

after the date of the final agency decision.

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## 6.0 Preparation for Combined Mailings of Standard Mail and Package Services Parcels

*[Revise title of 6.1 as follows:]*

### 6.1. Combined Machinable Parcels—DBMC Entry

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*[Revise title of 6.1.2.]*

#### 6.1.2 Basic Standards

\* \* \* \* \*

#### 6.1.3 Postage Payment

*[Revise 6.1.3 to add requirement for e-VS and reorganize to read as follows:]*

Mailers must pay postage for all pieces with a permit imprint at the Post Office serving the mailer's plant using one of the following postage payment systems. The applicable system agreement must include procedures for combined mailings approved by Business Mailer Support.

a. Manifest Mailing System (MMS), under 2.0;

b. Optional Procedure (OP) Mailing System, under 3.0, until January 1, 2007; or

c. Alternate Mailing System (AMS), under 4.0, until January 1, 2007.

d. Effective January 1, 2007, for mailings presented under 705.6.0, mailers must document and pay postage using the Electronic Verification System under 705.2.9.

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*[Revise title of 6.2 to read as follows:]*

### 6.2 Combining Parcels—DSCF Entry, Parcel Post OBMC Presort and BMC Presort

\* \* \* \* \*

#### 6.2.3 Postage Payment

*[Revise text of 6.2.3 to include e-VS requirement for DSCF Entry parcels, to read as follows:]*

Mailers must pay postage for all pieces with a permit imprint at the Post Office serving the mailer's plant using an approved manifest mailing system under 2.0. The following conditions also apply.

a. The applicable system agreement must include procedures for combined mailings approved by Business Mailer Support.

b. Effective January 1, 2007, for mailings presented under 705.6.0, mailers must document and pay postage using the Electronic Verification System under 705.2.9.

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## 7.0 Combining Package Services Parcels for Destination Entry

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### 7.1 Combining Parcels

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#### 7.1.2 Basic Standards

[Add the following sentence at the end of 7.1.2b.]

b. \* \* \* Effective January 1, 2007, for mailings presented under 705.7.0, mailers must document and pay postage using the Electronic Verification System under 705.2.9.

\* \* \* \* \*

An appropriate amendment to 39 CFR 111 to reflect these changes will be published if the proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 385

[Docket No. FMCSA-1998-3639]

RIN 2126-AA37

#### Safety Fitness Procedures; Withdrawal

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM); withdrawal.

**SUMMARY:** The Federal Motor Carrier Safety Administration [formerly Office of Motor Carriers (OMC) within Federal Highway Administration (FHWA)] withdraws its July 20, 1998 ANPRM and request for comments pertaining to the future evolution of the safety fitness rating system. After the ANPRM was published, FMCSA began the Comprehensive Safety Analysis 2010 Initiative (CSA 2010), a comprehensive review and analysis of FMCSA's current commercial motor carrier safety compliance and enforcement programs. FMCSA held a series of public listening sessions pertaining to CSA 2010 in September and October 2004. Many commenters at those listening sessions suggested that FMCSA delay publishing a notice of proposed rulemaking (NPRM) until the agency makes its final decisions regarding its long-term plan for monitoring motor carrier safety under CSA 2010. Therefore, this rulemaking is no longer necessary because, as CSA 2010 proceeds, FMCSA

expects to publish a rulemaking that would propose a new and improved safety compliance and monitoring methodology based on more recent information and policy.

