



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 390

[Docket No FMCSA-2013-0457]

Motor Carrier Management Information System (MCMIS) Changes to Improve Uniformity in the Treatment of Inspection Violation Data

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interpretative Rule and Statement of Policy.

SUMMARY: FMCSA announced proposed changes to its Motor Carrier Management Information System (MCMIS) on December 2, 2013. These changes will allow the States to reflect the results of adjudicated citations related to roadside inspection violation data collected in MCMIS. Individuals must submit certified documentation of adjudication results through a Request for Data Review (RDR) in FMCSA's DataQs system to initiate this process. MCMIS is being modified to accept adjudication results showing that a citation was dismissed or resulted in a finding of not guilty; resulted in a conviction of a different or lesser charge; or, resulted in conviction of the original charge. The adjudication results will impact the use of roadside inspection violation data in other FMCSA data systems. These changes are intended to improve roadside inspection data quality. This document describes the MCMIS changes, responds to comments received on the proposed changes and provides the schedule for implementation of these changes.

DATES: [INSERT DATE OF FILING FOR PUBLIC INSPECTION AT THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Courtney Stevenson, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC

20590, telephone 202-366-5241 or by email: courtney.stevenson@dot.gov. FMCSA office hours are from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, call Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

On December 2, 2013 (78 FR 72146), FMCSA encouraged interested parties to submit comments and related materials to docket number FMCSA-2013-0457.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this document as being available in the docket, go to <http://www.regulations.gov> and insert the docket number, "FMCSA-2013-0457" in the "Keyword" box and click "Search." Next, click "Open Docket Folder" button and choose the document listed to review. If you do not have access to the Internet, you may view the docket 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. Monday through Friday, except Federal holidays.

Privacy Act

All comments the Agency received were posted without change to <http://www.regulations.gov> and include any personal information provided. Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person 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>.

II. Executive Summary

Complete, timely, accurate, and consistently-reported inspection data enables FMCSA to achieve its safety mission by identifying and addressing trends in regulatory compliance. States adopt and enforce Federal standards for motor carrier safety and hazardous materials transportation under State law as an eligibility requirement for receipt of grant funds under the Motor Carrier Safety Assistance Program (MCSAP). MCSAP also requires that States report violations discovered through roadside inspections to FMCSA data systems and that they participate in FMCSA's national data correction system known as DataQs.

In addition to the inspection data reported to FMCSA, States may issue a citation associated with a violation noted in the roadside inspection. Such citations may subsequently be adjudicated in a due process system. The change reflected in this document and in FMCSA's data systems will allow motor carriers or drivers to submit the results of an adjudicated citation through the DataQs system. After confirming the adequacy of the documentation submitted in an RDR, the State will submit the adjudication results into the new field created to record this information.

Adjudication results recorded in MCMIS will potentially impact other FMCSA data systems, such as the Agency's Safety Measurement System (SMS) and the Pre-employment Screening Program (PSP).

Based on feedback to the December 2, 2013, notice, the Agency has determined that it will not apply this policy retroactively. The policy announced in this document

applies to inspections occurring on or after August 23, 2014. Accordingly DataQs will be modified to accept RDRs related to adjudicated citations in August 2014. The August 23, 2014, date is based on the time needed for State implementation of compatible State information technology (IT) systems able to record and transmit the adjudication data.

III. Compliance with the Administrative Procedure Act

This document announces changes to MCMIS that support a more consistent program for handling DataQs seeking recognition of adjudicated citations. This document contains a general statement of policy and reflects a change in Agency practice and procedures with respect to the handling of adjudicated citations through DataQs and in Agency information systems. The Administrative Procedure Act (APA), 5 U.S.C. 552(a)(1)(D), requires agencies to provide public notice of statements of general policy by publication in the Federal Register. Such “interpretative rules, general statements of policy or rules of agency organization, procedure, or practice” are not subject to the APA’s notice and comment requirements (5 U.S.C.553(b)(A)). This document does not amend any Agency regulation nor does it change how data correction is sought through DataQs. The IT and program changes announced in this document allow FMCSA and the States to receive more complete information on the subsequent disposition of citations issued during roadside inspections by accepting certified records of adjudication results submitted through the DataQs process.

Presently, MCMIS contains records of inspections, including violations observed by law enforcement officers, during such commercial motor vehicle (CMV) inspections. See 78 FR 59082, 59083 (September 25, 2013). Because MCMIS has always been a system that records roadside inspection data, MCMIS records presently do not reflect convictions,

acquittals or other subsequent adjudications or adjustments of charges that occur during subsequent due process proceedings. A driver has always been able to challenge the correctness of a violation that has been cited in a roadside inspection report using the DataQs system, whether a citation has been issued for that violation or not.

