DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 365, 385, 386, 387, and 395

[Docket No. FMCSA–2015–0001]

RIN 2126–AB11

Carrier Safety Fitness Determination

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

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

SUMMARY: FMCSA proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to revise the current methodology for issuance of a safety fitness determination (SFD) for motor carriers. The proposed new methodologies would determine when a motor carrier is not fit to operate commercial motor vehicles (CMVs) in or affecting interstate commerce based on the carrier's on-road safety data in relation to five of the Agency's seven Behavior Analysis and Safety Improvement Categories (BASICs); an investigation; or a combination of on-road safety data and investigation information. The intended effect of this action is to more effectively use FMCSA data and resources to identify unfit motor carriers and to remove them from the Nation's roadways.

DATES: FMCSA will be accepting both initial comments and reply comments in response to this NPRM. Send your initial comments on or before March 21, 2016 and reply comments on or before April 20, 2016.

ADDRESSES: You may submit comments (initial and reply) identified by the docket number FMCSA–2015–0001 using any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Services, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. David Yessen, (609) 275–2606, *David.Yessen@dot.gov.* FMCSA office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, call Docket Services, telephone 202–366–9826.

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I. Acronyms and Abbreviations

ATRI	American Transportation Research Institute.
BASIC	Behavior Analysis and Safety Improvement Categories.
CDL	Commercial Driver's License.
CMV	Commercial Motor Vehicle.
CVOR	Commercial Vehicle Operators Registration.
CR	Compliance Review.
CSA	Compliance, Safety, Accountability.
DOT	United States Department of Transportation.
FHWA	Federal Highway Administration.
FMCSA	Federal Motor Carrier Safety Administration.
FMCSRs	Federal Motor Carrier Safety Regulations, 49 CFR parts 350 through 399.
FR	Federal Register.
HM	Hazardous Materials.
HMR	Hazardous Materials Regulations, 49 CFR parts 171 through 180.
MCMIS	Motor Carrier Management Information System.
MCSAC	Motor Carrier Safety Advisory Committee.
MCSAP	Motor Carrier Safety Assistance Program.
NPRM	Notice of Proposed Rulemaking.
NTSB	National Transportation Safety Board.
OMB	Office of Management and Budget.
PHMSA	Pipeline and Hazardous Materials Safety Administration.
PU	Power Unit.
SFD	Safety Fitness Determination.
SMS	Safety Measurement System.
VMT	Vehicle Miles Traveled.
VOLPE	U.S. DOT Office of the Assistant Secretary for Research and Technology's John A. Volpe National Transportation Systems Center, Cambridge, MA.

II. Executive Summary

As the Federal government agency responsible for commercial motor vehicle (CMV) safety, FMCSA must identify unfit motor carriers. Under the existing regulations, a compliance review must be conducted to issue a Safety Fitness Determination (SFD) and, if a motor carrier receives a final unsatisfactory safety rating, FMCSA declares that motor carrier to be unfit to operate on the Nation's highways. The current SFD process does not permit the Agency to use all of the on-road safety data in the Motor Carrier Management Information System (MCMIS) in making each SFD. Based on experience and empirical data from the Safety Measurement System (SMS) and interventions, the integration of on-road safety data into the SFD process would improve the assessment of motor carriers and the identification of unfit motor carriers. Such integration is a longstanding recommendation of the National Transportation Safety Board (NTSB). Under this proposal, unfit determinations could be based on a carrier's on-road safety data alone. In this NPRM, FMCSA proposes to eliminate the current three-tier rating system (*i.e.,* satisfactory–conditional–unsatisfactory) for determining safety fitness in favor of a single determination of unfit. FMCSA's statutory requirement is to determine which owners or operators are unfit to operate on the Nation's roadways, and prescribe specific consequences for motor carriers found to be unfit. By statute, such carriers are prohibited from operating in interstate commerce or transportation that affects interstate commerce.

Using data from inspections or investigations or both, FMCSA proposes to evaluate carriers monthly to determine if they failed two or more Behavior Analysis and Safety Improvement Categories (BASICs) and thus should be proposed unfit. A motor carrier would be proposed unfit if it: (1) Failed two or more BASICs based exclusively on on-road safety data from 11 or more inspections with 1 or more violations in each, in a single BASIC, before a carrier could fail the BASICs; (2) had violations of the proposed set of critical and acute regulations, identified through an investigation, that cause the motor carrier to fail two or more BASICs; or (3) failed two or more BASICs based on a combination of data from inspections and investigation results. The Agency's analysis and reasoning for these proposals is explained in more detail later in this document.

FMCSA's MCMIS automatically takes each motor carrier's safety data from on-road safety inspections and converts the data into a BASIC measure and a rank/percentile using the methodology in ''Carrier Safety Measurement System (CSMS) Methodology.'' [1] This methodology, available to the public since December 2010, provides the details of the SMS currently used for identifying unsafe behaviors and prioritizing and selecting motor carriers for interventions, including investigations and compliance reviews. Each motor carrier's measure in each BASIC is a quantifiable determination of safety behavior in that BASIC. Percentile ranking allows the safety behavior of a motor carrier to be compared with the safety behavior of carriers with similar numbers of safety events. Within each safety event group, a percentile is computed on a 0–100 scale for each motor carrier that receives a non-zero measure, with 100 indicating the worst performance. Currently, when a motor carrier's SMS measures percentile ranking meets or exceeds the intervention thresholds shown in Table 3 below, the Agency prioritizes the carrier for interventions, including possibly a compliance review.

In SMS, a carrier's performance is compared to other carriers in its safety event group every month. As a result, improved safety performance by other carriers could result in the carrier having higher (worse) percentiles without having committed any additional violations. In contrast, under the proposed SFD methodology, every month a carrier's performance would be compared to an absolute failure standard that would be set in regulation based on each safety event group. Because the absolute failure standard would not change from month to month, changes in another company's performance would not impact the motor carrier. The failure standard will only be changed after rulemaking by the Agency, with notice and comment. The carrier's SFD measure would reflect its own performance against the failure standard, and would not be impacted by other carriers' performance.

From the motor carrier's measures, percentile ranking, and intervention thresholds, FMCSA developed proposed SFD failure standards at higher levels of noncompliance with the FMCSRs and HMRs, which provide stronger correlations to previous crashes.[2] The proposed SFD failure standards would be equivalent to the measures that would determine a motor carrier unfit at the 96th percentile for the Unsafe Driving and HOS Compliance BASICs, that is, a person would know the carrier is in the worst 4 percent of carriers that have measurable (non-zero) data in the MCMIS. The proposed SFD standards would determine that a motor carrier is unfit at the 99th percentile for the Driver Fitness, Vehicle Maintenance, and HM Compliance BASICs. Likewise, a person would know the carrier is in the worst 1 percent of carriers that have measurable data in the MCMIS. A carrier's absolute BASIC performance measure in any given month, *not the carrier's percentile within a given month,* would be used to determine if the carrier failed the BASIC. A carrier with an absolute performance measure that equals or is greater than the failure standard proposed in this document for the carrier's safety-event group would fail that BASIC using only on-road safety data.

Thus, the failure standards for a proposed unfit SFD would require significantly more evidence of non-compliance than the thresholds in SMS that the Agency uses to prioritize a carrier for interventions. The Agency's proposed approach would ensure that only the worst performing motor carriers would be issued a proposed unfit determination based solely on on-road safety performance data.

In addition, the proposed standards for an unfit SFD would be set at absolute values that would be higher measures (*i.e.*, poorer safety performance) than those used currently in SMS for interventions (see Table 3 below). The proposed SFD process would also require more inspections with violations—*i.e.*, 11 versus 3 to 5—to trigger a proposed SFD.

Failure standards would be established in each BASIC for several safety event groups. A carrier meeting or exceeding the failure standard in its safety event group would fail the BASIC.

The Crash Indicator BASIC and the Controlled Substances/Alcohol Compliance BASIC would be evaluated only during investigations, because the Crash Indicator BASIC currently does not include preventability determinations and controlled

[1] See ''Safety Measurement System Changes, June 2012'' page 5 in docket FMCSA–2012–0074 at *http://www.regulations.gov/#!documentDetail;D=FMCSA-2012-0074-0039* referencing version 3.0 of ''Carrier Safety Measurement System (CSMS) Methodology.'' The latest version, 3.0.2 of June 2014, is available in the rulemaking docket and at *http://csa.fmcsa.dot.gov/Documents/SMS Methodology.pdf.*

[2] The term ''crash'' is synonymous to the term ''accident'' as defined in 49 CFR 390.5 and may be used interchangeably in this document. See 79 FR 59457, October 2, 2014.

substances and alcohol violations from on-road safety data would rarely meet the data sufficiency standards. Thus, these two BASICs would not be used to make a proposed unfit determination based on on-road performance data alone, although data relating to the Crash Indicator BASIC and Controlled Substances/Alcohol BASIC would certainly be used during investigations. To be proposed unfit based solely on on-road safety data, a motor carrier would have to meet or exceed the absolute failure standard established for its safety event group for two BASICs.

Further, only preventable crashes would be used in calculating an SFD. This differs from the current SFD process which only determines the preventability of crashes to contest a motor carrier's recordable crash rate after the SFD. As described below, crash data could trigger a failure in a BASIC during the investigative process only if a certified safety investigator makes a ''preventability determination'' on the crashes and the preventable crashes exceed the failure standard.

