

PRESENTATION TO THE OFFICE OF MANAGEMENT AND BUDGET

**RE: THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION'S
PROPOSED SAFETY RATING METHODOLOGY**

August 10, 2015

ON BEHALF OF:

**The Alliance for Safe, Efficient and Competitive Truck Transportation (ASECTT)
Air & Expedited Motor Carrier Association (AEMCA)
American Home Furnishing Association (Special Furniture Division) (AHFA)
Auto Haulers Association of America (AHAA)
The Expedite Association of North American (TEANA)
Transportation Loss Prevention and Security Association (TLP&SA)**

By

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Henry Seaton, Seaton & Husk, L.P.
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I. MARK ANDREWS

APA RULEMAKING STANDARDS AND DUE PROCESS CONCERNS

Preface: We of course have not seen the proposed rule OMB is looking at, and we would not purport to lecture OMB about Ad Law 101. But we do have these specific concerns:

1. Administrative law issues:
 - a. If the proposed rule makes any use of SMS methodology, the methodology must be fully vetted in the rulemaking.
 - b. Agency cannot treat the methodology as a given, because SMS has never been open to full public scrutiny under APA.
 - i. It was developed behind closed doors.
 - ii. It is a moving target, constantly tweaked on the FMCSA website, with comment generally allowed only after the fact.
 - c. SMS cannot be treated as a mere reinterpretation of Part 385 safety standards.
 - i. Note the on-line disclaimer that SMS scores are not safety ratings under Part 385.
 - ii. SMS methodology would not reinterpret Part 385; it would replace it.
 - iii. Note major differences in data sources: indiscriminate use of roadside inspection data vs. on-site inspections, etc.
2. DQA issues exist regardless of whether SMS percentile and peer-grouping techniques would be used under the proposed rule:
 - a. SMS data gathering falls far short of DQA standards for data “quality” and “utility”.
 - b. Skewed by differing state enforcement priorities, and by extensive use of paperwork violations too trivial to put a carrier, driver or vehicle out of service.
 - c. Result: most statistical studies indicate that SMS scores cannot predict the crash risk of individual carriers.
3. Reg Flex issues exist regardless of whether the proposed rule uses current percentile and peer-grouping techniques:
 - a. Disparate impact on small carriers because of the law of large numbers – i.e., few data points make their scores fluctuate wildly.
 - b. Most small carriers aren’t measured at all – but one or two bad inspections can be devastating to such carriers.

II. HENRY SEATON

DATA SUFFICIENCY AND ACCURACY ISSUES, EFFECT ON SMALL CARRIERS

Why SMS Data is no Substitute for an Audit in Making a Safety Fitness Determination

1. Data Insufficiency. SMS methodology, by the agency's own calculations, only can measure approximately one-fifth of the operators of commercial motor vehicles the agency is required to regulate (approximately 100,000 out of 532,000 carriers).
2. GAO Study states 90% of measured carriers lack sufficient data (20 inspection incidents) to be statistically valid.

Result: SMS can measure with statistical accuracy approximately 10,000 out of 532,000 carriers.

Small Carriers Prejudiced By Law Of Large Numbers

Insufficiency of data results in wildly fluctuating and inaccurate profiling of small carriers.

Absent audit and analysis, a single crash or roadside infraction has statistical impact. 20x greater on 5 truck operator than 100 truck fleet.

Single crash puts truck fleet over threshold of \$1.4 per million.

SMS Data Has No Correlation to Individual Carrier Safety Performance

1. Crash data. Inability to determine crash preventability results in 80% error factor.
2. Hours of Service Violations. Measures paperwork compliance (50% of violations are form and manner on paper logs which big carriers and local haulers are not required to maintain).
3. Unsafe Driving. Geographical enforcement anomalies. 5 states responsible for 43% of accumulated points.
4. Vehicle Maintenance. 50% of accumulated points relate to non out-of-service issues / geographical enforcement anomalies skew ratings.
5. Driver Qualification and Drug and Alcohol. Acute violations statistically insignificant for measuring 532,000 carriers.
6. Drug and Alcohol. Less than 1% of carriers measured.
7. Driver Qualifications. Less than 4% of carriers measured.
8. See Figures 1, 2, and 3.

