Testimony of

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OWNER-OPERATOR TRUCK DRIVER AND SMALL BUSINESS OWNER

Before the

COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES

Regarding

IS FMCSA'S CSA PROGRAM DRIVING SMALL BUSINESSES OFF THE ROAD?

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Good afternoon Chairman Graves, Ranking Member Velazquez, and distinguished members of the Committee. Thank you for inviting me to testify on matters which are extremely important to our nation's small business trucking professionals and professional truck drivers.

My name is Daniel Miranda, and I own a small trucking company based in Sacramento, California. I am also a member of the Owner-Operator Independent Drivers Association (OOIDA). While I have been a professional truck driver for more than a decade, and have logged over one million miles behind the wheel, I am relatively new to being a small business owner in the trucking industry. I have owned a truck since 2008, have been driving under my own authority since February 2010, and currently have two drivers with trucks leased to me. I know that when most of you hear "owner-operator," you think of a driver who owns his own truck and is willing to haul nearly anything to keep their business open. I can tell you that I proudly fit that description. As I have stated, I have three trucks in my business and will travel in order to make a living, support my family, and keep my folks employed. My message to you today is that under the current regulatory scheme, despite the fact that I can haul a variety of dry goods and diversify my services, it is tough staying in business.

The majority of the trucking community in this country is made up of small businesses like mine, as 93 percent of all carriers have 20 or fewer trucks in their fleet and 78 percent of carriers have fleets of just six or fewer trucks. In fact, one-truck motor carriers represent nearly half of the total number of motor carriers operating in the United States.

As you are most likely aware, OOIDA is the national trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small-business truckers. The approximately 150,000 members of OOIDA are small business men and women in all 50 states who collectively own and operate more than 200,000 individual heavy-duty trucks.

I have come here today to speak about my experience with the Federal Motor Carrier Safety Administration (FMCSA)'s Compliance, Safety, and Accountability program, commonly known as CSA. I believe my experiences are similar to others in the trucking industry, particularly the little guys like me. Although I have only been operating under my own authority a short time, I can tell you that I have already experienced the oppressive and punitive nature of CSA in its current form. As someone who worked as a police officer committed to public safety

in Los Angeles before getting into trucking, I ask the Committee and the Agency if there isn't a better way to be monitoring and promoting safety on our nation's highways.

There are three overarching problems with the program that I will discuss today, in addition to telling my story about the complications my business has faced with this overly-burdensome system. These problems are: 1) *the lack of fairness and accuracy built into the system; 2) unfair and arbitrary severity weightings for violations, and; 3) the failure of FMCSA to account for whether a truck driver is actually at fault for the accidents reported in CSA.* In short, CSA, although well-intended, is today a program with considerable flaws that have wide reaching real-life implications for motor carriers. This is disconcerting to say the least, particularly in light of the fact that this program has never undergone a meaningful rulemaking.

Before I begin though, let me make it clear how this system unfairly targets small businesses. FMCSA urges shippers and brokers to use carriers who have been inspected versus those who have not been inspected. Moreover, brokers and shippers feel as if they will be liable if they do not use carriers with positive CSA rankings, something only achievable if a carrier undergoes lots of clean inspections. As a small carrier, I am less likely to be inspected as often as a carrier who has hundreds, if not thousands, of trucks, so it is difficult for me to show a score, much less the positive scores demanded by shippers and brokers.

Once a small carrier gets into the system, the only way they stay relevant is by receiving only 100-percent clean inspections, but this is not a real-world scenario. Roadside inspections, as I will discuss, are highly subjective, and law enforcement, as I know full well, can be over-zealous at times. As a small carrier, and I have seen this first-hand, just a few minor violations can send a score sky rocketing, putting the carrier nearly out of business as it becomes evident no one no one will employ your services because the system shows you are a risk, even though you operate safely. As a small carrier, I do not have the resources to fight citations and violations in court continuously, and if I should, overturned adjudications are irrelevant to the CSA system anyway, as citations are reflected as safety violations in the system even when they are overturned in court.

CSA Reports "Alleged" Violations Without Providing My "Day In Court."

As stated, I have quickly fallen victim to a bureaucratic system that capitalizes on minor mistakes and as a result have nearly gone out of business. In May of last year, one of my drivers was cited in Arizona for not keeping his logbook current. Over the next two weeks, the driver

had three subsequent inspections, one of them was clean and in the two others law enforcement determined there were violations in how the driver was characterizing his time under hours-of-service regulations as well as a minor violation with his trailer's reflective tape. Regardless of whether or not these violations occurred as alleged by law enforcement, as the owner of my business I took remedial steps with the driver, including requiring him to attend additional training on hours-of-service compliance and how to fill out logbooks to correctly record time under the regulations in order to prevent future issues and impacts on my record as a motor carrier.

