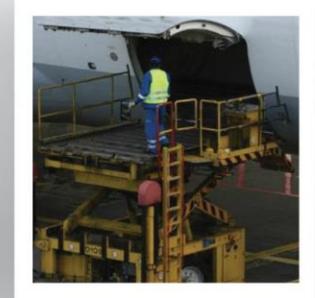


TIA CARRIER SELECTION FRAMEWORK



Develop and Implement an Effective Carrier Selection Program

TIA Transportation
Intermediaries
Association
Dedicated. Connected. Trusted.



Carrier Selection Framework

April 2020

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TIA understands this document to be a working draft, which may be updated from time to time. The TIA CSA-Carrier Selection Framework Subcommittee met on February 19, 2020 to review updates to the Framework and other relevant information and data. The Subcommittee approved the amended framework and continues to support the positions outlined in the framework. TIA is interested in any and all constructive feedback and advice, which could improve this Framework. Please send an email to Chris Burroughs at burroughs@tianet.org, and he will inform the committee of your remarks.

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Preamble

The Transportation Intermediaries Association (TIA) is the premier professional and educational organization of the \$214 billion third-party logistics industry. As one of the nation's preeminent users of the motor carrier industry, the TIA values safety on the highways and has created this Carrier Selection Framework ("Framework") as a value for its members. The Framework developed over several years of extensive discussion at the direction of the TIA Board of Directors.

The Carrier Selection Framework Committee began with multiple surveys of TIA membership and since 2006 has continued its work reviewing and combining survey results with significant events in the industry to build the useful and current Framework we have today. As practices and regulations continue to change, the Framework will endeavor to adapt.

TIA is fortunate that its Carrier Selection Committee has been comprised of the leading authorities and voices on the subject in the nation. Its recent Committee includes a broad and diversified range of subject matter experts, with firms and individuals who are authorities in freight broker operation; motor carrier operation; carrier assessment; professional risk management; several transportation attorneys; a former FMCSA Administrator; insurance industry experts who specialize in insuring freight brokers and motor carriers; and carrier compliance data reporting companies.

Carrier selection is a nuanced, often technical, and always exceedingly complex subject due to the innumerable differences among motor carriers who may appear "the same on the outside" to the general public and yet, to professional users, offer far different services. Important differences loom large among carriers, for example between service offerings, equipment types, and even market and/or geographical presence. There are notable distinctions among providers of regional services versus super-regional, national and/or cross-border and international services. Even more subtle differences, as between the sales and marketing focus among carriers, can make a real difference. To illustrate the spectacular diversity of the trucking industry: in 2013, the top 10 truckload carriers represent less than 5% of the entire nation's fleet of trucks. Incredibly, this specialized; complex and decentralized motor carrier industry meets the demands of an even more dynamic, diverse and complicated \$15 trillion U.S. economy.

In this context, TIA offers this Framework. The Framework will leave some highly important subjects untouched -- subjects that are specific to service parameters, SOPs, selection based on product type, equipment type, specialized services, private (not for-hire) carriers, and customized carriage like "dedicated carriage" -- and will leave those areas of motor carrier selection to be resolved through contracts between shippers and carriers, or among shippers, brokers, forwarders, third party logistics companies and carriers, based upon various parties' needs.

I. The Framework's Purpose is:

The purpose of this Framework is to assist TIA members in developing and implementing their own individual carrier selection policies and procedures. The ideas and information, and areas suggested for review contained in this Framework, represent merely one set of tools among many others that TIA members may turn to as sources of information on carrier selection. It is the Committee's hope that the information in this Framework may direct TIA members to other resources that may help TIA members reduce some exposure to risk of loss, liability and/or potential fraud when selecting motor carriers. The areas covered are:

- Cargo loss, damage and delay claims.
- Loss and/or damage arising out of loads that are re-brokered without knowledge or authorization, by a carrier, or someone illegally posing as a carrier, with or without fraudulent intent or purpose.
- Insurance policy coverage considerations for both freight brokers and motor carriers.
- Threat of imposed third party liability for personal injury and/or death arising out of accidents involving a carrier hired by a broker or shipper.

II. The Framework's Purpose is Not:

The Framework is not designed, not intended, and not recommended to be a checklist, or any type of industry "standard," nor a characterization or summary of industry standards, nor a collection of "minimum" thresholds for the selection of motor carriers. In fact, not a single company or individual on the Committee performs, recommends performing, intends to perform, or can even justify the application of most or all the tasks and/or areas suggested for possible review as outlined in this Framework. Most of the areas suggested for possible review in this Framework are specific to certain scenarios which may present themselves from time to time during carrier selection and/or during periodic carrier review.

Nothing in this Framework is intended to be nor should be used as legal advice or as a substitute for legal advice, which each member should obtain from qualified counsel familiar with the member's business and laws applicable to it. The Framework is not intended to define or prove compliance or non-compliance with any legal standard of care or diligence, and it should not be used or relied upon by anyone for any such purposes. This Framework is understood by TIA to be a "working draft" and an evolving document and framework.

III. **The Only Possible Motor Carrier Safety “Authority” Is the Federal Motor Carrier Safety Administration**

A. FMCSA Mission

The primary mission of the Federal Motor Carrier Safety Administration (FMCSA) is to reduce crashes, injuries and fatalities involving large trucks and buses. Pursuant to the Motor Carrier Safety Improvement Act of 1999, the FMCSA was established as a separate administration within the U.S. Department of Transportation (DOT) on January 1, 2000, FMCSA is headquartered in Washington, DC and employs more than 1,000 people in all 50 States and the District of Columbia, all dedicated to improving the safety of commercial motor vehicles (CMV) and saving lives.

B. Safety Rating and Data Facts

Some members of the public have mistakenly argued that certain FMCSA data sets, scores, or recordings of certain incidents by FMCSA should confer, imply, or in some way equate to a Safety Rating pursuant to 49 CFR Part 385. By federal law, a Safety Rating (Satisfactory, Conditional, and Unsatisfactory) is FMCSA's ultimate and final determination of the safety fitness of a carrier. The facts are:

- Only some of the data collected by FMCSA are publicly available.
- Many data sets relating to safety are purposefully hidden from the public by FMCSA.
- Many studies providing methodologies, facts and interpretations of this data have purposefully not been released to the public by FMCSA.
- FMCSA uses many data sets, both public and non-public, combined with FMCSA internal, non-public algorithms, processes and procedures, to prioritize carriers for Agency intervention and possible enforcement action.
- The only purpose of FMCSA's internal and non-public algorithms, processes, and procedures is to aid FMCSA, internally, as it prioritizes carriers for Agency intervention and possible enforcement action.
- Only FMCSA intervention and possible enforcement action may confer, change or confirm the Safety Rating of a motor carrier.
- By federal law, a Safety Rating is FMCSA's highest level determination of the safety fitness of a carrier.

Collectively, all of FMCSA's data, and all of its law enforcement designed data and processes, its carefully designed, internal, non-public processes applied to all of its data, still do not establish or create a Safety Rating for a motor carrier. Instead, the entirety of these data and processes only assist FMCSA and law enforcement, alone, in their effort to be more responsive as they prioritize and target carriers for FMCSA intervention and possible enforcement action. Without exception, results arising from and actions taken by FMCSA after intervention and enforcement action, and comprehensive reviews called Compliance Reviews, are the only mechanism to confer, change or confirm the Safety Rating of a motor carrier.

C. The FAST Act and CSA Reform

On Friday, September 25, 2019, the Department of Transportation (DOT) Inspector General's Office (IG) released an audit report entitled: "FMCSA's Plan Addresses Recommendations on Prioritizing Safety Interventions but Lacks Implementation Details." This report is part of the CSA reform language included in the FAST Act. In summary, the DOT IG found that while FMCSA's corrective action plan addresses motor carrier safety interventions, it lacks implementation details for improving transparency and its assessment of carrier safety rankings. For example, in response to recommendations from NAS and GAO, the Agency is testing an Item Response Theory (IRT) statistical model to gauge how it prioritizes motor carrier safety interventions.

Regarding the NAS recommendation on collecting more accurate and diverse types of data, FMCSA determined that much of the data does not exist. As a result, FMCSA no longer plans to collect additional data. Similarly, the plan describes putting datasets on a publicly available website but does not discuss making them user-friendly or outline costs and implementation steps – hindering FMCSA's efforts to make its data, safety measures and rankings more transparent. Finally, the complexity of the IRT model may make implementation and public outreach difficult.

On August 14, 2018, the Federal Motor Carrier Safety Administration released its report to Congress outlining the corrective action plan for addressing the National Academy of Sciences (NAS) study on Compliance, Safety, Accountability (CSA). By way of background, Section 5221 of the Fixing America's Surface Transportation (FAST) Act required the National Research Council of the National Academy of Sciences (NAS) to conduct a correlation study of the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, Accountability (CSA) initiative and Safety Measurement System (SMS). The SMS is FMCSA's algorithm for identifying patterns of non-compliance and prioritizing motor carriers for interventions. The FMCSA is prohibited from publishing percentiles and alerts on the SMS website for motor carriers transporting property until the Correlation Study is complete, and all reporting and certification requirements under section 5221 of the FAST Act are satisfied. The Agency estimates it will need \$2.5 million over two years for implementation of the action plan. This would include money for the creation of a standing committee, additionally research, new labor costs for statistical modeling and reallocation of contract resources from current work on SMS to work on implementation of the NAS recommendations.

The FMCSA contracted with NAS to assist with its response to the report's recommendations. The NAS established a new Standing Committee, that includes subject matter experts on organization safety, statistics, research and evaluation methods, motor carrier operations, enforcement, and IRT modeling.

The committee will provide expertise, guidance, and oversight to FMCSA in developing and testing IRT modeling, providing feedback and input on the other recommendations, and providing input on how to best measure motor carrier safety and system effectiveness. In addition, the Standing Committee will solicit input from stakeholders during the implementation process and will provide advice to FMCSA in the implementation of the recommendations. The Standing Committee will hold closed and open meetings to review FMCSA's progress in implementing its action plan and to provide guidance and advice.

In addition, the Agency is planning a public forum in July 2018 to discuss data issues and availability. Also, FMCSA will establish a committee to provide feedback on the process of implementing the NAS

recommendations under the Motor Carrier Safety Advisory Committee (MCSAC) to provide guidance and input as the process of implementing the NAS recommendations moves forward.

NAS Report Recommendations:

On June 27, 2017, the NAS released their comprehensive report on CSA and included six recommendations for FMCSA's consideration. These included:

1. **Investigate a new statistical model, within the existing structure of SMS, over the next two years.** FMCSA should evaluate the model's effectiveness at identifying motor carriers for intervention to inform the decision of whether to implement this new model.
2. **Improve the quality of Motor Carrier Management Information System (MCMIS) data** that feeds SMS by continuing to collaborate with States and other agencies. This effort should focus on data related to crash reports and carrier exposure (e.g., Vehicle Miles Traveled, Power Units, etc.).
3. **Explore ways to collect additional data that could enhance the recommended methodology for safety assessment.** This data could include carrier characteristics such as driver turnover rate, type of cargo, method and level of compensation, and better information on exposure.
4. **Make user-friendly versions of the MCMIS data file, and computer code used to calculate SMS results, available to the public.** The MCMIS file would not include any personally identifiable information and the computer code would comply with reproducibility and transparency guidelines.
5. **Conduct a study to better understand if percentile ranks should be available to the public.** This study should aim to determine whether percentiles are effective at identifying carriers for intervention. Findings from this study should inform the decision of whether to make percentiles public.
6. **Use absolute measures, in addition to relative percentiles, to determine which carriers are prioritized for intervention.** The percentiles should be calculated within carrier safety event groups and across all carriers.

FMCSA Corrective Plan Actions:

1. **The FMCSA is moving forward to develop and test an IRT model.** That model will be used to inform the Agency's work with opportunities for public input. As recommended by NAS, if the new IRT model performs well, it will replace the existing SMS. The FMCSA will not substantively modify SMS while they are testing the IRT model to ensure they have a stable comparison to evaluate effectiveness.
2. **The Agency agrees that more frequent and more detailed VMT data from motor carriers would reduce the need for FMCSA to use substitute values and would improve the quality of the data in SMS.** The FMCSA currently only collects carrier VMT data every two years. Access to this data, by State, on a monthly basis is not currently feasible, but the Agency will continue to identify possible sources for this important data.
3. **The Agency agrees that additional information about carrier operations might improve the Agency's analysis and identification of non-compliant motor carriers.** However, the collection of this data would come at a cost, and the benefits are unknown.

4. **The FMCSA agrees that there could be benefits from making MCMIS data available to researchers and carriers.** As a result, the Agency's first effort will be to improve data availability. The FMCSA will develop a webpage where researchers, carriers, safety consultants, and the public can obtain simplified MCMIS data snapshots.
5. **The FMCSA will be gathering public input from motor carriers, insurance companies and shippers regarding the ways in which the public uses SMS data.** Using the data collected in these public listening sessions. FMCSA will scope and complete a study specific to the issue of percentile ranks and the usability of public scores.
6. **Once IRT modeling is complete, FMCSA will evaluate the use of absolute measures for set intervention thresholds.** Absolute measures and percentiles are products of the SMS system. At this time, it is not known how these would be affected once the Agency completes the modeling recommended by NAS. Therefore, FMCSA defers action on this recommendation until it is confirmed this would be relevant.

On December 4, 2015, President Obama signed into law the "Fixing America's Surface Transportation Act" or the FAST Act. The five-year authorization for all federal surface transportation programs is the first long-term solution surface transportation bill since 2005 and includes major reforms to the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety, and Accountability (CSA) initiative.

Specifically, as required by the FAST Act, FMCSA was required to remove from public view immediately the following information:

- Analysis of violations
- Crashes in which a determination is made that the motor carrier or commercial motor vehicle driver is not at fault
- CSA Alerts
- Relative percentile for each Behavioral Analysis and Safety Improvement Category (BASIC)

While FMCSA is not prohibited from displaying all data, they have currently removed certain information from public view while they make changes. The Agency announced on December 11, 2015 that crash data and violations information has been restored to the public CSA website.

By law, the process that FMCSA must undertake to improve CSA before the initiative is brought back online is exhaustive. It will likely take over three or four years for the Agency to complete. The FAST Act required the National Research Council of the National Academics to conduct a study within 18 months on the following key aspects of the CSA initiative:

- Accuracy with which Behavioral Analysis and Safety Improvement Categories (BASICs):
 - Identify high-risk carriers; and
 - Predict or correlate with future crash risk.
- The methodology used to calculate BASIC percentiles and identify carriers for enforcement, including weights assigned to particular violations and the tie between crash risks.

- The relative value of inspection information and roadside enforcement data.
- Any data collection gaps or data sufficiency problems.
- The accuracy of safety data, including the use of crash data from crashes in which a motor carrier was free from fault.
- Whether BASIC percentiles for motor carrier of passengers should be calculated separately from motor carriers of freight.
- The difference in the rates at which safety violations are reported to FMCSA by various enforcement authorities, including States, territories, and Federal inspectors.
- How members of the public use the Safety Measurements System (SMS) and what effect making the SMS information public has had on reducing crashes and eliminating unsafe motor carriers from the industry.
- Whether the SMS provides comparable precision and confidence, through SMS alerts and percentiles, for the relative crash risk of individual large and small motor carriers.
- Whether alternatives to the SMS would identify high-risk carriers more accurately.
- The recommendations and findings of the Comptroller General of the United States and the Inspector General of the DOT, and independent review team reports, issued before the date of enactment.

Once the report has been completed and sent to the FMCSA and Congress, not later than 120 days after submission, the FMCSA will have to develop a corrective action plan that responds to deficiencies and opportunities identified in the report and how FMCSA plans to fix those problems.

After the corrective action plan is submitted to Congress, the Inspector General (IG) of the DOT must review and the plan and ensure that it address all the issues and problems identified within the study. If the DOT IG certifies that the corrective action plan is sufficient, FMCSA must begin implementing all necessary changes. Until that time the information removed from public view will remain hidden, and the Agency will not be allowed to complete a safety fitness determination (SFD) rulemaking that would tie the CSA scores to a motor carrier's safety rating.

During 2016, the National Academy of Sciences (NAS) held three public meetings where industry stakeholders from all facets of the transportation industry were invited to provide their views and positions on the CSA initiative. The NAS panel was compromised of 12 professors and scientists representing an expertise in a wide range of issue areas, including transportation, economics, and healthcare. TIA staff was offered a chance to provide a 3PL perspective after several attempts to be included on the limited agenda.

Throughout the three public meetings, it remained clear that the panel identified that a problem exists within the CSA initiative and it is clearly flawed in its current form, but the panel was not sympathetic towards recommending keeping the CSA scores and alerts permanently removed from public view. Even after TIA and several representatives from ATA, OOIDA, the American Bus Association (ABA), and other industry stakeholder groups provides a compelling case against making these scores public.

On June 27, 2017, the National Academy of Sciences (NAS) was tasked by Congress in the FAST Act, to conduct a thorough comprehensive examination of the Federal Motor Carrier Safety Administration's (FMCSA) Compliance, Safety and Accountability (CSA) initiative, released their much-anticipated report. Congress commissioned the NAS to conduct this study because of concerns from motor carriers, shippers and brokers about the validity of the system, and the impacts of the scores on third-parties. In summary, the NAS found that the CSA and Safety Measurement System (SMS) is:

structured in a reasonable way, and its method of identifying motor carriers for alert status is defensible. However, much of what is now done is ad hoc and based on subject-matter expertise that has not been sufficiently empirically validated. This argues for FMCSA adopting a more statistically principled approach that can include the expert opinion that is implicit in SMS in a natural way.

Additionally, the NAS based on the current information available to them, was unable to make a recommendation if a motor carrier's SMS results and scores should be made publicly available. The NAS recommends that the Agency conduct a detailed review and analysis of the potential impacts to industry and the public of making those scores publicly available. Ultimately, this means that the scores will likely remain hidden from view until further analysis is conducted.

Specifically, the NAS makes the following recommendations to the FMCSA for improvements:

1. FMCSA should implement an item response theory (IRT), which is a paradigm for the design, analysis, and scoring of tests, questionnaires, and similar instruments measuring abilities, attitudes, or other variables. It is a theory of testing based on the relationship between individuals' performances on a test item and the test takers' levels of performance on an overall measure of the ability that item was designed to measure. Several different statistical models are used to represent both item and test taker characteristics. This would:
 - a. move towards leaning on data alone, and not expert opinions,
 - b. enhance transparency of the evaluation system,
 - c. support the direct estimation of variability of scores and rankings, and
 - d. Allow the Agency to adapt to future changes.
2. FMCSA should continue to work with State Agencies and law enforcement to improve the quality of data in MCMIS. The two areas in need of immediate attention would be: carrier exposure and crash data and fault. The NAS calls for the development of a National Minimum Uniform Crash Criteria to be implemented nationwide.
3. FMCSA should investigate new ways of collecting data that will likely benefit the recommended methodology for safety assessment. This would include data on carrier characteristics – including information on driver turnover rates, type of cargo, method and level of compensation, and better information on exposure.
4. FMCSA should structure a user-friendly version of the MCMIS data file used as input to SMS without any personally identifiable information to facilitate its use by external parties, such as researchers, and by carriers. In addition, FMCSA should make user-

friendly computer code used to compute SMS elements available to individuals in accordance with reproducibility and transparency guidelines.

5. FMCSA should undertake a study to better understand the statistical operating characteristics of the percentile ranks to support decisions regarding the usability of public scores.
6. FMCSA should decide on the carriers that receive SMS alerts using both the SMS percentile ranks and the SMS absolute measures, and the percentile ranks should be computed both conditionally within safety event groups and over all motor carriers.