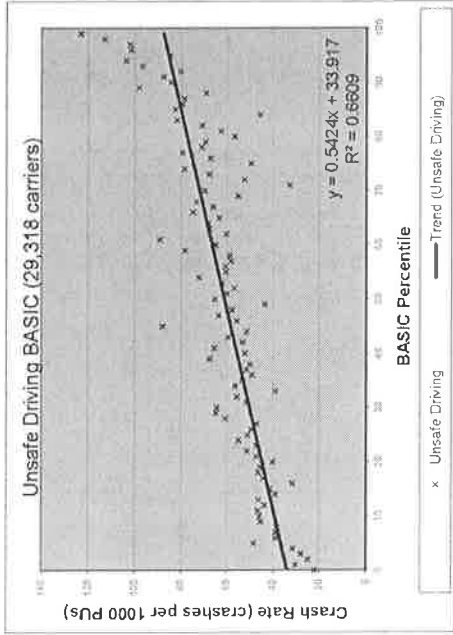
Effect of Publication of SMS Data without Due Process

1. Criticized by IG Report entitled “Improvements Needed in the Motor Carrier Safety Status Measurement System” (MH-2004-034, February 13, 2004).
2. Imposes alternative credentialing obligation on shipping public contrary to 49 U.S.C. §31144 and broker regulations.
3. Results in loss of business to small carriers.

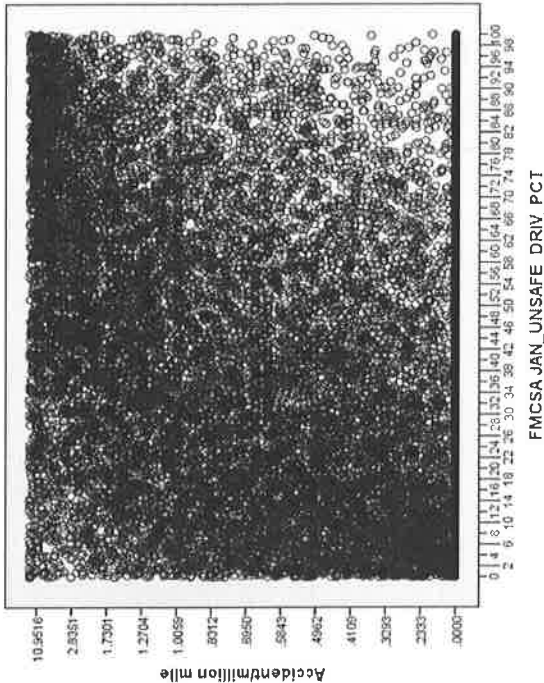
Example of Effect on Small Carriers	
Carrier A	Carrier B
15 Trucks 95 in HOS based on one driver/one trip No crashes Lost as much as \$1.5M in revenue	2,475 trucks Scores well over thresholds in 4 BASICS Crashes and fatalities, but SATISFACTORY Expanding operations

SMS methodology is statistically flawed
and does not measure safety fitness.

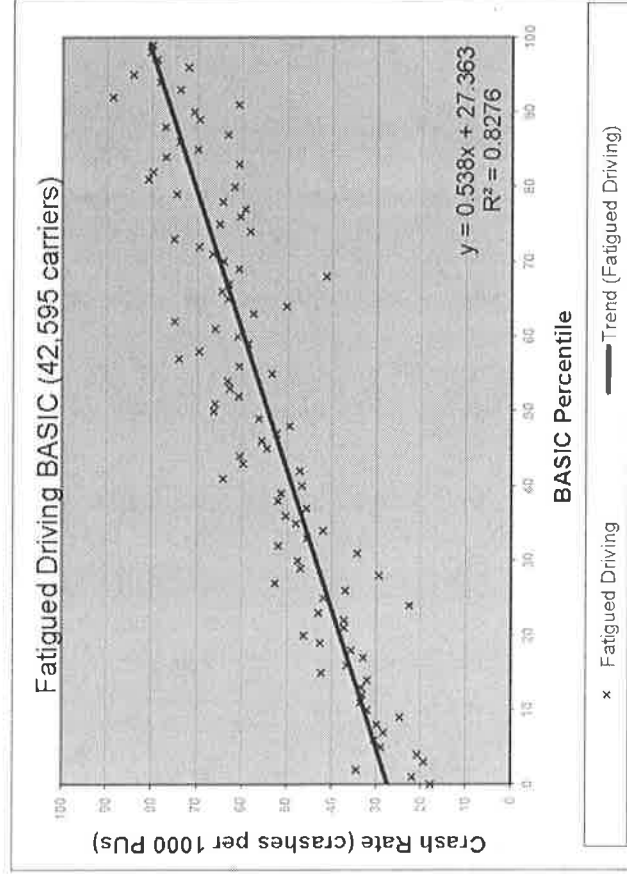
FMCSA Regression of
Averages – Unsafe Driving



