



WHAT MAKES A MOTOR CARRIER UNFIT FOR SERVICE?

**A PROPOSED RULE WOULD CHANGE THE FMCSA'S METHODOLOGY
FOR DETERMINING CARRIERS' SAFETY FITNESS**

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A proposed rule published by the Federal Motor Carrier Safety Administration (FMCSA or Agency) seeks to change the methodology for determining whether a motor carrier is unfit. Currently, the Agency has the authority to shut down a motor carrier only if auditors find unacceptable rates of violations, such as violating the hours-of-service rules or failing to make required vehicle repairs. Under the proposed rule, motor carriers could be declared unfit based on roadside inspections alone rather than going through the longer and more complicated audit process.

Because a compliance audit can take several days, officials have been able to investigate only 15,000 carriers annually, out of a total of 550,000 operating motor carriers. Violations recorded at truck stop inspections and along on the road have been used only to flag carriers for varying levels of intervention, including an audit. The

proposed rule, which would enable the Agency to rate carriers based on highway violations alone, would enable the Agency to assess 75,000 carriers every month, according to the Agency's estimates.

Of course, the proposed rule is not yet official. It was published in the Federal Register on January 21, 2016, commencing a 60-day public comment period. Reply comments are permitted for the following 30 days. At some point after the comments period, a final rule will be published. The Agency has sought comment on how it might phase in the implementation of the final rule to lessen the initial burden on the motor carrier industry, the Agency, and its enforcement partners.

To fully apprehend the changes that will likely be introduced with the proposed rule, it is important to understand the Agency's current system and methodology. This article presents a detailed overview of

that methodology, and then discusses and compares the methodology presented by the proposed rule.

CURRENT SYSTEM AND METHODOLOGY

Under the existing regulations, the Agency must conduct a compliance review in order to issue a safety fitness determination. The three possible safety fitness determinations – Satisfactory, Conditional and Unsatisfactory – are based on the degree of compliance with the safety fitness standard for motor carriers. A Satisfactory rating means that a motor carrier has adequate safety management controls in place to meet the safety fitness standard prescribed in federal regulations. A Conditional rating means a motor carrier does not have adequate safety management controls in place with respect to one or more safety requirements. An Unsatisfactory rating is given

when a motor carrier is in substantial non-compliance with safety requirements.

The current system uses the Safety Measurement System (SMS) methodology. The SMS is an automated system that runs monthly and measures on-road safety performance of motor carriers to identify candidates for intervention, identify specific safety problems, and monitor whether a carrier's performance is improving or getting worse. The SMS methodology groups the safety performance data of motor carriers and drivers into seven Behavior Analysis and Safety Improvement Category (BASICS).

Within each BASIC, the safety behavior of a motor carrier is compared with the safety behavior of carriers with similar numbers of safety events. Within each safety event group, a carrier is given a percentile rank, computed on a 0 to 100 scale for each motor carrier that receives a non-zero measure, with 100 indicating the worst performance.

One of the major criticisms of the current methodology is this comparison of safety performance with the safety performance of other motor carriers. As a result, improved safety performance by other carriers could result in the carrier having higher (worse) percentiles even when the carrier has not committed any additional violations.

Upon examining the safety performance for a given motor carrier, the Agency has a variety of interventions at its disposal, such as warning letters, targeted roadside inspections, offsite investigations, and on-site compliance reviews. The Agency's current policy calls for carriers designated "high risk" in two consecutive monthly assessments to receive a compliance review. A determination of the carrier's fitness (satisfactory-conditional-unsatisfactory) is made at the conclusion of the compliance review.

During the compliance review, the Agency calculates the vehicle out-of-service rate, reviews crash involvement, and conducts an in-depth examination of the motor carrier's compliance with the acute and critical regulations of the regulations. Acute regulations are those where noncompliance is so severe as to require immediate corrective action, regardless of the overall safety management controls of the motor carrier. Critical regulations are related to management or operational systems controls.

Overall noncompliance is calculated and rated on a point system according to six factors: (1) General; (2) Driver; (3) Operational; (4) Vehicle; (5) Hazardous Materials; and (6) Accident factor (recordable accident rate per million miles). If any of the six factors is assessed one point, then that factor is rated as Conditional. If any of the six factors is assessed two points, then

that factor is rated as Unsatisfactory. Two or more individual factors rated as Unsatisfactory will result in an overall rating of Unsatisfactory. One individual factor rated as Unsatisfactory and more than two individual factors rated as Conditional will also result in an Unsatisfactory rating overall.

The Agency's current safety fitness determination process is resource intensive and reaches only a small percentage of motor carriers. For instance, in 2012, the Agency and its state partners conducted approximately 17,000 ratable reviews out of a population of more than approximately 525,000 active motor carriers.

DETERMINATION AND METHODOLOGY UNDER THE PROPOSED RULE

The proposed rule seeks to modernize the current safety fitness methodology that has been in place since 1982. Most notably, the proposed rule eliminates the current three-tier rating system (Satisfactory-Conditional-Unsatisfactory) in favor of a single determination of "Unfit."

The proposed rule would also significantly change the Agency's safety fitness rating methodology. The proposed methodology would determine whether a carrier is Unfit based on the carrier's performance in relation to a fixed failure threshold established in the rule for five of the BASICS, investigation results, or a combination of on-road safety data and investigation information.

The other significant change introduced with the proposed rule is the removal of percentile rankings. Under the proposed methodology, a carrier's performance would be compared to an *absolute* failure standard that would be based on each safety event group. Because the absolute failure standard would not change from month to month, changes in another company's performance would not impact the motor carrier. The failure standard could only be changed after rulemaking by the Agency, with notice and comment. A motor carrier's safety fitness determination measure would reflect its own performance against the failure standard, and would not be impacted by other carriers' performance.

Under the proposed methodology, a motor carrier would be proposed unfit if it either (1) fails in two or more BASICS exclusively on data collected at roadside inspections; (2) has violations from a new set of proposed acute and critical violations; or (3) fails in two or more BASICS as a result of roadside data and/or investigation results. A carrier's absolute BASIC performance measure in any given month, rather than the carrier's percentile within a given

month, would be used to determine if the carrier failed the BASIC.

What this means is the failure standards for a proposed Unfit determination would require significantly more evidence of non-compliance than the thresholds in SMS that the Agency uses to prioritize a carrier for interventions. The Agency seeks to ensure that only the worst performing motor carriers would be issued a proposed Unfit determination based solely on on-road safety performance data.

Further, only *preventable* crashes would be used in calculating the safety fitness determination. This differs from the current process, which only examines preventability of crashes to contest a motor carrier's recordable crash rate after the determination is made. Under the proposed rule, crash data could trigger a failure in a BASIC during the investigative process only if a certified safety investigator makes a "preventability" determination on the crashes and the preventable crashes exceed the failure standard. The use of all crash data, regardless of fault, has been a major criticism of the current methodology.

The Agency estimates fewer than 300 carriers would be declared Unfit each year solely as a result of on-road safety violations. The Agency asserts that its analysis has shown that carriers identified through on-road safety data have crash rates of almost four times the national average.

Some organizations, including the American Trucking Associations (ATA), question whether using roadside inspection data is the right way to determine a carrier's fitness. The ATA believes violations recorded from roadside inspections do not necessarily predict which carriers have a higher risk of crashes.

Yet, there is general agreement that the current method for assigning safety ratings is in need of updating. It was developed and implemented in the 1980s and is based in large part on records kept at a motor carrier's place of business, rather than actual safety performance.



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