Additionally, the FAST Act required FMCSA to implement within 18 months a beyond compliance program within CSA that gives recognition, including credit or an improved SMS percentile, for a motor carrier that:

- Installs advanced safety equipment;
- Uses enhanced driver fitness measures;
- Adopts fleet safety management tools, technologies, and programs; or
- Satisfies other standards determined appropriate by the Administrator.

It is unclear how the removal of CSA data and analysis from public view will impact the legal landscape of negligent selection lawsuits that continue to threaten industry. At a minimum with the CSA alerts and analysis being removed from public view, the creditability of the CSA initiative certainly has to be questioned during litigation.

In addition to removing CSA analysis and scoring from public view, the FAST Act prohibited the FMCSA from using alerts and “relative” percentile scoring from being used for determining a motor carrier’s safety fitness determination (SFD).

In March 2016, the FMCSA published online the absolute performance measure scores of a motor carrier within each BASIC. These absolute performance measures available online, will only further generate confusion in the marketplace when hiring a motor carrier and will give the trial bar another quiver to seek judgment against a 3PL for negligent selection.

The performance measure weighs a carrier’s violations and crashes by time and severity. This measure only considers a carrier’s individual performance on a scale of 0-100, with 0 indicating the best performance. Although, it is not illegal under the FAST Act it does seem to be in firm contradiction to Congressional intent. The Executive and Legislative branches of the Federal Government were clear in their message within the FAST Act, that the CSA initiative is a flawed and failed product that needs to go back to the drawing board and reworked comprehensively.

D. Safety Fitness Determination (SFD) Proposed Rule

On January 21, 2016, the FMCSA published in the Federal Register a notice of proposed rulemaking (NPRM) for the much-anticipated motor carrier safety fitness determination rulemaking. Under this NPRM, the FMCSA is proposing to amend the process by which commercial motor vehicles are given a

SFD. The Agency seeks to include on-road safety data, inspection reports, and preventable crashes into their quiver available to them to determine a motor carrier's safety fitness. Additionally, the Agency seeks to clarify a motor carrier's status by eliminating the three-tier rating system and move to a red-light system for "unfit" carriers. Furthermore, the Agency certifies through this proposal that absolute measures are utilized to determine safety fitness of a carrier, versus the current state of play within the Safety Measurement System (SMS) of CSA, which ranks motor carriers based on the performances of not only their operations, but that of their peers. Several other significant changes are contained within the proposal, but will not be mentioned in this framework until they become regulation.

On March 22, 2017, the Federal Motor Carrier Safety Administration (FMCSA) announced in the Federal Register its notice of withdrawal of the January 21, 2016 notice of proposed rulemaking (NPRM) on Motor Carriers Safety Fitness Determination (SFD). data; an investigation; or a combination of on-road safety data and investigation information. The Agency announces through this notice in the Federal Register that it awaits the results of the National Academy of Sciences correlation study, as required by the FAST Act, based on that report the Agency will assess whether, and, if so, what corrective actions are advisable, and complete additional analysis before determining whether further rulemaking action is necessary to revise the SFD process.

E. CSA (formerly CSA 2010) "PHASE 1 of 2"¹

In December 2010, FMCSA publically replaced SEA scores with BASIC (**B**ehavior **A**nalysis and **S**afety **I**mprovement **C**ategories) scores. Some brokers and shippers concluded that BASIC scores (like SEA scores before them) may be useful as part of the totality of circumstances used to determine whether a motor carrier is fit for use. As time and understanding progressed, increasing numbers of industry experts and brokers are discontinuing considering BASIC scores as part of that determination because it became clear that, due to several reasons, BASIC scores are not a reliable measure of the comparative safety risk among motor carriers. In sum, reviewing a carrier's BASIC scores in the carrier screening and selection process simply has not been proven to reduce the risk of collision, accident or injury involving motor carriers on the highway. CSA exists. Knowledge of what it can do, and what it cannot nor is not designed to do, is critical to improving one's understanding. This briefing reviews CSA's roots, its current state, and what the experts are saying about it.

F. SafeStat, CSA, and the Advent of BASIC Scores

In 2010, FMCSA began rolling out its **C**ompliance, **S**afety, **A**ccountability (CSA) initiative, largely influenced by findings and recommendations published in the summer of 2007 by GAO (the Government Accountability Office). GAO found substantial and troubling flaws with CSA's predecessor system, SafeStat. In June 2007, GAO reported:

1 "Phase 1" is used in the title of this section to indicate that only the first phase of CSA has been introduced. FMCSA desires to have CSA data and other Agency data play a larger role in targeting interventions and enforcement of carriers, on a more issue-specific, less labor intensive fashion. FMCSA hopes CSA may lead to a replacement of the Safety Rating with "Safety Fitness Determination" or SFD. A SFD rulemaking process is required first, under the Administrative Procedure Act, which FMCSA may issue in 2013. Many challenges exist for CSA data to be deemed reliable enough to replace in-person comprehensive "Compliance Reviews."

FMCSA decides which motor carriers to review ... primarily by using an automated, data-driven analysis model called SafeStat. SafeStat uses data on crashes and other data to assign carriers priorities for compliance reviews.

FMCSA measures the ability of SafeStat to perform this role by comparing the crash rate of carriers identified as posing a high crash risk with the crash rate of other carriers.

...GAO assessed ... the extent to which changes to the SafeStat model could improve its ability to identify carriers that pose high crash risks... To carry out its work, GAO analyzed how SafeStat identified high-risk carriers in 2004 and compared these results with crash data through 2005... [GAO found that] SafeStat works ... about 83 percent better than selecting carriers randomly. SafeStat is built on a number of expert judgments rather than using statistical approaches, such as a regression model... Using a negative binomial regression model would further FMCSA's mission of reducing crashes through the more effective targeting of compliance reviews to the set of carriers that pose the greatest crash risk.

In August 2007, GAO reported:

FMCSA uses its "SafeStat" tool to target carriers for review ... based on their crash rates and safety violations. As requested, this study reports on (1) the extent to which FMCSA's policy for prioritizing compliance reviews targets carriers with a high risk of crashes, (2) how FMCSA ensures compliance reviews are thorough and consistent, and (3) the extent to which FMCSA follows up with carriers with serious safety violations. To complete this work, GAO reviewed FMCSA's regulations, policies, and safety data and contacted FMCSA officials in headquarters and nine field offices.

GAO concluded that, under SafeStat, FMCSA's compliance review process was overly resource intensive and allowed only a small percentage of motor carriers to be evaluated (roughly 3.2%). GAO found this untenable for several reasons. For one, carriers with "Conditional" safety ratings could continue to operate for 2 years or more without a follow-up compliance review from FMCSA. Largely in response to GAO's 2007 findings, in 2010, FMCSA began the roll-out of CSA, which GAO describes as an "improved data-driven approach to evaluate safety performance that is not contingent on compliance reviews." In the words of GAO, through its Safety Measurement System (SMS), the CSA program employs "a computer algorithm that uses safety data inputs to measure the safety performance of carriers and prompt an expanded set of FMCSA interventions with carriers, such as warning letters and off-site investigations to address safety problems."

GAO further explains:

Under CSA, FMCSA's policy calls for carriers designated "high risk" in two consecutive monthly assessments to receive a compliance review within 12 months, provided the carrier has not received a compliance review in the previous 24 months, which implements the spirit of GAO's recommendation. Therefore, FMCSA has assurance that at-risk carriers make safety improvements in a timely manner, which should reduce motor carrier crashes, fatalities, and injuries.

To the extent to which FMCSA can intervene in some fashion with carriers, the update at FMCSA —from SafeStat with its SEA scores, to CSA with its SMS System and BASIC scores— appears to have worked for FMCSA. For example, according to a study by the American Trucking Association (ATA), FMCSA's capacity to intervene with motor carriers rose from roughly 3.2% of all motor carriers in 2007 (under SafeStat), to

roughly 9.9% of carriers in 2011 (under CSA, using the SMS system and BASIC scores). In addition to tripling the volume interventions, as reported by ATA, from 2007 to 2011, FMCSA dramatically increased the pace and volume of its overall carrier compliance outreach, including sending many more warning letters to carriers, drawing attention to rising BASIC scores and alerting carriers to FMCSA's concerns about rising BASIC scores.

Nevertheless, while FMCSA may find BASIC scores useful tools to identify the carriers FMCSA feels could benefit from a warning letter, or some other intervention, there is nothing to indicate that BASIC scores, in their current form, can help the non-FMCSA/non-law enforcement layperson (including brokers and shippers) to determine the comparative risk of future crashes from one motor carrier to another.

G. BASIC Scores in Summary

In October 2012, on its public CSA website, FMCSA explained BASIC scores as follows:

The Safety Measurement System (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 monitor whether safety problems are improving or worsening. SMS has replaced SafeStat in the new Operational Model. SMS uses motor carrier data from roadside inspections, including all safety-based violations, State-reported crashes, and the Federal Motor Carrier Census to quantify performance in the following BASICs: Unsafe Driving, Fatigued Driving (Hours of Service), Driver Fitness, Controlled Substances/Alcohol, Vehicle Maintenance, Cargo-Related, Crash Indicator.... After a measurement is determined, the carrier is then placed in a peer group (e.g., other carriers with similar numbers of inspections).

Percentiles from 0 to 100 are then determined by comparing the BASIC measurements of the carrier to the measurements of other carriers in the peer group. A percentile of 100 indicates the worst performance.

Prior to the FAST Act being signed into law the following five (of seven total) BASIC scores were available to the public:

- **Unsafe Driving**
- **Hours of Service Compliance**
- **Driver Fitness**
- **Controlled Substances/Alcohol**
- **Vehicle Maintenance**

On July 24, 2014, the FMCSA announced enhancements to the display of information on the public SMS. The changes to the SMS public website, do not alter the methodology or affect a carrier's safety rating. The enhancements are a continuation of the Agency's efforts, to provide the motor carrier industry and other safety stakeholders with more comprehensive, informative, and regularly updated safety performance data. The enhancements become effective on August 2, 2014.

The following enhancements were added to the public SMS website on August 2, 2014:

1. Displaying a summary BASIC status to better clarify if a motor carrier's performance in the individual BASICs causes it to be prioritized for an intervention. Detailed data, such as the

motor carrier's percentile ranking in each BASIC, has been moved to the individual drill down pages for each BASIC.

2. Offering a new "Take a Tour" feature to highlight enhancements to the SMS display and show visitors how to locate and use the site.
3. Allowing the Web site user to download the data for all of the carriers in the same safety event group used to rank a motor carrier's BASIC percentile. The SMS determines a BASIC percentile for each motor carrier within a BASIC based on how the individual carrier's BASIC "measure" ranks relative to other carriers with a similar number of safety events (i.e., inspections, violations, or crashes).
4. Highlighting a motor carrier's individual performance measure in each BASIC to more clearly identify its performance trends over time. The measure is based on the results of the carrier's roadside inspections or crashes, and is not relative to other motor carriers in its safety event group.
5. Reordering the display of the BASICs based on their association to crash rates, with the BASICs with the strongest associations at the left.
6. Displaying any motor carrier safety rating from a compliance review (CR) issued in accordance with 49 CFR Part 385. Previously, users had to go to FMCSA's Safety and Fitness Electronic Records (SAFER) System Web site.
7. Displaying current insurance and operating authority status. Previously, users had to access FMCSA's Licensing and Insurance (L&I) Online Web site.
8. Providing a motor carrier's enforcement case history, including the date the case was closed, the applicable violations, and the associated fines.
9. Enhancing the presentation of safety performance over time through a variety of displays and graphs users can customize.
10. Displaying the total number of inspections as well as a breakdown of the number of inspections with violations used in the SMS in each carrier's detailed information.
11. Clarifying terminology in the SMS, such as the definitions of the terms "0%" and "<3 inspections with violations," in a new glossary called "SMS Display Key Terms." FMCSA reviewed and considered all of the comments received related to the preview.
12. Providing a carrier with its own inspection selection system (ISS) Information, including a carrier's ISS score, inspection recommendations, and the basis for those recommendations.
13. Providing Carrier and Driver Out-of-Service (OOS) Rates and National Averages to Allow Users to Compare an Individual Company's OOS Rate with the National Average for Commercial Motor Vehicles (CMVs).
14. Acknowledging Distinctions between BASICS and Crash Involvement by Incorporating BASIC Status to Crash Rate Graphs from FMCSA's SMS Effectiveness Test.

15. Displaying a Carrier's "Doing Business As" (DBA) Name to Enhance the Search Options on the Web Site.

In 2014, FMCSA announced that the SMS website will be updated on a continued basis to include the results of adjudicated citations associated with inspections conducted on or after August 23, 2014, that have been processed through DataQs. This has been a point of contention for the motor carrier industry for a while, and something they have been advocating for years.

On October 5, 2016, the FMCSA published in the Federal Register a notice of proposed "enhancements" to the CSA initiative. The key changes proposed to CSA and its Safety Measurement System percentile rankings include:

- Lowering intervention thresholds in some SMS categories/BASICs,
- raising the threshold in one BASIC, and
- making the Hazmat BASIC public and splitting it into two segments.

Other proposed changes available for preview include increasing the minimum number of crashes needed before a carrier receives a score in the Crash Indicator BASIC and shortening the time period for which violations lead to BASIC percentile ratings.

Changes issued this year are also available for preview on the agency's new site. Those changes include raising the score threshold for the Crash Indicator BASIC from two crashes to three crashes and removing carriers with no violations in the past year in several BASICs from its intervention prioritization.

The Crash Indicator BASIC changes mean carriers only involved in two crashes will no longer register a ranking within the Crash Indicator BASIC. Carriers must now be involved in three crashes before registering a score.

FMCSA plans to maintain the 65 percent intervention threshold for the BASICs with the highest correlation to crash: Unsafe Driving, Crash Indicator and Hours-of-Service Compliance. *Please note, "high correlation" doesn't necessarily reflect crash risk.

With the transportation industry's advocacy efforts, a stipulation within 2015's FAST Act transportation funding bill, the percentile rankings within the SMS BASICs are no longer available for public view. Only carriers and enforcers can see the ratings, even though the underlying data used to formulate the BASIC is still publicly available within the SMS portal.

The basic intervention thresholds now available for preview include:

1. Lowering the intervention threshold of the Vehicle Maintenance BASIC to 75 percent from the current 80 percent for general property carriers, thus targeting more carriers for intervention.
2. Raising the intervention threshold for the Controlled Substances/Alcohol BASIC from 80 percent to 90 percent, thus targeting fewer carriers for intervention.
3. Raising the intervention threshold for the Driver Fitness BASIC from 80 to 90 percent, thus targeting fewer carriers.

In addition to proposing to go public with the Hazmat Compliance BASIC (which has now been effectively barred by the FAST Act provisions), the agency has proposed splitting the BASIC into two segments — one for cargo tank carriers and one for non-cargo tank carriers. These proposed changes will also be available for preview for hazmat haulers on the agency's SMS preview site.

Now also available for preview are the proposal to reclassify violation of an out-of-service order to the Unsafe Driving BASIC (instead of whichever BASIC the original violation that caused the OOS order is in) and upping the maximum vehicle miles traveled figure used in CSA's so-called "utilization factor" to better account for carriers who run in high-mileage operations.

Carriers, especially smaller carriers with fewer inspections, will now be assigned BASIC percentile rankings based on violations from their most recent inspection within the previous 24 months, the agency will now only assign BASIC ratings for carriers who have had an inspection violation within the past year. The change applies to four BASICs: HOS Compliance, Vehicle Maintenance, Hazmat Compliance and Driver Fitness.

None of these enhancements will be effective until the Agency satisfies the requirements of the CSA reform language included in the FAST Act.

Some have claimed that members of the public, including shippers and freight brokers, can and should rely on BASIC scores to compare the relative safety risk of motor carriers and thereby ascertain which motor carriers are "safer" and less likely to be involved in a crash. According to this view, BASICs should be part of the totality of circumstances used to determine a carrier's fitness for use. However, several independent studies of CSA, published at various points throughout 2011 and 2012, demonstrate definitively that this claim has no merit.

According to the independent research, BASIC scores simply are not reliable for use by anyone other than law enforcement and FMCSA personnel to compare the relative safety of one motor carrier to another — even conceding that BASIC scores may be very useful tools for state and local law enforcement and/or FMCSA personnel to prioritize motor carriers for compliance monitoring, evaluation and intervention.

H. Independent Research Concludes BASIC Scores Unreliable for Non-Law Enforcement Purposes

November 4, 2011, Wells Fargo Securities Equity Research published a report titled *CSA: Good Intentions, Unclear Outcomes*. There, CSA data on the largest 200 carriers (by fleet size) in the FMCSA database, presumably the group with the largest set of BASICs data, were reviewed and compared with actual incidents of crashes, injuries and fatalities. In their analysis, the authors concluded:

*As we approach the one-year anniversary of the [CSA] program and after examining the data on the 200 largest carriers in the [FMCSA] database, we remain convinced that ... interested parties should NOT rely exclusively on a carrier's composite BASIC scores to assess accident probability or overall risk. Indeed, we believe the composite scores can be misleading. ... [C]onfidence is not high that improving [BASIC] scores actually predict reduced crashes, injuries, or fatalities. ... **[W]e find no meaningful statistical relationship between actual accident frequency and BASIC scores for Unsafe Driving, Fatigued Driving or Driver Fitness** (emphasis added).*

March 2012, the American Trucking Association (ATA) circulated a paper titled *Summary and Analysis of FMCSA's Evaluation of the CSA Operational Model Test*. There, ATA reviewed a test commissioned by FMCSA and performed by the University of Michigan Transportation Research Institute (UMTRI). UMTRI was tasked by FMCSA to evaluate the CSA/SMS/BASICs operation model. FMCSA published UMTRI's findings in August 2011. The preliminary UMTRI findings demonstrated that scores in at least two of the BASICs bore no relationship to crash risk. This was confirmed in the final UMTRI study. In its March 2012 analysis of the FMCSA's own UMTRI study, ATA found that "the system continues to have some substantial limitations."

*Foremost, the system lacks data on the vast majority of motor carriers. As a result, carriers with *BASIC+ scores above thresholds are perceived to be 'unsafe,' though their scores don't represent a comparison against the safety performance of all other carriers, but rather the 11% of carriers that have enough data in the system to be measured.*

Additionally, ATA noted:

FMCSA did not use the same method for measuring or expressing the relationship between scores in each BASIC [measurement category] and their respective crash risks. Instead, the agency chose varying methods and, for each measurement category, used the one that reflected the strongest statistical association with crashes. In other words, FMCSA evaluated [BASIC] categories differently, using whatever method would make the results look most favorable."

May 2012, FMCSA published on its website documentation entitled, "FMCSA DATA- INFORMATION FOR SHIPPERS, BROKERS AND INSURERS" which included, among other things, recommendations to use the scores and further stated: "A satisfactory rating does not mean carrier is currently in compliance and operating safely." Not only was the guidance filled with inaccuracies, but the documentation allegedly violated the settlement agreement in the first lawsuit against FMCSA's use, description and statements around CSA's usefulness, and its potential harm to business. The guidance documentation provided additional grounds for the new lawsuit currently pending in the United States Court of Appeals in Washington, DC. The purpose of the lawsuit is to have FMCSA remove scores from its public website and provide the shipping public with a safety rating for each carrier that indicates the carrier is or is not safe to hire.

Adding to the observation that politics was the driving force at FMCSA, two of the highest level executives at FMCSA agreed to listen to industry concerns and agreed to a meeting with TIA and the National Industrial Transportation League in advance of these documents being published. Unfortunately, and without notice, FMCSA published the documents before the meeting. The meeting was supposed to review why such a set of documents would be premature, poor public policy, and would likely lead to faulty decision-making. FMCSA removed the documents entirely several months later, after two Congressional hearings, and around the time the DOT inspector general and GAO began their investigations.

