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## CHAPTER 30

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# Compliance, Safety, Accountability (CSA): Crash Prevention Through Early Intervention

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In order to understand the Compliance, Safety, and Accountability Program (CSA), one must understand the practical enforcement problems that the program is intended to address. The Federal Motor Carrier Safety Administration (FMCSA) is charged with enforcing the Federal Motor Carrier Safety Regulations (FMCSRs) across the country, with the ultimate goal being the reduction in the number of crashes that produce deaths and injuries. The number of authorized motor carriers in the country has become so huge that it is virtually impossible for the FMCSA to actively monitor the activities of all.

The exponential growth of the trucking industry is a direct result of deregulation in 1980. Before the Motor Carrier Act of 1980 brought about deregulation, there were fewer than 27,000 authorized interstate motor carriers operating in the United States. By the turn of the century, there were more than 500,000.<sup>1</sup> It is almost impossible to put an exact number on the current number of motor carriers, but an estimate of approximately 750,000 motor carriers would not be out of line.

Given the huge number of motor carriers and the vast expansive geographic area in which they operate (and given the limitations on the resources available for enforcement purposes), the FMCSA, by necessity, had to develop a method to maximize the impact of its selection of motor carriers for attention.

Under the prior program, "SafeStat" the FMCSA developed four Safety Evaluation Areas (SEAs), including Accident, Driver, Safety Management, and Vehicle. The violations that went into scoring within these SEAs were only the most serious violations, those that would render a driver or the equipment "Out of Service." If a motor carrier were to have bad scores (above a

target threshold) in two of the areas, the motor carrier was then a candidate to receive a compliance review by the FMCSA. The compliance review is an on-site investigation into the operations of the motor carrier and may result in an official safety rating for the motor carrier.

The SafeStat program has proved to be a rather blunt instrument. The enforcement mechanism (the compliance review) required the expenditure of significant resources for each company targeted under the program, and there was no interim action, short of a compliance review, that could speed up the process or allow an earlier intervention. Accordingly, the number of motor carriers the FMCSA could affect by this process was very small.

To improve on SafeStat's effectiveness, the FMCSA launched its Compliance, Safety, Accountability program (CSA). The CSA program has three major components: (1) measurement of a carrier's safety performances; (2) evaluation of a carrier's safety program; and (3) intervention to correct a carrier's unfit safety program.<sup>2</sup> The goal of the system is to identify particular areas of operation of a motor carrier for improvement more quickly than has been possible under SafeStat, focus a streamlined intervention early on, and hopefully, correct problems at a time when crashes can be prevented. If the early intervention does not cure the problems, more intrusive intervention can be made.

### *CSA's Measurements*

The centerpiece of the CSA program is the FMCSA's Safety Measurement System (SMS). The SMS collects safety data from roadside inspections, state-reported crashes, and the federal motor carrier census.<sup>3</sup> The SMS program takes this data and weighs the number of violations and the severity of the violations in six of seven different Behavior Analysis and Safety Improvement Categories (BASICS). In the seventh BASIC, the FMCSA counts the number of crashes in which the motor carrier is involved and ranks that number within a peer group of similarly situated motor carriers. The seven BASICS are unsafe driving, fatigued driving, driver fitness, controlled substances and alcohol, vehicle maintenance, hazardous materials, and crash indicators. The SMS program then gives a carrier a measurement in each BASIC. A carrier's BASIC measurement depends on the number of adverse safety violations or crashes, the severity of the violations or crashes, and when the violations or crashes occurred.<sup>4</sup> The SMS program weighs recent violations more heavily.<sup>5</sup>

### **Unsafe Driving**

The Unsafe Driving BASIC measures a motor carrier's compliance with the FMCSRs Parts 392 and 397.<sup>6</sup> These regulations govern a motor carrier's operation of a commercial motor vehicle and prohibit operation of the vehicle in a careless or dangerous manner. The regulations state that a motor carrier and its driver must operate the motor vehicle in accordance with the laws, ordinances, and regulations of the jurisdiction where the driver operates the vehicle.<sup>7</sup> CSA

will rank a motor carrier poorly in this BASIC if, for example, the motor carrier's driver speeds, recklessly drives, improperly changes lane, fails to maintain a proper lookout or commits any other violation of a state's traffic law.<sup>8</sup>

Furthermore, the federal motor carrier regulations prescribe a higher standard of care in some situations. For example, the regulations outline specific conduct that a motor carrier must use when he or she operates a vehicle at or near a railroad crossing,<sup>9</sup> govern when and how the motor carrier uses his or her emergency signals,<sup>10</sup> and generally prohibit the motor carrier's driver from texting or otherwise using his or her cell phone.<sup>11</sup> A motor carrier's or its driver's violation of these regulations will also adversely affect the motor carrier's percentile in this BASIC.

