

**COMMENTS BY THE MOTOR CARRIER REGULATORY REFORM COALITION
ON THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA)
NOTICE RE MEETING OF THE
MOTOR CARRIER SAFETY ADVISORY COMMITTEE**

**Federal Register Number: 2018-14029
FMCSA-2006-26367-0153**

Filed: July 18, 2018

To follow are the comments of the Motor Carrier Regulatory Reform Coalition (MCRR), a group composed of 7 trade associations which previously submitted written comments to MCSAC and attended its June 2017 meeting concerning issues which are the subject of the noticed meeting for July 30 and 31, 2018.

Representatives of MCRR will be in attendance at the current meeting and request that they be allowed to participate actively in discussions concerning Task 17-2 and 17-3. Attached hereto and incorporated by reference are previous comments which MCRR has offered on these discussion topics.

With respect to Task 17-2, a “strategic plan” for fiscal 2018 through 2022, MCRR submits that no discussion of such a plan is appropriate without consideration of subsequent events since the June 2017 meeting. On July 13, 2018, the FMCSA issued a notice terminating the proposed needed enhancements to its SMS methodology which presumably reverts its analysis to a prior version discredited by numerous third-party studies. It follows that these actions should terminate any future use, need or financial commitment to SMS methodology. Importantly, it should terminate the effort by the Agency to publish SMS data or methodology for public use.

Moreover, the July 16 publication of the Corrective Action Plan required by the FAST Act, is replete with suggestions of unquantifiable costs, benefits and results. This precludes MCSAC from approving or effectively commenting on a strategic plan for fiscal 2018 through 2022 at its July 30-31 meeting.

From the Agency’s proposed action and its endorsement of the NAS “IRT” Model, it cannot be determined whether SMS and its publication is to be totally abandoned. The FMCSA has not met the FAST Act’s requirements for its restoration. The use of SMS in making an ultimate safety fitness determination was abandoned when the Agency dismissed its Notice of Proposed Rulemaking in 2016.

Accordingly, MCRR submits any consideration of long term planning or government expenditures for the further development, publication or use of SMS methodology is inappropriate.

A cursory review of FMCSA's Corrective Action Plan shows that it is actually the strategic plan for advancing a new "big data" initiative to somehow replace the objective audit procedure and regulations which have been in place for decades.

If, as it appears, further development of SMS methodology is to be abandoned and its systemic flaws are not to be addressed, then all the expenditures on SMS provide no "sunk cost" predicate for further expenditures developing a new, unproven IRT Model. This is particularly true when cheaper, more effective alternatives with proven results are available as discussed under 17-3 below.

MCRR submits that the Corrective Action Plan, and the IRT Model which apparently will become the Agency's sole focus for safety fitness reform, fails as a strategic plan for the following reasons:

(1) Additional relevant areas of inquiry and data development have not been identified nor has any strong relation between those areas of inquiry and safety compliance been identified. The National Academies of Sciences offered only a handful of suggestions, none of which have a proven correlation to accident causation and none of which constitute violations of the existing FMCSRs or state safety regulations (e.g., driver turnover, method of pay, road conditions, etc.).

(2) In this context MCRR submits that MCSAC would be remiss in approving any strategic plan that contemplated the IRT Model as proposed. The Administrative Procedure Act and the FAST Act make clear that any ultimate new safety fitness rule must be vetted through notice and comment. The Agency has acknowledged in its NPRM that ultimately the metrics and calculations for making a safety fitness determination must be defined and approved. Yet the IRT Model by its very nature suggests that the Agency and academic consultants should ultimately be free to move the gate post at will without notice or comment, due process or administrative and judicial appeal.

(3) Attached hereto as Appendix A is an entirely preliminary review of the Agency's 10-page Corrective Action Plan. Therein are raised additional issues which must be considered before MCSAC can endorse a four-year strategic plan with the IRT Model baked into the cake as its primary ingredient.

For these and other reasons, MCRR submits that approval of the Agency's 2018-2022 Strategic Plan has been overtaken by events and that any endorsement or proposal which incorporates the unvetted IRT Model should be withheld.