June 5, 2012, after months of concern with CSA and conversations with several industry groups, the Commercial Vehicle Safety Alliance (CVSA) convened a meeting of stakeholders in Washington to discuss the status of CSA, the SMS system, and BASIC scores. According to its own website:

CVSA is an international not-for-profit organization comprised of local, state, provincial, territorial and federal motor carrier safety officials and industry representatives from the United States,

Canada, and Mexico. Our mission is to promote commercial motor vehicle safety and security by providing leadership to enforcement, industry and policy makers. CVSA member jurisdictions are represented by various Departments of Transportation, Public Utility and Service Commissions, State Police, Highway Patrols and Ministries of Transport.

At its **June 2012** meeting, CVSA hosted law enforcement and industry representatives to share their perspectives on CSA. The discussion at that meeting resulted in a letter to FMCSA Administrator Anne Ferro. In part, the letter (see attachment #6) from the CVSA-convened working group recommended the following to Administrator Ferro:

FMCSA should communicate that the primary purpose of the system is to help Federal and State enforcement personnel use their limited resources more efficiently by prioritizing carriers for review. ... [In addition] FMCSA should be transparent about the lack of data to score many carriers, the resulting impact on safety and enforcement, data quality limitations, and other issues that impact the reliability, accuracy and significance of carrier scores.

Also in **June 2012**, the University of Maryland released the results of its independent evaluation of BASIC scores and their reliability as an indicator of crash risk. The findings were recorded in a report titled *Statistical Issues in the Safety Measurement and Inspection of Motor Carriers*. The Maryland report reached substantially the same conclusions as the Wells Fargo and ATA studies and supported the opinion of the CVSA working group. Dr. James Gimpel, the primary author of the Maryland report, found many flaws within the SMS data, from faulty reporting and data collection procedures to misleading statistical conclusions. As Dr. Gimpel explains:

*[S]tatistical relationships detected in the [SMS/BASICs] data are not only a cloudy reflection of the true population [of motor carriers], but may well be flat wrong. ... Accidents are very poorly predicted by the BASIC scores ... and this is especially astounding given that the data generation process selects specifically on carriers supposedly at risk for accidents, not even including carriers until they have a violation (**emphasis added**).*

A small share of the nationwide fleet of motor carriers is selected for inspection each year [by FMCSA]. Due to local peculiarities and pronounced biases in the selection process, the resulting data collection is an imperfect representation.

*... This is a serious problem in the SMS methodology because violations are not reflective of the actual performance and safety of [motor carrier] firms, but are an artifact of the application of the measuring instrument (**emphasis added**).*

*[T]he data are badly censored, biasing any subsequent data analysis. ... [T]his fundamental flaw has serious implications for the entire system. The bias only begins at the design stage. Other sources of bias occur as the measurement system is implemented. ... Any data analysis carried out by any entity based on the inspection data ... should be accompanied with the caveat that it represents only the particular cases contained in the data. Nothing can be extrapolated from it, and its external validity is in doubt (**emphasis added**).*

July 2, 2012, Wells Fargo vastly expanded its November 2011 study by increasing the sample size from 200 to 4,600 motor carriers and publishing a second study titled *CSA: Another Look with Similar*

Conclusions. There, Wells Fargo summarized its findings as follows: “Based on our research, we do not believe stakeholders should rely on CSA BASIC scores as an indicator of carrier safety performance or future crash risk.” Confirming and sharpening their findings from their November 2011 study, the authors concluded:

1. *We do not find any meaningful statistical correlation between BASIC scores and actual accident incidence measured on the basis of miles driven or numbers of power units in our 4,600 carrier dataset (emphasis added).*
2. *We find several aspects of data collection and BASIC scoring flawed, or potentially misleading.*
3. *We find it rather ambiguous of the FMCSA to assign percentile rankings and threshold maximums to carriers in several BASIC categories, but then leave open the interpretation of the carrier's overall safety performance to stakeholders (drivers, shippers ...).*
4. *Systems such as the Inspection Selection System (ISS) prompt more frequent inspections for carriers with high BASIC scores but two-thirds of inspections result in violations potentially creating a “negative feedback loop.” More troubling, in our view, is the disparity between State enforcement protocols.*

July 11, 2012, largely in response to industry complaints and the consistent findings by independent researchers that the use of BASIC scores by non-FMCSA/non-enforcement personnel had been creating substantial burdens without providing any commensurate offsetting safety benefits, the House Committee on Small Business convened a hearing to explore the adverse impact of CSA. The Committee was especially concerned because FMCSA had begun recently suggesting to shippers and brokers that reviewing BASIC scores should be part of private sector carrier screening and selection procedures.

Troubling to the Committee, FMCSA began making such a suggestion to the industry (a) without any solid evidence that reliance on BASICS could or would reduce motor carrier crash risk, (b) while CSA and BASICS were still in their infancy and still very much under development, and (c) in direct opposition to FMCSA's own prior, and long-standing, stated public position that BASIC scores, and SEA scores before them, were intended exclusively for law enforcement purposes, were specifically not intended for use by the general public, and could not be relied upon by a non-enforcement layperson to determine the comparative crash risk of one motor carrier to another.

This point is made perfectly clear by the disclaimer which appeared on FMCSA's own CSA website as recently as February 2011:

The data and BASICS are used by the enforcement community to prioritize investigations in roadside inspections. The SMS data system is not a safety fitness determination (SFD), is not a Safety Rating pursuant to 49 CFR Part 385, and does not represent FMCSA's final determination regarding the accuracy of the data

contained in the SMS.... The use of the SMS data system for purposes other than those intended above, may produce unintended results and inaccurate conclusions...

September 13, 2012, troubled by the findings of the Committee on Small Business, the Subcommittee on Highways and Transit of the House Transportation and Infrastructure (T&I) Committee, called its own

hearing to further explore the deficiencies and shortcomings of CSA, the SMS system, and BASIC scores. It is important to note that the House T&I Committee is the congressional committee with authorization and allocation jurisdiction over FMCSA.

According to the September 17, 2012 edition of *Transport Topics*, during the September 13, 2012 hearing of the T&I subcommittee, “Lawmakers joined trucking and transportation officials in criticizing [CSA], saying it targets safe carriers for unfair scrutiny.” Congressman John Duncan of Tennessee, Chairman of the Highways and Transit Subcommittee, stated plainly, “Scores generated in certain [BASICS] may not have a correlation to future crash risk and may inadvertently focus FMCSA’s enforcement measures on the wrong carriers.”

What is more, committee member Congressman Pete DeFazio of Oregon indicated that he was “especially troubled” with FMCSA’s “inaction” to correct substantial shortcomings that were known even before FMCSA’s launch of CSA and BASICS. Said Rep. DeFazio, “It’s been just a little over two years since, prior to *CSA’s implementation, we held a hearing in this subcommittee regarding this new system, and at that time we expressed a number of concerns that still endure.” Rep. DeFazio specifically cited the subcommittee’s expressed concerns, dating back to 2010, that the BASIC “crash indicator” score does not, by design, make any distinction between collisions caused by the carrier and collisions where the carrier was found not to be at fault.

Scott Mungo, representing the membership of ATA at the hearing, testified and gave perhaps the best summary of the findings of the congressional inquiry. Said Mungo, “FMCSA’s own analysis confirms that scores in certain CSA measurement categories ... do not reliably identify those carriers that are more likely to have future crash risk.”

October 2012, ATRI (the American Transportation Research Institute) published a report titled *Compliance, Safety, Accountability: Analyzing the Relationship of Scores to Crash Risk*. There, ATRI conceded that “the purpose of this paper is not to examine issues of reliability and validity with the SMS,” and managed to find some correlation between certain “high” BASIC scores and a carrier’s risk of future crash — a finding in stark opposition of the conclusions reached by Wells Fargo, ATA, the University of Maryland, CVSA, and the two congressional committees who have convened hearings to consider the question. Despite its anomalous and contradictory conclusion, ATRI was careful to note:

[R]ecently, a series of independent analyses have been released with the general consensus that BASIC scores are weakly, or not at all, related to actual crash rates. ... The various authors argue, and ATRI agrees, that SMS suffers from selection bias, introducing systemic error into the measurement system.

... [A]s currently designed, CSA has a number of defects that still need to be addressed. While it may be helpful for FMCSA to continue using specific BASIC percentile scores for internal purposes, ATRI proposes several alternative scenarios for relaying safety and compliance information to the public.

Despite CSA’s presence of systemic error, selection bias and ATRI’s acknowledgement of the shortcomings mentioned above, ATRI studied correlations anyway. ATRI’s study indicated that as the number of BASIC alert symbols for carriers increased, a positive correlation to crash risk seemed to exist. ATRI’s primary takeaway from this study was that a future CSA (with improved data gathering, etc.) could potentially improve reliability and abundance of data, but also they suggested that FMCSA might

consider basing its resource allocation less on individual alert symbols and more on total alert numbers or combinations of alerts, which may better indicate carriers in need of attention or intervention.

October 15, 2012, Congress asked GAO to review and audit the CSA program and answer nearly a dozen challenging questions that, when answered, will get to the heart of the many observed and studied deficiencies, shortcomings and flaws in the data and methodology used to arrive at BASIC scores. In the fall of 2012, simultaneous to GAO's audit, USDOT's own Office of Inspector General announced that it too would open an investigation of CSA.

October 16 & 17, 2012, at Administrator Anne Ferro's request, a special federal panel, the "MCSAC CSA Subcommittee," was created and convened to study CSA. Numbering among the panelists were experts in the field including safety advocates, law enforcement personnel, a shipper, a broker, insurers, bus operators, truck carriers and FMCSA staff. The panel is a special subcommittee of FMCSA's Motor Carrier Safety Advisory Committee (MCSAC). Prominent on the panel's October 2012 agenda was the growing concern that independent research continues to show BASIC scores are not a reliable source of information for the general public (non-enforcement personnel) to use in making determinations as to the relative crash risk or overall safety of motor carriers. The panel agreed to evaluate whether FMCSA should cease suggesting to the public that it use BASIC scores for such purposes. Auditors from GAO and USDOT were present for both days of the panel's October 2012 discussions.

December 5, 2012, the MCSAC CSA Subcommittee hosted authors of studies of CSA, BASICs and the methodologies. Increasing data had demonstrated that CSA had flawed data gathering methodologies, questionable statistical models, and unreliable BASIC score outcomes. Present were representatives from Wells Fargo Securities; American Transportation Research Institute ("ATRI"); University of Maryland; Volpe Center & University of Michigan Transportation Research Institute ("UMTRI").

The CSA Subcommittee sought consensus on agreements and disagreements. The presenters unanimously agreed that 2 of 5 visible BASICs -- Driver Fitness and Drug & Alcohol BASICs -- are either inversely correlated or not correlated at all. FMCSA has since admitted it agrees. The presenters unanimously agreed that there are significant geographic biases based on a variety of law enforcement practices or behaviors. There was unanimity around the relative lack of data for the carrier population. UMTRI stated that one reason FMCSA may have elected to retain non-preventable accidents (where the truck driver was hit, through no fault of his/her own) is the serious shortage of any data for the SMS system—what amounts to a subjective policy decision to take any data it can get its hands on. Unsafe Driving and HOS Compliance seem to have some positive correlation, in some cases. Even then, the correlation is not strong, nor can the data be extrapolated to the greater carrier population or interpreted to be safer or less safe than others. ATRI's report showed a stronger correlation between future crash risk and combined multiple high scores or alerts. However, ATRI's model is built upon a house of cards.

ATRI began its study agreeing with data gathering flaws and statistical problems identified by others but chose to ignore them to study correlations anyway.

February 5-6, 2013, the MCSAC CSA Subcommittee met and agreed, based on an abundance of evidence and common sense, to recommend to the full MCSAC that it recommend to FMCSA to:

- a) remove from visibility both the "Driver Fitness BASIC" and "Drug and Alcohol BASIC" due to the fact that they are proven to be misleading and inversely correlated to crash risk;

- b) consider excluding crash data for which there is a clear determination of not-at-fault or non-preventable crashes for purposes of a carrier's Crash Indicator BASIC; and
- c) evaluate the possibility of changing the definition of a reportable Department of Transportation (DOT) crash for purposes of CSA (e.g., to include only fatal crash data or casualty crash data). The full MCSAC voted on these recommendations on April 9, 2013 when it met, and decided to send all priorities to FMCSA Administrator Ferro.

July 3, 2013, on behalf of the CSA Subcommittee, Mr. Stephen Owings, Chairman of the MCSAC, sent FMCSA Administrator Ferro a detailed letter (attachment 7) outlining the Subcommittee's highest priority recommendations. These again included; addressing crash accountability, CSA's public accessibility, and addressing data quality. Interesting to note that the letter went one step further in regard to the public accessibility of CSA BASIC's. The Subcommittee letter recommended that,

"If removal of CSA scores from public view is not possible, FMCSA should remove, at a minimum, the Controlled Substance/Alcohol, Hazardous Materials, and Driver Fitness BASICs." "For the remaining three BASICs (Unsafe Driving, Vehicle Maintenance, Hours of Service), keep those in public view. Then give carriers an absolute score and a relative score and place both scores in context (by using a MCSAC Task 12-03 Report 5 disclaimer). Absolute scores should be featured more prominently on the website than they are currently."

In terms of using the data for carrier selection, the recommendations went even further and stated that "FMCSA should not provide guidance or encouragement on how to use SMS data for carrier selection (e.g. by shippers, brokers, insurance companies, etc.)"

To date of drafting this updated version of the TIA Carrier Selection Framework, there has been no response from the Agency on the recommended changes from the CSA MCSAC Subcommittee.

February 3, 2014, the Government Accountability Office (GAO), the independent, nonpartisan agency that works for Congress, released a study entitled: Modifying the Compliance, Safety, Accountability Program would improve the Ability to Identify High Risk Carriers. GAO found that the CSA program has helped the Agency investigate potentially dangerous companies and provide safety benefits to a far greater degree than under SafeStat, but there are serious concerns over the validity of how SMS scores are calculated and their correlation to potential future crash risk. GAO recommended that: FMCSA revise the SMS methodology to better account for limitations in drawing comparisons of safety performance information across carriers, the determination of a carrier's fitness to operate must account for limitations available performance information, and the Agency needs to eliminate the use of safety event groups.

Additionally, GAO noted that evidence suggest that small carriers are discriminated against, there is little correlation between enforcement patterns and accident rates, the data quality is inconsistent as States vary on inspection and enforcement practices, and data elements used to calculate violation rates are based on information that is self-reported by the carrier, which could be inaccurate, missing information, or misleading report, that could directly influence SMS scores." "Regardless of which type of model we fit, we see that the predictive power of our model is low, and the use of the SMS violations in predicting future crashes is not very precise."

March 4, 2014, the Department of Transportation's Inspector General's Office (DOT IG) released their audit on the CSA program late last week. In brief summary the IG found that while FMCSA has strengthened its controls to improve the quality of State-reported data used to assess carriers' safety performance, the Agency has not fully implemented planned improvements to its processes for reviewing data correction requests and for ensuring that carriers submit accurate information. In addition, FMCSA has not fully implemented the CSA enforcement intervention process nationwide; at the time of their report, only 10 States had fully implemented CSA enforcement interventions. Finally, FMCSA has limited documentation demonstrating it followed information technology best practices and Federal guidance for its Carrier Safety Measurement System. FMCSA concurred with all six of our recommendations to strengthen CSA.

The IG notes that FMCSA has made progress in moving toward a more data-driven, risk-based approach to oversight of the motor carrier industry, as called for by CSA. Quality data are critical to accurately identifying the highest risk carriers for enforcement interventions. While FMCSA has strengthened quality controls for State-reported data, more action is needed in key areas, including improving census data and completing its roll out of CSA enforcement interventions. Given that CSMS is such a high-visibility system within the motor carrier industry, FMCSA can also enhance its documentation of system processes to better adhere to best practices and Federal guidance. Without sustained management attention in these areas, FMCSA will be hindered in its ability to effectively implement CSA nationwide and address the key concerns of industry stakeholders.

Specifically, the IG recommends that the Agency:

1. Issue updated DataQs guidance;
2. Implement the process for deactivating USDOT numbers when carriers do not submit required census data, as described in FMCSA memorandum MC-ECS-2013-0009;
3. Develop a comprehensive plan to fully implement CSA enforcement interventions in the remaining 41 States. The plan should include an estimated completion date and milestones for releasing Sentri software, developing and delivering training, and using the enforcement interventions;
4. Update the CSMS requirements document to (a) specify all sources of CSMS data, including each of the MCMIS fields used, and (b) fully describe CSMS validation procedures;
5. Develop and implement a process for managing CSMS system documentation that includes a central file for validation records and testing results; and
6. Develop and implement a configuration management policy that includes documentation of system changes and associated testing for CSMS.

July 31, 2014, the American Transportation Research Institute (ATRI) released a comprehensive study examining the effects State enforcement disparities play on a carrier's safety performance metrics. ATRI found that eliminating state enforcement disparities on SMS scores, would, in many cases, changes the scores drastically. Across the seven carriers and four public BASICs that ATRI analyzed, scores decreased by as much as 17.7 points and increased by as much as 12.2 points from the actual scores reported by the SMS.

ATRI notes that, the impact of these disparities is highly dependent on the operational patterns and characteristics of each carrier. Carriers with a strong presence in states with violation rates significantly above or below the national average tended to see the largest impact in scores. Furthermore, the

impact on SMS scores is greater on carriers that have their miles concentrated in fewer states. While safety culture within a particular carrier should not vary simply by crossing state lines, the analysis nevertheless has shown that enforcement disparities among states can lead to both inflated and deflated safety measures, obscuring the true safety record of carriers relative to their peers.

Despite uniformity of the SMS in its calculation of BASIC scores, the intensity and focus of enforcement activities is largely at the discretion of each state. This has resulted in 50 or more different enforcement programs and strategies that are used to populate a uniform score (within each BASIC) of nationwide performance.

November 14, 2014, the Commercial Motor Vehicle Safety Alliance (CVSA) wrote a letter to Department of Transportation Secretary Anthony Foxx urging the Agency to remove the CSA SMS scores from public view. CVSA notes in the letter, that they fully support the CSA initiative as an enforcement tool for the Agency to prioritize carriers for intervention, but the program is not a good way to accurately assess carriers' future crash risk.

“Since the SMS scores are a poor indicator of an individual fleet’s propensity to be involved in a future crash, their utility in providing the public with information about fleet’s safety performance is limited.”

CVSA joins the American Trucking Associations (ATA) and the Owner-Operator Independent Drivers Association (OOIDA) who earlier this year requested that the Agency remove the CSA scores from public view.

I. Conclusion

In sum, no clear evidence exists to support the view that a motor carrier’s BASIC scores will (or even can) indicate, to the non-FMCSA, non-enforcement layperson (*e.g.*, freight broker, shipper, insurance provider, lawyer, general public), whether that particular motor carrier is more or less likely than any other carrier to be involved in a crash, collision, accident or injury. Indeed, much evidence suggests that BASIC scores are almost entirely *useless* for that purpose.

The risks don't end there. Shippers, brokers or forwarders that choose to incorporate B A S I C s into carrier selection risk running afoul of a growing legal school of thought. Some leading transportation attorneys in this area believe that an entity that *chooses* to use BASIC scores may constitute a waiver of legal rights to attack and challenge them in any litigation where the entity is being sued under state negligent hiring laws.

