



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

Proposed Revisions to DataQs Requirements for MCSAP Grant Funding

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 proposed revisions to the DataQs requirements for Motor Carrier Safety Assistance Program Grant funding.

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

FMCSA's proposal seeks to improve the impartiality, timeliness, transparency and fundamental fairness of the request for data review (RDR) process, thereby strengthening the agency's ability to make data-driven decisions that inform resource allocation, policy changes and new initiatives to prevent large truck and motorcoach-involved crashes and enhance safety on the nation's roads. Specifically, the agency's proposal requires states, as part of the Motor Carrier Safety Assistance Program (MCSAP), to incorporate a multi-level review process for RDRs, escalating the review from the DataQs analyst in the state MCSAP Lead Agency to a responsible decision-maker or panel of subject matter experts. Each RDR would be evaluated based on the documentation and evidence provided by the submitter of the RDR, along with any state documents or evidence. States would be encouraged to adopt a multi-level review process appropriate for their agency(s) structure to support independent evaluation of the request. Finally, states would be required to submit a DataQs Implementation Plan to FMCSA detailing how their agency will meet FMCSA's requirements for each stage of the RDR review process.

CVSA's membership believes in the FMCSA DataQs 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's member jurisdictions concur with our partners in the motor carrier community that there are inconsistencies in how the states manage DataQs and that additional standardization is appropriate. Finally, CVSA's members thank FMCSA for their ongoing engagement on this topic with both our state and industry members. This type of direct collaboration between state enforcement officials, the federal regulators and the regulated industry is at the core of CVSA's mission and purpose.

Overall, CVSA's membership supports the changes proposed by FMCSA, as the changes will bring more continuity to the DataQs process. The comments below provide specific feedback in response to the 'Comments Sought' section of the notice, as well as additional general comments and recommendations for the agency's consideration.

CVSA Responses to Comments Sought

1. *FMCSA outlined proposed revisions to DataQs requirements for MCSAP Grant funding in Section IV above. What are the potential benefits associated with this proposal? What are the potential challenges?*

Establishing a uniform framework for the DataQs RDR program, with defined timelines and processes, will provide motor carriers with improved uniformity and consistency across jurisdictions. Uniformity and consistency in enforcement are the principles upon which the Alliance was formed. As noted above, CVSA's membership believes in the FMCSA DataQs system and supports providing vigorous due process to motor carriers, drivers and their representatives. This is important not only to provide the motor carriers with the due process to which they are entitled, but also to ensure that the data FMCSA and the states rely upon is of the highest quality.

One potential challenge FMCSA and the jurisdictions will face when implementing this new approach will be ensuring that the program is as consistent and uniform as possible, while also allowing for the flexibility needed to account for variances in program size, structure and the individual jurisdiction's unique characteristics. For example, the structure outlined by FMCSA calls for three distinct rounds of review – the 'Initial Review,' the 'RDR Reconsideration Review' and the 'Final Review.' While this "three round" approach is practical and can be applied effectively in most jurisdictions, at least one jurisdiction – North Carolina – cannot comply with this approach because existing state law in North Carolina requires that the third round of review be considered by the state's court system.

There will likely be a number of small tweaks and adjustments that individual states will need to make to the framework set forth by FMCSA. CVSA's membership encourages FMCSA to focus on the goals of the proposal – transparency, due process and independent review – and to leverage the state plan requirement to allow states to offer alternative approaches, within the scope of the program, when necessary. This will allow the jurisdictions to meet the programmatic goals through an alternative approach.

