1993. On September 17, 1993 the EPA and the Maine DEP surveyed the site and declared that the soil cover system was completed according to the requirements in the ROD. Revegetation of the area was carried out in October of 1993. Purchase of 247 acres of the nearby Saco Heath from a peat mining company as compensation for the permanent loss of ten wetland acres onsite was completed in December 1993, and restoration of the remaining excavated wetland was completed in September 1994.

Maintenance of the site has included quarterly inspections for the first five years of remediation and semi-annual inspections since then. Per the Superfund State Contract between EPA and Maine DEP, these inspections are to be carried out by the State for thirty years following the remediation. These inspections of the Site will be conducted to ensure that the actions taken to form a physical barrier between humans and wildlife and the waste in the pits and lagoons are maintained. Monitoring of groundwater, surface water, and sediment will continue, as outlined in the O&M Plan, to measure water quality within the site and around the perimeter. These State-performed inspections and monitoring activities began in April 1995.

The survey of the Site and approval of the Remedial Action by the EPA and Maine DEP demonstrated that the Saco Tannery Waste Pits Site no longer poses a threat to human health and welfare or the environment.

As noted in section II above, EPA may delete a site from the NPL when ''all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate''. As EPA, with Maine DEP concurrence, has determined that this criterion is met, EPA announces its intent to delete the Saco Tannery Waste Pits Site from the National Priorities List.

Dated: August 2, 1999.

Patricia L. Meaney,

Director, Office of Site Remediation and Restoration.

[FR Doc. 99–21007 Filed 8–13–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 385 and 390

[FHWA Docket No. FHWA–99–5467]

RIN 2125–AE56

Safety Fitness Procedures

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to implement section 4009 of the Transportation Equity Act for the 21st Century (TEA–21) by amending the safety fitness procedures of the Federal Motor Carrier Safety Regulations. This action would prohibit all motor carriers found by the Secretary to be unfit from operating commercial motor vehicles (CMVs) in interstate commerce. The FHWA is proposing to treat an unsatisfactory safety rating under the safety fitness procedure regulations as a determination of unfitness. The FHWA also would revise the listing for locations of motor carrier and highway safety field offices to reflect recent changes to the Federal Highway Administration organizational structure.

DATES: Comments must be received on or before September 15, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund or Mr. William C. Hill, Office of Motor Carrier Research and Standards, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway 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:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara*.

Background

Section 4009 of TEA–21 (Public Law 105–178, 112 Stat. 107, at 405, June 9, 1998) amends 49 U.S.C. 31144 and requires the Secretary of Transportation to maintain by regulation a procedure for determining the safety fitness of an owner or operator [of commercial motor vehicles (CMVs)]. The procedure shall include, at a minimum, the following elements:

(1) Specific initial and continuing requirements with which an owner or operator must comply to demonstrate safety fitness.

(2) A methodology the Secretary will use to determine whether an owner or operator is fit.

(3) Specific time frames within which the Secretary will determine whether an owner or operator is fit. 49 U.S.C. 31144(b).

Because these provisions are very similar to the previous 49 U.S.C. 31144(a)(1), which was enacted by section 215 of the Motor Carrier Safety Act (MCSA) of 1984 (Public Law 98–554, 98 Stat. 2832), the FHWA regulations at 49 CFR parts 385 and 386 already include most of the requirements listed above.

Section 4009 of TEA–21 introduced two important changes. First, it transferred the substance of 49 U.S.C. 5113 to section 31144. Section 5113 codified section 15(b) of the MCSA of 1990 (Public Law 101–500, 104 Stat. 1213, 1218, November 3, 1990), which prohibited motor carriers rated unsatisfactory from using CMVs to transport, in interstate commerce, more than 15 passengers (including the driver) or hazardous materials (HM) in quantities requiring placarding, starting on the 46th day after the rating was issued. The regulation implementing section 5113 has been in effect since 1991 (49 CFR 385.13). By attaching this prohibition to a regulatory standard already used by the FHWA (i.e., unsatisfactory), Congress equated that rating with a determination that

passenger and HM motor carriers were not fit to operate on the highways.

Second, section 4009 of TEA–21 prohibits all owners and operators of CMVs not previously subject to 49 U.S.C 5113—that is, those owners and operators using CMVs to transport freight that does not include HM in quantities requiring placarding—from using those vehicles in interstate commerce starting on the 61st day after being found ''unfit.'' Also, Federal agencies are now prohibited from using those owners and operators to provide interstate transportation.

Because 49 U.S.C. 31144(b), as amended by section 4009, provides that ''[t]he Secretary shall *maintain* [emphasis added] by regulation a procedure for determining the safety fitness of an owner or operator,'' the FHWA believes that Congress authorized the continued use of the safety fitness rating regulation in effect on June 9, 1998, the date of enactment of TEA–21, until the agency adopts a final rule based upon this NPRM.

The parallelism between 49 U.S.C. 31144(c)(2) and (3) and the previous 49 U.S.C. 31144(a)(1) leads the FHWA to believe that Congress intended section 4009 to authorize the application of the principles embodied in section 15(b) of the MCSA of 1990 to the entire range of motor carriers that operate CMVs in interstate commerce. The only difference is that carriers of general freight would have 60 days, while passenger and HM carriers have 45 days, after the FHWA makes a determination of ''unfitness'' in which to improve or cease operations. Because the MCSA of 1990 explicitly referred to the three-part rating scheme used by the FHWA (satisfactory, conditional, unsatisfactory) and directed the FHWA to prohibit unsatisfactory rated motor carriers from transporting passengers and HM after the 45 day period, the FHWA has concluded that the functionally equivalent, though not identical, requirements of section 4009 authorize, but do not require, the FHWA to continue using its current safety fitness rating standards and methodology. The FHWA is therefore proposing to use an unsatisfactory rating assigned under the Safety Fitness Rating Methodology (SFRM) in part 385 as a determination of ''unfitness.'' This policy is congruent with that of section 15(b) of the MCSA of 1990. There is nothing in the legislative history concerning section 4009 of TEA–21 that suggests the FHWA should implement a different approach.

The proposed prohibition on the operation of CMVs would not be applied retroactively. Passenger and HM carriers rated unsatisfactory would have either improved their ratings since 1991 or ceased operating in interstate commerce. However, there were significant numbers of general freight carriers that held unsatisfactory ratings at the time TEA–21 was enacted; their operations were not illegal. The prohibition on unfit/unsatisfactory general freight carriers in section 4009 must be understood as applying only to those rated unsatisfactory by the FHWA after the effective date of a final rule generated by this proceeding. However, if a motor carrier that had been rated unsatisfactory prior to the effective date of the final rule received another unsatisfactory rating after the effective date of the final rule as a result of another compliance review, the new provisions would apply and the motor carrier would be required to cease its operations in interstate commerce within 60 days.

Section 4009 also specifies time periods for the FHWA to perform a compliance review requested by an unfit (i.e., unsatisfactory) rated motor carrier. For unsatisfactory carriers of passengers and HM, the follow-up compliance review must be completed within 30 days of the carrier's request; for all other carriers rated unsatisfactory, the follow-up review must be completed within 45 days after the carrier's request.