### **Fatigued Driving**

The Fatigued Driving BASIC measures a motor carrier's compliance with the FMCSRs in Part 392 and 395 that pertain to the driver's ability to operate the commercial motor vehicle.<sup>12</sup> The regulations prohibit a motor carrier's driver from operating a vehicle when his or her ability or alertness is impaired or so likely to become impaired because of fatigue or illness (or any other cause) that it is unsafe for him or her to operate the vehicle.<sup>13</sup> The regulations also limit the number of hours that the motor carrier's driver may drive and require the driver to maintain logbooks documenting his or her driving time.<sup>14</sup> The regulations also subject a motor carrier and its driver to prosecution for falsifying the driver's logbooks.<sup>15</sup> CSA will rank a motor carrier poorly in this BASIC if, for example, the motor carrier allows its driver to operate a vehicle for more hours than the regulations prescribe or permits its driver to falsify his or her logbooks.<sup>16</sup> A motor carrier "permits" a violation of the regulations when it fails to have in place a management system that effectively prohibits the violation.

### **Driver Fitness**

The Driver Fitness BASIC measures a motor carrier's compliance with the FMCSRs in Parts 383 and 391 that prohibit a motor carrier from allowing a driver who is unfit to operate a commercial motor vehicle due to a lack of training, experience, or medical qualifications.<sup>17</sup> For example, the regulations state that a person is qualified to drive a motor vehicle if, among other things, he or she (1) is at least 21 years old, (2) can speak and read English sufficiently to understand highway traffic signs and to respond to official inquiries, (3) safely operate a motor vehicle, and (4) has a valid commercial motor vehicle operator's license.<sup>18</sup> The regulations also require that a medical professional certify that the driver is medically qualified to operate a motor vehicle.<sup>19</sup> CSA will rank a motor carrier poorly in this BASIC if, for example, the motor carrier fails to require that its driver have a valid commercial driver's license or allows medically unqualified drivers to operate a commercial motor vehicle.<sup>20</sup>

### Controlled Substances/Alcohol

The Controlled Substances/Alcohol BASIC measures a motor carrier's compliance with FMCSRs in Parts 382 and 392 that require the motor carrier to test for controlled substances and alcohol and prohibit a driver from operating a vehicle while intoxicated.<sup>21</sup> For example, the regulations mandate that a motor carrier require that its drivers undergo testing for controlled substances before the driver performs a "safety sensitive" function for the first time.<sup>22</sup> The regulations also require the motor carrier to conduct random alcohol and controlled substance testing.<sup>23</sup>

The regulations also prohibit a driver from operating a commercial motor vehicle while he or she is intoxicated. CSA will rank a motor carrier poorly in this BASIC if, for example, the driver fails a test that indicates an alcohol level of .02 or greater or indicates that the driver was under the influence of illegal drugs.<sup>24</sup>

### Vehicle Maintenance

The Vehicle Maintenance BASIC measures a motor carrier's compliance with the FMCSRs in Parts 393 and 396 that require a motor carrier to properly maintain a commercial motor vehicle.<sup>25</sup> For example, the motor carrier regulations require that the motor carrier ensure that the vehicle's brakes are operating<sup>26</sup> and that the vehicle's tires are not worn.<sup>27</sup> The regulations also require the motor carrier to "systematically inspect, repair, and maintain" its motor vehicle.<sup>28</sup> CSA will rank a motor carrier poorly in this BASIC if, for example, the motor carrier allows a driver to operate a vehicle with inoperative brakes or lights, or the motor carrier fails to make the necessary repairs on the vehicle.<sup>29</sup>

The CSA recently moved its cargo or load requirements into this BASIC.<sup>30</sup> This BASIC now measures a motor carrier's compliance with the FMCSRs in Parts 392, 393, and 397 that require a motor carrier to take measures to prevent shifting loads, spilled, or dropped cargo, overloading, and unsafe handling of cargo on a commercial motor vehicle. The regulations set out general requirements for securing all cargo loads.<sup>31</sup> The regulations also set out specific requirements for securing loads depending on the commodity type.<sup>32</sup> CSA will rank a motor carrier poorly in this BASIC if, for example, the motor carrier fails to secure its load properly.<sup>33</sup>

