

EXHIBIT A

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

In this edition



- Letter from the Administrator
- CSA 2010 Field Rollout Schedule
- BASIC Assessments Available on CSA 2010 Website
- Test Efficiencies and Updates to SMS
- Lessons Learned from the Op-Model Test
- Look Ahead: December 2010 CSA 2010 Rollout



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

October 2010

CSA 2010 Field Rollout Schedule

2010

April–August 2010

Carrier Data Review—carriers viewed safety data organized by the Safety Measurement System's (SMS) Behavior Analysis and Safety Improvement Categories (BASICS)

July 2010

Four 50/50 Op-Model Test States (CO, GA, MO, and NJ) join five 100% Op-Model Test States (DE, KS, MD, MN, MT)

December 2010

- SMS replaces SafeStat and is available to the public, including shippers and insurance companies
- Carrier enforcement efforts prioritized based on SMS results
- FMCSA begins issuing warning letters to carriers with safety problems identified by BASICS
- Roadside inspectors use SMS results to identify carriers for inspection

June 30, 2010

Completion of Op-Model Test

August–December 2010

Carrier Data Preview—carriers can view an analysis of their safety data based on the BASICS

2011

2011

- Safety Fitness Determination Notice of Proposed Rulemaking (NPRM) scheduled to be published
- Enforcement staff trained and new interventions implemented state-by-state

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.

The screenshot displays the 'Carrier Data Preview' interface for a sample motor carrier. The top navigation bar includes links for Home, About CSA 2010, Your Data, Privacy & Media, FAQs, What's New, and Data Preview. The main header shows 'Carrier Name' and 'U.S. DOT #'. Below this, a table lists various safety categories with their respective scores and status (e.g., 'Unsafe Driving', 'Fatigued Driving (HOS)', 'Driver Fitness', 'Drugs/Alcohol', 'Vehicle Maintenance', 'Crash-Related', 'Crash Indicator'). To the right, a 'Carrier Registration Information' section provides details such as Legal Name, Physical Address, Phone, and Email. A 'Summary of Inspection and Crash Activity' section shows totals for inspections, violations, and crashes. The bottom of the page features the FMCSA logo and contact information.

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>

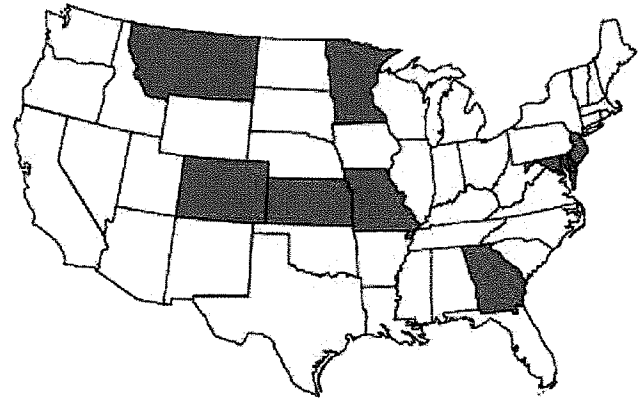


Lessons Learned from the Op-Model Test

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.



States that participated in the CSA 2010 Op-Model Test:
CO, DE, GA, KS, MD, MO, MN, MT, NJ

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

- **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.

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.

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 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.

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. 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

Department 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

EXHIBIT B

EXHIBIT B

TABLE OF CONTENTS

Page

DECLARATIONS

Declaration of David Owen (National Association of Small Trucking Companies).....	0001
Declaration of Mark McLochlin (The Expedite Alliance of North America)....	0003
Declaration of Mike King (Air & Expedited Motor Carrier Association)	0005
Declaration of Ken Lund (Allen Lund Company).....	0007

AFFIDAVITS

Apex Capital Corp.....	0009
BP Express, Inc.	00011
Des Moines Truck Brokers, Inc.	00013
Ennis Corp.....	00017
Express America Trucking, Inc.	00020
Forward Air, Inc.....	00023
Gobbell Transportation Safety, LLC	00032
H&V Leasing, Inc.	00050
Innovative Worldwide Logistics, Inc.....	00052
Jim Loyd Transport Co.	00054
Reliable Transportation Specialists, Inc.....	00057
Southern States Cooperative, Incorporated.....	00059
Tyme-It Transportation	00062
Universal Traffic Service, Inc.....	00066
Chep USA	00069

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 NASTC¹

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.

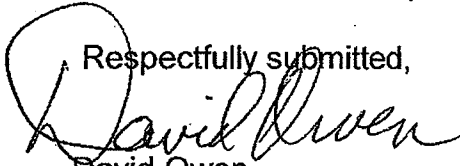
The agency has acknowledged that the statistics on which the carriers' BASIC scores and classifications are unreliable, that the algorithms that the agency is utilizing to calculate these scores are untested and unproven and that the public has neither been informed of nor provided

¹ 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,



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.¹

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 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.

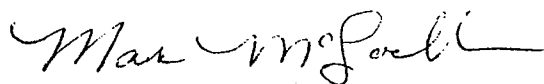
An "Alert" score will not only effect a carrier's competitive position but is likely to result in higher insurance premiums, a reluctance of drivers to work for such companies, and other economic and operational harm from which the carrier will be unable to recover if the publication is permitted to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

¹ 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", followed by a horizontal flourish.

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.¹

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.

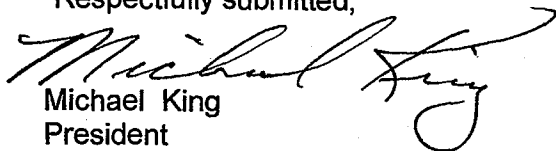
¹ Forward Air, Inc.

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

**DECLARATION OF KENNETH LUND,
ALLEN LUND COMPANY**

My name is Kenneth Lund and I am Vice-President of the Allen Lund Company. I am submitting this declaration in support of the relief sought by Petitioners.

The Allen Lund Company is the nation's largest truck broker of fresh fruits and vegetables. We arrange for the transportation of 238,000 shipments annually moving in interstate commerce and use 18,000 licensed, authorized and insured motor carriers to transport shipments. As a property broker and intermediary we are required by federal statute to retain carriers which are licensed and authorized and have no other delegated safety duties under the Federal Motor Safety Regulations.