Task 17-3 Regulatory Review

The Notice of the upcoming meeting notes that FMCSA has tasked MCSAC with providing recommendations concerning implementation of Executive Order 13771 as a follow-up to its June 2017 meeting. At that meeting, MCRR introduced a comprehensive regulatory reform agenda. It was allowed only several minutes to present this proposal

and no meaningful opportunity has been provided for direct follow-up or discussion of these issues with the Agency or U.S. DOT despite subsequent presentations and overtures.¹

Instead of addressing the principal cost and reform issues MCRR has tabled, the Agency has only proposed eliminating “nothing burger” rules of commerce that establish needed uniform marketplace standards such as cargo claims – which have no administrative cost burden on the Agency, yet are consistent with the Agency’s obligation to foster truck transportation under the National Transportation Policy.

MCRR wishes to participate in the MCSAC meeting to discuss its unaddressed regulatory reform agenda. Of particular importance is the use of the biennial desktop audit patterned after the new entrant audit which, with reasonable and quantifiable cost, would allow the Agency to actually survey motor carrier compliance of all licensed, authorized and insured carriers and issue a safety fitness determination upon which the public could rely.

At the MCSAC meeting, the Coalition will present practical cost estimates of this procedure which has already been endorsed by the Agency, as an accurate compliance standard for new entrants.

Now is the time, MCRR submits, to consider such alternatives before the Agency releases a proposed new four year strategic plan predicated on unverified and unapproved assumptions about the practical efficacy of the IRT Model.

Finally, in addition to participating in dialogue concerning MCRR’s previous proposals and the other proposed regulatory reform issues, MCRR asks that MCSAC discuss or place on its agenda for further discussion the possible use of new fatigue measurement technology as part of the hours of service reform.

Implementation of the ELD has caused much industry angst, the focus of which is on the rigid application of hours of service and its effect on productivity without any reference to driver fatigue. Whether a driver is tired, not miles traveled, is the real issue regardless of whether a CMV is being driven for personal conveyance or under dispatch. The circadian rhythms and “restorative sleep” assumptions that underly the current HOS rules have been subsequently challenged by the very academics whom the Agency relied upon in promulgating the rules themselves. A pilot program to consider the return of sleeper berth flexibility is underway.

Missing from the trial program is any recognition of the development of technology which allows for the direct measurement of fatigue. Actigraphy and other means of in-cab technology are available to allow a driver, and management, to measure and quantify alertness. Use of such technology in the trucking industry could be effective,

¹ See Appendix B for MCRR Comments to MCSAC filed June 7, 2017 and June 12, 2017. See also MCRR’s related presentation to the U.S. DOT dated November 16, 2017, posted at <https://www.regulations.gov/document?D=DOT-OST-2017-0069-1680>.

MCRR believes, with a small pilot grant for the purpose of considering actigraphy as a way to provide an alternative means for allowing greater driver flexibility while more accurately predicting fatigue.

Respectfully submitted,

The Motor Carrier Regulatory Reform Coalition:

AIR AND EXPEDITED MOTOR CARRIERS ASSOCIATION
ALLIANCE FOR SAFE, EFFICIENT AND COMPETITIVE TRUCK TRANSPORTATION
AMERICAN HOME FURNISHINGS ALLIANCE
AUTO HAULERS ASSOCIATION OF AMERICA
NATIONAL ASSOCIATION OF SMALL TRUCKING COMPANIES
THE EXPEDITE ALLIANCE OF NORTH AMERICA
TRANSPORTATION LOSS PREVENTION AND SECURITY ASSOCIATION

APPENDIX A

Other preliminary concerns about the Agency's Corrective Action Plan include:

(1) Estimated costs of IRT are undeterminable because the Agency admittedly excludes "federal staff time and costs associated with changing existing FMCSA information technology systems." (See pages 1 and 2.)

(2) Agency proposes a new "standing committee" to be staffed by "subject matter experts chosen by the NAS" with "guidance and input" to be provided by MCSAC. Thus, this proposal offers no assurance that the academics are disinterested "subject matter experts" (page 4) or that in the development process any cost benefit analysis will be conducted to determine the effect of new proposals on the trucking industry as required by the FAST Act. In this regard, although the Agency purports to be planning a "public forum" to "discuss data issues in July 2018" (page 4) the month has passed, no announcement has been published, and MCRR has no confidence that a "listening session" can possibly address the complex systemic issues involved.

