

the regulation at lower cost, or lower burden or adverse effect?

The Coast Guard will summarize—and will provide to the members of NBSAC for them to consider before the meeting in October 1997—all comments received during the comment period in response to this Request. It will consider all relevant comments in the formulation of any changes to the boating safety regulations that may result from this review.

Dated: May 21, 1997.

**N.T. Saunders,**

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 97-13872 Filed 5-27-97; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 49 CFR Part 385

[FHWA Docket No. MC-94-22; FHWA-97-2252]

RIN 2125-AC 71

#### Safety Fitness Procedure; Safety Ratings

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** This document is in response to a decision of the U.S. Court of Appeals, District of Columbia Circuit, entered on March 18, 1997. In this rulemaking the FHWA is proposing to incorporate a modified Safety Fitness Rating Methodology (SFRM), which would be used to measure the safety fitness of motor carriers against the safety standard, as an appendix to its Safety Fitness Procedures regulations. An interim final rule published elsewhere in today's **Federal Register** incorporates the current SFRM for an interim period to rate motor carriers that are transporting hazardous materials in quantities for which vehicle placarding is required, or transporting 15 or more passengers including the driver.

**DATES:** Comments must be received on or before July 28, 1997.

**ADDRESSES:** Submit written, signed comments to the docket number that appears in the heading of this document to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, D.C. 20590-0001. All comments received will be available for examination at the above address between 10 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:** Mr. William C. Hill, Vehicle and Operations Division, Office of Motor Carrier Research and Standards, (202) 366-4009, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Background

The U.S. Court of Appeals for the District of Columbia Circuit ruled that the FHWA's procedures for assigning safety ratings were adopted contrary to law. *MST Express and Truckers United for Safety v. Department of Transportation and Federal Highway Administration*, No. 96-1084, March 18, 1997. The court ruled that the FHWA had failed to carry out its statutory obligation to establish, by regulation, a means of determining whether a motor carrier has complied with the safety fitness requirements of the Motor Carrier Safety Act of 1984 (MCSA) (codified at 49 U.S.C 31144). Because the carrier's safety rating was determined based upon rules that were not promulgated pursuant to notice and comment rulemaking, as 49 U.S.C. 31144(a) requires, the petitioner's *conditional* safety rating was vacated and the matter remanded to the FHWA "for such further action as it may wish to take, consistent with the decision."

In this notice of proposed rulemaking (NPRM), the FHWA proposes to modify the SFRM, incorporate it as Appendix B to Part 385, and use it as the means for deciding whether motor carriers meet the safety fitness requirements.

The FHWA has been using an SFRM, comprised of six rating factors, since October 1, 1989, as the mechanism for determining how well motor carriers are adhering to 49 CFR 385.5, Safety fitness standard. In addition to making the detailed explanation available since August 16, 1991, the FHWA has sought comments from interested members of the public in FHWA Docket Nos. MC-91-8 (56 FR 40801) and MC-94-22 (59 FR 47203).

In the first docket, the FHWA solicited public comment on an interim final rule (56 FR 40801) (August 16, 1991) implementing that provision of the MCSA of 1990, Pub. L. 101-500, § 15(b)(1), 104 Stat. 1218, 49 U.S.C. 5113, prohibiting a motor carrier with

an *unsatisfactory* safety rating from operating a commercial motor vehicle (CMVs) to transport: (1) hazardous materials in quantities for which vehicle placarding is required, or (2) more than 15 passengers including the driver. This prohibition becomes effective after 45 days have elapsed following receipt of an *unsatisfactory* safety rating issued by the FHWA. During the 45-day period, the motor carrier should take such action as may be necessary to improve its safety rating to *conditional* or *satisfactory* or be subject to the prohibition. Fourteen comments were received in response to the 1991 interim final rule. Such of those comments as provide relevant information to this NPRM are discussed herein. The FHWA will also determine whether the 1991 interim rule is to be made final after consideration of the comments received in response to today's NPRM.

In the second docket, the FHWA published in the **Federal Register** on September 14, 1994, a notice and request for comments (59 FR 47203) explaining changes made to the SFRM in 1993, which was then being used to evaluate a motor carrier's adherence to the § 385.5 safety fitness standard. Additional changes to the SFRM, which became effective on October 1, 1994, were also explained. These changes initiated the use of violations of the safety regulations designated as "acute" or "critical" to rate each of the five regulatory factors evaluated when performing a compliance review (CR) at a carrier's place of business.

The FHWA also solicited comments concerning: (1) changes made in 1994, (2) the direction that future modifications to the SFRM should take, and (3) how best to disseminate information to the industry about new regulations and the FHWA programs that encourage "voluntary compliance."

The 17 comments received in response to changes to the rating criteria are discussed in this notice to the extent they provide relevant information to this NPRM. Comments that are duplicative of those discussed under the prior docket discussion are not repeated.

