

# LEGAL UPDATE

## FMCSA Proposes Developing New Methodology for Safety Fitness Determinations

On Aug. 29, 2023, the Federal Motor Carrier Safety Administration (FMCSA) [published](#) a notice of proposed rulemaking (NPRM) for developing a new methodology to determine when a motor carrier is not fit to operate commercial motor vehicles (CMVs) in or affecting interstate commerce.

With the proposal, the FMCSA is also requesting public comment on:

- The need to revise the regulations prescribing the safety fitness determination (SFD) process;
- The available science or technical information the agency uses to analyze regulatory alternatives for determining the safety fitness of motor carriers;
- The FMCSA's current 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 raised within this NPRM.

Comments must be received on or before Oct. 30, 2023.

### Safety Fitness Determination

SFDs are currently based on an analysis of existing motor carrier and other data collected during investigations. This collection process is referred to as a compliance review (CR). The CR may be conducted on-site at the motor carrier's place of business or remotely through a review of its records using a secure portal. The existing SFD process analyzes six factors to assign a carrier's safety fitness rating. The six factors the FMCSA evaluates are:

1. General;
2. Driver;
3. Operational;
4. Vehicle;
5. Hazardous materials; and
6. Accidents.

In addition to the six factors, the FMCSA calculates a 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 Federal Motor Carrier Regulations (FMCSRs) and hazardous materials regulations (HMRs).

"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.




#### IMPORTANT DATES

##### Aug. 29, 2023

The Federal Motor Carrier Safety Administration published a notice of proposed rulemaking for developing a new methodology to determine when a motor carrier is not fit to operate commercial motor vehicles in or affecting interstate commerce.

##### Oct. 30, 2023

Final date for submission of comments about this NPRM.



“Critical regulations” are related to management or operational systems controls. Overall noncompliance is calculated and rated on a point system within the six factors. During the investigation, one point is assessed for each instance of noncompliance with an acute regulation or each pattern of noncompliance with a critical regulation. Two points are assessed for each pattern of noncompliance with a critical regulation in part 395, Hours of Service of Drivers. For a critical regulation, the number of violations required to meet the threshold for a pattern is equal to at least 10% of those sampled, and more than one violation must be found to establish a pattern. In addition, on-road safety data is used in calculating the vehicle and crash factors.

If any factor is assessed one point, that factor is rated as “conditional.” If any factor is assessed two points, 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.

## Notice of Proposed Rulemaking Overview

This NPRM does not make any specific proposals but asks for input on the potential use of the safety measurement system (SMS) methodology to issue SFDs in a manner similar to the 2016 FMCSA proposed rule. This request for input complements the FMCSA’s 2016 NPRM titled [“Carrier Safety Fitness Determination.”](#) The 2016 NPRM proposed SFDs based on the carrier’s on-road safety data, an investigation or a combination of on-road safety data and investigation information; however, the rule was withdrawn in 2017.

This NPRM seeks input regarding new methodologies that would determine when a motor carrier is not fit to operate CMVs in or affecting interstate commerce. The intended effect of this action is to more effectively use FMCSA data and resources to identify unfit motor carriers and to remove them from roadways. A successful SFD methodology may:

- Target metrics that are most directly connected to safety outcomes;
- Provide for accurate identification of unsafe motor carriers; and
- Incentivize the adoption of safety-improving practices.

## Requested Feedback

Although the FMCSA states it is not making any proposals at this time, the agency is seeking input on several of the topics discussed in the 2016 NPRM. The FMCSA specifically requests responses to the following questions:

1. Should the FMCSA retain the current three-tiered rating system of “satisfactory”, “unsatisfactory”, and “conditional?” Why or why not? In the 2016 NPRM, the 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. 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 that are issued final ratings for each of the ratings listed below:
  - Unsatisfactory rating (unfit)

- Conditional rating
- Satisfactory rating

2. Should the FMCSA include additional hazardous material (HM) regulatory requirements in appendix B to part 385 (Explanation of Safety Rating Process) in the SFD calculation?
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?
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 not, why?
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 the FMCSA handle the matter within its safety fitness rating methodology? If no, why are the safety management aspects the same?
6. How will states be affected if the FMCSA changes the SFD? What resources might be needed to accommodate any changes, and how long would it take to incorporate any proposed changes?
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 FMCSA include more safety data in the SFD process in other ways and, if so, how? The FMCSA 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.
8. Given the importance of driver behavior in preventing crashes, how would you recommend the FMCSA incorporate driver behavior data into the SFD? What data should the FMCSA use? How should this methodology distinguish between data resulting in a conviction and data without a conviction?
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?
10. Should SFDs consider motor carriers' adoption and use of safety technologies in a carrier's rating? How should this fit into the SFD methodology?
11. Should the FMCSA 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.
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?

## Motor Carrier Next Steps

The proposed rule does not impose any new requirements on motor carriers. However, motor carriers should become familiar with the proposed rule and determine how the proposal, if implemented, would affect their operations. Based on this analysis, motor carriers should also consider commenting on the proposed rule as a whole or responding to the specific questions raised by the FMCSA.

