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(b) A State shall be in substantial compliance with 49 U.S.C. 31311(a) for any fiscal year in which neither of the eventualities in paragraph (a) of this section occurs.

[62 FR 37152, July 11, 1997]

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 apportionment 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

Sec.

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APPENDIX A TO PART 385 [RESERVED]
APPENDIX B TO PART 385—EXPLANATION OF SAFETY RATING PROCESS

AUTHORITY: 49 U.S.C. 113, 504, 521(b)(5)(A) and (b)(8), 5113, 31136, 31144, 31502; and 49 CFR 1.73.

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

EDITORIAL NOTE: Nomenclature changes to part 385 appear at 66 FR 49872, Oct. 1, 2001.

§ 385.1 Purpose and scope.

(a) This part establishes the FMCSA'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 fewer than 16 persons, including the driver.

[65 FR 50934, Aug. 22, 2000]

§ 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 regulations 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) [Reserved]

(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 occurrences listed in § 385.5 (a) through (k).

(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 (k).

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

[53 FR 50968, Dec. 19, 1988, as amended at 56 FR 40805, Aug. 16, 1991; 62 FR 60042, Nov. 6, 1997]

§ 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 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.

(a) Following a compliance review of a motor carrier operation, the FMCSA, using the factors prescribed in § 385.7 as computed under the Safety Fitness Rating Methodology set forth in appendix B of this part, 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.

(b) Unless otherwise specifically provided in this part, a safety rating will be issued to a motor carrier within 30 days following the completion of a compliance review.

[62 FR 60042, Nov. 6, 1997]

§ 385.11 Notification of safety fitness determination.

(a) The FMCSA will provide a motor carrier written notice of any safety rating resulting from a compliance 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 FMCSA'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 FMCSA 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 FMCSA 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.

[65 FR 50934, Aug. 22, 2000]

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

(a) Generally, 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 FMCSA on the Internet at *http://www.safersys.org*, or by telephone at (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 the date of the FMCSA's notice of proposed ''unsatisfactory'' rating.

(2) All other motor carriers rated from reviews completed on or after November 20, 2000 are prohibited from operating a CMV beginning on the 61st day after the date of the FMCSA's notice of proposed ''unsatisfactory'' rating. If the FMCSA determines the motor carrier is making a good-faith effort to improve its safety fitness, the FMCSA 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 an ''unsatisfactory'' rating to transport passengers in a CMV or to transport hazardous materials in quantities requiring placarding.

(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 January 22, 2001.

(d) *Penalties.* If a proposed ''unsatisfactory'' safety rating becomes final, the FMCSA will issue an order placing its interstate operations out of service. Any motor carrier that operates CMVs in violation of this section will be subject to the penalty provisions listed in 49 U.S.C. 521(b).

[65 FR 50934, Aug. 22, 2000]

§ 385.14 Motor carriers, brokers, and freight forwarders delinquent in paying civil penalties: prohibition on transportation.

(a) A CMV owner or operator that has failed to pay civil penalties imposed by the FMCSA, or has failed to abide by a payment plan, may be prohibited from operating CMVs in interstate commerce under 49 CFR 386.83.

(b) A broker, freight forwarder, or for-hire motor carrier that has failed to pay civil penalties imposed by the FMCSA, or has failed to abide by a payment plan, may be prohibited from operating in interstate commerce, and

its registration may be suspended under the provisions of 49 CFR 386.84.

[65 FR 78427, Dec. 15, 2000]

§ 385.15 Administrative review.

(a) A motor carrier may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in assigning its proposed safety rating in accordance with § 385.15(c) or its final safety rating in accordance with § 385.11(b).

(b) The motor carrier's request must explain the error it believes the FMCSA 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 Chief Safety Officer, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington DC 20590.

(1) If a motor carrier has received a notice of a proposed ''unsatisfactory'' safety rating, it should submit its request within 15 days from the date of the notice. This time frame will allow the FMCSA to issue a written decision before the prohibitions outlined in § 385.13 (a)(1) and (2) take effect. Failure to petition within this 15-day period may prevent the FMCSA from issuing a final decision before such prohibitions take effect.

