



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration (FMCSA)

[Docket No. FMCSA–2015–0124]

Beyond Compliance Program

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

ACTION: Notice; request for comment.

SUMMARY: The Fixing America’s Surface Transportation (FAST) Act requires FMCSA to implement a “Beyond Compliance” program no later than 18 months after the enactment of the Act. Through this proposed program, the FMCSA Administrator must allow recognition, either through credit recognized by a new Beyond Compliance Behavior Analysis and Safety Improvement Category (BASIC), or an improved Safety Measurement System (SMS) percentile, for a motor carrier that: (1) installs advanced safety equipment; (2) uses enhanced driver fitness measures; (3) adopts fleet safety management tools, technologies, and programs; or (4) satisfies other standards determined appropriate by the Administrator. The FAST Act also requires that the Agency provide the opportunity for notice and comment on a process for identifying and reviewing advanced safety equipment, enhanced driver fitness measures, fleet safety management tools, technologies, and programs, and other standards for use by motor carriers to receive recognition. This proposed program will not allow relief from regulatory requirements. This notice satisfies that requirement to seek comments on this program. Comments and data received in response to this notice will be used to further develop the Beyond Compliance program.

DATES: Comments 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 (FDMS) Docket No. FMCSA–2015–0124 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov*. Follow the on-line instructions for submitting comments.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

- *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.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Rowlett, 1200 New Jersey Avenue SE, Washington, DC 20590, Telephone (202) 366-6406, theresa.rowlett@dot.gov.

SUPPLEMENTARY INFORMATION:

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2015-0124), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. 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 that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2015-0124, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

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.

We will consider all comments and material received during the comment period and may draft an additional notice of program development based on your comments and other information and analysis.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2015-0124, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. 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

In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its program policy development process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

BACKGROUND

Motor Carrier Safety Advisory Committee (MCSAC) Tasking

On March 30, 2015, FMCSA tasked the MCSAC with providing recommendations to the Agency on the potential benefits and feasibility of voluntary compliance and ways to credit carriers and drivers who initiate and establish programs that promote safety beyond the standards established in FMCSA regulations. The Agency specifically asked for the views of the MCSAC on this concept, with any data or analysis to support it with regard to three basic areas:

1. What voluntary technologies or safety program best practices would be appropriate for beyond compliance?
2. What type of incentives would encourage motor carriers to invest in technologies and best practices programs?
3. How would FMCSA verify the voluntary technologies or safety programs were being implemented?

The Agency received the MCSAC's letter report on September 21, 2015. The MCSAC noted that the ideas in the report were not based on a full discussion on the merits; rather, these ideas were suggested and supported by a variety of MCSAC

members. It was the Committee's intention to provide FMCSA with a broad range of ideas that address the questions the Agency laid out in the Task Statement from the diverse group of stakeholders that constitute the MCSAC membership. Additionally, the MCSAC noted that the inclusion of ideas in this report was not based on a discussion of whether sufficient data exists to support the use of the relevant incentive or on cost/benefit considerations. A copy of the Task Statement and the letter report are included in the docket for this program referenced above.

April 2015 Federal Register Notice

On April 17, 2015, FMCSA issued a Federal Register notice requesting comment for possible development of a Beyond Compliance program. FMCSA sought responses to the following specific questions and encourages the submission of any other reports or data on this issue.

1. What voluntary technologies or safety program best practices would be appropriate for a Beyond Compliance program?
2. What safety performance metrics should be used to evaluate the success of voluntarily implemented technologies or safety program best practices?
3. What incentives would encourage motor carriers to invest in technologies and best practices programs?
 - a. Credit on appropriate SMS scores (*e.g.*, credit in Driver Fitness for use of an employer notification system)?
 - b. Credit on ISS scores?
 - c. Reduction in roadside inspection frequency?
 - d. Other options?

