

TESTIMONY OF
Jason Craig
Director of Government Affairs
C.H. ROBINSON

BEFORE THE
U.S. House of Representatives
Subcommittee on Highways and Transit
June 12, 2019

Under Pressure: The State of Trucking in America



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Chairman DeFazio, ranking member Graves, Chair Norton, ranking member Davis, and members of the Subcommittee on Highways and Transit, thank you for the opportunity to testify at today's hearing. As one of the nation's largest freight transportation brokers and the original third party logistics provider, C.H. Robinson has a unique view of how goods and commerce flow through our nation's infrastructure from manufacturer to consumer. Our customers and transportation providers represent the entire cross section of freight transportation stakeholders however, approximately 70% of our revenue is derived from truckload or less-than-truckload services. I intend to provide you insights into what supply chain vice presidents and directors need Congress to accomplish to improve trucking safety while maintaining our globally leading supply chain efficiency.

Introduction of Jason Craig

I serve as the Director of Government Affairs for C.H. Robinson. I joined C.H. Robinson in 1996 in operations, managing the export movements of hardwood lumber from Northern Minnesota to Asia. Over the course of my career at C.H. Robinson I have managed operations across modes and service lines for a wide range of shippers. I am also currently the vice-chair of the Minnesota Freight Advisory Committee.

Introduction of C.H. Robinson

C.H. Robinson was founded in 1905 and has grown to over 15,000 employees globally. We are the 7th largest publicly held company headquartered in Minnesota, and we have offices across the United States. Our employees in Phoenix, Kansas City, Eden Prairie, Chicago, and more than 130 other offices across 40 states send their warm greetings. Our role within freight

transportation has often been described as similar to that of a travel agent for goods, although that is a simplistic description. I prefer to think of ourselves as an outsourced freight transportation department which companies utilize in many different ways as their needs and our value dictate.

We do not own any commercial trucks ourselves, but rather build technology platforms and logistics services that allow us to streamline complex transportation management on behalf of our customers. A freight property broker is legally defined and regulated by the Federal Motor Carrier Safety Administration under Title 49 of the Code of Federal Regulations. Our industry is commonly referred to as the third party logistics or 3PL industry and is represented by the Transportation Intermediaries Association (TIA), which has over 1,700 companies as members.

C.H. Robinson is the original 3PL and we have seen our industry overall thrive as investments in technology, analysis, and visibility has led to greater value to both our customers and transportation providers. FMCSA lists 17,966 registered property brokers in 2017 as part of the “2018 Pocket Guide to Large Truck and Bus Statistics”, a 30% increase since 2013.

Confusion Created by FMCSA Publicly Available Data

While my colleagues have expertise in the operation and enforcement of the physical truck, I wish to focus on how motor carriers are selected and assigned to loads and how the committee can improve this process to increase safety and end confusion in this area.

Congress has given FMCSA many tools to remove unsafe motor carriers from the roads. These include assigning the carrier an unsatisfactory safety rating, declaring the carrier an

imminent hazard, and withdrawing the carrier's operating authority for failing to respond to a new entrant safety audit among other things. These tools are compiled annually in the Commercial Vehicle Safety Alliance's "North American Out-of-Service Criteria" guide, at the carrier level, specifically the administrative out-of-service chapter IV.

C.H. Robinson has established a detailed, thorough and consistent carrier qualification process that includes rapidly re-enforcing all of FMCSA's actions and denies freight to any carrier that FMCSA has declared out-of-service freight. However, from time to time, mostly in tragic and severe accidents, our carrier qualification process is challenged in court. A common theme in most negligent selection cases is that brokers and shippers should check more than the licenses and authorities that allow motor carriers to operate on the nation's highways, but there has been no guidance or direction provided as to what data and what thresholds are important enough to deny offering freight to a motor carrier beyond the tools Congress has provided FMCSA to take carriers off the roads.

I have been involved in and monitoring the Compliance, Safety, and Accountability or CSA program since approximately 2006. While the original goal of replacing an audit based Safety Fitness Determination (SFD) system with one that is data based is laudable and necessary, as many know, in practice it has become extremely difficult to complete. In September of 2012, C.H. Robinson testified before this committee regarding the then publicly available BASIC data and the confusion created by the BASIC data.¹ This data was intended to help FMCSA prioritize inspections and enforcement actions and carried the following warning:

¹ BASIC data is also referred to as the Safety Measurement System or SMS. BASIC stands for Behavior Analysis and Safety Improvement Categories.

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 CFR Part 385, or has otherwise been ordered to discontinue operations by the FMCSA, it is authorized to operate on the nation's roadways.