It is important to note that while the relative percentiles in SMS are not used in making Safety Fitness Determinations under this NPRM, the same data are used. Some groups have expressed concerns about that data, and many of those concerns are proactively addressed concerns about the SMS in the development of this SFD proposal. In addition to the differences noted above, it is important to point out that other concerns about the system including disparities for long-haul and short-haul carriers; differences for urban and rural motor carriers, and enforcement differences by the States have all been considered. The long and short haul differences are minimized by the combination (long-haul) and straight truck (short haul) segmentation. The impacts of urban and rural transportation are factored into the calculation of the Crash Indicator BASIC failure rates. Lastly, while enforcement differences exist between the States, the nature of the high failure standard in this rule is that the patterns of non-compliance for the carriers that are proposed unfit are not the result of these disparities but are the result of recurring non-compliance.

After a proposed unfit SFD, a motor carrier would have three different administrative proceedings available: (1) A review for material errors in assigning a proposed unfit SFD; (2) a review claiming unconsidered on-road performance inspection data; (3) a review after a request to operate under a compliance agreement. Consistent with current procedures, requests for one or more administrative reviews would not automatically stay a proposed unfit determination. After a final unfit determination, the motor carrier could request a review to resume operations.

The revised SFD methodology and rule would be used to identify and take legal action against unfit motor carriers that have failed to implement and maintain adequate safety management controls for achieving compliance with the FMCSRs and HMRs.

The Agency would maintain the current administrative review processes provided under § 385.15, would propose a compliance agreement procedure similar to the existing § 385.17 upgrade process for carriers with a proposed unfit SFD, and would add an opportunity to submit missing inspection data under § 385.16. FMCSA proposes to reduce the time for filing a petition for administrative review from the current 90 days to 15 days after the issuance of the proposed unfit SFD. Further, a new process, under § 385.18, explains the requirements for demonstrated corrective action and compliance agreements for entities with revoked registration due to an unfit safety rating.

Under this proposal, the Agency estimates in its separate Regulatory Evaluation that it would have proposed as unfit 3,056 motor carriers in 2011, about 2.5 times the number of proposed unfit SFDs relative to 1,232 under the current process, known as proposed unsatisfactory safety ratings. FMCSA estimates that the 3,056 proposed unfit SFD motor carriers would consist of:

- 262 motor carriers based solely upon on use of inspection data,
- 2,674 motor carriers based upon the result of investigations, and
- 120 motor carriers based on a combination of inspection and investigation data.

FMCSA then evaluated how many of these 3,056 motor carriers would have been in active service 12 months following a hypothetical final unfit determination in 2011 and found that most, 2,822 carriers, were active. The actual crash involvement and crash rates experienced by this population of 2,822 carriers over the course of the 12 months after the hypothetical final unfit determination provides a baseline and means of estimating benefits had these carriers been identified by the proposed process. The separate Regulatory Evaluation analyzing the costs and benefits of the proposed rule is available in the docket.

Application of the proposed method to data from a supporting analysis [3] identified 1,805 additional poor-performing carriers beyond those identified by the current SFD process, while the current SFD process identified 106 carriers that the proposed SFD method would not (1,017 carriers were identified by both the current and proposed methods). On net, of the 1,699 of these 1,805 carriers—the subset of carriers which remained in active operation during the twelve months following the date upon which each would have received a final unfit determination under the proposed rule—the switch from the current to the proposed method identifies carriers that were involved in 41 more fatal crashes, 508 more injury crashes, and 872 more tow-away crashes in those subsequent 12 months. The crash reduction elicited from these carriers constitutes the benefits of the rule.

The costs of the rulemaking are those incurred by:

(1) Drivers who were employed by additional carriers ordered out of service (OOS) who are now forced to seek new employment. It is estimated that 1,855 drivers would have been adversely affected in this manner annually.

(2) The additional carriers identified as deficient under the proposed SFD that opt to improve performance, thereby incurring costs to achieve compliance.

(3) FMCSA, resulting from information technology system update and modification expenses (estimated as a one-time cost of $3.0 million incurred in year 2017 under both Option 1 and Option 2).

Given (1) an assumed 2.17 percent annual increase in the carrier population, and hence the number of drivers, and (2) no change in real wages for drivers over time,[4] for the ten years from 2017 through 2026 the annualized costs (discounted at seven percent) of this proposed rule are estimated at $9.9 million. Were the real wages of drivers to increase by one percent annually, then the annualized cost from 2017 through 2026 rises to $10.6 million. Were drivers' real wages to increase by two percent annually, the annualized

[3] ''Estimating the Safety Impact of Proposed Safety Fitness Determination (SFD) Criteria,'' FMCSA, May 2015.

[4] This is a central assumption of the regulatory evaluation, and affects only the costs side of the net benefits projections. The Agency opted in this evaluation to consider costs under alternate 1% and 2% annual real wage growth assumptions to demonstrate the minimal degree to which potential growth in drivers' future real wages affects the net benefits of the rule.

cost of this proposed rule is $11.3 million.

Given (1) the estimated current monetized value of a statistical life component for a fatal crash of $10,885,000, for an injury crash of $393,000, and for a tow-away crash of $50,000, (2) annual increases in each of these values due to projected real growth of the value a statistical life of 1.18 [5] percent, (3) additional fixed crash costs not projected to increase annually of $134,000 for each fatal crash, $60,000 for each injury crash, and $22,000 for each tow-away crash, (4) an assumed 2.17 percent annual increase in the carrier population and hence the number of crashes, (5) an estimated 52.8 percent improvement in the 16.1 percent of carriers placed out of service (OOS), and (6) an estimated 17.4 percent improvement in the 83.9 percent of carriers that opted to correct deficiencies and remain in service, for the ten years from 2017 through 2026, the annualized benefits of the rule (discounted at seven percent) would be $240.9 million.[6]

With $240.9 million in annualized benefits and $9.9 million in annualized costs with no projected real wage growth among drivers, the annualized net benefits of the proposed rule would be $231.1 million. Table 1 summarizes the Agency's annualized benefit, cost, and net benefit projections of this rule utilizing a 7 percent discount rate under a range of annual real wage growth assumptions of 0 to 2 percent.

TABLE 1—ANNUALIZED NET BENEFITS (7% DISCOUNT RATE) OF THE RULE FROM 2017 THROUGH 2026

[in millions of 2013$]

	Real wage growth		
	0%	1%	2%
Benefits	$240.9	$240.9	$240.9
Costs	9.9	10.6	11.3
Net Benefits	231.1	230.4	229.6

Note: Compliance costs to carriers that improve performance to achieve compliance are not estimated.

Cumulative benefits, costs, and net benefits of the proposed rule are presented in Table 2 for not discounted, 3% discounted, and 7% discounted bases. For brevity, corresponding tables associated with the 1% and 2% annual real wage growth scenarios are not included here as the projections are nearly identical under these alternate assumptions, and the minimal differences resulting from utilization of positive real wage growth assumptions are demonstrated in the annualized values in the preceding table.

TABLE 2—CUMULATIVE BENEFITS AND COSTS OF THE RULE FROM 2017 THROUGH 2026

[in millions of 2013$]

Discount rate—>	0%	3%	7%
Benefits	$2,290.9	$1,997.5	$1,692.0
Costs	92.2	81.0	69.2
Net Benefits	21,98.7	1,916.5	1,622.8

Note: Compliance costs to carriers that improve performance to achieve compliance are not estimated.

III. Legal Basis

The proposed rule would replace the current safety fitness rating methodology with new methodologies. The new methodologies incorporate on-road safety data and the results of safety investigations.

This rulemaking is based primarily on the authority of section 215 of the Motor Carrier Safety Act of 1984 (1984 Act),[7] which directs the Secretary of Transportation (Secretary) to determine whether an owner or operator is fit to operate safely commercial motor vehicles and to maintain by regulation a procedure for determining the safety fitness of an owner or operator. [49 U.S.C. 31144(a), (b)] Congress intended that the safety fitness procedure required by this section would supersede all previous rules regarding DOT safety fitness assessments and ratings of motor carriers.[8] FMCSA's authority to determine the safety fitness of owners or operators of CMVs was broadened with major amendments in 1998 by the Transportation Equity Act

[5] The real growth rate of the VSL is in keeping with DOT's Office of the Secretary of Transportation guidance, available on the web at *http://www.dot.gov/sites/dot.gov/files/docs/VSL_Guidance_2014.pdf*. This growth factor represents real growth in the median hourly wage at a macroeconomic level and is not specific to drivers or the motor carrier industry. While real median hourly wages are projected to grow at 1.18% per year at a macroeconomic level, this assumption does not apply to drivers, as the real median hourly wage of drivers has declined or remained static in recent years. Nevertheless, the Agency considered a sensitivity analysis regarding real wage growth of drivers to demonstrate the costs of this proposed rule in the event that drivers' wages grow at 1 or 2 percent per year.

[6] Comparisons of the crash rates of carriers identified as unfit under the current and proposed SFD are presented in Section 2 of this rulemaking's Regulatory Evaluation.

