



Mr. T.F. Scott Darling, III
Acting Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Re: Docket No. FMCSA-2015-0001, Carrier Safety Fitness Determination

Dear Acting Administrator Darling,

The American Bus Association (ABA) appreciates the opportunity to comment on the Federal Motor Carrier Safety Administration's (FMCSA's or Agency's) notice of proposed rulemaking proposing to revise the current methodology for issuance of safety fitness determination of (SFD) for motor carriers, Docket No. FMCSA-2015-0001 (NPRM or Proposal).

The ABA is the leading trade association for private and over-the-road passenger motor carrier operators who transport the public and serve the motorcoach industry. ABA has been in operation for 90 years and has over 800 bus operating company members, including both large and small; rural and urban; and intercity, charter and tour operators. Our members provide all manner of passenger transportation services, including intercity scheduled service, charter and tour operations, airport and employee shuttle services, and commuter operations. In addition, ABA membership includes hotels, convention and visitors' bureaus, attractions, restaurants, motorcoach manufacturers and companies providing services to the motorcoach industry. Motorcoach companies carry out more than 600 million passenger trips per year, moving individual passengers a total of 65 billion miles annually.

The ABA's members pride themselves on their commitment to safety. They are active participants in groups such as the Bus Industry Safety Council, the Bus Maintenance and Repair Council, the Commercial Vehicle Safety Alliance (CVSA), the Transportation Research Board's Bus and Truck Safety Committee and other groups committed to safety and compliance in fleet operations. Annually, ABA members support the CVSA Road Check program and welcome the opportunity for increased inspections at destinations all across North America. As the established representative of the private motorcoach industry and its affiliates, ABA submits these comments.

The ABA supports the Agency's interest in maximizing its limited resources for the purpose of focusing on those motor carriers posing the highest risks to our nation's roadways and decreasing crashes. Further, our industry strongly supports a data-based approach to driving down safety risk, as this approach has proven effective in numerous other transportation and non-

transportation industries. However, in order for a data-based safety program to be successful, it must be based on sound, accurate, comprehensive data. This is the fundamental element for any data-based program, as clearly demonstrated in other industries such as nuclear energy industry or aviation industry. It is upon the foundation of sound data that safety risks are identified, prioritized and then mitigated, leading to statistically significant safety gains. Without the strong foundation of sound, accurate and comprehensive data, it produces biases in outcomes and skews results that in turn lead to the misdirected use of resources and other unintended consequences. Further, as a result, the validity of the safety program is then called into question, and rightly so. Clearly this is not FMCSA's intent. Yet, as we have already seen, the CSA program has experienced many of these problems, and as a result Congress took action in the recently enacted Fixing America's Surface Transportation Act or FAST Act, to specifically address these very concerns.

For this reason, as an initial comment, ABA believes the Proposal is premature and FMCSA should suspend all pursuits of Agency action that rely on its flawed data-based Compliance, Safety, Accountability (CSA) program. Although, as FMCSA states on its website, the FAST Act may not "prohibit" the Agency from publishing the SFD Proposal, it cannot be argued this action contradicts the spirit and intent of the various FAST Act provisions addressed toward improving the data FMCSA relies upon for its data-based safety program. The Agency may indeed parse the legislative language of the FAST Act to technically justify its actions, but the outcome only serves to frustrate the purpose of the legislative provisions and anger the regulated community, while completely missing an opportunity to address the flaws of its current data-based safety program, establish the program's credibility within the regulated community and advance safety.

Also, based on the length and complexity of the NPRM, ABA is concerned with the SFD Proposal in terms of satisfying Executive Orders 12866 and 12988, emphasizing the need for federal agencies to write regulations in "plain language." Specifically, these Executive Orders state that regulations must be "simple and easy to understand, with the goal of minimizing uncertainty and litigation"¹ and use "clear language," specifically clear language in setting standards.² However, the Proposal, instead, is very complicated, not easy to understand, and, as the Agency points out in the NPRM, is incomplete.³ Further, the Agency seeks comments on policy choices, yet, the choices are not presented clearly, but instead require a degree in advanced mathematics to understand. In effect, it appears with the number of issues the Agency attempts to address in this Proposal and complexity of the justification for the Proposal, including the various mathematical analyses, the Agency is trying to force a significant change in its enforcement structure upon the regulated community by overwhelming them in a manner that makes it extremely difficult for a motor carrier to offer comment, let alone understand the fundamental proposal.