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

(d) The FMCSA 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 FMCSA may dismiss its request for review.

(e) The FMCSA will notify the motor carrier in writing of its decision following the administrative review. The FMCSA 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 a rating change under the provisions of § 385.17.

[65 FR 50935, Aug. 22, 2000]

§ 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 FMCSA Service Center for the geographic area where the carrier maintains its principal place of business. The addresses and geographical boundaries of the Service Centers are listed in § 390.27 of this chapter.

(c) The motor carrier must base its request upon evidence that it has taken corrective actions and that its operations currently meet the safety standard 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 FMCSA to consider.

(d) The FMCSA 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 FMCSA 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 FMCSA cannot make a final determination within the 45-day period, the period before the proposed safety rating becomes final may be extended for up to 10 days at the discretion of the FMCSA.

(g) The FMCSA 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 FMCSA determines that the motor carrier is making a good faith effort to improve its safety status. This additional period would begin on the 61st day after the date of the notice of the proposed ''unsatisfactory'' rating.

(h) If the FMCSA 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 FMCSA determines that the motor carrier has not taken all the corrective actions required, or that its operations still fail to meet the safety standard 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 90 days of the denial of the request for a rating change. If the proposed rating has become final, it shall remain in effect during the period of any administrative review.

[65 FR 50935, Aug. 22, 2000]

§ 385.19 Safety fitness information.

(a) Final ratings will be made available to other Federal and State agencies in writing, telephonically or by remote computer access.

(b) The final 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 shall provide the FMCSA with the motor carrier's name, principal office address, and, if known, the USDOT number or the ICCMC docket number, if any.

(c) Requests should be addressed to the Office of Data Analysis and Information Systems (MC RIS), Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The information can also be found at the SAFER website: *http://www.safersys.org*.

[62 FR 60043, Nov. 6, 1997, as amended at 66 FR 49872, Oct. 1, 2001]

APPENDIX A TO PART 385 [RESERVED]

APPENDIX B TO PART 385—EXPLANATION OF SAFETY RATING PROCESS

(a) Section 215 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31144) directed the Secretary of Transportation to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles operating in interstate or foreign commerce. The Secretary, in turn, delegated this responsibility to the Federal Motor Carrier Safety Administration (FMCSA).

(b) As directed, FMCSA promulgated a safety fitness regulation, entitled ''Safety Fitness Procedures,'' which established a procedure to determine the safety fitness of motor carriers through the assignment of safety ratings and established a ''safety fitness standard'' which a motor carrier must meet to obtain a *satisfactory* safety rating.

(c) To meet the safety fitness standard, a motor carrier must demonstrate to the FMCSA that it has adequate safety management controls in place which function effectively to ensure acceptable compliance with the applicable safety requirements. A ''safety fitness rating methodology'' (SFRM) was developed by the FMCSA, which uses data from compliance reviews (CRs) and roadside inspections to rate motor carriers.

(d) The safety rating process developed by FMCSA is used to:

1. Evaluate safety fitness and assign one of three safety ratings (*satisfactory*, *conditional* or *unsatisfactory*) to motor carriers operating in interstate commerce. This process conforms to 49 CFR 385.5, Safety fitness standard, and § 385.7, Factors to be considered in determining a safety rating.

2. Identify motor carriers needing improvement in their compliance with the Federal

Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Material Regulations (HMRs). These are carriers rated *unsatisfactory* or *conditional*.

I. SOURCE OF DATA FOR RATING METHODOLOGY

(a) The FMCSA's rating process is built upon the operational tool known as the CR. This tool was developed to assist Federal and State safety specialists in gathering pertinent motor carrier compliance and accident information.