That warning is still in place today and the SFD linking the data with the safety rating is still not complete. In January 2016, FMCSA released a draft SFD rule that would have established a new safety rating process, however that rule was withdrawn in March 2017, for some very legitimate reasons primarily around data consistency and correlation to crash risk. As part of the Federal Register notice regarding the withdrawal, our comments were mentioned: "Specifically, C.H. Robinson noted it has long recommended a two-tiered structure that more clearly signals to shippers and other industry stakeholders, which carriers should not be hired due to safety concerns."

In 2014, CVSA wrote then Administrator Darling to express concern about the public display of motor carrier BASIC data. CVSA Executive Director at the time, Steve Keppler wrote "SMS (BASIC) scores are a poor indicator of an individual fleet's propensity to be involved in a future crash, their utility in providing the public with information about fleet's safety performance is limited."²

In response to feedback from across the freight transportation industry regarding the BASIC data, Congress mandated a study of the correlation between BASIC data and crash risk as part of the FAST Act. Part of the study was specifically to look at "*how members of the public use*

² See letter attached as Appendix A.

the SMS and what effect making the SMS information public has had on reducing crashes and eliminating unsafe motor carriers from the industry.” In addition, Congress required FMCSA to remove certain parts of the BASIC data from public view.

When the National Academy of Science submitted its correlation study in June of 2017, they responded to the issue of the public use of the data by recommending that FMCSA “should undertake a study to better understand the statistical operating characteristics of the percentile ranks to support decisions regarding the usability of public scores.” We were tremendously disappointed that the NAS study recommended yet another study. While the experts at the National Academy of Science undertook a very detailed, 183 page mathematical study regarding the entirety of the BASIC data model, they “were unable to recommend to FMCSA whether to make all percentile ranks public.”

Even though a large amount of data has been hidden from public view, other motor carrier data remains,³ without guidance from Congress or FMCSA regarding which data should be used by shippers and brokers to properly selected motor carriers. While we wholeheartedly agree that the use of appropriate motor carrier data is an effective tool to identify groups of potentially at-risk carriers compared to previous eras of solely audit based decisions, data without context has and is being used inappropriately. In some cases, brokers and shippers have been made to take legal responsibility for gauging the safety of carriers when there is no clear regulatory system in place for us to reliably check. This is a significant unintended

³ See screenshot of current SMS data in Appendix B

consequence of the almost decade long delay by FMCSA and Congress to provide clear guidance regarding which carriers should be safe to tender loads to.

Is a carrier with an unsafe driving score of 81 more dangerous than one with a score of 78? If that is true, then why not use only carriers with a score below 60 and shut all the other carriers down? A relative safety system is fine for internal inspection prioritization by FMCSA, but is damaging to market participants when made public without proper context, especially damaging to smaller carriers who may not have extensive data available in their profile.

Currently there is no requirement to validate any authority or safety status when selecting and tendering a load to a motor carrier. We feel strongly that the establishment of a motor carrier selection standard that mirrors the tools Congress has given FMCSA to take carriers off the road will improve truck safety by more quickly eliminating freight opportunities to motor carriers who have their authority pulled or are otherwise placed into an administrative out-of-service status at the carrier level.

A recent story perfectly describes the situation. In April of 2017, CVSA added an inactive US DOT number to the administrative out-of-service criteria.⁴ This means that when law enforcement stops a carrier operating under an inactive US DOT number, they are to be placed out-of-service immediately. Neither CVSA nor FMCSA announced this change broadly to those who select motor carriers. There is no clear, consolidated screenshot that aggregates all the information that allows a motor carrier to operate on the nation's roads, although they have slowly been making improvements. The only place shippers and brokers could see this change

⁴ See Appendix C from the CVSA 2017 North American Out of Service Criteria Report

was by ordering the full North America Standard Out-Of-Service Criteria Guide for \$35 on the CVSA website. Even today, many in the industry are unaware that an inactive or suspended US DOT number is not only a separate process than suspending operating authority, but also an administrative out-of-service criteria. If Congress would establish a motor carrier selection standard that allowed industry to reliably re-enforce FMCSA administrative out-of-service criteria, carriers who should be denied freight opportunities will more quickly be pulled off the road.

Instead, by publishing a myriad of motor carrier data with little clear guidance on its use (which even the experts at the National Academy of Science are unable to recommend if they should be used by the public or not) many shippers and brokers do not check any federal qualifications. Other shippers may be using unrelated or less important data with no correlation to crash risk which results in lost business opportunities for motor carriers whom FMCSA fully licenses and authorizes to operate.

