Safety Analysis and Intervention Requirements for Contracting Commercial Vehicles and Drivers on Connecticut DOT Contracts

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### Glossary of Terms

<table>
<thead>
<tr>
<th>Abbreviation</th>
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<tbody>
<tr>
<td>BASICS</td>
<td>Behavior Analysis and Safety Improvement Categories</td>
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<td>CASE</td>
<td>Connecticut Academy of Science and Engineering</td>
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<tr>
<td>CMVs</td>
<td>Commercial Motor Vehicles</td>
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<td>ConnDOT</td>
<td>Connecticut Department of Transportation</td>
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<td>CRs</td>
<td>Compliance Reviews</td>
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<td>CSA</td>
<td>Compliance, Safety, Accountability model</td>
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<tr>
<td>DAS</td>
<td>Connecticut Department of Administrative Services</td>
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<td>DMV</td>
<td>Connecticut Department of Motor Vehicles</td>
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<td>DMV/CVSD</td>
<td>DMV's Commercial Vehicle Safety Division</td>
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<td>FMCSA</td>
<td>Federal Motor Carrier Safety Administration's</td>
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<td>FMCSRs</td>
<td>Federal Motor Carrier Safety Regulations</td>
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<td>HMRs</td>
<td>Hazardous Materials Regulations</td>
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<td>HOS</td>
<td>Hours-of-Service</td>
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<tr>
<td>MCSAP</td>
<td>Motor Carrier Safety Assistance Program</td>
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<td>MCSIP</td>
<td>Motor Carrier Safety Improvement Process</td>
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<td>MMR</td>
<td>Meets Minimum Requirements</td>
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<td>NGA</td>
<td>National Governors Association</td>
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<td>NR</td>
<td>Not Recommended</td>
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<td>OOS</td>
<td>Out-of-Service</td>
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<td>PRISM</td>
<td>Performance and Registration Systems Management</td>
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<td>PUs</td>
<td>Power Units</td>
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<td>SEAs</td>
<td>Safety Evaluation Areas</td>
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<td>SFD</td>
<td>Safety Fitness Determination</td>
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<td>SFR</td>
<td>Safety Fitness Review</td>
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<td>SMS</td>
<td>Motor Carrier Safety Measurement System</td>
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<td>USDOT</td>
<td>U.S. Department of Transportation</td>
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<td>VMT</td>
<td>Vehicle Miles Travelled</td>
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Abstract

Connecticut is one of the first states in the country to enact policies and practices for qualifying contractors for using commercial vehicles on state contracts. The current contractor qualification process was stated as a verbal directive from former Governor Jody M. Rell’s office in response to a deadly commercial vehicle crash on Avon Mountain in 2005. The objectives of this study are to; 1) Identify how other states seek to assure the safety of vehicles utilized in state contracts; 2) Identify and summarize the purposes for which the FMCSA, CSA/SMS is intended; 3) Review Connecticut’s current contractor qualification system and the use of CSA/SMS for use in making contractor selection decisions; 4) Identify alternatives to utilizing CSA 2010/SMS, if appropriate, to accomplish state goals of commercial vehicle safety on state contracts. The study recommendations identify a suggested revised contractor qualification process that focuses on contractor accountability and state agency review of qualification requirements. Furthermore, the proposed qualification system requires that subcontractors engaged by a primary contractor be held to the same qualification requirement standards as primary contractors.
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1 Introduction

Route 44 over Avon Mountain has been identified as one of the most dangerous stretches of road in Connecticut. From 1995 to 2009 there have been 470 crashes on the western side of Avon Mountain and 712 on Avon Mountain in total. On July 29, 2005, a truck, operated by American Crushing and Recycling, weighing 70,000 pounds lost its brakes on the west side of the steep downgrade on Route 44 on Avon Mountain. Traveling at 80 mph, the fully loaded truck collided with stopped traffic in the eastbound lanes at the intersection of Route 10. In total 20 vehicles were involved and four people were killed, with many more injured.

The truck and company responsible for the crash previously operated as Wilcox Trucking, had 448 mechanical violations between 1994 and 2001. In 2001 the Connecticut Department of Motor Vehicles (DMV) suspended the registration of 16 trucks owned by the company because of a failure to comply with a number of repair orders. As a result, Wilcox ownership formed a new company, American Crushing and Recycling, and proceeded to operate using the same equipment and personnel but with a clean FMCSA record. Early in 2005, American Crushing and Recycling cancelled their liability insurance on their trucks. Immediately after the crash, American Crushing and Recycling unsuccessfully attempted to reinstate its liability insurance retroactive to July 1, 2005.

