

Re: 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)

COMMENTS OF THE NATIONAL ASSOCIATION OF SMALL TRUCKING COMPANIES (NASTC), THE EXPEDITE ALLIANCE OF NORTH AMERICA (TEANA), AND AIR & EXPEDITED MOTOR CARRIERS ASSOCIATION (AEMCA)

MOTION TO POSTPONE

COME NOW, the National Association of Small Trucking Companies (NASTC), The Expedite Alliance of North America (TEANA) and the Air and Expedited Motor Carriers Association (AEMCA), through Counsel, and files this their motion to postpone further release to the public of CSA 2010 data with percentile ranking until such time as full compliance with the Administrative Procedure Act and the protection afforded under the Regulatory Flex Act and the Paperwork Reduction Act is complied with and state as follows:

1. Interest of the Parties

The three organizations supporting this Petition represent over 3,000 small privately owned motor carriers that are part of over 150,000 similarly situated small businesses which will be directly adversely effected by the FMCSA's announced public release of CSA 2010 data and scoring in its present format.

At the outset, Petitioners reaffirm their commitment to highway safety and their commitment to work with the FMCSA to develop a new, less costly methodology pursuant to which the Agency can meet its statutory obligations to ensure that all motor carriers (both private and for-hire) are fit, willing and able to comply with federal safety regulations.

Petitioners recognize that CSA 2010 is a work in progress and pledge to work with the FMCSA to ensure that its ultimate data collection and statistical analysis can be used as a reasonable and fair tool for use by the Agency in its intended progressive intervention program.

Yet, for the reasons stated herein, Petitioners must unequivocally oppose release of unscrubbed CSA 2010 data together with untested statistical analysis which announces to the shipping public that any carrier with percentile rankings above artificially established enforcement thresholds are "marginal" or "deficient" and thus somehow not fit for use.

As small businesses, Petitioners submit that any change in the FMCSA's safety methodology which has a major economic impact on small carriers should be subject to close analysis in accordance with the Reg Flex Act, the Paperwork Reduction Act and the Data Quality Act.

The data collection method, the data accuracy, and its relevance to safety has not been subject to review or rulemaking and there has been no analysis of the effect on small businesses which comprise over 95% of the motor carrier industry and virtually 100% of Petitioners' constituency. With respect to safety, Petitioners submit that small for-hire motor carriers are not merely statistics and their employee drivers and owner-operator partners are not mere numbers. They represent successful small businesses in the best of the American tradition.

In this Motion to Postpone, Petitioners will show the direct substantial and devastating effect release of this data in its present form will have on the continued operations of approximately two-thirds of the industry because of the unintended vicarious liability consequences of the Agency's action.

2. Argument

Petitioners submit that unfortunately the FMCSA has not fully comprehended the effect which release of CSA 2010 in its current format to the public will have on small carriers. The Agency currently proposes to release raw data concerning every local state and federal recordable safety incident including warnings, citations, and out of service orders to the public in the name of "transparency" and "analysis." Unscrubbed data will be statistically accumulated by carriers, sorted into 6 BASICS and then scores will be assessed by percentile ranking in peer groups consisting of tens of thousands of operationally dissimilar carriers.

Based upon the lowest of its progressive thresholds for enforcement, percentage pegs and various percentile levels will be established in each BASIC category, ranging in value for non-hazmat non-bus operations from 65 to 80 percentile. Based upon these percentile rankings of carriers, current estimates are that 68% or over two-thirds of the industry will be pejoratively described in the public release of this data as "marginal" or "deficient" in at least one of the BASIC areas.

The cursory announcement afforded in the Federal Register on April 9, 2010 sets forth only an outline of CSA 2010 and does not set forth with specificity the data to be used, the basis for the peer groups or the assignment, the relative weighing of CSA violation points, the basis for percentile ranking or any factual predicate for concluding that a carrier should be labeled as "marginal" or "deficient."

The data collection method, data accuracy, and relevance to safety has not been subject to review or rulemaking and there has been no analysis on the affect on small businesses which comprise over 95% of the motor carrier industry.