In today's NPRM, the FHWA is proposing to incorporate as Appendix B to Part 385 the SFRM in a form substantially similar to that which has been used over the past 8 years and adopted by the interim final rule published elsewhere in today's **Federal Register**. The SFRM proposed in this NPRM has been modified, however, to change the accident factor. The reasons for this proposed modification are as follows. The preventable recordable accident criteria have been used by

FHWA since the mid-1980s. The FHWA has, however, received complaints that the criteria are too subjective. During the CR, preventability is evaluated based on the safety specialist's assessment. The FHWA believes that 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. However, individuals will not always agree when the same fact situations are evaluated.

We are proposing to use all recordable accidents in evaluating the accident factor because we believe this is a more objective standard. The data indicate that the vast majority of all accidents have been determined to be preventable. For Fiscal Year 1995, the average accident rate, derived from CRs performed during that time frame, was 0.812 for all carriers and 1.029 for carriers that operated entirely within a 100 air mile radius.

We are proposing to double the average rate to determine when a carrier is *unsatisfactory* in the accident factor. The FHWA believes that it would be reasonable to rate *unsatisfactory*, for the accident factor alone, any motor carrier with an accident rate that is twice the average rate for all carriers (or for carriers operating entirely within the 100 air mile radius, as the case may be), because the FHWA believes that it is likely that a carrier with an accident rate substantially above the norm for similarly situated carriers has inadequate or improperly functioning safety management controls. See 49 CFR § 385.7. Nevertheless, the recordable accident rate will be used to rate Factor 6, Accident, for a carrier only when the carrier has had two or more recordable accidents within the 12 months prior to the CR. The FHWA believes that a single accident within that time frame could be due to any number of reasons not reflecting on the adequacy of the carrier's safety management controls. Additionally, the FHWA proposes no longer to assign *satisfactory* or *conditional* ratings for this factor; only *unsatisfactory* ratings will be assigned.

## Discussion of Comments

### Purpose of Safety Ratings

The Interstate Truckload Carriers Conference (ITCC) stated that the FHWA's safety rating process was never intended to be used as an administrative mechanism for imposing severe sanctions upon motor carriers. The safety rating system, according to the

ITCC, was developed as an educational and management tool so the FHWA could focus its limited resources on the operations of motor carriers with problems. The commenter claimed that a motor carrier could receive a rating as a result of factors or considerations which were never part of a rulemaking proceeding and thus possibly be a violation of the Administrative Procedure Act (APA).

The American Trucking Associations (ATA) had similar concerns that because the safety criteria had not gone through public notice and comment rulemaking, it would be a possible violation of the APA and unfair for the FHWA to use those criteria for enforcement purposes. The ATA wanted the FHWA to provide the formula that establishes the *unsatisfactory* safety rating. It also stated that the safety rating process should be developed through notice and comment rulemaking. Comments concerning the safety review (SR) are no longer relevant since that review process was discontinued on September 30, 1994.

The FHWA adopted a final rule in 1988, after notice and opportunity for comment, that implemented the requirements of section 215 of the MCSA of 1984 and established a procedure to determine the safety fitness of motor carriers. The FHWA believed that the SFRM that it used to supplement the procedures set forth in its regulations did not amount to substantive requirements necessitating notice and comment rulemaking. In its interim final rule adopted in 1991, the FHWA advised motor carriers that they could obtain copies of the safety rating process by contacting the agency. See 56 FR at 40803. This offer to provide copies of the SFRM to carriers was reiterated in 1994. See 59 FR at 47205.

In light of the court's decision in *MST Express*, the FHWA is now soliciting public comment on its proposal to add the SFRM, modified as described in this NPRM, to Part 385. The FHWA notes that the SFRM proposed today has been modified, in part, in light of public comments received in response to the 1991 interim final rule and the 1994 request for public comment.

### Accident Factor

The ATA and the American Bus Association (ABA) were concerned about the inclusion of the reportable/preventable (subsequently changed to recordable/preventable) accident frequency in the rating process, as there are no regulations specifying acceptable frequencies for a *satisfactory* rating. Also, they believe that in borderline cases preventability is a judgment call

that may be influenced by short-term objectives. The ABA stated that the FHWA has not defined a preventable accident, and it would like the criteria for preventability "spelled out." The ABA also suggested that the FHWA could consider all reportable (now recordable) accidents in its safety rating process, which would eliminate subjective evaluations of whether particular accidents were preventable.

In response to these comments, the FHWA is proposing to adopt a recordable accident rate for the accident factor in the SFRM as discussed above.