Under this proposal, the FHWA would continue to perform administrative reviews under § 385.15 and corrective-action reviews under § 385.17 for motor carriers regardless of their projected or final safety rating. The current § 385.15(d) states that the FHWA will notify a petitioning motor carrier of the agency's decision on administrative review within 30 days after the agency receives a petition. The current § 385.17 does not specify a time limit for the FHWA to perform a review based upon a motor carrier's request to change a safety rating because of its corrective actions, but it does allow the agency to extend the period before a proposed safety rating becomes effective for up to 10 days (§ 385.17(d)). The agency is proposing to revise its regulations and procedures, now to be codified at §§ 385.15(c) and 385.17(e), to give priority to reviews of motor carriers with proposed or final unsatisfactory safety ratings because of the prohibition against operating in interstate commerce with such safety ratings.

This priority handling would not extend to non-passenger and non-HM motor carriers with unsatisfactory safety ratings that became final before the effective date of the final rule because the regulation would not be retroactive. Although the FHWA would continue to review proposed and final conditional safety ratings, the agency needs to place a higher priority on the proposed and final unsatisfactory safety ratings because of the severe operational consequences for the affected motor carriers. However, as explained above, if a motor carrier of non-HM freight that held an unsatisfactory safety rating issued prior to the effective date of a final rule were to receive a follow-up proposed unsatisfactory rating after the effective date of a final rule, the FHWA would provide those motor carriers the same priority handling as motor carriers receiving a proposed unsatisfactory safety rating for the first time.

The DOT Office of Inspector General (OIG) has observed that unsatisfactory motor carriers of non-HM freight may continue to operate in interstate commerce under the current regulations. These motor carriers may continue to operate under the proposed regulations unless they were to receive another unsatisfactory rating after the effective date of a final rule. The OIG also contends that some motor carriers of HM freight or of passengers continue to operate despite their unsatisfactory safety ratings, and are doing so illegally. The FHWA intends to carefully track the safety of operations of the first group to ensure that the traveling public is not exposed to increased risk from a motor carrier's operation that has been documented to have fallen below an acceptable level of safety. The agency will bring swift and appropriate enforcement actions against motor carriers that are operating in spite of having been directed to cease their operations in interstate commerce.

Rating Criteria

In the preamble of the 1997 final rule amending 49 CFR part 385 (62 FR 60035), the FHWA announced that it intended to review the entire rating system. On July 20, 1998, the agency published an advance notice of proposed rulemaking (ANPRM) which, among other things, began the process of creating a more performance-based means of determining the safety fitness of motor carriers (63 FR 38788). The FHWA is reviewing the comments to that docket, along with the possibility and practicality of incorporating alternative safety fitness information that would improve the effectiveness of the rating system. For the present, however, the FHWA is proposing to continue using the current SFRM included in appendix B to part 385 until it is ready to propose the elements of a revised process.

The American Trucking Associations (ATA) and Truckers United for Safety had challenged the decision in the 1997 final rule to use an amended version of the FHWA's SFRM that the agency uses to make safety fitness determinations. That challenge was rejected by the U.S. Court of Appeals for the District of Columbia Circuit in *American Trucking Associations, Inc.* v. *United States Department of Transportation,* 166 F. 3d 374 (D.C. Cir. 1999).

The FHWA is continuing its efforts to increase the level of reliable safety data and other information needed to create a more performance-based means of determining a motor carrier's safety fitness. The FHWA conducted a demonstration project, the Commercial Vehicle Information System (CVIS), recently renamed the Performance and Registration Information System Management (PRISM) Program. It also produced a new safety risk assessment model, the Motor Carrier Safety Status Measuring System (SAFESTAT). Both of these were described in the ANPRM of July 20, 1998. The FHWA plans to expand PRISM to as many as five new States this year. However, today's proposed rulemaking action does not reach these issues.

Terms: "Motor Carrier" and "Owner or Operator"

Prior to the 1998 TEA–21 amendment, 49 U.S.C. 31144 applied to ''owners and operators of commercial motor vehicles, including persons seeking new or additional operating authority as motor carriers.'' As amended, the section now refers to these entities as ''owner[s] or operator[s]'' of commercial motor vehicles, but not ''motor carriers.'' Although no explanation is provided in the committee reports, the FHWA believes this was done to cure an anomaly. Section 31144 was the only section in 49 U.S.C. chapter 311 which used the term ''motor carrier;'' it was not included in the definitions in section 31132. The Motor Carrier Safety Act of 1984, from which chapter 311 was derived, used the jurisdictional term ''commercial motor vehicle.'' ''Motor carrier'' and ''motor private carrier'' were defined separately in those provisions of title 49 of the United States Code administered by the Interstate Commerce Commission; the definitions are now codified at 49 U.S.C. 13102. The FMCSRs have long treated owners and operators of CMVs as ''motor carriers'' (see 49 CFR 390.5). The regulatory text of 49 CFR part 385 would continue to use the term ''motor carrier'' as equivalent to ''owners and operators'' specified by amended section 31144.

Effect of Rating

Since 1991, motor carriers receiving an unsatisfactory safety rating from the FHWA have been prohibited from using CMVs to transport more than 15 passengers, including the driver, or placardable quantities of HM, in interstate commerce. Furthermore, those motor carriers could not be used by Federal agencies. These prohibitions and the procedures for applying them are contained in 49 CFR 385.13, which implemented section 15(b) of the Motor Carrier Safety Act of 1990. The TEA–21 provision expands the same prohibition, under virtually identical conditions, to all other motor carriers, irrespective of their cargo, which are found by the FHWA to be unfit. These owners and operators may not operate CMVs in interstate commerce beginning on the 61st day after such fitness determination.

Despite the change in the language, nothing in the amending provision would indicate any intention on the part of Congress to require the FHWA to change the effect of an unsatisfactory rating applied to a motor carrier of passengers or placardable HM. Although it extends the prohibitions to all other motor carriers, section 4009 does not require that another standard be applied. Consequently, the FHWA is proposing to require all other motor carriers with a proposed unsatisfactory safety rating to cease operations when that rating becomes final. As is already the case with passenger and HM carriers, these other motor carriers would be given an appropriate period of time within which to improve that proposed rating.

Proposed Ratings; Effective Date of Final Rating

One of the changes to 49 CFR part 385 made in the November 6, 1997, final rule was the adoption of a ''proposed'' safety rating. A motor carrier is informed of its proposed rating at the end of a compliance review. If the proposed rating is unsatisfactory, it becomes the final rating 45 days later (if improvements are not forthcoming), and the carrier must halt its transportation of passengers or HM on the 46th day. The 45-day period after the proposed safety rating is announced provides the motor carrier with an opportunity to assess its operations and request the FHWA to reconsider the rating either because (1) it believes the FHWA proposed an erroneous rating, or (2) the motor carrier has taken corrective actions so that its operations meet the safety standards and factors specified in § 385.9 of the FMCSRs.

