

BEFORE THE
DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

COMMENTS OF THE
NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.
IN RESPONSE TO NOTICE AND REQUEST FOR PUBLIC COMMENTS
DOCKET NO. FMCSA-2015-0149
PROPOSAL FOR FUTURE ENHANCEMENTS TO
THE SAFETY MEASUREMENT SYSTEM (SMS)

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INTRODUCTION

The National Motor Freight Traffic Association, Inc. (“NMFTA”) submits these comments in response to the June 29, 2015 Notice and Request for Public Comments, published by the Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”) at 80 Fed. Reg. 37037 (“Notice”), seeking comments on several proposed enhancements to the Agency’s Safety Measurement System (“SMS”). NMFTA is a nonprofit membership organization headquartered at 1001 North Fairfax Street, Suite 600, Alexandria, VA 22314. Its membership is comprised of approximately 600 motor carriers operating in interstate, intrastate and foreign commerce primarily specializing in the transportation of less-than-truckload quantities of freight (LTL). NMFTA’s mission is to serve as a research and development organization providing the transportation industry with the necessary information to advance and improve its members’ interests and welfare. NMFTA is committed to helping the industry meet transportation challenges through research, education, and publication of specifications, rules, transportation codes and the preparation and dissemination of studies, reports and analyses. NMFTA participates in judicial, regulatory and legislative proceedings to represent the interests and welfare of its members and is authorized to file comments in this proceeding. This proceeding is relevant to NMFTA’s member carriers because they are subject to FMCSA’s safety jurisdiction and regulations, including the SMS program. Accordingly, they will be directly affected by FMCSA’s decisions with respect to the proposed enhancements to the SMS Behavior Analysis and Safety Improvement Categories (“BASICS”).

As discussed more fully below, NMFTA supports the Agency’s efforts to improve the methodology underlying the BASICS percentile scores in order to make them more accurate representations of the safety-related behaviors they are attempting to quantify. However,

NMFTA believes that some additional clarification is required regarding precisely which operations fall within the CT and non-CT categories once the hazardous materials (“HM”) Compliance BASIC is segmented as proposed. NMFTA also believes that making the HM Compliance BASIC scores available to the public immediately upon segmentation is unwarranted. Finally, in response to the Agency’s request for comments on other possible areas for consideration, NMFTA has noted below its concerns with the Crash Indicator and HOS Compliance BASICS and suggested steps that might be taken to improve their accuracy and reliability.

DISCUSSION

I. Enhancements to The Intervention Thresholds For Other BASICS Should Be Considered.

FMCSA has proposed to change the SMS Intervention Thresholds for the four BASICS having a low or medium correlation between the percentiles assigned carriers and crash risk to better reflect the relationship between the two. NMFTA supports the Agency’s effort to better align Intervention Thresholds with crash risk, since the purpose of those thresholds is to help the Agency prioritize for intervention the carriers most likely to be involved in future crashes. Appropriate adjustments to thresholds for individual BASICS will allow the Agency to increase the resources allocated to those carriers showing the greatest demonstrable need for intervention.

However, FMCSA has not proposed any changes to the Intervention Threshold level applied to the three BASICS previously found by the Agency to show the highest correlation to crash risk. NMFTA recommends certain adjustments that it believes could increase the utility of those BASICS. First, as NMFTA explained in its comments submitted to FMCSA earlier this year pertaining to the crash weighting analysis underlying the Crash Indicator BASIC score, the Association believes that this BASIC is flawed insofar as it currently gives the same weight to

all reportable crashes whether the driver was or was not at fault. *See* NMFTA Comments on Crash Weighting Analysis, Dkt No. FMCSA-2014-0177-0036 (Feb. 23, 2014). It would more effectively identify carriers in greater need of intervention if it counted only those crashes in which the carrier or its driver was at fault. Accordingly, if the Intervention Threshold for this BASIC is to remain at the current 65% level, findings as to fault taken from Police Accident Reports should be incorporated into the computation of the BASIC. *See id.* If fault is considered, the Crash Indicator BASIC will better help the Agency identify for intervention those carriers exhibiting unsafe behaviors that could be modified with Agency assistance.

Second, FMCSA should take a fresh look at the correlation between the HOS Compliance BASIC and crash risk in light of the December 2014 suspension of the 34-hour restart provision that went into effect July 1, 2013. *See* FMCSA Suspension Notice, www.fmcsa.dot.gov/regulations/hours-service/hours/service-drivers (Dec. 17, 2014). A survey conducted by the American Transportation Research Institute, showed that the limitations on use of the restart while the modified rule was in effect (July 2013-December 2014),¹ actually had a negative effect on safety due to increased driver fatigue. *See* ATRI (Nov. 2013), *Operational and Economic Impacts of the New Hours-of-Service*, pp. vi, ix, 20-21, 45, ordered from www.atri-online.org/2013/11/18/atri-study-identifies-significant-operational-and-economic-impacts-from-new-hours-of-service-rules. Fatigue levels might well have gone down when the suspension restored the restart provision to its prior form. As explained by NMFTA in its comments opposing the 2013 limitations on the use of the restart option, the rule as adopted in 2003 has been shown in numerous studies to have achieved the safety objectives that the Agency envisioned when it adopted the rule. *See* Dkt. No. FMCSA-2004-19608-23376 (March 4, 2011).

