

July 30, 2012

Submitted via www.regulations.gov
U.S. DOT Docket No. FMCSA-[2012-0074](#)
Docket Management Facility
Room W12-140
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

**Improvements to Compliance, Safety, Accountability (CSA)
Motor Carrier Safety Management System (SMS) Notice
Request for Public Comment
FMCSA-2012-0074**

These comments are filed jointly on behalf of the Truck Safety Coalition (TSC), Parents Against Tired Truckers (P.A.T.T.), Citizens for Reliable and Safe Highways (CRASH), and Road Safe America (RSA) in response to the Notice of Request for Public Comment by the Federal Motor Carrier Safety Administration (FMCSA) to planned improvements to the Compliance, Safety, Accountability (CSA) Motor Carrier Safety Management System (SMS). We seek to address the elimination of violations discovered during certain inspections and to ensure that other SMS “enhancements”, such as changing the terminology or breaking out categories, will not impact the integrity of the data or the public’s access. These comments also provide input regarding the Crash BASIC and the need to retain all crash data and avoid compromising its objectivity, both in the short term when it is used for intervention and crash prevention and in long term studies that require complete data.

As organizations representing the thousands of families and friends who have lost loved ones in truck crashes and truck crash survivors who sustain permanent, life-altering injuries every year, we support the FMCSA’s CSA Program and the resulting improvements that permit intervention before the compliance review level in order to change unsafe behaviors that lead to truck crashes and prevent deaths and injuries. Our volunteers have first-hand experience with the CSA Program and appreciate the truck safety improvements resulting from its identification of high risk motor carriers for intervention and improved compliance.

The CSA Program was based on the need to utilize all data more quickly in order to focus on intervention and prevention and is an improvement over the previous SafeStat system. On July 11, 2012, during testimony before a hearing of the House Committee on Small Business, FMCSA Deputy Administrator Bill Bronrott indicated that the CSA Program is performing at a high level. Mr. Bronrott noted that independent analysis indicates the CSA SMS is a significant improvement over prior systems and is effectively monitoring the industry with a CSA interventions model demonstrating an overall 35 percent increase in the number of carriers reached per Safety Investigator. Also noted was that compliance improved while being less intrusive and time-consuming for all motor carriers, both large and small.

During the time period from the CSA rollout in December 2010 to the end of 2011, violations per roadside inspection declined by 8 percent and driver violations per inspection declined by 12 percent. This is the most significant improvement in violation rates in the last 10 years. The improvements under the CSA program are necessary and overdue and should not be modified in ways that will hinder their effectiveness. Our comments will focus on concerns regarding changes to violation and crash data that may affect how the data is used, classified, and the access granted to it, all of which have potential to compromise the data.

TSC, P.A.T.T., CRASH, and RSA do not support the FMCSA proposal to make changes to align SMS with the Commercial Vehicle Safety Administration (CVSA) inspections by eliminating vehicle violations when a driver-only inspection is conducted and by eliminating driver violations when a vehicle-only inspection is conducted. We are concerned that the changes will reduce the available data that is necessary to identify high risk carriers in order to intervene. Resultantly, we urge the FMCSA to continue retaining all violations data, regardless of the type of inspection. For example, when a police officer pulls a car over for a faulty brake light and then notices that the car driver's license is suspended, the officer will identify and document all of the driver's violations, both license and vehicle related, and these both are recorded in the respective state's database. In his recent testimony, Mr. Bronrott commented that the FMCSA uses "all available inspection and crash data to assist the Agency in prioritizing carriers for review by the Agency." We believe that using all violations noted during every inspection will support this process and that if violations are found during an inspection they should be noted regardless of the type of inspection.

TSC, P.A.T.T., CRASH, and RSA are concerned with proposed changes in the "Summary of Activities" section of a motor carrier's information on SMS Online where FMCSA currently displays a count of recordable crashes broken into "fatality/injury" and "tow-away." In response to stakeholder requests, FMCSA is proposing to separate the combined fatality/injury category into distinct categories: fatality, injury, and tow-away crashes. We would like to confirm that any changes in groupings would not lead to limitations on use of the data. We would also like to receive clarification that the proposed change in terminology from "insufficient data" to "less than 5 inspections" and changing "inconclusive data" to "no violations within 1 year" will not impact the public's access to this information.