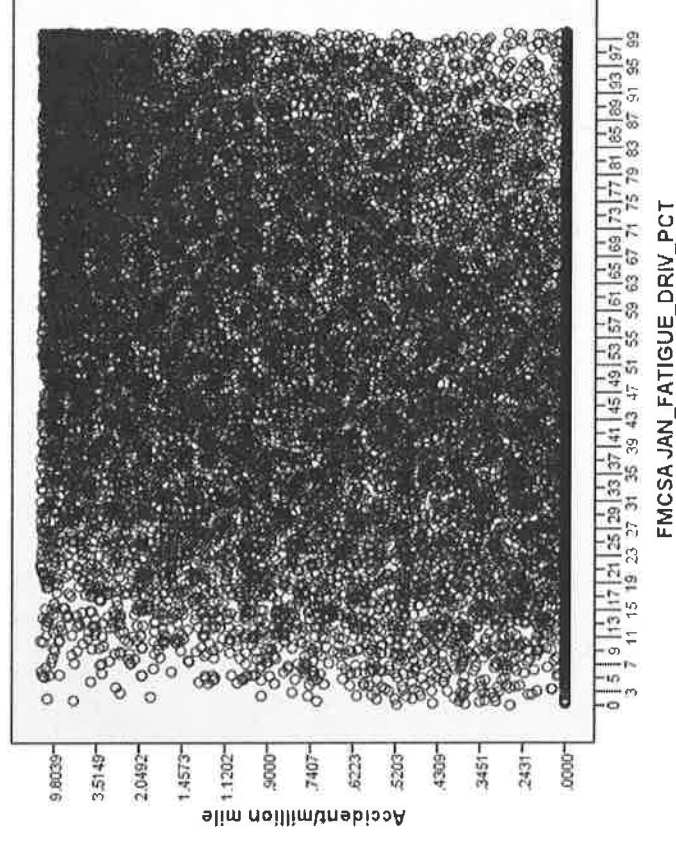
Unsafe Driving – Plot of
26,435 Carriers



FMCSA Regression of Averages – Fatigued Driving



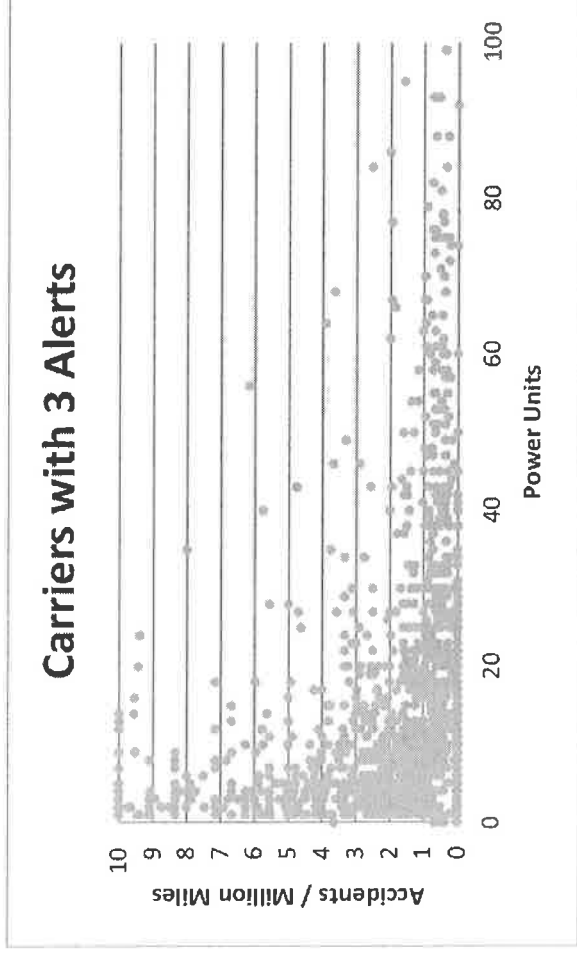
Fatigued Driving – Plot of 35,933 Carriers



These charts support the conclusion of Wells Fargo's analysis of the 200 largest trucking companies: "Quite simply, we found very little relationship (i.e. not statistically significant) between unsafe driver scores and actual accidents per power unit."

