



DEPARTMENT OF TRANSPORTATION

4910-EX-P

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2004-18898]

Agency Response to Public Comments of Safety Measurement System Changes

AGENCY: Federal Motor Carrier Safety Administration

ACTION: Notice; Response to Comments

SUMMARY The Federal Motor Carrier Safety Administration (FMCSA) announces changes to the Carrier Safety Measurement System (SMS). A preview of the original improvements became available to motor carriers and law enforcement on March 27, 2012, and will remain available until the SMS changes become operational. The SMS improvements are now scheduled to be operational in December 2012. Comments to the preview were reviewed and considered. This notice explains the Agency's modifications to the changes announced in March and describes four additional changes that will be implemented in December.

DATES: These improvements are scheduled to be operational in December 2012.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2004-18898 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>.
- Fax: 1- 202-493-2251.
- Mail: Docket Management Facility, (M-30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Ground Floor, Room 12-140, Washington, DC 20590-0001.
- Hand Delivery: Same as mail address above, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation” heading under the SUPPLEMENTARY INFORMATION section for instructions on submitting comments and additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Price, Federal Motor Carrier Safety Administration, 1000 Liberty Avenue, Suite 1300, Pittsburgh, PA 15222, Telephone 412-395-4816, E-Mail: bryan.price@dot.gov. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation

Comments regarding the improvements outlined in this Notice were originally collected under Docket Identification Number FMCSA-2012-0074. To avoid confusion and ensure consistency, FMCSA is moving to a single CSA docket. FMCSA’s CSA docket (FMCSA-2004-18898) will remain open to accept comments on the SMS methodology, and will remain open when the improvements outlined in this notice become operational in December.

Submitting Comments

If you submit a comment, please include docket number FMCSA-2004-18898. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to <http://www.regulations.gov>, enter “FMCSA-2004-18898” in the “Search” box, and click “Search”. If you submit your comments by mail or

hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received and may undertake future modifications of SMS based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> and in the “Search” box, enter “FMCSA-2004-18898”, and click “Search”. A list of documents will appear; click on the hyperlinks to view public submissions and Agency-provided materials. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act

All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. Anyone is able to search the electronic forum for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the Federal Register published on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

Background

FMCSA's enforcement and compliance programs are making America's roads safer. CSA is FMCSA's new enforcement and compliance program and has been operational since December 2010. An overview of CSA is available in the March 27, 2012, Federal Register Notice (77 FR 18298). With rollout of CSA, commercial motor vehicle safety awareness is at an all-time high with 30,000,000 visits to the Agency's SMS Website in its first year of operation. FMCSA has leveraged its programs to communicate with the industry about safety and compliance, resulting in the most dramatic drop in safety violations in a decade. In 2011, violations per roadside inspection were down by 8%, and driver violations per inspection were down by 10%.

SMS uses all available inspection and crash data to prioritize carriers for interventions. SMS quantifies on-road safety performance of carriers to identify the specific safety problems the carrier exhibits and to monitor whether performance is improving or worsening. SMS helps FMCSA more efficiently apply its resources and to bring carriers and drivers into compliance with Federal safety regulations and prevent crashes, saving lives.

The Agency has found that SMS is an effective tool for identifying those carriers with future safety and compliance issues. For example, the SMS has sufficient data to assess 200,000 of the 525,000 active carriers in FMCSA's data systems in a BASIC. Those 200,000 carriers are involved in 92% of the crashes reported to FMCSA. Both FMCSA and an independent evaluator, the University of Michigan Transportation Research Institute (<http://csa.fmcsa.dot.gov/Documents/Evaluation-of-the-CSA-Op-Model-Test.pdf>), have confirmed that SMS is an effective tool in identifying the high risk motor carriers and a significant improvement over the previous SafeStat system.

FMCSA's CSA Website (<http://csa.fmcsa.dot.gov>) is a resource that was created for all stakeholders to gain a better understanding of CSA in general, including SMS. This Website offers many educational items including:

- Informational factsheets on various aspects of CSA, including SMS;
- Presentations used to deliver information to the industry regarding CSA in general and the SMS methodology;
- The operational version of the SMS Methodology along with the proposed version released in March 2012;
- Various studies conducted on SMS's effectiveness; among other educational resources.