(a) Vicarious Liability/Efficiency and Competitive Concerns with Premature Release of CSA 2010 Data

The grist for this petition is the substantial anticompetitive effect which the proposed release to the public of CSA 2010 in December will have on the motor carrier industry, small carriers in particular.

Petitioners submit that the most disruptive and potentially devastating threat to the efficient and competitive privately owned motor carrier system is the fear of vicarious liability. Vicarious liability as it applies to interstate trucking is the concept that the shipper or broker as the customer of a safety regulated motor carrier (or vendor) can somehow be vicariously liable or responsible for negligent selection when it hires a carrier that the FMCSA regulates and confirms is licensed, insured and authorized to operate. The problem of vicarious liability is real and has resulted in aberrant decisions in which state law has been applied to suggest that a shipper or broker is required to second guess the Agency's ultimate fitness determination through use of publicly released data even when the FMCSA has certified the carrier is licensed and authorized for use. See *Schramm v. Foster*, 2004 U.S. Dist. Lexis 16875 (D.Md. August 23, 2004) and *Jones v. D'Souza*, 2007 U.S. Dist. LEXIS 66993 (W.D. Va. 2007).

Although SafeStat and current available data clearly contains warnings to the contrary, courts have misapprehended the role of the FMCSA and its current safety procedures. The Agency has been advised both formally and informally that release of the CSA 2010 scoring system with the current "marginal" and "deficient" limbo bars will be a train wreck involving trucks, clearly exacerbating the vicarious liability issue with drastic unintended economic consequences.

The Agency has been advised and comments in support of Petitioners' request will clearly demonstrate that major Fortune 500 customers (including shippers, logistics companies and intermodal equipment providers) are currently so confused about the Agency's use and intent of CSA 2010 that they are prospectively including in contracts provisions which would bar use of any carrier with a "deficient" or "marginal" rating in any BASICS category if and when CSA 2010 data is released to the public. See Appendix A. Attached as Appendix B is an example of the contractual language another Fortune 500 is now inserting in every contract for carriage which poignantly demonstrates this problem.

Unfortunately, the FMCSA has not disabused the shipping industry of its unreasoned fear of vicarious liability and has failed to affirm its sole preemptive duty to ultimately certify to the shipping and traveling public which carriers are fit for use. The comments of the Volpe Center and the Agency's response to inquiries from affected parties such as the Minnesota Trucking Association have only further heightened confusion over the permissible or intended use of CSA 2010 data by shippers and brokers.

Under the current system, the FMCSA audits approximately 17,000 carriers per year (including those deemed statistically the worst offenders under SafeStat) and ultimately awards over half satisfactory ratings. Assuming the accuracy of this data, far less than 1% of the motor carriers were found unfit to operate by the FMCSA in 2009 and crashes involving commercial motor vehicles declined 20% to a 60 year low. The Agency cannot don judicial blinders and ignore this economic reality, the confusion in the industry, or the devastating effect on over 150,000 small for-hire carriers¹ if

¹ This estimate is based on FMCSA data showing approximately 220,000 of the 700,000 registered carriers are for-hire and the estimate that CSA data will label two-thirds of the authorized drivers as marginal or deficient.

they are barred from handling customers' freight because the proposed unscrubbed CSMS data is released on schedule.

The labeling of over two-thirds of the industry as "deficient" with the obvious unintended consequence of bankruptcies and loss of jobs due to unrebutted vicarious liability concerns is clearly a foreseeable consequence which requires the relief Petitioners seek. Moreover, if faced with the risk of losing major customers at any time that the FMCSA website shows their operations are marginal or deficient under any BASICs, small businesses will be unlikely to make major investments in new equipment and lenders will be less likely to support them. Brokers' ability to access the back haul market and match loads with available carrier capacity will be compromised. Dead miles will be increased, fuel will be wasted, and the cost of transportation will be increased as the efficiency of the spot market is compromised.