4. What events should cause the incentives to be removed?
 - a. If safety goals for the carrier are not consistently achieved, what is the benefit to the motoring public?
5. Should this program be developed by the private sector like PrePass, ISO 9000, or Canada's Partners in Compliance (PIC)?
6. How would FMCSA verify that the voluntary technologies or safety programs were being implemented?

Forty-four responsive comments were received. The majority of commenters supported the idea of a program that gave recognition for voluntarily exceeding the requirements. However, 13 commenters were vendors with products or programs that could receive additional sales as a result of this program.

The United Motorcoach Association (UMA), the Owner Operator and Independent Driver Association (OOIDA) and Dale Chandler indicated that they were opposed to a Beyond Compliance program. Reasons cited included concerns that this type of program would be biased against small motor carriers that could not afford the investment and that this program would take resources away from FMCSA's safety missions.

Fixing America's Surface Transportation (FAST) Act

In December 2015, Congress passed the Fixing America's Surface Transportation (FAST) Act (Pub. L. No. 114-94, 129 Stat. 1312 (Dec. 4, 2015)) which requires FMCSA to implement a "Beyond Compliance" program no later than 18 months after the enactment of the Act. Section 5222 specifically requires that FMCSA allow recognition, including credit or an improved SMS percentile, for a motor carrier that: (1) installs

advanced safety equipment; (2) uses enhanced driver fitness measures; (3) adopts fleet safety management tools, technologies, and programs; or (4) satisfies other standards determined appropriate by the Administrator.

This section of the FAST Act also prescribes that the Administrator must carry out the program by either incorporating a methodology into the Compliance, Safety, Accountability (CSA) program; or establishing a safety Behavior Analysis Safety Improvement Category (BASIC) in SMS.

In developing the Beyond Compliance program, the Agency must develop a process for identifying and reviewing advanced safety equipment, enhanced driver fitness measures, fleet safety management tools, technologies, and programs, and other standards for use by motor carriers to receive recognition, including credit or an improved SMS percentile. Section 5222 prescribes that this process must provide for a petition process for reviewing advanced safety equipment, enhanced driver fitness measures, fleet safety management tools, technologies, and programs, and other standards; and seek input and participation from industry stakeholders, including commercial motor vehicle drivers, technology manufacturers, vehicle manufacturers, motor carriers, law enforcement, safety advocates, and the MCSAC. As noted above, the MCSAC was already consulted on this program. This notice seeks comments from other noted parties.

In Section 5222(e) of the FAST Act, Congress provided the Administrator with the authority to monitor motor carriers that receive recognition through a no-cost contract. This means that the costs for monitoring this program would be charged to the motor carrier by the third party contractor. FMCSA is currently completing the acquisition planning process required to establish this no-cost contract.

FMCSA must maintain a publicly accessible website that provides information on—(1) the advanced safety equipment, enhanced driver fitness measures, fleet safety management tools, technologies, and programs eligible for recognition; (2) any petitions for review of advanced safety equipment, enhanced driver fitness measures, fleet safety management tools, technologies, and programs, and other standards; and (3) any relevant statistics relating to the use of advanced safety equipment, enhanced driver fitness measures, fleet safety management tools, technologies, and programs, and other standards.

Section 5222 of the FAST Act requires initiation of the Beyond Compliance Program within 18 months from the date of the Act, and section 5223 of the FAST Act prohibits the display of certain important safety information on the Agency's SMS website until the Beyond Compliance program is initiated. Once the program is initiated, and within 3 years after the date of enactment of the FAST Act, FMCSA must submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the number of motor carriers receiving recognition and the safety performance of such carriers.

Listening Sessions

On December 24, 2015 (80 FR 80447), FMCSA announced in the Federal Register that it would be holding two listening sessions on the Beyond Compliance program. The sessions were held on January 12 and 31, 2016, to solicit information on the potential benefits and feasibility of voluntary compliance and ways to credit carriers who initiate and establish programs that promote safety beyond the standards established

in FMCSA regulations. The listening sessions were intended to provide interested parties with an opportunity to share their views on this topic with Agency representatives, along with any data or analysis they may have. All comments were transcribed and have been placed in the docket referenced above. This input was considered by FMCSA in developing the proposed program described below. Additional listening sessions are being planned for Louisville, KY, and Chicago, IL, on April 1 and 25, 2016, respectively. A separate notice will be published with the times and meeting locations for these listening sessions.

