



U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

Administrator

June 8, 2010

1200 New Jersey Avenue, SE
Washington, DC 20590

Refer to: MC-AA

Mr. John Hausladen
President
Minnesota Trucking Association
2277 Highway 36 West, #302
Roseville, MN 55113

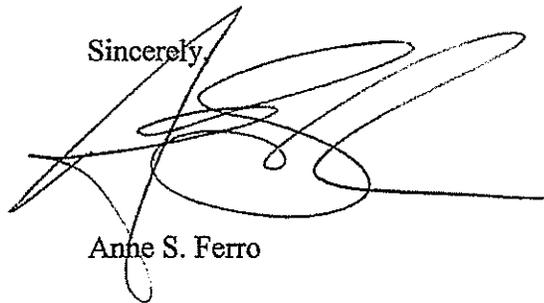
Dear Mr. Hausladen:

Thank you for your letter of May 10 requesting that the Federal Motor Carrier Safety Administration (FMCSA) review previously submitted recommendations made by the Minnesota Trucking Association (MTA) with respect to the Comprehensive Safety Analysis (CSA) 2010 Program. You asked for an update on FMCSA's position on issues you have raised and any changes FMCSA may have made or anticipates making during National implementation. The FMCSA agrees that open dialogue throughout, and after, CSA 2010 development is critical to the implementation, maintenance, and continued improvement of an effective enforcement model.

Your CSA 2010 Task Force submitted several key issues and recommendations to the FMCSA's CSA 2010 Docket (Docket # FMCSA-2004-18898). For clarity, FMCSA will paraphrase in the enclosure each of the key issues and/or recommendations presented by the MTA's CSA 2010 Task Force and will be followed by an FMCSA response.

Thank you again for bringing these concerns to our attention. Should you need additional information or assistance, please contact Gary Woodford, CSA 2010 Program Manager, at (202) 366-2978 or by e-mail at gary.woodford@dot.gov.

Sincerely,



Anne S. Ferro

Enclosure

FMCSA Response: Minnesota Trucking Association Letter, May 10, 2010

Inconsistency in State Enforcement

The MTA's CSA 2010 Task Force pointed out that some States have more aggressive motor carrier enforcement programs and suggested that motor carriers that travel in those States are at a disadvantage when being evaluated by the CSA 2010 Carrier Safety Measurement System (CSMS) methodology because they are subject to more scrutiny. To support MTA's opinion, you provided an anecdotal example of a motor carrier that discovered 47% of its violations were accounted for in two States through which it travelled, but travel in those States accounted for only 19% of its annual fleet miles.

FMCSA Response:

FMCSA fully understands the importance of promoting a uniform and consistent roadside inspection program. Working collaboratively with the Commercial Vehicle Safety Alliance (CVSA) and our State partners, FMCSA established a Data Uniformity Ad-hoc committee at the fall 2008 CVSA annual meeting. A principal goal of this committee is consistent documentation of roadside inspection and violation data. Through an FMCSA-funded high-priority grant, in the spring of 2009, CVSA staff and our State partners began work to prepare guidance that promotes more consistent documentation of roadside inspection and violation data. As an initial step in this effort, FMCSA is in the process of updating the roadside inspection software violation tables used throughout the country to eliminate obsolete or inappropriate roadside violations and to provide more clarity on how certain violations should be recorded.

Furthermore, CVSA recently changed its operational policy to encourage member jurisdictions to review their current policies that govern when and how vehicles should be selected for an inspection. The goal of this operational policy is to raise awareness that a valid and consistent vehicle and driver inspection selection process is critical to the integrity of the jurisdiction's program and also the national inspection program.

However, clearly some states have more robust commercial motor vehicle enforcement programs than others. Despite these apparent variances, FMCSA believes the key to improved motor carrier evaluations in the CSA 2010 CSMS is for the motor carrier to ensure it has taken all steps necessary to ensure compliance with the Federal Motor Carrier Safety Regulations when inspected.

Use of All Recorded Moving Violations from Roadside Inspections

The MTA's CSA 2010 Task Force expressed serious concern with the fact that the CSA 2010 CSMS uses all recorded moving violations from roadside inspections whether or not a citation (i.e., traffic ticket) has been issued to the driver. Your letter characterizes these recorded moving violations from roadside inspections as "warnings." In general, MTA's concerns centered on three issues:

- Whether there is a link between the recorded moving violations and crashes when a citation has not been issued;
- Whether due process is accorded drivers receiving recorded violations; and

- All speeding violations recorded against a motor carrier count the same without regard to severity or whether a citation has been issued.

