

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-6515

August 31, 2012

Ms. Anne S. Ferro
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Administrator Ferro:

I appreciate the willingness of the Federal Motor Carrier Safety Administration (FMCSA) to permit Deputy Administrator Bill Bronrott and Mr. Joseph DeLorenzo of the agency's Office of Enforcement Compliance to participate in the July 11, 2012 Small Business Committee hearing on the effects of the new Compliance, Safety and Accountability (CSA) program on small businesses. Because you were not able to participate in the hearing, I am writing to summarize the major concerns with the CSA program that were raised by the witnesses and Members of Congress at the hearing.

Since the FMCSA began implementation of the CSA program, a growing number of industry stakeholders and third-party researchers have raised concerns that the program, as currently designed, may not only have limited utility as a crash predictive tool, but in many cases may identify safe carriers as a crash risk. Of particular concern to the Committee is the potential for the Safety Measurement System (SMS) to disproportionately assign negative Behavior Analysis Safety Improvement Category (BASIC) scores to small carriers based on a handful of inspections, citations or warnings.

Below are the most common concerns raised by the private sector witnesses that testified on the second panel at the hearing.

I. Issues with Data Quality and the SMS Methodology

As addressed at the hearing, industry stakeholders and third-party researchers have identified a number of issues with the underlying data and SMS methodologies that call into question the system's ability to identify carriers at risk of causing a future accident and which may result in carriers, particularly small carriers, receiving negative safety scores. These methodological concerns are primarily related to: disparities in inspection frequency and emphasis between

states; the inclusion of citations and violations that have little or no correlation with crash risk; the severity weights assigned violations; the sufficiency of the data FMCSA uses to calculate BASICs; and FMCSA's decision to base scores on a carrier's relative performance to peers, rather than as an absolute.

Inspection Frequency: A number of independent studies have found that differences in inspection frequency could result in disproportionate and disparate outcomes for carriers operating in high inspection frequency states. The studies also documented that the negative consequences of these outcomes could be exacerbated in cases where states emphasize enforcement of certain regulations, particularly those that bear little relation to crash risk.

Additionally, the studies question whether the SMS will be able to achieve its primary purpose: identify carriers at risk for a future crash. For example, studies by Wells Fargo Securities¹ found no positive correlation between certain high BASICs and heightened crash risk. A separate study by Dr. James Gimpel at the University of Maryland² reached similar conclusions. Even the University of Michigan Transportation Research Institute (UMTRI) Evaluation of the Op Model Test³ commissioned by your agency discovered discrepancies between FMCSA's claims that high BASICs score in all categories are correlated with higher crash risk.

At the hearing, Deputy Administrator Bronrott noted that FMCSA has taken exception to the findings of Wells Fargo Securities 2011 study of CSA, noting that the study examined a relatively small sampling of the carrier universe, some 200 of the nation's larger carriers, presumably those with the most SMS data. Subsequently, Wells Fargo Securities has conducted a new study examining 4,600 carriers – which includes a substantial number of the small carrier universe – that it claims verifies the results of its previous study.

Does FMCSA plan on responding to the new Wells Fargo Securities and Gimpel studies? How does FMCSA account for the fact that multiple separate analyses of the program – the Wells Fargo Securities studies, the Gimpel study, and the Op Model Evaluation found weak or no correlations between certain high BASICs scores and crash risk and still stand by the statements made by FMCSA that all high BASICs scores are correlated with heightened crash risk? And, since the Op Model Evaluation was based on older data collected prior to full CSA implementation, does FMCSA plan to seek an independent analysis using all individual carrier scores in the CSA database?

Assignment of Severity Weights: At the hearing, a great deal of discussion involved the SMS's assignment of severity weights. A number of industry witnesses questioned the appropriateness

¹ ANTHONY GALLO & MICHAEL BUSHCE, WELLS FARGO SECURITIES, CSA: ANOTHER LOOK WITH SIMILAR CONCLUSIONS (2012); ANTHONY GALLO & MICHAEL BUSHCE, WELLS FARGO SECURITIES, CSA: GOOD INTENTIONS UNCLEAR OUTCOMES 2 (2011).

² JAMES GIMPEL, STATISTICAL ISSUES IN THE SAFETY MEASUREMENT AND INSPECTION OF MOTOR CARRIERS, DRAFT 3 (undated).

³ UNIVERSITY OF MICHIGAN TRANSPORTATION RESEARCH INSTITUTE, EVALUATION OF THE CSA 2010 OPERATIONAL MODEL TEST ii, (2011).

of severity weights assigned to certain infractions, especially for violations that appear to have little, if any, correlation to crash risk.

Even the UMTRI study, often cited by FMCSA as demonstrating the efficacy of the SMS program in identifying carriers with a high crash risk, questioned the appropriateness of certain severity weights by noting “no rationale or justification for the weights are given” in the documentation explaining SMS.

Absent an explanation, the severity weights appear to be arbitrary determinations with no connection to the goal sought by FMCSA – safe roads. What is FMCSA’s plan to review the severity weights assigned to specific violations? When will FMCSA better explain and justify each severity weight’s correlation to crash risk, and adjust these severity weights accordingly?

In addition, the current SMS assigns the same severity weights to violations that result in a warning by law enforcement as it does those that result in an actual citation. In issuing a warning, the officer is acknowledging that the severity of the infraction is relatively minor and not severe enough to warrant a formal citation. However, the system rates all infractions equally, regardless of the actual severity of the infraction. I strongly encourage FMCSA to consider whether severity weights should acknowledge this distinction.

