

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION OF SMALL )  
TRUCKING COMPANIES, THE )  
EXPEDITE ALLIANCE OF NORTH )  
AMERICA and AIR & EXPEDITED )  
MOTOR CARRIERS ASSOCIATION, )

Petitioners, )

v. )

FEDERAL MOTOR CARRIER SAFETY )  
ADMINISTRATION, )

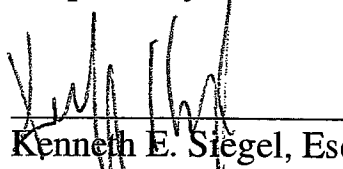
Respondent )

PETITION FOR  
REVIEW  
10-

The National Association of Small Trucking Companies (“NASTC”), a trade association incorporated in the State of Tennessee and located at 2054 Nashville Pike, Gallatin, TN 37066; The Expedite Alliance of North America (“TEANA”), a trade association incorporated in the Commonwealth of Pennsylvania and located at 100 North 2<sup>nd</sup> St., Philadelphia, PA 19103; and Air & Expedited Motor Carriers Association (“AEMCA”), a trade association incorporated in the Commonwealth of Virginia and located at 9532 Liberia Avenue # 705, Manassas, VA 20110 (hereafter collectively, “Associations”), hereby petition the Court under Rule 15(a), F.R.A.P., for review of the October 2010 final order, as amended on

November 18, 2010, issued by the Federal Motor Carrier Safety Administration in response to public comments it had invited in Docket No. FMCSA-2004-18898; Withdrawal of Proposed Improvements to the Motor Carrier Safety Status Measurement System (SafeStat) and Implementation of a New Carrier Safety Measurement System (CSMS). Copies of the request for comments and of the final orders are attached. All three Associations participated in the rulemaking before the agency.

Respectfully submitted,



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MOTOR CARRIERS ASSOCIATION, )

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Certificate of Service

FEDERAL MOTOR CARRIER SAFETY )  
ADMINISTRATION, )

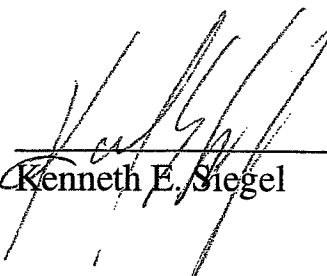
Respondent )

I hereby certify that copies of the foregoing were delivered by hand  
this 29<sup>th</sup> day of November, 2010 to:

Robert S. Rivkin, Esq.  
General Counsel  
U.S. Department of Transportation  
1200 New Jersey Ave., S.E.  
Washington, DC 20590

Alais Griffen, Esq.  
Chief Counsel  
Federal Motor Carrier Safety Administration  
1200 New Jersey Ave., S.E.  
Washington, DC 20590

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department Of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20130

  
\_\_\_\_\_  
Kenneth E. Siegel

# The CSA 2010

# Dispatch

## Letter from the Administrator

CSA 2010's Motor Carrier Data Preview is underway, the Operational Model Test (Op-Model Test) has successfully concluded and nine states are now fully operational. Motor carriers can now view an analysis of their violation and crash histories based on the new Safety Measurement System (SMS).

Accomplishing these milestones has taken dedication and hard work by many participants. In particular, I want to commend the Federal Motor Carrier Safety Administration's (FMCSA) field staff in the Op-Model Test States who have tested, evaluated, listened, learned, and helped to refine our improved approach to motor carrier safety. CSA 2010 was developed "from the ground up." The field staff—the Safety Investigators, Division Administrators, Field Administrators, Program Specialists—and all of our State Partners are at the heart of this important effort to improve safety on our nation's roads.

New solutions require careful testing. With that in mind, we continue to evaluate this new approach, fine-tuning it to ensure a successful nationwide rollout. FMCSA and our State Partners are working to incorporate the many lessons learned and feedback received from the agency's stakeholders, including Op-Model

Test participants, state law enforcement, industry experts, and safety advocates, among others.

FMCSA's schedule for the CSA 2010 rollout reflects my commitment to launch this program in the most effective way possible. I believe that a phased rollout will increase the understanding, acceptance and, most importantly, accountability by all parties for good safety performance.

CSA 2010 is designed to advance our safety-first mission by reducing truck- and bus-related crashes, injuries, and fatalities. After all, FMCSA is dedicated to saving lives and preventing needless tragedies. Everything we do with CSA 2010 counts towards safer drivers, safer vehicles, and safer carriers. Again, thank you for your diligent commitment to making safety the top priority.

**"America's roads are the safest they've ever been, but they must be safer and we won't rest until they are."**

— Transportation Secretary Ray LaHood

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- CSA 2010 Field Rollout Schedule
- BASIC Assessments Available on CSA 2010 Website
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- Lessons Learned from the Op-Model Test
- Look Ahead: December 2010 CSA 2010 Rollout



FMC-CSA-10-031



U.S. Department of Transportation  
**Federal Motor Carrier Safety Administration**

October 2010

# CSA 2010 Field Rollout Schedule

<p><b>April–August 2010</b> Carrier Data Review—carriers viewed safety data organized by the Safety Measurement System's (SMS) Behavior Analysis and Safety Improvement Categories (BASICS)</p>	<p><b>July 2010</b> Four 50/50 Op-Model Test States (CO, GA, MO, and NJ) join five 100% Op-Model Test States (DE, KS, MD, MN, MT)</p>	<p><b>December 2010</b></p> <ul style="list-style-type: none"> <li>SMS replaces SafeStat and is available to the public, including shippers and insurance companies</li> <li>Carrier enforcement efforts prioritized based on SMS results</li> <li>FMCSA begins issuing warning letters to carriers with safety problems identified by BASICS</li> <li>Roadside inspectors use SMS results to identify carriers for inspection</li> </ul>
<p><b>June 30, 2010</b> Completion of Op-Model Test</p>	<p><b>August–December 2010</b> Carrier Data Preview—carriers can view an analysis of their safety data based on the BASICS</p>	
<p><b>2011</b></p> <ul style="list-style-type: none"> <li>Safety Fitness Determination Notice of Proposed Rulemaking (NPRM) scheduled to be published</li> <li>Enforcement staff trained and new interventions implemented state-by-state</li> </ul>		

## BASICS Data and Analysis Available on CSA 2010 Website

ON AUGUST 16, 2010, FMCSA converted the Carrier Data Review into a Carrier Data Preview, which allows truck and bus companies to review an analysis of where they stand in each of the Behavior Analysis and Safety Improvement Categories (BASICS). The analysis is based on percentiles calculated in the SMS using 24 months of a carrier's on-road safety performance data (i.e. roadside inspection results and crashes). And, as in SafeStat, investigation findings are also considered in a carrier's performance analysis.