**(d) Why the FMCSA Should Affirm Its Sole Ultimate Duty
to Determine Highway Fitness for Use**

In the context of vicarious liability, Petitioners submit that the federal statutes and regulations have a preemptive effect under the Commerce Clause and The Federal Aviation Administration Authorization Act of 1994 (F4A).

The FMCSA and not state authorities are solely responsible for determining which carriers are safe to operate. Federal statute places the sole non-delegable duty upon an authorized motor carrier to conduct its operations in compliance with the Federal Motor Carrier Safety Regulations, to designate agents and to provide evidence of insurance to assure the traveling and shipping public that the carrier meets minimum levels of financial responsibility for its negligent acts or omissions. (49 CFR 387)

Federal statutes and regulations impose no safety compliance duty on shippers and brokers. In fact, property brokers which are regulated by the Agency and hence directly affected by this ruling are required only by regulation to retain "authorized carriers". See 49 C.F.R. 371.1. The U.S. DOT through the FMCSA, is charged with the exclusive duty of determining the compliance of motor carriers and bus lines with the requirements of the Act including the safe operation of commercial motor vehicles. The FMCSA is solely charged with registering authority, issuing permits to regulated carriers and assigning safety ratings and placing carriers out of service.

In this regard, the FMCSA's regulation of the trucking and bus industry as public utilities is no different than the duties and obligations of other regulatory bodies vis-à-vis the credentialing of the regulated and their certification for public use, whether the regulated entity be subject to the regulations imposed by the FAA, the FCC or the FMC. The Agency in the name of uniformity and highway safety has the sole duty to decide who is authorized to operate commercial motor vehicles in interstate commerce. The Agency assumes the duty so the shipping public does not have to.

Unfortunately, the Agency in an effort to be transparent and inclusive, has issued certain comments which have obfuscated the purpose of the CSMS data system and which have suggested to some that determining safety fitness is a "stakeholder shared

responsibility" and that shippers and brokers are invited, if not required, to second guess the Agency's progressive threshold analysis.

In responding to an inquiry by the Minnesota Trucking Association, the Agency's Administrator said that shipper use of CSA information allows "... the FMCSA to leverage the support of shippers, insurers, and other interested stakeholders to ensure that motor carriers remain accountable for sustaining safety operations over time."

In issuing the most recent safety measurement system methodology in August, the Volpe Center confirmed in the preface that "Future SMS development will be part of the continuous improvement process based on results and feedback" yet on page 1-2, concluded that, "Thus, the SMS will empower carriers and other firms (e.g. shippers, insurers) involved in the motor carrier industry to make safety based business decisions."

The Agency has not defined the "safety based business decisions" for which its shippers are required to make under the new methodology.

On the contrary, unless the FMCSA affirms its sole duty to determine safety for use as part of the CSA methodology, this kind of "inclusive" language will simply, through fear of vicarious liability, introduce a "game changer" which affects small companies, jobs and competition long before the SFD portion of the methodology can even be submitted for approval.

Petitioners submit the Agency cannot transition from SafeStat, with its warning that the data is not intended for use, to CSA 2010, with the suggestion that stakeholders should use the information to make safety decisions, without recognition that a major change in policy is inherently occurring which requires closer scrutiny and the protection assured by statute.

(e) CSA 2010 Methodology is a Work in Progress and Does Not Meet the Data Quality Act Requirements for Public Reliance in its Present Format

As late as last month, the Agency, in an effort to improve its analysis, made peer grouping changes and other system corrections which resulted in changes in as much as 50 percentage points for some carriers. Carriers one day ranked as deficient or marginal who were 15 percentage points above the 65% marginal threshold found their scores dropped to 30 with no change in their safety profile. (See Appendix C.)

Although the CSA 2010 methodology is hopefully a perfectible tool which has ultimate value for use by the Agency in performing its safety duties, it is the release of this data in December maligning over two-thirds of the industry as "marginal" or "deficient" which Petitioners submit is without statutory, scientific or statistical warrant and which will have a demonstrable and catastrophic effect on the industry and small carriers in particular.