The recordable accident rate will be used to rate Factor 6, Accident, only when two or more recordable accidents occurred within the 12 months prior to the initiation of the CR. Urban carriers (a carrier operating entirely within the 100 air mile radius) with a recordable accident rate greater than 2.1 will receive an *unsatisfactory* rating for the accident factor. All other carriers with a recordable accident rate greater than 1.6 would receive an *unsatisfactory* factor rating.

### Definitions of "Conditional" and "Unsatisfactory"

The ATA noted that the § 385.3 definitions of *conditional* and *unsatisfactory* should be changed to reflect § 385.5 (a)-(k), and not (h), as published in the August 16, 1991, **Federal Register**. That change is proposed in this notice.

### Objectivity of Ratings

The Chemical Waste Transportation Institute (CWTI) supported the FHWA's efforts to develop a computerized rating formula, and wanted the subjectivity minimized as much as possible. It also suggested that the FHWA describe what steps are being taken to minimize human error in the safety rating process.

The FHWA believes that having modified the SFRM to rate on the basis of actual violations of acute regulations and patterns of violations of critical regulations, as well as performance proposed to be measured by recordable accidents and vehicle out-of-service (OOS) rates from roadside vehicle/driver inspections, the safety rating process has been made more objective.

### Definitions of "Acute" and "Critical" Regulations

General Electric recommended having the "critical" and "acute" regulations made available to the public and the definitions of the terms "critical" and "acute" defined in part 385. It also recommended that the definitions of *conditional* and *unsatisfactory* be revised to make a clearer distinction

between these two ratings. The ABA stated that "the definitions of critical and acute violations are too vague to allow a reasonable objective judgment." The "acute" and "critical" regulations and the definitions of the terms are being published in the proposed Appendix B to 49 CFR 385.

#### Algorithm

Blakely & Associates wanted a computerized algorithm with a formula table so that carriers can determine ratings themselves. It also suggested that the FHWA provide to the carrier the rating at the conclusion of the CR. The SFRM contains explanations of the factor ratings and the Motor Carrier Safety Rating Table, which is the formula for determining a safety rating. The FHWA has also modified its procedures to provide motor carriers with an anticipated rating at the conclusion of the CR.

#### Elimination of the SR

Hanson Trucking and the ITCC believe that the SR should not have been eliminated as "it takes the focus of the audit from realistic safety concerns and places the focus on inaccuracies in paperwork." Hanson Trucking did not believe that noncompliance in the areas of false entries and improper form and manner will lead to increased accident frequency and severity. The ITCC believed that the 70-question format allowed carriers to police their operations and determine the quality of their safety compliance in advance of a CR by the FHWA. It stated that the first concern of an on-site audit should be the accident history of the motor carrier. Further, the ITCC believes that if a high accident frequency is in evidence, a CR should then be conducted in an attempt to educate the carrier in accident preventability. According to the ITCC, the lack of significant accident data (no accidents) should indicate that the motor carrier has an adequate safety program in place. The end goal, the ITCC stated, should be: no accident problems equals no CR or enforcement action.

The FHWA discontinued the SR since the CR is a more objective means to assess a motor carrier's adherence to the § 385.5, safety fitness standard. To the extent a carrier needs to know how far into noncompliance it can slip without risking a bad rating, the carrier will now be able to assess its safety compliance by conducting a self-review to determine if it has violations of "acute" regulations or patterns of violations of "critical" regulations.

#### Vehicle Factor

In factor 4 (Vehicle), the California Highway Patrol (CHP) believes the former system of a *conditional* threshold at 17 percent vehicle OOS rate for the vehicle factor was more appropriate than the current 34 percent OOS rate for *conditional*, and the Advocates for Highway and Auto Safety (Advocates) generally agreed with this position. The CWTI requested the FHWA to disclose its rationale for 34 percent OOS rate for a *conditional* factor 4 rating and for selecting 10 percent for the pattern of violations when evaluating compliance with "critical" regulations. The NPTC stated that the original 17 percent OOS rate should be the threshold for assigning a *conditional* factor rating, and then random vehicle inspections should be performed at the time of the CR. If there is total compliance with the part 396 requirements, the factor rating should be upgraded.

The ATA and several carriers were concerned that vehicles are sometimes inspected, no defects are discovered and the vehicles are then allowed to proceed without written inspection reports. Because of this, they contend the FHWA should re-evaluate the use of OOS percentages as a major component of factor 4 (Vehicle) rating, and place more importance on the motor carrier's compliance with part 396. Some carriers contended that for the OOS rate to be an accurate representation of a motor carrier's compliance with the regulations, it must be adjusted to the carrier's size.

The FHWA considered the comments concerning the method of evaluating compliance with the Vehicle Factor. The FHWA believes that the current method is appropriate and will not propose any changes at this time. Our goal is to utilize "performance-based information" to rate motor carriers whenever possible. Vehicle OOS rates are, therefore, used as a first indicator to evaluate factor 4-(Vehicle). A minimum of three or more inspections would be required to use vehicle OOS rates as a first indicator. The three inspections must have occurred in the twelve months prior to the CR, or be a combination of inspections performed at the motor carrier's facility at the time of the CR.