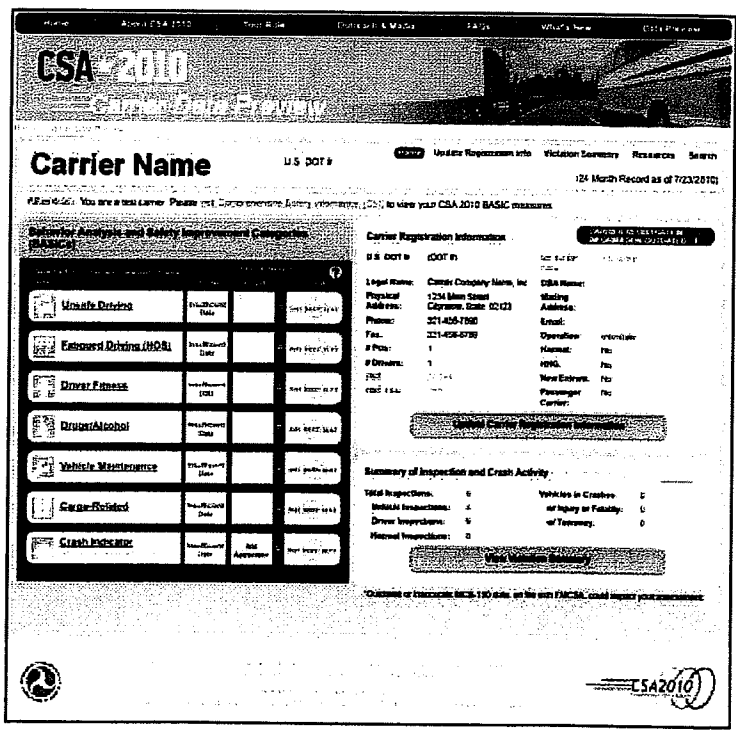
### What does this mean?

It means that carriers have an early opportunity to identify areas for improvement and to begin addressing safety problems today. Carriers can also request reviews of potentially incorrect data before the SMS is made available to the public in December 2010.

### How can carriers check their CSA 2010 data?

- Carriers can check their data by:
- Visiting <http://csa2010.fmcsa.dot.gov>
  - Selecting the Data Preview tab
  - Logging in with a DOT# and personal identification number (PIN)

Carriers can also enter the Data Preview through the FMCSA Information Portal:  
<https://portal.fmcsa.dot.gov/AccountRequest/AccountRequestForm1.jsp>  
 Here, carriers can obtain a Portal account.



Sample motor carrier overview from the Carrier Data Preview available at <http://csa2010.fmcsa.dot.gov>

The earlier carriers identify and address their safety compliance issues, the safer our roads will be for everyone.

# Test Efficiencies and Updates to SMS

JUNE 30, 2010 marked the successful end of the CSA 2010 Op-Model Test—a 30-month field test in nine states. Initial results indicate gains in enforcement efficiency, and research has demonstrated that efficiency improvements lead to measurable safety improvements later on.

## What are the efficiency gains?

- Issued more than 6,600 warning letters; 51% of recipients have logged in to review their safety data and analysis
- Conducted up to 35% more carrier investigations per Safety Investigator by employing the full array of safety investigations:
  - Onsite Investigation—Comprehensive: 30%
  - Onsite Investigation—Focused: 45%
  - Offsite Investigation: 25%
- Followed up on investigation findings with more carriers and drivers
  - Nearly 50% of investigations resulted in a Notice of Claim (NOC), Notice of Violation (NOV) or Cooperative Safety Plan (CSP), compared to approximately 35% using the existing enforcement model
  - Number of driver enforcement actions per Safety Investigator has increased

As a result of input from enforcement personnel, industry representatives, and safety experts, as well as findings from the nine-state Op-Model Test, FMCSA has updated the SMS to make it more effective in identifying high-risk and other carriers with safety compliance problems.

Specifically, the following updates were made:

### • Unsafe Driving and Crash BASICS

The measure of exposure was changed from Power Units (PUs) only to a combination of PUs and Vehicle Miles Traveled (VMT) in the Unsafe Driving BASIC and Crash Indicator. In addition, those two items changed from using PUs as a safety event grouping (formerly referred to as peer grouping) to using the number of crashes for the Crash Indicator and the number of inspections with a violation for the Unsafe Driving BASIC.

### • Controlled Substances/Alcohol BASIC

The measure of exposure changed from PUs to the number of relevant inspections.

### • Cargo-Related BASIC

FMCSA is employing a more strategic approach to addressing motor carriers with a history of size and weight violations rather than counting these violations in the Cargo-Related BASIC. It is important to note that these violations will still be cited at roadside inspections and addressed during investigations.

### • Severity Weighting

Severity weights for some roadside inspection violations were updated. These enhancements allow FMCSA to more effectively identify motor carriers with safety compliance problems, thereby raising the bar for safety on the nation's roads.

For additional details about the improvements to the SMS, visit:

<http://csa2010.fmcsa.dot.gov/Documents/SMSImprovementsFAQs.pdf>

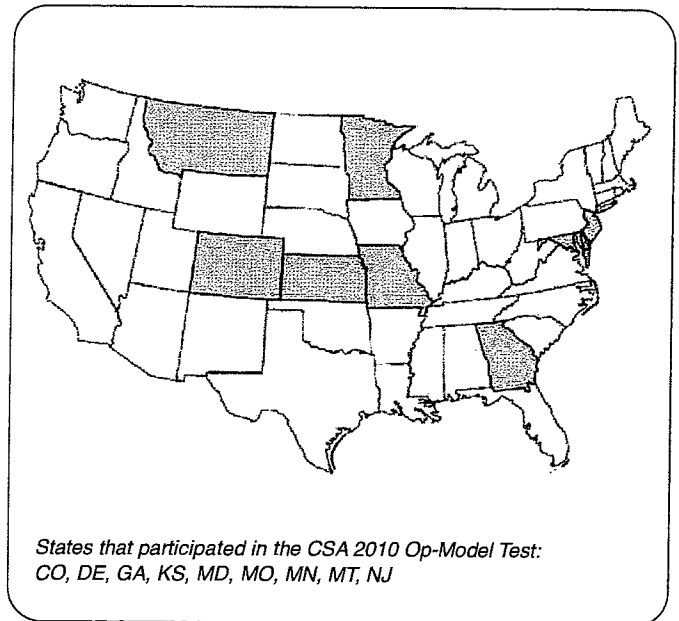


## Lessons Learned from the Op-Model Test

IN THE WINTER OF 2010, FMCSA will introduce four key concepts adopted from the CSA 2010 Op-Model Test that are aimed at achieving additional efficiency and effectiveness while the Agency transitions to the full array of new interventions. These transitional elements are outlined below.

