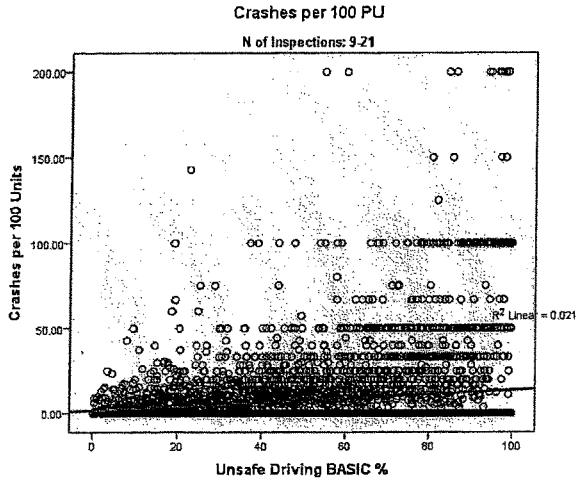

Figure 1. Bivariate Relationship between Unsafe Driving Score and Crashes per Power Unit, Combo Group 2, N=5,564

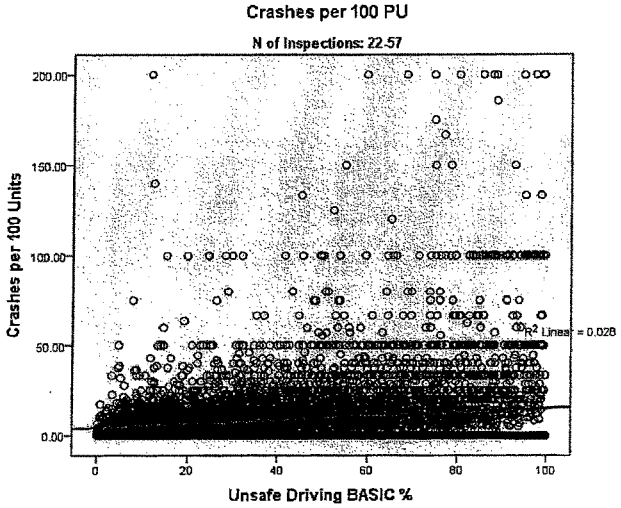

Figure 2. Bivariate Relationship between Unsafe Driving Scores and Crashes per Power Unit, Combo Group 3, N=8,998

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

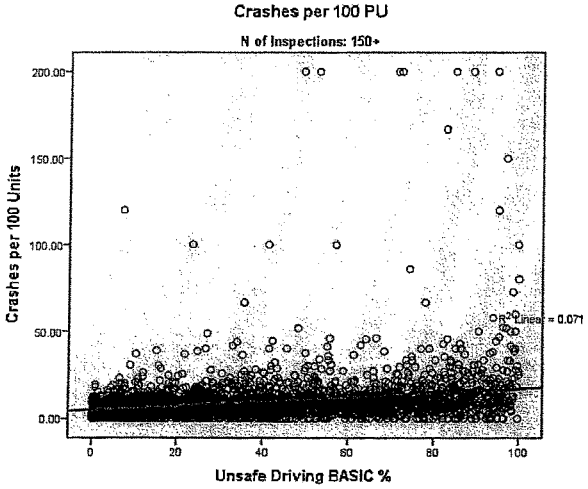

Figure 3. Bivariate Relationship between Unsafe Driving Scores and Crashes per Power Unit, Combo Group 5, N=3,351

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

In summary, then, based on the information provided in the MCMIS system, crash data supplied on individual firms reported by FMCSA, and stratifying the data by agency specified safety event groups, the estimated statistical relationships are quite varied across this limited sample of inspected vehicles. The relationship between unsafe driving scores and crash rate is almost non-existent for the carriers with fewest inspections, and is weakly positive for carriers in the higher inspection categories (Figures 2 and 3) but with a great deal of remaining error.

Driver Fatigue Scores and Crashes

Similar data analysis for other BASIC indicators shows that their relationships with crash ratings are highly variable across FMCSA's inspection frequency categories (see Figures 4, 5 and 6). For instance, for the smallest category with 6,598 carriers, the relationship between driver fatigue indicators and crash risk is flat, and slightly negative, but with an unstandardized regression coefficient not statistically discernible from zero (see Figure 4).

For group 2, with between 11 and 20 inspections, the relationship is positive, but unimpressive (see Figure 5). The regression coefficient suggests that for every ten point increase in the score for fatigued driving, the crash rating increases by 0.74 (β=.074). This is a statistically significant but weak association, with a wide scatter of points around the regression line (Figure 5). For this group, the fatigued driver BASIC score explains less than 1 percent of the variation in crashes per 100 power units (R2=.003).

For inspection group 5 for the driver fatigue BASIC, a category containing 763 larger carriers with high numbers of inspections (>500), the relationship between fatigued driving and crash risk is more robust than for carriers with fewer inspections (see Figure 6 below). In this event group, fatigued driving explains about 21 percent of the variation in crash risk (R^2=.21) and a ten point increase in the fatigued driving BASIC increases crash risk by slightly over 1 per 100 power units (β=.102). This is about as close to a substantively noteworthy relationship as any of these measures attain. But this relationship is reflective of only a very small share of firms, and while based on a sizable number of inspections, it is still not very precise as predictor of crash risk for individual carriers. Additional examination suggests that the relationship between crash risk and the driver fatigue BASIC for this group of firms seems to exhibit non-linearity, rising more steeply at scores above 80. But there is insufficient information at hand to discern whether this is an artifact of the scoring methodology, or a characteristic of specific carriers with high scores.

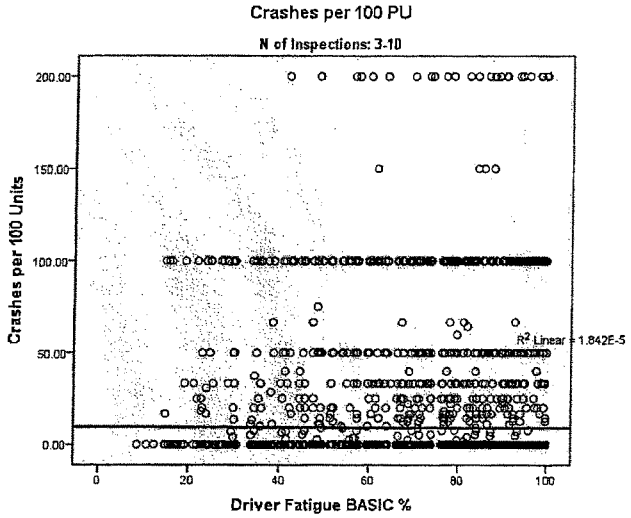

Figure 4. Bivariate Relationship between Driver Fatigue Scores and Crashes per Power Unit, Group 1, N=6,598

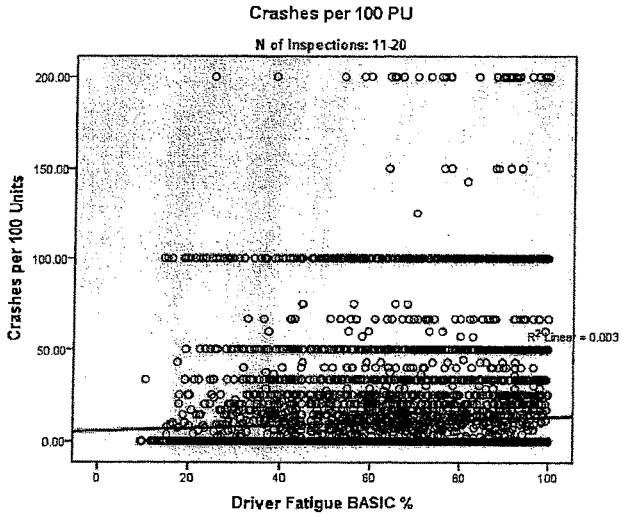

Figure 5. Bivariate Relationship between Driver Fatigue Scores and Crashes per Power Unit, Group 2, N=9,578

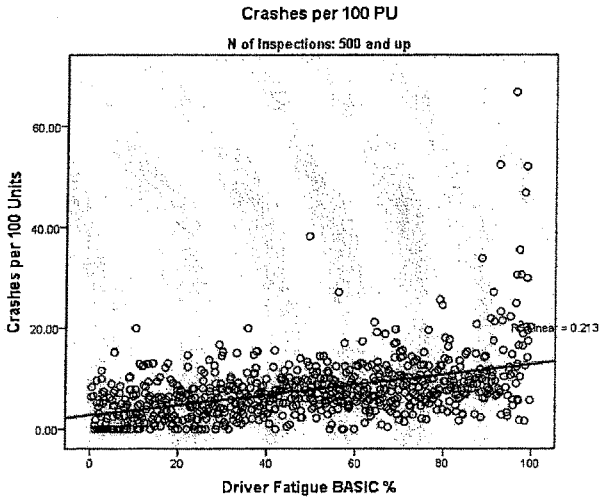

Figure 6. Bivariate Relationship between Driver Fatigue Scores and Crashes per Power Unit, Group 5, N=763

Vehicle Maintenance and Crashes

Finally, the vehicle maintenance BASIC specifies safety event groups similar to those of driver fatigue, except for the first one which includes carriers with 5-10 inspections rather than 3-10 (Volpe 2012, 3-13). The relationship of these scores in the MCMIS data to crash risk is also very low for the 5-10 inspections category, showing virtually no linear association between the explanatory and dependent variables at all (Figure 7) (R^2=.0004).

What's more, for the highest inspections category (501+), the relationship between vehicle maintenance scores and crash risk is actually *negative*! Here the regression coefficient indicates that a ten point rise in the vehicle maintenance BASIC % is associated with a 0.18 *drop* in crashes per 100 power units (Figure 8), although once again the variation in crashes per 100 power units explained by vehicle maintenance BASIC scoring hovers only about 1 percent (R^2=.013) (see Figure 8 below).

In any measurement system, there will be random error. The fact that the BASIC scores do not perfectly predict crashes by trucking firms is not itself a flaw with the SMS methodology. Even highly refined measuring instruments contain at least a limited amount of random error. But the SMS scoring system contains far more than simply random error – there is systematic error introduced. There are serious problems with the design of these instruments themselves that

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

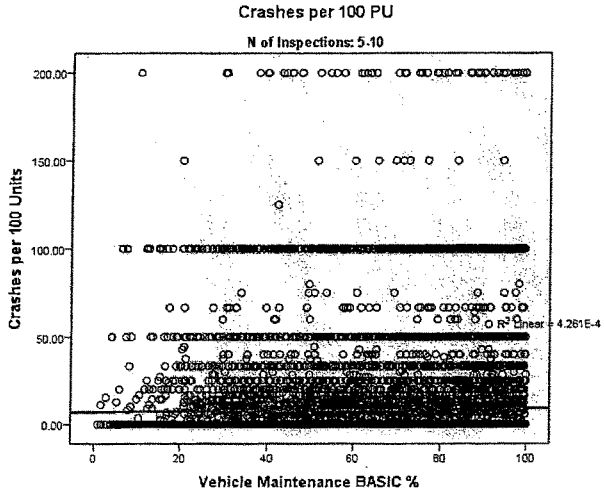

Figure 7. Bivariate Relationship between Maintenance Scores and Crashes per Power Unit, Group 1 N=17,014

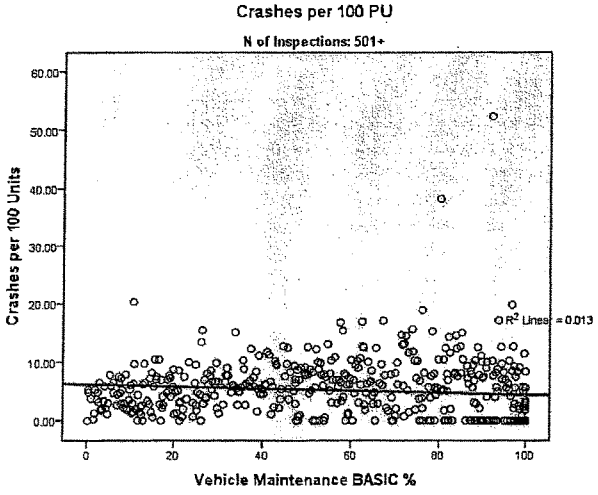

Figure 8. Bivariate Relationship between Maintenance Scores and Crashes per Power Unit, Group 5, N=503

be irrelevant, which is peculiar given what is commonly understood about the notions of unsafe driving, and the other constructs that BASIC scores are supposed to indicate. Nor do the relationships with crash risk improve appreciably when the data are not segmented by safety event group but analyzed as a whole to encompass greater heterogeneity.

The reliability of the SMS indicators is certainly questionable based on the weak and insignificant relationships between crash risk and BASIC scores. For the most frequently inspected safety event groups, the relationships are stronger for fatigued driving, but weaker for vehicle maintenance. Even in the case of fatigued driving, however, the association with crash risk is still insufficiently robust to justify generalizing to individual firm behavior and compliance. The straightforward evaluations presented here suggest these measures are erratic across the limited sample of carriers contained in the MCMIS data. Apparently, the SMS BASIC scores are not measuring what the FMCSA claims they are measuring. Measures that are unreliable cannot be depended upon to gauge true characteristics, changes and quantities.

Small Carriers and the Law of Large Numbers

Nowhere do we see the limitations of the BASIC scoring methodology more clearly than in that segment or group of carriers that have the fewest operators and are subject to fewer inspections. Under standard enforcement practices, the vast majority of smaller trucking firms go uninspected and therefore unmeasured. We have already noted that this is a major source of selection bias in the data, as the small number of very large carriers winds up being highly influential in regression specifications using the MCMIS data. The omission of small carriers is the quite natural result of basing data inclusion only on inspections and violations – on average smaller carriers have less exposure due to fewer travelled miles, and may also have fewer violations for reasons highlighted earlier. Consequently, the records that are included for the small carriers wind up having very few inspections counted in the denominator of BASIC formulae at any given point in time.

Table 1, below, shows the number of FMCSA SMS inspections over the previous two years as of March 2012. As the table indicates, a total of 326,000 firms have at least one inspection *that has been recorded.* Fully 200,000 carriers, or 61 percent of the total, have 5 or fewer inspections, and the SMS scoring system is not triggered until there are at least 5. Another 61,177 (18.7%) are recorded as having between 6 and 19 inspections. According to the March SMS data, 43,555 firms (13.3%) have had 20 or more inspections.

The problems of ratio and rate measures when denominators are small are well-known to statisticians. When ratio measures are based on fewer than 20 observations in the denominator, they are often considered unreliable, and frequently they are not even published. Twenty is a common cut-off point since beyond that changes in total variation contributed by successive measurements diminishes. Data with fewer than 20 observations in the denominator are not considered to meet a sufficient level of accuracy based on calculated standard errors. A denominator with 5 inspections is far less reliable than one with 40 when both have the same

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

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

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

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

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

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

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

the whole population. Or, as the number of trials increase, the difference between the expected and actual value moves toward 0.

This explains why typically values obtained based on large numbers of observations provide stable estimates of the true, underlying quantity. Conversely, values based on small numbers of observations may fluctuate dramatically from year to year, or differ considerably from one case to another, even when there is no meaningful difference between them. Binning the data by inspection frequency does not mitigate the high variation in successive scores for less frequently inspected carriers.

In summary, then, smaller trucking firms are subject to few inspections, meaning that whatever BASIC scores they generate, high or low, are not reliable indicators of these firms' propensity to operate safely and in compliance with regulatory standards. For firms with more trucks and greater exposure, the higher number of inspections yields an average that will be more reflective of their actual rate of safety and compliance.

The upshot of the paucity of scores for small carriers means that even slight increases in these scores for small carriers leads to inaccurate inferences about their safety risk. Even after binning the firms into peer groups or "safety event groups," certain classes of carriers labor with unaccounted for business routines and practices which unfairly influence the percentile grading system in an adverse direction.

For example, straightforward tabulations based on the MCMIS data indicates that carriers with regular operations in particular states are targets for a disproportionate number of inspections directed at recording unsafe driving violations. Just five states: Michigan, Indiana, Tennessee, Texas and Pennsylvania, are responsible for 45 percent of the violations which inform the statistical analysis for unsafe driving. With no adjustment made for this partiality, the resulting comparison of carriers operating in these states with the carriers which operate in lower enforcement states produces completely untrustworthy conclusions from statistical analysis. Similarly, for the fatigued driving analysis, carriers that maintain proper logs (RODS) are peer grouped with carriers which are not required to log at all, and those which have electronic devices for logging. Over 50 percent of the violations in the Fatigued Driving BASIC are "form and manner" or "change of duty" violations which are incurred only by carriers required to maintain RODS. These carriers face an arbitrarily imposed burden and discriminatory treatment as a result.

Conclusions

A small share of the nationwide fleet of motor carriers is selected for inspection each year. Due to local peculiarities and pronounced biases in the selection process, the resulting data collection is an imperfect representation of the population of carriers, and especially small carriers. In addition, the measurements specified by federal regulators as part of the SMS inspections regimen are subject to wide variation in emphasis and application by geographic location. This is a serious problem in the SMS methodology because violations are not reflective of the actual performance and safety of firms, but are an artifact of the application of the measuring

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

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

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

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

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

Increasing the number of biased observations only amplifies the magnitude of the bias. Simply increasing the total number of inspections carried out will not help if current tendencies in inspection and measurement remain in place. Large operators will continue to rack up numerous inspections that do little to alter their overall measure of compliance and safety while smaller operators will be subject to wild fluctuations in their BASIC scores, yielding relationships such as that found in Figure 1. Binning the data by frequency of inspection does nothing to protect smaller carriers from the threat of being placed out of service for violations that larger carriers can largely ignore.

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APPENDIX E

SAM GRAVES, MISSOURI
CHAIRMAN

NYDIA M. VELAZQUEZ, NEW YORK
RANKING MEMBER

Congress of the United States

U.S. House of Representatives

Committee on Small Business

2361 Rayburn House Office Building
Washington, DC 20515-6315

August 31, 2012

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

Dear Administrator Ferro:

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

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

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

I. Issues with Data Quality and the SMS Methodology

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

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

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

Additionally, the studies question whether the SMS will be able to achieve its primary purpose: identify carriers at risk for a future crash. For example, studies by Wells Fargo Securities[1] found no positive correlation between certain high BASICs and heightened crash risk. A separate study by Dr. James Gimpel at the University of Maryland[2] reached similar conclusions. Even the University of Michigan Transportation Research Institute (UMTRI) Evaluation of the Op Model Test[3] commissioned by your agency discovered discrepancies between FMCSA's claims that high BASICs score in all categories are correlated with higher crash risk.

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

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

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

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

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

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

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

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

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

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

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

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

II. The Need for a Crash Accountability Process

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

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

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

III. Shortcomings of the DataQs System

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

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

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

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

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

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

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

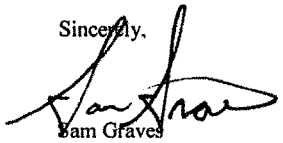
V. Conclusion

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

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

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

Sincerely,



Sam Graves
Chairman

APPENDIX F

THE JOURNAL OF COMMERCE

(http://www.joc.com)

Commentary: Industry, Not Government, Drives Truck Safety

Aug 31, 2012 2:42PM GMT
Tom Sanderson
Source:
The Journal of Commerce Online

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

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

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

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

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

Year 1979: The last year before deregulation

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

Year 2010

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

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

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

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

LTL Truckload Washington Regulation Commentary Trucking Government + Regulation North America United States

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

APPENDIX G

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

June 22, 2012

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Alternative Program:

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

Let's develop and implement something that works.

Suggestions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TESTIMONY OF BRUCE JOHNSON
DIRECTOR OF CARRIER SERVICES
C. H. ROBINSON

ON BEHALF OF THE TRANSPORTATION INTERMEDIARIES ASSOCIATION

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SEPTEMBER 13, 2012

HOW FMCSA'S CSA PROGRAM

IMPACTS FREIGHT BROKERS AND 3PL'S

1625 PRINCE STREET

ALEXANDRIA, VA 22314

Chairman Duncan, Ranking Member DeFazio, and members of the Transportation and Infrastructure Committee, thank you for the invitation and the opportunity to testify at today's oversight hearing. The Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, and Accountability (CSA) initiative has had a significant impact on the carrier eligibility process that freight brokers and shippers conduct to ensure the hiring of safe, legally registered, and properly insured motor carriers. As one of the nation's largest freight transportation brokerages, C. H. Robinson has seen the risk of negligent hiring lawsuits based on carrier selection grow significantly since 2004.

Introduction of Bruce Johnson

My name is Bruce Johnson and I am the Director of Carrier Services for C. H. Robinson. I am also a member of the Transportation Intermediaries Association (TIA), member of the TIA Carrier Selection Framework Committee, and a member of the TIA Board of Directors. As the Director of Carrier Services, I am responsible for overseeing the establishment and execution of Robinson's carrier eligibility process and have been asked many times to describe how we select and assign carriers by both customers and the courts.

Introduction of TIA

TIA is the professional organization of the $162 billion third-party logistics industry. TIA is the only organization exclusively representing transportation intermediaries of all disciplines doing business in domestic and international commerce. TIA represents over 1300 member companies of which over 70 percent of these companies are small family owned businesses.

Introduction of C.H. Robinson

C. H. Robinson was founded in 1905 and currently facilitates the movement of over 10 million shipments per year. C. H. Robinson is one of the world's most innovative third-party logistics companies. We are the 11th largest publicly held company headquartered in Minnesota. We have 165 offices across the United States with over 7,200 employees throughout the United States. All of our offices are networked through a common proprietary operating system with my department serving as our centralized carrier eligibility center. We monitor over 45,000 US-based motor carriers for proper authority, valid insurance, and other data points, including safety related data.

C. H. Robinson has attended and participated in most of the CSA listening sessions and provided feedback to FMCSA on how CSA is being used in contracting and carrier selection. While we do not operate any commercial trucks ourselves, we hire thousands of trucks daily, and we are committed to hiring safe motor carriers.

I am here to communicate to you that tremendous confusion exists in the industry about the risks of carrier eligibility and selection and what the BASIC[1] data and Safety Ratings mean for those hiring motor carriers. This confusion has added cost to freight brokers, motor carriers, manufacturers, importers, exporters, and consumers. Furthermore, the conflicting messages from FMCSA about what constitutes a safe motor carrier based on the available data have added significant legal risk to any entity that hires a motor carrier. FMCSA's primary purpose is motor carrier safety; it is their sole responsibility to keep our roads safe and authorize who is legally licensed to operate on the nation's highways.

The Role of the Freight Broker in the Supply Chain

Freight brokers, interchangeably referred to as "transportation intermediaries," third party logistics companies ("3PLs"), and non-asset based logistics companies, are professional businesses that act similarly to "travel agents" for freight. Freight brokers serve hundreds of thousands of U.S. businesses and manufacturers (shippers), importers, exporters, and carriers, bringing together the shippers' need to move cargo, with the corresponding capacity and equipment offered by rail, motor carriers, air, and ocean carriers.

Since we do not own and operate any power units ourselves, we must add value to both our customers and our carriers. By matching the right capacity to serve the shipper, we dramatically reduce the empty miles trucks drive between shipments, saving time and fuel and adding money to the bottom lines of carriers and shippers. Our industry has helped lower logistics costs as a percent of GDP by several percentage points since deregulation, to what is now estimated to be approximately 8.5 percent according to Rosalyn Wilson, author of the *23rd Annual State of the Logistics Report*.

Transportation intermediaries are primarily, non-asset based companies whose expertise is providing mode and carrier neutral transportation arrangements for shippers with the underlying asset owning and operating carriers. We get to know the details of a shipper's business, then tailor a package of transportation services, sometimes by various modes of transportation, to meet those needs. In many cases, shippers outsource the majority of their freight management to freight brokers. Shippers count on transportation

intermediaries to arrange, report, and improve on the smooth and uninterrupted flow of goods from origin to destination.

Freight brokers provide carriers access to services like consistent and rapid payment, fuel discounts and user friendly websites to search for and manage loads, paperwork, and receivables. Brokers keep carriers' equipment filled and moving. There are more than 15,000 licensed freight brokers in operation, and they range from one-person shops, to family owned businesses to multi-billion dollar, publicly traded corporations like C. H. Robinson. The market is very open and fragmented.

Compliance, Safety, and Accountability

In December of 2010, FMCSA launched CSA and the Safety Measurement System (SMS) became comprised of the BASIC data collected. There is no question that BASIC data and the associated screen shots are much more user friendly than its predecessor; from the category descriptions of "Fatigued Driving" and "Unsafe Driving", to the triangle and exclamation point indicating a score exceeding an arbitrary threshold, the BASIC data is presented crisply. FMCSA will readily admit, however, that while the format is a tremendous improvement, the purpose of the data remains the same: to assist FMCSA in prioritizing carriers for Agency compliance reviews, interventions, and inspections. In fact, FMCSA has attached the following warning to the BASIC data- it reads:

> *Readers should not draw conclusions about a carrier's overall safety condition simply based on the data displayed in this system. Unless a motor carrier in the SMS has received an UNSATISFACTORY safety rating pursuant to CFR Part 385,*

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

While the BASIC data is used as a compass to guide enforcement actions by FMCSA, the Safety Fitness Determination or Safety Rating is widely seen as the safety seal of approval by those who hire trucks. The Safety Ratings have equally user friendly names, and a carrier can be labeled Satisfactory, Conditional, and Unsatisfactory, or may be listed as having no safety rating at all because FMCSA has not prioritized its resources to perform a full compliance review on them. The Safety Rating, however, does not appear on the same screen as the BASIC data.

Currently, the BASIC data is not directly linked to the Safety Rating, and the industry is waiting for a rulemaking to draw clear lines and correlations between the two. When FMCSA implemented the BASIC's in December 2010, many in the industry and within FMCSA anticipated that a rulemaking linking BASIC data directly to the safety rating would occur quickly. What was supposed to be temporary, however, continues to be delayed by the Agency. While the industry anticipates that the SFD rulemaking will be released for public comments in January 2013, as we are all aware the federal rulemaking process takes time and a final rule may not be issued in 2013. This is due in part to legitimate concerns with the BASIC data accuracy and consistency by motor carriers. Every day that goes by without the Agency developing a fair and accurate SFD, the transportation industry will continue to be negatively impacted.

With user-friendly BASIC data and the official Safety Rating both visible, but in completely different systems, this has led to confusion amongst shippers and attorneys on

what constitutes a safe carrier to hire. There are often cases where satisfactory rated carriers have one or more BASIC alerts. FMCSA has added to that confusion by occasionally encouraging the use of BASIC data as a part of the carrier selection process, while at the same time maintaining a strict warning on the BASIC data that it not be used to exclude carriers from operating on the nation's roadways. For example, in May 2012, FMCSA released CSA factsheets targeted towards shippers and brokers. This information highlighted the difference between the BASIC data and the Safety Rating including the warning label. However, the factsheet confused the industry by saying in notes, that:

> *A Satisfactory or Conditional rating does not mean, however, that the public should ignore all other reasonably available information about the motor carrier's operations. CSA's SMS data ... are one of many possible resources that the public can use to assess a motor carrier's safety performance record.*

We encourage FMCSA to be clear and consistent with shippers and brokers on which carriers and which information should be used to select truckers to haul freight. What the industry needs is a bright line differentiation of which carriers are unsafe.

How BASIC data is used in Court

1. New Standard of Care

Prior to 2004, freight brokers were not overly concerned that they would be involved in a lawsuit if a motor carrier that was fully authorized to operate on the roads by FMCSA was selected to haul a load, and was subsequently in a tragic accident. Would you

be concerned about being sued if you hailed a fully licensed taxi, and through the negligence of the taxi driver a pedestrian was injured? Similarly, it should not be the responsibility of the travel agency to ensure that a particular airline is safe to operate, that is and should be determined by the Federal Aviation Administration (FAA). Furthermore, a travel agency should not have to second guess the FAA, and they should not be held liable for millions of dollars in potential lawsuits for booking a passenger on an "unsafe" airline.

In a series of court cases, however, some of which I provided testimony for, the court established a new interpretation of the responsibility, known as the duty of reasonable care. Subsequent court cases expanded and redefined the responsibilities of parties engaging independent contractors, and settlement and/or jury awards have grown substantially. In almost every case, the motor carrier's public liability insurance is exhausted, the carrier has filed bankruptcy, and those with deep pockets, like the broker or shipper, are sought to fill the loss and make the injured person or family whole. A common theme in most negligent hire cases is that brokers and shippers should second guess the FMCSA's decision of which carriers are safe to operate by examining the detailed safety record of each carrier before use. This second guessing scenario is why the conflicting interpretations of BASIC data and Safety Rating is of such great importance to freight brokers. Is a carrier with a score of 62 more dangerous than one with a score of 60? If that is true, then why not use only carriers with a score below 50 and shut all the other carriers down? The reason not to do this is that a relative safety system is fine for internal prioritization use, but damaging to market participants when made public. Brokers and shippers will continue to be sued because they used a carrier with a BASIC score that solely prioritizes them for an internal Agency compliance review. Until FMCSA provides firm

guidance on what BASIC thresholds constitutes a safe carrier, differing opinions will proliferate and the courts will arbitrate those opinions.

2. New Standard of Relationship

In a separate and distinct type of claim from negligent hiring, in some cases, courts have also changed the nature of the relationship between 3PLs and carriers from independent contractor to that of an agency, thereby, creating a vicarious liability scenario. These agency cases attempt to re-interpret the arrangements between the broker and carrier alleging that the broker exercised enough control over the carrier to make the carrier a part of the broker. The travel agent does not become the agent of the airline in an aviation accident. The lawsuits are becoming more frequent and the verdicts vary greatly between federal and state courts from $1 million to more than $20 million.

While C. H. Robinson has been successful overall at managing our risks of negligent hiring and vicarious liability lawsuits, we have spent considerable resources managing that risk. All brokers fear that they will be blind-sided someday when they think they have hired FMCSA authorized motor carriers.

There can be no question that the brokerage industry seeks to promote higher safety standards for our nation's highways. That being said, the brokerage industry is displeased with the current state of affairs with courts holding 3PLs and shippers to an ever changing standard in carrier selection. Congress and the FMCSA can re-set this standard to one that is more reasonable and static. It should not be the responsibility of industry stakeholders and companies like C. H. Robinson to determine which carriers are safe to operate on American highways. It should be the sole responsibility of the Agency

charged with issuing licenses to carriers and making sure those carriers adhere to safety standards established by the Agency to tell the public which carriers are safe-to-use and which carriers are not.

CSA and the Safety Fitness Determination (SFD)

As an industry that is made up of both multi-national companies and thousands of small businesses, we need a single, clear cut safety standard from the Federal agency which was established to reduce the number of highway accidents. There is a great misunderstanding of how the BASICs within the CSA system for each carrier are determined, and these BASICs are relative scores with considerable doubts and questions about data accuracy, consistency, and direct crash risk. We feel this information is for the Agency's internal use, not for public consumption, which makes it difficult for the public to understand if a carrier is safe or unsafe to operate on the nation's highways.

There is no question that the CSA initiative is helping FMCSA and the data regarding roadside compliance is improving; however there is still confusion regarding what constitutes a safe carrier to hire. FMCSA has shifted a tremendous burden of risk, in the form of negligent hiring lawsuits, onto shippers and brokers. With the threat of significant lawsuits, the industry is often faced with the choice of second guessing the Agency. It is not the responsibility of shippers or the brokerage industry to make the safety fitness determination of motor carriers. The only way to accomplish this task is for FMCSA to complete the new Safety Fitness Determination (SFD) rulemaking and fully link the BASIC data to the Safety Rating. However, we do not want FMCSA to develop a SFD, prior to

addressing industry concerns regarding the methodology used to evaluate carriers BASIC scores and percentages.

Recommendations

Until the Safety Fitness Determination (SFD) rulemaking is developed for public comment and ultimately developed into a final rule, we recommend:

1. FMCSA should immediately add the current compliance review based Safety Rating to all screenshots that display a carrier's BASIC data so there is no confusion about the two systems.
2. FMCSA should remove any language from its website and outreach that encourages shippers, brokers, or the public to use the BASIC data for their own purposes. FMCSA should not encourage the use of unproven, relative data, except for internal use.

Going forward in the middle term, we recommend the following:

3. When the SFD rulemaking is posted in the Federal Register and open to public comment, the industry will seek a rating system from FMCSA that rates all unsafe carriers as unfit to operate, and thus eliminate any confusion on which motor carriers are safe to hire. FMCSA officials have publicly indicated that this is the direction the Agency is currently considering in the development of the SFD rulemaking; the brokerage industry would strongly support this position.

4. We ask Congress to develop a legislative fix similar to the Graves Amendment enacted in 2005 as part of the SAFETEA-LU highway bill. The statute abolished the vicarious liability of companies that rent or lease motor vehicles based on the negligent driving of their customers. This amendment would create a uniform standard against liability without fault by preempting state vicarious liability laws imposing liability on non-negligent transportation brokers and shippers.

Conclusion and Legislative Fix

In conclusion, we fully support FMCSA and its mission to improve motor carrier safety on the nation's roadways. TIA and C.H. Robinson will work productively with industry participants, FMCSA and Congress to ensure that FMCSA publishes a safety fitness determination for all motor carriers that is based on accurate and fair data, and that does not discriminate based on carrier size or type. When the SFD rulemaking process begins, the industry asks Congress to carefully review the Agency's actions to ensure that quality data is utilized and fair and impartial processes are followed, and that a clear safety fitness determination is established for every carrier.

I appreciate the opportunity to testify before the committee today on the concerns of CSA and its effects on the transportation brokerage industry.

[i] Behavior Analysis and Safety Improvement Categories (BASICs)

STATEMENT OF WILLIAM GENTRY

PRESIDENT, GENTRY TRAILWAYS

AND ON BEHALF OF AMERICAN BUS ASSOCIATION AND UNITED MOTORCOACH ASSOCIATION

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

UNITED STATES HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 2012

My name is Bill Gentry and I am the owner and President of Gentry Trailways in Knoxville, TN. We furnish school bus transportation to our local school district and local and interstate charter and tour travel with over-the-road motorcoaches. We are take great pride in serving our community safely and economically for over 50 years.

Chairman Duncan, Ranking Member DeFazio, and Members of the Subcommittee, thank you for this opportunity to testify. On behalf of the members of the American Bus Association and the United Motorcoach Association, we appreciate you calling this hearing today and the opportunity to represent the motorcoach travel and tourism industry and our perspectives regarding the Federal Motor Carrier Safety Administration's Compliance Safety and Accountability Program, better known as CSA.

Among professionals in passenger transportation safety, hopes were high that CSA would afford new and improved tools to better predict the likelihood of commercial motor vehicle crashes. When CSA was launched, FMCSA stated: "It introduces a new enforcement and compliance model that allows FMCSA and its State Partners to contact a larger number of carriers earlier in order to address safety problems before crashes occur." Unfortunately, at this point independent studies and anecdotal evidence suggest CSA may fall severely short of its intended goal of significantly reducing commercial motor vehicle crashes.

Like its predecessor, CSA is rooted in compliance and the associated enforcement of the most rudimentary rules that are decades old and may not reflect progressive risk management stratagems and actuarial science. In other words, we placed an old engine in a new motorcoach and are expecting better performance. If anything, CSA cries out for improved methods for passenger carrier crash prediction and tools passenger carriers can utilize to mitigate their risk. Instead, the enforcement community remains entrenched in tactics that more resemble a "gotcha" mindset that generates revenue from fines rather than employing methods that truly reduce the possibility of a commercial motor vehicle crash. We do not believe the current data fed into CSA and the current prioritization scheme will result in a significant reduction in crashes.

Recently, Congress authorized $251,000,000 in Moving Ahead for Progress in the 21st Century (MAP-21) for FY 2013 to inspect commercial motor vehicles and drivers in the field. Routine inspections for a motorcoach include examining a driver's licensing, medical certificate, log books and the vehicle's emergency exits, headlamps, turn signals, emergency flashers, windshield, brake components, engine compartment and air pressure. All of these items are basic components of safe operations and command attention. Unfortunately, compliance or noncompliance with these items is rarely significant as indicators of a commercial motor vehicle driver crash. CSA lacks useful data for passenger carriers to mitigate crashes. Moreover, the consumers of passenger carrier services are left with algorithms and scores that are nearly impossible to decipher when selecting a safe passenger carrier.

Studies indicate that vehicle defects are responsible for less than 2% of commercial motor vehicle accidents. Over 95% of commercial motor vehicle accidents are caused by driver error. But there are stark differences in the significance of the type of driver error and its relation to crash causation. The American Transportation Research Institute reports that a conviction for "Failure to Use/Improper Signal" increases the likelihood of a commercial motor vehicle crash by 96%. Conversely, any "out-of-service" violation normally detected at a destination or roadside inspection increases the likelihood of a driver's involvement in a subsequent commercial motor vehicle by 26%. A "Past Crash" or "Improper Passing" violation increases the likelihood of driver's involvement in a crash by 88% while a "Size and Weight" violation increases the likelihood of an accident by 18% and a "Disqualified Driver" or "Medical Certificate" violation rates as "non-significant".

All of the highest indicators of an increased propensity for an accident relate to basic traffic law enforcement. In July 2009, the American Bus Association's Bus Industry Safety Council (BISC) implored the enforcement community at the International Association of Chiefs of Police meeting to issue citations when drivers violate basic traffic laws and insist that courts avoid reducing or modifying the original charges. It is a common complaint of owners of passenger carrier companies that law enforcement seems to ignore drivers who violate speed limits or drivers that follow other vehicles too close, while on the other hand issuing tickets for burned-out tail lights that increases a carriers' Safety Measurement Scores that may eventually trigger an FMCSA intervention.

CSA also fails to recognize the vast differences in the level of State participation in inspection activity. Many carriers' base of operation are in States lacking any formal passenger carrier inspection programs and therefore have very low contact with carriers while other states have substantial inspection activity. Make no mistake about it; the passenger carrier business is a national business. Tour operators routinely select passenger carriers from states hundreds of miles from the trip origination. It would not be surprising to find a carrier with better scores in Mississippi due to low enforcement contact compared to a high contact state such as New York. Is a passenger carrier safer that receives little or no inspection activity and therefore has no violations safer than a passenger carrier whose base of operation is in a high contact state? Additional disparities develop when the CSA scores do not take into account carriers' urban or rural bases of operations, miles traveled and in what regions those miles are traveled.

Often, when drivers incur traffic violations there are further disparities within CSA's Safety Measurement System. Passenger carriers with very low tolerance for traffic infractions routinely terminate drivers in an effort to eliminate the increased likelihood of a crash. Unfortunately, CSA's Safety Measurement Scores do not reflect the elimination of the risk when the driver is dismissed and the operator must endure the punitive scores associated with the violation for two years and which may subject the company to an agency intervention. Meanwhile the dismissed driver simply finds a carrier with more tolerance for drivers with traffic infractions; thus taking his increased likelihood for crashes with him. CSA in no way mitigates these disparities nor identifies the carrier with the increased propensity for an accident. Inconsistencies revolve around the differences in training, skill, supervision and experience of the officer inspecting the commercial motor vehicle. Should the inspecting officer err in some respect (e.g. wrongful assignment of a violation, a misinterpretation or mistake in law) the carrier's appeal process is arduous and time consuming. Any appeal is submitted via an online system once the violation appears on the carriers' safety record. Plainly stated, the system presumes the operator or driver at-fault on all violations. Furthermore, the appeal is reviewed by the very officer that issued the violation. States have various response times to the appeal and supervision over the appeal. Recently, FMCSA introduced an appellate process that may prove promising; but adds yet another layer of time-consuming bureaucracy. Meanwhile, as the information concerning the violation is public, passenger carriers must suffer the adverse consequences of consumers and insurers viewing violations that are in dispute as well as the costs in time and resources of getting the violation removed.

Perhaps CSA's most controversial subject is the issue of crashes. Simply stated all crashes, regardless of accountability, are the number one indicator that a commercial motor vehicle company and/or driver will incur another crash. In the past, FMCSA has collected information regarding all crashes. If the crashes associated with a carrier reached a certain threshold, an intervention occurred that evaluated the carrier's compliance with the Federal Motor Carrier Safety Regulations. Further evaluation of crashes was done to determine "preventability". We believe this system worked relatively well. However, the CSA system is problematic. First of all, consumers of commercial passenger carrier services are encouraged to evaluate a carrier's Safety Measurement System scores, including crash data. Unfortunately, the data contains no information regarding the severity or accountability of a crash. Unfiltered, the information cannot serve as credible consumer information upon which a carrier selection can be made. While ABA and UMA believe that crash data serves a critical role in predicting a carrier's propensity for an accident; the information in its current form is inappropriate for consumers and should be restricted to enforcement and the motor carrier's view only. Congress recently passed legislation that would require the FMCSA to develop an easy to understand rating system for consumers of passenger carrier services that would presumably reflect a carrier's propensity for a crash. ABA and UMA feel the development of this rating system should be prioritized by FMCSA leadership in order to meet the eighteen month deadline imposed by Congress.

There is one final issue that must be raised. Current law requires that States will ensure that, except in the case of an imminent or obvious safety hazard, an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where motor carriers may make planned stops. Congress will be disappointed to learn that FMCSA is advising States that

they may conduct passenger carrier vehicle and driver inspections at State weigh "stations"; subverting the will of Congress to protect passengers from safety hazards, delayed schedules and interfering with passengers' ability to find proper accommodations during inspections. The recently passed MAP-21 not only reiterates the prohibition against weigh station inspections but further states under Sec.32504 (ii) "Impoundment and Immobilization of Commercial Motor Vehicles for Imminent Hazard": "Enforcement shall not unreasonably interfere with the ability of a shipper, broker, or other party to arrange for the alternative transportation of any cargo or passenger being transported at the time the commercial vehicle is immobilized. In the case of a commercial vehicle transporting passengers, the Secretary or authorized State official shall provide reasonable, temporary, and secure shelter and accommodations for passengers in transit." It is our position that no weigh station was designed to accomodate 57 passengers, some of which may be very young, senior citizens or disabled.

Anecdotal evidence exists that CSA has changed behaviors and improved compliance with the Federal Motor Carrier Safety Regulations as interpreted by the North American Standard Out-of-Service Criteria. Our reservations with CSA concern its limited effect of reducing passenger carrier crashes through expensive and somewhat antiquated methods. Perhaps CSA's best feature is its flexibility and adaptability. The leadership at FMCSA has been responsive to recommendations and already CSA has evolved significantly since its entry in December 2010 and we applaud the FMCSA leadership for its willingness to listen to the industry.

We have two final recommendations for CSA. First, we recommend that the Government Accountability Office (GAO) engage the services of the American Academy of Actuaries in an effort to more effectively explore the link between the most significant causes of commercial motor vehicle crashes and the CSA's Safety Measurement System.

Second, under CSA, carriers are placed into peer groups (i.e., other carriers with similar numbers of inspections or size) and ranked according to performance. The rankings determine which carriers may not be complying, through inspections, with the Federal Motor Carrier Safety Regulations and therefore prioritized for intervention. However, passenger carriers are included in the peer rating system with the much large population of trucks. Given the nature of passenger carriers whose fleets may be typically smaller, travel fewer miles, and have a variety of risk exposures; we recommend that passenger carriers be rated within a passenger carriers peer group to more readily identify passenger carriers for interventions.

In conclusion, we believe CSA is well-intended, but has room for significant improvement and we look forward to working with the Committee and the FMCSA to achieve its intended goals.