Accordingly, we rely upon the ICC and now the FMCSA to certify motor carriers as safe for use and under Federal Regulations are not required to second guess the Agency's decision with respect to fitness.

Within the past few years, plaintiff's bar, in an effort to increase the amount of judgments, has named intermediaries in lawsuits contending that under state law intermediaries and shippers have an obligation to second guess the Federal Motor Carrier Safety Administration's ultimate safety fitness determination. As a result, state law judgments have been entered against shippers and brokers which have created chaos in the shipping community.

The FMCSA's intended release of CSA 2010 data to the public accompanied by its public statements that such data is intended for use by shippers and brokers in making safety related decisions, creates major problems for shippers and brokers by implying that the Federal Government has changed the statutes and regulations which govern responsibility for fitness determinations.

As a result of the prospective use of CSA 2010, our customers, competitors, and third party providers are suggesting that it can and will become the industry norm that brokers must rely upon this information for fear of vicarious liability and set new standards for use. Such new standards would be difficult and impractical to enforce and would affect the efficiency of our operations.

The data to be released under CSA 2010 has not been scrubbed or reviewed but figures released to the public by the FMCSA at various times have suggested that as many as two-thirds of the peer group motor carriers we currently use would be labeled as under safety "Alert" on December 6.

The Allen Lund Company has not been afforded an opportunity to comment about release of this data under the Administrative Procedure Act nor has the Agency considered the affect which release of this unscrubbed data would have upon the shipping and receiving public.

We have shared our concerns with the FMCSA in an open meeting and have received no formal response or opportunity to address this issue. Clearly, we share the concerns of the Petitioners that release of this data will have a dramatic effect upon competition, requiring the industry to bar from use motor carriers which the Agency has otherwise certified under the existing regulations as fit enjoying either a satisfactory or unrated status (unrated being the equivalent of satisfactory under existing regulations).

We currently pay over 10,000 carriers yearly in excess of \$120 million to transport fresh fruits and vegetables from the field to market. Over 97% of the carriers we use are small operators with 15 trucks or less who rely upon Allen Lund to eliminate deadhead and return their expensive refrigerated equipment to the areas of their domicile under load. If, because of fear of vicarious liability and release of CSA 2010 methodology we must bar any carrier who is under a safety "Alert" the carrier can easily be placed out of business.

In this regard, I have participated in over 10 different webinars and meetings over the past several months sponsored by a variety of trade associations in which safety consultants and present and former employees of the FMCSA have told shippers and brokers that the industry cannot rely upon the FMCSA's ultimate fitness determination. After release of CSA 2010 data we have been told that each shipper and broker must establish its own new credentialing criteria for fear of vicarious liability and must effectively use the data in some manner to second guess the Agency's ultimate fitness rating.

It is clear to us that the unintended consequences of premature release of CSA 2010 data far outweigh its benefits. In the absence of rulemaking, the Agency has not provided the shipping public with any clear guidance on why the material is being released or what we are supposed to do with it. The consequences on our business as shippers demand we accept indemnity obligations and use only peer group carriers who are not under alert could devastate Allen Lund's business, exacerbate our costs, and result in the blackballing of many small carriers who have not been afforded any due process or opportunity to be effectively heard.



Kenneth Lund
Allen Lund Company

**AFFIDAVIT OF DAVID BAKER
APEX CAPITAL CORP.**

My name is David Baker and I am President of Apex Capital Corp., 6000 Western Place, Suite 1000, Fort Worth, TX 76107. I offer this Affidavit on behalf of my company in support of Petitioners' relief in the above-described proceeding. Apex Capital is a commercial factor which finances approximately 1,000 small carriers through the purchase of receivables. The publication of CSA 2010 data to the public will, in our estimation, result in increased potential exposure of our assignors to large jury verdicts. Let me explain why.

Our clients are required by contract to indemnify and hold harmless the shipper and broker customers from vicarious liability arising out of their acts or omissions. Typically when vicarious liability is not an issue, lawsuits will settle within policy limits and small carriers can escape excess judgments which otherwise cripple their ability to stay in business. Publication of CSA 2010 data and its prospective use by plaintiff's bar to join shippers in lawsuits for alleged negligent selection or selection hiring will have a material adverse effect on the willingness of shippers to use small carriers.

Access to credit is particularly important in the trucking industry where new rigs are typically leased to own through equipment financing companies and small carriers are faced with financing their own float for up to 60 days on profit margins of 3% to 5%.

For these reasons, I ask that the Court consider the incalculable adverse effect which premature release of this data may have on the ability of carriers to remain in business and finance their operations.

By. 

David Baker
Apex Capital Corp.

State of Texas

County of Tarrant

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

Rachel D. Bradford [SEAL]
Notary Public

My Commission Expires: 8-19-2014



**AFFIDAVIT OF BILL HATFIELD,
BP EXPRESS, INC.**

My name is Bill Hatfield and I am Vice President and CFO of BP Express, Inc., a Knoxville, Tennessee based motor carrier. We employ/contract 175 people at 6 different terminals throughout the United States. We enjoy a satisfactory safety rating issued by the Federal Motor Carrier Safety Administration.

We have previewed our CSA 2010 percentile ranking and are above the 65 percentile in at least one of the BASICS and will be apparently marked in orange and noted as under "Alert" if this data is released to the public.

We support the relief sought by Petitioners because we have been advised by several customers and steamship lines that CSA 2010 data will be used to determine whether we can enjoy freight. Out of fear of vicarious liability, our customers are being told that the Agency's "satisfactory" fitness determination is no longer sufficient. Apparently, without rulemaking the Agency is releasing comments which suggest that shippers and brokers have undefined safety duties which makes the publication of this data necessary. BP Express is committed to safety and is not opposed to ultimate implementation by the Agency of a new fitness determination procedure.

Yet, we believe an unintended and unfair consequence of the program would be loss of business and the possible bankruptcy of small carriers who, like BP Express, have been certified by the Agency as satisfactory yet are blackballed by customers based on data for which we have had no due process.

Bill Hatfield
Bill Hatfield, Vice President CFO
BP Express, Inc.

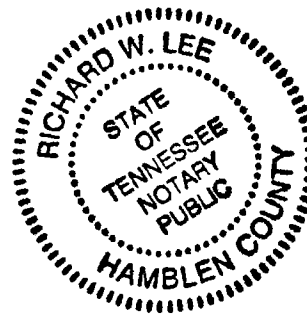
State of TENN.