1. Conduct Focused Compliance Reviews on appropriate carriers to center investigations on demonstrated safety problems as identified by the new SMS
2. Issue NOVs for specific inspection violations that are immediately identifiable and correctable without conducting an investigation
3. Use the new SMS to identify drivers to sample during carrier investigations
4. Use the "Red Flag Violation" process during carrier investigations to highlight drivers with violations that require further examination as identified in the new SMS

FMCSA field staff and State Partners will receive in-depth training on these concepts in the fall of 2010, prior to implementation.



## Look Ahead: December 2010 CSA 2010 Rollout

FMCSA IS COMMITTED to the effective rollout of CSA 2010. Here is a look at what will happen in December.

- **New SMS.** SMS will replace SafeStat.
  - SMS's Behavior Analysis and Safety Improvement Categories (BASICS) will replace SafeStat's Safety Evaluation Areas (SEAs) as the information used to prioritize FMCSA and State Partner enforcement and roadside inspection resources. The information will be available to motor carriers and the public.
  - SMS will evaluate carriers in each of the seven BASICS using the last 24 months of roadside violation and crash data. Additionally, if a Safety Investigator finds a "serious violation" during a compliance review or investigation, SMS will flag the relevant BASIC for 12 months. See the table of serious violations at:

[http://csa2010.fmcsa.dot.gov/Documents/Serious\\_Violations.xls](http://csa2010.fmcsa.dot.gov/Documents/Serious_Violations.xls)

- **BASICS to Roadside.** BASIC data will be sent to roadside inspectors to assist in determining which carriers to inspect and the appropriate inspection level.
- **Warning Letters.** Carriers with signs of safety problems in SMS will receive warning letters so that they can immediately address safety issues.
- **Key Concepts.** Key concepts learned from the Op-Model Test will be incorporated into FMCSA's compliance and enforcement program to increase efficiency and effectiveness during the transition to full use of the new CSA interventions in 2011.

FMCSA is working to ensure that its field staff and State Partners have a full understanding of CSA 2010 and its various components. A peer mentoring program between Op-Model Test States and non-Test States is underway. Formal training is planned to make sure that everyone has the information they need about CSA 2010 before the program is rolled out nationwide in December.

**Siegel, Kenneth**

**From:** CSA2010 Subscription [csa2010subscribe@dot.gov]  
**Sent:** Thursday, November 18, 2010 7:40 AM  
**To:** CSA2010 Subscription  
**Subject:** FMCSA Announces CSA Safety Measurement System (SMS) Improvements

**11/18/2010 - FMCSA Announces CSA Safety Measurement System (SMS) Improvements**

On August 16, 2010, FMCSA began providing carriers with information about where they stand in each of the new CSA SMS's Behavior Analysis and Safety Improvement Categories (BASICs) based on roadside inspection data and investigation findings. Based on feedback and analysis from the Data Preview period, the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) will roll out the new SMS to the nation in December with the following revisions:

**1. Modify the presentation of SMS BASIC results**

- Change the term "Deficient" to "Alert" when a motor carrier's score in one or more BASICs is above the FMCSA threshold for intervention.
- Change the highlight color from red to orange.
- Improve the language to clarify that BASIC results signify the carrier is prioritized for an FMCSA intervention.

*Explanation:* Feedback during the Data Preview indicate that the display of SMS results needs to clarify that BASIC percentiles above the FMCSA threshold signify the carrier is prioritized for an FMCSA intervention and do not signify or otherwise imply a "safety rating" or safety fitness determination.

**2. Modify Cargo-Related BASIC**

- Recalibrate the Cargo-Related BASIC by adjusting the cargo securement violation severity weightings based on input from subject matter experts (SMEs).
- Modify the public display to show the SMS Cargo-Related BASIC violations only. The percentiles and intervention status will not be on public display.

*Explanation:* Feedback during the Data Preview period identified a concern that the BASIC was over-representing certain industry segments and potentially creating a misleading safety alert warning. The Agency conducted additional analysis and concluded that the Cargo-Related BASIC be recalibrated with SMEs providing input on the cargo securement severity weights. The agency received SME input and will now adjust the severity weights and run the algorithm accordingly.

Also, the agency is conducting additional analysis to further understand the impact on the different industry segments of a carrier's exposure in this BASIC. During this analysis period, the BASIC results will continue to be an effective intervention prioritization tool for enforcement personnel based on sound safety principles. Accordingly, the percentiles and intervention status will be accessible to the FMCSA enforcement community and motor carriers only.

To learn more about CSA and to stay updated during the coming months, subscribe to the CSA RSS feed or email list at [http://csa2010.fmcsa.dot.gov/stay\\_connected.aspx](http://csa2010.fmcsa.dot.gov/stay_connected.aspx).

Thank You,  
CSA 2010 Web Team  
USDOT/Federal Motor Carrier Safety Administration

You are receiving this email because you opted in at our website: <http://csa2010.fmcsa.dot.gov>. To unsubscribe from this e-mail list, please unsubscribe [here](#).

11/29/2010



via a pre-established format through an .xml interface.

Public agencies may enter PFC remittance information into the database by either manual data entry or upload via a pre-established format through an .xml interface. The public agency data entry for projects is limited to manual entry wherein the public agency selects each appropriate project and inputs the data for that project.

The FAA notes that approximately 93 percent of the public agencies approved to collect PFC participate in the PFC database system. Those public agencies and air carriers choosing to use the database will no longer be required to distribute their quarterly reports to any interested party in any other way beginning June 21, 2010.

Issued in Washington, DC, on March 25, 2010.

**Frank San Martin,**

Manager, Airports Financial Assistance Division.

[FR Doc. 2010-8124 Filed 4-8-10; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2010-16]

#### Petition for Exemption; Summary of Petition Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before April 29, 2010.

**ADDRESSES:** You may send comments identified by Docket Number FAA-2010-0216 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey

Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.

- *Fax:* Fax comments to the Docket Management Facility at 202-493-2251.

- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

*Docket:* To read background documents or comments received, go to <http://www.regulations.gov> at any time or to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Leslie B. Taylor, phone (816) 329-4134, fax (816) 320-4090, e-mail [leslie.b.taylor@faa.gov](mailto:leslie.b.taylor@faa.gov).

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 2, 2010.

**Pamela Hamilton-Powell,**  
Director, Office of Rulemaking.

#### Petition for Exemption

*Docket No.:* FAA-2010-0216.

*Petitioner:* Hawker Beechcraft Corporation.

*Section of 14 CFR Affected:* 14 CFR 23.783(f)(1).