If it appears during the CR that the motor carrier's maintenance has either improved or deteriorated since the inspections in the Motor Carrier Management Information System, it is appropriate for the individual conducting the CR to perform inspections at the motor carrier's facility if vehicles are available (vehicles ready

to be dispatched or vehicles that just came off the road). Inspections may also be performed at the motor carrier's facility at the time of the CR, if there are fewer than three inspections on the carrier profile for the prior 12 months.

The reason for using a 34 percent or greater OOS rate for the *conditional* first indicator is as follows: (1) The national OOS rate has been in the low thirties for several years; (2) many of the roadside inspections are targeted at visibly defective vehicles; (3) some vehicles receive a cursory inspection and if there are no apparent defects, the vehicles are allowed to proceed without an inspection report being generated; and (4) using a minimum of three or more vehicle inspections, one OOS vehicle should not be able to impact the factor rating. The second indicator is the motor carrier's compliance with part 396, inspection, repair, and maintenance requirements. The number of records to be reviewed is derived from the International Standard of sampling procedures. If a violation of a part 396 acute regulation, or a pattern of violations of a critical regulation is discovered, a first indicator factor rating of *conditional* will be lowered to *unsatisfactory*, and a *satisfactory* factor rating to *conditional*, respectively.

Using two indicators to evaluate this factor is a reasonable approach. The vehicle OOS rates are either confirmed, with the first indicator rating remaining the same, or if significant noncompliance with part 396 is discovered, the factor rating is lowered to *conditional* or *unsatisfactory*, respectively. All of the defects that have been identified as OOS violations have the same weight, which is an additional reason for the OOS rate being set at 34 percent for *conditional* as the first indicator in the factor rating.

#### Selection of Records for Review

The ATA and several carriers stated that the safety rating process is not based upon a random sampling of the motor carrier's records. The FHWA has given a great deal of consideration to the issue of selecting carriers' records for review. The § 385.5 safety fitness standard was developed to measure the effectiveness of a motor carriers' safety management controls. The CR identifies and documents areas where a motor carrier's safety management controls have failed or are ineffective. The FHWA focuses its review on drivers and vehicles that were involved in accidents, those drivers who incurred OOS violations during roadside inspections, or those drivers or vehicles for which violations are more likely to be found (e.g. those drivers driving the

most miles). The drivers and vehicles reviewed using the "focused sample" are the same ones carrier officials should be focusing their efforts upon. The minimum number of records to be reviewed is derived from the International Standard of sampling procedures, which is based upon the number of drivers or vehicles that the motor carrier operates. When the number of records from this focused sample has been exhausted and there are fewer records than the sampling guidelines specify, random sampling is used to meet the minimum number required to be reviewed. Classifying certain regulations as "acute" or "critical" assists motor carriers in their compliance efforts as they can concentrate their initial efforts on complying with these regulations. It should be noted, however, that only full compliance with all of the safety regulations will ensure that motor carriers comply with the provisions of the § 385.5, safety fitness standard.

"Acute" regulations are ones where violations should not occur for a motor carrier with effective safety management controls. An example of an "acute" regulation is § 382.211, using a driver who has refused to submit to an alcohol or controlled substances test required under part 382. A motor carrier which commits this violation is one that instructed the driver to undergo testing, and the driver refused to be tested. There is no reasonable excuse for a carrier to use the driver after that driver's refusal to be tested.

A pattern of noncompliance is required before a rating factor is impacted by violations of "critical" regulations because even a motor carrier with effective safety management controls will, in all likelihood, violate some of the "critical" regulations. An example of a "critical" regulation is § 395.3(a)(1), requiring or permitting driver to drive more than 10 hours. By identifying this regulation as "critical," the FHWA has ensured that violations will not impact factor 3 (Hours of Service) unless they constitute a pattern. A pattern is defined as a number of violations (more than one) constituting 10 percent or more of the occasions where like violations could have occurred. Thus, when evaluating compliance with a "critical" regulation, the motor carrier's safety management controls usually are judged to be effective if the number of discovered violations is under 10 percent.

The FHWA believes that motor carriers with effective safety management controls are able to achieve a level of compliance with "critical" regulations before they reach a pattern

of violations. For rating purposes, all violations are considered, and effective safety management oversight should result in a violation rate of less than 10 percent of the records or occasions reviewed.

#### *Opportunity to Challenge a Rating*

Several commenters wanted the procedures changed to allow a motor carrier 30 days to challenge an anticipated safety rating where there are factual issues in dispute.