(3) The Agency faults the public for "not providing specific ideas for action on developing the IRT Model" yet neither the Agency (after developing SMS algorithms for over eight years), nor NAS has provided "specific ideas for action," quantified the costs or predicted its efficacy. (See page 5.)

(4) The Agency says it is establishing a no cost agreement with university based expertise in the IRT Model (page 5). MCRR believes that a complex statistical analysis designed behind closed doors by academics hired by the Agency has not proven to be a successful incubator for the SMS methodology even when measuring actual safety violations. Thus, open-ended use of academics to determine whether carriers are in compliance using unidentified areas of inquiry is not prudent.

(5) The Agency acknowledges that the underlying model will be complex but professes that it will work with stakeholders to ensure the output is understandable (page 6). In view of the Agency's ongoing IT track record and data management concerns highlighted in MCRR's regulatory reform agenda, complexity should give way to simplicity and the biennial audit procedure discussed in our comments should be considered.

(6) The Agency states that it "expects there will be iterations of the IRT Model over time" with no indication of how the model will satisfy the APA requirements for notice and opportunity when the rules are changed. (See page 6.)

(7) The Agency proposes an "inspection modernization" program of unknown content, cost and effect. (Page 7.)

(8) The Agency proposes to develop “user-friendly data and computer code” and to provide simplified MCMIS snapshots, but has not addressed validation with respect to how the data will be collected or displayed. (Page 9.) As shown in MCRR’s regulatory reform proposal the Agency has been challenged to deliver timely the URS data and to meet even the basic task of entering information concerning agents and insurance for exempt and private carriers. Undertaking additional data obligations when these Congressional mandates have not been met is not prudent.

(9) Moreover, the Agency has failed to answer the question of how the IRT Model could possibly improve actual information for truck fleets.

(10) At page 9, the Agency says it will gather “public input” on how “the public uses SMS data.” This vague assurance ignores information repeatedly presented to the Agency. Although the FAST Act requires as a prerequisite to further safety initiatives that this issue be examined, to date no study has been conducted nor input from the shipping and carrier public sought.

(11) The Agency provides no discussion on how it will treat absolute versus relative metrics but states it will develop “robust communication and outreach to manage resulting changes.” Unaddressed are FAST Act requirements for rulemaking. Will this “robust” plan include notice and comment procedures before using this model to generate intervention thresholds? (Page 10.)

(12) The Agency proposes to “develop and run small scale IRT Models by September of 2018” (page 10) – yet the Corrective Action Plan fails to identify areas of inquiry to be discussed, fails to establish any proposed metrics, and fails to indicate whether the IRT Model will be complementary to or a replacement of SMS. September 2018 is 2 months away. After 12 years and access to massive data, the same academics have been unable to deliver an effective “big data system.” Based on past experience, MCSAC and the Agency should have no confidence that such aggressive time limits and hopes for outcomes are plausible or reasonable.

(13) Although the Corrective Action Plan calls for MCSAC input at three points in its text (see pages 4 and 10), the published agenda for this meeting makes no reference to the Plan. Exactly when will such input be requested? If not now, at some future session for which necessary public notice has not yet been provided?

In sum, the so-called Corrective Action Plan does not meaningfully advance the FAST Act or NAS’ inquiry beyond where it stood when the report was issued last Fall. The Agency has merely endorsed a theory without a plan.

APPENDIX B

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AIR AND EXPEDITED MOTOR CARRIERS ASSOCIATION
ALLIANCE FOR SAFE, EFFICIENT AND COMPETITIVE TRUCK TRANSPORTATION
AMERICAN HOME FURNISHINGS ALLIANCE
AUTO HAULERS ASSOCIATION OF AMERICA
THE EXPEDITE ALLIANCE OF NORTH AMERICA
TRANSPORTATION LOSS PREVENTION AND SECURITY ASSOCIATION

**Further Details on Reform and Strategic Planning Proposals
Submitted to MCSAC by These Commenters on June 7, 2017**

The Comment previously submitted by these stakeholders does not propose changing a single word in the core Federal Motor Carrier Safety Regulations at 49 CFR Parts 382, 383 and 390-399. These Commenters, however, do seek to repeal and replace a series of quasi-rules developed in recent years by the Federal Motor Carrier Safety Administration ("FMCSA" or "Agency"), which issued them without use of notice-and-comment rulemaking under the Administrative Procedure Act ("APA"). Such quasi-rules are clearly within the scope of Executive Order No. 13771 (January 30, 2017) and related presidential actions regarding regulatory reform; see definition of "regulation" in E.O. 13771, sec. 4. These quasi-rules should be replaced in accordance with a new FMCSA strategic plan focused on sound data, simplified rules, due process, and attention to marketplace conditions that pose future threats to truck capacity. Here are further details on the six proposals offered by these stakeholders as part of their Comment in this docket dated June 7, 2017 (which is attached for the convenience of MCSAC members):