*Description of Relief Sought:* Hawker Beechcraft Corporation (HBC) requests an exemption from the specific dimensions of the passenger entry door of the Hawker Beechcraft Model 390-2. The door has basic dimensions greater than the minimum required by § 23.783(f)(1). The total area of the model 390-2 cabin door opening minus the area occupied by localized projections is greater than the minimum area required by § 23.783(f)(1); however, the minimum width dimension cannot

be met at discrete points due to the protrusions.

[FR Doc. 2010-8128 Filed 4-8-10; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2004-18898]

#### Withdrawal of Proposed Improvements to the Motor Carrier Safety Status Measurement System (SafeStat) and Implementation of a New Carrier Safety Measurement System (CSMS)

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice; request for comments.

**SUMMARY:** The FMCSA announces that it will replace its Motor Carrier Safety Status Measurement System (SafeStat) with an improved Carrier Safety Measurement System (CSMS) on November 30, 2010. The CSMS has been developed and tested as part of the Agency's Comprehensive Safety Analysis 2010 (CSA 2010) initiative. Therefore, FMCSA is withdrawing the notice of proposed improvements to SafeStat that was published for public comment on May 3, 2006. SafeStat is an automated algorithm currently used by FMCSA to identify high-risk and other motor carriers for on-site compliance reviews. By implementing the new CSMS algorithm, FMCSA will be able to better identify high-risk motor carriers, make more efficient and effective the Agency's and its State partners' allocation of compliance and enforcement resources and provide the motor carrier industry and other safety stakeholders with more comprehensive, informative, and regularly updated safety performance data.

From April 12, 2010 to November 30, 2010, FMCSA will provide individual motor carriers with a preview of their performance data at <http://csa2010.fmcsa.dot.gov>. This preview in advance of full implementation on November 30, 2010, will improve safety by effecting early compliance and providing opportunities for motor carriers to become better educated on the new CSMS.

**DATES:** Submit comments before September 30, 2010.

**ADDRESSES:** You may submit comments identified by the Docket Number in the heading of this notice by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the

instructions for submitting comments on the Federal electronic docket site.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

- *Hand Delivery:* Ground Floor, Room W12-140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. E.S.T., Monday through Friday, except Federal holidays.

*Instructions:* For detailed instructions on submitting comments and for additional information, see the Public Participation heading below. Note that all comments received, including any personal information, will be posted without change to <http://www.regulations.gov>. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to the ground floor, room W12-140, DOT Building, New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., E.S.T., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit <http://docketsinfo.dot.gov>.

*Public participation:* The [www.regulations.gov](http://www.regulations.gov) Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the <http://www.regulations.gov> Web site and also at the DOT's <http://docketsinfo.dot.gov> Web site. If you want FMCSA to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bryan Price, Federal Motor Carrier Safety Administration, 1000 Liberty Avenue, Suite 1300, Pittsburgh, PA 15222, Telephone 412-395-4816 E-Mail: [bryan.price@dot.gov](mailto:bryan.price@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comprehensive Safety Analysis 2010 (CSA 2010)

CSA 2010 is a major FMCSA safety initiative that will improve the effectiveness of the Agency's compliance and enforcement programs. CSA 2010 will help the Agency assess the safety performance of a greater segment of the motor carrier industry and allow it to intervene earlier with more carriers to change unsafe behavior and practices. The ultimate goal is to achieve a greater reduction in large truck and bus crashes, injuries, and fatalities, while making efficient use of the resources of FMCSA and its State partners.

In contrast to the Agency's current operational model, CSA 2010 is characterized by three principal components:

- (1) A more comprehensive carrier safety measurement system;
- (2) A broader array of progressive interventions to augment comprehensive on-site investigations (compliance reviews), including warning letters, off-site investigations, and on-site focused investigations; and
- (3) A new safety fitness determination (SFD) methodology based more on performance data and not necessarily tied to an on-site investigation. The third component, a new process pursuant to which FMCSA will formally propose and assign adverse SFDs—for example, unfit determinations and resulting prohibitions on operations—is the subject of a Notice of Proposed Rulemaking (NPRM) that will be published for comment at a later date during 2010.

This **Federal Register** notice addresses implementation of only the first component, a more comprehensive safety measurement system to identify and prioritize motor carriers for investigation. The new measurement system would be used to identify high-risk motor carriers for on-site investigations consistent with section 4138 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), [Sec. 4138, Pub. L. 109-59, 119 Stat. 1745 (49 U.S.C. 31144 note), August 10, 2005]. Furthermore, the new CSMS also would provide motor carriers and other safety stakeholders such as shippers with regularly updated safety performance assessments through a public Web site (<http://ai.fmcsa.dot.gov>).

FMCSA had originally planned to roll out CSA 2010 beginning in the summer of 2010. However, the Agency has received valuable feedback from its partners and stakeholders through CSA

2010 listening sessions and written comments to the CSA 2010 public docket referenced above. FMCSA has also gained valuable knowledge from its operational model test, involving nine States, which began in early 2008 and concludes in June 2010. Therefore, FMCSA has decided to move the beginning of CSA 2010 rollout from the summer to the fall of 2010. This will enable the Agency to incorporate comments and lessons learned into the CSA 2010 model prior to national rollout. Therefore, on November 30, 2010, FMCSA is planning on: (1) Replacing its current measurement system, SafeStat, with CSMS, (2) sending warning letters nationwide, and (3) implementing a revised nationwide Inspection Selection System for roadside inspectors that will be based on CSMS rather than SafeStat. The nine states currently operating in the operational model test will carry out the full array of CSA 2010 interventions after the test concludes in June 2010. These States are Colorado, Delaware, Georgia, Kansas, Maryland, Minnesota, Missouri, Montana, and New Jersey. For the remaining 41 States the new CSA 2010 interventions will be phased in during 2011. While the SFD rulemaking is in process, the Agency will continue to issue safety ratings in accordance with 49 CFR part 385—Safety Fitness Procedures.

##### Implementation of New Carrier Safety Measurement System (CSMS) To Replace SAFESTAT

###### SafeStat

The FMCSA's current operational model employs SafeStat to analyze the safety status of individual motor carriers in four analytic Safety Evaluation Areas (SEAs): (1) Accident, (2) Driver, (3) Vehicle and (4) Safety Management. The four SEA values are then combined into an overall safety status assessment, known as a SafeStat score. For a full description of the SafeStat methodology, visit the FMCSA Web site at: <http://ai.fmcsa.dot.gov>.

In 1997, FMCSA's predecessor Agency implemented SafeStat nationally as its primary tool for identifying high-risk and other motor carriers for compliance reviews. SafeStat results have also served as a prominent factor in roadside screening systems used by FMCSA and its State partners to identify motor carriers for increased inspection activity at the roadside.

