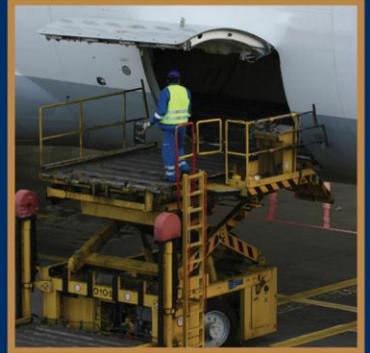


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**TIA WHITE PAPER SERIES**



**FMCSA – Compliance, Safety, & Accountability**

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### CSA Background:

In December of 2010, the Federal Motor Carrier Safety Administration (FMCSA) launched their new safety initiative the Compliance, Safety and Accountability (CSA) program. CSA replaced its predecessor safety measurement program SafeStat, which was considered by the Agency to be an effective tool, but was resource-intensive and reached only a small percentage of the registered motor carriers operating in interstate commerce. SafeStat utilized onsite compliance reviews (CR) to determine a motor carrier's safety measurement, which required an average of three to four days to complete.

CSA builds upon SafeStat for assessing and improving the safety performance of motor carriers and drivers through the new Safety Measurement System (SMS). The SMS quantifies the on-road safety performance of carriers and drivers to identify candidates for interventions, determine the specific safety problems that a carrier or driver exhibits, and to monitor whether safety problems are improving or worsening. SMS uses a motor carrier's data from roadside inspections, including all safety-based violations, State-reported crashes, and the Federal motor carrier census to quantify performance in seven categories, known as the Behavioral Analysis and Safety Improvement Categories (BASICS).

The seven categories of the BASICS are; unsafe driving, hours-of-service (HOS) compliance, driver fitness, controlled substance/alcohol, vehicle maintenance, hazardous materials (HM) compliance, and the crash indicator. A carrier's measurement for each BASIC depends on the number of adverse safety events, the severity of violations or crashes, and when the adverse safety events occurred. After the measurement is determined, the carrier is then placed into a peer group of other carriers with a similar number of inspections, and a carrier's percentile ranking are then determined by comparing the BASIC measurements of the carrier to the measurements of other carriers in the peer group. A percentile score can range from 0 to 100, a ranking of 100 indicates the worst performance.

FMCSA and State Partners use the BASICS measurement results to identify carriers for CSA intervention. The interventions of CSA build upon the compliance review of SafeStat. The tools range from warning letters to onsite comprehensive investigations. Intervention threshold levels are broken down into three categories, early contact, investigation, and follow-on.

FMCSA is developing a Safety Fitness Determination (SFD) methodology, which will link the BASIC data directly to the safety rating, which is ultimately the determination or

safety seal of approval to operate on our nation's highways and byways. The SFD rulemaking has been consistently delayed, because of industry concerns with the CSA data used to develop a safety measurement percentile.

#### Negligent Hiring & Vicarious Liability:

Prior to 2004, freight brokers were not overly concerned that they would be involved in a lawsuit if a motor carrier that was fully authorized to operate on the roads by FMCSA was selected to haul a load, and was subsequently in a tragic accident.

In a series of court cases, however, the court established a new interpretation of the responsibility, known as the duty of reasonable care. Subsequent court cases expanded and redefined the responsibilities of parties engaging independent contractors, and settlement and/or jury awards have grown substantially. In almost every case, the motor carrier's public liability insurance is exhausted, the carrier has filed bankruptcy, and those with deep pockets, like the broker or shipper, are sought to fill the loss and make the injured person or family whole. A common theme in most negligent hiring cases is that brokers and shippers should second guess the FMCSA's decision of which carriers are safe to operate by examining the detailed safety record of each carrier before use. This second guessing scenario is why the conflicting interpretations of BASIC data and Safety Rating are of such great importance to freight brokers.

Is a carrier with a score of 62 more dangerous than one with a score of 60? If that is true, then why not use only carriers with a score below 50 and shut all the other carriers down? The reason not to do this is that CSA is a relative safety system and is fine for internal prioritization use, but damaging to market participants when made public. Brokers and shippers will continue to be sued because they used a carrier with a BASIC score that solely prioritizes them for an internal Agency compliance review. Until FMCSA provides firm guidance on what BASIC thresholds constitutes a safe carrier, differing opinions will proliferate and the courts will arbitrate those opinions.

In a separate and distinct type of claim from negligent hiring, in some cases, courts have also changed the nature of the relationship between freight brokers and carriers from independent contractor to that of an agency, thereby, creating a vicarious liability scenario. These agency cases attempt to re-interpret the arrangements between the broker and carrier alleging that the broker exercised enough control over the carrier to make the carrier a part of the broker. The lawsuits are becoming more frequent and the verdicts vary greatly between federal and state courts from \$1 million to more than \$20 million.

Congress and the FMCSA can re-set this standard to one that is more reasonable and static. It should not be the responsibility of industry stakeholders to determine which carriers are safe to operate on American highways. It should be the sole responsibility of the Agency charged with issuing licenses to carriers and making sure those carriers adhere to safety standards established by the Agency to tell the public which carriers are safe-to-use and which carriers are not.

There is no question that the CSA initiative is helping FMCSA and the data regarding roadside compliance is improving; however there is still confusion regarding what constitutes a safe carrier to hire. FMCSA has shifted a tremendous burden of risk, in the form of negligent hiring lawsuits, onto shippers and brokers. With the threat of significant lawsuits, the industry is often faced with the choice of second guessing the Agency. It is not the responsibility of shippers or the brokerage industry to make the safety fitness determination of motor carriers.

#### TIA Policy:

TIA has evaluated facts and formulated its policy related to FMCSA safety data. FMCSA is the federal agency in charge of registration, licensing, monitoring and revoking authority. None of FMCSA's many data systems, data sets or sub-sets alone, or together signal, or intend to signal, or in fact dictate a motor carrier's Safety Rating. The entirety of FMCSA data sets and systems, together, and not any one CSA or other score, sub-set of scores, data, or selected indicator(s), apart from the whole, can replace FMCSA's comprehensive processes that prioritize interventions and enforcement. And only FMCSA interventions and/or enforcement actions and specific actions outlined in Title 49 CFR Part 385 may imply, confer, change or confirm a motor carrier's fitness determination or Safety Rating.

The CFR and regulations make this clear enough. However, FMCSA identified an acute need to issue remedial and clear warnings to the public against using selected data for commercial evaluations or conclusions about a carrier's Safety Rating or fitness determination.

Further, when one considers that FMCSA purposefully hides from the public many data sets, scores, internal procedures, supporting science, algorithms, and more, it becomes self-evident that only the FMCSA, the law enforcement agency overseeing truck and bus safety, is capable of determining motor carrier fitness based on safety, and not any other entity--especially not the public (including professional users of motor and bus carrier services). The public and the users of trucks and motor coaches depend entirely on the knowledge and resources and actions of the FMCSA, in exactly the same way that

commercial airline customers and passengers depend on the FAA to ensure air carriers and the skies remain safe.

It has been, and remains, TIA's consistent position that the FMCSA Safety Rating alone determines a motor carrier's fitness for use, and should always take precedence over, and clearly outweigh, any single score, or collection of scores, or data set, including CSA's SMS or BASIC scores.

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