Crash Ratios and the Law of Large Numbers

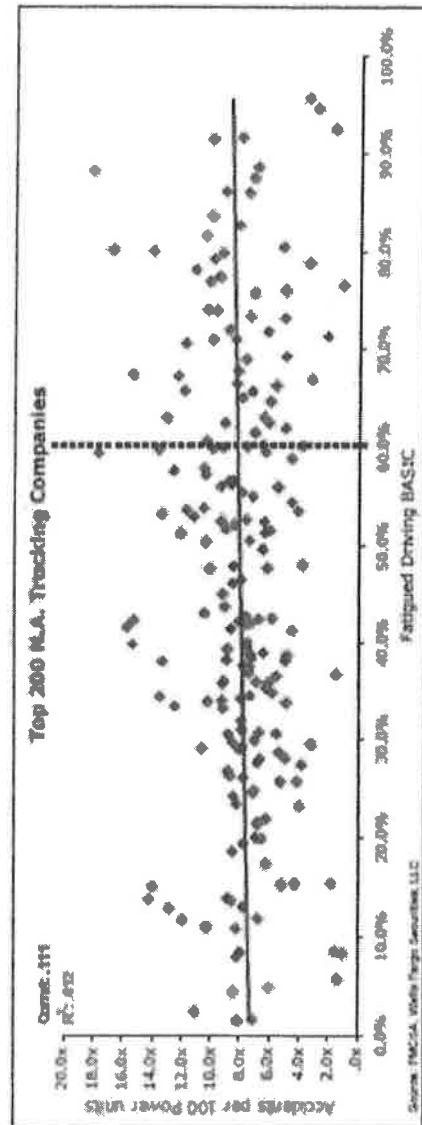
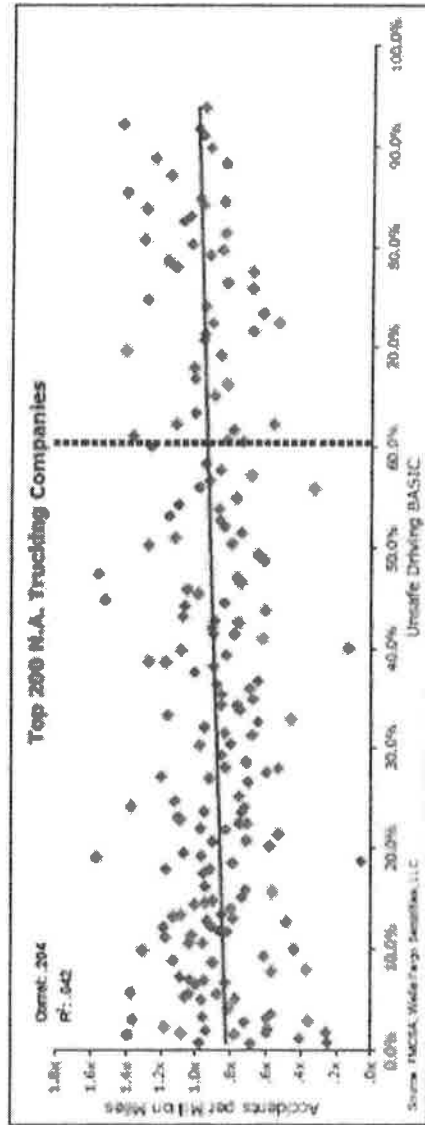
- 10 truck operator involved in 2 non-preventable accidents is over 1.6 million crashes per million threshold.



49% of small carriers with 3 ⚠️ had no accidents in past 2 years.

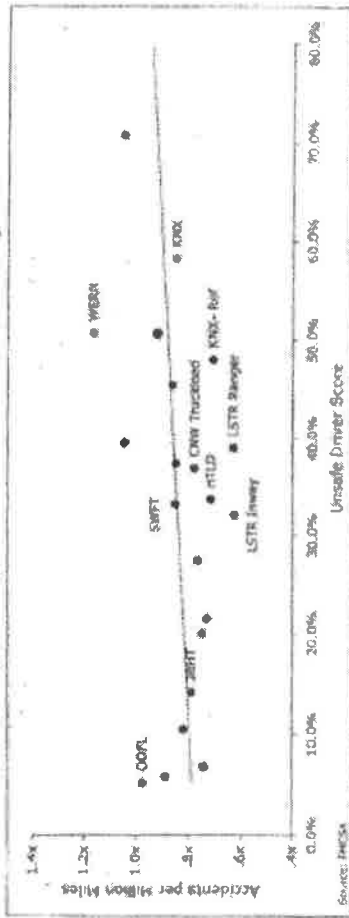
Proves volatility point, the larger the size, the less fluctuation.