The FHWA adopted ''proposed'' ratings in 1997, and is retaining them in this NPRM, in the interest of basic fairness to motor carriers. Section 15(b) of the MCSA of 1990 and section 4009 of TEA–21 both require carriers to cease interstate operations 45 or 60 days after receiving an unsatisfactory rating or a determination of unfitness. A final rating is public information which must be released under the Freedom of Information Act (FOIA), Public Law 89–487, 80 Stat. 250, as amended; in fact, the FHWA posts final ratings on its Safety and Fitness Electronic Records System (SAFER) web site [*http://www.safersys.org*] and makes them available through telephone inquiries to (800) 832–5660. An unsatisfactory rating can have an almost immediate impact on business once it becomes public, yet both the MCSA and TEA–21 provide carriers a substantial grace period after an unsatisfactory rating. In other words, the FOIA may defeat one of the essential elements of the 1990 and 1998 amendments by subjecting carriers to a serious, and potentially fatal, loss of business before they have had a chance to improve their safety posture. The FHWA believes the purposes of these statutes can best be reconciled by issuing ''proposed'' unsatisfactory and conditional safety ratings which are not releasable under the FOIA because they do not yet constitute the agency's final decision. The FHWA requests comment, however, on what harm would ensue if the ''proposed'' unsatisfactory rating became public before a final unsatisfactory rating were to be issued.

Under the rules proposed today, a motor carrier warned by the FHWA that its proposed rating is unsatisfactory would have an opportunity in the next 45 or 60 days to demonstrate its renewed commitment to safety and regulatory compliance, or to argue that the FHWA made a mistake in assigning that rating. A number of motor carriers have successfully used the 45-day grace period to improve their ratings since the 1997 rule went into effect. But if no such improvements are forthcoming, the carrier would be required to halt its CMV operations in interstate commerce the day after an unsatisfactory rating becomes final (i.e., on the 46th or 61st day after the carrier was notified of the proposed safety rating). The agency would then post the final rating to the SAFER web site and make it available by telephone. Although this procedure requires carriers to shut down one day, rather than 46 or 61 days, after the final rating of unsatisfactory, the FHWA believes the ''proposed'' safety rating followed by a 45- or 60-day grace period

achieves the same purpose as, and is entirely consistent with, section 4009.

Subsection (c) of 49 U.S.C. 31144 also provides discretionary power to the FHWA to allow unsatisfactory motor carriers that do not transport passengers or HM to operate for an additional 60 days, if the agency determines the motor carrier is making a good faith effort to improve its safety fitness. As noted above, the FHWA would not make a final determination of unfitness in its initial notification—the final determination would occur at the end of the 45- or 60-day period. Reiterating its commitment to highway safety, and responding to another comment by the DOT OIG, the FHWA intends to continue to provide careful, timely, and effective safety oversight of changes made by these motor carriers as they attempt to improve their safety ratings within the first 60-day period, and, if needed, during the second 60-day period.

Section 31144(d) specifies the time limits for the FHWA to review motor carriers' compliance with regulatory provisions that contributed to the fitness determination. For motor carriers of passengers or HM, the review must be performed within 30 days of the carrier's request. For all other motor carriers, the FHWA must perform the review within 45 days of the carrier's request.

In the preamble to the August 16, 1991, interim final rule that implemented the provisions of the MCSA of 1990 (56 FR 40801, at 40802), the FHWA said it would ''make its determination expeditiously because the 'unsatisfactory' safety rating may well affect a motor carrier's ability to continue in business. In the event the FHWA is unable to make its determination within the 45-day period, the agency may conditionally suspend any 'unsatisfactory' safety rating and rescind any related administrative order for a period of up to 10 additional calendar days.'' The current regulation, at 49 CFR 385.17(d), continues to allow for this additional time: ''If the motor carrier has submitted evidence that corrective actions have been taken pursuant to this section and a final determination cannot be made within the 45-day period, the period before the proposed safety rating becomes effective may be extended for up to 10 days at the discretion of the Regional Director.'' The NPRM retains this provision (as § 385.17(f)) because there may be circumstances under which competing demands for FHWA staff time would make it impossible to complete a review within the time limit specified by the statute. The agency does not expect that to happen frequently, but it does not wish to penalize motor carriers for delays not of their own making. The extension would be allowed at the discretion of the Enforcement Program Manager in the FHWA Resource Center for the appropriate geographic area—the agency no longer has Regional offices. The list of Resource Centers would appear under § 390.27.

Other Rating Issues

The FHWA does not currently issue safety ratings to two categories of motor carriers of passengers: (1) Non-business private motor carriers of passengers, such as churches or social groups, and (2) owners and operators of vehicles designed to transport fewer than 16 passengers, including the driver, for compensation. As to the first category, the FHWA does not believe that Congress intended the agency to include this group, because the occasional nature of the transportation these motor carriers provide does not readily lend itself to safety fitness evaluation. These motor carriers are not required to maintain most of the records otherwise mandated by the FMCSRs. However, they are still subject to many of the substantive regulations and to safety enforcement at roadside. The FHWA would continue its practice of not issuing a safety rating to this type of motor carrier.

The second category of passenger motor carrier is comprised mainly of limousine and van owners and operators. These entities are currently required to obtain operating authority from the FHWA, but are not subject to most provisions of the FMCSRs because their vehicles do not qualify as ''commercial motor vehicles'' under 49 CFR 390.5. However, section 4008 of TEA–21 changed part of the statutory definition of ''commercial motor vehicle'' to include those designed or used to transport ''more than 8 passengers (including the driver) for compensation'' (49 U.S.C. 31132(1)(B)). Motor carriers operating such vehicles would require safety fitness determinations. Most of the FMCSRs (except parts 382, 383, 387, and a few other requirements) became applicable to these smaller passenger vehicles on June 9, 1999. The FHWA is considering exempting for six months the operation of these small passenger-carrying vehicles from all of the FMCSRs, to allow time for the completion of a rulemaking on that issue.

Motor Carriers With Less Than Satisfactory Safety Ratings

In its April 26, 1999 audit of the FHWA's motor carrier safety program, the OIG recommended that the FHWA perform follow-up visits and monitoring of those motor carriers with a lower than satisfactory safety rating. The OIG recommended that these visits and monitoring take place at varying intervals to ensure that safety improvements are sustained, or if safety has deteriorated, that appropriate sanctions are invoked. The FHWA has made a practice of monitoring the safety performance of motor carriers under its regulatory jurisdiction, and to place special compliance program emphasis upon those with performance outcomes (such as accident rates and vehicles and drivers out-of-service rates that exceed thresholds set according to the type and volume of the operation) that indicate a potential safety problem. The agency will continue to devote its resources to improve highway safety, and will continue to work with its State partners toward this goal.

Docket Comments Concerning Section 4009

A few commenters to the July 20, 1998, ANPRM concerning safety fitness procedures addressed issues related to section 4009 of TEA–21. We summarize their comments here.

The Oregon Department of Transportation, Motor Carrier Transportation Branch (Oregon), stated that motor carriers that pose an imminent danger to the public or themselves should be prohibited from operating. Oregon believes that 49 CFR 385.13 adequately addresses unfit motor carriers of HM and passengers, and that the prohibition that section 4009 would impose on other motor carriers should be implemented by including additional performance-based data in the rating methodology. That data might include driver citations, driver out-of-service violations, and vehicle size and weight violations.

FHWA response. The FHWA will continue to use the authority in 49 U.S.C. 521(b)(5)(A) to deal with imminent hazards. (The implementing regulation is codified at 49 CFR 386.72, and is not included in today's rulemaking activity.) That authority is limited, however, to extreme cases. The FHWA agrees that performance-based information, where available, would be valuable in making safety fitness determinations. We will address this issue in future rulemaking.

