



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

September 12, 2016

T.F. Scott Darling III, Administrator, Federal Motor Carrier Safety Administration  
Docket Management Facility  
U.S. Department of Transportation  
1200 New Jersey Avenue SE. West Bldg. Ground Floor, Rm: W-12-140  
Washington D.C. 20590

RE: Crash Preventability Program. Docket No. FMCSA-2014-0177 – Notice, request for public comment

Dear Administrator Darling,

The *Western States Trucking Association* (“WSTA”)<sup>1</sup> submits these comments in response to a Notice and request for public comment published in the Federal Register on July 12, 2016 (FR Vol. 81, No. 133) pertaining to the *Federal Motor Carrier Safety Administration* (“FMCSA”) establishing a demonstration program to determine the efficacy of a program to conduct preventability determinations on certain types of crashes.

WSTA member motor carriers have been unfairly targeted by insurance premium increases, even lost their liability coverage, and suffered business loss as a direct result of FMCSA publishing motor carrier crash data that doesn’t discern who bore responsibility for causing a crash.

Many of our members would welcome a fair system that allowed for derogatory crash data to be removed from their *Safety Measurement System* (“SMS”) profile. We appreciate FMCSA attempting to move forward with a demonstration program but the usefulness of the program will be undermined by documentation requirements that cannot be fulfilled and by limiting the scope of challengeable crashes.

### **Demonstration Program Needs Further Refinement**

FMCSA is proposing to pre-condition a “non-preventable” determination on a select grouping of crashes by requiring evidence of a **conviction** which in reality means a citation must be issued. In the four types of crashes outlined by FMCSA (Driving under the influence, driving the wrong direction, striking the CMV in the rear, or striking the CMV while legally stopped) where the offending driver is killed, a citation will virtually never be issued because they are deceased. It is possible an autopsy report may reveal any levels of intoxication. By requiring a **conviction** FMCSA has virtually precluded any fatal crashes from being challenged by this caveat.

Since FMCSA is proposing to limit challengeable crashes to the narrow subset referenced in the previous paragraph, post-mortem evidence of intoxication should be allowed in lieu of requiring evidence of a **conviction**. Additionally, since FMCSA is proposing that a CMV driver either on a cell-phone or speeding face a potential determination that an animal strike was preventable, those two factors should be

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<sup>1</sup> The Western States Trucking Association is the oldest, independent nonprofit trucking association in the U.S. originally 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 trucking with most operations focused in the western U.S.

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allowed to be used in lieu of evidence of a **conviction** from a motor carrier requesting a preventability determination from FMCSA.

FMCSA is also proposing to allow “the public... to seek a review of the RDR...” We are left to presume this means unaffected/uninvolved third-parties could seek a potential reconsideration of a “non-preventable” determination.

Why would FMCSA even open the door to this potential and its abuse? If the purpose of the Demonstration Program is to validate the efficacy of such a program, FMCSA should want to encourage participation. Unaffected and uninvolved third party challenges to determinations will quickly limit the statistical validity of this effort as motor carriers will be discouraged from endeavoring to file a Request for Data Review if experience shows frivolous challenges unnecessarily drag out the time and effort needed to complete the process.

FMCSA should limit public challenges only to directly affected parties or their legal representatives.

We question why FMCSA would limit challengeable crashes to the narrow categories and exclude crashes that resulted from side-swipe and unsafe lane changes. In these types of crashes where the motor carrier bore no fault, more often than not, a citation will be issued to the offending driver assuming there was no fatal involvement. FMCSA should expand the class of challengeable crashes to include these types.

Many motor carriers from one-truck owner-operators to large fleets are increasingly using technology (dash-cams) to defend themselves against wrongful accusations of having caused a crash. It’s no secret that in many major metropolitan areas truckers are victimized by accident scams simply because it is known they must have liability insurance.

FMCSA should consider recorded video footage of a crash – even when a citation was not issued, to determine “non-preventability.”

Lastly, in the instance of a one-truck owner-operator motor carrier successfully challenging a crash and having it removed from his SMS profile, why wouldn’t FMCSA also remove it from the same driver’s record distributed through the Pre-employment Screening Program (“PSP”)?

Expanding on this thought further, every crash within the Demonstration Program determined to be “non-preventable” for the motor carrier included a driver of the involved commercial motor vehicle. The related drivers PSP report should also be expunged of the same crash data.

Respectfully submitted,



Joseph Rajkovacz  
Director of Governmental Affairs & Communications

Western States Trucking Association  
[joe@westrk.org](mailto:joe@westrk.org)

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