The FHWA believes that providing a motor carrier the anticipated rating at the conclusion of the CR gives the carrier adequate notice that a rating of *conditional* or *unsatisfactory* will become effective 30 days from that date. Motor carriers receiving such a notice can immediately: (1) Take corrective action on the discovered violations, which will enable them to request a reevaluation based upon corrective action taken (§ 385.17), and/or (2) petition the Director, Office of Motor Carrier Field Operations, if there are factual or procedural issues in dispute (§ 385.15). Either option may be utilized before the carrier receives a final safety rating.

#### *Point Assessment for Violations of "Acute" and "Critical" Regulations*

The ATA stated that assessing one point for a violation of an 'acute' regulation discriminates against the large motor carrier since more records are reviewed. Thus, it contends, there is a greater chance of one violation being discovered. The ATA further stated that violations of "acute" regulations should be evaluated on a percentage basis analogous to the 10% threshold for "critical" regulations. Rocor International wanted the percentage of violations of an "acute" regulation to be set at five percent of the records examined before one point is assessed. It stated that this would be fairer to the larger motor carrier where the probability of discovering a violation of one "acute" regulation increases directly with the number of records examined. The NPTC commented "Automatically assigning a *conditional* rating for a single instance of noncompliance with an 'acute' regulation may not be justified and fair. Just as there are many factors that determine the safety fitness of a motor carrier—vehicle condition, driver condition, over-the-road performance—when one part of one of these factors is out of compliance, it does not necessarily mean the motor carrier is unsafe."

Acute regulations have been identified as regulations where

noncompliance is so severe (and avoidable by the attentive motor carrier) that its occurrence is itself demonstrable of the absence of effective safety management controls. It is reasonable to demand zero tolerance for violations of these regulations. Thus, regardless of the number of motor carrier records checked, there should not be any instances of noncompliance with these identified "acute" regulations. If a motor carrier has violated an acute regulation, one instance of noncompliance will cause the factor rating to be *conditional*, but will not, in and of itself, cause the motor carrier to have a less than *satisfactory* safety rating. A motor carrier with as many as two factor ratings of *conditional* will still be rated as *satisfactory*. The FHWA believes that this is adequate protection for a motor carrier, of any size, that violates an acute regulation.

The CHP and the Advocates agreed with two points being assessed for a pattern of non-compliance with part 395 critical regulations.

On the other hand, the ATA and several other commenters believed that there is no justification for doubling the point value for hours of service violations, and that the FHWA has no evidence to show that fatigue or lack of alertness related accidents are tied to hours of service violations. Schafer Trucking wanted factor 3 (Hours of Service) changed from two points to one point for a pattern of noncompliance with a critical regulation unless the CR reveals the absence of an effective hours of service compliance program as indicated by either: (i) A recordable/preventable accident rate of more than 0.45 per million miles, or (ii) the failure of the carrier to have in place an hours of service compliance program enforced by sanctions which include driver suspensions and/or terminations for hours of service violations."

The FHWA believes that there are data to draw the conclusion that hours of service violations are related to fatigue. Studies have shown that driver error is a significant factor in the majority of accidents. The FHWA is continuing its major research efforts to better understand fatigue. There are no "acute" regulations in part 395 (Hours of Service). Thus, to have a rating of less than *satisfactory* in factor 3, a motor carrier would need a pattern of noncompliance with a "critical" regulation. When reviewing driver records of duty status (RODS), it is very rare that only several records are reviewed as a driver would typically generate 30 RODS in a month. The FHWA believes that motor carriers with effective safety management controls

will have less than a 10 percent rate of noncompliance with any of the part 395 critical regulations.

#### Rating Factors

The ITCC stated that the assignment of equal weights for the six rating factors seems inconsistent with the underlying purpose of giving more weight to violations of regulations that are acute or critical. It did not think that all factors should be weighted equally. The ITCC also stated that the overall factor rating is the correct area in which to place greater emphasis upon compliance with violations of the hours of service regulations.

The FHWA's SFRM, developed in 1988-89, combines parts of the FMCSRs and HMRs having similar characteristics into five regulatory areas called "rating factors." A sixth factor is included to address the accident history of the motor carrier. Each of the factors is rated *satisfactory*, *conditional* or *unsatisfactory*. Each of the six factors is weighted equally in the safety rating methodology. Giving each of the six factors equal weight is an attempt to balance the safety significance of the regulations, except that the FHWA believes it is appropriate to increase the point value for patterns of noncompliance with "critical" regulations relating to Part 395. Otherwise, the FHWA intends to retain the equal weight of the six factor ratings.

