I. Introduction

American Trucking Associations, Inc. (ATA) submits these comments to the Federal Motor Carrier Safety Administration (FMCSA) in response to the agency’s January 23, 2015 request for public comment titled “Crash Weighting Analysis.” ATA is the national trade association representing the American trucking industry. As such, ATA is vitally interested in FMCSA’s Compliance, Safety, Accountability program.

II. Summary of ATA’s position

ATA identified the inclusion of all crashes, regardless of responsibility, as a serious shortcoming of the Compliance, Safety and Accountability system over five years ago (then called Comprehensive Safety Analysis 2010). Below is a brief timeline detailing the progression of the crash accountability issue (relevant documents included in Appendix 1):

- **February 26, 2010** – ATA sends a letter to Administrator Ferro identifying crash accountability as the most pressing concern of CSA.
- **Circa March, 2010** – FMCSA conducts PAR Coding Test but does not publicly release results.

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1 Crash Weighting Analysis; 80 FR 15, 3719 (January 23, 2015) (hereinafter “the Notice”).
2 ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Directly and through its affiliated organizations, ATA encompasses over 34,000 motor carriers and suppliers of every type and class of operation in the United States, Canada, and Mexico.
• **April 16, 2010** – In a letter to ATA, Administrator Ferro responds to ATA’s concerns by indicating that the initial results of a feasibility study are promising as Police Accident Reports (PARs) are likely a viable source of crash accountability information. Administrator Ferro also suggested an alternative process whereby motor carriers can submit accountability disputes through a DATAQs type process.

• **August 16, 2010** – ATA sends a letter to Administrator Ferro requesting FMCSA initiate the FMCSA proposed alternative for removing crashes a carrier did not cause.

• **August 23, 2010** – In a letter to ATA, Administrator Ferro acknowledges the preliminary findings of the PAR Coding Test are under review and will be made public when the review is complete.

• **July 18, 2011** – TruckingInfo reports that “the Agency aims to start a [crash accountability] program in January.” Ralph Craft of FMCSA’s Analysis Division states: “This will give us another piece, which the industry has requested over and over again and which we feel is a legitimate request to improve the rating system.”

• **February 9, 2012** – FMCSA confirms to ATA and other stakeholders its plan to allow carrier to challenge crashes for which they were not accountable.

• **March 8, 2012** – Administrator Ferro, at an industry stakeholder meeting, reverses course stating FMCSA was “pulling back” on plans to implement a CSA crash accountability process “until further notice.”

• **July 23, 2012** – FMCSA makes public the results of its initial PAR Coding Test (discussed later in these comments) and issues the Crash Weighting Research Plan. The Crash Weighting research is scheduled to be completed by the summer of 2013.

• **April 10, 2013** – The Motor Carrier Safety Advisory Committee’s CSA Subcommittee issues its draft recommendations for CSA. Majority recommendations include the exclusion of crash data “for which there is a clear determination of not-at-fault or non-preventable crashes for the purposes of a carrier’s Crash Indicator score.

• **January 23, 2015** – FMCSA publishes results of Crash Weighting Analysis in the Federal Register.

The argument, then and now, is that it is illogical, and a poor use of scarce enforcement resources, to label carriers as unsafe based on crashes they did not cause. The issue is intuitive. Merely being struck by another motorist does not make one more likely to strike others. Crashes that a commercial motor vehicle driver did not *cause* are not indicative of the motor carrier’s propensity to *cause* a future crash.

A tragic accident that occurred on Saturday, March 21, 2015 is a good example of a crash caused by another motorist that was unavoidable on the part of the truck driver. In this case, three off-duty police officers on the way home from a strip club struck a truck while
traveling the northbound in the southbound portion of the West Shore Expressway on Staten Island in New York. The West Shore Expressway is a divided highway. The truck driver tried to swerve but had nowhere to go.\(^3\) Under current protocol, this accident will be charged to the driver and the motor carrier and will remain on their records for two years as an indicator of safety. Indisputably, in this case the CMV driver and the motor carrier should not be held accountable as this tragic crash cannot be construed as indicative of the safety controls employed by the company and its drivers.

This issue becomes even more poignant when considering how these scores are being used by third parties to make safety-based business decisions. Indeed, FMCSA encourages scores to be used for this purpose as demonstrated by this passage taken from the CSA Safety Measurement System (SMS) methodology:

\[\text{In addition to supporting the CSA Operational Model, the SMS results can provide stakeholders with valuable safety information. The SMS results will be easily accessible via the Internet to encourage improvements in motor carrier safety. Findings from the SMS will allow the evaluated carriers an assessment of their weaknesses in various safety areas. In turn, the SMS will empower motor carriers and other stakeholders involved with the motor carrier industry to make safety-based business decisions}^4\]

(emphasis added).

Though CSA is primarily an enforcement prioritization tool, a number of stakeholders, including shippers and brokers, are using it to make business decisions. This is true even of those scores that are not publicly available. Stakeholders seeking to limit their liability are, in some cases, requiring carriers to furnish their non-public scores as a condition of contract. This includes requesting Crash Indicator scores. Upon learning that a fleet has a high score in this category, a shipper will simply eliminate the carrier from consideration or cancel its contract. As a result, the system designed as a starting point (e.g., indicator) for evaluating motor carrier safety is being coopted as the definitive conclusion of safety performance. Sadly, the SMS methodology supports this inappropriate conclusion by suggesting that scores reflect “weaknesses in various safety areas.”\(^5\)

It’s not just shippers and brokers using CSA to make safety-based decisions. The system is also used by the media, the public and, importantly, plaintiff’s attorneys when filing civil suits. In these cases, decisions affecting the reputation of the trucking company can be based solely the carrier’s relative CSA score or involvement in non-preventable recordable accidents.

As evidenced by the current safety rating process and FMCSA’s plans for a safety fitness determination rulemaking, FMCSA values the importance of making crash preventability

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\(^5\) Ibid.
determinations. Indeed, “preventable accidents on the part of the motor carrier” is formally defined in 49 C.F.R. §385.3.\(^6\) ATA believes FMCSA should place the same emphasis on crash accountability in the CSA system as it does in its other safety measurement efforts. Not doing so, especially when considering how the data narrative is being used by those doing business with trucking companies, amounts to a dangerous double-standard and causes significant harm to motor carriers.

ATA believes a crash accountability process is necessary to ensure equal treatment of all carriers in CSA. It is an issue of fairness, but also efficient use of Federal resources. The goal of this process should not be to definitely declare fault, but to identify the predictive value of crashes in the same way the agency does with violations. For example, FMCSA recognizes that a reckless driving conviction has greater predictive value than a minor speeding violation. Similarly, the agency must agree that causing a crash is a better predictor of a fleet’s propensity to cause a crash in the future. A determination of accountability is not a release from liability or an absolute finding of fault. Instead, it is an acknowledgement that a particular crash is either a very good or very poor indicator of a fleet’s likelihood of causing a future crash.

Accordingly, as explained in detail below, ATA offers the following conclusions and recommendations:

- FMCSA should immediately erect a process to remove crashes in which it is plainly evident that, in all likelihood, the carrier did not cause it;
- There are several viable ways to cost-effectively account for crash causation;
- Police Accident Reports can be reliably and consistently used to make crash accountability determinations;
- All data contained in crash reports should be used to make crash accountability determinations;
- Determining crash accountability has been proven feasible;
- FMCSA should consider any improvement to the underlying data and resultant improvement to a BASIC’s predictive power necessary; and
- The creation of a uniform PAR would make the accountability determination process easier and more reliable.

III. Accidents a CMV driver did not cause are not a reflection of motor carrier safety.

Crashes are, by nature, rare and somewhat unpredictable. There are many factors that may influence the likelihood of a crash including the environment, traffic density and, most importantly, the actions of drivers of other vehicles in close proximity. Because of this, drawing conclusions about a motor carrier’s safety culture based only on a review of a motor carrier’s

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\( ^{6} \) “Preventable accident on the part of a motor carrier means an accident (1) that involved a commercial motor vehicle, and (2) that could have been averted but for an act, or failure to act, by the motor carrier or the driver.”
accident frequency record, without consideration of preventability or fault, is ill-advised. For example, accident frequency is often a reflection of operating environment. Carriers who operate mostly in urban environments have many more interactions with other vehicles than those who operate on interstate highways or rural roads. As a result, their accident involvement rate is generally higher. Often, the existence of crashes on a carrier’s record is not an indication of unsafe behavior, but actually a product of higher exposure to environmental hazards.

Studies have consistently shown that the vast majority of fatal car-truck crashes are not the result of actions on the part of the CMV driver. One of the most exhaustive of such studies was conducted by the University of Michigan Transportation Research Institute (UMTRI). The results were summarized in a 1999 Federal Highway Administration analysis brief. UMTRI examined the records of 8,309 fatal car-truck crashes in its Trucks in Fatal Accidents (TIFA) database for the years 1994-96. These records did not identify crash Critical Reasons but they did assign driver factors such as “too fast for conditions,” “improper following,” and “failure to keep in lane.” Figure 1 is a Venn diagram showing UMTRI’s principal results. Car drivers were assigned driver factors in 81% of the fatal crashes, while only 26% had factors for truck drivers. In 10% of the crashes, both drivers were assigned factors.  

These crash fault figures have been consistently verified in FMCSA’s annual Large Truck and Bus Crash Facts. These studies examined which vehicles were cited with driver factors in car-truck fatal crashes. The percentages of vehicle operators cited with driver factors for the 15,727 crashes analyzed from 2007 to 2012 are listed below.

- 2007: 85% of cars; 26% of trucks
- 2008: 85% of cars; 26% of trucks
- 2009: 81% of cars; 22% of trucks
- 2010: 86% of cars; 28% of trucks

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7 Critical Reason is defined in the Crash Weighting Analysis as “the immediate reason for the critical event or the failure leading to the critical event. The critical reason was identified to describe the role of the driver or vehicle involved in the crash event.”