People and entities who are searching for authorized, reliable, trustworthy, and safe motor carriers and are trying to perform due diligence and exercise reasonable care may find that prospect challenging. Based on the published research, the outcome of congressional inquiry, and the appointment of auditors from both GAO and USDOT to examine CSA and BASICs, experts have concluded that it would not reduce risk or improve safety simply to exclude motor carriers from the available pool based *solely* on a BASIC score, or even several BASIC scores.

Rather, such a decision would merely deny potential business opportunities to competent and compliant motor carriers and at the same time deny many important benefits to shippers; the decision could perhaps place shippers in a position of either losing carrier services altogether on a particular shipment or paying more than is necessary to obtain carrier services. The negative impact of excluding

motor carriers —the impact on commerce, supply chains, economics, prices, jobs, and so forth— would be substantial, while the safety benefits are unproven and most likely non-existent.

Where, as in this case, safety benefits are marginal, if they exist at all, while the detriment of excluding carriers is concrete and conclusive, the only reasonable course is to not use BASIC scores as part of the carrier selection process unless and until the CSA program reaches a level of maturity and accuracy where BASIC scores may actually give an indication of the relative risk of crashes, and overall safety, of one motor carrier compared to another.

The three studies are: The Evaluation of the CSA 2010 Operational Model, The University of Michigan Transportation Research Institute (UMTRI) August 2011; The Government Accountability Office Assessment on the CSA Program (GAO-11-858) September 2011; and; The Wells Fargo “CSA: Good Intentions, Unclear Outcomes” November 4, 2011; and “Compliance, Safety, Accountability: Analyzing the Relationship of Scores to Crash Risk” October 1, 2012.

J. Motor Carrier Safety Ratings Pursuant to 49 CFR Part 385.

The Framework has underscored Safety Ratings and their primary relevance today. All FMCSA systems and data are geared toward the end of prioritizing law enforcement, and issuance of Safety Ratings to motor carriers. In fact, FMCSA is aligning its data, methodologies, procedures and resources to further accentuate data’s role in determining a Safety Rating (or what may someday be called Safety Fitness Determinations or SFDs). Below are definitions of Safety Ratings:

- 1.** **SATISFACTORY** Safety Rating means that a motor carrier has in place and functioning adequate safety management controls to meet that portion of the safety fitness standard prescribed in 49 CFR 385.5(a). Safety management controls are adequate for this purpose if they are appropriate for the size and type of operation of the particular motor carrier.
- 2.** **“UNRATED” or “NONE”** Safety Rating means that FMCSA has not assigned a Safety Rating to the motor carrier. Unrated carriers can range from newer businesses, to carriers who have been in business for decades. “Unrated” should not be viewed as a negative. In fact, in many instances it may mean that the FMCSA has had no reason to conduct an on-site compliance review.
- 3.** **CONDITIONAL** Safety Rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with that portion of the safety fitness standard prescribed in 49CFR385.5(a), which could result in occurrences listed in 49 CFR 385.5(a)(1) through (a) (11).
- 4.** **UNSATISFACTORY** Safety Rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with that portion of the safety fitness standard prescribed in 49 CFR385.5(a), and this has resulted in occurrences listed in 49 CFR 385.5(a)(1) through (a) (11).

NOTE: According to FMCSA, the Agency is prioritizing interventions for “high-risk” carriers. A “high-risk” carrier is a motor carrier that exceeds the minimum threshold of the Crash, HOS Compliance or Unsafe driving BASICs and one other BASIC or a motor carrier who exceeds the minimum threshold of any four or more BASICs.

FMCSA states that a “high-risk” carrier has future crash rates more than double the crash rate of all active motor carriers. The Agency reports that generally about 7,000 carriers are given the “high-risk” label.

NOTE: The Committee Members and those TIA members surveyed overwhelmingly reported that they do not knowingly use a carrier with an UNSATISFACTORY Safety Rating.

* As of February 2, 2020, the most recently published data:

Number of Active For-Hire Motor Carriers: 241,422

Number of Drivers within that category: 2,601,024

Fleet Size in Trucks:	# of Companies	# of Drivers
1-6:	200,855	402,552
7-20:	25,515	278,236
20-100:	12,679	515,560
101-500:	1,984	431,715
501+:	389	972,961

Safety Rating	Percentage	# of carriers
Satisfactory:	10.4%	25,754
Conditional:	1.56%	6,884
Unsatisfactory	0.02%	57
Unrated:	86.78%	243,574

*Data provided by QualifiedCarriers.com, Tucker Company Worldwide and Federal Motor Carrier Safety Administration (FMCSA).

K. TIA's Formal Position on FMCSA Safety Data

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, intend to signal, or 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 Part 385 may imply, confer, change or confirm a motor carrier's fitness determination or Safety Rating.

The CFR (code of federal 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, and not any other entity--especially not the public (including professional users of motor and bus carrier services) -- is capable of determining motor carrier fitness based on safety. Federal statute requires that the FMCSA establish safety ratings for motor carriers. The public and the users of trucks and motor coaches depend entirely on the knowledge, 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 alone has responsibility for determining a motor carrier's fitness for use

L. TIA—Part of the Solution

TIA is working diligently and thoughtfully to be a leader in solution development and safety improvement.

- 1.** TIA has a seat at the CSA Subcommittee of the Motor Carrier Safety Advisory Committee and has been actively supporting positive changes to CSA, to make it a better program.
- 2.** TIA has a positive working relationship with FMCSA and its leadership and will continue to communicate on issues important to safety.
- 3.** TIA has requested FMCSA to clearly and regularly identify the list of carriers it deems “high-risk.”
- 4.** TIA has requested FMCSA to take action to prevent allowing (as of March 2013) nearly 375 FMCSA licensed for-hire motor carriers whose authority and insurance show as active to continue to operate on the nation’s roadways despite the fact that the FMCSA has placed the carrier out of service (OOS).

IV. NO WARRANTIES GUARANTEES ARE STATED OR IMPLIED BY TIA THROUGH USE OF FRAMEWORK:

As in any industry document, here is some of the fine print, for members to review and consider.

1. We live in a litigious society, where some people believe there are no accidents, and there are always parties to place blame for any unfortunate incident. Therefore, it should come as no surprise that TIA makes no warranties, express or implied, that no amount of diligence and certainly no adaptation of the ideas within this Framework can “guarantee” that in any given factual situation, a broker, shipper, or any broker customer will be free of exposure to liability arising out of loss, damage or injury to cargo or personal injury related to the selection of motor carrier.
2. In “negligent hiring” cases, the question of whether a party hiring a carrier was negligent may be presented to a jury to consider all relevant circumstances. Some courts have taken the position that even though the FMCSA information that was available to the public was not perfect, it should have been reviewed by the party selecting the carrier. Attorneys for claimants may continue to argue that there were “scores” or data that the broker (or shipper) should have considered that may have “warned” of a carrier’s alleged “dangerous” propensities.
3. Future claimants wishing to argue for inclusion of select data which they determine to be strategically important to their case, such as from CSA or another FMCSA data set, will have to overcome significant new challenges. Those include, but are not limited to, statements of facts present today, such as: (a) the clearly written FMCSA disclaimer language; (b) the deference given to policies and rulings of federal agencies; (c) the fact that CSA data is not a rating and is not intended to be used to determine a carrier’s fitness; (d) the fact that no authorized carrier except “Unsatisfactory” carriers are prohibited from operating on U.S. roadways; (e) any such selective data would be taken out of context of an enormously larger FMCSA system, much of which is untested, contested and much more is hidden from public view; (f) evidentiary challenges to validity of the data.
4. As a result of CSA and FMCSA’s assertions and clarifications, attorneys for claimants will likely face more difficulty in successfully arguing such a position due to the clarified role that CSA BASIC scores and other information play and due to the questions that exist as to the reliability and predictive nature of such data.

Prior to the FMCSA issuing clear disclaimer language and guidance to the public, some plaintiffs’ attorneys had argued that the use of BASIC scores or other FMCSA data sets (which are not Safety Ratings) by a broker, forwarder, third party logistics firm, or shipper (“Public User”) should be construed to mean that the Public User is accepting the responsibility to determine which carriers are safe and which are not. The newly updated disclaimers in combination and coordination with the entirety of the relevant regulations and statutes indicate that the statutory duty and authority to make determinations concerning a carrier’s safety, fitness and authority to operate rest solely and exclusively with FMCSA.

V. TIA CARRIER SELECTION FRAMEWORK

TIA recommends that its members draft written protocol for selecting motor carriers and create an ongoing review process for re-examining carriers periodically after selection. TIA does not have, and could not have, sufficient information concerning its members' business operations to presume to recommend the exact areas any member should consider in its carrier selection procedures. That responsibility rests solely with each individual member company. Please review Sections II and III to best understand what the Framework is and is not intended to be.

The following ideas are intended to serve as a framework that can be used as one resource among many others to aid in the development of a TIA member's internal company policies.

For emphasis, the following two paragraphs are redundant, and excerpted from **Section III** above.

The Framework is not designed, not intended and not recommended to be a checklist, an industry "standard," a characterization of industry standards, nor a collection of "minimum" thresholds to impose in order to select motor carriers. In fact, not a single company or individual on the Committee performs, recommends performing, intends to perform, or can justify application of all the tasks and areas of review represented in this Framework for all, or even most of the carriers it selects. Most of the areas of potential review in the Framework are specific to certain scenarios which may present themselves from time to time during carrier selection and/or during periodic carrier review.

They are not intended to be, nor should they be, used as legal advice or as a substitute for legal advice, which each member should obtain from qualified counsel familiar with the member's business and laws applicable to it. The Framework is not intended to define or prove compliance or non-compliance with an appropriate or minimal legal standard of care or diligence, and it should not be used or relied upon by anyone for any such purposes. This Framework is understood by the TIA to be a "working draft" and evolving document and framework.

A. Carrier Selection Considerations

The following is a list of possible considerations a TIA member may choose to use when selecting or reviewing a motor carrier and arranging for a motor carrier to transport freight. This list is not intended to be prioritized, definitive, minimal, comprehensive or in any way complete but is presented simply to provide some ideas on the nature of the inquiry. TIA recommends that its members each draft written carrier selection protocols, follow them consistently and also maintain appropriate records as proof of adherence to one's own internal protocols. If you deviate from your company's stated procedures, it is wise to keep notes as to why you did.

- Verify that the carrier has a DOT number and an MC number² on file and is active with FMCSA. You can find this easily by going to: <http://ai.fmcsa.dot.gov/sms/> and entering either number or by subscribing to one of several online services. An entity with no DOT number and only an MC number may be a broker. An entity with a DOT number and no MC number may be a private carrier without authority to haul freight for hire. Make sure the motor carrier authority type is for common and/or contract and that the authority is ACTIVE. The name on the authority should be the same as the one on your contract with the carrier, the carrier's insurance certificate, and the Secretary of State's filing (if

² Unified Registration System (URS) Rulemaking Final Rule

you check the state level). **In April 2017, CVSA amended the out-of-service criteria to include an inactive USDOT number or No USDOT#. It is imperative to ensure the motor carrier has been placed OOS.*

- Change is on the way for DOT and MC numbers. As part of the FMCSA's Final Rule on the Unified Registration System (URS) the Agency announced that MC, FF, and MX numbers will be eliminated. The final implementation of the URS Final Rule has been delayed several times in 2016, and as of this printing, the timetable on completion is to be determined. Additionally, the Agency has begun reissuing inactive MC numbers starting with number one to new motor carriers, because their database cannot handle a seventh digit. This is a bad practice as the early numbers are used for marketing purposes to show length of time in business.
- Verify that the carrier has a BOC-3 filing with FMCSA. Carriers are required to file for a BOC-3 agent in any state in which they operate.
- Verify that the carrier's licensing and insurance filing is current with FMCSA. You may find this easily by going to www.safer.fmcsa.dot.gov.org, entering the MC or DOT number of the carrier, and then clicking on "Licensing and Insurance" or by subscribing to one of several online services. (See the "Insurance Framework" section below for more detail on insurance considerations.)
- Verify the carrier's Safety Rating, also on www.safer.fmcsa.dot.gov.org, by navigating to "Company Snapshot."
- When hiring a Canadian motor carrier for interstate commerce, you may verify that an authorized Agency of the Canadian Federal Government or Canadian Territorial or Provincial government has not deemed the motor carrier unfit to operate through their respective safety fitness determination procedures. MAP-21 (P.L. 112-141) allows the U.S. DOT to use Canada's equivalent safety fitness determination, to determine whether a Canadian motor carrier is safe to operate in interstate commerce. Verifying the status of a Canadian motor carrier can be done by navigating through the www.safer.fmcsa.dot.gov.org website or directly through the specific Canadian Province website, which is provided below where available.
 - Manitoba Province: <http://www.gov.mb.ca/mit/mcd/mcs/csnapdisclaim.html>
 - Quebec Province: https://www.pes.ctq.gouv.qc.ca/pes/faces/dossierclient/rechercheAllege.jsp?MODE_AFFICHAGE=RESTREINT_NIR&langCode=fr
 - Ontario Province: <https://www.cvop.rus.mto.gov.on.ca/cips/Products.aspx>
 - British Columbia: Call (250) 952-0576. This Province will provide the carrier's safety rating if you provide the NSC#.
- Do not knowingly use carriers with an "Unsatisfactory" Safety Rating. Please note that not all data are always correct. If a carrier's Safety Rating is "Unsatisfactory" call the carrier's management and ask if the rating is correct. Please also call FMCSA to verify that the rating is correct and ask if the carrier's rating will be or has been upgraded.
- TIA strongly encourages members to either use the TIA model contracts or to use one designed by member firms, with the help or review of a transportation attorney who is familiar with the TIA model

contracts and/or transportation law regarding freight brokers. The TIA Model Broker-Carrier Contract requests several important carrier representations that indicate the carrier is in and that it will maintain compliance with all applicable state and federal safety regulations.

- Obtain a copy of the motor carrier's insurance certificate(s) from the motor carrier's insurance agent directly and not from the motor carrier. The certificate should list your company name as a certificate holder or bearer, and limits should meet or exceed minimum federal requirements (or your own contracts' requirements, if greater) and state requirements (if any) for worker's compensation.
 - Important note: Insurance certificates with Auto Liability for only "Scheduled Autos" (without both "hired and non-owned" or "Any Auto" also indicated) may present potential risk for no cargo insurance coverage. This is due to "Scheduled Auto" policy limits to listed VINs only. In such cases, cargo coverage will generally not extend to other vehicles, such as when a carrier uses equipment not on, the schedule or double-brokers a load to another carrier not listed on the policy.
 - Please refer to the Insurance section of this document for more information on insurance.
- Verify to see if any TIA member has reported an unethical, fraudulent, or other dispute or incident against a carrier by reviewing www.tiawatchdog.net or through other online services.
- Contact the carrier's business, customer and bank references.
 - In certain instances, the length of time the carrier has been in business may be valuable to you.
 - Verify the credit score or credit rating of the motor carrier. This might help you understand the carrier's financial health and may be insightful in certain circumstances.
- In certain cases, when a carrier is newly opened for business, you might find reason to do one or more of the following, in addition to checking references:
 - Attempt to check the principal's history. Some credit companies provide this information.
 - Request a copy of the carrier's new entrant safety audit results, if the carrier was required to submit one when it initiated operations. A passing grade indicates the carrier was inspected and had adequate safety management controls in place to operate in the U.S. If the carrier is older than 18-24 months, and the FMCSA shows it's common and/or contract authority to be "active," it is highly likely that the carrier has passed its New Entrant Safety Audit. NOTE: This should not be confused with a "Compliance Review" and its resulting DOT Safety Rating.
 - Ask if the carrier has a written safety policy in place and someone responsible for safety.
- In the event of a business name or ownership question or dispute, you might request to view the Secretary of State corporate or LLC filings to ensure that the carrier's name on papers distributed to you match those on file with the state (address and phone # should match as well; require a street address in addition to a P.O. Box).
- You may find reason to dig a little deeper into the carrier's history with FMCSA. If so, you might review the operating authority history on FMCSA's website. Carriers in financial distress may show

multiple “involuntary revocations” and reinstatements of authority due to lapses in insurance coverage.

- If your system has this capability, and if you find reason to do so, you might perform a database query of your own information system to look for duplicate addresses for multiple entities or to see if a carrier has assumed another name from an entity that you had a bad experience with previously. Not all name changes are bad or indicate anything negative.
- Develop an in-house suite of metrics with which you measure your company's performance relative to your customer demands and how carriers perform while hauling your customers' freight. Create a “do not use” list or function within your company to identify carriers who do not meet your service needs or your selection criteria.
- If a carrier has a “conditional” rating:
 - Ask when the “conditional” rating was received.
 - Ask for what reasons the carrier was given the rating. Obtain a copy of the carrier's FMCSA “conditional” rating report.
 - Ask what has been done to correct the alleged infractions. (Get a copy, including dates, of the corrections report that the carrier sent to the FMCSA).
 - Ask if a compliance review has been requested. If so, obtain a copy. If not, ask “why not?”

Note: FMCSA may take a minimum of 3 months, and very often 6 or more months, to act upon such a request and may take far longer based on the individual state's workload. See also the TIA Fraud Framework.

B. Update on Transportation Reauthorization Bill, “Moving Ahead for Progress in the 21st Century Act (MAP-21)

On July 6, 2012, President Obama signed into law the “Moving Ahead for Progress in the 21st Century Act (MAP-21). The law codified a number of carrier, broker and forwarder provisions. For more on broker and forwarder provisions of MAP-21 (P.L. 112-141), please visit: <http://www.gpo.gov/fdsys/pkg/PLAW-112publ141/pdf/PLAW-112publ141.pdf>.

A summary of the changes include:

- **Requires Unique Authority Numbers:** Requires DOT to issue distinctive registration numbers for each authority issued to an entity (motor carrier, broker, freight forwarder). Requires that each number include an indicator of the type of activity or service for which the registration number is issued. Authority given governs transaction.
- **Requires Brokers and Forwarders to Renew License every 4 years:** Requires that not later than 4 years after the date of enactment, the Secretary will require a freight forwarder or broker to renew its license. The license will then need to be renewed every 5 years.

- **Clarifies Motor Carrier Authority:** Clarifies that motor carriers need separate broker or forwarder authority and bond-to-broker freight. Clarifies that a motor carrier may provide transportation of property with self-propelled motor vehicles owned or leased by the motor carrier or through interchanges as permitted under regulation issued by the Secretary, provided that the originating carrier must physically transport the cargo at some point and retains liability for the cargo and interchanged carrier.
- **Creates exemptions for NVOCCs, Customs Brokers, and Indirect Air Carriers:** Creates exemptions for these entities from brokerage registration and licensing requirements to the extent that they are conducting their business practices as defined by the United States Code.
- **Increases Broker and Forwarder Requirements:** Raises the broker surety requirement to \$75,000 with a review after five years. Imposes a \$75,000 surety requirement on freight forwarders. Establishes a three-year relevant experience or certified training requirement to obtain a license. Requires all current brokers and forwarders to come into compliance within 1 year, and requires that the Secretary review the bond level within 6 months of the date of enactment and every 4 years. Requires that all broker and forwarder licenses be renewed every 5 years thereafter. There is no grandfather amendment in this legislation; all brokers and forwarders must comply.
- **Requires Performance Standards for Sureties:** Requires FMCSA to establish specific performance standards for bonds and other acceptable surety. Includes requirements that the broker or forwarder can file a bond issued by a surety registered and in good standing with the US Department of Treasury, or a trust or other security acceptable to the Administrator, provided that the surety amount consists of assets readily available to pay claims without resort to personal guarantees or collection of pledged accounts receivable. Makes the bond issuer, trust or other security holder ultimately responsible for the failure to make required payments. Specifies procedures for notification of cancellation. Specifies procedures for addressing claims. Establishes a “loser pays” process if claims must be fought in court.
- **Establishes Penalties for Brokering without a License:** Establishes severe penalties, including civil penalties up to \$10,000 for each violation and unlimited liability for payments, for brokering without a license. Extends payment liability for brokering without a license, jointly and severally, to any corporate entity or partnership involved and to the individual officers, directors, and principals of such entities.
- **Enables Private Remedies:** By placing these provisions in law, they can be enforced through the courts by the private sector without resort to action by FMCSA Hazardous Materials Regulations.