**DATES:** The ANPRM with request for comments published July 20, 1998 is withdrawn as of November 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nicole McDavid, Office of Enforcement and Program Delivery, (202) 366-0831, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Background

On November 6, 1997, FHWA (now FMCSA) published a final rule incorporating its safety fitness rating methodology (SFRM) as Appendix B to 49 CFR 385. In that document, the agency identified its ultimate goal as creating a more performance-based means of determining the fitness of motor carriers to conduct commercial motor vehicle (CMV) operations in interstate commerce. The final rule announced that FHWA would soon publish an ANPRM that would address the future evolution of its rating system methodology. Since that final rule, Congress substantially heightened the importance of Unsatisfactory ratings by amending 49 U.S.C. 31144 to prohibit transportation of any property in interstate commerce by motor carriers with Unsatisfactory ratings. (Transportation Equity Act for the 21st Century [Pub. L. 105-178, June 9, 1998, 112 Stat. 107])

On July 20, 1998, FHWA issued an ANPRM titled "Safety Fitness Procedures" (63 FR 38788) seeking comments and supporting data on what issues should be considered in developing a future safety fitness rating system. Specifically, the ANPRM invited responses to 21 detailed questions focusing on what a future SFRM should include.

On October 9, 1999, the Secretary of Transportation (Secretary) rescinded his authority to FHWA to carry out most of the motor carrier functions and operations (64 FR 56270, October 19, 1999) and redelegated that authority to the Director of the new Office of Motor Carriers. On October 29, 1999, the Secretary rescinded his authority to FHWA to carry out other duties and powers related to motor carrier safety vested in the Secretary by statute (64 FR 58356). Then, on January 1, 2000, responsibility for motor carrier

functions, operations, and safety within the Department of Transportation was transferred from FHWA to the Administrator of a new agency—FMCSA (65 FR 220, January 4, 2000).

In August 2004, FMCSA embarked on CSA 2010—a comprehensive review and analysis of FMCSA's current commercial motor vehicle safety compliance and enforcement programs that aims to identify better methods of improving highway safety (69 FR 51748, August 20, 2004). Currently, FMCSA and State agencies are able to conduct compliance reviews on only a small percentage of the more than 675,000 motor carriers listed in FMCSA's Motor Carrier Management Information System (MCMIS). Therefore, FMCSA is looking for ways to: (1) Improve monitoring of motor carriers, (2) make agency processes more efficient, and (3) expand its enforcement and compliance reach in the regulated community. These actions would improve FMCSA's ability to meet its goal of significantly reducing crashes, fatalities, and injuries involving large trucks and buses. The intent of CSA 2010 is to establish an operational model that could be used to confirm that a motor carrier has a safe operation as well as to identify unsafe motor carrier operations that should be targeted for compliance and enforcement activities. This new operational model will be critical to ensuring FMCSA can keep pace with the burgeoning motor carrier industry and continue to provide for the safe transportation of people and goods on the nation's highways. Moreover, this new operational model will directly affect any future SFRM.

In September and October 2004, FMCSA held a series of public listening sessions pertaining to CSA 2010. Specifically, FMCSA was soliciting input on ways that it could improve its process of monitoring and assessing the safety of the motor carrier industry and how that information should be presented to the public. Although broader in scope than the ANPRM, the public listening sessions included much input regarding improving FMCSA's safety and compliance programs. Specific to the Safety Fitness Procedures rulemaking initiative, many commenters offered suggestions and recommendations regarding safety indicators, compliance reviews, data gathering, performance measures, safety fitness ratings, regulatory compliance, rewards versus penalties to encourage compliance, and the use of third-party resources. Moreover, many commenters at those listening sessions suggested that FMCSA delay publishing a NPRM under the Safety Fitness Procedures

rulemaking action until FMCSA makes its final decision regarding its long-term plan for monitoring motor carrier safety under CSA 2010. For further detail on the public listening sessions, see FMCSA's final report, "Comprehensive Safety Analysis 2010 Listening Sessions" (Docket No. FMCSA-2004-18898).

### Summary of Comments to the ANPRM

The 1998 ANPRM invited responses to 21 specific questions focusing on how the future FMCSA SFRM should look. FMCSA received 37 public comments on this rulemaking. An Appendix to this notice lists the questions asked in the ANPRM and provides a summary of the comments received to date on each question.