As a result of this crash Governor Rell’s office contacted the DMV, the Department of Administrative Services (DAS), and the Connecticut Department of Transportation (ConnDOT) and issued a verbal directive to institute a program to ensure the safety of commercial vehicles and contractors awarded state contracts. Throughout the revision process the agencies reported that they met with leaders of the construction and carrier industry in Connecticut to refine the program into the current process. The impacts on carrier safety, and thus public safety, have not been evaluated and quantified. This study will evaluate the current system, identify its impacts, and make recommendations for revisions to the contractor qualification system, as appropriate.

The objectives of this study include:

1. Identify how other states seek to assure the safety of vehicles utilized in state contracts;
2. Identify and summarize the purpose of the Federal Motor Carrier Safety Administration’s (FMCSA) Compliance, Safety, Accountability model (CSA)/Motor Carrier Safety Measurement System (SMS);
3. Review Connecticut’s current contractor qualification system;
4. Identify alternatives to accomplishing the states’ goal of commercial vehicle safety on state contracts.

2 Review of FMCSA, CSA and SMS

The FMCSA’s ultimate goal is to reduce the number and frequency of crashes, injuries, and fatalities attributed to commercial vehicles. The goal of CSA is to improve commercial vehicle safety through data analysis, inspections, alerts and interventions. The CSA program introduces a new, more efficient, enforcement and compliance model to address safety
problems for a larger number of carriers before crashes occur. The intent of this model is to
serve as an “early warning system” to alert federal, state and local agencies to problem carriers
that need intervention or subsequently require the issuance of an Operations Out-of-Service
(OOS) order. The CSA model incorporates three major phases; measurement, evaluation and
intervention. Then, CSA guides enforcement officials on how to intervene most effectively and
efficiently to improve safety. Figure 1 outlines how the CSA model is structured.

The CSA’s measurement phase includes the SMS. According to Green and Blower (2011) the
intended goals of the SMS are to:

1) Identify unsafe motor carriers for interventions
2) Identify safety problems within broad areas at carriers
3) Monitor the safety performance of carriers on a near-continuous basis
4) Provide input safety measurements to the Safety Fitness Determination process, by
   which FMCSA identifies carriers that are conditional or unfit to operate.
2.1 CSA Measurement

2.1.1 SMS Data Sources

The SMS of the CSA uses all roadside inspection, violation and crash data as submitted by each state’s DMV and carriers. The SMS approach is a data driven method where data specific to an individual carrier are entered from multiple sources, and then compiled and aggregated into BASICs (Behavior Analysis and Safety Improvement Categories) and Crash Indicators. The following is a description for each of the data sources used in the SMS:

Roadside Inspection Reports are examinations conducted by a Motor Carrier Safety Assistance Program (MCSAP). In Connecticut, this is the responsibility of the DMV’s Commercial Vehicle Safety Division (DMV/CVSD). Trained inspectors conduct weigh station and random roadside inspections of individual commercial vehicles and their drivers to determine if they are in compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and/or Hazardous Materials Regulations (HMRs). The results of these reports are submitted to FMCSA and subsequently uploaded into the SMS.

Violations issued as a result of a moving violation or failed inspection are recorded and reported to FMCSA. The SMS assessments do not include violations that are: (1) a result of a crash or (2) assigned to another entity such as a shipper or Intermodal Equipment Provider.

State-Reported Commercial Vehicle Crash Data are submitted by the state DMV to the FMCSA. The reporting of these crashes follows the National Governors Association (NGA) standards and becomes part of the SMS evaluation.

Motor Carrier Census Data are provided to the FMCSA when a carrier obtains a USDOT number. Examples of census data include USDOT number, carrier name, number and type of Power Units (PUs), annualized vehicle miles travelled (VMT), physical location, current status, and types of cargo hauled. These data are used to generate the peer groups and percentile ranking for carriers.

2.1.2 SMS BASICs

The SMS data received are then used to generate a score for a carrier in seven different BASICs that are defined as follows:

- **Unsafe Driving BASIC** — Operation of commercial motor vehicles (CMVs) in a dangerous or careless manner (FMCSR Parts 392 and 397)
- **Fatigued Driving (Hours-of-Service) BASIC** — Operation of CMVs by drivers who are ill, fatigued, or in non-compliance with the Hours-of-Service (HOS) regulations. (FMCSR Parts 392 and 395)
- **Driver Fitness BASIC** — Operation of CMVs by drivers who are unfit to operate a CMV due to lack of training, experience, or medical qualifications. (FMCSR Parts 383 and 391)
- **Controlled Substances and Alcohol BASIC** — Operation of CMVs by drivers who are impaired due to alcohol, illegal drugs, and misuse of prescription or over-the-counter medications. (FMCSR Parts 382 and 392)
• **Vehicle Maintenance BASIC** — Failure to properly maintain a CMV. (FMCSR Parts 393 and 396)

• **Cargo-Related BASIC** — Failure to properly prevent shifting loads, spilled or dropped cargo, and unsafe handling of hazardous materials on a CMV. (FMCSR Parts 392, 393, 397 and applicable USDOT Hazardous Waste regulations)

• **Crash Indicator** — SMS evaluates a motor carrier’s crash history. Crash history is not specifically a behavior. Rather, it is a consequence of a behavior and may indicate a problem with the carrier that warrants intervention. It is based on information from state-reported crash reports and identifies histories or patterns of high crash involvement, including frequency and severity.