• 2011: 86% of cars; 31% of trucks\textsuperscript{13}
• 2012: 84% of cars; 31% of trucks\textsuperscript{14}

The Crash Weighting Analysis also confirmed this trend. In its analysis of 9,884 crash events (all types of recordable crashes, not just fatal crashes) for which the Police Accident Report (PAR) could be used to determine a critical reason, nearly 61% of the CMVs involved in the crash were not assigned a critical reason.\textsuperscript{15}

Research also shows that crash configuration can be a strong determinate of fault. The same UMTRI study mentioned above suggested that “in some types of fatal crashes, the physical evidence of the crash configuration strongly suggests that one driver may have contributed more heavily than the other.” For instance, the study found that more than nine times out of ten, when the following crash configurations occurred, the passenger vehicle operator involved in the crash was assigned a driver-related factor (percentages reflected below).\textsuperscript{16}

• Passenger vehicle encroached into truck’s lane and struck truck head-on (98%);
• Passenger vehicle encroached into truck’s lane and sideswiped truck (97%);
• Passenger vehicle rear-ended truck (94%).

Also of interest is that, according to FMCSA, in 91% of fatal head-on collisions between a large truck and a passenger vehicle, the passenger vehicle crossed the median into the truck’s lane of travel.\textsuperscript{17}

These profound and telling statistics confirm that commercial motor vehicle drivers face significant challenges when interacting with other motorists who are held to lesser standards. In fact, 61% of fatal crashes (involving vehicles of all types) are single vehicle crashes,\textsuperscript{18} whereas only 21% of fatal truck crashes are single vehicle crashes.\textsuperscript{19} There are a number of reasons motorists are more hazardous than truck drivers. First, both younger drivers (<20 years old) and

\textsuperscript{15} Federal Motor Carrier Safety Administration, \textit{Crash Weighting Analysis}, January 2015. Pg 18
\textsuperscript{18} National Highway Traffic Safety Administration, Traffic Safety Facts 2012, DOT HS 812 032, Table 28, Page 69
\textsuperscript{19} Federal Motor Carrier Safety Administration, Analysis Division, Large Truck and Bus Crash Facts 2012, FMCSA -RRA-14-004, June 2014, Crash Table 14, Pg 54
older drivers (>70 years old) have higher crash rates than middle-age drivers.\textsuperscript{20} Members of neither group typically drive trucks.\textsuperscript{21}

Also, truck drivers are held to higher standards of behavior. There are tens (if not hundreds) of thousands of car drivers who don’t meet the minimum requirements to drive trucks, including having been convicted of an egregious moving violation. Indeed, car drivers are twice as likely to have a previous suspension and are alcohol impaired in fatal crashes ten times more often than truck drivers.\textsuperscript{22}

Penalizing motor carriers for all crash involvement is clearly inappropriate. False conclusions could easily be drawn regarding a motor carrier’s safety culture without first understanding the carrier’s role in the accident. Indeed, FMCSA has acknowledged this limitation in its Safety Rating Methodology. The agency has done this in two ways:

1. When considering the Accident Factor of its Safety Rating Methodology, FMCSA acknowledges that “experience has shown that urban carriers, those motor carriers operating primarily within a radius of less than 100 air miles (normally urban areas) have a higher exposure to accident situations because of their environment and normally have higher accident rates.”\textsuperscript{23} Importantly, FMCSA is acknowledging that a carrier’s operating environment elevates risk exposure and can result in crashes that the CMV driver did not cause. FMCSA accounts for this by holding carriers who operate in urban environments to a different standard in the safety rating process.\textsuperscript{24} Specifically, a carrier is generally considered to have a satisfactory crash frequency if its rate of DOT defined crashes is 1.5 per million miles or less. However, the threshold for urban fleets is 1.7 per million miles, an acknowledgement that greater crash frequency does not reflect worse safety performance or an absence of effective, functioning, safety management controls. In other words, by doing so FMCSA concedes that often it is the environment in which a motor carrier operates, not how safely it drives, that can lead to elevated accident rates.

2. When a motor carrier challenges its safety rating, FMCSA considers crash preventability to evaluate its true safety performance. As stated in 49 CFR 385: “FMCSA will continue to consider preventability when a motor carrier contests a rating by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor.”\textsuperscript{25} Indeed, FMCSA makes crash accountability

\textsuperscript{20} Consumer Reports Magazine, Teenagers and older people are the riskiest drivers, More needs to be done to reduce accidents and deaths, October 2012. http://www.consumerreports.org/cro/magazine/2012/10/teenagers-and-older-people-are-the-riskiest-drivers/index.htm
\textsuperscript{21} The minimum age to operate a truck in interstate commerce is 21. Most truck drivers retire by age 70. The mean age for a truck driver is 50.
\textsuperscript{23} 49 C.F.R. §385 Appx. B[I][B][c]
\textsuperscript{24} During a compliance review, a carrier will be given an unsatisfactory rating for the accident factor if its recordable accident rate is roughly double the national average at the time the rule was issued (1.5 per million miles). For carriers operating within a 100 mile radius however, a carrier will be given an unsatisfactory rating if it has a recordable accident rate greater than 1.7. Reference: 49 C.F.R. § 385 Appendix B(B)(b-d)
\textsuperscript{25} 49 C.F.R. §385 Appendix B[B][e]
determinations based on evidence provided by affected fleets, demonstrating that such a process is reasonable, appropriate and possible. Moreover, the agency agrees that it would not be appropriate to measure the carrier’s safety standing based on crashes the carrier did not cause.

Recent public statements by FMCSA indicate that the agency will propose to account for fault or preventability in the coming Safety Fitness Determination notice of proposed rulemaking. Speaking at an industry conference in February, an FMCSA official said “only crashes that involve an investigation can affect the safety rating of carriers.” Having justifiably acknowledged the important role of preventability in assessing carrier safety fitness, not accounting for it in CSA is inappropriate. It also highlights an important contradiction. In the context of making publicly available Safety Fitness Determinations, FMCSA agrees that accounting for crash fault is important. However, in the context of a system the agency promotes as means to make “safety-based business decisions,” crash accountability is not considered.

Regrettably, CSA scores are being interpreted as final measures of safety by some shippers, brokers and other business partners. While scores in the Crash Indicator are not publicly available, many shippers and brokers are requiring access to them as a condition of contract. While this practice impacts all trucking companies, small carriers are disproportionately disadvantaged by it. These carriers experience very few accidents annually and the addition of a single no-fault crash can dramatically elevate their scores by increasing their relative rating or by changing their safety event group. For example, if a carrier with five trucks running less than 80,000 miles per power unit was involved in two tow-away accidents last year, its Crash Indicator measure would be 1.6. The addition of single tow-away accident the following year would nearly double the carrier’s measure to 3, putting that carrier at a significant disadvantage when compared with its peers. In other words, the carrier is likely to have a highly elevated percentile ranking as a result.

This point is especially concerning considering that the vast majority of the trucking industry is comprised of small carriers. As of September 2013, 90.6% of the trucking companies operated six or fewer trucks and 97.3% of the industry operated fewer than 20 trucks. Given the average industry crash rate, it is likely that these fleets have but a few crashes each on their records. Hence, a single crash can make a carrier’s rate change drastically.

Even though Crash Indicator scores are not publicly available, motor carriers are harmed since details relating to all crashes in which they involved are posted, including those they did not cause. This listing provides no reference to fault or preventability (other than an explanation that all crashes are considered without regard to fault) and includes only minimal

27 (Time X Severity)/(Avg PU X Utilization Factor) = ((2X2) X (2X1))/(5X1) = 1.6.
28 ((2X1)+(1X3)) X (1X3))/(5 X 1) = 3
information about the circumstances of the accident. As a result, those viewing the data are likely to perceive crash involvement or frequency as a reflection of the carrier’s propensity to cause a crash. For these reasons, FMCSA should immediately begin a process to remove crashes carriers did not cause from their records.

In addition to the aforementioned impacts these no-fault accidents can have on the reputations of otherwise safe motor carriers, they also represent a misuse of scarce enforcement resources. FMCSA has very limited resources with which to evaluate 525,000 active motor carriers. As a result, FMCSA and their state partners are only able to audit approximately 16,000 carriers, or approximately 3%, of the industry annually.\textsuperscript{30} Targeting a trucking company for enforcement intervention based on crashes the carrier did not cause results in another, less safe, carrier avoiding scrutiny. If FMCSA can only audit 16,000 carriers annually, should they select those struck more frequently by others, or those who have caused crashes?

\section*{IV. Police accident reports (PAR) can be used to reliably evaluate crash accountability.}

Based on FMCSA research, ATA believes that PARs can consistently and reliably be used to determine crash accountability. FMCSA completed its first study of the potential of using PARs to determine crash accountability in July of 2012. Its aim was “to determine the feasibility for accurately and consistently coding accountability from only a police accident report.”\textsuperscript{31} The study examined the PARs from 1,221 crashes of all severities and coded each with a critical reason. In the context of this study, “critical reason means accountability – when a truck or truck driver is coded with the critical reason the company responsible for that vehicle is judged to be accountable for the crash.”\textsuperscript{32}

The study tested the reliability of these determinations by asking two distinct groups to independently code each accident for critical reason. On average, the two groups found agreement in 93.2% of cases. Importantly, while the researchers expected agreement to decrease for less severe accidents, this did not happen. In fact, the highest agreement was found when investigating property damage only accidents (95.1%).\textsuperscript{33} Additionally, the researchers also suggested that agreement would increase with the development of a coding manual designed specifically for this task.

This research was further validated by the Crash Weighting Analysis. This study found that in 97.2% of the PARs reviewed that involved a CMV, a critical reason could be determined.\textsuperscript{34} Consistent with previous its previous research, FMCSA also found that when critical reason determinations were checked for accuracy, the reviewers agreed 92% of the

\begin{footnotesize}
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\item\textsuperscript{30} Paul E Green and Daniel Blower, \textit{Evaluation of the CSA 2010 Operational Model Test}, Final Report (Ann Arbor, MI: The University of Michigan Transportation Research Institute, August 2011), http://deepblue.lib.umich.edu/bitstream/2027.42/86185/1/102763.pdf. pg 1
\item\textsuperscript{32} Ibid
\item\textsuperscript{33} Ibid, pg 3
\item\textsuperscript{34} Federal Motor Carrier Safety Administration, \textit{Crash Weighting Analysis}, January 2015. Pg 17-18
\end{itemize}
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time.\textsuperscript{35} FMCSA also performed a second check for reliability when it compared the critical reason determinations of PARs matched with its corresponding National Motor Vehicle Crash Causation Survey records. Here, a 90% agreement was found.\textsuperscript{36}

Sadly, in what appears to be an attempt to discredit PAR accuracy, the Crash Weighting Study sought to compare PARs with their respective corresponding Fatality Analysis Reporting System (FARS) records. To do this, the researchers focused on specific fields within each report and recorded the rate at which the matches were successful. Unfortunately, FARS doesn’t contain a critical reason field and matching the other fields produced poor results because, in part, absence of any information in a field was considered a “non-match.” For instance, when contributing factor data was simply missing from the PAR, FMCSA identified it as a “non-match.” This misleading characterization implied that the two fields contained data which did not agree (e.g., pavement was wet or dry, nighttime or daytime), which was not the case.