### Hazardous Materials

The CSA originally entitled this BASIC "Cargo-Related BASIC" and it ranked a carrier on its compliance with all cargo-related requirements and hazardous materials requirements. A crash involving hazardous materials can cause significantly more damage than a crash involving non-hazardous materials.<sup>34</sup> But, because the previous BASIC ranked a motor carrier based on the motor carriers' violations for cargo-related problems and hazardous materials, some motor carriers with hazardous materials compliance problems did not

meet CSA's intervention threshold because they did not have any other cargo-related violations.<sup>35</sup> CSA moved cargo-related violations to another BASIC and modified this BASIC to focus on carriers that transport hazardous materials.<sup>36</sup>

This BASIC now measures a motor carrier's compliance with the FMCSRs regarding hazardous materials.<sup>37</sup> For example, the regulations state when the driver may leave the commercial motor vehicle unattended.<sup>38</sup> The regulations also state when and where a motor carrier may park a commercial motor vehicle containing hazardous materials<sup>39</sup> and how that carrier may fuel the vehicle.<sup>40</sup> CSA will rank a motor carrier poorly in this BASIC if a motor carrier violates any of these regulations.

### Crash Indicator

CSA defines the Crash Indicator BASIC as a motor carrier's history of high crash involvement.<sup>41</sup> The Crash Indicator BASIC uses information from state-reported crashes to monitor a motor carrier's history of involvement in crashes.<sup>42</sup> In that regard, the Crash Indicator BASIC is the one BASIC that does not monitor a motor carrier's behavior or necessarily involve some kind of "violation" by the motor carrier.<sup>43</sup> Rather the Crash Indicator BASIC monitors the consequences of a motor carrier's behavior.<sup>44</sup> CSA will rank a motor carrier poorly in this BASIC if, for example, the motor carrier has a history of more crashes than other similar motor carriers. The Crash Indicator BASIC also takes the frequency and severity of a motor carrier's crashes into consideration.<sup>45</sup> While a crash may or may not involve a violation on the part of a motor carrier or its driver, and while a crash may or may not have been preventable by the truck driver, this BASIC is not concerned with placing fault for a particular crash on a motor carrier. Rather, this BASIC scores the number and severity of crashes, irrespective of the perceived causes of the crashes, and allows FMCSA intervention to determine what is going on at a motor carrier that is involved in more than its share of serious crashes.

### CSA's Evaluation

After the SMS determines the carrier's measurements in each BASIC, the SMS places the carrier in a peer group with other carriers that have similar operations.<sup>46</sup> The SMS then compares the carrier's BASIC measurements with the other carriers in its peer group.<sup>47</sup> The SMS gives each carrier a percentile from 0 to 100 based on this comparison. A percentile of 100 indicates the worst performance in the peer group.<sup>48</sup> The Federal Motor Carrier Safety Administration uses these measurements to determine how to address a motor carrier with a poor safety performance.<sup>49</sup> The SMS allows the Administration to more effectively evaluate safety performance using new measures to identify the appropriate intervention level for each carrier and to assist in identification of which carriers the Administration should more fully investigate and possibly deem "unfit" to operate a commercial motor vehicle.<sup>50</sup>

### *CSA's Intervention*

CSA offers an expanded range of intervention tools to the Administration to address a motor carrier's poor performance in a BASIC.<sup>51</sup> The Administration's tools range from warning letters to comprehensive on-site reviews.<sup>52</sup> CSA's new tools supplement the Administration's labor-intensive compliance review system and allow the Administration to tailor its response to a motor carrier's particular need.<sup>53</sup> CSA categorizes its intervention into three categories: early contact, investigation, and follow-on.

CSA's early contact intervention protocols include:

- *Warning Letters:* Once the Administration determines that a motor carrier is deficient (has a score above the threshold for that BASIC) in one or more BASICs, the Administration can send a warning letter to the motor carrier that identifies its deficient BASIC and explains the consequences of failing to correct the problem. The warning letter also provides instructions so that the motor carrier can access its safety data.
- *Carrier Access to Safety Data and Measurement:* A motor carrier has access to its BASIC results and the data that went into those results. A motor carrier can monitor this data (and appeal data it believes is incorrect) through FMCSA's DataQs system at <https://dataqs.fmcsa.dot.gov/login.asp>.
- *Targeted Roadside Inspection:* CSA can provide a roadside inspector with its data that identifies a motor carrier's specific safety problem. This will allow the roadside inspector to focus his or her inspection on the motor carrier's specific problem area.