Proposed Program

Below is a description of FMCSA's proposal for the Beyond Compliance program. The Agency seeks comments and data that will support the development and implementation of this program.

Credit through a Beyond Compliance BASIC

FMCSA proposes to create a new BASIC in SMS. The Beyond Compliance BASIC would appear when a motor carrier is approved and participating in the Beyond Compliance program. The Agency proposes this means of acknowledging those programs that exceed regulatory requirements voluntarily for two reasons. First, many commenters to the April 2015 Federal Register notice advised that public recognition of participation in this program would provide value. Those companies with this BASIC would distinguish themselves from other companies when the public display of SMS is reinstated in the future. Second, developing and maintaining a separate BASIC in SMS can be completed within the 18 month timeframe prescribed by the FAST Act, whereas making modifications to the SMS methodology would be more complicated and time

consuming, and potentially impact the study of the SMS methodology required by Section 5221 of the FAST Act. In addition, a separate BASIC is easier and more cost effective for the Agency to implement and maintain. This alternative allows FMCSA to only modify the SMS and does not need to tie to data in other systems such as the Motor Carrier Management Information System.

FMCSA is specifically seeking comments on this proposal, and the pros and cons of the Beyond Compliance BASIC.

Programs meeting the requirements of the Beyond Compliance Program

The FAST Act prescribes the eligibility for the Beyond Compliance program. As a result, this program is available to a motor carrier that: (1) installs advanced safety equipment; (2) uses enhanced driver fitness measures; (3) adopts fleet safety management tools, technologies, and programs; or (4) satisfies other standards determined appropriate by the Administrator.

FMCSA proposes that technologies that are not currently mandatory, such as Electronic Logging Devices, would be eligible until they are required.

Eligibility

A motor carrier would be eligible to apply for the Beyond Compliance program if the following criteria were met:

1. The motor carrier did not have a Conditional or Unsatisfactory safety rating;
2. The motor carrier did not have any BASICs over intervention thresholds at the time of the application;

3. The proposed technology or program must be applied to the company's population of vehicles or drivers to adequately achieve the performance goal and improve safety;
4. The motor carrier must be an interstate carrier; and
5. The motor carrier must have graduated from the new entrant monitoring period.

Commenters supported establishing this program for companies that are already demonstrating compliance with the Agency's regulations. Specifically, John Boyle, of Boyle Brothers, Inc., noted that FMCSA "should focus on and reward real world results rather than who can attract technology partners or self-promote the best." The Commercial Vehicle Safety Alliance (CVSA) added, "The purpose of such a program is to recognize motor carriers who go above and beyond the minimum requirements. Releasing participating motor carriers from the minimum requirements is inappropriate and in direct conflict with the purpose of the program. CVSA strongly opposes any effort to do so." Advocates for Highway and Auto Safety noted that "Any program to support voluntary initiatives must, therefore, be predicated on adequate performance standards and documented safety improvement data that ensures the initiatives are actually contributing to highway safety." The Owners Operators and Independent Drivers Association opined that "...this proposal is largely being driven by technology firms whose primary interest is financial, and by large carriers who have already adopted technology but have not realized real improvement to their safety scores."

Petition Submission Process

FMCSA proposes that petitions for technologies and safety programs for consideration in a Beyond Compliance would be submitted using an on-line tool to be

developed by FMCSA. The on-line petition process would require the motor carrier to provide at least the following information:

1. USDOT number;
2. Company name and doing business as (DBA) names
3. Company official name, title, contact info;
4. Proposed technology or program;
5. Coverage (drivers and/or fleet);
6. Baseline safety information;
7. Expected improvement;
8. Estimated cost;
9. Installation timeframe (past or future); and
10. Self-certification.