### FMCSA Decision

After reviewing the public comments on the Safety Fitness Procedures ANPRM and the public's input at the CSA 2010 public listening sessions, FMCSA has determined that it is in the public's interest to withdraw the ANPRM and defer further rulemaking activity in this area until FMCSA establishes its revised operational model under CSA 2010 that will set forth the methodology for a future safety fitness rating system. As noted above, the agency has reviewed and summarized all of the comments received to date. FMCSA will address the comments received in response to this ANPRM in the context of the CSA 2010 initiative and in any SFRM rulemaking growing out of that comprehensive safety analysis.

Because numerous comments in response to the ANPRM addressed the use of third-party contractors, we think it informative to note FMCSA has been using contractors to conduct safety audits since January 2004. The use of contractors was, and is, necessary to address the need for heightened safety compliance monitoring under the New Entrant Safety Assurance Process. FMCSA has built into its contracts with third-party contractors effective safeguards against fraud and other abuses. It requires private contractors to meet the same minimum certification requirements as Federal and State safety auditors, including certain education, experience, and testing requirements.

FMCSA anticipates publishing a new rulemaking addressing a motor carrier safety fitness rating system consistent with the new methodology for monitoring motor carrier safety developed as part of the CSA 2010 initiative. FMCSA will consider fully all comments to this ANPRM in developing any new rulemaking document

addressing a motor carrier safety fitness rating system or methodology. Therefore, FMCSA is withdrawing its July 20, 1998 ANPRM on Safety Fitness Procedures.

Issued on: October 31, 2005.

Annette M. Sandberg,  
Administrator.

### Appendix—Discussion of Comments to the ANPRM

FMCSA's 1998 ANPRM on Safety Fitness Procedures invited responses to 21 specific questions focusing on how the agency's future SFRM should look. FMCSA received responses from 37 commenters<sup>1</sup>. Listed below are the questions asked in the ANPRM and, under each, a summary of the public comments the agency has received to date. As noted in the preamble to this notice, FMCSA will address these comments in the context of the CSA 2010 initiative and in any SFRM rulemaking growing out of that study.

*Question 1. What do you believe should be the principal ingredients of a rating system? What kind of a rating system would best suit your needs? Why?*

Many commenters asserted that crash involvement should be the principal criterion used in a rating system with regulatory compliance mentioned nearly as often and vehicle inspections following as a close third. Other commenters mentioned driver qualifications, out-of-service violations, moving violations, and general (unspecified) performance data. Several commenters believed the factors used in FMCSA's current rating system are appropriate.

Most commenters wanted a rating system that encourages safety, reduces motor carrier crash risk, and recognizes safe motor carriers. ATA would like to see a safety fitness rating

<sup>1</sup> Comments were received from the following: 11 State governmental organizations (Arizona Department of Public Safety; Colorado Department of Public Safety; Colorado State Patrol; Department of California Highway Patrol; Idaho Department of Law Enforcement, State Police Division; Iowa Department of Transportation; Louisiana Department of Public Safety and Correction, Louisiana State Police; Michigan Department of State Police; Michigan Public Service Commission; Oregon Department of Transportation; Oregon Freight Advisory Committee; and Public Utilities Commission of Ohio, Transportation Department), 9 motor carriers (ABC Bus Companies, Inc.; CoachUSA; Duplainville Transport; Frozen Food Express Industries, Inc.; HCI U.S.A. Distribution Companies, Inc.; Interstate Distributor Co.; Thompson Trucking, Inc.; Werner Enterprises, Inc.; and Yellow Corporation and subsidiaries), 8 trade associations (American Insurance Association; American Trucking Associations (ATA); Association of Waste Hazardous Materials Transporters; Commercial Vehicle Safety Alliance; National Private Truck Council (NPTC); National Tank Truck Carriers, Inc.; Transportation Lawyers Association; and Truckload Carriers Association), 3 consulting groups (Consolidated Safety Services, Inc.; International Motor Carrier Audit Commission; and Tran Services), a utility company (Alabama Power Company), a safety advocacy group (Advocates for Highway and Auto Safety), a labor union (International Brotherhood of Teamsters), an insurance company (Great West Casualty Company), the Canadian Council of Motor Transport Administrators, and an individual.

system that reflects safety performance rather than regulatory compliance. The State of Louisiana asserted that the rating system allows the State to fulfill its obligation of ensuring motorists' safety.