A carrier’s measurement for each BASIC depends on the number of adverse safety events for each BASIC category, the severity of violations or crashes, and the time period at which the adverse safety events occurred (more recent events are weighted more heavily). After this measurement, the carrier is then placed in a peer group. Peer groups are determined on a national scale based on the number of inspections that a carrier has undergone in the most recent 24 month time period. Percentiles range from 0 to 100 based on the BASIC measurements of other carriers in their peer group. A percentile 100 indicates the worst performance. Carriers that exceed the FMCSA’s threshold for a BASIC in their peer group are flagged with a symbol “⚠️” and identified for possible intervention.

### 2.2 CSA Evaluation

The FMCSA makes a determination on the safety fitness of a carrier based on the result of the BASICs. The BASICs enables FMCSA to make the determination as to which carriers should be deemed "Unfit" to operate or in need of intervention, using a regulatory process called Safety Fitness Determination (SFD). FMCSA has developed an SFD methodology that replaced the carrier evaluation process in SafeStat, which was solely dependent on the results of onsite compliance reviews. The SFD expands the use of on-road performance as calculated in the SMS and includes results of all investigations. This enables FMCSA to determine the safety fitness of a carrier based on a larger segment of the industry. SMS enables FMCSA to identify the level of intervention necessary through a process called “intervention selection.”

### 2.3 CSA Intervention

FMCSA interventions range from warning letters to onsite comprehensive investigations. The intent of the intervention tools is to address specific safety problems identified in the SMS BASICs. The CSA system was revised from the compliance review system formerly used in the SAFESTAT system, which was more labor intensive and less focused. Interventions under CSA are targeted and specific to the BASIC in which the carrier is not performing well. Interventions are categorized into early contact, investigation, and follow-on.

### 2.4 Unfit Suspension

If FMCSA determines that a carrier’s violations are severe enough or that the carrier is not responsive to interventions, they can issue an Out-of-Service Order requiring the carrier to cease operations.
all motor vehicle operations. Carriers that are ordered OOS are entered into a national database (including CSA); and if the state is a Performance and Registration Systems Management (PRISM) state, the state DMV is notified that a carrier in their state has been declared OOS. Upon receiving an OOS order, it is the carrier’s obligation to cease all operations until the FMCSA removes the OOS order. At any time if the state DMV finds a suspended carrier operating on the road they will have the vehicle towed and remove the registration tags. The state DMV may also remove the plates and registrations from all the companies’ vehicles once appeals and due process are completed. This process can take up to 60 days after the OOS order is issued by FMCSA.

2.5 Use of SMS Data – FMCSA Disclaimer

On March 25th the following disclaimer was added to the CSA website and SMS reports due to litigation from three plaintiffs; the National Association of Small Trucking Companies, the Expedite Alliance of North America and the Air & Expedite Motor Carriers Association. Their suit claimed shippers and brokers were using the Safety Measurement System (SMS) data to unfairly choose carriers to truck freight. The FMCSA posts the following disclaimer on each of the SMS reports generated through the CSA website (FMCSA, 2012, TEANA, 2011):

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.

3 Review of Commercial Vehicle Safety in Connecticut

3.1 Overview of the DMV Commercial Vehicle Safety Division

The mission of the Connecticut DMV is to “promote and advance public Safety, Security and Service through the regulation of drivers, their motor vehicles and certain motor vehicle-related businesses.” The mission of the Commercial Vehicle Safety Division is to “reduce the number and severity of accidents, fatalities, and injuries involving commercial motor vehicles and hazardous materials incidents through consistent, uniform, and effective commercial motor vehicle safety programs.”

In an effort to hold carriers responsible for their safety, Connecticut is one of 25 states that are listed as a full, Level 3, member of the PRISM program. The PRISM system allows the state DMV to check for active US DOT#’s, motor carriers who are not OOS by FMCSA and reviews a motor carrier’s MCSIP step(s). The PRISM Enforcement Process runs in parallel with the Commercial Vehicle Registration Process. Enforcement is designed to target carriers with a
poor safety performance record and guide them on how to improve through the Motor Carrier Safety Improvement Process (MCSIP). Carriers are identified for a MCSIP through the CSA BASICs evaluation. The interventions in MCSIP mirror the CSA intervention process, as they are essentially the same process. Carriers in the MCSIP that fail to improve their safety performance face escalating penalties that may culminate in a federal OOS order. The OOS order allows the state to deny, suspend and/or revoke vehicle registrations by the offending carrier. Once a carrier is declared OOS, the state DMV in which the carrier is registered is notified through PRISM the very next day.

