



November 29, 2023

U.S. Department of Transportation
Federal Motor Carrier Safety and Administration
1200 New Jersey Avenue SE
Washington, DC 20590
Submitted via www.regulations.gov

Re: Safety Fitness Determinations
Docket No. FMCSA-2022-0003

Dear Docket Clerk,

Pursuant to the Federal Motor Carrier Safety and Administration's (FMCSA) notice and request for comments published on August 29, 2023, Federal Register regarding Safety Fitness Determinations, Docket No. FMCSA-2022-0003, the Truckload Carriers Association (TCA), hereby submits these comments.

TCA, with offices at 555 E Braddock Road, Alexandria, VA, is the only national trade association whose collective sole focus is the truckload segment of the trucking industry. The association represents dry van, refrigerated, flatbed, and rail intermodal carriers operating in 48 contiguous U.S. states, Alaska, Mexico, and Canada. As a significant part of an industry with over half a million companies operating millions of power units within the United States, TCA, and its trucking company members regularly comment on matters affecting the national transportation industry's common interests and potential impacts.

With that in mind, The TCA and its members wish to answer the following questions provided by the FMCSA's Safety Fitness Determinations, Docket No. FMCSA-2022-0003.

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

The TCA believes that adopting a singular 'Unfit' rating is not optimal for assigning Safety Fitness Ratings. While the current three-tiered SFD is deemed acceptable, the primary concern is the need for more frequent annual FMCSA visits to carriers. According to the Docket, in

2019, the FMCSA and its state partners conducted 11,671 Compliance Reviews out of a population of more than 567,000 active interstate motor carriers. That is only 2% of the active motor carrier population. The issue of this matter revolves more on the adequacy of manpower and timeliness than the specific configuration of the Safety Fitness Determination Rating system.

In the event of a transition to a single-tier system, the TCA and its members raise a pivotal question: how will carriers transition their rating from "Unfit" to "Satisfactory"? Moreover, if such transitions are possible, what is the anticipated duration, considering the historical tendency of the FMCSA and its state partners to take extended periods to establish SFDs? Adding to this complexity is that certain carriers have not received safety fitness determinations for over two decades—a situation the FMCSA and its partners should interpret as a red flag, necessitating the prompt issuance of current SFD ratings for these carriers.

The TCA also wonders what the outcome would be if carriers were designated as 'Unfit' but were near the 'Fit' threshold. Without a middle ground like the conditional ranking in the three-tiered system, concerns arise about whether the FMCSA would establish a standardized definition of what qualifies as unfit. The repercussions of an 'Unfit' SFD are substantial, potentially impacting carriers significantly and, in extreme cases, leading to the closure of businesses that have previously maintained clean inspections.

Ultimately, there is a pressing need for increased accountability by FMCSA and its state partners concerning the expeditious handling of SFDs. As highlighted in our commentary on Requests for Data Review Docket No. FMCSA-2023-0190, the TCA advocates for establishing a federal standard that all states must adhere to due to the inconsistencies between states. This proposed national standard envisions a cohesive framework, ensuring consistency by standardizing regulations and enforcement practices across state boundaries in a timely and effective manner. With the implementation of a national standard, the FMCSA can then deliberate on the appropriate structure for SFDs, considering the newfound consistency and coherence achieved through the standardized framework.

- 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

As explained above, the TCA believes that the three-tiered structure is sufficient, as each has its costs or benefits.

The contracts established between buyers, sellers, and carriers are crucial to the sustenance of a carrier's business. Meeting a specific SFD threshold is imperative for carriers to engage with their customers effectively. Carriers must attain a conditional or satisfactory rating to maintain ongoing business relationships with buyers and sellers.

An unsatisfactory or unfit rating can spell the demise of a carrier's business. While the TCA strongly supports the removal of unsafe carriers from the roads, there is a concern about carriers unjustly receiving an unfit rating due to the prolonged SFD processing time. This raises questions within the TCA and its membership about how the FMCSA will ensure a fair rating, considering the economic hardships an unfit carrier may face due to a diminished pool of potential customers.

Even carriers with a conditional rating face challenges. While they are permitted to continue operations, the conditional rating can still result in the loss of business, especially if contracts mandate a satisfactory SFD rating. Attracting new buyers or sellers may also prove daunting with a conditional rating. Moreover, the transition from a conditional to a satisfactory SFD status poses difficulties, given the historical lack of timeliness exhibited by the FMCSA and its state partners in conducting SFD assessments for the country's vast population of 567,000 interstate motor carriers.

Pertaining to carriers who are deemed unsatisfactory or conditional, the TCA and its membership question the timing of the FMCSA to conduct a follow-up compliance review to allow carriers to get out of the unfit or conditional status, as the agency undertook only 2% of active motor carriers in 2019. The FMCSA must recognize that losing potential business is a penalty for these carriers if rated conditional or below. TCA recommends that a proactive time frame be put in place to give carriers a better rating.

On the positive side, carriers with a satisfactory SFD rating experience only favorable outcomes. They become attractive to new clients, facilitating increased business opportunities. Furthermore, carriers with a satisfactory rating can sustain ongoing collaborations with partners who require this standard, ensuring business continuity and economic stability for the carrier.