C. Hazardous Materials Regulations

**The information contained below is only a guideline for carrier selection on hazardous materials shipments. It does not cover information pertaining to all situations. For the purpose of clarity, in those situations that are questionable, the guidance of a hazmat professional is suggested.*

As a Broker, IMC or 3PL, the arrangement of hazardous materials transportation might be considered an intimidating endeavor. Transportation of all hazardous materials is governed by the Department of Transportation (49 CFR). Shippers and carriers that perform defined hazmat functions must observe / comply with 49 CFR Parts 100-185 and are considered an “offeror.” An offeror is one who performs any

of the following in order to prevent your firm from being classified as an offeror your employees should be trained to not perform in any of the below compliance functions:

- * Registration
- * Classification
- * Packaging
- * Develop a Security Plan
- * Documentation & Shipping Descriptions
- * Marking
- * Labeling
- * Placarding
- * Training & Emergency Response

An entity like a property broker, IMC or freight forwarder, that simply connects a shipper with a carrier to move hazardous materials, need not register with the Department of Transportation (DOT), and is not subject to provisions within 49 CFR.

For such entities, not subject to 49 CFR, the following is for information purposes only.

While the legal responsibility under 49 CFR resides with the offerors, entities not subject to the provisions within 49 CFR who wish to provide good customer service to their customers, will be well served to only send in carriers who are properly registered with the Pipelines and Hazardous Materials Safety Administration (PHMSA) and the Federal Motor Carrier Safety Administration (FMCSA) under DOT. Such carriers:

- Have a minimum \$5 million coverage for hazardous commodities and that the broker obtains written evidence of this (*Please check with your insurance provider about additional requirements for instances with hazardous cargo)
- Abide by all local, state, and federal law requiring the transport of that type of cargo in place
- Have an action plan (not a security plan) in place to deal with incidents

*Please note PHMSA registrations are valid for 1-3 years.

After January 1, 2005, the Federal Motor Carrier Safety Administration (FMCSA) requires motor carriers to obtain a Hazardous Materials Safety Permit (HMSP) prior to transporting certain highly hazardous materials. An HMSP is required to transport any of the following materials:
https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/DOT_FMCSA_HazMatBroch_04_2016_508CLN.pdf

HazMat regulations have been established to insure safety in handling and transporting hazardous materials. These regulations are found in Title 49 of the Code of Federal Regulations (49 CFR). In the event of an incident, failure to comply could result in civil or criminal penalties.

Helpful Links:

- PHMSA Registration certificate lookup:
<https://hazmatonline.phmsa.dot.gov/Services/companylookup.aspx>
- FMCSA Permit Verification:
http://mcmis.volpe.dot.gov/mcs150t/pkg_shipper.prc_shipper_request

- If a waste product is being hauled, an Environmental Protection Agency (EPA) ID and uniform hazardous waste manifest are required as well. *Please note various States have specific regulations.
 - EPA Facility Identification Lookup: <https://www3.epa.gov/enviro/facts/rcrainfo/search.html>

For more information, please visit FMCSA's hazardous materials information website: <https://www.fmcsa.dot.gov/regulations/hazardous-materials>

D. Food Safety Modernization Act (FSMA) Sanitary Transportation of Food Rule

The Food and Drug Administration (FDA) released the Final Rule for the Sanitary Transportation of Human and Animal Food on April 6, 2016. This Final Rule will advance FDA's efforts to protect foods from farm to table by keeping them safe from contamination during transportation. The earliest compliance dates for some businesses begin on April 6, 2017 while "small businesses" have until April 6, 2018 to comply. The Agency defines a small business as, "businesses other than motor carriers who are not also shippers and/or receivers employing fewer than 500 persons and that has less than \$25.5 million. For motor carriers the figure is having less than \$27.5 million in annual receipts.

The Agency amended the definition of a "shipper" to include 3PLs as a responsible party. Specifically, the definition reads:

Shipper means a person, e.g., the manufacturer or a freight broker, who arranges for the transportation of food in the United States by a carrier or multiple carriers sequentially.

Furthermore, the Agency notes that shippers or brokers are in the best position to determine the necessary requirements and places the primary responsibility for compliance on them. This would include:

- Appropriate transportation operations
- If the food needs temperature controlled for safety and the relevant operating temperature and mode of temperature monitoring
- If clean out procedures are needed
- If previous cargo should be revealed

The Agency notes that shippers can contractually assign responsibility to other covered parties.

Specifically, the rule would establish requirements for:

- **Vehicles and transportation equipment:** The design and maintenance of vehicles and transportation equipment to ensure that it does not cause the food that it transports to become unsafe. For example, they must be suitable and adequately cleanable for their intended use and capable of maintaining temperatures necessary for the safe transport of food.
- **Transportation operations:** The measures taken during transportation to ensure food safety, such as adequate temperature controls, preventing contamination of ready to eat food from touching raw food, protection of food from contamination by non-food items in the same load

or previous load, and protection of food from cross-contact, i.e., the unintentional incorporation of a food allergen.

- **Training:** Training of carrier personnel in sanitary transportation practices and documentation of the training. This training is required when the carrier and shipper agree that the carrier is responsible for sanitary conditions during transport.

NOTE: TIA takes particular issue with the Agency's assumption that brokers are in the "best position to determine the necessary requirements" around shipping food, as the broker is neither the owner of the product, the food manufacturer, or an expert in any way, on the relative condition and/or grades of food, the broker's sole "expertise" relates to whether or not a motor carrier generally fits the needs of the shipper. Nevertheless, as written, the rule imposes requirements on brokers which are impractical, and quite difficult to supervise or effectively manage, and brokers must be aware of the rule.

E. State Considerations—California

The Committee recognizes the potential financial and punitive threat posed by the California Air Resources Board (CARB) and the State of California.

1. Note on CARB's Transport Refrigeration Unit (TRU) Airborne Toxic Control Measure Regulation - brokers and forwarders nationwide.

On October 21, 2011, the California Air Resources Board (CARB) approved a package of amendments ("2011 Amendments") to the Transport Refrigeration Unit (TRU) Airborne Toxic Control Measure (ATCM). Included in this package is an amendment that affects brokers, freight forwarders, shippers, receivers, motor carriers and their drivers. ARB staff investigations have found a greater frequency of noncompliance among carriers hired by brokers, freight forwarders, shippers, and receivers compared to private fleets. The regulation took effect on January 1, 2013 and affects all brokers and forwarders who are hiring reefer units, no matter where they are domiciled.

If a broker or forwarder arranges, hires, contracts for, or dispatches reefer-equipped trucks, tractor-trailers, shipping containers, or rail-cars for the transport of perishable goods on California highways or railways, the broker or forwarder must:

- a) Require the carriers they hire or contract with to dispatch only reefers that comply with the Air Resources Board TRU ATCM in-use performance standards; and
- b) Provide contact information to the carrier so that dispatched drivers can present it to authorized enforcement personnel upon request. Contact information must include the broker's company name, street address, state, and zip code and a contact person's name and business phone number. *If a broker is not involved in arranging the transport of the load, then broker contact information is not required on bills of lading or related documents. CARB staff has indicated that as long as the broker provides his contact information to the driver, the requirement is met.

According to the guidelines disseminated by CARB, the starting point for brokers and forwarders should be able to verify compliance by asking carriers to provide proof of compliance and reference the Air Resources Board Equipment Registration (ARB-ER) registration system (<https://arber.arb.ca.gov/publicTCCReports.arb>) for 100 percent-compliant carriers. Through the ARBER data system, brokers and forwarders can check a carrier's compliance status.

Furthermore, the CARB "suggest" the following strategies that a broker or forwarder could use to ensure hiring a compliant carrier. These include:

- a) Businesses should consider sending to their carrier base an annual notice indicating that only carriers listed in the ARB's 100 percent-compliant database will be considered for hire or contract when arranging freight that travels on California highways and railways;
- b) Businesses (shippers) should include contract language in agreements between the shipper and broker or forwarder, or receiver and broker or forwarder, that clearly requires only ARB-compliant TRUs to be dispatched on California highways and railways;
- c) When advertising a load on an on-line load board, brokers should specify that the load requiring refrigerated transport equipment will travel on California highways or railways and the TRU used for the load must be ARB compliant;
- d) A broker should document the steps during hiring and contract negotiations with the carrier that show that the carrier was notified that an ARB-compliant TRU is required and that the carrier confirmed the contractual obligation to dispatch only ARB-compliant TRUs on California highways and railways;
- e) A broker should include contract language that clearly states that only ARB-compliant reefers be dispatched on California highways and railways. This language should be highlighted and bolded, and a space should be provided for a signature of acknowledgment; and
- f) A broker should require the carrier to provide the ARBER-certification page showing that the dispatched unit is compliant. This document may be used to show that there was a reasonable expectation that only certified-compliant reefer equipment would be used for a specific job if the specific IDN is called out in the contract.

2. Note on the California Air Resources Board (CARB) Greenhouse Gas Tractor-Trailer Regulation – California-based brokers and forwarders.

The California Air Resources Board (CARB) Tractor-Trailer Greenhouse Gas (GHG) regulation applies to 53-foot or longer box-type trailers, including both dry-van and refrigerated-van trailers and all heavy-duty tractors that pull them on California Highways. The tractors and trailers subject to this regulation either must use U.S. EPA SmartWay certified tractors and trailers or retrofit their existing fleet with SmartWay verified technologies. All owners, regardless of where their vehicles are registered, must comply with the regulation when operating on California highways and roads.

Besides the owners of these vehicles, drivers, motor carriers, California-based brokers and California-based shippers that operate or use them also share in the responsibility for compliance with the regulation. This includes brokerage companies that have a remote office or sales agent located in California. One or all of these parties may be held accountable for operating or using non-compliant vehicles on California highways.

** CARB officials recently have reported that the definition of a California-based brokers, include anyone that arranges transportation on a California highway. TIA members should use caution and work to abide by the regulation requirements.*

Brokers and forwarders may utilize the CARB GHG compliance tool at https://ssl.arb.ca.gov/ssltrucrs/trucrs_reporting/mobile/ to help people in the field determine whether a 53-foot trailer without aerodynamic retrofits is compliant with the Tractor-Trailer Greenhouse Gas Regulation to operate on California highways.

3. Note on the California Air Resources Board (CARB) Truck and Bus Regulation – California- based brokers and forwarders.

On December 12, 2008, the California Air Resources Board (CARB) approved the Truck and Bus regulations to significantly reduce particulate matter (PM) and oxides of nitrogen emissions from existing diesel vehicles operating in California. The regulation took effect on January 1, 2012.

This regulation applies to nearly all diesel fueled trucks and buses with a gross vehicle weight rating (GVWR) greater than 14,000 pounds that are privately or federally owned, including on-road and off-road agricultural yard trucks, and privately and publicly owned school buses. Other public fleets, solid waste collection trucks and transit buses are already subject to other regulations and are not part of the truck and bus regulation.

Trucks that transport marine containers must comply with the drayage truck regulation.

The regulation applies to any person, business, school district, or federal government agency that owns, operates, leases or rents affected vehicles. The regulation also establishes requirements for any in-state or out-of-state motor carrier, California-based brokers, or any California resident who directs or dispatches vehicles subject to the regulation. CARB estimates that approximately 170,000 businesses in nearly all industry sectors in California, and almost a million vehicles that operate in California roads each year are affected. ** CARB officials recently have reported that the definition of a California-based brokers, include anyone that arranges transportation on a California highway. TIA members should use caution and work to abide by the regulation requirements.*

Beginning January 1, 2012, the regulation phases in requirements for heavier trucks to reduce PM emissions with exhaust retrofit filters that capture pollutants before they are emitted to the air or by replacing vehicles with newer vehicles that are originally equipped with PM filters. Starting January 1, 2015, the regulation requires accelerated replacements of both lighter and heavier vehicles that do not have PM filters installed. From 2020 to 2023 nearly all older vehicles would need to be upgraded to have exhaust emissions meeting 2010 model year engine emissions levels.

A California-based broker who arranges the transportation of a motor carrier traveling in the State of California needs to “verify” that each hired company is either in compliance with the regulation or has reported compliance to CARB. Motor carriers that register with the CARB to use flexible compliance options must report information about all of the heavier vehicles in their fleet that operate in California and can print a certificate that confirms their reporting. California-based brokers should request this certificate from carriers to ensure compliance. Additionally, brokers can utilize the CARB truck and bus regulation online database <http://www.arb.ca.gov/msprog/onrdiesel/tblookup.php> to search for compliant carriers. If the carrier does not have a certificate, CARB recommends that brokers should obtain other documentation and a statement from the carrier that they are aware of the CARB Truck and Bus Regulation. This will demonstrate that the carrier is in compliance.

****To alleviate responsibility, TIA suggests brokers and forwarders use the same above referenced strategies for the TRU ATCM for these regulations as well. These strategies could be used in your consideration when selecting a carrier traveling in the state of California.**

Because of the CARB regulations, TIA has updated its Model Broker/Carrier Contract, which can be found under the “Members only” section of the TIA website (www.tianet.org).

F. State of California Port Trucking Labor Law

The State of California has enacted a new law that will hold transportation intermediaries jointly and severally liable for contracting with port drayage motor carriers who have unsatisfied judgments regarding unpaid wages, damages, expenses, penalties and workers’ compensation liability. Specifically, the law:

- 1) Requires the Division of Labor Standards Enforcement (DLSE) to post on its website a list of port drayage carriers, or their successors, with outstanding judgments for wage violations and other labor law violations.
- 2) Makes any customer using the service of a carrier on the DLSE list jointly and severally liable for unpaid wages and other damages or penalties, as specified. The customer’s liability will be determined either by DLSE or by a court in a civil action brought by DLSE or a commercial driver.
- 3) Provides exceptions for when a customer is jointly and severally liable, such as when employees are covered by a collective bargaining agreement or when a customer and a carrier have an existing contract at the time the carrier is listed on the DLSE website and the customer wishes to terminate the agreement within 90 days of the listing.

Transportation intermediaries, such as property brokers, FF, NVOCC, etc. all have exposure if they select a motor carrier who is on the list. [Motor carriers can be verified here.](#)

G. Note Regarding IRS Tax Compliance & Carrier Selection

The Internal Revenue Service requires businesses to collect a tax identification number, which can be obtained from a business' Form W-9. The IRS requires most businesses to submit a Form 1099-MISC listing the Federal Employers Identification Number (EIN), also known as a Taxpayer Identification Number, for each qualifying individual it pays and the dollar amount it paid.

Generally, "qualifying individuals" means: (a) the entity is paid more than \$600 per calendar year; and (b) the entity is non-incorporated.

Increasingly, TIA is hearing from its members that the IRS is contacting the broker and threatening fines when the broker has paid a qualifying entity (likely a carrier) over \$600 in a year without filing a 1099-MISC or filing a 1099-MISC with a wrong FEIN, even if the carrier gave the broker the wrong number.

Note: TIA has issued a notice (<http://tiaadvocacy.com/key-issues/1099-guidance>) indicating that under federal tax regulations, brokers need not prepare and send IRS form 1099 to motor carriers.

W-9 verification not only helps prevent potential identify fraud but may also help members avoid an IRS fine if an invalid W-9 was reported to the IRS.

The IRS has a website (**click here**):

Verification of W-9 information is easy **if** you have the legal reporting name and the EIN on the W-9. If you enter the legal reporting name incorrectly, please note: you only have two (2) attempts within a 24-hour period to enter it correctly, or the IRS delays your next attempt for 96 business hours to discourage unlawful identity phishing.

Enter the legal name and EIN from the W-9 form. Below are the possible results you may receive. Codes 0, 6, 7, and 8 are valid matches. When a valid result is received, you have the opportunity to verify and/or print the page.

- 0 = TIN and Name combination matches IRS records.*
- 1 = TIN was missing or TIN not 9-digit numeric.*
- 2 = TIN entered is not currently issued.*
- 3 = TIN and Name combination does not match IRS records.*
- 4 = Invalid TIN Matching request.*
- 5 = Duplicate TIN Matching request.*
- 6 = TIN and Name combination matches IRS SSN records.*
- 7 = TIN and Name combination matches IRS EIN records.*
- 8 = TIN and Name combination matches IRS SSN and EIN records.*

Before leaving this screen, you may want to do a Print Screen of the results. Once you exit this screen, the interactive results will no longer be available for viewing.

Using the IRS TIN matching system allows you to verify the accuracy of taxpayer TIN and name information prior to submitting information to the IRS. Internal Revenue Code 6724 provides any penalties under Section 6721 may be waived if the filer shows that the failure to file a correct TIN on an information return was due to reasonable cause and not willful neglect. Filers may prove due diligence

and receive a waiver from proposed penalties if they prove the TIN and name combination they submitted matched IRS records. Providing a copy of the Print Screen of your Interactive Results will be considered proof of due diligence.

To setup your IRS registration, you can visit the following webpage: <https://la1.www4.irs.gov/e-services/Registration/index.htm>

Always consult your CPA, and/or lawyer, and the IRS for exact tax, financial, legal and reporting requirements.

VI. INSURANCE OVERVIEW AND DEFINITIONS

This section of the Framework will review the definitions of common insurance terms. The section will review common insurance policies for carriers and for brokers.

Definitions of Insurance Terms & Policies:

A. General Liability or “GL”

GL insures the liability arising out of premises and operations. “Premises” is a business office or a trucker’s terminal, etc. “Operations” extends the insurance off premises. For a broker, it would include an employee making a sales call at a shipper’s place of business or a business meeting with a trucking company at its place of business, for example. For a trucker, it would include liability while the driver is at the shipper’s or consignee’s facility or at a truck stop.

GL is commonly mistaken for other types of insurance, so it is important to understand what it does not cover. Below are three very important exclusions to GL policies:

1. General liability always excludes all liability arising out of the use of an auto (or what is usually covered by Auto Liability, including, trucks, trailers, etc.).
2. General liability always excludes all liability due to an employee’s injury (or what is usually covered by worker’s compensation).
3. General Liability always excludes damage to cargo (and all other property in the care, custody, or control of the named insured).

B. Auto Liability

Auto Liability insures the liability arising out of the ownership and use of an auto (as defined below; includes trucks). Auto Liability insurance can be extended past an entity’s leased or owned vehicles with certain endorsements. Auto liability insurance always excludes three (3) things:

1. Auto liability always excludes all liability arising out of premises and operations (or that which is covered by GL insurance).
2. Auto liability always excludes injury to an employee of the insured (or what is usually covered by worker’s compensation).
3. Auto liability always excludes damage to cargo (all property in the care, custody, or control of the named insured).
 - **Auto:** Auto is usually defined to mean: a land motor vehicle, trailer, or semi-trailer designed for travel on public roads.
 - **Scheduled Auto:** Only those autos listed on the policy or added by an endorsement issued by the insurance company are insured. The schedule may or may not be on the certificate of insurance and will change as trucks are added or removed. If the carrier has interstate authority, the carrier’s liability policy must contain an MCS-90 endorsement. The MCS-90 is designed to protect the public, so the insurer must pay a bodily injury or property damage (this

property coverage does not include cargo) claim even if the truck involved is not scheduled on the policy. If the carrier has only intrastate authority, the MCS-90 may not be required by the state in which the carrier operates. One would have to assume the MCS-90 is not a part of an intrastate carrier's policy. There may or may not be an equivalent in the state in which the carrier operates. The state's DOT should be able to provide information about its requirements. There is no equivalent to the MCS-90 for cargo insurance. If a trucker with a scheduled vehicle cargo insurance policy uses a truck not on the schedule, or an owner-operator, or another freight company to move the freight, the cargo insurance of the first carrier will not apply.