CVSA also anticipates some jurisdictions running into challenges implementing the requirements outlined in the 'RDR Reconsideration Review Process' and the 'Final Review Process Requirements' sections. Specifically, in the 'RDR Reconsideration Review Process' section, the proposal states:

- f. The RDR Reconsideration must not be reviewed or decided by the issuing officer or inspector, nor a direct supervisor of the issuing officer or inspector.*

Later, in the Final Review Process Requirements' section, the proposal states:

- d. The Final Review must be escalated for review:*
- *By a responsible decision-maker identified by the State (e.g., Senior Leader in the MCSAP Office) who is outside the chain of command for the issuing officer or inspector.*

In both instances, the underlined text above is intended to provide for an independent review process, free of bias, conducted by subject matter experts who can make informed, balanced decisions, which CVSA and its member states support. However, depending on the size of a jurisdiction and its structure, meeting these specific requirements may prove problematic.

For example, in some states, in order to reach an official who is 'outside the chain of command for the issuing officer or inspector,' the state would have to involve an official outside the commercial motor vehicle enforcement/MCSAP division. In this instance, the proposal has competing priorities that are in conflict – the requirement that the reviewer be a subject matter expert who is in a position to make an informed decision and the requirement that the reviewer be outside the chain of command for the issuing officer or inspector.

To address this conflict, CVSA recommends FMCSA amend the language to allow states who cannot provide a commercial motor vehicle subject matter expert outside the chain of command to propose an alternative process that will ensure independent, unbiased review and decision making, within their program. Again, FMCSA can leverage the state plan requirement to allow for the flexibility some jurisdictions need, while ensuring the goals of the program are being met.

In addition, in the 'RDR Reconsideration Review Process' section, the use of the term 'direct' is problematic and the Alliance recommends using the term 'immediate' instead, for clarity. Using the term 'immediate' would make it clear the agency is intending to ensure that the official that the inspector reports to and is supervised by is not directly involved in the review of their original determination, without unintentionally excluding commercial motor vehicle enforcement subject matter experts who serve in larger supervisory roles.

2. *What challenges, if any, will States face in adhering to the timelines for each stage of the RDR process outlined above? Are there any other factors FMCSA should consider related to timelines?*

Generally, CVSA's member jurisdictions are comfortable with the timelines proposed, with a few suggested adjustments, so long as the agency considers the jurisdiction's average response times, rather than applying these timelines to each individual RDR. This is further discussed below, in response to question 2. c. Applying this approach will allow for the anomalies that will occur, while still holding the jurisdictions accountable for

timely responses to requestors. In addition, CVSA recommends that the timelines placed upon the jurisdictions also apply to federal response timelines, to ensure that industry is receiving timely responses from both their state and federal partners.

- a. *FMCSA proposes that the time an RDR spends with the requestor when the State asks for additional information will not impact the timeline for the State's review. The clock will stop while the requestor gathers additional information and will restart if the requestor responds. Is this approach reasonable?*

Yes, CVSA's member jurisdictions support this approach. Stopping the clock on the review process while the requestor gathers necessary information is fair to both the requestor and the jurisdiction. This policy acknowledges that jurisdictions should not be held responsible for delays that are outside of their control. This policy also ensures that the requestor's submission receives its full consideration time and that decisions are not rushed due to an approaching deadline.

- b. *When the State requests additional information from other State/local enforcement entities, how should FMCSA account for the time when the RDR needs input from State or Federal personnel outside the MCSAP Lead Agency?*

CVSA recommends that FMCSA take the same 'stop the clock' approach in this scenario as when the jurisdiction is waiting for additional information from the requestor, as the conditions are the same. The commercial motor vehicle enforcement/MCSAP agencies do not have control over entities outside their chain of command. The timelines put in place under this program should apply only to the portions of the process that the commercial motor vehicle enforcement/MCSAP agency has control over. Should FMCSA find that a jurisdiction is consistently having to 'stop the clock' for significant periods of time due to delays in communications from external agencies, FMCSA can work with the individual jurisdiction to address that challenge.

