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October 27, 2010

Anne S. Ferro, Administrator
Federal Motor Carrier Safety Administration
United States Department of Transportation
1200 New Jersey Avenue SE, Suite W60-300
Washington, DC 20590
Via U.S. Mail/Email
anne.ferro@dot.gov

Dear Ms. Ferro,

As you know we filed a Motion to Postpone under Docket No. FMCSA-2004-18898. We submit that CSA 2010 data should be accumulated solely for the Agency's enforcement purposes. In view of the devastating unintended vicarious liability consequences, public release of this data is neither proper nor required under FOIA (see 5 U.S.C. §552(b)(7)).

We firmly believe there is no internet exception to the APA and the protections guaranteed small businesses through the related rulemaking statutes. Unless the interests of the small motor carriers which represent 95% of the for-hire motor carriers are fully and adequately protected as part of the proposed early release of the unperfected CSA 2010 methodology, we must reserve our objections.

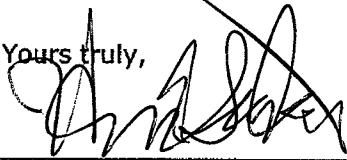
In an effort to accommodate the Agency, we submitted proposed redaction and disclaimer language in our letter to you of October 8 which was intended to address the vicarious liability concerns which otherwise will result in loss of business, carrier bankruptcies, loss of jobs and disruption to the industry.

We have received no response to either the Motion or the letter but have received through the media the attached notice which indicates that the Agency has made a preliminary decision concerning a possible warning. This relief, if true as reported, is a step in the right direction but does not satisfy our concerns. A SafeStat type warning has proven ineffective before in state court actions to preclude use of the data to establish shipper liability and will not be sufficient to allay the fears of brokers, shippers and third party equipment providers who are continuing to place contract termination provisions in carrier contracts under the misguided impression that the Agency intends the public to use this flawed data upon publication. In fact, the number of brokers and shippers advising our clients that CSA 2010 methodology will be used to deprive them of existing business is increasing. See attachments.

Accordingly, the Agency's full adoption of the redaction and disclaimer notice in our October 8 letter accompanied by unequivocal affirmation of the public's ability to rely upon the Agency's ultimate fitness determination as a certification for use is the bare minimum necessary to frame release of this data as planned in December.

We will be happy to meet again with you to discuss our issues but must reserve our objection to the public release of any data without APA compliance in the absence of the relief sought in our October 8 letter offering clear protection to the traveling and shipping public that failure to use all or part of the release data in its present form should not and cannot be used to establish vicarious liability.

Yours truly,



Henry E. Seaton, Esq.
*Counsel for the National Association of
Small Trucking Companies (NASTC);
The Expedite Alliance of North
America (TEANA); and the
Air & Expedited Motor
Carrier Association (AEMCA)*



William D. Bierman, Esq.
*Executive Director,
Transportation Loss Prevention and
Security Association*

cc: Gary.Shoemaker@dot.gov
Alais.Griffin@dot.gov



Valued NYK Contract Carrier:

NYK Logistics (Americas) Inc. is writing to urge you to preview your CSA 2010 data at <http://csa2010.fmcsa.dot.gov/>. Click on the Data Preview link at the top of the page where you will find your 7 Behavior Analysis Safety Improvement Categories (BASICS) data. This information will be used to determine your Safety Fitness Determination (SFD) and will replace your Safety Rating. If you have already visited this site then you are a step ahead and aware of your data under the new Safety Management System (SMS).

NYK's Safety Policy under the current SafeStat measurements, provides that we qualify carriers with Satisfactory Ratings. However, we may qualify carriers based on SafeStat data (scores) if your Rating is Conditional or not rated in the SAFER database.

The public will not have access to CSA 2010 data until the end of the year, at which time NYK will refine our Safety Policy to qualify carriers using CSA 2010 guidelines. Our Safety Policy will be in line with SMS. In the future, if the Unsafe Driving or Fatigued Driving BASICS or any two of the other BASICS are above the Unfit Threshold, you may not be qualified to move freight for NYK.

NYK welcomes all questions and feedback on this program and anticipates that you are on top of all the changes CSA 2010 will bring to your company and our industry. NYK also requests that you send us a copy of your CSA 2010 Preview Data at your convenience to carrier.safety@na.nyklogistics.com or fax to 901-215-3214.

Best regards,

NYK Carrier Relations Compliance Team
Toll Free: 877-468-5557
Fax: 901-215-3214

Please disregard this notice if you have received in error.

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October 27, 2010

NYK Logistics & Mega Carrier
NYK Carrier Relations Compliance Team
Via Fax: 901-215-3214

Dear NYK Carrier Relations Compliance Tam:

This firm represents several small carriers which have received the attached notice from you concerning your intended use of CSA 2010. We respectfully suggest that CSA 2010 is not intended for use by the shipping and traveling public in qualifying carriers. Specifically, CSA 2010 modality is a work in progress predicated on peer rankings of carriers based upon warnings and citations which have had no scrutiny and little due process.