The benefits of PRISM are documented on the FMCSA website (PRISM, 2012) and include:

- PRISM states show improved safety and lower crash rates over time when compared with non-PRISM states
- PRISM states achieve greater success in matching crash and inspection records to DOT numbers
- PRISM technologies reduce the time required to conduct a roadside inspection by about one-third
- PRISM helps states and the USDOT to accurately identify and remove high-risk carriers from our nation's highways
- Works to ensure motor carriers with an FMCSA OOS order do not continue to maintain interstate license plates
- Recognized safety events are recorded nationally and can be more accurately tied back to the responsible motor carrier
- PRISM is a performance-based approach to safety management
- Allows for efficient resource allocations through the increased targeting of the highest-risk carriers
- Improved data quality by using automated field data collection procedures to eliminate typing errors on critical elements on accident and inspection reports

The FMCSA has invested significant resources for the development of PRISM and CSA to intervene, rehabilitate and remove high risk carriers from our nation’s highways. Connecticut has been an early adopter of these systems and works diligently to ensure the traveling public and state’s infrastructure are protected from the unsafe practices of a minority of carriers.

3.2 Current Contractor Qualification Review Process

Under the current system the DMV/CVSD is responsible for conducting a motor carrier (company) Safety Fitness Review (SFR) for each contractor that has been selected for contract award by ConnDOT and DAS. The purpose of this process is to ensure that any company selected to provide services for the state, that involves the use of their commercial motor vehicles has an acceptable safety record.

Requests for a SFR can be made by any state agency by providing a contractor’s name and USDOT number to the DMV/CVSD. In response, the DMV/CVSD will reply as to whether or not the contractor meets minimum requirements (MMR) for a state contract. These reviews are restricted only to primary contractors. The DMV/CVSD’s review does not include subcontractors hired by a primary contractor. According to the DAS, DMV and ConnDOT
Each primary contractor is responsible for all of its agents and subcontractors with regard to the compliance of all applicable legal requirements.

Figure 2 provides a simplified view of the current review process conducted by the DMV/CVSD on behalf of state agencies.

Figure 2: Current Contractor Qualification Review Process
In the first stage of the review process, DMV/CVSD reviews the contractor to ensure they are in compliance with all state and federal laws. The process includes checking the contractor for outstanding unpaid violations and current suspensions. DMV/CVSD gives the carrier a grace period of typically 10 days to correct any outstanding issues. If a contractor fails to respond or does not comply with DMV/CVSD’s requests they will be rated as “NR.”

While waiting on a contractor to resolve any issues identified in the first stage, DMV/CVSD simultaneously begins the second stage of the review process; checking the contractor’s FMCSA SMS record.

For **Contractors with insufficient SMS data**, the DMV/CVSD first checks the contractor’s out-of-service rate. If the out-of-service rating for that contractor is more than twice the national average, the contractor is not recommended. However, to be evaluated based on OOS ratings; a contractor must have more than three inspections and more than two OOS. If a contractor does not meet these requirements, a decision on their eligibility for the award of state contracts is based on their ability to provide the following documents within a specified time period, typically 10 days from the DMV/CVSD’s request:

1) a valid Acord Certificate of Liability Insurance (insurance liability showing at least the minimum required depending on the type of commodity being transported, and state requirements) and naming the DMV as the certificate holder;

2) a drug and alcohol certificate showing the motor carrier is enrolled in a random drug and alcohol testing program;

3) CDL driver roster which includes the driver’s name, license number and the state that issued the license.

It is noted that under the current practice DMV/CVSD only requests the above documentation for contractors that do not have the minimum number of inspections and OOS ratings. This information is not requested or reviewed for contractors that have the minimum number of inspections and OOS ratings. However, insurance documentation, per item 1, is required by DAS for all contractors as a condition for contract award.

Once DMV/CVSD receives the requested documents and/or restoration fees, and the contractor is confirmed to be in compliance with state and federal law by DMV/CVSD, the contractor is given a MMR rating. If the contractor fails to submit the requested documents and/or restoration fees within the 10-day response period, a NR rating is given.

**Contractors with sufficient SMS data**, the seven SMS BASICs are reviewed for alerts and deficiencies. As described in the DMV/CVSD current process, “Any contractor with two or more deficient BASICs, or one deficient BASIC and two BASIC alerts, or three or more BASIC alerts will receive a NR rating.” However, the FMCSA no longer uses the term deficient or alert (see Section 2.5).
Although DMV/CVSD has not changed their official policy, under the current system a contractor will receive a NR if they have three or more BASICs with a ▲. DMV/CVSD is considering revising the qualification process to reflect the FMCSA changes.