Procedurally, FMCSA provides only one way to dispute or challenge violations under CSA, the DATA Q system. This is true whether or not a citation versus a warning is issued or if that citation is upheld by a court of law – under CSA these are all considered violations. And under DATA Q, even if you win in court, the violation still remains in CSA's database. I decided to challenge one of the violations noted above after talking with the driver and examining the circumstances. Our complaints in the DATA Q system simply went back to the state police officer who wrote up the violations at the roadside - as is FMCSA policy to follow state procedure. The citing officer then became judge and jury in the Data Q process on my complaint. Needless to say, the alleged violations still stand.

I place emphasis on "**alleged violations"** because a citation is issued at roadside and that citation may be challenged in court with the opportunity for it to be overturned. However, within the CSA system, the individual is assumed guilty at the time of the roadside citation, and it is at that time it is reported as a CSA safety violation, which is separate from a citation issued under state law.

Often small business truckers like me do not have the resources or time to continuously fight roadside citations in court – despite the fact that many citations may be egregious or arbitrary in nature and many are overturned in court. Large carriers, on the other hand, have legal departments and budgets that allow them to fight violations while keeping their drivers on the road. Take for example when a driver who may have no control over the equipment, is cited for an equipment violation, such as sleeper birth on a company-owned truck not meeting the size requirements under the law. That driver will likely decide that he has no way to fight the citation in court because he cannot afford to take time away from trucking in order to appear in a courtroom hundreds of miles away from his home or where business takes him on the court date.

However, even if the trucker takes the citation to court and wins, will still appear on the CSA system as a violation. The driver's only option is then to fight the CSA violation through the DATA Q system, which FMCSA uses to send the challenge back to the state for determination. As noted in my situation, the state then typically sends it back to the officer who issued the citation and recorded it into the CSA system. This is a tremendous amount of power for the police officer who is able to act as judge, jury, and executioner by issuing and upholding citations that in essence could put a small carrier out of business. A citation under FMCSA is the equivalent of a conviction, no matter what the court says.

CSA Does Not Have a Reliable Relationship to Safety.

CSA is flawed because its scoring system, which is centered around Behavior Analysis and Safety Improvement Categories, or BASICs, is prejudicial, arbitrary, or otherwise (as in the case of the "Crash Indicator BASIC") awaiting implementation – yet the impacts of this partial system are far reaching and disproportionately punish small businesses. Moreover, as my story will illustrate, once a carrier enters the "system" with an unfavorable score, it has near immediate business consequences with little opportunity for remedy as it is unclear how to expunge blemishes, cure minor wrongs, or otherwise purge inaccuracies – all while brokers refuse to offer shipments, shippers deny your rates, and insurance companies either raise your rates or cancel your policy altogether simply because you have a high score which may have been unfairly assigned.

In the CSA system, higher scores under each BASIC correlate with the perception of "unsafe" practices. Violations and citations issued at the state level are inputted into the system and they are assigned a severity weighting to then place drivers into percentile rankings based on a range of 0 to 100. The higher the percentile, the more unsafe a driver or carrier is considered to be and hence, considered more likely to crash.

Following the violations above, my score as a carrier went from 0 to 79 in a matter of weeks. Since that time, and even though I have ensured that my driver has completed classes in hours-of-service compliance, I have been refused loads by brokers and shippers and my insurance rates have escalated. I inquired with FMCSA on how to improve my score, and the answer I was provided with was to obtain more "clean" inspections. Having done that in the interest of proving that we are a compliant company and that we fixed whatever problems may

have existed, we underwent a number of inspections, all of which came back clean. However, under CSA, our score bizarrely went up to over 80 without any justification and has been that way for more than a year since the initial violations. This is exactly the opposite result of what should have happened according to information provided by FMCSA on CSA.

However, for a medium to large size carrier, the same three violations during a two week period are likely to hardly cause a blip in their BASIC scores. And for these larger carriers, it does seem that clean inspections do have a far-greater impact in reducing their CSA scores. But why should this only work for larger carriers? Further, for larger carriers a series of violations is likely to point at a systematic problem across the carrier, where the same thing for a small carrier is more likely to be something that is easier to correct. However, under CSA, the small carrier gets little to no credit for taking the corrective action and getting the clean inspections that FMCSA tells us we need to improve our scores.

CSA's purported purpose is to support FMCSA in its mission to reduce crashes, injuries and fatalities involving large trucks. FMCSA, in years past, has relied upon a very time intensive process for assessing carrier safety fitness by an on-site compliance review (usually triggered by roadside inspections) in order to ascertain whether problems existed within a carrier's safety management program. Under this system, FMCSA was only able to conduct compliance reviews on approximately two percent of active carriers. They also had to rely on states to supply them with current information for processing which was inadequate in many cases.

CSA was designed to be a more focused roadside inspection system, with data collected from these roadside inspections uploaded to a central data base called the Motor Carrier Management Information System (MCMIS). While CSA is a more focused system than the previous system, and as stated the intent is laudable, it is overly complicated with different formulas and rates for each BASIC, often producing a result that is biased against small carriers.