Not only has the small business protection assured by statute not been complied with, the CSA 2010 methodology and data reliability has not been tested in accordance with

the Data Quality Act.

Petitioners have concerns that releasing of CSMS to the public in its current state and without the protections afforded by the Administrative Procedure Act, Reg Flex analysis and scrutiny under the Data Quality Act will have a serious adverse effect on small carriers, brokers and shippers who use them.

The ongoing "refinements" to CSMS with regard to issues such as methods of measuring exposure, peer groupings, and violation severity weighting are issues which seriously impact small carriers and which should timely and properly be considered in the context of rulemaking and regulatory approval of the entire safety fitness determination methodology.

Petitioners have specific concerns about the effect of the current CA methodology as it relates to small carriers in the following areas:

(1) The law of large numbers – Reporting anomalies statistically prejudice entities with small samplings.

(2) Geographical anomalies – Small carriers operating in "probable cause states" are up to four times more likely to accumulate unsafe driving points than carriers operating nationally.

(3) Profiling - Small carriers without Prepass are subject to greater and more severe roadside inspections than larger Prepass carriers.

(4) Reporting failures/scale house anomalies – The system contains no checks to preclude underreporting of clean inspections which Petitioners' members report are significant at some scales.

(5) Due Process/DataQ has no checks or balances – Small carriers are particularly unable to efficiently and uniformly correct false data. (See Appendix D, Express America Statement.)

(6) EOBRs – Over 50% of the points in the fatigued drivers BASICs are incurred because of paper log violations. Thus, small carriers are statistically twice as likely to be rated "deficient" or "marginal" in the BASICs. (See Appendix E.)

(7) Carriers with units operating under the 100 mile logging exemption are not segregated from the OTR carriers which must log and comply with the 11 and 14 hour rule, thus contaminating any peer group sample.

The above flaws in the information gathered by the FMCSA represent an inherent problem in CSA 2010 whereby the information and its dissemination violate the Data Quality Act and the Office of Management and Budget ("OMB") and DOT Information Dissemination Quality Guidelines (referred to collectively herein as the "Guidelines"). The goal of the Guidelines is to "ensur[e] and maximiz[e] the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by

Federal Agencies," and in order to meet that goal, CSA 2010 must not go into effect as it is currently structured. (See *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication* 67 Fed. Reg. 36,8451, 36,8458 (Feb. 22, 2002).)

The Guidelines define dissemination as "agency initiated or sponsored distribution of information to the public," and information as "any communication or representation of knowledge such as facts or data, in any medium or form..." CSA 2010 thus falls within the purview of the Guidelines as under CSA 2010, motor carrier "BASICS" (information) will be publicly displayed on an FMCSA website (dissemination). (See *Withdrawal of Proposed Improvements to the Motor Carrier Safety Status Measurement System (SafeStat) and Implementation of a New Carrier Safety Measurement System (CSMS)*, 75 Fed. Reg. 68,18256, 68,18258 (April 9, 2010).) Additionally, the analytical information disseminated through CSA 2010 is likely to be "influential" as defined by the Guidelines (i.e., information "that will most likely have an important effect on governmental or private-sector policies, or have important consequences for specific technologies, substances, products, or firms") and as such it is necessary that an "independent re-analysis of original and supporting data using the same methods would generate similar analytical results, within an acceptable range of error or imprecision." (See *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication* 67 Fed. Reg. 36,8451, 36,8460 (Feb. 22, 2002).)

CSA 2010 fails to meet the standards of the Guidelines because the information therein contained and disseminated is not objective. Under the Guidelines, objectivity has two distinct components: presentation and substance. *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication* 67 Fed. Reg. 36,8451, 36,8459 (Feb. 22, 2002). As to presentation, "objectivity includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation." *Id.* As to the substance, "objectivity involves a focus on ensuring accurate, reliable, and unbiased information. In a scientific, financial, or statistical context, the original and supporting data shall be generated, and the analytic results shall be developed, using sound statistical and research methods." *Id.*

The information disseminated by CSA 2010 is neither objective with respect to its presentation nor its substance. As detailed above, the substance of the information is plagued with anomalies, reporting failures and the consequences of profiling small motor carriers. The gathered data is therefore not developed using sound statistical and research methods. Additionally, the information is presented in a significantly biased manner, as the motor carrier "peer groups," in which the data on carriers are compared directly to one another, are created without taking into account the varied characteristics of the motor carriers.