FMCSA Response:

The FMCSA has conducted effectiveness testing on the Unsafe Driving Behavior Analysis Safety Improvement Category (BASIC) for the CSA 2010 CSMS, as it is currently calculated, using all recorded moving violations without regard to whether a citation was issued. Put in simple terms, the analysis demonstrates there is a strong relationship between high scores in the Unsafe Driving BASIC and future crashes. Furthermore, FMCSA is aware of an additional study by the American Transportation Research Institute (ATRI) titled "*Predicting Truck Crash Involvement: Developing a Commercial Driver Behavior-Based Model and Recommended Countermeasures.*" That study also established a relationship between moving violations recorded on roadside inspections (including speeding violations) and future crash involvement without regard to whether a citation was issued.

With respect to the MTA's due process concern, motor carriers or drivers may request a review of a moving violation with the appropriate State agency through the FMCSA's established DataQs system, just as they can with any other regulatory violation that does not have an associated citation issued with it. In addition, from a legal standpoint, FMCSA does not believe that using recorded moving violations for safety assessment and enforcement workload prioritization purposes, absent changes to a motor carrier's formal safety fitness rating or assessment of a penalty, constitutes deprivation of a property interest for which due process is required.

The FMCSA fully understands your concern with the fact that all speeding violations are weighted the same. Based upon concerns expressed by MTA, other stakeholders, and motor carriers participating in our CSA 2010 Operational Model Test, FMCSA is implementing modifications to the roadside inspection software used by its field staff and our State partners across the country. This modification will require roadside officers to designate the severity of speeding offenses recorded on roadside inspections. For example, the enforcement officer will have to designate whether the recorded speeding violation was 1-5 MPH over the speed limit, 6-10 MPH over, or 11-14 MPH over, etc. This modification will allow FMCSA to assign lesser severity weights to the less severe speeding violations in the CSA 2010 CSMS.

Concern with State Responses to DataQs Requests

The MTA's CSA 2010 Task Force expressed concern with inconsistent responses by the States to requests for review of a violation through DataQs. In particular, your letter referenced the fact that a State may refuse to remove a violation from a motor carrier's record based upon a request submitted through DataQs, even if the violation has been dismissed in court. Furthermore, your letter suggested that recorded violations that do not have an associated citation issued (e.g. "warnings" for minor speeding infractions) cannot be heard in court because there is no penalty and therefore the violation itself becomes proof of guilt.

FMCSA Response:

The FMCSA is aware of stakeholder concerns regarding DataQs responses, and as a result, is actively promoting the standardization of the process for responding to requests for data review by motor carriers. Specifically, FMCSA and its State partners will provide procedural guidance to States on the management of the roadside request for data review process through our DataQ's management system. Over a year ago, FMCSA and several State partner subject matter experts formed a group to develop standardized procedures for the request for data review process. A sub-committee of this group is also reviewing motor carriers' due process rights during various stages of the appeals process. The goal of this initiative is to enhance the data review process by providing consistency and transparency for our stakeholders. A draft version of this guidance is currently under review and is set for release in the fall of 2010. It is longstanding FMCSA policy to continue using regulatory violations for assessment and workload prioritization purposes even if the violation has been dismissed or reduced to a lesser offense in court.

Peer Groups

The MTA's CSA 2010 Task Force suggested that FMCSA revisit the approaches used to group motor carriers for comparative purposes in the CSA 2010 CSMS. One of the Task Forces' concerns is that motor carriers are compared against each other without regard to their type of operation (e.g., truckload or less-than-truckload, flat-bed), or the commodities they transport. You also questioned peer grouping by a carrier's number of power units. You articulated support for adding additional peer groups as suggested by the American Trucking Association to better compare motor carriers of similar size, and you also suggested that FMCSA consider peer grouping in a manner similar to how the peer groups are constructed in the current Safety Status (SafeStat) System. Finally, your letter expressed concern with what you characterized as a "bell curve" result of percentile ranking that will always find some motor carrier's deficient no matter how safe the industry becomes overall.

FMCSA Response:

The FMCSA does not plan to develop peer groups based on commodities transported (e.g. Hazmat (HM)) or industry segment (i.e., truckload vs. less-than-truckload) at this time. The FMCSA's foremost concern is safety and the likelihood of future crash occurrence, without regard to industry segment.

The peer grouping approach attempts to account for the inherent greater variability in rates based on small samples or limited levels of exposure and the stronger level of confidence in measures based on larger levels of exposure. The peer grouping also allows the CSMS to handle the widely diverse motor carrier population, while ensuring that similarly situated carriers are treated with the same standards.

For most BASICs, peer groups are defined based upon the number of relevant inspections that a motor carrier has received. For the Unsafe Driving and Crash BASICs, however, peer groups are currently defined based on a motor carrier's number of power units. Based upon observations from our operational model test and feedback from MTA and other stakeholders, FMCSA is

currently testing and evaluating approaches to peer grouping that will result in more effective and equitable comparison of motor carriers with similar exposure in the Crash and Unsafe Driving BASICS. One approach that is being considered for National implementation later this year is to employ peer grouping in these BASICS using the number of crashes or violations similar to the approach used in the current SafeStat system as suggested by the MTA's CSA 2010 Task Force.

The FMCSA understands the broader issue you characterized as the "bell curve" effect of percentile ranking but does not view it as problematic given that the primary use of the percentile rankings is to identify motor carriers for workload prioritization purposes. A broad and overriding FMCSA objective is to raise the bar in safety. If, for example, the performance of motor carriers falling in the worst 20th percentile continues to result in better performing motor carriers over time, then the safety bar will have been raised. It is also worthwhile to note that formal safety fitness determinations under the Safety Fitness Determination (SFD), Notice of Proposed Rulemaking (NPRM) would, as discussed at our public listening sessions, be based upon an absolute value, a "line in the sand," based solely on a motor carrier's own performance measure rather than a motor carrier's percentile ranking which is influenced by other carrier measures in its peer group.

Public Access to Carrier Safety Measurement System Results

The MTA's CSA 2010 Task Force suggested that access to motor carrier results from the new CSMS be restricted to motor carriers and Federal and State enforcement officials only. To support your recommendation, the letter asserts that public access to the CSMS results "only causes confusion and poor policy decisions by shippers." Additionally, your letter suggests that the courts and plaintiffs' attorneys will draw their own conclusions on the CSMS results, resulting in undue liability for motor carriers. Finally, the MTA's CSA 2010 Task Force recommends that, if CSMS results are made public, the data be presented in a manner that is easy to understand and interpret.

FMCSA Response:

The FMCSA believes that making the CSMS results available to the public increases awareness and accountability, improves safety overall consistent with our overriding goal of reducing commercial motor vehicle crashes and is fully consistent with the Administration's Open Government Initiative. As indicated in our April 9, 2010, Federal Register Notice, public display of CSMS results is scheduled to begin in late 2010. The results of the predecessor system to the new CSMS, SafeStat, have been available to the public for nearly a decade. In 2009, the Analysis and Information Online website, which provides access to SafeStat results, recorded nearly 4 million user sessions, the vast majority of which were carriers, shippers, insurers and others reviewing SafeStat information. The FMCSA, therefore, believes there is clearly public demand for current and regularly updated assessments of motor carrier performance. This public demand allows FMCSA to leverage the support of shippers, insurers, and other interested stakeholders to ensure that motor carriers remain accountable for sustaining safe operations over time. It also raises awareness of the importance of roadside performance data generated by FMCSA and our State partners, thereby further accelerating the shared goal of improvements in data quality.

The FMCSA agrees, however, that the public display of the CSMS performance data should be presented in a manner that makes it clear to users what they mean and do not mean, and their limitations. During the latter part of the data preview period that began in April, the motor carrier industry will have access to their CSMS results in advance of the public. This period is scheduled to begin in August 2010. At that time, the format and content of the website will be similar to the format and content that will be used for public display at rollout later this year. The FMCSA welcomes suggestions to improve the presentation of the website before or after public rollout.

Carrier Access to Driver Data

The MTA's Task Force recommended that motor carriers have access to a driver's "motor vehicle record, drug and alcohol testing history, all of the enforcement actions or warnings issued to a driver during roadside inspections, and a driver's accident history to strengthen the driver qualification process." Additionally, your letter recommended that this information be available to motor carriers prior to National deployment of CSA 2010. Finally, your letter suggested that a study should be initiated to assess the economic impact to motor carriers of the \$10 per record fee charged by the contractor that is supporting FMCSA's Pre-Employment Screening Program (PSP).

FMCSA Response:

As you know, the PSP is a new pre-employment screening tool that recently became available. Developing a system to make this safety performance information electronically available for pre-employment screening purposes was mandated by Congress in section 4117 of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users. The PSP allows motor carriers to request and purchase motor vehicle inspection and crash records maintained by the FMCSA for the purpose of conducting pre-employment screening and with the operator-applicant's written consent. Individual drivers or operator-applicants may purchase their own Driver Information Resource record at any time. The records purchased through the PSP contain the most recent five years of crash data and three years of roadside inspection data for individual drivers from the FMCSA Motor Carrier Management Information System (MCMIS). Thus, the PSP provides the vast majority of the performance data you deemed necessary to strengthen the driver qualification process.

The FMCSA does not plan to conduct a study on the economic impacts to the motor carrier industry of paying a \$10 per record fee to receive driver records through the PSP program. While FMCSA believes that making this driver data available to potential employers will help them make more informed decisions when hiring commercial drivers, the program is voluntary. In addition, it warrants mentioning that the fees associated with the PSP Program cannot exceed the cost that would be charged to access the same information directly from FMCSA through a formal Freedom of Information Act request.

The FMCSA would also like to clarify a common misconception regarding driver qualification and CSA 2010. While not specifically mentioned in your letter, FMCSA is aware that many within the motor carrier industry believe that violations generated by a driver at his or her prior employer negatively impact a motor carrier's evaluation in the CSMS after that driver is hired. That is not the case. A motor carrier evaluation in the CSMS is based solely on inspection and crash data generated by drivers operating under that motor carrier's authority. Following the driver pre-employment qualification process, once hired, a driver's performance while operating

under a motor carrier's own authority is available to that carrier through their inspection and crash records. This allows a motor carrier to further monitor their drivers' on road safety performance while under their employment.

Safety Fitness Determination

The MTA's Task Force recommended that FMCSA maintain its current safety fitness rating methodology, which is tied to the full on-site compliance review, rather than proceeding with SFD concepts that have been discussed in public listening sessions and other presentation forums throughout the country. Moreover, your letter suggested that a Satisfactory safety rating under the current rating system is the "Gold Standard" and indicates that the "public is protected." Your letter further recommended that if changes to the safety rating process are ultimately made through rulemaking, FMCSA should adopt a two-tiered approach whereby motor carriers would be deemed either "Continue to Operate" or "Unfit." As a basis for this recommendation, you expressed concern that the term "Marginal," which has been discussed as a potential SFD label, has a negative connotation and motor carriers that received this SFD may lose business or incur increased costs.

FMCSA Response:

The FMCSA believes that, while effective, there are longstanding limitations with our current safety rating process that can be improved to benefit highway safety. One such limitation is the fact that a motor carrier's safety rating generally cannot be proposed for a downgrade without completion of an additional full compliance review at a motor carrier's place of business. As a result, the meaning of a motor carrier's safety rating as a current assessment of its safety performance diminishes over time and may be misleading. Put simply, a Satisfactory safety rating does not mean a motor carrier is currently in compliance, and, is not an assurance that the "public is protected" as suggested in your letter. It simply means the motor carrier met the FMCSA's safety fitness standard on the day the most recent compliance review was completed. The FMCSA plans to publish a comprehensive NPRM to address the above limitation and to propose other improvements to the SFD process in early 2011. We will consider MTA's comments on this issue as we continue development of the NPRM and look forward to considering further comments once the details of the NPRM have been finalized and published.

Use of All Recordable Crashes in the Carrier Safety Measurement System

The MTA's Task Force expressed serious concern with the fact that the CSMS uses all recordable crashes without considering preventability or accountability to assess motor carriers in the Crash BASIC. Specifically, your letter pointed out many consistent and understood themes on this issue, such as a motor carrier that operates 10 trucks and has three preventable or accountable crashes will be assessed the same as another motor carrier that operates 10 trucks and that has three non-preventable crashes.

FMCSA Response:

The FMCSA recognizes this concern and is considering several short-term and longer term approaches to address it. Initially, because FMCSA understands that many crashes cannot be attributed to the motor carrier, it will exclude the CSMS assessment of the Crash BASIC from any public websites that may be viewed by shippers or insurers. Furthermore, accountability of crashes will continue to be considered by FMCSA before issuance of any formal and final

adverse safety fitness ratings that follow compliance reviews. Longer term, FMCSA is evaluating the feasibility of an approach similar to a suggestion made by the American Trucking Associations, whereby staff would assess state reported crashes for accountability before the crashes are considered by the CSA 2010 CSMS methodology. In fact, FMCSA has already begun some preliminary analysis of this approach. The initial results of our feasibility test are promising, and indicate that the use of police accident reports (PARs) is a viable option for determining large truck and bus accountability. Work to date has been done in conjunction with the National Highway Traffic Safety Administration and the Volpe National Transportation Systems Center. We are now gathering information on various options for implementing such an approach, including the costs and challenges.

The FMCSA welcomes any additional information MTA may wish to offer on this subject. An alternative approach, for example, could be to require motor carriers to submit PARs to FMCSA for those accidents in which the carriers wish accountability to be determined. Other accidents, for which a motor carrier did not contest accountability by submitting a PAR, would be deemed accountable to the carrier.

The FMCSA data analysis has historically shown that motor carriers involved in a disproportionately high number of crashes are more likely than other motor carriers to be involved in future crashes. Simply put, FMCSA analysis indicates that past crashes are a good predictor of future crashes irrespective of accountability. Therefore, until a viable long-term solution can be instituted to determine accountability of State reported crashes, FMCSA will continue to use all recordable crashes in the CSA 2010 CSMS to identify motor carriers for workload prioritization purposes. The FMCSA believes this approach, coupled with not displaying CSMS crash assessments on public websites, and considering crash accountability before issuing adverse safety fitness ratings, is the most prudent position at this time. It balances the valid concerns of the MTA's CSA 2010 Task Force with FMCSA's mission to protect the motoring public using the best performance data currently available

Use of Power Units to Normalize the Crash and Unsafe Driving Behavioral Areas

The MTA's CSA 2010 Task Force expressed concerns with the fact that the Crash and Unsafe Driving BASIC currently use a motor carrier's number of power units to measure exposure rather than vehicle miles travelled (VMT).

FMCSA Response:

FMCSA acknowledges that the use of power units as the sole measure of exposure can potentially create a disadvantage for segments of the motor carrier industry that utilize their power units more intensively through cross country team operations, for example. The FMCSA also believes that the use of VMT as the sole measure of exposure can create a similar disadvantage for segments of the motor carrier industry that operate limited mileage due to the nature of their operations. The FMCSA agrees, however, that VMT is another valuable and widely recognized measure of exposure that could potentially improve the effectiveness of the CSMS. Currently, VMT data are missing or obsolete for many carriers. As suggested by other stakeholders, FMCSA will make the vehicle mileage field of the MCS-150 a mandatory field for biennial updates. And, as part of the recently released CSA 2010 Data Review website, FMCSA is encouraging motor carriers to provide their annualized VMT data. The FMCSA is optimistic that MTA will support these efforts by strongly encouraging its members and others to regularly update their VMT data and by partnering on other collaborative ideas to best ensure that VMT is

regularly and accurately reported by the motor carrier industry. These efforts will support ongoing FMCSA analysis aimed at implementing the most effective and equitable measure of exposure possible prior to National deployment of the CSMS later in 2010.

Clean Inspections

The MTA's CSA 2010 Task Force expressed a perception that "clean" inspections do not positively impact a motor carrier's assessments in the CSMS BASICs.

FMCSA Response:

A "clean inspection" reflects a relevant roadside inspection that does not result in any violations for a particular BASIC. A relevant inspection is one where the roadside inspector reviewed a particular area for evidence of violations (not all inspection types/levels look at all areas). For example, when a carrier has no BASIC violations related to the Fatigued Driving (Hours-of-Service) BASIC and/or Driver Fitness BASIC from a Driver Inspection (CVSA Level 1, 2, 3 or 6), this "clean inspection" will lower the associated BASIC measure. Similarly, when a carrier has no BASIC violations related to the Vehicle Maintenance BASIC and/or Cargo-Related BASIC from a Vehicle Inspection (CVSA Level 1, 2, 5 or 6), this "clean inspection" will lower the associated BASIC measure.

Additionally, it is entirely possible and common for an inspection that actually has out-of-service violations noted in one area to have a positive impact on a carrier's assessment in another area of the CSMS. For example, if a full driver and vehicle inspection is conducted (Level 1) and the driver is placed out-of-service for driving over allowable hours, the inspection will obviously have an adverse impact on the motor carrier's Fatigued Driving (Hours of Service) BASIC. However, if that same inspection report does not note vehicle violations, it is considered a relevant inspection that positively impacts the motor carriers' Vehicle Maintenance BASIC.

The FMCSA is aware of assertions within the motor carrier industry that carriers rarely receive inspections that do not result in one or more violations, and therefore, once a motor carrier is deemed deficient in a BASIC it is almost impossible to demonstrate improvement through additional inspections. This assertion is not supported by roadside inspection data. In fiscal year 2009, 33 percent of the approximately 3.5 million roadside inspections reported no violations.

Violation Severity Weights

The MTA's CSA 2010 Task Force expressed concern with the severity weights that have been assigned to the various roadside inspection violations and suggested that many are not consistent with the severity of the violation or their relevance to crash risk. To support this position, your letter provided anecdotal examples of roadside violations within a BASIC with assigned severity weights that do not appear to make sense from an intuitive or safety standpoint. Your letter further suggests that all violation severity weights should be reviewed by a panel that includes safety experts from within the motor carrier industry.

FMCSA Response:

One of the principal goals of the CSMS is to identify patterns of poor performance across multiple inspections. The roadside violation severity weights assigned are designed to help fine tune the CSMS by differentiating varying degrees of crash risk associated with specific violations. However, FMCSA has observed that the level of precision of the severity weights is not a major factor in identifying motor carriers with safety problems. In other words, regardless of the severity weights assigned to individual violations on an individual inspection, motor carriers with systemic safety problems across multiple inspections tend to rise to the top in the CSMS.

The FMCSA understands, however, that the individual violation weights assigned at this time have drawn considerable attention and focus from both motor carriers and individual drivers, and that they warrant further explanation of how they were derived. First, applicable safety-based violations of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations were distributed into the appropriate BASIC. For example, tire violations were put in the Vehicle BASIC and driver medical qualification violations were put into the Driver Fitness BASIC. Next, similar violations in each BASIC were grouped together. For example, the Vehicle BASIC has Tire and Brake groupings, among others. Within each BASIC the violation groups are assigned severity weights that reflect the violation group's statistical association with crash occurrence. The stronger the relationship between a violation group and crash risk, the higher its assigned weight. The violation severity weights for each violation group have been converted into a scale from 1 to 10, where 1 represents the lowest crash risk and 10 represents the highest crash risk relative to the other violations in the BASIC. Since the weights reflect the relative importance of each violation within each particular BASIC, they cannot be compared meaningfully across the various BASICs. In other words, a rating of 5 in one BASIC is not equivalent to a rating of 5 in another BASIC, but it does represent the midpoint between a crash risk of 1 and 10 within the same BASIC. This statistical analysis was then supplemented by crash consequence analysis (i.e. putting additional weight on violations that increase crash consequence rather than risk), effectiveness testing, and input from subject matter experts.

Irrespective of the approach used to assign severity weights to the roadside violation groups, the overall response to the CSMS from Federal and State enforcement personnel in the CSA 2010 Operational Model Test States has been positive. Put simply, the CSMS is a significant improvement over the current SafeStat system and is directing enforcement resources to motor carriers with patterns of safety violations across multiple inspections using the current severity weights.

The FMCSA, however, also readily acknowledges that other approaches to determining violation severity weights may yield results that are just as effective, or potentially more effective, in terms of identifying motor carriers with systemic safety problems. As a result, FMCSA would be very interested in the results of an independent review of the violation severity weights by a motor carrier and/or State roadside enforcement group.

