MDE, if the public entity uses at least one examination table; and

(2) At least one weight scale that meets the Standards for Accessible MDE, if the public entity uses at least one weight scale.

(d) Equivalent facilitation. Nothing in these requirements prevents the use of designs, products, or technologies as alternatives to those prescribed by the Standards for Accessible MDE, provided they result in substantially equivalent or greater accessibility and usability of the health care service, program, or activity. The responsibility for demonstrating equivalent facilitation rests with the public entity.

(e) Fundamental alteration and undue burdens. This section does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with paragraph (a) or (c) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or their designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

(f) Diagnostically required structural or operational characteristics. A public entity meets its burden of proving that compliance with paragraph (a) or (c) of this section would result in a fundamental alteration under paragraph (e) if it demonstrates that compliance with paragraph (a) or (c) of this section would alter diagnostically required structural or operational characteristics of the equipment and prevent the use of the equipment for its intended diagnostic purpose. This paragraph does not excuse compliance with other technical requirements where compliance with those requirements does not prevent the use of the equipment for its diagnostic purpose.

§ 35.212 Existing medical diagnostic equipment.

(a) Accessibility. A public entity shall operate each service, program, or activity offered through or with the use of MDE so that the service, program, or activity, in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require a public entity to make each of its existing pieces of MDE accessible to and usable by individuals with disabilities; or

(2) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with § 35.212(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or their designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services, programs, and activities provided by the public entity.

(3) A public entity meets its burden of proving that compliance with § 35.211(a) or (c) of this part would result in a fundamental alteration under paragraph (a)(2) if it demonstrates that compliance with § 35.211(a) or (c) of this part would alter diagnostically required structural or operational characteristics of the equipment and prevent the use of the equipment for its intended diagnostic purpose.

(b) Methods. A public entity may comply with the requirements of this section through such means as reassignment of services to alternate accessible locations; home visits; delivery of services at alternate accessible sites; purchase, lease, or other acquisition of accessible MDE; or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to purchase, lease, or otherwise acquire accessible MDE where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

§ 35.213 Qualified staff.

Public entities must ensure their staff are able to successfully operate accessible MDE, assist with transfers and positioning of individuals with disabilities, and carry out the program access obligation regarding existing MDE.

§§ 35.214–35.219 [Reserved]

Dated: January 8, 2024.

Merrick B. Garland,

Attorney General.

[FR Doc. 2024–00553 Filed 1–11–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 365, 385, 386, 387, and 395

[Docket No. FMCSA–2022–0003]

RIN 2126–AC52

Safety Fitness Determinations

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

ACTION: Notice of data availability; request for comments.

SUMMARY: This notice of data availability (NODA) is to alert stakeholders and members of the public about information that FMCSA believes may be relevant to this proceeding. This NODA identifies information the Agency has become aware of and provides an opportunity for public comment. The Agency may consider this information in preparation for further regulatory action following an advance notice of proposed rulemaking (ANPRM).

DATES: Comments must be received by February 12, 2024.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2022–0003 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket/*

FMCSA-2022-0003/document. Follow the online instructions for submitting comments.

- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.
- *Fax:* (202) 493–2251. To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Stacy Ropp, (609) 661–2062, *SafetyFitnessDetermination@dot.gov.* FMCSA office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this proceeding (FMCSA–2022–0003), indicate the specific section of this document to which your 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 email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission. To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2022-0003/document,* click on this NODA, click ''Comment,'' and type your comment into the text box on the following screen. 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.

FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the NODA contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the NODA, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the proceeding. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at *brian.g.dahlin@dot.gov.* At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2022-0003/document* and choose the document to review. To view comments, click this notice, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL 14—Federal Docket Management System (FDMS)), which can be reviewed at *www.transportation.gov/privacy.* The comments are posted without edit and are searchable by the name of the submitter.

II. Background

FMCSA published an ANPRM in this proceeding stating the Agency was interested in developing a new methodology to determine when a motor carrier is not fit to operate commercial motor vehicles (CMVs) in or affecting interstate commerce (Safety Fitness Determinations, 88 FR 59489 (Aug. 29, 2023)). The original deadline for submitting comments in response to the ANPRM was extended from October 30, 2023, to November 29, 2023 (88 FR 72727 (Oct. 23, 2023)). The background and history of the procedures and standards for safety fitness determinations, as well as the legal basis for such determinations, were set out in detail in the ANPRM (88 FR at 59489–59493).

III. What information is available?

The following reports and studies provide information that FMCSA may consider in responding to the public comments on the issues raised and questions posed in the ANPRM and in the context of further regulatory action. The list also provides links for the source of these items.

The following material is available on the internet at the locations specified below and in the docket for this rulemaking:

Bell, Jennifer L., et al. (2017). ''Evaluation of an in-vehicle monitoring system (IVMS) to reduce risky driving behaviors in commercial drivers: Comparison of in-cab warning lights and supervisory coaching with videos of driving behavior.'' *Journal of Safety Research.* 60: 125–136, *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5427714/.*

Cai, Maio, et al. (2021). ''The association between crashes and safety-critical events: Synthesized evidence from crash reports and naturalistic driving data among commercial truck drivers.'' *Transportation Research Part C: Emerging Technologies.* 126: 103016, *https://doi.org/10.1016/j.trc.2021.103016.*

Chen, Guang Xiang (2008). ''Impact of federal compliance reviews of trucking companies in reducing highway truck crashes.'' *Accident Analysis & Prevention.* 40: 238–245, *https://doi.org/10.1016/j.aap.2007.06.002.*

Cicchino, Jessica B. (2017). ''Effectiveness of forward collision warning and autonomous emergency braking systems in reducing front-to-rear crash rates.'' *Accident Analysis &*

Prevention. 99 (Pt A): 142–152, *https://dx.doi.org/10.1016/j.aap.2016.11.009.*

Lotan, Tsippy and Toledo, Tomer (2006). ''In-vehicle data recorder for evaluation of driving behavior and safety.'' *Transportation Research Record: Journal of the Transportation Research Board.* 1953: 112–119, *https://journals.sagepub.com/doi/pdf/10.1177/0361198106195300113.*

NHTSA (2023). *2021 FARS/CRSS coding and validation manual.* Report No. DOT HS 813 426. DOT, National Highway Traffic Safety Administration, *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813426.*

IV. What is FMCSA taking comment on and what supporting documentation do I need to include in my comments?

FMCSA has become aware of the reports and studies listed above. The Agency will be considering whether any material information contained in these reports and studies may be relied upon by the Agency in developing a proposed or final rule. This NODA is necessary to disclose such possible reliance and to provide the interested public an opportunity to comment on the accuracy and relevance of the information (49 CFR 5.5(a)(1)).

The comment period for the ANPRM ended on November 29, 2023. Comments submitted in response to this NODA must be limited to addressing any relevant information in the reports and studies listed above. Comments addressing other matters will not be considered by FMCSA.

Issued under authority delegated in 49 CFR 1.87.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–00522 Filed 1–11–24; 8:45 am]

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