County of HAMBLETON

Subscribed and sworn to before me this 24 day of NOVEMBER 2010.

Richard W. Lee [SEAL]
Notary Public

My Commission Expires: 3-25-13



**AFFIDAVIT OF JAMES R. DEMATTEIS
DES MOINES TRUCK BROKERS, INC.**

My name is James DeMatteis and I am the owner of Des Moines Truck Brokers, Inc. a property broker subject to the regulations of the FMCSA in Docket No. MC180183. I am making this Affidavit on behalf of my company in support of Petitioners' request to postpone release of CSA 2010 methodology and data to the public for the following reasons.

Des Moines Truck Brokers is required by FMCSA regulation to arrange for transportation using carriers which are licensed and authorized by the FMCSA to operate. In the ordinary conduct of our business, we confirm that carriers hold FMCSA authority and are certified by a rating of satisfactory or equivalent. This complies with our regulatory duty and the duty of the shipping public in general.

In the roll-out of CSA 2010, the Agency has issued various press releases but has not fully disclosed CSA 2010 methodology or what is to be expected of property brokers after the release. In fact, the Agency through its Administrator has repeatedly said that the material is going to be released to the public before rulemaking so that shippers and brokers can "make safety based decisions." There has been no formal determination of what additional duties this places upon Des Moines Truck Brokers or other brokers in general.

As a result, the industry is in confusion and release of this data without thorough vetting will have a major disruptive effect upon our business and our ability to utilize small carriers which are otherwise determined by the Agency to be fit to operate.

Des Moines Truck Brokers each year books approximately 4000 truck loads of freight using approximately 1200 different motor carriers, many of whom are small and are permitted by the FMCSA to operate. Des Moines Truck Brokers has been advised by consultant experts some of whom are former FMCSA officials, that with release of this data we must establish our own new safety credentialing standards for determining

carrier fitness, second guessing the Agency's ultimate determination and using the material to be released. What those standards are has not been determined. If it means that we must use this data in its current form, we will lose access, industry estimates, to over 50% of the carriers we currently use who are placed in peer groups. There seems to be much confusion over how many carriers will even be placed in these peer groups and it may very well be that the data to be released will not offer any information on many of the carriers we use, leaving us with the implied duty to second guess the Agency without any material to perform that analysis.

It is clear that property brokers and shippers are targets for vicarious liability and have been named in lawsuits in the past when plaintiff's bar seeks to add additional defendants. The industry as a whole has been alarmed by release of CSA 2010 and the shipping community has been told that it can no longer retain carriers who are licensed, authorized and insured or hire a broker to perform this simple duty.

Large 3PLs and asset-based carriers are currently conducting seminars to woo customers away from brokers like us suggesting that after CSA 2010 is released, the shipping community must hire only large brokers or large carriers to conduct service because the increased vicarious liability exposure requires an intermediary with sufficient reserves to sustain multimillion dollar judgments which will clearly result, they say, from this new modality.

This concern over CSA 2010 and its implementation if released, threatens us with immediate loss of business and leaves us with an unclear decision over the state of our operations. Do we use CSA methodology which is untried and unproven to bar from use up to half of the peer grouped carriers we currently use? What are we to do with respect to carriers which are not rated under CSA 2010 if the Agency's press release correctly suggests we now have some undefined safety based decision to make other than to rely on the Agency's ultimate safety fitness determination?

In this context, it should be noted that as a property broker, the statutes provide that we can be sued by any party aggrieved by our failure to perform our duties as a property broker. See 49 U.S.C. 14704. When our regulatory duties are only to hire a licensed and insured carrier, yet the Agency suggests our duties go further than that and release unscrubbed data without providing clarity, it is clear that the brokerage industry quickly becomes a target for additional litigation.

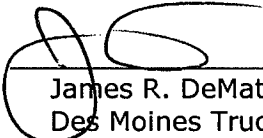
We support this petition also because of the devastating effect it will have upon carriers which we have found to be fit, willing and safe to operate but who will be faced with imminent loss of business based upon the scoring modality.

It is our understanding that 35% of the carriers regardless of the safety program, will be under "alert" and marked in orange for violation of hours of service regulations alone. Yet, when one examines the modality for this, it appears that this percentile ranking is in large part based upon paperwork violations which may have absolutely no indication of the carrier's crash record or its compliance with the hours of service.

We see no reason for the release of this data before it is thoroughly vetted in rulemaking. It appears to us that the early release of this data before the studies are even in or the public has had an opportunity to review the recent 800 changes in the modality and consider the effect of the release under the Administrative Procedure Act is improper and begs the question, "Why not wait and get it right?"

As a small business which provides a needed service of eliminating dead head miles and working with blue collar entrepreneurs to save fuel and efficiently and competitively conduct interstate commerce, I believe Des Moines Truck Brokers and the small carriers it uses deserve full consideration of the impact of release of this data under the APA before some artificial deadline or in lieu of premature release.

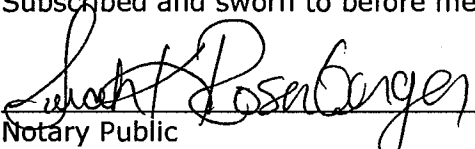
By:


James R. DeMatteis, President
Des Moines Truck Brokers

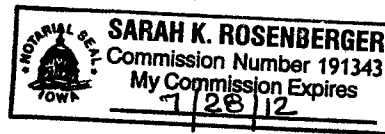
State of IOWA

County of Warren

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

 [SEAL]
Notary Public

My Commission Expires: 7/28/12



**AFFIDAVIT OF PATRICK INNIS
ENNIS CORP.**

My name is Patrick Ennis and I am the owner of Ennis Corp., a for-hire motor carrier based in Clarion, Iowa. We currently operate 23 over-the-road tractor trailer units. We are regulated by the Federal Motor Carrier Safety Administration and have a satisfactory safety rating.

For the past 5 or 6 months, we have been actively preparing for CSA 2010 and subscribed to Vigillo, a purveyor of information about CSA 2010, and J.J. Keller, a leading publisher of safety information. Although we have a satisfactory safety rating, our current score in fatigued driving under the CSA modality is 74.8 or approximately 9 percentage points above the initial enforcement threshold. Apparently, if CSA 2010 data is released to the public, we will be marked under "Alert" and coded orange for shippers and brokers to see.