[7] Motor Carrier Safety Act of 1984, sec. 215, Pub. L. 98–554, Title II, 98 Stat. 2829, 2844–2845, Oct. 30, 1984, now codified at 49 U.S.C. 31144. See *http://www.gpo.gov/fdsys/pkg/STATUTE-98/pdf/STATUTE-98-Pg2829.pdf* (PDF page 16 of 25).

[8] Sen. Report No. 98–424 at 16, May 2, 1984. Federal Highway Administration (FHWA) had been required to determine the safety fitness of for-hire motor carriers seeking operating authority from the Interstate Commerce Commission since 1967 when the Department of Transportation was created (see section 1653(e) of the Department of Transportation Act of 1966, Pub. L. 89–670, Oct. 15, 1966 (DOT Act)), see sec. 4(e) at *http://www.gpo.gov/fdsys/pkg/STATUTE-80/pdf/STATUTE-80-Pg931.pdf* (PDF page 4 of 20). FHWA codified in 49 CFR part 385 the for-hire motor carrier safety fitness regulations to address the DOT Act on June 17, 1982 (47 FR 26137) and revised them on May 19, 1983 (48 FR 22566). The 1984 Act expanded the Agency's safety fitness determinations to all motor carriers and owners and operators of CMVs operating in interstate commerce.

for the 21st Century (TEA–21)[9] and in 2005 by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).[10] Another amendment was made by the Commercial Motor Vehicle Safety Enhancement Act of 2012, part of the Moving Ahead for Progress in the 21st Century Act (MAP–21).[11]

As amended, the statute now requires the Secretary to: (1) Determine whether an owner or operator is fit to operate safely commercial motor vehicles, utilizing among other things the accident record of an owner or operator operating in interstate commerce and the accident record and safety inspection record of such owner or operator—(A) in operations that affect interstate commerce within the United States; and (B) in operations in Canada and Mexico if the owner or operator also conducts operations within the United States; (2) periodically update such safety fitness determinations; (3) make such final safety fitness determinations readily available to the public; and (4) prescribe by regulation penalties for violations of 49 U.S.C. 31144 consistent with 49 U.S.C. 521.[12]

It also provides that the Secretary shall maintain by regulation a procedure for determining the safety fitness of an owner or operator. The procedure shall include, at a minimum, the following elements: (1) Specific initial and continuing requirements with which an owner or operator must comply to demonstrate safety fitness; (2) a methodology the Secretary will use to determine whether an owner or operator is fit; (3) specific time frames within which the Secretary will determine whether an owner or operator is fit.[13]

This proposed rule also relies on 49 U.S.C. 31133, which gives the Secretary broad administrative powers to assist in the implementation of the provisions of the 1984 Act.[14] These powers include, among others, authority to conduct inspections and investigations, compile statistics, require production of records and property, prescribe recordkeeping and reporting requirements, and perform other acts considered appropriate. The Agency also has broad authority to inspect the equipment of a motor carrier or lessor, and to inspect and copy any record of a motor carrier or person controlling, controlled by, or under common control with, a motor carrier.[15] These powers are exercised to obtain the data used in the proposed new methodology for SFDs.[16]

FMCSA has authority to revoke the operating authority registration of any motor carrier that has been prohibited from operating as the result of a final unfit SFD.[17] MAP–21 grants FMCSA the authority to take similar action to revoke or suspend a motor carrier's safety registration on the same grounds.[18] FMCSA also has statutory authority to adopt a requirement that States receiving MCSAP grants enforce orders issued by FMCSA related to CMV safety and hazardous materials (HM) transportation safety.[19]

The Secretary has delegated the authority to carry out all of these functions to the FMCSA Administrator.[20]

IV. History of Past Actions

A. History of SFDs

The Federal Highway Administration (FHWA), the predecessor of FMCSA, promulgated Safety Fitness Procedures[21] in 1988 to determine the safety fitness of motor carriers through an onsite visit at the motor carrier's premises and to establish procedures to resolve safety fitness disputes with motor carriers, as required by the 1984 Act.[22] In 1991, FHWA issued an interim final rule[23] based on provisions of the Motor Carrier Safety Act of 1990 (1990 Act).[24] This interim final rule prohibited certain motor carriers rated unsatisfactory from operating CMVs in interstate commerce to transport more than 15 passengers or placardable quantities of HM starting on the 46th day after being found unfit. The regulation has been in effect since August 1991. FHWA stated that it would use a safety-rating formula to determine safety ratings, but the formula, while publicly available, was not included in the safety fitness regulation.[25]

In March 1997, in *MST Express* v. *Department of Transportation*,[26] the U.S. Court of Appeals for the District of Columbia Circuit ruled in favor of a motor carrier that had appealed its conditional safety fitness rating. The court found that FHWA did not carry out its statutory obligation to establish, by regulation, a means of determining whether a carrier has complied with the safety fitness requirements of the 1984 Act.[27] Because the carrier's conditional safety rating was based, in part, upon the formula that was publicly available, but was not included in the promulgated 1988 final rule or 1991 interim final rule, the court vacated the petitioner's conditional safety rating and remanded the matter to FHWA for further action.

In response, FHWA issued a second interim final rule in May 1997 incorporating the safety fitness rating

[9] Sec. 4009(a) of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat. 107, 405 (June 12, 1998). See *http://www.gpo.gov/fdsys/pkg/STATUTE-112/pdf/STATUTE-112-Pg107.pdf* (PDF page 299 of 403).

[10] Sec. 4114(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, 119 Stat. 1144, 1725 (Aug. 10, 2005). See *http://www.gpo.gov/fdsys/pkg/STATUTE-119/pdf/STATUTE-119-Pg1144.pdf* (PDF page 582 of 835).

[11] Sec. 32707(a), Div. C., Title II of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, 126 Stat. 813 (July 6, 2012). See *http://www.gpo.gov/fdsys/pkg/PLAW-112publ141/pdf/PLAW-112publ141.pdf* (PDF page 409 of 584).

[12] 49 U.S.C. 31144(a). See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleVI-partB-chap311-subchapIII-sec31144.pdf.*

[13] 49 U.S.C. 31144(b).

[14] See Sen. Report No. 98–424 at 9 (May 2, 1984). The amended provisions of the Motor Carrier Safety Act of 1984 are now found in subchapter III of chapter 311 of 49 U.S.C. See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleVI-partB-chap311-subchapIII.pdf.*

[15] 49 U.S.C. 504(c). See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleI-chap5-subchapI-sec504.pdf.*

[16] The statute provides FMCSA authority to determine the safety fitness of both motor carriers and employers owning and operating CMVs and drivers or other employees operating CMVs. Cf. 49 U.S.C. 31132(2) and (3). See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleVI-partB-chap311-subchapIII-sec31132.pdf.* This proposed rule involves the procedures and standards for determination of the safety fitness of only motor carriers and other employers that own or lease CMVs.

[17] 49 U.S.C. 13905(f)(1)(B). See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleIV-partB-chap139-sec13905.pdf.*

[18] 49 U.S.C. 31134(c). See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleVI-partB-chap311-subchapIII-sec31134.pdf.*

[19] 49 U.S.C. 31102(a) and (b). See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleVI-partB-chap311-subchapI-sec31102.pdf.*

[20] 49 CFR 1.87(f).

[21] 53 FR 50961 (Dec. 19, 1988), codified at 49 CFR part 385.

[22] FHWA codified safety fitness regulations for motor carriers seeking operating authority from the Interstate Commerce Commission (for-hire motor carriers) in 49 CFR part 385 on June 17, 1982 (47 FR 26137) and revised them on May 19, 1983 (48 FR 22566). The 1984 Act expanded the Agency's safety fitness determinations from for-hire motor carriers to all motor carriers operating in interstate commerce.

[23] 56 FR 40802 (Aug. 16, 1991), Regulatory Identification Number (RIN) 2125–AC71.

[24] Motor Carrier Safety Act of 1990, Pub. L. 101–500, sec. 15(b)(1), 104 Stat. 1218 (Nov. 3, 1990). See *http://www.gpo.gov/fdsys/pkg/STATUTE-104/pdf/STATUTE-104-Pg1213.pdf.* These provisions formerly found at 49 U.S.C. 5113 are now found at 49 U.S.C. 31144(c)(2) and (3) and (f) (as amended later). See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleVI-partB-chap311-subchapIII-sec31144.pdf.*

[25] 56 FR at 40803.

[26] 108 F.3d 401 (D.C. Cir. 1997).

[27] 49 U.S.C. 31144.

methodology into the safety fitness regulations [28] and a companion NPRM published the same day [29] proposed to adopt the formula or methodology for use in assigning safety fitness ratings to all classes of motor carriers. This companion NPRM discussed the public comments received in response to the 1991 interim final rule.