On behalf of the members of the American Bus Association and the United Motorcoach Association, I appreciate this opportunity to express our views regarding this important subject and to answer any questions you may have.

ABA represents motorcoach and tour companies in the United States and Canada. Its members operate charter, tour, regular route, airport express, special operations and contract services (commuter, school, transit). Another 2,800 member organizations represent the travel and tourism industry and suppliers of bus products and services who work in partnership with the North American motorcoach industry.

Founded in 1971, the United Motorcoach Association (UMA) is the nation's largest association of bus and motorcoach companies and industry suppliers with over 1,200 members located across North America. Our Members represents the full spectrum of bus and motorcoach operations; from small family charter and tour - to nationwide scheduled and commuter service operations. The United States Small Business Administration estimates over 90% of all privately owned bus and motorcoach companies meet the definition of "small business."

SUPPLEMENTAL MATERIAL PROVIDED BY THE UNITED MOTOROACH ASSOCIATION

American Transportation Research Institute, "Predicting Truck Crash Involvement: A 2011 Update", April 2011.

Federal Motor Carrier Safety Administration Analysis Brief, "The Bus Crash Causation Study", January 2010 (Publication No. FMCSA-RRA-10-003).

SUPPLEMENTAL MATERIAL PROVIDED BY THE AMERICAN BUS ASSOCIATION

American Bus Association letter of September 10, 2012 to Federal Motor Carrier Safety Administrator Re: Roadside Bus Inspections.

Research Results

ATRI American Transportation Research Institute

Predicting Truck Crash Involvement: A 2011 Update

The Problem

Despite fatal truck crash totals reaching their lowest levels in U.S. DOT recorded history in 2009, both industry and government remain convinced there is room for improvement. Reacting to recent research which has highlighted the pivotal role that driver-related factors play in truck crashes, it is clear that efforts aimed at further reducing preventable crashes must focus in large part on driver behaviors.

In 2005, ATRI conducted research that identified specific truck driver behaviors that are most predictive of future truck crash involvement.[1] Numerous factors could have changed these relationships over the past five years, however. Therefore, an updated analysis was warranted to discern which truck driver behaviors from the original study continue to hold predictive value in terms of crash involvement.

Research Goal

The main objective of this research was the identification of specific types of driver behaviors (violations, convictions and crashes) that are most highly correlated with future crash involvement. The Research Team examined to what extent drivers with certain driving records in one year (2008) were more likely to be involved in a truck crash in the following 12 months (2009), compared to drivers who did not have the same violations, convictions or prior crash history. Additionally, the Research Team sought to determine how the updated 2011 findings relate to those from ATRI's 2005 study.

[1] American Transportation Research Institute, Predicting Truck Crash Involvement: Developing a Commercial Driver Behavior-Based Model and Recommended Countermeasures. Alexandria, VA. October 2005.

Methodology

This research replicated a first-of-its-kind ATRI study which analyzed several driver-specific databases to statistically relate those data to future crash probability at the driver level of analysis. Data sources included the Motor Carrier Management Information System (MCMIS) and the Commercial Drivers License Information System (CDLIS).

For the purposes of this research, crash involvement was used as the dependent variable. The independent variables were driver-specific performance indicators mined from the data including: specific road inspection violation information; driver traffic conviction information; as well as past crash involvement information.

Driver data were gathered from a two-year time frame (2008-2009) and analyzed across those years to determine the future crash predictability of violations, convictions and crashes which occurred the previous year. Individual chi-square analyses were used to assess whether there was a significant difference in future crash rates for drivers based on their past violations, convictions and/or crash information.

Findings

This study's findings were based on data from 587,772 U.S. truck drivers. The analysis shows that a "failure to use/improper signal" conviction was the leading conviction associated with an increased likelihood of a future crash. When a truck driver was convicted of this offense, the driver's likelihood of a future crash increased 96 percent. Ten additional convictions were also significant crash predictors; of these, eight had an associated crash likelihood increase between 56 and

84 percent, while two registered between 36 to 40 percent.

In relation to driver violations, an improper passing violation had the strongest association with crash involvement. Drivers with this violation were 88 percent more likely than their peers to be involved in a crash. Seven additional violations had significant crash associations, with five ranging in magnitude between 38 and 45 percent and two between 18 and 21 percent.

Finally, the results indicated that drivers who had a past crash also had a significant 88 percent increase in their likelihood of a future crash. Table 1 ranks the top 10 driver events by the percentage increase in the likelihood of a future crash.

Table 1

If a driver had:	Increase in Crash Likelihood
A Failure to Use / Improper Signal conviction	96%
A Past Crash	88%
An Improper Passing violation	88%
An Improper Turn conviction	84%
An Improper or Erratic Lane Change conviction	80%
An Improper Lane / Location conviction	68%
A Failure to Obey Traffic Sign conviction	68%
A Speeding More Than 15 Miles over Speed Limit conviction	67%
Any conviction	65%
A Reckless / Careless / Inattentive / Negligent Driving conviction	64%

Conclusions drawn from this 2011 updated report include an acknowledgement that driver behaviors, while still associated with crash involvement, appear to be less strongly related than in ATRI's original report, when three predictors were found to more than double crash risk. Moreover, while many of the 2005 behaviors demonstrated similar patterns in the analysis update, a number of the most predictive behaviors from 2005 were replaced by new behaviors. Theories are proposed for these changes, with an emphasis on the finding that roadside inspected drivers generally had much safer records in the 2011 study, as evidenced by the lower proportion of drivers being issued violations (see Table 2).

Table 2

Violation:	Percent of Drivers with Violation (2005 Study)*	Percent of Drivers with Violation (2011 Study)*	Percent Change
Improper Passing	0.49%	0.11%	-78.82%
False or No Log Book	44.44%	20.10%	-54.77%
Speeding	25.04%	11.96%	-52.26%
Failure to Yield Right of Way	0.27%	0.14%	-49.07%
Disqualified Driver	1.65%	0.86%	-47.92%
Improper Turns	0.16%	0.08%	-46.86%
Following Too Close	1.42%	0.80%	-43.78%
Medical Certificate	10.59%	6.19%	-41.53%
Reckless Driving	0.10%	0.06%	-39.89%
Size and Weight	23.88%	14.52%	-39.19%
Moving	44.50%	27.49%	-38.23%
Improper Lane Change	1.02%	0.64%	-37.44%
Failure to Obey Traffic Control Device	3.44%	2.52%	-26.81%
Hours-of-Service	20.50%	17.32%	-15.51%
Any OOS violation	37.95%	34.74%	-8.46%

*Figures are calculated using only those drivers in the study who had a Roadside Inspection in 2002-2003 and 2008, respectively

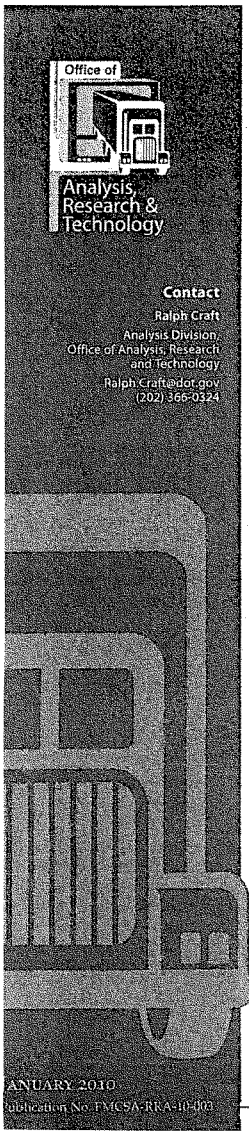
Finally, the report provides recommendations for how the industry can apply the current study's findings to continue to reduce the occurrence of crashes and crash-related behaviors. ATRI developed a formula for identifying "top tier" enforcement states, which highlight those states that contribute proportionally more to the nation's traffic enforcement activity totals than truck crash statistic totals.

Overall, the findings in this report suggest that driver interventions and industry innovations are capable of altering the magnitude and even the presence of the linkage between behaviors and future exposure to crashes. By becoming aware of problem behaviors, carriers and enforcement agencies are able to address those issues prior to them leading to serious consequences. The converse is also true, however, as lower priority behaviors, if ignored, may begin to play an increasing role in crash involvement.

To receive a copy of this report and other ATRI studies, please visit: WWW.ATRI-ONLINE.ORG

ATRI American Transportation Research Institute

ATRI's primary mission is to conduct and support research in the transportation field, with an emphasis on the trucking industry's essential role in the U.S. and international marketplace.



ANALYSIS BRIEF

Federal Motor Carrier Safety Administration

THE BUS CRASH CAUSATION STUDY

Ralph Craft
Federal Motor Carrier Safety Administration
Magdalene Skretta, Suzanne Cotty
Econometrica, Inc.

Summary

The Motor Carrier Safety Improvement Act of 1999 mandated a study to determine the causes of, and factors contributing to, crashes involving commercial motor vehicles and directed the Secretary of Transportation to transmit the results of the study to Congress. In response, the Federal Motor Carrier Safety Administration and the National Highway Traffic Safety Administration conducted a three-year study of large truck crashes—the Large Truck Crash Causation Study—and a smaller study of bus crashes, the Bus Crash Causation Study (BCCS). This Analysis Brief summarizes the results of the BCCS. Approximately 50 people are killed and fewer than 1,000 are injured annually in cross-country and intercity bus crashes. Given those relatively small numbers of bus-related fatalities and injuries, FMCSA decided to collect crash data in northeastern New Jersey, which is part of the New York City metropolitan area and home to large fleets of various types of buses. The BCCS was designed to collect more than 400 data elements on each crash that included at least one bus and at least one fatality or injury. Data collection included crashes occurring from January 1, 2005, to December 31, 2006.

The BCCS report includes information on 40 buses involved in 39 fatal and injury crashes (Category A, crashes involving fatalities or incapacitating injuries; or Category B, crashes involving non-incapacitating injuries) that occurred in New Jersey in 2005 and 2006. The following key variables were coded for each crash: *critical event* (the event after which a crash is unavoidable); *critical reason* (the immediate reason for the critical event); and *associated factors* (all factors selected from the current understanding of conditions related to crash risk and present at the time of the crash). Human errors by bus drivers, other vehicle drivers, and pedestrians or bicyclists were assigned as the critical reasons for bus crashes in 90 percent of the cases in the BCCS. Of the 19 crashes in which the bus was assigned the critical reason for the crash, driver error was the specific reason in 15 cases. In the 20 cases for which the critical reasons were not assigned to the bus or its driver but to another (non-bus) vehicle, a pedestrian, or a bicyclist, the problem was human error.

Introduction

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) mandated a study to determine the causes of, and factors contributing to, crashes involving commercial motor vehicles (CMVs). The MCSIA directed the Secretary of the U.S. Department of Transportation (DOT) to transmit the results of the study to Congress. In response, DOT's Federal Motor Carrier Safety Administration (FMCSA) and National Highway Traffic Safety Administration (NHTSA) conducted a three-year study of large truck crashes. FMCSA transmitted a report to Congress on the Large Truck Crash Causation Study (LTCCS) in March 2006. This Analysis Brief summarizes FMCSA's report to Congress providing the results of the Bus Crash Causation Study (BCCS).

Each year in the past decade, more than 4,800 people have been killed and more than 100,000 people have been injured in crashes involving large trucks. For the LTCCS, FMCSA was able to obtain a representative sample of large truck crashes by employing researchers at each of the 24 NHTSA Crashworthiness Data System (CDS) data collection sites across the Nation. In comparison, approximately 50 people are killed and fewer than 1,000 injured annually in cross-country and intercity bus crashes. Using the same data collection strategy for BCCS as LTCCS was not practical. Given the relatively small number of cross-country and intercity bus crashes resulting in fatalities or injuries and the concentration of those crashes in certain metropolitan areas, a nationally representative sample of bus crashes would have been prohibitively expensive to acquire and would have taken many years to complete.

Faced with the challenges of acquiring a representative, national sample of bus crashes, FMCSA decided to collect crash data in northeastern New Jersey, which is part of the New York City metropolitan area and home to large fleets of various types of buses. The goal was to study 50 to 100 crashes in a year. However, the paucity of bus crashes resulting in fatalities or injuries revealed only 39 crashes involving fatalities or incapacitating injuries (Category A) or non-incapacitating injuries (Category B) in 2 years. Despite the small sample, the BCCS is the largest in-depth comprehensive examination of bus crashes ever conducted.

The BCCS database is available electronically to the public. The public copy of the database does not include data from interviews that cannot be validated by a second source. Qualified researchers, academic institutions, and government agencies will be granted full access to the database, including interview data.

Methodology

The BCCS was conducted in New Jersey by FMCSA research staff and State CMV inspectors, in conjunction with New Jersey law enforcement and public safety agencies. The BCCS was designed to collect more than 400 data elements on each crash that included at least one bus and at least one fatality or injury. Generally, the study did not include crashes involving New Jersey transit buses or school buses transporting children from home to school, because most of FMCSA's safety regulations do not apply to those vehicle types. The only exception was to include transit and school buses if the crash involved at least one fatality.

Data collection included crashes occurring from January 1, 2005, to December 31, 2006. Buses are defined as vehicles designed or used to transport 9 to 15 people (including the driver) for compensation or more than 15 people for any purpose. New Jersey was selected as the data collection site for the following reasons: a high volume and wide variety of bus traffic; a high level of interest in bus crashes expressed by Federal, State, and local New Jersey government officials; and a strong State bus safety program. To ensure data quality, crash-site investigations began as soon as possible after the crash.

FMCSA developed the BCCS database using a methodology modeled on the LTCCS and

focused on pre-crash factors. State and local police agencies notified an FMCSA researcher when a crash occurred. Data collection was performed at each crash site by a two-person team consisting of a trained researcher and a New Jersey State bus inspector who conducted a North American Standard Level 1 inspection of the bus and bus driver involved in the crash. The researcher and bus inspector collected driver, passenger, and witness interviews at the crash scene. Crash forms were used to record extensive data, including the following:

- Location, time, date, and sequence of the crash event and collision measurements
- Bus and bus driver inspection results
- Roadway conditions, weather conditions, and traffic conditions
- Pre-crash events
- Driver age, sex, physical characteristics, and injury severity
- Drivers' use of drugs or alcohol.

Additional interview data were collected by telephone from the motor carrier responsible for the bus and from the drivers of other vehicles involved in the crash after leaving the crash scene. Researchers also reviewed police crash reports, hospital records, and coroners' reports for fatal crashes. The researcher often revisited a crash scene to refine scene diagrams and search for additional data. Crash case data were provided to FMCSA crash experts for coding, and difficult cases were reviewed by FMCSA New Jersey Division and Headquarters staff before being included in the electronic study database.

Crash Characteristics

This report includes information on 40 buses involved in 39 fatal and Category A or Category B injury crashes occurring in New Jersey in 2005 and 2006. Nationally, during this same time span, buses were involved in 5.6 percent of all large truck and bus fatal crashes; but in New Jersey, buses were involved in 14.5 percent of all truck and bus fatal crashes. Due to the small sample of 39 crashes, only whole numbers are used in the discussion of the BCCS data. There were 14 crashes involving at least one fatality and 25 crashes involving at least one A or B injury.

Eighteen of the 39 crashes included in this report involved a collision between a bus and a passenger vehicle (i.e., passenger car, pickup truck, van, or sport utility vehicle). In other crashes with motor vehicles, three buses collided with commercial trucks, two collided with motorcycles, one collided with a light rail car, and one was a crash between two buses. In eight cases, the bus hit a pedestrian, and in two cases the bus hit a bicyclist. There were four single-vehicle crashes, and in two of the crashes the buses caught fire.

Table 1 presents data on the bus body type for the 40 buses involved in the 39 crashes. More than half of these buses were motorcoaches (intercity buses).

Table 2 presents data on the bus operation for the 40 buses involved in the 39 crashes. Most of the buses were being used in charter or intercity regular route service. Examples of "other" operation types include a van carrying mentally disabled adults to a group home after a day trip and a condominium complex operating a bus service.

Table 1 Bus Body Type

Body Type	Number
Motorcoach	26
Transit bus	5
School bus	3
Large van	3
Small bus	3
Total	40

Table 2: Bus Operation

Operation Type	Number
Charter	16
Intercity regular route	10
Private/business	4
Transit	4
School	2
Other	4
Total	40

Coding Crash Data

The following key variables were coded for each crash:

Critical event: The event after which a crash is unavoidable. The critical event is the action or event that put the vehicle or vehicles on a course that made the collision unavoidable, given reasonable driving skills and vehicle handling. One vehicle in each crash is coded with the critical event. Examples of critical events include "lane change/run off road" and "loss of control."

Critical reason: The immediate reason for the critical event. The reason is coded to the vehicle that was coded with the critical event. The reason can be assigned to the driver, vehicle, or environmental conditions leading to the critical event. Possible critical reasons include: driver condition and decisions; vehicle failure; and environmental conditions, including weather and roadway conditions or roadway design features.

Associated factors: All factors selected from the current understanding of conditions related to crash risk and present at the time of the crash. No judgment is made as to whether the factor is related to the particular crash, just whether it was present during the crash event. Associated factors are considered in conjunction with the assignment of a critical reason to identify the range of events that lead to a crash. The associated factors provide sufficient information to describe comprehensively the circumstances of the crash. Examples of associated factors include fatigue, making an illegal maneuver, and inattention.

In addition to the analysis of crash events provided in this report, there are narrative descriptions included with each of the 39 crash case files. The tables in the following section focus on critical events, critical reasons, and associated factors for all cases included in the BCCS. Although critical events, critical reasons, and associated factors do not define the cause of a crash independently, when they are considered together, they provide researchers with the information needed for reasonable reconstruction of the crash events and assessment of crash causation.

Results

Table 3 provides a breakdown by critical event of the 19 crashes where the critical reason was assigned to the bus. "Traveling too fast" means the driver was traveling too fast for the conditions at the time of

Table 3

Crashes by Critical Events Where the Bus Was Coded with the Critical Reason

Event	Number
Pedestrian entering traffic lane	5
Lane change/run off road	4
Other vehicle stopped in lane	3
Traveling too fast for conditions	3
Other	4
Total	19

the crash, which may or may not be related to the speed limit. Other events included a bicycle in the roadway and a bus crossing through an intersection.

Table 4 shows the coding of critical reasons assigned to a bus. In 15 of the 19 cases, the critical reason was assigned to the bus driver, including 10 incidents in which the driver was coded with either inadequate surveillance (failed to look; looked but did not see) or inattention (attention wandered from driving task), both of which fall into the category of failing to recognize and react to a situation to avoid a collision. The only critical reasons assigned to the buses were fires on two buses and one incident of failed brakes. In one case, environmental conditions (e.g., roadway condition and design or adverse weather conditions) were coded as the crash critical event.

Table 4
Coding of Critical Reasons to Buses

Reason	Number
Driver	
Inadequate surveillance	6
Inattention	4
Following too close	2
Other	3
Driver total	**15**
Vehicle	
Bus fire	2
Brakes failed	1
Vehicle total	**3**
Environment	
Ice on the road	1
Environment total	**1**
Total assigned to buses	**19**

In the remaining 20 crashes, the critical reasons were not assigned to the bus or its driver. Other vehicles involved in the crashes were assigned the critical reason in 16 of the cases, and pedestrians were assigned the critical reason in 4 of the cases. In each of those 20 cases, the critical reason was assigned to the people involved, as opposed to vehicle failure or adverse environmental conditions. The drivers of the other vehicles were coded with traveling too fast or too slow (5 crashes), being unable to perform the driving task due to falling asleep or illness (4 crashes), being inattentive or distracted (3 crashes), and other factors (4 crashes). In all 4 of the crashes where pedestrians were coded with the critical reason, the critical reason was inattention.

Table 5 shows those associated factors that were coded more than once among all bus drivers in the study. Note that some factors coded for the drivers as being present before the crash were later judged also to be the critical reason for the crash. For example, inadequate surveillance was coded for 10 of the 40 bus drivers and was judged to be the critical reason for 6 crashes. The associated factors are listed in descending order according to how often they were coded for the bus drivers.

Each of the following eight associated factors was cited only one time: aggressive driving; driver distracted by conversation; driver was uncomfortable with passengers; driver made a false assumption; fatigue; illness; traveling too slow; and line of sight obstructed inside the bus.

State bus inspectors conducted a driver and vehicle safety inspection of each bus involved in a crash. The inspections determined whether serious safety problems existed before the crashes happened. These safety problems, if discovered before the crash, would have been enough for the inspector to place the bus out of service until the problems were corrected.

The pre-crash out-of-service (OOS) violations identified by State bus inspectors are shown in Table 6. Five of the bus drivers coded with the crash critical reason were each cited for one driver OOS violation. None of the drivers of the 21 buses that were not assigned the crash critical reason was cited with a driver OOS violation. Five buses coded with the crash critical reason had 12 vehicle OOS violations, and only 2 of the 21 buses *not* coded with the critical reason for the crash had vehicle OOS violations.

Table 5

Associated Factors Coded to Bus Drivers

Associated Factor	Number
Line of sight obstructed by vehicle, object, sign	22
In a hurry	16
Inadequate evasive action taken	15
Uncomfortable/unfamiliar with the road	11
Inadequate surveillance	10
Made an illegal maneuver	9
Prescription drug use	8
Driver had vision problems	6
Inattention/distraction	5
Impending problem masked by traffic flow	4
Distracted by a person, object, or event	4
Line of sight obscured by weather, poor light	4
Misjudged gap or velocity	4
Following too close	3
Driver had hearing problems	2
Traveling too fast	2

Of the 18 bus vehicle OOS violations, 6 involved brakes, 3 involved repair and maintenance problems, and 3 involved lighting devices violations. Other bus OOS violations included problems with the function or condition of steering, suspension, frame, axle, windshield, or emergency exit. Of the 18 bus vehicle OOS violations, 12 were assigned to the buses that were coded with the crash critical reason.

Three of the 19 drivers for the buses coded with the critical reason either carried an expired medical certificate or did not have a medical certificate. It is worth noting that not being able to present a medical certification is not an OOS violation. For 28 of the 40 drivers in the BCCS, data about medical certification were unknown.

Conclusion

Human errors by bus drivers, other vehicle drivers, and pedestrians or bicyclists were assigned as the critical reasons for bus crashes in 90 percent of the cases in the BCCS. Of the 19 crashes in which the bus was assigned the critical reason for the crash, driver error was the specific reason in 15 cases. In the 20 cases for which the critical reasons were not assigned to the bus or its driver but to another (non-bus) vehicle, a pedestrian, or a bicyclist, the problem was human error. The only cases for which the critical reason was not assigned to a driver, pedestrian, or bicyclist were two cases in which the buses caught fire, one case in which the bus brakes failed, and one case in which ice on the roadway resulted in a crash.

These results are very similar to the results in the LTCCS. In that study of 963 fatal and injury crashes involving large trucks, when the critical reason was assigned to the truck, it was assigned to the driver in 88 percent of the cases. When the critical reason was assigned to another vehicle—almost always a passenger vehicle—the reason was coded to the driver in 92 percent of the crashes. The only major difference between the studies is the almost total lack of pedestrians and bicyclists in the truck study.

Although the BCCS cannot be considered a representative sample of bus crashes (unlike the larger LTCCS, which was a nationally representative sample of fatal and injury crashes involving large trucks), it stands as an important study that has yielded worthwhile insight into crash risk factors for buses. Many of the human errors assigned to bus drivers, including inattention, distraction, haste, and misjudgments, are not violations of laws or regulations. On the other hand, some of the human errors are chargeable offenses—such as making illegal maneuvers and following too close. In many instances, human errors were accompanied by Federal OOS violations, such as violations of hours-of-service regulations or vehicle safety standards.

While better enforcement can improve the safety climate, producing safer drivers cannot be ensured solely by police enforcement actions. Finally, numerous vehicle OOS violations were found in BCCS post-crash inspections. The interaction of defective vehicles with driver errors cannot be ignored in assessing reasons for the crashes.

Table 6

Driver and Vehicle Out-of-Service Violations for All Buses in the Study

Violation	Number of Buses Coded with Critical Reason	Number of Buses Not Coded with Critical Reason	Total
Driver violations			
No commercial drivers license (CDL)	1	0	
10-hour rule	1	0	
No passenger endorsement on CDL	1	0	
Reckless operation	2	0	
Total driver violations			5
Vehicle violations			
Brakes	5	1	
Repair and maintenance	2	1	
Lighting devices	2	1	
Other	3	3	
Total vehicle violations			18
Total OOS violations			23

ANALYSIS BRIEF
Federal Motor Carrier Safety Administration

Office of Analysis, Research & Technology

Office of Analysis, Research and Technology
Federal Motor Carrier Safety Administration

The primary mission of the Federal Motor Carrier Safety Administration (FMCSA) is to reduce crashes, injuries and fatalities involving large trucks and buses. In carrying out its safety mandate, FMCSA develops and enforces data-driven regulations that balance motor carrier (truck and bus companies) safety with industry efficiency; harnesses safety information systems to focus on higher risk carriers in enforcing the safety regulations; targets educational messages to carriers, commercial drivers, and the public; and partners with stakeholders including Federal, State, and local enforcement agencies, the motor carrier industry, safety groups, and organized labor on efforts to reduce bus and truck-related crashes.

The mission of the Office of Analysis, Research and Technology is to reduce the number and severity of commercial motor vehicle crashes and enhance the efficiency of CMV operation by conducting systematic studies directed toward fuller scientific discovery, knowledge, or understanding; adopting, testing, and deploying innovative roadside practices and technology; analyzing trends, costs, fatalities and injuries in large truck and bus crashes; monitoring data quality; and preparing economic and environmental analyses for FMCSA's rulemakings.

This Analysis Brief was produced by the Analysis Division in FMCSA's Office of Analysis, Research and Technology. The Analysis Division provides the transportation industry and the public with analytical reports on trends, costs, and fatalities and injuries in large truck and bus crashes. The division also monitors data quality to ensure an accurate measurement of safety performance, so effective countermeasures can be developed to reduce the occurrence and severity of commercial motor vehicle crashes. In addition, the Analysis Division prepares all the economic and environmental analyses for FMCSA's significant rulemakings to ensure changes to motor carrier regulations are based on sound analysis and data.

ART
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VIA ELECTRONIC MAIL

Hon. Anne Ferro
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Re: Roadside Bus Inspections

Dear Administrator Ferro:

The American Bus Association ("ABA") is strongly opposed to the FMCSA's recent policy guidance that encourages states to conduct roadside inspections of intercity buses at weigh stations. A copy of the June 27, 2012 Memorandum from William Quade setting out this policy is attached. This position clearly violates federal law and is bad public policy.

As you know, this directly contravenes federal statutory and regulatory requirements. Section 4106 (a) of SAFETEA-LU added a new requirement for state motor carrier safety assistance grants as follows:

> [E]xcept in the case of an imminent or obvious safety hazard, ensures that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned stop.

Codified at 49 U.S.C. § 31102(b)(1)(X). The FMCSA has incorporated this statutory requirement into its regulatory grant provisions at 49 C.F.R. § 350.201(y).

The FMCSA's new justification for these inspections en route is that the word "station" in the statute and regulation may be read broadly to include a roadside "weigh station." This is not consistent with either the wording or the intent of the provision.

The reference to a "station" is the first item of a list of places where a vehicle transporting passengers may lawfully be stopped for an inspection, concluding with "or other location where a motor carrier may make a planned stop." A motor carrier never has a vehicle transporting passengers make a planned stop at a weigh station—such stops would only be at the direction of a state motor carrier safety officer. Furthermore, in the context of a paragraph referring solely to limitations on vehicles transporting passengers, the term "station" clearly refers to a bus station, or terminal, not to any location where state officials themselves set up scales and require an inspection protocol. None of those facilities provide sanitation services for passengers or reasonable accommodation for passengers with disabilities. The FMCSA's interpretation would allow the agency and the states to conduct inspections of motorcoaches not just at weigh stations but at service stations, fire stations, and railroad stations. That is not what Congress had in mind in banning state officials from conducting random roadside inspections of intercity buses.

The prohibition exists for the same reason that the Federal Aviation Administration does not conduct random inspections of airplanes when they are loaded with passengers and ready to take off: Congress has determined that the inconvenience to passengers and disruption to travel schedules is greater than the benefits of a truly random inspection program.

The FMCSA's argument that "stations" includes "weigh stations" collapses completely based on the legislative history of the most recent motor carrier safety authorizing legislation, Pub. L. No. 112-141. Section 32601 of S. 1813, as passed by the Senate, would have amended the statutory state motor carrier safety assistance grant criteria in 49 U.S.C. § 31102(b)(1)(X) to specifically provide that inspections of passenger vehicles may be conducted at "weigh stations, " in addition to "stations." The relevant section stated:

> (X) except in the case of an imminent or obvious safety hazard, ensures that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a ***station***, terminal, border crossing, maintenance facility, destination, rest stop, turnpike service area, ***weigh station***, rest stop, turnpike service area, or a location where adequate food, shelter, and sanitation facilities are available for passengers, and reasonable accommodation is available for passengers with disabilities.

This provision was removed in its entirety by the conference committee and the SAFETEA-LU language remains unchanged. The removal of this language is a clear and unequivocal indication that the conferees did not intend FMCSA to expand its bus inspections to "weigh stations" or any of the other locations added by the Senate language. Furthermore, the fact that the Senate used both "station" and "weigh station" in that provision is compelling evidence that the Congress intended for those terms to mean different things, and that a weigh station was never intended by Congress to simply be another type of station where bus inspections may be performed.

ABA fully supports increased inspections of motorcoaches and the association has lobbied for additional programs and funding for FMCSA to address illegal and unsafe bus operators, including designated funding under MCSAP for increased bus inspections and authority for FMCSA to hire third-party inspectors to assist with the workload. While ABA is sympathetic to the agency's urgent need to combat unsafe bus operations, we cannot allow the agency to ignore the specific restrictions in the law on inspections. Of course, state inspectors remain authorized to stop at bus at any time and at any place when there is an imminent or obvious safety hazard.

ABA asks that you rescind this policy directive immediately because it directly conflicts with the statutory language of SAFETEA-LU and the clear legislative history of MAP-21. We further ask you to advise FMCSA officials, and your state partners, that such random bus inspections at weigh stations are not permitted under federal law, and direct them to comply with those requirements immediately.

Thank you for your prompt attention to this matter.

Sincerely,

Peter J. Pantuso

Peter J. Pantuso
President and CEO

American Bus Association
111 K Street, NE 9th Floor
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Direct: 202-218-7229

Cc:
Bill Bronrott, Deputy Administrator
Bill Quade, Associate Administrator for Enforcement
Jack Van Steenburg, Assistant Administrator and Chief Safety Officer

Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

COMMERCIAL VEHICLE SAFETY ALLIANCE

COMMENTS FOR THE RECORD

HIGHWAYS AND TRANSIT SUBCOMMITTEE

OF THE

HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

SEPTEMBER 13, 2012 HEARING ON

"EVALUATING THE EFFECTIVENESS OF DOT'S TRUCK AND BUS SAFETY PROGRAM"

SUBMITTED OCTOBER 3, 2012

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Crash Risk vs. Regulatory Compliance

One assertion that was made often by industry during the recent hearing was the idea that noncompliance with regulations is not directly tied to safety. Some in industry have argued that so-called 'paperwork violations' should not be included in a carrier's SMS scores. CVSA disagrees strongly and believes that regulatory compliance must be taken into account. Certainly, behaviors that can be directly linked to crash risk are important and should be a factor in CSA. But noncompliance with a set of regulations should not be disregarded simply because that regulation cannot be directly tied to crash risk.

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

Further, CVSA members would dispute the assertion that these 'paperwork violations' have no tie to safety. In fact, our inspectors have found that these types of violations are often masking larger safety problems. For example, some may say that HOS records that do not include items like location changes of duty status or list miles driven are simply 'paperwork' violations, with no tie to regulatory compliance or driver or carrier safety performance. However, to an inspector, these violations are indicators that a driver could be concealing major violations, such as exceeding HOS driving time or on-duty time limits.

The safety regulations that exist are in place for a reason and a habit of noncompliance tells an inspector something about the carrier – either they do not understand the requirement or they don't care. Further, in my experience, I have found that carriers with a tendency to disregard regulations often tend to be less safe and experience more crashes than those with a strong safety culture.

Monitoring a carrier's regulatory compliance helps inspectors identify problem areas and prevent a bad habit from forming, hopefully, preventing a crash or other unsafe condition in the process. It's possible that FMCSA could make improvements to the weighting of certain violations, to better highlight those tied directly or indirectly to crash risk, but compliance with regulations is a critical factor in terms of CMV safety and should not be removed from the program.

Alternative Compliance

FMCSA's creation and launch of the Compliance, Safety, Accountability (CSA) program in 2010 will play an important role in making the nation's commercial motor vehicle fleets safer. Many stakeholders in the commercial vehicle community agree that the objectives of the CSA program are sound. However, we believe there are opportunities to improve the program. The CSA program, as currently operated, offers few mechanisms for fleets to proactively improve their scores.

Research has been underway for several years to explore the concept of potential "alternative compliance" methods for improving safety performance within the motor carrier industry. This concept aims to facilitate non-regulatory solutions by private industry to enhance their safety performance and to have the federal government formally recognize and incentivize proven solutions. There are a number of proven safety solutions that, if managed and structured properly, FMCSA could consider for an alternative compliance program, including deployment of advanced active safety technologies and other solutions such as fatigue management programs and hair testing for controlled substances.

Advanced safety systems, such as stability control systems, lane departure warning systems, collision mitigation systems and brake-stroke monitoring systems, have proven successful in preventing a number of the crash causes identified in the 2006 Large Truck Crash Causation Study. Independent, substantive data has demonstrated the success of these systems, which are being produced today and are commercially-available.

We believe it is appropriate for FMCSA to further explore this alternative compliance concept by instituting a pilot program that would investigate the feasibility of a system that provides motor carriers CSA 'credits' in exchange for adoption of certain alternative compliance solutions, in essence improving their score(s) due to their voluntary investment in these life-saving technologies. Such a pilot program would involve verification, using the specified solutions in real world operations, along with performance data collection and monitoring. In order to structure and execute a successful pilot program, strong input and participation from industry is imperative, including the technology manufacturers, motor carriers, and enforcement communities.

The application of safety credits through a CSA alternative compliance program would help institute a positive sustained behavioral change within the nation's commercial truck and bus fleets and enhance government and industry safety efforts. In addition, an alternative compliance program would help improve the efficacy CSA scores in terms of their reflection on the safety culture of the motor carrier, helping enforcement shine a brighter light on the 'bad actors' so they could target their efforts at those in need of further attention. This is an innovative approach to help incentivize improved safety performance that is both voluntary and private-sector driven.

Motor Carrier Safety Rating Reciprocity with Canada

In 2008, Canada and the United States signed a letter agreeing that their respective motor carrier safety compliance programs are compatible and produce similar results. In signing the letter, both countries reaffirmed their mutual commitment to achieving reciprocal recognition of motor carrier safety ratings, as set out in a 1994 Memorandum of Understanding between the United States and Canada. To this day, work continues on both sides of the border to help advance this important aspect of commercial vehicle safety, harmonization, trade facilitation and administrative efficiency and effectiveness. In fact, in the recently passed transportation bill, MAP-21, Congress instructed FMCSA to work with Canada on this important issue.

As with any bi-lateral agreement between countries, there are inevitable challenges that must be overcome in order to make this happen. Exchange of motor carrier safety data in support of reciprocity has proven to be the most problematic aspect and threatens to derail this critical initiative. The lack of an agreement will not only impact the efficiency and effectiveness of the two countries' safety measurement systems, but could ultimately

place more regulatory burden on US motor carriers operating in Canada. We encourage FMCSA to exhaust all avenues to work collaboratively with Canada to find an equitable and timely solution that works for both the United States and Canada. .

Due Process

Industry representatives also told the Committee that the CSA program lacks due process. While improvements could certainly be made, the Alliance disagrees that carriers are left without recourse. First, it's important to understand that there are two separate issues being discussed: violations that result in a legal citation and those that do not. Both sets are entered into the SMS, but both the appeals process for each group is different.

Non-Citation Violations

Violations that are recorded on an inspection report, but do not result in a citation are non-citation violations. FMCSA has the DataQs system in place as a process for challenging roadside inspection and crash data collected by the states. As the written and oral remarks offered by Assistant Chief Palmer indicate, there is certainly an opportunity to improve this process and provide industry with a more uniform solution. However, there *is* a process in place and it is working, for the most part. Carriers challenge less than 1 percent of violations and more than 60 percent of those challenges do, in fact, result in some sort of adjustment to the record.

However, the weaknesses with the DataQs process do not lie entirely with FMCSA, the states and the program; industry is responsible as well. Often, legitimate challenges are filed without the necessary supporting documentation. Without the appropriate supporting documentation, the inspecting agency cannot conduct a comprehensive evaluation. It is not enough to simply say, 'I disagree with this violation'. A carrier needs to provide solid, fact-based evidence supporting their claim that is should be changed.

In addition, "I didn't know" is not an acceptable reason for dismissing a violation. As an example, one of our members received a DataQ request asking that a missed weigh station violation be removed from the records. The explanation for why the driver missed the station? The grass around the station was high and the driver assumed the station was closed. This is not an acceptable reason to bypass an open weigh station and the violation should not be removed. In the future, that driver is likely to pay closer attention when approaching a weigh station.

As indicated in the Alliance's written testimony, FMCSA and industry must work together to help carriers understand how to submit a proper DataQ and what constitutes a legitimate basis for a DataQ change.

Violations that Result in a Citation

Inspection report violations that also result in a legal citation are another matter. Currently, when a CMV inspector conducts an inspection, he or she enters all noted violations on their inspection report. However, the inspector will not typically cite the driver or carrier for each and every violation, generally focusing on the most serious offenses. The driver or carrier can then challenge those citations in court. The citations are either upheld or dismissed and the carrier can then request that dismissed violations be removed from their record.

With regard to citations that have been dismissed in court, CVSA members have no objection to violations that have been dismissed based on merit being removed from a carrier's record assuming there is supporting evidence. However, valid citations can be dismissed in court for a number of reasons: a sympathetic judge may prefer to reduce the fines or alter the conviction to a lesser violation; or perhaps the inspector or carrier is unable to appear on the court date. Violations dismissed for reasons other than merit should remain on a carrier's record.

We are talking about two separate and distinct processes – the judicial system and CSA. The CSA program is a data driven tool that assists enforcement in targeting inspection and intervention activities. In order for the system to work effectively, we need as much data in the system as possible.

Additional Material from Ruby McBride and ASECTT
To the T&I Highways Subcommittee
CSA Recommendations:

Ruby McBride, a witness at the subcommittee's September 13, 2012, hearing on behalf of the Alliance for Safe, Efficient and Competitive Truck Transportation (ASECTT), and the coalition have provided these additional remarks and supporting information for the record, in response to questions and answers of the committee members and witnesses.

Based upon the testimony of Administrator Ferro, representatives of the American Trucking Association, the Transportation Intermediaries Association, and ASECTT, it is clear the SMS percentile rankings as published (1) have no demonstrable nexus to safety; (2) are based upon flawed and inadequate data; (3) are prejudicial to small carriers, which make up over 95% of the motor carrier populace; and (4) adversely affect the ability of carriers the agency has certified as fit to obtain freight.

The agency should be reminded that the National Transportation Policy requires it to consider efficiency, competition, and the effect of any of its actions on small carriers, and to ensure that false and misleading material is not publicly disseminated in accordance with the Data Quality Act guidelines.

Accordingly, the Transportation and Infrastructure Committee, with direct oversight responsibilities for the actions of the FMCSA, should direct the agency to cease publication of percentile rankings in any of the so-called BASICs until such time as SMS methodology has been proven in a final judicially appealable order, in accordance with the Administrative Procedures Act.

In support of this request, the committee should note that the Administrator has acknowledged that SMS methodology remains a work in progress and has appointed a special committee to

look into the methodology over an indefinite period of time. The Administrator has further acknowledged that the agency cannot now use SMS methodology to make a safety fitness determination under existing law – it has no statutory warrant for telling shippers and brokers that the work in progress is fit or required for their use. The Administrator further promised that rulemaking would be instituted in early 2013 and that the agency would seek objective or static standards upon which to make its statutorily required safety fitness determination.

This admission demonstrates the agency's own recognition that it cannot "grade on a curve" and that the publishing of a percentile ranking of carriers, uncoupled as it is from any provable nexus to crash predictability, impinges on the rights of certified carriers to compete for freight and places a credentialing burden on the shipping public, contrary to the agency's existing statutory duty.

The agency's refusal to afford industry the due process of rulemaking virtually guaranteed a flawed system. CSA is now disrupting the trucking industry. Therefore, Congress must step up its oversight of the agency and investigation into the CSA program and SMS. Despite numerous ways in which the agency has been informed of the harm CSA is inflicting on this vital economic sector, FMCSA refuses to acknowledge the extent of the harm the CSA program is causing.

Therefore, congressional oversight must go further. Specifically, the Inspector General should be called in to conduct an investigation into CSA itself and the manner in which the agency has proceeded to create and foist CSA upon motor carriers, shippers, and brokers. Also, the Government Accountability Office should be directed to examine SMS methodology, CSA data, the agency's underlying assumptions as to CSA's crash predictability, CSA's degree of validity and reliability as called into question by the Wells Fargo, Gimpel, and Iyoob studies, and the adverse impact that publishing CSA carrier BASICs on the Internet and urging their usage in carrier selection is having on industry and the economy, as well as identify specific ways in which the agency has failed to comply with statutory requirements for due process, including the Administrative Procedures Act, the Data Quality Act, and the Regulatory Flexibility Act.

Congress should also require the agency to put CSA through full rulemaking, as it refused to do in late 2010, affording industry the due process the law provides for such significant changes in a regulatory regime.

The following recommendations expand upon this central recommendation that publishing and publicizing CSA scores immediately be stopped.

1. *STOP PUBLISHING CARRIER SCORES ON FMCSA WEBSITE.*

FMCSA has openly admitted "data quality" problems in testimony before Congress on multiple occasions. These admissions alone should be sufficient to warrant a complete cessation of any publication of CSA's misleading data and causing further harm to safe motor carriers.

Until such time that the industry can be assured the data is accurate, this data should only be available for use by FMCSA, law enforcement, and the motor carrier.

FMCSA should be required to post a disclaimer admitting data quality problems and advising the public (including plaintiff lawyers) not to rely upon previously posted data.

2. *STOP USING THE BELL CURVE METHODOLOGY TO RANK MOTOR CARRIERS.*

The SMS (bell curve) methodology used by CSA for ranking motor carriers is NOT based upon a fair and equitable system for all motor carriers. Under the current system, 35% of all motor carriers in each peer group will always fall below the threshold and be labeled "High Risk," no matter what they do. How can this be a fair system? If all motor carriers were perfect, which 35% would FMCSA label as "High Risk"? A motor carrier's score should be based upon its own performance, NOT the performance of others.

The current scores are based upon the results of roadside inspections, with the only method for a motor carrier to improve its score being to obtain more "clean" roadside inspections. However, there is no guarantee that one's score will improve if fortunate enough to get the additional clean inspections. This is because of the ranking system. For example, if there are other carriers in one's peer group who got more clean inspections, one could find that its score actually declined even more. What does one carrier's performance being based upon the performance of another have to do with improving safety?

3. *ESTABLISH STATIC LINES FOR EACH MOTOR CARRIER.*

The FMCSA should establish a threshold or static line for each motor carrier based upon factors pertinent to specific motor carriers.

