Final determination for purposes of part 385, subpart J means:

(1) An adjudication under this subpart upholding a notice of remedial directive and proposed unfitness determination;

(2) The expiration of the period for filing a request for administrative review of remedial directive and proposed unfitness determination under this subpart; or

(3) The entry of a settlement agreement stipulating that the carrier is subject to mandatory EOBR installation, use, and maintenance requirements.

Motor carrier includes owner-operators leased to carriers subject to a remedial directive, regardless of whether the owner-operator has separate operating authority under part 365 of this chapter.

Proposed determination of unfitness or proposed unfitness determination means a determination by FMCSA that a motor carrier will not meet the safety fitness standard under §385.5 on a specified future date unless the carrier takes the actions necessary to comply with the terms of a remedial directive issued under this subpart.

Remedial directive means a mandatory instruction from FMCSA to take one or more specified action(s) as a condition of demonstrating safety fitness under 49 U.S.C. 31144(b).

Threshold rate violation for the purposes of this subpart means a violation rate for any appendix C regulation equal to or greater than 10 percent of the number of records reviewed.

§ 385.805 Events triggering issuance of remedial directive and proposed determination of unfitness.

A motor carrier subject to 49 CFR part 395 will be subject to a remedial directive and proposed unfitness determination in accordance with this subpart for threshold rate violations of any appendix C regulation or regulations that have been documented during a compliance review. A remedial directive and proposed unfitness determination will be issued if a compliance review conducted on the motor carrier resulted in a final determination of one or more threshold rate violations of any appendix C regulation are discovered.

§ 385.807 Notice and issuance of remedial directive.

(a) Following the close of the compliance review described in §385.805, FMCSA will issue the motor carrier a written notice of remedial directive and proposed determination of unfitness. FMCSA will issue the notice and proposed determination as soon as practicable, but not later than 30 days after the close of the review.

(b) The remedial directive will state that the motor carrier is required to install and maintain EOBRs compliant with §395.16 of this chapter in all of the motor carrier’s CMVs and to use the EOBRs to record its drivers’ hours of service pursuant to §395.16. The motor carrier shall provide proof of the installation to FMCSA in accordance with §385.811 within the following time periods:

(1) Motor carriers transporting hazardous materials in quantities requiring placarding, and motor carriers transporting passengers in a CMV, must install EOBRs and provide proof of the installation by the 45th day after the date of the notice of remedial directive.

(2) All other motor carriers must install EOBRs and provide proof of installation by the 60th day after the date of FMCSA’s notice of remedial directive. If FMCSA determines the motor carrier is making a good-faith effort to comply with the terms of the remedial directive, FMCSA may allow the motor carrier to operate for up to 60 additional days.

(3) A motor carrier may challenge the notice of remedial directive and proposed determination of unfitness in accordance with §385.817.

§ 385.811 Proof of compliance with remedial directive.

(a) Motor carriers subject to a remedial directive to install EOBRs under this section must provide proof of EOBR installation by one of the following: