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CSA and Motor Carrier Safety Ratings: The Past, Present and Future

I. INTRODUCTION

The Federal Motor Carrier Safety Administration's ("FMCSA") Compliance Safety Accountability program ("CSA") is one of the most significant and ambitious motor carrier safety regulatory initiatives ever. After starting out as a pilot test project in a small number of states in 2008, it enters its final phase early this year when the FMCSA files its Notice of Rulemaking ("NPRM") regarding the implementation of CSA's SMS methodology into the Safety Fitness Determination (SFD) process, which determines a carrier's ultimate safety fitness rating. Up to this point CSA, with its SMS methodology, has helped the FMCSA prioritize its safety monitoring and intervention efforts, assisted it in determining carriers subject to Comprehensive Reviews, and has provided the basis for publicly displayed **comparative percentile rankings** of carriers in the seven statistical areas the FMCSA has determined to be related to carrier propensity to be involved in vehicular accidents (the SMS Methodology BASICS). In its final phase, SMS methodology will be used in the SFD process to **rate each carrier's safety fitness, based solely on a motor carrier's own performance measure.**

Both regulators and industry representatives have made exhaustive efforts to try to create an open, complete and objective system for monitoring, assessing and rating the compliance of motor carriers with FMCSA safety regulations. CSA has been the subject of much public debate and discussion during the last two years. There is not complete agreement among those most interested in CSA as to the viability of the CSA's SMS methodology and the relationship of all the BASICS categories to a motor carrier's ability to operate its fleet safely on the nation's roadways, nor is there agreement on the amount of, or the manner in which, CSA generated data should be made public.

Drawing upon not only legal and regulatory materials, but also upon the perspectives and opinions expressed by the stakeholders in this process, as disclosed in the news media, opinion columns and blogging pieces, this article summarizes what CSA has been in the past, its present role and what can be expected in the future after the new rule making becomes final, including the issues that have been raised regarding CSA's SMS methodology. This article closes with suggestions for improvements.

II. THE PAST: CSA's BEGINNINGS

"CSA" first came into being in 2008 as the CSA Op-Model Test in a small number of pilot test states. The CSA Op-Model Test was used to evaluate the effectiveness of the new Safety Measurement System (SMS) and new FMCSA safety interventions options and to compare the cost and efficiency of the CSA to the compliance and enforcement model under the existing SafeStat system for measuring the carrier safety track records and for the determination of which fleets warrant FMCSA intervention measuresⁱⁱ. Under SafeStat the FMCSA had been evaluating the relative safety status of individual motor carriers

with respect to the rest of the motor carrier population in four analytic Safety Evaluation Areas (SEAs): Accident, Driver, Vehicle, and Safety Management, but the data used for the four basic SafeStat categories was limited to out-of-service and select traffic enforcement violationsⁱⁱⁱ. During the time the FMCSA was continuing the pilot tests in a small number of states and readying CSA for nationwide implementation, it became known as “CSA 2010” (Comprehensive Safety Analysis 2010). In 2011, CSA 2010 expanded from pilot states testing to nationwide implementation and became known simply as “CSA”, which now stands for “Compliance Safety Accountability”.

On August 31, 2011, the University of Michigan Transportation Research Institute announced the results of its two-year test of the CSA Op-Model Test in the pilot program states^{iv}. Based upon the results the UMTRI Study, the FMCSA takes the position SMS methodology has been confirmed to substantially improve FMCSA’s enforcement and compliance model under SafeStat. Armed with the results of the UMTRI Study, the FMCSA makes the following claims regarding CSA’s SMS methodology and its enforcement alternatives: “(1) CSA’s SMS better identifies motor carriers for safety interventions than the previous SafeStat system; (2) CSA interventions are effective in improving motor carriers’ safety behavior; (3) CSA interventions use enforcement resources efficiently and (4) CSA reaches more carriers to improve safety compliance.” Accordingly, the FMCSA contends that the use of SMS data on a comparative basis among peer groups is a significant improvement because it directs enforcement resources to motor carriers with patterns of safety violations across multiple inspections using the current severity weights^v.

III. THE PRESENT: THE CSA SMS METHODOLOGY PROGRAM TODAY

In 2011 CSA SMS methodology replaced the existing SafeStat system on a nationwide basis. SMS methodology became the comprehensive system for using current data to monitor carriers, and to identify carriers needing agency monitoring or intervention. According to the DOT, “[t]he SMS design builds on the lessons learned from developing and implementing SafeStat for Compliance Review prioritization. However, the SMS also incorporates new CSA requirements for identifying specific types of unsafe behaviors that the entities exhibit. A more specialized set of interventions will now address these unsafe behaviors and the system will also expand the use of on-road safety violation data.”^{vi} Planned rulemaking during the first part of 2012 will make SMS data the basis for the ultimate ratings, which will be discussed in the next section. In the meantime, and as we approach the time of rulemaking for the final phase of implementation of the CSA program, SMS methodology is still not used as the basis of the agency’s ultimate rating of whether a carrier is “Satisfactory” and therefore able to operate safely, in accordance with the FMCSA safety regulations (49 C.F.R. Part 385). Regulations now require an on-site Compliance Review before a rating can be made.

Even though CSA SMS methodology has not yet been fully implemented, it is now being used for other very important purposes, including the determination of whether to intervene in a carrier’s safety program. SMS methodology currently uses SMS data to rate carriers on a **comparative percentile basis**^{vii} in seven categories of information, known as the “Behavior Analysis and Safety Improvement Categories” (“BASICS”). Information for the seven BASICS is collected during on-road safety inspections and state-reported CMV crash records. All roadside inspection violations that pertain to a BASIC are assigned a severity weight that should reflect its association with crash occurrence and crash consequences. A primer on the SMS methodology can be found on the FMCSA web site^{viii}.

According to the FMCSA, the seven BASICS information categories are related to the tendency of carriers to have future vehicular accidents, or “crashes.” The BASICS categories are:

1. UNSAFE DRIVING — refers to the operation of commercial motor vehicles by drivers in a dangerous or careless manner.
2. FATIGUED DRIVING — includes violations of the regulations pertaining to HOS requirements and the management of commercial motor vehicle driver fatigue.
3. DRIVER FITNESS — includes violations for failure to have a valid commercial driver’s license (CDL) and being unable to show that a driver is medically unqualified to operate a CMV.
4. CONTROLLED SUBSTANCES/ALCOHOL—deals with the operation of commercial motor vehicles by drivers who are impaired due to alcohol, illegal drugs, and the misuse of prescription or over-the-counter medications.
5. VEHICLE MAINTENANCE — addresses the regulatory requirements to properly maintain a commercial motor vehicle.
6. CARGO RELATED — monitors whether cargo has been loaded properly in order to prevent shifting loads, spilled or dropped cargo, overloading, and unsafe handling of HM on a commercial motor vehicle.
7. CRASH INDICATOR — based on information from state-reported crashes that meet reportable crash standards.

According to the FCMSA, the BASICs represent “behavioral” areas that lead to crashes^{ix} and, within each BASIC the violation groups are assigned severity weights that reflect the violation group’s statistical association with crash occurrence. SMS Methodology calculates a carrier score for each BASIC, which is then compared to other carriers to determine a percentile ranking for each carrier with sufficient data to compare for each of the BASICs. This establishes the relative safety ranking for each carrier in each category.

The SMS data compiled by the FCMSA (based on a 24 month period), and the resulting comparative percentile score for categories 1-5 above, have been made public on the FMCSA web site, as have the high violation percentile “threshold” levels that bring about further monitoring or intervention^x. “Crash History” presently can be seen only by enforcement personnel or by a motor carrier that is logged into its own safety profile and it is not publically available^{xi}. The FCMSA has said that it recognizes carrier concerns that many crashes cannot be attributed to the motor carrier, and therefore should not be viewed by shippers or insurers. Likewise, currently the Cargo-Related BASIC can be seen only by enforcement personnel or by a motor carrier that is logged into its own safety profile. It is not available to the public^{xii}. The lack of public access to the Cargo Securement data is apparently because of concerns raised over the inclusion of Hazmat violations in the Cargo-Related BASIC and whether these are really a crash risk^{xiii}.

The theory upon which the present use of CSA SMS methodology is based is that percentile rankings of carriers by peer groups, based upon roadside inspections and other information, is an accurate method of determining which carriers are in need of further FMCSA monitoring and intervention efforts. By these methods, the safety behaviors of the carriers are compared through a percentile ranking of score of 1-100, with the worst carriers having the highest percentile rankings. Depending on the particular BASIC category, FMCSA threshold levels for further monitoring or intervention vary between 65% and 80%^{xiv}.

Once SMS generated statistical analysis indicates that intervention under CSA is warranted, the intervention can be as intensive as a Focused On-Site Investigations and as simple as the issuance of warning letters to carriers concerning bad scores on one BASIC. Other available enforcement options

include Targeted Roadside Inspections and Focused Off-Site Inspections^{xv}. Warning letters, which were issued by the tens of thousands in 2011, have outlined possible consequences of continued safety issues, instruct carriers on the method to be used to check their safety data online, and how to challenge inaccurate data. There are also various subsequent follow up remedial actions that the agency can take, the most severe being the Out of Service Order, but also including a Cooperative Safety Plan, a Notice of Violation and a Notice of Claim.

The FMCSA has admitted that there are some valid issues that have been raised with regard to the causal nexus between two of the seven present BASICs categories and the propensity of a carrier to become involved in crashes, stating that the UMTRI Study “identified some areas that require improvement and FMCSA is firmly committed to a continuous improvement process for this very important program.” Specifically cited are “Cargo-Related” and “Driver Fitness” BASICs, because they have a weaker relationship to crash risk.^{xvi} It should also be pointed out that an advisory committee to the FMCSA recently recommended that the agency gather additional data in order ascertain that the SMS methodology for safety measurement is based on science and not on the intuition or opinions of experts^{xvii}. So, it is readily apparent that some SMS methodology tweaking will be necessary.

IV. THE FUTURE: FULLY REPLACING THE CURRENT SAFETY RATING SYSTEM WITH CSA

Despite all the attention given CMS during the last few years, CSA has not changed FMCSA regulations with regard to the making of ultimate safety ratings. According to the FMCSA, “[t]here is one rule that FMCSA is trying to change as part of CSA. The carrier safety rating process that determines whether FMCSA will deem a carrier unfit is currently in rule-making to potentially change to a new process called Safety Fitness Determination^{xviii}. According to the FMCSA, “[t]he third part of CSA, the updated Safety Fitness Determination (SFD), will require rulemaking to decouple the Agency’s official Safety Rating (as required in 49 U.S.C. 31144) from the requirement of an onsite investigation.

The rule to be proposed will apparently **allow the FMCSA to base Safety Ratings directly on performance data, which will then be updated on a monthly basis.**^{xix} Until the rule making for the third part of CSA, and the updated Safety Fitness Determination (SFD) is complete, the agency has indicated that it uses “the safety rating methodology as outlined in 49 CFR Part 385 and will continue to use this methodology^{xx}. The FMCSA SFD Notice of Rulemaking (“NPRM”) should be released sometime during the first part of 2012^{xxi} and then the rule making process will need to be completed, including a 60-day comment period. The FMCSA expects that when the rule making is complete and CSA is implemented to completely replace the current rating system, the result will be to “accelerate return to compliance or removal from service for motor carriers with the worst safety problems.^{xxii}”

Under either the existing safety rating system, or that to be proposed in the upcoming rule making process, the question for the FMCSA to answer is whether a carrier's safety management controls meet the safety fitness standard outlined in 49 CFR Part 385. Under current regulations the FMCSA requires that an on-site Compliance Review be conducted before a safety rating may be issued^{xxiii}. Compliance Reviews have been initiated based upon the results of roadside inspections, a non-frivolous hotline complaint, or if the carrier has been involved in a significant fatal crash or HM incident (and most recently SMS data if the carriers are over the threshold in multiple BASICs)^{xxiv}. The current safety rating process has been deficient, because carrier ratings have been based upon data gathered during the most recent on-site Compliance Review for each carrier. Compliance Reviews are labor intensive, which necessarily limits their number and frequency. This results in safety ratings for rated carriers that may not reflect a carrier’s current operations because the data upon which the rating is based may be dated.

Prior to CSA, the agency used statistical analysis under the Safety Status Measurement System (“SafeStat”) in order to prioritize carriers for Compliance Reviews, *but not to rate them*. In contrast to CSA BASICs scores, SafeStat data was never made generally available to the public. After full implementation of SMS, the Safety Evaluations or Safety Fitness Determinations will be based on the more complete and up to date data generated under SMS methodology. The FMCSA has indicated that the SMS COMPARATIVE PERCENTILE RANKING SYSTEM, which determines how a carrier measures up within its peer group, will not serve as the basis for making the Safety Fitness Determination (“SFD”) for individual carriers. **Rather, the SFD will be based solely on a motor carrier’s own performance measure.**^{xxv} This means that the ultimate SFD rating will be based solely on the carrier’s most current individual SMS data, which will be periodically updated,“ such that the CSA SFD determination would reflect the current status of a carrier’s safety program, and not just its status on the day of the most recent Compliance Review”^{xxvi} (as would be the case under the existing system).

Eliminating the need for a CR before making an ultimate safety rating and using SMS methodology in the rating process, are the most significant changes anticipated in the proposed new rule making, but the rating terminology will also change significantly. After full implementation of the CSA program, the proposed new terminology for the ultimate safety ratings will apparently be “Unfit, ” “Marginal” or “Continue Operation,”^{xxvii} although the use of “Fit”, “Marginal” or “Unfit,” was at one time proposed.^{xxviii} This will replace the present classification terms of either “Satisfactory,” “Unsatisfactory,” or “Conditional.”

The agency has provided the following table comparing the SFD process under existing system with what is being planned under CSA. The FMCSA says that “[t]here are four important differences between FMCSA’s current safety rating methodology and the proposed CSA Safety Fitness Determination (SFD),”^{xxix} which are indicated below:

Newly Proposed SFD	Existing SFD
Not exclusively tied to Onsite Investigations	Only to be issued or downgraded via an Onsite Investigation/compliance review
Updated regularly	Provides a snapshot of compliance only on the date of the most recent compliance review
Based on violations of all safety-based regulations	Based only on critical and acute violations
Labels carriers under consideration as Unfit, Marginal, or Continue to Operate	Labels carriers Unsatisfactory, Conditional, or Satisfactory

V. SUPPLY CHAIN BUSINESSES’ CONCERNS WITH CSA

Trucking community support for the FMCSA’s CSA initiative has been good, but so far there has not been total support for the end product. According to the American Transportation Research Institute (“ATRI”), most trucking companies believe the FMCSA’s CSA program is an improvement over the SafeStat system. ATRI surveyed carriers and found that carriers with higher safety violation levels generally had a more negative view of the program, that carriers generally understood the important aspects of it, and that the majority believe that it is improving safety^{xxx}. CSA has generally been received less favorably by smaller carriers. Smaller carriers have been opposed to the SMS scoring system as

giving larger carriers an advantage because larger fleets reduce the impact of single violations on the overall category scores^{xxxix}. The ATA, which represents both large and small carriers, supports the FMCSA's safety goals, but would like to see further changes in the scoring system and has directed staff to continue taking a constructive approach toward improving the program^{xxxix}.

Some broker and shipper executives have been highly critical of CSA, and its use of SMS data and methodology. The criticisms have included challenges to the validity of the studies backing SMS, the lack of a proven nexus between CSA BASICs comparative percentile ratings and the frequency of carrier crashes, and the lack CSA ratings for thousands of the smallest carriers. Thomas Sanderson, CEO of Transplace, and lawyer Henry Seaton contend that the scoring system is unfair, because it applies to a small percentage of carriers and is based on flawed statistical calculation of driving infractions. As a result, they claim that small carriers are being hurt and brokers, as well as fleets, are losing substantial business^{xxxix}. Sanderson stated in an article he authored that "[t]here is no proof that SMS methodology is a better measure of safety than the objective-based compliance review currently required by statute. SMS methodology is based on "grading on a curve," which assumes that half the motor carriers it rates are somehow marginal or deficient"^{xxxix} (by virtue of an above the threshold score on at least one of the BASICs by over half the carriers with sufficient information to be ranked).