These factors should include clean inspections based upon:

a. Miles driven;
b. Region of operation;
c. Size of fleet, and
d. Whether or not the carrier is exempt from maintaining records of duty status reports.

4. *STOP RANKING MOTOR CARRIERS IN PEER GROUPS.*

Peer groups are not based upon miles driven, but rather upon the size of the fleet and/or number of inspections for the previous month. It is not unusual for a motor carrier suddenly to find that it has been switched from one peer group to another. This sudden change from one peer group to another can cause drastic changes in the SMS scores. Should a carrier who runs within a 100-mile radius (who is not required to maintain records of duty status) be in the same peer group as a motor carrier who runs cross-country?

Should a carrier who runs in states where inspection rates are low be compared to a carrier who runs in states where inspection rates are higher?

5. *ESTABLISH METHODS FOR DUE PROCESS.*

There is NO due process. If a driver or motor carrier is successful in adjudicating a citation and results in a dismissal, there is no current process for removing the points charged against the driver or the motor carrier. DataQ challenges are currently referred back to the same law enforcement official who issued the citation, which means the individual who issued the citation also acts as judge and jury.

6. *STOP ASSESSING POINTS FOR WARNING TICKETS.*

Warning tickets are assessed as points against the motor carrier and driver in SMS methodology. This makes NO sense! Where is the logic in being punished for something that you cannot challenge?

7. *SEAT BELT VIOLATIONS SHOULD ONLY BE ASSESSED AGAINST THE DRIVER WHO FAILED TO WEAR HIS/HER SEAT BELT – NOT THE MOTOR CARRIER.*

All drivers should wear their seatbelts. It is fair to say that "ALL" motor carriers instruct their drivers to wear their seatbelts. Yet, there are still some drivers who fail to wear their seatbelts. If the motor carrier has a policy requiring drivers to wear their seatbelts, why should the motor carrier be assessed points when the driver fails to do so? These points should only be assessed against the driver who violated the law and the motor carrier's policy, NOT against the motor carrier.

8. *DRIVER'S CSA SCORES SHOULD NOT REMAIN WITH MOTOR CARRIER AFTER THE DRIVER LEAVES THE MOTOR CARRIER.*

Currently, a driver's high CSA score remains with the motor carrier for two years after the driver leaves the motor carrier. What message does this send to a motor carrier who is trying to run a safe operation? If a motor carrier terminates a driver with a high score, should not the driver's high score follow him and not remain with the motor carrier? A motor carrier who acts responsible and terminates a driver with a high CSA score should be rewarded for this action and not punished by being required to bear the score for two years.

However, under CSA, if one hires a driver who already has a bad score, his points begin at zero with the carrier. (Under the current system, a carrier is punished for getting rid of a bad driver, yet rewarded with zero points for hiring a bad driver.) This does not make sense!

9. *STOP BRANDING MOTOR CARRIERS AS "HIGH RISK' BASED UPON INFORMATION THAT HAS NOTHING TO DO WITH "SAFETY".*

FATIGUED DRIVING SCORES are comprised of a significant amount of information that has nothing to do with safety.

The data behind the numbers MUST be fixed before there can be any fair and equitable application of the CSA program.

a. *Form and Manner* violations are administrative errors that have absolutely nothing to do with whether a driver is fatigued or unsafe, or whether or not the driver is likely to have a crash.

EXAMPLES:
Driver fails to sign log;
Driver fails to put the Bill of Lading number on log; or
Driver fails to put the miles on his log.

While we agree that these violations are also important and should be addressed, we do not believe that they should be in the same category as "Driver Fatigue."

b. Failure to pay *child support* has nothing to do with whether a driver is fatigued or unsafe. Yet this has been the underlying reason for some carriers' CSA scores taking a hit in this category.

Form and manner violations should be separated from hours of service violations.

10. *CRASH DATA SCORES SHOULD NOT INCLUDE ACCIDENTS CAUSED BY OTHER PARTIES.*

Crash Data scores currently include accidents caused by other parties. Even deer strikes are charged against motor carriers and drivers if the vehicle requires towing. There is no differentiation in points between accidents caused by the motor carrier and accidents caused by other parties. This is patently unfair!

Motor carriers should only be assessed points for accidents that they caused.

11. *HOURS OF SERVICE (10) HOUR BREAKS SHOULD ALLOW DRIVERS TO SPLIT REST TIME 8/2, 7/3 OR 6/4.*

Currently, a drivers' sleeper berth break (10 hours) can only be split into one (8) eight-hour break and one (2) two-hour break or the full (10) ten hours. While this may be couched in the name of "safety," we do NOT believe it is "safer." This regulation is forcing drivers to drive when they are tired because they will lose their available hours to work if they need to take more than a two-hour break, but less than eight. What this really means is a driver who needs to take a four-, five-, or six-hour break in the middle of his (otherwise legal) 11-hour shift is now being faced with the decision to take only a two-hour break or drive the full eleven hours, even when he may be tired. This makes no "common sense." This regulation should be changed immediately. The Hours of Service Rule needs a simple "fix." Allow the drivers to split their breaks and rest when they are tired.

As an industry, we all realize that regulations are necessary in order to protect the motoring public. However, they must be based upon "logic" and "common sense." Drivers MUST be allowed to rest when they are tired without the risk of losing their available time to work.[1] Wouldn't it be in the best interest of the motoring public to

[1]Example: Driver John Doe is home all weekend in Nashville, TN. His load is going from Nashville, TN, to Dallas, TX, 684 miles (approximately 11 hours) to deliver Monday morning at 9:00 a.m. CST. John has plenty of hours to begin his run. He can legally leave his home by 10:00 p.m. Sunday night and make the delivery on time Monday morning. However, while at home, John had to mow the lawn and fix the roof. By 6:00 p.m. Sunday evening, John is a little tired and decides to go ahead and leave, in order to have some extra time along the way to stop and rest. Under the current rules, he can only split his break (8 hours/2 hours). This means if John drives to Little Rock, AR, (349 miles – 5 ½ hours) he will get there around 11:30 p.m. Now John is tired and needs to stop for a nap. Under the existing rules, John either has to take a full 8-hour break or only 2 hours. When John lies down, he actually sleeps for 4 hours. Now he's rested and ready to go, but because John took more than two hours, he must now either take the full 8 hours or lose 4 hours off his 14-hour day. If John begins to drive when he wakes up at 4:30 a.m., he can only drive until 8:00 a.m. (due to the 14-hour rule), which puts him 1 hour shy of making his delivery on time. If John takes 4 more hours to complete his 8-hour break, then he cannot leave Little Rock, AR, until 7:30 a.m. John would only have 1½ hours to drive 335

allow drivers to split their breaks in the middle of an otherwise legal run? What makes more sense: A regulation that forces a driver to run straight through, so his logs will be legal; or a regulation that allows him to split his break in a manner that gives him the additional rest that he needs?

If the regulation allows for breaks to be split by 6/4, 7/3, or 8/2, with a mandatory 10-hour break requirement for every 24-hour period; this would provide a safer environment for the motoring public and allow drivers to get the rest they need without being penalized for doing so. I believe all motors carriers would endorse this change to the regulation because it truly is about "SAFETY" and based upon "LOGIC" and "COMMON SENSE."

Accompanying this statement are two items: Analysis of percentile groupings through CSA, as it works out in practice with respect to Panther Expedited Services, an ASECTT member, and a chart of actual groupings of carriers in the Unsafe Driving BASIC. These illustrate the practical adverse effects of SMS and CSA, as well as the objective data versus CSA's subjectivity and inherent unfairness. These items further substantiate the case for prohibiting the FMCSA from publishing carrier BASICs.

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miles. When John left his home in Nashville, he had plenty of time to make the run straight through. He just needed a little more than two hours rest when he took his break. However, because he took the extra time to rest, he is now forced with no way to make an "on time" delivery. On the other hand, if John could legally split his break and not lose the 4 hours off his 14 hours available to work, he would be able to stop and rest along the way and make his delivery "on time." There is no logic in this rule, especially when it is couched in the name of "safety."

PANTHER
EXPEDITED SERVICES, INC.®

Position Paper On Percentile Scoring in SMS Methodology

Overview:

Analysis of Panther's CSA Scores over the past 18 months indicates acceptable levels of compliance in all areas, with one exception. The Unsafe Driving BASIC measure has exceeded the threshold of intervention status, with little change in the month-to-month comparison:

BASIC(s) Overview	7/27/2012	06/22/2012	5/25/2012	4/27/2012	3/23/2012	2/24/2012
Unsafe Driving	⚠	⚠	⚠	⚠	⚠	⚠
On-Road Performance Detail	73.9%	75.5%	72.9%	76.7%	72.8%	72.5%

The Concern:

A detailed review of the SMS methodology used by the FMCSA to determine the Unsafe Driving Scores, and the subsequent division of carriers into Safety Event Groups to use in comparisons to determine the percentile of each carrier, reveals a process that prevents carriers over the intervention threshold limit to show demonstrable improvement over a given period of time.

Percentile scores and month-to-month changes:

From the CSA Methodology Report, Version 3.0 (March 2012), all carriers being scored in the Unsafe Driving BASIC are split into two segments, based on the percentage of vehicles in the carrier's fleet that are Straight Trucks or Tractor Trailer combos. The cutoff percentage is 30/70, meaning all fleets with more than 30% Straight Trucks are placed in the Straight Segment.

From each segment, carriers are then split into 5 groups, based on the number of inspections over the last 2 years which resulted in an unsafe driving violation. The cutoff to be in the largest group (called the Straight-5 Group) is 50 inspections with at least one unsafe driving violation. This is the group Panther finds itself within. Panther's BASIC measure (shown above) is a reflection of our performance compared to other carriers in this group. This group features many carriers that do not engage in standard over-the-road operations as Panther does. Among the carriers in this group are:

LEGAL NAME	TRUCKS	SCORE
UNITED PARCEL SERVICE INC	97370	2.1
RYDER TRUCK RENTAL INC	96580	0.0
FEDERAL EXPRESS CORP	30857	1.0
FEDEX GRD PACKAGE SYSTEM	29531	19.5
IBC TRUCKING LLC	6656	7.6
ASPLUNDH TREE EXPERT CO	7641	3.2
SCHWANS HOME SERVICE INC	5819	21.7
LOWE'S HOME CENTERS INC	4520	59.7
PANTHER EXPEDITED SERVICES	1054	73.9

Of the 8 largest fleets in the group, shown above, none of them engage in predominantly over-the-road transport. These fleets are comprised primarily of local service and delivery vehicles, meaning these trucks are, on the whole, inspected far less frequently than those in Panther's fleet, as well as those of the other expedite carriers in the group (Fed Ex Custom Critical, Tri-State Expedited Services, Load One, and Express-1).

Other fleets in the group include many of the largest nationwide movers (United, Allied, North American, and Mayflower), as well as the two of the largest driveaway carriers in the country (Horizon and Quality Driveaway.) All of these carriers have an Unsafe Driving percentile score that exceeds the priority threshold for load monitoring and possible interventions.

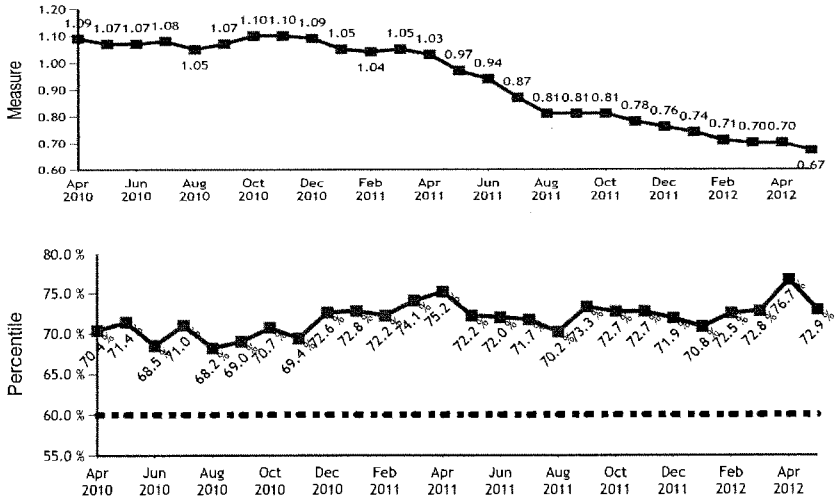
Straight -5 Carrier Score Comparison:

A Freedom of Information Act request made in February 2011 resulted in the receipt of a list showing all the carriers in the Straight-5 Safety Group. At the time there were 110 carriers; as of Aug 2012 that number had dropped to 93. By entering each of the carriers' DOT numbers into the FMCSA website, a chart was developed to monitor the Unsafe Driving measurement score and percentile ranking of each carrier in the group. This chart is provided at the end of this paper, in addition to the small sample provided below. It reveals how the measurement score for each carrier translates into a percentile score between 0 and 100. It also reveals the problem with using percentile scores as a determination of carrier's actual performance in the category.

CARRIER NAME	TRKS	#INSP	INSP W/VIOL	UD MEASURE	UD SCORE
DEALERS CHOICE TRUCKAWAY	1027	960	91	0.56	67.0
IRON MOUNTAIN INFO MGMT	1592	1302	97	0.60	68.1
PANTHER EXPEDITED SERVICES	1054	3085	240	0.60	69.2
GRAEBEL VAN LINES INC	821	1181	99	0.60	71.4

This small sampling illustrates the problem of the percentile system. Three of the four carriers listed (including Panther) have the same measurement score, taken to two decimal places, yet there is a three point separation in the percentile score. This tight grouping is repeated throughout the chart, with the potential result being wild swings in the percentile score from one month to the next, even if the carrier's measurement goes up or down by just 0.01 point.

As all carriers strive to improve their score within the category, the other issue with percentiles becomes apparent. If a group of carriers are reducing their measurement score at the same rate from one month to the next, they will keep the same percentile score as well. This presents the false impression that the carrier is not making any progress in improving their score, despite evidence to the contrary:



Looking at the two charts together, Panther's Unsafe Driving measurement score has dropped from 1.10 in December 2010 (the month the scores were first made public) to 0.67 in May 2012. This represents a 40% improvement in the score in 18 months. Our percentile score, however, actually went UP 0.1% over the same period of time, from 72.8 to 72.9. This graphically shows the most obvious flaw in the system, in its current form. Despite this, the FMCSA, shows this percentile score to the public, and advises shippers and brokers to use this score to determine which carriers are safe to use. We believe this practice must stop immediately.

The Solution:

An adjustment in the methodology, replacing the percentile score with a "hard target" score based solely on the measurement score, would allow carriers to convey a specific time frame, based on a month-to-month record of improvement, to reduce their score below the hard target score within a prescribed time frame, and could share this information with their present and future customers.

Summary:

The FMCSA has indicated their intention to use a hard target scoring system when they produce their Safety Fitness Determination (SFD) scoring system in the first quarter of 2013. While this is an encouraging first step, it also underscores the importance of hiding the percentile scores from public view to prevent the potential loss of business and vicarious liability lawsuits that would result from the use of such biased, inaccurate scores.

Presented by:

Irwin Shires
Panther Expedited Services
Seville, OH
September 26, 2012

DOT #	LEGAL_NAME	TRKS	UD MEASURE	UD SCORE
16130	RYDER TRUCK RENTAL INC	101317	0.02	0.0
86876	FEDERAL EXPRESS CORP	30857	0.04	1.0
21800	UNITED PARCEL SERVICE INC	97370	0.07	2.1
101328	ASPLUNDH TREE EXPERT CO	7641	0.08	3.2
327574	PENSKE TRUCK LEASING CO	29644	0.09	4.3
926150	FRITO LAY SALES LP	6199	0.09	5.4
342305	TRUGREEN CHEMLAWN LTD	6432	0.10	6.5
773524	IBC TRUCKING LLC	6656	0.12	7.6
1203339	CROP PRODUCTION SERVICES	4637	0.14	8.7
53433	UNION PACIFIC RAILROAD CO	3444	0.17	9.8
403881	RSC EQUIPMENT RENTAL	2335	0.17	10.9
523181	ALLIED WASTE SERVICES LLC	2373	0.18	12.0
242281	HERITAGE OPERATING L P	2475	0.19	14.2
281683	BNSF RAILWAY CO	2704	0.20	15.3
99905	MICHELS CORPORATION	2677	0.20	16.4
647378	EARTHGRAINS BAKING CO LLC	3645	0.20	17.5
29619	CSX TRANSPORTATION INC	2614	0.21	19.7
265752	FEDEX GRD PACKAGE SYSTEM	30057	0.22	20.8

714483	DEAN TRANSPORTATION	2023	0.23	21.9
108029	SCHWANS HOME SERVICE INC	5819	0.23	23.0
282018	FERGUSON ENTERPRISES INC	2010	0.24	24.1
221707	ARAMARK UNIFORM APPAREL	3543	0.24	25.2
500579	SUNBELT RENTALS INC	2134	0.25	26.3
987199	BRIDGESTONE AMERICAS TIRE	1961	0.27	27.4
155682	DS WATERS OF AMERICA INC	2077	0.28	28.5
273286	HORIZON TRANSPORT INC	679	0.28	29.6
962089	BFI WASTE SERVICES LLC	2185	0.29	30.7
86873	HELENA CHEMICAL COMPANY	1914	0.31	31.8
400989	PROBUILD LLC	4166	0.31	32.9
124419	CHS INC	2423	0.32	34.0
324244	ALSCO INC	1675	0.32	35.1
388004	AMERIGAS PROPANE LP	3997	0.32	36.2
104165	KRAFT FOODS GLOBAL INC	1193	0.33	37.3
180743	CLEAN HARBORS ENVIRO SERV	1962	0.33	38.4
471318	DARLING INTERNATIONAL	926	0.33	39.5
132504	COMPASS GROUP USA	2466	0.33	40.6
88111	HD SUPPLY INC	1429	0.34	41.7
899748	UNITED RENTALS N AMERICA	1129	0.37	43.9
397962	STERICYCLE INC	1565	0.38	45.0
420647	SOUTHERN WINE & SPIRITS	1428	0.39	46.1
89243	FERRELLGAS L P	2986	0.41	47.2
363	AARON RENTS INC	2322	0.42	48.3
465185	QUALITY DRIVE AWAY INC	734	0.42	49.4
164025	FEDEX CUSTOM CRITICAL INC	1422	0.44	50.5
171830	KA BULK TRANSPORT LLC	577	0.45	51.6
151288	SAFETY-KLEEN SYSTEMS INC	1632	0.46	52.7
198783	DREYER'S GRAND ICE CREAM	962	0.49	54.9
97235	LOWE'S HOME CENTERS INC	4550	0.51	56.0
175882	AMERICAN TIRE DISTRIBUTORS	700	0.53	57.1
226673	SUTTLES TRUCK LEASING INC	529	0.53	58.2
349013	TIRE CENTERS LLC	740	0.53	59.3
244311	TRI-STATE EXPEDITED SERVICES	451	0.54	60.4
50039	EXEL DIRECT INC	646	0.55	61.5
63904	UNIFIRST CORPORATION	1693	0.55	62.6
1278850	SPECIALIZED TRANSPORTATION	675	0.55	63.7
387474	FRESENIUS USA MFG INC	409	0.56	65.9
255166	DEALERS CHOICE TRUCKAWAY	1027	0.56	67.0
338113	IRON MOUNTAIN INFO MGMT	1592	0.60	68.1
500737	PANTHER II TRANSPORTATION	1054	0.60	69.2
220843	GRAEBEL VAN LINES INC	821	0.60	71.4
104154	L & W SUPPLY CORP	827	0.62	73.6
572263	BUILDER SERVICES GROUP INC	1612	0.63	74.7
1719074	CEVA FREIGHT LLC	1119	0.64	75.8
342596	H T HACKNEY CO	550	0.65	76.9
1153892	SHRED-IT USA INC	472	0.67	77.5
460019	EXPRESS-1 TRANSPORT	367	0.68	78.0

125563	MAYFLOWER TRANSIT LLC	3068	0.70	79.1
251000	AMER BUILD & CONTR. SUPPLY	2371	0.70	80.2
76029	BEKINS VAN LINES LLC	969	0.72	81.3
76235	ALLIED VAN LINES INC	2188	0.73	82.4
50504	FARMER BROTHERS CO	679	0.75	83.5
17765	JOSEPH ELETTO TRANSFER INC	298	0.82	84.6
70851	NORTH AMERICAN VAN LINES	1676	0.83	85.7
70719	WHEATON VAN LINES INC	958	0.83	86.8
254513	LIBERTY TRANSPORTATION INC	230	0.85	87.9
271225	DEFFENBAUGH INDUSTRIES	548	0.90	89.0
125550	ATLAS VAN LINES INC	3876	0.98	90.1
49922	ARPIN VAN LINES INC	657	1.05	91.2
72029	STEVENS VAN LINES INC	617	1.06	92.3
256677	COVAN WORLDWIDE MOVING INC	493	1.11	93.4
76628	NATIONAL VAN LINES INC	272	1.11	94.5
726855	HOME CITY TRANSPORT INC	607	1.50	96.7
941172	LKQ CORPORATION	454	2.17	98.9

IME
institute of makers of explosives

The safety and security institute of the commercial explosives industry since 1913

September 10, 2012

The Honorable John J. Duncan
Chairman
Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

The Honorable Peter A. DeFazio
Ranking Member
Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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

Dear Mr. Chairman and Representative DeFazio:

On behalf of the members of the Institute of Makers of Explosives (IME), I am submitting a statement for the record of the hearing you are holding to evaluate the effectiveness of the truck and bus safety program administered by the U.S. Department of Transportation's (DOT) Federal Motor Carriers Safety Administration (FMCSA) on September 13, 2012.

Interest of IME

The IME is the safety and security institute of the U.S. commercial explosives industry. Our mission is to promote safety and the protection of employees, users, the public and the environment; and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations. The Institute does not sponsor trade shows or other marketing events.

Among our members are for-hire and private motor carriers that transport commercial explosives, blasting agents, and precursor chemicals that are used in every state of the Union. Virtually all of the over three million metric tons of explosives products and blasting agents consumed annually in the United States are transported by truck. These materials are regulated as hazardous materials and are moved in quantities requiring placards. No deaths have been attributed to the transportation of commercial explosives since the 1970s.

FMCSA oversees the safety of motor carriers transporting placarded quantities of the Division 1.1, 1.2, or 1.3 explosives, and other specified hazardous materials, by requiring that these carriers have a "satisfactory" safety rating and obtain a Hazardous Materials Safety Permit (HMSP). A safety rating is determined by a compliance review. A compliance review is an on-site examination of motor carrier operations and safety controls. To obtain a HMSP, a motor carrier must not have a crash rate, or driver, vehicle or hazardous materials (HM) Out-of-Service (OOS) rate in the top 30 percentile of the national average. None of the witnesses scheduled to

testify at this hearing are among the universe of motor carriers subject to these stringent requirements. Thus, we hope that our comments will provide yet another perspective on FMCSA's truck safety priorities and initiatives.

Compliance, Safety, Accountability (CSA)

On-site compliance reviews are resource intensive. Given the relative ease of entry into trucking, FMCSA has not been able to keep up with the number of compliance reviews that would be required for new entrants or to consistently relook at the performance of motor carriers with safety ratings, some of which are over a decade old. These realities prompted the search for a new way to evaluate the safety performance of motor carriers that would focus FMSCA's limited inspection resources on the carriers presenting risks that would likely result in crashes, fatalities, and injuries on our nation's highways. For decades the agency has used an automated, data-driven analysis system known as SafeStat to identify and prioritize carriers for on-site compliance reviews. But, SafeStat was still identifying too many carriers to keep pace. CSA was launched at the end of 2010 as a more intuitive replacement for SafeStat. At this time, FMCSA uses CSA as a pointer to flag at risk carriers so that timely and appropriate intervention can be taken by the agency to address identified deficiencies. However, FMCSA envisions this program to be more than a pointer system. The agency intends that CSA will replace compliance reviews as the means to determine a carrier's safety fitness.

This evolution of the CSA program from a pointer system to a means to determine safety fitness is very concerning given the consequences for less than satisfactory safety fitness ratings. Carriers have begun to see the results of the CSA data calculations and question whether the metrics and weights in fact correlate to actual crash risk. We join with others who have cited concerns with the accuracy of the data and the questionable methodology. Motor carriers are within their rights to raise concerns about inspection subjectivity, regional disparities, and being held accountable to crashes when the carrier is not at fault. It is not out of bounds to expect that the weights assigned to violations would be reflective of crash risk, or to expect agreement about what qualifies as an inspection and that clean inspections would be recorded. Finally, as long as CSA is a pointer system, FMCSA should not leave it up to third-parties to interpret the results. Before FMCSA even begins to contemplate turning this program into its safety fitness determination standard, these over-arching concerns must be addressed.

We credit FMCSA for meeting with stakeholders and testing some changes in order to perfect the CSA program. However, this initiative still has a long way to go. Sometimes a step forward in one area may also result in a step back in another. FMCSA's approach to identifying hazmat carriers at risk of causing crashes highlights outstanding flaws in the CSA program. While we agreed with FMCSA that it makes sense to establish a separate "HM" BASIC applicable only to hazmat carriers, we are very troubled by exclusions from the definition of who is a hazmat carrier, and by the severity weightings of HM violations in the absence of research showing that these violations cause crashes.

FMCSA defines a hazmat carrier as any carrier with placarded hazmat activity in the prior two years. We agree that this should be the triggering threshold. However, the agency proposes to exclude from this universe of hazmat carriers those that inadvertently transport placarded hazmat loads or that transport only a small percentage of placarded loads. We oppose these exclusions. As FMCSA knows, one of the biggest hazmat safety risks is the transport of undeclared materials. In the last five years, 74 percent of incidents involving Class 1 materials were undeclared. Furthermore, whether a carrier transports one hazmat load or more, each shipment is subject to the same rigorous safety and security requirements. The consequences of non-compliance with these requirements have never been dependent on whether or not a carrier performed a covered hazmat transportation activity some minimum number of times. All carriers engaged in the transport of placardable quantities of hazardous materials should be held to the same standards. Carriers should be sufficiently motivated to train their employees and to follow applicable regulations or take steps, like "will-not carry" airlines, to ensure that they do not "inadvertently" transport placardable quantities of hazardous materials. Where other modal administrations provide disincentives for carriers to casually engage in the transportation of placardable loads of hazardous materials, FMCSA's proposed policy abets this practice.

We agree with FMCSA that the greatest predictors of crash risk are found in the Unsafe Driving and Fatigued Driving BASICs. While the presence of hazardous materials in cargo may exacerbate the consequences of crashes, we do not believe that the presence of hazardous material is a predictor of crashes. FMCSA agrees with us. But rather than pare down the hundreds of violations that are now part of this metric to those few where the presence of hazmat may have a causal link to crash outcomes, the agency simply renamed the HM BASIC, the HM "Compliance" BASIC. In short, FMCSA has changed the intended purpose of CSA for hazmat carriers from one that predicts crashes to one that monitors regulatory compliance. We object to this mission creep.

Additionally, some of the listed hazmat violations under this BASIC are arguably not even the carrier's responsibility. For example, hazmat violations dealing with marking or package testing are usually a shipper responsibility. Yet, they are respectively assigned weights of 5 and 7 on a scale of 1 to 10. Finally, we note that all hazmat securement violations are weighted at 10. We assume that the point of this ranking is that an improperly secured load can destabilize a vehicle, and thus contribute to a crash. If this is the case, then all other load securement violations in the Vehicle Maintenance BASIC should be weighted at 10 as well. Instead, the highest weighting is 7.

FMCSA should not be allowed to side-step the issues and concerns of hazmat carriers by simply changing CSA's purpose for these carriers to one assessing regulatory "compliance," rather crash causation. FMCSA has other means to monitor and address regulatory non-compliance.

Hazardous Materials Safety Program

The CSA program commands the focus and attention of FMCSA to the detriment of other safety programs it administers. One such program is the HMSP program. Authorized by Congress in 1990 and implemented by FMCSA in 2005, this program is what the agency hopes CSA will be – the means to determine the fitness of covered carriers. It is nearing the end of its fourth permitting cycle.

As originally envisioned, the program was only supposed to disqualify the worst 30 percent of carriers who transport specified hazardous materials not already in possession of a "satisfactory" safety rating. The premise underlying the establishment of the HMSP program was that it was going to prevent seven hazmat truck-related crashes per year. FMCSA stated that the safety benefits to be derived from the projected crash reductions would be "large because of the number of conventional crashes that may be prevented." This has not proved to be the case. Analysis of the data collected during the seven years of the HMSP and during the seven years immediately preceding the implementation of the HMSP shows that the HMSP program has had almost no effect on crash rates:

Comparison of Safety Data from the Seven Years Before and Since the HMSP

HMSP Material	1998-2004		2005-2011		All Hazmat Highway Incidents			
					1998-2004		2005-2011	
	Crashes	Fatalities	Crashes	Fatalities	Crashes	Fatalities	Crashes	Fatalities
Explosives (25 kg. 1.1, 1.2, 1.3 & placarded 1.5)	35	0	25	0				
RAM (HRCQ*)	4	0	1	0				
TIH	47	0	51	0				
Methane	4	0	3	0				
TOTAL	**90**	**0**	**80**	**0**	**2190**	**62**	**2156**	**61**

Data from the Hazardous Materials Information System (HMIS), 6/14/2012.
* It may be that none of these crashes are highway route controlled quantities (HRCQ). From the data in HMIS, it was possible to eliminate some incidents that were clearly not HRCQ. Where there was doubt the incident was counted.

FMCSA has realized neither the reduction in crash magnitude nor severity expected after the permit was established. At the same time, examination of the HMSP program and its regulatory history has revealed due process omissions and a program-changing clerical error that negates the option to obtain a HMSP based on a carrier's satisfactory safety rating. As a

result of these flaws, require all carriers, even those with satisfactory safety ratings, must maintain a crash rate, and driver, vehicle and HM OOS rates below the 30 percentile of the national average. The cumulative effect of the arbitrary 30 percent disqualification thresholds could technically disqualify every carrier who applies. In practical terms, the collective thresholds raise the disqualification rate to a level higher than 30 percent. These regulatory defects, which expose covered carriers to the risk of being shut down by as few as two, point-in-time, non-crash causal OOS violations with no appeal, are neither justified nor equitable. Nor are they what Congress intended when this program was authorized.

As you know, Congress recently enacted the Moving Ahead for Progress in the 21st Century Act (MAP-21). Section 33014 of this legislation directs FMCSA to initiate a rulemaking, by July 6, 2014, to reform the HMSP unless the agency publishes a justification in the Federal Register for why a rulemaking is not necessary. FMCSA has recognized that the program is in need of reform and accepted a petition for rulemaking in 2011. However, in accepting the petition, the agency stated that the rulemaking would have to wait until the CSA safety fitness determination rule was finalized. Meanwhile, our members and other HMSP holders continue to be subject to a flawed program that harms good carriers for reasons, in most cases, that are not causal factors in vehicle crashes.

Given the agency's regulatory priorities, we have asked that FMCSA provide interim relief in advance of full HMSP reform rulemaking by providing carriers an alternative way to demonstrate their safety fitness other than waiting to "age out" of disqualifying OOS violations that are not linked to crash causation. Specifically, we have asked FMCSA to allow any carrier, except those presenting an imminent hazard or demonstrating a pattern of non-compliance, the option to request a full review of its safety management controls and an opportunity, if appropriate, to file a corrective action plan prior to denying the carrier its HMSP. We were thrilled that Congress directed FMCSA to consider providing such an additional level of review as an element of HMSP program reform. This remedy is necessary because the majority of HMSP holders are carriers whose operations generate infrequent inspections. For these carriers, recovering from as few as two OOS violations in the 12 months before the carrier's HMSP expires can be a mathematical impossibility. This is particularly troubling when the OOS violation is not an underlying factor of vehicle crashes. As noted above, this is the case with many hazmat OOS violations.

Let us explain. The HM OOS rate is now 6.82%. At the 6.82% HM rate, a carrier with two HM OOS, from three or more inspections during the final 12 months of the permit, would need to have at least 27 "clean" inspections to fall below 6.82%. Our members average only 14 inspections a year. In short, two HM OOS in a 12 month period is a virtual "out-of-business" order for these carriers. Please consider the following:

(1) The closer to the expiration of the HMSP that a carrier receives an OOS violation that puts it underwater in terms of clean inspections, the more difficult it is to generate the number of "clean" inspections needed to get above water again; there simply is not enough time.
(2) Each additional HM OOS will require another 14 "clean" inspections.

(3) A carrier may no longer request inspections in an effort to obtain "clean" inspections.
(4) CVSA has been unable to reach a policy determination regarding what constitutes and should be recorded as a "clean" inspection.
(5) Inspections are not random, nor should they be with limited resources. Inspections are targeted to vehicles/drivers that appear to have compliance issues. In short, it is harder to get a "clean" inspection than it is to get one with an OOS violation.
(6) OOS violations can be subjective; for example, those involving cargo securement.
(7) The vast majority of carriers subject to the HMSP operate specialized trucks that cannot be used to transport other goods while waiting to "age out" of OOS violation histories.
(8) HMSP holders are among the safest operators on the road.
(9) Providing an additional level of safety fitness review does not compel FMCSA to allow carriers to continue to hold HMSPs; it will enhance the agency's assessment capabilities.

It is uncertain when FMCSA will be able to finalize the HMSP rulemaking mandated by Congress. In the meantime, the agency has refused to use its discretion to ensure that "fit" carriers are not put out of business based on insufficient data anomalies. Regrettably, the agency argues that MAP-21 precludes it from providing the interim relief we seek because Congress mandated a study to identify HMSP program deficiencies before taking regulatory action. MAP-21 sets deadlines by which action to reform the HMSP must be done, but nothing in MAP-21 prevents the agency from acting in advance of those deadlines. Accordingly, we ask the Subcommittee to urge FMCSA to reconsider its position on this matter and to promptly issue an interim final rule or take other administrative action to allow a permit holder to request an additional level of review prior to denying a carrier its HMSP, except in cases presenting an imminent hazard or demonstrating a pattern of non-compliance.

Again, we share FMCSA's commitment to safety. That said, inspection frequency and outcome do not seem to correlate to crashes or fatalities for carriers subject to the HMSP. Providing carriers an opportunity for additional review of their safety controls and to take corrective actions will still enable FMCSA to ensure that only fit carriers are allowed to transport materials subject to the HMSP.

Conclusion

Given the diversity of motor carriers, the task of FMCSA to craft a comprehensive safety assessment program that is reasonable, fair, and transparent is daunting. What is clear is that CSA is not ready for prime time. Yet, in the meantime, hazmat carriers subject to the flawed HMSP program have been told that reform will not be forthcoming until rules are finalized establishing CSA as the agency's new safety fitness determination program. The agency's intransigent position is destabilizing to the affected industry and should not be tolerated.

We are encouraged that the Subcommittee is looking into the serious issues raised by stakeholders affected by FMCSA's administration of its safety program. As FMCSA works to perfect the CSA program in advance of rulemaking to recommend it as a replacement for the SafeStat program, Congress should ensure that the program meets the goals of the agency to

be a predictor of crash risk and that it not repeat the mistakes of the HMSP. Finally, we ask the Subcommittee to urge FMCSA to provide requested interim relief to HMSP holders who are facing unjustified disqualification under this flawed program.

Respectfully,

Cynthia Hilton

Cynthia Hilton
Executive Vice President

Parents Against Tired Truckers and Citizens for Reliable and Safe Highways

October 3, 2012

The Honorable John J. Duncan, Jr.
Chairman
Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
B-376 Rayburn House Office Building
Washington, DC 20515

The Honorable Peter A. DeFazio
Ranking Member
Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
B-375 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Duncan and Ranking Member DeFazio,

I am writing on behalf of the Truck Safety Coalition (TSC) in response to your Subcommittee's September 13th hearing, "Evaluating the Effectiveness of DOT's Truck and Bus Safety Program." The TSC is a partnership of the Citizens for Reliable and Safe Highways (CRASH) Foundation and Parents Against Tired Truckers (P.A.T.T.). We are dedicated to reducing the number of preventable deaths and injuries caused by truck-related crashes, providing compassionate support to truck crash survivors and families of truck crash victims, and educating the public, policy-makers and media on truck safety issues. The TSC would like to respectfully submit documentation into the official hearing transcript record. This documentation provides case studies in which the Police Accident Report (PAR) was missing information, contained incorrect information, or both. The case studies are indicative of the limitations of PARs as a determining factor of fault or preventability in a truck crash and support the TSC's opposition to changes being considered to the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, Accountability (CSA) Program.

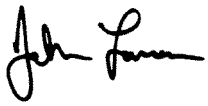
During the hearing, Steve Owings testified on behalf of the Truck Safety Coalition. His testimony focused on changes being considered to crash data maintained within the CSA Crash BASIC, thresholds for intervention, and the necessity of preserving public access to information. Mr. Owings urged for caution in response to the changes being considered in order to preserve the high performing, CSA Program, "...it is essential that the Program retains the ability to efficiently analyze data for timely intervention, that it is cost effective given FMCSA's limited resources, and that it remains fair to truck crash victims and their surviving family and friends." Of particular concern is the change to the CSA Crash BASIC data, which would rely on the Police Accident Report (PAR) to determine fault and preventability. Mr. Owings noted that PARs often lack complete and accurate information and in fact do not even include information on crash preventability. As he shared with Members of the Subcommittee, this was the case with the crash that killed his son Cullum. Had his son Pierce not survived this horrific crash, they would have never known the truth that the truck driver lied about the events leading up to the crash and that it was the truck driver, and

not Cullum, whose actions caused the crash. Unfortunately, the truck driver's incorrect version of the crash is the only eyewitness account that is noted in the PAR for the Owings crash.

Attached are five case studies which provide examples of incorrect and incomplete PARs, and demonstrate how they are inadequate to answer the questions of why or how a crash occurred above and beyond what has been reported by the conscious survivors. The studies detail how incorrect and incomplete PARs may also lead to erroneous charges being filed and explain why PARs should not be used as the deciding factor in determining fault or preventability in truck crashes.

Thank you for your time and consideration of the case studies and our concerns with the changes being considered to the Crash BASIC. We look forward to continuing to work with the Subcommittee on Highways and Transit, as well as the Committee on Transportation and Infrastructure, to support improvements to truck safety and to make America's roads safer.

Sincerely,



John Lannen
Executive Director

Aguilar Crash

Truck driver neglected to properly secure car on trailer, chose not to pull onto the shoulder or into an available driveway, stopped in a lane of traffic and then failed to use warning signs or triangles

PAR did not note crucial information or violations and placed car driver "at fault"

On December 13, 2007, a United Road Transport tractor-trailer hauling cars, was stopped at night, in a moving lane of traffic, in a 50 mph speed limit zone. The tractor-trailer had picked up its last car in Houston and was heading to San Antonio. As the truck turned the corner to drive onto the three lane 50 mph service road, the driver and his assistant realized that the car they had just loaded was not chained down. They should have realized this during the pre-trip inspection, but they neglected to perform this vital safety measure after loading the last car and before beginning their trip. They proceeded to drive 1/4 mile down the 50 mph road, choosing to stop in a lane of traffic and make the necessary repairs to secure the car, rather than safely pulling into one of two available driveways or off onto the side of the road and out of the lane of traffic.

Sean Matthew Aguilar, was driving to pick up his girlfriend and take her to a church recital. He was traveling at the speed limit, approximately 50 mph, when the car in front of him quickly changed lanes. Sean was suddenly confronted with a stopped tractor trailer in the right lane of traffic and was unable to avoid crashing into the back of the trailer. Sean suffered a traumatic head injury, a fractured pelvis, and a fractured wrist.

The truck driver claimed that the trucks two rear flashers were on but that he did not use or display any triangles or warning signs which were readily available as part of the truck's emergency kit. The truck driver's excuse was that they were only going to be there for a couple of minutes and that they were not stopped in a moving lane of traffic. The assistant driver admitted that they were in the right lane of traffic. He also admitted that in the quarter mile stretch they continued driving after they realized there was a problem with their load, that there were multiple places that they could have safely pulled off the road, including two driveways and areas on the grassy shoulder, but that they did not.

The police officer at the scene did not investigate why the truck had stopped. Thepolice officer had limited knowledge of Federal Motor Carrier Safety Regulations (FMCSRs) and Commercial Driver's License (CDL) requirements for warning triangles. The officer claimed that it was perfectly legal for an 18 wheeler to stop in a moving lane so long as it had flashers on. The officer blamed the car, claiming that it "failed to control its speed" and may have been "following too closely" to the car in front of it. The Police Accident Report (PAR) never mentioned the truck driver's failure to place warning devices or to inspect and properly load the auto transport before leaving the loading facility.

The officer in this case is wrong, and admitted that he had no Commercial Motor Vehicle (CMV) training or experience and does not do CMV inspections. Texas law adopts the FMCSR, and it mandates that warning flashers be immediately turned on and that as soon as possible, the warning triangles be placed at 10', 100', and 200' behind the trailer (392.22 (a), (b)(1) and (v)). It is now known that the truck was there for over an hour before the wreck happened, but the truck driver claimed he was there only two to three minutes. Now that the officer has seen the relevant FMCSR's (392.1; 392.2; 392.9(a)(1), (2) and (b)(1); 392.22(a), (b)(1) and (v)) he agrees that this wreck would not have happened but for these violations. Today, he would ticket the truck driver and add the truck driver's violations to the causes of the crash.

The investigating officer's failure to fully investigate the circumstances surrounding why the truck stopped and the officer's limited knowledge of FMCSR regulations resulted in an incomplete investigation and an incorrectly written PAR. Had the investigating officer known that the truck driver should have taken precautionary actions to warn oncoming drivers when he decided to stop in an active lane of traffic, he would have been obligated to note the truck driver's failure to do so on the PAR. The varying level of knowledge of FMCSRs required by police officers from state to state is a great hindrance to fully investigating and determining causation in a crash.

"Not-at-fault" is NOT equivalent to "non-preventable." In the Aguilar crash, the tractor trailer driver could have taken reasonable steps to have avoided the crash, such as performing a safety inspection before beginning the trip, pulling off the roadway before stopping rather than stopping in a lane of traffic and simply putting out the triangles he admits were sitting behind his seat. These actions would have helped to prevent the crash, though failure to do so, would not automatically have resulted in the truck driver being found "at fault" in the crash. "Fault" and "preventability" are related but not identical concepts and it cannot be assumed that one proves the other.

This truck driver admits to a similar crash several years earlier, at night without the warning triangles placed out. He claims the El Paso Police reached the same conclusion that the officer did in this case – the car that hit him from the rear was at fault, despite there being no warning devices.

