



334 N. Euclid Avenue • Upland, CA 91786
(909) 982-9898 • Fax (909) 985-2348
www.westrk.org

February 20, 2016

T. F. Scott Darling III, Acting Administrator
Docket Management Facility
U.S. Department of Transportation
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE., Room W12-140
Washington, DC. 20590

RE: Comments on a Beyond Compliance Program. Docket No. 2015-0124. Potential Benefits and Feasibility of Voluntary Compliance; Public Listen Sessions.

Dear Mr. Darling,

The Western States Trucking Association (“WSTA”)¹ supplies these comments in response to the Notice of Public listening session(s) published in the Federal Register on December 24, 2015.

The WSTA is supportive of incentivizing motor carriers to adopt technologies or other programs not mandated by regulation that can enhance safety outcomes of individual motor carriers. We believe the *quid pro quo* that should be offered to motor carriers voluntarily participating in a *Beyond Compliance* program is for the Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”) to offer relief in the form of reduced percentile rankings within the Safety Measurement System (“SMS”).

Additionally, while not mandated in the FAST Act requirement to establish a *Beyond Compliance* program, we believe FMCSA should also consider allowing individual drivers to take advantage of this initiative as a way to eliminate certain violations entirely from that individual’s record that is disseminated through FMCSA’s Pre-Employment Screening Program (“PSP”). We think it’s unfair to allow motor carriers access to methods of improving their SMS profiles while at the same time not allowing drivers the same privileges.

On January 12 and 31, 2016, FMCSA held listening sessions concerning *Beyond Compliance* that to any observer clearly exposed a rift within the industry about the benefits of having such a program. In our view; negative rhetoric and opposition statements to a *Beyond Compliance* program implying it would be no more than a “give-away” to larger motor carrier interests is not constructive to aiding the Agency comply with a congressional mandate. We choose instead to submit these comments in the hope to aid the Agency develop a useful program that small businesses, independent owner-operator motor carriers (“IOOMC’s”), and potentially even drivers might benefit by through participation.

¹ The *Western States Trucking Association* is the oldest, independent nonprofit trucking association in the U.S. founded in 1941. We are headquartered in Upland, CA. Our nearly 6,000 member and affiliated motor carriers are engaged in virtually every mode of trucking including construction, port drayage, cross-border, general freight, heavy-haul and agricultural operations. Nearly half of our members are single-truck independent owner-operator motor carriers (IOOMC’s) and most fleet members are small, family and in many instances, minority owned companies.

INTEGRITY ◊ PROFESSIONALISM ◊ EDUCATION ◊ SAFETY

As some have suggested during the listening sessions, and we agree, driver training is an important aspect of improved safety outcomes. However, we do not believe it is an exclusive factor when discussing improved highway safety and nothing else should ever be considered to augment this important piece of the safety equation. Many professions mandate various forms of in-service training or continuing education on an annual basis to remain credentialed. While we don't believe mandating annual refresher training is a viable solution industry-wide, we do think those who choose to go above and beyond existing regulatory requirements and achieve better safety outcomes should be rewarded.

We offer the following responses to the three questions asked by FMCSA in the December 24, 2015 Notice about the time and location(s) of the Listening Sessions.

1) What voluntary technologies or safety program best practices would be appropriate for Beyond Compliance?

Any one-size-fits-all approach to a *Beyond Compliance* program will never fully achieve the programs potential. There are definitely differences in how safety management is approached by smaller entities versus their larger rivals. Some of the keys to development of this program are accessibility and cost of implementation. If the allowable technology and programs are not sufficiently diverse including low-cost options, FMCSA will not get enough industry participation to fully actualize potential safety benefits.

We have purposely used the word "potential" in describing benefits as benefits would clearly be defined as improved safety outcomes. It is certainly possible that adding any and all safety technologies to vehicles operated by any fleet could result in little or no appreciable improvement in crash rates or roadside inspection data. That is the challenge faced by FMCSA with a *Beyond Compliance* program; it is going to need a "carrot" approach in order for industry acceptance to develop. In our view, the agency is going to need to be flexible initially in approving types of technologies and programs in order to determine the effectiveness of approved technologies and programs.

