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Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue SE., West Building
Ground Floor, Room 12-140
Washington, D.C. 20590-0001

Re: Docket No. FMCSA 2012-0074

The Western Trucking Alliance (“WTA”) submits the following comments in response to a Notice; Request for public comments published by the Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”) in the Federal Register on March 27, 2012 concerning improvements to the Carrier Safety Measurement System (“CSMS”) used as part of the Agency’s Compliance, Safety, Accountability (“CSA”) initiative.

The WTA is the interstate conference of the California Construction Trucking Association (“CCTA” or “Association”).¹ The CCTA is a 501(c)(6) trade association founded in 1941 and headquartered in Upland, California. CCTA membership consists of over 1,100 motor carriers ranging in size from one-truck operations to fleets with over 350 trucks. Approximately 60 percent of CCTA members are sole-proprietors – small one-truck independent owner-operators with their own authority. CCTA members operate in various modes of trucking from vocational to property carrying in both intrastate and interstate commerce. As such, the proposed changes in the CSMS will affect many of our members.

The WTA is supportive of the Agency’s CSA initiative as a performance based tool meant to analyze on-road motor carrier safety performance and allows the Agency to focus resources and prioritize underperforming motor carriers for onsite compliance reviews (“CR”).² While we appreciate the Agency’s continuing efforts to work with all stakeholders in order to refine the initiative so that it can better focus on unsafe motor carriers, we do believe more modifications to the initiative are needed than outlined in this current Notice.

Within the Notice the Agency highlighted six proposed changes to the CSMS.

1. Incorporate Cargo/Load Securement Violations into the Vehicle Maintenance BASIC

The WTA does not believe folding the Cargo-Related BASIC into the Vehicle Maintenance BASIC will sufficiently eliminate the bias towards the open equipment segment of the industry – especially smaller motor carriers. This is precisely why motor carrier profiles in the Cargo-Related BASIC were hidden from public viewing. Simply stated, many motor-carriers specializing in the open equipment segment of the industry are prone to being over-represented in the number/quantity of load securement violations compared to motor carriers pulling van styled trailers where both the contents and securement of the transported load are not readily visible to roadside law enforcement.

While we appreciate that FMCSA has attempted to normalize the severity weighting of load securement violations within the newly proposed Vehicle Maintenance BASIC, for example in CSA methodology Version 2.2, a violation of 392.9 carried a severity weight of 7 in the standalone Cargo-Related BASIC and now in the merged Version 3.0,

¹ Formerly known as the California Dump Truck Owners Association

² From Preface of Safety Measurement System Methodology – Version 3.0 – March 2012

Vehicle Maintenance BASIC, the violation has a severity weight of 1. We don't believe enough was done to minimize the disparate treatment within this BASIC based on the operational characteristics of a motor carrier.

Open-equipment motor carriers will still be exposed to higher percentile rankings in the new BASIC since they will be subjected to a much higher level of scrutiny and enforcement for a greater variety of violations than other motor carriers not pulling the same type of trailers. While all motor carriers are expected/strive to minimize Vehicle Maintenance violations, the open equipment segment faces a much higher hurdle in avoiding the cumulative effect of being held accountable for more potential violations than other motor carriers within this BASIC.

2. Change the Cargo-Related BASIC to the HM BASIC and Change How HM Carriers are Identified

The WTA understands the Agency efforts to better identify motor carriers that transport Hazardous Materials ("HM") as outlined in the Notice. However, this particular BASIC exposes the randomness and arbitrary nature of how certain violations (and severity weightings) have been included in many BASIC's that don't meet the defined standard for inclusion. Ultimately, inclusion of violations in any BASIC with no nexus to crash causation hurts the CSA program by unfairly running up motor carrier and driver percentile rankings (scores).