C.H. Robinson, other brokers, and shippers are important stakeholders when it comes to motor carrier safety. While we are not as critical to motor carrier safety as those who operate, maintain and drive trucks, we can and want to ensure that the carriers we select have been deemed safe to operate on the nation's roadways by FMCSA. We look forward to being able to amplify and re-enforce the expert decisions at FMCSA regarding who should be authorized to operate on the nation's roadways when Congress clearly establishes a motor carrier selection standard we can rely on.

Other Issues of Safety Important to C.H. Robinson

Truck Parking

The current availability of truck parking in our country is insufficient. In fact, when weather events challenge truck drivers, some of our customers have begun opening their yards not just to drivers on loads for their own freight, but for all truck drivers. They recognize that there is simply no place for these drivers to go. We are encouraged by provisions included in MAP-21 and the FAST Act to address truck parking and we look forward to additional solutions to this issue that will make America's supply chain safer and more competitive.

Infrastructure Investment

Outdated and poorly designed infrastructure is a safety risk to all. C.H. Robinson wholeheartedly supports a robust investment in the nation's freight roadways that will also improve safety and reduce truck crashes. Properly designed and maintained ramps, merges and sight lines help keep us all safe. We would refer committee members to the National Association of Manufacturers infrastructure blueprint titled "Building to Win" that was recently released and included the following:

Unsound infrastructure puts lives at risk. Businesses and manufacturers are cutting into their bottom lines with wasted time and money. According to the NAM's quarterly survey, manufacturers consider rising transportation costs a top business concern. The United States desperately needs a targeted, substantial investment in revitalizing the nation's infrastructure. Congress should legislate identifying and prioritizing projects of national and regional significance requiring federal investment and vision to revitalize the nation's infrastructure.

Freight Advisory Committees

This committee should also be aware that many supply chain professionals feel very disconnected from the policy making process. If they do have a local need or issue, they have trouble connecting in a timely manner with the right agency or official who can address the issue. Sometimes a supply chain professional may have a need in Missouri, but controls the freight from their office in Atlanta. We see the same frustration from state and local officials who try to engage the freight community. The establishment of state Freight Advisory Committees as part of the FAST Act has provided shippers an opportunity to more directly connect with state infrastructure planners. We see tremendous potential for these committees to be incubators of policy and expertise for both state, regional, and national freight transportation planners. One example of how this structure is working successfully is how a proposal by U.S. Customs to adjust hours at a border crossing in northern Minnesota was vetted through the Minnesota Freight Advisory Committee and stakeholders were quickly identified to provide input and execute a solution that worked for all public and private stakeholders. Congress should continue to bolster this program and provide more opportunities for these Freight Advisory Committees to add their voices to the freight infrastructure planning process.

Appendix A



Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

November 14, 2014

Secretary Anthony Foxx
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Foxx:

I am writing to you on a matter of tremendous importance to commercial motor vehicle law enforcement, the Federal Motor Carrier Safety Administration's (FMCSA) *Compliance, Safety, Accountability* (CSA) program. The Commercial Vehicle Safety Alliance (CVSA) is aware that a number of stakeholder groups recently wrote to you expressing their concerns about CSA, including the public display of CSA *Safety Measurement System* (SMS) scores. CVSA would like to offer its views on these matters given their importance and relevance to law enforcement.

CSA is a very good program with tremendous potential to improve commercial motor vehicle (CMV) safety. Already, CSA has raised awareness of the importance of safety and has caused motor carriers to devote more attention and resources to safety initiatives than ever before. Of course, CVSA strongly supports the goal of CSA, which is to implement more effective and efficient ways for FMCSA, its State partners, and the trucking industry to reduce CMV crashes, fatalities, and injuries.¹

CVSA recognizes and appreciates the concerns recently raised by some stakeholders. For instance, some have pointed out that differences in enforcement practices from one jurisdiction to the next can affect motor carriers' SMS scores. These differences in enforcement practices are necessary to address the varying safety challenges that exist in different jurisdictions. However, since SMS scores are based on comparative performance, the environment (i.e., jurisdiction) in which carriers operate can impact the accuracy of their measurements.

Stakeholders have also raised concerns about the relationship between certain violations, carriers' scores and crash risk. Law enforcement has an obligation to enforce all laws and regulations regardless of their statistical relationship to crash risk. For this reason, law enforcement agencies must identify fleets that exhibit patterns of non-compliance. While all non-compliance should be considered, CVSA believes fleets that commit violations shown to have a strong correlation to crash risk should be identified and appropriately prioritized for intervention.