In 1999, SafeStat data became available to the public on the FMCSA's Analysis and Information (A & I) online Web site <http://ai.fmcsa.dot.gov>. Motor

carriers, the insurance industry, shippers, safety advocates, and other interested parties began routinely accessing SafeStat data online for use in their own safety analysis and business decisions. In 2004, FMCSA removed public access to the Accident SEA due to problems with the completeness of crash data reported by the States at that time and because the raw crash data reported by the States generally do not include an indication of preventability or accountability. The remaining SafeStat data displayed at <http://ai.fmcsa.dot.gov> (Driver, Vehicle and Safety Management SEAs) continued to serve as a valuable source of information to motor carriers and other stakeholders. In fact, during calendar year 2009, the SafeStat online web site recorded nearly 4 million user sessions.

#### New CSMS

On November 30, 2010, FMCSA plans to replace SafeStat with the new CSMS. The new CSMS will work within the CSA 2010 operational model to monitor and quantify the safety performance of commercial motor carriers using data available in FMCSA's motor carrier database, the Motor Carrier Management Information System (MCMIS). Under CSA 2010, these data would include violations found during roadside inspections, traffic enforcement, and other types of interventions. The new CSMS groups these data into seven Behavioral Analysis Safety Improvement Categories (BASICS): Unsafe Driving, Fatigued Driving (Hours-of-Service), Driver Fitness, Controlled Substances and Alcohol, Vehicle Maintenance, Cargo Related, and Crash History. FMCSA developed the BASICS under the premise that commercial motor vehicle (CMV) crashes can ultimately be traced to the behavior of motor carriers and drivers.

There are three important ways that the new CSMS is different from the Agency's current measurement system, SafeStat. The new CSMS:

1. Is organized by seven specific behavioral areas (BASICS), while SafeStat is organized into four broad SEAs;
2. Uses all safety-based inspection violations, while SafeStat uses only out-of-service violations and selected moving violations;
3. Uses risk-based violation weightings while SafeStat does not.

For further information on the new CSMS see the Safety Measurement System Methodology at <http://csa2010.fmcsa.dot.gov>.

When the new CSMS is implemented on November 30, 2010, motor carrier BASICS will be publicly displayed at

<http://ai.fmcsa.dot.gov> in the same manner that the SEAs are displayed today under SafeStat. As discussed above, FMCSA removed public access to the Accident SEA on SafeStat because of problems with the completeness of State crash data at that time and because the data do not include information on preventability or accountability. FMCSA is currently conducting a feasibility study on using police accident reports to determine motor carrier crash accountability before the crash data are entered into CSMS. Until this analysis is completed, the Agency will continue to follow its current policy under SafeStat: the crash data will be displayed publicly, but the CSMS assessment of a motor carrier's crash history will not be publicly displayed.

#### Industry Preview

Since 2004, FMCSA has been actively consulting with, and preparing, the motor carrier industry and other safety stakeholders for implementation of CSA 2010 and the new CSMS to replace SafeStat. The Agency first held a series of public listening sessions on the broader overall CSA 2010 initiative and the new CSMS in September and October of 2004. These six sessions were designed to collect public input on ways that FMCSA could improve its process of monitoring and assessing the safety performance of the commercial motor carrier industry. A broad cross section of stakeholders, including industry executives, truck and bus drivers, insurance and safety advocacy groups, State and local government officials, and enforcement professionals participated in the sessions (Docket Number FMCSA-2004-18898). Following these initial public listening sessions, FMCSA held annual formal public listening sessions across the country between 2006 and 2008 to prepare the motor carrier industry and other stakeholders for CSA 2010 deployment and the new CSMS. Most recently, in December 2009, FMCSA held two webcasts that included over 3,000 participants. These can be viewed on the CSA 2010 Web site at <http://csa2010.fmcsa.dot.gov>. In all of these formal sessions, in addition to FMCSA's other proactive outreach activities, differences between SafeStat and the new CSMS were emphasized to prepare the motor carrier industry and other stakeholders for implementation of CSA 2010 and the new CSMS.

On April 12, 2010, FMCSA will undertake an additional step to prepare the motor carrier industry and other stakeholders for replacement of SafeStat with the new CSMS. FMCSA will provide individual motor carriers with a

preview of their performance data at <http://csa2010.fmcsa.dot.gov>, sorted into the BASICS as it will be in the new CSMS. To view their data, motor carriers will have to enter their Personal Identification Number (PIN). Motor carriers that do not have a PIN, or those that have forgotten their PIN, can go to the following Web address for assistance: [https://li-public.fmcsa.dot.gov/LIVIEW/PKG\\_PIN\\_START.PRC\\_INTRO](https://li-public.fmcsa.dot.gov/LIVIEW/PKG_PIN_START.PRC_INTRO). This preview in advance of CSMS implementation on November 30, 2010 will improve motor carrier safety by encouraging early action by carriers to correct and prevent violations, especially in areas that are not currently measured by SafeStat.

The FMCSA is currently considering refinements to the CSMS with regard to issues such as methods of measuring exposure, peer grouping, and violation severity weighting, based upon public comments received thus far and observations resulting from the CSA 2010 Operational Model Test. As a result, initially this preview will not provide motor carriers with an assessment of whether their performance in the BASICS is above FMCSA thresholds that warrant an intervention in the broader CSA 2010 Operational Model Test. Assessments will be added to the preview Web site after completion of the CSA 2010 Operational Model Test, and after any refinements are made to the CSMS during the summer of 2010 but before implementation on November 30, 2010. Thus, motor carriers will have approximately 7½ months to view their roadside violations data from the CSA 2010 perspective—mid-April through November 2010. For the first 3½ months—mid-April through July 2010—carriers will see their violations categorized by BASIC. Beginning in August, after the refinements to CSMS are complete, motor carriers will be able to see an assessment of their violations through CSA 2010. The purpose of this data preview period is to provide individual motor carriers with the opportunity to view their data from the CSA 2010 perspective, and to use the time to identify and take actions to correct deficiencies in their operations which are leading to unsafe behavior.

#### New CSMS for Identification of High-Risk Motor Carriers

In section 4138 of SAFETEA-LU Congress emphasized the importance of directing compliance review resources toward high-risk motor carriers as follows:

The [FMCSA] shall ensure that compliance reviews are completed on motor carriers that have demonstrated through performance data that they pose the highest safety risk. At a minimum, a compliance review shall be conducted whenever a motor carrier is rated as category A or B for 2 consecutive months.