As currently required in the MCSAP grant program, pursuant to 49 CFR 350.201(s), the States must “establish a program to ensure that accurate, complete, and timely motor carrier safety data are collected and reported, and ensure the State’s participation in a national motor carrier safety data correction system prescribed by FMCSA.” Today’s announced policy change is thus within the scope of the current MCSAP program.

IV. Background

A. Databases for Inspection Data

State and local law enforcement officials routinely conduct roadside inspections documenting violations of laws or regulations that are compatible with the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). See 49 CFR 350.105 (defining “compatible or “compatibility”). These law enforcement officials, at their discretion, may issue citations for the violations recorded on the roadside inspection report. States are responsible for entering roadside inspection and violation data into SafetyNet, a database management system that allows entry, access, analysis, and reporting of data from driver/vehicle inspections, crashes, investigations, assignments, and complaints. SafetyNet provides data to MCMIS that interfaces with several databases, including: (1) the Safety and Fitness Electronic Records (SAFER) system; (2) PSP; and (3)

SMS. SafetyNet and MCMIS have always contained records of inspections and reportable crashes.

B. Motor Carrier Safety Data Correction System

As noted, pursuant to 49 CFR 350.201(s), one condition for participation in the Motor Carrier Safety Assistance Program (MCSAP) is that a State establish a program to ensure that accurate and timely motor carrier safety data are collected and reported and that the State participates in a national motor carrier safety data correction system prescribed by FMCSA. DataQs is that national motor carrier data correction system (49 CFR 350.211) (State certification at paragraph 11). DataQs is an online system that provides an electronic means for drivers, motor carriers, and members of the public to submit concerns about the accuracy of crash, inspection, and violation data in FMCSA data systems. When a request for an RDR is filed, the DataQs system automatically forwards the request to the appropriate Federal or State office for processing and resolution (<https://dataqs.fmcsa.dot.gov/>).

The data system and policy changes announced in this document will allow drivers, motor carriers, and members of the public to file an RDR in FMCSA's DataQs system and to seek acknowledgement of the adjudication in the inspection record. The change in the State data systems will parallel corresponding changes to FMCSA data systems. A citation that has been resolved through a judicial or administrative process, regardless of outcome, is considered to be adjudicated.

FMCSA believes these changes will (1) provide a uniform and orderly process to incorporate recording adjudicated citations through DataQs under the State's MCSAP

Commercial Vehicle Safety Plans and budgets (see 49 CFR 350.213 for description of CVSP); (2) provide an effective process to ensure system effectiveness and data quality; and (3) reduce the cost of applying and implementing these changes across the Agency and the States. FMCSA is requiring that MCSAP grantees follow this policy of recording adjudication results as a condition of their grant funding under 49 CFR 350.201.

V. Discussion of Public Comments and FMCSA Responses

A. General Discussion

FMCSA announced proposed changes to MCMIS on December 2, 2013 (78 FR 72146). The Agency received 111 unique comments during the 30-day comment period. Seventy of the 111 comments supported the proposed changes, with commenters stating that this change will help ensure that drivers and carriers are treated justly. Steve Davis, a fleet owner for FedEx Ground, said, “I strongly approve of this change to allow updated court information to be included in MCMIS. This will improve uniformity without question and give a true account of the resolution of violation information.” More than half of the supporting commenters (38) did not identify themselves with a specific stakeholder group. The remaining commenters in support of the changes were motor carriers (17) and representatives of industry associations (9) and the Commercial Motor Vehicle Safety Alliance (CVSA).

The motor carriers that commented included Coach USA, DART Transit Company, J.B. Hunt, Sharp Transport, Inc., and Stallion Transportation Group. The industry associations that submitted comments included the Alliance for Safe, Efficient and Competitive Trucking Transportation (ASECTT), American Bus Association (ABA), American Moving and Storage Association (AMSA), American Trucking Associations,

Inc. (ATA), Institute of Makers of Explosives (IME), International Food Distributors Association (IFDA), Minnesota Trucking Association/Minnesota Trucking Associate Safety Council (MTA/MTASC), National Association of Small Trucking Companies (NASTC), Owner-Operator Independent Drivers Association, Inc. (OOIDA).

Those commenters generally opposing the changes offered suggestions to improve the proposal. These included Advocates for Highway and Auto Safety (Advocates), American Association for Justice (AAJ), the Kentucky State Police, the Pennsylvania State Police, and the West Virginia Public Service Commission. One commenter, Jeff Steeger, who did not identify himself with a particular group, objected to the policy and stated it would “allow carriers and their drivers to improve their SMS score while demonstrating a continued lack of compliance with our safety regulations.”