The perceived shrinking pool of available carriers is caused by the large number of carriers who today are rated as "Satisfactory", but are above the SMS intervention threshold on at least one of the BASICs categories. Indeed, a carrier could be rated as Satisfactory under the existing safety rating system, but be shown above the FMCSA intervention threshold on several BASICs categories. Despite this apparent rating contradiction for many carriers, the DOT does intend that the public, including shippers, brokers and insurers, rely on its SMS BASICs ratings in making decisions regarding carriers. In a report prepared by the U.S. Department of Transportation's John A. Volpe National Transportation Systems Center, it was stated that "in addition to supporting the CSA Operational Model, the SMS results can provide other stakeholders with valuable safety information. The SMS results will be easily accessible via the Internet to encourage improvements in motor carrier safety. Findings from the SMS will allow the evaluated carriers an assessment of their weaknesses in various safety areas. Thus, the SMS will empower carriers and other firms (e.g., shippers, insurers) involved with the motor carrier industry to make safety-based business decisions"^{xxxix}

A case can be made that the current situation can be described in "Star Trek terms" as having the appearance of particular carriers operating in two parallel data/rating universes. When viewing both the current SAFER rating and the CMS BASICs rankings, a shipper or broker could find that a particular carrier is perfectly "Satisfactory" when viewed in the current SAFER rating universe, but having significant potential safety issues when viewed in the SMS BASICs universe. This could bring about new liability exposure for brokers and shippers who might be sued for negligently selecting such a carrier if it becomes involved in a motor vehicle accident while on dispatch by the brokers or hauling goods for the shippers. Previously, under the laws of most states, there had been very limited circumstances where brokers of shippers could be found liable for selecting carriers found to be Satisfactory by the FMCSA.

If the "parallel universe situation" is not adequately addressed, liability concerns could significantly limit the pool of available carriers that prudent brokers or shippers could use. The agency does currently direct data users from the pages displaying carrier BASICs scores to the pages for the SAFER scores,^{xxxix} and provides a disclaimer on the web pages displaying carrier SMS data stating, among other things, that a score above the intervention threshold "is not intended to imply any federal safety rating ... (and that) [u]nless a motor carrier has received an UNSATISFACTORY safety rating ... **it is authorized to**

operate on the nation's roadways.^{xxxvii} No matter how laudable the intent by the agency, these disclaimers are not likely adequate to address the potential liability issues. In subsequent litigation, the fact that a selected carrier that gets involved a serious injury vehicular accident is authorized, for regulatory purposes, to operate on our highways, may not be answer the question asking whether the selecting shipper or broker had been reasonably diligent in selecting the carrier, notwithstanding the potential safety problems indicated on the carrier's BASICs scores.

In order to protect themselves from such potential liability, some shippers have started using standard provisions in their carrier contract templates requiring above the threshold scores in all, or a large portion of the BASICs categories. This could eliminate defaulting carriers from hauling contracting shippers' goods and perhaps keep shippers from entering into contracts with many carriers to begin with. Concerned brokers and shippers want to return to reliance solely upon the existing, simple SFD categories of Satisfactory, Conditional or Unsatisfactory (or as proposed by FMCSA, as Unfit, Marginal, or Continue to Operate^{xxxviii}). They do not want to be in a position of second guessing the agency's ultimate decision to allow a carrier to operate on our highways on the basis of its compliance with FMCSA safety regulations.

Insurance companies writing truck accident insurance also have access to CSA BASICs ratings. More data means that underwriting will be based on a more objective analysis than in the past. This should lead to better rates for trucking companies with the best scores, but could make it harder for carriers with bad BASICs categories scores to obtain reasonable rates, or even coverage, which would further shrink the pool of carriers that for shippers and brokers to hire. An FMCSA advisory panel recently recommended that better instructions be provided to shippers, brokers, insurance companies and financial institutions how CSA ratings should be used in evaluating carriers^{xxxix}.