(b) The CR is an in-depth examination of a motor carrier's operations and is used (1) to rate unrated motor carriers, (2) to conduct a follow-up investigation on motor carriers rated *unsatisfactory* or *conditional* as a result of a previous review, (3) to investigate complaints, or (4) in response to a request by a motor carrier to reevaluate its safety rating. Documents such as those contained in driver qualification files, records of duty status, vehicle maintenance records, and other records are thoroughly examined for compliance with the FMCSRs and HMRs. Violations are cited on the CR document. Performance-based information, when available, is utilized to evaluate the carrier's compliance with the vehicle regulations. Recordable accident information is also collected.

II. CONVERTING CR INFORMATION INTO A SAFETY RATING

(a) The FMCSA gathers information through an in-depth examination of the motor carrier's compliance with identified ''acute'' or ''critical'' regulations of the FMCSRs and HMRs.

(b) Acute regulations are those identified as such where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier. An example of an acute regulation is §383.37(b), allowing, requiring, permitting, or authorizing an employee with more than one Commercial Driver's License (CDL) to operate a commercial motor vehicle. Noncompliance with §383.37(b) is usually discovered when the motor carrier's driver qualification file reflects that the motor carrier had knowledge of a driver with more than one CDL, and still permitted the driver to operate a commercial motor vehicle. If the motor carrier did not have such knowledge or could not reasonably be expected to have such knowledge, then a violation would not be cited.

(c) Critical regulations are those identified as such where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls. An example of a critical regulation is §395.3(a)(1), requiring or permitting a driver to drive more than 10 hours.

(d) The list of the acute and critical regulations which are used in determining safety ratings is included at the end of this document.

(e) Noncompliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates. The FMCSA has used noncompliance with acute regulations and patterns of noncompliance with critical regulations since 1989 to determine motor carriers' adherence to the Safety fitness standard in §385.5.

(f) The regulatory factors, evaluated on the basis of the adequacy of the carrier's safety management controls, are (1) Parts 387 and 390; (2) Parts 382, 383 and 391; (3) Parts 392 and 395; (4) Parts 393 and 396 when there are less than three vehicle inspections in the last 12 months to evaluate; and (5) Parts 397, 171, 177 and 180.

(g) For each instance of noncompliance with an acute regulation or each pattern of noncompliance with a critical regulation during the CR, one point will be assessed. A pattern is more than one violation. When a number of documents are reviewed, the number of violations required to meet a pattern is equal to at least 10 percent of those examined.

(h) However, each pattern of noncompliance with a critical regulation relative to Part 395, Hours of Service of Drivers, will be assessed two points.

A. Vehicle Factor

(a) When a total of *three or more inspections are recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months prior to the CR or performed at the time of the review*, the Vehicle Factor (Parts 393 and 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and noncompliance with acute regulations and/or a pattern of noncompliance with critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor rating as follows:

1. If a motor carrier has three or more roadside vehicle inspections in the twelve months prior to the carrier review, or three vehicles inspected at the time of the review, or a combination of the two totaling three or more, and the vehicle OOS rate is 34 percent or greater, the initial factor rating will be *conditional*. The requirements of Part 396, Inspection, Repair, and Maintenance, will be examined during each review. The results of the examination could lower the factor rating to *unsatisfactory* if noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered. If the examination of the Part 396 requirements reveals no such problems with the systems the motor carrier is required to

maintain for compliance, the Vehicle Factor remains *conditional*.

2. If a carrier's vehicle OOS rate is less than 34 percent, the initial factor rating will be *satisfactory*. If noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered during the examination of Part 396 requirements, the factor rating will be lowered to *conditional*. If the examination of Part 396 requirements discovers no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains *satisfactory*.

(b) Nearly two million vehicle inspections occur on the roadside each year. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles, thus preventing them from being placed OOS during roadside inspections. Since many of the roadside inspections are targeted to visibly defective vehicles and since there are a limited number of inspections for many motor carriers, the use of that data is limited. Each CR will continue to have the requirements of Part 396, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

B. Accident Factor

(a) In addition to the five regulatory rating factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate which the carrier has experienced during the past 12 months. *Recordable* accident, as defined in 49 CFR 390.5, means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) Recordable accidents per million miles were computed for each CR performed in Fiscal Years 1994,1995 and 1996. The national average for all carriers rated was 0.747, and .839 for carriers operating entirely within the 100 air mile radius.