The original FR Notice posted in March 2012 also includes detailed information about SMS.

FMCSA is continuously listening to stakeholder feedback and researching and analyzing ways to improve its programs. The SMS changes proposed in March reflect that work. FMCSA is committed to a thoughtful, methodical, and transparent process to ensure that the SMS continues to support the Agency's critical safety mission.

In total, the SMS changes being implemented in December more effectively identify and prioritize motor carriers for intervention to reduce commercial motor vehicle crashes and HM incidents. Motor carriers identified as exceeding the intervention threshold in any BASIC under the revised methodology have a 3.9% greater future crash rate and 3.6% greater future HM violation rate than those previously identified for intervention using the existing SMS methodology. Details regarding this analysis of motor carriers exceeding the intervention thresholds as well as high risk motor carrier identification is posted on the CSA website at (http://csa.fmcsa.dot.gov/Documents/SMS_FoundationalDoc_Final.pdf)

Proposed SMS Changes from March 2012 Federal Register Notice

FMCSA provided detailed descriptions of the following planned changes to the SMS in a Federal Register Notice published on March 27, 2012 (77 FR 18298) and in a summary and analysis document posted on the CSA website

(http://csa.fmcsa.dot.gov/Documents/SMS_FoundationalDoc_Final.pdf); these changes have been available for carriers and law enforcement to preview since that date and included the following:

- Strengthening the Vehicle Maintenance BASIC by incorporating cargo/load securement violations from today's Cargo-Related BASIC;
- Changing the Cargo-Related BASIC to the Hazardous Materials (HM) BASIC to better identify HM-related safety and compliance problems;
- Better aligning the SMS with Intermodal Equipment Provider (IEP) regulations;
- Aligning violations that are included in the SMS with Commercial Vehicle Safety Alliance (CVSA) inspection levels by eliminating vehicle violations derived from driver-only inspections and driver violations from vehicle-only inspections;
- More accurately identifying carriers that transport significant quantities of HM; and
- More accurately identifying carriers involved in transporting passengers.

In addition, FMCSA described changes to the display of information on the SMS Website (<http://ai.fmcsa.dot.gov/sms/>). Specifically, FMCSA provided notice of its plan to modify the SMS Website display to:

- Change current terminology, including the terms “Insufficient Data” and “Inconclusive,” to fact-based definitions that clarify the carrier's status in each BASIC; and
- Distinguish between crashes with injuries and crashes with fatalities.

SMS Changes to be Implemented

FMCSA is implementing the above-mentioned changes to SMS in December 2012, with two notable modifications. First, in response to public comments expressing concern about the HM BASIC, it will not be made available to the public for one year. Instead, only motor carriers and law enforcement personnel that log into FMCSA systems will be able to view percentile ranks in the HM BASIC. This one year time period will allow the Agency to further study and refine the BASIC prior to making it available to the public. Second, the HM BASIC will be named the HM Compliance BASIC.

Additional Changes

In addition to the changes outlined above, FMCSA is providing notice of four more changes based on careful consideration of comments received and stakeholder feedback. In short, the Agency is proposing these changes: to remove speeding violations that are 1 to 5 miles per hour (mph) over the speeding limit; to lower the severity weight from 5 to 1 for speeding violations that do not designate MPH range above the speed limit; to make the severity weights associated with electronic and paper logbook violations the same; and to change the name of the Fatigued Driving (Hours-of-Service (HOS)) BASIC to the Hours-of-Service (HOS) Compliance BASIC. Comments to these additional changes can be made to the original CSA docket (FMCSA-2004-18898). Users of the SMS Preview website should be aware the four additional changes will not be incorporated in the SMS Preview website and will become visible upon going operational in December.

Removal of 1 to 5 mph speeding violations

In the current SMS, the Unsafe Driving BASIC uses all speeding violations regardless of the range exceeding the speed limit. FMCSA is removing commercial motor vehicle speeding violations in the 1 to 5 mph over the speed limit range from SMS. Current speedometer

regulations (49 CFR 393.82) only require accuracy within 5 mph. This change therefore aligns SMS with the regulatory requirement. Once implemented, the Unsafe Driving BASIC will not include any speeding violations that fall into the 1 to 5 mph over the speed limit range regardless of when the inspection occurred. This change applies to the prior 24 months of data used by SMS and all SMS data moving forward.