In the third stage of the review process for contractors with sufficient data, the DMV/CVSD reviews a contractor’s vehicle inspection records to determine the driver and vehicle out-of-service percentage. Contractors with a driver/vehicle out-of-service percentage equal to, or greater than, two times the FMCSA national OOS average receive an NR rating. Contractors that pass the three stages of review by the DMV/CVSD receive a MMR rating.

The results of the contractor review are submitted to the contracting agency. For contractor reviews that receive an NR, DMV/CVSD provides an explanation to the contracting agency of why the contractor was not recommended. The contracting agency is responsible for notifying the contractor that they were not selected as a result of the safety fitness review process.

4 National Commercial Vehicle Contracting Survey

In an effort to understand the state of practice with regard to commercial vehicle safety and state contracts, the study management team conducted a national survey of state administrative departments, including DOTs and DMVs. The survey was a basic four question on-line survey. Twenty-two states responded to the survey, with only 4 states (Connecticut, Georgia, Kentucky and Texas) indicating “Yes” to the question:

Does your state review a contractor’s commercial vehicle safety records as part of the contractor selection/award process? (i.e. FMCSA, inspection reports, crash reports, drug and alcohol testing, insurance, CSA, SafeSTAT)

However, follow-up with the State of Georgia, could not verify that they have an actual contractor safety review program for contracting in place.

5 Contractor Focus Group Sessions

To gain feedback from stakeholders with regard to the state’s current safety fitness review process used for state contracting purposes the study management team hosted two focus group sessions consisting of 16 contractors that do business with the state. These focus groups consisted of both contractors that have, and have not, been excluded from state contracts through the use of the current contractor qualification process. However, the contractors that had been disqualified were most vocal and critical of the system. The goal of these focus groups was to identify the issues with the current system and allow the contractors to have input into any potential changes that are made to the process. The results of the focus group sessions are provided in the findings section of this report.
6 Study Findings

6.1 Independent Review of the Connecticut Current Qualifications System for State Contracting

The following observations have been identified through the study’s focus group sessions, investigation by the study research team, and study committee meeting discussions.

6.1.1 BASICs Criteria

The current process, as detailed on the DMV website, is no longer valid for the BASICs review. FMCSA revised the terms and conditions of CSA on March 25, 2011 to no longer include alerts or deficiencies. Therefore, DMV/CSVD’s current process of evaluating a contractor based on the number of alerts or deficiencies or a combination thereof is not valid.

A second issue with the use of the BASICs is that the BASICs score is used to place a contractor into a percentile to determine if the contractor is given a ▲ based on the threshold for that BASIC. Therefore, there will always be a certain percentage of contractors with a ▲ regardless of the safety record of the peer group. The use of percentiles for overall safety improvement is valid since there is always room for improvement. However, this system is not valid for qualifying a company’s safety fitness for the purpose of state contracting.

6.1.2 National Out of Service Rate Comparison

Figure 3 provides an overview of 2011 OOS rates by state. According to FMCSA the national OOS rate for 2011 was 27.6%. Connecticut is the second highest ranked state with an OOS rate of 47.7%; or almost twice the national average. However, inspection programs across the country vary in size, scope, funding staffing and operational procedures. Therefore, direct comparisons of OOS ratings between states are not justified. Connecticut’s high OOS rating should not be viewed negatively. In fact, this implies that almost half of the vehicles or drivers that the DMV/CVSD selects for inspection are not at a safety fitness level acceptable for operation. Further, the DMV/CVSD is effective at identifying drivers or vehicles with safety related issues and does not unnecessarily detain drivers or vehicles for unneeded inspections.

In comparison, Nevada has the lowest OOS rating in 2011 (12.4%); implying that out of every 100 inspections only 12 trucks or drivers are put OOS. This would appear to be an inefficient use of state resources for vehicle inspections; however the full details of the Nevada system have not been reviewed.
6.1.3 CT’s Use of OOS Rate for Contractor Qualification on State Contracts

Currently it is the state’s practice to use a company’s percentage of commercial vehicle inspections that result in OOS orders as one of the criteria for determining eligibility for state contract awards. The DMV/CSVD has stated that in an effort to operate efficiently with limited resources, the department targets inspections of commercial vehicles with a high likelihood of having violations. The inspection methods used by the DMV/CVSD, are not in question. Rather, the use of OOS metrics derived for the award of state contracts is the issue. The DMV/CVSD’s targeting vehicles for inspection that they believe have safety issues statistically biases their ability to use the OOS rate for contract awards. Furthermore, differences in how programs are administered across the country further limits the ability to compare Connecticut’s OOS rating to other states or even neighboring states. This is of particular concern since analysis of DMV records indicates that 28 of the 64 (44%) of “NR” recommendations issued by DAS, DMV/CVSD and ConnDOT for state contracting purposes were based on a company’s OOS rate.