Inc# [redacted]

TEXAS PEACE OFFICER'S CRASH REPORT CR3 (Rev. 01/06) Submission of Crash Records: This report may be submitted via the CRIS Web Portal, electronically submitted via XML or mailed to the TEXAS DEPARTMENT OF PUBLIC SAFETY, PO BOX 4087, AUSTIN TX 78773-0350. Please see the DPS Instructions to Police for more details regarding these submission methods or look on the CRIS Website at http://www.txdps.state.tx.us/crisproject/index.htm

☐ FATAL ☒ CMV INVOLVED ☐ SCHOOL BUS RELATED ☐ RAILROAD RELATED ☐ MEDICAL ADVISORY BOARD ☐ HIT AND RUN ☐ AMENDMENT/ SUPPLEMENT

PLACE WHERE CRASH OCCURRED
COUNTY: HARRIS CITY OR TOWN: HOUSTON
IF CRASH WAS OUTSIDE CITY LIMITS INDICATE FROM NEAREST TOWN: ____ MILES ☐N ☐S ☐E ☐W OF MAJOR AUTO & TRUCK 16/30

LOC #: ____ ORI #: ____ DPS #: ____

ROAD ON WHICH CRASH OCCURRED: 5600 (BLOCK NUMBER) S. Sam Houston Pkwy W S/R W/B (STREET OR ROAD NAME) (ROUTE NUMBER OR STREET CODE)
CONSTRUCTION ZONE WORKERS PRESENT ☐ YES ☐ NO ☐ YES ☒ NO SPEED LIMIT 50

INTERSECTING STREET OR RR X'ING NUMBER: (BLOCK NUMBER) (STREET OR ROAD NAME) (ROUTE NUMBER OR STREET CODE)
CONSTRUCTION ZONE WORKERS PRESENT ☐ YES ☐ NO ☐ YES ☐ NO SPEED LIMIT

NOT AT INTERSECTION ____ ☐ FT. ☐ MI. ☐N ☐S ☐E ☐W OF
MILEPOST LATITUDE LONGITUDE

DATE OF CRASH: DEC (MONTH) 13 (DATE) 2007 (YEAR) DAY OF WEEK: THURSDAY HOUR: 6:00 ☐ AM ☒ PM IF EXACTLY NOON OR MIDNIGHT, SO STATE

UNIT # 1 | 1 1-MOTOR VEHICLE 2-TRAIN 3-PEDALCYCLIST 4-PEDESTRIAN 5-MOTORIZED CONVEYANCE 6-TOWED 7-NON-CONTACT 8-OTHER
VIN# [redacted] ALTERED VEHICLE HEIGHT ☐ YES ☒ NO

YEAR MODEL: 2000 COLOR & MAKE: TAN CHRYSLER MODEL NAME: SEBRING BODY STYLE: 2 DOOR LICENSE PLATE: [redacted]

DRIVER'S NAME: AGUILAR, SEAN MATTHEW (LAST, FIRST, MIDDLE) (ADDRESS (STREET, CITY, STATE, ZIP)) PHONE NUMBER: -

DRIVER'S LICENSE: TX (STATE) [redacted] (NUMBER) C (CLASS/TYPE) — (ENDORSEMENTS) — (RESTRICTIONS) [redacted] (DATE OF BIRTH) LICENSE STATUS: 1 (1-VALID 2-NOT VALID 3-SUSPENDED/REVOKED 4-CANCELLED/DENIED 5-EXPIRED 6-UNKNOWN)

DRIVER'S ETHNICITY: 1 (1-WHITE 2-HISPANIC 3-BLACK 4-ASIAN 5-OTHER) DRIVER'S SEX: ☒ MALE ☐ FEMALE DRIVER'S OCCUPATION: — POLICE, FIREFIGHTER, EMS, ON EMERGENCY ☐

TYPE OF ALCOHOL SPECIMEN TAKEN 1-BREATH 2-BLOOD 3-URINE 4-NONE 5-REFUSED: 4 TEST RESULTS: — TYPE OF DRUG SPECIMEN TAKEN 1-BLOOD 2-URINE 3-NONE 4-REFUSED: 3 TEST RESULTS: — DRUG CATEGORY: —

LESSEE ☐ OWNER ☒ (NAME OF LESSEE IF LEASED, OWNER/NAME SHOWN ON TITLE): SAME AS DRIVER (ADDRESS (STREET, CITY, STATE, ZIP))

LIABILITY INSURANCE ☐ YES ☒ NO ☐ EXP (INSURANCE COMPANY NAME): NONE (POLICY NUMBER) VEHICLE DAMAGE RATING: FD-3

UNIT # 2 | 1 1-MOTOR VEHICLE 2-TRAIN 3-PEDALCYCLIST 4-PEDESTRIAN 5-MOTORIZED CONVEYANCE 6-TOWED 7-NON-CONTACT 8-OTHER
VIN# [redacted] ALTERED VEHICLE HEIGHT ☐ YES ☒ NO

YEAR MODEL: 1997 COLOR & MAKE: RED PETERBILT MODEL NAME: TRACTOR BODY STYLE: — LICENSE PLATE: [redacted]

DRIVER'S NAME: [redacted] (LAST, FIRST, MIDDLE) (ADDRESS (STREET, CITY, STATE, ZIP)) PHONE NUMBER: [redacted]

DRIVER'S LICENSE: TX (STATE) [redacted] (NUMBER) A (CLASS/TYPE) — (ENDORSEMENTS) A (RESTRICTIONS) [redacted] (DATE OF BIRTH) LICENSE STATUS: 1 (1-VALID 2-NOT VALID 3-SUSPENDED/REVOKED 4-CANCELLED/DENIED 5-EXPIRED 6-UNKNOWN)

DRIVER'S ETHNICITY: 1 (1-WHITE 2-HISPANIC 3-BLACK 4-ASIAN 5-OTHER) DRIVER'S SEX: ☒ MALE ☐ FEMALE DRIVER'S OCCUPATION: DRIVER POLICE, FIREFIGHTER, EMS, ON EMERGENCY ☐

TYPE OF ALCOHOL SPECIMEN TAKEN 1-BREATH 2-BLOOD 3-URINE 4-NONE 5-REFUSED: ☐ TEST RESULTS: — TYPE OF DRUG SPECIMEN TAKEN 1-BLOOD 2-URINE 3-NONE 4-REFUSED: ☐ TEST RESULTS: — DRUG CATEGORY: —

LESSEE ☐ OWNER ☒ (NAME OF LESSEE IF LEASED, OWNER/NAME SHOWN ON TITLE): [redacted] (ADDRESS (STREET, CITY, STATE, ZIP)) 56

LIABILITY INSURANCE ☒ YES ☐ NO ☐ EXP (INSURANCE COMPANY NAME): Canal Ins. (POLICY NUMBER) [redacted] VEHICLE DAMAGE RATING: NONE

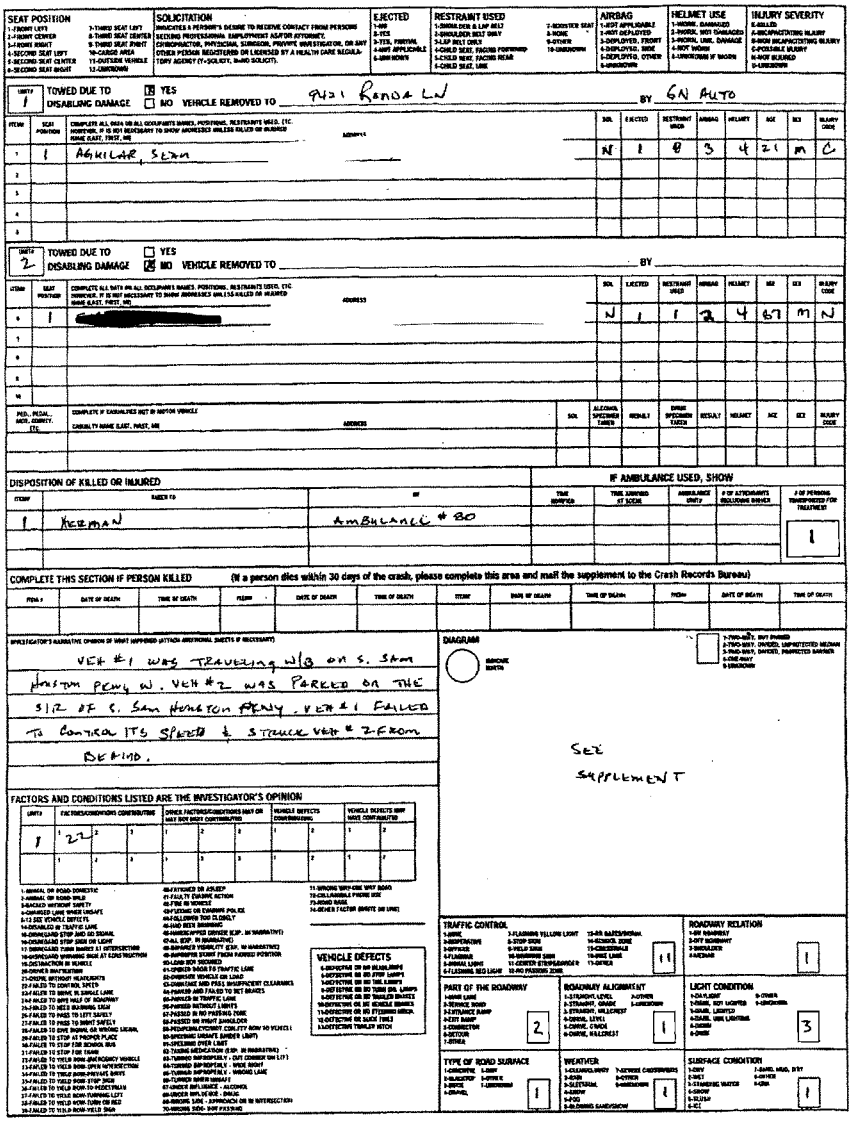
DAMAGE TO PROPERTY OTHER THAN VEHICLES
NONE (OBJECT) (NAME AND ADDRESS OF OWNER) (TEXT FROM CRIS) $ (DAMAGE ESTIMATE)

IN YOUR OPINION, DID THIS CRASH RESULT IN AT LEAST $1,000.00 DAMAGE TO ANY ONE PERSON'S PROPERTY? ☒ YES ☐ NO

CHARGES FILED
NAME: AGUILAR, SEAN CHARGE: ACCIDENT, NO INS. CITATION#: [redacted]
NAME: ____ CHARGE: ____ CITATION#: ____

TIME NOTIFIED OF CRASH: 12-13-07 (DATE) 1801 (TIME) HOW: DISPATCH TIME ARRIVED AT SCENE: 12-13-07 (DATE) 1808 (TIME) DATE OF REPORT: 12-13-07

TYPED OR PRINTED NAME OF INVESTIGATOR: [redacted] ID#: [redacted] AGENCY: H.P.D. DIST/AREA: 16/30 REPORT COMPLETE: ☒ YES ☐ NO



SEAT POSITION
1-FRONT LEFT 7-THIRD SEAT LEFT
2-FRONT CENTER 8-THIRD SEAT CENTER
3-FRONT RIGHT 9-THIRD SEAT RIGHT
4-SECOND SEAT LEFT 10-CARGO AREA
5-SECOND SEAT CENTER 11-OUTSIDE VEHICLE
6-SECOND SEAT RIGHT 12-UNKNOWN

SOLICITATION
(INDICATES A PERSON'S DESIRE TO RECEIVE CONTACT FROM PERSONS SEEKING PROFESSIONAL EMPLOYMENT ASAFDR ATTORNEY, CHIROPRACTOR, PHYSICIAN, SURGEON, PRIVATE INVESTIGATOR, OR ANY OTHER PERSON REGISTERED OR LICENSED BY A HEALTH CARE REGULATORY AGENCY (Y=SOLICIT, B=NO SOLICIT).

EJECTED
1-NO
2-YES
3-YES, PARTIAL
4-NOT APPLICABLE
9-UNKNOWN

RESTRAINT USED
1-SHOULDER & LAP BELT
2-SHOULDER BELT ONLY
3-LAP BELT ONLY
4-CHILD SEAT, FACING FORWARD
5-CHILD SEAT, FACING REAR
6-CHILD SEAT, UNK
7-BOOSTER SEAT
8-NONE
9-OTHER
10-UNKNOWN

AIRBAG
1-NOT APPLICABLE
2-NOT DEPLOYED
3-DEPLOYED, FRONT
4-DEPLOYED, SIDE
5-DEPLOYED, OTHER
9-UNKNOWN

HELMET USE
1-WORN, DAMAGED
2-WORN, NOT DAMAGED
3-WORN, UNK. DAMAGE
4-NOT WORN
5-UNKNOWN IF WORN
9-UNKNOWN

INJURY SEVERITY
K-KILLED
A-INCAPACITING INJURY
B-NON INCAPACITATING INJURY
C-POSSIBLE INJURY
N-NOT INJURED
9-UNKNOWN

UNIT # 1 — TOWED DUE TO DISABLING DAMAGE: [X] YES [ ] NO — VEHICLE REMOVED TO 9121 RONDA LN — BY 6N AUTO

ITEM#	SEAT POSITION	COMPLETE ALL DATA ON ALL OCCUPANTS (NAMES, POSITIONS, RESTRAINTS USED, ETC. HOWEVER, IT IS NOT NECESSARY TO SHOW ANONYMOUS WITNESS UNLESS KILLED OR INJURED) NAME (LAST, FIRST, MI)	ADDRESS	SOL	EJECTED	RESTRAINT USED	AIRBAG	HELMET	AGE	SEX	INJURY CODE
1	1	AGUILAR, SEAN		N	1	8	3	4	21	M	C
2											
3											
4											
5											

UNIT # 2 — TOWED DUE TO DISABLING DAMAGE: [ ] YES [X] NO — VEHICLE REMOVED TO ____ — BY ____

ITEM#	SEAT POSITION	COMPLETE ALL DATA ON ALL OCCUPANTS (NAMES, POSITIONS, RESTRAINTS USED, ETC. HOWEVER, IT IS NOT NECESSARY TO SHOW ANONYMOUS WITNESS UNLESS KILLED OR INJURED) NAME (LAST, FIRST, MI)	ADDRESS	SOL	EJECTED	RESTRAINT USED	AIRBAG	HELMET	AGE	SEX	INJURY CODE
6	1	[redacted]		N	1	1	2	4	67	M	N
7											
8											
9											
10											

PED., PEDAL., MOT. CONVEY., ETC.	COMPLETE IF CASUALTIES OUT OF MOTOR VEHICLE — CASUALTY NAME (LAST, FIRST, MI)	ADDRESS	SOL	ALCOHOL SPECIMEN TAKEN	RESULT	DRUG SPECIMEN TAKEN	RESULT	HELMET	AGE	SEX	INJURY CODE

DISPOSITION OF KILLED OR INJURED

ITEM#	TAKEN TO	BY
1	KEEMAN	AMBULANCE # 80

IF AMBULANCE USED, SHOW

TIME NOTIFIED	TIME ARRIVED AT SCENE	AMBULANCE UNITS	# OF ATTENDANTS (INCLUDING DRIVER)	# OF PERSONS TRANSPORTED FOR TREATMENT
				1

COMPLETE THIS SECTION IF PERSON KILLED (If a person dies within 30 days of the crash, please complete this area and mail the supplement to the Crash Records Bureau)

ITEM #	DATE OF DEATH	TIME OF DEATH	ITEM #	DATE OF DEATH	TIME OF DEATH	ITEM #	DATE OF DEATH	TIME OF DEATH	ITEM #	DATE OF DEATH	TIME OF DEATH

INVESTIGATOR'S NARRATIVE OPINION OF WHAT HAPPENED (ATTACH ADDITIONAL SHEETS IF NECESSARY)

VEH #1 WAS TRAVELING W/B ON S. SAM HOUSTON PKWY W. VEH #2 WAS PARKED ON THE S/R OF S. SAM HOUSTON PKWY. VEH #1 FAILED TO CONTROL ITS SPEED & STRUCK VEH #2 FROM BEHIND.

DIAGRAM

NORTH

1-TWO-WAY, NOT DIVIDED
2-TWO-WAY, DIVIDED, UNPROTECTED MEDIAN
3-TWO-WAY, DIVIDED, PROTECTED BARRIER
4-ONE-WAY
9-UNKNOWN

SEE SUPPLEMENT

FACTORS AND CONDITIONS LISTED ARE THE INVESTIGATOR'S OPINION

UNIT #	FACTORS/CONDITIONS CONTRIBUTING	DRIVER FACTORS/CONDITIONS MAY OR MAY NOT HAVE CONTRIBUTED	VEHICLE DEFECTS (CONTRIBUTING)	VEHICLE DEFECTS MAY HAVE CONTRIBUTED
1	1: 22, 2: , 3:	1: , 2: , 3:	1: , 2:	1: , 2:
	1: , 2: , 3:	1: , 2: , 3:	1: , 2:	1: , 2:

1-ANIMAL OR ROAD DOMESTIC
2-ANIMAL OR ROAD WILD
3-BACKED WITHOUT SAFETY
4-DAMAGED LANE WHEN UNSAFE
5-13 SEE VEHICLE DEFECTS
14-DISABLED IN TRAFFIC LANE
15-DRIVE AND STOP SIGN OR SIGNAL
16-DRIVE AND STOP SIGN OR LIGHT
17-DRIVE AND TURN MARKED AT INTERSECTION
18-DRIVE AND WRONG SIDE AT ZERO TRAFFIC
19-DISTRACTION IN VEHICLE
20-DRIVER'S DISTRACTION
21-DROVE WITHOUT HEADLIGHTS
22-FAILED TO CONTROL SPEED
23-FAILED TO DRIVE IN SINGLE LANE
24-FAILED TO GIVE HALF OF ROADWAY
25-FAILED TO HEED WARNING SIGN
26-FAILED TO PASS TO LEFT SAFELY
27-FAILED TO PASS TO RIGHT SAFELY
28-FAILED TO GIVE SIGNAL OR WRONG SIGNAL
29-FAILED TO STOP AT PROPER PLACE
30-FAILED TO STOP FOR SCHOOL BUS
31-FAILED TO STOP FOR TRAIN
32-FAILED TO YIELD ROW-ROADWAY VEHICLE
33-FAILED TO YIELD ROW-DRIVE INTERSECTION
34-FAILED TO YIELD ROW-PRIVATE DRIVE
35-FAILED TO YIELD ROW-STOP SIGN
36-FAILED TO YIELD ROW-TO PEDESTRIAN
37-FAILED TO YIELD ROW-TURNING LEFT
38-FAILED TO YIELD ROW-TURN ON RED
39-FAILED TO YIELD ROW-YIELD SIGN
40-ATTACKED BY ASSAILANT
41-FAULTY EVASIVE ACTION
42-FIRE IN VEHICLE
43-FLEEING OR EVADING POLICE
44-FOLLOWED TOO CLOSELY
45-HAD BEEN DRINKING
46-HANDICAPPED DRIVER (EXP. IN NARRATIVE)
47-ILL (EXP. IN NARRATIVE)
48-IMPAIRED VISIBILITY (EXP. IN NARRATIVE)
49-IMPROPER START FROM PARKED POSITION
50-LOAD BOX SECURED
51-OPERATING TOO FAST FOR TRAFFIC LANE
52-OVERSIZE VEHICLE OR LOAD
53-OVERTAKE AND PASS INSUFFICIENT CLEARANCE
54-PARKED AND FAILED TO SET BRAKES
55-PASSED IN TRAFFIC LANE
56-PARKED WITHOUT LIGHTS
57-PASSED IN NO PASSING ZONE
58-PASSED ON RIGHT SHOULDER
59-PEDACYCLIST/CONST. CONTR. ROW TO VEHICLE
60-SPEEDING UNSAFE (UNDER LIMIT)
61-SPEEDING OVER LIMIT
62-TAKING MEDICATION (EXP. IN NARRATIVE)
63-TURNED IMPROPERLY - CUT CORNER ON L/T
64-TURNED IMPROPERLY - WIDE RIGHT
65-TURNED IMPROPERLY - WRONG LANE
66-TURNED WIDE LEFT
67-UNDER INFLUENCE - ALCOHOL
68-UNDER INFLUENCE - DRUG
69-WRONG SIDE - APPROACH OR INTERSECTION
70-WRONG SIDE - NOT PASSING
71-WRONG WAY-ONE WAY ROAD
72-CELLULAR PHONE USE
73-ROAD RAGE
74-OTHER FACTOR (WRITE IN UNIT)

VEHICLE DEFECTS
1-BRAKES
2-STEERING
3-TIRE BLOWOUT
4-WORN OR SLICK TIRES
5-MOTORCYCLE TRAILER HITCH

TRAFFIC CONTROL
1-NONE
2-OFFICER
3-FLASHER
4-ANIMAL CAR
5-FLASHING RED LIGHT
6-FLASHING YELLOW LIGHT
7-STOP SIGN
8-YIELD SIGN
9-RAILROAD SIGN
10-RAILROAD FLASHER
11-CENTER STRIPE/BARRIER
12-NO PASSING ZONE
13-SCHOOL ZONE
14-RESIDENCE ZONE
15-CROSSWALK
16-BIKE LANE
17-OTHER
11

ROADWAY RELATION
1-ON NEAREST
2-OFF ROADWAY
3-SHOULDER
4-MEDIAN
1

PART OF THE ROADWAY
1-MAIN LANE
2-SERVICE ROAD
3-ENTRANCE RAMP
4-EXIT RAMP
5-CONNECTOR
6-DETOUR
7-OTHER
2

ROADWAY ALIGNMENT
1-STRAIGHT, LEVEL
2-STRAIGHT, GRADE
3-STRAIGHT, HILLCREST
4-CURVE, LEVEL
5-CURVE, GRADE
6-CURVE, HILLCREST
7-OTHER
8-UNKNOWN
1

LIGHT CONDITION
1-DAYLIGHT
2-DAWN, DUSK LIGHTED
3-DAWN, LIGHTED
4-DARK, UNLIGHTED
5-DARK, UNK LIGHTING
6-OTHER
7-UNKNOWN
3

TYPE OF ROAD SURFACE
1-CONCRETE
2-BLACKTOP
3-BRICK
4-GRAVEL
5-DIRT
6-OTHER
7-UNKNOWN
1

WEATHER
1-CLEAR/CLOUDY
2-RAIN
3-SLEET/HAIL
4-SNOW
5-FOG
6-BLOWING SAND/SNOW
7-SEVERE CROSSWINDS
8-OTHER
9-UNKNOWN
1

SURFACE CONDITION
1-DRY
2-WET
3-STANDING WATER
4-SNOW
5-SLUSH
6-ICE
7-SAND, MUD, DIRT
8-OTHER
9-OIL
1

INC# [redacted]

TEXAS PEACE OFFICER'S CRASH REPORT CR3-3 (Rev. 01/05) Submission of Crash Records: This report may be submitted via the CRIS Web Portal, electronically submitted via XML or mailed to the TEXAS DEPARTMENT OF PUBLIC SAFETY, PO BOX 4087, AUSTIN TX 78773-0320. Please see the DPS Instructions to Police for more details regarding these submission methods or look on the CRIS Website at http://www.txdps.state.tx.us/crisproject/index.htm.

☐ FATAL ☒ DMV INVOLVED ☐ SCHOOL BUS RELATED ☐ RAILROAD RELATED ☐ MEDICAL ADVISORY BOARD ☐ HIT AND RUN ☐ AMENDMENT/ SUPPLEMENT

PLACE WHERE CRASH OCCURRED
COUNTY HARRIS CITY OR TOWN HOUSTON
IF CRASH WAS OUTSIDE CITY LIMITS INDICATE FROM NEAREST TOWN _____ MILES ☐N ☐S ☐E ☐W OF MAJOR AUTO / TRUCK 16/30

LOC # _____
CRI # _____
DPS # _____

ROAD ON WHICH CRASH OCCURRED 5600 BLOCK NUMBER S. Sam Houston Pkwy N STREET OR ROAD NAME S/B w/o ROUTE NUMBER OR STREET CODE
CONSTRUCTION ZONE WORKERS PRESENT ☐ YES ☐ NO ☐ YES ☒ NO SPEED LIMIT 50
INTERSECTING STREET OR RR XING NUMBER _____ BLOCK NUMBER _____ STREET OR ROAD NAME _____ ROUTE NUMBER OR STREET CODE _____
CONSTRUCTION ZONE WORKERS PRESENT ☐ YES ☐ NO ☐ YES ☐ NO SPEED LIMIT _____
NOT AT INTERSECTION _____ ☐ FT. ☐ MI. ☐N ☐S ☐E ☐W OF _____ MILEPOST _____ LATITUDE _____ LONGITUDE _____

DATE OF CRASH DEC 13 2007 DAY OF WEEK THURSDAY HOUR 6:00 ☐ AM ☒ PM IF EXACTLY NOON OR MIDNIGHT, SO STATE

UNIT # 2A | 6 1-MOTOR VEHICLE 2-TRAIN 3-PEDALCYCLIST 4-PEDESTRIAN 5-MOTORIZED CONVEYANCE 6-TOWED 7-NON-CONTACT 8-OTHER
VIN# [redacted] ALTERED VEHICLE WEIGHT ☐ YES ☒ NO
YEAR MODEL 1989 COLOR & MAKE BLK JM BTM MODEL NAME TRAILER BODY STYLE AUTO TRANSPORTER LICENSE PLATE [redacted]
DRIVER'S NAME [redacted] 3 PHONE NUMBER [redacted]
DRIVER'S LICENSE [redacted] A — A [redacted] LICENSE STATUS 1 1-VALID 2-NOT VALID 3-SUSPENDED/REVOKED 4-CANCELLED/DENIED 5-EXPIRED 6-UNKNOWN
DRIVER'S ETHNICITY 1 1-WHITE 2-HISPANIC 3-BLACK 4-ASIAN 5-OTHER DRIVER'S SEX ☒ MALE ☐ FEMALE DRIVER'S OCCUPATION DRIVER POLICE, FIREFIGHTER, EMS, OR EMERGENCY ☐
TYPE OF ALCOHOL SPECIMEN TAKEN 1-BREATH 2-BLOOD 3-URINE 4-NONE 5-REFUSED 4 TEST RESULTS ___ TYPE OF DRUG SPECIMEN TAKEN 1-BLOOD 2-URINE 3-NONE 4-REFUSED 3 TEST RESULTS ___ DRUG CATEGORY ___
LESSEE ☐ OWNER ☒ SAME AS DRIVER
LIABILITY INSURANCE ☒ YES ☐ NO ☐ EXP Canal Ins. [redacted] VEHICLE DAMAGE RATING BD-2

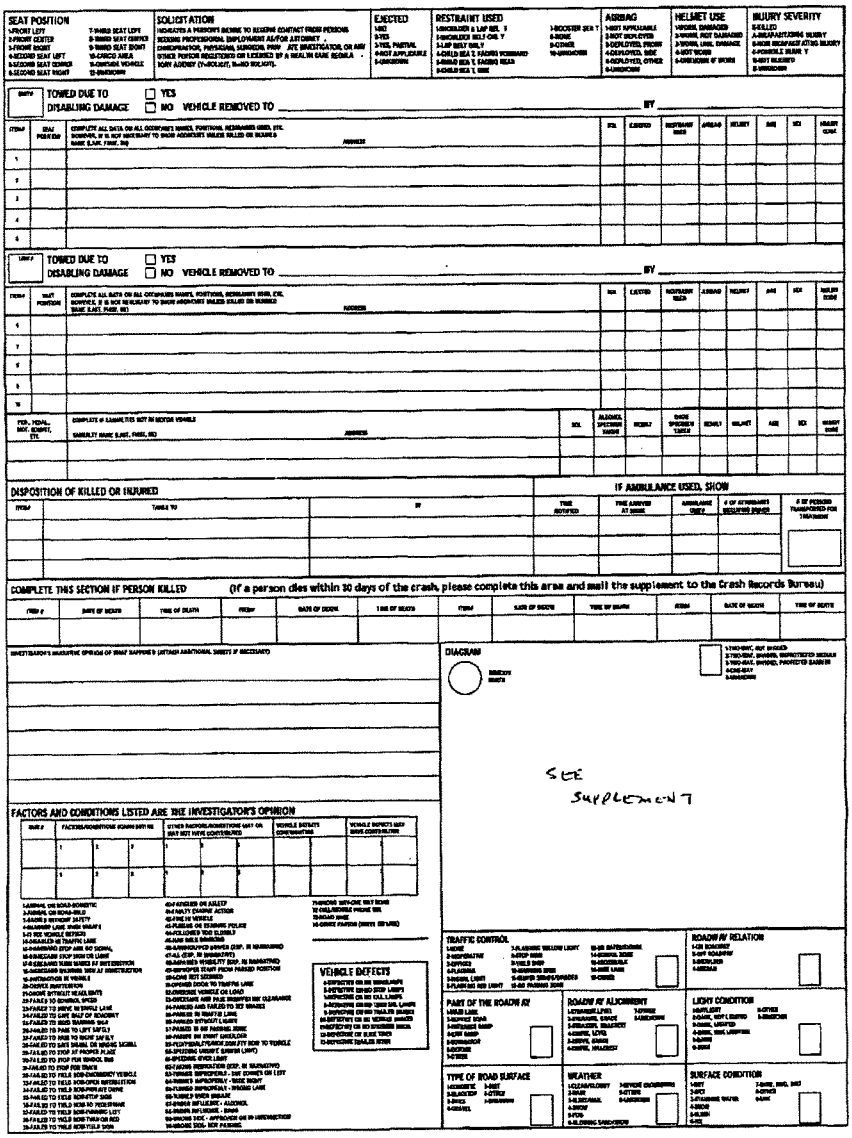
UNIT # ___ | ___ 1-MOTOR VEHICLE 2-TRAIN 3-PEDALCYCLIST 4-PEDESTRIAN 5-MOTORIZED CONVEYANCE 6-TOWED 7-NON-CONTACT 8-OTHER
VIN# _____ ALTERED VEHICLE WEIGHT ☐ YES ☐ NO
YEAR MODEL _____ COLOR & MAKE _____ MODEL NAME _____ BODY STYLE _____ LICENSE PLATE _____
DRIVER'S NAME _____ PHONE NUMBER _____
DRIVER'S LICENSE _____ LICENSE STATUS ___ 1-VALID 2-NOT VALID 3-SUSPENDED/REVOKED 4-CANCELLED/DENIED 5-EXPIRED 6-UNKNOWN
DRIVER'S ETHNICITY ___ 1-WHITE 2-HISPANIC 3-BLACK 4-ASIAN 5-OTHER DRIVER'S SEX ☐ MALE ☐ FEMALE DRIVER'S OCCUPATION _____ POLICE, FIREFIGHTER, EMS, OR EMERGENCY ☐
TYPE OF ALCOHOL SPECIMEN TAKEN 1-BREATH 2-BLOOD 3-URINE 4-NONE 5-REFUSED ___ TEST RESULTS ___ TYPE OF DRUG SPECIMEN TAKEN 1-BLOOD 2-URINE 3-NONE 4-REFUSED ___ TEST RESULTS ___ DRUG CATEGORY ___
LESSEE ☐ OWNER ☐ _____
LIABILITY INSURANCE ☐ YES ☐ NO ☐ EXP _____ VEHICLE DAMAGE RATING _____

DAMAGE TO PROPERTY OTHER THAN VEHICLES
_____ NAME AND ADDRESS OF OWNER _____ $ _____

IN YOUR OPINION, DID THIS CRASH RESULT IN AT LEAST $1,000.00 DAMAGE TO ANY ONE PERSON'S PROPERTY? ☒ YES ☐ NO

CHARGES FILED
NAME _____ CHARGE _____ CITATION# _____
NAME _____ CHARGE _____ CITATION# _____

TIME NOTIFIED OF CRASH 12-13-07 1801 HOW DISPATCH TIME ARRIVED AT SCENE 12-13-07 1808 DATE OF REPORT 12-13-07
TYPED OR PRINTED NAME OF INVESTIGATOR [redacted] ID# [redacted] AGENCY H.P.D. BEAT/AREA 16/30 REPORT COMPLETE ☒ YES ☐ NO



SEAT POSITION
SOLICITATION
EJECTED
RESTRAINT USED
AIRBAG
HELMET USE
INJURY SEVERITY

DRIVER — TOWED DUE TO DISABLING DAMAGE — ☐ YES ☐ NO — VEHICLE REMOVED TO _____ BY _____

ITEM # | SEAT POSITION | COMPLETE ALL DATA ON ALL OCCUPANTS (NAMES, POSITIONS, RESTRAINT USED, ETC. BOOKING, IF IS NOT NECESSARY TO SHOW ADDRESSES UNLESS KILLED OR INJURED) NAME (LAST, FIRST, MI) ADDRESS | SEX | EJECTED | RESTRAINT USED | AIRBAG | HELMET | AGE | SEX | INJURY SEVERE

1
2
3
4
5

UNIT # — TOWED DUE TO DISABLING DAMAGE — ☐ YES ☐ NO — VEHICLE REMOVED TO _____ BY _____

ITEM # | SEAT POSITION | COMPLETE ALL DATA ON ALL OCCUPANTS (NAMES, POSITIONS, RESTRAINT USED, ETC. BOOKING, IF IS NOT NECESSARY TO SHOW ADDRESSES UNLESS KILLED OR INJURED) NAME (LAST, FIRST, MI) ADDRESS | SEX | EJECTED | RESTRAINT USED | AIRBAG | HELMET | AGE | SEX | INJURY SEVERE

6
7
8
9
10

TYPE (PEDAL, MOT. SCOOT., ETC.) | COMPLETE # (ANIMALS) NOT IN MOTOR VEHICLE — OWNER'S NAME (LAST, FIRST, MI) ADDRESS | SEX | ALCOHOL SPECIMEN TAKEN | RESULT | DRUG SPECIMEN TAKEN | RESULT | HELMET | AGE | SEX | INJURY SEVERE

DISPOSITION OF KILLED OR INJURED

ITEM # | TAKEN TO | BY | IF AMBULANCE USED, SHOW: TIME NOTIFIED | TIME ARRIVED AT SCENE | AMBULANCE CALL # | # OF ATTENDANTS RESUSCITATION ASSIGNED | # OF PERSONS TRANSPORTED FOR TREATMENT

COMPLETE THIS SECTION IF PERSON KILLED (If a person dies within 30 days of the crash, please complete this area and mail the supplement to the Crash Records Bureau)

ITEM # | DATE OF NOTIFY | TIME OF DEATH | FROM | DATE OF DEATH | TIME OF NOTIFY | ITEM # | DATE OF NOTIFY | TIME OF DEATH | FROM | DATE OF NOTIFY | TIME OF NOTIFY

INVESTIGATOR'S NARRATIVE OPINION OF WHAT HAPPENED (ATTACH ADDITIONAL SHEETS IF NECESSARY)

DIAGRAM

SEE SUPPLEMENT

FACTORS AND CONDITIONS LISTED ARE THE INVESTIGATOR'S OPINION

UNIT # | FACTORS/CONDITIONS (CHOOSE UP TO 3) | OTHER FACTORS/CONDITIONS MAY OR MAY NOT HAVE CONTRIBUTED | VEHICLE DEFECTS CONTRIBUTED | VEHICLE DEFECTS MAY HAVE CONTRIBUTED

VEHICLE DEFECTS

TRAFFIC CONTROL

ROADWAY RELATION

PART OF THE ROADWAY

ROADWAY ALIGNMENT

LIGHT CONDITION

TYPE OF ROAD SURFACE

WEATHER

SURFACE CONDITION

TEXAS PEACE OFFICER'S CRASH REPORT CRB-3 (Rev. 1/06) Submission of Crash Records: This report may be submitted via the CRIS Web Portal, electronically submitted via XML or mailed to the TEXAS DEPARTMENT OF PUBLIC SAFETY, PO BOX 4087, AUSTIN TX 78773 - 0350. Please see the DPS Instructions to Police for more details regarding these submission methods or look on the CRIS Website at http://www.txdps.state.tx.us/crisproject/index.htm. CASE#: [redacted]

PLACE WHERE CRASH OCCURRED — COUNTY: Harris — CITY OR TOWN: Houston (SHOW ONLY IF INSIDE CITY LIMITS)

IF CRASH WAS OUTSIDE CITY LIMITS INDICATE DISTANCE FROM NEAREST TOWN: ____ MILES NORTH S E W OF ____ CITY OR TOWN: MAJOR AUTO / TRUCK

ROAD ON WHICH CRASH OCCURRED: 5500 S. Sam Houston Pkwy N SIR — BLOCK NUMBER — STREET OR ROAD NAME — ROUTE NUMBER OR STREET CODE — CONSTR. ZONE: YES SPEED 50 / [X] NO LIMIT

INTERSECTING STREET OR RR X'ING NUMBER — BLOCK NUMBER — STREET OR ROAD NAME — ROUTE NUMBER OR STREET CODE — CONSTR. ZONE: YES SPEED / NO LIMIT

NOT AT INTERSECTION ... FT. ____ OF MI. N S E W — SHOW MILE POST OR NEAREST INTERSECTING NUMBERED HIGHWAY. IF NONE, SHOW NEAREST INTERSECTING STREET OR REFERENCE POINT.

DATE OF CRASH: DEC 13 2007 — DAY OF WEEK: THURSDAY — HOUR: 6:00 — [ ] A.M. IF EXACTLY NOON OR [X] P.M. MIDNIGHT, SO STATE

LOC. ____

DO NOT WRITE IN THIS SPACE — DPS NO. — LOC. ____ CODE ____ SEVERITY ____ FAT. REC. ____ DR. REC. ____

UNIT NO. 1 Business Address: ____ Phone #: ____

UNIT NO. 2 Business Address: ____ Phone #: ____

IF EMERGENCY VEHICLE: UNIT # ____
WAS IT USING SIREN? YES NO INTERMITTENTLY ____ STEADY ____ RED LIGHTS ON? ____

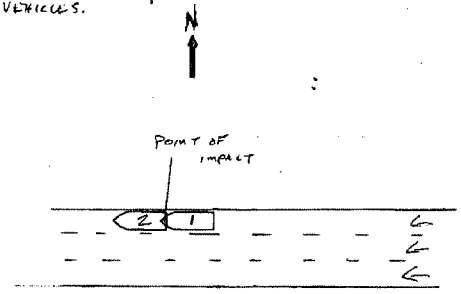
UNIT NO. 1 REMARKS

NO STATEMENT

UNIT NO. 2 REMARKS

I WAS CHECKING THE BACK OF MY TRAILER WHEN HE HIT ME FROM BEHIND.

* NOTE: NOT TO SCALE
POINT OF IMPACT DETERMINED BY DAMAGE TO BOTH VEHICLES.



SIGNATURE [redacted] — SIGNATURE OF INVESTIGATOR — H.P.D. — DEPARTMENT — DATE THIS SUPPLEMENT MADE: 12-13-07

INC # [redacted]

CRB-3C (Rev. 01/06) COMMERCIAL MOTOR VEHICLE ENFORCEMENT SUPPLEMENT TO THE TEXAS PEACE OFFICER'S CRASH REPORT

[Y] 10,001 LBS. OR MORE ☐ HAZARDOUS MATERIAL ☐ 9 OR MORE PASSENGER CAPACITY (DRIVER INCLUDED)

CRASH INFORMATION

LOC# _____

ORI# _____

DPS# _____

1. COUNTY Harris 2. CITY OR TOWN Houston

3. ROAD ON WHICH CRASH OCCURRED 5600 (BLOCK #) S. Sam Houston Pkwy W S/R (STREET OR ROAD NAME / ROUTE #)

4. DATE OF CRASH DEC (MONTH) 13 (DATE) 2007 (YEAR) 5. HOUR 6:00 ☐ AM ☒ PM

ROADWAY ACCESS: [1] 1-FULL ACCESS CONTROL; 2-PARTIAL ACCESS; 3-NO ACCESS...

DRIVER INFORMATION

6. NAME [redacted]

7. DRIVER LICENSE CLASS [1] 1-A 2-B 3-C 4-D 5-M 6-UNK.

CARRIER INFORMATION

8. VEHICLE OPERATION ☐ INTERSTATE COMMERCE ☒ INTRASTATE COMMERCE ☐ NOT IN COMMERCE ☐ GOVERNMENT ☐ PERSONAL

9. CARRIER'S CORPORATE NAME [redacted]

10. CARRIER'S PRIMARY ADDRESS [redacted] (NUMBER / STREET / CITY / STATE / ZIP)

11. CARRIER ID TYPE ☐ ICC ☒ US DOT ☐ TxDOT ☐ OTHER ☐ NONE 12. CARRIER ID NUMBER [redacted]

MOTOR VEHICLE INFORMATION

13. UNIT NUMBER ON CRB-3 [2] 14. LICENSE PLATE [redacted] (YEAR / STATE / NUMBER)

15. GROSS VEHICLE WEIGHT RATING (GVWR) ☒ 80,000
REGISTERED GROSS VEHICLE WEIGHT (RGVW) ☐

16. VEHICLE TYPE: [9]
1-PASSENGER CAR (ONLY IF VEHICLE DISPLAYS HM PLACARDS)
2-LIGHT TRUCK (ONLY IF VEHICLE DISPLAYS HM PLACARDS)
3-BUS (SEATS FOR 9-15 PEOPLE, INCLUDING DRIVER)
4-BUS (SEATS FOR >15 PEOPLE, INCLUDING DRIVER)
5-SINGLE UNIT TRUCK (2 AXLES, 6 TIRES)
6-SINGLE UNIT TRUCK (3 OR MORE AXLES)
7-TRUCK TRAILER
8-TRUCK TRACTOR (BOBTAIL)
9-TRACTOR/SEMITRAILER
10-TRACTOR/DOUBLE TRAILER
11-TRACTOR/TRIPLE TRAILER
99-UNKNOWN HEAVY TRUCK OVER 10,000 LBS. (CANNOT CLASSIFY)

17. CARGO BODY STYLE: [8]
1-BUS (SEATS FOR 9-15 PEOPLE, INCLUDING DRIVER)
2-BUS (SEATS FOR >15 PEOPLE, INCLUDING DRIVER)
3-VAN/ENCLOSED BOX
4-CARGO TANK
5-FLATBED
6-DUMP
7-CONCRETE MIXER
8-AUTO TRANSPORTER
9-GARBAGE/REFUSE
10-GRAIN, CHIPS, GRAVEL
11-POLE
12-NOT APPLICABLE
98-OTHER _____

18. HAZARDOUS MATERIAL
TRANSPORTING PLACARDABLE HAZARDOUS MATERIAL ☐ YES ☒ NO
1 DIGIT CLASS# [ ] 4 DIGIT ID# [ ][ ][ ][ ]
HAZARDOUS MATERIAL RELEASED OR SPILLED ☐ YES ☒ NO (DO NOT INCLUDE FUEL FROM THE VEHICLE FUEL TANK)
1 DIGIT CLASS# [ ] 4 DIGIT ID# [ ][ ][ ][ ]

TRAILER NUMBER 1 INFORMATION

19. LICENSE PLATE [redacted]

20. GROSS VEHICLE WEIGHT RATING (GVWR) ☐
REGISTERED GROSS VEHICLE WEIGHT (RGVW) ☐ 80,000

TRAILER TYPE: [2] 1-FULL TRAILER 2-SEMI TRAILER 3-POLE TRAILER

TRAILER NUMBER 2 INFORMATION

21. LICENSE PLATE _____

22. GROSS VEHICLE WEIGHT RATING (GVWR) ☐
REGISTERED GROSS VEHICLE WEIGHT (RGVW) ☐ _____

TRAILER TYPE: [ ] 1-FULL TRAILER 2-SEMI TRAILER 3-POLE TRAILER

23. SEQUENCES OF EVENTS - UNIT ____
SEQ 1: [13] SEQ 2: [ ] SEQ 3: [ ] SEQ 4: [ ]

1-NONCOLLISION: RAN OFF ROAD
2-NONCOLLISION: JACKKNIFE
3-NONCOLLISION: OVERTURN (ROLLOVER)
4-NONCOLLISION: DOWNHILL RUNAWAY
5-NONCOLLISION: CARGO LOSS OR SHIFT
6-NONCOLLISION: EXPLOSION OR FIRE
7-NONCOLLISION: SEPARATION OF UNITS
8-NONCOLLISION: CROSS MEDIAN/CENTERLINE
9-NONCOLLISION: EQUIPMENT FAILURE
10-NONCOLLISION: OTHER
11-NONCOLLISION: UNKNOWN
12-COLLISION INVOLVING PEDESTRIAN
13-COLLISION INVOLVING MOTOR VEHICLE IN TRANSPORT
14-COLLISION INVOLVING PARKED MOTOR VEHICLE
15-COLLISION INVOLVING TRAIN
16-COLLISION INVOLVING PEDALCYCLE
17-COLLISION INVOLVING AN ANIMAL
18-COLLISION INVOLVING A FIXED OBJECT
19-COLLISION WITH WORK ZONE MAINTENANCE EQUIPMENT
20-COLLISION WITH OTHER MOVABLE OBJECT
21-COLLISION WITH UNKNOWN MOVABLE OBJECT
98-OTHER _____

24. TOTAL NUMBER OF AXLES [5]

25. TOTAL NUMBER OF TIRES [18]

26. OFFICER'S PRINTED NAME [redacted] DEPT. H.P.D. DATE 12-13-07

Browning Crash
PAR was missing information and contained incorrect information, and, as a result, PAR incorrectly assigned Michael Browning fault

On September 14, 2007, Michael Browning was driving North in the left lane on SC 125 in North Augusta, SC, when his pickup truck crashed into the back of a log truck attempting to make a right hand turn onto Pine Log Rd. According to the Police Accident Report (PAR), both vehicles had been traveling in the right lane when the accident occurred. The PAR states that the pickup truck struck the log truck for unknown reasons, essentially placing blame on Mr. Browning. Michael Browning died as a result of injuries sustained in the crash.