As you are aware, a recent report from the Government Accountability Office (GAO) found CSA SMS scores to be unreliable predictors of individual fleet crash propensity. Specifically, GAO found that (during the period they studied) FMCSA identified many carriers as "high risk" that were not later

¹ *Safety Measurement System Methodology Version 3.0*, March 2012, Federal Motor Carrier Safety Administration, Washington, D.C.

involved in a crash.² In contrast, FMCSA research showed that carriers identified as high risk have higher future crash rates than other active carriers, suggesting that the SMS is effective enforcement prioritization tool.³

These findings alert us to an important distinction. FMCSA's analysis focused on the *collective* crash rate of carriers in groups (e.g., all carriers with a particular BASIC percentile score), not *individual* carrier scores. FMCSA acknowledged that "this collective crash rate is not a prediction of the actual crash rate of an individual carrier. In fact, 93 percent of the carriers in the model had no crashes in the post-identification monitoring period."⁴

This distinction leads us to an important conclusion. Since the *collective* crash rates of fleets with SMS scores above thresholds are higher than those below, the SMS is useful as an enforcement prioritization tool. In short, enforcement agencies can focus on these fleets to conduct further investigations and determine which of them are truly risky. On the other hand, since the SMS scores are a poor indicator of an *individual* fleet's propensity to be involved in a future crash, their utility in providing the public with information about fleets' safety performance is limited.

Given the value of the SMS as an enforcement prioritization tool and law enforcement's obligation to enforce compliance with all laws and regulations, CVSA feels strongly that law enforcement's access to SMS data must not be limited. To help further ensure that law enforcement resources are used most efficiently, FMCSA should strive to improve the program so as to better identify those individual fleets that pose the greatest risk of causing future crashes. FMCSA should also take these steps to eventually arrive at scores that are strong measures of an individual fleet's safety performance. Until these improvements are made, however, CVSA echoes stakeholders' call to remove SMS scores from public view.

Your consideration of CVSA's views on these important issues is greatly appreciated. If you have further questions or comments, please do not hesitate to contact me by phone at 301-830-6145 or via email at stevek@cvsa.org.

Sincerely,



Stephen A. Keppler
Executive Director


Cc: Scott Darling, Acting Administrator, FMCSA


² United States Government Accountability Office, *Federal Motor Carrier Safety: Modifying the Compliance, Safety, Accountability Program Would Improve The Ability to Identify High Risk Carriers*, GAO-14-114, February 2014.


³ *The Carrier Safety Measurement System (CSMS) Effectiveness Test by Behavior Analysis and Safety Improvement Categories (BASICS)*, Federal Motor Carrier Safety Administration, January 2014.

⁴ *Ibid.*

Appendix B: Current SMS (BASIC) Screenshot


Federal Motor Carrier Safety Administration
LOGIN |


Working Together for Safety.



Safety Measurement System

[A&I](#)
[CSA](#)
[SMS](#)
[OVERVIEW](#)
[TOOLS](#)
[HELP](#)
[SEARCH](#)

QUICK SEARCH
 [GO](#)

Number of Vehicles: 107
Number of Drivers: 110
Number of Inspections: 114

Safety Rating & OOS Rates
(As of 06/05/2019 updated daily from SAFER)

SATISFACTORY
(Rating Date: 03/12/2004)

Out of Service Rates

Type	OOS %	National Avg %
Vehicle	14.5	20.7
Driver	1.7	5.5
Hazmat	4.5	4.5

Licensing and Insurance
(As of 06/05/2019 updated hourly from L&I)

Active For-Hire Authority

Type	Yes/No	MCE/MXe
Property	Yes	
Passenger	No	
Household Goods	No	
Broker	No	

BASIC Status (Public Property Carrier View) ?

Behavior Analysis & Safety Improvement Categories (BASICS)

Based on a 24-month record ending April 26, 2019

UNSAFE DRIVING

CRASH INDICATOR

HOURS-OF-SERVICE COMPLIANCE

VEHICLE MAINTENANCE

CONTROLLED SUBSTANCES AND ALCOHOL

Not Public HAZARDOUS MATERIALS COMPLIANCE

DRIVER FITNESS

Select a BASIC icon above to get details, or view your [Complete SMS Profile](#).

Summary of Activities

The summary includes information on the 5 most recent investigations and 24 months of inspections and crash history.

