

**Subpart D—Consequences of State Noncompliance**

**§384.401 Withholding of funds based on noncompliance.**

(a) *Following first year of noncompliance.* An amount equal to five percent of the funds required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(5) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's first year of noncompliance under this part.

(b) *Following second and subsequent year(s) of noncompliance.* An amount equal to ten percent of the funds required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(5) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's second or subsequent year of noncompliance under this part.

**§384.403 Period of availability; effect of compliance and noncompliance.**

(a) *Period of availability—(1) Funds withheld on or before September 30, 1995.* Any funds withheld under this subpart from apportionment to any State on or before September 30, 1995, shall remain available for apportionment to such State as follows:

(i) If such funds would have been apportioned under 23 U.S.C. 104(b)(5)(B) but for the provisions of this subpart, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under 23 U.S.C. 104(b)(1) or 104(b)(3) but for the provisions of this subpart, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(2) *Funds withheld after September 30, 1995.* No funds withheld under this subpart from apportionment to any State after September 30, 1995, shall be available for apportionment to such State.

(b) *Apportionment of withheld funds after compliance.* If, before September 10 of the last fiscal year for which funds withheld under this subpart from ap-

portionment are to remain available for apportionment to a State under paragraph (a) of this section, the State makes the certification called for in §384.305 and a determination is made that the State has met the standards of subpart B of this part for a period of 365 days and continues to meet such standards, the withheld funds remaining available for apportionment to such State shall be apportioned to the State on the day following the last day of such fiscal year.

(c) *Period of availability of subsequently apportioned funds.* Any funds apportioned pursuant to paragraph (b) of this section shall remain available for expenditure until the end of the third fiscal year succeeding the fiscal year in which such funds are apportioned. Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

(d) *Effect of noncompliance.* If, at the end of the period for which funds withheld under this subpart from apportionment are available for apportionment under paragraph (a) of this section, the State has not met the standards of subpart B of this part for a 365-day period, such funds shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

**PART 385—SAFETY FITNESS PROCEDURES**

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## Federal Highway Administration, DOT

## § 385.3

APPENDIX TO PART 385—FORM MCS-150,  
MOTOR CARRIER IDENTIFICATION REPORT

AUTHORITY: 49 U.S.C. 104, 504, 521(b)(5)(A),  
5113, 31136, 31144, 31502; and 49 CFR 1.48.

SOURCE: 53 FR 50968, Dec. 19, 1988, unless  
otherwise noted.

### § 385.1 Purpose and scope.

(a) This part establishes procedures to determine the safety fitness of motor carriers, to assign safety ratings, to take remedial action when required, and to prohibit motor carriers receiving a safety rating of "unsatisfactory" from operating a commercial motor vehicle:

(1) To provide transportation of hazardous materials for which vehicle placarding is required in accordance with part 172, subpart F of this title; or

(2) To transport more than 15 passengers, including the driver.

(b) The provisions of this part apply to all motor carriers subject to the requirements of this subchapter.

[56 FR 40805, Aug. 16, 1991]

### § 385.3 Definitions.

*Applicable safety regulations or requirements* means 49 CFR subtitle B, chapter III, Subchapter B—Federal Motor Carrier Safety Regulations; and 49 CFR subtitle B, chapter I, Subchapter C—Hazardous Materials Regulations.

*Commercial motor vehicle* shall have the same meaning as described in § 390.5 of this subchapter.

*Preventable accident* on the part of a motor carrier means an accident (1) that involved a commercial motor vehicle, and (2) that could have been averted but for an act, or failure to act, by the motor carrier or the driver.

*Reviews*. For the purposes of this part:

(1) *Compliance review* means an on-site examination of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial drivers license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regula-

tions by motor carriers, or to investigate complaints or other evidence of safety violations. The compliance review may result in the initiation of an enforcement action.

(2) *Safety review* means an on-site assessment to determine if a motor carrier has adequate safety management controls in place and functioning to meet the safety fitness standard. The safety review includes an inspection of selected motor carrier records and operations. It is used to gather information for assigning ratings to unrated carriers. The safety review is not ordinarily employed to gather evidence in support of enforcement actions, but will if certain serious violations are discovered (e.g., absence of proof of financial responsibility; document falsification).

(3) *Safety management controls* means the systems, policies programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations which ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage.

*Safety ratings*: (1) *Satisfactory safety rating* means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in § 385.5. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

(2) *Conditional safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in the occurrences listed in § 385.5 (a) through (h).