Baseline safety information would include a statement of the safety gains sought, defined with data. This must be a measurable performance data that can be monitored to determine if improvement has been made.

FMCSA specifically requests comments on other data that should be required with the application.

It is also anticipated that this online system would allow requestors to submit documentation in support of the request. Documentation to be submitted with a request would include, but is not limited to:

1. Vendor documentation;
2. Training materials;
3. Company policies;

4. Company monitoring plans; and
5. Other proof of implementation.

FMCSA specifically requests information on what documentation should be submitted with an application.

Petition Review Process

As noted above, the FAST Act allows FMCSA to award a no-cost contract to a third party to provide monitoring support for this program. It is expected that this third party would be used to interview applicants and complete validation of the application. The third-party would make recommendations to FMCSA on whether or not applications should be approved.

FMCSA would complete review of submitted petitions within 60 days. Applicants would receive a written decision by email. If the application is approved, the motor carrier would see the Beyond Compliance BASIC on its SMS profile. At this point in the process, SMS would show that the motor carrier is “Deployed.”

If FMCSA does not agree that the application met the requirements of the program, a justification for this decision would be provided so that the motor carrier may adjust the application and resubmit.

Mandatory Use Period and Monitoring

Within approximately 6 months after the application is approved, the approved program or technology would be evaluated to identify the impacts on the baseline performance measures. This monitoring would be conducted by the third-party contractor. The use of the technology or safety program would be confirmed and if the

safety baseline has improved, the Beyond Compliance BASIC would indicate that the motor carrier is “Improved.”

Recurring Monitoring

Recurring monitoring would be conducted by the third party contractor. FMCSA proposes that use of the approved technology or safety program would be validated at least annually. The validation could occur through an on-site review, submission of documentation, self-certification, or another method of evaluation. FMCSA specifically requests comments on other means of validating the sustained use of the approved technology or safety programs.

Removal from the Program

A motor carrier would be immediately removed from the program if it received a final conditional or unsatisfactory safety rating; was declared an imminent hazard; or received an out of service or revocation order from FMCSA. Additionally, a motor carrier would be removed from the program immediately if it was determined that the approved technology or safety program was not being used or was being used by fewer drivers/vehicles than approved.

A motor carrier would be provided a warning if an alert(s) exceeded the intervention threshold or did not maintain performance above the performance baseline specified in its application. If the SMS measure or the performance did not improve within 6 months, the motor carrier would be removed from the program.

SMS Display

FMCSA will design the change to SMS to show a Beyond Compliance BASIC. Information on the Beyond Compliance BASIC detail page would explain that this

BASIC exists for carriers that have applied to this program and been approved. The detail page would also include a brief explanation of the technology or program and would show if the program is “Deployed” or “Improved.”

Cost

As noted above, FMCSA has the authority to contract for a no-cost contract to provide monitoring services for this program. This means that the costs of the work performed by this third party would be paid by the motor carrier. For the monitoring that would be conducted as part of the application process, FMCSA estimates that this would take, on average, five hours per carrier. However, it is acknowledged that some programs or technologies will require significantly more resources to monitor. At a wage that is commensurate with a GS-13 Management Analyst in the Washington, DC, area, this would equate to \$44.15 per hour or \$220.

It is expected that the six month validation would be two hours, or \$88, and the annual review would take two additional hours, or an additional \$88 per year. Assuming a carrier is in the program for five years, FMCSA estimates that the fee would be approximately \$750 per motor carrier. This would be the expected cost for a program implemented on a small number of vehicles and/or drivers. It is expected that the costs would be tiered so that larger programs requiring more monitoring would incur a higher cost. FMCSA specifically seeks data and cost information to determine the appropriate range of fees to be paid by the motor carrier under the no-cost contract.

Issued on: April 13, 2016

T. F. Scott Darling, III,
Acting Administrator

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