



Commercial Vehicle Safety Alliance

Improving commercial motor vehicle safety and enforcement

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Dockets Operations
U.S. Department of Transportation
1200 New Jersey Avenue, SE
West Building, Ground Floor
Room W12-140
Washington, DC 20590-0001

RE: Docket Number: FMCSA-2023-0190
Appeal Process for Requests for Data Review

The Commercial Vehicle Safety Alliance (CVSA) respectfully submits the following comments in response to the Federal Motor Carrier Safety Administration's (FMCSA) notice and request for comments regarding the agency's proposal to develop and implement a federal appeals process for Requests for Data Review (RDRs) submitted to the agency through the DataQs system.

CVSA is a nonprofit organization comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. The Alliance aims to prevent commercial motor vehicle crashes, injuries and fatalities and believes that collaboration between government and industry improves road safety and saves lives. Our mission is to improve commercial motor vehicle safety and enforcement by providing guidance, education and advocacy for enforcement and industry across North America.

General Comments

In the notice, FMCSA proposes to create a federal appeals process for RDRs submitted to the agency through the DataQs system. This system would provide motor carriers with an opportunity to have their requests reviewed by FMCSA after the request has been reviewed and denied after reconsideration by the state agency. In its proposal, FMCSA notes that not all RDRs would be eligible for consideration under the federal review process. Instead, the agency proposes to focus on those requests that pertain to significant matters of legal interpretation or implementation of enforcement policies or regulations. FMCSA's determination on these appeals would be final. In addition, FMCSA proposes to establish new guidelines for the review of RDR Reconsiderations, specifically that the state ensure that a reconsideration request is reviewed by an individual other than the person who originally reviewed and denied the RDR.

CVSA believes in the FMCSA DataQ system and supports providing vigorous due process to motor carriers, drivers and their representatives. The Alliance applauds FMCSA for engaging with the commercial motor vehicle community to identify ways to improve the DataQ system. Further, CVSA concurs with our partners in the motor carrier community that there are inconsistencies in how the states treat DataQs and that additional standardization is appropriate.

However, CVSA has concerns with the federal review panel concept proposed by FMCSA. First, FMCSA is proposing to review only a portion of the RDRs submitted by motor carriers for consideration, focusing on those that require interpretation or clarification. This proposal includes no solution for those RDRs that are being contested due to a disagreement between the state and the motor carrier regarding the actual facts of the scenario. It is reasonable to assume that FMCSA will be reviewing only a small portion of the overall number of RDRs submitted to this federal appeals process for consideration, leaving the majority of the RDRs unresolved. CVSA does not believe it is practical to go through the effort that will be involved in establishing and maintaining this federal appeals process if it will not address the majority of the RDRs that would be submitted.

Further, the proposal from FMCSA provides little detail on the specifics of how such an appeals process would work. For example, who would sit on the appeals panel? It is critical that the individuals conducting the reviews be knowledgeable when it comes to the regulations, and ideally, these subject matter experts would be certified in the relevant portions of the North American Standard Inspection Program (Part A, Part B, Hazardous Materials, etc.). Will the members of the panel be consistent or will they rotate? Who will determine which RDRs qualify for FMCSA review? How will that determination be applied consistently if more than one reviewer is involved?

The proposal also lacks details regarding the process itself. How long will the appeals process take? Will FMCSA establish minimum timeframes for a determination to be made once a request is submitted? Once a determination is made, how long will it take the agency to communicate that decision to the motor carrier and the state and how long will it take for the data correction, if necessary, to be applied?

CVSA also has concerns about the impact such a program could have on other critical agency priorities. Will establishing and maintaining a federal appeals process divert resources from other important agency initiatives?

Finally, it is unclear at this point how the proposed changes to the Safety Management System and the current safety fitness determination rulemaking will impact the DataQs program. Both proposals could result in a significant increase or decrease in the number of DataQs submitted, which in turn would impact the workload associated with the federal review concept.

While CVSA has concerns and questions regarding the establishment of a federal appeals process to address these RDR challenges, the Alliance acknowledges that work must be done to ensure that our partners in the motor carrier industry have access to due process. CVSA recommends that FMCSA consider an alternative approach to addressing the issues outlined in the proposal.

