

# TRANSPORTATION & LOGISTICS

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## *Plugged* IN

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// New regulations from the Federal Motor Carrier Safety Administration are expected to double the number of 'unfit' carriers.



## ‘FIT’ TO OPERATE?

All trucking firms are to likely face monthly federal safety reviews.

– By H. Peyton Inge IV

**More than double the number of** trucking companies that were flagged for poor safety performance by the federal government will be classified as “unfit” under new regulations evolving at the Federal Motor Carrier Safety Administration.

What’s more, the safety performance of all trucking companies would be scrutinized every month to determine operator fitness. To say these expected changes via a proposed Carrier Safety Fitness Determination rule are sweeping is an understatement.

The serious, complex nature of the proposed rule has spurred numerous queries to our firm, which serves as a legal backstop for trucking operations across the United States. Here’s our plain-English take on what you need to know now about impending fit/unfit regulations.

### **Act Now to be ‘Fit’**

The FMCA has been accruing compliance data on U.S. owner/operators for roughly six years now, as part of its Compliance, Safety, Accountability (CSA) initiative. Now, the agency intends to use it (and other metrics) to help them



determine which motor carriers will be permitted to continue operation.

The current system relies upon Compliance Reviews that date as far back as 1986. "...Many of the ratings are not likely to reflect to carriers' current safety compliance," says the FMCSA's Carrier Safety Fitness report on the impending changes. The agency has also determined that the newer compliance data is a better predictor of which carriers are unsafe.

That means if your company has been flagged recently for violations in investigations or inspections for hazardous

materials regulations, hours of service noncompliance, unsafe driving and other measures in the Behavior Analysis and Safety Improvement Categories (BASIC), it's time to step up your game.

### **'Conditional' No Longer**

In brief, the new rules would rate a carrier's safety performance as either "Fit" or "Unfit," rather than the current ratings of "Satisfactory," "Unsatisfactory," or "Conditional."

The key point is that carriers currently within the bottom 5 percent of the Driver Fitness, Vehicle Maintenance, and Hazardous Materials (HM) Compliance BASICs should immediately begin efforts to reduce violations found at roadside inspections. To be clear, the exact percentile is not yet decided, but any carrier ranking in the 95th percentile or worse should be proactive. If the rule is ultimately enacted, any carrier that falls within the chosen threshold that has received 11 or more inspections, with at least one or more violations within the preceding 24 months would be deemed unfit and placed out of service.

### **Know Where You Stand**

First, find out what how the proposed rule would affect your company now. Grab a copy of your company's Safety Measurement System (SMS) profile, your most recent investigation report and go to: <https://csa.fmcsa.dot.gov/sfd/SFDCalculator.aspx>.

Use the calculator to help determine where you fall. Remember the calculator uses 2013 statistics as the base to calculate the failure rate, so the numbers should be expected to vary from the final rule, when and if it is enacted. Essentially, do not assume that a 94th percentile rank will necessarily ensure a "Fit" rating down the road.