*Question 2. What benefits do you expect to gain from a rating system? What business decisions do you presently base on carrier ratings?*

Commenters cited the following benefits from a rating system:

- Improved safety for commercial motor vehicle drivers and other motorists,
- Lower insurance rates,
- Greater marketing potential and more business for safer motor carriers,
- More efficient use of State and local resources to target unsafe motor carriers,
- Crash reduction,
- Community recognition, and
- Ability to obtain a hazardous materials permit.

One commenter stated the current system is acceptable.

With regard to business decisions, many commenters reported that the rating system assists them in hiring motor carriers. The Arizona Department of Public Safety; Michigan Department of State Police; Michigan Public Service Commission; and Oregon Department of Transportation noted that the rating system supports their enforcement strategies. Another commenter indicated that the rating system should help motor carriers improve their performance and compliance. Thompson Trucking, Inc. remarked that the rating system would not affect its business decisions.

*Question 3. Are there differences in the way ratings should be used? (e.g., by FHWA [FMCSA]? by shippers? by others?)*

Most commenters agreed that safety fitness ratings have different uses. Some commenters suggested that FMCSA use the ratings as part of the compliance review in determining which motor carriers have adequate safety controls in place. Others commented that shippers could use ratings to determine whether a motor carrier is responsible and adheres to the same standards as the shipper.

Two commenters contended that safety ratings should not have different uses. One commenter added that only FMCSA should use the ratings.

*Question 4. If ratings must impact the continued operations of rated carriers, what is the appropriate threshold for determining that a carrier is unsatisfactory, meaning "unfit to operate"?*

Commenters deemed the following events or factors as appropriate Unsatisfactory thresholds:

- Abnormally high crash rate,
- Failure to correct a problem after receiving notice of the problem,
- Lack of safety management controls,
- Inspection failures,
- Continued violation of the FMCSRs, and
- Use of unqualified drivers.

Other commenters, including the Association of Waste Hazardous Materials Transporters and ATA, stated that only violations of performance-related regulations, as opposed to paperwork-related violations, should result in an Unsatisfactory rating. The

Michigan Department of State Police went further by suggesting that in assigning Unsatisfactory ratings, FMCSA count only those performance-related regulations which, if violated, could expose the driver or the public to imminent harm.

The Colorado Department of Public Safety, Colorado State Patrol suggested using a weighted point system such as that employed by SafeStat. Several other commenters recommended setting a minimum standard rather than ranking motor carriers against one another.

*Question 5. Should the FHWA [FMCSA] continue to maintain the three ratings: Satisfactory, Conditional, or Unsatisfactory? If yes, what benefits do you perceive in maintaining the three ratings?*

Commenters, including motor carriers, trade associations, and State governments, were split almost evenly on this question. Those commenters who supported keeping the current three ratings of Satisfactory, Conditional, and Unsatisfactory gave reasons such as: (1) The ratings are easy to understand and adequately serve their intended purpose and (2) the ratings provide essential information to the public, shippers, and motor carriers. One commenter noted that if FMCSA changed the rating system, past ratings might become irrelevant. Another commenter suggested FMCSA keep at least the Satisfactory and Unsatisfactory ratings but add intermediate levels (besides the Conditional rating used in the current methodology).

Among those commenters taking the opposite position, most recommend limiting the ratings to Satisfactory and Unsatisfactory. Several commenters also suggested placing new motor carriers in a probationary or provisional status until they receive a rating. Other commenters recommended replacing the current rating system with SafeStat.