First, CVSA supports FMCSA's proposal to establish new guidelines for the review of RDR Reconsiderations, specifically requiring that the state ensure that a reconsideration request be reviewed by an individual other than the person who originally reviewed and denied the RDR. Many states have this requirement in place as part of their DataQs program already and applying this standard consistently across all jurisdictions will result in more uniformity and more rigorous review by the states of motor carrier RDR reconsideration requests.

Building on this approach of improving and standardizing the DataQ review process at the state level, CVSA also encourages FMCSA to identify the jurisdictions whose DataQs processes perform well and identify key elements of those programs that could be applied to jurisdictions where the review process is less effective. CVSA recommends that FMCSA work directly with the jurisdictions where improvements are necessary. The Alliance welcomes the opportunity to support FMCSA in this effort. After implementing these changes, CVSA recommends

FMCSA reevaluate the overall performance of the DataQs program and determine at that point whether an additional level of review is necessary. Working directly with the individual jurisdictions, coupled with the requirement that a reconsideration request be reviewed by an individual other than the person who originally reviewed and denied the RDR, will result in significant improvement to the DataQs and RDR Reconsideration processes and may address industry's concerns regarding the program.

Comments to Specific Provisions

As noted above, CVSA has significant concerns and questions regarding FMCSA's federal review panel proposal that prevent the Alliance from supporting the concept at this time. CVSA recommends, instead, that FMCSA work directly with the jurisdictions to improve the DataQs program at the state level. However, should FMCSA determine a federal panel is appropriate despite these concerns, CVSA provides the following feedback to the specific questions posed by FMCSA in the notice and request for comments.

1. *Should FMCSA consider appeals for RDRs that are not related to the interpretation or understanding of regulations, policy, or standards.*

No. If FMCSA moves forward with a federal review panel model, the narrow scope identified by FMCSA is appropriate. Where there are questions regarding the applicability of the regulation and a clarification or interpretation is necessary, FMCSA can and should engage with the states and motor carrier industry to provide that clarity. In instances where a state and motor carrier are disagreeing over the facts of a challenge, it would be difficult for FMCSA to make a determination on which party is correct.

CVSA does recommend, however, that FMCSA provide additional clarity regarding which challenges will qualify for federal review. The agency provides several example scenarios in the notice, but it would be beneficial for the agency to further define what qualifies as "significant matters of legal interpretation or implementation of enforcement policies or regulations." CVSA expects that, at least at the beginning of the program, FMCSA (and therefore the states) will see a significant increase in the number of rejected RDRs sent in for reconsideration as industry attempts to understand the scope of the program. This would create unnecessary additional work for the states and FMCSA. Providing a clear, specific definition will help mitigate some of these additional challenges.

2. *If so, what are some examples of RDRs that should be reviewed in an appeal?*

As noted in response to Question 1 above, if FMCSA moves forward with a federal review panel model, CVSA agrees with FMCSA's recommendation to limit the scope of the RDRs that qualify for a federal review to "significant matters of legal interpretation or implementation of enforcement policies or regulations."

3. *As mentioned above, some States and program offices have created review boards and panels with processes for managing requests or referrals that occur during the initial RDR review or an RDR Reconsideration. How would the addition of the FMCSA appeal impact these review boards and their processes?*

While CVSA does not support FMCSA's proposal to implement a federal review panel model at this time, the Alliance does not anticipate that the jurisdictions with existing review boards and panels will experience any significant impacts if such a program were created. These states would keep their current process in place. The only impact CVSA anticipates is an increase in the number of RDRs submitted for reconsideration, as

motor carriers adjust to the new model and seek to understand which appeals will qualify for FMCSA review and which will not.

4. *What burdens, if any, will States face when updating their source data when notified in DataQs of an FMCSA appeal result that requires a data change?*

While CVSA does not support FMCSA's proposal to implement a federal review panel model at this time, the Alliance does not anticipate that the jurisdictions will face any significant burdens when updating their source data when notified of an FMCSA decision that requires a data change.

