



July 29, 2015

Docket Management Facility  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
West Building, Ground Floor  
Room W12-140  
Washington, D.C. 20590-0001

**RE: Docket No. FMCSA-2015-0149 – Proposal for Future Enhancements to the Safety Measurement System (SMS)**

Dear Sir/Madam:

The American Bus Association (ABA) appreciates the opportunity to comment on the Federal Motor Carrier Safety Administration's (FMCSA's or Agency's) Notice; request for public comment on proposed enhancements to the Agency's Safety Measurement System (SMS) methodology, as well as other possible areas for consideration (Notice).

The ABA is the leading trade association for private and over-the-road operators who transport the public and serve the motorcoach industry. The ABA has been in operation for over 80 years and has over 800 bus operating company members, large and small, intercity and charter and tour operators, rural and urban. Indeed, our members provide all manner of transportation services, including intercity scheduled service, charter and tour operations, and airport and employee shuttle services. In addition, ABA's membership includes hotels, convention and visitors bureaus, attractions, restaurants, motorcoach manufacturers and other companies providing services to the motorcoach industry.

In its notice, FMCSA proposes several enhancements to the SMS with the intent of improving the system. Most notably, in terms of motor carriers, these changes will affect the SMS Behavior Analysis and Safety Improvement Categories (BASICS) scores publicly available on the FMCSA SMS website and used by the Agency to prioritize and intervene with motor carriers that pose the greatest safety risk.

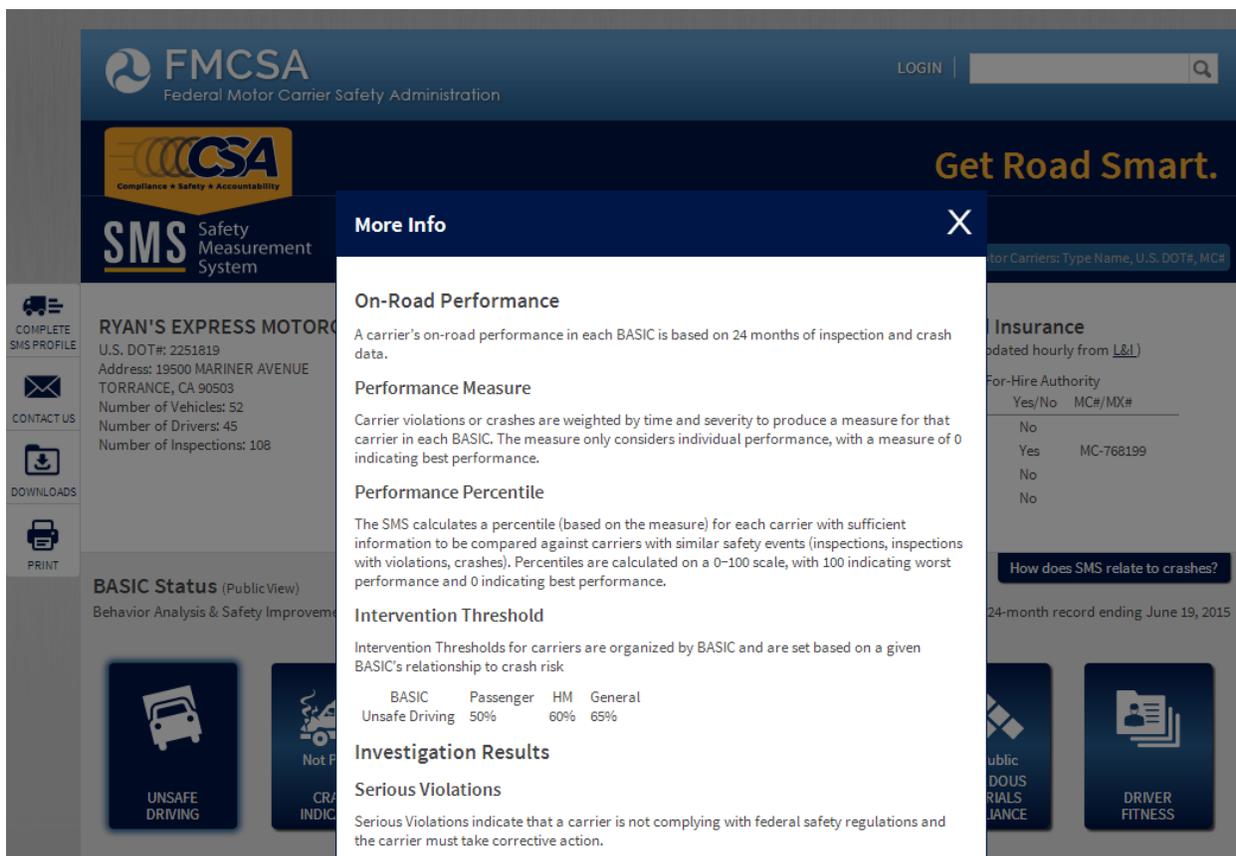
ABA commends FMCSA for its efforts to improve the system and, in general, supports the proposal. Access to accurate and timely data is essential for carriers, the law enforcement community and the public at large. Alternatively, inaccurate data leads to flawed results and misconceptions, jeopardizing the validity of the system and undermining safety overall. For this reason ABA strongly supports all actions the Agency can take to improve the system, and believes additional enhancements, beyond the proposals outlined in the Notice, are in order. The