Eyewitness accounts, taken after the crash and after the PAR was completed, state that Mr. Browning's vehicle was actually traveling in the left lane when, suddenly, the log truck crossed into his path from the right lane. Additionally, eyewitnesses reported that the truck driver failed to use a signal light, neither indicating his need to cross into the left lane in order to negotiate a right turn, nor that his intent was to turn right on to Pine Log Road. The investigating officer, who authored the PAR, was not aware of this information because he failed to interview witnesses. Eyewitness accounts revealed that the log truck driver's actions caused the crash, place the fault on the truck driver, and should have been included in the PAR.

Missing and incomplete information in PARs often result because the truck driver is the only surviving or conscious witness after a crash. In truck versus passenger vehicle crashes, 97 percent of the deaths are suffered by the occupants of the passenger vehicle who cannot speak for themselves at the scene of the crash. Seriously injured passenger vehicle occupants are also often unable to be interviewed at the crash scene. As a result, it is only when all the evidence regarding a crash is uncovered, including eye witness accounts and the results of accident reconstruction investigations that the information can be considered and the accuracy of the initial PAR can be determined.

ORIGINAL Jeff Smith, Coroner FATAL

D.P.S. USE ONLY | Page # 1 Of 1

SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-310 (Rev. 01/2001)

Of Units: 2 | Amended | Attach Copy of Original Report | Corrected | Notified: 1439 | Arrived: 1449

Date: 09-14-2007 | Time: 1425 | County: 02 | 1-Interstate 4-Secondary 2-US Primary 5-County 3-SC Primary | Collision Location (Rt # / Name): S 125 | 0-Main 6-Connection 2-Alternate 7-Business 5-Spur | Miles: 11.2 | Dir: (S)W | In / Near City or Town of: North Augusta

Lane # 2 | Dir: (N)E S W | Distance Offset: 45 Feet | Direction: (S)W | 1-Interstate 4-Secondary 2-US Primary 5-County 3-SC Primary 6-Other | Base Intersection (Rt # / Name) From: 65/Pine Log Rd. | 0-Main 6-Connector 2-Alternate 7-Business 5-Spur 9-Other | ASRU code | MP/Sub

RR Id: NA | From: N E (1-Entrance) S W (2-Exit) | Ramp Only | To: N E (2-US Primary) S W (3-SC Primary) | 1-Interstate 4-Secondary 5-County 6-Other | Second Intersection (Rt. # / Name) Toward: 302 | 0-Main 6-Connector 2-Alternate 7-Business 5-Spur 9-Other | Latitude: 33 ° 23 2250 | Longitude: 81 ° 50 2260

X-269539 | Driver/Pedestrian's Full Name: [redacted]

Unit #: 1 | Sex: M | Race: W

State: SC | Driver's License #: [redacted] SS | Insurance Company: Unknown

Year: 1985 | Body: TT | Vehicle Make: FTLR | VIN #: [redacted]

State: SC | Year: 2008 | License Plate #: [redacted] | Owner's Full Name: [redacted]

Home Telephone: [redacted] | Bus. Telephone: ( ) NA

Contributed To Collision: Yes (No)

Estimated Speed: 10 | Speed Limit: 55 | C.D.L. Req: Yes (No) | T/B S Req: Yes (No) | Alc/Drg info (see back): Yes (No)

Summons #: NA | Code | Summons #: NA | Code | Towed By: NA

X-269540 | Driver/Pedestrian's Full Name: Browning - Michael Vance

Unit #: 2 | Sex: M | Race: W | Birth Date: [redacted]

State: GA | Driver's License #: [redacted] | Insurance Company: Hartford Ins. Co.

Year: 2000 | Body: PKP | Vehicle Make: Ford | VIN #: [redacted]

State: GA | Year: 2005 | License Plate #: [redacted] | Owner's D.L. #: Unknown

Home Telephone: [redacted] | Owner's Full Name: [redacted]

Bus. Telephone: [redacted] | Street: [redacted]

Contributed To Collision: (Yes) No

Estimated Speed: 55 | Speed Limit: 55 | C.D.L. Req: Yes (No) | T/B S Req: Yes (No) | Alc/Drg info (see back): Yes (No)

Summons #: NA | Code | Summons #: NA | Code | Towed By: Raymond's Towing

X-269541 | Driver/Pedestrian's Full Name:

Unit #: VH | Sex: | Race: | Street:

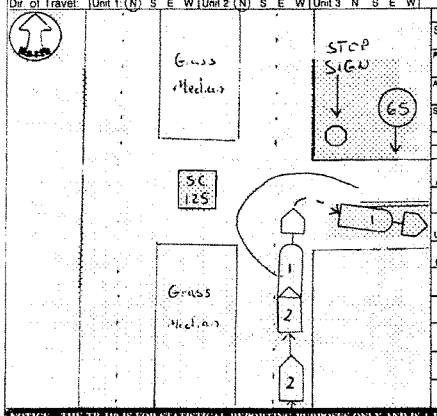
Birth Date: | City, State, & Zip:

State: | Driver's License #: | Insurance Company:

Year: | Body: | Vehicle Make: | VIN #:

Dir. of Travel: Unit 1: (N) S E W | Unit 2 (N) S E W | Unit 3 N S E W

Estimated Speed: | Speed Limit: | C.D.L. Req: Yes No | T/B S Req: Yes No | Alc/Drg info (see back): Yes No | Summons # | Code | Summons # | Code | Towed By:



Unit 1 Dam.	Unit 2 Dam.	Unit 3 Dam.	Prop. Dam. 1	Prop. Dam. 2
$ 100.00	$ 15000.00	$	$ NA	$ NA

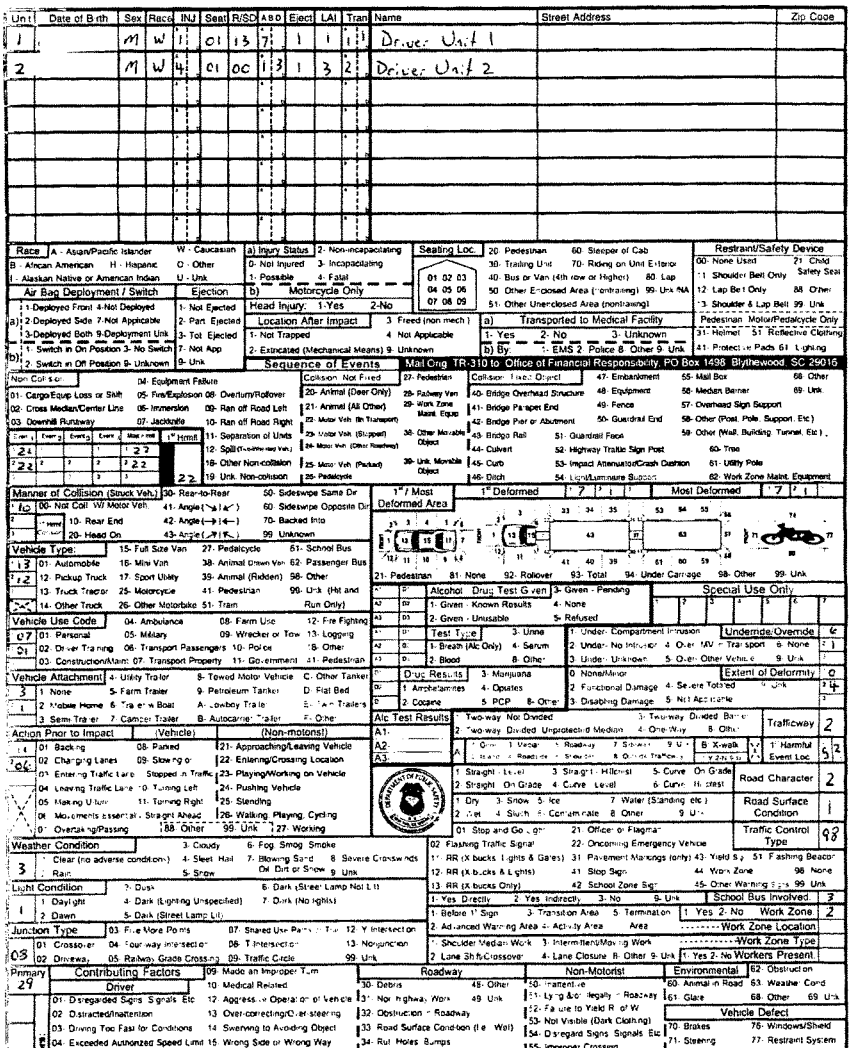
Property Owner/Witness: [redacted] | Address: [redacted] | State: SC | Zip: 29836 | Phone: [redacted]

Photo (Y)N | Describe What Happened (Refer to Units by Number)

Units 1 and 2 were traveling North on SC 125. Unit 1 attempted to turn right on S-65. Unit 2 for unknown reasons struck Unit 1 in the rear.

NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION, AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name: [redacted] | Rank: Lt. | Badge #: [redacted] | Code: [redacted] | Date: 9-14-2007 | Reviewer's Name: [redacted] | Rank: COL | Internal Agency Code: [redacted]



Unit	Date of Birth	Sex	Race	INJ	Seat	R/SD	ABD	Eject	LAI	Tran	Name	Street Address	Zip Code
1		M	W	1	01	13	7	1	1	1	Driver Unit 1		
2		M	W	4	01	00	1	3	1	2	Driver Unit 2		

Race: A - Asian/Pacific Islander; B - African American; H - Hispanic; I - Alaskan Native or American Indian; O - Other; U - Unk; W - Caucasian

a) Injury Status: 0- Not Injured; 1- Possible; 2- Non-incapacitating; 3- Incapacitating; 4- Fatal

b) Motorcycle Only — Head Injury: 1-Yes 2-No

Seating Loc.: 01 02 03 / 04 05 06 / 07 08 09

20: Pedestrian; 30: Trailing Unit; 40: Bus or Van (4th row or Higher); 50: Other Enclosed Area (nontrailing); 51: Other Unenclosed Area (nontrailing); 60: Sleeper of Cab; 70: Riding on Unit Exterior; 80: Lap; 99: Unk NA

Restraint/Safety Device: 00: None Used; 01: Child Safety Seat; 11: Shoulder Belt Only; 12: Lap Belt Only; 13: Shoulder & Lap Belt; 88: Other; 99: Unk

Air Bag Deployment / Switch: 1-Deployed Front; 2-Deployed Side; 3-Deployed Both; 4-Not Deployed; 7-Not Applicable; 9-Deployment Unk; 1- Switch in On Position; 2- Switch in Off Position; 3- No Switch; 7- Not App; 9- Unk

Ejection: 1- Not Ejected; 2- Part Ejected; 3- Tot Ejected

Location After Impact: 1- Not Trapped; 2- Extricated (Mechanical Means); 3- Freed (non mech.); 4- Not Applicable; 9- Unknown

a) Transported to Medical Facility: 1- Yes; 2- No; 3- Unknown

b) By: 1- EMS; 2- Police; 8- Other; 9- Unk

Pedestrian Motor/Pedalcycle Only: 31- Helmet; 32- Reflective Clothing; 41- Protective Pads; 61- Lighting

Sequence of Events

Mail Orig. TR-310 to: Office of Financial Responsibility, PO Box 1498, Blythewood, SC 29016

Non Collision: 01: Cargo/Equip Loss or Shift; 02: Cross Median/Center Line; 03: Downhill Runaway; 04: Equipment Failure; 05: Fire/Explosion; 06: Immersion; 07: Jackknife; 08: Overturn/Rollover; 09: Ran off Road Left; 10: Ran off Road Right; 11: Separation of Units; 12: Spill; 18: Other Non-collision; 19: Unk. Non-collision

Event 1	Event 2	Event 3	Event 4	Most Harmful	1st Hrmfl
24				27	
22	?	?	?	22	22

Collision: Not Fixed: 20: Animal (Deer Only); 21: Animal (All Other); 22: Motor Veh. (In Transport); 23: Motor Veh. (Skipped); 24: Motor Veh. (Other Roadway); 25: Motor Veh. (Parked); 26: Pedalcycle; 27: Pedestrian; 28: Railway Veh; 29: Work Zone Maint. Equip; 30: Other Movable Object; 39: Unk. Movable Object

Collision: Fixed Object: 40: Bridge Overhead Structure; 41: Bridge Parapet End; 42: Bridge Pier or Abutment; 43: Bridge Rail; 44: Culvert; 45: Curb; 46: Ditch; 47: Embankment; 48: Equipment; 49: Fence; 50: Guardrail End; 51: Guardrail Face; 52: Highway Traffic Sign Post; 53: Impact Attenuator/Crash Cushion; 54: Light/Luminaire Support; 55: Mail Box; 56: Median Barrier; 57: Overhead Sign Support; 58: Other (Post, Pole, Support, Etc); 59: Other (Wall, Building, Tunnel, Etc); 60: Tree; 61: Utility Pole; 62: Work Zone Maint. Equipment; 66: Other

Manner of Collision (Struck Veh.): 00: Not Coll. W/ Motor Veh.; 10: Rear End; 20: Head On; 30: Rear-to-Rear; 40: Angle; 41: Angle; 42: Angle; 43: Angle; 50: Sideswipe Same Dir.; 60: Sideswipe Opposite Dir.; 70: Backed Into; 99: Unknown

1st Most Deformed Area: 1st Deformed: 1 7; Most Deformed: 1 7

21- Pedestrian; 81- None; 92- Rollover; 93- Total; 94- Under Carriage; 98- Other; 99- Unk

Vehicle Type: 01: Automobile; 12: Pickup Truck; 13: Truck Tractor; 14: Other Truck; 15: Full Size Van; 16: Mini Van; 17: Sport Utility; 25: Motorcycle; 26: Other Motorbike; 27: Pedalcycle; 28: Medium Truck; 29: Heavy Truck; 30: Bus; 31: School Bus; 38: Animal Drawn Veh.; 39: Animal (Ridden); 41: Pedestrian; 51: Train; 62: Passenger Bus; 98: Other; 99: Unk (Hit and Run Only)

Alcohol / Drug Test Given: 1- Given - Known Results; 2- Given - Unusable; 3- Given - Pending; 4- None; 5- Refused

Special Use Only

Vehicle Use Code: 01: Personal; 02: Driver Training; 03: Construction/Maint; 04: Ambulance; 05: Military; 06: Transport Passengers; 07: Transport Property; 08: Farm Use; 09: Wrecker or Tow; 10: Police; 11: Government; 12: Fire Fighting; 13: Logging; 18: Other; 21: Pedestrian

Test Type: 1- Breath (Alc Only); 2- Blood; 3- Urine; 4- Serum; 8- Other

1- Under: Compartment Intrusion; 2- Under: No Intrusion; 3- Under: Unknown; 4- Over: MV in Transport; 5- Over: Other Vehicle; 6- None; 9- Unk

Underride/Override

Vehicle Attachment: 1- None; 2- Mobile Home; 3- Semi Trailer; 4- Utility Trailer; 5- Farm Trailer; 6- Trailer w Boat; 7- Camper Trailer; 8- Towed Motor Vehicle; 9- Petroleum Tanker; A- Cowboy Trailer; B- Auto Carrier Trailer; C- Other Tanker; D- Flat Bed; E- Other Trailers; F- Other

Drug Results: 1- Amphetamines; 2- Cocaine; 3- Marijuana; 4- Opiates; 5- PCP; 8- Other

0- None/Minor; 1- Functional Damage; 2- Severe Totaled; 3- Disabling Damage; 4- Severe Fatality; 5- Not Applicable; 9- Unk

Extent of Deformity

Alc Test Results: A1: ; A2: ; A3:

Trafficway: 1- Two-way Not Divided; 2- Two-way Divided Unprotected Median; 3- Two-way Divided Barrier; 4- One-Way; 8- Other

Action Prior to Impact (Vehicle): 01: Backing; 02: Changing Lanes; 03: Entering Traffic Lane; 04: Leaving Traffic Lane; 05: Making U-turn; 06: Movements essential; 07: Overtaking/Passing; 08: Parked; 09: Skidding or; 10: Turning Left; 11: Turning Right; 88: Other; 99: Unk

Action Prior to Impact (Non-motorist): 21: Approaching/Leaving Vehicle; 22: Entering/Crossing Location; 23: Playing/Working on Vehicle; 24: Pushing Vehicle; 25: Standing; 26: Walking, Playing, Cycling; 27: Working

B- X-walk; V- Veh; 1- Harmful Event; 2- Harmful Event Loc.

1: Straight - Level; 2: Straight - On Grade; 3: Straight - Hillcrest; 4: Curve - Level; 5: Curve On Grade; 6: Curve - Hillcrest

Road Character

1: Dry; 2: Wet; 3: Snow; 4: Slush; 5: Ice; 6: Sand; 7: Water (Standing, etc.); 8: Other; 9: Unk

Road Surface Condition

Traffic Control Type: 01: Stop and Go Light; 02: Flashing Traffic Signal; 11: RR (X bucks, Lights & Gates); 12: RR (X bucks & Lights); 13: RR (X bucks Only); 21: Officer or Flagman; 22: Oncoming Emergency Vehicle; 31: Pavement Markings (only); 41: Stop Sign; 42: School Zone Sign; 43: Yield Sign; 44: Work Zone; 45: Other Warning Sign; 51: Flashing Beacon; 96: None; 99: Unk

Weather Condition: 1: Clear (no adverse conditions); 2: Rain; 3: Cloudy; 4: Sleet, Hail; 5: Snow; 6: Fog, Smog, Smoke; 7: Blowing Sand, Dirt or Snow; 8: Severe Crosswinds; 9: Unk

Light Condition: 1: Daylight; 2: Dawn; 3: Dusk; 4: Dark (Lighting Unspecified); 5: Dark (Street Lamp Lit); 6: Dark (Street Lamp Not Lit); 7: Dark (No lights)

1: Yes Directly; 2: Yes Indirectly; 3: No; 8: Unk

School Bus Involved

1: Before 1st Sign; 2: Advanced Warning Area; 3: Transition Area; 4: Activity Area; 5: Termination Area

1: Yes 2: No Work Zone

Work Zone Location

1: Shoulder/Median Work; 2: Lane Shift/Crossover; 3: Intermittent/Moving Work; 4: Lane Closure; 8: Other; 9: Unk

Work Zone Type

1: Yes 2: No Workers Present

Junction Type: 01: Crossover; 02: Driveway; 03: Five or More Points; 04: Four-way Intersection; 05: Railway Grade Crossing; 06: T-Intersection; 07: Shared Use Paths or Trails; 08: Unknown; 09: Traffic Circle; 12: Y-Intersection; 13: Non-junction; 99: Unk

Environmental: 62: Obstruction; 63: Weather Cond; 68: Other; 69: Unk

Primary Contributing Factors — Driver: 01: Disregarded Signs, Signals, Etc; 02: Distracted/Inattention; 03: Driving Too Fast for Conditions; 04: Exceeded Authorized Speed Limit; 05: Failed to Yield Right of Way; 06: Ran off Road; 07: Fatigued/Asleep; 08: Followed Too Closely; 09: Made an Improper Turn; 10: Medical Related; 11: Operating Defective Equipment; 12: Aggressive Operation of Vehicle; 13: Over-correcting/Over-steering; 14: Swerving to Avoiding Object; 15: Wrong Side or Wrong Way; 16: Under the Influence; 17: Vision Obscured (Within Unit); 18: Improper Lane Usage/Change; 28: Other Improper Action; 29: Unk

Roadway: 30: Debris; 31: Non-highway Work; 32: Obstruction - Roadway; 33: Road Surface Condition (Ice, Wet); 34: Rut, Holes, Bumps; 35: Shoulders (None, Low, Soft, High); 36: Traffic Control Device (Inop, Missing); 37: Work Zone (Constr, Maint, Utility); 38: Worn, Travel-Polished Surface; 48: Other; 49: Unk

Non-Motorist: 50: Inattentive; 51: Lying &/or Illegally in Roadway; 52: Failure to Yield Right of Way; 53: Not Visible (Dark Clothing); 54: Disregard Signs, Signals, Etc; 55: Improper Crossing; 56: Darting; 58: Other; 59: Unk; 57: Wrong Side of Road; 66: Under the Influence; 67: Other Person Under Influence

Vehicle Defect: 70: Brakes; 71: Steering; 72: Power Plant; 73: Tires/Wheel; 74: Lights; 75: Signals; 76: Windows/Shield; 77: Restraint System; 78: Truck Coupling; 79: Cargo; 80: Fuel System; 88: Other; 89: Unk

ORIGINAL

D.P.S. USE ONLY

South Carolina
Uniform Traffic Collision Report
(For Investigating Officers)
Supplemental Bus & Truck Collision Report

Amended-Attach Copy of Original Report

Corrected

Page 1 of 1 Pages

Date	Time	County	Route Category	Collision Location (Route Number and Name if Any)	Auxiliary
09-14-2007	1425	02	1-Interstate 2-US Primary (3-SC Primary) 4-Secondary 5-County	ON 125	(0)-Mainline 6-Connection 7-Business 1-Alternate 5-Spur

SCREENING INFORMATION

NUMBER OF QUALIFYING VEHICLES INVOLVED

A Truck Having a GVWR of 10,001 lbs. or More For the Power Unit → 1

OR

A Vehicle with a Hazardous Materials Placard → NA

OR

A Bus That is Designed or Used to Carry 16 or More Persons, Including the Driver → NA

OR

A Motor Vehicle Engaged in Interstate Commerce that is Designed or Used to Carry 9-15 Persons, Including the Driver, for Compensation → NA

Number of Persons Involved:

Sustaining Fatal Injuries → 1

Transported for Immediate Medical Services → 1

Number of Vehicles Towed

Towed From the Scene Due to Damage → 1

Do Not Complete This Form Unless:

One or More Qualifying Vehicles was Involved - AND

One or More Qualifying Injuries was Sustained - OR

One or More Vehicles (not necessarily the truck or bus) Was Towed from the Scene

Total Number of Supplemental Forms Required for this Collision : 1

Unit Number 1 FR-10 Number [redacted]

Carrier Information

Name: [redacted]

Address: [redacted]

City: [redacted] State: [redacted] Zip: [redacted]

Business Phone Number: [redacted]

Identification Numbers

U.S. DOT [redacted] None = 0

ICC MC State:

State Number

Is this vehicle an (1) Interstate or a (2) Intrastate carrier? 2

Was a Citation Issued to this Vehicle? 1- Yes 2- No 3- Pending 2

Investigator's Name [redacted] Rank Tpr Date 09-14-2007

Access Control

1- No Access Control
2- Full Access Control
3- Partial Access Control → 1

Vehicle Information

Gross Vehicle Weight Rating

Weight Rating of the Power Unit of the Truck

01- Less Than or Equal to 10,000 Pounds
02- 10,001-26,000 Pounds
03- More Than 26,000 Pounds
99- Unknown/Hit and Run → 03

Vehicle Configuration

00- Passenger Car (only w/ HAZMAT placard)
01- Light Truck (only w/ HAZMAT placard)
02- Bus (seats for 9-15 people)
03- Bus (seats for 16 + people)
04- Single Unit Truck (2 axles/6+ Tires)
05- Single Unit Truck (3 or more axles)
06- Truck w/ Trailer
07- Truck-Tractor Only (Bobtail)
08- Tractor w/ Semi-Trailer
09- Tractor w/ Double Trailers
10- Tractor w/ Triple Trailers
98- Other/Unable to Classify
99- Unknown/Hit and Run → 08

Cargo Body Type

00- Bus (seats for 9-15 people)
01- Bus (seats for 16+ people)
02- Enclosed Box
03- Cargo Tank
04- Flat Bed
05- Dump
06- Concrete Mixer
07- Auto Transport
08- Garbage/Refuse
09- Grain, Chips, Gravel
10- Pole
11- Intermodal Container
97- Not Applicable
98- Other
99- Unknown/Hit and Run → 10

Trailer Length and Width

Length

00- No Trailer
01- Less than 480 in. (40 ft)
02- 481 in. - 576 in (48 ft.)
03- 577 in. or more
99- Unknown/Hit and Run

Trailer 1 Length: 03 Trailer 2 Length: NA

Width

00- No Trailer
01- Less than 60 in. (5 ft.)
02- 61 in. - 84 in. (7 ft.)
03- 85 in. or more
99- Unknown/Hit and Run

Trailer 1 Width: 03 Trailer 2 Width: NA

Hazardous Material Involvment

Was This Vehicle Carrying Hazardous Materials?
1- Yes 2- No 3- Unknown/Hit and Run → 2

Did the Vehicle Have a Hazardous Material Placard?
1- Yes 2- No 3- Unknown/Hit and Run → 2

If "Yes", What Class of Hazardous Material (from placard/shipping papers)?

01- Class 1 (Explosives)
02- Class 2 (Gases)
03- Class 3 (Flammable Liquics)
04- Class 4 (Flammable Solids)
05- Class 5 (Oxidizing Substance)
06- Class 6 (Poison/Infectious Substance)
07- Class 7 (Radioactive)
08- Class 8 (Corrosives)
09- Class 9 (Misc. Goods)
10- No Placard
99- Other/Unknown/Hit and Run

If "YES", enter 4 digit HAZMAT ID (from placard/shipping papers)

Was Hazardous Material Released From This Vehicle's Cargo?
1- Yes 2- No 3- Unknown/Hit and Run → 2

Notification of Release:

Reviewer's Name [redacted] Date 09-15-2007

Melton Crash
Speed incorrectly cited as a violation and truck driver incorrectly found "at fault" on PAR
Investigation found shipper and unbalanced load at fault and speed not a factor

On October 27, 2006, UPS driver Samuel Lavance Melton was traveling southbound on Highway 59 in Houston, TX, when he attempted to take the I-10 exit ramp. Upon exiting the highway, the load that the tractor-trailer was pulling suddenly shifted, causing Mr. Melton to hit the concrete barrier, and subsequently causing the tractor-trailer to roll-over. Mr. Melton suffered a traumatic brain injury, in addition to other physical injuries, as a result of the over-turned truck.

The Police Accident Report (PAR) incorrectly charged the UPS driver with "failure to control speed" while attempting to exit. It was later found, over the course of the investigation, that the crash was a direct result of the shipper incorrectly loading the sealed load. The shipper's faulty loading caused the shift of the load that resulted in the roll-over when the truck attempted to turn at a low speed. The charges against Mr. Melton were later dismissed.

If this crash had been reviewed, using the information contained in the PAR, and based on the police officer's charge, Mr. Melton would have been found "at fault" for a crash he did not cause. Additionally, the party at fault, in this case the shipper, would not have been held accountable for their actions.

[redacted] 11:55:25 AM MAJOR SEMI-TRAILER / FIXED OBJECT IN CH [redacted]

TEXAS PEACE OFFICER'S CRASH REPORT CRS-3 (Rev. 01/06) Submission of Crash Records: This report may be submitted via the CRIS Web Portal, electronically submitted via XML or mailed to the TEXAS DEPARTMENT OF PUBLIC SAFETY, PO BOX 4087, AUSTIN TX 78773-0350. Please see the DPS Instructions to Police for more details regarding these submission methods or both on the CRIS Website at http://www.txdps.state.tx.us/crisproject/index.htm

☐ FATAL ☑ CMV INVOLVED ☐ SCHOOL BUS RELATED ☐ RAILROAD RELATED ☐ MEDICAL ADVISORY BOARD ☐ HIT AND RUN ☐ AMENDMENT/ SUPPLEMENT

PLACE WHERE CRASH OCCURRED
COUNTY HARRIS CITY OR TOWN HOUSTON
IF CRASH WAS OUTSIDE CITY LIMITS INDICATE FROM NEAREST TOWN ____ MILES ☐N ☐S ☐E ☐W OF ____
LOC # ____ ORI # ____ DPS # ____

ROAD ON WHICH CRASH OCCURRED 3000 (BLOCK NUMBER) EAST FWY (STREET OR ROAD NAME) ENTRANCE RAMP (ROUTE NUMBER OR STREET CODE)
CONSTRUCTION ZONE WORKERS PRESENT ☐ YES ☑ NO SPEED LIMIT 45
INTERSECTING STREET OR RR X'ING NUMBER (BLOCK NUMBER) (STREET OR ROAD NAME) (ROUTE NUMBER OR STREET CODE)
CONSTRUCTION ZONE WORKERS PRESENT ☐ YES ☐ NO SPEED LIMIT
NOT AT INTERSECTION 200 ☐FT. ☐M. ☐N ☐S ☐E ☐W OF EASTX FWY
MILEPOST LATITUDE LONGITUDE

DATE OF CRASH OCTOBER (MONTH) 27 (DATE) 2006 (YEAR) DAY OF WEEK FRIDAY HOUR 11:15 ☐AM ☑PM IF EXACTLY NOON OR MIDNIGHT, SO STATE

UNIT # 1 | 1 | 1-MOTOR VEHICLE 2-TRAIN 3-PEDALCYCLIST 4-PEDESTRIAN 5-MOTORIZED CONVEYANCE 6-TOWED 7-NON-CONTACT 8-OTHER
VIN# [redacted] ALTERED VEHICLE HEIGHT ☐YES ☑NO
YEAR MODEL 99 COLOR & MAKE WHITE / VOLVO MODEL NAME ____ BODY STYLE TRAILER LICENSE PLATE [redacted] (YEAR) (STATE) (NUMBER)
DRIVER'S NAME MELTON (LAST) SAMUEL (FIRST) LAVANCE (MIDDLE) (ADDRESS (STREET, CITY, STATE, ZIP)) PHONE NUMBER 46 [redacted]
DRIVER'S LICENSE FL (STATE) [redacted] (NUMBER) (CLASS) H (ENDORSEMENTS) NONE (RESTRICTIONS) [redacted] (DATE OF BIRTH)
LICENSE STATUS 6 (1-VALID 2-NOT VALID 3-SUSPENDED/REVOKED 4-CANCELLED/DENIED 5-EXPIRED 6-UNKNOWN)
DRIVER'S ETHNICITY 3 (1-WHITE 2-HISPANIC 3-BLACK 4-ASIAN 5-OTHER) DRIVER'S SEX ☐MALE ☐FEMALE DRIVER'S OCCUPATION TRUCK DRIVER POLICE, FIREFIGHTER, EMS, ON EMERGENCY ☐ (IF CHECKED, PLEASE EXPLAIN IN NARRATIVE)
TYPE OF ALCOHOL SPECIMEN TAKEN 1-BREATH 2-BLOOD 3-URINE 4-NONE 5-REFUSED 4 TEST RESULTS ____
TYPE OF DRUG SPECIMEN TAKEN 1-BLOOD 2-URINE 3-NONE 4-REFUSED 4 TEST RESULTS ____ DRUG CATEGORY 1: ____ 2: ____
LESSEE ☐ OWNER ☑ [redacted] (NAME (IF OTHER THAN LESSEE IF LEASED, OTHERWISE SHOW OWNER)) [redacted] (ADDRESS (STREET, CITY, STATE, ZIP))
LIABILITY INSURANCE ☑YES ☐NO ☐EXP (INSURANCE COMPANY NAME) ACE AMERICA INS. CO. (POLICY NUMBER) [redacted] VEHICLE DAMAGE RATING ROLLOVER

UNIT # 1A | 6 | 1-MOTOR VEHICLE 2-TRAIN 3-PEDALCYCLIST 4-PEDESTRIAN 5-MOTORIZED CONVEYANCE 6-TOWED 7-NON-CONTACT 8-OTHER
VIN# [redacted] ALTERED VEHICLE HEIGHT ☐YES ☑NO
YEAR MODEL 97 COLOR & MAKE WHITE / UTILITY MODEL NAME 53' BODY STYLE TRAILER LICENSE PLATE [redacted] (YEAR) (STATE) (NUMBER)
DRIVER'S NAME (LAST) (FIRST) (MIDDLE) (ADDRESS (STREET, CITY, STATE, ZIP)) PHONE NUMBER
DRIVER'S LICENSE (STATE) (NUMBER) (CLASS) (ENDORSEMENTS) (RESTRICTIONS) (DATE OF BIRTH)
LICENSE STATUS (1-VALID 2-NOT VALID 3-SUSPENDED/REVOKED 4-CANCELLED/DENIED 5-EXPIRED 6-UNKNOWN)
DRIVER'S ETHNICITY (1-WHITE 2-HISPANIC 3-BLACK 4-ASIAN 5-OTHER) DRIVER'S SEX ☐MALE ☐FEMALE DRIVER'S OCCUPATION ____ POLICE, FIREFIGHTER, EMS, ON EMERGENCY ☐ (IF CHECKED, PLEASE EXPLAIN IN NARRATIVE)
TYPE OF ALCOHOL SPECIMEN TAKEN 1-BREATH 2-BLOOD 3-URINE 4-NONE 5-REFUSED ____ TEST RESULTS ____
TYPE OF DRUG SPECIMEN TAKEN 1-BLOOD 2-URINE 3-NONE 4-REFUSED ____ TEST RESULTS ____ DRUG CATEGORY 1: ____ 2: ____
LESSEE ☐ OWNER ☐ (NAME (IF OTHER THAN LESSEE IF LEASED, OTHERWISE SHOW OWNER)) (ADDRESS (STREET, CITY, STATE, ZIP))
LIABILITY INSURANCE ☐YES ☐NO ☐EXP (INSURANCE COMPANY NAME) (POLICY NUMBER) VEHICLE DAMAGE RATING ROLLOVER

DAMAGE TO PROPERTY OTHER THAN VEHICLES
CONCRETE (OBJECT) BARRICADE (NAME AND ADDRESS OF OWNER) TX DOT 20' (FEET FROM CURB) $ 0 (DAMAGE ESTIMATE)

IN YOUR OPINION, DID THIS CRASH RESULT IN AT LEAST $1,000.00 DAMAGE TO ANY ONE PERSON'S PROPERTY? ☐YES ☐NO

CHARGES FILED
NAME SAMUEL MELTON CHARGE FAILURE TO CONTROL SPEED / ACC CITATION# [redacted]
NAME ____ CHARGE ____ CITATION# ____

TIME NOTIFIED OF CRASH 10/27/06 (DATE) 11:20 PM (HOUR) HOW DISPATCHED TIME ARRIVED AT SCENE 10/27/06 (DATE) 11:26 PM (HOUR) DATE OF REPORT 10/27/06
TYPED OR PRINTED NAME OF INVESTIGATOR [redacted] ID# [redacted] AGENCY HPD DIST/AREA 7C10 REPORT COMPLETE ☑YES ☐NO

[redacted] 11:55:25 AM

SEAT POSITION
1-FRONT LEFT
2-FRONT CENTER
3-FRONT RIGHT
4-SECOND SEAT LEFT
5-SECOND SEAT CENTER
6-SECOND SEAT RIGHT
7-THIRD SEAT LEFT
8-THIRD SEAT CENTER
9-THIRD SEAT RIGHT
10-CARGO AREA
11-EXTERIOR, VEHICLE
12-UNKNOWN

SOLICITATION
INDICATES A PERSON'S DESIRE TO RECEIVE CONTACT FROM PERSONS SEEKING PROFESSIONAL EMPLOYMENT AND/OR ATTORNEY, CHIROPRACTOR, PHYSICIAN, SURGEON, PRIVATE INVESTIGATOR, OR ANY OTHER PERSON REGISTERED OR LICENSED BY A HEALTH CARE REGULATORY AGENCY (Y=SOLICIT, N=NO SOLICIT).

EJECTED
1-NO
2-YES
3-YES, PARTIAL
4-NOT APPLICABLE
5-UNKNOWN

RESTRAINT USED
1-SHOULDER & LAP BELT
2-SHOULDER BELT ONLY
3-LAP BELT ONLY
4-CHILD SEAT, FACING FORWARD
5-CHILD SEAT, FACING REAR
6-CHILD SEAT, LAP
7-BOOSTER SEAT
8-NONE
9-OTHER
10-UNKNOWN

AIRBAG
1-NOT APPLICABLE
2-NOT DEPLOYED
3-DEPLOYED, FRONT
4-DEPLOYED, SIDE
5-DEPLOYED, OTHER
6-UNKNOWN

HELMET USE
1-WORE, DAMAGED
2-WORE, NOT DAMAGED
3-WORE, UNK. DAMAGE
4-NOT WORN
5-UNKNOWN IF WORE

INJURY SEVERITY
0-KILLED
1-INCAPACITATING INJURY
2-NON INCAPACITATING INJURY
3-POSSIBLE INJURY
4-NOT INJURED
9-UNKNOWN

UNIT 1 — TOWED DUE TO DISABLING DAMAGE: ☑ YES ☐ NO — VEHICLE REMOVED TO 2505 CAMELCADE — BY MILESTAR WRECKER

ITEM	SEAT POSITION	COMPLETE ALL DATA ON ALL OCCUPANTS (NAMES, POSITIONS, RESTRAINTS USED, ETC. REMOVED, IF IS NOT NECESSARY TO SHOW ADDRESSES UNLESS KILLED OR INJURED) NAME (LAST, FIRST, MI) — ADDRESS	SOL	EJECTED	RESTRAINT USED	AIRBAG	HELMET	AGE	SEX	INJURY CODE
1	1	SAME AS DRIVER	N	N	A	N	N/A	25	M	C
2										
3										
4										
5										

UNIT 1A — TOWED DUE TO DISABLING DAMAGE: ☑ YES ☐ NO — VEHICLE REMOVED TO 2505 CAMELCADE — BY MILESTAR WRECKER

ITEM	SEAT POSITION	COMPLETE ALL DATA ON ALL OCCUPANTS (NAMES, POSITIONS, RESTRAINTS USED, ETC. REMOVED, IF IS NOT NECESSARY TO SHOW ADDRESSES UNLESS KILLED OR INJURED) NAME (LAST, FIRST, MI) — ADDRESS	SOL	EJECTED	RESTRAINT USED	AIRBAG	HELMET	AGE	SEX	INJURY CODE
6										
7										
8										
9										
10										

PED, PEDAL, BIKE, SKATER, ETC.	COMPLETE IF CASUALTIES WERE IN MOTOR VEHICLE — CASUALTY NAME (LAST, FIRST, MI) — ADDRESS	SOL	ALCOHOL SUSPECTED	ALCOHOL TESTED	DRUG SUSPECTED	DRUGS TESTED	HELMET	AGE	SEX	INJURY CODE

DISPOSITION OF KILLED OR INJURED

ITEM#	TAKEN TO	BY
1	WILL SEE PRIVATE PHYSICIAN	

IF AMBULANCE USED, SHOW

TIME SERVICED	TIME ARRIVED AT SCENE	AMBULANCE UNIT #	# OF ATTENDANTS (INCLUDING DRIVER)	# OF PERSONS TRANSPORTED FOR TREATMENT
6N SCENE		19	2	0
WHEN ARRIVED				

COMPLETE THIS SECTION IF PERSON KILLED (If a person dies within 30 days of the crash, please complete this area and mail the supplement to the Crash Records Bureau)

ITEM #	DATE OF DEATH	TIME OF DEATH	ITEM#	DATE OF DEATH	TIME OF DEATH	ITEM#	DATE OF DEATH	TIME OF DEATH	ITEM#	DATE OF DEATH	TIME OF DEATH

INVESTIGATOR'S NARRATIVE OPINION OF WHAT HAPPENED (ATTACH ADDITIONAL SHEETS IF NECESSARY)

VEH #1 WAS PULLING VEH #1A S/B ON THE FRONTAGE RD. VEH #1 TOOK THE EAST FWY E/B EXIT. AS VEHS #1 & 1A WERE MERGING TOGETHER TO THE EAST FWY E/B ENTRANCE RAMP THE 1ST THE CONCRETE BARRICADE & TURNED OVER

DIAGRAM

NORTH

SEE SUPPLEMENT

FACTORS AND CONDITIONS LISTED ARE THE INVESTIGATOR'S OPINION

UNIT #	FACTORS/BEHAVIORS CONTRIBUTING	OTHER FACTORS/CIRCUMSTANCES MAY OR MAY NOT HAVE CONTRIBUTED	VEHICLE DEFECTS CONTRIBUTING	VEHICLE DEFECTS MAY HAVE CONTRIBUTED
1	22			

1-AGGRESSIVE DRIVING
2-ALCOHOL INVOLVEMENT
3-ANIMAL IN ROADWAY
4-BICYCLE RIDER ERROR
5-DISABILITY (PHYSICAL OR MENTAL)
6-DISREGARDED CONTROL DEVICE
7-DISTRACTION IN VEHICLE
8-DRIVING TOO FAST FOR CONDITIONS
9-DRIVING WRONG WAY
10-DROVE LEFT OF CENTER
11-DROVE OFF ROAD
12-DRUG INVOLVEMENT
13-EMERGENCY VEHICLE RESPONSE
14-EXCEEDED SPEED LIMIT
15-FAILED TO CONTROL SPEED
16-FAILED TO DRIVE IN SINGLE LANE
17-FAILED TO GIVE HALF OF ROADWAY
18-FAILED TO YIELD RIGHT-OF-WAY
19-FAILED TO PASS TO LEFT SAFELY
20-FAILED TO PASS TO RIGHT SAFELY
21-FAILED TO GIVE SIGNAL OR WRONG SIGNAL
22-FAILED TO STOP AT PROPER PLACE
23-FAILED TO STOP FOR SCHOOL BUS
24-FAILED TO STOP FOR TRAIN
25-FAILED TO YIELD-EMERGENCY VEHICLE
26-FAILED TO YIELD-OPEN INTERSECTION
27-FAILED TO YIELD-PRIVATE DRIVE
28-FAILED TO YIELD-STOP SIGN
29-FAILED TO YIELD-TO PEDESTRIAN
30-FAILED TO YIELD-TURNING LEFT
31-FAILED TO YIELD-TURN ON RED
32-FAILED TO YIELD-TURN FROM A LANE
33-FAILED TO YIELD-UNPROTECTED TURN
34-FAILED TO YIELD-OTHER
35-FALSE ASSUMPTION OF RIGHT-OF-WAY
36-FATIGUED, ASLEEP
37-FLED POLICE
38-FOLLOWED TOO CLOSELY
39-HAD BEEN DRINKING
40-HAZARDOUS ACTION (DESCRIBE IN NARRATIVE)
41-ILLNESS
42-IMPROPER BACKING
43-IMPROPER LANE CHANGE
44-IMPROPER PASSING
45-IMPROPER START FROM PARKED POSITION
46-LOST CONSCIOUSNESS
47-MADE IMPROPER TURN
48-MISJUDGED GAP
49-NOT DISCERNIBLE
50-OPERATING DEFECTIVE EQUIPMENT
51-PASSED IN NO PASSING ZONE
52-PASSED ON SHOULDER
53-PHYSICAL IMPAIRMENT
54-RAN OFF ROAD
55-RAN RED LIGHT
56-RAN STOP SIGN
57-SPEEDING
58-STOPPED IN TRAFFIC LANE
59-SWERVING TO AVOID
60-TAILGATING
61-TOOK RIGHT-OF-WAY
62-TURNING IMPROPERLY
63-UNFAMILIAR WITH ROADWAY
64-UNFAMILIAR WITH VEHICLE
65-WEATHER
66-WORK ZONE
67-OTHER
68-OTHER IMPROPER ACTION
69-LANE CHANGE
70-LOSS OF CONTROL
71-OBJECT IN ROADWAY
72-OTHER NON-MOTORIST
73-OVERTAKING
74-PARKED MOTOR VEHICLE
75-PASSING
76-TURNING
77-UNKNOWN
78-OTHER

VEHICLE DEFECTS
1-BRAKES
2-STEERING
3-TIRE BLOWOUT
4-WORN OR SLICK TIRES
5-TRAILER EQUIPMENT
6-VEHICLE CONTROL SYSTEMS
7-LIGHTS
8-VISIBILITY
9-OTHER
10-UNKNOWN

TRAFFIC CONTROL: 11
ROADWAY RELATION: 1
PART OF THE ROADWAY: 4
ROADWAY ALIGNMENT: 5
LIGHT CONDITION: 3
TYPE OF ROAD SURFACE: 1
WEATHER: 1
SURFACE CONDITION: 1

[redacted] 11:55:25 AM

TEXAS PEACE OFFICER'S CRASH REPORT CR3-3 (Rev. 1/06) Submission of Crash Records: This report may be submitted via the CRIS Web Portal, electronically submitted via XML or mailed to the TEXAS DEPARTMENT OF PUBLIC SAFETY, PO BOX 4087, AUSTIN TX 78773-.-0350. Please see the DPS Instructions to Police for more details regarding these submission methods or look on the CRIS Website at http://www.txdps.state.tx.us/crisproject/index.htm. CASE#: [redacted]

PLACE WHERE CRASH OCCURRED — COUNTY: HARRIS — CITY OR TOWN: HOUSTON (SHOW ONLY IF INSIDE CITY LIMITS)
IF CRASH WAS OUTSIDE CITY LIMITS INDICATE DISTANCE FROM NEAREST TOWN: ____ MILES NORTH S E W OF ____ CITY OR TOWN
ROAD ON WHICH CRASH OCCURRED: 3000 BLOCK NUMBER — EAST FWY ENTRANCE RAMP STREET OR ROAD NAME — ROUTE NUMBER OR STREET CODE — CONSTR. ZONE: YES SPEED 45 / NO LIMIT
INTERSECTING STREET OR RR XING NUMBER: BLOCK NUMBER — STREET OR ROAD NAME — ROUTE NUMBER OR STREET CODE — CONSTR. ZONE: YES SPEED / NO LIMIT
NOT AT INTERSECTION: 200 FT. OF EASTEX FWY (SHOW MILE POST OR NEAREST INTERSECTING NUMBERED HIGHWAY, IF NONE, SHOW NEAREST INTERSECTING STREET OR REFERENCE POINT.)
DATE OF CRASH: OCTOBER 27 20 06 — DAY OF WEEK: FRIDAY — HOUR: 11:15 A.M. IF EXACTLY NOON OR P.M. MIDNIGHT, SO STATE

LOC. ____
DO NOT WRITE IN THIS SPACE — DPS NO.
LOC. ____
CODE ____
SEVERITY ____
FAT. REC. ____
DR. REC. ____

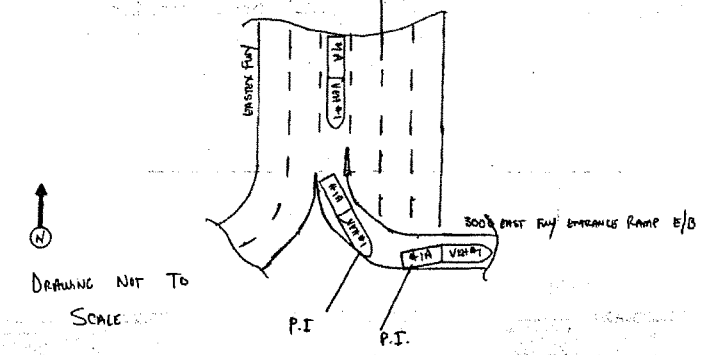
UNIT NO. 1 Business Address: [redacted] Phone #: [redacted]
UNIT NO. 2 Business Address: ____ Phone #: ____

IF EMERGENCY VEHICLE: UNIT # ____
WAS IT USING SIREN? YES NO INTERMITTENTLY ____ STEADY ____ RED LIGHTS ON? ____

UNIT NO. 1 REMARKS

I WAS TRAVELING S/B ON 59. I TOOK THE I-10 EAST EXIT. AS I WAS MAKING THE TURN I SLID & HIT THE WALL CAUSING ME TO TURN OVER.