(c) Experience has shown that urban carriers, those motor carriers operating primarily within a radius of less than 100 air miles (normally in urban areas) have a higher exposure to accident situations because of their environment and normally have higher accident rates.

(d) The recordable accident rate will be used to rate Factor 6, Accident. It will be used only when a motor carrier incurs two or more recordable accidents occurred within the 12 months prior to the CR. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable accident rate greater than 1.7 will receive an *unsatisfactory* rating for the accident factor. All other carriers with a recordable accident rate greater than 1.5 will receive an *unsatisfactory* factor rating. The rates are a result of roughly doubling the national average accident rate for each type of carrier rated in Fiscal Years 1994, 1995 and 1996.

(e) The FMCSA will continue to consider preventability when a motor carrier contests a rating by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. Preventability will be determined according to the following standard: ''If a driver, who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.''

C. Factor Ratings

(a) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into five regulatory areas called ''factors.''

(b) The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor. Factor Ratings are determined as follows:

FACTORS

Factor 1 General=Parts 387 and 390
Factor 2 Driver=Parts 382, 383 and 391
Factor 3 Operational=Parts 392 and 395
Factor 4 Vehicle=Parts 393 and 396
Factor 5 Haz. Mat.=Parts 397, 171, 177 and 180
Factor 6 Accident Factor=Recordable Rate

''Satisfactory''—if the acute and/or critical=0 points
''Conditional''—if the acute and/or critical=1 point
''Unsatisfactory''—if the acute and/or critical=2 or more points

III. SAFETY RATING

A. Rating Table

(a) The ratings for the six factors are then entered into a rating table which establishes the motor carrier's safety rating.

(b) The FMCSA has developed a computerized rating formula for assessing the information obtained from the CR document and is using that formula in assigning a safety rating.

MOTOR CARRIER SAFETY RATING TABLE

Factor ratings		Overall Safety rating
Unsatisfactory	Conditional	
0	2 or fewer	Satisfactory
0	more than 2	Conditional
1	2 or fewer	Conditional
1	more than 2	Unsatisfactory
2 or more	0 or more	Unsatisfactory

B. Proposed Safety Rating

(a) The proposed safety rating will appear on the CR. The following appropriate information will appear after the last entry on the CR, MCS–151, part B.

''Your proposed safety rating is SATISFACTORY.''

OR

''Your proposed safety rating is CONDITIONAL.'' The proposed safety rating will become the final safety rating 45 days after you receive this notice.

OR

''Your proposed safety rating is UNSATISFACTORY.'' The proposed safety rating will become the final safety rating 45 days after you receive this notice

(b) Proposed safety ratings of *conditional* or *unsatisfactory* will list the deficiencies discovered during the CR for which corrective actions must be taken.

(c) Proposed *unsatisfactory* safety ratings will indicate that, if the *unsatisfactory* rating becomes final, the motor carrier will be subject to the provision of §385.13, which prohibits motor carriers rated *unsatisfactory* from transporting hazardous materials requiring placarding or more than 15 passengers, including the driver.

IV. ASSIGNMENT OF FINAL RATING/MOTOR CARRIER NOTIFICATION

When the official rating is determined in Washington, D.C., the FMCSA notifies the motor carrier in writing of its safety rating as prescribed in §385.11. A proposed *conditional* safety rating (which is an improvement of an existing *unsatisfactory* rating) becomes effective as soon as the official safety rating from Washington, D.C. is issued, and the carrier may also avail itself of relief under the §385.15, Administrative Review and §385.17, Change to safety rating based on corrective actions.

V. MOTOR CARRIER RIGHTS TO A CHANGE IN THE SAFETY RATING

Under §§385.15 and 385.17, motor carriers have the right to petition for a review of their ratings *if there are factual or procedural disputes,* and to request another review after corrective actions have been taken. They are the procedural avenues a motor carrier which believes its safety rating to be in error may exercise, and the means to request another review after corrective action has been taken.