In November 1997, FHWA published a final rule incorporating the Agency's revised safety fitness rating methodology in appendix B to 49 CFR part 385, Safety Fitness Procedures.[30] In November 1998, FHWA published amendments to the rule that corrected several minor errors.[31] These changes withstood judicial review in 1999 in *American Trucking Associations, Inc.* v. *U.S. DOT*.[32] The court in the *ATA* case gave deference to the FHWA's interpretation of its statutory directive as it related to the level of specificity required in regulation and related interpretive guidance. On the reason for the Agency's use of interpretive guidance rather than notice and comment rulemaking to implement aspects of the methodology, the court noted: ''It is easy to imagine an affirmative reason for the agency's decision not to subject the sampling procedure to notice and comment rulemaking—the desire to be able to vary these technical elements of the process without excessive delay as experience accrues.'' [33]

In 1998, TEA–21 added a prohibition applicable to all owners and operators of CMVs not previously subject to the 1990 Act's prohibition—that is, those CMV owners and operators not transporting more than 15 passengers or HM in quantities requiring placarding. Following that change, all owners and operators, including those not transporting more than 15 passengers or HM in quantities requiring placarding, were prohibited from operating CMVs in interstate commerce, starting on the 61st day after being found unfit.[34] It also prohibited Federal agencies from using those owners and operators that were prohibited from operating to provide interstate transportation of non-HM freight. FHWA proposed the regulations implementing the TEA–21 amendments in 1999, and FMCSA, which was established in 2000, published the final rule on August 22, 2000.[35]

FMCSA published several additional amendments in 2000.[36] These changes updated the list of acute and critical regulations [37] to conform it to changes in FMCSA and the Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations. In 2007, the Agency further revised the safety fitness procedures regulations and appendix B to implement SAFETEA–LU statutory amendments.[38]

In 2007, in response to a motorcoach crash with numerous fatalities, NTSB recommended that FMCSA use all motor carrier violations when assessing a carrier's safety fitness. (See NTSB recommendation H–07–003 in ''Highway Accident Report: Motorcoach Fire on Interstate 45 During Hurricane Rita Evacuation Near Wilmer, Texas, September 23, 2005.'' [39]). A copy of the NTSB report and a related Motor Carrier Safety Advisory Committee (MCSAC) report have been placed in the docket. The MCSAC recommended unanimously to FMCSA that it implement the NTSB proposal to use all motor carrier violations when assessing a carrier's safety fitness. NTSB closed the recommendation on September 15, 2015, after NTSB accepted FMCSA's alternative actions. A copy of NTSB's letter closing the recommendation is also in the docket.

B. Analytical Basis for the Proposed Changes

FMCSA proposes to base SFDs on data from driver/vehicle inspections and investigations. Three reports regarding the Agency's existing SMS form the technical basis for the proposed methodology for this rulemaking. Two of the reports were prepared by FMCSA. The third report was developed and published by the American Transportation Research Institute (ATRI). Copies of all three reports are in the docket for this document.

The most recent report is titled ''Carrier Safety Measurement System (CSMS) Methodology–Version 3.0.2'' (June 2014).[40] It provides the details of the measurement system currently used for identifying unsafe carriers and prioritizing and selecting them for interventions under the Compliance, Safety, Accountability (CSA) initiative.

The second report, ''Carrier Safety Measurement System (CSMS) Violation Severity Weights'' (December 2010),[41] involved quantifying the relative crash risk of violations of the FMCSRs and HMRs. The results from this study were used to assign risk-based weights to driver/vehicle inspection violations in the SMS which would also be used in the proposed methodology for determining safety fitness. (See proposed appendix B to part 385.)

The third report, a study titled, ''Compliance, Safety, Accountability: Evaluating a New Safety Measurement System and Its Impacts'' (December 2012), ATRI, involved an analysis of carriers assessed by BASICs. The results from this study confirmed that SMS is better at targeting carriers and identifying safety problems. In addition, the ATRI study indicated that the number of ''alerts'' a carrier has is the best indicator of future crashes.

Additionally, the Agency's CSA Operational Model Test [42] and additional analysis by the University of Michigan Transportation Research Institute [43] and FMCSA indicate that

[28] 62 FR 28807 (May 28, 1997) adding appendix B to 49 CFR part 385. RIN 2125–AC71.

[29] 62 FR 28826 (May 28, 1997), discussion of 1991 interim final rule comments at page 28827, RIN 2125–AC71.

[30] 62 FR 60035 (Nov. 6, 1997). RIN 2125–AC71.

[31] 63 FR 62957 (Nov. 10, 1998). RIN 2125–AC71.

[32] 166 F.3d 374 (D.C. Cir. 1999).

[33] 166 F.3d at 378–380. See also *Animal Legal Defense Fund, Inc.* v. *Glickman*, 204 F.3d 229, 235 (D.C. Cir. 2000) and cases therein cited.

[34] Section 4009 of the Transportation Equity Act for the 21st Century, Pub. L. 105–178, 112 Stat. 107, at 405, June 9, 1998. Section 4009 added the additional prohibition and recodified the statutory prohibitions of using unsatisfactory-rated motor carriers in 49 U.S.C. 5113 to 49 U.S.C. 31144.

[35] 65 FR 50919 (Aug. 22, 2000).

[36] 65 FR 11904 (Mar. 7, 2000).

[37] FHWA proposed acute and critical regulations for determining safety fitness in 59 FR 47203 (Sept. 14, 1994) and made them final in 62 FR 28807 (May 28, 1997).

[38] 72 FR 36760 (July 5, 2007).

[39] Report No. NTSB/HAR–07/01, PB2007–916202, Notation 7774C, Adopted Feb. 21, 2007. You may download the report by visiting *http://www.ntsb.gov/investigations/AccidentReports/Reports/HAR0701.pdf* on the Internet. H–07–003: ''To protect the traveling public until completion of the Comprehensive Safety Analysis 2010 Initiative, immediately issue an Interim Rule to include all FMCSRs in the current CR process so that all violations of regulations are reflected in the calculation of a carrier's final rating.'' See also NTSB recommendations H–99–006 ''Change the safety fitness rating methodology so that adverse vehicle and driver performance-based data alone are sufficient to result in an overall unsatisfactory rating for the carrier'' and H–12–017 ''Include safety measurement system rating scores in the methodology used to determine a carrier's fitness to operate in the safety fitness rating rulemaking for the new Compliance, Safety, Accountability initiative.''

[40] John A. Volpe National Transportation Systems Center, ''Carrier Safety Measurement System (CSMS) Methodology–Version 3.0.2'' FMCSA, June 2014.

[41] John A. Volpe National Transportation Systems Center, ''Carrier Safety Measurement System (CSMS) Violation Severity Weights,'' December 2010.

[42] The CSA operational model test was a two-phase, 30-month (February 2008 to December 2010) field test to assess the validity, efficiency, and effectiveness of the CSA operational model.

[43] Green and Blower, ''Evaluation of the CSA 2010 Operational Model Test,'' FMCSA, August 2011, Report No. MC–RRA–11–019, *http://csa.fmcsa.dot.gov/Documents/Evaluation-of-the-CSA-Op-Model-Test.pdf.*

SMS is more effective than SafeStat, the Agency's previous intervention prioritization system, because it improves identification of high-risk carriers and provides information for determining the specifics of their safety performance problems.

V. Existing Safety Monitoring and Data Quality Programs

The CSA program, implemented in December 2010, is FMCSA's current initiative to improve large truck and bus safety. It is a set of enforcement and compliance tools that allow FMCSA and its State partners to address the safety and compliance problems of motor carriers before crashes occur. There are two elements of the Agency's existing CSA Program that are part of the Agency's safety monitoring programs: (1) The Safety Measurement System (SMS); and (2) the use of a varied set of interventions on motor carriers identified by SMS. FMCSA has provided significant information about the CSA program and its initiatives through public listening sessions, **Federal Register** notices, a comments docket, and a dedicated Web site. As a result, this rulemaking provides only summary level information about CSA to explain its relationship to the proposed changes in the SFD process.[44]

The remaining element of the Agency's existing safety monitoring programs is the compliance review or investigation that results in a safety rating.

A. Safety Measurement System (SMS)

The SMS is an automated system that runs monthly and measures on-road safety performance of motor carriers to: (1) Identify candidates for intervention, (2) identify specific safety problems, and (3) monitor whether a carrier's performance is improving or getting worse. SMS groups the safety performance data of motor carriers and drivers into seven BASICs. The BASICs are:

1. Unsafe Driving BASIC

The Unsafe Driving BASIC addresses the requirement to avoid driving a CMV in a dangerous or careless manner, and it includes driving and parking rules for drivers transporting HM. Some safety violations that may cause a motor carrier to rank poorly in this BASIC include speeding, reckless driving, improper lane change, distracted driving, failure to wear safety belt while operating a CMV, and texting or using a mobile telephone while operating a CMV.

2. Hours of Service (HOS) Compliance BASIC

The HOS Compliance BASIC addresses the requirements to obey the HOS rules and not to drive when fatigued. This BASIC includes violations of the regulations pertaining to maximum driving time during the work day, maximum on-duty time that may be accumulated before driving is prohibited during the work day and during the work week, and preparation in proper form and manner and retention of records of duty status (RODS) as they relate to HOS requirements. Safety violations that may cause a motor carrier to rank poorly in this BASIC include a driver operating more hours than allowed under HOS regulations, failure to prepare and maintain RODS and falsification of RODS.

