

FMCSA's NPRM on Safety Fitness Determinations

The Federal Motor Carrier Safety Administration has released the text of its notice of proposed rulemaking (NPRM) on carrier safety fitness determinations (SFDs). The agency will publish the NPRM in the *Federal Register* on Jan. 21. Comments will be due March 21, and there will be another 30 days for rebuttal comments.

A single fitness rating: Unfit

FMCSA's stated goal is to adopt an SFD system that is easier for the public to understand and reflects motor carriers' ongoing safety performance, not a snapshot of a safety program based on an audit that might have occurred years earlier. The agency proposes to:

- Replace today's three-stage safety rating system – Satisfactory, Conditional and Unsatisfactory – with a single rating: Unfit
- Use a combination of on-road performance – i.e., roadside inspection data – and investigations to assess motor carriers on an ongoing basis
- Use roadside data alone to assign proposed unfit ratings in situations where there is sufficient available data

Any carrier not found unfit may continue to operate.

BASICs used for on-road data and investigations

FMCSA plans to replace today's six factors – general, driver, operational, vehicle, hazardous materials and accidents – with the Behavior Analysis and Safety Improvement Categories (BASICs) that it uses in the Compliance, Safety, Accountability (CSA) program and the Safety Measurement System (SMS).

For carriers with sufficient data in a BASIC – 11 or more inspections with violations over 24 months – FMCSA proposes to use on-road data alone to determine whether the carrier is unfit in that BASIC. This would apply to five BASICs:

- Hours of Service Compliance
- Unsafe Driving
- Vehicle Maintenance
- Hazardous Materials Compliance
- Driver Fitness

The Crash Indicator would not be used for data-based fitness determinations because FMCSA will not consider crashes without a preventability determination. Controlled Substances and Alcohol would not be used in that way either because violations are too rare.

Ratings may be assigned in one of three ways: On-road data alone, investigations alone or a combination of on-road and investigations. Because of the threshold being set at 11 or more violations with inspections in a BASIC – higher than the three to five inspections under CSA – FMCSA expects the vast majority of SFDs to be based on investigations alone.

Fixed failure standards

For on-road data, a motor carrier would be found unfit if it exceeds the failure standards that would be established by FMCSA. The failure standards would be absolute measures of weighted inspections divided by the appropriate normalizing factor, but they would be based on the worst performers in a

carrier's safety event group – another concept retained from CSA – at the time the failure standards are set.

The failure standards, which would be set by regulation, differ depending on the BASIC. For HOS Compliance and Unsafe Driving, the standard measure will identify carriers performing worse than 96% of carriers in a given safety event group as of the date the failure standards are set. For the other three – Vehicle Maintenance, Driver Fitness and HM Compliance – the measure would identify carriers performing worse than 99% of carriers in the group as of the date failure standards are set.

The percentiles used to set the fixed failure standards are higher than the intervention thresholds under SMS -- 65% or 85% depending on the BASIC. The failure standards in the NPRM are for illustration purposes only; the agency plans to set the final standards as part of the final rule.

FMCSA proposes four safety event groups based on the number of inspections with violations over 24 months:

- 11 to 21
- 22 to 57
- 58 to 149
- 150+

Without safety event groups, enforcement would be skewed against small carriers because of “the law of small numbers” – i.e., when there are fewer events there is more variability and less certainty.

Acute and critical violations continue but revised

For investigations, FMCSA would continue assessing carriers based on their performance in acute and critical regulations except that those regulations would be grouped together according to the BASICs rather than today's six factors.

An acute violation fails the BASIC, just as an acute violation fails a factor today. But FMCSA proposes to tighten its standards regarding critical violations so that if a motor carrier is cited for a violation of a single critical regulation with violations discovered in a minimum of 10% violation of the records examined, it would fail that BASIC. In general, it takes two critical violations today to fail a factor.

FMCSA's NPRM includes a proposed revised schedule of acute and critical violations, and the agency seeks comments on additional violations.

Several options for responding to proposed unfit ratings

Similar to today, carriers would have three options for responding to a proposed unfit rating:

- Seeking administrative review of material errors
- Claiming unconsidered inspection data
- Requesting to operate under a compliance agreement

One important change is that carriers would have to request administrative review within 15 days rather than 90 days today.

Compliance agreements would be similar to today's consent agreements and would spell out carrier-specific monitoring plans and compliance thresholds. They could include such elements as technology adoption, training, inspections, document submissions and achieving SMS scores below prescribed

levels. If a carrier is operating under a compliance agreement, a notation to that effect will appear on the public website during the duration of the compliance agreement.

If a proposed unfit rating becomes final, a carrier would have to provide evidence of corrective action before reapplying for operation.

For more information

A copy of the NPRM as well as other tools, including a pre-recorded webinar and a calculator for motor carriers to see how the new SFD process would affect them if they were currently in place, are available at www.fmcsa.dot.gov/sfd.