VI. CONCLUSION

(a) The FMCSA believes this ''safety fitness rating methodology'' is a reasonable approach for assigning a safety rating which best describes the current safety fitness posture of a motor carrier as required by the safety fitness regulations (§385.9). This methodology has the capability to incorporate regulatory changes as they occur.

(b) Improved compliance with the regulations leads to an improved rating, which in turn increases safety. This increased safety is our regulatory goal.

VII. LIST OF ACUTE AND CRITICAL REGULATIONS.

§382.115(a) Failing to implement an alcohol and/or controlled substances testing program (domestic motor carrier) (acute).

§382.201 Using a driver known to have an alcohol concentration of 0.04 or greater (acute).

§382.211 Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382 (acute).

§382.213(b) Using a driver known to have used a controlled substance (acute).

§382.215 Using a driver known to have tested positive for a controlled substance (acute).

§382.301(a) Using a driver before the motor carrier has received a negative pre-employment controlled substance test result (critical).

§382.303(a) Failing to conduct post accident testing on driver for alcohol and/or controlled substances (critical).

§382.305 Failing to implement a random controlled substances and/or an alcohol testing program (acute).

§382.305(b)(1) Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions (critical).

§382.305(b)(2) Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions (critical).

§382.309(a) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 (acute).

§382.309(b) Using a driver who has not undergone a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances (acute).

§ 382.503 Allowing a driver to perform safety sensitive function, after engaging in conduct prohibited by subpart B, without being evaluated by substance abuse professional, as required by § 382.605 (critical).

§ 382.505(a) Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04 (acute).

§ 382.605(c)(1) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than .02 or with verified negative test result, after engaging in conduct prohibited by part 382 subpart B (acute).

§ 382.605(c)(2)(ii) Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up alcohol and/or controlled substance tests in the first 12 months following the driver's return to duty (critical).

§ 383.23(a) Operating a commercial motor vehicle without a valid commercial driver's license (critical).

§ 383.37(a) Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver's license which is suspended, revoked, or canceled by a state or who is disqualified to operate a commercial motor vehicle (acute).

§ 383.37(b) Knowingly allowing, requiring, permitting, or authorizing an employee with more than one commercial driver's license to operate a commercial motor vehicle (acute).

§ 383.51(a) Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle (acute).

§ 387.7(a) Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage (acute).

§ 387.7(d) Failing to maintain at principal place of business required proof of financial responsibility (critical).

§ 387.31(a) Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility (acute).

§ 387.31(d) Failing to maintain at principal place of business required proof of financial responsibility for passenger carrying vehicles (critical).

§ 390.15(b)(2) Failing to maintain copies of all accident reports required by State or other governmental entities or insurers (critical).

§ 390.35 Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records (acute).

§ 391.11(b)(4) Using a physically unqualified driver (acute).

§ 391.15(a) Using a disqualified driver (acute).

§ 391.45(a) Using a driver not medically examined and certified (critical).

§ 391.45(b)(1) Using a driver not medically examined and certified during the preceding 24 months (critical).

§ 391.51(a) Failing to maintain driver qualification file on each driver employed (critical).

§ 391.51(b)(2) Failing to maintain inquiries into driver's driving record in driver's qualification file (critical).

§ 391.51(b)(7) Failing to maintain medical examiner's certificate in driver's qualification file (critical).

§ 392.2 Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated (critical).

§ 392.4(b) Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle (acute).

§ 392.5(b)(1) Requiring or permitting a driver to drive a motor vehicle while under the influence of, or in possession of, an intoxicating beverage (acute).

§ 392.5(b)(2) Requiring or permitting a driver who shows evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle (acute).

§ 392.6 Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed (critical).

§ 392.9(a)(1) Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured (critical).

§ 395.1(h)(1)(i) Requiring or permitting a driver to drive more than 15 hours (Driving in Alaska) (critical).

§ 395.1(h)(1)(ii) Requiring or permitting a driver to drive after having been on duty 20 hours (Driving in Alaska) (critical).