Further, ABA questions FMCSA's regulatory impact analysis in support of the Proposal. As outlined in the "Evaluation of Regulatory Impact Analysis for FMCSA's Carrier Safety Fitness

¹ Executive Order 12866, Sec. 1, par. (b)(12), October 4, 1993.

² Executive Order 12988, Sec. 3, pars. (a) and (b), February 7, 1996.

³ "But the [BASIC failure] standards in the final rule will be based on a more current calculation completed closer to the final rule's publication date." SFD Proposal, 81 Fed. Reg. p.

Determination: Proposed Rule” (Evaluation) attachment, ABA questions the validity of FMCSA’s cost/benefit analysis. Based on the Evaluation, it appears FMCSA underestimates the costs associated with the Proposal, in addition to not fully or properly analyzing the proposed action in compliance with guidance from the Office of Management and Budget.

In addition to these procedural concerns, ABA offers the following, specific additional comments. ABA believes the Proposal will not achieve the intended results because: 1) Data Deficiencies and Analysis of the CSA Program; 2) Concerns with the Agency’s Preferred SFD Methodology (i.e. Method 1), is flawed and will yield biased results, 3) SFD Appeals Process Must Change; 4) Incomplete Proposal; and 5) Responses to additional FMCSA questions.

1. Data Deficiencies and Analysis of the CSA Program

ABA is concerned about the documented deficiencies in the CSA program, and specifically the Safety Measurement System’s (SMS) ability to predict the future crash risk of *individual* carriers.

These deficiencies include the use of an flawed data set (for example, the inclusion of not-at-fault crashes, or missing data from carriers with no data profile); the distant statistical correlation between certain violations and crash risk; the categorization of event peer groupings consisting of vastly dissimilar vehicles or operations; and the lack of uniformity in inspections, and thus data input to CSA among varying jurisdictions. These well documented deficiencies are the basis for the Congressionally mandated correlation study in the FAST Act.⁴ The ABA not only believes FMCSA is not following the spirit or intent of the law, it believes the Agency is further jeopardizing the credibility of the CSA program as a valid data-based safety program that can lead to safety gains.

a. Data Deficiencies

As previously noted on numerous occasions, the CSA program includes data from motor carrier crashes, regardless of fault. The FAST Act also picked up on this in Section 5306, with the required creation of a special subcommittee as part of the Motor Carrier Safety Advisory Committee to review Post-Accident Reporting. Having accidents on a carrier’s record that are not their fault does not provide an accurate assessment of future carrier safety performance. In addition, motor carriers of passengers are much more likely to have reportable accidents.

As discussed by ABA and others under FMCSA-2014-0177, “Crash Weighting Analysis”:

“FMCSA is clear that for purposes of the Crash Indicator, that "more weight [is] given to fatality and injury crashes than to those that meet the definition of an accident only because one or more vehicles was towed from the scene". (80 Federal Register at 3721). A passenger-carrying commercial motor vehicle has up to 55 people on board whereas a freight-carrying commercial motor vehicle typically has one. Thus, in any given accident, it is inevitable that there are more likely to be injuries, or reports of injuries, in the vehicle carrying 55 people than in the vehicle carrying one person, regardless of the adjudicated validity of those claims (particularly in our litigious society). This would seemingly "stack the deck" against passenger

⁴ P.L. 114-94, §5221

motor carriers even if injury/fatality crashes were given equal weight with crashes involving towed vehicles, but the bias against passenger motor carriers is made much worse by the extra weighting FMCA gives to injury/fatality crashes when determining Crash Indicator scores.”

