

TRANSPORTATION & LOGISTICS INTERNATIONAL

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Herzog Railroad Services helps customers fulfill their need for speed. [pg.22](#)



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// The Safety Measurement System catalogs traffic and DOT violations accumulated by vehicles operating under your DOT number across the country.

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front

SAFETY (Scores) First

Navigating the Carrier Safety Measurement System can be challenging without the right approach.

— H. Peyton Inge IV

It's likely that you built your company from the ground up, growing from one truck to multiple vehicles. Your accounts have more freight and you want to keep the business. Good drivers are scarce and idle rigs cost money. The obvious solution is to simply hire more drivers. Sounds easy, right? Well, not quite.

The Federal Motor Carrier Safety Administration's (FMCSA) new Safety Measurement System (SMS) monitors the violations accumulated by your drivers and measures the safety performance of your company against competitors. The worse your score, the more likely the FMCSA will initiate a targeted investigation of your company. The million-dollar question is, "What can you do to improve your company's safety score?"

What is the Safety Measurement System?

First, it's important to know that these violations are more common than you might think.

Between 2012 and 2014, the FMCSA flagged nearly one out of every 10 motor carriers for allegedly employing unsafe drivers; poor vehicle maintenance; drivers testing positive for controlled substances or alcohol; or fatigued and/

or unfit drivers. The agency cited more than 63,000 interstate or intrastate hazmat trucking firms for infractions among nearly 750,000 that were subject to those inspections, according to our firm's recent analysis.

The SMS is a complicated computer program that catalogs traffic and Department of Transportation (DOT) violations accumulated by vehicles operating under your DOT number across the country. The SMS system organizes the total violations a carrier receives into seven different categories. The older the violation, the less it hurts your score, which is compared to competitors with a similar number of trucks to determine where you stack up.

The intent behind SMS is to prevent crashes by detecting unsafe carriers before collisions occur. In extreme circumstances, investigators using the SMS system will place carriers out of service if progress is not observed during the intervention process.

The results of your SMS score/ranking is available from the FMCSA at the bottom of the web page listed here: <http://csa.fmcsa.dot.gov/yourrole/motorcarriers.aspx>

The SMS system assigns your DOT

number to a Safety and Fitness Electronic Records (SAFER) percentile score. The lower the score, the safer your operation is determined to be. The higher your score, the worse your rank and the more likely you are to be the subject of increased scrutiny from the FMCSA, including targeted roadside inspections at commercial motor vehicle inspection stations. Brokers monitoring safety scores also may tend to migrate towards carriers with better safety ratings, particularly in light of some the recent outrageous court decisions regarding broker liability. Some insurance companies also consider FMCSA safety scores when establishing insurance rates.

How do you improve your safety score? Looking backward, your options are realistically limited to contesting alleged violations. As a general rule, you should contest every violation, every time. Hire a local traffic attorney to beat the cases you can, and obtain reduced citations in those you cannot. Second, you can't terminate a driver and improve your safety rating because any violation that occurs under your DOT number likely will be counted against you regardless if the driver works for you after



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the incident occurred. Similarly, your score will not be impacted by drivers who have violations that occurred before you hired them.

Looking forward, from a management perspective, the SMS system requires that you 1) hire safe drivers; 2) monitor hours of service; 3) ensure your equipment is DOT compliant; and 4) work with new hires and current drivers to assure they're up to date on the safe operation of their big rigs. Prudent plan-

ning and solid safety practices gradually will improve your score over time.

At this point, you have probably looked up your company's SMS score to determine where you rank. Now, you want to improve your safety rating. To do so, you must understand the seven SMS categories, as well as understand what you can do in each area to improve your ranking in that specific category. The components are 1) unsafe driving violations; 2) hours of service violations;

3) driver fitness; 4) drug/alcohol violations; 5) maintenance; 6) Hazardous Material Compliance; and 7) Crash Indicator Assessment. This article focuses on the two areas where your company is most able to directly influence and improve its SMS score.