(3) *Unsatisfactory safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in § 385.5 (a) through (h). Motor carriers receiving an "unsatisfactory safety rating" may be subject to the provisions of § 385.13.

## § 385.5

(4) *Unrated carrier* means that a safety rating has not been assigned to the motor carrier by the FHWA.

[53 FR 50968, Dec. 19, 1988, as amended at 56 FR 40805, Aug. 16, 1991]

### § 385.5 Safety fitness standard.

The satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. To meet the safety fitness standard, the motor carrier shall demonstrate that it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

- (a) Commercial driver's license standard violations (part 383),
- (b) Inadequate levels of financial responsibility (part 387),
- (c) The use of unqualified drivers (part 391),
- (d) Improper use and driving of motor vehicles (part 392),
- (e) Unsafe vehicles operating on the highways (part 393),
- (f) Failure to maintain accident registers and copies of accident reports (part 390),
- (g) The use of fatigued drivers (part 395),
- (h) Inadequate inspection, repair, and maintenance of vehicles (part 396),
- (i) Transportation of hazardous materials, driving and parking rule violations (part 397),
- (j) Violation of hazardous materials regulations (parts 170 through 177), and
- (k) Motor vehicle accidents and hazardous materials incidents.

[53 FR 50968, Dec. 19, 1988, as amended at 58 FR 33776, June 21, 1993]

### § 385.7 Factors to be considered in determining a safety rating.

The factors to be considered in determining the safety fitness and assigning a safety rating include information from safety reviews, compliance reviews and any other data. The factors may include all or some of the following:

- (a) Adequacy of safety management controls. The adequacy of controls may be questioned if their degree of formalization, automation, etc., is found to be substantially below the norm for

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similar carriers. Violations, accidents or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or not functioning properly.

(b) Frequency and severity of regulatory violations.

(c) Frequency and severity of driver/vehicle regulatory violations identified in roadside inspections.

(d) Number and frequency of out-of-service driver/vehicle violations.

(e) Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews.

(f) Frequency of accidents; hazardous materials incidents; accident rate per million miles; preventable accident rate per million miles; and other accident indicators; and whether these accident and incident indicators have improved or deteriorated over time.

(g) The number and severity of violations of state safety rules, regulations, standards, and orders applicable to commercial motor vehicles and motor carrier safety that are compatible with Federal rules, regulations, standards, and orders.

[53 FR 50968, Dec. 19, 1988, as amended at 58 FR 33776, June 21, 1993]

### § 385.9 Determination of a safety rating.

Following a safety or compliance review of a motor carrier operation, the FHWA, using the factors prescribed in § 385.7, shall determine whether the present operations of the motor carrier are consistent with the safety fitness standard set forth in § 385.5, and assign a safety rating accordingly.

### § 385.11 Notification of a safety rating.

(a) The FHWA shall provide written notification to the motor carrier of the assigned safety rating.

(b) Notification of a "conditional" or "unsatisfactory" rating will include a list of those items for which immediate corrective action must be taken.

(c) A notification of an "unsatisfactory" safety rating will also include a notice that the motor carrier will be subject to the provisions of § 385.13, which prohibit motor carriers rated "unsatisfactory" from transporting:

(1) Hazardous materials requiring placarding under part 172, subpart F, of this title; or

(2) 15 or more passengers, including the driver.

[56 FR 40806, Aug. 16, 1991]

**§385.13 Unsatisfactory safety rating—  
Prohibition on transportation of  
hazardous materials and pas-  
sengers.**

(a)(1) A motor carrier that receives a safety rating from the Federal Highway Administration which is “unsatisfactory” shall have 45 calendar days from the effective date of that rating or from the date of notice of that rating, whichever is later, to take such action as may be necessary to improve such safety rating to “conditional” or “satisfactory.”

(2) *Prohibition on transportation.* After the last day of the 45-day period established pursuant to paragraph (a)(1) of this section and until notification is issued pursuant to this part of either a “conditional” or “satisfactory” safety rating, a motor carrier rated “unsatisfactory” shall be prohibited from operating a commercial motor vehicle to transport—

(i) Hazardous materials for which vehicle placarding is required pursuant to this title; or

(ii) More than 15 passengers, including the driver.

(3) *Ineligibility for Federal Government transportation.* Any motor carrier that receives a safety rating of “unsatisfactory” shall be ineligible to contract or subcontract with any Federal agency for the transportation of—

(i) Hazardous materials for which vehicle placarding is required pursuant to this title; or

(ii) More than 15 passengers, including the driver.

