



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-2022-0003
Safety Fitness Determinations

The Commercial Vehicle Safety Alliance (CVSA) respectfully submits the following comments in response to the Federal Motor Carrier Safety Administration's (FMCSA) advance notice of proposed rulemaking (ANPRM) and request for comments regarding the agency's interest in developing a new methodology to determine when a motor carrier is not fit to operate commercial motor vehicles in or affecting interstate commerce, Docket Number FMCSA-2022-0003.

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 ANPRM, FMCSA proposes to develop a new methodology to determine when a motor carrier is not fit to operate commercial motor vehicles in or affecting interstate commerce. The agency requests feedback on the need for a rulemaking to revise the regulations prescribing the safety fitness determination process; the available science or technical information to analyze regulatory alternatives for determining the safety fitness of motor carriers; feedback on the agency's current safety fitness determination (SFD) regulations, including the process and impacts; the available data and costs for regulatory alternatives reasonably likely to be considered as part of this rulemaking; and responses to specific questions included in the ANPRM.

Overall, CVSA agrees that it is appropriate for FMCSA to move forward with revisions to the safety fitness determination process. Establishing a new methodology for determining a motor carrier's safety fitness will improve safety and enforcement by helping inspectors identify the motor carriers most in need of intervention.

CVSA filed comments in 2016 (Attachment A) in response to FMCSA's Carrier Safety Fitness Determination notice of proposed rulemaking (NPRM) and request for comments, Docket Number FMCSA-2015-0001. In those comments, CVSA was supportive, overall, of the agency's proposal, although the Alliance did offer additional feedback and recommended adjustments to that proposal. Given FMCSA's recent progress in updating the Safety Measurement System (SMS) methodology, it is appropriate at this time for the agency to complete its work on revisions to the SFD process as well.

Comments to Specific Questions

CVSA provides the following feedback to the specific questions posed by FMCSA in the ANPRM and request for comments.

1. *Should FMCSA retain the current three-tiered rating system of Satisfactory, Unsatisfactory, and Conditional Why or why not?*

No, CVSA does not support FMCSA retaining the current three-tiered rating system of Satisfactory, Unsatisfactory and Conditional. The current system can be misleading and should be simplified for clarity. The current three-tiered rating system relies solely on compliance review data. Because the enforcement community does not have the resources to conduct compliance reviews on the majority of the industry on a regular basis, these assessments can often be outdated and inaccurate. Further, use of the term 'Satisfactory' can be misleading, as it can be viewed as an endorsement of the motor carrier by FMCSA. As FMCSA notes in the ANPRM, a 'Satisfactory' rating reflects the status of the motor carrier at the time of the investigation. Some current safety ratings are quite dated and may no longer accurately reflect a motor carrier's safety performance. Likewise, use of the 'Conditional' rating is misleading, as it allows motor carriers to continue operations for an extended period of time despite having significant breakdowns in their safety management controls. Allowing motor carriers to continue operations under a 'Conditional' rating also provides little incentive to the motor carrier to address their safety management issues. Those carriers who are less concerned about their safety rating may choose to simply exist under the 'Conditional' rating, making no corrections, until shippers or insurance companies force them to seek an upgrade. Finally, the process by which a motor carrier can submit a corrective action plan to be moved from 'Conditional' to 'Satisfactory' can also create a misleading perception of the motor carrier's safety performance. Due to the limitation on resources within the enforcement community, a motor carrier can submit a corrective action plan with minimum verification of the issues being resolved.

a. *In the 2016 NPRM, FMCSA proposed replacing the three-tiered structure with a single rating of Unfit. Under such a structure, carriers that completed safety fitness reviews successfully would continue operating and not appear different, in terms of their SFD, from carriers that had not yet been reviewed. Would this approach be sufficient to ensure safety? Please explain your views.*

CVSA reiterates its support for the proposed move to a single rating of 'Unfit,' for motor carriers. CVSA supported this proposal in the 2016 NPRM as well, noting that the agency's decision to move to a single determination of 'Unfit' will help remove uncertainty and clarify the intent of the program – to identify and remove unsafe motor carriers from the roadways. Motor carriers will no longer operate under safety ratings that are outdated and there will be no more

misconceptions about whether or not a ‘Satisfactory’ rating should be perceived as an endorsement by FMCSA. This change, when coupled with the other changes to the program, such as incorporating the roadside inspection data, will create a system that provides a clear assessment of a motor carrier’s safety fitness.