The Conference Report for SAFETEA-LU further clarified Section 4138 as follows:

**Senate Bill:**

The Senate bill requires the Secretary to ensure that safety compliance reviews of motor carriers are completed for carriers that have demonstrated that they pose the highest safety risk. A single compliance review is required for any motor carrier that is rated as category A or B for two consecutive months.

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

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

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

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

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

S. Rep. No. 110-418, at p.88 (2008).

Beginning on November 30, 2010, FMCSA plans to implement the new CSMS to identify high-risk motor

carriers and to meet the intent of SAFETEA-LU section 4138. The new CSMS effectively identifies as many high-risk motor carriers and more precisely identifies their specific performance problems than the current method. Furthermore, FMCSA operational policies will continue to require onsite investigations (i.e., compliance reviews) of these high-risk motor carriers. The FMCSA therefore believes that its planned action of implementing a more effective method of identifying high-risk motor carriers, and continuing to require on-site investigations of these motor carriers is fully consistent with section 4138 of SAFETEA-LU.

**Comments**

FMCSA requests comments on the above initiatives and the CSMS methodology, <http://csa2010.fmcsa.dot.gov>. Commenters are requested to provide supporting data wherever appropriate.

Issued on: April 6, 2010.

**Anne S. Ferro,**  
Administrator.

[FR Doc. 2010-8183 Filed 4-8-10; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF THE TREASURY**

**Departmental Offices; Debt Management Advisory Committee Meeting**

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue, NW., Washington, DC, on May 4, 2010 at 11:30 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of the Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103-202, § 202(c)(1)(B) (31 U.S.C. 121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 10 1-05, that the meeting will consist of discussions and debates of the issues

presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103-202, § 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Deputy Director for Office of Debt Management (202) 622-1876.

Dated: April 2, 2010.

**Mary Miller,**

Assistant Secretary (Financial Markets).

[FR Doc. 2010-8125 Filed 4-8-10; 8:45 am]

**BILLING CODE 4810-25-M**

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION	)	
OF SMALL TRUCKING COMPANIES,	)	
THE EXPEDITE ALLIANCE OF	)	
NORTH AMERICA and AIR &	)	
EXPEDITED MOTOR CARRIERS	)	
ASSOCIATION,	)	
	)	
Petitioners,	)	
v.	)	F.R.A.P. 26.1(a)
	)	Corporate Disclosure
FEDERAL MOTOR CARRIER SAFETY	)	Statement
ADMINISTRATION,	)	
	)	
Respondent	)	

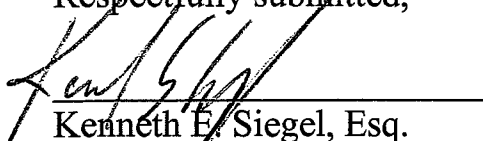
Under Rule 26.1 of the U.S. Court of Appeals of the District of Columbia Circuit, counsel of Petitioner certifies the following:

The National Association of Small Trucking Companies (“NASTC”) is a trade association incorporated in the State of Tennessee. No parent company or publicly-held company holds a 10% or greater ownership interest in NASTC. Its membership consists primarily of individuals who operate commercial motor vehicles. The purpose of NASTC is to serve as an advocate for, a consultant to, and a source of collective buying power for its member companies. NASTC has over 2600 members in the United States and Canada.

The Expedite Alliance of North America (“TEANA”), is a trade association incorporated in the Commonwealth of Pennsylvania. No parent company or publicly-held company holds a 10% or greater ownership interest in TEANA. Its membership consists primarily of individuals who operate commercial motor vehicles in the expedited freight market. The purpose of TEANA is to serve as an advocate for and a consultant to its members on matters of federal and state legislation and regulation.

The Air & Expedited Motor Carriers Association (“AEMCA”), is a trade association incorporated in the State of Virginia. No parent company or publicly-held company holds a 10% or greater ownership interest in AEMCA. Its membership consists primarily of individuals who operate commercial motor vehicles in the air and expedited freight markets. The purpose of AEMCA is to provide its members with timely, value added information, education, benefits and opportunities to promote business development through networking with members and industry groups and to serve as an advocate for and a consultant to its member companies.

Respectfully submitted,



Kenneth E. Siegel, Esq.  
Mark Andrews, Esq.  
Strasburger & Price, LLP  
1800 K. St. NW Suite 301  
Washington DC 2006

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION	)	
OF SMALL TRUCKING COMPANIES,	)	
THE EXPEDITE ALLIANCE OF	)	
NORTH AMERICA and AIR &	)	
EXPEDITED MOTOR CARRIERS	)	
ASSOCIATION,	)	
	)	
Petitioners,	)	
v.	)	F.R.A.P. 28(a)(1)
	)	Certificate as to
FEDERAL MOTOR CARRIER SAFETY	)	Parties, Rulings, and
ADMINISTRATION,	)	Related Cases
	)	
Respondent	)	

Under Rule 28(a)(1) for the U.S. Court of Appeals of the District of Columbia Circuit and the Federal Rules of Appellate Procedure, counsel of Petitioner certifies the following:

**A. Parties**

**1. Petitioners:**

The National Association of Small Trucking Companies (“NASTC”) is a trade association incorporated in the State of Tennessee. Its membership consists primarily of individuals who operate commercial motor vehicles. The purpose of NASTC is to serve as an advocate for, a consultant to, and a source of collective

buying power for its member companies. NASTC has over 2600 members in the United States and Canada. See attached Declaration of David Owens.

The Expedite Alliance of North America (“TEANA”), is a trade association incorporated in the Commonwealth of Pennsylvania. Its membership consists primarily of individuals who operate commercial motor vehicles in the expedited freight market. The purpose of TEANA is to serve as an advocate for and a consultant to its members on matters of federal and state legislation and regulation. See attached Declaration of Mark McLochlin.

The Air & Expedited Motor Carriers Association (“AEMCA”), is a trade association incorporated in the State of Virginia. Its membership consists primarily of individuals who operate commercial motor vehicles in the air and expedited freight markets. The purpose of AEMCA is to provide its members with timely, value added information, education, benefits and opportunities to promote business development through networking with members and industry groups and to serve as an advocate for and a consultant to its member companies. See attached Declaration of Mike King.

## **2. Respondents:**

The respondents are the Federal Motor Carrier Safety Administration (“FMCSA”) and the United States.

### **B. Rulings Under Review.**



Petitioners seek review of the final rules issued by respondents in Docket No. FMCSA-2004-18898; *Withdrawal of Proposed Improvements to the Motor Carrier Safety Status Measurement System (SafeStat) and Implementation of a New Carrier Safety Measurement System (CSMS)*. A copy of the request for comments and final rules, which rules have not been published in the Federal Register, are attached.

**C. Related Cases.**

The case on review has not previously been before this Court or any other court. Petitioners are not aware of any related cases currently pending before this Court or any other court.