3. Driver Fitness BASIC

The Driver Fitness BASIC addresses the requirements concerning commercial driver's licenses (CDLs) and disqualifying offenses for persons operating CMVs, as defined in 49 CFR 383.5. This BASIC also captures violations of the regulations for driver qualifications, including medical qualifications for interstate drivers of CMVs, as defined in 49 CFR 390.5. High scores in this BASIC are an indication that a carrier has allowed the operation of CMVs by drivers who are not qualified due to a lack of knowledge, skills, medical qualifications, or a valid license.

4. Controlled Substances/Alcohol BASIC

The Controlled Substances/Alcohol BASIC addresses the requirements for controlled substances and alcohol testing for CDL holders. Safety violations that may cause a motor carrier to rank poorly in this BASIC include a driver found to be in possession of alcoholic beverages or operating under the influence of a controlled substance.

5. Vehicle Maintenance BASIC

The Vehicle Maintenance BASIC addresses the requirements for equipment inspection, proper maintenance, and repair of a CMV, and the prevention of shifting loads and spilled or dropped cargo. Proper maintenance includes ensuring that lamps or reflectors are working, brakes are in proper working condition, and tires are not dangerously worn. Some safety violations that may cause a motor carrier to rank poorly in this BASIC are operating a vehicle with inoperative brakes, lights, or other mechanical defects; failure to make required repairs; improper load securement to prevent shifting upon or within the CMV to such an extent that the CMV's stability or maneuverability is adversely affected; or operating a vehicle placed OOS for safety deficiencies.

6. HM Compliance BASIC

The HM Compliance BASIC addresses the Federal safety regulations related to the packaging, transportation, and identification of HM. In the event of a crash or spill, the HM Compliance BASIC also covers the proper communication of the hazard of the cargo on board. The general public is subject to a greater safety risk if HM is involved in a motor carrier crash; and unmarked or poorly marked HM cargo can result in less effective emergency response, as well as injuries and fatalities for emergency responders and others. At present, the HM Compliance BASIC scores can be seen only by enforcement personnel and by a motor carrier that accesses its own safety profile; it is not publicly available. The public can, however, see information on the number and types of HM violations involving the motor carrier.

7. Crash Indicator BASIC

The Crash Indicator BASIC identifies histories or patterns of crash involvement, such as frequency and severity. It is based on information from State-reported crashes that meet recordable crash standards. Multiple State-reported crashes raise the percentile rank of the Crash Indicator BASIC, which signals potential safety problems. The SMS cannot currently factor in the role of the carrier in causing the crash—or crash preventability. (See discussion of crashes below.) At present, the Crash Indicator BASIC can be seen only by enforcement personnel and by a motor carrier that accesses its own safety profile; it is not publicly available. The public can, however, see information on the number and severity of crashes involving the motor carrier.

B. Interventions

Interventions are a suite of enforcement tools ranging from warning letters to comprehensive investigations that provide carriers with the information necessary to understand

[44] For more detailed information, please go to the CSA Web site at *http://csa.fmcsa.dot.gov/* and review documents in the program's docket at *www.regulations.gov*, docket number FMCSA–2004–18898. In a one year period from 2012 to 2013, there were 46 million visits to the SMS Web site. Therefore, FMCSA believes that the industry and the public are already very familiar with this system and the information it provides.

their safety problems and to change unsafe behavior.

Currently, when a motor carrier's SMS scores meet or exceed established intervention thresholds the Agency prioritizes it for investigations or enforcement. The SMS intervention thresholds are as follows:

TABLE 3—INTERVENTION THRESHOLDS FOR SMS

Basic	SMS Intervention thresholds		
•	Passenger	HM	All others
Unsafe Driving, HOS, Crash Indicator	Greater than or equal to (≥) 50%	≥60%	≥65%
Driver Fitness, Controlled Substances/Alcohol, Vehicle Maintenance	≥65%	≥75%	≥80%
HM	≥80	≥80%	≥80%

It is important to note that the thresholds FMCSA currently uses to select carriers for an intervention, using SMS, are not the same measures that are being proposed in this NPRM for the SFD failure standards. (See Section 2.4 of proposed appendix B to part 385 below.)

C. Current SFD Process

SFDs are currently determined based on data collected during a CR or other investigation. The existing SFD process uses six factors to rate carriers' safety performance. Portions of the regulations (the FMCSRs and the HMRs) with similar characteristics are grouped together into six 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 HM—Parts 171, 177, 180, and 397
Factor 6 Accident[45] factor—Recordable accident rate per million miles

FMCSA calculates a vehicle out-of-service rate, reviews crash involvement, and conducts an in-depth examination of the motor carrier's compliance with the acute and critical regulations of the FMCSRs and HMRs, currently listed in 49 CFR part 385, appendix B, part VI.

• ''Acute regulations'' are those where noncompliance is so severe as to require immediate corrective action, regardless of the overall safety management controls of the motor carrier.

• ''Critical regulations'' are related to management or operational systems controls.

Overall noncompliance is calculated and rated on a point system according to the six factors. During the investigation, for each instance of noncompliance with an acute regulation or each pattern of noncompliance with a critical regulation one point is assessed. Patterns of noncompliance with HOS are assessed two points. For a critical regulation, the number of violations required to meet the threshold for a pattern is equal to at least 10 percent of those sampled, and more than one violation must be found to establish a pattern. In addition, on-road safety data is used in calculating the vehicle and crash factors.

If any of the six factors is assessed one point, then that factor is rated as ''conditional.'' If any of the six factors is assessed two points, then that factor is rated as ''unsatisfactory.'' Two or more individual factors rated as ''unsatisfactory'' will result in an overall rating of ''unsatisfactory.'' One individual factor rated as ''unsatisfactory'' and more than two individual factors rated as ''conditional'' will also result in an ''unsatisfactory'' rating overall. See Table 4 below:

TABLE 4—CURRENT SFD 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

The Agency's current SFD process is resource-intensive and reaches only a small percentage of motor carriers. In FY 2012, FMCSA and its State partners conducted approximately 17,000 ratable reviews out of a population of more than approximately 525,000 active motor carriers. A ratable review is one that could potentially result in a conditional or unsatisfactory safety rating. Table 5 presents the distribution of ratable reviews conducted.

TABLE 5—DISTRIBUTION OF RATABLE INVESTIGATIONS TYPES IN FY 2012[46]

Investigation type	Number
Ratable Full CRs/Comprehensive On-Site Investigations	6,641
Ratable Focused CRs/Focused On-Site Investigations	10,361
Total	17,002

Of the 17,002 ratable reviews conducted in FY 2012, 1,013 resulted in a proposed unsatisfactory safety rating, while an additional 3,618 resulted in a proposed or final safety rating of conditional.

The Agency concludes that changes to the SFD process are needed for many reasons. First, the current SFD methodology evaluates a motor carrier's compliance using only a limited range of inspection data. Additionally, the current process does not integrate all of the data that is available in MCMIS. Over 3.5 million inspections are conducted each year, and this information is not effectively used to remove unsafe operators from our Nation's roadways.

Second, the safety rating is a snapshot of a company's safety performance on a specific date. The Agency's MCMIS database reflects safety ratings dating back to 1986, and many of the ratings are not likely to reflect the carriers' current safety compliance.

Third, the current SFD process is not designed to continually monitor motor carrier on-road safety data. In addition, the assignment of a ''satisfactory'' safety rating implies to the public, correctly or not, that the Agency has approved the current operations of a motor carrier, when actually FMCSA has merely rated the operations for the specific period covered by the CR. The assigned safety rating thus may not reflect the company's current compliance and could be misleading to those who might interpret it as a reflection of a motor carrier's current safety status.

[45] The term ''crash'' is synonymous to the term ''accident'' as defined in 49 CFR 390.5 and may be used interchangeably in this document. See 79 FR 59457, October 2, 2014.

[46] Motor Carrier Safety Progress Report, FMCSA, as of March 31, 2013. Under the ''Carrier Reviews'' section, figures are summed to obtain counts in Table 5. Accessed April 29, 2015 at *https://cms.fmcsa.dot.gov/safety/data-and-statistics/motor-carrier-safety-progress-report-33113.*

Fourth, under the current SFD process, a motor carrier may continue to operate indefinitely with a conditional rating even if a ratable review reveals breakdowns in safety management controls in multiple areas. For example, a motor carrier with noncompliance documented by an investigation in areas such as vehicle maintenance (factor 4) and controlled substances and alcohol testing (factor 2) would receive only a proposed conditional rating, which, if it became final, still allows the motor carrier to continue operating.

Fifth, as noted above, the current regulations only allow the Agency and its State partners to assess or rate the safety fitness of a small population of motor carriers on an annual basis. This proposal expands the number of assessed and rated carriers.

Lastly, FMCSA has two open NTSB recommendations related to changing the safety fitness methodology on which the Agency has agreed to take action: [47]

- H–99–006: Change the safety fitness rating methodology so that adverse vehicle and driver performance-based data alone are sufficient to result in an overall unsatisfactory rating for the carrier.
- H–12–017: Include safety measurement system rating scores in the methodology used to determine a carrier's fitness to operate in the safety fitness rating rulemaking for the new Compliance, Safety, Accountability initiative.

For these reasons, the Agency proposes to make the changes to the SFD process reflected in this NPRM.