** As indicated earlier, scheduled autos means that the insurance covers only the trucks actually listed by VIN on the policy. The MCS-90 provides liability insurance protection to the public for unscheduled trucks. There is no MCS-90 equivalent for cargo insurance policies. If the trucker uses an unscheduled vehicle, the cargo insurance will not apply.

- **Any Auto:** Any auto means any auto for which the insured may be held liable.
- **Hired Auto:** This covers only those autos the insured leases (less than 30 days), hires, or rents. However, autos you lease, hire, or rent from an employee are not hired autos. What if lease it greater than 30 days? No coverage?
- **Non-Owned Auto:** Non-owned auto means only those autos you do not own, lease, hire, or rent that are used in connection with your business. However, autos leased, hired, or rented from employees are considered non-owned autos but only while used in connection with the insured's business.
- **Owned Auto:** This includes autos leased for more than 30 days.
- **Contingent Auto Liability:** This is a newer form of auto liability insurance. As with all insurance policies, and especially because this is fairly new, it is important that you read this policy carefully. The purpose of this insurance is to provide insurance for potential personal injury and death liability involving accidents involving the independent contractor carrier selected by a broker. However, some Contingent Auto policies contain absolute contractual liability exclusions, and others have very limited contractual liability exclusions. The absolute exclusions mean that any liability the broker assumes in a contract is not covered by the policy unless approved by the underwriter in advance.

The most common example would be liability assumed in a shipper contract. The limited exclusion will provide contractual liability coverage only for certain contracts. Read the policy carefully and talk to your agent to determine which may apply to your situation.

Be aware--contingent cargo policies can vary in coverage in other meaningful ways too. For example, there are "follow form" and "non-follow form" insurance policies (there may be other terms to describe these differences). Follow form insurance generally mimics the coverage and exclusions of a motor carrier's insurance. Because it is not practical or even possible to know all the exclusions present in a motor carrier's insurance, the risk a broker runs when buying this type of insurance is simple: if the carrier's insurance excludes an item it hauled for a broker's customer, the broker's insurance will also exclude that item. Non-follow form may also

have its own policy exclusions, but those exclusions are not designed to mimic the motor carriers' insurance.

C. Hired & Non-Owned Auto Liability

The standard ISO (Insurance Services Office) auto policy (and equivalent policies) include contractual liability coverage. You should read your policy and talk to your agent to be certain you have the proper coverage.

D. Workers Compensation

This is insurance purchased by a business that insures injuries and illnesses sustained by employees. By state laws, Workers Compensation is usually the employee's sole source of recovery against his or her employer for a work-related injury or illness. Consult with your insurance agent and read the policy for more information.

E. Third Party Insurance

Third Party Insurance covers risks associated to a business where a potential liability may arise from injury or loss due to the actions or negligence of a third party -- for instance, a sub-contractor, vendor, etc. -- in the course of conducting an insured's business service or operation. Third party insurance is perhaps better known to international forwarders but may be available to freight brokers and other entities. Consult with your insurance agent, and read the policy for more information.

F. Errors & Omissions

E&O is an insurance form which insures against liability for committing an error or omission in the performance of professional duties. Lawyers, doctors, and accountants buy E&O insurance for obvious reasons. Most E&O policies exclude bodily injury and property damage, primarily because GL and auto liability cover that. A broker can buy E&O insurance. A broker arranging international transportation should consider E&O insurance due to unique characteristics inherent in this activity. Brokers that perform freight bill auditing or freight bill payment services should consider E&O insurance. Brokers that arrange COD shipments should consider E&O insurance to provide protection for failing to collect on such shipments. Brokers that perform other consulting services (such as supply chain management) should consider E&O insurance. A broker that performs any activity that can produce a financial loss other than cargo loss and damage should consider E&O insurance. E&O insurance can be purchased as a stand-alone policy. A stand-alone policy is usually more flexible and can provide high limits of insurance but usually has a significant deductible. E&O insurance can also be purchased as part of a Contingent Cargo insurance program. *E&O Insurance will only cover claims for breach of contract and negligence.

G. Shipper's Interest Insurance

Shipper's Interest Insurance is one option available for purchase on a transaction, or a series of transactions, that covers loss or damage to the customer's cargo, or property. It is important to understand the variety of cargo insurance coverages available through both the carrier and the broker, to understand where shipper's interest insurance might fit. Shipper's interest is first party insurance (non-legal liability) as opposed to third party insurance (legal liability). Motor truck cargo and contingent cargo are legal liability policy forms that provide coverage for loss if the carrier insured is legally liable as

a result of the establishment of Carmack Liability, the carrier has certain exclusions such as for acts of God which the carrier is not legally liable. Comparably, contingent cargo requires that an agreement be present that the broker shall be liable for coverage to respond.

Shipper's Interest removes the issue of legal liability from coverage. A broker is not liable by authority but could be liable by contract. Irrespective of liability, a broker may buy shipper's interest insurance if it wishes to be extra attentive to the customer's freight in the event of loss. Brokers will often be highly selective when using shipper's interest insurance, as it is not generally inexpensive at higher value levels. Shipper's Interest coverage can be helpful in the following instances:

- The need for higher limits- Typically 90% of carriers have 100,000 limits
- LTL insurance gaps- most LTL carriers only offer a per pound liability so if the broker has to indemnify the shipper for the full value of the loss, they need this supplement coverage
- Shipper relationship issues- although brokers are not legally liable, brokers recognize that failure of a carrier's motor truck cargo coverage can jeopardize relationships.

Shipper's Interest Insurance is becoming more mainstream on a per shipment, per shipper, or per commodity basis. The underwriting is based on annual values shipped relative to the type of commodity shipped."

H. Certificate of Insurance

A certificate of insurance is usually in the form of an Acord certificate, though not always. A certificate of insurance is not a contract, because that is prohibited by law. The certificate of insurance does not convey any rights to the certificate holder. The insurance company is not obligated to send any notice of cancellation to a certificate holder. It should be considered a snapshot of the declarations page of an insurance policy or policies. A Certificate Holder is defined as: the entity to whom an insurance agent has issued a certificate of insurance.

I. Miscellaneous Additional Terms

- **Endorsement:** An endorsement is a document added to an insurance policy by the insurance company that changes the policy. It may add, remove, or reduce coverage. It may add conditions like unattended vehicles or require maintenance of refrigeration units, etc. It is important to read endorsements. Your agent can help you with this.
- **Exclusion:** An exclusion is any policy language that removes or reduces coverage. It is important to read exclusions and think about if/how an exclusion may affect your insurance. Your agent can help you with this.
- **Terms and Conditions:** Language that imposes requirements on the insured in order to trigger the coverage under the policy may be referred to as Terms and Conditions.
- **Additional Insured:** An "additional insured" party is an entity that has been given the benefit of the insurance provided by a liability type policy via joint agreement between the named insured and the insurance company. In the vast majority of policies, an additional insured requirement must be in a written contract between the parties.

J. CAUTION REGARDING ADDITIONAL INSURED

Adding an additional insured to your policy will probably reduce the amount of insurance available to your company. You may no longer have the limits of insurance you purchased available to you. In some states, an additional insured can file claims that are not related to the business relationship between the named insured and the additional insured. In some policies, adding an additional insured will void some of the insurance.

Shippers should carefully avoid being named additional insured on any cargo policy. This may void cargo coverage entirely (for that shipper), as cargo claims cannot be filed against a party named on the policy.

If the insurance company makes a payment on behalf of an additional insured, the primary owner (the broker, here) will suffer the consequences of a higher premium due to loss experience or face a non-renewal.

As an additional insured to a motor carrier's policy, brokers are subject to all exclusions and defenses that the insurance provider can assert against the insured carrier. It is illegal in many states for another entity, such as a shipper, to be listed as additional insured for worker's compensation. Check with your agent or state.

The "Any Auto," and/or "Hired Auto and Non-Owned Auto" and/or "Contingent Auto" endorsements (together) are suggested to help protect against potential third party claims arising from an accident involving a carrier that the broker had selected to transport freight. Non-owned is also useful when an employee using his/her own car on company business has an accident.

K. INSURANCE TYPES COMMONLY CARRIED BY CARRIERS AND BY BROKERS

This section will review standard types of insurance that motor carriers often purchase to insure their business and insure associated risks to the public. The second part will review the types of insurance that TIA member brokers may obtain to insure their businesses.

1. Motor Carrier Related Insurance

A motor carrier may be held liable for bodily injury and/or property damage suffered by third parties pursuant to state law standards for negligence or other tort law. Additionally, motor carriers and freight forwarders may be liable for freight loss and/or damage under the Carmack Amendment, as set forth in 49 U.S.C. 14706. In short, a motor carrier or freight forwarder may be liable under the Carmack Amendment if freight is lost, damaged or stolen while in the possession or control of the carrier or freight forwarder. This standard of semi-strict liability is subject to exceptions for acts of God, public enemy, acts of the shipper, public authority, or inherent vice and proof that it was not negligent. Therefore, it is recommended that the broker obtain and retain current certificates of insurance showing the following information from the motor carriers it contracts with. Unless specifically stated below as required by law, the limits provided are estimates only. Each broker should evaluate its own needs and follow its own carrier selection protocol.

Please refer to Attachment 1, a SAMPLE Insurance Certificate, and Acord Form. The insurance certificate must:

- Name your company (the broker) as “certificate holder” or “certificate bearer”;
- Originate directly from the insurer or agent, not the carrier or carrier’s office;
- Be signed by the insurance agent;
- Show the correct address for the motor carrier;
- Include policy numbers, underwriters and current dates for each policy listed.
- Important note: Some certificates may have a “radius” listed (e.g. 500 miles). This could indicate that the stated insurance applies ONLY if the truck is within 500 miles of the address of the trucker.

Insurance limits most commonly seen today are as follows:

Please note: the insurance filing by the carrier with DOT is often a minimum amount as required by law. Wide fluctuations in policy limits and policy types occur in the market. If your business requires internally, or through contract, limits or coverage more than what is shown, discuss this with your agent and the carrier(s) whom you will be selecting for that/those contract(s).

General Liability: \$1,000,000 (FMCSA does not require this)

Auto Liability: (Public Liability is generally covered in carriers’ Auto Liability). The requirements for motor carriers vary by service type. Please see the following chart for a schedule of limits from Federal Regulations.

THE SCHEDULE OF LIMITS SHOWN BELOW DOES NOT PROVIDE COVERAGE.

The limits shown in this schedule are for information purposes only. (See 49 CFR 387.303)

SCHEDULE OF LIMITS

Public Liability

Type of Carriage ³	Commodity Transported	Minimum
(1) For-hire (in interstate or foreign commerce)	Property (Non-hazardous).	\$ 750,000
(2) For-hire and Private (in interstate, foreign or intra-state commerce)	Hazardous substances as defined in 49 CFR 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Class A or B explosives, poison gas (Poison A), liquefied compressed gas or compressed gas; or highway route controlled quantity radioactive materials as defined in 49 CFR 173.403.	\$5,000,000
(3) For-hire and Private (in interstate or foreign commerce: in any quantity) or (in intrastate commerce: in bulk only)	Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CER 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above or (4) below.	\$1,000,000
(4) For-hire and Private (in interstate or foreign commerce)	Any quantity of Class A or B explosives; any quantity of poison gas (Poison A); or highway route controlled quantity radioactive materials as defined in 49 CFR 73.403.	\$5,000,000

³ The types of carriage listed under numbers (1), (2) and (3) apply to vehicles with a gross vehicle weight rating of 10,000 pounds or more. The type of carriage listed under number (4) applies to all vehicles with a gross vehicle weight rating of less than 10,000 pounds.

⁴ The schedule shows all possible limits. The carrier's actual limits depend upon what type of authority the carrier has. The schedule does not change the limits purchased by the carrier.

Auto Liability (continued): For non-hazardous approved motor carriers, it appears to be most common today for carriers to carry \$1,000,000 in auto liability. The following three bullets represent tendencies of certain carrier types to carry certain insurance types only and do not represent a statement of fact about any carrier.

- Fleets of fewer than 25 tractors may likely have SCHEDULED** & HIRED (also may have NON-OWNED) checked on the insurance certificate.
- Fleets over 25 trucks should likely have ANY AUTO checked on the insurance certificate.
- Owner-operators with one or just a few trucks will most often have SCHEDULED** checked on the insurance certificate.

** As indicated earlier, scheduled autos means that the insurance covers only the trucks actually listed by VIN on the policy. If the motor carrier's insurance certificate includes a list of trucks wherein only its scheduled autos are insured, and the carrier then tenders a load to another carrier whose equipment is not listed on the first carrier's insurance certificate, cargo insurance may be invalid.

Cargo Liability

Most industry model contracts have settled on a minimum cargo liability for truckload freight at \$100,000 per incident, and there seem to be a majority of carriers today who carry \$100,000 cargo insurance per incident, possibly for this reason.

Therefore, TIA recommends, as a discussion starting point between parties, matching the cargo insurance limit to the value of the shipment. The carrier's insurance certificate should include coverage per incident of this amount or another mutually agreed-to amount between parties.

Most freight broker cargo policies are so-called "Contingent Cargo" policies. Brokers should consider carefully that certain contingent policies require that the carrier's policy cover the loss primarily and that the carrier's insurance limit and coverage is equal to, or greater than, the amount of the contingent policy.

Federal Regulations Changed in March 2011:

Federal regulations do not require motor carriers except "household goods carriers" to have any Cargo Liability insurance. Federal regulations require motor carriers registered as "household goods carriers" to have \$5,000 in Cargo Liability insurance (See 49 CFR 387.303).

Federal regulations previously required motor carriers registered as "common carriers" to maintain at least \$5,000 of cargo liability insurance through a BMC-32

Endorsement. However, on 3/21/2011, all federal requirements for cargo insurance (except those for "household goods carriers") were discontinued. As a result, FMCSA requires no cargo insurance of any kind for any carrier except for "household goods carriers." The BMC-32 endorsement requirement was simultaneously discontinued.

Private Confirmation of Evidence of Cargo Insurance

Because of FMCSA's discontinuation of cargo insurance requirements by all but household goods carriers, the only ways to verify whether or not a carrier has cargo insurance will be to obtain a copy of the carrier's insurance certificate directly from the carrier's insurance agent and not from the carrier. Certificates obtained directly from the carrier may not be accurate. Additionally, verification that the carrier's insurance is still active may require confirmation from the insurance underwriter.

Cargo Insurance Deductibles

It is prudent to suggest here that a carrier's ability to pay valid and undisputed claims on cargo loss may be related to the level of the carrier's deductible. Carriers with high deductibles whose businesses are not flush in cash may have difficulty paying claims in part or in full.

Understand and Disclose Cargo Values

It is good practice and good form for shippers and carriers, and shippers and brokers, and brokers and carriers to communicate prior to a shipment being picked up to determine the value of a shipment, so the cargo insurance risks can be adjusted accordingly if necessary. The industry model contracts support this observation.

Differences in Cargo Policies Make a Difference

Cargo insurance policies are not all the same and regularly cover different types of commodities. Many policies exclude certain commodities. Popular exclusions tend to include items like: tobacco products, liquor, securities, garments, money, explosives, electronics, precious metals, jewelry, and so on. Each insurance company has its own parameters.

Additionally, certain perils may be excluded. Driver or other trucking company employee theft is usually excluded, as are theft from an unattended (driver is not physically in the truck) vehicle or mysterious disappearance. Some policies limit payment to 10% of the loss if the cargo (electronics for example) is stolen in such scenarios. Others cover theft only if there are visible signs of forced entry. While this seems daunting, there is a common sense perspective. If the freight is easy to sell, it is attractive to thieves and more likely to be excluded or restricted. If that is your situation, contact the trucker's insurance agent to learn what the exclusions or restrictions may be.

Temperature Controlled Shipments

It is suggested that for refrigerated/temperature-controlled shipments a motor carrier should furnish proof of Reefer Breakdown Insurance or Endorsement. As a condition of coverage, cargo insurers often require evidence that the trucker has maintained the refrigeration unit in compliance with the manufacturer's specifications. Brokers should verify that carriers are in compliance with this requirement and have the records to verify that. The policies typically do not cover driver error in setting or operating the reefer unit.

A Final Thought on Cargo Insurance vs. Cargo Liability

In most loss cases, the carrier may still be liable to make restitution for legitimate loss, but in the event of an unforeseen exclusion, restriction and/or high deductible, it simply won't have the financial ability of its insurance protection behind it. This removes an important source of collection from the broker's toolbox as it seeks to work with the shipper, client, and carrier to resolve claims which may become an expensive process. The carrier's overall financial viability is vital; in case its insurance does not cover a claim.

Workers Compensation

Workers Compensation (WC) insurance is required by all states' laws. It is suggested that the motor carriers verify compliance with this requirement by furnishing an insurance certificate that shows WC coverage, the insurer, policy number, policy dates, and limits of insurance. However, all states allow the corporate officers of corporations, members of LLCs, partners, and proprietors of businesses to elect to be either covered by worker's compensation insurance or excluded from coverage. Furthermore, very small companies may not have any employees other than the officer(s), member(s), partners, or proprietor. Thus, many small businesses are not required to purchase worker's compensation insurance. A good example would be a 1- or 2- truck motor carrier in which the owner(s) are also the driver(s). Some states also exempt owner/operators from the worker's compensation law. Brokers will encounter quite a few carriers that do not buy workers compensation insurance and are not required to. In such cases, the broker should document this by having the carrier sign a form stating that his state law allows him to operate without worker's compensation insurance. It should also state that if the carrier's status changes or if the carrier voluntarily buys workers compensation insurance, the carrier will comply with the appropriate state worker's compensation statute and so notify the broker. The carrier should also agree to provide a certificate of worker's compensation insurance if the carrier buys such insurance subsequent to signing the contract. An example of a form brokers can use to accomplish this is provided.

All WC policies have two coverage parts. The first is the statutory worker's compensation insurance. There are no dollar limits in this section of the policy. The policy must pay what the statute requires. The second is Employers Liability. Employers Liability provides coverage in the extremely rare circumstance that the employer is sued following an employee's injury or illness. These suits are very rare because the first coverage part has no dollar limit in the policy. The basic limits for Employers Liability coverage are shown below (higher limits are available).

Employers Liability:	Bodily Injury by Accident	\$100,000 each accident
	Bodily Injury by Disease	\$500,000 policy limit
	Bodily Injury by Disease	\$100,000 each employee

2. Broker-Related Insurance

Like most businesses, freight brokers should buy their own insurance to protect their companies from normal business risks and the third-party risks involved in operating as a broker.

Each broker should carefully evaluate their own needs in coordination with an insurance agent and possibly a transportation attorney. It is important for authorized individuals within member firms to take the time to read policies carefully. Don't be afraid to take notes and ask questions if something doesn't make sense. All insurers are different and all policies are different.

Unless specifically stated below as "required" by law, the policies and limits provided below are examples of what is commonly found in the marketplace. Please refer back to the definitions and descriptions of these insurance types above, and read your entire policy. Sometimes the headings for coverage or inclusions may sound attractive but contain fine print that may not be so.

