

BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION  
DEPARTMENT OF TRANSPORTATION

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COMMENTS OF THE  
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.

IN RESPONSE TO A NOTICE AND REQUEST FOR COMMENTS

DOCKET NO. FMCSA-2005-23239

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BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION  
DEPARTMENT OF TRANSPORTATION

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The Owner-Operator Independent Drivers Association, Inc. (“OOIDA”) hereby submits these comments in response to the May 3, 2006, notice published by the Federal Motor Carrier Safety Administration (“FMCSA”), at 71 Fed. Reg. 26170, soliciting comments on its proposed improvements to the Motor Carrier Safety Status Measurement System (“SafeStat”) algorithm. SafeStat is a data-driven analysis system that determines the current relative safety status of individual motor carriers. FMCSA has proposed four major changes to the formulas used by the SafeStat system to determine a carrier’s SafeStat category and score, which changes are intended to improve SafeStat’s ability to accurately identify carriers posing a high crash risk.

OOIDA is a not-for-profit trade association incorporated in Missouri with its principal place of business located at 1 NW OOIDA Drive, P.O. Box 1000, Grain Valley, Missouri 64029. OOIDA is the largest trade association representing the interests of independent owner-operators and professional truck drivers on all issues that affect small business truckers. OOIDA actively promotes the views of commercial truckers before a broad variety of forums, including federal and state agencies, legislatures, courts, other trade associations, and private businesses, in an ongoing effort to obtain equitable and safe working conditions for these commercial truck drivers.

OOIDA’s more than 141,000 members collectively own and operate more than 210,000 heavy duty trucks and small truck fleets. These members include small motor carriers as well as truckers leased to motor carriers. The performance of all these carriers is tracked by the SafeStat system. Consequently, OOIDA regularly uses the publicly-available SafeStat carrier safety analyses to guide or support its activities on behalf of its members. For example, OOIDA frequently uses SafeStat data

in responding to members inquiring about why they are being targeted for a compliance review or for increased roadside inspections. Both OOIDA and its members use SafeStat ratings to help members evaluate a potential employer's safety record. OOIDA also has a trucking insurance subsidiary that considers SafeStat data along with other available information in making insurance underwriting decisions in specific cases and in tracking the performance of insured carriers. For these reasons, OOIDA appreciates FMCSA's efforts to improve the accuracy of the SafeStat algorithm and is submitting these comments regarding the proposed changes.

### **DISCUSSION**

SafeStat evaluates a carrier's safety performance in four areas: accidents, drivers, vehicles, and safety management. SafeStat has proposed a reduction of the time frame considered in data analysis in all four areas from 30 months to 24 months. As discussed below, OOIDA supports this reduction. SafeStat has also proposed specific changes in the accident, driver, and vehicle safety evaluation areas ("SEA"). As also discussed below, while OOIDA agrees that the formulas used in each of these areas can be improved, OOIDA has some concerns with each of the specifically-proposed changes.

#### **I. Shortened Data Exposure Time Period.**

FMCSA has proposed a reduction in the time period considered in analyzing data for purposes of determining a carrier's SafeStat category and score from the current 30 months to 24 months. OOIDA supports this change, as a focus on more recent data better reflects a carrier's safety performance at the time it is being evaluated. It is the quality of the data within the studied time frame, whether 30 or 24 months, rather than quantity that is critical. Further, aligning the SafeStat time frame with the two-year time period used in the SAFER system and other FMCSA reports relating to safety, will make comparisons of data compiled by each system easier.

## II. New Traffic Violations Indicator.

FMCSA has, in the Driver SEA, proposed the replacement of the current Moving Violations Indicator (“MVI”) with a Traffic Violations Indicator (“TVI”). As a preliminary matter, OOIDA objects to the focus here on violations instead of convictions. Citations for moving violations are often successfully challenged. Nevertheless, because there is no easy way to get the SafeStat record adjusted, the erroneous citations remain on a carrier’s SafeStat record for a long time and hurt its rating. To eliminate this problem, only admitted violations and convictions following challenges should be included in the new TVI calculations.