(b) *Penalties.* Any motor carrier that operates commercial motor vehicles in violation of this section will be subject to the penalty provisions of 49 U.S.C. App. 1809 and 49 U.S.C. 521.

[56 FR 40806, Aug. 16, 1991]

**§385.15 Request for a change in a safety rating; facts and procedure.**

(a) A petition for review of a safety rating, where there are factual or procedural disputes, must list all issues in

dispute and be accompanied by any information or documents the motor carrier is relying upon as the basis for its petition.

(b)(1) The petition must be submitted to the Director, Office of Motor Carrier Field Operations, within 90 days of the date of notification of the assignment, or change, of a safety rating.

(2) Motor carriers affected by the provisions of §385.13 should submit their petitions and supporting documentation to the Director, Office of Motor Carrier Field Operations, within 15 days from the date of notification of the assignment of a safety rating.

(c) As part of the consideration of a petition, the Director, Office of Motor Carrier Field Operations, may request the motor carrier to submit additional data and attend a conference to discuss the safety rating. Failure to provide such data or to attend the conference may result in dismissal of the petition.

(d) The Director, Office of Motor Carrier Field Operations, shall notify the motor carrier in writing of a decision on a petition for review of a safety rating, which will constitute the final agency action. The decision may:

(1) Confirm the rating; or

(2) Revise the rating.

[56 FR 40806, Aug. 16, 1991]

**§385.17 Request for a change in a safety rating; corrective action taken.**

(a) A request for a change in a safety rating may be made when the basis for the change is evidence that corrective actions have been taken and that operations currently meet the safety fitness standard specified in §385.5. The request shall be directed in writing, via certified mail, to the Regional Director of Motor Carriers for the FHWA Region in which the motor carrier maintains its principal place of business for safety. The Regional Office addresses are listed in §390.27 of this subchapter. Such a request shall include a written description of corrective actions taken and other documentation that may be relied upon as a basis for improving the assigned rating.

(b) The FHWA will make its determination based upon documentation submitted or any additional investigation deemed necessary.

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(c) In cases where the FHWA is unable to make a determination within the 45-day period established in §385.13 and the motor carrier has submitted evidence that corrective actions have been taken pursuant to paragraph (a) of this section, and has cooperated in any investigation, the FHWA may conditionally suspend the effective date of the “unsatisfactory” safety rating for an additional period of up to 10 days.

[56 FR 40806, Aug. 16, 1991, as amended at 61 FR 1843, Jan. 24, 1996]

**§385.19 Safety fitness information.**

(a) Safety rating information on motor carriers will be made available to all Federal agencies telephonically or by remote computer terminals.

(b) The safety rating assigned to a motor carrier will be made available to the public upon request. Any person requesting the assigned rating of a motor carrier should provide the FHWA with the motor carrier name, principal office address, and the ICC assigned docket number, or the U.S. DOT identification number.

(c) Requests should be addressed to: OMC—Safety Rating, P.O. Box 13028, Arlington, Virginia 22219.

(d) Oral requests by telephone will be accepted and may be made by calling (703) 276-6876. Oral requests made by telephone will be sent a written response if so requested.

[56 FR 51344, Oct. 11, 1991]

**§385.21 Motor carrier identification report.**

(a) All motor carriers currently conducting operations in interstate or for-

eign commerce shall file a Motor Carrier Identification Report, Form MCS-150, within 90 days after the effective date of this rule. Exception: The provisions of this section do not apply to a motor carrier that has received written notification of a safety rating from the FHWA.

(b) All motor carriers beginning operation after the effective date of this rule shall file the Motor Carrier Identification Report, Form MCS-150, within 90 days after beginning operations.

(c) The Motor Carrier Identification Report, Form MCS-150, is available from all FHWA region and division motor carrier safety offices nationwide and from FHWA Office of Motor Carrier Information Management and Analysis, 400 Seventh Street, SW., Washington, DC 20590.

(d) The completed Motor Carrier Identification Report, Form MCS-150, shall be filed with the FHWA, Office of Motor Carrier Information Management and Analysis, 400 Seventh Street, SW., Washington, DC 20590.

**§385.23 Failure to report.**

Failure by a motor carrier to file a Motor Carrier Identification Report, Form MCS-150, pursuant to the provisions of §385.21, or furnishing misleading information or making false statements upon the MCS-150 shall subject the offender to the penalties prescribed in title 49, United States Code, 522(b).

