

NATIONAL DRIVER RECORD NOTIFICATION SYSTEM REPORT TO CONGRESS

Pursuant to Section 32303 of the
Moving Ahead for Progress in the 21st Century Act (P.L. 112-141)
September 2015

BACKGROUND

The Commercial Motor Vehicle Safety Act of 1986 requires that drivers self-report a conviction for any traffic violation (except parking) to their employer within 30 days of the conviction. If the driver's commercial driver's license (CDL) is suspended, revoked, canceled, or if he/she is disqualified from driving, the employer must be notified within 1 business day and the employer may not then knowingly use that driver. Violation of this requirement may result in civil or criminal penalties.

However, motor carriers are only required to check the driving history record of their employees annually. As a result, if a driver does not self-report, it could be up to 364 days before a motor carrier obtains this information. In the interim, the driver may have been operating illegally on the roadways. This represents a significant potential highway safety hazard, since across all vehicle types, suspended drivers have a crash rate that is 14 times higher than other drivers.

Absent a system to facilitate the real-time, automatic notification of commercial driver violations (or change in license status) to employers, the current requirement of self-reporting by drivers and annual checks by motor carriers results in a safety vulnerability in terms of having unqualified drivers (i.e., loss of driving privileges following certain convictions for traffic offenses) operating on the roadways longer without the motor carrier's knowledge.

In 2007, Congress directed the Federal Motor Carrier Safety Administration (FMCSA) to conduct a pilot program through section 4022 of the Transportation Equity Act of the 21st Century (P.L. 105-178), to test to what extent driver performance records should be included in any information systems under the U.S. Department of Transportation's (DOT) oversight; to assess the feasibility, costs, safety impacts, and benefits; and to assess methods for efficient exchange of driver safety data from existing State systems. The pilot program, which was tested in Colorado and Minnesota, allowed motor carriers to register, with the driver's express permission, to receive timely electronic notifications of convictions and suspensions. The results of the pilot indicated that an expanded Employer Notification System (ENS) was needed and could have significant safety and cost benefits for carriers.

Section 4135 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P.L. 109-59) required DOT to convene a task force to identify and implement lasting program improvements to close the existing safety gap. The December 2008 report to Congress, available online at <http://www.fmcsa.dot.gov/mission/policy/commercial-drivers-license-task-force-report>, also concluded that an ENS system would have significant safety impacts. The report included a recommendation to "Implement a nationwide proactive employer notification system." The Task Force report noted that implementation of an ENS program would require that

significant number of States revise their systems, resulting in increased costs and that these costs would need to be supported by the CDL Program Improvement grants.

MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT (P.L. 112-141)

Most recently, Congress supported FMCSA's efforts to establish a notification system by providing section 32303 the Moving Ahead for Progress in the 21st Century Act (MAP-21), which permitted employers to satisfy the requirement to check their drivers' histories annually by "receiving occurrence-based reports of changes in the status of a driver's record from one or more driver record notification systems that meet minimum standards issued by the Secretary." The FMCSA published guidance on this issue in the Federal Register on March 12, 2015.

Through MAP-21, Congress further supported the Secretary's plans to develop and implement a national driver record notification system. The plan was to include an assessment of the merits of achieving a national system by expanding the Commercial Driver's License Information System (CDLIS) and an estimate of the fees that an employer will be charged to offset the operating costs of the national system. The recommendations and plan were to be reported to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. The purpose of this report is to provide the recommendations and plan requested by Congress per MAP-21.

RECOMMENDATION DEVELOPMENT

In an effort to quickly advance this initiative and identify the States already operating ENS programs,, FMCSA provided CDL Program Improvement grant funding to the American Association of Motor Vehicle Administrators (AAMVA). This grant supported the creation of a cadre of jurisdictional personnel whose mission was to discuss CDL issues and provide input to FMCSA on common protocols and best practices. The AAMVA-established working group consisted of representatives from 17 States.

The tasking to the working group was to identify the following:

- Which jurisdictions have an ENS already in place?
- What are the types of ENS currently in existence?
- What are the basic data elements of existing ENS systems?
- What are the best practices to ensure data is accurate, consistent, and complete?
- What are the merits of achieving a national system by expanding CDLIS?
- What is the level of involvement of motor carriers? What are their responsibilities under a nationwide ENS?