Respectfully submitted,

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Kenneth E. Siegel, Esq.  
Mark Andrews, Esq.  
Strasburger & Price, LLP  
1800 K. St. NW Suite 301  
Washington DC 2006  
Telephone (202) 742-8602  
Fax (202) 742-8692  
Email [Kenneth.Siegel@strasburger.com](mailto:Kenneth.Siegel@strasburger.com)

Henry E. Seaton, Esq.  
Seaton & Husk, L.P.

Counsel for Petitioners



## DECLARATION OF DAVID OWEN, PRESIDENT OF NATIONAL ASSOCIATION OF SMALL TRUCKING COMPANIES

My name is David Owen. I am President of the National Association of Small Trucking Companies ("NASTC"). NASTC is a for-profit trade association incorporated in the State of Tennessee. The membership of NASTC consists primarily of individuals who operate small fleets of commercial motor vehicles. NASTC's mission is to serve as an advocate for, a consultant to, and a source of collective buying power for its member companies. NASTC has over 2600 members in the United States and Canada. Several of the parties submitting statements in support of the motion for stay of the Federal Motor Carrier Administrations (FMCSA) rule in Docket No. FMCSA-2004-18898; Withdrawal of Proposed Improvements to the Motor Carrier Safety Status Measurement System (SafeStat) and Implementation of a New Carrier Safety Measurement System (CSMS) ("CSA-2010") are members of NASTC<sup>1</sup>

NASTC has been a leading party in representing the interests of its members and other small fleet operators before the FMCSA and Congress with respect to the agency's CSA-2010 program. NASTC filed comments, on behalf of its members, with the agency in the 2004-18898 docket. NASTC's comments included a request that the agency postpone publishing the individual records and BASIC scores of motor carriers until the agency had provided adequate notice of all aspects of the program and had conducted and completed a full rulemaking pursuant to the Administrative Procedures Act.

While any one of NASTC's member carriers could have brought this action before the Court or filed comments before the agency below on its own, NASTC and its members elected to take such action collectively on behalf of themselves and other small fleet operators.

As stated in the statements submitted by the NASTC members, if the FMCSA is permitted to publish on the Agency's website the BASIC scores of individual carriers many carriers will be hurt economically because of the harm to their reputations. The harm which the carrier will suffer will be irreparable. Many shippers and freight brokers have already announced that they will not use the services of motor carriers whose BASIC scores fall below a certain level and the carrier receives an "Alert" classification from FMCSA. Both shippers and brokers are concerned that they may be found vicariously liable to third party plaintiffs in cases arising from accident claims against the motor carrier while it is transporting the shipper or broker's freight. The shippers and brokers and their counsel have expressed concern that plaintiffs counsel will introduce the FMCSA "Alert" classification of the carrier as evidence of the shipper or broker's negligence in using the services of the carrier. The FMCSA has issued statements to the transportation industry that it is the intent of the agency in publishing carrier's BASIC scores and classifications that shippers and carriers not use those carriers with "Alert" scores even though such carriers may lawfully operate on the nations roads and highways.

An "Alert" score will not only effect a carrier's competitive position but is likely to result in higher insurance premiums, a reluctance of drivers to work for such companies, and other economic and operational harm from which the carrier will be unable to recover if the publication is permitted to occur.

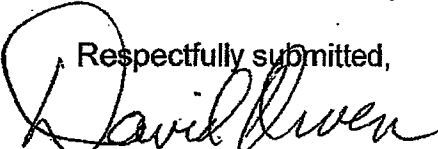
The agency has acknowledged that the statistics on which the carriers' BASIC scores and classifications are unreliable, that the algorithms that the agency is utilizing to calculate these scores are untested and unproven and that the public has neither been informed of nor provided

<sup>1</sup>Ennis Corp., H&V Leasing, Inc., Jim Loyd Transport Co.

an opportunity to comment on, the agency has refused to postpone the publication of the scores and classifications.

This declarations under penalty of perjury.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David Owen". The signature is written in dark ink and is positioned to the left of the typed name.

David Owen  
President

DECLARATION OF MARK McLOCHLIN, ELECTED PRESIDENT  
OF THE EXPEDITE ALLIANCE OF NORTH AMERICA

My name is Mark McLochlin. I am elected President of The Expedite Alliance of North America (TEANA) and owner of Clearwater Logistics. TEANA is a not-for-profit trade association domiciled in the State of PA. The 85 members of TEANA consist primarily of small carriers which provide expedited or "hot shot" motor carrier transportation in interstate commerce, and affiliated brokers. TEANA's mission is to advocate best practices and ensure an efficient and competitive environment in which its members can provide economical services designed to meet the industry's needs. Two of the parties submitting statements in support of the motion for stay of the Federal Motor Carrier Administrations (FMCSA) rule in Docket No. FMCSA-2004-18898; Withdrawal of Proposed Improvements to the Motor Carrier Safety Status Measurement System (SafeStat) and Implementation of a New Carrier Safety Measurement System (CSMS) ("CSA-2010") are members of TEANA.<sup>1</sup>

TEANA has been a leading party in representing the interests of its members before the FMCSA and Congress with respect to the agency's CSA-2010 program. TEANA filed comments, on behalf of its members, with the agency in the 2004-18898 docket. TEANA's comments included a request that the agency postpone publishing the individual records and BASIC scores of motor carriers until the agency had provided adequate notice of all aspects of the program and had conducted and completed a full rulemaking pursuant to the Administrative Procedures Act.

While any one of TEANA's members could have brought this action before the Court or filed comments before the agency on its own, TEANA and its members elected to take such action collectively on behalf of themselves and other similarly affected motor carriers.

As stated in the statements submitted by the TEANA members, if the FMCSA is permitted to publish on the Agency's website the BASIC scores of individual carriers many carriers will be hurt economically because of the harm to their reputations. The harm which the carrier will suffer will be irreparable. Many shippers and freight brokers have already announced that they will not use the services of motor carriers whose BASIC scores fall below a certain level and the carrier receives an "Alert" classification from FMCSA. Both shippers and brokers are concerned that they may be found vicariously liable to third party plaintiffs in cases arising from accident claims against the motor carrier while it is transporting the shipper or broker's freight. The shippers and brokers and their counsel have expressed concern that plaintiffs counsel will introduce the FMCSA "Alert" classification of the carrier as evidence of the shipper or broker's negligence in using the services of the carrier. The FMCSA has issued statements to the transportation industry that it is the intent of the agency in publishing carrier's BASIC scores and classifications that shippers and carriers not use those carriers with "Alert" scores even though such carriers may lawfully operate on the nation's roads and highways.

