

THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION'S

SAFETY AND

PRE-EMPLOYMENT SCREENING PROGRAMS



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The Federal Motor Carrier Safety Administration (FMCSA) has developed the "Compliance Safety Accountability" (CSA) initiative to improve the effectiveness of the FMCSA's safety compliance and enforcement programs. CSA will replace the current SafeStat System. The stated purpose of CSA is "to achieve a greater reduction in large truck and bus crashes, injuries and fatalities while maximizing the FMCSA's resources." Currently, the FMCSA is responsible for regulating more than 725,000 interstate and foreign-based truck and bus companies. FMCSA's inspection and compliance review process is extremely labor intensive. Each year the FMCSA is only able to reach approximately two percent of the regulated motor carriers. However, with the development of new technologies and the implementation of CSA, the FMCSA hopes that it can make substantial improvements in the efficiency and effectiveness of its enforcement and compliance programs. CSA was designed to provide the FMCSA with a more robust tool to help identify a carrier's unsafe behavior before a fatal crash. In her comments before the Committee on Transportation, Anne Ferro, the FMCSA Administrator extolled the merits of CSA; "what gets measured, gets done!" [See U.S. Department of Transportation FMCSA Industry Briefing, August 2010; CSA Safety System Methodology, August 2010 prepared by John A. Volpe, National Transportation System Center; and <http://csa2010.fmcsa.dot.gov/>.]

CSA deals with: (1) the collection of crash data and safety violation data; (2) analyzing the weight and severity of each violation and each crash; and (3) determining which intervention procedures should be utilized to address safety issues before the problems result in a crash.

CSA utilizes a Safety Measurement System (SMS) which quantifies the safety performance of the trucking companies. Each company will receive a percentile score (scale is 0 to 100) and will be "ranked" within an appropriate peer group. The SMS allows enforcement officers to identify specific safety problems and to "surgically address them through a tailored set of interventions." The SMS results will be easily accessible to the carriers via the Internet to encourage improvement in motor carrier safety. The SMS will also provide shippers, freight brokers and third party logistics companies with the necessary safety information so that they can make safety based business decisions when selecting a carrier. [Recent cases have held that shippers, brokers and third party logistics companies can be held liable for negligent selection, negligent hiring or negligent entrustment if they do not exercise reasonable care in selecting a carrier. At a minimum, before hiring a motor carrier, a shipper, broker or third party logistics company should access the CSA 2010 SMS to determine the safety rating of the carrier. See *Schramm v. Foster*, 341 FSupp 2d 336 (2004) and *Jones v. CH Robinson Worldwide, Inc.*, 558 FSupp 2d 603 (2008).] CSA 2010 utilizes two measurement systems.

The Carrier Safety Measurement System ("CSMS") for trucking companies and the Driver Safety Measurement System ("DSMS") for truck drivers.

Both CSMS and DSMS use on-road safety inspections and state reported commercial motor vehicle crash records. This information is entered into the Motor Carrier Management Information System ("MCMIS") and every month the safety rankings will be updated. SMS will identify carriers with safety issues so that the appropriate inspections and interventions can be performed. Under the proposed Safety Fitness Determination (SFD) rule, motor carriers will receive a rating of "unfit," "marginal" or "continue in operation." The SFD Notice of Proposed Rulemaking is expected sometime in 2011.

The SMS identifies six "behaviors" which have been shown to increase the likelihood of commercial motor vehicle crashes. The six behaviors are:

1. **Unsafe Driving:** Operation of commercial motor vehicles in a dangerous and careless manner. Example violations: Speeding, reckless driving, improper lane change and inattention.

2. **Fatigued Driving (Hours of Service):** Operation of commercial motor vehicles by drivers who are ill, fatigued or in non-compliance with hours of service regulations. This includes any violation of any regulation dealing with the accurate recording of log books. Instances related to fatigued driving are distinguished from incidents where unconsciousness or inability to react is brought about by the use of alcohol, drugs or other controlled substance. Example violations: Hours of service violations, log book violations and operating a commercial motor vehicle while ill or fatigued.

3. **Driver Fitness:** Operation of commercial motor vehicles by drivers who are unfit due to a lack of training, experience or medical qualifications. Example violations: Failing to have a valid and appropriate commercial driver's license and being medically unqualified to operate a commercial motor vehicle.

4. **Controlled Substances/Alcohol:** Operation of commercial motor vehicles by drivers who are impaired due to alcohol, drugs and misuse of prescription or over-the-counter medications. Example violations: Use or possession of controlled substances or alcohol.

5. **Vehicle Maintenance:** Failure to properly maintain a commercial motor vehicle. Example violation: Brakes, lights and other mechanical defects, and failure to make required repairs.