Hazardous Materials as a Distinct BASIC

The MTA's CSA 2010 Task Force noted that the vast majority of regulatory violations that potentially contribute to a motor carrier's assessment in the Cargo-Related BASIC are hazardous materials (HM) related. And, your letter suggested that a separate Hazardous Materials BASIC be developed and added to the CSMS based, in part, on the significant percentage of potential roadside violations that are related to hazardous materials.

FMCSA Response:

The FMCSA developed the BASICs under the premise that commercial motor vehicle crashes can ultimately be traced to the behavior of motor carriers and drivers. In other words, a premise of the BASICs is that they are "behavioral" areas that lead to crashes. During early deliberations, FMCSA considered the development of a separate HM BASIC, as suggested by MTA, rather than including HM violations in the Cargo-Related BASIC. Ultimately, however, FMCSA deployed the CSMS for testing purposes without an HM BASIC. The FMCSA's rationale for this approach was that HM violations generally do not increase the risk of a crash but instead contribute to the consequences if a crash occurs. Furthermore, testing of the CSMS revealed that motor carriers with a pattern of roadside HM violations would still be identified for intervention as deficient in the Cargo-Related BASIC. And, due to the potential impact on public safety, FMCSA has lowered the intervention threshold for HM carriers in all BASICs thereby holding HM carriers to a higher standard of performance.

Moving forward after national implementation, FMCSA will revisit the merits of a separate HM BASIC to perhaps better account for the inherent risk associated with transporting HM.

Motor Carrier Efforts in Disqualifying Poor Performing Drivers

The MTA's CSA 2010 Task Force noted that roadside violations are considered by the CSMS for a full 24 months and expressed the opinion that motor carriers should receive credit in the CSMS when they terminate an unsafe driver who has adversely contributed to their safety assessments. To emphasize this point, your letter stated that drivers should take their record with them and not leave it with the motor carrier. Additionally, your letter asked broad questions about the driver safety measurement system (DSMS), the potential application of interventions to individual drivers, and whether DSMS scores could lead to disqualification of a driver by FMCSA. Finally, your letter indicated that the MTA believes CSA 2010 should not be deployed unless the DSMS is available to motor carriers.

FMCSA Response:

The issue of violations remaining on a motor carrier's record after a driver has been terminated is not new or unique to the CSMS or to CSA 2010. In fact, the current SafeStat System keeps violations on a motor carrier's record for a full 30 months without regard to whether the driver has been terminated or has otherwise left the employment of the motor carrier. The FMCSA believes disciplinary action by motor carriers with their drivers can result in improvements in highway safety, and routinely encourages motor carriers to implement progressive company disciplinary policies, and may use carriers' actions to discipline drivers when making enforcement decisions. However, FMCSA's ultimate goal is for motor carriers to have safety

management controls that prevent the violations from occurring in the first place. At this time, the FMCSA does not envision departing from its longstanding policy of using a carrier's driver violations for assessment purposes even if the driver has been terminated by the motor carrier.

With respect to your broad questions about the DSMS and driver enforcement, the DSMS is not used to prioritize or target individual drivers for intervention by FMCSA. At this time, DSMS is an internal tool used by FMCSA and its State partners during compliance investigations of motor carriers to assist in determining which of the motor carriers' drivers to examine. Monetary fines and other interventions against an individual driver can be, and sometimes are, levied, based upon violations discovered during a motor carrier investigation. However, the fines and other interventions are generally limited to driver-based violations, such as operating after testing positive for controlled substances and knowingly and willfully exceeding the hours-of-service regulations. This approach to individual driver enforcement is a longstanding FMCSA policy and is not new or unique to CSA 2010 initiative. Under CSA 2010, however, stronger enforcement on individual drivers has been encouraged. The advent of the DSMS provides a tool for enforcement staff to more easily identify a motor carrier's drivers for closer examination, but the DSMS results do not impact upon disqualification of drivers by FMCSA or the States.

Finally, FMCSA respectfully disagrees with your position that CSA 2010 should not be deployed unless the DSMS results are made available to the motor carrier industry. The same underlying data that contribute to the internal DSMS scores are currently available through the new PSP program for pre-employment qualification purposes. In other words, a PSP request on an individual driver for pre-employment qualification purposes would show an inquiring motor carrier the exact same crash and inspection history that the DSMS provides. The difference, however, is that the PSP does not provide a ranking or assessment by FMCSA. This allows motor carriers to make their own informed hiring decisions based upon their own standards of safety.