

PRESS RELEASE – March 9, 2011

Headline: FMCSA and Three Trade Associations Agree to Settlement on CSA

As a result of mediation, the FMCSA and three motor carrier trade associations -- The National Association of Small Trucking Companies (NASTC), The Expedite Alliance of North America (TEANA), and the Air & Expedited Motor Carrier Association (AEMCA) -- have agreed to settlement of the pending petition for review in the U.S. Court of Appeals about publication of CSA 2010/SMS methodology before following agency rulemaking procedures.

The three trade associations sought to postpone publication of percentile rankings and "Alert" designations for carriers. They argued that the SMS methodology was a work in progress intended for the Agency's own use, but that shippers and brokers were misconstruing the data as a new de facto safety rating system -- which could result in the blackballing of 57% of the ranked carriers in the SMS database which had one or more "alert" that the Agency had found fit to operate under current law.

As a result of the settlement, the Agency has agreed to change its website disclaimer and remove the term "Alert" with respect to any of the reported BASICs. The new disclaimer language which will appear on the SMS website on March 25 follows below.

With respect to the settlement, Petitioners issued the following statement:

"We applaud the Agency for affirmatively restating its sole duty to credential carriers as safe for operation over the nation's roadways. We believe these changes will disabuse shippers and brokers of the misconception that SMS methodology, percentile rankings of carriers, and monitoring thresholds are intended for their use in determining carrier fitness. This important settlement confirms for a confused industry that it is still the job of the FMCSA to certify carriers. Now the SMS website will direct readers to the Agency's Licensing & Insurance database to confirm that carriers are authorized under existing Federal Motor Carrier Safety Regulations, and will reaffirm that unless a carrier is rated as unsatisfactory or out of service, the Agency has determined it is fit for use."

(As reported by Hank Seaton Esq.)

New SMS Disclaimer

The FMCSA will replace any ALERT symbol currently displayed in orange on the SMS public website with the following symbol displayed with the color gold, as viewed on the banner at

<http://csa.fmcsa.dot.gov/default.aspx>, as a fill color: 

The FMCSA will replace the current language displayed on the public SMS website screen entitled "USE OF SMS DATA/INFORMATION" with the following:

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. Motor carrier safety ratings are available at <http://safer.fmcsa.dot.gov> and motor carrier licensing and insurance status are available at <http://li-public.fmcsa.dot.gov/>

Finally, the FMCSA will delete the word "established," currently used in the phrase "established intervention thresholds," from the footnote contained in the Legend on the public SMS website that defines what is meant by the  symbol. The FMCSA will also delete the word "established" from the phrase "established intervention thresholds" in any other place the phrase appears on the public SMS website.

SETTLEMENT OF LITIGATION WITH FMCSA TIMELY

Settlement of the court case brought by three trade associations against the FMCSA over publication of CSA/SMS data could not have been more timely, Petitioners state. Pursuant to the Settlement Agreement entered into in *NASTC et al. v. FMCSA*, the Agency has issued a new disclaimer which makes clear that current Federal Motor Carrier Safety Regulations remain in place, that SMS data is intended primarily for its own internal use, and that it has not abrogated its obligation to certify carriers as safe to operate on the nation's roadways. Users of the website are directed to the Licensing & Insurance portal and are advised that unless carriers are rated as unsatisfactory or placed out of service, the current Agency determination of fitness has not been changed by release of SMS data.

Petitioners point out that this settlement comes on the heels of a recent Morgan Stanley study, which demonstrated that 55% of the shippers had been led to believe SMS methodology should be used in determining whether to use otherwise licensed, authorized and insured carriers. Another Wall Street pundit reported that release of the data would adversely affect small carriers and large 3PLs alike, and could result in carrier bankruptcies and diminished capacity. James Scapellato in *Transport Topics* (2/28/2011) stated, "As a former DOT regulator and prosecutor, I find the conscious public release of unreliable CSA information simply wrong. It confuses and misleads members of the public who trust in the DOT's pronouncements."

In issuing their Press Release concomitantly with the Agency's announcement of its changed disclaimer, Petitioners praised the Agency for recognizing the unintended vicarious liability consequences of releasing SMS data in its initial form, and for eliminating the confusion which surrounded the initial publication. Petitioners noted that the removal of the pejorative characterization that carriers were "Under Alert," and the Agency's reaffirmation of its duty to certify carriers as safe, were important steps to allay fears of a frightened and confused industry. "This settlement was needed to combat misuse of SMS methodology by the plaintiff's bar to establish vicarious liability where none is intended under federal law," Petitioners stated.