VI. CLOSING REMARKS: THE NEED FOR CHANGES

There is no doubt that since 2008 the FMCSA and industry partners have made Herculean efforts to get things right with CSA. Everyone agrees with the object of the effort, which is ultimately to improve the safety of travelling on our highways. The on-going efforts to determine satisfactory methods to use CSA SMS generated data for SFDs should result in overall SFD ratings that are based on more complete and current data, and therefore more objective and fair to everyone involved. The public availability of ultimate SFD ratings and each rated carrier's relative standing among its peers in the BASICs categories would seem to be a useful public service that enhances the ability shippers and brokers to make decisions on which carriers to use. On the other hand, exactly how the FMCSA will eventually fully incorporate SMS methodology and data into the SFD process is now unknown. In addition, critics in the shipping and brokerage communities have made a valid point that the public availability of SMS data in its present form may create unwarranted liability exposure. Here are a few of my suggestions for improvement of the CSA program during the upcoming rulemaking process:

1. When the overall safety rating of "Satisfactory" is replaced with a different term when the Notice of Rulemaking is published, that term should be changed to clearly indicate that the rated carrier is "fit" to operate, and not just that regulators will allow the carrier involved to "continue to operate."
2. The FMCSA should either eliminate the public showing of its designated intervention levels on the BASICs categories (and make the thresholds an internal enforcement tool), or it should provide adequate disclaimers and on-line explanations as to the limited utility of BASICs scores when read in isolation from the ultimate safety rating designations. This additional language

should clearly state that a carrier allowed by the FMCSA to operate on our highways is a carrier that can be reasonably relied upon to operate safely.

3. The SMS Methodology should be tweaked to alleviate doubts as to the causal nexus between the two of the seven BASICs categories and crash potential.

As we enter the final third phase of the implementation of CSA, I am hopeful that this article has provided another useful perspective on CSA and the current issues surrounding it, as well as to provide useful ideas to improve upon the CSA program.

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The contents of this Journal are not intended to be and should not be relied upon as legal advice.

WALT METZ BIO

Walt Metz was Vice President, General Counsel and Secretary of Americold Realty Trust/Americold Logistics in Atlanta for five years from 2005 to 2010, and has several years of experience working as in-house counsel for two major trucking companies. At Americold he directed the legal affairs for North America's largest provider of temperature controlled food distribution and logistics services, Americold Logistics, LLC. Before taking his position at Americold, Walt served in the legal departments of Sears, Roebuck and Company in the Chicago area and Werner Enterprises of Omaha. During Walt's seven plus years at Werner Enterprises he supervised the nationwide defense of high exposure trucking and transportation litigation for the large transportation carrier, and provided advice on claims, litigation and risk management issues, including the structure of self-insured liability and workers compensation programs and the associated layers of excess insurance policies. At Sears he continued to manage litigation, including high exposure commercial litigation and class actions. Walt also recently completed a short tenure at Old Dominion Freight Lines. Prior to going in-house, Walt was a member of two Omaha law firms, where he practiced primarily in Commercial Litigation and General Practice. He graduated from the University of Nebraska-Lincoln with High Distinction and was elected to membership in Phi Beta Kappa. He also earned his JD at Nebraska. Walt continues to be a huge Big Red fan!

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ENDNOTES:

ⁱ Last Revised on February 9, 2012

ⁱⁱ <http://csa.fmcsa.dot.gov/about/umtri.aspx>

ⁱⁱⁱ SEE "SAFETY MEASUREMENT SYSTEM (SMS) METHODOLOGY," prepared by John A. Volpe National Transportation Systems Center for Federal Motor Carrier Safety Administration at <http://ai.fmcsa.dot.gov/SMS/HelpFiles/SMSMethodology.pdf>

^{iv} "Effect of Trucking Safety Rules Was Felt in 2011" By Timothy Cama, Staff Reporter, *Transport Topics*, December 19 and 26, 2011.