- As required by 49 CFR 387.307, a freight broker must demonstrate evidence of a surety bond or trust fund agreement of at least \$75,000.
- General Liability of \$1 Million or more.
- Auto Liability of at least \$1 Million with either "Any auto" or "hired and non-owned" auto coverage.
- Third Party Insurance as determined by the broker and its insurance agent website.
- Contingent Cargo of at least \$100,000.
- Workers Compensation as required by law.
- Errors & Omissions Insurance as per your perceived needs.

It may be helpful to know that insurance companies are rated by a third-party organization for financial stability. A "B+" rating or higher should be sufficient unless serving a government agency; they require A-. For a fee, you can visit www.ambest.com to check a company's rating.

VII. TERMS TO AVOID IN PROMOTIONAL & CONTRACTUAL MATERIALS

The TIA has published several model contracts that TIA supports. There is a Shipper-Broker model; a Co-Broker Model; a Broker-Carrier Model and an IMC-Broker model. These TIA model contracts consider most of today's known interpretations of insurance, regulations, laws and customary practices.

TIA strongly encourages members either to use the TIA model contracts or to use one designed by member firms with the help or review of a transportation attorney who is familiar with the TIA model contracts and/or transportation law regarding freight brokers.

Regarding promotional, sales and marketing materials a broker prepares for its business, a broker should not allow another business entity to designate it as an "agent" of the carrier or shipper for any reason. The word "agent" is a legal term that carries with it implications a member may not desire.

Brokers should avoid characterizing independent contractor motor carriers they select for use as a "subcontractor" of the broker. Federal regulations governing freight broker operations in no way support this characterization of the relationship between broker and carrier. Contractor and subcontractor characterizations may raise worker's compensation and/or employment-related potential liability issues.

Though "partner" may be the most overused word in the business world, there are reasons why a broker should not refer to itself as a "partner" with, or "in partnership" with, an independent contractor motor carrier. This word or phrase may be misconstrued by some to indicate that the relationship, between two different businesses with different owners, is something more than a business contract or a business relationship between buyer and seller.

Representations should not be made that if the carrier's insurance limits are insufficient, the broker's insurance will cover the loss, unless that is in fact the case. In fact, it is rarely true that this condition will apply. Check with your insurance agent carefully.

Brokers may not hold themselves out to the public as "carriers." This is prohibited by 49 CFR 371.7. Signing a contract with a shipper wherein the broker is named as "carrier" is not permitted, and simply changing the word "carrier" to "broker" in contracts may not be prudent. Check with your transportation attorney and insurance agent for advice.

Shippers commonly ask brokers to indemnify them for liability caused by the broker. Such a clause, if accepted, should always be made "subject to broker's insurance limits" unless the broker as a matter of business judgment wants to "bet the business" on the outcome. (See TIA model broker/ shipper contract.)

VIII. USING TECHNOLOGY TO ASSIST YOU IN SELECTING AND REVIEWING CARRIERS

A carrier selection process will be more effective if it is used consistently by all members of staff and for every load moved. Technology may aid a Public User to streamline the process. By saving weeks, hours, days, or even as little as a few seconds or key-strokes per load, a company can save valuable time and lower the risk of selecting a carrier that fails its selection process.

For brokerages using a computerized Transportation Management System (TMS), there are a number of techniques that can be used to ensure that qualification standards and policies are routinely followed.

- 1. Software-assisted carrier checkup.** This can be accomplished by placing computer-generated links (URLs) in the software that automatically take the user to specific carrier listings on the government websites. The broker staff can review the carrier results almost instantly. It is simple to accomplish, and it reduces the amount of work required to perform the basic carrier selection. However, it does rely upon the user to make those checks consistently and to interpret the results according to pre-specified guidelines.

Here is an example:

The following link: http://li-public.fmcsa.dot.gov/LIVIEW/pkg_carrquery.prc_getdetail will take the user to the Licensing and Insurance website listing for MC 999999 to view that carrier's contract/common authority and check its authority history.

- 2. Load information into the TMS.** There are a number of commercial and government sources that provide lists of active or inactive operating authorities, Safety Ratings, and insurance filing evidence for carriers. One commonly used risk management technique is to load this information into a TMS and then program it to prevent the dispatch of any carrier that falls below a pre-set qualification threshold. This approach works well for maintaining standards on carriers already known to the system, but it is less useful when qualifying new carriers that have not been used before. When using this approach:
 - The system will need a clear set of qualification rules that can be applied to all the carriers. "Gray areas" in the processes will need to be fleshed out.
 - The system may require an administrative person or manager of carrier compliance
 - The carrier information must be updated on a regular basis, preferably daily, because thousands of carriers have their authority revoked every day and new Safety Ratings can be posted at any time.
 - The system will either need to store data on all for-hire freight carriers (and there are a lot of them), or it will need to accommodate an alternative qualification process for adding new carriers.
 - The system will need accurate MC#s and DOT#s on which to base its decisions.
 - The system will need an override capability for emergencies and unexpected events.

3. **Real Time Carrier Lookup.** Another useful technique is to have the TMS perform an automatic real time query on each carrier before tendering a load. The advantages of this method are that it does not require large quantities of data to be pre-loaded; it can be used to qualify all carriers, new and old; and information retrieved in the query can be used to update the carrier profile. The main disadvantage to this method is speed. It can be slower than using information that is pre-loaded into the TMS. Again, there are a number of companies that provide real-time look-up services of this kind.
4. **Commercial TMS Systems.** Companies that have purchased or are actively shopping for a commercially available TMS should ask their vendor about available carrier qualification options. Most TMS vendors have implemented some form of carrier selection process.
5. **Carrier Qualification Websites.** For companies that do not have a computerized transportation management system, there are several web-based carrier qualification and carrier monitoring services available. These can save a considerable amount of time by presenting carrier selection and/or compliance information in a single place. In addition, many will notify the user of changes to Safety Rating, authority, or insurance to monitored carriers.
6. **TIA Watchdog and similar services.** TIA, like other services, offers services to members through www.tiawatchdog.net. Here, members can review names of carriers or other parties who have commercial complaints lodged against them. This can help TIA members to avoid scams, frauds, or legitimate businesses whose practices don't seem appealing for one reason or another.

Attachment 1

Certificates of Insurance

- 1) The disclaimer is probably the most important part of every certificate of insurance because it specifically states that the certificate (and that includes everything typed on it) does NOT amend, extend, or alter the coverage afforded by the insurance policies. The certificate does NOT confer any rights on the certificate holder. Both of these principles are reinforced by the states' certificate of insurance statutes. The purpose of a certificate of insurance is to show who the first named insured is, what the policy numbers are, what the inception and expiration dates are, which insurance company provides coverage, and so on. If any of these are incorrectly reflected on the certificate that does not obligate the insurance company to anything. The statutes and the disclaimer make it clear that the certificate is merely a representation of the declarations page of the policy on the date the certificate is issued.
- 2) Only very rarely will general liability limits vary from those shown. If you have a requirement for general liability insurance in your shipper or carrier contracts, the contractually required limits should match these limits. The "damage to rented premises" limit is of concern to the landlord and tenant only. The "med exp" (aka medical payments) coverage limit is not important. For brevity a contract can require a \$1,000,000 per occurrence limit because the other limits will automatically follow.
- 3) There are two parts to Workers Compensation policies; the statutory limits and the employer's liability (EL) limits. There are no dollar limits in the worker's compensation policy for the statutory section. The limits (and there are many) are in the states' statutes and the policy must pay up to those limits. The statutes require the insurer to pay the usual and customary expenses for medical treatment and to pay for disability according to a schedule or formula. Workers Compensation can pay medical expenses for 40 years or more for one claim, so there are no dollar limits for medical expenses. Disability benefits are usually required up until the injured employee reaches age 65. Neither the trucker nor the insurer can change any of this. The only part of the policy the trucker can change is the employer's liability limits. The limits are purchased in "sets". The next step above the standard limits is \$500,000 each accident, \$500,000 disease each employee, and \$500,000 disease policy limit. These limits do not affect the statutory section in any way.
- 4) The description box has been mis-used over the years. One of the reasons behind the change in the Acord certificate is to curb this. The box is intended to describe a particular job, usually in the construction industry. It can be used to show scheduled vehicles on a trucker's policy or to show refrigeration system breakdown coverage, or show deductibles, or show additional limits when there isn't space on the form. Caution: Insurers and insurance agents are very, very reluctant to enter additional insured language provided by the certificate holder. If the language is vague or too broad or implies anything that the policy does not specifically address, that language will be rejected.

Shippers are notorious for trying to insert language here that is far broader than what the policy provides. Refer back to the disclaimer at the top. The language they propose for this box does NOT change the policy, but it can get the insurance agent in a great deal of legal trouble. Professional agents will not put in language just because the certificate holder wants it that way.

- 5) The most important change in the new Acord certificate is the cancellation language. There is no longer a space to enter a number of days for notice. The reason is that state statutes do not allow for any particular number of days in some circumstances. By law, the first named insured can cancel any policy at any time without any advance notice being given. If the insurance company cancels the policy, the amount of advance notice varies by state and reason. Ten days' notice is required if the cancellation is for non-payment of premium. If the cancellation is mid-term, there are only certain circumstances under which the insurer can cancel a policy and at least 30 days' notice is required in most states. Some states require 60 days' notice for non-renewal. It is the states' statutes that govern this. The insurance policy merely complies with the statutes. So the new language says the insurer must issue notice in accordance with the policy provisions and those provisions must comply with the statutes.

- 6) Umbrella policies are the most efficient way for a company to buy higher liability insurance limits. Often truckers will buy excess liability which is not as broad as an Umbrella. Umbrellas and excess policies come in increments of \$1,000,000. These limits are in addition to the general liability, auto liability, and employer's liability limits. For example, if a shipper requires a \$2,000,000 auto liability limit, often the best way to reach that is to add a \$1,000,000 Umbrella or Excess policy to the \$1,000,000 auto liability insurance limit.
- 7) Small truckers (less than 10 or 20 trucks) will usually have the "scheduled autos" box checked. In this case, only those trucks physically listed on the policy are insured (see the discussion in the insurance section of this document). Truckers with scheduled auto coverage should also have at least hired auto coverage (to provide coverage for a trip lease for example). They may also have nonowned auto coverage. Larger truckers may have the "any auto" box checked. In this case, there is no schedule to restrict coverage only to those listed. With the "any auto" box checked, there is no need to check any other boxes.

PLEASE CONSULT YOUR INSURANCE PROVIDER FOR A BETTER UNDERSTANDING

Attachment 3

Depending on the nature of the freight to be hauled, and/or the language in your written carrier contract, at times you may wish to learn more about a motor carrier's insurance policy. Here is an example of a letter addressed to the carrier's insurance agent authorizing you to do this.

Date

Motor Carrier's Insurance Agent
Street or PO Box
Anytown, USA 00000

Re: Motor Carrier's Name

Dear Agent:

We want to do business with your client, Motor Carrier's Name, beginning mm/dd/year. Cargo insurance policies exclude or restrict coverage for certain commodities and contain exclusions for certain perils and circumstances. We want to be certain that a major problem does not occur after a loss and we want to choose carriers whose cargo insurance meets our customers' needs. We also want to present the opportunity for you to adjust the policy if necessary and avoid any errors.

Please complete the questionnaire that is attached and return it to (your company) via (fax or email or mail) by mm/dd/year.

Sincerely,

This letter should be accompanied by a permission slip where the trucking company signs a statement authorizing and encouraging the agent to complete the form and answer any questions from Broker about the policy. The form can be a one-sentence authorization like this.

(Motor Carriers Name), hereby authorizes and requests that (insurance agency name), complete and return the (title of screening form), and answer any questions, verbal or written, concerning its contents, to (broker's name).

Signature

Summary of Exclusions, Limits of Insurance and Special Conditions

Insured: _____ Policy No. _____

Covered Property Exclusions:

NO EXCLUSIONS

Reefer breakdown

Reefer breakdown after certain age

Computers

TV's, VCR's, DVD Players, Stereos, etc.

Garments, Shoes or other Wearing Apparel

Geographical exclusion, please indicate territory:

Liquor

Tobacco Products

Computers

Computer Peripherals

Textiles

Other _____

Limits of Insurance:

_____ NO LIMITS

Commodity: _____ Limit: _____

LIMIT BASED ON PERIL INSURED AGAINST

Peril: _____ Limit: _____

Vehicle Coverage:

_____ Any vehicle _____ All owned vehicles
_____ Scheduled vehicles (please attach schedule) _____ Hired vehicles

Special Conditions: NO SPECIAL CONDITIONS

_____ Unattended vehicle _____ Vehicle alarm required
_____ Property loaded on vehicle Overnight _____ Unattached trailer
_____ Co-Insurance _____ Attended trailer
_____ Stationary Vehicles/unarmed terminals _____ Attended vehicle
_____ Locked vehicle _____ Other

Note: If any of the above special conditions are marked, please specify or attach declarations page & any endorsements for reference.

Changes in policy:

In order to protect the best interests of all parties involved, please notify _____
_ in writing within 24 hours of any changes to the insured's cargo policy.

Policy reviewed by:

Printed name

signature

date

Position

Company

**CERTIFICATE OF ELECTION TO NOT MAINTAIN
WORKERS' COMPENSATION COVERAGE**

The undersigned, as authorized representative of the motor carrier set forth below, hereby warrants and represents to {broker} that such motor carrier is not required by {State} law to maintain Workers' Compensation insurance, and further that it has elected not to maintain such insurance.

In the event that motor carrier subsequently either (1) becomes subject to pertinent Workers' Compensation law, or (2) motor carrier's maintenance of Workers' Compensation insurance remains elective but motor carrier elects to maintain such insurance, then motor carrier will provide {broker} with evidence of such insurance in compliance with the terms of the pertinent agreement between the parties.

Motor Carrier: _____

Signature: _____

By: _____

Name Typed or Printed

Its: _____

Title

Date: _____

December 10, 2012

Attachment 6

The Honorable Anne Ferro
Administrator
Federal Motor Carrier Safety Administration 1200
New Jersey Avenue, S.E.
Washington, D.C. 20590
Via Email

Dear Administrator Ferro:

On behalf of the organizations listed below, we are writing to share our collective views on FMCSA's safety monitoring and measurement system, Compliance, Safety, Accountability (CSA). This past June, representatives from the many diverse segments of the commercial vehicle industry (e.g., truckload, tank carriers, private and for hire carriers, motor coach operators), as well as those representing transportation intermediaries and enforcement, met to discuss the CSA program. The result of this session was a consensus on a number of the benefits of CSA, as well as some suggested actions we believe FMCSA can take to improve upon the program going forward. We offer these views in hopes that FMCSA will give them careful consideration as the Agency continues to advance CSA.

Benefits

We agree that CSA is a good program that has already had a positive impact on highway safety. It has raised awareness of fleet and driver safety performance to a new level. Motor carriers and drivers are more sensitive to their performance measurements than ever before. It has helped enforcement target their resources more effectively, focusing on carriers that are of the highest risk. As a result, drivers are operating more safely and being more diligent in verifying the condition of the vehicles they are operating. Motor carriers are devoting more resources and attention to safety management controls and training programs. Finally, CSA provides a more efficient means for FMCSA to use real time performance data to prioritize the least safe carriers for intervention.

Areas for Improvement

The group identified six areas of mutual interest and has developed corresponding recommendations for improvement. They are:

DataQs – Both industry and law enforcement representatives agreed that the increase in DataQ challenges needs to be addressed. In particular, more funding should be made available to the states to support their needs. The increased focus on carrier safety data, brought about by CSA, has resulted in a surge of DataQ requests to state agencies. Though accurate data is the foundation of CSA, FMCSA has not provided additional funding to the state agencies to handle this increased demand for data corrections. As a result, DataQ personnel are often overwhelmed, impacting the timeliness and responsiveness of their agencies in addressing data challenges. Subsequently, the effectiveness of CSA can be impacted by data quality and timeliness issues.

Crash Accountability – Industry and law enforcement alike expressed concern with FMCSA's responsiveness in addressing its plan for determining crash accountability, the issues the Agency has identified in developing an accountability determination process, and a specific timeline for establishing this process. The group believes FMCSA should release the proposal that the Agency had planned to publish in spring 2012 and a list of issues currently being considered, as well as a near-term timeline for developing a crash accountability determination process. This is important in helping the affected parties understand what FMCSA is considering, so that constructive comments can be provided back to the Agency. Since our meeting, FMCSA has released its plans for researching the issue over the coming year, but not a specific plan or timeline for a process to resolve this issue. We look forward to the results of FMCSA's research and the opportunity to provide input on the development of a subsequent crash accountability determination process.

Communication – The group expressed a desire to improve communication regarding CSA. Specifically, some suggested that FMCSA should regularly provide notifications of carriers issued out-of-service (shut down) orders and those identified as "high-risk." Others indicated that there should be more regular updates and education with respect to changes with the program, and carriers should have the ability to access their own performance data in near-real time so they can take corrective action immediately.

Transparency with Respect to Data Limitations – Though FMCSA does a good job of communicating the benefits of CSA, the Agency should be clearer about the program's limitations. Specifically, FMCSA should be more transparent about the lack of data to score many carriers, the resulting impact on safety and enforcement, data quality limitations, and other issues that impact the reliability, accuracy and significance of carrier scores - as well as law enforcement's ability to prioritize the least safe carriers for intervention.

Explanation of What CSA Scores Reflect/Mean – There was consensus that the meaning/significance of carriers' CSA scores is not well understood. Neither law enforcement, the industry, nor those who use the scores to make business decisions (e.g., intermediaries) are fully aware that scores in some categories are a stronger indicator of future crash risk, while others reflect non-compliance. FMCSA should clearly indicate the meaning/significance of carriers' CSA scores.

The group was divided on whether or not scores should be focused exclusively on crash risk. Law enforcement participants articulated their interest in highlighting carriers that demonstrate patterns of non-compliance and the merits of using CSA to induce compliance. Industry participants contended that it is inappropriate to focus attention on otherwise safe carriers whose compliance measures do not relate (either directly or indirectly) to future crash risk. Moreover, the industry participants felt strongly that while CSA was designed to prioritize carriers for intervention, the program's broader purpose is to support the primary mission of FMCSA "...to reduce crashes, injuries and fatalities involving large trucks and buses."

While there was a general consensus that regulatory compliance is important, there was no agreement with respect to the role of CSA in highlighting compliance issues that do not relate directly to crash risk.

Make the Purpose of CSA More Clear – Participants agreed that FMCSA should make the purpose of CSA more clear. Specifically, FMCSA should communicate that the primary purpose of the system is to help Federal and State enforcement personnel use their limited resources more efficiently by prioritizing carriers for review. While some perceive CSA to be a verified measure of relative safety performance, and others perceive it as a tool for those engaged with the transportation industry to make business decisions, its primary purpose is to help law enforcement prioritize its intervention efforts.

Conclusion

We all have a stake in the design and application of CSA. Accordingly, these groups share mutual interests and have suggestions for how the program can be improved. We encourage FMCSA to carefully consider these suggestions and implement them, in the mutual interest of safety and the spirit of cooperation.

Regards,

The undersigned organizations

American Bus Association
American Trucking Associations
Commercial Vehicle Safety Alliance
National Private Truck Council
National Tank Truck Carriers
Transportation Intermediaries Association
Truckload Carriers Association
United Motorcoach Association



Attachment 7

Motor Carrier Safety Advisory Committee

C/O: Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Room W64-232
Washington, DC 20590

July 3, 2013

The Honorable Anne S. Ferro Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590 Dear

Administrator Ferro:

As instructed by the Federal Motor Carrier Safety Administration (FMCSA), the Motor Carrier Safety Advisory Committee (MCSAC) created the Compliance, Safety, Accountability (CSA) subcommittee (subcommittee) and tasked it with providing feedback and suggestions on the CSA program and how it could be more effective as a tool for identifying unsafe motor carriers. FMCSA tasked the Committee with providing periodic letter reports to the Agency recommending prioritized actions, with supporting data, to improve the CSA program.