ABA offers the following comments regarding FMCSA’s proposals affecting passenger motor carriers, along with other enhancements for the Agency to consider.

**I. FMCSA Proposed Enhancements**

**A. SMS Intervention Thresholds.**

The ABA supports FMCSA’s proposal to change some of the SMS intervention thresholds to better reflect BASICs’ correlation to crash risk, and believes the categories identified are appropriate. However, based on accessing the SMS web link, it appears passenger motor carriers already have a lower threshold for the Vehicle Maintenance and Unsafe Driving BASIC than the general ones listed in the Notice. For example, the Unsafe Driving BASIC intervention threshold for passenger carriers appears to be 50%, while the hazardous materials threshold is at 60% and general operators’ threshold at the 65% level. (See below) Based on these threshold levels, while we agree that lowering a BASIC threshold would likely bring new carriers into consideration, we question whether this change would affect or increase the number of passenger carriers brought into consideration or, alternatively, whether this was the intent of the proposal.



## **B. Reclassification of Out-of-Service (OOS) Violations and Adjustments to the Utilization Factor (UF).**

The ABA also supports reclassifying violations for operating while out-of-service, to the Unsafe Driving BASIC. Non-compliance with an OOS order is a dangerous act and should be severely punished. Placement of OOS violations under this BASIC will more closely align the penalty to the action, as well as enable motor carriers to better identify and address the underlying, non-compliant activity.

Additionally, ABA supports the proposed changes to the UF by increasing the maximum vehicle miles traveled numerator used in the calculation. By this action the Agency will be refining the data, producing a more accurate depiction of carrier operations and an improved correlation to its safety and compliance record. The ABA is in favor of all efforts to further refine data to better reflect actual carrier operations and safety performance.

## **II. ABA Proposed Additional Enhancements**

### **A. Segmenting Passenger and Property Carriers.**

Although ABA takes no position on FMCSA's proposed enhancement concerning hazardous materials (HM) compliance activities in general, we are very interested in the Agency's proposal to segment cargo tank and non-cargo tank carriers for evaluation under the BASICs. The Agency's stated purpose for proposing this action parallels the same argument ABA and others, including the National Transportation Safety Board, have repeatedly raised concerning passenger and property carriers. As FMCSA states in the Notice with regard to HM carriers, passenger and property carriers "have different operations and often receive different violations."

