INTERMODAL ASSOCIATION OF NORTH AMERICA

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May 20, 2016

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-2015-0001;
Carrier Safety Fitness Determination Notice of Proposed Rulemaking

Dear Administrator Darling:

The Intermodal Association of North America is a leading industry trade association representing the combined interests of the intermodal freight industry. IANA's membership roster of over 1,000 corporate members includes railroads — Class I, short-line and regional; water carriers and stacktrain operators; port authorities; intermodal truckers and over-the-road highway carriers; intermodal marketing and logistics companies; and suppliers to the industry such as equipment manufacturers, intermodal leasing companies and consulting firms. IANA's associate (non-voting) members include shippers, academic institutions, government entities and non-profit associations.

IANA appreciates the efforts that the Federal Motor Carrier Safety Administration has put into the development of its Safety Fitness Determination Notice of Proposed Rulemaking. We recognize that it will be difficult to get all parties to agree, and it is our intent with these comments to provide additional input to help the Agency as it further deliberates on this issue. The intermodal industry is a unique sector of the freight transportation community, as it comes under the jurisdiction of a number of regulatory agencies. As FMCSA ponders its next steps we would ask that it is sensitive to, and takes into consideration, the unique aspects of the intermodal industry. The drayage community is a vital component of this industry and any changes that could affect the dynamic environment between intermodal stakeholders needs to be carefully considered.

First, it is our belief that moving to an absolute measurement approach as proposed in the NPRM is an improved method over the relative nature that has been the hallmark of the Compliance, Safety, and Accountability Program to date. It will permit motor carriers to be more in control of their own destiny as the actions (or inactions) of other motor carriers will not have the impact on their CSA scores like they do today.

The underpinning of FMCSA's SFD proposal is the SMS Methodology and its associated severity weights and measures. It is our belief that the entire methodology (including the severity weights and their rationale), should be subject to the notice and comment process. Part of the reason Congress and

others have expressed concerns with the CSA scores being made public is because these scores have resulted in a de facto safety rating, which has had direct impacts on business. It is one thing to use the scores as a part of the carrier selection and enforcement prioritization strategy. However, it is an entirely different issue to use the underlying data for purposes of safety rating determinations. There must be a higher standard for the assignment of safety ratings that is backed with sound science, transparency, and input by the public and those who are impacted.

Additionally, subsection 31136(f) of Title 49 U.S.C. promulgated through section 5202 of the FAST Act indicates that "the Secretary shall consider the effects of the proposed or final rule on different segments of the motor carrier industry, and formulate estimates and findings based on the best available science." It further states that proposed or final rules shall "consider the effects on commercial truck and bus carriers of various sizes and types." As previously indicated, the intermodal industry is a crucial component to the freight transportation community and is made up of many small businesses, and as such, we believe FMCSA needs to further assess the potential impacts on this important segment of the industry.

Subparagraph 5221(d)(2)(C) of the FAST Act states that "any rulemaking by USDOT relating to the CSA program, including the SMS or data analysis under the SMS", must consider the results of a comprehensive review process as required under subsections 5221(a) through (d) of the FAST Act. This process includes an independent study to be completed by the National Research Council of the National Academies, and reported to Congress and the USDOT Inspector General within 18 months of enactment of the FAST Act. Also outlined in subsection 5221(d) is the completion of a corrective action plan with regard to any defects in the CSA/SMS/BASICs methodology that may be identified by NRC report.

By moving forward with this NPRM we have concerns that the FMCSA may be acting prematurely based on the direction provided by the Congress. Declaring a carrier "Unfit" equates to that company being placed in an alert status. The information by which the carrier will be deemed to be unfit is the same data and underlying methodology that Congress expressed concerns with when enacting the FAST Act provisions. To propose that this same system be used to determine if carriers are unfit and prohibited from operating implies that the Agency is not addressing the concerns that have been brought forward.

FMCSA is required by the Motor Carrier Safety Act of 1984 to make safety fitness determinations for carriers operating in interstate commerce. We believe its proposal to only make determinations as to "Unfit" carriers is not in keeping with its statutory duty. The vast majority of business contracts between carriers and their customers require carriers to have a "Satisfactory" safety rating. By doing away with this rating option, how will a drayage carrier be able to establish that it does indeed, possess a satisfactory operating record if there is no safety rating? How will insurers react to this alternate approach? FMCSA's contention that the safety rating is interpreted to mean Agency approval of the carrier's fitness is incorrect. The satisfactory rating indicates a satisfactory level of compliance with the safety regulations. At the very least, carriers who have earned satisfactory ratings should be able to retain them.

On a related point, as the Agency proceeds with this rulemaking it is important to ensure it assigns appropriate accountability for any roadability defects of intermodal equipment that are discovered

during inspections or investigations, to the proper parties (e.g. Intermodal Equipment Providers vs. Motor Carriers). To do otherwise could adversely impact fitness determinations for intermodal motor carriers.

The 15-day proposed requirement for motor carriers to submit requests for review of a proposed "Unfit" SFD is too short of a time frame. It does not provide the motor carrier a reasonable opportunity to investigate, review, respond and ultimately supply the documentation that would be requested or necessary to challenge the findings should they need to do so. In addition, should a motor carrier choose to challenge the FMCSA SFD, we believe a stay of the proposed rating is in order until such time as the Agency can assess the legitimacy of the challenge, unless an immediate safety hazard can be shown.

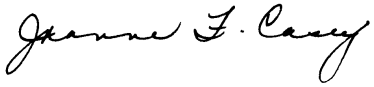
The Government Accountability Office recommended in its 2014 report (GAO-14-114), among other things, that FMCSA should set a higher data sufficiency threshold to improve its reliability to identify carriers at a higher risk of crashing, and used 20 inspections in its analysis to demonstrate this. FMCSA chooses to use 11 inspections with violations in a 24-month period in its proposal. Given the consequences of even a "proposed unfit" determination in causing customers to cease using a motor carrier, and the potential of targeting or the issuance of unfit ratings to carriers not in the "high risk" pool, a substantial dataset needs to underpin the safety fitness determination. It is critical that the Agency is able to defend this number, and it must be grounded in performance data.

It is important that the Agency review the list of proposed critical acute and critical regulatory violations discovered during investigations and roadside inspections to assess culpability on the part of the motor carrier prior to including them in the SFD determination. There are instances where a motor carrier has the proper training programs, policies, procedures and remedial measures in place, and the driver still violates such policies through no fault of the carrier, or it is evident the carrier had no means to detect or control for the violations (e.g. drinking alcohol or using drugs while operating a CMV). These instances are not necessarily evidence that the motor carrier is unfit, and should be adequately accounted for in the SFD determination process.

Lastly, the NPRM excludes the use of non-preventable crashes in the motor carrier's SFD, which will help to ensure that FMCSA does not label carriers as "Unfit" based simply on crash *involvement*. However, determining which crashes are likely *caused* (e.g., rear-ended others), versus those that are *preventable,* would be a better standard for identifying carriers that meet the unfit standard. Using the preventable approach imposes an unacceptably high liability on the motor carrier, and is not consistent with FMCSA's goal of identifying the "high-risk" motor carriers.

IANA appreciates the opportunity to provide its comments on this important component of the CSA program. We also value our relationship with the FMCSA and look forward to continuing our joint efforts to ensure that the intermodal community engages in safe, reliable and efficient cargo transportation practices.

Sincerely,



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