Finally, the information is not presented with "a high degree of transparency about

data and methods to facilitate the reproducibility of such information by qualified third parties." (See *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication* 67 Fed. Reg. 36,8451, 36,8460 (Feb. 22, 2002).) Thus, motor carriers performing significantly different services and subject to the laws of significantly different jurisdictions are compared as if the differences did not exist. CSA 2010 is therefore currently designed to disseminate influential information regarding motor carriers that is not objective and as a result will have important and often devastating consequences on the transportation industry.

Obviously, the CSA 2010 modality can be further refined and reasonable thresholds can be imposed for the Agency's use in determining ultimate fitness but Petitioners submit there is an entirely different question whereas here the Agency intends to release the data for public use knowing that imminent loss of business is foreseeable.

(f) Argument in Support of Delaying Publication of CSMS Data

The Federal Register Notice to which this comment is addressed provides for a three step program for its implementation of CSA 2010. The first step is approval of the "more comprehensive carrier safety measurement system" and only the third step, the ultimate new safety fitness determination methodology is scheduled for Notice of Proposed Rulemaking. (See Fed. Reg. Vol. 75, No. 68, p. 18257.)

The Agency states that the subject Federal Register Notice addresses only implementation of the first component "a more comprehensive safety measurement system" to identify and prioritize motor carriers for investigation. The Agency has repeatedly acknowledged that the CSMS system is a work in progress and that the Agency has received "valuable feedback from its partners and stakeholders through listening sessions and written comments." Petitioners submit that the valuable feedback time has not yet expired and that the CSMS program is not ready for prime time. The industry has not had an opportunity to review the peer groupings, the assigned point valuations on violations, the due process concerns of reporting warnings and citations not convictions, the viability of DataQ or a scientific basis for labeling carriers as "marginal" or "deficient" based upon percentile rankings.

Conclusion

In conclusion, Petitioners share the FMCSA's safety concerns and pledge to work with the Agency to develop CSA 2010 methodology as a viable compliance and enforcement tool for the Agency's use. Yet Petitioners submit that release of CSA 2010 information to the public with percentile rankings by artificial peer groups labeling a majority of the industry as "marginal" or "deficient" is flawed, seriously misleading, and will have direct and severe adverse consequences on the motor carrier industry and small carriers in particular.

CSA 2010 procedures and the terms and conditions of release to the public can and must be considered in the context of rulemaking in order to assure that the real concerns of small carriers concerning misuse of CSA 2010 by the industry for purposes

of barring carriers from use can be considered.

The Agency must affirm its sole duty to certify carriers as licensed, authorized and insured for use by the shipping public and for operations on the public highways. The Agency must affirm its regulatory obligation and retract misleading statements to the contrary from which the industry has inferred that second guessing and other safety standards need to be applied for fear of vicarious liability. The issue of the Agency's preemptive safety duties is an important issue of Federal Constitution law which cannot be treated as a language change in a press release. At stake is an important principle of federal transportation law and the Agency's statutory duties and obligations which cannot and should not be left to state courts in accident suits to resolve in disparate and non-uniform fashions. Such a change in the schema of federal regulation of interstate commerce cannot be left to a confused industry to sort out with loss of business and jobs as collateral damage. Clearly, statutory and judicial issues are at stake which mandate the immediate relief Petitioners seek.

Finally, the Agency must acknowledge its regulatory duty to consider the effect of all regulations on small business enterprises and its obligation to provide a level playing field in which "mom and pop" small businesses can be certified for use and compete on a level playing field with large carriers backed by Wall Street hedge funds.