We do not believe that CSA 2010 is fair or appropriate for release to the public in its current state. Our company is clearly peer grouped in fatigued driving with companies that are not required to log and with companies who have the onboard recording device. CSA 2010's "fatigued driving" BASIC is based not only on drivers which exceed the 14 hour and 70 hour driving times but also on paperwork violations such as the failure of a driver to keep his log up to date when stopped for inspection. Over half of

the points we have accumulated in this BASIC result from paperwork violations which carriers in our peer group do not incur.

As a carrier ultimately certified by the FMCSA as "satisfactory" we value the Agency's ultimate determination and oppose the December 6 release of CSA 2010 data because of fear of the affect it will have on our ability to compete and obtain freight from shippers and brokers.

Much of our ability to operate efficiently and return trucks to our Iowa base is predicated on obtaining back haul freight in the spot market from property brokers. Several of the current brokers who tender us freight have indicated they are being counseled to use CSA 2010 data to credential carriers for use out of fear of vicarious liability or negligent selection.

With a satisfactory safety rating, we believe we have been ultimately credentialed for use by shippers and brokers. Clearly, we cannot afford to remain in business and lose our access to back haul freight. We do not understand why the Agency seems intent on releasing CSA 2010 data to the public next week when it has been made aware of the potential adverse consequences on carriers like Ennis who have been subject to an audit and found fit to operate. Accordingly, we urge the Court to grant the relief Petitioners seek.

Patrick Ennis

Patrick Ennis, Owner
Ennis Corp.

State of Iowa

County of Wright

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

Kaysie Williams

[SEAL]

Notary Public

My Commission Expires: 9.25.2013



**Affidavit of Barry E. Bernard,
Express America Trucking, Inc.**

My name is Barry Bernard and I am President of Express America Trucking, Inc., an intermodal drayman based in Memphis, Tennessee. We employ 165 drivers and owner-operators at three terminals throughout the southeast and pull intermodal containers between rail heads and ports on the one hand and interim customers on the other. I am authorized by my company to submit this Affidavit in support of the relief sought by Petitioners in the above captioned lawsuit.

As an intermodal carrier, we are highly dependent upon contracts with large intermodal brokers and upon access to chasses and containers provided by steamship lines and/or other intermodal equipment providers. Over the past several months, we have received notice from at least three key equipment providers or brokers that upon release of CSA data to the public we will be scored based upon CSA 2010 criteria and will lose access to business and/or the trailers and chassis necessary to provide service if our scores exceed the enforcement thresholds established by the Agency.

Express America Trucking, like most of the similarly situated competitors of which I am aware, fare poorly in one or more of the five remaining BASIC areas which will still be published if the Agency is not deterred. This is true because of the nature of our business, the fact that we pull intermodal containers, use independent contractors and paper logs yet are peer grouped with dissimilar carriers, and has no proven correlation to our safety record. We have not been afforded an opportunity to examine the Agency's scoring mechanism, its peer grouping of carriers, or its rating system for violations. Unlike flatbed carriers who were granted redaction of the securement BASIC as the result of private meetings with the Agency, our carriers have not been formally or informally addressed.

Under the proposed CSA 2010 system of reporting violations, there is no due process in that warnings and citations are reported and fed through the system before we have an opportunity to contest and any "DataQ" we file is not subject to judicial review.

For all these reasons, release of this data is tainted and not ready for public release. I am advised that in August of 2010, after working on the pilot program in test states for several years, the Agency made 800 changes in its scoring methodology, none of which have been subject to peer review.

It is out of fear of vicarious liability that shippers and brokers feel compelled to use this unscrubbed system. No one has provided us with an answer as to why this system must go live on December 6 when affected shippers and brokers have not been afforded the opportunity to review its affect upon small carriers like Express America Trucking.

Clearly a stay is warranted because the adverse consequence of release upon Express America Trucking and similarly situated carriers. We will be faced with immediate loss of existing customers and access to equipment we have come to be dependent upon. Moreover, we perceive we will have difficulty in raising finances, obtaining loans for new equipment and continuing in business.

We currently enjoy a satisfactory or equivalent safety rating from the FMCSA and accordingly are certified for use by shippers, brokers and steamship lines. Any release of the proposed data will undermine the shipping public's ability to utilize us out of fear of vicarious liability. For these reasons, we ask that the Court direct postponement of release of this data until the matter can be properly considered and statutory due process provided.

By: _____

Barry E. Bernard, President
Express America Trucking, Inc.

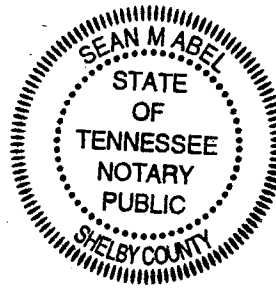
State of Tennessee

County of Shelby

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

Sean M. Abel [SEAL]
Notary Public My Commission Expires
October 7, 2014

My Commission Expires: _____



**AFFIDAVIT OF MATTHEW J. JEWELL,
FORWARD AIR, INC.**

My name is Matthew J. Jewell and I am Executive Vice President and Chief Legal Officer of Forward Air, Inc., a property broker subject to the regulations of the FMCSA in Docket No. MC249708.

At the request of Petitioners, I attended a meeting with the FMCSA (hereinafter sometimes referred to as "the Agency") held at its office on October 5, 2010. The meeting was arranged by the Small Business Administration after Petitioners received no response to their formal Motion to Postpone. At that time, the Agency requested from Petitioners language to be placed upon any release which would satisfy the vicarious liability concerns and permit release of the data as scheduled.

As a defense lawyer familiar with the misuse of SafeStat in tort litigation, I helped draft proposed language which would make clear that the Agency made the ultimate determination of fitness and that CSA 2010 methodology could not be used in a court of law. This suggested language was submitted to the Agency by letter dated October 8, 2010.

No response was received by Petitioners but Administrator Ferro apparently released certain comments to another trade association indicating that the SafeStat warning would be attached and that pejorative language would be removed. In response, a follow-up letter was sent to the Agency addressing these concerns. A copy of it is attached. Again, no response to Petitioners was forthcoming.