UNIT NO. 2 REMARKS



SIGNATURE [redacted] SIGNATURE OF INVESTIGATOR — HPD DEPARTMENT — DATE THIS SUPPLEMENT MADE: 10/27/06

[redacted] 11:55:25 AM

CASE # [redacted]

CRB-3C (Rev. 01/06) COMMERCIAL MOTOR VEHICLE ENFORCEMENT SUPPLEMENT TO THE TEXAS PEACE OFFICER'S CRASH REPORT
☑ 10,001 LBS. OR MORE ☐ HAZARDOUS MATERIAL ☐ 9 OR MORE PASSENGER CAPACITY (DRIVER INCLUDED)

CRASH INFORMATION

1. COUNTY HARRIS 2. CITY OR TOWN HOUSTON
LOC#
ORI#
DPS#
3. ROAD ON WHICH CRASH OCCURRED 3000 (BLOCK #) EAST FWY ENTRANCE RAMP (STREET OR ROAD NAME) (ROUTE#)
ROADWAY ACCESS: 1 (1-FULL ACCESS CONTROL, 2-PARTIAL ACCESS, 3-NO ACCESS)
4. DATE OF CRASH OCTOBER (MONTH) 22ND (DATE) 2006 (YEAR) 5. HOUR 11:15 ☐AM ☑PM (MILITARY TIME)
DAY OF WEEK: 1 (1-SUN 2-MON 3-TUE 4-WED 5-THU 6-FRI 7-SAT)

DRIVER INFORMATION

6. NAME Samuel Laurence Melton 7. DRIVER LICENSE CLASS: 1 (1-A 2-B 3-C 4-D 5-M 6-UNK)

CARRIER INFORMATION

8. VEHICLE OPERATION ☑ INTERSTATE COMMERCE ☐ INTRASTATE COMMERCE ☐ NOT IN COMMERCE ☐ GOVERNMENT ☐ PERSONAL
9. CARRIER'S CORPORATE NAME [redacted]
10. CARRIER'S PRIMARY ADDRESS [redacted] (NUMBER) [redacted] (STREET) [redacted] (CITY) [redacted] (STATE) [redacted] (ZIP)
11. CARRIER ID TYPE ☐ ICC ☒ US DOT ☐ TxDOT ☐ OTHER ☐ NONE 12. CARRIER ID NUMBER [redacted]

MOTOR VEHICLE INFORMATION

13. UNIT NUMBER ON CRB-3: 1 14. LICENSE PLATE ____ (YEAR) (STATE) (NUMBER)
15. GROSS VEHICLE WEIGHT RATING (GVWR) ☑ / REGISTERED GROSS VEHICLE WEIGHT (RGVW) ☐ 80,000

16. VEHICLE TYPE: 9
1-PASSENGER CAR (ONLY IF VEHICLE DISPLAYS HM PLACARDS)
2-LIGHT TRUCK (ONLY IF VEHICLE DISPLAYS HM PLACARDS)
3-BUS (SEATS FOR 9-15 PEOPLE, INCLUDING DRIVER)
4-BUS (SEATS FOR >15 PEOPLE, INCLUDING DRIVER)
5-SINGLE UNIT TRUCK (2 AXLES, 6 TIRES)
6-SINGLE UNIT TRUCK (3 OR MORE AXLES)
7-TRUCK TRAILER
8-TRUCK TRACTOR (BOBTAIL)
9-TRACTOR/SEMITRAILER
10-TRACTOR/DOUBLE TRAILER
11-TRACTOR/TRIPLE TRAILER
99-UNKNOWN HEAVY TRUCK OVER 10,000 LBS. (CANNOT CLASSIFY)

17. CARGO BODY STYLE: 3
1-BUS (SEATS FOR 9-15 PEOPLE, INCLUDING DRIVER)
2-BUS (SEATS FOR >15 PEOPLE, INCLUDING DRIVER)
3-VAN/ENCLOSED BOX
4-CARGO TANK
5-FLATBED
6-DUMP
7-CONCRETE MIXER
8-AUTO TRANSPORTER
9-GARBAGE/REFUSE
10-GRAIN, CHIPS, GRAVEL
11-POLE
12-NOT APPLICABLE
98-OTHER ____

18. HAZARDOUS MATERIAL
TRANSPORTING PLACARDABLE HAZARDOUS MATERIAL ☐ YES ☑ NO
1 DIGIT CLASS# ____ 4 DIGIT ID# ____
HAZARDOUS MATERIAL RELEASED OR SPILLED ☐ YES ☑ NO (DO NOT INCLUDE FUEL FROM THE VEHICLE FUEL TANK)
1 DIGIT CLASS# ____ 4 DIGIT ID# ____

TRAILER NUMBER 1 INFORMATION

19. LICENSE PLATE [redacted]
20. GROSS VEHICLE WEIGHT RATING (GVWR) ☑ / REGISTERED GROSS VEHICLE WEIGHT (RGVW) ☐ 80,000
TRAILER TYPE: 2 (1-FULL TRAILER, 2-SEMI TRAILER, 3-POLE TRAILER)

TRAILER NUMBER 2 INFORMATION

21. LICENSE PLATE ____
22. GROSS VEHICLE WEIGHT RATING (GVWR) ☐ / REGISTERED GROSS VEHICLE WEIGHT (RGVW) ☐ ____
TRAILER TYPE: ☐ (1-FULL TRAILER, 2-SEMI TRAILER, 3-POLE TRAILER)

23. SEQUENCES OF EVENTS - UNIT 1

SEQ 1	SEQ 2	SEQ 3	SEQ 4
18	3		

1-NONCOLLISION: RAN OFF ROAD
2-NONCOLLISION: JACKKNIFE
3-NONCOLLISION: OVERTURN (ROLLOVER)
4-NONCOLLISION: DOWNHILL RUNAWAY
5-NONCOLLISION: CARGO LOSS OR SHIFT
6-NONCOLLISION: EXPLOSION OR FIRE
7-NONCOLLISION: SEPARATION OF UNITS
8-NONCOLLISION: CROSS MEDIAN/CENTERLINE
9-NONCOLLISION: EQUIPMENT FAILURE
10-NONCOLLISION: OTHER
11-NONCOLLISION: UNKNOWN
12-COLLISION INVOLVING PEDESTRIAN
13-COLLISION INVOLVING MOTOR VEHICLE IN TRANSPORT
14-COLLISION INVOLVING PARKED MOTOR VEHICLE
15-COLLISION INVOLVING TRAIN
16-COLLISION INVOLVING PEDALCYCLE
17-COLLISION INVOLVING AN ANIMAL
18-COLLISION INVOLVING A FIXED OBJECT
19-COLLISION WITH WORK ZONE MAINTENANCE EQUIPMENT
20-COLLISION WITH OTHER MOVABLE OBJECT
21-COLLISION WITH UNKNOWN MOVABLE OBJECT
98-OTHER ____

24. TOTAL NUMBER OF AXLES: 5
25. TOTAL NUMBER OF TIRES: 18

26. OFFICER'S PRINTED NAME ____ DEPT. ____ DATE ____

Owings Crash
Truck driver lied at the scene of the crash
Police officer did not interview the crash survivor or eyewitnesses
PAR, incorrectly assigned fault to the car driver

This crash occurred on December 1, 2002, in Rockbridge County, Virginia. Cullum Owings and his younger brother Pierce were on their way back to Washington and Lee University after spending Thanksgiving at home with their family. They were stopped in traffic when a speeding tractor trailer came up behind them moving too fast to stop. Cullum swerved his car into the median to avoid a crash, but the truck followed and barreled into the driver's side of the vehicle, pinning their car against an embankment in the median. Pierce, survived with minor injuries and Cullum died at the scene.

Right after the crash, Pierce was too upset to speak with the State Trooper in charge of the scene, and therefore, the Trooper only spoke to the truck driver. The truck driver reported that Cullum and Pierce's car was in the right lane and, at the very last moment, pulled in front of the truck causing the truck to hit their car. The truck driver reported that both vehicles then continued into the median of the highway, ending up between the road and the embankment in the median. Although there were many witnesses, the Trooper did not record their names nor did he interview any of them. The resulting Police Accident Report (PAR) reflected the trucker driver's statement and indicated that the car was in the right lane and pulled into the left lane, while the striking truck was going straight, always in the left lane.

Based on the truck driver's statement, the Trooper in charge at the scene believed that if it had not been for Cullum's inattentive decision to pull into the left lane in front of the truck, there would have been no injuries that night, let alone a death. The Trooper did recognize that the truck driver was driving too fast for the conditions and charged him with reckless driving. In the end, the Trooper took the truck driver's word for what happened, and this is the only version of the crash reflected on the PAR.

Cullum's parents, Steve and Susan Owings hired a private investigator to advertise and find the other eyewitnesses, all of whom corroborated Pierce's version of the crash. The boys were always in the left lane, and were stopped there, when Cullum glanced in his rearview mirror and realized that the truck was bearing down on them fast. Cullum had stopped with enough maneuvering room in front of him and when he saw that the truck was not going stop in time, he chose to flee into the median and this is where the crash occurred. At the last minute, the truck driver realized that he was not going to be able to stop and drove into the median, hitting one car instead of many.

The PAR only reflected the truck driver's testimony and failed to include eyewitness accounts, the surviving crash victim's as well as other eyewitnesses, into consideration. As a result of the investigating officer's actions, the PAR was incomplete and incorrect. It was only through a complete investigation, which included eyewitness testimony, that the true chain of events was revealed and the truck driver was convicted of reckless driving.

COMMONWEALTH OF VIRGINIA - DEPARTMENT OF MOTOR VEHICLES

PAGE 1 OF 1 PAGES

POLICE ACCIDENT REPORT

3 AGENCY COPY

FR 300P (REV. 7/99)

ACCIDENT DATE: 10/10/02	DAY OF WEEK: SUN	TIME: 8:18 AM PM	COUNTY OF ACCIDENT: Rockbridge	MILE POST NUMBER: 185.10	RAILROAD CROSSING ID. NO. IF WITHIN 150 FEET:
OR TOWN:	LANDMARKS AT SCENE:	NUMBER OF VEHICLES: 2	OFFICIAL USE ONLY		

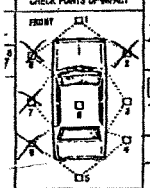
ROUTE NO. OR STREET NAME AT SCENE: Interstate 81 North

AT INTERSECTION WITH OR 3.9 MILES FEET N S E W OF ROUTE NUMBER OR STREET NAME: Rt 60 (Exit 188)

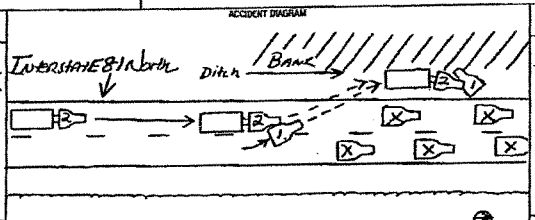
VEHICLE NO. 1	VEHICLE NO. 2 (OR PEDESTRIAN)
DRIVER'S NAME (LAST, FIRST, MIDDLE): Owings, Stephen Cullum	OPERATOR'S NAME (LAST, FIRST, MIDDLE): [redacted]
ADDRESS (STREET & NO.): [redacted]	OCCUPATION: Truck Driver
YEARS OF DRIVING EXP:	ADDRESS (STREET & NO.): [redacted]
CITY: [redacted] STATE: [redacted] ZIP CODE: [redacted]	YEARS OF DRIVING EXPERIENCE: 24
DATE OF BIRTH: [redacted] SEX: m DRIVER'S LICENSE NUMBER: [redacted] JCDL STATE: [redacted]	CITY: [redacted] STATE: [redacted] ZIP CODE: [redacted]
VEHICLE OWNER'S NAME (LAST, FIRST, MIDDLE): Owings, Stephen G. (Same)	DATE OF BIRTH: [redacted] SEX: m DRIVER'S LICENSE NUMBER: [redacted] STATE: [redacted]
ADDRESS (STREET & NO.): SAME AS DRIVER	VEHICLE'S OWNER'S NAME (LAST, FIRST, MIDDLE): [redacted]
CITY: STATE: ZIP CODE:	ADDRESS (STREET & NO.): [redacted]
MAKE & TYPE OF VEHICLE (SHOW MOPED, MOTORCYCLE, AMBULANCE, ETC.): Lexus 4dr Sdn CMV HAZMAT	CITY: [redacted] STATE: [redacted] ZIP CODE: [redacted]
YEAR: 92 REPAIR COST: 10,000	MAKE & TYPE OF VEHICLE (SHOW MOPED, MOTORCYCLE, AMBULANCE, ETC.): International T-T CMV HAZMAT
ER STATE: [redacted] NAME OF INSURANCE CO. (NOT AGENT): UNKNOWN	YEAR: 00 REPAIR COST: 30,000
	STATE: TN NAME OF INSURANCE CO. (NOT AGENT): UNKNOWN

DAMAGE TO MORE THAN RTY OBJECT STRUCK (TREE, FENCE, ETC.) OWNER'S NAME (LAST, FIRST, MIDDLE) ADDRESS REPAIR COST

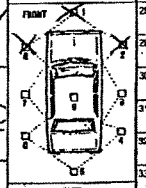
VEHICLE NO. 1 DAMAGE CHECK POINTS OF IMPACT



ACCIDENT DIAGRAM



VEHICLE NO. 2 DAMAGE CHECK POINTS OF IMPACT



INDICATE NORTH BY ARROW

VEHICLE NO. 1 SPEED	BEFORE ACCIDENT	LIMIT	MAXIMUM SAFE
	70	65	70

VEHICLE NO. 2 SPEED	BEFORE ACCIDENT	LIMIT	MAXIMUM SAFE
	65	65	70

VEHICLE NO. 1 DAMAGE: UNKNOWN NO DAMAGE MINOR OVERTURNED UNDERCARRIAGE TOTALED BY FIRE OTHER

VEHICLE NO. 2 DAMAGE: UNKNOWN NO DAMAGE MINOR OVERTURNED UNDERCARRIAGE TOTALED BY FIRE OTHER

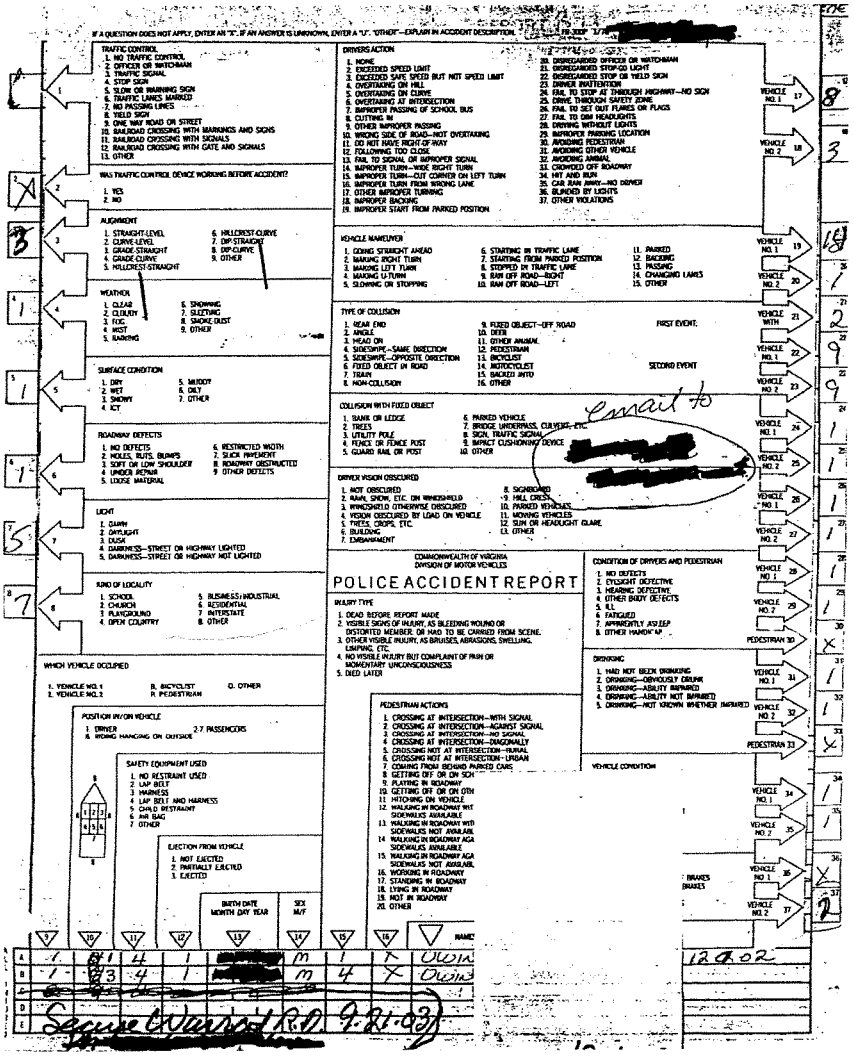
ACCIDENT DESCRIPTION: Vehicles "X" are Stopped or partly Stopped in the (Northbound) Vehicle #1 attempt to go left. Vehicle #2 overtaking at speed and attempt to go left, Vehicle #2 Struck Vehicle #1 and both Vehicles #1 and #2 traveled off road to left and Struck Bank before coming to Rest.

Vehicle #2 [redacted] - Load Secured/Secured

OFFENSES CHARGED (MVA/VC): Reckless Driving - Driver #2

10	11	12	13	14	15	16	NAMES OF INJURED - IF DECEASED, INCLUDE DATE OF DEATH
1	4	1	[redacted]	m	1	X	Owings, Stephen Cullum - 12-01-02
3	4	1		m	4	X	Owings, John Pierce

INVESTIGATING OFFICER'S NAME: [redacted] BADGE/CODE NUMBER: [redacted] DEPARTMENT NAME AND CODE NUMBER: VA. STATE POLICE REVIEWING OFFICER: [redacted] DATE REPORT FILED: 12-02-02



COMMONWEALTH OF VIRGINIA
DIVISION OF MOTOR VEHICLES

POLICE ACCIDENT REPORT

IF A QUESTION DOES NOT APPLY, ENTER AN "X". IF AN ANSWER IS UNKNOWN, ENTER A "U". "OTHER"—EXPLAIN IN ACCIDENT DESCRIPTION.

TRAFFIC CONTROL
1. NO TRAFFIC CONTROL
2. OFFICER OR WATCHMAN
3. TRAFFIC SIGNAL
4. STOP SIGN
5. SLOW OR WARNING SIGN
6. TRAFFIC LANES MARKED
7. NO PASSING LINES
8. YIELD SIGN
9. ONE WAY ROAD OR STREET
10. RAILROAD CROSSING WITH WARNINGS AND SIGNS
11. RAILROAD CROSSING WITH SIGNALS
12. RAILROAD CROSSING WITH GATE AND SIGNALS
13. OTHER

WAS TRAFFIC CONTROL DEVICE WORKING BEFORE ACCIDENT?
1. YES
2. NO

ALIGNMENT
1. STRAIGHT-LEVEL
2. CURVE-LEVEL
3. GRADE-STRAIGHT
4. GRADE-CURVE
5. HILLCREST-STRAIGHT
6. HILLCREST-CURVE
7. DIP-STRAIGHT
8. DIP-CURVE
9. OTHER

WEATHER
1. CLEAR
2. CLOUDY
3. FOG
4. MIST
5. RAINING
6. SNOWING
7. SLEETING
8. SMOKE/DUST
9. OTHER

SURFACE CONDITION
1. DRY
2. WET
3. SNOWY
4. ICY
5. MUDDY
6. OILY
7. OTHER

ROADWAY DEFECTS
1. NO DEFECTS
2. HOLES, RUTS, BUMPS
3. SOFT OR LOW SHOULDER
4. UNDER REPAIR
5. LOOSE MATERIAL
6. RESTRICTED WIDTH
7. SLICK PAVEMENT
8. ROADWAY OBSTRUCTED
9. OTHER DEFECTS

LIGHT
1. DAWN
2. DAYLIGHT
3. DUSK
4. DARKNESS—STREET OR HIGHWAY LIGHTED
5. DARKNESS—STREET OR HIGHWAY NOT LIGHTED

KIND OF LOCALITY
1. SCHOOL
2. CHURCH
3. PLAYGROUND
4. OPEN COUNTRY
5. BUSINESS/INDUSTRIAL
6. RESIDENTIAL
7. INTERSTATE
8. OTHER

WHICH VEHICLE OCCUPIED
1. VEHICLE NO. 1
2. VEHICLE NO. 2
B. BICYCLIST
P. PEDESTRIAN
O. OTHER

POSITION IN/ON VEHICLE
1. DRIVER
2-7. PASSENGERS
8. RIDING HANGING ON OUTSIDE

SAFETY EQUIPMENT USED
1. NO RESTRAINT USED
2. LAP BELT
3. HARNESS
4. LAP BELT AND HARNESS
5. CHILD RESTRAINT
6. AIR BAG
7. OTHER

EJECTION FROM VEHICLE
1. NOT EJECTED
2. PARTIALLY EJECTED
3. EJECTED

DRIVER'S ACTION
1. NONE
2. EXCEEDED SPEED LIMIT
3. EXCEEDED SAFE SPEED BUT NOT SPEED LIMIT
4. OVERTAKING ON HILL
5. OVERTAKING ON CURVE
6. OVERTAKING AT INTERSECTION
7. IMPROPER PASSING OF SCHOOL BUS
8. CUTTING IN
9. OTHER IMPROPER PASSING
10. WRONG SIDE OF ROAD—NOT OVERTAKING
11. DID NOT HAVE RIGHT OF WAY
12. FOLLOWING TOO CLOSE
13. FAIL TO SIGNAL OR IMPROPER SIGNAL
14. IMPROPER TURN—WIDE RIGHT TURN
15. IMPROPER TURN—CUT CORNER ON LEFT TURN
16. IMPROPER TURN FROM WRONG LANE
17. OTHER IMPROPER TURNING
18. IMPROPER BACKING
19. IMPROPER START FROM PARKED POSITION
20. DISREGARDED OFFICER OR WATCHMAN
21. DISREGARDED STOP-GO LIGHT
22. DISREGARDED STOP OR YIELD SIGN
23. DRIVER INATTENTION
24. FAIL TO STOP AT THROUGH HIGHWAY—NO SIGN
25. DRIVE THROUGH SAFETY ZONE
26. FAIL TO SET OUT FLARES OR FLAGS
27. FAIL TO DIM HEADLIGHTS
28. DRIVING WITHOUT LIGHTS
29. IMPROPER PARKING LOCATION
30. AVOIDING PEDESTRIAN
31. AVOIDING OTHER VEHICLE
32. AVOIDING ANIMAL
33. CROWDED OFF ROADWAY
34. HIT AND RUN
35. CAR RAN AWAY—NO DRIVER
36. BLINDED BY LIGHTS
37. OTHER VIOLATIONS

VEHICLE MANEUVER
1. GOING STRAIGHT AHEAD
2. MAKING RIGHT TURN
3. MAKING LEFT TURN
4. MAKING U-TURN
5. SLOWING OR STOPPING
6. STARTING IN TRAFFIC LANE
7. STARTING FROM PARKED POSITION
8. STOPPED IN TRAFFIC LANE
9. RAN OFF ROAD—RIGHT
10. RAN OFF ROAD—LEFT
11. PARKED
12. BACKING
13. PASSING
14. CHANGING LANES
15. OTHER

TYPE OF COLLISION
1. REAR END
2. ANGLE
3. HEAD ON
4. SIDESWIPE—SAME DIRECTION
5. SIDESWIPE—OPPOSITE DIRECTION
6. FIXED OBJECT IN ROAD
7. TRAIN
8. NON-COLLISION
9. FIXED OBJECT—OFF ROAD
10. DEER
11. OTHER ANIMAL
12. PEDESTRIAN
13. BICYCLIST
14. MOTORCYCLIST
15. BACKED INTO
16. OTHER
FIRST EVENT:
SECOND EVENT

COLLISION WITH FIXED OBJECT
1. BANK OR LEDGE
2. TREES
3. UTILITY POLE
4. FENCE OR FENCE POST
5. GUARD RAIL OR POST
6. PARKED VEHICLE
7. BRIDGE UNDERPASS, CURVER, ETC.
8. SIGN, TRAFFIC SIGNAL
9. IMPACT CUSHIONING DEVICE
10. OTHER

DRIVER VISION OBSCURED
1. NOT OBSCURED
2. RAIN, SNOW, ETC. ON WINDSHIELD
3. WINDSHIELD OTHERWISE OBSCURED
4. VISION OBSCURED BY LOAD ON VEHICLE
5. TREES, CROPS, ETC.
6. BUILDING
7. EMBANKMENT
8. SIGNBOARD
9. HILL CREST
10. PARKED VEHICLES
11. MOVING VEHICLES
12. SUN OR HEADLIGHT GLARE
13. OTHER

INJURY TYPE
1. DEAD BEFORE REPORT MADE
2. VISIBLE SIGNS OF INJURY, AS BLEEDING WOUND OR DISTORTED MEMBER, OR HAD TO BE CARRIED FROM SCENE.
3. OTHER VISIBLE INJURY, AS BRUISES, ABRASIONS, SWELLING, LIMPING, ETC.
4. NO VISIBLE INJURY BUT COMPLAINT OF PAIN OR MOMENTARY UNCONSCIOUSNESS
5. DIED LATER

PEDESTRIAN ACTIONS
1. CROSSING AT INTERSECTION—WITH SIGNAL
2. CROSSING AT INTERSECTION—AGAINST SIGNAL
3. CROSSING AT INTERSECTION—NO SIGNAL
4. CROSSING AT INTERSECTION—DIAGONALLY
5. CROSSING NOT AT INTERSECTION—RURAL
6. CROSSING NOT AT INTERSECTION—URBAN
7. COMING FROM BEHIND PARKED CARS
8. GETTING OFF OR ON SCH
9. PLAYING IN ROADWAY
10. GETTING OFF OR ON OTH
11. HITCHING ON VEHICLE
12. WALKING IN ROADWAY WIT SIDEWALKS AVAILABLE
13. WALKING IN ROADWAY WITH SIDEWALKS NOT AVAILABL
14. WALKING IN ROADWAY AGA SIDEWALKS AVAILABLE
15. WALKING IN ROADWAY AGA SIDEWALKS NOT AVAILABL
16. WORKING IN ROADWAY
17. STANDING IN ROADWAY
18. LYING IN ROADWAY
19. NOT IN ROADWAY
20. OTHER

CONDITION OF DRIVERS AND PEDESTRIAN
1. NO DEFECTS
2. EYESIGHT DEFECTIVE
3. HEARING DEFECTIVE
4. OTHER BODY DEFECTS
5. ILL
6. FATIGUED
7. APPARENTLY ASLEEP
8. OTHER HANDICAP

DRINKING
1. HAD NOT BEEN DRINKING
2. DRINKING—OBVIOUSLY DRUNK
3. DRINKING—ABILITY IMPAIRED
4. DRINKING—ABILITY NOT IMPAIRED
5. DRINKING—NOT KNOWN WHETHER IMPAIRED

VEHICLE CONDITION

Email to [redacted]

A	1	01	4	1	[redacted]	M	1	X	OWEN
B	1	03	4	1	[redacted]	M	4	X	OWEN
C									
D									
E	Square D Warrington RD				9-21-03				

12-02-02

White
Investigating officer did not interview witness, had limited knowledge of FMCSRs, and incorrectly assigned fault to Mr. White on the PAR

On May 11, 2011, Jere Fergurson White was driving on S.R. 6 in Dallas, TX when his pickup truck struck the rear of a tractor trailer. Mr. White died as a result of the crash.

The investigating police officer failed to speak to a key eyewitness and had little knowledge of Federal Motor Carrier Safety Regulations (FMCSRs). As a result, the officer failed to look for log book violations and treated the crash like a standard motor vehicle crash. Due to the investigating officer's lack of knowledge and failure to interview all key witnesses, the police accident report (PAR) indicates that Mr. White was in the wrong when his truck struck the rear of the stopped tractor trailer.

An investigation into the crash discovered, and proved, that the tractor trailer Mr. White rear-ended, had been improperly stopped in the lane of traffic, on a 65 mph road, because he had missed his turn. The driver claimed that he had his rear flashers engaged but the eye witness said that no flashers were on. It was also established that the driver of the stopped tractor-trailer, who worked for a Canadian company, was a habitual hours of service (HOS) violator. The Canadian trucking company had given the driver four final warnings and, in spite of these, he continued his flagrant HOS violations and continued to drive. When the trucking company was confronted with the truck driver's history, they conceded that he should have been terminated long before the wreck. If the trucking company had done as they should have, this tractor trailer driver would not have been on the road at the time of the accident, and this crash could have been prevented.

As was the case with the officer at the scene of the White crash, the varying level of required knowledge of FMCSR regulations from state to state, hinders the investigating officers' ability to fully and properly investigate commercial vehicle crashes. PARs, like the PAR for the White crash, reflect inaccuracies resulting from the officer's lack of knowledge and experience, and are not suitable to make a determination of preventability.

GEORGIA UNIFORM MOTOR VEHICLE ACCIDENT REPORT

Accident Number	Agency NCIC No.	County	Date Rec. by DOT
[redacted]	[redacted]	PAULDING	

Date	Days of Week	Time	Off. Arrived	Vehicles	Total Number of: Injuries	Fatalities	Inside City Of:
05/11/2011	Sun M T W Th F S	14:18	14:24	3	3	1	DALLAS

Road of Occurrence: S.R. 6 — 1 ☐ Interstate 2 ■ Lowest St. Rt. 3 ☐ Co. Road 4 ☐ City St.

At Its Intersection With: MT. OLIVET LOOP — 1 ☐ Interstate 2 ☐ Lowest St. Rt. 3 ■ Co. Road 4 ☐ City St.

Corrected Report? Yes ☐

Not At Its Intersection But: _____ ☐ Miles 1 ☐ North 3 ☐ East ☐ Feet 1 ☐ South 3 ☐ West

On: 1 ☐ Interstate 2 ☐ Lowest St. Rt. 3 ☐ Co. Road 4 ☐ City St. 5 ☐ Co. Line

Suppl. To Original? Yes ☐

And continuing in the direction checked above, the Next Reference Point is: 1 ☐ Interstate 2 ☐ Lowest St. Rt. 3 ☐ Co. Road 4 ☐ City St. 5 ☐ Co. Line

Hit and Run? Yes ☐

Driver # 1

LAST NAME	FIRST	MIDDLE
WHITE	JERE	FERGURSON

Ped: 0 — Address: [redacted]

City: [redacted] — State: [redacted] — Zip: [redacted] — DOB: [redacted]

Driver's License No.: [redacted] — Class: C — State: [redacted] — ■ Male ☐ Female

Posted Speed: 65 — Insurance Co.: STATE FARM — Policy No.: [redacted]

Year: 1996 — Make: CHEVROLET — Model: GMT-400 — Telephone No.: [redacted]

VIN: [redacted] — Vehicle Color: BLK

Tag #: [redacted] — State: [redacted] — County: [redacted] — Year: 2012

Trailer Tag # — State — County — Year

■ Same as Driver — Owner's Last Name: WHITE — First: JERE — Middle: FERGURSON

Address: [redacted]

City: [redacted] — State: [redacted] — Zip: [redacted]

Removed By: MOORES TOWING — ☐ Request ■ List

Alcohol Test	Type	Results	Drug Test	Type	Results
02			02		

Driver Cond	Direction of Travel	Vision Obscured	Contributing Factors
01	04	01	11 09 17

Veh Cond	Veh Maneuver	Ped. Maneuver
01	06	

Most Harmful Event	Veh Class:	Veh Type:
11	01	02

Traffic Ctrl: 07 — Device Inoperative ☐ Yes ■ No

Driver # 2

LAST NAME	FIRST	MIDDLE
[redacted]	[redacted]	

Ped: 0 — Address: [redacted]

City: [redacted] — State: [redacted] — Zip: [redacted] — DOB: [redacted]

Driver's License No.: [redacted] — Class: 1 — State: [redacted] — ■ Male ☐ Female

Posted Speed: 65 — Insurance Co.: MARKEL INS. CO. — Policy No.: [redacted]

Year: 2004 — Make: PETERBUILT — Model: TRACTOR — Telephone No.: [redacted]

VIN: [redacted] — Vehicle Color: WHITE

Tag #: [redacted] — State: [redacted] — County: [redacted] — Year: 2011

Trailer Tag #: [redacted] — State — County — Year: 2011

☐ Same as Driver — Owner's Last Name: [redacted] — First — Middle

Address: [redacted]

City: [redacted] — State: [redacted] — Zip: [redacted]

Removed By: MOORES TOWING — ☐ Request ■ List

Alcohol Test	Type	Results	Drug Test	Type	Results
02			02		

Driver Cond	Direction of Travel	Vision Obscured	Contributing Factors
01	04	01	01

Veh Cond	Veh Maneuver	Ped. Maneuver
01	05	

Most Harmful Event	Veh Class:	Veh Type:
11	07	04

Traffic Ctrl: 07 — Device Inoperative ☐ Yes ■ No

Injured Taken To: ATLANTA MEDICAL CENTER — By: LIFENET

EMS Notified Time: 14:16 — EMS Arrival Time: 14:24 — Hospital Arrival Time: 15:23 — Photos Taken: ■ Yes ☐ No — By: [redacted]

Report By: [redacted] — Department: DALLAS PD — Report Date: 05/17/2011 — Checked By: [redacted] — Date Checked: 05/17/2011

Witness(es): Name — Address — City — State — Zip Code — Telephone No.