6.1.4 Insurance and Drug and Alcohol Criteria

The consensus of the study’s focus group sessions and study committee discussion was that providing proof of insurance and a drug and alcohol testing program are valid and appropriate requirements. These requirements were responsible for over half of the “NR” reported in the DMV dataset, and are also required by the federal government.

6.2 National Commercial Vehicle Contracting Survey

Based on the survey conducted as part of this study, Connecticut is the only state that is currently using CSA for the purpose of determining the safety fitness of contractors for state contracts.
6.3 **State Agency Subcontractor Review**

The use of subcontractors and the relationship between subcontractors and contractors is complex. For certain industries, such as paving and hauling, subcontractors may work for multiple companies over a week or even the course of a day based on the demand for work. Furthermore, a contractor may not know exactly which subcontractors will be working on their projects until the day before or even the day of service. In this industry, subcontractors are often engaged by primary contractors through a broker that assigns jobs on a daily basis. Therefore, developing a system to track and qualify subcontractors on a job-by-job basis and day to day basis presents significant challenges for the industry and for timely state agency review and approval of subcontractors. For this reason subcontractors have been excluded from the current contractor qualification review process.

6.4 **Contractor Feedback**

6.4.1 **OOS Rating Criteria**

The primary source of contractor concerns centers around the use of the OOS rate to evaluate a contractor’s safety fitness for providing services on a state contract. Contractors noted that they were no longer able to request supplemental vehicle inspections to aid in reducing their OOS rating. Many contractors stated that they drove well maintained trucks they knew would pass inspections through mobile or fixed weigh stations in an effort to have these vehicles inspected. Contractors rely on these techniques to circumvent the OOS criteria.

Companies interested in bidding on state contracts have recognized that their OOS rating can impact their ability to obtain state contracts. Actions instituted by companies in an effort to improve their safety, BASIC scores and OOS rates to reduce or eliminate any chance for the issuance of an OOS order included:

- changing out parts on vehicles when any signs of age or creep in tolerances are identified;
- increasing vehicle inspection frequency; and
- having a driver’s failure to do a complete pre-trip check or walk-around considered as grounds for immediate termination.

6.4.2 **Drug and Alcohol Requirements**

Contractors agreed that the requirements for insurance and enrollment in, or proof of, a drug and alcohol testing program were valid requirements and consistent with FMCSA requirements.

6.4.3 **Communication and Outreach**

Based on comments provided by industry, when the state implemented the current system used for qualifying contractors for state contracts that utilize commercial vehicles, there was little to no information provided to contractors regarding the qualification process. When DMV/CVSD was asked what steps were taken to make contractors aware of the new practice, it was stated
that the practice was posted online. Also, according to contractors there is limited contact and
explanation given to contractors when they are denied a contract award.

7 Recommendations

Based on the study findings, the following recommendations are made with respect to the
commercial vehicle qualification process for the award of state contracts. The foundation of the
recommended process requires contractor certification of compliance with qualification process
elements through submittal of a Certification Statement at bid submittal and state agency
auditing of contractors awarded state contracts.

A summary of the recommendations is provided in Table 3. Figure 4 contains a revised
flowchart based on the proposed changes.
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</thead>
<tbody>
<tr>
<td>Contractor Certification Statement</td>
<td>NO</td>
<td>YES</td>
<td>Not Applicable</td>
<td>Bid Submittal</td>
<td>Contracting Agency</td>
<td>Contractor provides Certification Statement attesting to compliance with contracting requirements to Contracting Agency.</td>
</tr>
<tr>
<td>Insurance Certification: Acord Certificate of Liability Insurance</td>
<td>YES</td>
<td>YES</td>
<td>During Contractor Review</td>
<td>Bid Submittal &amp;</td>
<td>DMV/CVSD</td>
<td>Contracting Agency</td>
</tr>
<tr>
<td>Drug and Alcohol Testing Program: Documentation</td>
<td>YES</td>
<td>YES</td>
<td>During Contractor Review</td>
<td>Bid Submittal &amp;</td>
<td>DMV/CVSD</td>
<td>Contracting Agency</td>
</tr>
<tr>
<td>Contractor’s FMCSA. Safety Fitness Record (In Good Standing; Not Suspended)</td>
<td>YES</td>
<td>NO</td>
<td>During Contractor Review</td>
<td>Not Applicable</td>
<td>DMV/CVSD</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>OOS Ratings: Use of OOS Rating for State Contracts</td>
<td>YES</td>
<td>NO</td>
<td>During Contractor Review</td>
<td>Not Applicable</td>
<td>DMV/CVSD</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Contractor’s FMCSA, Safety Fitness Record (In Good Standing; Not Suspended)</td>
<td>YES</td>
<td>YES</td>
<td>During Contractor Review</td>
<td>Bid Submittal &amp;</td>
<td>DMV/CVSD</td>
<td>Contracting Agency or DMV</td>
</tr>
<tr>
<td>SMS BASICSs Review</td>
<td>YES</td>
<td>NO</td>
<td>During Contractor Review</td>
<td>Not Applicable</td>
<td>DMV/CVSD</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>SMS Driver Records</td>
<td>NO</td>
<td>YES</td>
<td>Not Applicable</td>
<td>Bid Submittal and At Will by Agencies</td>
<td>Not Applicable Contracting Agency or DMV</td>
<td>Subcontractors comply with same requirements as Primary Contractors. Primary Contractors required to provide “Notice” of contracting requirements to Subcontractors. Subcontractors provide compliance Certification Statement to Primary Contractor. Primary Contractor provides Subcontractor USDOT # to Contracting Agency at time of engagement. State agencies conduct Subcontractor audits to assure compliance during contract.</td>
</tr>
</tbody>
</table>
CERTIFICATION STATEMENT AT BID SUBMITTAL: A Primary Contractor, as part of a bid submittal to the contracting agency, is required to submit a certification statement (state form) that indicates they:

- For Subcontractors: will (1) provide to each subcontractor engaged, notice of the state’s requirements for operating commercial vehicles on state contracts; and (2) secure and maintain on file a certification statement (state form) from each subcontractor engaged for the operation of a commercial vehicle on a state contract, a certification statement indicating that the subcontractor is in compliance with the state’s requirements;
- Have or will have and maintain a valid insurance liability policy for the duration of the term of the state contract.
- Are enrolled in a drug and alcohol testing program;
- Are in compliance with all state and federal laws and regulations; and all fees, and fines for violations due the state have been paid;
- Are in good standing with FMCSA;
- Attest that each driver operating a contractor’s commercial vehicle for services on a state contract is in good standing with FMCSA.

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**Figure 4: Recommended Contractor Qualification Review Process**

**Agency (ConnDOT, DAS, ETC.) Contractor Bid Review**

**Contract Award Documentation:** Documents to be provided by each selected contractor, as part of contract award process:

- For Primary Contractor
  ✓ Valid Accident Certificate [insurance liability]
  ✓ US DOT number (if not provided in bid submittal)
- For all Subcontractors though the Primary Contractor at the time of engagement of a Subcontractor on a project:
  ✓ US DOT number

Did the contractor provide appropriate paperwork?

- **Yes**
  - Both conditions must be satisfied for a MMR rating
    - **MMR**

- **No**
  - **Not Recommended**

Audit Sampling of Primary Contractors and Subcontractors by State Agencies Contracting for Services and DMV/CVSD

Are the Primary Contractor and all Subcontractors engaged by the Primary Contractor in compliance with the contractor qualification requirements for the operation of commercial vehicles on a state contract?

- **Contractor: XYZ**
- **DOT #: 1234567890**

- **Yes**
  - In compliance with contractor qualification requirements
    - **MMR**

- **No**
  - Sanctions/Penalties assessed for failure to comply with certified contracting requirements
    - Warning
    - Fines and Penalties
    - Suspension
    - Contract Termination
7.1 Discontinue Use of Invalid Criteria

7.1.1 OOS Ratings
The primary concern with the current contractor qualification process is the use of OOS ratings to determine contractor eligibility for state contracts. It was determined that this practice is biased by a non-random inspection process and is not valid statistically. As a result, the state should not establish OOS rating criteria separate from that used by FMCSA/CSA for qualifying contractors. Therefore, it is recommended that OOS ratings should not be used for the purpose of qualifying contractors for use of commercial vehicles on state contracts.

However, it is noted that the practice of focusing resources on those carriers most likely to be in violation of safety standards is an appropriate strategy for the use of resources by DMV/CVSD for the purpose of assuring the safe operation of commercial vehicles on state roads.

7.1.2 CSA/SMS BASICs Review
It is recommended that the state not use CSA/SMS BASICs scores to determine the safety fitness of a contractor. Contractors should be aware of their BASICs scores and it is the responsibility of FMCSA to suspend unsafe carriers from operating commercial vehicles.

However, contractors operating commercial vehicles on state contracts with BASICs scores that are below the thresholds for a BASIC should be placed on a priority list to be reviewed by DMV. These reviews should be conducted throughout the contract term to determine if a contractor has been issued an OOS order due to lack of compliance with interventions from FMCSA. Moreover, for contractors with commercial vehicles registered in Connecticut, the PRISM system used by DMV provides daily updates for OOS orders issued.

If a contractor is found to be ordered OOS by FMCSA, the DMV should take action as soon as legally possible to remove tags and registrations from the contractor’s vehicles. Furthermore, DMV should make DAS and ConnDOT, as applicable, aware of any contractor issued an OOS order. The contracting agency should have the authority to void any contract with any contractor ordered OOS by FMCSA, once they have legal authority to do so (following due process procedures for contractor appeals to FMCSA).