[53 FR 50968, Dec. 19, 1988, as amended at 60 FR 38743, July 28, 1995]

APPENDIX TO PART 385—FORM MCS-150, MOTOR CARRIER IDENTIFICATION REPORT

(Approved by OMB under control number 2125-0544)

OMB No. 2125-0544

		<h2>MOTOR CARRIER IDENTIFICATION REPORT</h2>						
IF THE ABOVE LOCATION IS BLANK, INCORRECT, OR IS A DIVISION OR BRANCH, PLEASE IDENTIFY YOUR COMPANY'S PRINCIPAL OFFICE IN THE SPACE BELOW.								
1. NAME OF MOTOR CARRIER				2. DBA NAME				
PHYSICAL ADDRESS:	3. STREET ADDRESS/ROUTE NUMBER							
	4. CITY	5. COUNTY	6. STATE	7. ZIP CODE + 4				
	8. PRINCIPAL PHONE NUMBER ( ) - -	9. ICC DOCKET NUMBER MC	10. USDOT NUMBER USDOT	11. OPERATION CLASSIFICATION A. Authorized For Hire B. Exempt For Hire C. Private D. Migrant E. U.S. Mail F. Other				
12. CARGO CLASSIFICATIONS: <i>(Please circle all that apply)</i> A. General Freight      H. Mobile Homes      O. Livestock      V. Commodities Dry Bulk B. Household Goods      I. Machinery, Large Objects      P. Grain, Feed, Hay      W. Refrigerated Food C. Metal: Sheets, Coils, Rolls      J. Fresh Produce      Q. Coal/Coke      X. Beverages D. Motor Vehicles      K. Liquids/Gases      R. Meat      Y. Paper Products E. Driveway/Towaway      L. Intermodal Containers      S. Garbage, Refuse, Trash      Z. Other <i>(Specify)</i> F. Logs, Poles, Beams, Lumber      M. Passengers      T. U.S. Mail G. Building Materials      N. Oilfield Equipment      U. Chemicals						13. CARRIER OPERATION A. Interstate B. Intrastate Only—HazMat. C. Intrastate Only—Non-HazMat.		
14. HAZARDOUS MATERIALS CARRIED <i>(Please circle all that apply)</i> (T)—In Cargo Tanks      (P)—In Packages A. Explosives A      T P      H. Corrosives      T P      O. Irritating Material      T P B. Explosives B      T P      I. Oxidizers      T P      P. 'ORM' Material      T P C. Explosives C      T P      J. Poison A      T P      Q. Hazardous Waste      T P D. Flammable Liquid      T P      K. Poison B      T P      R. Etiological Agent      T P E. Flammable Solid      T P      L. Combustible Liquid      T P      S. Blasting Agent      T P F. Flammable Gas      T P      M. Radioactive Material      T P      T. Hazardous Substance      T P G. Non-flammable Gas      T P      N. Organic Peroxide      T P      U. Cryogenics      T P								
15. EQUIPMENT	Straight Trucks	Truck Tractors	Trailers	HazMat Cargo Tank Trailers	HazMat Cargo Tank Trucks	Buses	16. DRIVERS SUBJECT TO FMCSR	
OWNED								100 Mile Radius _____
TERM LEASED								Beyond 100 Mile Radius _____
TRIP LEASED							TOTAL _____	
17. CERTIFICATION STATEMENT <i>(to be completed by an authorized official)</i> I, _____ <i>(please print name)</i> certify that I am familiar with the Federal Motor Carrier Safety Regulations. Under penalties of perjury, I declare that the information entered on this report is, to the best of my knowledge and belief, true, correct and complete. Signature _____ Date _____ Title _____								

## NOTICE

The Form MCS-150, Motor Carrier Identification Report, must be filed by all motor carriers operating in interstate or foreign commerce. A new motor carrier must file Form MCS-150 within 90 days after beginning operations. Exception: A motor carrier that has received written notification of a safety rating from the Federal Highway Administration (FHWA) need not file the report. To mail, fold the completed report so that the self-addressed postage paid panel is on the outside. This report is required by 49 CFR Part 385 and authorized by 49 U.S.C. 504 (1982 & Supp. III 1985).