DOT MICROFILM NUMBER (DO NOT WRITE IN THIS SPACE)

COMMERCIAL VEHICLES ONLY

Carrier Name — Vehicle #: — Address — City — State — Zip

No. of Axles	G.V.W.R.	Fed. Reportable	Cargo Body Type
		1 ☐ Yes 2 ☐ No	
Vehicle Config.	I.C.C.M.C.#	U.S.D.O.T.#	Interstate ☐ Intrastate ☐

C.D.L.? 1 ☐ Yes 2 ☐ No — C.D.L. Suspended? 1 ☐ Yes 2 ☐ No

Vehicle Placard? 1 ☐ Yes 2 ☐ No — Hazardous Materials? 1 ☐ Yes 2 ☐ No

Released? 1 ☐ Yes 2 ☐ No

If YES, Name of 4 Digit Number from Diamond or Box: _____

1 Digit Number from Bottom of Diamond: _____

___ Ran Off Road ___ Down Hill Runaway ___ Cargo Loss or Shift ___ Separation of Units

Carrier Name — Vehicle #: 2 [redacted] — Address: [redacted] — City — State — Zip

No. of Axles	G.V.W.R.	Fed. Reportable	Cargo Body Type
5	80,000	1 ■ Yes 2 ☐ No	06
Vehicle Config.	I.C.C.M.C.#	U.S.D.O.T.#	Interstate ■ Intrastate ■
06	[redacted]	175138	

C.D.L.? 1 ■ Yes 2 ☐ No — C.D.L. Suspended? 1 ☐ Yes 2 ■ No

Vehicle Placard? 1 ☐ Yes 2 ■ No — Hazardous Materials? 1 ☐ Yes 2 ■ No

Released? 1 ■ Yes 2 ☐ No

If YES, Name of 4 Digit Number from Diamond or Box: _____

1 Digit Number from Bottom of Diamond: _____

___ Ran Off Road ___ Down Hill Runaway ___ Cargo Loss or Shift ___ Separation of Units

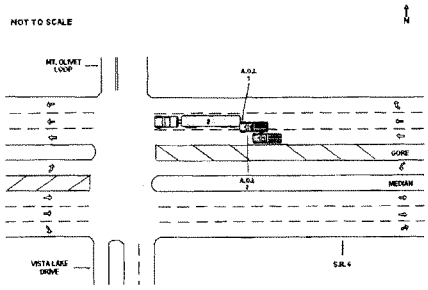
REMARKS

(Officer Narrative on seperate Page)

OFFICER NAME [redacted] OFFICER NUMBER [redacted]

INDICATE ON THIS DIAGRAM WHAT HAPPENED

NOT TO SCALE



Accident Investigation Site?	CITATIONS - VEHICLE # 1	CITATIONS - VEHICLE # 2
■ Yes ☐ No Site Number:		

First Harmful Event	Traffic-Way Flow	Weather	Surface Cond.	Light Cond.	Manner of Collision	Location at Area of Impact	Road Comp.	Road Def.	Road Character	Construction / Maint Zone
11	2	1	1	1	3	1	2	1	3	NONE

	VEH: 1	VEH: 2
Number of Occupants	1	1
Point of Initial Contact	12	6
Damage to Vehicles	4	3

SKID DISTANCE: 0 AFTER 0 Width of Road

BEFORE IMPACT: VEH. 1: 0 VEH. 1: 0 63.9

BEFORE IMPACT: VEH. 2: 0 VEH. 2: 0

Damage Other Than Vehicle: NONE

Owner

Occupants (list below):		AGE	SEX	VEH #	POS	INJURY	TAKEN FOR TREAT.	EJECT	SAFETY EQUIP.	EXTRIC.	AIR BAG
	Driver # 1 Or Pedestrian # 0 WHITE, JERE					1	1	1	0	1	1
	Driver # 2 Or Pedestrian # 0 [redacted]					0	2	1	3	2	2
LAST NAME, FIRST NAME	ADDRESS CITY STATE ZIP	XX	XX	XX	XX	XXXXX	XXXXX	XXXXX	XXXX	XXXXX	XXXX
[redacted]		4	18	M	3	3	3	2	1	3	2	2

ACCIDENT NARRATIVES FOR CASE# [redacted]

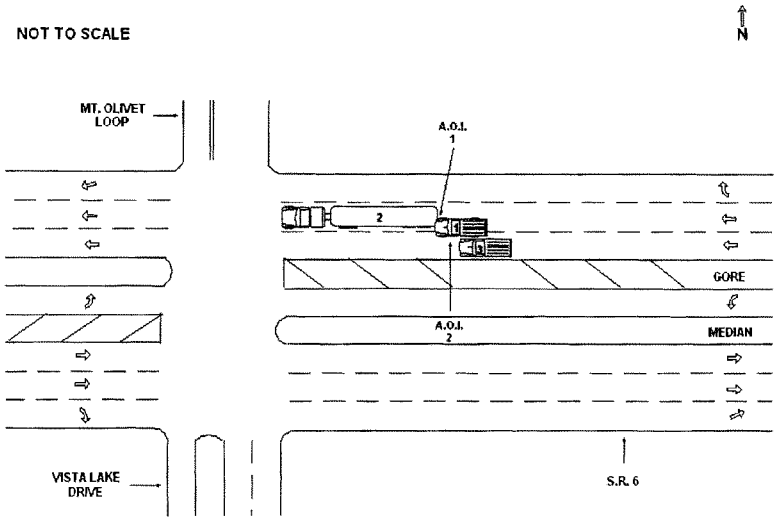
REMARKS OFFICER NAME [redacted] OFFICER NUMBER [redacted]

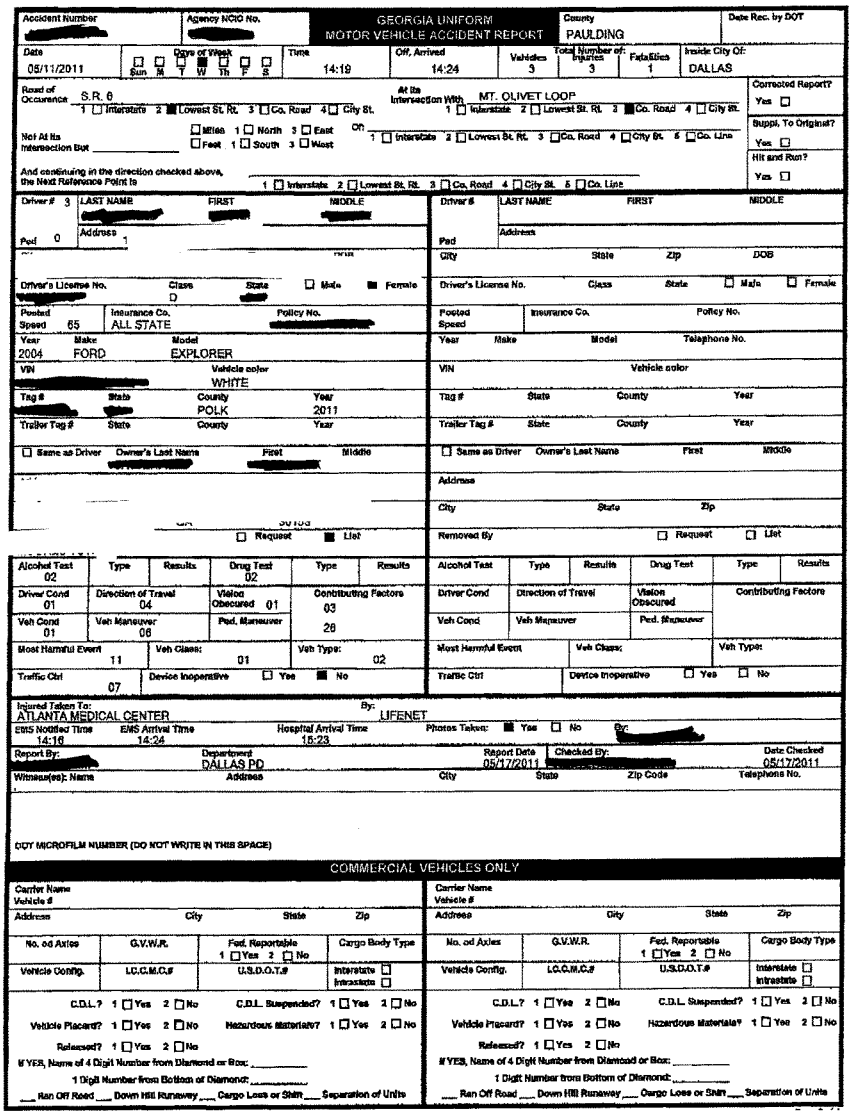
VEHICLES NUMBER 1, 2, AND 3 WERE TRAVELLING WEST ON S.R. 6.
VEHICLES NUMBER 1 AND 3 WERE IN THE SAME LANE BEHIND VEHICLE NUMBER 2.
VEHICLE NUMBER 2 WAS A SLOW MOVING TRACTOR WITH A FLAT BED TRAILER.
VEHICLE NUMBER 1 ATTEMPTED TO CHANGE LANES AND PASS VEHICLE NUMBER 2.
VEHICLE NUMBER 1 STRUCK THE REAR OF VEHICLE NUMBER 2'S TRAILER.
DUE TO THE IMPACT, VEHICLE NUMBER 1 ROTATED INTO THE INSIDE / LEFT LANE.
VEHICLE NUMBER 3 ATTEMPTED TO CHANGE LANES AND STRUCK VEHICLE NUMBER 1.
VEHICLE NUMBER 2 DROVE TO THE SIDE OF THE ROAD AND STOPPED.
GEORGIA STATE PATROL TROOPERS [redacted] AND [redacted] ASSISTED AT SCENE OF ACCIDENT.
DALLAS POLICE DEPARTMENT OFFICER [redacted] ASSISTED WITH ACCIDENT INVESTIGATION.

FULL PAGE DIAGRAM

INDICATE ON THIS DIAGRAM WHAT HAPPENED

NOT TO SCALE





GEORGIA UNIFORM MOTOR VEHICLE ACCIDENT REPORT

Accident Number: [redacted] | Agency NCIC No.: [redacted] | County: PAULDING | Date Rec. by DOT:

Date: 05/11/2011 | Day of Week: Sun M T W Th F S | Time: 14:19 | Off, Arrived: 14:24 | Vehicles: 3 | Total Number of: Injuries 3, Fatalities 1 | Inside City Of: DALLAS

Road of Occurrence: S.R. 6 (1 Interstate 2 Lowest St. Rt. 3 Co. Road 4 City St.) At Its Intersection With: MT. OLIVET LOOP (1 Interstate 2 Lowest St. Rt. 3 Co. Road 4 City St.) | Corrected Report? Yes

Not At Its Intersection But: ____ (Miles 1 North 3 East / Feet 1 South 3 West) On (1 Interstate 2 Lowest St. Rt. 3 Co. Road 4 City St. 5 Co. Line) | Suppl. To Original? Yes

And continuing in the direction checked above, the Next Reference Point is (1 Interstate 2 Lowest St. Rt. 3 Co. Road 4 City St. 5 Co. Line) | Hit and Run? Yes

Driver # 3	LAST NAME	FIRST	MIDDLE
Ped 0	Address 1		
Driver's License No.	Class D	State	☐ Male ■ Female
Posted Speed 65	Insurance Co. ALL STATE	Policy No.	
Year 2004	Make FORD	Model EXPLORER	
VIN	Vehicle color WHITE		
Tag #	State	County POLK	Year 2011
Trailer Tag #	State	County	Year
☐ Same as Driver	Owner's Last Name	First	Middle
		☐ Request	■ List

Alcohol Test 02	Type	Results	Drug Test 02	Type	Results
Driver Cond 01	Direction of Travel 04		Vision Obscured 01	Contributing Factors 03 26	
Veh Cond 01	Veh Maneuver 06		Ped. Maneuver		
Most Harmful Event 11	Veh Class:	01	Veh Type: 02		
Traffic Ctrl 07	Device Inoperative ☐ Yes ■ No				

Driver #	LAST NAME	FIRST	MIDDLE
Ped	Address		
City	State	Zip	DOB
Driver's License No.	Class	State	☐ Male ☐ Female
Posted Speed	Insurance Co.	Policy No.	
Year	Make	Model	Telephone No.
VIN	Vehicle color		
Tag #	State	County	Year
Trailer Tag #	State	County	Year
☐ Same as Driver	Owner's Last Name	First	Middle
Address			
City	State	Zip	
Removed By		☐ Request	☐ List

Alcohol Test	Type	Results	Drug Test	Type	Results
Driver Cond	Direction of Travel		Vision Obscured	Contributing Factors	
Veh Cond	Veh Maneuver		Ped. Maneuver		
Most Harmful Event	Veh Class:		Veh Type:		
Traffic Ctrl	Device Inoperative ☐ Yes ☐ No				

Injured Taken To: ATLANTA MEDICAL CENTER | By: LIFENET

EMS Notified Time 14:16 | EMS Arrival Time 14:24 | Hospital Arrival Time 15:23 | Photos Taken: ■ Yes ☐ No | By: [redacted]

Report By: [redacted] | Department: DALLAS PD | Report Date: 05/17/2011 | Checked By: [redacted] | Date Checked: 05/17/2011

Witness(es): Name | Address | City | State | Zip Code | Telephone No.

DOT MICROFILM NUMBER (DO NOT WRITE IN THIS SPACE)

COMMERCIAL VEHICLES ONLY

Carrier Name / Vehicle #	Address	City	State	Zip
No. of Axles	G.V.W.R.	Fed. Reportable 1 ☐ Yes 2 ☐ No	Cargo Body Type	
Vehicle Config.	I.C.C.M.C.#	U.S.D.O.T.#	Interstate ☐ Intrastate ☐	
C.D.L.? 1 ☐ Yes 2 ☐ No	C.D.L. Suspended? 1 ☐ Yes 2 ☐ No			
Vehicle Placard? 1 ☐ Yes 2 ☐ No	Hazardous Material? 1 ☐ Yes 2 ☐ No			
Released? 1 ☐ Yes 2 ☐ No				
If YES, Name of 4 Digit Number from Diamond or Box: ____				
1 Digit Number from Bottom of Diamond: ____				
___ Ran Off Road ___ Down Hill Runaway ___ Cargo Loss or Shift ___ Separation of Units				

Carrier Name / Vehicle #	Address	City	State	Zip
No. of Axles	G.V.W.R.	Fed. Reportable 1 ☐ Yes 2 ☐ No	Cargo Body Type	
Vehicle Config.	I.C.C.M.C.#	U.S.D.O.T.#	Interstate ☐ Intrastate ☐	
C.D.L.? 1 ☐ Yes 2 ☐ No	C.D.L. Suspended? 1 ☐ Yes 2 ☐ No			
Vehicle Placard? 1 ☐ Yes 2 ☐ No	Hazardous Material? 1 ☐ Yes 2 ☐ No			
Released? 1 ☐ Yes 2 ☐ No				
If YES, Name of 4 Digit Number from Diamond or Box: ____				
1 Digit Number from Bottom of Diamond: ____				
___ Ran Off Road ___ Down Hill Runaway ___ Cargo Loss or Shift ___ Separation of Units				

REMARKS

(Officer Narrative on seperate Page)

OFFICER NAME [redacted] OFFICER NUMBER [redacted]

INDICATE ON THIS DIAGRAM WHAT HAPPENED

Accident Investigation Site?	CITATIONS - VEHICLE # 3	CITATIONS - VEHICLE #
■ Yes ☐ No		
Site Number:		

First Harmful Event	Traffic-Way Flow	Weather	Surface Cond.	Light Cond.	Manner of Collision	Location at Area of Impact	Road Comp.	Road Def.	Road Character	Construction / Maint Zone
11	2	1	1	1	3	1	2	1	3	NONE

	VEH: 3	VEH:
Number of Occupants	2	
Point of Initial Contact	12	
Damage to Vehicles	3	

SKID DISTANCE: 0 VEH. 3 AFTER 0 VEH. 3

BEFORE IMPACT: VEH. VEH.

Width of Road: 63.9

Damage Other Than Vehicle:	Owner	AGE	SEX	VEH #	POS	INJURY	TAKEN FOR TREAT.	EJECT	SAFETY EQUIP.	EXTRIC.	AIR BAG
NONE											
	Driver # 3 Or Pedestrian # 0 [redacted]					4	2	1	3	2	2
Occupants (list below):	Driver # Or Pedestrian #										

LAST NAME, FIRST NAME	ADDRESS	CITY	STATE	ZIP	XX	XX	XX	XX	XXXXX	XXXXX	XXXXX	XXXX	XXXXX	XXXX

ACCIDENT NARRATIVES FOR CASE# [redacted]

REMARKS OFFICER NAME [redacted] OFFICER NUMBER [redacted]

VEHICLES NUMBER 1, 2, AND 3 WERE TRAVELLING WEST ON S.R. 6.

VEHICLES NUMBER 1 AND 3 WERE IN THE SAME LANE BEHIND VEHICLE NUMBER 2.

VEHICLE NUMBER 2 WAS A SLOW MOVING TRACTOR WITH A FLAT BED TRAILER.

VEHICLE NUMBER 1 ATTEMPTED TO CHANGE LANES AND PASS VEHICLE NUMBER 2.

VEHICLE NUMBER 1 STRUCK THE REAR OF VEHICLE NUMBER 2'S TRAILER.

DUE TO THE IMPACT, VEHICLE NUMBER 1 ROTATED INTO THE INSIDE / LEFT LANE.

VEHICLE NUMBER 3 ATTEMPTED TO CHANGE LANES AND STRUCK VEHICLE NUMBER 1.

VEHICLE NUMBER 2 DROVE TO THE SIDE OF THE ROAD AND STOPPED.

GEORGIA STATE PATROL TROOPERS [redacted] AND [redacted] ASSISTED AT SCENE OF ACCIDENT.

DALLAS POLICE DEPARTMENT OFFICER [redacted] ASSISTED WITH ACCIDENT INVESTIGATION.

ACCIDENT NARRATIVES FOR CASE# [redacted]

REMARKS OFFICER NAME [redacted] OFFICER NUMBER [redacted]

VEHICLES NUMBER 1, 2, AND 3 WERE TRAVELLING WEST ON S.R. 6.

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GEORGIA STATE PATROL TROOPERS [redacted] AND [redacted] ASSISTED AT SCENE OF ACCIDENT.

DALLAS POLICE DEPARTMENT OFFICER [redacted] ASSISTED WITH ACCIDENT INVESTIGATION.

DOT-323 Overlay

Georgia Uniform Vehicle Accident Report Overlay

ALCOHOL AND / OR DRUG TEST GIVEN
1 - Yes 2 - No 3 - Refused

TYPE TEST
1 - Blood 2 - Breath 3 - Urine 4 - Other

DRIVER CONDITION
1 - Not Drinking
2 - Not Known if U.I.
3 - Drinking Not Impaired
4 - U.I. Alcohol
5 - U.I. Drugs
6 - U.I.Alcohol & Drugs
7 - Physical Impairment
8 - Apparently Fell Asleep

DIRECTION OF TRAVEL
1 - North 2 - South 3 - East 4 - West

VISION OBSCURED BY
1 - Not Obscured
2 - Headlights
3 - Sunlight
4 - Parked Vehicle
5 - Trees, Bushes
6 - Rain, Snow, Ice on Windshield
7 - Other

VEHICLE CONDITION
1 - No Known Defects
2 - Tire Failure
3 - Brake Failure
4 - Improper Lights
5 - Steering Failure
6 - Slick Tires
7 - Other

VEHICLE MANEUVER
1 - Turning Left
2 - Turning Right
3 - Making U-turn
4 - Stopped
5 - Straight
6 - Changing Lanes
7 - Backing
8 - Parked
9 - Passing
10 - Negotiating A Curve
11 - Entering/Leaving Parking
12 - Entering/Leaving Driveway

PEDESTRIAN MANEUVER
1 - Crossing, Not At Crosswalk
2 - Crossing at Crosswalk
3 - Walking with Traffic
4 - Walking Against Traffic
5 - Pushing Or Working on Vehicle
6 - Other Working in Road
7 - Playing Roadway
8 - Standing in Roadway
9 - Off Roadway
10 -Other
11 -Darting Into Traffic

FIRST HARMFUL EVENT/MOST HARMFUL EVENT NON-COLLISION
1 - Overturn
2 - Fire/Explosion
3 - Immersion
4 - Jackknife
5 - Other Non-Collision

COLLISION WITH OBJECT NOT FIXED
6 - Pedestrian
7 - Pedalcycle
8 - Railway Train
9 - Animal
10 - Parked Motor Vehicle
11 - Motor Vehicle In Motion
12 - Motor Vehicle In Motion – In Other Roadway
13 - Other Object (Not Fixed)
14 - Deer

COLLISION WITH FIXED OBJECT
15 - Impact Attenuate
16 - Bridge Pier/Abutment
17 - Bridge Parapet End
18 - Bridge Rail
19 - Guardrail Face
20 - Guardrail End
21 - Median Barrier
22 - Highway Traffic Sign Post
23 - Overhead Sign Support
24 - Luminaire Right Support
25 - Utility Pole
26 - Other Post
27 - Culvert
28 - Curb
29 - Ditch
30 - Embankment
31 - Fence
32 - Mailbox
33 - Tree
34 - Other - Fixed Object

CONTRIBUTING FACTORS
1 - No Contributing Factors
2 - D.U.I.
3 - Following Too Close
4 - Failed to Yield
5 - Exceeding Speed Limit
6 - Disregard Stop Sign/Signal
7 - Wrong Side Of Road
8 - Weather Conditions
9 - Improper Passing
10 - Driver Lost Control
11 - Changed Lanes Improperly
12 - Object Or Animal
13 - Improper Turn
14 - Parked Improperly
15 - Mechanical Or Vehicle Failure
16 - Surface Defects
17 - Misjudged Clearance
18 - Improper Backing
19 - No Signal/Improper Signal
20 - Driver Condition
21 - Driver's Vehicle
22 - Too Fast For Conditions
23 - Improper Passing Of School Bus
24 - Disregard Police Officer
25 - Distracted
26 - Other
27 - Cell Phone
28 - Inattentive

VEHICLE CLASS
1 - Privately Owned
2 - Police
3 - Fire
4 - School
5 - Other Govt. Owned
6 - Military
7 - Commercial Vehicle (For Acc. Reporting Purposes Only)
8 - Other

VEHICLE TYPE
1 - Passenger Car
2 - Pickup Truck
3 - Truck Tractor (Bobtail)
4 - Tractor/Trailor
5 - Tractor W/Twin Trailers
6 - Logging Truck
7 - Logging Tractor/Trailer
8 - Single Unit Truck
9 - Panel Truck
10 - Van
11 - Utility Passenger Vehicle.
12 - Vehicle With Trailer
13 - Bus
14 - Truck Towing House Trailer
15 - Ambulance
16 - Motorized Recreational Vehicle
17 - Motorcycle, Scooter, Minibike
18 - Moped
19 - Pedalcycle, Bicycle
20 - Farm or Construction, Equip.
21 - All Terrain Vehicle
22 - Other
23 - Go cart

TRAFFIC CONTROL
0 - Gates
1 - No Control Present
2 - Traffic Signal
3 - RR Signal/Sign
4 - Warning Sign
5 - Stop Or Yield Sign
6 - No Passing Zone
7 - Lanes
8 - Other
9 - Flashing Lights

CARGO BODY TYPE
1 - Van (Encl. Box)
2 - Auto Carrier
3 - Bus
4 - Dump
5 - Garbage/Refuse
6 - Flatbed
7 - Cargo Tanker
8 - Concrete Mixer
9 - Other

VEHICLE CONFIGURATION
1 - Bus (Seating for More Than 15 Passengers)
2 - Single Unit Truck: 2 Axles
3 - Single Unit Truck: 3 or More Axles
4 - Truck Trailer
5 - Truck Tractor (Bobtail)
6 - Tractor Trailer
7 - Tractor With Twin Trailers
8 - Unknown Heavy Truck (Cannot Classify)

TRAFFIC-WAY FLOW
1 - Two-way Traffic-way With No Physical Separation
2 - Two-way Traffic-way With a Physical Separation
3 - Two-way Traffic-way With a Physical Barrier
4 - One-way Traffic-way
5 - Continuous Turning Lane

WEATHER
1 - Clear
2 - Cloudy
3 - Rain
4 - Snow
5 - Sleet
6 - Fog
7 - Other

SURFACE CONDITION
1 - Dry
2 - Wet
3 - Snowy
4 - Icy
5 - Other
6 - Mud
7 - Sand
8 - Slush
9 - Oil

LIGHT CONDITION
1 - Daylight
2 - Dusk
3 - Dawn
4 - Dark - Lighted
5 - Dark - Not Lighted

MANNER OF COLLISION
1 - Angle
2 - Head On
3 - Rear End
4 - Sideswipe - Same Direction
5 - Sideswipe - Opposite Direction
6 - Not A Collision With a Motor Vehicle

LOCATION AT AREA OF IMPACT
1 - On Roadway
2 - On Shoulder
3 - Off Roadway
4 - Median
5 - Ramp
6 - Gore

ROAD COMPOSITION
1 - Concrete
2 - Black Top
3 - Tar And Gravel
4 - Dirt
5 - Gravel
6 - Other

CONTRIBUTING ROAD DEFECTS
1- No Defects
2 - Defective Shoulders
3 - Holes, Deep Ruts, Bumps
4 - Loose Material On Surface
5 - Water Standing
6 - Road Under Construction
7 - Running Water
8 - Other

ROAD CHARACTER
1 - Straight And Level
2 - Straight On Grade
3 - Straight On Hillcrest
4 - Curve And Level
5 - Curve On Grade
6 - Curve On Hillcrest

DAMAGE TO VEHICLE
1 - None
2 - Slight
3 - Moderate
4 - Extensive
5 - Fire Present

AGE
00 - Up To One Year
01 - 97 Actual Age
98 - Ninety-eight Or Older
99 - Unknown

SEX
M - Male F - Female

TAKEN FOR TREATMENT
1 - Yes 2 - No

INJURY CODE
0 - Not Injured
1 - Killed
2 - Serious
3 - Visible
4 - Complaint

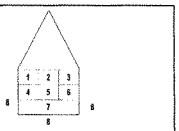
CONSTRUCTION / MAINTENANCE ZONE CODES
0 - None 1 - Construction 2 - Maintenance 3 - Utility 4 - Unknown type

EJECTION
1 - Not Ejected
2 - Trapped
3 - Totally Ejected
4 - Partially Ejected

SAFETY EQUIPMENT
0 - None Used
1 - Shoulder Belt
2 - Lap Belt
3 - Lap and Shoulder Belt
4 - Child Safety Seat (Property Used)
5 - Child Safety Seat (Improperly Used)
7 - Bicycle Helmet
8 - Motorcycle Helmet
9 - Unknown

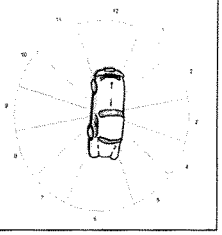
EXTRICATION (Equipment Used)
1 - Yes 2 - No

AIR BAG FUNCTION
0 - No Air Bag In This Seat
1 - Deployed Air Bag
2 - Non-Deployed Air Bag
3 - Deployed Side
4 - Deployed other Directions
5 - Deployed Multiple Directions
6 - Non-Deployed Front
7 - Non-Deployed Side
8 - Non-Deployed Other Direction
9 - Non-Deployed Multiple Direction



SEATING POSITION

POINTS OF INITIAL CONTACT
00 - Overturned
13 - Top
14 - Undercarriage
15 - Non-Contact Vehicle



COMMENTS OF LEE BROWN

EXECUTIVE DIRECTOR

CALIFORNIA CONSTRUCTION TRUCKING ASSOCIATION &
WESTERN TRUCKING ALLIANCE

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

September 13, 2012

EVALUATING THE EFFECTIVENESS OF DOT's TRUCK AND BUS SAFETY PROGRAM

334 NORTH EUCLID AVENUE
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Chairman Duncan and Ranking member DeFazio and members of the subcommittee, the hearing you are holding today concerning "Evaluating the Effectiveness of DOT's Truck and Bus Safety Program" necessitates my submission of comments to the subcommittee on behalf of the California Construction Trucking Association (CCTA) and our interstate conference, the Western Trucking Alliance (WTA).

Since the launch of the Federal Motor Carrier Safety Administrations (FMCSA) Compliance, Safety, Accountability (CSA) program, aspects of the initiative certainly have been the source of controversy within the trucking industry. While the CCTA and WTA may find some common-ground and agree with certain criticism of the program and a need for improvement, overall we believe the safety monitoring program has been wrongly characterized as unfair to small-business motor carriers. Our degree of confidence in the safety monitoring systems is expressed in our active support of legislation granting the California Highway Patrol (CHP) the authority to emulate the CSA monitoring program on the 60,000 plus motor carriers registered in California.

The CCTA is a 501(c) (6) trade association founded in 1941 and headquartered in Upland, California. CCTA membership consists of over 1,100 member motor carriers ranging in size from one-truck operations to fleets with over 350 trucks. Approximately 60 percent of CCTA members are sole-proprietors – small one-truck independent owner-operators with their own authority. CCTA members operate in various modes of trucking from vocational to property carrying in both intrastate and interstate commerce.

Data from FMCSA clearly shows that comparisons of motor carrier performance under CSA to identical groupings from the previous SafeStat measurement system have small-business motor carriers performing better than their larger motor carrier counterparts. Small-business motor carriers constitute nearly 97 percent of the regulated community.

The following charts illustrate the comparative differences in the percentage and numbers of motor carrier's identified as deficient in at least one Safety Evaluation Area (SEA) of the old SafeStat system versus being in alert status/above the intervention threshold in the Safety Measurement System (SMS) of CSA – these results are not surprising to us because they are consistent with how many of our members safety profiles are displayed on the SMS.

Group	# of Power Units	Percentage of motor carriers in this group with 1 or more SEAs "deficient" under the SafeStat system	Percentage of motor carriers in this group with 1 or more BASICs at "alert" status under the CSMS
1	0<PU<=5	7.1%	7.4%
2	5<PU<=15	22.2%	20.7%
3	15<PU<=50	29.4%	30.0%
4	50<PU<=500	28.7%	39.4%
5	500<PU	22.1%	51.4%
	Overall percentage of carriers with deficient SEA or BASIC at "Alert" status	10.1%	10.3%

Group	# of Power Units	Number of motor carriers with 1 or more SEAs identified as "deficient" under the SafeStat system	Number of motor carriers with recent activity that have 1 or more BASICs identified as being at "alert" status under the CSMS
1	0<PU<=5	29,488	30,553
2	5<PU<=15	12,162	11,338
3	15<PU<=50	6,071	6,184
4	50<PU<=500	2,069	2,840
5	500<PU	139	323
	Overall number of motor carriers with deficient SEA or BASIC at "Alert" status	49,929	51,238

The CCTA recognizes that CSA employs an actual performance based measurement system primarily from roadside inspection and accident reports. Percentile rankings within any of the SMS Behavior Analysis and Safety Improvement Categories (BASICs) are necessarily dependent on having a statistically relevant number of roadside inspections for each measurement category.

The absence of percentile rankings within any BASIC for most small-business motor carriers does not mean FMCSA is not monitoring smaller carriers. It is either reflective of them having clean (no violation) inspections or an insufficient number of inspections with violations to statistically assign them a percentage ranking.

We do view CSA as a work in progress. It's not perfect as the debate surrounding the absence of an accident accountability/fault system exemplifies. Motor carriers and drivers should not have their safety profiles tarnished by accidents for which they clearly bear no responsibility. We do not believe creating a mechanism within CSA to remove not-at fault motor carrier or driver crash data is insurmountable.

California, a state with a population of nearly 38 million people and the 9th largest economy on the planet presents a relevant statistical model for FMCSA to consider when moving forward on this needed improvement to CSA. California does make fault determinations for injury and fatal crashes. The data is posted to the Statewide Integrated Traffic Records System (SWITRS) and can be viewed at: http://www.chp.ca.gov/switrs/index.html

As the chart on the next page shows, trucks are determined to not be at fault in over 80 percent of crashes involving fatalities. For combination vehicles involved in injury crashes they are determined to be not at fault two thirds of the time and for straight trucks the fault rate is almost 50 percent.

TABLE 3A DRIVERS IN FATAL AND INJURY COLLISIONS AND DRIVERS WHO WERE AT FAULT BY TYPE OF VEHICLE - 2010

	DRIVER IN FATAL COLLISIONS			DRIVERS IN INJURY COLLISIONS		
	Total	At Fault	Percent At Fault	Total	At Fault	Percent At Fault
STATEWIDE VEHICLE TYPE*						
Passenger car	2,315	1,266	54.7	204,025	96,861	47.5
Passenger car with trailer	3	2	66.7	484	234	48.3
Motorcycle/scooter	373	244	65.4	9,818	5,530	56.3
Moped				44	27	61.4
Pickup or panel truck	606	316	52.1	32,045	16,333	51.0
Pickup or panel truck with trailer	19	7	36.8	789	365	46.3
Truck or truck tractor	66	13	19.7	2,234	1,090	48.8
Truck or truck tractor with trailer	147	28	19.0	2,863	1,060	37.0
School bus	8	1	12.5	341	87	25.5
Other bus	27	6	22.2	1,328	498	37.5
Emergency vehicle	11	3	27.3	1,464	550	37.6
Highway construction equipment				37	16	43.2
Other	16	10	62.5	402	182	45.3
Not stated[1]	107	41	38.3	35,124	17,011	48.4
TOTAL	3,698	1,937	52.4	290,998	139,844	48.1

CCTA appreciates the recent FMCSA announcement about modifications to the SMS. For example, the removal 1-5 mph speeding violations from the SMS methodology will help truckers operating in probable cause states where those minor violations were used as a pretext to make a traffic stop in order to conduct a roadside inspection. Many of the other changes made by the agency at the request of industry will help to focus the program on identifying actual poor safety performance thus improving CSA as a model

The CCTA is supportive of legislation in California that would allow the CHP to adopt a CSA style performance based measurement system to replace the currently mandated Biennial Inspection of Terminal (BIT) program.

The California Commercial Motor Vehicle Safety Act of 1988, commonly referred to as the Biennial Inspection of Terminals (BIT) Program was enacted by the California Legislature in an effort to alleviate the growing number of truck related collisions on California's highways. Primarily, the intent is to ensure every truck terminal throughout the state is inspected by the CHP on a regular basis, thereby creating a level field for all motor carriers statewide. The law requires the CHP to inspect truck terminals every 25 months and the same requirements apply to all carriers, large and small.

A BIT inspection is similar to the compliance review (CR) performed by FMCSA and its state partners. However, the terminal inspection process treats all motor carriers identically regardless of their safety performance. It is both time consuming and expensive for CHP to administer and for motor carriers who must take time away from productive activities.

In an era where government must become more efficient in how it approaches safety oversight of the regulated motor carrier community, CSA represents a true performance based measurement system that can render a snapshot of motor carrier safety management practices. Certainly, further improvements need to be made and the CCTA is optimistic that FMCSA will continue working collaboratively with all stakeholders towards that goal.

Statement for the Record

by the

National Association of Small Trucking Companies

to the House Transportation and Infrastructure Committee

Hearing on DOT's Truck and Bus Safety Program

September 13, 2012

Mr. Chairman and members of the Committee:

National Association of Small Trucking Companies (NASTC) is an affiliate member of ASECTT and fully subscribes to their comments, documented under "Improvements to the Compliance, Safety, Accountability (CSA), Motor Carrier Safety Measurement System (SMS) – docket #FMCSA 2012-0074" dated July 5, 2012.

Congressional mandate several years ago requires FMCSA to perform an onsite audit for new entrants within 18 months of their authority activation. Since FMCSA can only physically perform 11,000-12,000 such audits per year, this mandate cannot possibly be accomplished without a tremendous growing of the agency's inspectors and tripling the size of their bureaucracy and their budget. Enclosed is a description of an alternative plan that could address Congress's wishes without unduly burdening funding requirements or demanding substantial increases to FMCSA's bureaucracy, its budget, or its power base (See enclosure A).

CSA's bell curve structure and peer grouping makes the ultimate suggestion that 35 percent of all carriers need "intervention" all of the time because they are "deficient" in one of its BASICS. So, regardless of across-the-board industry improvements, individual company improvements, or widespread individual driver improvements on safety and compliance, there is never any diminishing workload of companies and drivers in FMCSA's intervention pipeline. This results in a self-fulfilled misrepresentation that suggests that 35 percent of the industry always falls into the "bad actor" category. This is simply untrue.

Small trucking companies make up almost 95 percent of motor carriers, with fleets of 20 or fewer vehicles.

Small motor carriers are the lifeblood of the American economy. These carriers create jobs, often in less populous counties and states, which support local economies, support families, and support the distribution system of the marketplace.

Small trucking companies play critical roles in the supply chain. They get products to market, supply suppliers, keep grocery and retail shelves stocked, and keep hospitals and clinics supplied with the essential medical goods they need.

CSA misrepresents the objectively true safety status of motor carriers. This is due to flaws, bias, and gaps in the data CSA uses to assign carriers BASIC scores, as well as methodological flaws.

CSA further jeopardizes objectively safe motor carriers by the fact carriers' BASIC scores fluctuate outside the control of carriers, to a certain degree, due to CSA's reliance on a relative scale. A relative, as opposed to an absolute, scale grades on a curve motor carriers that have enough roadside inspection data to get them a BASIC score.

Third-party studies, including analysis by Wells Fargo Securities, the University of Maryland, and the University of Michigan Transportation Research Institute, document that CSA BASICs do not predict carriers' risk of a future crash. There is little or no correlation between compliance and safety (i.e., crashes, fatalities, and injuries).

The University of Maryland study criticizes CSA's particular potential for wrongly branding small carriers with its misleading ratings. The law of large numbers requires sufficient sample sizes, in this case inspection data, in order to rate those carriers accurately. Small data sets and small fleet sizes mean a small carrier's violations per inspection look much worse proportionately than they would for large-fleet carriers. Also, this system has the effect of "profiling" unrated carriers for more inspections.

CSA scores brand objectively safe motor carriers with ratings that threaten their ability to secure business.

CSA jeopardizes small carrier business and thereby jeopardizes small carrier jobs. Fewer trucks, fewer trucking companies, fewer jobs, less capacity all translate into economic disruption and economic shrinkage at all levels. This is not something that is already happening in large numbers.

FMCSA claims that CSA has caused truck and bus related fatalities to fall 5 percent in 2011. But CSA may have actually made the industry 200 percent less efficient. ASECTT chairman Tom Sanderson has noted that these fatalities dropped 12 percent in 2009 and 20 percent in 2010, prior to CSA.

FMCSA should step up and assume its responsibility as the sole determiner of carrier safety fitness. To perform that duty, the agency must focus on performing objective safety fitness inspections, not pawn off de facto safety fitness determinations on the shipping public based on a relative, problem-ridden rating system.

The agency must stop making CSA scores public. These faulty, misleading ratings have nothing to do with "transparency" and everything to do with misrepresentations that have direct, harmful effects.

An alternative to CSA, aside from its use internally by the agency, which we would support, is to assess a fee that would fund an actual safety fitness inspection (See Enclosure A).

Also included: Enclosure (B), a letter written to our membership on January 31, 2012, which includes a "NASTC Composite CSA Scorecard" that shows some real statistical data indicating the impact of CSA on our carriers.

Enclosure A (Excerpt from ASECTT comments)

"Finally, under the Reg Flex Act, the Agency is required to defend its proposed regulations as cost effective. The Agency is required to consider other viable alternatives. In charging its handpicked Motor Carrier Safety Advisory Committee with reviewing SMS methodology last July, the Agency asked that the committee 'not reinvent the wheel,' implying that only cosmetic changes were contemplated. In light of the systemic flaws in SMS methodology, its compliance cost and inability to comprehensively measure all carriers as required by Congress, ASECTT submits that real alternatives, not just cosmetic changes, must be considered in the rulemaking process.

"Recognizing Congress's directive to the Agency, to for the first time enroll private and exempt carriers in a comprehensive system to obtain agents and insurance, ASECTT submits that the Agency can expand its new carrier audit procedure to obtain an *effective, objective* evaluation of each carrier on an annual or biannual basis, targeting carriers for progressive intervention using objective standards. An outline of this alternative is as follows.

"(1) Require all carriers to annually update the MCS-150 confirming their insurance and agents and assess a $200 to $300 filing fee. Use the fee to fund state enforcement officials through the MCSAP program, and/or fund independent contractors, to prepare summary audits offering verification to the public that each registrant has safety procedures in effect to meet the requirements of compliance on the basis of objective criteria, without grading on the curve.

"(2) Use progressive intervention methods as envisioned by CSA to manage and privately reprove carriers found deficient under SMS methodology, as refined and improved with public input through rulemaking.

"With this proposal, the Agency could self-fund a compliance program which would assure an objective audit of all active carriers, internalizing an improved version of SMS scoring for its own use without needlessly disrupting the motor carrier industry or creating a constitutional crisis between federal and state law."

Enclosure B

NASTC Composite CSA Scorecard

As of December 31, 2011, NASTC had **3,308** member companies.

2,673 of these companies are in CSA or **80.8%** of our members. So, **635** companies are not in CSA for whatever reason and are unrated.

NASTC companies had a total of **138,347** DRIVER inspections and **8,552** out of service citations for a **6.181%** out of service ratio. The national average for driver out of service citations is **5.51%.**

NASTC companies had **71,068** truck inspections with **13,205** being placed out of service for a ratio of **18.580%**. The national average for truck OOS citation is **20.72%**.

Of the **2,673** companies in CSA, **1,551** were not on alert in any BASICS, or 58%. **1,122** were on alert for at least one BASIC or, **41.97%**.

There were **447** companies with multiple alerts. The additional **667** alerts bring the total for the NASTC group to **1,789** total alerts.

If you include the **635** nonrated companies in the data, you would have **2,186** companies without alerts, and that would skew the data to show that **81.78%** of members were not on alert, leaving **18.22%** of NASTC members appearing to be very unsafe carriers.

October 1, 2012

The Honorable John J. Duncan, Jr., Chairman
The Honorable Peter A. DeFazio, Ranking Member
Subcommittee on Highways and Transit of the
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515
Via email to Subcommittee Staff Assistant, Caryn Moore at

Dear Chairman Duncan and Ranking Member DeFazio:

I am writing today to strongly urge you to support the continuation of the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, Accountability (CSA) Program's process of including all truck crashes in its Crash BASIC database, regardless of fault, as an indicator of future crash risk. Multiple scientific studies support this process and the ability of the whole data to accurately predict crash risk. It would be a terrible mistake to engage in a process to determine preventability in truck crashes based solely on the police accident report (PAR) and to then, as a result of this determination, allow for classification and then removal of certain crash data.

I am a board certified forensic engineer practicing in southeastern Kentucky. I have worked for trucking companies and for the families of truck crash victims, and depending on scientific facts and objective evidence, have helped to prove fault for both sides during my career. Due to my location, many of the cases that I have investigated involve coal trucks. I have come to see the common links between many of these crashes, most of them involving, among other factors, overweight trucks with conspicuity issues. Another commonality with these crashes is that the car driver is frequently, and incorrectly, assigned fault by the investigating police officer.

I became a truck safety advocate when my son Guy was killed in a crash with a grossly overloaded coal truck. He was only sixteen years old when he encountered a single unit truck weighing 134,500 pounds on a long, steep grade, as are common in our region. The truck was traveling at least 35 mph below the speed limit, which violated Guy's expectations, and because it did not have most of the lights and reflectors required by safety regulations, he did not see it in time to be able to avoid running into it.

This was not the usual case of a driver tailgating another vehicle while that vehicle comes to a sudden stop and the victim is not paying attention. The cases about which I write, including my own son's crash, occur when trailing vehicles approach from large distances with abundant sight distance, yet the truck cannot be detected in time. This is the cornerstone of the truck conspicuity issue, that slow moving trucks, lacking proper lighting to alert approaching drivers are not obvious or conspicuous until it is too late to avoid a crash. In Guy's crash, the truck had an extended bed to allow it to haul overweight, and because that bed had absolutely no underride protection, Guy was almost decapitated.

The Kentucky Vehicle Enforcement, who are supposed to oversee commercial truck safety regulations, were not called out to the crash. The state police, lacking training in commercial vehicle investigations and forensic engineering issues, made multiple mistakes. They did not weigh the truck because they did not consider weight as a factor. On the PAR, the truck weight is listed as 80,000 pounds, the state weight limit, instead of its actual weight of 134,000 pounds. The police officers did not take into account the dangerously slow speed as a factor. They ignored the conspicuity hazard. Last, there was no penalty for not having the required underride protection. The trucker and his company, after creating the factors to greatly increase the likelihood of the crash, got off without even a warning.

The police relied on a foregone conclusion, that when a driver runs into something, it is always his fault. This is true when vehicles are traveling at normal speeds and are conspicuous. I have disproven the common fallacy of fault using human factors and the laws of physics and had a peer reviewed technical paper on the topic published in the Journal of the National Academy of Forensic Engineers. (Article included in submission)

I have reconstructed many rear coal truck crashes that occurred the same way. I have never seen a case of anyone running into any other kind of vehicle in this manner in my region, not even other trucks. This is because most other vehicles, not being overloaded and driving with lights and reflectors covered by coal dust, travel at normal speeds and comply with conspicuity laws. Yet our police assign fault to the victims, partly because they don't have the proper training with regards to this aspect of the PAR or the understanding of conspicuity and partly because the victim is almost always dead and cannot give his or her side of the story.

I have reconstructed other cases in which overloaded coal trucks have crashed because of not being able to stop in time traveling downhill or speeding, often both. I have worked on crashes in which fatalities occurred because an overloaded truck rolled over in an emergency swerve. I have had instances of crashes occurring because the trucker did not swerve because he was afraid of rolling over. Yet police often consider these simply unavoidable or as having unforeseeable consequences, and then fail to prosecute trucker drivers and truck owners for contributing violations such as overweight trucks, speeding, improper maintenance of brakes, inadequate steering, and the lack of compliance with other critical mechanical systems.