Based on the HM Compliance proposal in the Notice, the Agency does appear to have the ability to segment the safety event groups by business type for evaluation under the BASICs. The ABA has long advocated that buses should be segregated from trucks within the SMS. 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, even within passenger operations (i.e. charter v. scheduled service).

Further, as noted in comments to this docket submitted by other passenger carriers, with which ABA concurs, there is a fundamental bias against passenger carriers in assessment under the Crash Indicator BASIC, by not segregating passenger and property carriers. A crash involving a passenger carrier, by the fact it carries people rather than freight, is at risk for having a higher personal injury count versus a property carrier, regardless of the circumstances. Thus, the total accident count for passenger carriers, generally, will have a higher percentage involving personal injury than property carriers. This reality then results in a bias reflected in the Crash Indicator BASIC, because the severity of the crash (number of fatalities or injuries) is a factor in calculating the rating. So, passenger carriers, generally, tend to have a worse Crash Indicator

BASIC rating than property carriers, even if their overall accident rates and other BASICs' ratings are as good, if not better, than comparable property carriers.

In brief, like HM carriers, by segmenting passenger and property carrier operations in terms of assessment under the BASICs, FMCSA can address the bias resulting from comparing unlike operations and improve the SMS's ability to identify passenger carriers with serious safety problems. We urge FMCSA to include this change to the SMS as part of its current effort to improve the system.

## **B. Crash Data Refinement.**

The ABA has also previously raised concerns with regard to the crash data used to evaluate a carrier's safety performance. Throughout the Notice, FMCSA justifies its SMS enhancement proposals by describing the effort with phrases such as a way to "more closely align" data, "eliminate bias," "appropriately reflect," and "provide a more accurate picture." Based on the Agency's interest in better refining safety data, as evidenced in this Notice, ABA requests FMCSA also consider refining the crash data currently relied upon by the Agency for the SMS and made public.

Under current practice, the crash data used by the Agency to evaluate safety performance against BASICs makes no distinction between "at fault" and "not-at-fault" accidents, rather it counts all crash events regardless of fault. The FMCSA could improve the correlation of the BASICs' thresholds to crash risk, and better reflect actual operations, if it would refine its crash data. Many "not-at-fault" accidents, for example a situation where a bus is struck while unoccupied and parked in a stationary position, continue to be included in carriers' crash statistics. The inclusion of this data leads to inaccurate outcomes, because the crash rate developed from this data and then used for the SMS is based on events both within and not within carriers' control. Not only does this effect the Agency's effort to prioritize for safety, it also misleads customers looking to make a decision between motor carriers.

In the Agency's own Crash Weighting Analysis Study (January 2015), nearly 61% of the accidents studied were acknowledged as not being attributed to the driver or commercial vehicle. Yet, under the SMS rationale, the BASICs assume a measure of control by either the company or the driver in a safety outcome. Further, under this rationale, the analyzed accidents and the resulting indicator of future crashes should be based on events, behaviors and operator procedures, within the control of the motor carrier, in order to achieve safety improvements. However, this is not the current practice; crashes outside of a carrier's control (or fault) are being considered or weighted as equivalent to crashes resulting from poor training or safety practices.

To address this concern, ABA proposes two actions the Agency could undertake to improve the accuracy of crash data: 1) establish a universal crash or accident incident report form (for use at all levels of law enforcement); and 2) establish an adjudication process (or expand the current DataQs system) to assist in removing misleading crash events from a company's record. In support of its "ongoing continuous improvement efforts," ABA believes FMCSA must address the issue of inaccurate and misleading crash data used for SMS purposes and made available to the public.

