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**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2015-0439]**

**Notification of Changes to the Definition of a High Risk Motor Carrier and Associated Investigation Procedures**

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

**ACTION:** Notice of definition and procedural changes.

**SUMMARY:** This notice announces the Agency's efforts to improve the carrier prioritization process to enable safety investigators to take more immediate action against carriers with the highest crash risk. Specifically, FMCSA is announcing a new High Risk Motor Carrier definition and associated investigative procedural changes. These changes correspond with the "Blueprint for Safety Leadership: Aligning Enforcement and Risk" report issued by a Federal Aviation Administration Independent Review Team (IRT) in July 2014. The IRT recommended that FMCSA sharpen its priority-setting focus and improve the timeliness of investigator actions on those motor carriers representing the highest risk. This notice explains the Agency's new High Risk Motor Carrier definition and associated investigative procedural changes.

**DATES:** Comments on this notice must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System Docket ID [FMCSA-2015-0439] using any of the following methods:

Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 0590-0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the Privacy Act heading below.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Mr. David Yessen, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone 609-275-2606 or by email:

[david.yessen@dot.gov](mailto:david.yessen@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services at (202) 366-9826.

**SUPPLEMENTAL INFORMATION:**

Docket: For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The online Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

## **Background**

With the implementation of the Compliance, Safety, Accountability (CSA) program in December 2010, FMCSA began using the Safety Measurement System (SMS) to identify high-risk carriers for onsite investigations (75 FR 18256). Section of 5305(a) of the recently enacted Fixing America's Surface Transportation Act, Pub. L. 114-94, (Dec. 4, 2015; 129 Stat. 1312) requires that FMCSA ensure, at a minimum, that a review is conducted on motor carriers that demonstrate through performance data that they are among the highest risk carriers for four consecutive months.

Under the previous policy, which is being superseded and can be found at 75 FR 18256, non-passenger carriers that meet or exceed specific SMS Behavior Analysis and Safety Improvement Category (BASIC) Intervention Thresholds for two consecutive months must receive an onsite investigation within 12 months, unless they received an onsite investigation within the previous 24 months. Passenger carriers that meet or exceed the specific BASIC Intervention Thresholds for one month must receive an onsite investigation in 90 days unless they received an onsite investigation within the previous 12 months. Carriers that meet these criteria are considered "Mandatory" for prioritization.

## **New Definition of High Risk**

As part of FMCSA's continuing efforts to improve CSA, the Agency is improving the carrier prioritization process to enable safety investigators to take more immediate action against carriers with the highest crash risk. The Agency's efforts also correspond with the "Blueprint for Safety Leadership: Aligning Enforcement and Risk" report issued by a Federal Aviation Administration Independent Review Team (IRT) in July 2014. The IRT report recommended that FMCSA should sharpen its priority-setting focus and improve the timeliness of investigator actions on those motor carriers representing the highest risk. The IRT report noted that the current High Risk definition does not specify which carriers require the most urgent attention or allow for dynamic risk management.

For these reasons, FMCSA developed, and today announces that it is adopting, a new High Risk motor carrier definition. Under the new definition, passenger carriers are "High Risk" if they have two or more of the following Behavior Analysis and Safety Improvement Categories (BASICS), most closely correlated with crash risk, at or above the 90th percentile for one month and they have not received onsite investigation in the previous 12 months: Unsafe Driving, Crash Indicator; HOS Compliance, and Vehicle Maintenance. Non-passenger carriers are considered "High Risk" if they have two or more of these BASICS at or above the 90th percentile for two consecutive months and they have not received an onsite investigation in the previous 18 months.

The new definition will identify a smaller number of carriers, but this group of carriers will have a higher crash risk than the group of carriers identified under the current High Risk definition. This newly defined High Risk list will be the Agency's investigative priority. It will allow the Agency to more promptly conduct investigations of carriers that pose the greatest risk to public safety, rather than placing carriers at high crash risk in a longer queue of investigations.

In addition, to address those carriers with poor safety performance that will no longer fall under the High Risk definition, FMCSA will identify and monitor additional carriers with significant crash risk using dynamic risk management tools recommended by the IRT. The term dynamic risk management refers to the techniques and processes that Agency managers will use to evaluate the safety performance of carriers on the Moderate-Risk, Risk, and Monitor lists, and to reprioritize these carriers as needed. Safety performance data analysis tools were developed to support the dynamic management decision-making process. The term “Mandatory” will no longer be used to identify carriers for investigation prioritization. FMCSA will also introduce other prioritization changes over the next year to address other carriers with significant indicators of non-compliance and to improve the Agency’s ability to manage risk and respond appropriately based on the best available data. As a result, the Agency anticipates conducting a similar number of investigations as are currently conducted.

Table 1 below provides the approximate number of carriers that would be identified annually under the new High Risk definition and the Agency’s additional risk tiers.

**Table 1 — New High Risk Criteria Carriers and Crash Rates**

	<b>New High Risk</b>	<b>Moderate Risk</b>	<b>Risk</b>
<b>Number of carriers identified in 12 months</b>	2,800	1,500	9,200
<b>Crash rate (24 months) per 100 Power Units *</b>	18.25	14.25	10.80

\*Current Mandatory Carrier Crash Rate: 13.35

This change will not impact a carrier’s safety fitness rating, authority to operate, or SMS percentiles, and will not change the SMS methodology, or how FMCSA makes enforcement decisions.

## II. Summary of Changes

The following table defines the criteria for designating Passenger and Non-Passenger carriers as “High Risk.” Table 2 is offered as reference material to assist the public in understanding the new High Risk definition.

**Table 2 — Passenger and Non-Passenger Carriers Designated As “High Risk”**

<b>Criteria</b>	<b>Current Mandatory</b>	<b>New High Risk</b>
<b>SMS BASIC Performance</b>	<ul style="list-style-type: none"> <li>• Unsafe Driving, Crash Indicator, or HOS Compliance BASICS greater than or equal to the 85th percentile and one other BASIC at or above the “all other” motor carrier threshold; or</li> <li>• Any four or more BASICS at or above the “all other” motor carrier threshold (65th/80th percentiles).</li> </ul>	<ul style="list-style-type: none"> <li>• Two or more of the following BASICS at or above the 90<sup>th</sup> percentile: <ul style="list-style-type: none"> <li>○ Unsafe Driving</li> <li>○ Crash Indicator</li> <li>○ HOS Compliance</li> <li>○ Vehicle Maintenance</li> </ul> </li> </ul>
<b>Passenger Carrier</b>	Occurs in One Month	Occurs in One Month
<b>Non-Passenger Carrier</b>	Occurs in Two Consecutive Months	Occurs in Two Consecutive Months
<b>Time Since Last Onsite Investigation</b>	<ul style="list-style-type: none"> <li>• Passenger – 12 Months</li> <li>• Non-Passenger – 24 Months</li> </ul>	<ul style="list-style-type: none"> <li>• Passenger – 12 Months</li> <li>• Non-Passenger – 18 Months</li> </ul>

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T.F. Scott Darling, III,  
Acting Administrator.

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