Wells Fargo Top 200

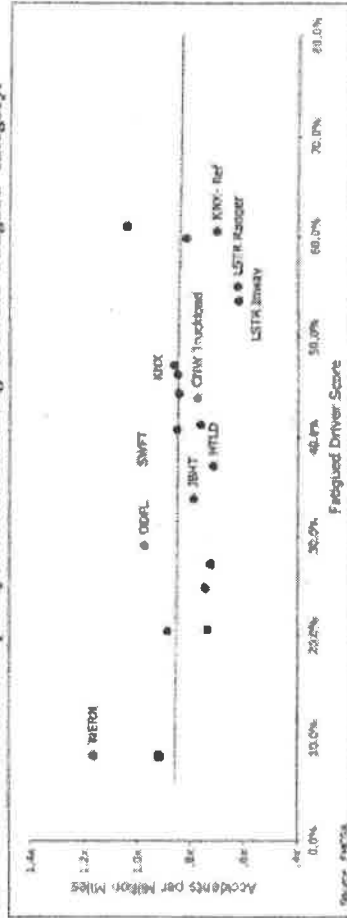


Wells Fargo study "Regulatory Roulette: Assessing CSA" Contradicts Nexus Claim

KNX and KNX Refrigerated have high "Unsafe Driver" scores but the actual number of accidents per million miles is below WERN, ODFL and SWFT who have lower "Unsafe Driver" results. Likewise, LSTR Ranger and LSTR Inway have very low accident incidence yet are scored as having a higher percentage of "Unsafe Drivers" than several peers.



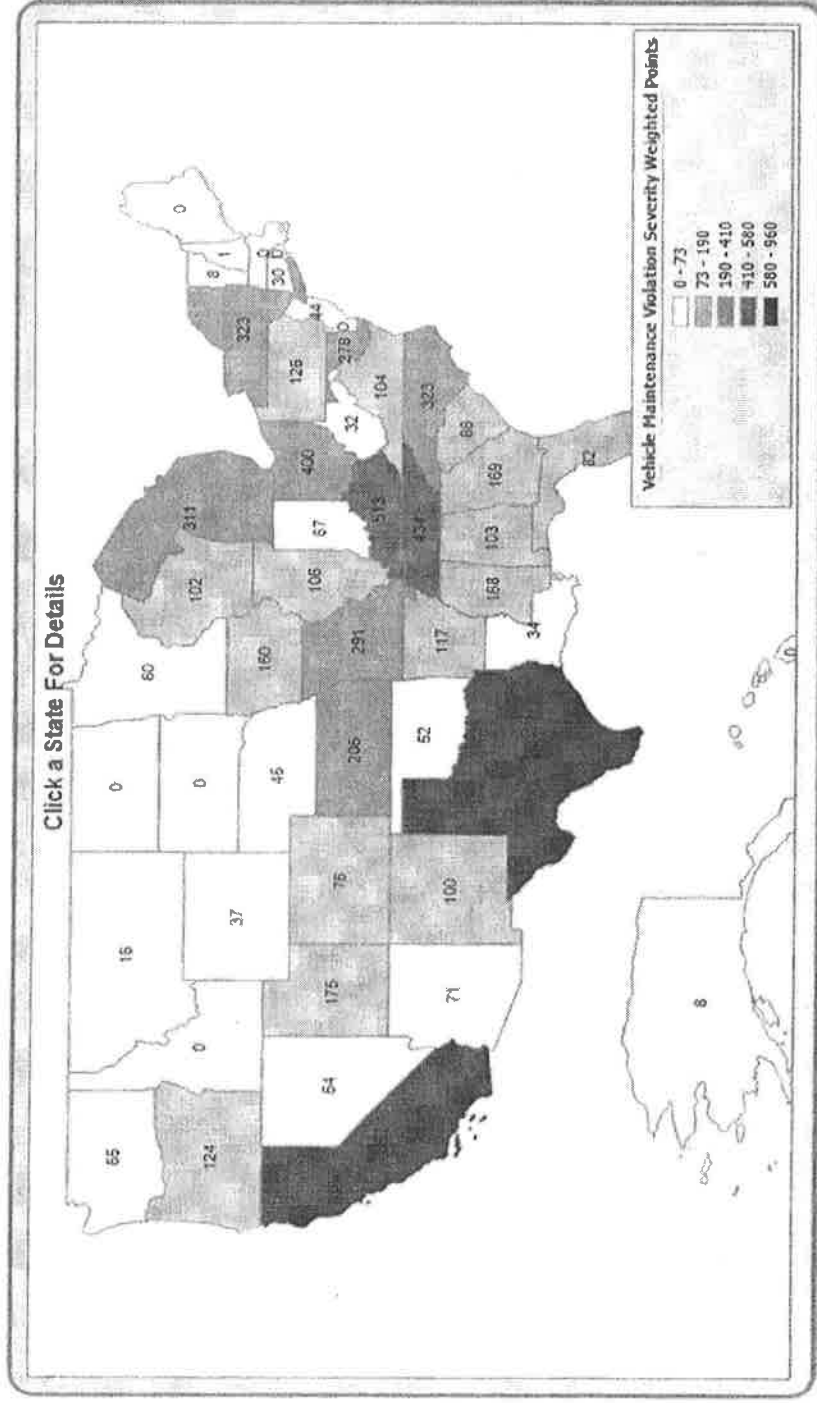
WERN has the highest accidents per million miles in our sample, but the lowest "Fatigued Driver" score. We believe WERN's electronic driver logbooks are the reason behind the low score in this category. Again, LSTR's actual accident frequency is "best-in-class" even though they do not score well on "Fatigued Drivers". In another example, KNX Refrigerated is slightly below HTLD on accident frequency but scores much higher in the "Fatigued" category.