The Transportation Lawyers Association's Committee on Federal Agency Practice criticized what it considered the FHWA's ''repetitive rulemakings on the same issue without new rules being developed.'' It also highlighted concerns with due process

because safety ratings entail severe economic ''punishment'' and the data upon which ratings are based are allegedly so erroneous as to be meaningless.

FHWA response. The FHWA described in detail its rulemaking actions, and their background, in the July 20, 1998, ANPRM (63 FR 38788). The safety rating process incorporates due-process protections in §§ 385.15 and 385.17. The agency believes these have proven to be adequate. Finally, the FHWA is continually updating records and improving the quality and effectiveness of the information in its Motor Carrier Management Information System (MCMIS) database. The agency continues to receive more timely and better quality data from its field staff and its State partners.

The FHWA is continuing to assess its methods for assigning safety ratings to motor carriers. The agency recognizes that the consequences of an *unsatisfactory* safety rating are extremely serious for motor carriers that cannot or will not improve their commitment to safety. We acknowledge the need to exercise great care in reviewing information that could result in an *unsatisfactory* rating, but the statutory mandate is clear.

The American Trucking Associations (ATA) stated that it supported Section 4009 of TEA–21, but went on to say:

> We take issue, however, with how the agency has characterized the Congressional mandate. In the subject notice, the agency states that the prohibition on transportation should apply to carriers with unsatisfactory ratings. In fact, the Act did not use the term ''unsatisfactory rating'' but instead deliberately used the term ''not fit to operate.'' * * * The industry believes this distinction is an important one. As stated earlier, unsatisfactory compliance does not always result in unsafe performance. In fact, some carriers who have received unsatisfactory safety ratings under the current system have acceptable accident rates. Instead, the term ''not fit to operate'' should be reserved for carriers whose performance is so poor that to allow them to continue to operate would be a certain and substantial threat to highway safety. Specifically, carriers with high accident rates who have failed to act on the opportunity to improve should be placed in this category.

FHWA response. As discussed above, the FHWA believes this proposed rule is consistent with the statutory mandate. Congress used the term ''unsatisfactory'' in the 1990 MCSA, and gave no indication that it intended to require a different result in TEA–21. Even the 45-day grace period for passenger and HM carriers was retained. Therefore, the change in wording, from ''unsatisfactory'' in section 5113 to ''not fit'' in section 31144, does not support the interpretation urged on the agency by the ATA.

The National Tank Truck Carriers, Inc. (NTTC) believes the safety rating system's fundamental purpose is to provide an alert to the public, including shippers, of the shortcomings of unsafe motor carriers. The NTTC also believes the enforcement community should give priority attention to unsafe motor carriers: the more the rating system ''singles out'' the unsafe carrier, the more responsive it will be to congressional intent.

Advocates for Highway and Auto Safety criticized what it considers the FHWA's inadequate stewardship of motor carrier safety, but did not offer any comment on the contents of section 4009.

FHWA response. In TEA–21, Congress provided the agency with specific direction to prohibit all unfit motor carriers—not only passenger and HM carriers—from operating in interstate commerce. As indicated above, there is nothing in the statute or legislative history of this provision which suggests that Congress intended to require the FHWA to adopt a standard for evaluating ''fitness'' that differs from the current safety rating system in Part 385.

The Department of California Highway Patrol (CHP) expressed a concern with the 45-day period between a motor carrier's receipt of the FHWA's proposed safety rating and the time the rating becomes final. The CHP believes that allowing a motor carrier to continue to operate would appear to defeat the purpose of the ratings, and also that a motor carrier's corrective action taken during the 45-day period could cause the FHWA's intended rating downgrade to become moot.

FHWA response. The CHP appears to be concerned about the regulatory grace period that the FHWA addressed in the November 6, 1997, final rule (62 FR 60035, at 60039). The Motor Carrier Safety Act of 1990 specified a 45 day period before an unsatisfactory motor carrier was required to cease passenger or HM operations. Section 4009 of TEA–21 also requires this time period. The previous regulations, as well as those proposed today, are consistent with the purpose of the statutes. As explained above, the FHWA believes motor carriers should not be penalized by having their proposed unsatisfactory ratings released during the time period they are given to improve their proposed ratings.

Consolidated Safety Services, Inc. (CSS), a safety services provider, expressed some reservation about the practical effects of the statute's prohibitions. The CSS described its work for two Federal agency clients, the Military Traffic Management Command (MTMC) and the U.S. Postal Service (USPS). According to CSS, the MTMC requires motor carriers to have a DOT satisfactory safety rating in order to be considered for a contract to provide passenger transportation. The USPS, on the other hand, refuses to allow unsatisfactory-rated motor carriers to transport mail, but motor carriers rated conditional, as well as unrated carriers, are eligible. Because of the FHWA's inability (due to resource constraints) to rate all the motor carriers the USPS had requested to be rated, CSS developed a ''DOT Equivalency Inspection Program'' for the USPS. With the support of the National Star Route Mail Contractors Association, CSS inspected over 100 mail carriers and advised the USPS that ''over 80 percent of those contracted postal carriers inspected could not meet the FHWA's minimums.'' According to CSS, the USPS reverted to its original position, excluding only those motor carriers specifically required by statute to be excluded (i.e., those with unsatisfactory ratings from the FHWA).

FHWA response. The USPS did not provide comments to this docket, and since CSS did not describe the criteria it used to assess the safety status of the USPS contract motor carriers, it is unclear whether the 80 percent that failed the CSS program would also be rated unsatisfactory under the FHWA's standards.

The Canadian Council of Motor Transport Administrators commented that the TEA–21 prohibition against an unfit motor carrier's transportation of any property would make the U.S. approach similar to that of Canada.

The Public Utilities Commission of Ohio (PUCO) expressed concern that the FHWA had not prepared cost-benefit analyses for the ANPRM because the FHWA had maintained that the issues raised in the ANPRM did not constitute ''significant regulatory action.'' The PUCO's comments reflected its concern about potentially extensive changes to the safety fitness program and the current and future role of States in conducting motor carrier safety compliance reviews.

FHWA response. The FHWA used the ANPRM to gather information as a prelude to a rulemaking. The ANPRM did not propose specific new or revised regulations, therefore the FHWA did not have the basis to perform detailed regulatory analyses at that time.

Federal Government Agency Use of Unsatisfactory Rated Motor Carriers

Since 1991, any department, agency, or instrumentality of the United States Government has been prohibited from using a passenger or HM motor carrier with an unsatisfactory safety rating. Section 4009 of TEA–21 extends this prohibition to cover all motor carriers found to be unfit. As written, the prohibition applies to the Federal agency and not to the motor carrier.

The FHWA would continue to advise a motor carrier of its proposed safety rating as soon as possible after the FHWA's compliance review, but not later than 30 days afterwards. At the end of the 45- or 60-day period (or longer, if extended), the proposed rating would become the motor carrier's final safety rating if the FHWA has no basis to change it. On the effective date of a final unsatisfactory safety rating, Federal government agencies will be precluded from using, or continuing to use, these motor carriers' transportation services.