Regarding a related issue, TSC, P.A.T.T., CRASH, and RSA also support the CSA program's process of including all crashes in its Crash BASIC and firmly oppose any changes to the Crash BASIC in order to re-classify crashes as "preventable", "non-preventable", and "undetermined." We support the current process of counting all crashes, regardless of fault for the following reasons:

Previous crashes indicate an increased likelihood of a future crash. It is well accepted in the truck research community that crash involvement, in and of itself, is a crash predictor. A 2005 American Transportation Research Institute (ATRI) study determined that a past truck crash increased the likelihood of a future crash by 87 percent (<http://www.atri-online.org/research/results/One-Pager%20CMVE.pdf>). Past crashes are indicative of future crash risk irrespective of a finding of "fault" or "preventability" in a particular crash and support FMCSA's process of including all data.

"Not-at-fault" is not equivalent to "non-preventable." If a truck driver is found "not-at-fault" in a police accident report (PAR) that does not mean that the crash was "non-preventable." Many situations exist in which the motor carrier or its driver could have taken reasonable steps such as setting up flares and additional reflectors or choosing not to drive in windy conditions, to have avoided the crash, but which would not result in their being found "at fault" in the crash. "Fault" and "preventability" are related but not identical concepts and it cannot be assumed that one proves the other.

The FMCSA cannot rely on police accident reports to determine "non-preventability." The police do not investigate "preventability." A police investigation looks for violations of traffic laws and there is no section in a standard PAR to address or spur an investigation into the question of "preventability." It would certainly be a step backward for truck safety if the determination of whether a crash was "preventable" relied on a finding of "fault" due to a violation noted in a PAR. In order for PARs to have any relevance for such a finding, all PARs would need to be changed and proper training would have to be implemented across-the-board.

Police Accident Reports are not always accurate or complete. In fatal and serious injury crashes, police officers are often unable to obtain a statement from the car driver. Ninety-seven percent of vehicle occupants killed in two-vehicle crashes involving a passenger vehicle and a large truck in 2010 were occupants of the passenger vehicles, according to the Insurance Institute for Highway Safety. The investigation is frequently left only with physical evidence at the scene, along with the surviving truck driver's explanation. In addition to self interest to deny fault, it is frequently the case that when a driver has fallen asleep at the wheel, he or she may not know what happened, and may "fill in the details" inaccurately, even if there is no intent to fabricate. At the scene of the crash, responding officers often have numerous and time-sensitive duties such as tending to the injured, clearing the roadway, traffic control, etc., that may delay and hinder them from fully investigating all aspects of crash causation. It is only when all the evidence surrounding the crash is more fully investigated and evaluated that the findings of the PAR can be reviewed, and may be revealed to be incomplete or incorrect. We rely on law enforcement and have a great deal of respect for the work they do. Unfortunately, in real world situations, not all information may be available to the responding officer at the time the PAR is completed.

In order to be fair to all parties involved in truck crashes, if the FMCSA were to establish a means of a "determination" at the request of the industry, it would also have to allow participation from the motoring public and crash victims. Under the system requested by industry, there is no provision for a family to participate in a preventability finding in a crash that killed their loved one. In order to improve the accuracy of the system, the preventable crashes are the ones that need to be identified and classified; however, trucking companies are not likely to request a review of crashes that are clearly preventable. Accordingly, if the purpose of a review system is to allow the FMCSA to more effectively focus on the companies that have contributed to the cause of the crashes, the FMCSA must make a preventability or non-preventability finding in every crash. Additionally, if the program is to have any semblance of fairness, truck crash survivors and surviving families must have the opportunity to participate in any proceeding brought to exclude a crash to ensure that both sides of the issue are heard and that the agency does not make an arbitrary judgement based on insufficient information. The agency simply does not have the resources or manpower to perform this task. Investigations and reliable determinations of "preventability" can take years and hundreds of thousands of dollars to perform. This type of crash review program would, in effect, turn FMCSA into a court system that would usurp the function of state civil courts for determining fault and liability in truck crashes and impact the length and outcome of any settlement as a finding of "non-preventable" would now need to be considered and weighed. The impact on the families of those killed and the injured is potentially devastating.

In conclusion, we support the CSA program and urge the FMCSA to resist any challenges to remove, limit, or subjectively classify violation or crash data that would result in diminishing the program's effectiveness. CSA is advancing safety and its interventions are working, lives are being saved and injuries are being prevented.

We appreciate your consideration of our comments.

Sincerely,

Daphne Izer
Co-founder
Parents Against Tired Truckers (P.A.T.T.)

Jennifer Tierney
Board Member
Citizens for Reliable and Safe Highways
(CRASH)

John Lannen
Executive Director
Truck Safety Coalition

Steve Owings
Founder
Road Safe America