- c. *FMCSA acknowledges that meeting the timeline standard for every RDR may not be achievable. How should delays by either the State or the requestor in the RDR process be handled? What are some examples of extenuating circumstances that would delay the review of an RDR?*

As noted above, delays on the part of the requestor or other external entities should stop the clock on the timeline, to allow the jurisdiction the full time allowed to consider the RDR. This benefits both the jurisdiction and the requestor. CVSA recommends FMCSA consider evaluating a jurisdiction's performance on average RDR resolution time, rather than applying the timeline to every individual RDR submitted. Doing so would hold jurisdictions accountable for their timeliness and performance, while also accounting for the extenuating circumstances that FMCSA acknowledges will occur. If FMCSA finds that a jurisdiction is consistently averaging a response time that is longer than the standard, the agency can work with the individual jurisdiction directly to identify the challenges and address them.

There are many reasons an RDR could be delayed – the reviewer could be out on leave unexpectedly, or out on planned leave; systems could crash or go down for extended periods of time; inspectors or other subject matter experts necessary for the consideration may be unavailable due to training or other obligations. In some instances, resolving the RDR itself may take additional time – for example,

if the inspection was assigned to the wrong motor carrier, the jurisdiction must first identify the correct motor carrier before they can reassign the inspection report. Often this is a fairly straightforward process, but there can be occasions where finding the correct motor carrier takes more time.

Additional Comments Regarding Proposed Timelines

- *Initial Review Process Timeline* – FMCSA proposes that states be required to open a new RDR within seven days of submission and respond within 21 days of submission, allowing the requestor 14 days to respond to requests for additional information from the jurisdiction. CVSA's member jurisdictions agree these timelines are reasonable, so long as the agency considers the jurisdiction's average response times, as noted above, rather than applying these timelines to each individual RDR. Applying this approach will allow for the anomalies that will occur, while still holding the jurisdictions accountable for timely responses to requestors.
- *RDR Reconsideration Review Process Timeline* – FMCSA proposes that states be required to open an RDR Reconsideration request within seven days of submission and respond within 21 days of submission. CVSA's member jurisdictions agree these timelines are reasonable, so long as the agency considers the jurisdiction's average response times, as noted above, rather than applying these timelines to each individual RDR. Applying this approach will allow for the anomalies that will occur, while still holding the jurisdictions accountable for timely responses to requestors.

FMCSA also proposes to allow the requestor 14 days to respond to requests for additional information from the jurisdiction in this second round of review. CVSA's member jurisdictions strongly oppose the introduction of any new information in the second or third round of an RDR review request. If additional information is included in the RDR Reconsideration request by the requestor, the RDR should immediately be referred back to the first round for review, based on the additional information. In both the RDR Reconsideration stage and the Final Review state, the jurisdiction is being asked to determine if the original decision was correct, and that can only be done consistently and effectively if the reviews in the second and third rounds are conducted on the same information.

Final Review Process Timeline – FMCSA proposes that states be required to open an RDR Final Review request within seven days of submission and respond within 30 days of submission. CVSA's member jurisdictions agree that the initial seven-day requirement for jurisdictions to open the request is a reasonable timeline, assuming, as noted above, that the agency considers the jurisdiction's average response times, rather than applying these timelines to each individual RDR.

CVSA's members do not support the proposal of 14 days for the requestor to respond to requests for additional information from the jurisdiction. CVSA's member jurisdictions strongly oppose the introduction of any new information in the second or third round of an RDR review request. If additional information is included in the RDR Reconsideration request by the requestor, the RDR should immediately be referred back to the first round for review, based on the additional information. In both the RDR Reconsideration stage and the Final Review state, the jurisdiction is

being asked to determine if the original decision was correct, and that can only be done consistently and effectively if the reviews in the second and third rounds are conducted on the same information.

Finally, CVSA's member jurisdictions agree that 30 days is not sufficient time to resolve the RDR Final Review process, particularly if the jurisdiction uses the panel approach made available in the proposal. Coordinating schedules for multiple reviewers, particularly those in senior positions, is difficult and jurisdictions could easily find themselves missing the proposed deadlines while making good faith efforts to resolve the RDR requests in a timely manner. CVSA's member jurisdictions recommend the agency consider a 45-day timeline for the jurisdictions to respond to this final round of RDR review.