Changes to FHWA Organizational Structure

The FHWA has recently undergone a significant reorganization of its field and headquarters offices. The nine FHWA Regions have been eliminated and four Resource Centers have been established that provide support to the FHWA Division offices located in each State.

In headquarters, many of the functions of the former Office of Safety and Technology and Office of Field Operations under the Associate Administrator for Motor Carriers have been combined into a new Office of Motor Carrier Enforcement. The decision regarding safety fitness has been elevated to the Program Manager for Motor Carrier and Highway Safety, the senior manager of this operating unit of the FHWA (the agency no longer uses the title Associate Administrator). We have revised the appropriate sections of part 385 and section 390.27 to reflect these changes in organizational structure and titles.

Rulemaking Analyses and Notices

The proposed changes to 49 CFR part 385 are a straightforward implementation of the amendments to 49 U.S.C. 31144 made by section 4009 of TEA–21. The regulatory changes, like the statutory amendments, simply expand a prohibition on interstate operations, which had previously applied only to HM and passenger carriers, to all other motor carriers. Section 15(b) of the MCSA of 1990 added to the FHWA's existing safety rating a mandate to require that passenger and HM carriers cease conducting those operations in interstate commerce 45 days after they received an unsatisfactory rating. Section 4009 of TEA–21 clearly authorizes the FHWA to take the same course in shutting down all other carriers 60 days after they receive an unsatisfactory rating. The agency is undertaking a separate rulemaking action (see RIN 2125–AE37) to explore means to improve its safety fitness determination process in relation to its overall safety compliance and enforcement program, as well as the application of those determinations within the truck and bus industries.

The proposed rule would only apply prospectively. Motor carriers which are currently rated unsatisfactory, which do not transport passengers or HM, would not be affected unless the FHWA issued an unsatisfactory safety rating in a follow-up compliance review conducted on or after the rule's effective date. For the non-passenger and non-HM motor carriers that receive a notice of a proposed unsatisfactory safety rating on or after the effective date of a final rule, the regulation would provide 60 days, with the possibility of an additional 60 days, to challenge the rating, or to demonstrate improvement in their safety practices.

The FHWA will carefully consider comments it receives to evaluate whether any changes to this proposal are required. Because U.S. Government agencies would be precluded from contracting with unfit motor carriers for non-HM freight transportation service, we are working informally with the federal agencies that utilize substantial amounts of contracted transportation (the United States Postal Service, the General Services Administration, and the Military Traffic Management Command) to advise them concerning this proposed rulemaking. The FHWA particularly invites motor carriers who provide this transportation to government agencies to comment on this proposed rulemaking.

All comments will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FHWA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this proposed regulatory action is significant within the meaning of Executive Order 12866 and under the regulatory policies and procedures of the DOT because of the substantial public interest in the provision of safe interstate motor freight and passenger transportation. This NPRM was reviewed by the Office of Management and Budget. This proposed rule would require any motor carrier in interstate commerce that the FHWA rates unsatisfactory to cease providing CMV transportation after a grace period of 45 days (for HM and passenger operations) or 60 days (for all other motor carriers). A motor carrier would be allowed to commence those operations again only if the FHWA determines its safety rating is no longer unsatisfactory. Although these requirements have been in place since 1991 for passenger and HM motor carriers, this is the first time they would be applied to other motor carriers.

Motor carriers of passengers and of placardable quantities of HM would not be subject to new sanctions for noncompliance as a result of this regulatory action. In fact, under the new regulations, the FHWA would have to respond to any requests for a follow-up review of an unsatisfactory safety rating within 30 days—the current regulations require this to be accomplished within 45 days. This revision is required by 49 U.S.C. 31144(d)(2) and (3).

As of December 31, 1998, the FHWA's MCMIS listed 477,486 motor carriers as active. Summary statistics of these motor carriers follow:

Motor carriers of passengers: 10,728 in MCMIS 3,242 rated (23 percent), 33 rated unsatisfactory (1 percent of rated passenger carriers, 0.24 percent of all passenger carriers).

Motor carriers of HM: 41,723 in MCMIS 23,447 rated (56 percent), 565 rated unsatisfactory (2.4 percent of rated HM carriers, 1.4 percent of all HM carriers).

Motor carriers of property, non-HM: 421,793 in MCMIS 102,517 rated (24 percent), 8,999 rated unsatisfactory (8.8 percent of rated carriers, 2 percent of all motor carriers of non-HM property).

The number of motor carriers with unsatisfactory safety ratings is a small fraction of all the rated motor carriers in MCMIS, and a minute fraction of the motor carriers of passengers and of HM. Although a larger number of motor carriers of non-HM freight in MCMIS

have unsatisfactory safety ratings, the FHWA believes this is the result of two factors. First, until this time, an unsatisfactory rating did not prohibit a non-HM-freight motor carrier from operating in interstate commerce. Second, many motor carriers in MCMIS may have ceased operating in interstate commerce or are no longer in business. Since there is no requirement for motor carriers to notify the FHWA of a change in status, they continue to be counted as ''active'' interstate motor carriers. The MCMIS contains a motor carrier's last rating of record, and, unless the motor carrier requested the FHWA to reassess its safety posture with a view toward revising the safety rating, this rating remains on file.

The following summary gives a recent history of follow-up compliance reviews (CRs) on motor carriers performed by the FHWA in fiscal year 1998. The columns represent the number of power units operated by the motor carrier.

TABLE 1.—FOLLOW UP COMPLIANCE REVIEWS, FISCAL YEAR 1998 (10/1/1997–09/30/1998)

	1–6	7–20	21–100	101–500	501–1000	1001+	Total	Percent
Property carriers:								
Start Unsat	113	101	53	5	0	0	272	100.0
End Sat	40	32	13	1	0	0	86	31.6
End Cond	33	33	19	2	0	0	87	32.0
End Unsat	19	22	15	1	0	0	57	21.0
End Not Rated	21	14	6	1	0	0	42	15.4
HM carriers:								
Start Unsat	22	59	51	17	1	1	151	100.0
End Sat	12	23	22	7	0	0	64	42.4
End Cond	7	26	23	8	1	1	66	43.7
End Unsat	1	10	6	2	0	0	19	12.6
End Not Rated	2	0	0	0	0	0	2	1.3
Pass. carriers:								
Start Unsat	19	12	3	0	2	0	36	100.0
End Sat	17	7	2	0	0	0	26	72.2
End Cond	2	5	1	0	1	0	9	25.0
End Unsat	0	0	0	0	1	0	1	2.8
End Not Rated	0	0	0	0	0	0	0	0.0

For example, in fiscal year 1998, 272 re-rated motor carriers of property (non-HM) had received an initial unsatisfactory safety rating. All but 57 of them received a conditional or satisfactory safety rating from the FHWA resulting from follow-up reviews performed during the year; the 42 motor carriers that ended the year in the ''not rated'' category were no longer operating in interstate commerce. Supplemental Item 1 of this docket contains summary statistics and detailed data from calendar years 1994–1998 for passenger, HM, and non-HM property motor carriers.