D. Data Quality Program

Over the past several years, the Agency has significantly improved the quality of safety data on motor carriers and considers the State-reported driver and vehicle inspection and crash data to be reliable. All of the States receive MCSAP grant funds from FMCSA and are required to establish programs to ''ensure that . . . accurate, complete, and timely motor carrier safety data is collected and reported'' and to participate in a national motor carrier safety data correction system.[48] FMCSA sets a goal for States to provide standard, basic information about large truck and bus crashes within 90 days of the crash event and results of driver/vehicle inspections within 21 days. In addition, FMCSA implemented a comprehensive set of data quality initiatives to assist the States in improving the accuracy, timeliness, completeness, and consistency of crash and inspection data. The process provides the States and FMCSA with a monthly report that summarizes the latest performance results and tracks progress toward meeting FMCSA's goals. Also, evaluation teams made up of technical experts from the DOT's John A. Volpe National Transportation Systems Center and FMCSA conduct reviews of the data collection processes for State-reported crash and inspection data. These reviews identify areas for potential process improvement. These initiatives have resulted in a significant improvement in the quality of State-reported data over the past several years.

In addition, FMCSA developed the DataQs online system to facilitate data corrections and to track corrective actions.[49] DataQs provides a single, Web-based location that allows the industry to file and monitor Requests for Data Review (RDRs) concerning Federal and State data released to the public. Through the DataQs system, data concerns are forwarded automatically to the appropriate office for resolution, including State partners. The system also allows filers to monitor the status of each request. Requests for changes to data based on adjudicated citations are also processed through the DataQs system.

FMCSA also evaluates State-reported crash and inspection data and releases evaluation data to the public on a quarterly basis on the FMCSA Web site. The evaluation uses the State Safety Data Quality map to rate the States on the completeness, timeliness, accuracy, and consistency of State-reported crash and inspection data reported to MCMIS (*http://ai.fmcsa.dot.gov/DataQuality/dataquality.asp* [50]). As of October 2015, only the District of Columbia and Massachusetts had a ''poor'' rating and two States (Connecticut and Maryland) have ''fair'' ratings. All other States have ''good'' ratings.

VI. Proposed SFD Changes

A. Numbers of Inspections and Violations Used in This Proposal

FMCSA uses 11 inspections as the minimum number for several different analyses and considerations in Tables 6 through 16. Table 6 below is provided to clarify the various applications of the 11-inspection requirement. To receive a safety fitness determination based on inspections a motor carrier must have had at least 11 inspections in the previous 24 months.

TABLE 6—NUMBER OF INSPECTIONS WITH VIOLATIONS REQUIRED

Action	Minimum number of inspections required	Minimum number of inspections with violations required	Explanation
Assess	11	0	If a motor carrier has 11 inspections in MCMIS, the Agency has sufficient information to assess it.
Data Sufficiency for Potential to Fail a BASIC.	11	11	This is the data threshold that must be met before a carrier could fail a BASIC.

[47] These recommendations are available through the NTSB Safety Recommendations-Search and View Web pages. Retrieved April 6, 2015, from: *http://www.ntsb.gov*.

[48] 49 U.S.C. 31102(b)(1)(Q). See also (1) section 4128 of SAFETEA–LU, Pub. L. 109–59, 119 Stat. 1144, 1742 (Aug. 10, 2005) (providing for State Safety Data Improvement Program Grants ''to improve the accuracy, timeliness, and completeness of . . . safety data''), (2) section 32603(c) of Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, 126 Stat. 405 (July 6, 2012) (additional State Safety Data Improvement grant funding was provided for fiscal years 2013 and 2014), and (3) 49 CFR 350.201(s), 350.211, 350.327(b)(3) and (5).

[49] FMCSA established the DataQs system in accordance with the Office of Management and Budget (OMB) Guidelines for Implementing Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554). OMB directed Federal agencies subject to the Paperwork Reduction Act (44 U.S.C. Chapter 35) to establish and implement written guidelines to ensure and maximize the quality, utility, objectivity, and integrity of the information they disseminate.

[50] Accessed on April 6, 2015.

B. Only One SFD—Unfit

In this NPRM, FMCSA proposes to eliminate the current three-tier rating system (*i.e.*, satisfactory–conditional–unsatisfactory). FMCSA proposes to change its SFD system to a single determination—unfit. The Agency has statutory discretion to establish the nomenclature for safety fitness determinations.[51] In addition, the safety fitness statute requires FMCSA to determine only ''whether an owner or operator is fit'' to continue to operate on the Nation's roadways, and it prescribes specific consequences for motor carriers found to be not fit. It prohibits such carriers from engaging in interstate transportation [52] or transportation that affects interstate commerce.[53] It also prohibits any U.S. Government agency from using such carriers for transportation.[54]

This change to the SFD process would address some of the shortcomings of the current safety rating system. Most importantly, it would help focus the Agency's resources on removing unsafe carriers from the Nation's highways. In addition, it would eliminate the misperception that a satisfactory rating means that FMCSA approves of the current operations of a motor carrier. FMCSA believes that the term ''unfit'' conveys a clearer and more accurate message to the public than the term ''unsatisfactory.'' These changes better align the safety fitness regulations with the Agency's mission to remove unsafe operators from the Nation's roadways. At the same time, the change makes clear that the Agency will not devote its limited enforcement resources toward reviews initiated for the sole purpose of assigning a more positive safety rating label to carriers that are not prohibited from operating in interstate or intrastate commerce.

C. Three Paths to ''Proposed Unfit''

Based on the Agency's experience with SMS and interventions, FMCSA believes that integration of on-road safety data into the SFD process would improve the safety evaluation of motor carriers and the identification of unsafe motor carriers as unfit. Under this proposal, unfit determinations could be based on one of three methodologies.

- Unfit Method 1: Carrier with Two or More Failed BASICs from On-Road Safety Performance
- Unfit Method 2: Carrier with Violations of the Revised Critical and Acute Regulations Identified Through an Investigation
- Unfit Method 3: Combination of Inspection Data and Investigation Results

Figures 1, 2, and 3 illustrate how, under this proposal, carriers could receive proposed unfit safety fitness determinations. This information is also provided in appendix B. Extensive detail for each method is provided below. These paths to a proposed unfit determination are not mutually exclusive. For example, even though an owner or operator regularly undergoes the monthly assessment under Unfit Method 1, at any time, if circumstances warrant, FMCSA can conduct an investigation under Unfit Method 2 to determine whether the owner or operator is fit.

[51] 49 U.S.C. 31133(a)(10), 31144(b).

[52] 49 U.S.C. 31144(c)(1)–(3).

[53] 49 U.S.C. 31144(c)(5).

[54] 49 U.S.C. 31144(f).