This “apples to oranges” comparison is unhelpful as it departs from previous validation methods that compared conclusions reviewers drew after reviewing multiple fields from each report. A more useful analysis would have been to ask reviewers to use the FARS record to make a critical reason determination and then compared it to the determination made using only the PAR.

PAR consistency could be improved, however, as the form and function of them can vary across jurisdictions. To address this issue, ATA believes that FMCSA should work to create a uniform police accident report to be used by state and local law enforcement. Making PARs, and their associated coding mechanisms, uniform across all jurisdictions would also make determining accountability easier and more reliable.

V. \textit{Any improvement in the correlation of between past crash causation and future crash causation is important and should be pursued.}

The second objective of FMCSA’s Crash Weighting Analysis was to examine whether or not including crash accountability will improve the predictive power of the Crash Indicator. Because inaccurate scores result in lost business opportunities and wasted Federal enforcement dollars, any improvement in the correlation between previous crashes and future crashes is incredibly important. Here too, FMCSA analysis supports using accountability determinations in CSA.

The Crash Weighting Study attempted to analyze how the removal or weighting of crashes a carrier did not likely cause might improve the accuracy of CSA. To do this, FMCSA first attempted to investigate how weighting or removing all reportable crashes, regardless of severity, would improve the predictive power of the Crash Indicator BASIC. Unfortunately, the vast majority of crashes included in the PAR analysis were fatal accidents retrieved from the

\footnotesize{\textsuperscript{35} Ibid, pg 21
\textsuperscript{36} Ibid, pg 25}
FARS database. To account for this, FMCSA also included single-vehicle accidents obtained from the Motor Carrier Management Information System (MCMIS) as well as all other accidents in MCMIS for which critical reason determinations were not made. Sadly, crashes for which some determination of accountability was made, those from the PAR analysis and the single-vehicle crashes from MCMIS, only accounted for 20% of the data set.\textsuperscript{37} Not surprisingly, given the data set was diluted with tens of thousands of crashes for which no accountability determination was made, little improvement to the Crash Indicator BASIC was documented.

To account for this shortcoming, FMCSA then evaluated how including only fatal crashes might improve the predictive power of the Crash Indicator BASIC. In their words “the fatal crash models were calculated to determine what happens when there are larger percentages of crashes with crash weighting determinations.”\textsuperscript{38} In this model, 75% of the crashes used included a critical reason determination.\textsuperscript{39} As a result, this analysis “appears to improve the ability of SMS to predict future crashes by 1.8% to 5.0%.”\textsuperscript{40} FMCSA also asserted that “removing crashes not attributed to the motor carrier decreased the total number of carriers above the threshold by approximately 50 percent.”\textsuperscript{41}

Given the crash accountability figures cited in section III of these comments, it is safe to assume that if FMCSA were to make critical reason determinations for all accidents, the resulting improvement to the Crash Indicator BASIC would be notable. Considering the negative impact of inaccurate CSA scores on motor carries, any improvement to the Crash Indicator BASIC is necessary.

FMCSA also draws the flawed conclusion that removing not-at-fault crashes does not improve the predictive power of the crash indicator. The error here is that FMCSA draws conclusions based on future crash involvement frequency, not future crash causation, which is often a reflection of operating environment. This conclusion ignores the research the agency cited in the Crash Weighting Analysis showing that prior at-fault crashes were strongly associated with driver responsibility for a subsequent crash.\textsuperscript{42}

\section*{VI. The process proposed to make crash accountability determinations is unnecessarily long and burdensome.}

The final portion of the Crash Weighting Analysis explores a process to make an accountability determination for all accidents and its associated costs. The proposed process adds unnecessary burden to FMCSA and costs could be cut sharply by simplifying it.

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\item \textsuperscript{37} Ibid, pg 33
\item \textsuperscript{38} Ibid, pg C-1
\item \textsuperscript{39} Ibid, pg 36
\item \textsuperscript{40} Ibid, pg 37
\item \textsuperscript{41} Ibid
\item \textsuperscript{42} Chandraratna, S., Stamatiadis, N., and Stromberg, A., “Crash Involvement of Drivers with Multiple Crashes,” \textit{Accident Analysis & Prevention}, 38 (2006): 532-541.
\end{itemize}
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A significant portion of the costs associated with the proposed process are attributable to the public input phase. ATA believes this is unnecessary. Requiring that accountability determinations be posted in the Federal Register and made available for public comment is contrary to how all other data corrections are treated in CSA. Currently, if a motor carrier or driver requests a data correction in CSA, public notice and input is not required. Crash accountability determination should be considered a data correction in the same way. Eliminating this unnecessary step would save up to $6.8 million annually.

Eliminating this step from the process also mitigates the timeliness concern raised by FMCSA. This is because the longest portion of the proposed process would be the publication, public comment, and appeals procedure. By removing this hurdle, the time it takes to come to a satisfactory decision would not exceed the 24 month timeframe during which a crash remains on a carriers CSA profile.

VII. How FMCSA Could Impose a Solution

The fact that crashes carriers did not cause are used to reflect their safety performance is illogical to motor carriers, drivers, laypersons and Members of Congress. FMCSA increasingly finds itself having to awkwardly defend its reasoning for the continued use of these crashes in the CSA Safety Measurement System. It appears FMCSA understands the need to change, but is having difficulty crafting a solution. To aid the process, ATA proposes a couple of options.

As a first step, FMCSA could establish an agency-based DataQs process to review those accidents carriers and drivers contend they very obviously did not cause. As a condition of submission and consideration, FMCSA could require that the “plainly evident” crash meet certain criteria. For instance, eligible crashes could include those where the truck was struck by another vehicle that:

- Had been operated by a motorist found by the investigating officer or agency to be responsible for the crash;
- Had been operated by a motorist who was the sole party cited for a contributing violation (e.g., ran a red light);
- Had been operated by a motorist found to be driving under the influence of alcohol (as defined by state law);
- Crossed the centerline or median;
- Was driving the wrong way on an interstate or other divided roadway;
- Struck the truck in the rear;

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43 On March 26, 2015, FMCSA will publish guidance recognizing the importance of eliminating these crashes. The guidance, titled “Federal Motor Carrier Safety Regulations; Regulatory Guidance Concerning Crashes Involving Vehicles Striking Attenuator Trucks Deployed at Constructions Sites,” advises carriers operating the attenuator vehicle (construction vehicles equipped with a rear crash cushion) that are stuck from behind to use the DataQ system to have these crashes removed from the carriers CSA profile.
• Struck the truck while it was stopped at a traffic control device or legally stopped off the traveled portion of the roadway;44

The agency should also allow carriers to challenge incidents defined as “crashes” that don’t always involve other vehicles, such as:

• Crashes involving an individual committing suicide by deliberately crashing into or stepping in front of a truck; and
• Cases of trucks incapacitated by animals unexpectedly entering the roadway.

To challenge “plainly evident” crashes, carriers should be required to provide the respective PARs, a description of the incident and other appropriate supporting documentation. This approach would be shorter, simpler and less costly than the one FMCSA suggested. FMCSA would not need to obtain all police accident reports from States. Also, as with the current DataQs process, a notice and public comment period would not be necessary. Finally, the costs to accommodate such a process would be reasonable, as the volume of accidents would be much smaller than what FMCSA outlined in the Crash Weighting Study.

FMCSA must embrace the notion that imposing such a solution is viable. In Ontario Canada, for example, crashes are discounted if an “impropriety” was not present. Also, California identifies the “primary collision factor” for each major crash and posts these determinations on a public-facing website. Other states, including Oregon, employ similar processes. Clearly, if states can find a way to make such determinations, a Federal agency can do the same.

As an alternative, FMCSA could take an entirely different approach by keeping such crashes from being uploaded into the system at the outset. Specifically, knowing their limited value in identifying lapses in driver/carrier safety, the agency could instruct enforcement officials not to upload crashes meeting the criteria outlined above (struck by other motorist cited for the sole contributing violation). Doing so would limit the resources needed to later identify and remove such crashes from the system. Further, it would put greater focus on fleets that instigate such crashes (e.g., truck crossed median and struck other vehicle), a goal FMCSA and all stakeholders should share.45

ATA is aware of FMCSA’s belief that a crash a carrier did not cause should still be attributed to the carrier if the truck should not have been operating at the time of the crash. For instance, the agency believes that when a truck is rear ended by an inebriated passenger vehicle operator, the crash should remain on the carrier’s record if the truck had an out-of-

44 The aforementioned March 26, 2015 guidance may, in part, recognized that a parked truck should not be held accountable when being stuck in the rear.

45 In its comments to this notice, Oregon DOT indicated that “states are already conducting this type of review for all crashes to facilitate mandatory data sharing with the Federal Highway Administration and the National Transportation Safety Administration.” Indeed, Oregon DOT determines crash causation for each reportable CMV crash and requests FMCSA facilitate the upload of this data to accommodate crash accountability. Docket ID: FMCSA-2014-0177-0026
service vehicle defect at the time of the crash. For this reason, FMCSA contends, it cannot automatically discount crashes that carriers clearly did not cause.

FMCSA’s reasoning here is deeply flawed. First, such instances are rare and should not be the basis for derailing an entire process to better identify fleets that cause crashes. Second, such violations are not relevant to why the crash occurred. They should be measured in the relevant BASIC (e.g., Vehicle Maintenance), but should not impact other categories. The purpose of the Crash Indicator, quite simply, should be to identify fleets that cause crashes, not those that coincidentally have violations at the time of being struck by others.