The FHWA anticipates that this rulemaking will have minimal economic impact on the interstate motor carrier industry. Based upon the statistics on follow-up compliance reviews conducted during calendar years 1994 through 1998, the FHWA expects that between 50 and 100 motor carriers might not improve an initial proposed unsatisfactory safety rating. These motor carriers would be required to cease their operations in interstate commerce until they could demonstrate to the FHWA that they had improved the safety of their operations. The vast majority of motor carriers with unsatisfactory safety ratings have been able to achieve improved ratings during follow-up CRs performed by the FHWA and its State partners. The very few motor carriers that did not achieve improved ratings represent the very few that have elected not to devote resources to safety and regulatory compliance, both of which should have been cornerstones of any responsible operation. However, the FHWA is unable to determine the precise impact this rulemaking would have on non-HM interstate motor carriers of property. As of late 1998, the FHWA has provided safety ratings to approximately 25 percent of those motor carriers identified in the MCMIS as active. The FHWA is interested in any information that will assist the agency in determining the economic impact of this proposed rule on this portion of the motor carrier industry and any additional impacts on its customers.

With respect to motor carriers of non-HM freight, a small number may be adversely affected by this regulatory action. A motor carrier of non-HM freight that receives a notice of a proposed unsatisfactory safety rating would be prohibited from providing transportation in interstate commerce starting 61 days from the date of that notice, unless the FHWA revises that rating as the result of (1) an administrative review or (2) a demonstration by the motor carrier that it has taken corrective action. If the FHWA determines a motor carrier is making a good faith effort to improve its safety posture, the agency could extend the initial 60-day period for up to 60 additional days.

Based upon its analysis of statistical information concerning motor carriers' improvement in their safety ratings, the FHWA believes that the vast majority of motor carriers interested in continuing their operations would be able to do so. The agency believes that any potential adverse economic impact to those relatively few motor carriers who are unwilling or unable to demonstrate an improvement in the safety of their operations within the 60 to 120 day period specified in TEA–21 is entirely consistent with the intent of the statute. The FHWA believes the traveling public would derive a safety benefit from the removal from the Nation's highways of CMVs operated in interstate commerce by those few motor carriers found to be unfit to operate them safely. In addition, shippers of non-HM freight would derive direct and indirect economic gains through the improved safety and corresponding efficiency of their commercial motor freight transportation.

This proposed rule would only affect the operations of the small number of motor carriers determined to be unfit to operate CMVs based on the frequency and severity of their safety violations, poor outcomes of roadside inspections, and accident experience. The number of motor carriers of non-HM freight that do

not improve their safety rating from unsatisfactory is expected to continue to be small—fewer than 100 motor carriers per year. The FHWA believes the number of motor carriers potentially subject to this level of impact is much smaller than the number of motor carriers that ceases operations as a result of normal economic fluctuations. This rulemaking reinforces the importance of complying with the safety regulations by putting into place a mechanism to force unfit motor carriers to improve their operational safety. There are no new costs associated with this rulemaking and the overall adverse economic effects would be minimal.

This rulemaking, if adopted, would allow the FHWA to require that those few motor carriers of non-HM freight that cannot or will not improve their safety performance above the level that produced an unsatisfactory safety rating, to cease their operations in interstate commerce. The FHWA believes that removing these motor carriers from the public highways will provide a very important, although unquantifiable, safety benefit. The agency believes these motor carriers pose a significant safety risk to the traveling public because of their demonstrated refusal, or inability, to comply with the FMCSRs. This proposed rule would provide the FHWA with an essential tool to take prompt and effective action against these motor carriers.

This rulemaking would not result in inconsistency or interference with another agency's actions or plans. It would, however, implement a specific congressional directive prohibiting Federal agencies from using any motor carrier with an unsatisfactory safety rating to provide ''any transportation service.'' Therefore, all Federal agencies that contract for motor carrier passenger or freight transportation in CMVs must review the safety ratings of new and prospective motor carrier contractors. The FHWA believes that the United States Postal Service, the General Services Administration, and the Military Traffic Management Command are the primary agencies affected; the FHWA is working with these agencies to solicit their views on this rulemaking action.

The FHWA believes that the rights and obligations of recipients of Federal grants will not be materially affected by this regulatory action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612) the FHWA has evaluated the effects of this proposed rulemaking on small entities. The motor carriers to be economically impacted by this rulemaking would be those who are rated unsatisfactory and fail to take appropriate actions to improve their rating. As of March, 1999, some 79 percent of the 483,385 active motor carriers in MCMIS were in the ''very small'' or ''small'' category (less than 21 power units). The FHWA's statistical information contained in MCMIS indicates that relatively few small motor carriers of passengers or HM have received unsatisfactory safety ratings since 1994, the earliest date for which information is readily available, and fewer still did not improve their safety ratings based upon the FHWA's follow-up compliance reviews.

The following tables show statistics for follow-up compliance reviews of motor carriers of property (non-HM) for calendar years 1994 through 1998.

TABLE 2.—MOTOR CARRIERS OF PROPERTY INITIALLY RATED UNSATISFACTORY, BY NUMBER OF DRIVERS

	1–4	5–19	20–49	50–99	100–299	300+	Total
CY 94	475	293	89	36	19	7	919
CY 95	196	204	109	35	15	2	561
CY 96	158	208	102	30	11	6	515
CY 97	94	168	54	16	9	0	341
CY 98	81	152	46	7	4	0	290

TABLE 3: MOTOR CARRIERS OF PROPERTY STARTING AND ENDING UNSATISFACTORY, BY NUMBER OF DRIVERS

	1–4	5–19	20–49	50–99	100–299	300+	Total
CY 94	37	41	17	5	3	0	103
CY 95	23	24	21	9	1	0	78
CY 96	17	37	14	3	1	0	72
CY 97	5	7	3	2	0	0	17
CY 98	15	28	9	3	1	0	56

Between 81 and 475 motor carriers of property that employed between 1 and 4 drivers began a calendar year with an unsatisfactory safety rating. By the end of the calendar year, all but between 5 and 37 had improved their safety rating. During that same period, between 152 and 293 motor carriers of property that employed between 5 and 19 drivers began the calendar year with an unsatisfactory safety rating. All but between 7 and 37 had improved their safety rating by the end of the year. As long as these motor carriers held (or were able to improve) their safety ratings to conditional or satisfactory, § 385.13 of this proposed rule would not have affected their ability to operate in interstate commerce. There is no reason to believe that this proposed regulatory action would increase those impacts.

Therefore, the FHWA certifies that this regulatory action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995 and Executive Order 12875 (Enhancing the Intergovernmental Partnership)

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C 1531 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this proposal under Executive Order 13045, ''Protection of Children from Environmental Health

Risks and Safety Risks.'' This proposed rule is not economically significant and does not concern an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule would implement a statutory mandate to prohibit interstate motor carrier operations found to be unsafe and therefore unfit. Motor carriers can avoid all of the implications of an unsatisfactory safety rating simply by complying with the FMCSRs. Furthermore, motor carriers with a proposed unsatisfactory safety rating would have at least 45 or 60 days, depending on the type of operation, to correct deficiencies identified by the FHWA before halting operations in interstate commerce. Finally, even if a motor carrier were to suspend its operations, it can resume operations by correcting its deficiencies, coming into compliance with the FMCSRs, and demonstrating these improvements to the FHWA. The FHWA therefore certifies that this rule has no takings implications under the Fifth Amendment or Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The FHWA has determined this proposed rule does not have sufficient federalism impacts to warrant the preparation of a Federalism Assessment.