1. Replace SMS with Biennial Audits

The Agency should abandon its current use of a mix of SMS methodology, focused audits, enhanced investigative techniques and other related "guidance" in the safety rating process, replacing them with a continuation of new carrier audits and with similar biennial audits of all registered carriers. FMCSA should condition any less than satisfactory finding upon an objective compliance review as required by existing regulations at 49 C.F.R. Part 385.

Simply stated, SMS scoring is incapable of predicting the safety performance of individual motor carriers. This was demonstrated by these Commenters in their submissions to the record for the now-abandoned Safety Fitness Determination rulemaking ("ASECTT SFD Comments"); see Docket No. FMCSA-2015-0001, Tracking No. 1k0-8psk-2m3b (May 23, 2016), at pp. 26-36 and Exhibits A, B. SMS also has failed to achieve its avowed goal of providing comprehensive coverage of the carrier population. As shown by April 2017 MCMS data, only 12.9 percent of all carriers have been scored in the Vehicle Maintenance BASIC, and the corresponding score coverages for the Hours of Service and Unsafe Driving BASICS are 10.0 and 6.9 percent respectively.

The Agency's current use of offsite audits for many new entrants (despite the reference to on-site audits in 49 C.F.R. 385.315) has affirmed that a remote or desktop audit is an accurate, cost-effective tool for determining carrier compliance.

Petitioners propose that the similar desktop audit be conducted of every registered motor carrier, on at least a biennial schedule corresponding to its census update deadline. This audit would be conducted by federal and state officials or outside contractors at the cost of approximately \$300 per audit, the expense to be borne by the registrant. Desktop audits would result in a finding that a carrier is “fit to operate and fit to use” – in accordance with the Agency’s certification responsibilities under 49 U.S.C. 31144 and with the directive from Congress in SAFETEA-LU that the Agency develop a method for reviewing and rating all registrants. If no such finding appears appropriate, the Part 385 safety rating process or existing “imminent hazard” procedures would be available to the Agency.

The commenting organizations are largely composed of small carriers under SBA guidelines. The compliance posture of all carriers, both large and small, should be measured under the same uniform yardstick, which the biennial desktop audit would ensure. The details of such a program have been developed by experienced safety consultants working with Commenters (see ASECTT SFD Comments, at 60-63 and accompanying Affidavit of Richard Gobbell at 9-12) and can be shared upon request.

2. Replace URS with a simple, comprehensive, publicly accessible system.

Congress’ direction to the Agency to enroll evidence of agents and insurance for all registrants has lingered for over 10 years and has not been achieved. The public deserves simple, comprehensive, accurate and user-friendly access to all registrants’ census information including current agents, insurance, telephone numbers and email addresses to ensure carrier qualifications and avoid identity theft and fraud. The Agency’s failure to prescribe equal insurance requirements and filings for all carriers regardless of whether they are public, private or exempt is overdue, and discriminatory against regulated for-hire carriers.

Although the various regulatory exemptions for particular motor carrier industry sectors may have made sense prior to economic deregulation in 1980, their primary significance in recent years has been to defeat the efforts of the Agency’s code writers to fully implement universal on-line registration under the enormously complex “final” URS rule issued in 2013! A replacement for URS that collected only basic census information for all fleets would not require a registration form running to 20 pages in hard copy, or instructions running to 30 pages.

3. Separation of FMCSA’s investigative and adjudicatory functions

Currently, the Agency’s safety enforcement personnel are the sole administrative adjudicators of proposed safety ratings. There is no assurance that appeals will receive due-process review by an Administrative Law Judge before a carrier is placed out of service by an unsatisfactory safety rating, or is subject to losing its customers under a conditional rating.