The very fact that a violation is contained in the methodology is supposed to indicate its relevance to crash risk.³ The agency defines crash risk as "the risk of crashes occurring and the **consequences of the crash after it occurs.**" (Emphasis added). Within the methodology are violations that have nothing to do with either. For example, § 177.834 (f) - smoking while loading or unloading - certainly is an egregious (and stupid) violation of the General Requirements in Hazardous Material Regulations ("HMR"), yet the violation will never be implicated as a causal factor in a crash or its aftermath. It simply doesn't belong in the methodology.

Another less emotive example of violations included in the HM BASIC that should be removed because it's a catch-all for violations already contained in other BASIC's is § 397.2 – Must comply with rules in parts 390-397. Inclusion of this particular regulation can be used by law enforcement to capture violations properly not included in other BASIC's simply because they have no correlation with increased crash risk – or the consequences afterward. For example violation of a local or state law for "sailing mudflaps." Its inclusion unfairly opens the door to the "stacking" of violations – essentially a HM motor carrier getting tagged twice for the same violation because they are transporting HM.

3. Apply Carrier-Based Violations on Intermodal Equipment Provider ("IEP") Trailers to the Vehicle BASIC

While the focus of this Notice and request for comment is related to the CSMS, is it reasonable to assume that violations attributable to a motor carrier with the new IEP attribution list will also be attributable to a driver in the Driver Safety Measurement System ("DSMS")?

Regardless of the answer, we think that FMCSA should amend § 392.7 (b) – Equipment Inspection and use (pre-trip) - to include a more detailed list of the newly attributable violations for drivers pulling intermodal equipment or minimally expand the categories of what drivers must inspect since some of the items on the attribution list are not covered in the current definition.

4. Eliminate the Use of the Terms "Inconclusive" and "Insufficient Data"

The proposal to change both terms currently used to more fact-based descriptions makes a certain degree of sense. However, considering how subjectively many in the supply-chain (shippers and brokers) are incorrectly interpreting and using CSA data, simply changing the term from "Insufficient Data" to designate "< than 5 inspection" does not help explain why a particular motor carrier has no percentile ranking in a particular BASIC.

³ From Appendix A of Safety Measurement Methodology – Version 3.0 – March 2012. page.64

The fact that the mathematical algorithm used to develop a percentile ranking **rightly** requires a relevant number of inspections in a particular BASIC before a percentile ranking can be developed seems to be lost on many stakeholders – especially in the shipping community. The problem that has evolved in the supply-chain is similar to contractual requirements that a motor carrier must have a **satisfactory safety fitness determination** in order to be eligible to haul freight for a particular shipper. Many shippers and brokers now think the absence of a percentile ranking means something negative about a motor carrier’s safety profile.

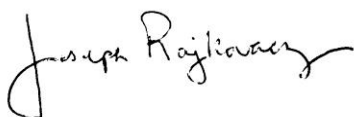
Perhaps FMCSA might think about expanding the ICON LEGEND box located under the BASIC Overview of a motor carrier’s publicly viewable profile to include an explanation that clearly states the absence of a percentile ranking should not be construed in the negative. We understand that if brokers and shippers were to follow the currently available links they certainly could be educated on how to interpret the data present, unfortunately that is a step many won’t make for a variety of reasons.

5. Distinguishing Crash Data

As FMCSA is well aware the trucking industry is keenly interested in the Agency moving expeditiously towards a rulemaking to establish a fault determination protocol for commercial motor vehicle involved crashes. Without the ability to challenge ANY crash data regarding fault (accountability) we believe that NO crash statistics should be publicly viewable. It is simply too prejudicial to the motor carrier.

While certain stakeholders have asked the agency to separate the Fatality/Injury numbers currently viewable on a motor carrier’s profile, we question the wisdom in separating the two categories as likely to further exacerbate the problem of a motor carrier being incorrectly viewed as responsible for all crashes posted to their profile. We believe this bias could be more profound for smaller motor carriers. Bluntly, fatal crash involvement has many negative connotations associated with the involvement – rightly so if one is at fault. Unfortunately, motor carriers don’t have the ability to challenge crash data where they were not a fault.

Respectfully submitted,



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