The common areas of concern included enforcement impacts; pleas, dismissals, and other court actions; retroactive implementation; workload and resources; continued uniformity concerns; and questions about the impacts on SMS weighting based on violation on the conviction.

Comments to the docket also addressed consistency in the processing of RDRs, other quality assurance initiatives, crash weighting and the process for requesting appeals. Most of these issues are outside of the scope of the December 2, 2013, notice and, therefore, are not addressed herein. It should be noted, however, that the Agency is involved in separate initiatives addressing many of these issues.

FMCSA received comments seeking clarification on what is a “conviction” under FMCSA regulations and expressing concerns that routinely-assessed fees may

inadvertently count as “convictions.” In Section V.A. of today’s document the Agency clarifies how it interprets the regulatory definitions in 49 CFR 383.5 and 390.5.

B. Enforcement Impacts

Both law enforcement and industry commenters expressed concerns that changing how data systems address violations in roadside inspections based on adjudicated citations would result in law enforcement officers issuing fewer citations. The impact of this change would be that officers would issue more warnings, which cannot be adjudicated by a court. Four commenters affiliated with law enforcement agencies indicated that this change would result in an influx of RDRs and increased workload. Coach USA urged that, “FMCSA should not accept information regarding violations from state officials unless the state issued a citation for the alleged violation at issue.”

FMCSA acknowledges that law enforcement agencies may alter their enforcement practices as a result of today’s policy change. However, it remains the Agency’s position that these process changes will improve data quality, accuracy, and uniformity. The Agency’s interests are in capturing fair and accurate violations in MCMIS. FMCSA has never provided direction to law enforcement on when to issue citations and defers to those agencies for the best ways to enforce the violations they observe.

C. Dismissals, Pleas and Other Court Actions

The treatment of dismissed citations was the most common topic addressed by commenters. Sixteen commenters argued that a dismissed citation does not always indicate that the violation did not occur at the time of the inspection and, therefore, dismissed citations should not be the sole basis for removing violations from inspection reports. These commenters expressed the opinion that often citations are dismissed based on plea

bargaining or technical issues such as the carrier's or driver's evidence of corrective action, a lenient judge or jury, an absent officer-witness, or a clerical error.

Several commenters expressed concern that there will be increased attempts to plea bargain to a violation with a lower severity weight to improve SMS scores. Additionally, commenters expressed concern about court clerks causing errors or officers being unable to attend hearings, resulting in dismissals. Lt. Colonel Keith Percy of the Kentucky State Police, stated that "Criminal court systems, already overburdened with cases considered more serious than traffic violations, are under great pressure to deal cases away, and traffic cases fall away with little, if any, political consequence."

Advocates for Highway and Auto Safety recommended that "the agency should maintain discretion to retain citations, even when dismissed, if such dismissals are not on the merits and indicate a pattern and practice that would violate the prohibition against masking of traffic violations."

FMCSA acknowledges that these scenarios may occur. However, there are checks and balances in place to prevent improper dismissal of commercial driver violations, including 49 CFR 384.226 that prohibits States from masking convictions, deferring imposition of judgment, or allowing an individual to enter into a diversion program that would prevent a commercial learner's permit (CLP) or CDL holder's conviction from appearing on the Commercial Driver's License Information System (CDLIS) driving record.

On the issue of burden on the system, it should be noted that, notwithstanding the nearly 3.5 million inspections conducted from January 1, 2013, through December 31, 2013, there were fewer than 40,000 RDRs submitted through DataQs for this period.

Based on an annual estimate of 3.5 million inspections, only 1.1 percent of inspections resulted in an RDR. The Agency has confidence that the courts will strive to objectively evaluate the charged violations and that dismissals of citations for administrative or other reasons will not have a significant impact on the reliability of safety data. Additionally, the Agency will continue to provide outreach to courts and prosecutors to explain the serious impacts of cases involving CMVs and commercial drivers and to improve their knowledge and understanding of CMV violations and their potential consequences.

As part of its data quality program, FMCSA will be monitoring the incoming data on adjudicated citations to look for patterns that might indicate routine masking of violations by State officials and take appropriate action to address these situations.