Lowered severity weight for speeding violations that do not designate MPH range above the speed limit

In the current SMS, the Unsafe Driving BASIC applies a severity weight of 5 to general speeding violations that do not specify the range exceeding the speed limit. FMCSA is reducing the severity weight for general speeding violations (49 CFR 392.2S) to 1 for those violations occurring on or after January 1, 2011. This is the date when inspectors had access to updated roadside inspection software, ASPEN, to record violations broken out by mile per hour categories above the speed limit. After the changes are implemented in December, the following severity weights will apply to recorded speeding violations:

Specified MPH Range Above Speed Limit	Violation Severity Weight
Not specified	1 * For all recorded violations with an unspecified range above the speed limit occurring after January 1, 2011
1-5	0
6-10	4
11-14	7
15+	10

Alignment of paper and electronic logbook violations

In the current SMS, hours-of-service form and manner violations have different weights for paper (weight of 2) and electronic form and manner logbook (weight of 1) violations. FMCSA is now equally weighting paper and electronic logbook form and manner violations with a severity weight of 1 for consistency purposes. In addition, the current SMS assigns a severity weight of 5 to paper log violations having to do with a driver not having a log book but only a severity weight of 1 for similar violations of electronic logbooks. With these changes, all violations related to not having a logbook, electronic or paper, will have a severity weight of 5.

Name Change of the Fatigued Driving (HOS) BASIC to the HOS Compliance BASIC

Upon careful review of comments concerning the proposed SMS changes and stakeholder feedback, FMCSA is changing the name of the Fatigued Driving (HOS) BASIC to the Hours of Service (HOS) Compliance BASIC. This action is being taken to reflect that the BASIC includes violations such as “form and manner” and “logbook not current” that, by themselves, do not necessarily indicate fatigued driving or driving in excess of allowable hours.

Response to Docket Comments on “Improvements to the Compliance, Safety, Accountability (CSA) Motor Carrier Safety Measurement System (SMS)”

The Agency received 118 unique comment submissions to the March notice, mostly from drivers, carriers, and industry associations. Of the 118 submissions, no single topic drew responses from a majority of the commenters and many of the submissions addressed more than one topic. Below is a synopsis of the comments received and the Agency’s responses.

Strengthen the Vehicle Maintenance BASIC by moving cargo/load securement violations from the Cargo-Related BASIC to the Vehicle Maintenance BASIC.

Comments: Several commenters, such as Bison Transport, Inc, Q-Line Trucking, the Western Trucking Alliance, Vigillo, LLC, the Owner-Operator Independent Driver Association (OOIDA), and B-H Transfer commented that cargo/load securement violations do not belong in the Vehicle Maintenance BASIC. Some of those commenters, such as Bison Transport, proposed that the Unsafe Driving BASIC would be more suitable, because the driver bears primary responsibility for such violations. Some commenters, such as Vigillo, are concerned that cargo/load securement violations would not receive enough emphasis in the Vehicle Maintenance BASIC. Some commenters are of the opinion that cargo/load securement violations will still receive too much emphasis. Others, like Q-Line Trucking, are concerned that moving the violations to the Vehicle Maintenance BASIC would transfer the flat-bed bias to that BASIC instead of addressing the bias directly.

Several commenters, including OOIDA, Bison Transport, Inc. and Q-Line Trucking, proposed that cargo/load securement violations should be compared by group – flatbed or open trailer – not all together in the Vehicle Maintenance BASIC.

The American Trucking Association (ATA) supports the proposed enhancement but suggested changing the name of the Vehicle Maintenance BASIC to reflect the additional violations being included.

Agency Response: FMCSA analysis indicates, the proposed approach of moving cargo/load securement violations into the Vehicle Maintenance BASIC identifies carriers with a higher future crash risk while at the same time effectively addressing the bias associated with carriers that haul open trailers. A detailed description of this analysis, and the issue associated with motor

carriers that primarily transport open trailers, is posted on the CSA website at http://csa.fmcsa.dot.gov/Documents/SMS_FoundationalDoc_Final.pdf.