Also, the data FMCSA relies upon for its data-based safety program is incomplete. While again ABA supports efforts to prioritize the Agency’s enforcement and intervention actions using compliance and safety performance data, there are thousands of carriers for which the Agency still has no CSA data. A data-based safety program cannot produce effective results without sound, accurate and complete data. FMCSA should, as a starting point toward improving its database, elevate in inspection or investigation priority those carriers with no data profile. It is difficult to understand how the Agency can develop and execute an appropriate risk prioritization strategy, without a complete picture of the operating environment. Oftentimes these “unseen” carriers present more of an imminent crash risk than those operators repeatedly visited and for which a more robust data profile exists. It is more likely, too, that the carriers with robust data profiles benefit by knowing their safety standing, as it provides a reference point from which to improve safety performance. In terms of the “unseen” carriers, there is not only a gap in the database to account for these carriers, but they are deprived of data to reference in terms of self-evaluating and improving the safety of their operations.

b. Variance of Statistical Correlations

ABA also has concerns with the relationship between the statistical correlations FMCSA relies upon for justification in using the current data base. The ABA is confused by FMCSA correlations between the BASICS and crash risk, and the Proposal’s relation to FMCSA’s high priority risk definition proposed change (FMCSA-2015-0439). Specifically, how a carrier with an Unsafe Driving BASIC of 85% might be at a lower crash risk than if it had a 90% BASIC rating for Hours of Service (HOS) Compliance.

For example, in the passenger sector, we are aware the vast majority of HOS Compliance violations are related to form and manner infractions⁵, rather than violations for exceeding the maximum driving limits (i.e. a true safety concern). Additionally, with the widespread support for the phased adoption of electronic logging devices following the publication of a final rule under FMCSA–2010–016, we anticipate these types of form and manner HOS violations will be eliminated. So, the proposed definition of high risk, would not accurately capture unsafe actions by operators. A more useful approach would be for the Agency to focus on violations that more conclusively impact unsafe and high risk operations in considering ways to prioritize Agency enforcement actions.

Like the High Risk Carrier Definition rulemaking under FMCSA-2015-0439, the SFD Proposal has the same deficiencies. The BASICS that are more heavily weighted for SFD do not necessarily correlate to high risk operations. It would be prudent for FMCSA to resolve its study of recent crash and violation as outlined as part of the correlation study. Proposed changes to the High Risk Carrier definition should be suspended until the conclusion of the SFD rulemaking as the Agency has chosen to intertwine the concepts.

⁵ <https://www.fmcsa.dot.gov/regulations/enforcement/civil-penalties>

c. Peer Groupings

In the Proposal, FMCSA explores the concept of comparing urban carriers to other urban carriers and rural carriers to other rural carriers. Additionally, in the Agency's notice regarding enhancements to the SMS (FMCSA 2015-0149), FMCSA proposes to segment cargo tank and non-cargo tank carriers for evaluation under the BASICS. These potential modifications indicate the Agency has the ability to align the peer groups to more analogous operations. The ABA has long advocated for buses to be segregated from trucks within the SMS. This position has been repeatedly echoed by the National Transportation Safety Board, as well. The fact that motorcoach data is not segregated and analyzed separately from the truck population remains another major flaw of the CSA program.

Passenger carrier operations are distinctly different from property carrier operations: the "cargo," i.e. passengers, have very different needs and requirements; passenger carriers operate at a greater risk of personal injuries, due to their "cargo"; the vehicles and equipment employed between the two operations differ; the hours of operation and services differ, and there is further differentiation even within passenger operations (i.e. charter v. scheduled service). Because the passenger carrier SMS ratings are publically available, consumers frequently assume that the percentages represent comparisons between other bus carriers. When the underlying data and even the other carriers that they are compared against can be so easily called into question, its effectiveness is diminished and the fundamental information must be re-addressed.

d. Uniformity in Inspections

There is also inherent bias in only looking at carriers with 11 inspections with violations. By needing that many instances of inspections with violations, there is a disproportionate emphasis put on finding violations during inspections and compliance reviews. The "gotcha" mentality is not one that incentivizes a good working relationship between industry and enforcement and actively discourages carriers from seeking out of inspections.