A major difference between the MVI and the new TVI is that the TVI analysis will include violations of local laws, ordinances, and regulations (as referenced in 49 C.F.R § 392.2) in addition to the twelve specified moving violations used at present in the MVI. Although FMCSA has not proposed any modifications with respect to the twelve specific violations, OOIDA believes that at least one modification is needed. The possession of alcohol is not in all cases illegal and certainly does not rise to the same level of severity as use of alcohol or the other ten specifically-listed moving violations. Accordingly, it should be eliminated from this list.

With respect to the proposed modifications, OOIDA does not object to the incorporation of local violations into the analysis. However, given the significant variations in both the type of conduct that constitutes a violation and the level of enforcement at the local level, some guidance or definition of the types of local violations that are to be included must be provided to ensure uniformity and to prevent violations unrelated to safety from being included in the analysis. For example, an engine brake (commonly called “Jake Brake”) violation is treated by some local jurisdictions as a moving violation that would be reported as an unspecified local law violation for SafeStat purposes, even though the prohibition on engine brakes pertains to noise reduction not safety. Thus, it is not

enough that the unspecified local violations are, in the TVI, given half the weight of specified moving violations. If they are not important enough to be given full weight and specifically identified, then perhaps they should be excluded from the computations entirely.

FMCSA has suggested that the expanded range of traffic violations considered by SafeStat will allow FMCSA to identify more higher risk carriers and improve geographical coverage in states with relatively low reporting of the twelve specified moving violations that were used in the MVI. A state that has not and does not at present report the specified violations already covered by the MVI, is not likely to report local violations just because they are added to the Driver SEA. The end result will simply be a greater burden on the states that already meet their obligations to report specified violations.

Another significant difference between the MVI and the TVI is that the TVI uses a different measure of exposure, specifically the average number of power units a carrier operates at the end of three stated time periods rather than the currently-used number of drivers. FMCSA contends that the data used to calculate the number of power units is more complete than the data used to calculate the number of drivers. OOIDA agrees that the number of drivers is not an accurate measure for normalizing the data collected, but questions the benefits to be gained by using vehicle numbers as its replacement. First, motor carrier census data is only updated biennially. Because the number of vehicles operated by a carrier can and often does change dramatically within that two-year time period, reported numbers are often very inaccurate. Second, the number of reportable vehicles is easily manipulated, particularly by large carriers. Large carriers often have unused vehicles (old or newly-purchased) that can be used to artificially inflate the vehicle numbers and skew the ratio between violations and vehicles. Also, local delivery trucks and “spotting tractors” used by some large carriers may be included in the number of reported vehicles, even though such vehicles

experience relatively little exposure. Third, violations per vehicle are not comparable if vehicles are driven substantially different distances due to the nature of a particular motor carrier's operation.

OVIDA suggests as an alternative either to number of drivers or vehicles that the new TVI should be normalized based on vehicle-miles-traveled. This information, like the number of drivers and vehicles is collected by FMCSA in the motor carrier census (form MC-150). Unlike the number of vehicles it is subject to independent verification through IFTA filings. Further, relating the number of violations to miles traveled provides a fairer representation of exposure as it relates to driver safety. Indeed, mileage is the measure used by the National Highway Traffic Safety Administration ("NHTSA"), another DOT agency, in determining accident fatality rates in the Fatality Analysis Reporting System (FARS) and in determining accident injury rates in the General Estimating System (GES) component of the National Automotive Sampling System (NASS). It is an equally suitable standard in the SafeStat context.

One additional change made in the FMCSA's switch from the MVI to the TVI is that carriers are no longer grouped based solely upon the number of moving violations for comparison purposes, they are now divided into four groups based upon the average number of vehicles and ranked against other carriers within their group. The grouping of similarly-sized carriers is a welcome improvement. However, the proposed four groups are not sufficient to ensure that carriers are really being compared to their peers. According to recent statistics, there are between 650,000 and 720,000 active motor carriers operating nearly 4.5 million power units. Approximately 85 percent of those carriers have ten or fewer trucks and a significant portion of those are one-truck fleets. At the other extreme are carriers like UPS, which has more than 75,000 trucks in the U.S. alone. With such a large spread in the number of vehicles operated by carriers tracked by the SafeStat system, four groupings simply is not adequate to provide an accurate picture of how any particular carrier

compares to its peers. The number of groupings needs to be expanded so that the range within each group is much smaller.