¹ During the months in which the modified restart rule was operational, a restart had to include two midnight to 6 a.m. time periods and could not start sooner than 168 hours (7 days) after the beginning of the previous restart. 76 Fed. Reg. 81134, 81136, 81188 (Dec. 27, 2011).

II. Although Segmenting the HM Compliance BASIC Reflects the Distinct Operations of CT and non-CT Carriers, the Change Does Not Justify Making the Ratings Public.

FMCSA has proposed two changes to the HM Compliance BASIC in addition to a modified Threshold Intervention level. First, the Agency proposed segmenting the BASIC into cargo tank (“CT”) and non-CT carrier categories. Second, it proposed making the newly-segmented percentile ratings public because it is “confident” that the segmentation makes the score more representative of carrier operations. For the reasons discussed below, NMFTA supports the proposed segmentation, but does not believe that this adjustment justifies disclosing the formerly unpublished HM Compliance percentile score to the public.

A. Segmenting the HM Compliance Basic better Reflects the Varied Operations of CT and non-CT carriers.

The HM Compliance BASIC reflects the unsafe handling of hazardous materials on commercial motor vehicles, as measured by violations found during roadside inspections of vehicles carrying placardable quantities of HM. However, CT and non-CT carriers have all been lumped together even though the distinct operations of the two types of HM carriers typically result in different regulatory violations. NMFTA believes the proposed segmentation of this BASIC will help eliminate the bias the existing format caused, particularly for non-CT carriers.

However, NMFTA seeks clarification on the placement of carriers who sometimes haul liquid totes in sizes and quantities that might require their drivers to get a tanker endorsement even though the carriers do not conduct a true CT operation. Such carriers should be placed in the non-CT category because their business operations are more akin to and result in violations similar to those of other non-CT carriers. While the discussion in FMCSA’s Notice (80 Fed. Reg. at 37039) advises that when FMCSA evaluated the merits of segmentation the CT category included only carriers who were operating CT vehicles during more than 50% of their

inspections, the Notice does not indicate how a CT vehicle was or will be defined going forward – i.e., whether it will be limited to trucks with permanent tanks attached, or whether it will include any vehicle carrying load requiring a driver to have a tanker endorsement. NMFTA would propose that an inspected vehicle be counted as a CT vehicle for purposes of determining whether a carrier falls within the CT category only if, as defined in 49 C.F.R. §178.320(a)(Cargo tank motor vehicle), it is “a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle.” All other vehicles, even those carrying totes requiring HM endorsements, should properly be categorized as non-CT vehicles.

B. Public Disclosure of the HM Score Would be Premature.

At present the HM Compliance BASIC score is withheld from public view because of persistent concerns about its accuracy and reliability. However, FMCSA is proposing, in conjunction with this segmentation of the BASIC, to immediately make it available for public consumption based upon the Agency’s expressed confidence that the change will eliminate any problems. 80 Fed. Reg. at 37039. NMFTA strongly believes that immediate publication of the score is unwarranted and that the status quo should be maintained.

Before the Agency even considers making the score public, FMCSA should allow for a trial implementation period to better understand the operation of the segmented BASIC, and to then reevaluate the accuracy and reliability of the ratings based upon concrete data. Other factors, in addition to the CT/non-CT nature of the carrier’s operation, might be skewing the results, making them more indicative of crash severity and consequences than of crash rates. *See SMS Effectiveness Report*, pp. 45. NMFTA is also concerned about the publication of this score because of the likelihood that it will be misunderstood and improperly used by the shipping public, a group that tends to assume this BASIC score is a true measure of crash risk and safety

performance for the involved HM carrier. In fact, as the Agency itself has acknowledged, the “HM Compliance BASIC has almost no association with future crash risk.” *Id.* at pp. 45-46. Since the segmentation of the BASIC will not change this fundamental fact, segmentation does not justify making available to the public a score that has not historically been published.

III. Reclassifying Violations for Operating While OOS to the Unsafe Driving BASIC Accurately Reflects the Nature of the Wrong.

Currently, when a carrier is cited for violating an out-of-service (“OOS”) order, that violation is accounted for in the same BASIC as the underlying violation. FMCSA has now proposed moving all violations of OOS orders to the Unsafe Driving BASIC. NMFTA supports this proposed change because it believes FMCSA has correctly concluded that the decision to violate an OOS is a wrong separate and apart from the underlying noncompliant conduct that resulted in the OOS, a wrong that is indicative of a carrier’s unwillingness to take safety concerns and violations seriously. Accordingly, it is more appropriate that all violations resulting from operation of a vehicle in an OOS status be categorized as Unsafe Driving violations.

IV. Increasing the Maximum VMT in the Utilization Factor to 250,000 More Accurately Reflects Operations of High-Utilization Carriers.

FMCSA has proposed increasing to 250,000 the maximum Vehicle Miles Travelled (“VMT”) that can be used in determining the Utilization Factor (“UF”). The UF is a component in the Unsafe Driving and Crash Indicator BASICs that comes into play and causes formula adjustments when a carrier routinely has a higher than normal utilization of its vehicles. However, the current UF employs a 200,000 VMF maximum cut-off point, a figure that deprives carriers whose vehicles average more than that of the benefit that accrues to those who average less than 200,000 miles per vehicle. Recent data has shown a large enough number of very high utilization carriers, whose vehicles average more than 200,000 miles, to justify an increase in the

UF to 250,000 miles is a logical change. The increase should improve the correlation between the Unsafe Driving and Crash Indicator percentiles and actual crash risk for these very high-utilization carriers.

Respectfully submitted,



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