*Question 6. What should be the highest tier in such a system, and what should it connote?*

Commenters agreed that Satisfactory should be the highest tier in the rating system and suggested a Satisfactory rating connote that the motor carrier

- Is doing a good job of decreasing crashes and moving violations and maintaining regulatory compliance.
  - Has acceptable compliance and management efforts.
  - Has acceptable performance measures.
  - Is safe enough to be in business.
  - Meets the requisite criteria for the class.
  - Is 90- to 100-percent compliant with the regulations.
  - Has an acceptable level of compliance.
- Question 7. How long should any rating last?*

Opinions on this question varied considerably. Commenters suggested timeframes ranging from 6 months to indefinitely or until some indicator falls below an acceptable level. Most commenters believed the duration should be tailored to the rating. Many commenters suggested using SafeStat as a model.

*Question 8. Do you see any benefit to a single rating system by the FHWA [FMCSA] which would be concerned only with unsatisfactory carriers that would have to improve or cease operating?*

Most commenters did not support a system focusing solely on the Unsatisfactory rating. They believed such a system would be inadequate and potentially misleading as well as make a negative impression on the public. The Association of Waste Hazardous Materials Transporters noted that a single rating system would not fulfill FMCSA's obligation to both Congress and the States to provide affirmative evidence of compliance.

In contrast, several commenters contended that a single-rating system would be more efficient. One commenter suggested that FMCSA use such a system if the resources are unavailable to support a tiered rating system.

*Question 9. Should such ratings be determined entirely by objective (performance-based) criteria? Why?*

Commenters were almost evenly split with slightly more commenters, including the Arizona Department of Public Safety; Colorado Department of Public Safety, Colorado State Patrol; Louisiana Department of Public Safety and Correction, Louisiana State Police; and Michigan Department of State Police, favoring the use of performance-based criteria in conjunction with the motor carrier's level of regulatory compliance. Many commenters in this group noted that performance data and regulatory compliance are complementary measures of safety fitness because performance data are indicators of past behavior while regulatory compliance points to future behavior.

Among the commenters who suggested using only performance-based criteria, several contended that performance and effort correlate directly with safety whereas regulatory compliance must be assessed more indirectly through the motor carrier's compliance with paperwork requirements. In contrast, one commenter suggested basing the safety rating solely on regulatory compliance.

*Question 10. What data elements best reveal the safety performance of the motor carrier and should receive consideration in future safety fitness determinations?*

Commenters suggested using the following data elements (in order of the frequency with which they were mentioned) to make safety fitness determinations:

- (1) Crashes (taking into account fault versus no fault),
- (2) Inspections/out-of-service violations,
- (3) Regulatory compliance,
- (4) Moving violations,
- (5) Use of qualified drivers,
- (6) Management controls (such as training and substance abuse testing),
- (7) Hazardous materials compliance and/or violations,
- (8) Current data elements, and
- (9) Financial condition of the motor carrier.

The Commercial Vehicle Safety Alliance and Michigan Department of State Police contended public opinion regarding these data elements would inevitably show bias. In their view, FMCSA should conduct research to identify the salient risk factors and use those factors as the data elements.

*Question 11. How should regulatory compliance be treated in safety fitness determinations? Which regulations are most important in evaluating safety fitness?*

Nearly all commenters believed FMCSA should consider regulatory compliance in

determining a motor carrier's safety fitness rating. Many commenters suggested that the motor carrier's desire and ability to operate within the regulations be considered a safety benchmark.

A number of commenters believed FMCSA should distinguish between violations of acute and critical regulations. Those commenters believed paperwork errors should not be considered a compliance violation for safety fitness purposes. ATA and Werner Enterprises, Inc. recommended FMCSA conduct research to verify a link between compliance and safety before using compliance violations in determining safety fitness ratings.

With regard to the regulations most important to the evaluation of safety fitness, commenters cited the following issues (in descending order of the frequency with which they were mentioned):

- (1) Vehicle inspections (related both to repair and maintenance),
- (2) Qualifications of drivers,
- (3) Reporting of crashes,
- (4) Drug and alcohol testing,
- (5) Logbook violations, and
- (6) Hazardous materials violations.