In part, the problem lies with the fact that a federal program is designed to be dependent on 50 different states reporting in a uniform and timely manner on alleged violations and citations. This alone is a challenge, as so much within motor carrier safety enforcement, and law enforcement in general, is subjective. As a former law enforcement officer, I know firsthand that police officers weigh a wide variety of variables when making decisions over citations. Law enforcement officers are human – what one state trooper will issue a citation for; another is just as likely to provide a warning. This does not just happen in trucking – think about when you or

someone you know was pulled over for speeding or simply having a tail light out unbeknownst to you. One officer may give you a ticket while another may simply give you a warning. However, in trucking this level of subjectivity, when combined with the complex CSA system, has significant negative impacts for small truckers like me.

Arbitrary and Inadequate Severity Weightings.

In addition to the lack of "due process" safeguards, the severity weights used in CSA are arbitrary and assign accountability based on no correlation to increased crash-risk. This is especially true in the Fatigue BASIC, where a large percentage of the violations captured are not true hours of service safety violations, but are rather "form and manner" or administrative violations (e.g. the driver forgot to write down a bill of lading number rather than exceeding a daily driving limit). According to FMCSA, approximately 35% of all hours-of-service violations are simply form and manner violations and not a result of exceeding allotted driving or on-duty hours. For example, a driver who is cited for failing to sign his Daily Vehicle Inspection Report (DVIR) is assigned a severity weighting of 4 under the Fatigue BASIC– despite the fact that the signing of this report has nothing to do with fatigue or safety. It is simply a paperwork violation associated with an innocent mistake, yet the severity level assigned by FMCSA for this violation is only slightly lower than that assigned to a violation resulting from not keeping a current record of duty status.

For those using paper logs, which will remain perfectly legal until the DOT implements a rulemaking requiring the use of electronic logging, the violation of "driver's record of duty status not current" has a severity rating of 5. Effectively, that very same violation for those that have an electronic on-board recorder (EOBR), which are typically large companies, receives a severity weight of 1. Failure to sign a log or put a bill of lading number on the log sheet has a 2 severity weight but if that information is missing with an EOBR printout, the severity weight is 1. Currently, I am aware of very few small carriers have EOBRs on their trucks because of cost and since they are the driver and owner they see no need for them, but under this system they are arbitrarily punished for making a perfectly legal business decision.

FMCSA also has a system within MCMIS called the Inspection Selection System whereby the data from roadside is sorted and the system sends out information to enforcement that certain carriers:

- Should be inspected (warranted as a high risk carrier)
- Optional to inspect
- Pass where inspection is not warranted.

I understand that this helps law enforcement at roadside to focus on the "bad actors" within the trucking industry. Under CSA though, it is impossible for a carrier to obtain a score without at least three inspections in the Driver Fatigue Basic (five in other BASICs). This punishes a small carrier who is likely to get inspected less frequently than a large carrier with hundreds, if not thousands of trucks.

It may sound as if small businesses can fly under the radar screen, but FMCSA has informed shippers and brokers that they need to be checking the Carrier Safety Management System where the percentile scores and rankings are posted when selecting a carrier. The small carrier who has three relevant and clean inspections under the Driver Fatigue BASIC still may not get a percentile ranking because **in order to receive a percentile ranking you must have one violation**. So a carrier with three clean inspections does not receive a percentile ranking and when shippers and brokers look for that carriers ranking they find nothing often choosing a carrier that has had a violation thus a percentile ranking. Again, this seems to be a system that is punishing small carriers who are operating safely simply because they are small carriers.

Lack of a Crash "Fault" Indicator.

Another primary problem with CSA revolves around the Crash Indicator BASIC. Under CSA, crash data is collected without any determination of fault, despite the fact that police reports collect this information for use throughout the criminal justice process. Just to be clear, FMCSA relies heavily on police input, but inconsistently relied upon that. Whereas in DATA Q FMCSA defers completely to law enforcement to judge their own inspections, FMCSA does not rely upon law enforcement when it determines that a truck driver is not at fault in an accident. This means that without the fault determination, any truck involved in an accident is indistinguishable from another in FMCSA databases, and that has significant prejudicial impact on both driver and motor carrier safety profiles.

For example, nearly 20% of all crashes or other "negative interactions" with trucks involve another vehicle rear-ending a moving truck. However, CSA displays this type of crash without any indication that the trucker was not at fault. I have learned about another real-world

example where one truck that was hit by multiple vehicles as part of a 50-vehicle accident. Despite the fact that the trucker was able to stop his truck and not hit anyone, the seven fatalities that resulted from this major accident are all listed in the trucker's record under CSA with no distinction or notation about what really happened. With this flawed data publicly available to freight brokers and shippers, incomplete and false CSA data is being used to essentially red-line carriers. As illustrated with my example, regardless of fault or control, once a small carrier receives a negative score, it is nearly impossible to cure before your business is put in serious jeopardy.

Conclusion.

CSA replaced SafeStat as FMCSA's safety management and performance system in December of 2010. We are now a year and a half into the new system and its flaws are becoming more obvious. In short, CSA, while well meaning, in its incomplete form is having real-life impacts on motor carriers.

Given the significant role that CSA is primed to play in FMCSA's future enforcement and regulatory activities, it is important that the agency get the system right. Unfortunately, there are still major hurdles it must overcome.