Most Recent Investigation: 3/9/2004 (Compliance Review)

Total Inspections: 114
Total Inspections without Violations used in SMS: 64
Total Inspections with Violations used in SMS: 50

Total Crashes* : 10

*Crashes listed represent a motor carrier's involvement in [reportable crashes](#), regardless of the carrier's or driver's role in the crash. [Continue for details.](#)

Continue for more Crash, Inspection & Investigation Details

Carrier Registration

Carrier Registration Details

Subject to Hazmat Threshold

Update Registration Info

Enforcement Cases

(Six years as of 06/05/2019 updated monthly from FMCSA)

No penalties found

Tools/Resources

SMS Methodology

How to Improve

Request a Data Review

For U.S. DOT:

Complete SMS Profile

Carrier History

Appendix C: 2017 North American Out of Service Administrative Criteria

PART IV

NORTH AMERICAN STANDARD ADMINISTRATIVE OUT-OF-SERVICE CRITERIA

*POLICY STATEMENT

The purpose of this part is to identify violations that prohibit the motor carrier from operating the commercial motor vehicle until the condition is corrected. The violations in this section are important aspects of the motor carrier's ability to operate lawfully and to help in maintaining uniformity across the industry.

The necessity for all enforcement personnel to implement and adhere to these standards is: (1) a matter of law; (2) perceived as necessary by the society we are charged with protecting; and (3) a professional obligation if substantial enhancement in the safety of commercial motor vehicle operators is to be achieved.

Except where state, provincial, territorial or federal laws preclude enforcement of a named item, motor carrier safety enforcement personnel and their jurisdictions shall comply with these out-of-service violation standards.

OUT-OF-SERVICE VIOLATION: Violations under this category preclude further operation of a commercial motor vehicle by the carrier for a specified period of time or, for some violations, until a specific requirement has been complied with.

1. OPERATING AUTHORITY

Operating a commercial motor vehicle without the required operating authority or beyond the scope of the motor carrier's operating authority. (Authority Required - 392.9(a)(1) or Beyond Scope - 392.9(a)(2)) **Declare vehicle out of service until the proper operating authority is obtained.**

*** 2. INACTIVE/NO USDOT NUMBER**

*** a. Inactive USDOT Number**

When required to have a USDOT number, operating a commercial motor vehicle with a "de-activated" or "inactive" USDOT number. (392.9(b)) **Declare vehicle out of service until USDOT number is "active."**

*** b. No USDOT Number**

Operating a commercial motor vehicle with no USDOT number when required and a history of operating a commercial motor vehicle with no USDOT number when required. (392.9(b)) **Declare vehicle out of service until a USDOT number has been obtained.**

*** 3. MEXICO DOMICILED CARRIERS OPERATING IN THE U.S.**

A Mexico-domiciled carrier (USDOT X Number) granted provisional operating authority pursuant to 49 CFR 365 operating a commercial motor vehicle in the United States that does not display a current CVSA decal on the power unit. (385.103(c)) **Declare vehicle out of service until the vehicle satisfactorily passes an inspection and a CVSA decal is issued.**

*** 4. U.S. FEDERAL OUT-OF-SERVICE ORDERS**

Operating a commercial motor vehicle while an existing motor carrier out-of-service order, issued by the Federal Motor Carrier Safety Administration (FMCSA) is in effect. (Choose from the list of fourteen Sections of the Federal Motor Carrier Safety Regulations (CFRs) listed below. **Declare vehicle out of service until such time as the motor carrier out-of-service order issued by FMCSA has been satisfied.**

Description	Section
Failure to Pay Fine - Private Carrier	386.83(a)(1)
Failure to Pay Fine - For-Hire Carrier	386.83(a)(1)
UNSAT/UNFTT - Placarded HM	385.13(a)(1)
UNSAT/UNFTT - Passenger Carriers	385.13(a)(1)
UNSAT/UNFTT - Property Carriers	385.13(a)(2)
New Entrant - Failure to Respond to Expedited Action Notification	385.308(d)
New Entrant - Failure of Safety Audit	385.325(c)
New Entrant - Refusal of Audit/No Contact	385.337(b)
Imminent Hazard - Motor Carrier	386.72(b)(4)
Imminent Hazard - Intermodal Equipment Provider	386.72(b)(4)
MX Carrier - Inadequate Corrective Action	385.105(b)
MX Carrier - UNSAT/UNFTT	385.111(a)
MX Carrier - Suspended Operating Authority for UNSAT Rating or Failed Safety Audit	385.111(c)(1)
MX Carrier - Revoked Operating Authority	385.111(c)(2)

Enforcement Guidance: All out-of-service orders must be confirmed. Vehicles shall only be declared out of service after online or telephonic verification of the motor carrier's out-of-service order.