The NPTC suggested that any regulations regarding management controls would be most important to safety fitness determinations. The Louisiana Department of Public Safety and Correction, Louisiana State Police contended that all the regulations are important because they represent the minimum safety standards.

*Question 12. How should poor compliance be reconciled with good safety experience? Should a motor carrier be rated unsatisfactory even if it has a low accident rate?*

A number of commenters supported giving Unsatisfactory ratings to motor carriers with poor compliance but good safety experience. Two of those commenters added that FMCSA should differentiate between motor carriers making paperwork mistakes and those that ignore the regulations. In contrast, four commenters opposed assigning Unsatisfactory ratings to motor carriers with low crash rates.

Commenters who contended that noncompliance with the safety regulations should be evaluated independently of crash rates gave the following reasons:

- There appears to be a correlation between compliance and future safety fitness,
- A low crash rate could simply be a matter of luck, and
- Allowing noncompliant motor carriers to escape an Unsatisfactory rating would be unfair to motor carriers that comply with the regulations.

Seven commenters maintained that FMCSA must consider both regulatory compliance and safety performance. However, they did not suggest specific ways to achieve this.

One commenter posited that if poor compliance coexists with good safety experience, this could mean the regulations have little impact on safety.

*Question 13. Do you believe there is presently sufficient data available to make judgments about a motor carrier's ability to stay in business?*

Most commenters believed FMCSA has sufficient performance and compliance data to determine whether it is safe to allow a motor carrier to stay in business. However, several commenters expressed reservations about the sufficiency, accuracy, and quality of the data collected by FMCSA. NPTC argued that SafeStat seriously underreports crashes for two reasons: (1) The current database is limited to crashes meeting the National Governors Association reporting standards, which exclude less-severe crashes, and (2) States and local jurisdictions have inadequate reporting procedures. NPTC also recommended that FMCSA expand and prioritize the types of data it presently captures on driver behavior and vehicle condition.

ATA considered the safety rating so important that it believed FMCSA's data must be impeccable. ATA urged the agency to work with law enforcement, the States, and the trucking industry to help improve the accuracy and quality of the data. ATA asserted that in the interest of fairness and uniformity, FMCSA should take responsibility for correcting data errors or discrepancies instead of referring the motor carrier to the State(s) that provided the data. In addition, ATA noted the importance of keeping MCS-150 forms current as many performance measures are based on information motor carriers provide on the forms.

The Transportation Lawyers Association criticized the adequacy of FMCSA's data and contended that there are due process concerns when a safety rating based on questionable data carries severe economic consequences.

Other commenters cited a need for better controls on the data collections, noting that many inspectors record only inspections with negative results keeping no record of positive inspections. One commenter questioned whether FMCSA has enough inspectors to review all the available data.

*Question 14. Should carriers be grouped by similarity of operations? By size?*

A majority of commenters supported grouping motor carriers in some way. The most frequently recommended sorting criteria were operating environment (rural versus urban), size, and type of transport. One commenter suggested grouping motor carriers by MCS-150 filing categories.

Of those commenters opposed to sorting motor carriers into groups, some argued that FMCSA should apply uniform standards to all motor carriers. The Colorado Department of Public Safety, Colorado State Patrol contended that grouping motor carriers would be unnecessary if FMCSA rated all motor carriers against a particular standard rather than ranking them.

*Question 15. Are there significant benefits to be derived from a third-party [private contractor] on-site review system for evaluating motor carriers? What do you perceive them to be?*

Commenters were almost evenly split between supporting and opposing the use of private contractors. Those commenters favoring the concept believed it would garner industry support and represent a better use of FMCSA's resources. Several commenters

recommended contracting with trade associations or insurance companies, provided they were of the same caliber as U.S. Department of Transportation inspectors. Most commenters in this group also recommended that Federal and State Governments maintain the right to conduct inspections under certain circumstances. One commenter suggested using private contractors exclusively for data collection and not for enforcement actions.