By moving load securement violations to the Vehicle Maintenance BASIC and recalibrating the severity weights, FMCSA has mitigated the known bias created by information system limitations; ensured that the carriers with a pattern of load securement violations are still identified; and strengthened the Vehicle Maintenance BASIC by improving the identification of carriers with the highest future crash rates.

In addition, the FMCSA has determined that the Unsafe Driving BASIC is not an appropriate place to house the cargo securement violations. The Vehicle Maintenance BASIC is focused on the physical condition of the vehicle, of which the cargo is a part, whereas the Unsafe Driving BASIC is focused on how the vehicle is being driven (e.g. improper lane change, speeding). Further, the Vehicle Maintenance BASIC is normalized by number of inspections, whereas the Unsafe Driving BASIC is normalized by on-road exposure measured by Power Units (PU) and Vehicle Miles Traveled (VMT). The Agency continues to believe that the number of inspections is a more appropriate normalization factor for cargo securement violations, and, therefore, will include the cargo securement violations in the Vehicle Maintenance BASIC. The Agency does not plan to change the name of the Vehicle Maintenance BASIC with this set of enhancements.

FMCSA acknowledges there would be advantages to comparing cargo/load securement violations by group, e.g. flatbed or open trailer. However, at this time FMCSA does not have access to reliable, consistent data to allow us to make these determinations.

Rename the Cargo-Related BASIC the HM Compliance BASIC

Comments: Many commenters believe the HM Compliance BASIC should not be implemented as described. Commenters, such as Schneider National, expressed that HM violations are paperwork violations that do not correlate with crash risk or severity. Commenters such as Vigillo feel that carriers hauling HM infrequently would be disproportionately affected by the existence of an HM Compliance BASIC, regardless of their overall safety. Some commenters, including Con-way Freight, suggested separating out different types of HM operations or adjusting severity weights for HM violations by bulk versus non-bulk. Schneider National's comments suggest removing shipper violations from SMS.

Agency Response: The Agency strongly disagrees with the assertion that HM regulations are solely paperwork violations. The basis for the HM Regulations is twofold – to contain HM for the protection of life and property, and to communicate the inherent risks of hazardous materials to emergency responders when released. While violations of shipping papers and placards do not cause crashes, the absence of them during mitigation of a crash where HM is present can result in injury or death to emergency responders and the public. FMCSA has the mandate to enforce the HM Regulations as they pertain to transportation by highway, and the HM Compliance BASIC provides the Agency with the tools needed to identify trends in non-compliance.

The first step in the development of the HM Compliance BASIC was an examination of carrier and shipper violations to make a determination of which violations should be accountable to the carrier. The Agency, including subject matter experts, determined that the violations outlined in Appendix A of the SMS Methodology are to be included in the HM Compliance BASIC http://csa.fmcsa.dot.gov/Documents/SMS_Methodology_Carrier_V3-0.pdf. However, based on feedback received during the preview period, three of the violations listed in Appendix

A of the preview methodology will not be included when HM BASIC goes operational in December on the basis that they are administrative, rather than safety based. The three violations that will not be included are: 49 CFR 107.601 Failing to register with PHMSA prior to transporting hazardous materials requiring HM registration; 49 CFR 107.620(b) No copy of US DOT Hazardous Materials Registration Number; and 49 CFR 397.3AU Failing to comply with Alliance for Uniform HM Registration requirements.

The intervention threshold in this BASIC will be set at 80% for all carriers. Analysis done on the effectiveness of this BASIC shows that carriers above the intervention threshold have future HM violation rates more than 15% higher than carriers above the threshold in the current Cargo-Securement BASIC.

However, in consideration of the comments related to the HM Compliance BASIC FMCSA will refrain from displaying this BASIC to the public until December 2013. During this time, the HM Compliance BASIC will be utilized as an enforcement prioritization tool, and its effectiveness in identifying non-compliant HM carriers will be further analyzed.

The Agency recognizes that different carriers haul various quantities of HM. Therefore, the Agency plans to display the percentage of HM placardable inspections for a carrier to provide context to inspections and violations displayed on SMS.