CSA's investigation protocols include:

- *Off-site Investigation:* CSA can require a motor carrier to submit documents to the Administration or state partner. These types of documents could include toll receipts, border crossing records, or drug testing records. The Administration or state will use these documents to evaluate the motor carrier's safety problems and the root causes of those safety problems.
- *On-site Focused Investigation:* CSA may use this intervention protocol when a motor carrier is deficient in one or more BASICs. The CSA's on-site focused investigations target specific problem areas.
- *On-site Comprehensive Investigation:* This intervention protocol is similar to SafeStat's compliance review. The investigation takes place at the motor carrier's place of business. The CSA will use this intervention protocol when the motor carrier exhibits broad and complex safety problems through continually alerted BASICs, worsening multiple BASICs, or a fatal crash or complaint. While the CSA's focused

investigation targets specific problems, the CSA's on-site comprehensive investigation addresses all aspects of the motor carrier's business.

CSA's follow-on protocols include:

- *Cooperative Safety Plan (CSP)*: The motor carrier may voluntarily implement a cooperative safety plan to address the motor carrier's underlying safety problems. The motor carrier works with the Administration to develop the plan.
- *Notice of Violation (NOV)*: The Administration may send a NOV to the motor carrier. The NOV is the Administration's formal notice of safety alerts and requires a response from the carrier. The Administration will send this notice when the motor carrier's regulatory violations are severe enough to warrant formal action but not a civil penalty. To avoid further intervention, the motor carrier must provide evidence that it has taken action to correct its violations.
- *Notice of Claim (NOC)*: The Administration may issue a NOC in cases where the motor carrier's regulatory violations are severe enough to warrant assessment and civil penalties.
- *Operations Out-of-Service Order (OOS)*: The Administration may issue an OOS order to require the carrier to cease all motor vehicle operations.<sup>54</sup>

### *Public Information*

CSA has made much of its information public.<sup>55</sup> The general public can access a motor carrier's SMS data at <http://ai.fmcsa.dot.gov/sms/>. This is an important part of the effectiveness of the program. Brokers and shippers have access to the information so they have a ready means to choose motor carriers who follow the rules and have fewer safety problems. Although motor carriers with poor safety history may object to such disclosure, a safe motor carrier should be proud of its record and welcome the fact that the world can see its safety scores. Through the CSA Web site the public has access to a motor carrier's BASIC percentile rank for five of the seven BASICS: Unsafe Driving, Fatigued Driving, Controlled Substances/Alcohol, Driver Fitness, and Vehicle Maintenance.<sup>56</sup> While motor carriers who want to hide their scores and not allow the scores to be made public have prevailed in part for the time being in that scores are not made public for the crash, the public can still view the lists of crashes, roadside inspections, and violations resulting from roadside inspections.<sup>57</sup>

### *Conclusion*

While the CSA program is still fairly new and the FMCSA is still making changes, the program promises to be a much sharper tool to allow more focused attention to a greater number of motor carriers that exhibit safety

problems. There has been a noticeable increase in safety compliance awareness in the industry press and in industry conferences since the inception of this program. The FMCSA should continue with its efforts to reach more carriers as well as to broaden the information that is available to the public. This CSA “spotlight” could help clean up a lot of dark corners within the industry.

