



May 6, 2016

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-2015-0439, Notification of Changes to the Definition of a High Risk Motor Carrier and Associated Investigation Procedures.

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 on proposed changes to the definition of a high risk motor carrier and associated investigation procedures (Notice).

ABA is the leading trade association for private and over-the-road passenger 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, large and small, intercity and charter and tour operators, rural and urban. Our members provide all manner of passenger transportation services, including intercity scheduled service, charter and tour operations, airport and employee shuttle services. In addition, ABA membership includes hotels, convention and visitors bureaus, attractions, restaurants, motorcoach manufacturers and companies that provide 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.

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, the Transportation Research Board's Bus and Truck Safety Committee and other groups committed to safety and compliance in fleet operations. It is within this context ABA submits these comments on behalf of its membership.

ABA is concerned about the documented deficiencies in the Compliance, Safety, Accountability (CSA) program, and specifically the Safety Measurement System's (SMS) ability to predict the future crash risk of *individual* carriers. These deficiencies stem from a number of areas including data insufficiency (e.g. at-fault crashes), the distant statistical correlation between some violations and crash risk, event peer groupings consisting of vastly dissimilar vehicles or

operations, and a lack of uniformity in inspections between different jurisdictions. Due to these well documented deficiencies, Congress, through enactment of the FAST Act¹ directed FMCSA to commission a study (Study) of CSA and SMS and based on that study, develop a corrective action plan to address deficiencies. Based on this Congressional mandate, ABA believes FMCSA is not following the spirit or intent of the law, and should instead: 1) focus on the completion of the correlation study; 2) eliminate misleading information from the CSA program; and 3) prioritize Agency action to address carriers for which the Agency has no data, in terms of considering changes to the current high risk carrier definition and associated investigation procedures.

1. Focus on the CSA Correlation Study

While ABA supports prioritization and maximizing the use of FMCSA’s intervention resources, ABA opposes FMCSA making any programmatic changes based on the utilization of the Behavioral Analysis and Safety Improvement Categories (BASICS) until the National Academies of Science has completed its CSA Correlation study (Study) and FMCSA has prepared and submitted its corrective action plan to Congress. We are anticipating the 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.

ABA is also curious, along with the American Trucking Associations, about FMCSA correlations. 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 infractions², 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 its 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 help prioritize Agency enforcement actions.

2. Misleading Information and DataQ’s Delays Could Lead to Lost Business

In addition, because passenger carriers’ BASIC rankings are currently publicly available, ABA has concerns that imperfect CSA data will be utilized to improperly identify a carrier as a “high risk” carrier, when they may not be the case. By misidentifying a carrier as “high risk” in such a public fashion, type of public indication the Agency impacts a carrier’s business negatively. In light of the short time period between carrier rating calculations, i.e. 1 month, and the challenges carriers experience using the DataQs process, with waits of 2-8 weeks or longer for the

¹ P.L. 114-94, §5221

² <https://www.fmcsa.dot.gov/regulations/enforcement/civil-penalties>

resolution and adjudication of disputed violations³, passenger carriers are extremely vulnerable to negative consequences resulting from a false designation of “high risk.” Increasing the uniformity for crash reporting, enforcement and inspections among the various jurisdictions, ABA believes, could further improve the quality of the CSA data. Similarly, removing the ability for law enforcement officials to issue uncontestable driver warnings, instead of infractions, will also assist in the Agency’s prioritization efforts. This would occur by removing from FMCSA’s intervention lists companies that do not need to be there, and allow the Agency to instead focus on those companies that actually receive violations.

3. Add Unseen Carriers to the Priority List

Again, while 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 has no CSA data. We would like to see these carriers, with no data, elevated in priority. From ABA’s view, we find it difficult to understand how the Agency can develop and execute an appropriate prioritization strategy, when the Agency has an incomplete picture of the operating environment. Often times these “unseen” carriers present more of an imminent crash risk than those operators where there is more robust data and that continue to be visited or inspected repeatedly. But it is those carriers for which data exist, that have the benefit of knowing their safety standing and have a reference point, which can then lead to safety improvements. Those carriers with no data have no reference point to guide their actions.

ABA supports FMCSA’s efforts to maximize its limited resources. However, ABA urges FMCSA to hold off pursuing changes dependent on CSA data until the NAS study has been completed and a corrective action plan submitted to Congress. FMCSA should also eliminate misleading information from public display before identifying a high risk carrier. FMCSA should also elevate the priority for gathering data on carriers currently “invisible” due to lack of data, when considering changes to their high risk carrier definition and associated investigation procedures.

Sincerely,

A handwritten signature in black ink, appearing to read "Brandon Buchanan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brandon Buchanan
Director of Regulatory Affairs

³ Potential Benefits and Feasibility of Voluntary Compliance Public Listening Session - April 25, 2016 in Chicago, IL; Comments of Bill Quade, Associate Administrator for Enforcement and Program Delivery at Federal Motor Carrier Safety Administration - <https://recapd.com/w-e058cd>