An "Alert" score will not only effect a carrier's competitive position but is likely to result in higher insurance premiums, a reluctance of drivers to work for such companies, and other economic and operational harm from which the carrier will be unable to recover if the publication is permitted to occur.

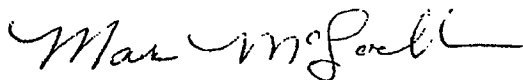
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<sup>1</sup> Tyme-It Transportation, Inc. and Universal Traffic Service, Inc.

The agency has acknowledged that the statistics on which the carriers' BASIC scores and classifications are unreliable, that the algorithms that the agency is utilizing to calculate these scores are untested and unproven and that the public has neither been informed of nor provided an opportunity to comment on, the agency has refused to postpone the publication of the scores and classifications.

This declaration is under penalty of perjury.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Mark McLochlin".

Mark McLochlin  
President

**DECLARATION OF MICHAEL KING, ELECTED PRESIDENT OF THE  
AIR & EXPEDITED MOTOR CARRIER ASSOCIATION**

My name is Michael King. I am the elected President of the Air & Expedited Motor Carrier Association (AEMCA) and owner of King's Express of Buffalo, New York. AEMCA is a not-for-profit trade association domiciled in Manassas, Virginia. The AEMCA currently has 110 members consisting primarily of licensed for hire interstate motor carriers serving the air freight industry. Among the services AEMCA provides to its members is information concerning regulatory compliance with not only the Federal Motor Carrier Safety Administration (FMCSA) requirements but also with TSA and FAA rules and regulations, compliance with which is essential to the rendition of surface transportation having a prior or subsequent movement by air. AEMCA is committed to ensuring that its members are apprised of regulations governing their operations and regularly participates in regulatory issues which affect the membership. One of the parties submitting a statement in support of the motion for stay of the FMCSA rule in Docket No. FMCSA-2004-18898; Withdrawal of Proposed Improvements to the Motor Carrier Safety Status Measurement System (SafeStat) and Implementation of a New Carrier Safety Measurement System (CSMS) ("CSA-2010") is a member of AEMCA.<sup>1</sup>

AEMCA has been a leading party in representing the interests of its members before the FMCSA and Congress with respect to the agency's CSA-2010 program. AEMCA filed comments, on behalf of its members, with the agency in the 2004-18898 docket. AEMCA's comments included a request that the agency postpone publishing the individual records and BASIC scores of motor carriers until the agency had provided adequate notice of all aspects of the program and had conducted and completed a full rulemaking pursuant to the Administrative Procedures Act.

While any one of AEMCA's member carriers could have brought this action before the Court or filed comments before the agency on its own, AEMCA and its members elected to take such action collectively on behalf its members, broker partners and other similarly affected small carriers.

As stated in the statements submitted by the AEMCA members, if the FMCSA is permitted to publish on the Agency's website the BASIC scores of individual carriers many carriers will be hurt economically because to the harm to their reputations. The harm which the carrier will suffer will be irreparable. Many shippers and freight brokers have already announced that they will not use the services of motor carriers whose BASIC scores fall below a certain level and the carrier receives an "Alert" classification from FMCSA. Both shippers and brokers are concerned that they may be found vicariously liable to third party plaintiffs in cases arising from accident claims against the motor carrier while it is transporting the shipper or broker's freight. The shippers and brokers and their counsel have expressed concern that plaintiffs counsel will introduce the FMCSA "Alert" classification of the carrier as evidence of the shipper or broker's negligence in using the services of the carrier. The FMCSA has issued statements to the transportation industry that it is the intent of the agency in publishing carrier's BASIC scores and classifications that shippers and carriers not use those carriers with "Alert" scores even though such carriers may lawfully operate on the nation's roads and highways.

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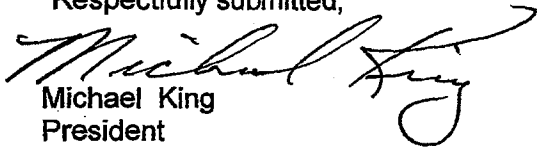
<sup>1</sup> Forward Air, Inc.

An "Alert" score will not only effect a carrier's competitive position but is likely to result in higher insurance premiums, a reluctance of drivers to work for such companies, and other economic and operational harm from which the carrier will be unable to recover if the publication is permitted to occur.

The agency has acknowledged that the statistics on which the carriers' BASIC scores and classifications are unreliable, that the algorithms that the agency is utilizing to calculate these scores are untested and unproven and that the public has neither been informed of nor provided an opportunity to comment on, the agency has refused to postpone the publication of the scores and classifications.

This declaration is under penalty of perjury.

Respectfully submitted,

  
Michael King  
President



UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW  
Washington, DC 20001-2866  
Phone: 202-216-7000 | Facsimile: 202-219-8530

AGENCY DOCKETING STATEMENT

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

1. CASE NO. \_\_\_\_\_ 2. DATE DOCKETED: 11-29-2010
3. CASE NAME (lead parties only) Nat. Assoc of Small Truck. Co. v. Fed. Motor Carrier Safety Administration
4. TYPE OF CASE:  Review  Appeal  Enforcement  Complaint  Tax Court
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED?  Yes  No  
If YES, cite statute \_\_\_\_\_
6. CASE INFORMATION:
- a. Identify agency whose order is to be reviewed: Federal Motor Carrier Safety Administration
- b. Give agency docket or order number(s): FMCSA-2004-18898
- c. Give date(s) of order(s): October 20, 2010 and November 18, 2010
- d. Has a request for rehearing or reconsideration been filed at the agency?  Yes  No  
If so, when was it filed? \_\_\_\_\_ By whom? \_\_\_\_\_  
Has the agency acted?  Yes  No If so, when? \_\_\_\_\_
- e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2):  
Petitioners are trade association and all filed comments in the proceeding before the agency  
representing the interests of their respective members. The individual members of the  
associations could bring this case. See attached declarations.
- f. Are any other cases involving the same underlying agency order pending in this Court or any other?  Yes  No  
If YES, identify case name(s), docket number(s), and court(s) \_\_\_\_\_
- g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?  Yes  No  
If YES, give case name(s) and number(s) of these cases and identify court/agency: \_\_\_\_\_
- h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution?  Yes  No  
If YES, provide program name and participation dates. \_\_\_\_\_

Signature  Date 11-29-2010

Name of Counsel for Appellant/Petitioner Kenneth E. Siegel

Address Strasburger & Price LLP, 1800 K St NW, Suite 301, Washington, DC 20006

E-Mail kenneth.siegel@strasburger.com Phone ( 202 ) 742-8602 Fax ( 202 ) 742-8692

ATTACH A CERTIFICATE OF SERVICE

**Note:** If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged statement.