4. Adjudicatory and administrative functions of FMCSA should be moved to the Surface Transportation Board or other separate panel within U.S. DOT

Although FMCSA is the sole agency within the U.S. DOT which has comprehensive regulatory authority over the motor carrier industry, FMCSA has repeatedly self-defined its primary mission as enforcing safety regulations with regard to commercial motor vehicles, not to administer the National Transportation Policy as defined in 49 U.S.C. 13101. There is a backlog of non-safety related commercial issues (such as leasing rules, household goods issues, broker practices under MAP-21, and transfer rules) which have not been addressed by FMCSA. These issues are best referred to and determined by an independent agency.

Rail carriers currently operate under a division of functions similar in effect to what Commenters propose here – with safety enforcement handled by the Federal Railroad Administration and regulatory adjudications handled independently by the Surface Transportation Board (“STB”). While the STB obviously would need staffing up to handle the larger caseload likely to arise in the motor carrier industry, it does have appropriate experience and legal expertise for handling adjudications in accordance with administrative due process.

5. Replace use of website notice and guidance with APA-compliant rulemaking

The Agency should cease using “guidance,” “interpretations” and similar devices for announcing measures with substantive legal effect. SMS of course is a prime example of an elaborate quasi-rule that has wide-ranging legal consequences but will be found nowhere in the Code of Federal Regulations. It is the product of complex algorithms devised and repeatedly refined by contractors behind closed doors, and of a long series of “listening sessions” and other “rulemaking lite” procedures. Other examples of quasi-rules have included website pronouncements urging shippers and bus passengers to use dubious SMS methodology for selecting carriers which the Agency has found to be fit to operate; use of “vetting” procedures for new carrier registrants without any defined timetable or pass/fail criteria; the recent (albeit quickly corrected) removal of public information from the Agency’s website without prior notice; and the use of “enhanced investigative techniques” and “focused audits” under which protracted on-site investigations can end only in two ways: with a rating of less than satisfactory, or with a cryptic notation on the Agency’s website that the audit was “non-ratable.”

6. Seek clarification of scope of federal preemption of state laws

As pointed out above, FMCSA has been designated as the primary regulator of interstate motor carriers. Its safety fitness determinations under 49 U.S.C. 31144, and under the Commerce Clause itself, set the preemptive standard for not only a carrier’s “fitness to operate” but also its “fitness for use.” Other regulatory issues such as the status of lease operators as independent contractors, the setting of hours of service regulations, the establishment of cargo claim procedures, the operations of freight brokers and the protection of interstate household good shippers, likewise have all been delegated to the FMCSA with preemptive effect.

With respect to the above-listed areas of motor carrier safety and commercial regulation, carriers and the shipping public should be able to refer any issue of

general transportation importance, any question as to interpretation of regulations and any court referral under the doctrine of primary jurisdiction to a separate adjudicative panel as proposed in paragraph 4 above for interpretation of laws and regulations. There is a clear need for a federal regulatory arbiter of such issues in order to advance the National Transportation Policy, promote uniform national rules in these areas, and apply the doctrines of implied, field and express preemption.

The Agency's next strategic plan should recognize the importance of such an arbiter in reducing regulatory uncertainty. Much of this uncertainty is caused by escalating jury verdicts under state law in cases where juries are misapplying SMS data, misreading owner-operator leasing rules, and ignoring federal cargo liability standards. These Commenters' members already are seeing increases in liability insurance premiums, because insurers perceive regulatory uncertainty as a source of increased risk. In turn, premium increases could reduce the supply of truck transportation at a time when freight volumes are still recovering from recession levels. Even if FMCSA chooses to read its regulatory responsibilities narrowly, it cannot ignore such potential impacts on the ability of motor carriers to comply with the Agency's own insurance regulations.


In summary, the Agency's regulatory reform agenda should begin with critical examination of the many quasi-rules that it has promulgated in recent years, including but not limited to SMS. To the extent these quasi-rules were devised without benefit of APA due process, Commenters submit that they likewise can and should be withdrawn without APA notice and comment. With regard to strategic planning, the Agency should start by rethinking its entire approach to regulation of motor carriers. Because sound regulation depends on sound data, the Agency's first and foremost strategic goal should be to improve the quality, accuracy, completeness and accessibility of its data. In addition, it should pay renewed attention to the need for regulatory certainty and uniformity as support for sound marketplace conditions in the nationwide industry it regulates.