Figure 1: Example for Unfit Method 1

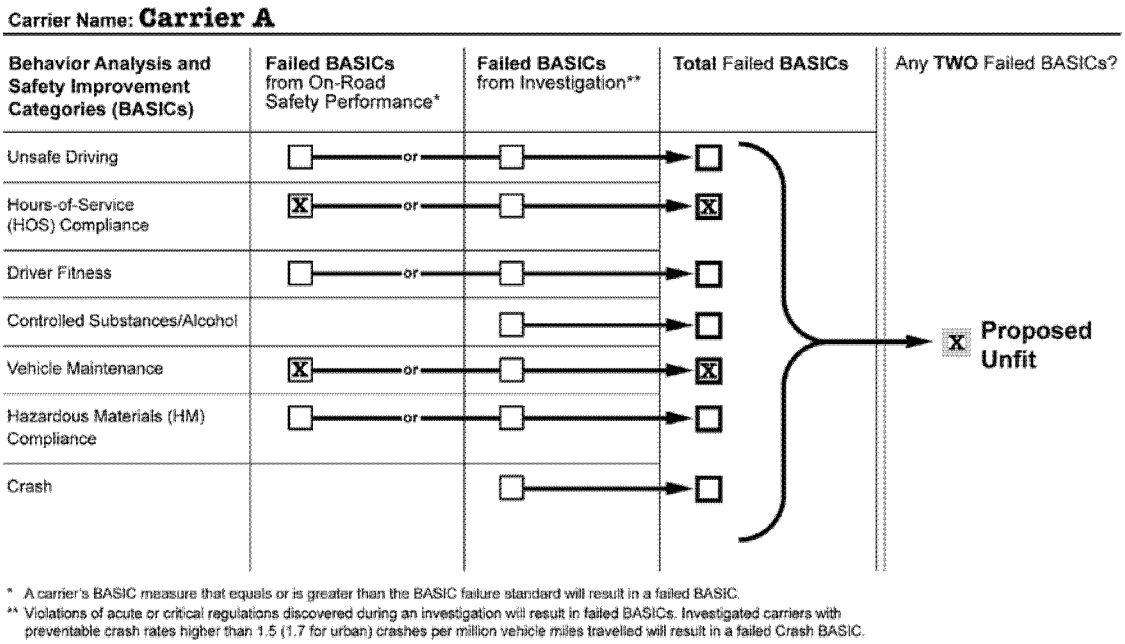


Figure 2: Example for Unfit Method 2

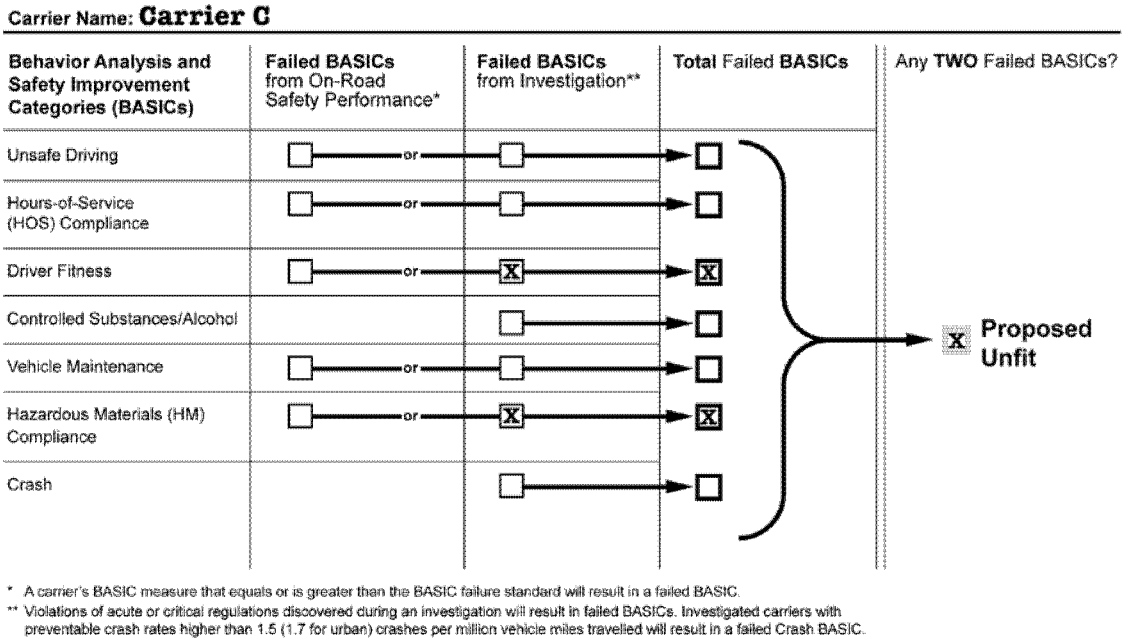
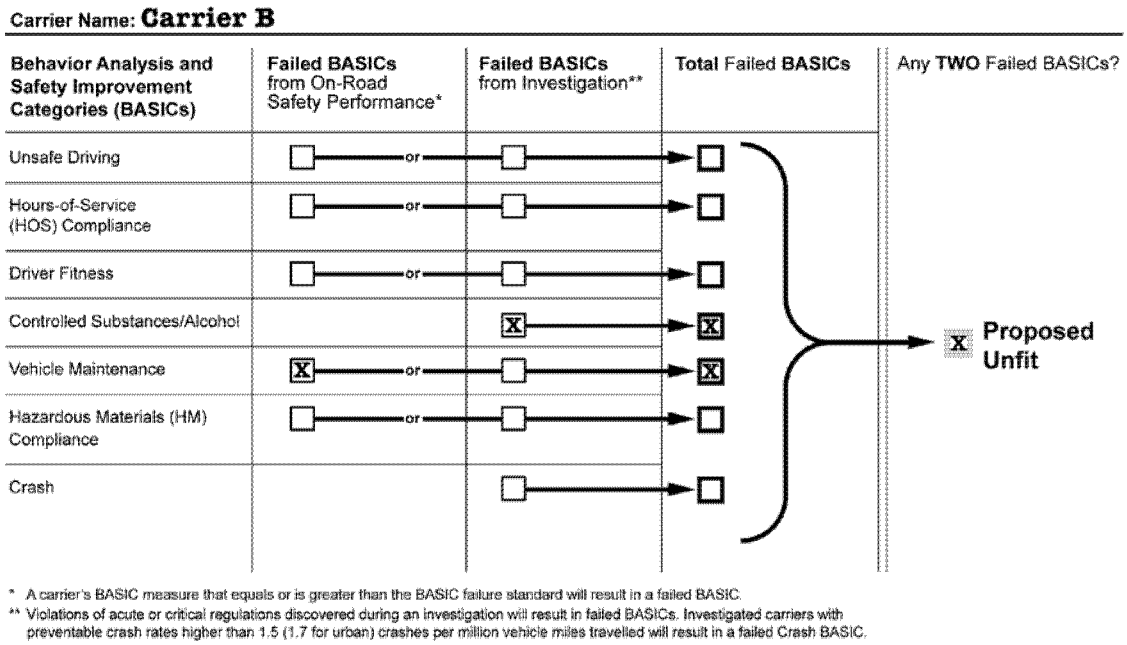


Figure 3: Example for Unfit Method 3



1. Unfit Method 1: Carrier With Two or More Failed BASICs From On-Road Safety Performance Is Proposed Unfit

Under Unfit Method 1, violations recorded on inspections would be sorted into the five BASICs for which on-road safety data is considered under the proposed SFD process: Unsafe Driving, HOS Compliance, Driver Fitness, Vehicle Maintenance, and HM Compliance. (Under the proposed SFD process, a motor carrier can fail the Crash Indicator BASIC or the Controlled Substances and Alcohol BASIC only based upon investigation findings under Unfit Method 2.)

The proposed rule would require 11 or more inspections with 1 or more violations in each, in a single BASIC, before a carrier could fail the BASIC for SFD purposes. The Agency proposes 11 or more inspections with violations, rather than the minimum of 3 to 5 inspections with violations required for SMS intervention, because this higher number provides a higher confidence level in assessing safety fitness, which is appropriate due to the seriousness of the regulatory consequences.

While more inspections with violations might be an even stronger indicator of non-compliance, as was recommended by the Government Accountability Office (GAO) for the Agency's SMS,[55] a significantly greater data requirement—*e.g.,* 20 inspections with violations—would mean that an unreasonably large percentage of carriers would never reach this threshold in a 24-month period. FMCSA believes that a more than twofold difference from the higher SMS inspection requirement is sufficient and appropriate for SFD. The Agency's analysis indicates that requiring 11 or more inspections with 1 or more violations in each increases the proportion of medium to large carriers falling within the ''SFD eligible'' population, compared to a 5 or more inspection requirement, but still does not result in small motor carriers escaping scrutiny. The Agency notes that carriers with 10 or fewer inspections with violations are still subject to safety fitness determinations under Unfit Method 2. The Agency also notes that raising the inspection requirement above 20 violations as GAO recommends for SMS as shown in tables 8 to 13, the groups of 11 to 20 inspections showed the highest crash risk compared to carriers with more inspections.

Table 7 illustrates the number of carriers that have 11 or more inspections with 1 or more violations in each in a 24-month period and, therefore, would have sufficient data to be evaluated for an SFD, compared to carriers with 5 or more inspections.

TABLE 7—NUMBER OF CARRIERS THAT HAVE 11 OR MORE OR 5 OR MORE INSPECTIONS IN A 24-MONTH PERIOD

Power units	11+ inspections (SFD)		5+ inspections (intervention)	
	Number of carriers	Percent of total shown (percent)	Number of carriers	Percent of total shown (percent)
5 or fewer	31,957	42.1	86,486	59.5
6 to 15	21,885	28.9	32,974	22.7
16 to 50	14,843	19.6	18,122	12.5
51 to 500	6,558	8.6	7,058	4.9

[55] ''Modifying the Compliance, Safety, Accountability Program Would Improve the Ability to Identify High Risk Carriers,'' U.S. Government Accountability Office, Report No. GAO–14–114, February 3, 2014. See *http://www.gao.gov/products/GAO-14-114*, accessed April 6, 2015.

TABLE 7—NUMBER OF CARRIERS THAT HAVE 11 OR MORE OR 5 OR MORE INSPECTIONS IN A 24-MONTH PERIOD—Continued

Power units	11+ inspections (SFD)		5+ inspections (intervention)	
	Number of carriers	Percent of total shown (percent)	Number of carriers	Percent of total shown (percent)
501+	585	0.8	597	0.4
Total	75,828	100	145,237	100

The weight of a safety event would decrease over time, with more recent events having a greater impact on a motor carrier's BASIC scores than events from the more distant past. Under this proposal the Agency would not use events older than 24 months in determining a motor carrier's safety performance measure.

FMCSA emphasizes that a carrier that receives a proposed unfit determination under Method 1 may have the opportunity to enter into a compliance agreement which could provide it an opportunity to improve its safety performance and avoid a final determination of unfit. Therefore, the increased scrutiny that comes with poor results from 11 inspections with violations within 24 months does not mean the carrier would automatically face an operations out-of-service order. It would be required, however, to correct deficiencies in its safety management controls sooner than it would if the Agency waited for a larger number of inspections. The Agency requests comments on the minimum number of inspections and minimum number of violations that should be considered in making a proposed unfit determination.

Proposed Failure Standards for Unfit Method 1

The proposed failure standard for an SFD would be set at an absolute value that would equate to higher levels (*i.e.,* poorer safety performance) than those used in SMS for interventions. That absolute value—a figure based on time- and severity-weighted violations divided by the number of relevant inspections or vehicles for different safety event groups—would be set at the time when the SFD rule becomes final.

The Agency's goal is to establish failure standards that would identify motor carriers with a high crash risk. However, the Agency must take into consideration existing enforcement resources and strike a balance between the population identified and the ability to handle the associated workload.