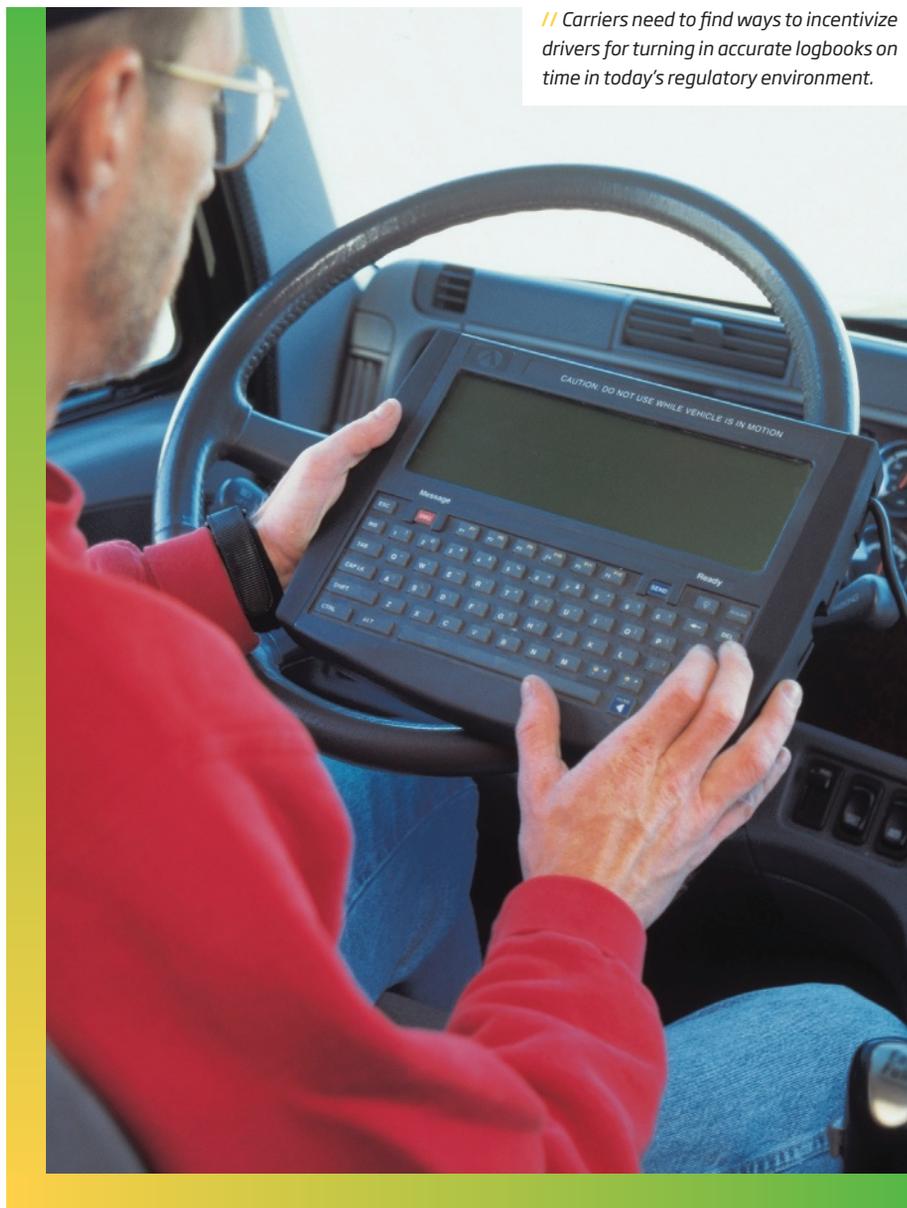
Second, take a close look at the violations your company received over the

preceding 24 months. Determine what you need to improve on the most and come up with a plan to make sure it happens. The easiest categories to address proactively are Hours of Service, Equipment, and Hazardous Cargo violations. Institute a careful strategy to reduce these types of violations in the future and make sure your company sticks to it.

### **The Witching 'Hours'**

Hours of Service (HOS) violations are a prime example of an area that every company needs to aggressively monitor. HOS violations typically raise their ugly head here at Chamblee Ryan when drivers, or even companies, are generally accused of permitting drivers to drive beyond what the FMCSA regulations permit. Driving beyond the regulations is a surefire way to increase the amount of money that a plaintiff's lawyer demands if your truck is involved in a collision. I anticipate that the HOS violations will decrease significantly as more companies move to electronic log books over the next two years. The GPS monitor cannot be beaten, so you know -- as does the DOT -- where that truck has been, and if it was or was not in service. The cost to use electronic logs is relatively low and, in the end, will earn you money, particularly if you institute a system to reward drivers who follow the rules.

Paper logs are more cumbersome to monitor, but if you have HOS violations, monitoring and effective policies to ensure compliance with FMCSA regulations is absolutely essential. Whether you hire an outside service to spot check the logs, or simply place a portable GPS unit on the tractor and compare it with the logs turned in, or compare fuel receipts with log book entries, you must create a culture for your company that HOS violations will not be tolerated. After all, your operating



// Carriers need to find ways to incentivize drivers for turning in accurate logbooks on time in today's regulatory environment.



// As enforcement by the Department of Transportation increases, the number of equipment violations also increases.

authority is the one at risk if the driver receives a violation.