- *14-Day Response Window for Requestor* – In each stage of the proposed RDR process, FMCSA allows 14 days for the requestor to respond to the jurisdiction's request for additional information. As noted above, CVSA's members do not support allowing additional information to be introduced into an RDR's review process after the initial round of review.

In addition, FMCSA indicates that a request will be closed automatically at the end of the 14 days with the status "Closed – No Requestor Response." To help manage the number of open requests a jurisdiction is managing, CVSA's members recommend the agency consider having the system close an RDR automatically after seven days without a response from the requestor but allow them to be reopened and retain their original timeline if additional information is submitted between the seventh and fourteenth days.

- *Adjudicated Citations and RDR Timelines* – FMCSA's proposal requires that the jurisdictions follow the agency's adjudicated citations policy. Several of CVSA's member jurisdictions noted that when they receive an RDR for a violation that is currently being adjudicated in the court system, they close the RDR with no change made and await the court's decision. CVSA's member jurisdictions recommend that FMCSA's program acknowledge and allow for this approach, as jurisdictions cannot respond to an RDR that is being considered by the court system and leaving the item open while the court process takes place would likely exceed FMCSA's stated timelines and impact a jurisdiction's performance.
- *Clarification: Business vs. Calendar Days* – CVSA's member jurisdictions recommend FMCSA amend the final program requirements to clarify that the timelines are based on business days, rather than calendar days. The personnel who manage RDR reviews generally work Monday through Friday, so basing these timelines on calendar days would effectively cut two days from the seven-day timeline and up to six from the 21-day timeline automatically. The timelines should be based on business days, when personnel are reasonably expected to be at work and able to perform their work functions.
- *Clarification: Timelines* – CVSA's member jurisdictions also request that FMCSA provide language clarifying that the 'clock' restarts with each round of RDR review. So, from the date of submission, the jurisdiction has seven days to open and 21 days to reply to an RDR submitted for the Initial Review round. Then, should the requestor choose to submit the RDR for a second consideration, the jurisdiction will have seven days from the resubmission of the RDR, not the original submission date.

Jurisdictions will have no idea how long each RDR review will take and whether or not the requestor will choose to resubmit. It is necessary for the timeline ‘clock’ to restart with each round of submission.

- *System Outages and Jurisdiction Timeliness Evaluations* – As noted above, one factor that could impact response times is system outages, either at the state or federal level. CVSA’s member jurisdictions recommend the agency address how system outages will impact the agency’s assessment of a jurisdiction’s timeliness. Evaluating the jurisdictions on their average response times will help alleviate the impact of an occasional system outage and CVSA’s member jurisdictions encourage the agency to use this approach, rather than applying these timelines to each individual RDR. In addition, the agency could consider using the same ‘stop the clock’ approach for a jurisdiction whose responses are impacted by a system outage.
- *RDRs Submitted to the Wrong Jurisdiction* – In some cases, a jurisdiction may receive an RDR request for a violation that was written by an inspector from a different jurisdiction. In these cases, the ‘clock’ should restart for the issuing jurisdiction, to allow them the full time to consider the RDR. The jurisdiction should not receive an RDR midway through the process, started in another jurisdiction, and be expected to resolve the request in a shortened timeframe, due to a mistake by the requestor.

3. *The proposal outlined in Section IV revises MCSAP Grant requirements and would impact funding distributed by FMCSA. How should States be held accountable for compliance?*

As part of its oversight of the MCSAP program, FMCSA should monitor the jurisdictions’ timeliness performance in responding to RDR. As noted above, CVSA’s members recommend that the agency focus on a jurisdiction’s average response times, rather than applying the timeframes outlined in the proposal to each RDR individually. Should the agency identify a jurisdiction that consistently exceeds those timeframes, the agency should engage with the jurisdiction directly to identify what challenges are creating the delays and work with the jurisdiction to address them, as the agency would with any other situation where a jurisdiction is not meeting the requirements of MCSAP.