^v "FMCSA Response": Minnesota Trucking Association Letter, May 10, 2010

^{vi} SEE "SAFETY MEASUREMENT SYSTEM (SMS) METHODOLOGY," prepared by John A. Volpe National Transportation Systems Center for Federal Motor Carrier Safety Administration at <http://ai.fmcsa.dot.gov/SMS/HelpFiles/SMSMethodology.pdf>



^{vii} SEE <http://csa.fmcsa.dot.gov/FAQs.aspx>, Frequently Asked Questions: What is a "percentile?":

The Safety Measurement System (SMS) calculates a measure for each Behavior Analysis and Safety Improvement Category as described in the [SMS Methodology](#) document. The measure is then used to assign a ranking, or percentile, for each motor carrier that has information that could be compared against other similar carriers. This percentile ranking allows a carrier's safety behavior to be compared with the safety behavior of carriers with similar operations and numbers of safety events. The percentile is computed on a 0-100 scale, with 100 indicating the worst performance and 0 indicating the best performance. The carrier in the group with the most violations will be at the 100th percentile, while the safest carrier in the group will be at the 0 percentile. All other carriers in the group will be between these two numbers based on their

compliance records. The carrier in the group with the most violations will be at the 100th percentile, while the safest carrier in the group will be at the 0 percentile. All other carriers in the group will be between these two numbers based on their compliance records.

viii SEE "SAFETY MEASUREMENT SYSTEM (SMS) METHODOLOGY," prepared by John A. Volpe National Transportation Systems Center for Federal Motor Carrier Safety Administration at <http://ai.fmcsa.dot.gov/SMS/HelpFiles/SMSMethodology.pdf>


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

x SEE <http://csa.fmcsa.dot.gov/FAQs.aspx>, Frequently Asked Questions: How is a carrier's Behavior Analysis and Safety Improvement Category (BASIC) Overall Status determined? Each BASIC's Overall Status is determined by the results of the motor carrier's on-road performance over the previous 24 months and the investigation results over the previous 12 months. Overall Status will display a  symbol if either the on-road performance's percentile is over the established threshold or the investigation results show the discovery of a serious violation. This indicates that the BASIC is a  and the motor carrier may be prioritized for an intervention, which can include a warning letter, investigation, and identification for roadside inspection.

xi http://csa.fmcsa.dot.gov/Documents/FMC_CSA_12_005_BASICs_Crash_Indicator.pdf

xii http://csa.fmcsa.dot.gov/Documents/FMC_CSA_12_003_BASICs_CargoRelated.pdf

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

xiv Instead of "intervention," the agency uses the word "monitoring" on the web site displaying the data. ("A  symbol, based on that data, indicates that FMCSA may prioritize a motor carrier for further monitoring.") However, early on the DOT stated that The SMS will be a key component in determining the inclusion of entities with significant safety problems into the CSA Intervention Process—SEE "SAFETY MEASUREMENT SYSTEM (SMS) METHODOLOGY," prepared by John A. Volpe National Transportation Systems Center for Federal Motor Carrier Safety Administration at <http://ai.fmcsa.dot.gov/SMS/HelpFiles/SMSMethodology.pdf>

xv <http://csa.fmcsa.dot.gov/about/interventions.aspx>

xvi <http://csa.fmcsa.dot.gov/about/umtri.aspx>

xvii "Panel: FMCSA Safety Scoring Needs More Science Behind It", By Eric Miller, Staff Reporter *Transport Topics*, January 2, 2012

xviii "CSA, Just the Facts," by FMCSA at <http://csa.fmcsa.dot.gov/Documents/JustTheFacts.pdf>

xix <http://www.fmcsa.dot.gov/documents/strategic-plan/draft-fmcsa-2011-2016-strategic-plan.pdf>, P. 8.

xx <http://csa.fmcsa.dot.gov/FAQs.aspx> (What determines "Unfit" in terms of process and score for motor carriers?)

xxi The FMCSA has said it plans to propose the safety determination rule in February 2012 and have it finalized sometime in 2013. "Effect of Trucking Safety Rules Was Felt in 2011" By Timothy Cama, Staff Reporter, *Transport Topics*, December 19 and 26, 2011. The FMCSA also gave some indication recently that it could be released in April of 2012 (November 14, 2011 letter from FMCSA Administrator, Anne S. Ferro to Cynthia Hilton of the Institute of Makers of Explosives).