These proposed changes to the FMCSRs would not directly preempt any State law or regulation. They would not impose additional costs or burdens on the States. Although section 4009 of TEA–21 requires the FHWA to revise part 385 of the FMCSRs, States are not required to adopt part 385 as a condition for receiving Motor Carrier Safety Assistance Program (MCSAP) grants. Also, this action would not have a significant effect on the States' ability to execute traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This proposed action would not involve an information collection that is subject to the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this proposal for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have an adverse effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: August 6, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, Chapter III, parts 385 and 390 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. Revise the authority citation for part 385 to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 31136, 31144, and 31502; and 49 CFR 1.48.

2. Revise § 385.1 to read as follows:

§ 385.1 Purpose and scope.

(a) This part establishes the FHWA's procedures to determine the safety fitness of motor carriers, to assign safety ratings, to direct motor carriers to take remedial action when required, and to prohibit motor carriers receiving a safety rating of ''unsatisfactory'' from operating a CMV.

(b) The provisions of this part apply to all motor carriers subject to the requirements of this subchapter, except non-business private motor carriers of passengers and motor carriers conducting for-hire operations of passenger CMVs with a capacity of 8–15 persons, including the driver.

3. Revise § 385.11 to read as follows:

§ 385.11 Notification of safety fitness determination.

(a) The FHWA will provide a motor carrier written notice of any rating resulting from a safety fitness review as soon as practicable, but not later than 30 days after the review. The notice will take the form of a letter issued from the FHWA's headquarters office and will include a list of FMCSR and HMR compliance deficiencies which the motor carrier must correct.

(b) If the safety rating is ''satisfactory'' or improves a previous ''unsatisfactory'' safety rating, it is final and becomes effective on the date of the notice.

(c) In all other cases, a notice of a proposed safety rating will be issued. It becomes the final safety rating after the following time periods:

(1) For motor carriers transporting hazardous materials in quantities requiring placarding or transporting passengers by CMV—45 days after the date of the notice.

(2) For all other motor carriers operating CMVs—60 days after the date of the notice.

(d) A proposed safety rating of ''unsatisfactory'' is a notice to the motor carrier that the FHWA has made a preliminary determination that the motor carrier is ''unfit'' to continue operating in interstate commerce, and that the prohibitions in § 385.13 will be imposed after 45 or 60 days if necessary safety improvements are not made.

(e) A motor carrier may request the FHWA to perform an administrative review of a proposed or final safety rating. The process and the time limits are described in § 385.15.

(f) A motor carrier may request a change to a proposed or final safety rating based upon its corrective actions. The process and the time limits are described in § 385.17.

4. Revise § 385.13 to read as follows:

§ 385.13 Unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts.

(a) A motor carrier rated ''unsatisfactory'' is prohibited from operating a CMV. Information on motor carriers, including their most current safety rating, is available from the FHWA on the internet at http://www.safersys.org, or by telephone, (800) 832–5660.

(1) Motor carriers transporting hazardous materials in quantities

requiring placarding, and motor carriers transporting passengers in a CMV, are prohibited from operating a CMV beginning on the 46th day after receiving the FHWA's notice of proposed ''unsatisfactory'' rating.

(2) All other motor carriers rated after [date 30 days after the date of publication of the final regulations in the **Federal Register**] are prohibited from operating a CMV beginning on the 61st day after the motor carrier receives the FHWA's notice of proposed ''unsatisfactory'' rating. If the FHWA determines the motor carrier is making a good-faith effort to improve its safety fitness, the FHWA may allow the motor carrier to operate for up to 60 additional days.

(b) A Federal agency must not use a motor carrier that holds a ''unsatisfactory'' rating to transport passengers or to transport hazardous materials in quantities requiring placarding in a CMV.

(c) A Federal agency must not use a motor carrier for other CMV transportation if that carrier holds an ''unsatisfactory'' rating which became effective on or after [date 30 days after the date of publication of the final regulations in the **Federal Register**].

5. Revise § 385.15 to read as follows:

§ 385.15 Administrative review.

(a) A motor carrier may request the FHWA to conduct an administrative review if it believes the FHWA has committed an error in assigning its proposed or final safety rating.

(b) The motor carrier's request must explain the error it believes the FHWA committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documents that support its argument.

(c) The motor carrier must submit its request in writing to the FHWA, Program Manager, Office of Motor Carrier and Highway Safety, 400 Seventh Street, SW., Washington DC 20590.

(1) If a motor carrier has received a notice of a proposed ''unsatisfactory'' rating, it should submit its request within 15 days from the date of the notice.

(2) A motor carrier must make a request for an administrative review within 90 days of the date of the proposed or final safety rating issued by the FHWA under the provisions of § 385.11, or within 90 days after denial of a request for a change in rating under § 385.17(i).

(d) The FHWA may ask the motor carrier to submit additional data and attend a conference to discuss the safety rating. If the motor carrier does not provide the information requested, or does not attend the conference, the FHWA may dismiss its request for review.

(e) The FHWA will notify the motor carrier in writing of its decision following the administrative review. The FHWA will complete its review:

(1) Within 30 days after receiving a request from a hazardous materials or passenger motor carrier that has received a proposed or final ''unsatisfactory'' safety rating.

(2) Within 45 days after receiving a request from any other motor carrier that has received a proposed or final ''unsatisfactory'' safety rating.

(f) The decision constitutes final agency action.

(g) Any motor carrier may request improvement in the safety rating under the provisions of § 385.17.

6. Revise § 385.17 to read as follows:

§ 385.17 Change to safety rating based upon corrective actions.

(a) A motor carrier that has taken action to correct the deficiencies that resulted in a proposed or final rating of ''conditional'' or ''unsatisfactory'' may request a rating change at any time.

(b) A motor carrier must make this request in writing to the FHWA Resource Center for the geographic area where the carrier maintains its principal place of business. The addresses and geographical boundaries of the Resource Centers are listed in § 390.27.

(c) The motor carrier must base its request upon evidence that it has taken corrective actions and that its operations currently meet the safety standards and factors specified in §§ 385.5 and 385.7. The request must include a written description of corrective actions taken, and other documentation the carrier wishes the FHWA to consider.

(d) The FHWA will make a final determination on the request for change based upon the documentation the motor carrier submits, and any additional relevant information.

(e) The FHWA will perform reviews of requests made by motor carriers with a proposed or final ''unsatisfactory'' safety rating in the following time periods after the motor carrier's request:

(1) Within 30 days for motor carriers transporting passengers in CMVs or placardable quantities of hazardous materials.

(2) Within 45 days for all other motor carriers.

(f) The filing of a request for change to a proposed or final safety rating under this section does not stay the 45-day period specified in § 385.13(a)(1) for motor carriers transporting passengers or hazardous materials. If the motor carrier has submitted evidence that corrective actions have been taken pursuant to this section and the FHWA cannot make a final determination within the 45-day period, the period before the proposed safety rating becomes effective may be extended for up to 10 days at the discretion of the FHWA.