As of this writing, I have not been formally advised of any Agency decision on the Petition or our suggested language. The best information I have concerning the language has been obtained from presentations made by the Agency to other groups which indicate that the color of the warnings will be changed from red to orange, language indicating that a carrier is deficient or marginal will be changed to "alert" and that the following warning will be placed upon the website, "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."

This information was gleaned only from presentations made by FMCSA or former FMCSA officials to others at private webinars. In my estimation, this language does not address the serious vicarious liability concerns we have. Placing the words "Alert" on the website, is an open invitation for vicarious liability and use of the data by shippers and brokers to grade carriers. Moreover, the language that indicates that it is not part of the safety rating will have no affect, in my estimation, to dispel the intended forced use of the data by the shipping and receiving public to establish a new standard for diligence in negligent selection suits.

It is clear to us from the participation by the current and former Agency officials in webinars, seminars and the dissemination of information to the shipping public that CSA 2010 is intended to shift in large part the responsibility for credentialing carriers from the Agency to the shipper and broker community.

Unless this matter is postponed and thoroughly and properly considered, as the party responsible to my company for risk assessment, I will have no alternative but to preclude use of any carrier who is under enforcement activity by the Agency for fear of vicarious liability. This will very likely result in loss of business for carriers who have provided excellent service to us without mishap and will otherwise affect our ability to effectively route our traffic via low cost providers and eliminate dead head and inefficiencies incurred by carriers seeking return shipments in the spot market.

For these reasons, on behalf of Forward Air, I request that publication of this data be postponed pending appropriate consideration of these matters in the impending rulemaking proceeding.

By: _____

Matthew J. Jewell, Executive Vice President
and Chief Legal Officer
Forward Air, Inc.

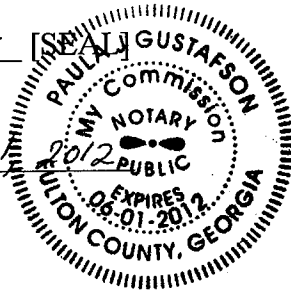
State of Georgia

County of Fulton

Subscribed and sworn to before me this 26th day of November, 2010.

Paula Gustafson
Notary Public

My Commission Expires: June



LAW OFFICE OF SEATON & HUSK, L.P.

HENRY E. SEATON, ESQ.
Admitted in VA, TN, DC
heseaton@aol.com

JOHN T. HUSK, ESQ.
Admitted in VA, DC
johnhusk@aol.com

ELIZABETH M. OSBURN, ESQ.
Admitted in VA
eosburn@transportationlaw.net

JEFFREY E. COX, ESQ.
Admitted in VA, DC, MD
jeffcox@transportationlaw.net

2240 Gallows Road
Vienna, VA 22182
Telephone: (703) 573-0700
Facsimile: (703) 573-9786

222 Second Ave. North
Suite 360-M
Nashville, TN 37201
Telephone: (615) 255-0540
www.transportationlaw.net

JERE R. LEE, ESQ.
OF COUNSEL
Admitted in TN only
jerelee@mindspring.com

RICHARD GOBBELL
Non-Lawyer
Motor Carrier Safety Consultant
gobbell49@comcast.net

October 27, 2010

Anne S. Ferro, Administrator
Federal Motor Carrier Safety Administration
United States Department of Transportation
1200 New Jersey Avenue SE, Suite W60-300
Washington, DC 20590
Via U.S. Mail/Email
anne.ferro@dot.gov

Dear Ms. Ferro,

As you know we filed a Motion to Postpone under Docket No. FMCSA-2004-18898. We submit that CSA 2010 data should be accumulated solely for the Agency's enforcement purposes. In view of the devastating unintended vicarious liability consequences, public release of this data is neither proper nor required under FOIA (see 5 U.S.C. §552(b)(7)).

We firmly believe there is no internet exception to the APA and the protections guaranteed small businesses through the related rulemaking statutes. Unless the interests of the small motor carriers which represent 95% of the for-hire motor carriers are fully and adequately protected as part of the proposed early release of the unperfected CSA 2010 methodology, we must reserve our objections.

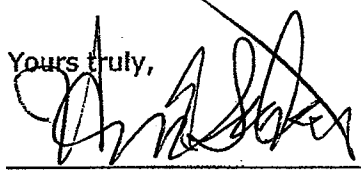
In an effort to accommodate the Agency, we submitted proposed redaction and disclaimer language in our letter to you of October 8 which was intended to address the vicarious liability concerns which otherwise will result in loss of business, carrier bankruptcies, loss of jobs and disruption to the industry.

We have received no response to either the Motion or the letter but have received through the media the attached notice which indicates that the Agency has made a preliminary decision concerning a possible warning. This relief, if true as reported, is a step in the right direction but does not satisfy our concerns. A SafeStat type warning has proven ineffective before in state court actions to preclude use of the data to establish shipper liability and will not be sufficient to allay the fears of brokers, shippers and third party equipment providers who are continuing to place contract termination provisions in carrier contracts under the misguided impression that the Agency intends the public to use this flawed data upon publication. In fact, the number of brokers and shippers advising our clients that CSA 2010 methodology will be used to deprive them of existing business is increasing. See attachments.


Accordingly, the Agency's full adoption of the redaction and disclaimer notice in our October 8 letter accompanied by unequivocal affirmation of the public's ability to rely upon the Agency's ultimate fitness determination as a certification for use is the bare minimum necessary to frame release of this data as planned in December.

We will be happy to meet again with you to discuss our issues but must reserve our objection to the public release of any data without APA compliance in the absence of the relief sought in our October 8 letter offering clear protection to the traveling and shipping public that failure to use all or part of the release data in its present form should not and cannot be used to establish vicarious liability.

Yours truly,



Henry E. Seaton, Esq.
*Counsel for the National Association of
Small Trucking Companies (NASTC);
The Expedite Alliance of North
America (TEANA); and the
Air & Expedited Motor
Carrier Association (AEMCA)*



William D. Bierman, Esq.
*Executive Director,
Transportation Loss Prevention and
Security Association*

cc: Gary.Shoemaker@dot.gov
Alais.Griffin@dot.gov



Valued NYK Contract Carrier:

NYK Logistics (Americas) Inc. is writing to urge you to preview your CSA 2010 data at <http://csa2010.fmcsa.dot.gov/>. Click on the Data Preview link at the top of the page where you will find your 7 Behavior Analysis Safety Improvement Categories (BASICS) data. This information will be used to determine your Safety Fitness Determination (SFD) and will replace your Safety Rating. If you have already visited this site then you are a step ahead and aware of your data under the new Safety Management System (SMS).