CVSA has no concerns with FMCSA’s observation that “Under such a structure, carriers that completed safety fitness reviews successfully would continue operating and not appear different, in terms of their SFD, from carriers that had not yet been reviewed.” The purpose of the Motor Carrier Safety Assistance Program is to identify and remove unsafe motor carriers from the roadways and, as noted above, a motor carrier’s SFD is a reflection of the motor carrier’s operations at the time of the investigation. Given these considerations, moving to one single determination of ‘Unfit’ is the most effective approach to avoid misconceptions and confusion regarding a motor carrier’s status.

It is important that FMCSA and the jurisdictions work to ensure that the overall investigations workload between compliance reviews on moderate and high-risk carriers, along with new entrant safety audits is managed effectively. In addition, CVSA encourages FMCSA to ensure that a process is in place to make sure that motor carriers who have acute or critical issues that do not qualify for an ‘Unfit’ determination are still monitored and required to address their issues.

CVSA is also supportive of the revised appeals process outlined in the 2016 NPRM and FMCSA’s decision to allow motor carriers with a preliminary “unfit” determination to continue operation under a monitored compliance agreement. However, to ensure clarity, the ‘Unfit’ determination should not be made public until all appeals steps have been taken and the carrier has been deemed unfit for operation. If a carrier receives a preliminary ‘Unfit’ determination and is permitted to continue operating under a compliance agreement, the ‘Unfit’ rating should not be made public, as the carrier is still being permitted to operate. Publicly rating a carrier ‘Proposed Unfit’ and then permitting them to continue to operate will cause confusion for those using the SFD and would essentially create an unofficial ‘Conditional’ rating under the new system, undermining the agency’s move to a single determination model.

b. What are the costs and/or benefits to a motor carrier associated with each current possible rating? Please provide data or information relating to the costs and/or benefits for motor carriers who are issued final ratings for each of the ratings listed below:

- *Unsatisfactory rating (Unfit)*
- *Conditional rating*
- *Satisfactory rating*

CVSA is not well positioned to speak to the costs and/or benefits of the current three designations for motor carriers. However, the Alliance can offer the following observations.

First, some shippers and insurance companies currently require a motor carrier to have a 'Satisfactory' rating. This means that safe motor carriers currently need an investigation in order to secure business and reasonable insurance rates. This is problematic, as motor carriers cannot 'request' investigations to earn a rating and FMCSA and the jurisdictions must focus their resources on the most high-risk carriers. Enforcement should not be spending their time investigating safe motor carriers who do not qualify for an investigation. Moving to the single determination approach that identifies 'Unfit' operators could benefit many motor carriers who currently have no rating, simply because they have not met the threshold for an investigation yet. However, because we know that a motor carrier's safety rating can impact contracts and insurance rates, CVSA encourages FMCSA to study this issue to better understand the impacts of a move to the single determination model.

2. *Should FMCSA include additional HM regulatory requirements in Appendix B to Part 385 (Explanation of Safety Rating Process) in the SFD calculation?*

Without additional information, CVSA is unable to address this question, as it is unclear what additional hazardous materials regulatory requirements FMCSA is proposing to incorporate. CVSA requests clarification of this request in a subsequent publication to the docket.

However, it should be noted that FMCSA's proposal to move to a single determination of 'Unfit' will necessitate changes to the Hazardous Materials Safety Permit requirements under Part 385, Subpart E, as § 385.407 currently requires a motor carrier seeking a hazardous materials safety permit to have a 'satisfactory' safety rating.

3. *Currently, the table of regulatory factors in Appendix B to Part 385 (at II(C)(b)) excludes parts 172 and 173. However, there are violations in these parts included in the list of critical and acute violations in Appendix B. Should they be included in the SFD calculations?*

In instances where the motor carrier is also the shipper, this would be appropriate.

4. *Should motor carriers of passengers be subject to higher standards than other motor carriers in terms of safety fitness rating methodology? If yes, what should these higher safety standards or thresholds be, and why are they appropriate? If no, why not?*

Overall, CVSA acknowledges the additional risk associated with transporting people versus property and it is appropriate to incorporate this concept in to the SFD methodology. However, CVSA encourages FMCSA to consider alternative approaches to doing so. The current minimum violation rates are designed to identify patterns in behavior that are indicative of unsafe practices within the motor carrier's safety management processes. Rather than lowering the minimum rate of violations for a pattern, for purposes of a critical violation determination, CVSA recommends FMCSA consider a reduction to the total quantity of factors allowed and focus on factors that are greater contributors to crashes, such as driver qualifications, unsafe driver behavior, hours-of-service, and, within the vehicle components, focus on critical inspection items, such as tires, brakes, etc. This approach would keep the minimum violation rates

intact while still incorporating the higher risk associated with moving passengers and the fact that passengers are subject to fewer inspections than property carriers, due to restrictions on en route inspections.

