

## FMCSA REMOVES CSA DATA FROM PUBLIC WEBSITE

By George Carl Pezold

For some time there has been continuous debate over the use of CSA data and "BASIC" scores by the public and whether the availability of this information imposes any duty of shippers, carriers and brokers to use the data when selecting and hiring motor carriers, particularly in view of the threat of "negligent hiring" suits in the event of highway accidents.

On December 4th, the U.S. Department of Transportation, Office of Public Affairs, issued the following press release:

WASHINGTON -- As of December 4, 2015, pursuant to the FAST Act of 2015, much of the information previously available on the Federal Motor Carrier Safety Administration's (FMCSA) website related to property carrier's compliance and safety performance will no longer be displayed publicly. While the agency is not prohibited from displaying all of the data, no information will be available for property carriers while appropriate changes are made. This also applies to information provided to the public through the QCMobile app. FMCSA is working to return the website and app to operation as quickly as possible. All information on passenger carriers remains available, and enforcement users and motor carriers can view safety data by using their login information. If you are a motor carrier and do not have login credentials, please click here for more information on how to obtain your PIN.

As a result, most of the CSA data that has been available on the FMCSA website will no longer be accessible by the general public - at least until the FMCSA has completed further studies, reports and modifications to the satisfaction of Congress.

The "Fixing America's Surface Transportation Act" or "FAST Act" is some 1371 pages long. The provisions dealing with "Compliance, Safety, Accountability" (CSA) are in Sections 5221 - 5225 of the Act, and the relevant sections are summarized below:

### SEC. 5223. DATA CERTIFICATION.

#### (a) IN GENERAL.-

...no information regarding analysis of violations, crashes in which a determination is made that the motor carrier or the commercial motor vehicle driver is not at fault, alerts, or the relative percentile for each BASIC developed under the CSA program may be made available to the general public

#### (b) LIMITATION ON THE USE OF CSA ANALYSIS.-

Information regarding alerts and the relative percentile for each BASIC developed under the CSA program may not be used for safety fitness determinations

#### (c) CONTINUED PUBLIC AVAILABILITY OF DATA.-

Notwithstanding any other provision of this section, inspection and violation information submitted to the Federal Motor Carrier Safety Administration by commercial motor vehicle inspectors and qualified law enforcement officials, out-of-service rates, and absolute measures shall remain available to the public.

#### (d) EXCEPTIONS.-

(1) IN GENERAL.-Notwithstanding any other provision of this section-

(A) the Federal Motor Carrier Safety Administration and State and local commercial motor vehicle enforcement agencies may use the information referred to in subsection (a) for purposes of investigation and enforcement prioritization;

(B) a motor carrier and a commercial motor vehicle driver may access information referred to in subsection (a) that relates directly to the motor carrier or driver, respectively; and

(C) a data analysis of motorcoach operators may be provided online with a notation indicating that the ratings or alerts listed are not intended to imply any Federal safety rating of the carrier.

(2) NOTATION

The notation described in paragraph (1)(C) shall include the following: "Readers should not draw conclusions about a carrier's overall safety condition simply based on the data displayed in this system. Unless a motor carrier has received an UNSATISFACTORY safety rating under part 385 of title 49, Code of Federal Regulations, or has otherwise been ordered to discontinue operations by the Federal Motor Carrier Safety Administration, it is authorized to operate on the Nation's roadways."