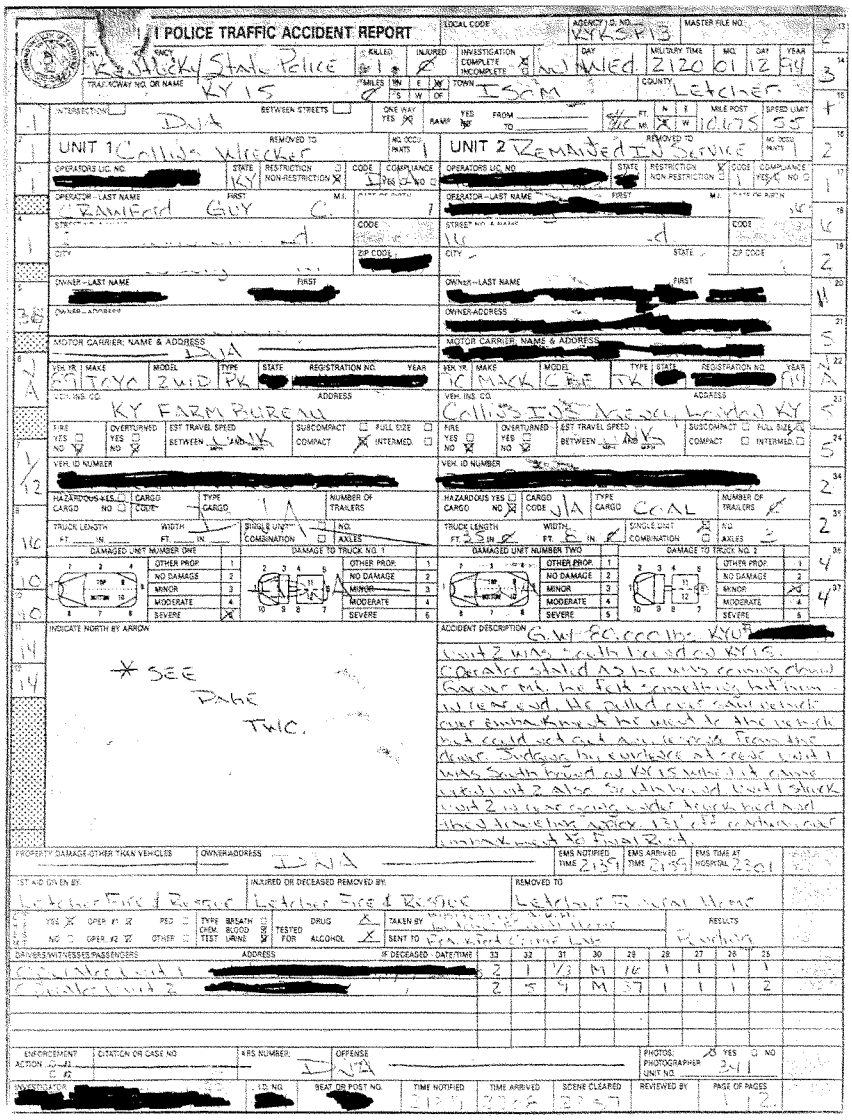
These are merely a few examples of reasons why it would be a tragic mistake for the CSA Program to allow classification of fault based solely on PARs. Few police have the training in physics, human factors, and other disciplines required to properly reconstruct crashes. Relying on police reports will likely result in a high percentage of the crashes being incorrectly attributed to the horribly injured or killed passenger vehicle victims. This will not serve to improve the Crash BASIC, will likely increase the time it takes to target carriers for intervention and will decrease the effectiveness of the CSA Program's crash prevention intention. Additionally, the process would be completely unfair to truck crash victims and their surviving family and unquestionably has legal ramifications that adversely affect their seeking justice for their loved ones through the criminal and civil court systems.

Thank you very much for your consideration. I ask that my letter, the attached PAR, and the National Academy of Forensic Engineers technical paper *The Reconstruction of Eastern Kentucky Rear Coal Truck Crashes* be submitted into the Subcommittee on Highways and Transit's, September 13, 2012, hearing "Evaluating the Effectiveness of DOT's Truck and Bus Safety Program," record. I urge you to support the FMCSA's process of including all crashes in its Crash BASIC and do all that you can to protect the public from future truck crashes.

Sincerely,

Roy Crawford
Professional Engineer and Fellow of the National Academy of Forensic Engineers
Kentucky and West Virginia Volunteer Coordinator, Truck Safety Coalition
Administrator, Underride Network

cc: Members of the Subcommittee on Highways and Transit



1 POLICE TRAFFIC ACCIDENT REPORT

LOCAL CODE: AGENCY I.D. NO. KYKSP13 MASTER FILE NO.

UNIT: KY AGENCY: Kentucky State Police | KILLED: 0 | INJURED: 1 | INVESTIGATION COMPLETE: X | INCOMPLETE: | DAY: NOTIFIED | MILITARY TIME: 2120 | MO: 01 | DAY: 12 | YEAR: 19

TRAFFICWAY NO. OR NAME: KY 15 | MILES: 8 | N: | E: | S: | W: X | TOWN: ISOM | COUNTY: Letcher

INTERSECTION: | BETWEEN STREETS: DNA | ONE WAY: YES X | RAMP: NO X | FROM: | TO: | FT: | MI: X | N: | S: | E: | W: | MILE POST: 16175 | SPEED LIMIT: 55

UNIT 1 Collins Wrecker | REMOVED TO: | NO. OCCUPANTS: 1

OPERATOR'S LIC. NO. [redacted] | STATE: KY | RESTRICTION: NON-RESTRICTION X | CODE: | COMPLIANCE: YES X NO

OPERATOR—LAST NAME: RAMEFORD | FIRST: GUY | M.I.: C | DATE OF BIRTH: [redacted]

STREET NO. & NAME: [redacted] | CODE: [redacted]

CITY: [redacted] | ZIP CODE: [redacted]

OWNER—LAST NAME: [redacted] | FIRST: [redacted]

OWNER ADDRESS: [redacted]

MOTOR CARRIER: NAME & ADDRESS: DNA

VEH. YR.: 77 | MAKE: TOYO | MODEL: 2WD | TYPE: PK | STATE: [redacted] | REGISTRATION NO.: [redacted] | YEAR: [redacted]

VEH. INS. CO.: KY FARM BUREAU | ADDRESS:

FIRE: NO X | OVERTURNED: NO X | EST. TRAVEL SPEED: BETWEEN 1 AND 1K | SUBCOMPACT: | COMPACT: X | FULL SIZE: | INTERMED.:

VEH. ID NUMBER: [redacted]

HAZARDOUS: NO X | CARGO: | TYPE CARGO: 1 | NUMBER OF TRAILERS:

TRUCK LENGTH: FT. IN. | WIDTH: IN. | SINGLE UNIT: | COMBINATION: | NO. AXLES:

DAMAGED UNIT NUMBER ONE

DAMAGE TO TRUCK NO. 1	
OTHER PROP.	1
NO DAMAGE	2
MINOR	3
MODERATE	4
SEVERE	X 5

UNIT 2 REMAINED IN SERVICE | REMOVED TO: | NO. OCCUPANTS: 1

OPERATOR'S LIC. NO. [redacted] | STATE: | RESTRICTION: NON-RESTRICTION X | CODE: 1 | COMPLIANCE: YES X NO

OPERATOR—LAST NAME: [redacted] | FIRST: | M.I.: | DATE OF BIRTH:

STREET NO. & NAME: [redacted] | CODE:

CITY: [redacted] | STATE: | ZIP CODE:

OWNER—LAST NAME: [redacted] | FIRST:

OWNER ADDRESS: [redacted]

MOTOR CARRIER: NAME & ADDRESS: [redacted]

VEH. YR.: 1C | MAKE: MACK | MODEL: CHF | TYPE: TK | STATE: [redacted] | REGISTRATION NO.: [redacted] | YEAR: [redacted]

VEH. INS. CO.: Collins Ins. Agency, Louisa KY | ADDRESS:

FIRE: NO X | OVERTURNED: NO X | EST. TRAVEL SPEED: BETWEEN 1 AND 1K | SUBCOMPACT: | COMPACT: | FULL SIZE: X | INTERMED.:

VEH. ID NUMBER: [redacted]

HAZARDOUS: NO X | CARGO: | TYPE CARGO: 1A | NUMBER OF TRAILERS: X

TRUCK LENGTH: FT. 23 IN. | WIDTH: FT. IN. | SINGLE UNIT: | COMBINATION: X | NO. AXLES: 2

DAMAGED UNIT NUMBER TWO

DAMAGE TO TRUCK NO. 2	
OTHER PROP.	1
NO DAMAGE	2
MINOR	X 3
MODERATE	4
SEVERE	5

INDICATE NORTH BY ARROW

* SEE PAGE TWO.

ACCIDENT DESCRIPTION: G.W. Eccles KY [redacted]

Unit 2 was South bound on KY 15.
Operator stated as he was coming down
Gascue Mt. he felt something hit him
in rear end. He pulled over and went
over embankment he used to stop vehicle
but could not quit any leaves from the
driver. Judging by evidence at crash Unit 1
was South bound on KY 15 when it came
up on Unit 2 also Southbound. Unit 1 struck
Unit 2 in rear causing both to go off
the left shoulder approx 131 FT northeast
of Mark mile Post Road.

PROPERTY DAMAGE OTHER THAN VEHICLES | OWNER ADDRESS: DNA | EMS NOTIFIED TIME: 2135 | EMS ARRIVED TIME: 2159 | EMS TIME AT HOSPITAL: 2301

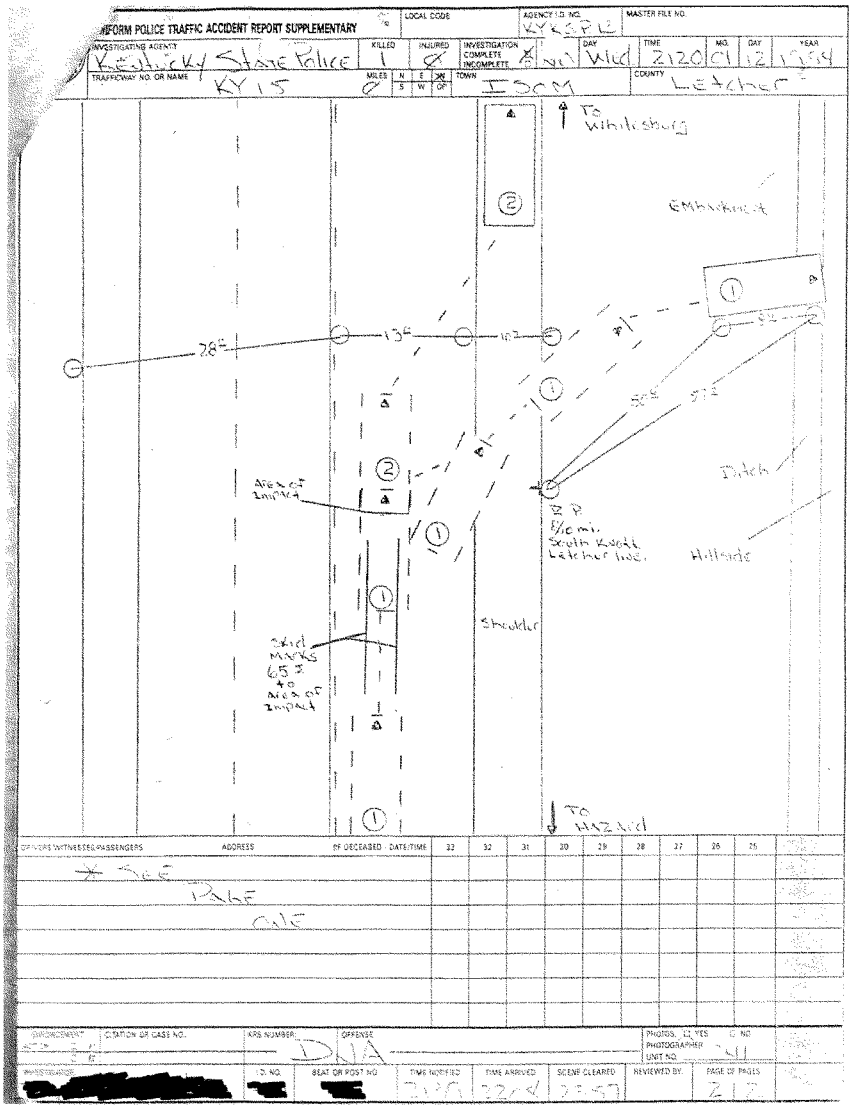
1ST AID GIVEN BY: Letcher Fire & Rescue | INJURED OR DECEASED REMOVED BY: Letcher Fire & Rescue | REMOVED TO: Letcher Fire and Rescue

DRIVER: YES X OPER. #1 X | PED | TYPE: BREATH | CHEM. BLOOD X | URINE X | TESTED FOR: DRUG | ALCOHOL X | TAKEN BY: [redacted] | SENT TO: [redacted] | RESULTS: Pending

DRIVERS/WITNESSES/PASSENGERS	ADDRESS	IF DECEASED, DATE/TIME	33	32	31	30	29	28	27	26	25
Guy Rameford Unit 1	[redacted]		2	1	73	M	16	1	1	1	1
Charles Unit 2	[redacted]		2	5	54	M	37	1	1	1	2

ENFORCEMENT ACTION: CITATION OR CASE NO. | KRS NUMBER: | OFFENSE: DUI | PHOTOS: YES X NO | PHOTOGRAPHER UNIT NO. 241

INVESTIGATOR: [redacted] | I.D. NO. [redacted] | BEAT OR POST NO. [redacted] | TIME NOTIFIED: 2135 | TIME ARRIVED: 2256 | SCENE CLEARED: 2327 | REVIEWED BY: | PAGE OF PAGES: 1 2


UNIFORM POLICE TRAFFIC ACCIDENT REPORT SUPPLEMENTARY
LOCAL CODE
AGENCY I.D. NO. KYKSPLE
MASTER FILE NO.
INVESTIGATING AGENCY Kentucky State Police
KILLED 1
INJURED 8
INVESTIGATION COMPLETE / INCOMPLETE
DAY Wed
TIME 2120
MO. 01
DAY 12
YEAR 1984
TRAFFICWAY NO. OR NAME KY 15
MILES 2
N S E W
ON OR
TOWN ISOM
COUNTY Letcher
To Whitesburg
Embankment
28'
13'
10'
5'
50'
57'
Ditch
Apex of Impact
2 P
1/2 mi. South Kwalt Letcher line.
Hillside
Shoulder
Skid Marks 65' to Apex of Impact
To Hazard
OFFICERS WITNESSES/PASSENGERS
ADDRESS
DT DECEASED - DATE/TIME
32
32
31
30
29
28
27
26
25
See Page One
ENFORCEMENT
CITATION OR CASE NO.
KRS NUMBER DNA
OFFENSE
PHOTOS: YES NO
PHOTOGRAPHER
UNIT NO.
INVESTIGATOR
I.D. NO.
BEAT OR POST NO.
TIME NOTIFIED 2126
TIME ARRIVED 2214
SCENE CLEARED 2257
REVIEWED BY
PAGE OF PAGES 2 2

The Reconstruction of Eastern Kentucky Rear Coal Truck Crashes

by Roy Crawford, P.E. (NAFE 475F)

Introduction

This paper proposes a method for reconstructing a certain type of collinear, front-to-rear vehicle crash, Eastern Kentucky single-unit coal truck underrides. The crashes discussed are those in which a following vehicle gains rapidly from a long initial distance on a leading slowly moving vehicle that is not sufficiently conspicuous for crash avoidance. The results of these analyses provide insight into the details of what occurs in these types of crashes, show that inattention and/or speeding by the victims are not necessarily causes of the crashes, and can support or refute independent human factors evidence.

Discussion

The author has performed reconstructions of several Eastern Kentucky crashes that occurred because of slow speed and insufficient rear conspicuity of vehicles on high-speed highways, usually at night and/or sometimes in difficult sight conditions. The trucks involved are usually black or another dark color, are coated with mud and dust, and have only two tail lamps that are spaced just eighteen inches apart. See Figure 1. It is likely that the close spacing of the tail lamps causes some following motorists to mistake them for vehicles with tail lamps of normal spacing but three or four times farther away. When these lamps become covered with the mud and dust that is common to dirt and gravel Eastern Kentucky coal mine haul roads, there can be very little if any practical rear conspicuity. These crashes typically involve overloaded coal trucks traveling up and down the steep hills of this region of the country.

Many people envision these types of crashes as occurring when an assumed inattentive driver suddenly sees a truck in his or her path, hits the brakes too late, and slides into and strikes the truck. They are usually surprised to learn that while this sequence happens in only a few seconds, the vehicles involved are initially widely separated and cover significant distances between the beginning of perception of the following driver and impact.

Analysis

In the author's experience, inattention is always listed as a causative factor in these crashes, and speed is often listed as well. Inattention is expected

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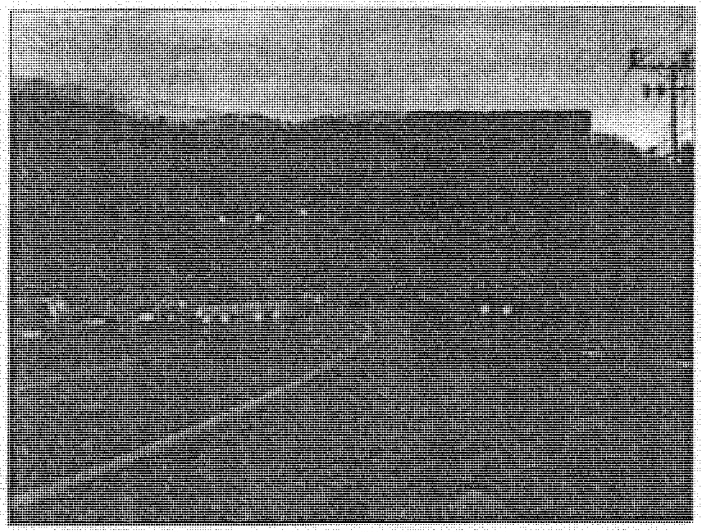


Figure 1
This truck has only two rear lamps and no reflectors or reflective tape. Its tail lamps resemble one side of the automobile adjacent to it. Even with some remaining daylight, it begins to blend into the background.

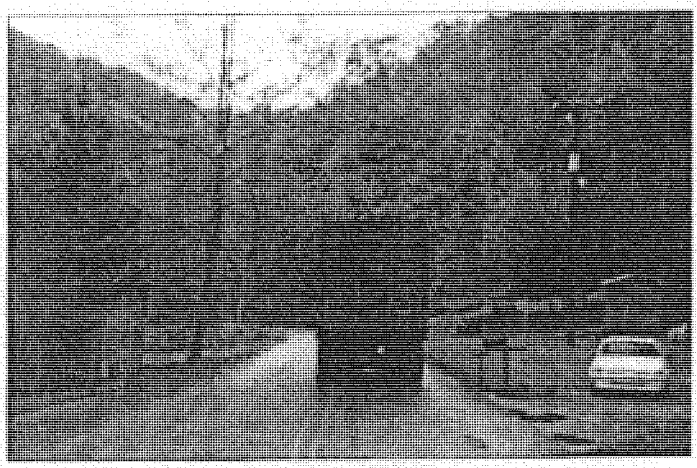


Figure 2
The rear of an Eastern Kentucky single unit coal truck. It has no identification or clearance lamps and no reflectors. Its turn, running, and brake lamps are combined and located six feet or more forward of and under the rear of the dump body. These lamps are spaced only 18" apart and, on this truck, one is broken or completely obscured.

because many people cannot believe that a driver could fail to see something as large as a truck, misunderstanding the difference between seeing and perceiving as a hazard. Speeding is listed whenever there is some evidence of high speed with the understanding that high speed reduces available perception, reaction, and avoidance maneuvering times and distances. However, the author argues that in these cases neither of these factor is necessarily causative.

Studies have shown that when trucks travel at speeds well below the flow of traffic, crash rates rise dramatically, and unlike most Eastern Kentucky coal trucks, the trucks studied had proper rear conspicuity. See Figure 2. The author has never had a case in which one vehicle closed rapidly on another from a large distance and struck it from behind when the lead vehicle was traveling at a normal speed nor a case in which this has happened to a vehicle encountering another with the proper level of rear conspicuity. He knows of no similar cases in his area involving any types of trucks other than coal trucks.

See Figure 3 for an example of a reconstruction of an Eastern Kentucky rear coal truck crash. In this set of calculations, the inputs necessary from the reconstructionist are listed under the heading Assumptions. These include coefficient of friction, grade, closing speed of the vehicles at impact, braking distance, if any, leading vehicle speed, and perception and reaction times of the following driver. The values of these inputs are gathered by standard methods outside the scope of this paper.

These types of reconstructions must be calculated in reverse chronological order from impact to the beginning of perception. There are four sections of results on the spreadsheet. The first section describes the scenario at impact, at which a time of zero has been assigned in this case and the rear of the leading vehicle and the front of the trailing vehicle are at the same point in space. These calculations can be performed with a leading vehicle accelerating or decelerating, but the leading vehicle speed in this example is assumed to be constant throughout the scenario, so it is the same as originally input for all four sections.

Following vehicle speed is the sum of the leading vehicle and closing speeds based on the simplifying assumption that because of the overwhelming difference in masses between the vehicles, usually about a 40:1 ratio, and the lack of permanent crush damage to the coal truck, the truck is treated as a moving barrier. Because truck delta-v's are usually less than one mile per hour in these crashes, their drivers often state that they did not feel any impact and were not aware there had been a crash until they were notified by someone else who saw the wrecked victim vehicle behind the coal truck involved.

Collinear, Same-Direction, Front-to-Rear Crash Scenario Calculations					
Assumptions:		**Standard example**			
Coefficient of friction	**0.7**	Dimensionless			
Grade	**5**	Percent, uphill positive			
Impact closing speed	**20**	Miles per hour			
Braking distance	**50**	Feet			
Leading vehicle speed	**25**	Miles per hour			
Perception time	**1.75**	Seconds			
Reaction time	**0.75**	Seconds			
Time	**0.00**	**Both vehicles at point of impact**			
	Leading vehicle speed	**25**	Miles per hour		
	Following vehicle speed	**45**	Miles per hour		
Time	**-0.72**	**Beginning of braking of following vehicle**			
	Leading vehicle speed	**25**	Miles per hour		
	Following vehicle speed	**56**	Miles per hour		
	Distance of leading vehicle from point of impact			**27**	Feet
	Distance of following vehicle from point of impact			**50**	Feet
	Separation between vehicles			**23**	Feet
Time	**-1.47**	**Beginning of reaction time**			
	Leading vehicle speed	**25**	Miles per hour		
	Following vehicle speed	**56**	Miles per hour		
	Distance of leading vehicle from point of impact			**54**	Feet
	Distance of following vehicle from point of impact			**112**	Feet
	Separation between vehicles			**58**	Feet
Time	**-3.22**	**Beginning of perception time**			
	Leading vehicle speed	**25**	Miles per hour		
	Following vehicle speed	**56**	Miles per hour		
	Distance of leading vehicle from point of impact			**118**	Feet
	Distance of following vehicle from point of impact			**256**	Feet
	Separation between vehicles			**138**	Feet

Figure 3

The second results section yields the products of calculations of the time and distance between impact and the beginning of braking by the victim vehicle, if any. It is not uncommon for there to be no skid marks at all. The point in time, the speed of the following vehicle, and the locations of both vehicles and the separation distance between them at the initiation of braking are all calculated using standard equations.

The third results section yields the products of calculations of the time and distance during physical reaction of the following vehicle driver. The time is simply the previous time plus the reaction time used by the reconstructionist. In this example, the speeds of both vehicles are assumed to be unchanged before and until initiation of braking by the following vehicle driver, so they are the same in this and the fourth results sections. The distances covered during this time interval are added to the previous distances from impact, and the locations of both vehicles are calculated using standard methods. Finally, the separation distance is again the difference between these two figures.

The fourth and final results section is calculated in the same manner as the third. Total time is perception time added to the previous time. All distances and locations are again calculated by standard methods.

In this example, the entire crash sequence occurs in less than 3-1/2 seconds. At the initiation of braking, the vehicles are only separated by 23 feet and the following vehicle is still traveling at its full initial speed of 56 mph.

A key result of this analysis is the final figure in section four, the separation between vehicles. Since, for example, rear truck lights are required to be visible for at least five hundred feet under normal conditions, and in practice can be perceived much farther away than this, such a result indicates either that the truck's rear conspicuity was grossly insufficient, as is the case in most if not all Eastern Kentucky crashes; that environmental conditions made traveling even at normal speeds by the following vehicle unsafe and an unusually slow speeds by the truck even more unsafe; that there was some problem with the following vehicle that hampered its driver's sight distance; that the following driver was extremely inattentive; that the trailing vehicle was traveling at a very high speed; or a combination of these factors. It is typical for the separation distance at the beginning of perception in these crashes to be between 175 and 250 feet, much less than the legally required 500 feet.

The inattention issue is dealt with first; see Figure 4. The second example uses the same assumptions as the first example but with perception time increased to yield an initial separation between the vehicles of the minimum 500 feet that would be expected if the conspicuity required by law under normal conditions was being met. The perception time required is almost 10 seconds, an unreasonably long time to expect someone to be inattentive when driving a motor vehicle. Since sight distances are usually ample in these crashes, this is often considered proof of gross inattention. However, the argument can be made that ample sight distance proves the opposite: that drivers cannot properly guide vehicles along the roadway, often around curves, and keep them centered in their lanes for this much time and distance while being so inattentive as to not

be able to see trucks even in their peripheral vision until it is too late to avoid a crash. In other words, that ample sight distance exists in these crashes is not proof of inattention by the victim but of insufficient rear conspicuity and the danger of violating the expectations of drivers by vehicles traveling much slower than the flow of traffic. Even in cases where there are two climbing lanes, one providing a way to pass the slow-moving truck, victim vehicles have remained in the rightmost lane, indicating they did not perceive the truck in time. This example shows that gross inattention is not only not necessary but also very unlikely to be a causative factor in this type of crash.

Collinear, Same-Direction, Front-to-Rear Crash Scenario Calculations					
Assumptions:		**Inattention question**			
Coefficient of friction	**0.7**	Dimensionless			
Grade	**5**	Percent, uphill positive			
Impact closing speed	**20**	Miles per hour			
Braking distance	**50**	Feet			
Leading vehicle speed	**25**	Miles per hour			
Perception time	**9.68**	Seconds		**< Only change**	
Reaction time	**0.75**	Seconds			
Time	**0.00**	**Both vehicles at point of impact**			
	Leading vehicle speed	**25**	Miles per hour		
	Following vehicle speed	**45**	Miles per hour		
Time	**-0.72**	**Beginning of braking of following vehicle**			
	Leading vehicle speed	**25**	Miles per hour		
	Following vehicle speed	**56**	Miles per hour		
	Distance of leading vehicle from point of impact			**27**	Feet
	Distance of following vehicle from point of impact			**50**	Feet
	Separation between vehicles			**23**	Feet
Time	**-1.47**	**Beginning of reaction time**			
	Leading vehicle speed	**25**	Miles per hour		
	Following vehicle speed	**56**	Miles per hour		
	Distance of leading vehicle from point of impact			**54**	Feet
	Distance of following vehicle from point of impact			**112**	Feet
	Separation between vehicles			**58**	Feet
Time	**-11.15**	**Beginning of perception time**			
	Leading vehicle speed	**25**	Miles per hour		
	Following vehicle speed	**56**	Miles per hour		
	Distance of leading vehicle from point of impact			**409**	Feet
	Distance of following vehicle from point of impact			**909**	Feet
	Separation between vehicles			**500**	Feet

Figure 4

It is the author's expectation that in most if not all of these cases glare from oncoming vehicles is very likely a contributing factor, although unfortunately rarely provable. The driver who caused the glare will ordinarily never know that his or her passing by was a factor, the truck driver may not remember or wish to acknowledge the oncoming vehicle, and the victim(s) are usually killed or have brain damage that causes them to be unable to remember the crash or the events leading up to it. An oncoming vehicle would also cause the following driver in these situations to dim his or her headlights, greatly reducing the distance at which those headlights can illuminate another vehicle.

It is also reasonable to expect that in some cases the victim driver looks away from the highway for at least a brief amount of time just before or upon entering a point in time and space in regard to the perception, reaction, and braking and/or steering time and distance necessary to avoid a crash and, by the time he or she looks back, it is too late to do so. This does not necessarily mean that the driver was negligently inattentive. He or she may merely be doing one of the many minor tasks that all drivers perform such as changing a radio station, talking with a passenger, looking in a mirror, reading a billboard, or lighting a cigarette.

For example, consider a coal truck that is perceivable at only 300 feet. A following driver may take his or her eyes off the highway for two seconds beginning at a separation distance of 400 feet, and look back too late to avoid a crash. If the driver is able to perceive a properly conspicuous vehicle at the 500 feet or more that is required by law and traveling at a normal speed, he or she will have enough notice to either complete the task quickly enough that a problem is avoided or wait until the situation is dealt with before performing it. The drivers who become victims of underride crashes may in many cases be the ones who have the misfortune to initiate one of these tasks just before or upon entering the minimum distance required to avoid such a crash. If glare from an oncoming vehicle occurs at the same time and/or there are environmental problems with sight such as fog, rain, or snow, the danger of the situation rises dramatically.

See Figure 5. To consider the possibility of high speed by the following vehicle being a contributing factor, the third example again shows most of the original factors but with a braking distance that yields a very high initial following vehicle speed and a leading vehicle that is perceivable for the required 500 feet. Closing speed is set to zero to represent the following vehicle coming as close as possible to the leading vehicle without striking it. These calculations show that in this example 500 feet is a sufficient sight distance to allow even most speeding following drivers to perceive the danger, react by braking or steering, and avoid crashes with ample time. In this case any speed less than 99

Collinear, Same-Direction, Front-to-Rear Crash Scenario Calculations					
Assumptions:		**Speeding question**			
Coefficient of friction	**0.7**	Dimensionless			
Grade	**5**	Percent, uphill positive			
Impact closing speed	**0**	Miles per hour		**< Changed**	
Braking distance	**406**	Feet		**< Changed**	
Leading vehicle speed	**25**	Miles per hour			
Perception time	**1.75**	Seconds			
Reaction time	**0.75**	Seconds			
Time	**0.00**	**Both vehicles at point of impact**			
	Leading vehicle speed	**25**	Miles per hour		
	Following vehicle speed	**25**	Miles per hour		
Time	**-4.80**	**Beginning of skid of following vehicle**			
	Leading vehicle speed	**25**	Miles per hour		
	Following vehicle speed	**99**	Miles per hour		
	Distance of leading vehicle from point of impact			**176**	Feet
	Distance of following vehicle from point of impact			**406**	Feet
	Separation between vehicles			**230**	Feet
Time	**-5.55**	**Beginning of reaction time**			
	Leading vehicle speed	**25**	Miles per hour		
	Following vehicle speed	**99**	Miles per hour		
	Distance of leading vehicle from point of impact			**204**	Feet
	Distance of following vehicle from point of impact			**515**	Feet
	Separation between vehicles			**311**	Feet
Time	**-7.30**	**Beginning of perception time**			
	Leading vehicle speed	**25**	Miles per hour		
	Following vehicle speed	**99**	Miles per hour		
	Distance of leading vehicle from point of impact			**268**	Feet
	Distance of following vehicle from point of impact			**768**	Feet
	Separation between vehicles			**500**	Feet

Figure 5

mph would allow the following vehicle to come to a stop without striking the lead vehicle. These last two examples point up the critical need for proper rear conspicuity, especially when a vehicle is traveling below the speed of the flow of traffic.

The Underride Protection Issue

The results of these crashes are often made much worse when the lead vehicle is a singe-unit truck with a dump body designed with a large rear overhang and either no or insufficient rear underride protection. See Figure 6.

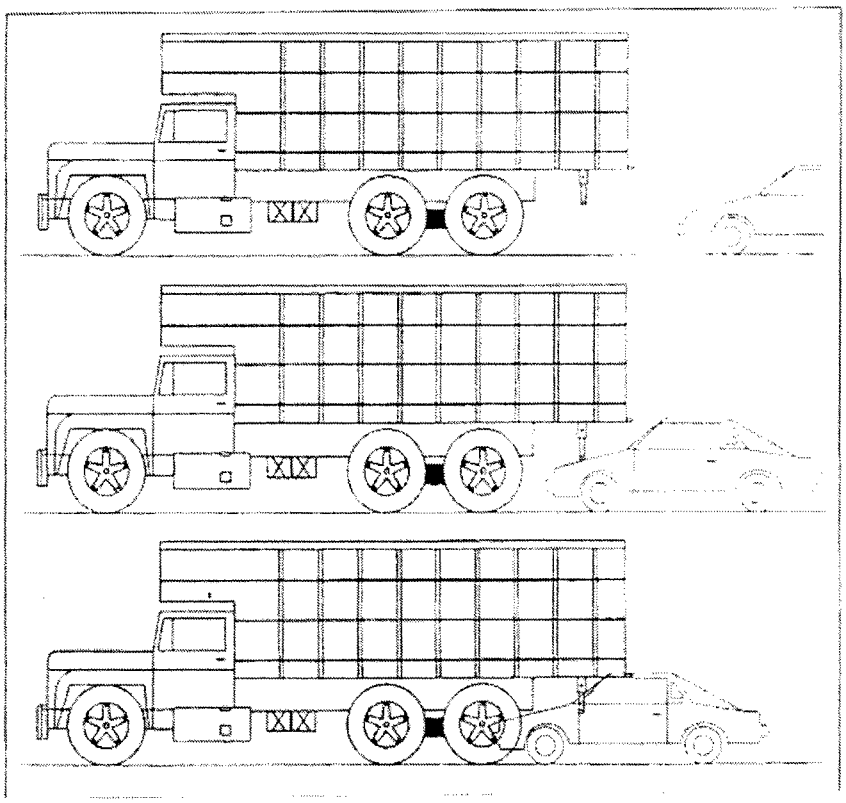


Figure 6

Because none of the occupant protection systems of a vehicle — such as air bags, seat belts, collapsing steering columns, and crumple zones — are able to perform as intended when the top of a vehicle is sheared off before the front of the vehicle strikes anything solid, front-seat victims characteristically suffer massive head and chest trauma, usually death, and often decapitation. Injuries are horrific when there are no underride guards because the heads of victims are directly struck by the unprotected tailboards of trucks, something that would not happen if occupant space intrusion were prevented by safe guards. This is how the actress Jayne Mansfield was killed in 1967.

To be able to haul 40 tons or more over the safe limit, Eastern Kentucky single-unit coal trucks typically have rear overhangs that create underride zones of six feet or more about four feet above the ground when the truck is unloaded. The overweight, conspicuity, and underride protection regulations that would prevent these crashes are not enforced, and as a result, there have been well over twenty such crashes in Eastern Kentucky causing over a dozen deaths.

The argument is often made that closing speeds at impact were so high that the victim(s) would have been killed by sudden deceleration alone even had underride guards been in place. This opinion presumes underride guards that are rigid and have insufficient energy absorbing abilities. That a victim would have been killed by delta-v upon striking an underride guard is a probability in some cases, especially if the guard were not sufficiently energy absorbing and/or when restraints were not used. However, this has been claimed even when frontal crush damage to the victim vehicle indicated an easily survivable delta-v and one of the two front-seat occupants survived the crash.

When it is not possible to make a sufficiently accurate estimation of closing speed in a case in which at least one of the occupants survived the crash, the highest delta-v the occupant(s) could be expected to survive may be used to calculate a worst-case scenario.

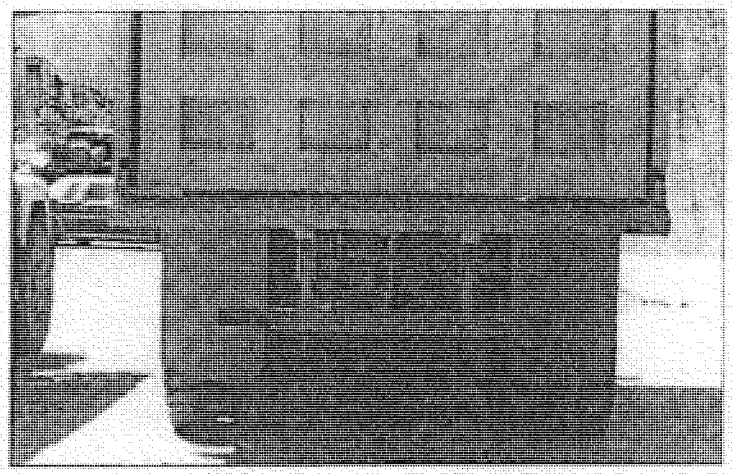
After some public attention was given to the underride guard problem after a crash in early 1994, nearly all single-unit coal trucks in Eastern Kentucky had underride guards installed. However, most of the ones presently being used are so flimsily designed and constructed that they collapse with relatively little effect upon impact. Crash tests have shown that minimally compliant guards cannot protect most victims, especially when the victims are in the newer, smaller vehicles with sloping hoods.

Safe underride guards should be full width, mounted flush with the rear of the vehicle, constructed as low to the ground as possible, and be energy-absorbing. Guards that are less than full width and not mounted flush with the rear allow people to be killed when the driver of the following vehicle swerves at the last moment, a common maneuver, causing part of his or her vehicle to pass under an unprotected rear corner of the truck.

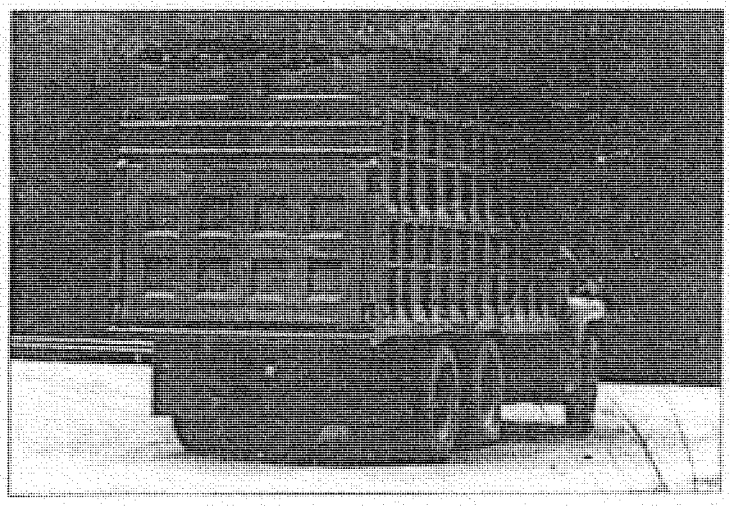
Underride guards should be able to stop an automobile with a closing speed of at least 40 mph, over as long a time interval as possible, and without any intrusion into the occupant compartment. As of the beginning of 1998, improved underride protection is required on newly built trailers, but existing trailers as well as all single-unit trucks are unfortunately exempt from these regulations.

Conclusions

The evidence in this paper debunks some of the myths surrounding rear vehicle crashes, namely that inattention and speed are always the causes of these tragedies. It also shows that even if such crashes are the fault of following drivers, their injuries and deaths could be greatly reduced by properly-designed and -manufactured underride guards.



The only lights on this truck are spaced 18" apart and covered with mud. The hinged underride guard is minimally compliant.



A typical Eastern Kentucky single unit coal truck. These trucks operate at around 120,000 pounds gross weight.

Testimony of the Snack Food Association

before

the Subcommittee on Highways and Transit of the House Committee on Transportation and Infrastructure

on

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

September 13, 2012

The Snack Food Association (SFA) is the international trade association of the snack food industry representing snack manufacturers and suppliers, representing over 400 companies worldwide. SFA members' core business is manufacturing and distributing convenience foods to thousands of retail outlets such as grocery and convenience stores. In support of this activity, SFA member-companies collectively engage tens of thousands of professional drivers and operate commercial vehicles in a wide range of fleet operations. These may include in-house "private" fleets and/or third-party providers.

SFA generally supports the goals and objectives of the Federal Motor Carrier Safety Administration's Compliance, Safety Accountability program. We believe the objectives of CSA and its Safety Management System (SMS) methodology represent a significant improvement over the prior SafeStat system in its potential to more effectively identify carriers for enforcement intervention. A central purpose of CSA is to make better use of the Agency's resources by focusing attention on those components of a carrier's compliance and safety record that have the strongest correlation with crashes. SMS quantifies compliance performance by percentile in each of seven categories known as "Behavioral Analysis and Safety Improvement Categories" or "BASICs." If the methodology works correctly, the FMCSA will be better able to identify those carriers posing the greatest safety risk. If it doesn't, this raises serious questions about the program's fundamental soundness. SFA is concerned that gaps in FMCSA's implementation and methodology may undermine program objectives.

As noted above, a central purpose of CSA is to make better use of enforcement resources by focusing attention on those components of a carrier's compliance and safety experience that most closely relate to actual crashes. However, as the American Trucking Associations (ATA) has pointed out, this is not the case for all seven of the SMS BASICS categories. For example, "there appears to be no difference in crash rates for carriers with scores exceeding the (enforcement) intervention threshold in the Driver Fitness BASIC compared to carriers whose scores do not" according to ATA Vice President for Safety Policy, Rob Abbott.[1] In a study commissioned by

[1] *Compliance, Safety, Accountability (CSA) – Let's Not Make It An Ashtray*, Rob Abbott, June 2012

FMCSA itself, the University of Michigan's Transportation Research Institute (UMTRI) found that the Driver Fitness and Cargo-Related BASIC appear to have no relationship to crash risk. In fact the data actually show an inverse relationship between Driver Fitness scores and crash rates. The UMTRI study also questioned CSA's method for assigning severity to various violations, describing some of the weightings as "arbitrary". [2] A study commissioned by the Alliance for Safe, Efficient, and Competitive Truck Transportation (ASECTT), a group representing small motor carriers and freight brokers, found that with respect to individual carriers, percentile rankings both above and below the agency's monitoring thresholds "are not valid predictors of crash frequency." [3] A study by Wells Fargo of the 200 largest motor carriers for which sufficient data is available found "very little relationship (i.e., not statistically significant) between Unsafe Driver or Fatigued Driver scores and actual accidents per power unit." [4]

The validity and credibility of the BASICs are central to the success of the CSA program. If they need to be revised to establish a firm correlation with actual crash risk, this should be accomplished as quickly as possible. FMCSA should fully evaluate the outside studies noted above as a first step to making necessary changes.

Other concerns involve significant underreporting of crashes by some states and enforcement disparities among the states. The UMTRI researchers found that several states report fewer than 50% of commercial motor vehicle crashes to the FMCSA database. Significant differences in state inspections and enforcement are well known. FMCSA has worked to encourage improved state reporting of commercial vehicle crashes and more uniform enforcement. It is to be commended for this effort. However, considerable work remains to be done and SFA urges the Subcommittee to consider additional measures that may be necessary to ensure full state compliance.

Finally, the data FMCSA use do not distinguish between preventable and non-preventable crashes. SFA member companies' fleet operations disproportionally involve smaller vehicles (under 26,000 lbs.) engaged in urban distribution and delivery to grocery and convenience stores, often in areas with heavy traffic. As such they have greater exposure than do other types of trucking operations to crashes resulting through no fault of their own. While these crashes tend to be less severe than those experienced by heavy-duty over-the-road truckers, they nonetheless count against a company's safety record if they meet the threshold for a DOT-reportable crash. The current FMCSA's safety rating methodology acknowledges this distinction in part by setting a higher threshold for acceptable crash rates for carriers operating within a 100-mile radius. Incorporating "accountability" into the SMS scoring process would take this a step further and represent a more effective means of ascribing risk.

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[2] *Evaluation of the CSA 2010 Operational Model Test*, University of Michigan Transportation Research Institute, August, 2011

[3] SMS BASICS Scores Are Not Valid Predictors of Crash Frequency, Inam Iyoob, June 2012

[4] CSA: Another Look With Similar Conclusions, Wells Fargo, July, 2012

Our understanding is that FMCSA has developed a means of evaluating accountability and intended to include it in the SMS methodology, but has now changed course for reasons unexplained. The Agency now says it wants to conduct additional study of the issue. SFA believes accountability is central to the credibility of CSA and should be incorporated into the SMS methodology as soon as possible. If it is not, it is critical that distinctions in fleet exposure, such as described above, must be fully accounted for and appropriately weighted in the ranking methodology. Crash severity should also be appropriately weighted.

In August, FMCSA announced several programmatic changes designed to improve CSA. While these represent modest improvements to the system it is disappointing that they do not address the fundamental issues raised above.

In summary, while SFA supports the objectives of CSA, the program may require revisions to ensure its usefulness and credibility as an enforcement tool and its unbiased application across the regulated community. Issues that must be addressed include the validity of BASICs as crash predictors; state under-reporting of crashes and discrepancies in state enforcement; incorporation of "preventability"; and appropriate weighting with respect to fleet operation and crash severity.

SFA appreciates this opportunity to submit testimony and requests that it be included in the hearing record.

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