§ 395.1(h)(1)(iii) Requiring or permitting driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska) (critical).

§ 395.1(h)(1)(iv) Requiring or permitting driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska) (critical).

§ 395.3(a)(1) Requiring or permitting driver to drive more than 10 hours (critical).

§ 395.3(a)(2) Requiring or permitting driver to drive after having been on duty 15 hours (critical).

§ 395.3(b)(1) Requiring or permitting driver to drive after having been on duty more than 60 hours in 7 consecutive days (critical).

§ 395.3(b)(2) Requiring or permitting driver to drive after having been on duty more than 70 hours in 8 consecutive days (critical).

§ 395.8(a) Failing to require driver to make a record of duty status (critical).
§ 395.8(e) False reports of records of duty status (critical).
§ 395.8(i) Failing to require driver to forward within 13 days of completion, the original of the record of duty status (critical).
§ 395.8(k)(1) Failing to preserve driver's record of duty status for 6 months (critical).
§ 395.8(k)(1) Failing to preserve driver's records of duty status supporting documents for 6 months (critical).
§ 396.3(b) Failing to keep minimum records of inspection and vehicle maintenance (critical).
§ 396.9(c)(2) Requiring or permitting the operation of a motor vehicle declared ''out-of-service'' before repairs were made (acute).
§ 396.11(a) Failing to require driver to prepare driver vehicle inspection report (critical).
§ 396.11(c) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again (acute).
§ 396.17(a) Using a commercial motor vehicle not periodically inspected (critical).
§ 396.17(g) Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards (acute).
§ 397.5(a) Failing to ensure a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material is attended at all times by its driver or a qualified representative (acute).
§ 397.7(a)(1) Parking a motor vehicle containing Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (critical).
§ 397.7(b) Parking a motor vehicle containing hazardous material(s) other than Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (critical).
§ 397.13(a) Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 25 feet of a motor vehicle containing Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2 (critical).
§ 397.19(a) Failing to furnish driver of motor vehicle transporting Division 1.1, 1.2, or 1.3 (explosive) materials with a copy of the rules of part 397 and/or emergency response instructions (critical).
§ 397.67(d) Requiring or permitting the operation of a motor vehicle containing explosives in Class 1, Divisions 1.1, 1.2, or 1.3 that is not accompanied by a written route plan (critical).
§ 171.15 Carrier failing to give immediate telephone notice of an incident involving hazardous materials (critical).
§ 171.16 Carrier failing to make a written report of an incident involving hazardous materials (critical).
§ 177.800(c) Failing to instruct a category of employees in hazardous materials regulations (critical).
§ 177.817(a) Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper (critical).
§ 177.817(e) Failing to maintain proper accessibility of shipping papers (critical).
§ 177.823(a) Moving a transport vehicle containing hazardous material that is not properly marked or placarded (critical).
§ 177.841(e) Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals unless an exception in § 177.841(e)(i) or (ii) is met (acute).
§ 180.407(a) Transporting a shipment of hazardous material in cargo tank that has not been inspected or retested in accordance with § 180.407 (critical).
§ 180.407(c) Failing to periodically test and inspect a cargo tank (critical).
§ 180.415 Failing to mark a cargo tank which passed an inspection or test required by § 180.407 (critical).
§ 180.417(a)(1) Failing to retain cargo tank manufacturer's data report certificate and related papers, as required (critical).
§ 180.417(a)(2) Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required (critical).

[62 FR 60043, Nov. 6, 1997, as amended at 63 FR 62959, Nov. 10, 1998; 65 FR 11907, Mar. 7, 2000]

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

Subpart A—Scope of Rules; Definitions

Sec.
386.1 Scope of rules in this part.
386.2 Definitions.

Subpart B—Commencement of Proceedings, Pleadings

386.11 Commencement of proceedings.
386.12 Complaint.
386.13 Petitions to review and request for hearing: Driver qualification proceedings.
386.14 Replies and request for hearing: Civil forfeiture proceedings.
386.15 [Reserved]
386.16 Action on petitions or replies.