Also, FMCSA has contended that it cannot adopt a process to discount “plainly evident” crashes since there are rare instances when a truck is responsible for them. However, this argument misses the point. The intent of CSA is to identify the fleets that are most likely to cause future crashes. Hence, the agency should consider the simple odds that “plainly evident” crashes were not caused by trucking companies to prioritize enforcement resources. Discounting these crashes based on anomalies is inconsistent with how FMCSA treats violations (e.g., weighted based on their relationship to future crash risk and predictive power) and is otherwise simply illogical.

VIII. Conclusions

- ATA believes a crash accountability process is necessary to ensure more equitable treatment of carriers in CSA and the effective use of Federal enforcement resources. The goal of this process should not be to definitely declare fault, but to agree that merely being involved in a crash is a poor indicator of a motor carrier’s propensity to cause a crash in the future. A determination of accountability is not a release from liability, but an acknowledgement that being some accidents are not a reflection of the driver or motor carrier’s safety culture. Therefore, FMCSA should immediately erect a process to remove crashes in which it is plainly evident that, in all likelihood, the carrier did not cause it.

- ATA is confident that PARs can be reliably and consistently used to make crash accountability determinations. Several FMCSA studies have confirmed their efficacy. PARs remain the most trusted and reliable source of information pertaining to a crash event.

- All data contained in crash reports, not just predefined data fields, should be used to make a crash accountability determination.

- Determining crash accountability has been proven feasible. At least two states and Ontario, Canada currently make crash accountability determinations. Canada incorporates “impropriety,” defined as the existence of a vehicle defect, or a
contributing driver action or driver condition, into their carrier rating system. California uses “primary collision factor” to determine fault when gathering traffic safety statistics.

- ATA believes any improvement in the correlation of any measurement category to crash causation, including but not limited to the Crash Indicator, is a laudable and necessary goal. As such, FMCSA should consider any improvement to the underlying data and resultant improvement to a BASIC’s predictive power necessary.

- As outlined above, there are several ways to create a process to account for crash causation that is both cost-effective and timely. FMCSA should initiate such a process as soon as practical.

- The creation of a uniform Police Accident Report would make the accountability determination process easier and more reliable. It would also improve data quality in general, which would advance our understanding of crash causation and inform our decisions on how to make our highways safer.

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February 26, 2010

The Honorable Anne Ferro
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Ave., S.E.
Washington, D.C. 20590

Dear Administrator Ferro:

Thank you for the opportunity to meet on Tuesday of this week to discuss the CSA 2010 program. As we stated at the outset of the meeting, ATA fully supports the safety and efficiency objectives of CSA 2010, and believes the program has significant potential to further improve the trucking industry’s impressive safety record. However, as you also know from the meeting, ATA, its members and State affiliates have identified a number of serious problems with parts of the program methodology. The purpose of this letter is to reiterate these problems and, more importantly, to communicate in writing our recommended solutions to improve CSA 2010. If these problems are not resolved, ATA is concerned that CSA 2010 will ultimately target the wrong carriers and drivers for interventions, which will harm the program’s credibility. We are optimistic that FMCSA will work with ATA prior to full CSA 2010 implementation to institute our recommended solutions, or perhaps other similar, solutions that specifically address the identified problems.

The biggest problem and ATA’s most pressing concern is the lack of a crash accountability determination prior to the data being entered and used in the program. In measuring each carrier’s safety performance, CSA 2010 considers all DOT-defined crashes, including those for which the motor carrier and/or driver could not reasonably be held accountable. This is a huge problem since the majority of serious truck-involved crashes are multi-vehicle crashes involving cars, many of which are caused by the driver of the other vehicle. Accordingly, a carrier involved in one or more crashes for which it was not responsible is determined by FMCSA to be just as unsafe as a like-sized carrier who was involved in the same number of crashes — but caused them. FMCSA staff has repeatedly stated the program will not consider crash accountability in determining a carrier’s (and a driver’s) safety score for the purposes of selecting carriers for intervention. This approach is not only inappropriate; it does nothing to help the Agency target unsafe carrier and driver behavior resulting in crashes.

ATA’s Recommended Solution - There are a number of ways in which FMCSA could resolve this concern. ATA believes FMCSA’s use of a single contractor with a small, well-trained ‘crash evaluation team,’ may be the most efficient way to resolve it. Such a ‘crash evaluation team’ would need to follow standardized, FMCSA-developed crash accountability guidelines which could easily be developed in the near-term, and then refined over time as experience dictates. ATA believes a crash evaluation team might be as small 13-15 well-trained people, with 1-2 experienced supervisors. This type of contract could well be less than seven figures (i.e., less than $1 million per year) and could be implemented prior to full CSA 2010 implementation.

ATA’s second significant concern is CSA 2010’s use of each carrier’s truck count (referred to as “power units” by FMCSA) as the measure of risk exposure rather than the total number of miles these trucks travel each year. Motor carriers who employ greater asset utilization will have more actual exposure to crashes and other safety-related events, but will be compared to carriers who have less exposure — though the same or similar number of trucks. This problem is especially acute for motor carriers that move expedited freight with sleeper teams (i.e., two drivers per truck) since their vehicles travel more miles and, as a result, have more exposure to adverse safety events. Similar to the crash accountability problem, using a carrier’s truck count detracts from the Agency’s ability to target carriers and drivers most in need of government intervention and, as was described in our meeting, results in safety scores for some carriers which can best be described as ‘false positives.’ These false positives result in the Agency inefficiently (and ineffectively) assigning its limited enforcement resources. And, because safety performance is relative, truly unsafe carriers will likely be missed.

Good stuff.

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ATA’s Recommended Solution – FMCSA’s MCS-150 form—required to be updated and submitted by all carriers to FMCSA every 2 years—is the filing used to collect both mileage and truck count data from the industry. Agency staff has stated it has more truck count data than mileage data in its system because the online MCS-150 form was programmed to make the truck count field a required one, and the mileage field an optional field. FMCSA should immediately re-program its online MCS-150 form to make the mileage field mandatory and carriers should not be capable of electronically submitting the form to FMCSA unless this field is completed. Also, if FMCSA does not have mileage data for some carriers prior to CSA 2010 implementation (i.e., those carriers who are not required to submit their next MCS-150 form for another 1-2 years), CSA 2010 should default to an average annual mileage per truck figure, and use that carrier’s truck count on file as the multiplier. The average annual mileage per truck can easily be determined based on the latest Federal Highway Administration data on truck miles traveled (approx. 227 billion in 2008) and the number of registered number of large trucks (slightly more than 9 million in 2008). Using these figures, the average annual mileage per truck is 25,254. This default figure would likely be low for many carriers and, therefore, use of it in CSA 2010 would serve as a great incentive for these carriers to file an updated MCS-150 form well before its next required submission date. In addition, FMCSA should consider requiring carriers to submit an updated MCS-150 form annually, as must be done today in PRISM States.

ATA’s third significant concern is that CSA 2010 currently counts all alleged moving violations listed on roadside inspection reports, regardless of whether or not a citation was issued to the driver. In other words, warning notices and even simple “warnings” listed on inspection reports are counted and scored in CSA 2010 exactly the same as an actual moving violation citation. This presents several problems. First, in order for a law enforcement officer to issue a citation, he/she has to meet certain thresholds of observation. These thresholds are not arbitrary and are in force so motorists are not falsely accused. These same thresholds do not apply to warnings in which the officer presumes there is no penalty. Second, since these are merely warnings, there is no due process procedure for drivers and carriers to challenge them. Third, in some states law enforcement officers must have probable cause in order to stop a truck and conduct a vehicle inspection (and, therefore, get reimbursed under MCSAP). In these states, it is common practice for enforcement officials to stop a truck for a trifling speeding offense (e.g., 3 mph over the limit) and list ‘warning for speeding’ on the inspection report as justification for the inspection. Carriers operating in these probable cause states are disproportionately impacted and will likely have worse CSA 2010 “unsafe driving” scores than carriers who operate elsewhere. Lastly, and perhaps most importantly from a safety perspective, there is research demonstrating a clear link between actual citations (and citations resulting in convictions) and future truck crashes. There is no such research linking warnings and future truck crashes.

ATA’s Recommendation – Warnings and warning tickets should not be assigned a point value and should not be used in CSA 2010, at least initially. This information should be maintained separately by FMCSA, and carefully evaluated to determine if it has some predictive value regarding potential, future unsafe behavior by drivers and carriers. Citations and, if possible, conviction data should be used in CSA 2010 because research demonstrates it serves as a good measure/predictor of driver and carrier safety.

While ATA has a number of other data, data accessibility, and methodology concerns, we believe it’s appropriate at this point to work with FMCSA prior to CSA 2010 implementation to resolve the three significant problems outlined above.

ATA would greatly appreciate a response concerning FMCSA’s willingness to work with ATA to address these three problems prior to full CSA 2010 implementation. We respectfully request, if possible, a response before the truck safety oversight hearing in late March since this issue will likely be a focus of the hearing.

Sincerely,

David J. Osielcki
ATA Sr. Vice President for Policy & Regulatory Affairs
Mr. David J. Ociecki  
Senior Vice President for Policy  
and Regulatory Affairs  
American Trucking Associations, Inc.  
950 N. Glebe Road, Suite 210  
Arlington, VA 22203-4181

Dear Mr. Ociecki:

Thank you for your February 26 letter following our meeting to discuss the Federal Motor Carrier Safety Administration (FMCSA) Comprehensive Safety Analysis (CSA) 2010 Program. Your letter reiterates concerns that you, your members, and State affiliates have expressed with the CSA 2010 Carrier Safety Measurement System (CSMS) methodology and offers recommended approaches to address those concerns. The FMCSA appreciates that the American Trucking Associations, Inc., (ATA) continues to fully support the safety and efficiency objectives of the CSA 2010 program and that ATA has offered recommended solutions to address its concerns.

The first concern you identified is that recordable crash data reported to FMCSA by our State partners, and linked to motor carrier records, do not identify whether the motor carrier was accountable for the crash. More specifically, you expressed concern that the CSA 2010 CSMS methodology uses the recordable crash data to identify motor carriers for intervention without an accountability determination. As a recommended solution to this concern, you suggested that FMCSA employ a contract staff that would review State-reported crash reports to make accountability determinations before the crashes are considered in the CSA 2010 CSMS methodology.