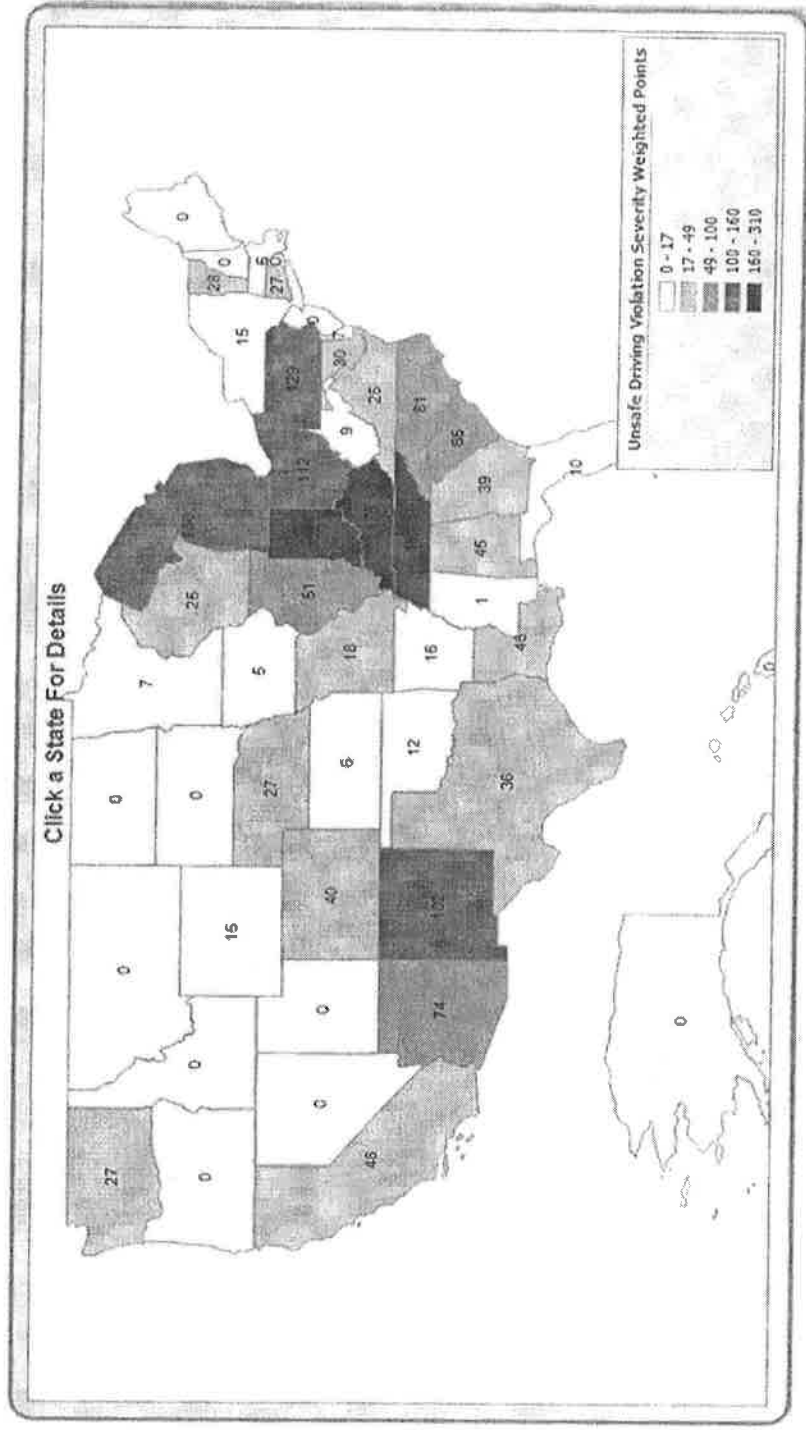
III. IRWIN SHIRES

1. Agency claims unsafe driving compliance data is best predictor of individual carrier safety fitness performance.
 - (a) Actual graphs of individual crash records by peer groups refutes correlation.
 - (b) State enforcement discrepancies preclude use of raw SMS scores (see Charts 1 and 2).
 - (c) Enforcement is uneven and varies by state
 - (i) probable cause states/speed warnings
 - (ii) lightly patrolled areas/no reporting local jurisdictions.
 - (d) System favors speed limiters on governors not proven to reduce accidents.
2. Misuse of SMS percentile and raw data confuses shipping public and costs carriers found “fit to operate” the ability to compete.
 - (a) Small carriers most greatly affected; but
 - (b) large carriers are branded too (e.g. the Panther experience).

State-by-state discrepancies: Maintenance



State-by-state discrepancies: Unsafe Driving



IV. RICK GOBBELL

1. Is CSA/SMS Currently Identifying carriers that have a high crash risk?
 - (a) High Risk Carrier audited by FMCSA show that 59% of the carriers receive a Satisfactory or Non-Rated Rating
2. Is CSA/SMS currently reducing large truck crashes?
 - (a) Injury and tow-away crashes are up 9% and 19% since 2012 and Fatal Crashes, while showing a 20% reductions in the last 10 years have shown no improvements since 2012
3. Effect on Small Business Entities and Cost to FMCSA?
 - (a) 90% of trucking companies operate less than 10 trucks. The burden of responding and challenging. These carriers transport only about 30% of the freight. This rule will most affect these small business entities
 - (b) Due process proceeding will place a very heavy burden on these small business entities, those less likely to have the knowledge, ability and resources to file responses and appeals under 49 CFR 385.
