



**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
UNITED STATE DEPARTMENT OF TRANSPORTATION**

**COMMENTS OF THE
NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.
1001 NORTH FAIRFAX STREET, SUITE 600, ALEXANDRIA, VA 22314
IN RESPONSE TO FMCSA'S NOTIFICATION OF CHANGES TO THE
DEFINITION OF A HIGH RISK MOTOR CARRIER AND ASSOCIATED
INVESTIGATION PROCEDURES**

May 6, 2016

I. INTRODUCTION

The comments are submitted on behalf of the National Motor Freight Traffic Association, Inc., (NMFTA) in response to a notice and request for comments published on March 7, 2016, and entitled "Notification of Changes to the Definition of a High Risk Motor Carrier and Associated Investigation Procedures," FMCSA-2015-0439. FMCSA announced that it is changing the process it uses to identify motor carriers with the highest crash risk.

II. STATEMENT OF INTEREST

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 movement of less-than-truckload quantities of freight (LTL). NMFTA's mission is to promote, advance and improve the welfare and interests of its members and the motor carrier industry in general. NMFTA presents its members' position in relevant judicial, regulatory and legislative proceedings. LTL carriers provide a service and operate a business model that is distinct from other types of motor carriers. FMCSA collects inspection records and other data about motor carriers, including NMFTA members, into its MCMIS database. FMCSA will use that data to identify what it considers high risk motor carriers deserving of increased enforcement.

III. COMMENTS OF NMFTA

FMCSA's proposal is to revise its definition of a high risk carrier as one that surpasses the 90 percentile threshold in two or more Safety Management System (SMS) Behavior Analysis and Safety Improvement Categories (BASIC) in one month: Unsafe Driving, Crash Indicator, HOS Compliance, and Vehicle Maintenance. As a preliminary matter, NMFTA believes that FMCSA should hold this proceeding in abeyance until the agency has completed its pending

Safety Fitness Determination (SFD) rulemaking. In the SFD rulemaking, FMCSA would change who would be identified as high risk under the present proposal. One of the potential improvements in the SFD proposal is that in order to receive a safety fitness determination, the motor carrier must have at least 11 inspections in the last 24 months. This is intended to respond to the criticism by the Government Accountability Office (GAO) that found FMCSA needed to have between 11 and 20 inspections of a motor carrier in order to draw a useful inference about the carrier's safety practices. *See* GAO Report GAO-14-114, *Modifying the Compliance, Safety, Accountability Program Would Improve the Ability to Identify High Risk Carriers*, February 2014. In the SFD rulemaking, FMCSA has proposed to give scores to motor carriers beginning at the low end of this range (at least 11 inspections in the last 24 months). In the interest of a more accurate analysis, however, NMFTA urges FMCSA to adopt a standard requiring an even higher minimum number of inspections before it assesses a motor carrier's safety risk. NMFTA believes this data sampling standard is critical to the accurate identification of higher-risk motor carriers. FMCSA could narrow its enforcement focus more accurately by identifying motor carriers who have the greatest number of inspection reports and also meet the high-risk standard.

Given the serious consequences to a motor carrier of being identified as “high risk” and the possibility that fewer safe motor carriers will be identified as high-risk under the new SFD system, FMCSA should wait until it has improved the underlying system before instituting this high risk carrier identification proposal.

FMCSA states that the impetus for the new high risk focus comes from the recommendations of the Independent Review Team appointed by Secretary Foxx and their report on FMCSA efforts entitled *Blueprint for Safety Leadership: Aligning Enforcement and Risk* published July 14, 2014. That report includes several recommendations that bear on this

proposal because they would improve the Safety Management System's structure, procedures and methodology.

Recommendation 2.3.2 states:

Continue to identify and implement methods for emphasizing absolute rather than relative individual motor carrier rankings so that it does not undermine industry's willingness to innovate and share best practices.

This recommendation was not heeded by the FMCSA in this proceeding and is the focus of NMFTA's concerns. Without an absolute or objective measure of safety, NMFTA believes there is a strong possibility that relatively safe motor carriers will be identified as high-risk. The pending Safety Fitness Determination proposed rule begins to remedy these defects in the system by establishing an objective standard of safety. However, that proposal does not address the problems presented by grouping and ranking carriers.

The current Safety Management System is not transparent about which motor carriers are being grouped and ranked together. Nor is the system transparent about the number and identity of particular violations that may make up the record of each motor carrier above the 90th percentile. It seems entirely possible that motor carriers with just one or two violations may be put above the 90% threshold and, therefore, considered "high risk." This is of special concern when FMCSA seems to weigh some violations not indicative of poor motor carrier safety management practice above those that may be.

Recommendation 2.3.1 states:

FMCSA should expand its work with industry and stakeholders to develop SMS enhancements. These enhancements should enable FMCSA to better discern motor carrier management actions that lead to crashes and to allow more timely and appropriate investigation and enforcement actions.

To address this recommendation, FMCSA should adjust the weight assigned to different violations that make up each BASIC measurement to more accurately identify poor safety management practices that cause accidents. This is especially true for equipment violations that cannot be observed in a pre-trip inspection or for violations that inevitably occur mid-trip, even when the driver performed a proper pre-trip inspection and has a current Appendix G periodic inspection. For example, certain lighting violations are weighed at a 6 out of 10 even though the failure of a light bulb can occur after a pre-trip inspection and while a driver is operating the vehicle. Compare this to brake violations that are only given a 4. Brakes can go out of adjustment after inspection, but are they more or less likely than lighting violations to be evidence of unsafe motor carrier practices? Are they less evidence of the likelihood of a crash? Dealing with these violations would fall within the additional Report Recommendation 2.5.2 to "identify more effective tools for handling relatively minor violations." FMCSA should revise its methodology to exclude light bulb and similar non-preventable equipment failures that can occur while the truck is being operated. NMFTA's members do not believe that every safety violation or category of safety violations in the SMS system is equivalent in seriousness or crash predictability.

III. CONCLUSION

NMFTA members encourage FMCSA to continue to revise its SMS system to achieve maximum possible accuracy in identifying what causes crashes, what rules would prevent those crashes, and how and why rule violations identify poor safety management practices. NMFTA acknowledges that this may be an incremental process. The next incremental effort should be to increase the minimum inspection sample size needed to identify a motor carrier as "high-risk" and to remove from the SMS methodology minor violations that occur despite the efforts of a

careful motor carrier and driver, including those violations that occur after an inspection and while a driver and truck are in operation.

Respectfully submitted,



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