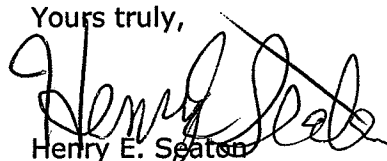
Attached hereto is a Motion to Postpone release of this data filed by 4 trade associations together with 2 additional letters to the FMCSA requesting redaction of all or part of this data from public view because of the unintended vicarious liability consequences of same.

We honestly believe based upon published data that shippers, brokers and IEPs have been seriously misled about the intended use or penalties for non-use of this flawed data when it is released. Your letter is one of many that has been sent to small carriers and it is for this reason that we oppose release of CSA 2010 data.

We urge you to join the coalition of the named associations to straighten out the confusion of CSA 2010. Many brokers like NYK have expressed support for our efforts, recognizing that as many as two-thirds of their available carriers may be barred from use if the course of action you indicate is followed. Please note that the "thresholds" to which you refer do not in any way replace the current rating system of satisfactory, unfit, conditional, or unrated (which is the equivalent of satisfactory). These thresholds are only intended by the Agency for its internal use in its monitoring and enforcement policy and do not establish "the Unfit Threshold" in any of the BASIC areas.

We are not unmindful of your vicarious liability concerns and it is for that reason that we are seeking relief from the FMCSA in advance of release of this data. Your comments and feedback to both the undersigned and Administrator Anne Ferro would be welcome.

Yours truly,


Henry E. Seaton

HES/nre

Transport Topics; week of October 25, 2010

HEADLINE: Ferro Says FMCSA to Alter CSA to Address Industry Concerns

Byline: Sean McNally, Senior Reporter

PHOENIX — The **Federal Motor Carrier Safety Administration** is making several changes in its soon-to-be-implemented overhaul of truck safety standards as a result of industry comments, Administrator Anne Ferro told Transport Topics.

Ferro said at the annual meeting of American Trucking Associations here last week that FMCSA will change some of the terminology used to label fleets, put disclaimers on the data and hold back crash data when the program is implemented in December.

However, despite the desire by some fleets to delay publication of the scores, they will be posted as scheduled, Ferro said.

"We've had a great deal of opportunity to talk to the industry ... about our publication of that data to a broader audience," Ferro told TT in an Oct. 19 interview during the ATA meeting. "Number one, it will be going public in December, and we will be initiating the warning letters and phasing-in the concept of a focused compliance review where appropriate."

But to avoid inflammatory terms, FMCSA will be "getting away from that 'trigger language,' so it won't say 'deficient' " on a carrier's score, but "probably something closer to 'threshold', or 'above the threshold' or something like that," Ferro said.

Fleets have been concerned that using the term "deficient" is too pejorative and could harm them in legal proceedings.

Also in response to industry concerns, Ferro said that while the agency considers whether it's feasible to assign fault to the crashes in its system, "we will continue to treat the crash data as we do under SafeStat" and keep it off FMCSA's public website.

As a result, carriers' scores in six of the seven CSA safety categories are now scheduled to be posted.

Under CSA, the agency is sorting carrier infractions — from crashes to cargo securement violations — into seven categories, or BASICs.

In August, FMCSA changed the way some of the BASICs are calculated. Those revisions, according to Scott Randall, safety director at Hogan Transports, benefited large carriers, who generally saw improvements in their scores.

"The larger the carrier, the greater the chance they would be deficient under the old methodology," but under the new methodology "larger carriers all saw a decrease," he said.

Keith Klein, chief operating officer of Transport Corp. of America, said that before the changes, his company was "deficient in three of the seven basics," but that is not the case now.

"There are still some concerns on CSA 2010, that there may be a lot of bumps in the road that we think could be avoided to some degree," said Charles "Shorty" Whittington, president of Grammer Industries and chairman of ATA's executive committee. "However, in a nutshell, this

thing is so far down the pike that if you're going to be a carrier, you're going to have to learn to be a good carrier."

Steve Williams, chairman and CEO of Maverick USA Inc., told TT he agreed with FMCSA's decision to post the scores, despite his concerns about CSA.

"I don't like the message that it is sending to the public, that we have something hidden behind this score," he said.

However, that didn't absolve the agency from continuing to look at the program, he said. "I am confident that we will in time — and it needs to be sooner than later — get this right," Williams said. "It is a critical piece that needs to be implemented and to accomplish the goals that we want to accomplish on highway safety."

Some of the concern stems from carriers' fear that shippers or plaintiffs attorneys may use the data from CSA either to select carriers or in lawsuits.

Former FMCSA Administrator Annette Sandberg, now a consultant and attorney with Scopelitis, Garvin, Light, Hanson & Feary, said that failing to do due diligence and potentially using a carrier with a deficient or even marginal score "does not play very well" with juries, citing several multimillion-dollar suits where brokers or shippers have been found negligent for using poorly rated carriers.

As a result, Sandberg said she advises her clients to discuss the CSA issue with their carriers, and for carriers to explain that there are issues with the data.

John Hill, also a former FMCSA administrator and current consultant, said he believed the CSA scores should be publicized. But he added that if quality issues with the data persist, the scores might need to be withheld until the data problems were solved.

End.