Those commenters opposing the use of private contractors believed it would open the door to inappropriate interpretations of the rating methodology. They also contended that any resource savings could be canceled by FMCSA expenditures for training and monitoring of the contractors. The Transportation Lawyers Association noted that in an Office of the Inspector General's Report, dated March 26, 1997, the U.S. Department of Transportation stated its opposition to the use of private contractors because of legal considerations and the cost and complexity of developing and monitoring such a system.

Two commenters stated they would need more information about who pays and controls the private contractors, what role the Federal and State Governments would play, and who enforces the regulations before they can adequately respond to this question.

*Question 16. If a third-party [private contractor] review system were to start up, what should be the Federal role in such a system?*

Most commenters stated that the Federal Government should have significant involvement with private contractors by setting standards and providing guidance, certification, and training. However, a significant minority believed the Federal Government should take a more limited role, such as by monitoring private contractors through random audits and other methods. Several commenters asserted that the Federal Government should focus solely on compliance and enforcement issues.

*Question 17. Could and should a private third-party [contractor] review system coexist with a Federal system? What would be their respective roles? What relationships should there be, if any, between coexisting Federal and private review systems?*

Commenters had a range of opinions on this question. The most frequent recommendation was for the Federal Government to audit private contractors. Many commenters suggested using private contractors solely to collect data or, at the very most, to conduct an initial review that would be subject to FMCSA review. Other commenters recommended using private contractors only as consultants, who would assist motor carriers with improving their safety performance. In contrast, some commenters recommended training and certifying private contractors to conduct complete reviews in place of FMCSA.

Many commenters did not support a private contractor system because they doubted it could be implemented successfully. One commenter contended that such a system would likely increase the incidence of litigation against the agency by motor carriers receiving Unsatisfactory ratings.

*Question 18. What should be the effect of the third-party [private contractor] rating on the carrier's operation? What kind of review procedures would be required?*

Many commenters stated that a private contractor review should have the same effect on the motor carrier's operation as one conducted by the Federal Government. Other commenters advocated using private contractors strictly as consultants—the contractor would not rate the motor carrier. Still other commenters suggested the role of private contractors be limited to data collection. One commenter suggested making private contractor reviews voluntary but publishing the results for the benefit of the public.

Two commenters opposed the use of private contractors. One commenter argued that large motor carriers would have an economic advantage because they could more easily afford these private contractors.

With respect to review procedures, several commenters recommended establishing an appeals process for private contractor compliance reviews. One commenter recommended that FMCSA automatically review any Unsatisfactory rating assigned by

a private contractor. Another commenter stated that private contractors should not be allowed to assign ratings.

*Question 19. Should the information from third-party [private contractor] on-site reviews become a part of the FHWA [FMCSA] database? How should such information be treated?*

Most, but not all, commenters supported including private contractor review information in the FMCSA database provided data-collection controls are in place. In addition, a majority of the commenters recommended using private contractor review data in the same way as the data collected by FMCSA. However, several commenters added that information collected by private contractors should be coded and continuously monitored to ensure safety data integrity and quality.

*Question 20. Should a third-party reviewer [private contractor] have direct access to the FHWA's [FMCSA's] database to a greater extent than such information is presently available to the public?*

Most commenters supported such access so long as a confidentiality agreement is in place. Other commenters suggested that

private contractors be allowed access only to publicly available information in the FMCSA database. Several commenters specifically opposed allowing private contractors access to FMCSA databases. A few commenters said that private contractors should have access only to the motor carrier information needed to complete a review.

*Question 21. Should there be standards for third-party [private contractor] reviews, including the identification of the relevant data elements to be employed for evaluative purposes? How should such standards be developed?*

Nearly all commenters supported holding private contractors to defined standards. Most commenters believed contractor standards should mirror those standards used by FMCSA and its MCSAP-funded enforcement partners. One commenter recommended a task group to develop separate standards for private contractors.

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