Commenters would be happy to address any followup questions from MCSAC members. Thank you for this opportunity to comment on the Committee's interconnected tasks relating to strategic planning and regulatory reform.

Attachment: Comment filed June 7, 2017

Mark Andrews - Comments

The is a Comment on the **Federal Motor Carrier Safety Administration (FMCSA) Notice: Meetings: Motor Carrier Safety Advisory Committee**

For related information, [Open Docket Folder](#) 

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ASECTT and five other organizations
(see Comments)

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Mark J. Andrews

Comment

PREFACE: This comment is being timely submitted on June 7, 2017 for a meeting of the Motor Carrier Safety Advisory Committee (MCSAC) on June 12-13, 2017. Commenters are the following organizations of transportation stakeholders:

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

Contact information for the above Commenters, and for their personal representatives who expect to attend the MCSAC meeting, has today been emailed to Ms. Shannon Watson at the headquarters of the Federal Motor Carrier Safety Administration (FMCSA), as required by the Federal Register notice dated May 26, 2017 concerning this meeting.

COMMENTERS' CONCERNS: This comment pertains to Task 17-2 (2018-2022 Strategic Plan) and related Task 17-3 (Regulatory Review), as described in the above-referenced Federal Register notice. FMCSA already has made a commendable start on the latter task, by withdrawing or suspending regulatory projects such as:

-- the Unified Registration System, which remains in limbo for most registrants because of chronic IT issues more than three years after its publication as a "final rule."

-- the proposed Safety Fitness Determination rule, which has been withdrawn until completion of the Congressionally mandated National Academies investigation into whether its underlying Safety Measurement System (SMS) is capable of predicting safety performance of individual motor carriers.

-- the recently withdrawn proposal for increasing minimum insurance coverage requirements for motor carriers.

Commenters submit, however, that the withdrawal of regulatory schemes such as these should go hand-in-hand with consideration of how essential FMCSA functions can be performed with greater fairness,

transparency, simplicity and accuracy. This is where strategic planning under Task 17-2 can play a role. Given that progress on accident reduction has stalled out despite the command-and-control approach taken by many recent FMCSA rules, Commenters submit that now is the time to "repeal and replace" that approach with a new regulatory strategy having six key elements:

1. Replace SMS -- with its reliance on the wildly varying enforcement priorities of roadside inspections in 50 States -- by a uniform procedure for biennial desktop audits of all carriers with USDOT numbers, funded by a registration renewal fee, so that all carriers (for a change) are examined and found "fit to operate and thus fit to use."
2. Replace URS with a simple, comprehensive, accurate, user-friendly and publicly accessible system that can capture essential insurance, safety and contact information for all truck fleets.
3. Separate FMCSA's investigative and adjudication functions, so that safety enforcement personnel are not also empowered to act as judge and jury in penalty and safety rating cases. Other agencies make much greater use than FMCSA of independent, legally trained administrative law judges who can insist on due process and data integrity in enforcement matters.
4. Consider moving FMCSA's adjudicative functions into a separate panel within USDOT, to ensure fair dispute resolution and comprehensive administration of the agency's commercial regulations (leasing rules, household goods, broker practices, transfers) as well as its safety regulations -- for greater consistency with the National Transportation Policy.
5. Re-focus FMCSA on the need for transparency and compliance with the Administrative Procedure Act in its rulemaking activities, rather than endlessly proliferating quasi-rules in the form of "guidance." Examples of quasi-rules include SMS scoring "enhancements"; the "vetting" of new applicants without defined pass/fail criteria, and the use of "enhanced investigative techniques" in safety audits.
6. Seek legislative clarification on the scope of federal preemption of state laws relating to such issues as carrier prices, routes, services, cargo liability and use of independent contractors, in order to ensure uniform enforcement and a vibrant competitive marketplace. Such legislation should explicitly provide that court referrals under the doctrine of primary jurisdiction are within the scope of the functions of the separate adjudicative panel proposed in paragraph 4 above.

Given that the seven business days between the Federal Register notice date and this due date for comments have limited the opportunities for Commenters to consult with each other on this matter, Commenters reserve the right to supplement the above observations in written or verbal presentations at the upcoming MCSAC meeting. For this purpose, we respectfully request an allocation of 30 minutes on the MCSAC agenda for either June 12 or 13. Thank you for your consideration.