### Notes

1. ECONOMICS & STATISTICS GROUP, AMERICAN TRUCKING ASSOCIATIONS, AMERICAN TRUCKING TRENDS (2002).
2. *How Does CSA Work*, FEDERAL MOTOR CARRIER SAFETY ASSOCIATION, [http://csa.fmcsa.dot.gov/about/csa\\_how.aspx](http://csa.fmcsa.dot.gov/about/csa_how.aspx).
3. *See Safety Measurement System*, FEDERAL MOTOR CARRIER SAFETY ASSOCIATION, <http://csa.fmcsa.dot.gov/about/basics.aspx>.
4. *Id.*
5. *Id.*
6. *Unsafe Driving BASIC Factsheet*, FEDERAL MOTOR CARRIER SAFETY ASSOCIATION, [https://csa.fmcsa.dot.gov/Documents/FMC\\_CSA\\_12\\_008\\_BASICs\\_UnsafeDriving.pdf](https://csa.fmcsa.dot.gov/Documents/FMC_CSA_12_008_BASICs_UnsafeDriving.pdf).
7. 49 C.F.R. § 392.2.
8. *Supra* note 6.
9. 49 C.F.R. §§ 392.10 and 392.11.
10. 49 C.F.R. § 392.22–.24.
11. 49 C.F.R. § 392.80–.82.
12. *Fatigued Driving (HOS) BASIC Factsheet*, FEDERAL MOTOR CARRIER SAFETY ASSOCIATION, [https://csa.fmcsa.dot.gov/Documents/FMC\\_CSA\\_12\\_007\\_BASICs\\_FatiguedDriving.pdf](https://csa.fmcsa.dot.gov/Documents/FMC_CSA_12_007_BASICs_FatiguedDriving.pdf).
13. 49 C.F.R. § 392.3.
14. 49 C.F.R. § 395.
15. 49 C.F.R. § 395.8.
16. *Supra* note 12.
17. *Driver Fitness BASIC Factsheet*, FEDERAL MOTOR CARRIER SAFETY ASSOCIATION, [https://csa.fmcsa.dot.gov/Documents/FMC\\_CSA\\_12\\_006\\_BASICs\\_DriverFitness.pdf](https://csa.fmcsa.dot.gov/Documents/FMC_CSA_12_006_BASICs_DriverFitness.pdf).
18. 49 C.F.R. § 391.11.
19. 49 C.F.R. § 391.41–.43.
20. *Supra* note 17.
21. *Controlled Substances/Alcohol BASIC Factsheet*, FEDERAL MOTOR CARRIER SAFETY ASSOCIATION, [https://csa.fmcsa.dot.gov/Documents/FMC\\_CSA\\_12\\_004\\_BASICs\\_ControlledSub.pdf](https://csa.fmcsa.dot.gov/Documents/FMC_CSA_12_004_BASICs_ControlledSub.pdf).
22. 49 C.F.R. § 382.301.
23. 49 C.F.R. § 382.305.
24. *Supra* note 21.
25. *Vehicle Maintenance BASIC Factsheet*, FEDERAL MOTOR CARRIER SAFETY ASSOCIATION, [https://csa.fmcsa.dot.gov/Documents/FMC\\_CSA\\_12\\_009\\_BASICs\\_VehMaint.pdf](https://csa.fmcsa.dot.gov/Documents/FMC_CSA_12_009_BASICs_VehMaint.pdf).
26. 49 C.F.R. § 393.48.
27. 49 C.F.R. § 393.75.



28. 49 C.F.R. § 396.3.
29. *Supra* note 25.
30. Department of Transportation, Federal Motor Carrier Safety Administration, *Improvements to the Compliance, Safety, Accountability (CSA) Motor Carrier Safety Measurement System (SMS)*, 77 Fed. Reg. no. 59 (March 27, 2012).
31. 49 C.F.R. § 393.106.
32. 49 C.F.R. § 393.116–393.136.
33. *Supra* note 25.
34. *Supra* note 30.
35. *Id.*
36. *Id.*
37. *See generally* 49 C.F.R. § 397.
38. 49 C.F.R. § 397.5.
39. 49 C.F.R. § 397.7.
40. 49 C.F.R. § 397.15.
41. *Crash Indicator BASIC Factsheet*, FEDERAL MOTOR CARRIER SAFETY ASSOCIATION, [https://csa.fmcsa.dot.gov/Documents/FMC\\_CSA\\_12\\_005\\_BASICs\\_Crash\\_Indicator.pdf](https://csa.fmcsa.dot.gov/Documents/FMC_CSA_12_005_BASICs_Crash_Indicator.pdf).
42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.*
46. *Supra* note 3.
47. *Id.*
48. *Id.*
49. *See Safety Evaluations*, FEDERAL MOTOR CARRIER SAFETY ASSOCIATION, <http://csa.fmcsa.dot.gov/about/model.aspx>.
50. *Id.*
51. *Intervention*, FEDERAL MOTOR CARRIER SAFETY ASSOCIATION, <http://csa.fmcsa.dot.gov/about/interventions.aspx>.
52. *Id.*
53. *Id.*
54. *Id.*
55. *Frequently Asked Questions*, FEDERAL MOTOR CARRIER SAFETY ASSOCIATION, <https://csa.fmcsa.dot.gov/FAQs.aspx>.
56. *Id.*
57. *Id.*