### III. Simplifying the Calculation of the Accident SEA.

FMCSA has proposed simplifying the Accident SEA by eliminating the Recordable Accident Indicator (“RAI”), which uses recordable crash and vehicle-miles-traveled data gathered during a carrier’s most recent compliance review to calculate the recordable accident rate for all carriers that have had compliance reviews within the past 12 months. This makes the Accident Involvement Indicator (“AII”), which looks at the number of state-reported crashes and normalizes them based upon the number of vehicles reported in the motor carrier census, the sole determinant of the Accident SEA. The justification given by FMCSA for the change is that it will establish one standard for measuring crash rates, avoiding potentially conflicting results from multiple standards.

OOIDA must initially question whether having only one standard is preferred. Looking at a carrier’s accident rate from two different perspectives might well be a more effective way to identify all carriers with a higher crash risk. Presumably the divergent results obtained from different standards explains why three different formulas--the MVI/TVI discussed above, the Driver Inspections Indicator (DII), and Driver Review Indicator (DRI)--are employed in the Driver SEA area, with the highest indicator being adopted and applied in each case. OOIDA recognizes that an AII may be derived for virtually all carriers, while an RAI can be calculated only for carriers that have had a compliance review within the 12-month period prior to the calculation. But this does not mean that the RAI should be eliminated. It is a valuable tool where current mileage data it is available. Having two standards is particularly desirable where, as here, large carriers who are self-insured and/or have their own body shops are able to artificially lower the number of reported accidents.

In addition, for the reasons discussed at page 4 above, reliance entirely upon the number of

vehicles to normalize the number of crashes is flawed because of the inaccuracy and unreliability of those numbers. Because the RAI depends upon vehicle-miles-traveled, it is a more accurate way to give meaning to the number of crashes experienced by carriers when compared to other carriers.

Finally, the Accident SEA, both before and after the proposed modifications, is deficient to the extent that it incorporates all reportable accidents in its formulas, regardless of fault. At present, for example, if a carrier's truck is rear-ended while at a traffic light the crash still counts and hurts a carrier's SafeStat rating. However, a carrier should not be held accountable for an accident when its vehicle and driver bear no responsibility. To the contrary, to avoid this result, the Accident SEA should be restricted to crashes in which the carrier is partially or totally at fault.

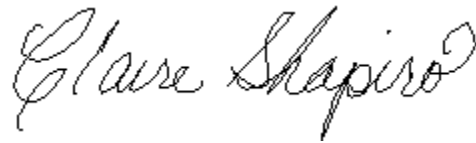
#### IV. Expanding Vehicle Out-of-Service Violation Data in the Vehicle Inspection Indicator.

Finally, FMCSA has proposed that the results of driver-only inspections (Level 3) resulting in vehicle out-of-service ("OOS") violations will be included when calculating the Vehicle Inspection Indicator ("VII") in the Vehicle SEA. The existing formula includes OOS violations noted in Level 1, 2, and 5 inspections. OOIDA does not have a problem with the inclusion of results from Level 3 (driver only) inspections in the Vehicle SEA when OOS violations are noted. For the same reasons as discussed at page 3 above in relation to the Driver SEA, OOIDA has a problem with the focus in the Vehicle SEA formulas on violations instead of convictions. Discrepancies are often found between violations cited during roadside inspections and actual regulatory violations. For example, OOIDA received a report from a driver who was put out-of-service for failure to keep a mileage recap in his log, conduct that is not a violation of the cited regulation. In that case and many others, alleged OOS violations are successfully challenged and reversed. Thus, the VII should only include admitted violations and convictions following challenges.

CONCLUSION

SafeStat is a useful tool that should be modified as needed to ensure that high risk carriers are identified so their problems may be addressed through on-site FMCSA compliance reviews, roadside inspections, and possibly participation in the PRISM safety improvement process (MCSIP). However, to get the maximum benefit from the SafeStat system, FMCSA also needs to devote more resources to the standardization of the data that is being submitted by various states for analysis. On the other end, FMCSA needs to make more resources available to take action against those identified high risk carriers whose safety status does not improve over time. FMCSA should not only be prepared to suspend or revoke operating authority for consistently poor performing carriers, but must also take steps to ensure that the same individuals do not simply set up shop under another name.

Respectfully submitted,



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