D. Prospective Implementation

The December 2, 2013, notice specifically asked for comment on the Agency's plan to implement these changes prospectively. Only six commenters addressed the issue. Three representatives of industry associations recommended that the Agency apply the policy retroactively, starting from the implementation of the Compliance, Safety, Accountability program in 2010. Two members of the law enforcement community supported the prospective-only application of the policy. Stephen Keppler of the Commercial Vehicle Safety Alliance noted that applying the policy retroactively would have significant adverse impacts, including decreased data uniformity and consistency, and an increase in States' workloads that could deplete their resources. Mr. Keppler also stated that prospective implementation of this policy "allows for improved planning, resource allocation and management for both the States and FMCSA."

The Kentucky State Police indicated that they would expect the number of RDRs submitted to increase significantly, especially due to dismissals. The Pennsylvania State Police noted that there would be significant workload impact on the minor judiciary. The Agency therefore continued to consider workload in deciding not to implement this change retroactively.

FMCSA continues to believe that prospective application will mitigate the potential for significantly increased numbers of RDRs, based on hundreds—potentially thousands—of past adjudicated citations, which could quickly exhaust States' DataQs capability. Such a drain on State DataQs staff could prevent States from promptly acting on other RDR requests and/or could create a need to redirect scarce State resources, adversely affecting motor carrier safety enforcement. As previously stated, FMCSA believes that prospective application will (1) provide a uniform and orderly process for the States to incorporate this policy into their State MCSAP plans and budgets (see 49 CFR 350.213); (2) provide an effective process that the Agency can test to ensure system effectiveness and data quality; and (3) reduce the cost of applying and implementing these changes across the Agency and the States.

Based on the comments and the workload and safety impacts noted above, the Agency has determined that it will implement the policy and changes prospectively. The policy announced in this document applies to inspections occurring on or after August 23, 2014. Accordingly, DataQs will be modified to accept RDRs related to adjudicated citations in August 2014.

E. Uniformity and Masking

Commenters expressed concern that this proposal effectively moves the decision making on roadside inspection data from the State DataQs officials to the courts, where the decisions will not be any more consistent, based on the courts' and judges' varying knowledge of CMVs, CDLs, and motor carrier safety regulations.

The IFDA expressed concern that, "...this continued broad delegation of authority to the states directly contradicts a primary rationale for the announced changes which is to "improve uniformity across the states. Given this obvious inconsistency, we question how much actual difference the announced changes are likely to make."

As previously noted, FMCSA will continue and increase its outreach efforts to courts and prosecutors to remind them of the prohibition in 49 CFR 384.226 on masking convictions, deferring imposition of judgment, or allowing an individual to enter into a diversion program that would prevent a CLP or CDL holder's conviction for a violation, in any type of motor vehicle, of a State or local traffic law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the CDLIS driving record.

F. Adequate Documentation

Commenters requested more information on the Agency's definition of adequate documentation needed to demonstrate dismissal or other adjudication outcome. ATA recommended that the Agency "clearly define 'adequate documentation' for the purposes of this notice." ATA further indicated that "FMCSA must instruct States which documents are acceptable and provide motor carriers and drivers with recourse to amend their records should a State refuse to accept proof of adjudication."

FMCSA will accept scanned copies of certified documentation from the appropriate court or administrative tribunal. Examples include but are not limited to certified records

of the docket entry, the order of dismissal, or entry of a ‘not guilty’ determination.

FMCSA recognizes that the varying nature and types of tribunals may result in varying types of official documentation that contain the adjudication results, and thus the Agency has not specifically limited the type of document that must be submitted. The submitter should obtain certified documents that are clearly identified and verifiable. These documents must be uploaded into the DataQs system for verification by a State official. Alternatively, the documentation may include a web site link to an official court website with adjudication results.

G. SMS Weighting

AAJ and ATA questioned which SMS severity weights would be used if a conviction was for a different charge than the initial cited violation. FMCSA clarifies that where the adjudication results in a conviction to a different charge, the severity weight will be reduced to a 1 in SMS. The chart in Section V.D. of this document provides more detail on the impact of changes in SMS and PSP.

VI. Overview of Changes

A. Terms Used in the Document

For purposes of this document, the following terms have the meaning indicated.

Adequate Documentation: For the purpose of processing an RDR seeking to document the result of an adjudicated citation, FMCSA finds that scanned copies of certified documentation from the appropriate court or administrative tribunal or providing a direct web link to the adjudication results of an official court or agency website presents adequate and verifiable documentation of the adjudication result.

Adjudicated Citation: Refers to a citation that has been contested and resolved through a due process proceeding in a State, local, or administrative tribunal, regardless of how the action is resolved, whether by a judge or prosecutor or as part of a plea agreement or otherwise.

Citation: Refers to a notice, issued by a law enforcement officer to a CMV driver for a violation of law or an adopted FMCSR or HMR. The driver may contest the citation through a State-provided administrative or judicial system.