Relief Sought

The above premises considered, Petitioners request the Agency to (1) postpone public release of CSA 2010 data pending completion of rulemaking on the SDF aspects of CSA 2010; or in the alternative (2) release only accumulated safety data as FOIA may require, redacting any pejorative characterization of a carrier based upon such data as well as percentile ranking and establishing a duty on shippers, brokers or other carriers; and (3) issue a statement affirming that in the absence of an administrative final rulemaking, the Agency is monitoring the activity of all interstate carriers and that the shipping and traveling public may rely upon the Agency's ultimate fitness determination as a certification for use.

Respectfully submitted,



Henry E. Seaton, Esq.
Seaton & Husk, L.P.
General Counsel for NASTC, AEMCA and TEANA
September 30, 2010

AFFIDAVIT OF CHRIS MOORE
IN SUPPORT OF MOTION TO POSTPONE

My name is Chris Moore and I am President of National Drayage Services, LLC, 3150 Lenox Park Boulevard, Suite 312, Memphis, TN 38115. We support the Motion filed by NASTC, AEMCA, TEANA and other parties to postpone release of CSA 2010 data for public use until this matter can thoroughly be reviewed as part of rulemaking.

We are a small drayage company which current utilizes 0105 owner-operators and which provides intermodal transportation to and from the following ports: CHARLESTON SC, SAVANNAH GA, JACKSONVILLE FL, MEMPHIS TN. We are 1 of the over _____ motor carrier signatories to the UIIA which is intended to permit motor carriers to have free and open access to steamship owned containers and chassis.

Out of fear of vicarious liability, at least 2 steamship lines (one of which is the country's second largest) has determined that it must second guess the FMCSA's determination of fitness and has issued orders that motor carriers found deficient or marginal under CSA 2010 in any BASIC area are to be barred from use and cannot even transport the steamship's box on customer routed freight.

Because of this misconception about the FMCSA release of existing and proposed data, carriers who are fit, willing, able and authorized by the Agency for use are very simply deprived of access to freight. We oppose the release of CSA 2010 in its present form because it will only exacerbate the problem. Now is the time for the Agency to address the misconception concerning the label "deficient" or "marginal" which have no meaning in the current safety fitness methodology and which we submit should have no place in the new methodology which should be subjected to rulemaking.

If the current misconceptions about CSA 2010 are not corrected by the Agency and the proposed data is released, there are estimates that as many as _____ small draymen like my company may lose business and may not be able to financially survive long enough to successfully complete the progressive intervention program which CSA 2010 envisions.

Christopher Moore, President
National Drayage Services, LLC

State of Tennessee)
County of Shelby)

Subscribed and sworn to before me this 24th day of September, 2010.

Karen S. Stevens [Seal]
Notary Public

My Commission Expires: _____

MY COMMISSION EXPIRES MARCH 25, 2012



(g) Carrier hereby acknowledges that it possesses full and complete understanding and knowledge of the DOT's CSA 2010 program (including, but not necessarily limited to, driver violations and ranking criteria). Carrier, and any drivers of Carrier, shall at all times meet CSA 2010 safety standards sufficient to enable Carrier to (a) operate without DOT intervention or restriction; (b) obtain and maintain the insurance coverage required by this Agreement; and (c) be and remain competitive with similarly situated carriers with regard to quality of driver safety as measured under CSA 2010. Carrier further agrees to (i) immediately notify Broker in writing of receiving notification that Carrier has been deemed "unfit" or "marginal" in any area of their safety and compliance performance measured by the CSA 2010 program; and (ii) to reject and not otherwise accept the transport of any freight offered by Broker during such time as Carrier is deemed "unfit" or "marginal" in any area of its safety and compliance performance measured by the CSA 2010 program.

(h) Carrier shall only provide services under this Agreement by using competent professional drivers who meet the minimum driver qualification standards of the DOT, including, but not limited to, familiarity and compliance with state and federal motor carrier safety regulations. Carrier shall not provide services under this Agreement when utilizing any driver found to be unsafe, unqualified, unfit, uninsurable, or marginal, pursuant to federal or state law or the criteria established by the DOT as part of the CSA 2010 program.

