

Docket Number FMCSA-2015-0001

RIN 2126-AB11

Docket Services  
U.S. Department of Transportation  
Room W12-140  
1200 New Jersey Ave SE  
Washington DC 20590

**Re: Carrier Safety Fitness Determination**

The Institute of Scrap Recycling Industries, Inc. (ISRI) is the "Voice of the Recycling Industry." ISRI represents more than 1,600 companies, (of which 850 of those companies have US DOT authority) in 21 chapters nationwide that process, broker, and consume scrap commodities, including metals, paper, plastics, glass, rubber, electronics, and textiles. With headquarters in Washington, D.C., the Institute provides education, advocacy, safety, compliance training, and promotes public awareness of the vital role recycling plays in the U.S. economy, global trade, the environment and sustainable development.

Safety is a number one priority for our association and our members. We want our drivers to complete each day safely and accident free. As an association, we are dedicated to creating a safety culture in every company in our industry.

We appreciate the hard work that the Federal Motor Carrier Safety Administration is doing to improve safety on America's highways. We also appreciate the positive impact of the CSA initiative and SMS to improve the ability to track safety issues and to create a more efficient method of identifying unsafe motor carriers. However we are concerned, that despite these efforts, not enough progress has been made in improving data quality related to the results of roadside inspections. As a result, we question if the proposed Safety Fitness Determination methodology, regardless of its merits or demerits, will be able to meet its intended function.

In these comments, we will briefly describe our industry and then provide comments on the safety fitness determination proposal.

**The scrap and recycling industry truck fleet overview:**

Our industry has a fleet of more than 30,000 scarp and recycling commercial motor vehicles (CMV's). The fleet includes, but is not limited to recycling collection trucks, roll-off container trucks, luger trucks, and other CMV's including flatbeds and dry vans. These trucks are primarily Class 8 heavy-duty vocational vehicles. The majority of our member companies operate within a 100 air-mile radius, and time cards are used to record the driver's hours of service.

### **The Impact of FAST on this proposal:**

Regardless of the merits of this proposal, we are surprised that it was released after the passage of the December 4, 2015, "Fixing America's Surface Transportation Act" (FAST Act). Due to the controversies surrounding the implementation of the Compliance, Safety, Accountability program and the quality of data in the Safety Measurement System, that law imposed restrictions on the use of the CSA initiative, including the Behavior Analysis and Safety Improvement Categories (BASIC) performance scores that are generated from SMS data. The FAST Act requires several third-party assessments of the CSA initiative and that the agency is to develop and submit to Congress a corrective action plan, including benchmarks and reforms identified by the assessments. Congress mandated that the assessments and action plan "be considered in any rulemaking by [FMCSA] that relates to the CSA program, including the SMS or data analysis under the SMS." That Act also requires the agency to "consider the effects of the proposed or final rule on different segments of the motor carrier industry" and to "consider the effects on commercial truck and bus carriers of various sizes and types" (see section 5202 of the FAST Act).

This notice of proposed rulemaking has a detailed history of the agency's development of both CSA and SMS, including congressional history and intent, yet, to our surprise, it never mentions the FAST Act. Obviously the agency is in the process of meeting the Congressional requirement regarding third-party assessments of CSA, but that effort is only in the early stages and is far from finished. As for the requirement that the agency consider the effects of a proposed rule on different segments of the industry and on commercial truck and bus carriers of various sizes and types, we see no attempt to include this analysis. We do not understand how the agency could issue this proposed rule 48 days after the signing of the FAST Act without meeting the requirements of that Act or including any discussion of that law in the preamble of this proposed rule. As a result, we believe that FMCSA should withdraw the proposal and follow the directives in the FAST Act.

### **Responses to specific aspects of the proposal:**

#### **Data reliability:**

An accurate data system is at the heart of the effectiveness of the proposed rule. Unfortunately, the current system, while an improvement over the previous data system, does not provide this level of reliability. As noted by the General Accounting Office (GAO) in its February, 2014 report, "Modifying the Compliance, Safety, Accountability Program Would Improve the Ability to Identify High Risk Carriers" (GAO-14-114) and the March, 2014 report of the Office of Inspector General, US. Department of Transportation, "Actions Are Needed to Strengthen FMCSA's Compliance, Safety, Accountability Program (Audit Report No. MH-2014-032), the inspection sampling base is too small to provide a valid assessment of carrier safety performance. As a result, we would suggest that the agency follow the recommendations made by the GAO and the Inspector General in regard to these data flaws, before going final with this rule.