The public reporting burden for this collection of information on the Form MCS-150 is estimated by the FHWA to average 20 minutes. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to Office of Management and Budget and the FHWA at the following addresses:

Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503

and

Federal Highway Administration, Office of Motor Carrier Field Operations, HFO-10, 400 7th Street, SW, Washington, DC 20590

## INSTRUCTIONS FOR COMPLETING THE MOTOR CARRIER IDENTIFICATION REPORT (MCS-150)

(Please Print or Type All Information)

1. Enter the name of the business entity (i.e. corporation, partnership, or individual) that owns and controls the motor carrier operation.
2. If the business entity is operating under a name other than that in Block 1, i.e. "trade name", enter that name. Otherwise, leave blank.
3. Enter the principal place of business (where all safety records are maintained) street address.
4. Enter the city where the principal place of business is located.
5. Enter the name of the county in which the principal place of business is located.
6. Enter the two-letter postal abbreviation for the State, or the name of the Canadian Province or Mexican State, in which the principal place of business is located.
7. Enter the zip code number corresponding with the street address.
8. Enter the telephone number including area code of the principal place of business.
9. Enter the motor carrier 'MC' number under which the Interstate Commerce Commission (ICC) issued your operating authority, if appropriate. Otherwise, enter "N/A."

10. Enter the identification number assigned to your motor carrier operation by the U.S. Department of Transportation, if known. Otherwise, enter "unknown."
11. Circle appropriate classification. Circle all that apply. If F "other" is circled, enter the type of operation in the space provided.
  - A. Authorized For Hire
  - B. Exempt For Hire
  - C. Private
  - D. Migrant
  - E. U.S. Mail
  - F. Other \_\_\_\_\_

*Authorized For Hire*—transportation for compensation as a common or contract carrier of property, owned by others, or passengers under the provisions of the ICC.

*Exempt For Hire*—transportation for compensation of property exempt from the economic regulation by the ICC.

*Private*—transportation of property, owned or leased by the motor carrier, in furtherance of a commercial enterprise other than for-hire transportation.

*Migrant*—interstate transportation, including a contract carrier, but not a common carrier of 3 or more migrant workers to or from their employment by any motor vehicle other than a passenger automobile or station wagon.

*U.S. Mail*—transportation of U.S. Mail under contract with the U.S. Postal Service.

12. Circle the letter of the types of cargo you usually transport. If Z "other," is circled enter the name of the commodity in the space provided.
13. Circle the appropriate type of operation.
  - A. Interstate
  - B. Intrastate, transporting hazardous materials (49 CFR 100-178)
  - C. Intrastate, NOT transporting hazardous materials.

*Interstate*—transportation of persons or property across State lines, *including international boundaries*, or wholly within one State as part of a through movement that originates or terminates in another State or country.

*Intrastate*—transportation of persons or property wholly within one State.
14. Circle the letter of *all* of the types of hazardous materials (HM) you transport. In the columns following the HM types, either circle *T* if the HM is transported in cargo tanks or *P* if the HM is transported in other packages.
15. Enter the total number of vehicles owned, term leased and trip leased, that are, or can be, operational the day this form is completed.

16. Enter the number of drivers used on an average work day. Part-time, casual, term leased, trip leased and company drivers are to be included.

*100 mile radius driver*—a driver that operates within a *100 air-mile radius* of the normal work reporting location.

17. Print or type the name, in the space provided, of the individual authorized to sign documents on behalf of the entity listed in Block 1. That individual must sign, date, and show his or her title in the spaces provided. (Certification Statement, see 49 CFR 385.21 and 385.23)

[56 FR 5365, Feb. 11, 1991]

## PART 386—RULES OF PRACTICE FOR MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS PROCEEDINGS

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### APPENDIX A TO PART 386—PENALTY SCHEDULE; VIOLATIONS OF NOTICES AND ORDERS

AUTHORITY: Title XII of Public Law 99-570, 100 Stat. 3207-170 (49 U.S.C. App. 2701 *et seq.*); Title II of Public Law 98-554, 98 Stat. 2829 (49 U.S.C. App. 2501 *et seq.*); Public Law 97-449, 96 Stat. 2413 (49 U.S.C. 104(c)(2), 501 *et seq.*, 3101 *et seq.*); Public Law 93-633, 88 Stat. 2156 (49 U.S.C. App. 1801 *et seq.*); Public Law 97-261, 96 Stat. 1121 (49 U.S.C. 10927, note); Public Law 96-296, 94 Stat. 820 (49 U.S.C. 10927, note); 49 CFR 1.45, 1.48.

SOURCE: 50 FR 40306, Oct. 2, 1985, unless otherwise noted.