NYK's Safety Policy under the current SafeStat measurements, provides that we qualify carriers with Satisfactory Ratings. However, we may qualify carriers based on SafeStat data (scores) if your Rating is Conditional or not rated in the SAFER database.

The public will not have access to CSA 2010 data until the end of the year, at which time NYK will refine our Safety Policy to qualify carriers using CSA 2010 guidelines. Our Safety Policy will be in line with SMS. In the future, if the Unsafe Driving or Fatigued Driving BASICS or any two of the other BASICS are above the Unfit Threshold, you may not be qualified to move freight for NYK.

NYK welcomes all questions and feedback on this program and anticipates that you are on top of all the changes CSA 2010 will bring to your company and our industry. NYK also requests that you send us a copy of your CSA 2010 Preview Data at your convenience to carrier.safety@na.nyklogistics.com or fax to 901-215-3214.

Best regards,

NYK Carrier Relations Compliance Team
Toll Free: 877-468-5557
Fax: 901-215-3214

Please disregard this notice if you have received in error.

LAW OFFICE OF SEATON & HUSK, L.P.

HENRY E. SEATON, ESQ.
Admitted in VA, TN, DC
heseaton@aol.com

JOHN T. HUSK, ESQ.
Admitted in VA, DC
johnhusk@aol.com

ELIZABETH M. OSBURN, ESQ.
Admitted in VA
eosburn@transportationlaw.net

JEFFREY E. COX, ESQ.
Admitted in VA, DC, MD
jeffcox@transportationlaw.net

2240 Gallows Road
Vienna, VA 22182
Telephone: (703) 573-0700
Facsimile: (703) 573-9786

222 Second Ave. North
Suite 360-M
Nashville, TN 37201
Telephone: (615) 255-0540
www.transportationlaw.net

JERE R. LEE, ESQ.
OF COUNSEL
Admitted in TN only
jerelee@mindspring.com

RICHARD GOBBELL
Non-Lawyer
Motor Carrier Safety Consultant
gobbell49@comcast.net

October 27, 2010

NYK Logistics & Mega Carrier
NYK Carrier Relations Compliance Team
Via Fax: 901-215-3214

Dear NYK Carrier Relations Compliance Team:

This firm represents several small carriers which have received the attached notice from you concerning your intended use of CSA 2010. We respectfully suggest that CSA 2010 is not intended for use by the shipping and traveling public in qualifying carriers. Specifically, CSA 2010 modality is a work in progress predicated on peer rankings of carriers based upon warnings and citations which have had no scrutiny and little due process.

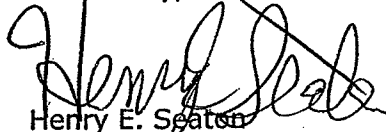
Attached hereto is a Motion to Postpone release of this data filed by 4 trade associations together with 2 additional letters to the FMCSA requesting redaction of all or part of this data from public view because of the unintended vicarious liability consequences of same.

We honestly believe based upon published data that shippers, brokers and IEPs have been seriously misled about the intended use or penalties for non-use of this flawed data when it is released. Your letter is one of many that has been sent to small carriers and it is for this reason that we oppose release of CSA 2010 data.

We urge you to join the coalition of the named associations to straighten out the confusion of CSA 2010. Many brokers like NYK have expressed support for our efforts, recognizing that as many as two-thirds of their available carriers may be barred from use if the course of action you indicate is followed. Please note that the "thresholds" to which you refer do not in any way replace the current rating system of satisfactory, unfit, conditional, or unrated (which is the equivalent of satisfactory). These thresholds are only intended by the Agency for its internal use in its monitoring and enforcement policy and do not establish "the Unfit Threshold" in any of the BASIC areas.

We are not unmindful of your vicarious liability concerns and it is for that reason that we are seeking relief from the FMCSA in advance of release of this data. Your comments and feedback to both the undersigned and Administrator Anne Ferro would be welcome.

Yours truly,


Henry E. Seaton

HES/nre

00029

Transport Topics; week of October 25, 2010

HEADLINE: Ferro Says FMCSA to Alter CSA to Address Industry Concerns

Byline: Sean McNally, Senior Reporter

PHOENIX — The Federal Motor Carrier Safety Administration is making several changes in its soon-to-be-implemented overhaul of truck safety standards as a result of industry comments, Administrator Anne Ferro told Transport Topics.

Ferro said at the annual meeting of American Trucking Associations here last week that FMCSA will change some of the terminology used to label fleets, put disclaimers on the data and hold back crash data when the program is implemented in December.

However, despite the desire by some fleets to delay publication of the scores, they will be posted as scheduled, Ferro said.

"We've had a great deal of opportunity to talk to the industry ... about our publication of that data to a broader audience," Ferro told TT in an Oct. 19 interview during the ATA meeting. "Number one, it will be going public in December, and we will be initiating the warning letters and phasing-in the concept of a focused compliance review where appropriate."

But to avoid inflammatory terms, FMCSA will be "getting away from that 'trigger language,' so it won't say 'deficient' " on a carrier's score, but "probably something closer to 'threshold', or 'above the threshold' or something like that," Ferro said.

Fleets have been concerned that using the term "deficient" is too pejorative and could harm them in legal proceedings.

Also in response to industry concerns, Ferro said that while the agency considers whether it's feasible to assign fault to the crashes in its system, "we will continue to treat the crash data as we do under SafeStat" and keep it off FMCSA's public website.

As a result, carriers' scores in six of the seven CSA safety categories are now scheduled to be posted.

Under CSA, the agency is sorting carrier infractions — from crashes to cargo securement violations — into seven categories, or BASICs.

In August, FMCSA changed the way some of the BASICs are calculated. Those revisions, according to Scott Randall, safety director at Hogan Transports, benefited large carriers, who generally saw improvements in their scores.

"The larger the carrier, the greater the chance they would be deficient under the old methodology," but under the new methodology "larger carriers all saw a decrease," he said.