As not every state has an FMCSA-certified bus inspection program, it is difficult to believe that all enforcement personnel fully understand the regulations for passenger carrying CMVs. As a case in point, within the most recent MCMIS data⁶ as of 4/29/16 more than 40 violations nationwide have been attributed to passenger carriers for violations of 49 CFR 395.3(a)(3)(ii) during roadside inspections. However, this part of the regulation refers to the maximum driving time for property carrying vehicles. While ABA is confident in the FMCSA and CVSA training programs, there is still a number of items like this particular misapplication of the regulations, which our members have to deal with on a periodic basis and become a burden in the DataQs adjudication queue. In addition, without uniformity in inspections, "safe harbor states" will become a beacon to unscrupulous operators.

⁶ Data Source: FMCSA Motor Carrier Management Information System (MCMIS) 4/29/2016 data snapshot - https://ai.fmcsa.dot.gov/ProgramReport/pcReport.aspx?rpt=reg_RIV

United States Department of Transportation

FMCSA Federal Motor Carrier Safety Administration

Analysis & Information Online SMS Driver Safety GOTHAM Data Quality Crash Stats Enforcement Programs MCSAP A&I Resources

Passenger Carrier - Roadside Inspection Violations

Domicile: [All Domiciles] Vehicle Type: [All Passengers] Inspection Type: [All] Report Focus: [National] Time Period: [2018] [Fiscal] [Calendar] [Submit]

Summary of Roadside Inspection Violations on Passenger Carriers

Violation Code	Description	# of Inspections	# of Violations ¹	# of OCS Viol.	# of Viol. per Insps.	% of Total Violations
101 393.75(N)	Under Inflat Tire	56	57	14	1.01	0.13
102 393.65(O)	Glazing Permits Less Than 70 Percent Of Light	57	57	0	1	0.13
103 393.79	Defogger / Defogger Inoperative	56	56	0	1	0.12
104 393.45(UV)	Brake Tubing And Hose Adequacy Under Vehicle	55	56	47	1.01	0.12
105 393.80	Falling To Equip Vehicle With Two Rear Vision Mirrors	54	54	0	1	0.12
106 393.75(a)(2)	Tire—Tread And/Or Sidewall Separation	51	53	25	1.03	0.12
107 393.83(a)	Improper Exhaust Discharge (Not Rear Of Cab)	51	53	12	1.03	0.12
108 391.11(BS-DN)	Driver does not have a valid operator's license for the CMV being operated.	53	53	53	1	0.12
109 393.205(a)	Wheels/Rim Cracked Or Broken	52	52	34	1.04	0.11
110 39225LLEWA1	State/Local Laws - Excessive Weight - 1-2500 Lbs Over On An Axle/Axis Groups	43	51	1	1.18	0.11
111 393.60(EWS)	Windshield - Obstructed	51	51	0	1	0.11
112 393.93(a)(3)	Seats Not Secured In Conformance With Fmvss	49	51	1	1.04	0.11
113 393.47(d)	Insufficient Brake Linkage	44	50	27	1.13	0.11
114 393.201(g)	Frame Accessories Improperly Attached	46	49	1	1.02	0.11
115 393.55(b)	Alas - Malfunction Indicators For Hydraulic Brake System	47	47	0	1	0.10
116 393.55(c)	No Means To Ensure Operable Check Valve	45	45	0	1	0.10
117 392.28(C)	Following Too Close	44	44	0	1	0.10
118 393.26	Requirements For Reflectors	34	43	0	1.26	0.09
119 391.11(BS-DEN)	Driver operating a CMV without proper endorsements or in violation of restrictions.	43	43	37	1	0.09
120 395.3(a)(3)(ii)	Driving beyond 8 hour limit since the end of the last off-duty or sleeper period of at least 30 minutes.	34	42	1	1.23	0.09

Data Source: FMCSA Motor Carrier Management Information System (MCMIS) 4/29/2016 data snapshot.
For more information see the [Report Description](#).