Regarding some comments suggesting more or less relationship between enforcement and rating factors, the FHWA believes that separating enforcement actions from safety ratings is appropriate. Both are tools that are used to induce motor carriers to improve their compliance with regulatory requirements. There will be instances where a motor carrier has an enforcement action pending against it, and appropriately has a satisfactory safety rating. An example of this is where one terminal has a 15 percent violation rate for compliance with § 395.3 (a)(1), requiring or permitting driver to drive more than 10 hours. The motor carrier's overall violation rate may be seven percent for compliance with § 395.3(a)(1), which is satisfactory; however, an enforcement action may be initiated against the carrier for its terminal with the 15 percent violation rate. The FHWA believes this is appropriate as the carrier's overall compliance is *satisfactory* yet it has a significant noncompliance problem at one terminal with a 15 percent violation rate for noncompliance with § 395.3(a)(1).

#### Future Direction

Today's NPRM is necessary to meet the FHWA's obligation under 49 U.S.C. § 31144, as interpreted by the court in *MST v. DOT*, to prescribe regulations establishing a procedure to decide on the safety fitness of owners and operators of commercial motor vehicles, which shall include—

(A) specific initial and continuing requirements to be met by the owners, operators, and persons to prove safety fitness;

(B) a means of deciding whether the owners, operators, and persons meet the safety fitness requirements of clause (A) of this paragraph; and

(C) specific time deadlines for action by the Secretary in making fitness determinations.

The FHWA believes incorporation of the SFRM and the other amendments to Part 385 proposed herein will meet that obligation. It is now soliciting further comments on the SFRM as an appendix to Part 385 for use in determining a motor carrier's safety fitness, the proposed change to the accident factor, as well as on the other minor changes proposed to be made to Part 385 itself.

The FHWA views this proposed action as a short-term approach. For the long term, the FHWA is moving toward a more performance-based means of determining when it is that carriers are not fit to conduct commercial motor vehicle operations safely in interstate commerce.

Under legislative direction in the Intermodal Surface Transportation and Efficiency Act of 1991, the FHWA has been conducting pilots in five States to determine the feasibility of relating safety performance to vehicle registrations. This has led to the development of a system of data collection, called Safestat, which incorporates all the safety information known about motor carriers and produces a relative ranking of each carrier against all others similarly situated. Within the next year or two, the FHWA believes the system will have reached the point where it can be successfully employed to identify the worst performing carriers. The system is presently used to identify problem carriers and prioritize them for CRs.

Several sections in part 385 are proposed to be amended to correct previous technical errors. The definition of "Safety review" in section 385.3 would be removed since the Safety Review was discontinued as of October 1, 1994. The definition of *Conditional safety rating* in section 385.3 would be revised to "ensure compliance with the safety fitness standard that could result

in occurrences listed in § 385.5(a) through (k)." The definition of *Unsatisfactory safety rating* would be revised to "ensure compliance with the safety fitness standard which has resulted in occurrences listed in § 385.5(a) through (k). Section 385.9 would be revised to include a subsection (b) to meet the 49 U.S.C. § 31144(a)(C) requirement that there be specific time deadlines for action by the Secretary in making fitness decisions. Section 385.17 would be revised to "conditionally suspend the prohibition of operating with the *unsatisfactory* safety rating for an additional period of up to 10 days." The current Appendix to Part 385 is changed to Appendix A in the interim final rule published elsewhere in today's **Federal Register**. The revised Safety Rating Process is added as Appendix B.

#### Rulemaking Analyses and Notices

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866. No serious inconsistency or interference with another agency's actions or plans is likely to result, and it is unlikely that this regulatory action will have an annual effect on the economy of \$100 million or more. This Notice of proposed rulemaking rule is administrative in nature in that it neither imposes new requirements upon the motor carrier industry nor alters the August 16, 1991, interim final rule implementing the provisions of 49 U.S.C. 5113. The FHWA does not anticipate any new economic impacts as a result of this rulemaking. This rule would not impose any costs on motor carriers in addition to those assessed in the Regulatory Evaluation and Regulatory Flexibility Analysis prepared in support of the 1988 final rule. (The 1991 interim final amended the 1988 rule in ways that the FHWA believes had minimal economic impact on motor carriers.)

The existing rating factors are used to evaluate the degree to which the motor carrier complies with the regulations and add no costs because the carrier is already required to comply. Compliance with regulations, however, is only a surrogate for actual safety performance. The addition of the accident factor introduced a direct measure of performance into the equation. In 1988, this factor was not considered as having a cost consequence because the effect of a negative rating resulting from substantially higher accidents than the

norm would be virtually identical to the impact on the carrier's business that would flow from public knowledge of its poor safety performance.

The impact resulting from a negative rating generally relates to knowledge of the rating by a shipper or insurer. If those same entities know of the unusually high accident rate, the FHWA believes the consequences would or should be approximately the same.