7.2 Contractor Qualification Requirements
The following contractor qualification process elements were determined to be valid components of a qualification system for state contracting and are consistent with state and federal laws for operating a commercial vehicle and consistent with the current contractor qualification process.

7.2.1 Insurance Certification
A two-step process is recommended for contractors to provide proof of insurance.

- Step 1: Bid Submittal: The contractor Certification Statement would require a contractor to attest to the fact that they have or will have for the duration of the contract period the
required insurance with their bid submittal. This would ensure that companies bidding on state contracts are aware of and in compliance with the insurance contracting requirements.

- **Step 2: Contractor Review Process:** Contractors whose bids are being considered for a contract award, should be required to submit a valid Acord Certificate of Liability Insurance (insurance liability showing at least the minimum required depending on the type of commodity being transported and state requirements) that names the DMV as the certificate holder.

A contractor’s failure to maintain the required insurance during a contract period should be considered as cause for contract termination.

**7.2.2 Drug and Alcohol Testing**

The contractor’s Certification Statement should include a statement attesting that the contractor is enrolled in a drug and alcohol testing program.

**7.2.3 Compliance with State and Federal Laws**

The contractor’s Certification Statement should include a statement attesting that the contractor is (1) in compliance with state and federal laws, and (2) current on any fines, registrations or fees owed to the state for their vehicles and business.

**7.2.4 SMS Driver Records**

The new SMS/CSA system provides a more complete commercial vehicle driver safety fitness record information. Whereas, the SAFESTAT system only provided a driver’s safety record for a specific employer, the new system provides a complete history of a driver’s safety record that is no longer employer specific. The contractor’s Certification Statement should include a statement attesting that any driver operating a contractor’s commercial vehicle on a state contract is in good standing – not under suspension.

**7.2.5 Subcontractor Contracting Qualification Requirements**

Subcontractors working on behalf of primary contractors should be required to adhere to the same contractor qualification requirements as primary contractors. A primary contractor’s Certification Statement provided to the contracting agency at bid submittal should certify that the primary contractor will:

1. Provide “Notice” to each subcontractor to be engaged by the primary contractor of the state’s contractor qualification requirements for operating commercial vehicles on state contracts.

2. Secure a “Certification Statement” from each subcontractor attesting that the subcontractor is in compliance with all contractor qualification requirements for the operation of commercial vehicles on state contracts including that they:
   - have or will have for the duration of the period of service to the primary contractor a valid insurance liability policy in compliance with state requirements;
• are enrolled in a drug and alcohol testing program;
• are in compliance with all state and federal laws and regulations; and all fees, and fines for violations due the state have been paid.
• are in good standing with FMCSA
• attest that each driver operating a commercial vehicle of the subcontractor for services provided on behalf of a primary contractor under a state contract is in good standing with FMCSA.

Primary contractors should maintain a record of all subcontractor Certification Statements for review and audit by state agencies. It is suggested that the subcontractor Certification Statements provided to primary contractors should be renewed periodically, such as one year. Each subcontractor would be required to notify any primary contractor issued a Certification Statement of any change in their compliance with the state’s contractor qualification requirements.

3. Provide the contracting agency with a USDOT number for each subcontractor they engage for the operation of commercial vehicles on state contracts.

This process would provide for documented primary contractor accountability for subcontractors, while subjecting subcontractors to the same standards as primary contractors.

### 7.3 State Agency Audits of Contractors and Subcontractors

In addition to contractors certifying that they are in compliance with the state’s contracting qualification requirements, a key component of the recommended contractor qualification system involves having the contracting agency and/or DMV conduct periodic audits of contractors operating commercial vehicles on state contracts to verify contractor compliance with Certification Statements.

Contractor and subcontractor Certification Statements should provide for acknowledgement of potential sanctions/penalties that could be assessed by the state for failure to comply with certified contracting requirements. A contractor or subcontractor found to be in violation of certified contracting requirements may be subjected to any of the following suggested sanctions/penalties:

- Provided a grace period to resolve the compliance requirement
- Assessed fines and penalties
- Issued a suspension for the operation of commercial vehicles on state contracts and/or suspended from bidding on state contracts for a predetermined period of time
- Issued a contract termination order

Also, maintaining an electronic database of all contractor and subcontractor US DOT numbers would allow the state to monitor all contractors FMCSA records and to quickly take action when an OOS order is issued by FMCSA and announced through PRISM.
8 Concluding Remarks
Connecticut is one of the first states in the country to enact policies and practices for qualifying contractors for using commercial vehicles on state contracts. The current contractor qualification process has evolved since implementation in 2005. The study recommendations identify a suggested revised contractor qualification process that focuses on contractor accountability and state agency review of qualification requirements. Furthermore, the proposed qualification system requires that subcontractors engaged by a primary contractor be held to the same qualification requirement standards as primary contractors.

9 Acknowledgements
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10 References