In sum, ABA anticipates the Congressionally mandated study will provide a better basis for FMCSA’s analytical methodology and correlation to crash risk. It is for this reason, ABA believes Agency actions related to the CSA program should be suspended until the Study and corrective action plan have been completed. Increasing the uniformity for crash reporting, enforcement and inspections among the various jurisdictions, ABA believes, could further improve the quality of the CSA data. Addressing the issues related to the peer groupings as discussed most recently under FMCSA-2015-0149 and comparing motor carriers of passengers to other more similar motor carriers of passengers will greatly improve the accuracy and relevance of the BASIC comparisons.

The ABA believes FMCSA should suspend any further actions related to the CSA program until, at a minimum, the Congressionally mandated actions concerning the program, the data used in the program, and its corrective action plan are completed.

2. Concerns with the Agency’s Preferred SFD Methodology

As ABA has stated, the Agency’s interest in pursuing a data-based approach to managing safety and prioritizing risk is commendable. Further, we appreciate the implementation of the CSA program has occurred over a number of years, and the SFD Proposal is supposed to be the final step in the CSA implementation process. Yet, during this implementation period, FMCSA has repeatedly received criticism for using flawed data in its data-based program and not making efforts to address this shortcoming. Now, even with a Congressional mandated study underway to force the Agency to address the data issue, the Agency proceeds with this Proposal to make further, dramatic changes its longstanding safety fitness determination process based on the same flawed program.

The SFD Proposal is a dramatic change for the industry. Whereas currently, motor carriers seek inspections and oversight to ensure an accurate and current safety data profile, valuing both good

inspections and managing the outcomes of inspections that produce violations, or “bad” inspections. Under FMCSA’s Proposal this will no longer be the case, because the Proposal skews the system so that “good” or violation-free inspections will be a thing of the past as inspections will be skewed to find violations.

Further, Method 1 relies heavily on roadside inspection data. However, the Proposal raises concerns for ABA over use of the word “roadside” inspections. For passenger carriers, inspections currently occur at destination facilities where the passengers can be safely accommodated during the inspection and the officer is able to safely conduct the inspection without fear of being interrupted by traffic hazards. ABA seeks clarification whether this meets FMCSA’s expectation of a roadside inspection? As well, ABA has concerns over compliance review data as that process would place an undue statistical bias under the proposed SFD methodology as motorcoach operators are required to have compliance reviews once every 3 years.

The Proposal also asks the industry to accept Method 1 (or really any of the Methods) without an indication as to what the absolute thresholds will ultimately be or how they will be calculated. It doesn’t really make sense for such an important component of the proposed regulation to not be under following this comment period and have a “to be determined” assigned to it. ABA’s concerns regarding the Proposal are heightened due to the lack of transparency exemplified by the confusion over definitions and the absence of the absolute thresholds.

Additionally, ABA is troubled by the weighting of acute and critical violations in the SFD Proposal. As articulated in the comments of Greyhound Lines Inc., we believe that the weighting should be adjusted so that a company with a significant history of positive and compliant safety performance is not unduly downgraded to “unfit” status based on a singular safety event.

ABA would call for FMCSA to reject Method 1 and only consider the hybrid Method 3 following additional clarification and significant changes to the BASICS, peer groups and absolute thresholds.

3. SFD Appeals Process Must Change

The SFD Proposal includes changes to the current administrative review process for challenging proposed SFDs. Although the Agency describes these changes as providing altogether 4 different administrative proceedings before an unfit SFD becomes final, in reality there are only two. The third and fourth administrative proceeding proposals concern actions to either rectify the deficiencies that lead to the initial unfit SFD or actions to resume an operation following a final unfit SFD determination – in either case, neither review involves challenges to the underlying unfit SFD Proposal. Therefore, there are only two administrative proceedings the Agency proposes to challenge the underlying basis for an unfit SFD.