4. *If the State does not receive information from the requestor when additional information is requested, or the additional information the requestor provides is inadequate, how should the RDR be handled? Should the State reserve the right to proceed with the review and come to a decision? Should the previous round of review get another chance to reconsider their previous decision when new information is provided?*

If a requestor does not respond to a jurisdiction’s request for additional information, the RDR should be closed automatically at the end of the 14 days with the status “Closed – No Requestor Response,” as outlined in FMCSA’s proposal. CVSA’s members also encourage the agency to consider having the system close an RDR automatically after seven days without a response from the requestor but allow them to be reopened and retain their original timeline if additional information is submitted between the seventh and fourteenth days. This would help manage the number of open requests a jurisdiction is managing, allowing program managers and reviewers to focus on active RDRs. If the jurisdiction decides to make a change to the RDR without receiving the additional information, they should have the authority to do so. Finally, as noted in the comments above, CVSA’s member jurisdictions strongly oppose the introduction of any new information in

the second or third round of an RDR review request. If additional information is included in either the RDR Reconsideration request or the Final Review request by the requestor, the RDR should immediately be referred back to the first level for review, based on the additional information. In both the RDR Reconsideration stage and the Final Review stage, the requestor is challenging the original decision and the jurisdiction is being asked to determine if the original decision was correct, and that can only be done consistently and effectively if the evaluations conducted in the second and third rounds of review are considering the same information as the initial review.

5. *To what extent should FMCSA prescriptively define the criteria for a “valid reason” for the Reconsideration Review Process described in Section IV versus leaving this determination to the States? If FMCSA were to define the process, what specific information should a submitter be required to provide to meet that standard?*

CVSA’s members recommend that the agency leave the determination of what qualifies as a “valid reason” for the Reconsideration Review Process described in Section IV to the jurisdictions. Creating a set list of reasons would be cumbersome and require ongoing updating and review by the agency – inevitably, over time new examples would come to light. Creating a set list would likely force jurisdictions to exclude an otherwise valid reason because it is not “on the list.” If the agency identifies any issues within a particular state as part of their MCSAP oversight, that can be addressed directly with the individual state.

Additional Comments and Considerations

In addition to the responses above to the questions posed in the “Federal Register” notice, CVSA’s state and industry members identified a number of other considerations and questions for the agency to consider before implementing this new approach.

- ***DataQ Implementation Plans***

CVSA’s member states support FMCSA’s proposed requirement that states develop and submit a DataQs Implementation Plan to the agency for review and approval. However, the current proposal does not establish a process for addressing RDR reviews submitted to a jurisdiction without an approved implementation plan. While CVSA is confident that the jurisdictions will be able to submit plans that meet the program’s stated goals, as noted above, some states may need to suggest alternative approaches based on their individual program size or structure. In these instances, there may be a period of time where FMCSA and the jurisdiction are revising the state’s plan. The current proposal does not address how RDRs submitted to the state will be addressed while the plan is finalized.

In addition, the proposal does not address a timeline for implementing these new requirements. Will states’ implementation plans be reviewed and approved before the new requirements go into effect? CVSA encourages FMCSA to consider and propose a timeline for implementation prior to making these new requirements effective and to ensure a process is in place for addressing RDRs received while a state’s plan is under review.