2. Should FMCSA include additional HM regulatory requirements in the SFD calculation?

The FMCSA should not include any additional hazmat regulatory requirements in the SFD calculation, as the existing hazmat requirements are already robust, and subject to strict monitoring, and are closely evaluated. Hazmat

transportation is handled with care, inherently prioritizing safety considerations. Therefore, there is no essential need to introduce additional hazmat-related criteria into the SFD calculation.

Furthermore, TCA members have advocated that hazmat considerations should remain distinctly separate within the regulatory framework. The logic behind this separation lies in the relatively limited number of carriers engaged in hazmat transportation. Should additional hazmat regulations be mandated as part of the SFD calculation, it could potentially create an imbalance in the regulatory landscape. Non-hazmat haulers, not subject to these additional requirements, might gain a competitive advantage. Therefore, maintaining a clear demarcation between hazmat and non-hazmat regulations is essential to uphold fairness and equity among carriers operating in diverse freight sectors.

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?

As mentioned in question two, hazmat is its own entity and should be treated as such.

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?

The TCA and its members believe that if available data indicates an increased safety risk to the public, motor carriers of passengers should be held to more stringent safety standards compared to other motor carriers regarding SFDs.

In instances where data highlights an increased safety risk, it is a matter that warrants the attention and consideration of the FMCA. However, it is essential to acknowledge that motor carriers of passengers are already subject to a heightened safety standard.

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?

As a collective body, the TCA maintains that high standards should be applied to any vehicular collision, regardless of whether it involves a passenger motor carrier or a truckload carrier. All lives are at risk while driving on the roads. Prioritizing safety is crucial, and investigating an accident should be supervised by high standards. The perpetrator of the accident should not be the sole determining factor, as fatalities can arise from various crash scenarios.

Furthermore, the TCA stresses that those involved in passenger transportation are already held to rigorous standards. The substantial safety measures imposed on passenger carriers reflect the significant responsibility of transporting individuals. To promote safety on the roads, the TCA advocates for the continued enforcement of existing rules by the FMCSA. This approach is deemed essential to ensure consistent application of safety regulations across the transportation sector, fostering an environment where the well-being of all road users takes priority.

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?

Referring to our commentary on Requests for Data Review Docket No. FMCSA-2023-0190, the TCA advocates implementing a federal standard that all states should adhere to. If there is a universal standard, it will be easier for states and the FMCSA to communicate with one another. A universal standard would also put more responsibility on the states to promptly submit all inspections, specifically clean inspections, as these can impact a carrier's SFD.

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.

The FMCSA needs to take account of the lack of data that is available to be used for SFDs. If SMS lacks data on a carrier, the FMCSA should deem that to be a red flag and conduct a compliance review to determine SFDs. Additionally, integrating on-road safety data into the SFD process could benefit carriers with these technologies, as they are trying to enforce safety on the roads. However, the FMCSA must acknowledge that smaller carriers and owner-operators can be financially challenged to update their technologies continuously outside of regulations.

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?

The FMCSA already has data available on driver behavior by evaluating a driver's hours of service during a compliance review.

If solely examining driver behavior, the TCA believes that the FMCSA should use data resulting in a conviction, the FMCSA could also use the PSP to back any claims of reckless driving if conviction is in place.

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?

The FMCSA should refrain from adopting or using safety technologies in a carrier's SFD rating rather than concentrating on the safety technologies integrated into trucks by carriers. The TCA encourages the FMCSA to focus on a carrier's drivers and their experience.

The TCA and its members support integrating safety technologies as an additional layer of protection. However, there is a lingering concern regarding the anticipated timeframe for safety technologies to be deemed flawless. Suppose the FMCSA mandates the utilization of safety technologies in determining safety fitness. In that case, the TCA emphasizes the importance of allowing the trucking industry a natural progression for technology improvement rather than imposing rigid time-based deadlines that may prove challenging to meet.

The FMCSA must acknowledge the financial constraints faced by small carriers and owner-operated drivers, who may need help to afford new technologies as they evolve. Nevertheless, the agency should recognize that carriers remain committed to enhancing road safety.

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.

Following discussions with our members, it has been determined that the existing review process is satisfactory. Nevertheless, TCA membership strongly recommend that facilitating electronic submissions for carriers would be more convenient than relying on traditional mail methods.

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?

The TCA has emphasized the need for states to demonstrate greater consistency in enforcing regulations, particularly regarding the timing and attention devoted to addressing violations. Evident disparities exist among states in their regulatory practices, with some states implementing regulations that display bias and stray from federal processes. This inconsistency emphasizes the necessity for a thorough review of existing laws, as the variations across state borders can result in unequal treatment of violations. The disparity emphasizes the pressing need to establish a federal standard to which all states should adhere.

In the context of concerns raised by the FMCSA regarding driver behavior, a uniform approach should be adopted, where all drivers on the road are held accountable for their actions, as driving is a right and not a privilege.

The Truckload Carriers Association and its members sincerely appreciate the FMCSA for allowing us to share our insights and comments regarding Safety Fitness Determinations. We eagerly anticipate collaborating closely with the FMCSA to promote the advancement and improvement of the truckload industry. Our commitment to constructive engagement reflects our shared dedication to fostering positive developments and ensuring the industry's sustained growth and effectiveness.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Ward". The signature is fluid and cursive, with a large, stylized "J" and "W".

Jim Ward
TCA President