6. **Cargo Related:** Failure to properly prevent shifting loads, spilled or dropped cargo and unsafe handling of hazardous materials on a commercial motor vehicle. Example violations: Improper load securement, cargo retention and hazardous material handling.

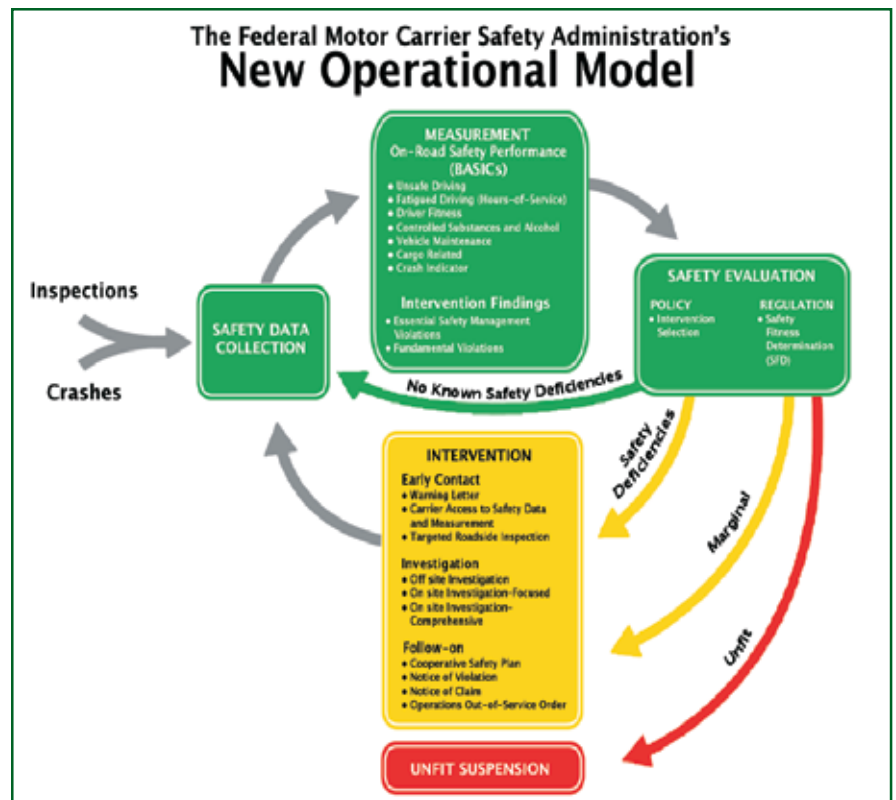
In addition, to the evaluation of these "behavioral" characteristics, the SMS evaluates the actual crash history of each trucking company and each driver. The crash indicator determines the history or pattern of crash involvement as well as the frequency and severity of the crashes.

The CSA operational model (shown below) features continuous monitoring of a trucking company's safety performance and a driver's safety performance. If a trucking company and/or truck driver are found to have safety problems, they will be subject to the "intervention process." Intervention can be as simple as a warning letter identifying a specific safety deficiency and informing the carrier of the consequences of failing to take the necessary corrective action. CSA also permits enforcement officers to spot check motor carriers based on their safety scores. A carrier with certain safety violations can be required to produce business records for an offsite inspection. Failure to respond to a request for business records can result in the issuance of a subpoena and an onsite inspection.

A "focused" or limited onsite inspection can be conducted when a safety score reveals two or less safety issues. However, if a carrier has a long list of safety violations or is involved in a fatal crash, the carrier may be subject to an onsite "comprehensive" investigation. These investigations may result in a voluntary Cooperative Safety Plan designed to address the underlying problems. A carrier may receive a Notice of Violation (for violations not serious enough to warrant a fine) or a Notice of Claim (where the violations are severe enough to warrant a civil fine.)

CSA dovetails nicely with the FMCSA's new Pre-Employment Screening Program (PSP). [See www.psp.fmcsa.dot.gov.] The PSP is a voluntary program available to all trucking companies at a minimal cost. The PSP allows motor carriers and drivers to purchase their driving records from the FMCSA's MCMIS. The MCMIS will contain a five year history of crash data and three year history of safety inspections. The FMCSA believes that making this information available to potential employers (trucking

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companies) will help the trucking companies make an informed decision “before” hiring a truck driver. It is important to note that an employer cannot access this data without the driver’s permission.

If you are an attorney representing a victim of a trucking accident, you will need to draft the appropriate discovery requests to determine if the motor carrier participated in the PSP program. If the carrier did not participate in the program and if a request for driver information from PSP would have revealed a history of unsafe driving, the carrier’s failure to utilize the PSP program will support a separate claim against the trucking company for negligent hiring and/or negligent entrustment.

The full implementation of CSA and the trucking industry’s willingness to participate in PSP should help make our highways safer for the next generation. ▲



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