

Before The  
U.S. Department of Transportation  
Federal Motor Carrier Safety Administration

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Docket No. FMCSA-2014-0109

Agency Information Collection Activities:  
Revision of a Currently-Approved Information  
Collection Request: Accident Recordkeeping  
Requirements

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Comments of  
National Motor Freight Traffic Association, Inc.

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1.

I.

Prefatory Statement

On April 15, 2014, National Motor Freight Traffic Association, Inc. (NMFTA) was one of the original two parties which submitted comments in response to the initial Notice in this proceeding regarding the accident reporting requirements. While the recent Federal Register Notice properly noted NMFTA's suggestion that the Agency could better use the information in the Accident Register, it did not suggest, as reported, that the Police Accident Reports be improved. (See 79 Fed. Reg. at p. 25983.) Rather, in response to the Federal Motor Carrier Safety Administration's (FMCSA) inquiry as to whether the accident information collection will have practical utility, NMFTA suggested the use of the information in the Accident Register in establishing that a carrier was without fault to mitigate information in the crash indicator of FMCSA's Behavioral and Safety Improvement Categories (BASICS). Accordingly, NMFTA is resubmitting its comments for further consideration by FMCSA.

II.

Identity and Interest of National Motor Freight Traffic Association, Inc.

NMFTA is a non-profit Virginia corporation, with offices located at 1001 North Fairfax Street, Suite 600, Alexandria, VA 22314. Among its transportation members are some 450 motor carriers which are authorized to operate in interstate and foreign commerce, and which are subject to the Federal Motor Carrier Safety Administration's (FMCSA) safety jurisdiction. Specifically, those member carriers are required to comply with FMCSA's Accident Register regulations set forth in 49 C.F.R. Section 390.15. Accordingly, they are directly affected by the regulations which are the subject of FMCSA's Notice published in the February 14, 2014 issue of the Federal Register (79 Fed. Reg. at pp. 9703-9727), as republished in FMCSA's May 6, 2014 Notice (79 Fed. Reg. at p. 25983.) NMFTA's Articles of Incorporation, as pertinent, authorize it to initiate and/or participate in regulatory proceedings, such as this, which affect the interests of its members. NMFTA's comments are specifically directed to FMCSA's request as to ways it can enhance the quality, usefulness, and clarity of the collected information.

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III.

### Value and Utility of the Accident Register

FMCSA describes the value of its accident reporting requirements as follows:

By requiring motor carriers to gather and record information concerning CMV accidents, FMCSA is strengthening its ability to assess the safety performance of motor carriers. This information is a valuable resource in Agency initiatives to prevent, and reduce the severity of, CMV crashes, (72 Fed. Reg. at p. 9033.)

NMFTA agrees that the Accident Register can be a valuable resource in promoting safety and in reducing CMV crashes. However, it should be recognized that the information contained in the accident register can and, where appropriate, should mitigate information attributed to a carrier in the crash indicator of FMCSA's Behavioral and Safety Improvement Categories (BASICS).

The crash indicator, like the other BASICS categories, is made available to the public. It lists the histories and patterns of high crash involvement, including frequency and severity, based on information from State-reported crashes. Considered by FMCSA are the miles logged by the carrier versus the number of accidents. The identified sources for the crash information are law enforcement crash reports, and crashes reported by the carrier that are reviewed by the Agency during on-site inspections. Nevertheless, that category does not distinguish where the driver is not at fault. That is a critical component for the carrier which will have its crash information available to the public. Because of vicarious liability concerns, the failure to identify when the driver was not at fault could result unfairly in a loss of business opportunities for the carrier because shippers, brokers, or third party logistics providers wrongly could interpret the data as indicating an unsafe carrier and choose not to use its transportation services.

A good example of where a carrier could be impacted unfairly by raw crash data is in the circumstance of passenger vehicle/ truck-involved crashes. As was reported in a study by the University of Michigan Transportation Research Institute, in fatal car-truck crashes, cars were the encroaching vehicle in 89% of head-on crashes, 88% of opposite direction sideswipes, 80% of rear-end crashes, and 72% of same-direction sideswipes. These statistics are considered indicators that the passenger vehicle was at fault in those crashes. While there may be disagreement regarding the extent to which passenger vehicles cause automobile /truck crashes, there appears to be reliable data supporting the fact that the majority of those crashes involve fault on the part of the driver of the automobile. Because of the serious misconceptions that are created when a carrier has an accident reported in the BASICS crash indicator where it

was not at fault regarding its safety compliance and safe transportation operations, the absence of driver fault should be indicated if that category of crash is to be reported for a carrier in the publicly-available BASICS.

In this regard, NMFTA agrees with an earlier position stated by American Trucking Associations, Inc. (ATA) that police accident reports can be used to assign fault for Compliance, Safety, Accountability data-reporting purposes. The police are usually the first on the scene of an accident and are in a good position to accurately reconstruct what happened and the factors which caused or contributed to the crash. Moreover, as required by 49 C.F.R. Section 390.15(b) a carrier must include in the Accident Register copies of all accident reports required by insurers and governmental entities. A carrier should be permitted to utilize such reports or other information in the Accident Register to establish that it was not at fault before that crash is reported in the crash category; or, at the very least, it should be permitted to utilize the accident register information to have a crash removed from its record or be shown as not at fault.

#### IV.

#### Conclusion

NMFTA submits that, in keeping with FMCSA's initial inquiry as to whether the accident information collection will have practical utility, the suggested use of the information in the Accident Register to establish the absence of fault on the carrier's part, before or after the inclusion of that data in the crash category, will enhance the significance of that record-keeping on both FMCSA's and the carrier's part. On the one hand, FMCSA will benefit from the inclusion of crash data that more accurately and fairly portrays a carrier's safety compliance in its operations; and, on the other, a carrier will have the ability to ensure that the crash information reported for it recognizes the absence of fault on its part.

As indicated, crash information can play a significant role in a carrier's selection by a shipper, broker, or third party logistics provider. Therefore, the accuracy of that data is critical in the public's perception of the conduct of safe transportation operations by the carrier. Moreover, the accuracy of the data in the crash category can play a crucial role regarding potential liability issues that could be created for all parties to the transportation arrangement.

Finally, fundamental fairness dictates that a carrier be provided the opportunity to establish that a crash was not the fault of its driver and not have its safety record impaired by inaccurate data.

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Respectfully submitted,

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