The FMCSA recognizes this concern and is considering several short-term and longer term approaches to address it. As FMCSA works to address the issue, the Agency will exclude the crash assessment of the CSA 2010 CSMS from any public Web sites that may be viewed by shippers or insurers. Furthermore, FMCSA will continue to consider accountability of crashes before issuing any formal and final adverse safety fitness ratings that follow compliance reviews. Longer term, FMCSA is evaluating the feasibility of an approach similar to your recommendation, whereby staff would assess State-reported crashes for accountability before they are considered by the CSA 2010 CSMS methodology. In fact, FMCSA has already begun some preliminary analysis of this approach.

The initial results of our feasibility study are promising and indicate that the use of police accident reports (PARs) is a viable option for determining large truck and bus crash accountability. Work to date has been done in conjunction with the National Highway Traffic Safety Administration and the Volpe National Transportation Systems Center. We are now
gathering information on various options for implementing such an approach, including the costs and challenges. For example, one challenge involves gathering the PARs from all of the different State agencies involved, although we are encouraged by the increasing use of electronic storage of such records by the States.

An alternative approach, for example, could be to require motor carriers to submit PARs to FMCSA for those accidents in which the carriers seek an accountability determination. Accidents for which a motor carrier would not contest accountability by submitting a PAR would be deemed accountable to the carrier under this approach.

The FMCSA data analysis has historically shown that motor carriers involved in a disproportionately high number of crashes are more likely than other motor carriers to be involved in future crashes. Simply, FMCSA analysis indicates that past crashes are a good predictor of future crashes, irrespective of accountability. Therefore, until a viable long-term solution can be instituted to determine accountability of State-reported crashes, FMCSA will continue to use all crashes in the CSA 2010 CSMS to identify motor carriers for intervention. The FMCSA believes this approach, coupled with not displaying CSMS crash assessments on public Web sites at this time, and considering crash accountability before issuing adverse safety fitness ratings, is the most prudent position at this time. It balances the valid concerns of the ATA with FMCSA’s mission to protect the motoring public using the best performance data currently available.

The second concern you identified is that the CSA 2010 CSMS currently uses a motor carrier’s number of power units rather than vehicle miles travelled (VMT) as a measure of exposure. Further, the letter pointed out your position that motor carriers that employ greater asset utilization are at a disadvantage because of their increased exposure to adverse safety events. The letter essentially stated that FMCSA may be missing higher risk carriers by using power units as the measure of exposure in the CSA 2010 CSMS. Moreover, you offered recommended solutions such as making the mileage field of the MCS-150 form a mandatory field for updates and suggested that FMCSA consider using an “average annual miles per truck” estimate for those motor carriers in which FMCSA currently does not have up-to-date VMT data.

The areas of the CSA 2010 CSMS that currently use power units as the measure of exposure are the Crash and Unsafe Driving Behavior Analysis Safety Improvement Categories (BASICS). FMCSA acknowledges that the use of power units as the sole measure of exposure can potentially create a disadvantage for segments of the motor carrier industry that employ greater asset utilization, for example, through cross-country team operations. FMCSA also believes, however, that the use of VMT as the sole measure of exposure can create a similar disadvantage for segments of the motor carrier industry that operate limited mileage due to the nature of their operations. Regardless, FMCSA agrees that VMT is another valuable and widely recognized measure of exposure that could potentially improve the effectiveness of the CSMS. As suggested by ATA, FMCSA will make the vehicle mileage field of the MCS-150 a mandatory field for updates.

As part of the recently released CSA 2010 Data Review Web site, FMCSA is encouraging motor carriers to provide their annualized VMT data. The FMCSA is optimistic that ATA will support
these efforts by strongly encouraging its members and others to regularly update their VMT data and through other collaborative ideas that will ensure that VMT is regularly and accurately reported by the motor carrier industry. These efforts will support ongoing FMCSA analysis aimed at implementing the most effective and equitable measure of exposure possible prior to national deployment of the Safety Measurement System in November 2010.

The third significant concern conveyed in your letter is that the CSA 2010 CSMS uses all recorded moving violations from roadside inspections without considering whether a citation or “ticket” was issued. Your letter characterized these recorded moving violations from roadside inspections as “warnings.” You stated ATA’s belief that it is common practice by enforcement officials in States that must have probable cause to conduct an inspection to stop a truck for what you referred to as a “trifling” speeding offense and then record a speeding violation with no citation or “ticket” as justification for the inspection. You also objected to the lack of a due process procedure for drivers to challenge warnings. Your letter further stated that ATA believes there is no research linking warnings for moving violations, as they are currently recorded, and future truck crashes. The ATA essentially recommended that moving violations without issued citations be removed from consideration in the CSA 2010 CSMS.

The FMCSA has conducted effectiveness testing on the Unsafe Driving BASIC (Behavior Analysis Safety Improvement Category) of the CSA 2010 CSMS as it is currently calculated using all recorded moving violations without regard to whether a citation was issued. Put in simple terms, the analysis demonstrates there is a strong relationship between high scores in the Unsafe Driving BASIC, as derived by including all recorded moving violations, and future crashes. From a legal standpoint, the Agency’s use of warnings as one factor in selection of an intervention does not constitute deprivation of a property interest for which a due process procedure is required. The FMCSA has, however, as part of its attempt at further effectiveness analysis, reviewed the existing inspection data to determine if it is feasible to exclude recorded moving violations from consideration by the CSA 2010 CSMS when a citation is not issued. At this time, it is not feasible. A free-form text field exists whereby an enforcement officer can enter whether a citation was issued. However, the completeness and accuracy of this field is not sufficient to employ in the CSMS at this time.

To address this issue, FMCSA is considering the addition of a simple Yes/No field to indicate whether a citation was issued in conjunction with the recorded speeding violation. Furthermore, based upon concerns expressed by ATA and motor carriers participating in our CSA 2010 Operational Model Test, FMCSA is implementing modifications to the roadside inspection software used by its field staff and our State partners that will require roadside officers to designate the severity of speeding offenses recorded on roadside inspections. For example, the enforcement officer will have to designate whether the recorded speeding violation was 1-5 MPH over the speed limit, 6-10 MPH over, etc. Moving forward, this will allow FMCSA to assign less weight to the less severe speeding violations in the CSA 2010 CSMS.
Thank you again for bringing these concerns to my attention. The FMCSA will continue to improve the CSA 2010 CSMS as we obtain comments and learn from the ongoing Operational Model Test, and as we move toward national deployment later this year.

Sincerely,

Anne S. Ferro
August 16, 2010

The Honorable Anne Ferro
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Ave. S.E.
Washington, DC 20590

Dear Administrator:

The purpose of this letter is to continue communicating on CSA 2010 issues important to both FMCSA and ATA. We appreciated your comprehensive April 2010 response to ATA’s February letter in which we made specific recommendations we believe will improve the safety measurement system (SMS) and, therefore, the carrier-targeting function of the program.

We are currently reviewing the changes FMCSA recently made to the methodology and are beginning to receive feedback from members in pilot states on the effect of those changes. Feedback thus far has been generally positive, and the industry genuinely appreciates FMCSA’s willingness to listen to concerns and suggestions, and make program changes when warranted.

While it has not yet occurred, ATA is pleased that FMCSA has committed to institute a process allowing the Agency to make crash accountability determinations prior to crashes being entered into the SMS. We are writing to make two specific requests related to this decision.

First, ATA respectfully requests FMCSA’s specific timeline to establish and implement this process, and any deliverables (e.g. issuing an RFP, etc.) associated with the timeline. Second, until this new process is in place, ATA requests that FMCSA remove the following types of crashes from the SMS, subsequent to a properly filed DATAQs request by either an involved driver or carrier:

1. documented suicides (where a pedestrian or motorist deliberately collides with a truck);
2. crashes involving a vehicle operating in the wrong direction on an interstate or similar, limited access highway;
3. crashes involving a vehicle rear-ending a commercial motor vehicle while legally stopped at a traffic control device; and,
4. crashes involving a vehicle striking a commercial motor vehicle while legally parked off the traveled portion of a road or highway.

Good stuff.

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703-638-1996 * FAX: 703-638-1748 * dosleckl@trucking.org
ATA Letter to FMCSA on CSA 2010
August 16, 2010

It’s reasonable and appropriate, in ATA’s view, to suggest that the commercial driver and carrier involved in each of these types of crashes should be presumed to have no accountability in the crash and, therefore, removal of such crashes should be a matter of Agency policy. Removing these types of crashes will provide a greater measure of fairness in the Crash Indicator BASIC until FMCSA institutes its more comprehensive crash accountability determination process. More importantly, however, removing these types of crashes will, at the outset of CSA 2010 implementation, improve FMCSA’s ability to target its limited enforcement resources at carrier’s needing the attention and assistance with root cause analysis.

In order to highlight the realistic nature of this request, I am attaching a recent letter from an ATA member to FMCSA’s Montana division office on this same subject. This letter provides two specific examples of crashes involving “wrong way” drivers, and seeks a near-term process similar to what ATA is requesting in this letter.

Thank you again for your willingness to listen and act upon the industry’s CSA 2010 program improvement recommendations. Thanks in advance for considering this request.

Sincerely,

[Signature]

Dave Osiecki

Enclosure  – July 30, 2010 Watkins Shepard Letter to FMCSA MT Division Office
July 30, 2010

Bruce D. Holmes
DOT Division Administrator
Montana Division
2880 Skyway Drive
Helena, MT 59602

Dear Mr. Holmes:

Watkins and Shepard Trucking Inc. has participated in Montana's Pilot CSA 2010 program for the past 15 months. We have found the program helpful to measure our company's safety fitness with the one exception of the flawed methodology of the Crash Indicator Basic. While we believe this is an important category and can be a strong indicator of a motor carrier's safety fitness, we also believe the crash indicator in its current form is not an accurate method of measurement of a motor carrier's safety fitness. The crash indicator category has flawed methodology because it currently does not distinguish between preventable and non preventable accidents.

The inclusion of all DOT recordable accidents in the Crash Indicator Basic does not accurately measure the motor carrier's safety fitness because DOT recordables include many accidents where the motor carrier could not prevent the accident. Over the past twenty-four months, Watkins and Shepard had sixty-four accidents. Thirty-four of those accidents were preventable, and thirty of those accidents were non preventable. Forty-Eight percent of DOT recordable accidents were non preventable, almost half of all DOT recordable accidents. Including all DOT recordables is not an accurate method of measurement.