Keith Klein, chief operating officer of Transport Corp. of America, said that before the changes, his company was "deficient in three of the seven basics," but that is not the case now.

"There are still some concerns on CSA 2010, that there may be a lot of bumps in the road that we think could be avoided to some degree," said Charles "Shorty" Whittington, president of Grammer Industries and chairman of ATA's executive committee. "However, in a nutshell, this

thing is so far down the pike that if you're going to be a carrier, you're going to have to learn to be a good carrier."

Steve Williams, chairman and CEO of Maverick USA Inc., told TT he agreed with FMCSA's decision to post the scores, despite his concerns about CSA.

"I don't like the message that it is sending to the public, that we have something hidden behind this score," he said.

However, that didn't absolve the agency from continuing to look at the program, he said. "I am confident that we will in time — and it needs to be sooner than later — get this right," Williams said. "It is a critical piece that needs to be implemented and to accomplish the goals that we want to accomplish on highway safety."

Some of the concern stems from carriers' fear that shippers or plaintiffs attorneys may use the data from CSA either to select carriers or in lawsuits.

Former FMCSA Administrator Annette Sandberg, now a consultant and attorney with Scopelitis, Garvin, Light, Hanson & Feary, said that failing to do due diligence and potentially using a carrier with a deficient or even marginal score "does not play very well" with juries, citing several multimillion-dollar suits where brokers or shippers have been found negligent for using poorly rated carriers.

As a result, Sandberg said she advises her clients to discuss the CSA issue with their carriers, and for carriers to explain that there are issues with the data.

John Hill, also a former FMCSA administrator and current consultant, said he believed the CSA scores should be publicized. But he added that if quality issues with the data persist, the scores might need to be withheld until the data problems were solved.

End.

**AFFIDAVIT OF RICHARD GOBBELL,
GOBBELL TRANSPORTATION SAFETY, LLC**

My name is Richard Gobbell and I am President of Gobbell Transportation Safety, LLC. I am making this statement in support of the Petition for Stay filed by the Petitioners in the above-described proceeding.

From 1972 until 2007, more than 35 years, I was employed by state and federal highway safety enforcement agencies that were responsible for the enforcement of the Federal Motor Carrier Safety and Hazardous Materials Regulations. For 15 years, I taught enforcement and compliance review course at Federal Motor Carrier Safety Administration's National Training Center in Oklahoma City and Washington, DC to both federal and state enforcement officials. Prior to my retirement, for 30 years I was with the Federal Highway Administration (FHWA) and the Federal Motor Carrier Safety Administration (FMCSA) in which I was responsible for the enforcement of both the Federal Motor Carrier Safety and Hazardous Materials Regulations. Two and 1/2 years prior to my FHWA and FMCSA service I was with the former Interstate Commerce Commission (ICC). At the ICC I was responsible to insure that each carrier that had or was granted operating authority was maintaining a safe operating condition within its company.

I completed my last 12 year of my career at the FMCSA as the Tennessee Division Administrator. As the Division Administrator it was my responsibilities to administrate a comprehensive motor carrier safety program in Tennessee, through my staff of nine employees and administered a FMCSA's Grant programs to the Tennessee Department of Safety. That program included, among other things, it

conducting a very large commercial motor vehicle roadside inspections program across the State. When I retired from FMCSA I was responsible for the oversight of more than 900 Tennessee Department of Safety roadside truck inspectors.

During my career at the State agency I worked for, the FHWA and the FMCSA, I inspected approximately **10,000** commercial motor vehicles in operation upon the highway. I conducted somewhere around **1,000** motor carrier compliance reviews at carrier's offices. I investigated **100s** of commercial motor vehicle crashes.

Following my retirement in 2007 I have been a safety consultant and have served as an expert witness in several civil cases directing attention particularly to the vicarious liability issue which has arisen since deregulation. Attached hereto as Appendix A is a copy of my vitae.

The FMCSA regulations governing highway safety have changed little since they were implemented and enforced by the Interstate Commerce Commission prior to deregulation. When entry control and the filed rate doctrine in the Interstate Commerce Commission Termination Act was promulgated by Congress over 15 years ago, motor carriers were freely allowed to waive rules of commerce and enter written bilateral contracts pursuant to 49 U.S.C. 14101(b). The one aspect of regulation which did not change was the FMCSA safety rules. Those safety rules cannot be waived by written contract and placed solely upon the authorized motor carrier the non-delegable safety duties to comply with FMCSA requirements. See 49 C.F.R. 390.3(a).

Similarly, both before and after deregulation, the Federal Government established a regulatory body which is solely responsible for determining safety fitness. When the Interstate Commerce Commission's regulation over highway safety was terminated, enforcement of the safety rules and the credentialing of carriers were transferred first to the Federal Highway Administration and then, when it was created, to the Federal Motor Carrier Safety Administration (a subsidiary agency of the U.S. DOT) without any material change in the regulations or statutes.

The traditional public utility basis for the ICC and now the U.S. DOT to certify carriers as safe to use was based upon the doctrine that the Agency is the ultimate determiner of highway safety and that it is upon its decision both the traveling and shipping public can rely. The federally promulgated insurance requirements and endorsements demonstrate that these minimum levels of financial requirements are intended to inure to the benefit of the shipping and traveling public.

With deregulation, though, has come a new conflict between federal and state authorities as plaintiff's bar has sought to join shippers and brokers into accident litigation in an effort to increase the amounts of judgments and available sources of recovery. I have been personally involved in several lawsuits in which plaintiff's bar has attempted to use FMCSA safety data to establish a duty on shippers, brokers and vehicle leasing companies for screening of carriers which exceeds verification that the government has determined the carrier to be fit to operate.

In this context, the shipper and broker community is frightened about the prospects of vicarious liability and approaches CSA 2010 with heightened awareness of the unintended consequences of release of additional data.

Although the broker regulations provide that a broker is required only to retain a licensed, authorized and insured carrier, the argument being made is that a brokers, shippers and vehicle leasing companies have an additional statutory duty to use data released by the Agency to second guess the Agency's ultimate fitness determination.

In this context, premature release to the public of CSA 2010 data will and has, in my estimation, already has and will expand when released a chilling *effect* on competition and the ability of carriers to obtain business where the Agency has merely indicated in a percentile ranking that such carriers are under progressive examination.