Additionally, AAMVA was tasked with developing an estimate of the fees that an employer will be charged to offset the operating costs of the national system.

AAMVA identified 11 States with existing ENS systems. The systems in place include both "push" and "pull" systems. "Push" systems provide for automatic notification when a driver

license status changes or on certain timeframes, and “pull” systems allow employers to retrieve reports from the system as requested.

Regarding fees, AAMVA noted that the States had a significant range of fees. The Association did recommend that any future plans for ENS should allow the States to set their own fees. Currently, the States charge per-record fees range from zero to \$11.50. In addition, some States charge monthly or annual fees instead of, or in addition to, the per-record fee.

In accordance with the MAP-21 language, the AAMVA working group gave consideration to using CDLIS as the platform for a future national ENS system. However, because CDLIS is a pointer-system that does not hold the driver records, the requests ultimately must be handled by the States. In addition, to manage the protection of the personally identifiable information of the drivers, the States need to receive approval to release the information from the drivers.

ENS RECOMMENDATIONS

The working group did not make any recommendations about specific fee rates, but suggested that any system that is implemented allow the States to set their own rates.

The working group recommended that, in any future ENS requirements, FMCSA allow the States the option of operating “push” or “pull” systems, or both. AAMVA also provided the Agency with recommendations for the following mandatory data elements:

- Driver name.
- Driver license number.
- Driver license State.
- License class.
- Date of birth.
- Driver address.
- Driver release – if required by jurisdiction, to demonstrate that the driver understands that the employer will be notified whenever the driver’s status has changed.
- Driver’s Privacy Protection Act reason.
- Motor Carrier Information:
 - Company Name.
 - Doing Business As Name.
 - Mailing Address.
 - Physical Address – if different from mailing address.
 - Billing Address – if different from mailing address or physical address.
 - Motor Carrier contact person.
 - Contact person telephone number.
 - Contact person email address.
 - Motor Carrier Website.
 - Federal Employers Information Number.

The SDLA, which serves as the home State of record for a driver, already has the driver information in its database and would not have to collect it when registering the driver. The majority of the missing data would be provided by the motor carrier.

The working group also identified the following best practices:

1. Allow for batch uploading for motor carrier driver records.
2. Require motor carriers to register with the CDL-issuing jurisdiction.
3. Notification should occur, at a minimum, when changes in driver status occur.
4. Allow the States to decide the level of detail provided in the notification and what triggers the notification.
5. Jurisdictions must post convictions to the driver's record as soon as their jurisdictional law permits.
6. Allow the States to decide if the notification is electronic or paper.
7. Fees should be decided by the States.
8. FMCSA should investigate the use of a national portal for motor carriers to use to register their drivers.
9. ENS must allow for third party provider access.
10. Any national ENS must be revenue neutral to the jurisdictions.
11. Any future rulemaking should consider impacts to existing jurisdictions, including laws and statutes.
12. Allow for other interfaces for transmitting driver information to the motor carrier, such as a pending expiration of a medical certificate.

The FMCSA has reviewed these recommendations and additional information provided by AAMVA on the status of each State's ENS program. As a result of the Agency's review, FMCSA will use this input in the development of a nationwide ENS system.

PLAN

In order to address this significant safety problem and expand the availability of an ENS nationwide, the Agency developed a plan that leads to full implementation of ENS program in all licensing jurisdictions. The Agency's approach is to first encourage voluntary implementation while formal rulemaking is underway. The first steps of the plan include the following:

1. FMCSA publishing an ENS "Best Practices Guide" to share the information provided by the AAMVA working group.
2. Completing a cost-benefit analysis on ENS options.
3. Issuing a Notice of Proposed Rulemaking (NPRM) establishing the requirement for ENS programs and defining the minimum requirements.
4. Addressing comments submitted in response to the NPRM and determining requirements in a final rule.

The Agency will proceed with the "Best Practices Guide" in Fiscal Year 2016 and will initiate the cost-benefit analysis of options. This will then prepare the Agency to consider issuing an NPRM in 2017.