Analysis conducted on the HM Compliance BASIC indicates that the motor carriers over the 80th percentile intervention threshold in this BASIC had slightly fewer inspections where a placardable quantity of HM was on board, but more HM inspections with violations, which means it better identifies the carriers in non-compliance. A detailed description of this analysis is also available on the CSA website at

http://csa.fmcsa.dot.gov/Documents/SMS_FoundationalDoc_Final.pdf

By implementing the HM Compliance BASIC for enforcement purposes, carriers that are not in compliance by properly packaging, transporting, accurately identifying, and communicating hazardous cargo in the event of a crash or spill are being identified.

Each BASIC measures a different area of performance and compliance. Substantial compliance and good performance in the other BASICs does not necessarily translate into proper safety management practices and compliance with the HM Regulations. Therefore, it is possible for a carrier to have strong safety management practices in all other BASICs, while demonstrating poor performance in the HM Compliance BASIC. However, FMCSA analysis indicates that nearly half of the motor carriers above the 80th percentile intervention threshold in the HM BASIC are also above threshold in at least one other BASIC.

Better align SMS with IEP regulations

Comments: Many of the commenters that addressed this change, such as Western Trucking Alliance, OOIDA, and Werner Enterprises, support implementation. However, some commenters, including ATA, are concerned that attributing violations to a motor carrier that should be found during a pre-trip inspection, is not effective in holding IEPs accountable for maintaining their trailers with continuous maintenance programs.

Agency Response: In December 2008, FMCSA adopted regulations to require IEPs to: register and file with FMCSA an IEP Identification Report (Form MCS-150C); establish a systematic inspection, repair, and maintenance program to assure the safe operating condition of each intermodal chassis; maintain documentation of their maintenance program; and provide a means to effectively respond to driver and motor carrier reports about intermodal chassis mechanical defects and deficiencies (73 FR 76794 and amended with 74 FR 68703). Roadability reviews are conducted to ensure compliance with this rule. Although FMCSA will not assign a

safety rating to an IEP as a result of a roadability review, it will cite the IEP for violations found and may impose civil penalties

Under 49 CFR Part 390.40, when a motor carrier's driver agrees to haul equipment from an IEP, the driver is required to determine if the IEP trailer is in safe condition. With this change implemented, those violations that should be found during pre-trip inspections will be included in a motor carrier's SMS in order to better identify carriers with compliance issues.

IEPs are not included in the SMS because they have different operations than a motor carrier, and it would not be accurate to compare them to motor carrier operations in SMS. FMCSA may consider a measurement system for IEPs in the future. Therefore, violation data collected during inspections performed today, may eventually be used in a measurement system for IEPs.

Align violations that are included in SMS with the CVSA inspection levels by eliminating the vehicle violations derived from driver-only inspections and driver violations from vehicle-only inspections.

Comments: Many commenters, such as ATA and FedEx, agreed with this change. OOIDA asked that a list of violations associated with specific inspection levels be made public. A few commenters from the safety advocacy community, including Advocates for Highway and Auto Safety, strongly opposed removing any identified violations from a carrier's record.

Agency Response: In the current SMS, a BASIC measure is calculated by dividing the number of applicable violations by the number of relevant inspections. A relevant inspection is one where either (a) a relevant violation was found, or (b) the inspection level requires an examination of areas that could reveal a violation in the BASIC. Without the change, vehicle violations found from driver-only inspections would be counted in the Vehicle Maintenance

BASIC, without giving credit in that BASIC for clean driver-only inspections. By aligning the violations used in SMS calculations with CVSA inspection levels, carriers will be measured using only violations that are included in appropriate inspections without being penalized for violations cited outside the scope of the inspection. This change reinforces that inspectors should report violations within the scope of the level of inspections they are certified to perform. It is also important to note that though these violations will not be included in the SMS BASIC measure calculations, the violations will still appear on the inspection report, and, therefore, will still be on the carrier's profile.

A description of what is examined for each inspection level is described on the FMCSA Website: <http://www.fmcsa.dot.gov/safety-security/safety-initiatives/mcsap/inslevels.htm>.