 - (c) The proposed rule will probably increase the administrative burden and cost to FMCSA in handling appeals, challenges and reviewing and other filings that will be imposed on motor carriers. It may very well be that this proposed rule will actually increase the operating cost of the FMCSA.
4. What are some alternatives to CSA/SMS Safety Fitness Determinations?
 - (a) Streamlined Compliance Reviews focusing on critical and acute violations
 - (b) The California BIT program for example

www.ai.fmcsa.dot.gov

Reviews by Safety Rating

Domicile: Carrier Type:

Report Focus: ☒ National ☐ State

Time Period:

Display As:

Reviews by Safety Rating

Safety Rating	FY 2011			FY 2012			FY 2013			FY 2014			FY 2015		
	Fed	State	Total	Fed	State	Total	Fed	State	Total	Fed	State	Total	Fed	State	Total
Satisfactory	3,546	1,902	5,448	2,284	1,392	3,676	1,495	1,168	2,663	1,488	1,162	2,650	1,059	835	1,894
Conditional	2,249	1,132	3,381	2,347	1,021	3,368	1,874	937	2,811	1,640	1,070	2,710	1,193	733	1,926
Unsatisfactory	201	111	312	213	127	340	234	132	366	304	129	433	181	111	292
Not Rated	201	1,626	1,827	250	1,588	1,838	199	1,636	1,835	202	1,671	1,873	559	1,154	1,713
Total	6,197	4,771	10,968	5,094	4,128	9,222	3,802	3,873	7,675	3,634	4,032	7,666	2,992	2,833	5,825

Note: As of March 2016, when calculating "Days out of Service" from the "Carrier Time" data down, most numbers reflect motor carriers that were subject to the SMS assessment rating threshold at the time of the

Conditional or Un-Satisfactory

41%

41%

41%

36%

Satisfactory or
Non-Rated Review

59%

59%

59%

64%

Point: 59% of the carriers identified as high risk by FMCSA using CSA/SMS methodology when audited are found to be in good compliance with the regulations.