5. *Is there a specific aspect of safety management, such as driver training, driver fatigue management and mitigation, vehicular maintenance and repair, etc., that is so fundamentally different in passenger transportation, relative to CMVs transporting property, that FMCSA's safety fitness rating methodology should take this aspect into special consideration? If yes, what is this specific aspect of safety management, and how do you recommend FMCSA handle the matter within its safety fitness rating methodology? If no, why are the safety management aspects the same?*

No, the factors necessary for establishing a strong safety management process and safety culture within a motor carrier operation do not change based on what the carrier is moving. The fundamental aspects are the same – knowledge of and adherence to the regulations, robust and responsive training programs, rigorous vehicle maintenance practices, etc. However, as noted above, the risk of fatalities associated with a crash clearly increases when the vehicle(s) involved transport people rather than cargo. To address this within the SFD methodology, as detailed above, CVSA recommends FMCSA consider a reduction to the total quantity of factors allowed and focus on factors that are greater contributors to crashes.

6. *How will States be affected if the Agency changes the SFD? What resources might be needed to accommodate any changes, and how long would it take to incorporate any proposed changes?*

Overall, CVSA anticipates the states will benefit if the comprehensive set of proposed changes to the SFD methodology are implemented. However, CVSA's position could shift on this matter if only portions of the overhaul are implemented, as the Alliance is considering the entire suite of proposed changes, based on the 2016 proposal, with the updates reflected in the 2023 ANPRM.

Refining the system to better identify those motor carriers most in need of intervention will improve safety, while also reducing the workload for the jurisdictions. As noted previously, under the current model, because shippers and insurance providers require motor carriers to have a 'Satisfactory' rating, there is high pressure on the states to conduct investigations on motor carriers who would not meet the threshold under the new model and who – quite simply – do not require enforcement intervention. Reducing unnecessary investigations, in turn, frees those resources for other activities targeting high-risk carriers and drivers.

In addition, moving to the single tier system with a more structured approach to the probationary period provided by the 'Proposed Unfit' designation will assist the states with identifying unsafe motor carriers and removing them from the roadways more effectively, rather than allowing a portion of the population to remain in the 'Conditional' status for an extended period of time.

7. *The current SFD does not use all available safety data, such as all inspection-based data. Should the SMS methodology be used to issue SFDs, in a manner similar to what was proposed in the 2016 NPRM? If so, what adjustments, if any, should be made to that proposal? If not, should the Agency include more safety data in the SFD process in other ways and, if so, how? The Agency is interested in comments specifically on whether*

the integration of on-road safety data into the SFD process would improve the assessment of motor carriers' safety posture and the identification of unfit motor carriers.

CVSA strongly supports incorporating roadside inspection data into the SFD methodology, as well as the three proposed mechanisms used to reach an 'Unfit' determination as outlined by FMCSA in 2016 (with several small adjustments). As mentioned above and in CVSA's 2016 comments, the current rating system relies solely on compliance review data. Because the enforcement community does not have the resources to conduct compliance reviews on the majority of the industry on a regular basis, these assessments can often be dated and inaccurate. It should also be noted that investigations are scheduled, which allows the motor carrier time to prepare and demonstrate compliance. However, the North American Standard Inspection Program is designed to be an unscheduled 'spot check' of a motor carrier's safety culture and compliance. The overall compilation of a motor carrier's roadside inspection safety data provides a clear and accurate evaluation of the efficacy of a motor carrier's safety management processes. Incorporating the roadside inspection data will improve the accuracy of SFDs by including more comprehensive and recent data in the system.

8. *Given the importance of driver behavior in preventing crashes, how would you recommend the Agency incorporate driver behavior data into the SFD? What data should the agency use? How should this methodology distinguish between data resulting in a conviction and data without a conviction?*

It is well documented that driver behavior is a significant factor in crashes. As a result, it is imperative that FMCSA find a way to incorporate a pattern of unsafe driver behavior into a motor carrier's SFD. FMCSA's proposal to incorporate roadside inspection data is an effective way to address this matter. Using the roadside inspection data will incorporate driver violation data, for those violations associated with an inspection report. In addition, the SMS is designed to weigh recent violations more heavily, which helps to recognize instances where a motor carrier has addressed unsafe driving behavior proactively, allowing focused enforcement on those motor carriers that allow unsafe driving behavior to persist within their driver population. As noted previously, the system is designed to identify patterns of unsafe behavior, not just a single occurrence.