With regard to the first two administrative review proposals, ABA has very specific concerns. The proposed time periods allotted for filing a petition for administrative review based on material error or the new administrative procedure based on missing data, are extremely and unnecessarily limited. In terms of comparison, the time frame for filing a petition for review

would be reduced from 90 days to 15 days; and for the new review, only 10 days permitted to file. These numbers are a significant reduction for motor carriers seeking due process while trying to remain in operation following an unsatisfactory rating. Such timeframes, in short, do not allow sufficient time for a motor carrier to review the proposed SFD determination, the underlying basis and evidence supporting the Proposal, gather the requisite material necessary to challenge the Proposal and employ the DataQs process, and prepare and file a petition for review.

Specifically, considering the inherent problems with the DataQs process, the proposed time frames are unreasonable. The time necessary for a carrier to pursue review of a contested violation through the DataQ process is substantially longer than the times Proposal times for the administrative review process. In other words, while a carrier is in the process of pursuing challenges through the DataQs process to address unjustified violations, the time for challenging an unfit SFD that relies on those same violations, will expire. Further, because SFD ratings are based on data from inspections and compliance reviews, the DataQs process is a necessary initial step for all motor carriers preparing to challenge an SFD. As ABA noted in comments to FMCSA's SMS enhancement notice (FMCSA 2015-0149), any item undergoing a DataQs review remains visible on a carrier's record, affecting their SMS score and thus an SFD.

It is wholly unreasonable to expect a motor carrier to be in a position to challenge an SFD under the proposed administrative process time frames. In order to protect their due process rights, the logical result would be for carriers to pursue a DataQ review of every single violation, in anticipation of challenging every SFD. This is unreasonable, unduly burdensome and wholly unnecessary, particularly in the case of small carriers who lack the large administrative and executive staff resources necessary to meet the deadlines. Based purely on the timelines, the likelihood of incorrect data leading to an incorrect SFD is high, and FMCSA provides no justification for proposing a reduction the timeframes.

While ABA will continue to urge the public to focus on using safe carriers whenever they travel by motorcoach, the publishing of compliance agreements on the FMCSA website following "unfit" determinations which are likely based on disputed (if not inaccurate) data, would be difficult for ABA to support. Finally, with regard to FMCSA reflecting SFDs on its public website, the Agency should only be publishing those SFDs which have been fully adjudicated and are final. In other words, while an SFD challenge is currently pending, it should not be reflected on any public website.

The ABA supports the current administrative review process filing timeframe of 90 days, and believes any new administrative review process timeframes should be consistent.

4. Incomplete Proposal.

The ABA also questions the basis upon which FMCSA can issue a regulatory proposal to change the long standing safety fitness determination process for motor carriers, without providing in the actual NPRM the *failure standard* for the new safety fitness determination process. The Proposal discusses the purposes of the standard and the Agency's goal to establish a standard that would identify motor carriers with a high crash risk, but it then cites resources as the basis

for not doing so. This is a case of an Agency trying to force its will without providing proper notice to the regulated community. It is entirely illogical – the Agency is asking the regulated community to comment on a significantly changed process of determining carrier fitness that will impact the viability of operators, but right at the punch line it says: “just trust us” on the a standard.

Then, after announcing the standard would be set at the time the SFD rule becomes final, the Agency posits that the SFD failure standard for passenger carriers be more stringent than property carriers. Yet, the Agency provides no basis for setting a higher standard for passenger carriers, other than if the standard were set higher more passenger carriers would be effected. After this shrift explanation, the Agency concludes by requesting comment on whether the proposed higher standard is appropriate.

With so little justification, ABA is hard pressed to respond to FMCSA’s request. To be clear, ABA could consider supporting passenger motor carriers being held to more stringent intervention thresholds in SMS, *but only if* the data can be validated as correct and passenger carriers are compared to other passenger within their respective peer groups. However, before considering higher standards, given the low annual crash rates within the passenger carrier sector⁷, FMCSA should provide statistical justification for the higher standard, rather than simply chalking it up to legacy.

In sum, FMCSA’s approach to this rulemaking effort is lacking. As previously noted, the Proposal appears to be a very long and complicated document intended to be purposely confusing and difficult, possibly in an effort to thwart attempts to provide meaningful comment from the regulated industry. On the one hand, it provides a level of mathematical detail requiring an advanced degree to understand, yet, on the other hand it lacks specificity in key areas such as failure standards and justification for the disparate treatment of passenger carriers.