In public meetings on October 16-17, 2012, December 5, 2012, and February 5-6, 2013, the subcommittee identified, discussed, and recommended enhancements to the CSA program. The MCSAC met in a public meeting on April 9, 2013, to discuss the subcommittee's recommendations and is advancing them for consideration by the Agency. Attached are the subcommittee's initial highest priority recommendations relating to the following issues: 1) crash accountability; 2) CSA's public accessibility; and 3) data Quality. The MCSAC believes that the positions presented in the subcommittee's recommendations are reflective of the differing views with respect to each issue. These initial recommendations are attached as the first in a series of recommendations for Task 12-03 by the CSA Subcommittee of the MCSAC with a summary of the related discussion to provide insight on the matters considered.

If FMCSA were to go forward with changes to the Crash BASIC, the Committee recommends that the Agency determine which criterion it will use and define the term for it very clearly. Once defined, we recommend that the term be used consistently.

On behalf of the MCSAC, I submit these initial recommendations to FMCSA for its consideration.

Sincerely,

//signed//

Stephen C. Owings
Chairman, Motor Carrier Safety Advisory Committee

Enclosure

MCSAC Task 12-03: Evaluation of and Recommendations on the CSA Program CSA Subcommittee Recommendations

Introduction

In Task 12-03, FMCSA requested that the MCSAC form a subcommittee to provide feedback, suggestions, and recommendations for enhancements of the CSA program. The Agency also requested that the subcommittee prioritize recommended enhancements of CSA to enable FMCSA to direct its efforts to the most important or timely needs of the program. This report contains the initial highest priority recommendations developed by the subcommittee, which the MCSAC is advancing to the Agency for its consideration. In addition to the recommendations, which are highlighted in yellow, the report below includes background discussion and rationale to support each recommendation. The subcommittee's report has been annotated with some comments and redline-strikeout edits from the MCSAC (in red text).

Regarding the first issue addressed below ("Crash Accountability/Fault/Causation"), the MCSAC requests that FMCSA consider the differences between and provide specific definitions for the terms relating to this subject. In particular, the terms "fault," "preventability," "causation," and "accountability" each have different meanings and would result in different crash data being attributed to a carrier, depending on the term and definition used. For this reason, the Committee believes the Agency must carefully consider the meaning and use of each of these terms. The MCSAC also requests that the FMCSA inform the Committee of any Agency definitions of these terms (regulatory or otherwise) that are established by the Agency.

I. Crash Accountability/Fault/Causation

- A. Currently, the Crash Indicator Behavior Analysis & Safety Improvement Category (BASIC) includes data on all reportable crashes, regardless of fault or preventability.
- B. Not all crashes are reported (only those that involve the towing of a vehicle). There is an underreporting factor.
- C. Many members expressed concern that crash preventability is an important part of data quality, stating that being involved in crashes is different than causing them. Starting from all reported crashes is inappropriate because many of them may not be related to carrier safety.
- D. Other members argued that because Crash Indicator is the BASIC that correlates best to risk of future crashes, there is value in looking at all crashes, regardless of fault.
- E. One member suggested the following solution: Continue to use all reportable crash data in the Crash Indicator BASIC, *but*:
 1. Fault should be weighted (no fault determination – 1 point, fault found – 2 points, not-at-fault – 0 points).
 2. If a determination of fault (e.g., primary contributing factor) is on the crash report, it should be used.
- F. Many police reports do not contain a fault determination.
- G. When it is reported, there is a lack of consistency in how preventability or fault is reported. When it is reported, there is a lack of due process to challenge a finding of fault or preventability.
- H. FMCSA: The Agency is in the midst of a study to examine whether the Crash Indicator BASIC score can be better correlated to future crashes by removing crash data where a preventability determination can be made.
 1. The study is using preventability determinations in Police Accident Reports (PARs) from fatal accidents (those in the University of Michigan Transportation Research Institute (UMTRI) Trucks Involved in Fatal Accidents (TIFA) Survey).
 2. Whoever coded the critical event in the large truck causation study is assigned that crash.

3. The study is examining the following questions:
 - a. Are the preventability determinations in the Fatality Analysis Reporting System (FARS) a better determination of crashes if only those crashes with fault are used?
 - b. If the Crash Indicator correlation to crashes is improved by using only preventable crashes, is the improvement so substantial that it is worth the cost/effort to pursue a preventability determination for each crash?

I. Subcommittee Consensus Recommendations:

1. The current FMCSA study should consider the following issues-
 - a. For each crash PAR in FARS, look to any additional crash investigations that were done (e.g., criminal report, results of civil lawsuit, accident reconstruction report, employer accident report, insurance report, compliance review, etc.).
 - i. When considering employer (carrier) reports, the Agency review should beware of subjectivity.
 - b. Examine and evaluate all existing State and academic studies on the accuracy of State crash reports.
 - c. The Agency should consider and price different alternatives for determination of preventability or fault. Consider costs for carriers and other areas of industry.

J. Subcommittee Recommendations (Palmer, Petrancosta, Hamilton, Tucker, Spencer, Davison, Mulanix, Supina):

1. Examining all information that the Agency has before it, FMCSA should exclude crash data for which there is a clear determination of not-at-fault or non-preventable crashes for Purposes of a carrier's Crash Indicator BASIC score.
 - a. For example, if a determination of fault (e.g., primary contributing factor) is on the crash report, it should be used. Most law enforcement agencies get it right if they are required to find fault on a report.
 - b. Rationale:
 - i. Preventability determination in crashes is an important part of data quality. Being involved in crashes is different than causing them.
 - ii. Starting from all reported crashes is inappropriate because many of them may not be related to carrier safety.
 - iii. Determination of preventability for a particular crash is very fact-specific.

K. Subcommittee Recommendations (Owings, Lannen):

1. The Crash Indicator BASIC should continue to use all crash reports, regardless of fault m; Preventability determination.
2. Rationale:
 - a. Crash Indicator is the strongest BASIC (i.e., the BASIC that best correlates to future crashes). There is value in looking at all crashes regardless of fault.
 - b. Currently, all ~~reportable~~ ~~reported~~ ~~reportable~~ crashes are included, so all carriers are being treated the same. The lack of consideration of fault in crash data should affect all carriers the same way.
 - i. MCSAC Comment: The Committee believes the word "reportable" should be changed to "reported" because not all reportable crashes are reported.
 - c. Police reports are subjective and imperfect. Asking someone to determine fault by looking at the crash report information would be more subjective than using the fault determination on a police report.
 - d. Determining preventability would be costly: variances in timing to investigate; training level of officers; differences in crash report forms; and differences in analysis of a crash report

- e. How would the second party be contacted that a crash is being appealed? What is the process of notification? What is the cost?
 - f. What are the legal consequences (for a civil or criminal suit) of the Federal government making a determination of fault or preventability of crashes?
3. Caveat: If preventability could be determined in a cost-effective way and it contributed to the correlation of the Crash Indicator BASIC score to future crashes (as evaluated in the currently ongoing FMCSA study), it should be used to separate data for purposes of the Crash Indicator BASIC.
 4. An unintended consequence of only including crashes for which a report indicates that a carrier was a primary contributing factor would be that in the case where the fault determination was wrong, that crash would be removed from the carrier's Crash Indicator BASIC score.
- L. Some members expressed concern that motor coaches should be separated from trucks in the Crash Indicator BASIC relative rating because there are fewer motor coach crashes, which are weighted heavily because of the involvement of passenger injuries, skewing passenger carriers' Crash Indicator BASIC score. These members argued that FMCSA should consider using absolute numbers (vs. relative).
1. FMCSA (Bill Quade) explained that the problem with separating them is that it creates very small peer groups by categorizing different passenger carriers. The resultant relative ratings within a peer group are divergent.

II. **Public** Accessibility of CSA

- A. Some members argued that, regardless of the intention, the public, businesses, and brokers are using CSA to make business decisions based on BASIC scores, i.e., potential customers are using the Safety Measurement System (SMS) as a carrier selection tool. These members argue using SMS as a carrier selection tool is inappropriate because certain scores are inversely correlated (i.e., not correlated) to crash risk.
1. For example, if the potential customer makes a decision not to work with a carrier based on one negative rating in one BASIC (which they can see) but that carrier has a low crash rate (which the public cannot see), the customer may have made a different decision had it possessed complete information about the carrier.
 2. Alternatively, the consumer may select a carrier that is not rated because that carrier is operating "under the radar."
- B. The Agency has sufficient data to score only 40% of carriers in some BASICs, so the relative score is not relative to the entire universe of existing carriers because FMCSA does not have enough data to score 60% of carriers.
- C. Subcommittee Recommendations:
1. Removal of CSA scores from public view is not possible, FMCSA should remove, at a minimum, the Controlled Substance/Alcohol and Driver Fitness BASICs. (Dissent: Lannen, Hamilton, Mulanix, and Owings)
 2. FMCSA should remove from public view the three BASIC scores that do not correlate strongly to crash risk (HM, Driver Fitness, and Controlled Substance/Alcohol). Keep the Crash Indicator BASIC removed from public view. For the remaining three BASICs (Unsafe Driving, Vehicle Maintenance, Hours of Service), keep those in public view. Then give carriers an absolute score and a relative score and place both scores in context (by using a disclaimer). Absolute scores should be featured more prominently on the website than they are currently. (Dissent: Lannen, Hamilton, Mulanix, and Owings)

3. While the Agency should explain what the data is (and what it is not), FMCSA should not provide guidance or encouragement on how to use SMS data for carrier selection (e.g., by shippers, brokers, insurance companies, etc.). Direction to users should be explicit. (Dissent: Lannen, Owings; Abstain: Hamilton, Mulanix)
 4. Explanation of the CSA system should include a statement that SMS scores are compliance scores and should not be considered a safety determination for use by entities hiring carriers. (Dissent: Lannen, Owings, and Hamilton)
 5. Disclaimer regarding the "Use of SMS Data/Information" should be at the front end of the score information (as a header). SMS should use a pop-up screen to require acknowledgement of the disclaimer containing this information before the user can access the scores.
 6. Caveat: FMCSA should work to improve data quality, data gathering, and lack of data for many carriers.
- D. FMCSA (Bill Quade): Absolute scores are problematic because small carriers have a lot of variability in scores because they have less inspection snapshots. Showing absolute scores (vs. relative scores) will generally make large carriers have higher scores than smaller carriers.
1. FMCSA does not feel it has enough accurate mileage data to provide scores in terms of "per 100,000 miles." Mileage data is provided by carriers and is not reliable.
- E. Subcommittee Recommendations (Lannen, Hamilton, Mulanix, and Owings): FMCSA should keep all scores public and explain the difference between a compliance score and a safety score. The Agency should provide more education on how the public should interpret the scores.
1. The two BASICS that do not correlate well to crash risk should be referred to as "compliance" scores (Controlled Substance/Alcohol, Driver Fitness), and the BASICS that do correlate well to crash risk should be referred to as "safety" scores.
 2. Rationale:
 - a. This is taxpayer data; the public should be able to see it.
 - b. The rating will still exist, even if it is removed from the website. Hiding the data will just result in diverting FMCSA resources to Freedom of Information Act (FOIA) requests (unintended consequence).

III. Data Quality Issues

- A. FMCSA: The Agency has efforts ongoing to improve State's quality of data (including but not limited to the list below). FMCSA has seen crash reporting improve significantly in the past decade.
1. The Agency has developed a DataQs guide so that all States have a standard document for those determinations.
 2. FMCSA is about to release a new version of the DataQs process to make it more user- friendly, collect better information, and improve reporting capabilities (e.g., what violations are being challenged).
 3. The Agency is contemplating moving to a system that does not permit a carrier to submit a DataQ unless it has submitted its MCS-150 update per the biennial update requirement.
- B. **Under-reporting** by States. States under-report crashes.
1. Solving this problem might solve some of the methodology problems in the SMS scoring.
 2. Even with additional funding, States can give forms and training to local municipality enforcement agencies but they cannot force the local jurisdictions to accurately upload information relating to a non-fatal crash.

3. Subcommittee Consensus Recommendations: FMCSA should evaluate the possibility of changing the definition of a reportable Department of Transportation (DOT) crash for purposes of CSA (e.g., to include only fatal crash data or fatal and injury crash data).
 - a. The Agency should consider any definition of crashes that shows a better correlation to futile crashes.
 - b. The danger of not including all crashes (e.g., only fatal crash data) is that doing so might miss crashes that could have been a fatal or serious injury crash, but for the specific luck/situational facts of that situation.

C. **Standardization in the data.** There are no standard crash report forms.

1. Subcommittee Consensus Recommendations: FMCSA should reach out to the Commercial Vehicle Safety Alliance (CVSA), the International Association of Chiefs of Police (IACP), and/or the National Highway Traffic Safety Administration (NHTSA) to work towards standardization. These entities could provide valuable input on this problem.
2. IACP could provide good input on all the local crash reporting data.

D. **Geographical disparities** create biases for certain carriers depending on where they operate.

1. The number of inspections conducted is higher in certain States. Certain types of violations are more likely to be cited in certain areas.
 - a. Subcommittee Consensus Recommendations: If the violations do not correlate to crash risk, FMCSA should evaluate weighing violations from those States differently for uses of SMS scores.
 - b. **Some MCSAC members expressed the view that there is some value in BASIC ratings that do not necessarily correlate directly to crash risk because they may still indirectly have a relation to safety.**
2. Out-of-service rates are higher in certain States.
3. In certain speed zones, non-violation inspections are conducted under the pretenses of speeding. Points are given for speeding, although no other violations are found.
4. FMCSA encourages States to focus on issues that result in crashes in their States. There may be reasons for certain disparities.
5. The opportunity to obtain accurate inspections is just as likely in these different types of areas.
6. Subcommittee Consensus Recommendations: FMCSA should evaluate the normalization of outlier violation data from heavily reporting States (e.g., out-of-service rates outside of the average, highly reported violations outside of the average across States), and determine whether such normalization would produce scores that better correlate to future crashes.
7. **MCSAC Comment: Many States do not have enough officers to perform the ideal quantity of inspections.**

E. **Lack of data for certain carriers.**

1. Approximately 325,000 carriers do not have enough data to be scored in the system (but account for only 8 percent of crashes).
2. Currently, FMCSA places 10% of carriers with insufficient data as a 99% score in the Inspection Selection System (ISS) every month to gather additional data through inspections. Most of these are small carriers.
3. Subcommittee Consensus Recommendations: FMCSA should evaluate the usefulness and cost of collecting data from Federal annual inspections of vehicles. The Agency should focus on States that have a manual inspection program.

F. **Unique motor coach issues:** There are only a few States (approximately 6) that have State-level inspection programs. Not many motor coaches are inspected outside of those States, which creates an uneven playing field for passenger carriers. A State-level inspection program should be tied to Motor Carrier Safety Assistance Program (MCSAP) grants.

- G. California officers that provide traffic citations to drivers process those violations (e.g., speeding, improper lane change) through the Department of Motor Vehicles (DMV) because officers without certification cannot complete the motor carrier violation. Convictions for moving violations are not uploaded into SMS data.
 - 1. FMCSA is aware of the problem and would like to obtain that type of data. It is working with the States and the American Association of Motor Vehicle Agencies (AAMVA) to obtain access to citation reports of commercial driver's license (CDL) drivers.



Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

November 14, 2014

Secretary Anthony Foxx
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Foxx:

I am writing to you on a matter of tremendous importance to commercial motor vehicle law enforcement, the Federal Motor Carrier Safety Administration's (FMCSA) *Compliance, Safety, Accountability* (CSA) program. The Commercial Vehicle Safety Alliance (CVSA) is aware that a number of stakeholder groups recently wrote to you expressing their concerns about CSA, including the public display of CSA *Safety Measurement System* (SMS) scores. CVSA would like to offer its views on these matters given their importance and relevance to law enforcement.

CSA is a very good program with tremendous potential to improve commercial motor vehicle (CMV) safety. Already, CSA has raised awareness of the importance of safety and has caused motor carriers to devote more attention and resources to safety initiatives than ever before. Of course, CVSA strongly supports the goal of CSA, which is to implement more effective and efficient ways for FMCSA, its State partners, and the trucking industry to reduce CMV crashes, fatalities, and injuries.¹

CVSA recognizes and appreciates the concerns recently raised by some stakeholders. For instance, some have pointed out that differences in enforcement practices from one jurisdiction to the next can affect motor carriers' SMS scores. These differences in enforcement practices are necessary to address the varying safety challenges that exist in different jurisdictions. However, since SMS scores are based on comparative performance, the environment (i.e., jurisdiction) in which carriers operate can impact the accuracy of their measurements.

Stakeholders have also raised concerns about the relationship between certain violations, carriers' scores and crash risk. Law enforcement has an obligation to enforce all laws and regulations regardless of their statistical relationship to crash risk. For this reason, law enforcement agencies must identify fleets that exhibit patterns of non-compliance. While all non-compliance should be considered, CVSA believes fleets that commit violations shown to have a strong correlation to crash risk should be identified and appropriately prioritized for intervention.

As you are aware, a recent report from the Government Accountability Office (GAO) found CSA SMS scores to be unreliable predictors of individual fleet crash propensity. Specifically, GAO found that (during the period they studied) FMCSA identified many carriers as "high risk" that were not later

¹ *Safety Measurement System Methodology Version 3.0*, March 2012, Federal Motor Carrier Safety Administration, Washington, D.C.

involved in a crash.² In contrast, FMCSA research showed that carriers identified as high risk have higher future crash rates than other active carriers, suggesting that the SMS is effective enforcement prioritization tool.³

These findings alert us to an important distinction. FMCSA's analysis focused on the *collective* crash rate of carriers in groups (e.g., all carriers with a particular BASIC percentile score), not *individual* carrier scores. FMCSA acknowledged that "this collective crash rate is not a prediction of the actual crash rate of an individual carrier. In fact, 93 percent of the carriers in the model had no crashes in the post-identification monitoring period."⁴

This distinction leads us to an important conclusion. Since the *collective* crash rates of fleets with SMS scores above thresholds are higher than those below, the SMS is useful as an enforcement prioritization tool. In short, enforcement agencies can focus on these fleets to conduct further investigations and determine which of them are truly risky. On the other hand, since the SMS scores are a poor indicator of an *individual* fleet's propensity to be involved in a future crash, their utility in providing the public with information about fleets' safety performance is limited.

Given the value of the SMS as an enforcement prioritization tool and law enforcement's obligation to enforce compliance with all laws and regulations, CVSA feels strongly that law enforcement's access to SMS data must not be limited. To help further ensure that law enforcement resources are used most efficiently, FMCSA should strive to improve the program so as to better identify those individual fleets that pose the greatest risk of causing future crashes. FMCSA should also take these steps to eventually arrive at scores that are strong measures of an individual fleet's safety performance. Until these improvements are made, however, CVSA echoes stakeholders' call to remove SMS scores from public view.

Your consideration of CVSA's views on these important issues is greatly appreciated. If you have further questions or comments, please do not hesitate to contact me by phone at 301-830-6145 or via email at stevek@cvsa.org.

Sincerely,



Stephen A. Keppler
Executive Director

Cc: Scott Darling, Acting Administrator, FMCSA

² United States Government Accountability Office, *Federal Motor Carrier Safety: Modifying the Compliance, Safety, Accountability Program Would Improve The Ability to Identify High Risk Carriers*, GAO-14-114, February 2014.

³ *The Carrier Safety Measurement System (CSMS) Effectiveness Test by Behavior Analysis and Safety Improvement Categories (BASICS)*, Federal Motor Carrier Safety Administration, January 2014.

⁴ *Ibid.*

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