March 21, 2016

The Honorable T.F. Scott Darling III
Acting Administrator
U.S. Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, N.W. Washington, DC 20590

Comments for Docket Number FMCSA-2015-001
Safety Fitness Determination

Dear Administrator Darling,

The Power & Communication Contractors Association (PCCA) represents construction companies and manufacturers that build and repair America’s power and communications infrastructure, including electric transmission, distribution, and substation facilities and broadband, telephone, and cable television systems. PCCA members also engage in directional drilling, local area and premises wiring, and improvements to water and sewer infrastructure, as well as gas and oil pipelines. PCCA members include a range of carriers who employ thousands of commercial drivers impacted by Safety Fitness Determinations (SFD) overseen by the Federal Motor Carrier Safety Administration (FMCSA). PCCA appreciates the opportunity to comment on the new SFD proposed by FMCSA.

For the reasons stated below, PCCA believes FMCSA’s proposed rule would apply an overly restrictive standard with regard to safety fitness on non-traditional carriers, significantly curb due process, and provide exorbitant authority to roadside enforcement.

**Reduction of Three Determinations to One**

FMCSA proposes to move from the current three-tiered SFD of “satisfactory,” “unconditional,” and “unsatisfactory” to a single determination of “unfit” based on data from a combination of roadside inspection violations and investigations. Specifically, under FMCSA’s proposal, a carrier would be determined “unfit” if:

- Carrier has failed two or more “BASICS” (Behavioral Analysis and Safety Improvement Categories) from on-road safety performance,
- Carrier with violations of the revised “critical and acute” requirements determined during investigations, or
- A combination both roadside inspection and investigation results.

The rule change would result in assessment of carriers on a monthly basis using fixed failure measures identified in the proposed rule. PCCA members would be subject to a more rigid set of standards applied under BASICS. The proposed rule will inevitably lead to unnecessary and overly burdensome impacts on carriers who maintain utility fleets but whose primary function is outside of commercial trucking.
Impacts on Key Services
Non-traditional motor carriers such as contractors who respond to emergency calls to maintain or restore electric power and telecommunications service already struggle with maintaining lower safety scores for a number of reasons. The data to be considered in the proposed rule could wrongfully identify a carrier as unfit. Additionally, consideration of Compliance, Safety and Accountability (CSA) is only one tool in identifying the safety performance of a carrier. Higher scores for a particular carrier or an upward trend in scores are not necessarily an accurate reflection of the safety of that carrier or the carrier's safety and compliance programs.

Inconsistency in roadside enforcement already presents a hardship on many utility drivers and a range of other carriers. Authorities commonly base an SFD on inconsistent data, subjecting drivers to a slippery slope when it comes to expectations when demonstrating compliance. This is especially problematic to smaller carriers that lack the staff and resources compared to larger carriers whose primary industry is commercial transportation.

PCCA members have been forced to adapt to the ever-changing CSA program for years. While the current system is by no means perfect, it does provide carriers the opportunity to maintain a dialogue with enforcing authorities.

Additionally, smaller and regional carriers, such as PCCA members, will be abruptly subject to threats of a slew of high-severity weight violations as they adapt to the new SFD almost immediately following issuance of a final rule. This will likely lead to spikes in BASIC fitness scores despite the fact that a sufficient safety program may well be in place.

Undue Restriction of Due Process
Allowing for a carrier’s status to be determined solely through roadside inspection data would unfairly rob the carrier of due process. Carriers currently maintain sufficient records required by existing regulations and provide for a high level of safety fitness. However, changes in a driver’s SFD will impact a carrier’s profile score quicker than the carrier can take corrective action. The “unfit” determination would prevent the motor carrier from identifying root causes and making necessary adjustments to the CSA Safety Management Cycle.

The new SFD proposed by FMCSA would also afford roadside enforcement disproportionate authority. The current system provides the carrier the opportunity to present evidence and appeal elevated or inaccurate BASIC scores stemming from inconsistent or inappropriate roadside enforcement. These provisions would be removed under the proposed rule, restricting necessary recourse from carriers looking to contest “unfit” determinations that are unwarranted.

These programmatic deficiencies are similar to those inherent in DOT’s reportable accident process. Every accident is placed on the carrier’s profile regardless of fault determination or root cause, while internal compliance reviews allow for non-preventable accidents to be reviewed and removed where the driver is found to be not at fault. FMCSA’s new SFD would apply the same approach.
Roadside data should be used in combination with other factors when determining safety fitness and carrier trends but should not be considered unilaterally.

**Conclusion**
PCCA members around the country rely on their drivers when providing services that sometimes carry life-and-death ramifications, such as repairing critical power and communication facilities. While our drivers and utility fleets are a critical part of our industry, commercial motor carrier transportation is not our fundamental business. Therefore, we encourage FMCSA to withdraw or significantly reduce the regulatory burdens included in the proposed rule as issued on January 21, 2016.

We thank you for your consideration.