### **Single "Unfit" Rating:**

The agency proposes to replace the current "Satisfactory", "Conditional" and "Unsatisfactory" safety ratings with a single "unfit" rating. We recommend that you consider using the "unfit" in a combination of both (inspections and investigations). In addition, possibly looking at it from a different perspective e.g., the SFD should raise a red flag for the on-site intervention visit to determine if the carrier is unfit. Roadside inspections have no way to determine the motor carriers' internal management intervention practices. Using roadside inspections within the 24 month period would not reflect what the carrier is doing to turn their scores around or if they have company policies that are being enforced.

### **Appeals process:**

We appreciate the agency's attempt to streamline the appeals process. However, lowering the time limit to file appeals from 90 days to 15 is too much streamlining. Such a short period of time to file an appeal will be burdensome on medium and large carriers and extremely challenging for small carriers. This is particularly the case during holiday periods or times of unique and challenging weather events such as blizzards and hurricanes that cause unusual challenges to normal operations. We strongly support the existing 90 day period.

### **Changes to "critical" and "acute" BASIC violations:**

We support these changes (**NOTE:** page 3582 of the proposal). Two involve texting, two involve hand-held mobile telephones, three involve drugs or intoxicants, one involves false statements/records, one involves using a CMV not periodically inspected, one involves operating a motor vehicle in a condition likely to cause an accident or vehicle breakdown and one involves a driver who does not use a seat belt.

### **Cargo securement:**

In December, 2012, the agency moved cargo securement into the vehicle maintenance BASIC. We agree that cargo securement requirements did not fit into the previous BASIC. However, we remain puzzled why they were moved to the vehicle maintenance BASIC. Vehicle maintenance requirements cover actions that occur at the fleet yard and the garage. In our industry, cargo securement requirements cover both those actions that occur when an empty container is loaded onto a roll-on/roll-off truck and those actions that occur at the job site where the empty container is replaced with a full container. Moreover, unlike in other industries, the body of a roll-on/roll-off truck is the cargo. When containers are switched at the generators site, the driver is responsible for proper securement, not the vehicle maintenance crew at the garage or fleet yard. We believe that cargo securement requirements should have their own separate BASIC.

**Crash Indicator:**

The agency proposes to create two classes of carriers, "urban" and "rural" for establishing crash rates. Yet the defining difference between the two is that an "urban" carrier would operate entirely within a radius of 100 air miles. A rural carrier might not. This is an odd distinction. Within our industry, these local routes can be in a densely populated urban area, less densely populated suburban areas and lightly populated rural areas. Their one common trait is that they are within the 100 air mile radius. We believe a more useful distinction is between "local" routes and long haul routes, or, perhaps, "short haul" and "long haul" with short haul routes being local routes and long haul routes being non-local routes. This distinction also has the advantage of reflecting real world operational differences.

The agency also asks whether it should use the recordable or preventable crash rate with calculating a carrier's safety fitness determination. We appreciate and support the agency's position that only preventable recordable crashes will be considered when determining crash rates. Punishing a carrier for accidents it did not cause is simply wrong. Fitness determinations should rest on factors within the carrier's control. Crash causation, not crash involvement, should be the standard.

**Minimum inspections:**

The agency asked if the threshold of 11 inspections with two individual BASIC violations in a 24 month period is sufficient to trigger fitness assessments. This is clearly an improvement over the existing threshold, but we question if it provides sufficient data to justify additional assessments of the carrier. The reports cited above do not believe it is. We do not understand why FMCSA disagrees with those reports.

**Conclusion:**

As we stated in the beginning of our comments, our industry is constantly looking for ways to ensure that our drivers return home safely at the end of the day. We appreciate the hard work undertaken by FMCSA and roadside inspectors throughout the country to ensure that our highways remain safe. If you have any questions about our comments, please feel free to contact me.

Sincerely Yours,

*Commodor E. Hall*

Commodor E. Hall, CDS  
Transportation Safety Director  
Institute of Scrap Recycling Industries, Inc.  
Office: 202-662-8519  
1600 L Street. NW  
Suite 600  
Washington, DC 20036