A few examples of the non preventable accidents include the following:

- 11/11/08 in NH we were struck by a drunk driver going the wrong way on the roadway.
- 12/16/08 in ID we were struck by a drunk driver entering the freeway via the exit ramp going the wrong way on the interstate.
- 11/22/09 in MT we were struck head on by a vehicle that lost control on the interstate.
• 12/13/09 in WY we were rear ended by an inattentive driver.
• 03/28/10 in NY we were struck in the side by an out of control drunk driver.
• 04/30/10 in CA we were rear ended by a driver that fell asleep on the interstate.
• 05/22/10 in WA a drunk driver crossed the center line and struck our trailer.

None of these scenarios indicate our safety fitness yet all of them are included in the Crash Indicator Basic. We believe distinguishing preventable and non preventable accidents is necessary for the Crash Indicator Basic to be an accurate method as it was intended under CSA 2010.

We request the Montana Department of Transportation to take steps to work with the Federal Motor Carrier Safety Administration to correct the Crash Indicator Basic by allowing for the distinction between preventable and non preventable accidents. We believe this can be accomplished in the same way motor carriers use "Data Q" in appeals to the Federal Motor Carrier Safety Administration to currently distinguish between an accident that is DOT recordable and one that is not. The same or a similar appeals process could efficiently address the distinction between preventable and non preventable accidents in the Crash Indicator Basic of CSA 2010 and subsequently cure the current flawed methodology.

We appreciate your attention to this matter and for your consideration of our request. We look forward to working with the Montana Department of Transportation to resolve this inequitable method of measurement of the Crash Indicator Basic. Please call me if you have any questions.

Sincerely,

Ray Kuntz
CEO, Watkins and Shepard Trucking, Inc.

cc: Dave Osiecki, VP of Safety, Security, and Operations, ATA
August 23, 2010

Refer to: MC-AA

Mr. Robert S. Abbott
Vice President, Safety Policy
American Trucking Associations
950 N. Glebe Road, Suite 210
Arlington, VA 22203

Dear Mr. Abbott:

This is in response to your letter of May 17 to Mr. Gary Woodford of my staff in which you request additional information on planned improvements to the Federal Motor Carrier Safety Administration’s (FMCSA) major safety initiative, Comprehensive Safety Analysis 2010 (CSA 2010).

Your letter includes eight questions, the first four of which stem from my letter to the American Trucking Associations (ATA), dated April 16 (copy enclosed), in which I addressed a number of ATA’s concerns and suggestions for improving the current CSA 2010 Carrier Safety Measurement System. The remaining four questions stem from other FMCSA documents and presentations.

I hope this information is helpful.

Sincerely,

Anne S. Ferro

Enclosure(s)
Enclosure

1. With respect to the feasibility study on crash accountability, who is doing the study and when do you anticipate it will be completed?

**FMCSA Response:** Work to date has been done in conjunction with the National Highway Traffic Safety Administration and the Volpe National Transportation Systems Center. It has focused on determining the feasibility of using police accident reports for determining large truck and bus crash accountability. A report describing this work is currently under review.

However, this work is part of FMCSA’s overall effort at gathering information to determine the best way to implement such an approach competent enough to allow accurate conclusions from a number of sources and potential solutions in order. To that end, the Agency plans to request public comments in the upcoming CSA 2010 safety fitness determination Notice of Proposed Rulemaking (NPRM). That NPRM is currently scheduled to be published in the first quarter of 2011. FMCSA is hopeful that this information will enable the Agency to implement the best possible approach for determining crash accountability, both from a cost and operational perspective, and, as soon as possible, within the constraints of any resource limitations.

2. The Administrator’s letter [of April 16, 2010], says that the Agency already has preliminary findings from the feasibility study. Could you please provide us with a copy?

**FMCSA Response:** I am unable to provide a copy at this time since these preliminary findings are under review. Once the review is completed, the findings will be made public.

3. The letter states that all crashes (irrespective of accountability) are a good predictor of future crashes. Which organization (e.g., Volpe, UMTRI) provided the underlying analysis for this statement? Please provide a copy of this analysis as well.

**FMCSA Response:** The underlying analysis for the statement referred to in the Administrator’s letter of April 16, 2010, was conducted by the Volpe National Transportation Systems Center. I have attached a copy of this study which can also be found on the FMCSA’s Analysis and Information online website at:

http://ai.fmcsa.dot.gov/CARRIERResearchResults/PDFs/Final_SS_Effectiveness_03_18_04.pdf

4. We appreciate that the agency is willing to look at measures other than simply power unit counts to develop reliable exposure data. However, we understand that the agency may not be committed to using purely mileage data as a measure of exposure. If some sort of hybrid approach is being developed, who is developing it? Will this method be tested to verify its accuracy prior to implementation? Will stakeholders have an opportunity to review this method before November 30?
**FMCSA Response:** As indicated in Administrator Ferro’s letter of April 16, 2010, FMCSA acknowledges that the use of power units as the sole measure of exposure for the Unsafe Driving and Crash, Behavior Analysis Safety Improvement Categories can potentially create a disadvantage for segments of the motor carrier industry that have greater asset utilization, for example, through cross-country team operations. Likewise, the use of vehicle miles travelled (VMT) as the sole measure of exposure can create a similar disadvantage for segments of the motor carrier industry that operate limited mileage due to the nature of their operations.

Therefore, FMCSA is looking at using what may be the most balanced and accurate measure that is simple to calculate and apply like a blended approach that employs both power units and VMT. This work was performed by the Volpe National Transportation Systems Center. The methodology will be fully tested to verify its accuracy prior to CSA 2010 implementation. Stakeholders will have the opportunity to review the methodology details through the CSA 2010 website after August 16, 2010, when motor carriers can go to the website and view their safety assessment based on the announced changes to the Carrier Safety Measurement System.

5. We understand that the violation severity weights were assigned, in part, based on the agency’s Violation Severity Assessment Study. ATA requests a copy of this study to better understand how these weights were assigned.

**FMCSA Response:** I understand that Gary Woodford of my staff recently provided a copy of this study to you via email.

6. We also understand that, in some instances, assigned weights were adjusted based on input from a panel of law enforcement personnel. ATA would like to have similar input. To that end, ATA would be willing to host a panel of industry experts and would welcome FMCSA’s participation. Please let us know how FMCSA would like to proceed.

**FMCSA Response:** FMCSA would welcome public input on the Carrier Safety Measurement System violation severity weights. The Agency recommends that ATA proceed with its panel of industry experts, and provide FMCSA with its results and recommendations. FMCSA has recently made changes to some violation severity weights based on input from subject matter experts and stakeholders. The public will also have an opportunity to provide comments on the violation severity weights in connection with the upcoming notice of proposed rulemaking (NPRM) that will address safety fitness determination under CSA 2010. That NPRM is expected to be published in the first quarter of 2011.

7. We understand that the University of Michigan Transportation Safety Institute (UMTRI) is conducting an evaluation of CSA 2010. When will UMTRI’s final report be delivered to FMCSA? We also understand that preliminary reports may be available. If so, how do we obtain them?
**FMCSA Response:** The University of Michigan Transportation Research Institute (UMTRI) is conducting an evaluation of the CSA 2010 operational model (Op-Model) test results. Since the Op-Model test just recently concluded in June 2010, it is too premature to release publicly any results from the UMTRI study. As well, a peer reviewing of UMTRI’s work is a customary step the Agency takes before making public its major research projects. The UMTRI final report describing its findings is expected to be completed by December 2010.

8. We understand that FMCSA is developing new DataQs guidelines for the States in hopes of facilitating data quality improvements. Do you have an estimate of when these guidelines will be published?

**FMCSA Response:** FMCSA anticipates publishing the DataQs guidelines to which you refer by the last quarter of 2010.

Attachment
FMCSA Working on Plan to Correct CSA Scores for No-Fault Crashes
By Oliver B. Patton, Washington Editor

From where Daveleva Huellinghoff sits, it makes no sense. She runs a small fleet out of Union, Mo., with a good safety record, yet her CSA crash indicator score jumped from 0% to 44% as a consequence of two accidents that were not the company's fault.

The Federal Motor Carrier Safety Administration intends to build a system that screens out no-fault crashes before they are entered into CSA scores, said senior transportation specialist Bryan Price. But it's not easily done, he said, so the agency is working on a near-term remedy.

In one of the accidents, a motorist ran under a Huellinghoff trailer and is now facing charges. In the other, the Huellinghoff truck was stopped at a red light when the other vehicle drove into its rear.

"We challenged the accidents and received notice from the Missouri Highway Patrol that there was nothing we could do," Huellinghoff said in a letter to HDT.

The only way to get the accidents out of the system is to go through a safety audit, she was told.
"Can they not read the accident reports and see that it was the other vehicles' fault? This would be too simple!"

Working on a remedy

Ralph Craft of FMCSA's Analysis Division described a system in which carriers will be able to use the CSA data correction system, DataQs, to submit a Police Accident Report and get an assessment of accountability on their crashes.

The agency aims to start a program in January in which the accident reports are screened and given different weightings in the CSA system based on accountability. All crashes would still be in the system, but the agency is figuring out how to give non-preventable crashes more weight than preventable crashes, he said.

"We're trying to use every piece of data that we have to figure in a carrier's rating," Craft said. "This will give us another piece, which the industry has requested over and over again and which we feel is a legitimate request to improve the rating system."

Here's how the system will work. All crashes will continue to be entered into the CSA database. If a carrier believes that it was not at fault in a crash, it could mail a copy of the police accident report in to DataQs. The report would not go to the state, as other DataQs challenges do, Craft said. Instead it would go to a team of specialists who would analyze it for accountability.

The specialists are the researchers, contractors to the agency, who prepared the agency's definitive Large Truck Crash Causation Study, and a related study on automobiles prepared for the National Highway Traffic Safety Administration. They have been doing this kind of analysis for the past decade, Craft said.

FMCSA tested this approach by having researchers who had coded data for the automobile study but not the truck study assess accountability based on just the police accident reports that were used in the truck study. The agency found that these researchers matched the accountability in the truck study 92% of the time, Craft said.