The instant proposal to consider all recordable accident instead of only preventable recordable accidents would have the same sort of impact. Nevertheless, the FHWA believes that this is a significant regulatory action within the meaning of the Department of Transportation's regulatory policies and procedures because it expects that there will be significant public interest in this 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 rule on small entities and has determined that it would not have a significant economic impact on a substantial number of small entities. The motor carriers economically impacted by this rulemaking will be those who are rated as unsatisfactory, and fail to take appropriate actions to have their rating upgraded. In the past, relatively few small motor carriers had been affected by the statutory consequences of an *unsatisfactory*, and there is no reason to believe that those impacts will increase in any way by this action.

#### *Executive Order 12612 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. These safety requirements do not directly preempt any State law or regulation, and no additional costs or burdens would be imposed on the States as a result of this action. Furthermore, the State's ability to discharge traditional State governmental functions would not be affected by this rulemaking.

#### *Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal 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 action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

#### *National Environmental Policy Act*

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that this action would not have any effect on the quality of the environment.

#### *Regulation Identification Number*

A regulation 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 in 49 CFR Part 385**

Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, and Safety fitness procedures.

Issued on: May 21, 1997.

**Jane F. Garvey,**

*Acting Federal Highway Administrator.*

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

#### **PART 385—SAFETY FITNESS PROCEDURES**

1. The authority citation for part 385 continues to read as follows:

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

2. In § 385.3, under the definition "Reviews", remove and reserve paragraph "(2) Safety review"; and under the definition "Safety ratings", revise paragraphs "(2) Conditional safety rating" and "(3) Unsatisfactory safety rating" to read as follows:

#### **§ 385.3 Definitions.**

\* \* \* \* \*

*Reviews.* \* \* \*

(1) \* \* \*

(2) [Reserved]

(3) \* \* \*

*Safety ratings:* (1) \* \* \*

(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).

\* \* \* \* \*

3. Section 385.9 is amended by designating the current undesignated text as paragraph (a), and by adding paragraph (b) to read as follows:

#### **§ 385.9 Determination of a safety rating.**

(a) \* \* \*

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

4. Section 385.17 is amended by revising paragraph (c) to read as follows:

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

\* \* \* \* \*

(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 prohibition of operating with the unsatisfactory safety rating for an additional period of up to 10 days.

5. Part 385 is amended by designating the existing appendix as appendix A, and by adding appendix B to read as follows:

#### **Appendix B To Part 385—Safety Rating Process**

Section 215 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31144) directed the Secretary of Transportation, in cooperation with the Interstate Commerce Commission, 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 Highway Administration (FHWA).

As directed, FHWA 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.

To meet the safety fitness standard, a motor carrier must demonstrate to FHWA 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 FHWA, which uses data from compliance reviews (CRs) to rate motor carriers.

The safety rating process developed by FHWA's Office of Motor Carriers 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 with 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*.

#### Source of Data for Rating Methodology

The FHWA'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.

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 and vehicle maintenance 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.

#### Converting CR Information Into a Safety Rating

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

Acute are those identified regulations, where noncompliance is so severe 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 knowledge or could not reasonably be expected to have knowledge, then a violation would not be cited.

Critical are those identified regulations, where noncompliance relates to management

and/or operational controls. Noncompliance with these regulations is indicative of a breakdown 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.

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

Noncompliance with acute regulations and patterns of noncompliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates. The FHWA has used noncompliance with acute regulations and patterns of noncompliance with critical regulations since 1989 to determine motor carriers' adherence to the § 385.5—Safety fitness standard. Compliance with regulatory factors (1) Parts 387, & 390, (2) Parts 382, 383 & 391, (3) Parts 392 & 395, (4) Parts 393 & 396, when there are less than three vehicle inspections in the last 12 months to evaluate, and (5) Parts 397, 171, 177 & 180, will be evaluated as follows:

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 large numbers of documents are reviewed the number of violations required to meet a pattern is equal to at least 10 percent of those examined.

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

#### Vehicle Factor

When there are a combination of *three or more inspections 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 & 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% 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 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%, 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*.

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. 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.

#### Accident Factor

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* 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.

The recordable accidents per million miles were computed for each CR performed in Fiscal Year 1995. The national average for all carriers rated was 0.812, and 1.029 for carriers operating entirely within the 100 air mile radius.

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

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 within the 12 months prior to the CR. An urban carrier (a carrier operating entirely within the 100 air mile radius) with a recordable accident rate greater than 2.1 will receive an *unsatisfactory* rating for the accident factor. All other carriers with a recordable accident rate greater than 1.6 will receive an *unsatisfactory* factor rating. The rates are a result of doubling the national average accident rate for all carriers rated in Fiscal Year 1995.

#### Factor Ratings

In the methodology, parts of the FMCSRs and the HMRs having similar characteristics are combined together into five regulatory areas called "factors."



The following table shows the five regulatory factors, parts of the FMCSRs and

HMRs associated with each factor, and the accident factor.

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.