The idea that technological safety "add-ons" would only be beneficial to large fleets and financially out-of-reach for smaller entities is a red-herring. Many small entities do purchase new equipment and spec technology they believe has value. However, small entities predominantly "re-purpose" the trucks originally purchased by larger fleets. Ultimately, the deployment of advanced safety technologies by larger entities in the vehicles they purchase is shared into the secondary market where most IOOMC's and small-fleets acquire equipment.

Any eventual rulemaking should be very clear that the benefit of participation in the program is not limited to the first owner (purchaser) of a vehicle containing applicable technology, but any owner as long as the technology is operable.

FMCSA is well aware of many of the advanced safety technologies not mandated either by the Agency or the National Highway Traffic Safety Administration ("NHSTA"). Our list of technologies to be considered is not intended to be exclusive, but a beginning point for wider discussion:

- Adaptive cruise control
- Lane departure warning technology
- Stability control
- Forward looking cameras
- Use of disc brakes
- ELD installation and use when exempted by regulation

Safety programs to consider adopting into a Beyond Compliance program:

- Random DOT drug and alcohol testing at a higher percentage than required by regulation
 - Enhanced driver safety training programs: an example would be the successful completion of a defensive driving course such as the Smith System®
 - Utilization of the North American Fatigue Management Program (NAFMP). Successful completion of training modules by motor carrier executives, managers, staff, and drivers
- 2) **What type of incentives would encourage motor carriers to invest in technologies and best practices programs?**

Simply, reduced percentile rankings within the SMS.

A carrier wanting to participate in this program is likely to be facing one or more consequences from underperforming their peers within the SMS. It could be the loss of business because of deficiencies in one or more BASIC's. It could be an insurance increase driven by poor performance in a BASIC. Should FMCSA's proposed Safety Fitness Determination rulemaking as proposed ultimately become a final rule, getting an "Unfit" determination becomes a business "death sentence" and small-business oftentimes do not have the financial resources to exercise their due process rights. Having an avenue available to maintain their business by implementing advanced safety practices is an idea we support.

If a carrier is above one or more intervention thresholds, reducing the raw percentile ranking to a point below the threshold could be a huge inducement. For a carrier concerned about exceeding an intervention threshold, walking back their raw percentile ranking would still be viewed as an incentive.

FMCSA has few "carrots" in which to induce any motor carrier to participate. Many in the industry have complained that they are unfairly tarnished by a negative percentile ranking because of deficiencies with the SMS methodology or the algorithm used to compute "scoring." That is a point-of-view that has been validated by studies - especially the report published on February 3, 2014 by the U.S. Government Accountability Office (GAO) citing weaknesses with the SMS in identifying at risk motor carriers and by the fact that congress has mandated a study of CSA in the FAST Act.

While some in industry almost seem to believe or hope that any system to measure motor carrier safety performance will disappear, the WSTA is much more pragmatic in believing there will always be a system to measure safety performance of motor carriers. We think it's imperative that any measurement system incorporate some form of "forgiveness" to recognize those motor carriers making an effort to improve their safety management practices and safety performance.

Until FMCSA completes its rulemaking mandating that New Entrant motor carriers pass a proficiency examination before being granted operating authority, we think New Entrants could be the biggest beneficiary of an accessible *Beyond Compliance* program.

Many New Entrants are scammed by third-party providers of authority services and even some associations who only perform minimal efforts in getting them their operating authority. Education of many regulatory requirements, especially the New Entrant Safety Assurance Program is often missing. It is true FMCSA makes available some education materials, but only in English and contrary to the opinions of some, English is not a prerequisite (nor ever will be) to operate as a registered motor carrier. These types of motor carriers "cannot know what they don't know" unless instructed or materials are made equally available to them.

INTEGRITY ◊ PROFESSIONALISM ◊ EDUCATION ◊ SAFETY

For motor carriers such as these, being able to mitigate negative SMS data by adopting progressive countermeasures and training programs not mandated by regulation could conceivably save their businesses.

3) How would FMCSA verify that the voluntary technologies or safety programs are being implemented?

Minimizing the administrative function for the agency (and industry too) will be an ingredient as to whether motor carriers wish to participate. Verifying technology versus instituted programs probably requires different means of validation.

For participating motor carriers utilizing technology FMCSA could consider adding to a carriers SMS profile (and information systems only accessible by roadside law enforcement) the fact that they are participating in the *Beyond Compliance* program and listing or classifying the technologies and/or programs being utilized. If the technology listed is found non-operational or not installed on a vehicle during a roadside inspection, FMCSA might consider creating an extremely weighted violation within the SMS and instituting a raw number violation threshold that would terminate participation in the program and restore previously discounted data/percentiles.