### **More Carrot, Less Stick**

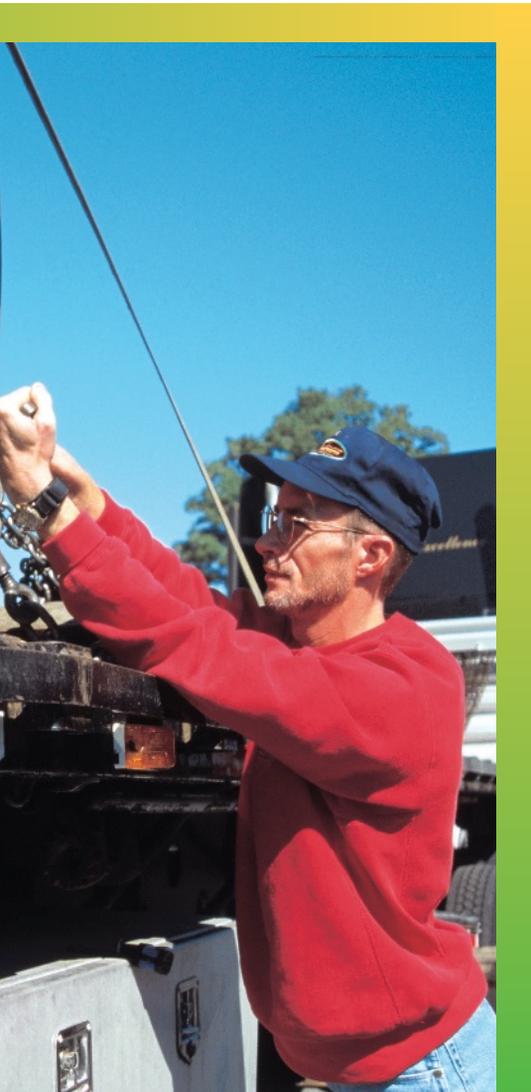
The reality is that drivers, and particularly good drivers, are hard to find. Trucking is no longer considered a culture. Most drivers simply look at it as a job and are more than happy to jump ship for the promise of an extra few bucks. With that shift in mentality comes new challenges and opportuni-

ties. Looking for new ways to incentivize drivers, such as a small bonus for turning in accurate log books on time, or ways to eliminate costs incurred due to downtime, such as by prudent and professional load planning, should be carefully considered.

### **Increasing Maintenance**

Citations for Equipment Violations are becoming more and more common as DOT enforcement ramps up. Our firm

is handling an increasing number of calls asking for help fighting equipment tickets. And the fact is, most of the time such tickets are properly written. The issue is rarely life-threatening, but your teams need good quality brakes, tires, and lights. Absent those safety features, the odds of a collision go up. Considering the proposed rules, equipment is a prime example of an area that your company can proactively choose to avoid equipment citations. Have a policy in place where your drivers are quickly reimbursed for necessary on-the-road repairs, or make sure your



company quickly authorizes the repairs from the provider.

The top complaint I hear from drivers is that they asked for a repair, only to have it denied after waiting for a decision for several hours. I encourage company managers to speak directly with their mechanics to tackle truck repairs and maintenance immediately. Even mention that their work is key in keeping the entire operation in business, given the impending changes in the safety-rating system. Like mechanics, drivers should carefully look at tires, brakes, and lights as often as possible.

> MORE

## 'FITNESS' TEST

In the proposed Safety Fitness Determination rule, the FMCSA intends to review millions of inspection and investigation records on a monthly basis to help determine which trucking companies are "fit" or "unfit" to remain on the road.

Key points:

- The agency currently rates trucking companies "Satisfactory," "Unsatisfactory," or "Conditional."
- Under the proposed rules, an operator can trigger an "unfit" or an "out of service" finding if their company has been investigated or been inspected on the side of the road 11 or more times in the preceding 24 months, and has received one or more violations in one or more BASIC categories.
- The proposed rule uses a drop-dead failure threshold for each of five BASIC categories (Unsafe Driving, Hours of Service Compliance, Vehicle Maintenance, Hazardous Materials Compliance; and Driver Fitness).
- In 2012, the federal government gave "unsatisfactory" safety ratings to about 1,000 carriers. Under the new rules another 1,800 carriers would be flagged as "unfit."

Be efficient and find creative ways to minimize costs. Reward safe drivers and thorough mechanics. Do not be afraid to address recurring equipment issues with anyone.

An effective equipment maintenance policy will reduce equipment violations, which could cost exponentially more when the new rules are adopted.

### Taking 'Hazards' from Hazmat

Hazardous Material violations are the third area where companies can efficiently reduce FMCSA violations. Do this by carefully training and placing only your best drivers at the helm of a hazardous load. It's important for these drivers to drive slowly, carefully and to make sure they have the proper placards displayed. They need to stick to designated routes and should not deviate unless necessary. Above all, designate an employee in your company to be the go-to person to handle calls from drivers with questions about hauling and handling hazardous materials.

Trucking companies that can adapt to these changes will likely survive and thrive.

### When, Not If

The proposed rules do not yet have an effective date, however, comments from the public were due by April 20. We anticipate that the rule will be adopted in some form in the future. While new regulations and tougher standards are seldom welcomed by the industries they impact, trucking companies that can adapt to these changes will likely survive and thrive. The others will be left behind. 🌈

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