"That has given us the confidence that if we code crashes just on the basis of the police accident report, we can get it right almost all the time," he said.

He also said that in order to keep the analysis even-handed, the researchers will look at a post-crash inspection if there is one, and the Motor Carrier Management Information System crash report from the state, as well as the
Police Accident Report. The agency will not permit trucking companies to submit data from insurance companies or witnesses. That would overwhelm the system, he said.

It will be possible for a carrier that is not at fault to still be found accountable, he said. For example, if a motorist drives into the back of a trailer stopped at an intersection, the truck driver probably is not at fault. But the carrier would be accountable if, say, the driver is out of service.

There will be an appeals process for carriers that want to challenge a determination of accountability, Craft said. The appeals will be handled by the FMCSA's legal staff.

The agency views this as a short-term solution, said Price. Longer term, it wants to get the necessary reports and analyze them for accountability before the data ever goes into CSA.

**Accountability**

Price said there are between 120,000 and 140,000 reportable crashes each year. The agency already gets raw accident reports from states today, but these reports do not have enough data to make an accountability determination.

What's missing are the actual Police Accident Reports, which contain the handwritten personal observations of the officer on the scene, and his diagram of the accident. This information is critical to making an accountability judgment, said Ralph Craft.

Price said the agency needs to set up a system in which the Police Accident Reports are forwarded to the screeners as a matter of course. "The real key to this is developing a mechanism in which, in addition to those raw accident reports, we also get the detailed Police Accident Report that we need. That's the hard part."

It's hard because it requires another action by the state and municipal enforcement agencies that are preparing the reports. "They will either have to send it to us or have a mechanism for us to get our hands on it easily," Price said.

So in effect, the short-term solution of having the carriers send in the reports creates both a collection mechanism and an initial screening mechanism. Price said the agency is going to encourage carriers to send in reports only when they believe they are not at fault.

**Not as easy as it sounds**

The enforcement community has concerns about this process, which is more complicated than it looks, according to Steve Keppler, executive director of the Commercial Vehicle Safety Alliance.

"Crash investigations are many times very subjective," he said. "The officer on the scene is seeing things and talking to people, and once that information leaves the scene you have someone else reviewing it who was not there, based on what the investigating officer said."

It creates problems if the reviewer makes a determination on accountability that is different than the officer's determination, Keppler said. On top of that, insurance companies do their own investigations, which might lead to conclusions that are different than either the officer's or the reviewers. "What do you do with that?"
Trucking Officials Blast FMCSA Over Crash-Fault Review Delay

By Eric Miller, Staff Reporter

This story appears in the March 19 print edition of Transport Topics.

The Federal Motor Carrier Safety Administration’s last-minute decision to delay its highly anticipated review of how it assigns fault in truck-related crashes has seriously damaged the agency’s credibility with the trucking industry, according to some industry officials.

In a hastily called, closed-door meeting with truck and bus industry stakeholders March 8, FMCSA Administrator Anne Ferro said the agency would delay its review of the Compliance, Safety, Accountability program’s so-called crash accountability process (3-12, p. 29).

Ferro refused to publicly comment on her decision.

Behind closed doors, however, Ferro told the meeting attendees that she personally decided to delay the process after some public-interest groups questioned the “uniformity and consistency” of police accident reports and said they felt the agency should include a way to “accept public input into the process,” according to those who attended the meeting. The crash review had been expected to begin by now.

FMCSA originally had said it would soon set up a process to review accountability determinations, and Ferro’s announcement both surprised and discouraged truckers who were eagerly expecting to hear details this month, said John Conley, president of National Tank Truck Carriers.

“I truly believe that the credibility of the agency will, and should, take a hit,” Conley told Transport Topics.

“I was surprised and very disappointed,” he said.

Joe Rajkovacz, head of regulatory affairs for the Owner-Operator Independent Drivers Association, called the agency’s delay an “outrageous kowtowing to safety advocacy groups.”

An FMCSA spokeswoman said the agency determined there were several “critical areas that required further study” before it could proceed with its review.

NTTC’s Conley said, “I’ve defended the CSA program when my members have alleged that FMCSA is out to get us. I’ve told them, ‘Let’s look at what they are doing; they’re listening.’”

The FMCSA spokeswoman said areas that needed further study included “establishing a uniform process for making crash determinations, reviewing police accident reports and ensuring public input in the development process.”

“As a result, FMCSA will continue to thoroughly examine these issues as it sharpens CSA as a safety-enforcement tool,” the spokeswoman said. The agency has not given a new timeline for completing the review.

Carriers have raised concerns that crashes are posted on their crash indicator scores even if they were not at fault and that the lack of an accountability determination has the potential to single out a carrier for unwarranted enforcement attention.

The premise of the crash accountability program was to identify crashes for which a carrier has greater responsibility and consider weighing them differently from other crashes in the CSA safety measurement system, according to a memo written by John Drake, FMCSA’s director of government affairs, and e-mailed to stakeholders on March 9.

The agency’s ultimate goal for the crash accountability process is to code every interstate motor carrier crash as either “accountable” or “not accountable” to the motor carrier and the driver, largely based on police accident reports, according
to a recent CSA newsletter.

CSA data currently allow a public view of a carrier’s crashes but do not include details of the crash or whether the carrier or driver was at fault. However, several executives said carriers still must explain those crashes listed on their CSA crash profiles to shippers and brokers seeking to use motor carriers they know have good safety records.

“Yeah, the [CSA] crash BASIC [Behavior Analysis and Safety Improvement Categories] is invisible to public viewing, but unfortunately, it’s not invisible to the people you’re doing business with,” said OOIDA’s Rajkovacz.

“One trucker gets involved in a fatal accident. Do you think that any shipper or broker wants to contract with them and wants to wade through what will probably be 20 reams of paper trying to show this guy wasn’t at fault?”

Rajkovacz agreed that FMCSA has “taken a credibility hit” because of the announced delay.

“The idea that we can’t use police accident reports to make some sort of determination is absurd,” Rajkovacz said.

David Osiecki, senior vice president of policy and regulatory affairs for American Trucking Associations, said truckers are eager to see that their safety scores accurately reflect those crashes that they could not have prevented or for which they were not at fault.

Osiecki said the agency already has made a policy decision to create an accountability process and could move ahead immediately with fault determinations for crashes where truckers obviously are not to blame.

“The simple part of this is that there are clearly crashes that are black and white,” Osiecki said. “There are wrong-way drivers on interstate highways that run into the front end of trucks. There are trucks that are legally parked and get hit in the rear or some other part of the truck.”

“The administrator said serious questions had been raised about the reliability of police accident reports,” Osiecki added. “That sounds a lot to me like they’re questioning the professionalism and the competence of law enforcement officers that complete these reports.”

Stephen Keppler, executive director of the Commercial Vehicle Safety Alliance, said that while his organization did not seek a delay, he can understand why FMCSA slowed down the process.

“From our perspective, I think they’re better served to do their diligence and work with people that have some thoughts to share,” Keppler said.

“The police accident reports are reliable; they’re accurate,” Keppler added. “But that’s just one part of a crash investigation.”

Keppler said it’s a law enforcement officer’s responsibility to investigate and report the facts of a crash and identify what could have contributed to that crash.

A crash predictor model developed by the American Transportation Research Institute holds that a driver who is involved in a crash, regardless of fault, has a higher chance of being involved in a subsequent crash, said Rebecca Brewster, president of ATRI.

“Certainly it is understood that the predictability of being involved in a past crash is much higher for those for whom that crash was something they are at fault for,” Brewster told TT.

But she added, “We really do need to take a look at the accountability because it is a flaw in the system to say that a carrier or driver that had no responsibility in a crash should have their score impacted by that crash. It simply is not a fair and equitable system.”
MCSAC Task 12-03: Evaluation of and Recommendations on the CSA Program
CSA Subcommittee Recommendations to the MCSAC

I. Crash Accountability/Fault/Causation
   A. Currently, the Crash Indicator Behavior Analysis & Safety Improvement Category (BASIC) includes data on all reportable crashes, regardless of fault or preventability.
   B. Not all crashes are reported (only those that involve the towing of a vehicle). There is an underreporting factor.
   C. Many members expressed concern that crash preventability is an important part of data quality, stating that being involved in crashes is different than causing them. Starting from all reported crashes is inappropriate because many of them may not be related to carrier safety.
   D. Other members argued that because Crash Indicator is the BASIC that correlates best to risk of future crashes, there is value in looking at all crashes, regardless of fault.
   E. One member suggested the following solution: Continue to use all reportable crash data in the Crash Indicator BASIC, but:
      1. Fault should be weighted (no fault determination – 1 point, fault found – 2 points, not-at-fault – 0 points).
      2. If a determination of fault (e.g., primary contributing factor) is on the crash report, it should be used.
   F. Many police reports do not contain a fault determination.
   G. When it is reported, there is a lack of consistency in how preventability or fault is reported. When it is reported, there is a lack of due process to challenge a finding of fault or preventability.
   H. FMCSA: The Agency is in the midst of a study to examine whether the Crash Indicator BASIC score can be better correlated to future crashes by removing crash data where a preventability determination can be made.
      1. The study is using preventability determinations in Police Accident Reports (PARs) from fatal accidents (those in the University of Michigan Transportation Research Institute (UMTRI) Trucks Involved in Fatal Accidents (TIFA) Survey).
      2. Whoever coded the critical event in the large truck causation study is assigned that crash.
      3. The study is examining the following questions:
         a. Are the preventability determinations in the Fatality Analysis Reporting System (FARS) a better determination of crashes if only those crashes with fault are used?
         b. If the Crash Indicator correlation to crashes is improved by using only preventable crashes, is the improvement so substantial that it is worth the cost/effort to pursue a preventability determination for each crash?
   I. Subcommittee Consensus Recommendations:
      1. The current FMCSA study should consider the following issues—
         a. For each crash PAR in FARS, look to any additional crash investigations that were done (e.g., criminal report, results of civil lawsuit, accident reconstruction report, employer accident report, insurance report, compliance review, etc.).
i. When considering employer (carrier) reports, the Agency review should
   beware of subjectivity.
 b. Examine and evaluate all existing State and academic studies on the accuracy
   of State crash reports.
 c. The Agency should consider and price different alternatives for determination
   of preventability or fault. Consider costs for carriers and other areas of
   industry.