Data Quality: Finally, a number of industry stakeholders and third-party researchers have questioned whether FMCSA has attained enough data to ensure that the SMS is accurate and reliable. For example, the study by Dr. James Gimpel determined that FMCSA has too little data on small firms to generate accurate BASICs scores. The study also found that your agency’s paucity of data on small carriers could result in disparate effects on smaller carriers as small changes in the number of violations per inspection have a substantially larger effect when the total number of inspections is smaller than they do when the total number of inspections is higher.

As Mr. DeLorenzo testified at the hearing, concerns about the quality of SMS data and the effects this issue has on carrier BASICs scores are one of the top concerns expressed by small trucking company operations. These concerns have been buttressed by ample third-party research that also question the adequacy and reliability of the data upon which SMS will assign scores to carriers. Therefore, what is FMCSA’s plan to address the small amount and, in some cases, the lack of data for the majority of carriers? Also, how many carriers currently have enough data in the CSA system to generate a score in each of the seven BASICs? If data sufficiency is a long-term challenge, will the agency modify the SMS to take into account these limitations?

II. The Need for a Crash Accountability Process

Accidents that are not the fault of a commercial motor vehicle operator should not be included in a carrier’s BASICs score. The inclusion of such incidents not only violates the principles of fairness and due process, it undermines public and commercial confidence in the accuracy of the data SMS uses to calculate BASICs scores while contributing nothing to the goal of promoting

greater safety behavior on the part of commercial motor vehicle operators in order to reduce crash risk.

I was troubled to learn at the hearing that the agency is only now beginning to study the appropriateness of using police reports in a crash accountability system. FMCSA had promised to conduct this study more than two years ago during the initial implementation of the SMS. We understand from stakeholders that FMCSA may have conducted prior research in this area in 2010. What was the outcome of that research, and why is additional research on police reports necessary at this juncture?

III. Shortcomings of the DataQs System

During his testimony, Deputy Administrator Bronrott highlighted the ability of carriers to challenge incorrect information in their records. However, even the FMCSA has acknowledged the difficulties that carriers experience in receiving timely corrections to these records. Many small trucking companies are concerned that the DataQs process is not working as well as it should. All too often DataQs Requests for Data Review are not handled consistently or in a timely manner and continue to include dismissed or dropped citations.

Since the SMS uses all inspection violations the FMCSA claims include a safety component to calculate BASIC scores, the DataQs challenges should be handled consistently and expeditiously. The Administrative Procedures Act was enacted to prohibit such ad hoc and inconsistent decision making.

IV. Negligent Hiring, Vicarious Liability and the Safety Fitness Determination Rulemaking

The FMCSA is sending a mixed and confusing message to shippers, brokers, carriers and the public. The agency includes a disclaimer on the SMS website stating that the symbol for “exceeds intervention threshold” is not a safety fitness rating, but the agency has encouraged shippers, brokers and insurers to use the information in the SMS, including BASICs scores, to make business decisions. Brokers and shippers are concerned that the BASICs scores will be viewed as de facto safety ratings because the FMCSA is encouraging private industry to rely on them and courts may consider BASICs scores in determining the viability of vicarious liability and negligent hiring claims. Nevertheless, the FMCSA’s continues to rollout changes to the SMS which indicates that the system is still a work in progress and has weaknesses.

This is problematic for several reasons. First, the FMCSA currently has a safety fitness rating system. Second, the FMCSA is required to go through the rulemaking process to revise its safety fitness rating system. Third, the FMCSA intends to use SMS-generated scores to determine if carriers are unfit to operate. Finally, the proposed rulemaking to update the safety fitness rating system has been delayed by several years due to changes made to the SMS.

While industry is eager to see FMCSA move forward with the Safety Fitness Determination rulemaking, the agency should not preempt that rulemaking by suggesting that shippers, brokers,

and carriers use BASICs scores for carrier selection. Furthermore, the agency should not move forward with the rulemaking until the concerns regarding the underlying data and SMS methodologies, particularly those related to the relationship between BASICs scores and crash risk, are addressed.

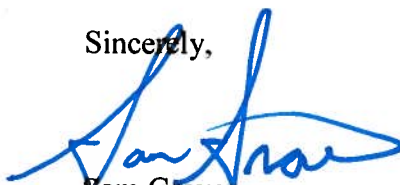
V. Conclusion

As I noted at the hearing, I believe the CSA program is well intentioned and has the potential to improve FMCSA's ability to more efficiently use and focus its resources on problem drivers and carriers in order to improve highway safety and reduce crashes caused by commercial motor vehicle operators. However, small business concerns related to the accuracy and reliability of the current SMS raises questions not only as to its ability to accurately identify potentially dangerous carriers, but also about the program's potential to misidentify those carriers who are not at risk of causing crashes.

In addition, the differences between the former SafeStat system and the SMS are significant. While FMCSA may have been under no legal obligation to put the program up for notice and comment rulemaking, the scope of the changes and the concerns identified by small businesses suggest that the agency and public would benefit from additional stakeholder input into the design of SMS methodologies. I appreciate that the FMCSA announced changes that it believes will improve the CSA program in August, but I am troubled that the changes do not address the concerns summarized above.

For these reasons, I urge the FMCSA to seriously consider what changes should be made to ensure that CSA portrays the safety records of small commercial motor carriers accurately and treats them fairly. Please provide a response to the Committee addressing the concerns raised in this letter by September 28, 2012 and explain what future steps you will take to ensure that small businesses are treated fairly under the CSA program. I look forward to your productive actions to remedy these issues.

Sincerely,



Sam Graves
Chairman