- ***“Closed—No Data Correction Made” Response Requirements***

In both the ‘Initial Review Process Requirements’ and the ‘RDR Reconsideration Review Process’ sections of the proposal, FMCSA details what information must be included in a jurisdiction’s response to a requestor

when the decision is to deny the request. CVSA's industry and enforcement members support this standardization in responses and believe it will benefit both industry and the jurisdictions. The information required is reasonable. However, it was noted that in the system, as it is currently structured, there is limited space to include all the required information. Further, some of the proposed required pieces of information, such as the description of or link to the state's DataQs Implementation Plan and the next steps in the process, are static responses that will not, generally, change and are not unique to the individual RDR. Instead of requiring this information to be included in each individual RDR response, CVSA's members recommend that the information and links to the state plans be made available on FMCSA's DataQs website. Anyone submitting an RDR for consideration would be familiar with the site and this approach would ensure that requestors would know, with some outreach and education and time, where and how to find that information, which they should have access to whether they have an active RDR or not. This approach would also save the jurisdictions time in completing their responses. More importantly, it would leave more space in the response itself for the jurisdiction to provide the requestor with additional details regarding why their request was denied.

In addition, CVSA's members seek clarification from FMCSA regarding whether or not that same set of information is required in the 'Final Review' stage of the process, when a jurisdiction decides to close the RDR with no data correction.

- *Industry Accountability*

CVSA and its membership have long been in support of revising the DataQs program to provide for more transparency and consistency, and the Alliance is largely supportive of the changes being proposed by FMCSA. The jurisdictions believe strongly that the motor carrier industry is entitled to due process and that the data collected in roadside inspections should be as accurate as possible. However, additional work is needed to address abuse of the DataQs system by bad actors in the motor carrier industry as well. CVSA's members encourage FMCSA to develop and put into place systems to address nuisance and frivolous DataQs, which are seen in every jurisdiction on a regular basis. Addressing and responding to these nuisance RDRs waste scarce enforcement time and resources, which impacts both enforcement and those in industry who use the system the correct way. It is important that industry, like the enforcement community, be held accountable to their responsibilities. In addition, CVSA's members urge FMCSA to put into place a mechanism for penalizing requestors who submit fraudulent documentation as part of their RDR. Doing so will ensure that the program is being used as it is intended.

- *Clarification Regarding Legal Review Requirement*

In the "RDR Reconsideration Review Process Requirements" section of the proposal, the agency notes that "Legal review should be incorporated, where applicable." CVSA's members request that, prior to finalizing the program, FMCSA provide a clarification on what is meant by this requirement. Without clear understanding of this requirement, the jurisdictions are unable to ensure that their DataQ Implementation Plans will meet the needs set forth in this section.

If this is intended to require that jurisdictions involve their legal counsel before making a determination, the jurisdictions also noted two potential challenges to this requirement. First, in many jurisdictions, when the

legal counsel is presented with a commercial motor vehicle regulatory issue or question, they are likely to consult the MCSAP agency leadership/personnel for guidance. Additionally, involving legal counsel could have significant impacts on a jurisdiction's budget, as there are costs associated with involving legal counsel. CVSA's members encourage FMCSA to consider these factors and to issue a clarification on what this requirement means for jurisdictions.

- *Necessary System Updates*

Finally, it is important to note that to implement the proposal as outlined, several updates to the DataQs system will be necessary. For example, currently, the system does not allow an RDR to be reopened a second time. In order to implement the third, Final Review, portion of the agency's proposal the system will need to be modified to allow for it. In addition, changes are necessary to implement the action to automatically close a request with the status "Closed—No Requestor Response" if the requestor does not respond within 14 days. Consideration must also be given to how the 'stop the clock' concept will be implemented within the DataQs system.

It is imperative that the DataQs system be updated to accommodate the new processes outlined in the proposal. CVSA's members encourage FMCSA to conduct a comprehensive review of the DataQs system and identify and implement all the necessary changes prior to making the new program effective. As part of this update, CVSA's member also recommend ensuring that the language within the DataQs system aligns with the terminology used in the proposal, so it is clear which step of the process an RDR is in – making management easier for both industry and enforcement.

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 at 202-998-1008 or collin.mooney@cvsa.org.

Respectfully,



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