xxii <http://csa.fmcsa.dot.gov/about/umtri.aspx>

xxiii 49 C.F.R. 385.9 (Determination of a safety rating) states: (a) Following a compliance review of a motor carrier operation, the FMCSA, using the factors prescribed in §385.7 as computed under the Safety Fitness Rating Methodology set forth in appendix B to this part, shall determine whether the present operations of the motor carrier are consistent with that portion of the safety fitness standard set forth in §385.5, and assign a safety rating accordingly. (b) Unless otherwise specifically provided in this part, a safety rating will be issued to a motor carrier within 30 days following the completion of a compliance review.

xxiv According to Annette Sandberg, a former FMCSA Administrator, now in private law practice, currently "there are a number of reasons a carrier may be selected for a compliance review. These reasons can vary from the carrier's roadside performance and scores in the SMS, a non-frivolous hotline complaint, or if the carrier has been involved in a significant fatal crash or HM incident." (SEE—"A Primer on FMCSA Safety Ratings and CSA Scores," by Timothy W. Wiseman and Annette M. Sandberg, *The Transportation Lawyer*, October, 2011).

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

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

xxvii "CSA, Introduction to the Safety Measurement System Version." By FMCSA at <http://csa.fmcsa.dot.gov/Resources.aspx>

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

xxix <http://csa.fmcsa.dot.gov/FAQs.aspx> ("What is the proposed approach for the Safety Fitness Determination (SFD) and why was it not part of the Operational Model Test (Op-Model Test)?")

xxx "ATRI Survey of Truckers Says CSA Tops SafeStat", By Timothy Cama, Staff Reporter, *Transport Topics*, November 28, 2011.

xxxi "Agency Safety Scoring Seen as Unfair to Fleets, Brokers", By Rip Watson, Senior Reporter, *Transport Topics*, January 9, 2012, Page 9.


xxxii "Agency Safety Scoring Seen as Unfair to Fleets, Brokers", By Rip Watson, Senior Reporter, *Transport Topics*, January 9, 2012, Page 9.


xxxiii "Agency Safety Scoring Seen as Unfair to Fleets, Brokers", By Rip Watson, Senior Reporter, *Transport Topics*, January 9, 2012, Page 9.

xxxiv "The Safety Measurement System: A Flawed Assessment of Motor Carrier Conduct", by Tom Sanderson, CEO of Transplace, December 2011 | Commentary | 3PL Line.

xxxv SEE "SAFETY MEASUREMENT SYSTEM (SMS) METHODOLOGY," prepared by John A. Volpe National Transportation Systems Center for Federal Motor Carrier Safety Administration at <http://ai.fmcsa.dot.gov/SMS/HelpFiles/SMSMethodology.pdf>

xxxvi The SMS provides an assessment of a motor carrier's on-road performance and investigation results within the Behavior Analysis and Safety Improvement Categories (BASICS). Assessments cover 24 months of activity and results are updated monthly. For current Motor Carrier Safety Ratings visit [SAFER](#) and for current operating authority and insurance information visit [Licensing and Insurance](#) (L&I) system.

xxxvii The data in the Safety Measurement System (SMS) is performance data used by the Agency and Enforcement Community. A  symbol, based on that data, indicates that FMCSA may prioritize a motor carrier for further monitoring.

The  symbol is not intended to imply any federal safety rating of the carrier pursuant to 49 USC 31144. Readers should not draw conclusions about a carrier's overall safety condition simply based on the data displayed in this system. Unless a motor carrier in the SMS has received an UNSATISFACTORY safety rating pursuant to 49 CFR Part 385, or has otherwise been ordered to discontinue operations by the FMCSA, it is authorized to operate on the nation's roadways.

^{xxxviii} "FMCSA Response": Minnesota Trucking Association Letter, May 10, 2010

^{xxxix} "Panel: FMCSA Safety Scoring Needs More Science Behind It", By Eric Miller, Staff Reporter, *Transport Topics*, January 2, 2012