Question 2: Is CSA/SMS Methodology reducing crashes?

All Crashes	Fatal Crashes	Injury Crashes	Towaway Crashes	Print PDF	Download Data	Report Description
Summary statistics for Large Trucks and Buses in all domiciles based on the MCMIS data source(s) covering Calendar Year(s) 2011 - 2015 for fatal crash events						
National: Summary Report						
Summary		CY 2011	CY 2012	CY 2013	CY 2014	CY 2015*
Number of vehicles involved in fatal crashes		4,108	4,318	4,422	4,252	993
Number of fatal crashes		3,775	3,912	3,969	3,832	866
Number of fatalities as a result of a crash		4,245	4,397	4,451	4,340	981

2011 3,775

2012 3,192

2013 3969

2014 3,832

16% Reduction 2011 - 2012

17% Increase from 2012 to 2014

Question 2: Is CSA/SMS Methodology reducing crashes?

Summary statistics for Large Trucks and Buses in all domiciles based on the MCMIS data source(s) covering Calendar Year(s)
2011 - 2015 for Injury crash events

[All Crashes](#)
[Fatal Crashes](#)
[Injury Crashes](#)
[Towaway Crashes](#)

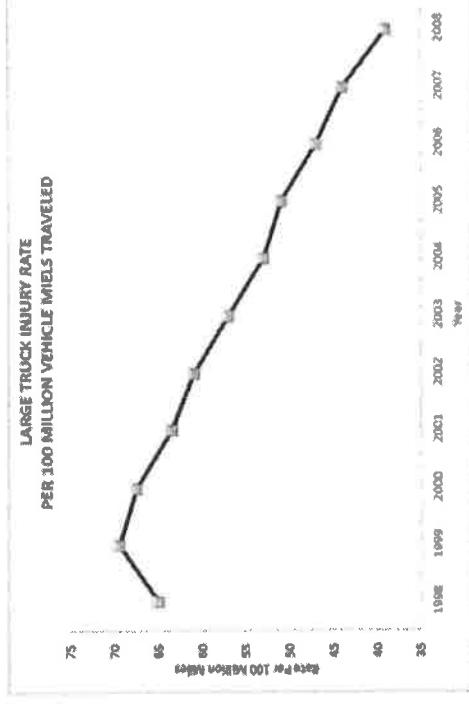
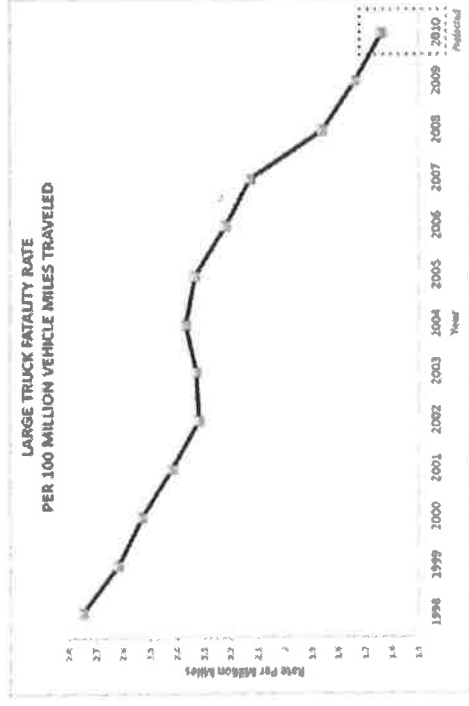
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	CY 2011	CY 2012	CY 2013	CY 2014	CY 2015*
National: Summary Report					
Summary					
Number of vehicles involved in injury crashes	29	53,806	56,540	56,192	9,631
Number of injury crashes	31	50,761	53,324	56,192	8,908
Number of injuries as a result of an injury crash	32	76,314	79,618	56,192	13,154

Truck crashes resulting in injuries have increased from 51,231 in 2011 to 56,192 in 2014, an increase of 9%.

Fatalities involving commercial motor vehicles are down 20%
The lowest rate in decades when SMS/CSA was released



IF IT ISN'T BROKEN, WHY FIX IT?

The rate of decline has not improved since CSA/SMS has been published and implemented.