- Any violation may be cited on a level 1, 2, 4 or 6 inspection
- Level 3 (driver-only) inspections only include driver violations, which are those violations that are included in the Unsafe Driving, Fatigued Driving (HOS) (being renamed HOS Compliance), and Driver Fitness BASICS
- Level 5 (vehicle-only) inspections only include the violations associated with Vehicle Maintenance, current Cargo-Related (changing to HM Compliance) BASICS

These violations, by BASIC, can be found in the Version 3.0 SMS Methodology document, Appendix A https://csa.fmcsa.dot.gov/Documents/SMS_Methodology_Carrier_V3-0.pdf.

More accurately identify carriers that transport significant quantities of HM.

Comments: Schneider National and FedEx wanted the Agency to implement either the HM Compliance BASIC or the HM threshold, but not both. In one of its comments, Con-Way suggested that the HM Intervention threshold should apply to HM Safety Permit carriers only.

Agency Response: The HM Compliance BASIC and the HM Intervention threshold are two separate concepts and cannot be used as a substitute for each other. The HM Compliance BASIC allows the Agency to better identify HM-related compliance issues in order to mitigate the consequences of crashes or spills involving HM. The HM Intervention threshold applies more stringent intervention thresholds across all BASICs for carriers that often haul placardable quantities of HM due to the increased potential consequences of a crash involving placardable quantities of HM.

The definition of carriers subject to the lower HM Intervention threshold is being revised in December to ensure the carriers are hauling a sizeable amount of HM placardable quantities before being subject to the more stringent intervention thresholds. Under the new criteria, a motor carrier will be subject to the lower HM intervention thresholds when they have:

1. At least two inspections on a vehicle transporting HM requiring placards, within the past 24 months, with one inspection occurring within the past 12 months; and
2. At least five percent of the motor carrier's total inspections involve a vehicle transporting HM requiring placards; OR
3. An FMCSA HM safety permit.

FMCSA had originally proposed to also subject carriers to the lower HM intervention thresholds if an investigation within the last 24 months had identified them as a carrier that transported placarded quantities. However, that provision is not being implemented because commenters, including Werner Enterprises pointed out that motor carriers that transport as little as one placarded load per year could be subject to the lower HM intervention thresholds primarily

because they received a compliance review rather than the fact that they transport significant quantities of HM.

More accurately identify carriers involved in transporting passengers

Comments: No commenters objected to this change. However, Advocates for Highway and Auto Safety requested that the analysis behind the change be made public.

Agency Response: The Agency is proceeding with the definition change to the population of carriers subject to the more stringent Passenger Carrier intervention thresholds across BASICS. FMCSA proposed this change based on a desire to accurately capture passenger carriers subject to our jurisdiction as opposed to specific statistical analysis. This change adds all for-hire carriers with 9-15 passenger capacity vehicles and private carriers with 16-plus passenger capacity vehicles, as these carriers/entities are under FMCSA's authority, removes all carriers with only 1-8 capacity vehicles and private carriers with 1-15 passenger capacity vehicles (effectively removing many limousines, vans, taxis, etc.), as these carriers/entities are generally outside most of FMCSA's authority, and removes carriers where less than 2% of their respective fleets are passenger vehicles to exclude carriers that do not transport passengers as a significant part of their businesses. This change removes 4,200 carriers and adds 5,700 other carriers for a net increase of 1,500 carriers that are identified as transporting passengers.

Change the current terminology, "inconclusive" and "insufficient data," to fact-based descriptions.

Comments: No commenters objected to this change. The Advocates for Highway and Auto Safety wanted the specific replacement language available to the public during the preview instead of the general term "fact-based descriptions." ATA stated that the descriptions are a positive step, but would like BASIC percentile ranks (i.e. 0%) assigned to carriers that have not

had a violation in a certain number/percentage of inspections to indicate their safe operations in addition to the fact-based descriptions.

Agency Response: In the current SMS, having a 0% in a BASIC indicates that the carrier has sufficient information for a percentile in SMS and that the carrier is operating safer than 100% of others in its safety event group. When the December 2012 SMS changes are implemented, carriers with sufficient data to be assessed and no violations will be assigned a 0% in that BASIC. The fact-based descriptions will apply when a carrier does not receive a percentile based on the methodology.

Separate crashes with injuries and crashes with fatalities in the SMS display.