CSA Revisions Improve Most Scores but Worsen Others, Carrier Execs Say

Sean McNally, Senior Reporter

Changes that the **Federal Motor Carrier Safety Administration** has made to its CSA safety-monitoring program are causing the ratings of fleets across the country to change, and not always for the better, carrier executives told Transport Topics.

Carriers by and large saw their scores go down, sometimes dramatically, but in some of the BASICs most related to higher crash rates, some fleets saw their scores go up in other areas, as a result of FMCSA's changes to the program. In this program, lower scores mean better safety ratings. "We saw significant drops in some of our scores and saw increases in others, and it is strictly in tune with the methodology changes that were implemented," said Jack Curry, safety director for American Central Transport Inc., Liberty, Mo.

Curry said the truckload carrier "saw significant improvement in the BASIC area of unsafe driving and in our crash indicator . . . 55 basic points in one and 30 in another; it is a huge drop," which he attributed to FMCSA's use of miles driven and total vehicles for grouping fleets, rather than just the number of trucks.

On the flip side, he said that American Central Transport's percentile score in the cargo-related BASIC rose because of the changes FMCSA made to the types of violations it examines in that category. FMCSA started allowing nationwide fleets to see their percentile scores under CSA on Aug. 16, but fleets in nine states, such as Missouri, where the agency had been running a pilot test of the program, have been able to see their scores all along.

In addition to opening up the system to provide more information, FMCSA also made a number of changes to how it calculates fleet safety records — ranging from resetting the thresholds for when a company is targeted for intervention to the severity of hundreds of violations to how the system calculates a carrier's exposure to safety problems.

"Had these tweaks been done previously, we probably wouldn't have been on their radar," said Donna Underwood, safety director for Steelman Transportation Inc., Springfield, Mo. Underwood said Steelman, primarily a flatbed carrier with 100 trucks and a small hazardous materials division, was deficient in four of the BASICs before the changes were made. "I am right now deficient in just two: cargo and fatigued driving," she said. Steelman had been deficient in unsafe driving because of speeding violations, but FMCSA instituted a graduated point system, Underwood said, which reduced its score.

Sherwin Fast, president of Great Plains Trucking Inc., Salina, Kan., said the modifications caused dramatic drops in the score for his fleet of about 55 trucks. The company initially was in the 95th percentile for crashes, Fast said, but after an FMCSA investigation put the fault for many of those crashes elsewhere, "they lowered it down to 75." "Now, this last couple weeks when they switched to the mileage instead of the vehicle, we're at a 20.7," he said. "We run a lot of miles, so we went from a 95 to a 20. . . . We would never have been targeted for an intervention of any kind, had they been doing this all along."

Great Plains' unsafe driving score also fell dramatically, to 43.8 from 93.9, because of the change in methodology. "I love the new one; it just looks so much better," Fast said.

"They've improved across the board," said Richard Jenkins, safety director for Brown Trucking Co., Lithonia Ga., adding that the company's crash indicator score "dropped 30 basis points, which was huge."

A couple of key points I would like to discuss with CSA 2010 is the challenge process. The process for removing erroneous information through the DataQ web portal and the state time frame for having roadside inspection data reported.

The time frame to remove false or inaccurate data differs in each and every state as well as the process to remove false data listed in the FMCSR Web portal. The DataQ website allows you to challenge any incorrect data however getting the incorrect information removed is not easy at it sounds.

As an example, an owner operator leased his truck on with Express America in March 1 ,2010 only to quit unexpectedly on March 23, 2010 – His registration still shows Express America Trucking and he has received no less than 4 roadside inspections from his current carrier. Unfortunately his current carrier is not concerned with all the applicable requirements regarding vehicle registrations. All of this driver's roadside inspections were horrendous and this information is listed under our DOT number. I move to challenge the information and have this data removed.

