

THE DRIVER FITNESS REPORT TO CONGRESS

Pursuant to Senate Report 112-157
Accompanying the Transportation, Housing and Urban Development,
and Related Agencies Appropriations Bill, 2013 (S. 2322)
June 2013

Senate Report 112-157 accompanying the Transportation, Housing and Urban Development, and Related Agencies Appropriations Bill, 2013 (S. 2322), requested the Federal Motor Carrier Safety Administration (FMCSA) to submit a report on the driver fitness component of the Compliance, Safety, Accountability (CSA) program that identifies key objectives, programmatic goals, information technology system requirements, and timelines for implementation. This report responds to the Committee's request by identifying the programmatic goals and current and planned activities for FMCSA's driver program, including the steps the Agency would take to implement a driver safety fitness determination (SFD).

BACKGROUND

Research, such as the FMCSA's Large Truck Crash Causation Study, has shown that unsafe driver behavior is a major contributor to crashes involving commercial motor vehicles (CMV). As a result, under CSA, FMCSA has expanded its previous approach, which primarily focused on motor carriers and relied on them to be accountable for driver safety problems. The FMCSA has identified the following goals to support these efforts:

- Improve the Agency's ability to identify which drivers pose the highest risk based on the best available safety and compliance information.
- Improve the Agency's ability to intervene with drivers who pose the highest safety risk.
- Remove the highest risk drivers from the roadways.

The FMCSA's current CSA Driver Program consists of three main elements:

Driver Safety Measurement System (SMS): The Driver SMS enables law enforcement to evaluate drivers' safety performance across employers when conducting CSA investigations. As with the Carrier SMS, this tool uses information from roadside inspections and crashes and employs seven Behavior Analysis and Safety Improvement Categories including Unsafe Driving, Hours of Service (HOS) Compliance, Driver Fitness, Controlled Substances/Alcohol, Vehicle Maintenance, Hazardous Materials Compliance, and Crash Indicator. Driver SMS results are available to enforcement personnel, but not to carriers, drivers, or the public, to maintain adequate control over private and employment-sensitive information.

Pre-employment Screening Program (PSP): Mandated in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users,¹ the PSP is designed to assist motor carriers in assessing drivers' safety violation and crash histories during the employment

¹ 49 U.S.C. 31150, added by § 4117 (a) of Pub. L. 109-59, 119 Stat. 1728 (Aug. 5, 2005).

screening process. Although not part of CSA, the PSP uses the same inspection and crash information that feeds the Driver SMS. Available for purchase by motor carriers or drivers for a fee, a driver record contains the most recent 5 years of crash data and the most recent 3 years of roadside inspection data, including serious safety violations.

Driver Enforcement: Driver enforcement occurs as part of motor carrier investigations and focuses on egregious violations, such as driving while disqualified, making a false entry on a medical certificate, or committing numerous HOS violations. When investigation results verify driver violation(s), FMCSA takes civil penalty enforcement action against the driver and also against the motor carrier if the evidence supports motor carrier knowledge or lack of safety management controls.

POTENTIAL PROGRAM ENHANCEMENTS

The Government Accountability Office (GAO) reviewed CSA's potential to improve safety and released its report, "Motor Carrier Safety, More Assessment and Transparency Could Enhance Benefits of New Oversight Program" and recommended that FMCSA:

...develop a plan for implementing driver fitness ratings that prioritizes steps that need to be completed and includes a reasonable timeframe for completing them. The plan should also address the safety implications of delayed implementation of driver fitness ratings.²

In January 2012, the U.S. Department of Transportation concurred with the recommendation. On July 6, 2012, the President signed into law the Moving Ahead for Progress in the 21st Century Act (MAP-21), which authorized the surface transportation programs. In all, MAP-21 included 29 separate provisions that will require rulemakings, requirements for 34 programmatic changes, and 11 reports to Congress during the 2-year span of this law.

The FMCSA has considered how it would augment existing driver efforts by developing an enhanced methodology to identify drivers posing the highest safety risk and implementing enforcement processes to address unsafe driver behavior. The following is a high-level outline of the approach FMCSA would use to implement a Driver SFD process contingent on the completion of other Agency priorities and the availability of dedicated resources. Specific steps in implementing a Driver SFD process would follow the timeline below:

Year 1: The FMCSA would assess the feasibility of establishing a Driver SFD in terms of identifying driver-level data sources for monitoring individual drivers' safety performance on a continuous basis and establishing a severity weighting system for various violations of the Federal Motor Carrier Safety Regulations and identifying options for considering drivers' crash involvement. The FMCSA would assess existing initiatives and research, complete a stakeholder analysis, and establish decision points.

² GAO, "Motor Carrier Safety, More Assessment and Transparency Could Enhance Benefits of New Oversight Program (GAO-11-858)," September 2011, p. 38. <http://www.gao.gov/new.items/d11858.pdf>.

Year 2: The FMCSA would identify and develop a driver safety measurement methodology and business processes aimed at (1) identifying the most unsafe drivers and (2) intervening with them to either change their behavior or remove them from service. Regarding information technology (IT) requirements, FMCSA would analyze requirements, identify required infrastructure, and design supporting systems. The FMCSA would also initiate regulatory impact analyses to consider the number of drivers who would likely be rated unfit, and estimate the potential safety benefits in terms of crashes, injuries, and fatalities prevented by removing unfit drivers from the Nation's roadways.

Years 3—5: The FMCSA would test the new Driver SFD methodology and business processes and refine them based on test results and stakeholder feedback. The approach would be similar to FMCSA's Operational Model Test conducted for its CSA initiative.

Year 6: Given that FMCSA would have to complete a notice-and-comment rulemaking to establish the Driver SFD methodology, enforcement penalties, and due process for a Driver SFD process, the Agency would issue a Notice of Proposed Rulemaking (NPRM) during this period. The rulemaking would be considered significant and undergo review through the Office of Management and Budget before publication.

Year 7: The FMCSA would evaluate comments on the NPRM and issue a Final Rule and final regulatory impact analyses. The compliance date for the Final Rule would likely be 1-2 years following publication in the Federal Register. The Agency would also begin developing policies, training, and outreach and communication materials to support the Driver SFD process. The Agency would also complete IT Functional Requirements Documents for a Driver SFD.

Year 8: The FMCSA would complete the final steps necessary for implementing a Driver SFD program. These would include delivering training to State and Federal personnel and providing educational materials to carriers, drivers, and driver training schools to ensure the carriers and drivers fully understand the implications of continued unsafe driving behaviors.

Year 9: The FMCSA would fully implement the Driver SFD program beginning with the compliance date established by the Final Rule.

The FMCSA has adopted a vision for the future that strives for zero CMV crashes, injuries, and fatalities by moving toward a crash-free and fully accountable CMV transportation lifecycle. To this end, as outlined above, the Agency is considering plans to augment existing driver efforts by developing an enhanced methodology to identify drivers posing the highest safety risk and implementing enforcement processes to address drivers' unsafe behavior. This effort remains contingent upon the completion of other FMCSA priorities and the availability of dedicated resources to effectively implement a Driver SFD program.