The Agency, in considering CSA 2010, has not released its methodology, its science, or its math for public review and criticism. The program is, by the Agency's own admission, a work in progress and the University of Michigan study has not even been released. In August of this year, for example, the Agency made approximately 800 statistical changes to its methodology which affected its scoring and the outcome of its peer group sampling making any analysis based on the previous methodology impossible. Even the number of carriers in each peer group has not been released.

As a consultant familiar with the roadside inspections and collection of data involved, it has been impossible for me to accurately review the data to be collected

and to verify its accuracy and applicability, or fitness for use.

I have read the Petition to Postpone filed by Petitioners with the Agency and note that no response to the points raised by it has been forthcoming. Ordinarily, the Agency is required to set forth any change which would have a major affect upon the industry in a rulemaking proceeding at which time each of these issues should be addressed to assure data quality accuracy as well as to protect the interests of small carriers and entities under the Reg Flex Act and the Paperwork Reduction Act. No such procedures have been afforded in this case. Moreover, there are serious due process concerns about the data being accumulated and weighed.

The data being accumulated includes roadside warnings and citations, not convictions, and the data is to be released to the public with any due process afforded the carrier provided only on the backside after the harm to its reputation is done. "DataQs" is a procedure in which a carrier may send a request to review a data issue to the Federal Government which in turn refers the request back to the enforcement officer for a non-judicial review. In my experience of filing numerous DataQ, it is an ineffective means of protest and violates all concepts of due process. Moreover, as Petitioners point out, there are serious flaws with the data to be accumulated and the accuracy of the data when used for a statistical ranking.

Obviously, there are geographical differences imposed based upon the area of carrier operations and carriers in "probable cause" states are up to 4 times as likely to have high scores in one of the BASIC areas as carriers who operate principally in non-"probable cause" states. Yet, because both carriers are compared

in the same peer group, the result is an inequitable bias against certain carriers based upon their geographical scope of operation.

This bias is also particularly apparent in the important stand-alone basis of carriers' hours of service compliance. Apparently, the Agency proposes to compare for percentile rankings in the same peer group carriers which have the on-board recording device, those which are not required by regulations to log, and those which currently maintain a paper log. A carrier which maintains a paper log is twice as likely to accumulate points in this important BASIC than a carrier which operates an EOBR or one which is not required to log. This bias easily manifests itself in making carriers with paper logs likely to populate the upper 35% of the percentile ranking in a peer group which is deemed to be under the FMCSA's proposed methodology as a stand-alone BASIC.

The additional areas raised by Petitioners in their Motion to Postpone are well taken and in my experience reflect actual problems with the data including but not limited to the failure of roadside inspectors to list satisfactory inspections, the profiling of certain carriers based upon the age and nature of equipment, and other enforcement anomalies. The Agency has acknowledged that uniformity of enforcement is a difficult task and one in which Commercial Vehicle Safety Alliance (a non-governmental agency) is currently working on. Simply stated, though, the inequities have not been adequately addressed at this point to permit the release of the data with any reliability.

As part of use of CSA 2010 in its ultimate enforcement activities, the Agency has apparently set artificial percentile rankings which are convenient for its ultimate

enforcement program to be unveiled and considered in rulemaking in the Spring, but I have seen no scientific evidence for public listing of the term "Alert" or coding in orange any carrier above the 65 or 80 percentiles in any of the five remaining BASIC areas.

No reason has been cited for releasing peer group rankings to the public suggesting that carriers are under enforcement based upon percentile rankings until this thorough review required by statute is performed. Unfortunately, the Agency in its public releases and the Administration's letter to the Minnesota Trucking Association, has suggested that the data is being made available to the public which 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" without appreciating the effect on the industry due to the vicarious liability consequences of this statement. (See June 8, 2010 letter from Anne Ferro to the Minnesota Trucking Association.)

It appears clear from the preparatory CSA 2010 seminars conducted by the industry and the Agency that the shippers and brokers fearful of vicarious liability will believe it is incumbent to use this un-scrubbed data to bar existing carriers from use if this material is released. To date, the Agency has given no apparent consideration to the affect of the release of this data on the efficiency of motor carriers or the competition between motor carriers which is set forth in the National Transportation Policy. See 49 U.S.C. 13101. Each year the Agency conducts a safety audit of approximately 17,000 motor carriers which it deems most at risk

under its current compliance review enforcement system and ultimately finds only about one percent of all carriers unfit to operate.

While no analysis of the use of CSA 2010 in the test states has been issued by the Agency, it does not appear that there is any correlation between the number of carriers identified for intervention and labeled as under "Alert" and the number of carriers ultimately found to be unsafe. Missouri, one of the test states in which CSA 2010 methodology was used, assigned an unsatisfactory rating to only 2 carriers for fiscal year 2010, yet approximately two-thirds of the carriers it tested under CSA methodology were labeled deficient and under "Alert."

If the Agency is able to use its comprehensive safety methodology to rate all 600,000 plus carriers as originally proposed in the five remaining BASIC areas, at least 250,000 would be under "Alert" and the for-hire segment which makes up 170,000 to 200,000 carriers will be severely compromised if shippers and brokers use the public data as the Agency suggests they should in making safety based decisions.

It is interesting to note that the Agency has selectively decided to publish for the public review percentile rankings in only 5 of the 7 BASIC areas of inquiry noting that in 2 of the 5, the determination has been made that the material is not yet ready for public release. This subjective decision by the Agency demonstrates that there is, in the Agency's schema, no requirement for public release and, I submit, that in all 7 of the BASICS, CSA 2010 is a work in progress and that the same adverse consequences of premature release requires delayed publication of any data.

By: Richard C. Gobbell
Richard Gobbell, President
Gobbell Transportation Safety, LLC

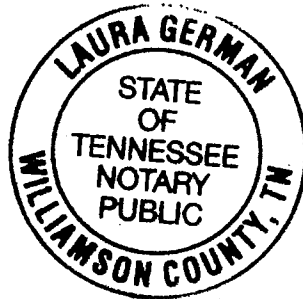
State of Tennessee

County of Williamson

Subscribed and sworn to before me this 26 day of November, 2010.

Laura German [SEAL]
Notary Public

My Commission Expires: 01/21/2013



Appendix A

November 26, 2010

A copy Richard C. Gobbell's Vitae.