Conviction: This term is defined in 49 CFR 383.5 and 390.5 as an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court costs, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

Court Costs: FMCSA interprets "court costs" as fees imposed by a court or administrative tribunal that are intended to cover the State's expenses of handling the case. Payment of an incidental expense uniformly imposed on all persons that appear before a particular court or tribunal regardless of case outcome should not be considered a court cost under FMCSA's regulatory definition of "Conviction." Examples of excluded, non-punitive court costs include but are not limited to scheduling fees, the cost of a certified copy of the court's docket or order, or attorney fees.

Fine: A sum of money imposed as a penalty for an offense. A court cost may be considered a fine when the amount charged exceeds the amount generally imposed for court costs and is akin to a penalty.

Unvacated: Refers to an order or judgment that has not been canceled or rescinded.

B. New Data Field for Adjudicated Citations Results

Previously, SafetyNet and MCMIS recorded inspection and violation data from the initial inspection report only and did not contain a data field that would allow the State to append the result of an adjudicated citation to the appropriate violation on the inspection report. With these changes, SafetyNet and MCMIS will be modified to provide a field that may be populated with the adjudication result of a citation associated with the related inspection report. The adjudication result will impact the use of the related violations in SMS and PSP, as indicated in the chart below in Section V.D.

C. Revised DataQs Guidance to the States

FMCSA will issue revised direction to the States on receiving, reviewing, and documenting adjudication results when an RDR containing adequate documentation is submitted. Upon confirming the adequacy and accuracy of the documentation, States will enter the adjudication result in the field appending the inspection record in SafetyNet. State and Federal data systems will be modified to accept data concerning a citation associated with a violation that was dismissed or resulted in a finding of not guilty or resulted in a conviction of a different or lesser charge.

D. Impact of Changes in SMS and PSP

The following table indicates how the adjudication outcomes documented in MCMIS will impact the use of the cited violation in FMCSA’s SMS and PSP databases:

Result of Adjudicated Citation Associated with a Violation Uploaded to MCMIS	Violation in SMS	Violation in PSP
Dismissed with fine or punitive court costs	Violation not removed	Violation not removed
Dismissed without fine or punitive court costs	Remove violation	Remove Violation
Not Guilty	Remove violation	Remove Violation
Convicted of a lesser charge	Append inspection to indicate violation “Resulted in conviction of a different charge.” Change severity weight to 1.	Append inspection to indicate violation “Resulted in conviction of a different charge.”

As required by FMCSA's MCSAP regulations (49 CFR part 350), States must follow the Agency's regulatory definition of “conviction” in 49 CFR 383.5 and 390.5 and address RDRs accordingly. Thus, when an RDR indicates that a court dismissed a citation while still imposing a fine or punitive court cost, the outcome will be recorded in MCMIS as a conviction.

E. Prohibition on Masking Convictions

FMCSA regulation at 49 CFR 384.226 prohibits States from masking convictions, deferring imposition of judgment, or allowing an individual to enter into a diversion program that would prevent a CLP or CDL holder's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the CDLIS driving record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State. The Agency views the practice of courts dismissing citations after a guilty plea has been entered or following payment of a fine or mandatory contribution to a State or local program as a condition of dismissal, as “masking” of a commercial driver's violation of State or local traffic control laws. Masking convictions allows commercial drivers to accumulate multiple serious traffic safety violations without the driver's State of licensure or other States being aware of the driver's actual driving history, and it is for this safety reason that such practices are prohibited.

The changes to State and FMCSA data systems outlined in this document will enable both the Agency and the State licensing agencies to better track and document patterns and practices that are inconsistent with 49 CFR 384.226 concerning the masking prohibition. States found to have used masking or other diversionary programs may be found in substantial noncompliance and could risk decertification of their CDL programs, which could impact grant funding.

VII. Implementation Plan

A. Policy

FMCSA’s State Programs Division will issue direction to the MCSAP agencies explaining the expectations and responsibilities related to the adjudicated citation

process. This policy will apply to inspections occurring on or after August 23, 2014, and will be included in the next version of the DataQs manual.

B. Training

FMCSA will conduct training for DataQs analysts through DataQs email blasts, training bulletins and webinars. The webinars and other training will be provided to DataQs analysts before the policy is implemented to improve the consistency of implementation. The Agency will also be providing training to its own staff. In addition, information will be available on the Agency's website and on the DataQs website.

Issued on: May 30, 2014.

Anne S. Ferro,
Administrator.

[FR Doc. 2014-13022 Filed 06/02/2014 at 11:15 am; Publication Date: 06/05/2014]