The ABA believes FMCSA’s Proposal is incomplete, lacking specificity as to failure standards and justification for proposing disparate treatment of motor carriers of passengers.

5. Responses to Additional FMCSA Questions

a. English Language Proficiency (ELP)

FMCSA has asked for comment about including ELP in its estimates of violations.

ELP is a critical skill for motor carriers of passengers as drivers need to be able to read highway signs, effectively communicate with their passengers as well as communicate emergency first responders in case of an emergency and law enforcement personnel when there is an issue that could result in a violation. One need not look any further than the unfortunate crash of October 26, 2012 at the Miami International Airport where an inability to read the height signs led to a fatal incident.

⁷ Large Truck and Bus Crash Facts 2014 - <https://www.fmcsa.dot.gov/safety/data-and-statistics/large-truck-and-bus-crash-facts-2014>

b. Public's Access to For-hire Motorcoach Safety Information

FMCSA has asked whether the public's access to motorcoach safety information is adequately met by its website and the SaferBus App.

ABA believes the public currently has adequate access to motorcoach safety information, including violation details and rulings of safety fitness determinations through the FMCSA website and the SaferBus App. We do believe that understanding the BASICs is very complicated for members of the public and would suggest that the ratings be simplified under another rulemaking.

c. State Access to MCSAP Funds to Place Carriers Out of Service

FMCSA has asked whether states should be given additional funds through the FMCSA MCSAP program to place an unfit carrier's entire fleet out of service.

States may need legislative or regulatory action to enable their roadside inspectors to place CMVs operated by these carriers out of service. ABA has no comment on this aspect as the question is looking for a state's perspective on potential implementation and ABA would recommend that FMCSA provide the ability for a state to find the unfit company's base of operation in order to place all of its vehicle's out of service in addition to considering additional funding.

d. Recommended Implementation Period

FMCSA has asked how long the implementation period should be for a new SFD rule.

While ABA does not think that this SFD rulemaking is appropriate to be pursued at present, any implementation period would require a significant amount of educational outreach to both motor carriers and enforcement entities. In addition, time should be taken to implement all of the related rules.

e. Ineligibility for Federal Contracts for Unfit Carriers

FMCSA has asked whether carriers who are declared unfit should be removed from eligibility for federal contracts by FMCSA.

Language on this issue should be considered by the granting agencies impacted by motor carrier participation rather than FMCSA. Many agencies, including the Department of Defense have clauses related to operating authority written into their grant agreements.

f. Listing Critical and Acute Violations under Those Subject to Maximum Civil Penalty

FMCSA has asked if certain critical and acute violations should be subject to the maximum civil penalty.

The critical and acute regulations set forth in Tables 3–1 and 3–2 of the SFD Proposal should be studied against the annual closed enforcement cases and individual carrier safety performance. An analysis process should be used to determine which violations are worthy of being attributed acute or critical status. Similarly an analysis should be performed looking at violations, crash risk and crash results. Ideally the NAS Correlation study will provide insight on this issue.

The ABA appreciates the opportunity to comment on the FMCSA’s NPRM concerning modifications to the safety fitness determination process. Although ABA is a strong supporter of data-based approaches to safety management, it believes FMCSA’s CSA program is flawed due to its reliance on unsound data and data analysis. Further, ABA believes FMCSA should suspend its various regulatory actions related to the CSA program until it completes all of the Congressionally mandated actions from the FAST Act intended to address the numerous concerns raised regarding the program since its inception.

Sincerely,

A handwritten signature in black ink, appearing to read "Brandon Buchanan", with a long horizontal flourish extending to the right.

Brandon Buchanan
Director of Regulatory Affairs

Attachment: John Dunham & Associates, “Evaluation of Regulatory Impact Analysis for FMCSA’s Carrier Safety Fitness Determination: Proposed Rule”, Brooklyn, NY; March 2016.