- a. *If a State declined to change the violation in its data systems as a result of a decision in an FMCSA appeal, or was unable to, what would be the impact be of having FMCSA update the data in MCMIS directly while the State retained the original data in the its source systems?*

In general, CVSA does not anticipate that this scenario would occur. However, if it were to happen, CVSA does not anticipate it creating any challenges, as the Motor Carrier Management Information System (MCMIS) is the authoritative source for violation data under the Motor Carrier Safety Assistance Program. CVSA views this as similar to the adjudicated citation process: once FMCSA makes a change, that is the official word on the matter. Furthermore, for jurisdictions using FMCSA's SafeSpect platform, the change would occur automatically.

5. *One purpose of the FMCSA review is to provide clarity on significant regulatory or policy issues. FMCSA appeals may identify instances where this clarity could be helpful for future RDRs and RDR Reconsiderations. Are there recommended practices for disseminating appeal outcomes?*

While CVSA does not support FMCSA's proposal to implement a federal review panel model at this time, if such a program were created, the Alliance encourages the agency to take steps to ensure that both the jurisdictions and the motor carrier community are aware of those decisions. Doing so will provide additional clarity and result in more consistent application of the regulations, based on the agency's guidance. It would also help motor carriers make better informed decisions when determining whether or not to submit an RDR for reconsideration.

While the exact mechanism for distribution of these decisions may depend on the number of appeals the agency decides to review, CVSA encourages the agency to look for opportunities to push the information out proactively to both enforcement and industry. The decisions could potentially be posted on the DataQs public site, and cross-referenced on the agency's Compliance, Safety Accountability main page. CVSA also encourages FMCSA to work with their industry partners, including CVSA, to distribute the information.

6. *Are there any factors that FMCSA should consider relating to its proposed requirement for a separate reviewer, independent from the initial reviewer, for program office review for all RDR Reconsiderations?*

CVSA supports FMCSA's proposal to establish new guidelines for the review of RDR Reconsiderations, specifically requiring that the state ensure that a reconsideration request is reviewed by an individual other than the person who originally reviewed and denied the RDR. While it is true that many states already have this standard in place as part of their DataQs program, making it a requirement and applying it consistently across all jurisdictions will result in more uniformity and more rigorous review by the states of motor carrier's RDR reconsideration requests. The only way FMCSA can ensure universal adoption of this process is to require

it. CVSA encourages FMCSA to build on this concept and to review jurisdictions with well performing DataQs programs for other consistencies and common best practices, and then to work directly with the jurisdictions the agency identifies as having programs that need improvement to implement these common factors.

As noted above, CVSA acknowledges the concerns with the DataQs system expressed by our industry partners, especially those related to the processes some jurisdictions use to review RDRs submitted for reconsideration. High quality, accurate violation data is critical to the overall performance of the Motor Carrier Safety Assistance Program, as well as all the individual state programs. Further, the states and FMCSA have a responsibility to provide motor carriers with access to robust due process.

While CVSA commends FMCSA for seeking to address these issues, the Alliance cannot support the federal appeals process outline by FMCSA in the notice and request for comments. There are too many unanswered questions regarding how the program would work, as well as concerns regarding the timeliness and consistency of such a program. And finally, CVSA notes that such a program, as outlined by FMCSA, would only address a small portion of the RDR Reconsideration requests, leaving the majority of the issues unresolved by this new program.

Instead, CVSA encourages the agency to implement the proposed requirement that the state ensure that a reconsideration request is reviewed by an individual other than the person who originally reviewed and denied the RDR. In addition, CVSA encourages FMCSA to evaluate jurisdictions with effective programs and then work directly with the jurisdictions whose programs have been identified as needing improvement to implement changes that could improve their performance. CVSA would like to offer to partner with FMCSA in this effort, should the agency choose to move forward with it.

CVSA works to closely monitor, evaluate and identify potentially unsafe transportation processes and procedures as well as to help facilitate and implement best practices for enhancing safety on our highways. Commercial motor vehicle safety continues to be a challenge and we need the involvement of all affected parties to help us better understand these issues and put into place practical solutions. We appreciate the opportunity to comment on this proposal and the agency's commitment to safety and stakeholder involvement.

If you have further questions or comments, please do not hesitate to contact me by phone at 202-998-1008 or by email at collin.mooney@cvsa.org.

Respectfully,



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