Unsafe driving – the SMS uses traffic citations issued to CMV operators to categorize the severity of the offense for purposes of your SMS score. “Unsafe driving” can be anything from failing to dim your headlights to speeding to driving recklessly. Each offense is assigned a severity weight of 1 to 10. Texting, using a cell phone without a hands-free device and speeding more than 15 mph over the limit are viewed as particularly severe and are rated 10. Transport of hazardous cargo at the time of an offense frequently magnifies the offense. Each individual offense identified per citation counts against your company. Each violation occurring over the last 24 months is assigned a time weight factor of 1, 2 or 3, with 3 representing the most recent occurrence.

As an example, a ticket for speeding 15 mph over is assigned a severity factor of 10. If it occurred within the last six months, then the offense is multiplied by 3. The time weight drops to 2 if it occurred between six months to one year ago, and to 1 if it occurred more than one year ago. Anything older than two years ago is not factored. If the violation occurred as part of an out-of-service violation, an additional two points is added to the severity score for that violation

In that example, a carrier that contested the speeding ticket and was convicted of a lesser charge would receive a score of three, rather than 36. A carrier that beat the ticket would receive no points. Provide a copy of the applicable court records to the FMCSA and they will adjust your SMS score.

Realistically, the key to improving

SMS scores are becoming increasingly important to carriers. Prudent planning can address many of the issues before they develop.

your Safe Driving score is to fight traffic violations in every instance where it is reasonable to do so. Make sure your drivers know to provide you with a copy of their ticket immediately. Hire a local traffic attorney to defend the ticket and/or negotiate the ticket down. If you have drivers who have received tickets over the last few years, then contact each driver and find out what happened to that ticket. If they did not pay it, most courts will permit the driver to post a small bond and contest liability well after the original due date has passed.

HOS Compliance – Hours-of-service (HOS) compliance issues are particularly difficult for smaller companies, or companies using paper log books. It's no secret that the current regulations are complex. Not all driver violations are intentional. Regardless, you absolutely must monitor your drivers to ensure compliance because, as we've seen, the additional points can drastically impact your safety ranking if a driving violation is discovered.

How do you effectively monitor paper logs? You can do it yourself or hire a third-party auditing company to audit the logs on a weekly basis. Without exception, you should require your drivers to transmit their weekly logs to the company and you should strictly enforce company policy regarding non-compliance. Fines or financial penalties as a deterrent to future incidents with the same driver are strongly recommended.

Easy Safety Topics

The remaining categories monitored by SMS are driver fitness; controlled substances/alcohol; maintenance; hazardous material compliance; and the crash indicator assessment. Driver fitness generally catalogs the likelihood that your drivers fail to carry necessary DOT medical cards and/or records. You should maintain a running list of the

expiration dates of your drivers' medical cards and follow up with the drivers to make sure they appear for their physicals. Obviously, make sure your drivers are properly licensed, trained and endorsed for your particular CMV.

Strictly enforce pre-employment and random drug/alcohol policies. Enact a zero-tolerance policy and stick to it. Remind your drivers of the policy and hold safety meetings that discuss the details.

As a smart businessperson, you know preventative maintenance saves your fleet money. Think of the SMS system and DOT equipment regulations in the same manner. Make sure your vehicles are properly maintained. Tires, lights, restraints, etc., all should be up to code. Equipment violations are likely inevitable, but are also the easiest to see, anticipate and prevent.

The final SMS category is called a crash indicator. It measures crashes

against your total miles driven. Serious crashes (i.e. fatalities) are counted more seriously. How do you avoid a bad score in this category? Retain productive, safe drivers and conduct the training necessary to remind them that your SMS score is everyone's responsibility.

SMS scores are becoming increasingly important to carriers. Prudent planning can address many of the issues before they develop and, as discussed, it is possible to retroactively improve your SMS score by contesting violations and presenting the appropriate proof to the FMCSA. 🌈

Attorney H. Peyton Inge IV practices transportation law at the Dallas office of Chamblee, Ryan, Kershaw & Anderson P.C., one of the leading U.S. law firms for defending trucking companies against lawsuits of all types and aiding them in state and federal compliance issues.

// Each individual offense identified per citation counts against a transportation company's SMS score.