Comments: The majority of commenters, including ATA, FedEx, OOIDA, do not want crashes displayed on the SMS Website, unless a preventability determination process is implemented. Those commenters also do not want carriers to be prioritized using the Crash Indicator until a preventability determination process is implemented. Two commenters, the Advocates for Highway and Auto Safety and a joint comment from the Truck Safety Coalition, Parents Against Tired Truckers, Citizens for Reliable and Safe Highways and Road Safe America, support the proposed change and as well as the use of the Crash Indicator for prioritization of carriers and cite research indicating crash involvement is a good predictor of future crashes. In addition, these safety advocates want the Crash Indicator to be available for the public to view and do not want the Agency to remove any crashes from a carrier's record.

Agency Response: Consistent with the public display of crash information over the last 10 years on our Safer website and in the SafeStat system, carrier crashes reported to MCMIS are displayed in FMCSA public information technology (IT) systems. Carrier Crash Indicator percentiles and measures are not publicly available. In June 2012, language was added to various

FMCSA public IT systems, including SMS, and it explicitly explains that the list of crashes represents a motor carrier's involvement in a crash with no determination as to responsibility.

FMCSA analysis indicates that prior crashes, regardless of a carrier's role in a crash, are a good predictor of future crash involvement. Therefore, FMCSA continues to use the Crash Indicator for internal prioritization purposes, while continuing to hide the percentile from public view. However, FMCSA recognizes that additional crash data might further sharpen the ability of the SMS to identify carriers that pose the highest risk. Accordingly, on July 23, 2012, the Agency announced it is conducting a comprehensive analysis to identify a process for determining a carrier's role in a crash and including that determination in the SMS. More information on this issue is available at

http://csa.fmcsa.dot.gov/documents/CrashWeightingResearchPlan_7-2012.pdf. General

Comments on SMS Preview

Some commenters, including ATA and Schneider National, agree with providing a preview for carriers to understand how proposed changes will affect their SMS percentiles and to address any safety issues that may be identified before the changes go public. OOIDA and the Alliance for Safe, Efficient, and Competitive Truck Transportation (ASECTT) believe that the creation of and any changes to SMS need to go through a notice and comment rulemaking under 49 U.S.C. §31144(b).

Agency Response: FMCSA uses SMS to examine roadside and other inspection data to identify current safety performance issues and intervene with carriers when necessary. SMS does not change any regulation within the FMCSRs, is not a safety fitness rating, does not affect the safety fitness rating of a motor carrier, and does not impact a carrier's operating authority.

Accordingly, the Agency's current use of SMS data is not subject to notice and comment rulemaking.

The Agency is, however, developing a notice of proposed rulemaking (NPRM) that would propose the use of SMS data in making safety fitness determinations. The NPRM will solicit comments on this particular issue.

In order to ensure transparency in the development and enhancements of SMS, the Agency plans to issue changes at periodic intervals and to provide enforcement personnel and carriers the opportunity to preview the changes prior to implementation. FMCSA will continue to seek comments and consider them before completing implementation of changes.

Comments on Other Topics and Agency Responses

FMCSA received many comments about aspects of the CSA program that did not concern the proposed changes to SMS and are therefore beyond the scope of this notice. These topics include, among other things, the general status of CSA, the correlation between BASIC scores and future crash risk, a perception of effects on small businesses, the Utilization Factor (UF) that gives carrier credit for the extra exposure that results from making high utilization of trucks, training of enforcement officers, violation weightings, the Driver SMS (DSMS), severity weighting determinations, disparities between States, the DataQs process, and making SMS scores publicly available.

While these topics are beyond the scope of this notice, FMCSA intends to respond to these comments through the Frequently Asked Questions (FAQs) on FMCSA's website. FMCSA will provide also these topics to the MCSAC subcommittee that will provide the Agency recommendations on CSA for their consideration.

Implementation

Changes outlined in this notice will be implemented in December 2012.

Next Steps

As mentioned throughout this notice, FMCSA plans to periodically develop enhancements to SMS, make them available for preview to law enforcement and motor carriers, and collect comments. The next set of packaged enhancements is under development. The Agency is examining the following: comprehensive modifications to roadside violation severity weights, recalibration of the Utilization Factor used to incorporate VMT for the Crash Indicator and Unsafe Driving BASIC, and adjustments to safety event groups in all BASICs.

Issued: August 22, 2012

Anne S. Ferro

Administrator

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