

BEFORE THE
DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

COMMENTS OF THE NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.
IN RESPONSE TO NOTICE AND REQUEST FOR COMMENTS CONCERNING
CRASH PREVENTABILITY DETERMINATION PROGRAM
DOCKET NO. FMCSA-2014-0177

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INTRODUCTION

The National Motor Freight Traffic Association, Inc. (“NMFTA”) submits these comments in response to the August 5, 2019, Notice and Request for Comments published by the Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”) at 84 Fed. Reg. 38087 (“Notice”), announcing the Agency’s intent to establish a permanent program allowing motor carriers and their drivers to seek removal of non-preventable crashes from FMCSA’s consideration when it prioritizes a carrier for intervention based upon the carrier’s Crash Indicator BASIC score. In a crash preventability demonstration program initiated in July 2017, FMCSA evaluated 8 types of crashes that might be deemed non-preventable. In the current Notice, FMCSA has proposed some changes to those existing crash categories as well as the addition of another 8 types of crashes that may be non-preventable. FMCSA seeks comments on both the proposed modifications and the newly-added crash types.

NMFTA is a nonprofit membership organization, with a membership comprised of approximately 500 motor carriers operating in interstate, intrastate, and foreign commerce. These carriers specialize in the movement of less-than-truckload quantities of freight (“LTL”). NMFTA’s mission is to promote, advance, and improve the welfare and interests of its members and the motor carrier industry in general. In furtherance of this mission, and pertinent here, NMFTA presents its members’ position in relevant judicial, regulatory, and legislative proceedings. Because NMFTA’s members are in their day-to-day motor carrier operations subject to FMCSA’s safety jurisdiction and regulations, including the Safety Measurement System (“SMS”) which contains carriers’ BASIC percentile scores, they will be directly impacted by FMCSA’s actions regarding the removal of certain crashes from the Crash Indicator

BASIC. Accordingly, NMFTA has participated in this docket since its onset, and submits the following comments below.

DISCUSSION

I. NMFTA Supports FMCSA's Consideration of Fault in its Crash Analysis.

In prior comments submitted in this proceeding, NMFTA advised FMCSA of its firm belief that findings as to fault in crashes, as derived from Police Accident Reports (“PARs”) should be incorporated into the computation of the Crash Indicator BASIC to ensure that this score represents a carrier’s conduct in the fairest and most meaningful manner. *See* Docket No. FMCSA-2014-0177, Comments on Crash Preventability Program (Sept. 12, 2016); Comments on Crash Weighting Analysis (March 24, 2015); *see also* Comments on Improvements to the CSA SMS, Docket No. FMCSA-2012-0074 (July 2, 2012). Historically, FMCSA’s practice was to include all recordable crashes in calculating a carrier’s Crash Indicator BASIC score, no matter what role the carrier and driver played in the accident. This practice, however, does not provide a realistic picture of the carrier’s safety disposition. A carrier whose drivers repeatedly cause recordable crashes is more likely to have a poor safety disposition that could benefit from Agency intervention than a carrier whose well-trained drivers are victims of crashes caused by other motorists or by external conditions. For this reason, NMFTA has supported a crash-preventability determination program that would allow removal of a crash from the BASIC to be made whenever the relevant PARs make a finding in the driver’s favor with respect to fault. *See* NMFTA Comments cited above. PARs are a reliable contemporaneous source of information prepared by well-trained law enforcement officers.

While the crash preventability determination program that FMCSA tested in the prior demonstration program, even as expanded in the FMCSA’s current Notice, is not as broad in

scope as NMFTA would ideally wish to see, it is a definite step in the right direction insofar as it gives stakeholders some opportunity to correct their records, by removing misleading crash data. Further, in so doing, it will improve the quality and accuracy of the data in FMCSA's records that is used to determine which carriers should be the proper focus of Agency intervention.

II. Additional Categories of Non-Preventable Crashes Should be Added to the Program.

FMCSA has requested comments on the various categories of non-preventable crashes included in the program. NMFTA discusses below three categories of crashes that are or should be included within the scope of the program.

A. Unattended vehicles

The original set of crash types included a CMV struck while "legally stopped or parked, including when the vehicle was unattended." 84 Fed. Reg. at 38088. In the Notice, this category has been reframed, in relevant part, as follows:

Legally stopped or parked—Crashes would qualify if the CMV was stopped at a light, stop sign or other traffic control device, stopped for railroad crossings or school buses, or was parked.

As revised, there is no longer any indicator that this category of non-preventable crashes includes both situations where the vehicle is attended or unattended. NMFTA would recommend that the qualifier be reinserted to make it clear that the presence of the driver is not critical for the crash to be deemed non-preventable and removable from a driver and/or carrier's record.

B. Other Types of Crashes May Also be Deemed Non-Preventable.

As defined for purposes of FMCSA's safety fitness regulations, a "preventable accident" is one involving a CMV "that could have been averted but for an act, or failure to act, by the motor carrier or the driver." *See* 49 C.F.R. § 385.3. NMFTA believes there are several categories of crashes, not included within those already identified by FMCSA in the Notice, that

should be treated as non-preventable using this definition. The first are crashes that are caused by extreme weather events. This could include high winds, tornadoes, hail, wildfires, duststorms, and comparable unpredictable harsh weather conditions. Such conditions often materialize suddenly and unexpectedly, catching a driver off-guard and unable to take action that would avert a crash in a safe manner. The second are crashes where the other driver has clearly taken unsafe actions that resulted in the crash. While FMCSA has already proposed adding crashes caused by a driver who failed to stop at a traffic control device to the crashes that are non-preventable, this category could also include situations involving speeding excessively or making an extreme lane incursion. Importantly, all of these are situations that are often easily identified in a PAR as the cause of the crash.

NMFTA believes that the Agency should consider adding the crash types discussed above to the list that may be deemed non-preventable. NMFTA would also ask that FMCSA establish some procedures for carriers in the future to propose the addition of other crash types for inclusion in the crash preventability determination program.

III. Non-preventable Crashes Should Not Be Displayed in the SMS.

FMCSA has stated in the Notice that non-preventable crashes included in the program would continue to be displayed in the SMS, with the non-preventable finding noted, even though such crashes have been eliminated for purposes of calculating the carrier's Crash Indicator BASIC score. *See* 84 Fed. Reg. at 38090. The Agency has asked, however, whether they should also be removed from the SMS. *Id.* For the reasons discussed below, it would be appropriate to remove the crashes entirely from the SMS.

The removal of non-preventable crashes from the SMS not only provides an additional safety incentive for carriers, as FMCSA has suggested in the Notice (*see id.*), but also ensures

that crashes beyond a carrier and its driver's control are not used against them in any way. Listing on the SMS as a recordable crash allows the public to view and interpret a non-preventable crash negatively against the carrier, even though it has been established that the driver had no ability to prevent it from happening. Indeed, a shipper might decide not to use a carrier with such non-preventable crashes when there may be others willing to provide similar services that have fewer or no reported crashes. If non-preventable crashes are not a factor in computing a carrier's safety compliance score, they should not be reported in a manner that subjects them to public misinterpretation.

Respectfully submitted,



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