

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

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COMMENTS OF THE  
NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.  
IN RESPONSE TO NOTICE AND REQUEST FOR PUBLIC COMMENTS  
DOCKET NO. FMCSA-2014-0177  
CRASH WEIGHTING ANALYSIS

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## **INTRODUCTION**

The National Motor Freight Traffic Association, Inc. (“NMFTA”) submits these comments in response to the January 23, 2015 Notice and Request for Public Comments, published by the Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”) at 80 Fed. Reg. 3719 (“Notice”), seeking comments on its study analyzing the feasibility of using a motor carrier’s fault in crashes as an indicator of future crash risk in the CSA Motor Carrier Safety Management System (“SMS”). NMFTA is a trade association, located at 1001 North Fairfax Street, Suite 600, Alexandria, VA 22314, whose member motor carriers transport the vast majority of less-than-truckload shipments moving throughout the United States and Canada. Those carriers are subject to FMCSA’s safety jurisdiction and regulations, including the CSA SMS program. Accordingly, they will be directly affected by FMCSA’s decision with respect to the consideration of a carrier’s fault in calculating the SMS Crash Indicator rating.

The referenced study was FMCSA’s response to stakeholder comments in a 2012 proceeding proposing improvements to the SMS, comments addressing the Agency’s failure to account in the SMS Crash Indicator for the carrier’s role in crashes. In other words, for giving the same weight to all crashes whether the driver was or was not found to be at fault. Addressing this criticism, the study considered whether determinations of fault in Police Accident Reports (“PARs”) provide sufficient, consistent, and reliable information to support crash weighting determinations; whether a crash weighting process including fault would offer a stronger predictor of crash risk than overall crash involvement; and how FMCSA might manage a process for making such crash weighting determinations, including acceptance of public input. The Agency has now requested comments on its additional analysis and results.

As discussed more fully below, and as noted by NMFTA in prior proceedings regarding improvements to the SMS, NMFTA strongly believes that findings as to fault derived from PARs should, whenever available, be incorporated into the computation of the Crash Indicator to ensure that this rating presents a carrier’s conduct in a fairer and more meaningful manner. *See* NMFTA Comments on Improvements to the Compliance, Safety, Accountability (CSA) Safety Measurement System (SMS), Docket No. FMCSA-2012-0074-0067 (July 2, 2012). In addition, information obtained from PARs regarding crash accountability should be reflected in the Summary of Activities section of SMS reports along with the total number of recordable crashes, to ensure that the publicly-available crash data provides a more accurate picture of a carrier’s operations.

## **DISCUSSION**

FMCSA has deemed any consideration of fault unnecessary because of its finding that a relatively high number of crashes correlates to a greater likelihood of future crashes, even where the carrier and its driver had no responsibility for the crash. Even FMCSA, however, seems to implicitly recognize that the inclusion of all

crashes is problematic, as it has not made the Crash Indicator rating public, and it has placed a note in the Summary of Activities portion of the SMS report stating that the “Total Crashes” “represent a motor carrier’s involvement in reportable crashes, regardless of the carrier’s or driver’s role in the crash.” See <https://ai.fmcsa.dot.gov/SMS/HelpCenter/Index.aspx#faq1421>. FMCSA contends on the SMS website that this caveat will “eliminate misrepresentation.” *Id.* However, NMFTA does not believe this is an adequate way to ensure that carriers are properly prioritized for intervention, or that this is an adequate way to ensure against public reliance and misinterpretation of the crash listings. Although the actual Crash Indicator rating itself is confidential, the SMS report makes public the total number of recordable crashes and contains an itemized list of each crash that includes the weight assigned to it for purposes of the Crash Indicator. Thus, notwithstanding the caveat noting the failure to consider fault, the SMS gives a false reading as to the carrier’s safety compliance in its operations. Moreover, the failure to make a distinction would also lead the public to misinterpret and give too much credence to the crash data that is provided.

I. Consideration of fault will lead to a more accurate Crash Indicator.

As acknowledged in the Notice, a better correlation with crash risk is demonstrated when fault is considered in connection with the most serious crashes—those involving fatalities. 80 Fed. Reg. at 3722. Thus, assignments of fault from PARs should at the very least be used in weighting fatal crashes. Moreover, a recent GAO study points out that even when non-fatal crashes are considered, the demonstrated correlation between high SMS scores and increased likelihood of future crashes is an aggregate number, based upon industry averages. It is not a comparable predictor for many individual carriers. *Federal Motor Carrier Safety: Modifying the Compliance, Safety, Accountability Program Would Improve The Ability to Identify High Risk Carriers*, GAO-14-114, at 15-16, 52-57 (Feb. 2014). GAO also found that the overall lack of data “creates the likelihood that many SMS scores do not represent an accurate or precise safety assessment for a carrier.” *Id.* at 16-17, 20-21. Finally, the failure to consider fault ignores the fact that an increased level of future crashes among carriers with a higher Crash Indicator based upon total crash numbers may reflect the fact that a carrier operates in an environment that is more conducive to crashes instead of a poor safety disposition.<sup>1</sup> All of these factors indicate that a Crash Indicator weighted to reflect a driver and carrier’s role in reportable crashes, using information derived from PARs, would more effectively help FMCSA identify those unsafe carriers requiring Agency intervention.

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<sup>1</sup> For example, carriers operating in urban environments with significantly greater traffic densities are likely to have higher crash levels than carriers operating in more rural areas with low traffic densities, even though their safety programs and training are comparable or better.

Although PARs vary in form from state to state, they typically require the investigating officer to identify by code numbers the “circumstances”, “factors”, or “causes” contributing to the crash and to write a narrative description of the crash. See <http://www.actar.org/reports.html> (contains links to state traffic crash report forms and overlay code sheets). A number of state reports expressly request a finding as to causation. Moreover, we have been advised by police academy directors that determinations of fault are an expected part of the analytic process reflected in the narrative, even when not specifically requested. Thus, the PARs not only summarize the actual physical data found at the scene of the accident but the conclusions of a well-trained investigator regarding the cause of the crash.

Given the comprehensiveness of PARs, it is not surprising that FMCSA found in its study that 91 percent of PARs can be coded for causation. See *Crash Weighting Analysis* (January 2015) (“Weighting Analysis”), at 16. Such readily-available information should not be disregarded simply because PARs are not entirely uniform throughout the states or because they may not always contain an assignment of causation. To the contrary, PARs should be used to provide an added data element whenever causation is specifically identified or can be readily determined from them, which is possible in the vast majority of cases. Nor should such reports be disregarded just because a new system would have to be established for collecting them from states. The accuracy of the Crash Indicator, like other scores upon which FMCSA bases its action, must be given the highest priority. Inaccurate or misleading scores not only lead FMCSA to direct its limited resources to the wrong carriers, but they paint an inaccurate safety picture of a carrier that is available to the public. Such consequences undermine the value of the SMS for all involved parties.

## II. PARs are a reliable source of crash information that should not be disregarded

PARs are the first-hand reports prepared by law enforcement officers who collect and evaluate on-the scene crash information and evidence. These reports not only detail the actual physical data found at the scene of the accident but contain the conclusions of a well-trained investigator regarding the cause of the crash. Consequently, such first-hand reports should be considered by FMCSA along with the simple fact that a particular type of recordable accident occurred, the information that is already used by FMCSA in its computations, when assessing or reviewing a motor carrier’s safety compliance.

Although FMCSA questions the reliability of PARs, there is no legitimate reason to believe them to be unreliable.<sup>2</sup> The law enforcement officers who prepare the PARs are typically trained in measuring and mapping crash scenes, assessing roadway evidence and vehicle damage, and collecting all relevant information from individuals present at the scene. Police academy directors have confirmed for

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<sup>2</sup> It is worth noting that insurance companies rely upon PARs in making liability determinations for coverage purposes, apparently recognizing their reliability.

NMFTA that state standards and training requirements for entry-level police officers include a unit on responding to traffic accidents. That unit includes the basics of accident report writing, taking measurements, diagramming accidents, distinguishing primary and associated collision factors, recognizing different types of physical evidence at the scene and the type of information they provide, understanding tire and skid marks. The outline of the program employed by the state of California, as posted on the internet, is a good example of the accident-investigation unit. *See* <https://www.post.ca.gov/regular-basic-course-training-specifications.aspx>, at LD 29. The knowledge gained in the classroom is reinforced through analysis of simulated traffic collisions. *See id.* After completing training, rookies work in the field with more experienced officers, which allows them to observe actual accident investigations and to have their own work critiqued by others. As noted above, learning to make determinations of fault is an integral part of the training process.

Some percentage of officers go on to take more advanced training courses in crash investigation and reconstruction and, according to those responsible for training, in most cases those more highly trained officers are called to the scene of fatal accidents as well as other serious accidents to ensure a complete, thorough, and accurate analysis and report of the crash. Additionally, nearly all states have Highway Patrol Officers, who receive extensive training in crash investigation and reporting that focuses on a detailed review of the factors in the PAR and includes the analysis of sample PARs filled out by the new officers. It is these well-trained officers who most commonly respond to crashes occurring on state and interstate highways and prepare PARs for those accidents.

### III. Public input is not essential to the use of PARs in the SMS process.

In its Notice, FMCSA finds that the use of PARs may not be feasible because time and costs of collection and review may be excessive. This seems to be due to the unnecessarily complicated process the Agency is considering for incorporation of PARs into the SMS. Although no definitive procedures have yet been established, the Agency's study envisions a process similar to that involved in grants of operating authority. Specifically, PARs would be reviewed and coded for causation, the results of the reviews would be published in the Federal Register and, if the results of the review are appealed, there would be some time period in which the public could challenge that appeal. *See Weighting Analysis, supra*, at xviii, 39. As noted in the study, the cost of accepting and analyzing public input is estimated to be four times that of the initial PAR review. *Id.* at xx, 41.

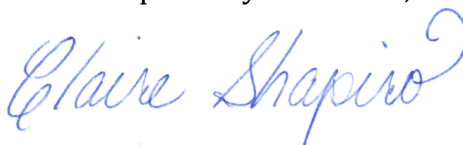
The procedure outlined by FMCSA for using PARs is at odds with the normal procedures followed in connection with other data and information input into the SMS to determine the Crash Indicator rating. The data currently used to calculate the Crash Indicator rating, which is data derived from PARs that is submitted by state and local law enforcement authorities to MCMIS, is loaded into the SMS system without any prior opportunity for the public to challenge its accuracy. Attempts to contest such data, whether by carriers or members of the public, can only be made

independent of the SMS process through the DataQ system. No reason is given by FMCSA in either the Notice or the Weighting Analysis, and NMFTA cannot see any reason, why PARs should be treated differently than all other information derived from PARs. Indeed, it would be illogical to give more credence to opinions from self-interested members of the public trying to advocate their case than to PARs written by impartial police officers trained in crash investigation and reporting. When the appeal and public input steps are eliminated from the PAR review process, the simple reviewing and coding of PAR data would not place an undue financial burden on the FMCSA or extend the review process in an untimely manner.

**CONCLUSION**

For the reasons discussed above, NMFTA deems it appropriate for the Agency to revise the calculation of the Crash Indicator to weight crashes to reflect driver and carrier fault using determinations of causation derived from PARs. At the very least, fault should be part of the equation for fatal accidents. In addition, the Summary of Activities in the SMS should be amended to include a data element identifying the determination as to fault for the reported crashes.

Respectfully submitted,



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