The state of Georgia required me to send a notarized letter stating the circumstances in which this driver left our company and affirming that he no longer worked for Express America. The state informed me that it could be 6 weeks or longer before the information was removed once they received my notarized letter. This driver had 2 inspections in the state of Georgia and 2 of his inspections in Texas. Texas did respond that the data would be removed but it could take up to 6 weeks. I had 2 inspections to show up on our DOT number in July 2010 of this year from the state of Texas but the driver had not been employed with Express America since November of 2009. Almost 8 months had passed prior to this information being uploaded to the FMCSR web portal.

The time constraints associated with reported data and the method of removing inaccurate data are both significant issues that should be addressed as well.

Sean Abel
Director of Safety and Compliance
Express America Trucking, Inc.
4120 Air Trans Road
Memphis, TN 38118
Express America Trucking Company, Inc
901-346-5520
Fax 901-346-2140
Cell 901-301-3022

Charleston Terminal
3216 Industry Drive
Charleston, SC 29418
Phone: 843-760-9485
Fax: 843-760-9489

Savannah Terminal
6-D Telfair Place
Savannah, GA 31415
Phone: 912-232-5722
Fax: 912-232-5721

Statistical Anomalies in SafeStat

Fatigued driving (HOS) is highlighted by the FMCSA as a stand alone BASIC and the threshold for being labeled as deficient is the 65 percentile. In other words, if a carrier is in the bottom 35% of its peer group based upon a weighted points scheme, the carrier will be labeled as deficient in this area and if CSA 2010 data is prematurely released to the public, that carrier will be barred from use by steamship lines, shippers and brokers who feel compelled to use CSA 2010 data for fear of vicarious liability.

In an excellent article entitled, "Trust but Verify" Aaron Huff in the September issue of CCJ opined that the on-board recording device represents a technological gain for the industry. Included was the conclusion that carriers who convert to electronic logs before CSA 2010 goes live have the rare opportunity to reduce their total violations in the fatigued category BASIC by 50%.

An examination of the attached chart demonstrates how this is possible and how little a 50 percentile drop may actually have to do with fatigued driving. Clearly, the biggest source of violations classified as "fatigue related" are actually paperwork violations pertaining to general form and manner of logs and failure of a driver to record current duty status. When coupled with failure to maintain a log, these 3 paperwork violations account for 71% of the total violations in the fatigue BASIC area.

This means that drivers who fill out paper logs based on the numbers are susceptible to receive over three times more fatigued driving violations than those who log electronically.

This obvious discrepancy does not disappear when the CSA 2010 point valuation criteria is applied. For rating purposes, each violation in a category is weighted, points are assigned and total points accumulated are compared based upon the number of inspections conducted with all peer grouped carriers including both those who log manually and electronically. Based upon the number of violations times the severity rating, paperwork violations account for 122.98 points, far more than are assigned to carriers found guilty of exceeding the hours of service under the 11 and 14 hour rules combined (76.65).

The 50 point differential in percentile ranking enjoyed by carriers with electronic logs may have some correlation to safety but the frequency and severity attached to paperwork violations severely skews the percentile ranking as to make any peer group including both paper and electronic loggers statistically invalid as a measure of fatigue.

In sum, the electronic logging system is certainly to be encouraged for a whole lot of reasons but any system which assigns more total points to paperwork violations (which only paper loggers incur) than it does to actual violations of the hours of service regulations cannot compare apples to oranges and conclude that one is deficient, marginal or not safe to eat.

Top rankings of 2010 inspection violations (through May 21)

Rank	Violation Code	Description	% of total violations	CSA 2010 point value
1	395.8	Log violation (general/form and manner)	19.84	2
2	395.8F1	Driver's record of duty status not current	13.64	5
5	395.3A2	Requiring or permitting driver to drive after 14 hours on duty	7.04	7
6	395.8E	False report of driver's record of duty status	4.02	7
8	395.3A1	Requiring or permitting driver to drive more than 11 hours	3.9	7
11	395.8A	No driver's record of duty status	3.02	5
			51.46	