9. *What changes, additions, or deletions, from the current list of critical and acute violations should be included in the NPRM, and why? Should the list be retained? Why or why not?*

As noted in the Alliance's 2016 comments, CVSA supports the revised list of acute and critical violations, as proposed by FMCSA in the NPRM. Based on the arguments put forth in the 2016 NPRM, CVSA concurs with FMCSA's recommended changes. In addition, CVSA recommends that FMCSA establish a routine mechanism for recommending changes to this list going forward.

10. *Should SFD consider motor carriers' adoption and use of safety technologies in a carrier's rating? How should this fit into the SFD methodology?*

CVSA is a strong and long-time supporter of the concept of identifying ways to incorporate a motor carrier's proactive safety efforts into their overall safety evaluation, often referred to as the 'Beyond Compliance' concept. In October, CVSA sent a letter to FMCSA encouraging the agency to move forward

with such a program, noting that doing so would better distinguish between carriers who are merely compliant with the Federal Motor Carrier Safety Regulations (FMCSR) and those who take additional steps to ensure not only compliance, but a higher safety culture overall.

However, CVSA does not support direct consideration of a motor carrier's adoption and use of safety technology into the SFD. The purpose of the SFD, as discussed above and in FMCSA's ANPRM, is to identify those motor carriers that are not fit to operate in interstate commerce. If a motor carrier who has proactively deployed safety technology intended to prevent or mitigate the severity of crashes meets FMCSA's threshold for an 'Unfit' designation, the technology is not having its intended benefit. Either the technology has been purchased but is not being used properly, or the motor carrier's other safety management processes are so insufficient that their poor performance offsets the safety benefit of the technology. Either way, the end result is that the SFD methodology has identified patterns of unsafe behavior that could, if deemed accurate, justify removing the motor carrier from operations. That determination should not be masked by adjustments to the SFD methodology in an attempt to reward carriers for deploying safety technology unsuccessfully.

Instead, given that FMCSA is proposing to incorporate SMS and the roadside inspection data into the SFD methodology, CVSA supports FMCSA's efforts to identify ways to recognize this proactive adoption of safety technology within the SMS. Incorporating considerations of the deployment of safety technologies at this level is a more accurate indicator of a motor carrier's safety culture and provides industry with an incentive to invest in safety technology without hiding unsafe motor carrier safety management processes behind ineffective investments. Further, CVSA strongly cautions FMCSA against incorporating this concept into both the SMS and SFD, as doing so could disproportionately skew the methodology overall and provide a disadvantage for motor carriers with strong safety management processes who cannot afford significant safety technology investments.

11. *Should the Agency revise the current administrative review procedures in §§ 385.15 and 385.17(j) related to administrative review and corrective action? Which of those procedures should be changed or discarded? Please give the reasons for your views.*

CVSA is supportive of the revised appeals process outlined in the 2016 NPRM and FMCSA's decision to allow motor carriers with a preliminary 'Unfit' determination to continue operation under a monitored compliance agreement. Tightening the timelines allowable for the administrative review would help expedite removal of unsafe carriers from the roadways. Further, it is appropriate to allow a motor carrier to continue operations while they appeal their SFD status. However, to ensure clarity, the 'Unfit' determination should not be made public until all appeals steps have been taken and the motor carrier has been deemed unfit for operation. Publicly rating a carrier 'Proposed Unfit' but then permitting them to continue to operate will cause confusion for those using the SFD and would essentially create an unofficial 'Conditional' rating under the new system, undermining the agency's move to a single determination model.

12. *Given that unsafe driving behaviors, such as speeding and texting while driving, are highly correlated with crash risk, should the safety fitness rating methodology give more weight to unsafe driving violations of § 392.2? For example, each pattern of noncompliance with a critical regulation relative to Part 395, Hours of Service of Drivers, is assessed double the points in the safety fitness rating methodology. Should violations of § 392.2, or a subset of those violations, be treated in a similar manner?*

CVSA supports FMCSA's recommendation that roadside inspection data and SMS be incorporated into the SFD methodology. Currently, the SMS methodology places a higher weight on unsafe driver violations. If FMCSA incorporates the SMS into SFD, further adjusting the SFD directly to place more weight on these violations should not be necessary and could skew the SFD by accounting for this factor twice. Like Beyond Compliance, CVSA supports incorporating this data at the SMS level, rather than the SFD. However, if FMCSA is unable to incorporate the SMS into the SFD methodology, then the agency should explore mechanisms to incorporate these violations into the SFD.

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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