### **C. Improvements to DataQs System.**

ABA was very supportive of FMCSA's action in 2013-14 to improve the DataQs system by modifying it to reflect the result of adjudicated citations. Again, we note here the importance of that initiative in terms of refining data for accuracy. However, we believe further improvements could be made to the DataQs process, as it remains overly burdensome and labor intensive for use by carriers. Essentially, in an effort to address accuracy of crash, inspection or violation data in FMCSA's data systems, carriers must jump through multiple hoops, beginning at the local level and the issuing agency, in order to pursue their case. Also, because driver warnings (where tickets are not issued) still count against a carrier's safety record, carriers should have the ability to use DataQs to correct non-citation violations distributed in error. The problem is, companies often are not aware or are uninformed about the issuance of a warning or its details. To address this issue, ABA recommends driver warnings either be removed from appearing within the SMS or that a written report be required to accompany a warning (just like a ticket) so they can be fully challenged through the DataQs process.

Additionally, any item undergoing a DataQs review remains visible on a carrier's record – effecting their SMS, potentially their intervention threshold and possibly causing a loss of business due to the public accessibility of this information. Even if the item is ultimately adjudicated or removed, it is visible for the duration of the DataQs review process, which can be 90 days or more. ABA recommends that any item submitted for review through DataQs be temporarily rescinded from a motor carrier's safety record pending the conclusion of that review.

### **D. Form and Manner Violations.**

ABA concurs with FMCSA that Hours-of-Service (HOS) compliance, as it relates to driver fatigue, is one of the leading indicators of crash risk correlation. As such, the monitoring of duty hours and driver rest periods is a critical aspect of managing driver fatigue. However, the “form and manner” violations<sup>1</sup> within the HOS category, are largely of a paperwork nature, and have very little effect on safety outcomes as such violations tend to be recording errors.

The ABA believes the weighting of recording errors attributed to form and manner should properly reflect the safety risk associated with the violation. Based on this view, ABA would argue the weighting of such errors be significantly discounted, if not eliminated entirely. FMCSA also appears to agree that some of these recording errors have limited influence on safety performance. For example, the Agency continues to grant a limited exemption for fixed route drivers from having to record a change in duty status while loading and unloading passengers or their luggage during brief stops (FMCSA-2012-0268). Further, with the promulgation and implementation of a final rule mandating electronic logging devices (FMCSA-2010-0167), such violations will likely become obsolete. Therefore, ABA recommends FMCSA propose changes to phase-out of this outdated practice.

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<sup>1</sup> Referring to violations found in 49 CFR 395.8, such as location remarks.

## **E. Carrier Initiated Inspections.**

Finally, ABA understands the statutory changes made by MAP-21 in regards to the usage of Motor Carrier Safety Assistance Program (MCSAP) funds. We also appreciate FMCSA's interest in preventing safety performance data from being skewed in an artificially positive manner. However, the result of the statutory change is an environment where the opposite has occurred; data is now actually being skewed in an artificially negative manner. This issue is exacerbated by the fact that there is not uniformity in the implementation of inspection practices among the states. Again, in support of the Agency's interest in continuous improvement and refinement of data to ensure accurate depictions of operations in support of safety prioritization, this issue must be addressed. The Agency needs to provide an opportunity for continuous dialogue and feedback between motor carriers and law enforcement. The operational interchange (through carrier-initiated inspections), is a necessary part of continuous improvement and safe operations.

The ABA is encouraged by FMCSA's interest in a systematic approach to making improvements to SMS by developing enhancements and soliciting public comment. We are also encouraged by the Agency's willingness to initiate policy changes such as improvements to the DataQs systems to reflect more accurate roadside inspection data. We believe these actions demonstrate progress toward improving the overall safety evaluation process, and will result in safety improvements for the industry. Yet, we strongly believe more can and should be done. As outlined above, crash data needs to be refined, passenger carriers should be evaluated within their own peer group, the DataQs process needs simplification, and HOS form and manner violations should be eliminated from BASIC. These additional enhancements support the Agency's goal to improve SMS, ensuring it yields its intended safety benefits through accurate depictions of carriers' safety performance and better crash risk correlation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brandon Buchanan". The signature is written in dark ink and is positioned above the typed name and title.

Brandon Buchanan  
Director of Regulatory Affairs