J. Subcommittee Majority Recommendations (Palmer, Petrancosta, Hamilton, Tucker,
   Spencer, Davison, Mulanix, Supina):
   1. Examining all information that the Agency has before it, FMCSA should exclude
      crash data for which there is a clear determination of not-at-fault or non-preventable
      crashes for purposes of a carrier’s Crash Indicator BASIC score.
      a. For example, if a determination of fault (e.g., primary contributing factor) is
         on the crash report, it should be used. Most law enforcement agencies get it
         right if they are required to find fault on a report.
      b. Rationale:
         i. Preventability determination in crashes is an important part of data
            quality. Being involved in crashes is different than causing them.
         ii. Starting from all reported crashes is inappropriate because many of
              them may not be related to carrier safety.
         iii. Determination of preventability for a particular crash is very fact-
              specific.

K. Subcommittee Minority Recommendations (Owings, Lannen):
   1. The Crash Indicator BASIC should continue to use all crash reports, regardless of
      fault or preventability determination.
   2. Rationale:
      a. Crash Indicator is the strongest BASIC (i.e., the BASIC that best correlates to
         future crashes). There is value in looking at all crashes regardless of fault.
      b. Currently, all reportable crashes are included, so all carriers are being treated
         the same. The lack of consideration of fault in crash data should affect all
         carriers the same way.
      c. Police reports are subjective and imperfect. Asking someone to determine
         fault by looking at the crash report information would be more subjective than
         using the fault determination on a police report.
      d. Determining preventability would be costly: variances in timing to
         investigate; training level of officers; differences in crash report forms; and
         differences in analysis of a crash report.
      e. How would the second party be contacted that a crash is being appealed?
         What is the process of notification? What is the cost?
      f. What are the legal consequences (for a civil or criminal suit) of the Federal
         government making a determination of fault or preventability of crashes?

3. Caveat: If preventability could be determined in a cost-effective way and it
   contributed to the correlation of the Crash Indicator BASIC score to future crashes
   (as evaluated in the currently ongoing FMCSA study), it should be used to separate
   data for purposes of the Crash Indicator BASIC.
4. An unintended consequence of only including crashes for which a report indicates that a carrier was a primary contributing factor would be that in the case where the fault determination was wrong, that crash would be removed from the carrier’s Crash Indicator BASIC score.

L. Some members expressed concern that motorcoaches should be separated from trucks in the Crash Indicator BASIC relative rating because there are fewer motorcoach crashes, which are weighted heavily because of the involvement of passenger injuries, skewing passenger carriers’ Crash Indicator BASIC score. These members argued that FMCSA should consider using absolute numbers (vs. relative).
   1. FMCSA (Bill Quade) explained that the problem with separating them is that it creates very small peer groups by categorizing different passenger carriers. The resultant relative ratings within a peer group are divergent.

II. Public Accessibility of CSA

A. Some members argued that, regardless of the intention, the public, businesses, and brokers are using CSA to make business decisions based on BASIC scores, i.e., potential customers are using the Safety Measurement System (SMS) as a carrier selection tool. These members argue using SMS as a carrier selection tool is inappropriate because certain scores are inversely correlated (i.e., not correlated) to crash risk.
   1. For example, if the potential customer makes a decision not to work with a carrier based on one negative rating in one BASIC (which they can see) but that carrier has a low crash rate (which the public cannot see), the customer may have made a different decision had it possessed complete information about the carrier.
   2. Alternatively, the consumer may select a carrier that is not rated because that carrier is operating “under the radar.”

B. The Agency has sufficient data to score only 40% of carriers in some BASICs, so the relative score is not relative to the entire universe of existing carriers because FMCSA does not have enough data to score 60% of carriers.

C. Subcommittee Majority Recommendations:
   1. If removal of CSA scores from public view is not possible, FMCSA should remove, at a minimum, the Controlled Substance/Alcohol and Driver Fitness BASICs. (Dissent: Lannen, Hamilton, Mulanix, and Owings)
   2. FMCSA should remove from public view the three BASIC scores that do not correlate strongly to crash risk (HM, Driver Fitness, Controlled Substance/Alcohol). Keep the Crash Indicator BASIC removed from public view. For the remaining three BASICs (Unsafe Driving, Vehicle Maintenance, Hours of Service), keep those in public view. Then give carriers an absolute score and a relative score and place both scores in context (by using a disclaimer). Absolute scores should be featured more prominently on the website than they are currently. (Dissent: Lannen, Hamilton, Mulanix, and Owings)
   3. While the Agency should explain what the data is (and what it is not), FMCSA should not provide guidance or encouragement on how to use SMS data for carrier selection (e.g., by shippers, brokers, insurance companies, etc.). Direction to users should be explicit. (Dissent: Lannen, Owings; Abstain: Hamilton, Mulanix)
4. Explanation of the CSA system should include a statement that SMS scores are compliance scores and should not be considered a safety determination for use by entities hiring carriers. (Dissent: Lannen, Owings, and Hamilton)
5. Disclaimer regarding the “Use of SMS Data/Information” should be at the front end of the score information (as a header). SMS should use a pop-up screen to require acknowledgement of the disclaimer containing this information before the user can access the scores.
6. Caveat: FMCSA should work to improve data quality, data gathering, and lack of data for many carriers.

D. FMCSA (Bill Quade): Absolute scores are problematic because small carriers have a lot of variability in scores because they have less inspection snapshots. Showing absolute scores (vs. relative scores) will generally make large carriers have higher scores than smaller carriers.
   1. FMCSA does not feel it has enough accurate mileage data to provide scores in terms of “per 100,000 miles.” Mileage data is provided by carriers and is not reliable.

E. Subcommittee Minority Recommendations (Lannen, Hamilton, Mulanix, and Owings): FMCSA should keep all scores public and explain the difference between a compliance score and a safety score. The Agency should provide more education on how the public should interpret the scores.
   1. The two BASICs that do not correlate well to crash risk should be referred to as “compliance” scores (Controlled Substance/Alcohol, Driver Fitness), and the BASICs that do correlate well to crash risk should be referred to as “safety” scores.
   2. Rationale:
      a. This is taxpayer data; the public should be able to see it.
      b. The rating will still exist, even if it is removed from the website. Hiding the data will just result in diverting FMCSA resources to FOIA requests (unintended consequence).

III. Data Quality Issues
A. FMCSA: The Agency has efforts ongoing to improve State’s quality of data (including but not limited to the list below). FMCSA has seen crash reporting improve significantly in the past decade.
   1. The Agency has developed a DataQs guide so that all States have a standard document for those determinations.
   2. FMCSA is about to release a new version of the DataQs process to make it more user-friendly, collect better information, and improve reporting capabilities (e.g., what violations are being challenged).
   3. The Agency is contemplating moving to a system that does not permit a carrier to submit a DataQ unless it has submitted its MCS-150 update per the biennial update requirement.

B. Under-reporting by States. States under-report crashes.
   1. Solving this problem might solve some of the methodology problems in the SMS scoring.
   2. Even with additional funding, States can give forms and training to local municipality enforcement agencies but they cannot force the local jurisdictions to accurately upload information relating to a non-fatal crash.
3. **Subcommittee Recommendation**: FMCSA should evaluate the possibility of changing the definition of a reportable Department of Transportation (DOT) crash for purposes of CSA (e.g., to include only fatal crash data or fatal and injury crash data).
   a. The Agency should consider any definition of crashes that shows a better correlation to future crashes.
   b. The danger of not including all crashes (e.g., only fatal crash data) is that doing so might miss crashes that could have been a fatal or serious injury crash, but for the specific luck/situational facts of that situation.

C. **Standardization in the data**. There are no standard crash report forms.
   1. **Subcommittee Recommendation**: FMCSA should reach out to the Commercial Vehicle Safety Alliance (CVSA), the International Association of Chiefs of Police (IACP), and/or the National Highway Traffic Safety Administration (NHTSA) to work towards standardization. These entities could provide valuable input on this problem.
   2. IACP could provide good input on all the local crash reporting data.

D. **Geographical disparities** create biases for certain carriers depending on where they operate.
   1. The number of inspections conducted is higher in certain States. Certain types of violations are more likely to be cited in certain areas.
      a. **Subcommittee Recommendation**: If the violations do not correlate to crash risk, FMCSA should evaluate weighing violations from those States differently for purposes of SMS scores.
   2. Out-of-service rates are higher in certain States.
   3. In certain speed zones, non-violation inspections are conducted under the pretenses of speeding. Points are given for speeding, although no other violations are found.
   4. FMCSA encourages States to focus on issues that result in crashes in their States. There may be reasons for certain disparities.
   5. The opportunity to obtain accurate inspections is just as likely in these different types of areas.
   6. **Subcommittee Recommendation**: FMCSA should evaluate the normalization of outlier violation data from heavily reporting States (e.g., out-of-service rates outside of the average, highly reported violations outside of the average across States), and determine whether such normalization would produce scores that better correlate to future crashes.

E. **Lack of data for certain carriers**.
   1. Approximately 325,000 carriers do not have enough data to be scored in the system (but account for only 8 percent of crashes).
   2. Currently, FMCSA places 10% of carriers with insufficient data as a 99% score in the Inspection Selection System (ISS) every month to gather additional data through inspections. Most of these are small carriers.
   3. **Subcommittee Recommendation**: FMCSA should evaluate the usefulness and cost of collecting data from Federal annual inspections of vehicles. The Agency should focus on States that have a manual inspection program.

F. Unique motorcoach issues: There are only a few States (approximately 6) that have State-level inspection programs. Not many motorcoaches are inspected outside of those States,
which creates an uneven playing field for passenger carriers. A State-level inspection program should be tied to Motor Carrier Safety Assistance Program (MCSAP) grants.

G. California officers that provide traffic citations to drivers process those violations (e.g., speeding, improper lane change) through the Department of Motor Vehicles (DMV) because officers without certification cannot complete the motor carrier violation. Convictions for moving violations are not uploaded into SMS data.

1. FMCSA is aware of the problem and would like to obtain that type of data. It is working with the States and the American Association of Motor Vehicle Agencies (AAMVA) to obtain access to citation reports of commercial driver’s license (CDL) drivers.