(g) The FHWA may allow a motor carrier with a proposed rating of ''unsatisfactory'' (except those transporting passengers in CMVs or placardable quantities of hazardous materials) to continue to operate in interstate commerce for up to 60 days beyond the 60 days specified in the proposed rating, if the FHWA determines that the motor carrier is making a good faith effort to improve its safety status. This additional period would begin the 61st day after the date of the proposed ''unsatisfactory'' rating.

(h) If the FHWA determines that the motor carrier has taken the corrective actions required and that its operations currently meet the safety standard and factors specified in §§ 385.5 and 385.7, the agency will notify the motor carrier in writing of its upgraded safety rating.

(i) If the FHWA determines that the motor carrier has not taken all the corrective actions required, or that its operations still fail to meet the safety standards and factors specified in §§ 385.5 and 385.7, the agency will notify the motor carrier in writing.

(j) Any motor carrier whose request for change is denied in accordance with paragraph (i) of this section may request administrative review under the procedures of § 385.15. The motor carrier must make the request within 45 days of the denial of the request for rating change. If the proposed rating has become final, it shall remain in effect during the period of any administrative review.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

7. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, 31504; sec. 204 of Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); and 49 CFR 1.48.

8. Revise § 390.27 to read as follows:

§ 390.27 Locations of motor carrier and highway safety resource centers.

The following table sets forth the locations and territories for the four resource centers that are established to provide support to the FHWA division offices located in each State:

Resource center	Territory included	Location of office
Eastern	CT, DC, DE, MA, MD, ME, NJ, NH, NY, PA, PR, RI, VA, VT, WV.	City Crescent Building, #10 South Howard Street, Suite 4000, Baltimore, MD 21201–2819.
Midwestern	IA, IL, IN, KS, MI, MO, MN, NE, OH, WI	19900 Governors Drive, Suite 210, Olympia Fields, IL 60461–1021.
Southern	AL, AR, FL, GA, KY, LA, MS, NC, NM, OK, SC, TN, TX	61 Forsyth Street, SW, Suite 17T75, Atlanta, GA 30303–3104.
Western	American Samoa, AK, AZ, CA, CO, Guam, HI, ID, Mariana Islands, MT, ND, NV, OR, SD, UT, WA, WY.	201 Mission Street, San Francisco, CA 94105.

[FR Doc. 99–20905 Filed 8–13–99; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF68

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Carex lutea (Golden Sedge)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to determine endangered status for *Carex lutea* (golden sedge) under the authority of the Endangered Species Act of 1973, as amended (Act). This rare plant is presently known from only eight populations in Pender and Onslow counties, North Carolina. *C. lutea* is endangered throughout its range because of habitat alteration; conversion of its limited habitat for residential, commercial, or industrial development; mining; drainage activities associated with silviculture and agriculture; and suppression of fire. In addition, herbicide use, particularly along utility or road rights-of-way, may also be a threat. This proposal, if made final, will extend the protection of the Act to *C. lutea*. We are seeking data and comments from the public.

DATES: Send your comments to reach us on or before October 15, 1999. We will not consider comments received after the above date in making our decision on the proposed rule. We must receive public hearing requests by September 30, 1999.

ADDRESSES: Send comments, materials, and requests for a public hearing concerning this proposal to the State Supervisor, Asheville Field Office, US Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora A. Murdock at the above address (828/258–3939, extension 231).

SUPPLEMENTARY INFORMATION:

Background

Carex lutea (LeBlond) is a perennial member of the sedge family (Cyperaceae) known only from North Carolina. Fertile culms (stem) may reach one meter (3 feet) or more in height. The yellowish green leaves are grasslike, with those of the culm mostly basal and up to 28 centimeters (cm) (10 inches (in)) long, while those of the vegetative shoots reach a length of 65 cm (25 in). Fertile culms produce two to four flowering spikes (multiple flowering structure with flowers attached to the stem), with the terminal (end) spike being male and the one to three (usually two) lateral spikes being female. Lateral spikes are subtended by leaflike bracts (a much-reduced leaf). The male spike is about 2 to 4 cm (0.75 to 1.5 in) long, 1.5 to 2.5 millimeters (mm) (0.05 to 0.10 in) wide, with a peduncle (stalk) about 1 to 6 cm (0.5 to 2 in) long. Female spikes are round to elliptic, about 1 to 1.5 cm (0.5 in) long and 1 cm (0.5 in) wide. The upper female spike is sessile (not stalked; sitting), while lower female spikes, if present, have peduncles typically 0.5 to 4.5 cm (0.2 to 1.75 in) long. When two to three female spikes are present, each is separated from the next, along the culm, by 4.5 to 18 cm (1.75 to 7 in). The inflated perigynia (sac which encloses the ovary) are bright yellow at flowering and about 4 to 5 mm (.16 to .20 in) long; the perigynia beaks (point) are out-curved and spreading, with the lowermost in a spike strongly reflexed (turned downward). *C. lutea* is most readily identified from mid-April to mid-June during flowering and fruiting. It is distinguished from other *Carex* species that occur in the same habitat by its bright yellow color (particularly the pistillate (female) spikes), by its height and slenderness, and especially by the out-curved beaks of the crowded perigynia, the lowermost of which are reflexed (LeBlond *et al.* 1994).

LeBlond *et al.*, in 1994 described *Carex lutea* from specimens collected in 1992 by R. J. LeBlond, B. A. Sorrie, A. A. Reznicek, and S. A. Reznicek in Pender County, North Carolina. It is the only member of the *Carex* section *Ceratocystis* found in the southeastern United States.

Carex lutea grows in sandy soils overlying coquina limestone deposits, where the soil pH is unusually high for this region, typically between 5.5 and 7.2 (Glover 1994). Soils supporting the species are very wet to periodically shallowly inundated. The species prefers the ecotone (narrow transition zone between two diverse ecological communities) between the pine savanna and adjacent wet hardwood or hardwood/conifer forest (LeBlond 1996; Schafale and Weakley 1990). Most plants occur in the partially shaded savanna/swamp where occasional to frequent fires favor an herbaceous ground layer and suppress shrub dominance. Other species with which this sedge grows include tulip poplar (*Liriodendron tulipifera*), pond cypress (*Taxodium ascendens*), red maple (*Acer rubrum* var. *trilobum*), wax myrtle (*Myrica cerifera* var. *cerifera*), colic root (*Aletris farinosa*), and several species of beakrush (*Rhynchospora* spp.). At most sites, *C. lutea* shares its habitat with Cooley's meadowrue (*Thalictrum cooleyi*), federally listed as endangered, and with Thorne's beakrush (*Rhynchospora thornei*), a species of concern to us. All known populations are in the northeast Cape Fear River watershed in Pender and Onslow counties, North Carolina. As stated by LeBlond (1996):

> . . . localities where *Carex lutea* have been found are ecologically highly unusual . . . The combination of fairly open conditions underlain by a calcareous substrate is very rare on the Atlantic coastal plain. Many rare plant species are associated with these localities, and several have very restricted distributions, either being endemic to a small area or with a few highly scattered occurrences. The affinities of these taxa are variable, but include connections to the calcareous savannas of the Gulf Coast States; alkaline marshes of the Atlantic tidewater; calcareous glades, barrens, and prairies of the Appalachian region and the ridge and valley