Factor Ratings are determined as follows:

- “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

Safety Rating

The ratings for the six factors are then entered into a rating table which establishes the motor carrier’s safety rating. The FHWA 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 less .....	Satisfactory.
0 .....	More than 2 .....	Conditional.
1 .....	2 or less .....	Conditional.
1 .....	More than 2 .....	Unsatisfactory.
2 or more .....	0 or more .....	Unsatisfactory.

Anticipated Safety Rating

The *anticipated* (emphasis added) safety rating will appear on the CR. The following appropriate information will appear after the last entry on the CR, MCS-151, Part B. “It is anticipated the official safety rating from Washington, D.C. will be SATISFACTORY.”  
 or  
 “It is anticipated the official safety rating from Washington, D.C. will be CONDITIONAL. The safety rating will become effective thirty days from the date of the CR.”  
 or  
 “It is anticipated the official safety rating from Washington, D.C., will be UNSATISFACTORY. The safety rating will become effective thirty days from the date of the CR.”

Assignment of Rating/Motor Carrier Notification

When the official rating is determined in Washington, D.C., the FHWA notifies the motor carrier in writing of its safety rating as prescribed in § 385.11. An anticipated safety rating which is higher than the existing rating becomes effective as soon as the official safety rating from Washington, D.C. is issued. Notification of a *conditional or unsatisfactory* rating includes a list of those Parts of the regulations, or recordable accident rate for which corrective actions must be taken by the motor carrier to improve its overall safety performance.

Motor Carrier Procedural Rights

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.

Conclusion

The FHWA believes this “safety 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 (Section 385.9). Improved compliance with the regulations leads to an improved rating, which in turn increases safety. This increased safety is our regulatory goal.

List of Acute and Critical Regulations

- § 382.115(c) Failing to implement an alcohol and/or controlled substance testing program. (acute)
- § 382.201 Using a driver who has an alcohol concentration of 0.04 or greater. (acute)
- § 382.211 Using a driver who has refused to submit to an alcohol controlled substances test required under Part 382. (acute)
- § 382.213(b) Using a driver who has used a controlled substance. (acute)
- § 382.215 Using a driver who has tested positive for a controlled substance. (acute)
- § 382.301(a) Failing to require driver to undergo pre-employment controlled substance testing. (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 25 percent 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 50 percent 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 Driver performing 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 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) 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) 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) 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 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(a)/391.95 Using an unqualified driver, a driver who has tested positive for controlled substances, or refused to be tested as required. (acute)
- § 391.11(b)(6) 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) Using a driver not medically examined and certified each 24 months. (critical)
- § 391.51(a) Failing to maintain driver qualification file on each driver employed. (critical)
- § 391.51(b)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)
- § 391.51(c)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)
- § 391.51(c)(3) Failing to maintain inquiries into driver's driving record in driver's qualification file. (critical)
- § 391.51(d)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)
- § 391.87(f)(5) Failing to retain in the driver's qualification file test finding, either "Negative" and, if "Positive", the controlled substances identified. (critical)
- § 391.93(a) Failing to implement a controlled substances testing program. (acute)
- § 391.99(a) Failing to require a driver to be tested for the use of controlled substances, upon reasonable cause. (acute)
- § 391.103(a) Failing to require a driver-applicant whom the motor carrier intends to hire or use to be tested for the use of controlled substances as a pre-qualification condition. (critical)
- § 391.109(a) Failing to conduct controlled substance testing at a 50% annualized rate. (critical)
- § 391.115(c) Failing to ensure post-accident controlled substances testing is conducted and conforms with 49 CFR Part 40. (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 has 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(i)(1)(i) Requiring or permitting a driver to drive more than 15 hours. (Driving in Alaska.) (critical)
- § 395.1(i)(1)(ii) Requiring or permitting a driver to drive after having been on duty 20 hours. (Driving in Alaska.) (critical)
- § 395.1(i)(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(i)(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) Requiring or permitting driver to drive after having been on duty more than 60 hours in 7 consecutive days. (critical)
- § 395.3(b) 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(l) 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. (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 Class A or B explosives, (Class 1.1, 1.2, or 1.3) is attended at all times by its driver or a qualified representative. (acute)
- § 397.7(a)(1) Parking a motor vehicle containing Class A or B explosives (1.1, 1.2, 1.3) within 5 feet of traveled portion of highway. (critical)
- § 397.7(b) Parking a motor vehicle containing hazardous material(s) 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 explosives, oxidizing materials, or flammable materials. (critical)
- § 397.19(a) Failing to furnish driver of motor vehicle transporting Class A or B explosives (Class 1.1, 1.2, 1.3) 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 Division 1.1, 1.2, or 1.3 (explosive) material 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(a) 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. (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)
- § 180.417 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)

[FR Doc. 97-13873 Filed 5-27-97; 8:45 am]

BILLING CODE 4910-22-P