Validating safety programs are more difficult. FMCSA may well need to create an application process where submittal of base documents may be required (i.e. certificates of completion). Ultimately, a motor carrier is going to need to keep and preserve records – similar to other record retention requirements and make them available to investigators. However, it is going to take the agency making an allowance over a specific period of time to determine whether a safety program is yielding positive results.

Whether technology or safety programs are used, the end result is that the agency needs to see measurable improvements in both crash and roadside data. For carriers with no discernable improvements after a fixed point of time, they should be removed from the program and it would not be unreasonable to have their percentile ranking restored to the point it existed at time of entry into the program.

4) Allow Drivers to Mitigate Negative Data Contained in their PSP Records

Many motor carriers utilize an individual drivers PSP report to assess the types and frequency of violations found during roadside inspections. Simply, if a drivers report shows a history of systemic violations, the employer understands that by hiring the driver the carrier's independent SMS data will likely be negatively impacted if there are no behavioral changes on the part of the driver. This creates a strong disincentive to employ a particular driver.

The motor carrier industry has rightly pointed out problems with SMS methodology and severity weightings and astutely used the political process to wring out forced changes, what about individual drivers who get yoked with the same negative data in their PSP report and have no way themselves to be credited with efforts to improve performance? The same motor carrier industry wanting relief in the form of reduced percentile rankings within the SMS will still use the exact same inspection data they've potentially mitigated for themselves to make adverse hiring decisions against a driver. That is unfair and unforgiving to drivers making an earnest effort to improve their safety performance.

As is readily acknowledged, many entry-level drivers are inadequately trained up-front and released onto the nation's highways only to accumulate violations noted on an inspection report simply because they were inadequately trained. Very quickly violations can add up leading to termination and lack of employability because of data contained in ones PSP report.

INTEGRITY ◊ PROFESSIONALISM ◊ EDUCATION ◊ SAFETY

As an example; drivers suffer from negative violations noted on inspection reports simply because certain states are “probable cause” states where the officer uses a minor traffic infraction noted on an inspection report as the reason to make the traffic stop and perform an inspection. Cumulatively, those types of violations can have very negative consequences on the employability of a driver even if they have never been involved in a crash.

If FMCSA would credit a driver for successful completion of a state sanctioned “traffic school” or even completing on-road training with the widely acclaimed Smith System® it will certainly incentivize drivers at risk of job loss to go above and beyond to save their livelihood. Using this example, upon successful completion FMCSA could eliminate 3 months, 6 months, even 2 years of particular moving violations associated with a driver via inspection reports thus enhancing their employability.

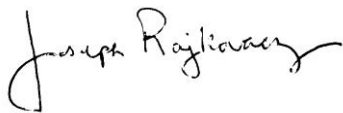
We do not believe this idea violates the federal prohibition from masking traffic convictions since we are talking about non-adjudicated violations noted on an inspection report. In fact, U.S. DOT has already weighed in approving a somewhat similar program in the state of California where even commercial driver’s license holders can utilize traffic school once in 18 months to eliminate the “points” associated with an adjudicated traffic violation in order to keep their driver’s license. This would really be no different in concept.

Additional ideas would include mitigating negative violation data by completing a brake training course put on by a manufacturer, truck/trailer dealership, etc. Many trucking associations hold workshops on performing a proper pre-trip inspection, for a driver inadequately trained in proper procedure successfully completing a course could be used to mitigate some equipment specific violations. In the FMCSA April 23, 2015 Federal Register Notice and request for public comment on the “Beyond Compliance Program,” the North American Fatigue Management Program is mentioned. Why not allow an individual driver who completes the coursework to mitigate some HOS violations in their records?

CONCLUSION

As FMCSA moves forward in developing a *Beyond Compliance* program, it must be accessible to all motor carriers, and we believe drivers too. We believe the Agency should look broadly at the value of non-technology based options to improve highway safety, something FMCSA’s Montana study on New Entrant motor carriers validated as a method to improve safety outcomes.

Sincerely,



Joe Rajkovacz

Director of Governmental Affairs &
Communications

Western States Trucking Association
joe@westrk.org

INTEGRITY ◊ PROFESSIONALISM ◊ EDUCATION ◊ SAFETY