In considering what absolute failure standards to propose, the Agency considered four options, based on different SMS percentiles. The standards considered equate roughly to the 95th, 96th, 98th, and 99th percentiles for all motor carriers with 11 or more inspections with violations for the 24-month period that ended on March 22, 2013. The proposed failure standards for each BASIC, as calculated through inspections, are presented in Tables 8 through 13. But the standards in the final rule will be based on a more current data and calculation completed closer to the final rule's publication date.

For purpose of analysis in this rulemaking, the Agency proposes to use the absolute failure standards that equate to the 99th percentile for the Driver Fitness, Vehicle Maintenance, and HM Compliance BASICs. This failure standard is equivalent to the absolute value that defines the worst 1 percent of motor carriers with 11 or more inspections, each with 1 or more violations, in a BASIC as of the date of the calculation—March 22, 2013. (See also Table 16 below.)

The failure standard for Unsafe Driving and HOS Compliance would be more stringent than the other BASICs and require a higher level of compliance. A measure equivalent to the 96th percentile would be used for the Unsafe Driving and HOS Compliance BASICs. FMCSA based this standard on the stronger correlation of these BASICs to previous crashes.[56] During CSA development, the Agency discussed having these two BASICs be ''stand-alone'' BASICs in the SFD rulemaking;[57] meaning that failing even one of these two BASICs would result in a proposed unfit SFD. However, based on both the Agency's analysis for this proposal and the ATRI research, mentioned above, using more BASICs to determine a carrier's safety fitness has been shown to be a better measure of the overall safety performance of the carrier.

The Crash Indicator BASIC and the Controlled Substances/Alcohol Compliance BASIC would be examined only during investigations, because the Crash Indicator BASIC currently does not include preventability determinations, and controlled substances and alcohol violations from on-road safety data would rarely meet the data sufficiency standards.

Failure standards for each of the five BASICs relevant to Unfit Method Number 1 would be established for up to four different safety event groups. (A full explanation of safety event groups is provided below.) A carrier meeting or exceeding the failure standard in its safety event group in the specific BASIC would fail that BASIC for SFD purposes. Tables 8 through 16 below show the options FMCSA considered for each BASIC.

In SMS, a carrier's performance is compared every month to other carriers in its safety event group. As a result, improved performance by other carriers could result in the carrier having higher (worse) percentiles, without the carrier having committed any additional violations. By contrast, in the proposed SFD process, each month a carrier's performance would be compared to an absolute failure standard that would be set in regulation based on each safety event group. Because the absolute failure standard would not change by the month but instead would only change after rulemaking by the Agency, with notice and an opportunity to comment, changes in another company's performance would not impact the motor carrier. The carrier's measure would reflect its own performance against the failure standard.

Tables 8 through 13 below show proposed failure standards that would apply for each of the five BASICs used in this methodology. For all of the BASICs except Unsafe Driving, the threshold would be determined by

[56] John A. Volpe National Transportation Systems Center, ''Carrier Safety Measurement System (CSMS) Violation Severity Weights,'' December 2010.

[57] See 72 FR 62293, at 62299, (Nov. 2, 2007), Comprehensive Safety Analysis 2010 Initiative, Notice of public listening session.

dividing the number of time- and severity-weighted violations by the number of relevant inspections. The specific numerators and denominators that would be used to determine the proposed failure standard for each BASIC are identified in appendix B. For purposes of clarifying and analyzing this proposal only, failure standards are presented below based on the data available as of March 22, 2013. But the standards in the final rule will be based on a more current calculation completed closer to the final rule's publication date.

TABLE 8—UNSAFE DRIVING FAILURE STANDARDS (GENERALLY, WEIGHTED VIOLATIONS DIVIDED BY POWER UNITS—SEE APPENDIX B, SECTION 2.4)—COMBINATION [58] VEHICLE SEGMENT—ALTERNATIVES CONSIDERED

Safety Event Group (number of inspections with unsafe driving violations)	BASIC Failure standard equivalent to 95%	BASIC Failure standard equivalent to 96%	BASIC Failure standard equivalent to 98%	BASIC Failure standard equivalent to 99%
11 to 21	12.74	14.21	18.54	27.25
22–57	8.77	9.58	13.5	18.98
58–149	5.47	6.26	8.10	9.71
150+	2.77	2.80	2.90	3.00

TABLE 9—UNSAFE DRIVING FAILURE STANDARDS: (WEIGHTED VIOLATIONS DIVIDED BY POWER UNITS) STRAIGHT TRUCK [59] SEGMENT—ALTERNATIVES CONSIDERED

Safety event group (number of inspections with unsafe driving violations)	BASIC Failure standard equivalent to 95%	BASIC Failure standard equivalent to 96%	BASIC Failure standard equivalent to 98%	BASIC Failure standard equivalent to 99%
11 to 18	8.19	9.64	11.47	15.99
19–49	4.59	5.12	7.31	12.05
50+	1.36	1.47	1.89	2.05

TABLE 10—HOURS OF SERVICE COMPLIANCE FAILURE STANDARDS (WEIGHTED VIOLATIONS DIVIDED BY DRIVER INSPECTIONS)—ALTERNATIVES CONSIDERED

Safety event group (number of driver inspections)	BASIC Failure standard equivalent to 95%	BASIC Failure standard equivalent to 96%	BASIC Failure standard equivalent to 98%	BASIC Failure standard equivalent to 99%
11 to 20	3.88	4.15	4.94	5.65
21–100	2.94	3.13	3.66	5.21
101–500	2.09	2.20	2.44	2.69
501+	1.46	1.54	1.73	1.91

TABLE 11—DRIVER FITNESS FAILURE STANDARDS (WEIGHTED VIOLATIONS DIVIDED BY DRIVER INSPECTIONS)—ALTERNATIVES CONSIDERED

Safety event group (number of driver inspections)	BASIC Failure standard equivalent to 95%	BASIC Failure standard equivalent to 96%	BASIC Failure standard equivalent to 98%	BASIC Failure standard equivalent to 99%
11 to 20	1.54	1.68	2.19	2.74
21–100	0.78	0.86	1.11	1.39
101–500	0.29	0.31	0.39	0.50
501+	0.14	0.15	0.19	0.24

TABLE 12—VEHICLE MAINTENANCE FAILURE STANDARDS (WEIGHTED VIOLATIONS DIVIDED BY VEHICLE INSPECTIONS)—ALTERNATIVES CONSIDERED

Safety event group (number of vehicle inspections)	BASIC Failure standard equivalent to 95%	BASIC Failure standard equivalent to 96%	BASIC Failure standard equivalent to 98%	BASIC Failure standard equivalent to 99%
11 to 20	14.19	14.93	16.94	18.79

[58] Combination vehicle segments include those motor carriers that operate either truck tractors or motor coaches.

[59] Straight truck segments include all carriers that operate straight trucks, HM cargo tank trucks, or school buses/mini-buses/limousines/vans with capacity of 9 or more passengers. These different types of power units are defined on the FMCSA Registration/Update(s) (Application for USDOT Number/Operating Authority Registration), Form MCSA–1. See *http://www.regulations.gov/#!documentDetail;D=FMCSA-1997-2349-0195*.

[60] Tversky, A.; Kahneman, D. (1971). ''Belief in the law of small numbers''. Psychological Bulletin 76 (2): 105–110. *http://psycnet.apa.org/journals/bul/76/2/105/*.

TABLE 12—VEHICLE MAINTENANCE FAILURE STANDARDS (WEIGHTED VIOLATIONS DIVIDED BY VEHICLE INSPECTIONS)—ALTERNATIVES CONSIDERED—Continued

Safety event group (number of vehicle inspections)	BASIC Failure standard equivalent to 95%	BASIC Failure standard equivalent to 96%	BASIC Failure standard equivalent to 98%	BASIC Failure standard equivalent to 99%
21–100	11.96	12.62	14.38	16.12
101–500	8.84	9.18	10.36	11.82
501+	6.54	6.77	7.9	8.91

TABLE 13—HM COMPLIANCE FAILURE STANDARDS (WEIGHTED VIOLATIONS DIVIDED BY PLACARDED HM INSPECTIONS)—ALTERNATIVES CONSIDERED

Safety event group (number of placarded HM inspections)	BASIC Failure standard equivalent to 95%	BASIC Failure standard equivalent to 96%	BASIC Failure standard equivalent to 98%	BASIC Failure standard equivalent to 99%
11 to 20	4.18	4.34	5.55	6.87
21–100	2.81	2.99	3.65	4.82
101–500	1.86	1.96	2.34	2.56
501+	1.33	1.46	1.83	1.95

The percentage of carriers and crash rates of carriers under FMCSA's jurisdiction are presented in Tables 14 and 15 below for the purpose of comparison. Table 14 displays the frequency with which motor carriers are identified as ''unfit,'' based on the number of power units (PU) the carrier operates. Table 15 show the crash rates for the same motor carriers.

TABLE 14—DISTRIBUTION OF PROPOSED UNFIT DETERMINATIONS BY POWER UNITS (PU) GROUPS FOR EACH ALTERNATIVE CONSIDERED

Alternatives considered	5 or fewer PU (%)	6 to 15 PU (%)	16 to 50 PU (%)	51 to 500 PU (%)	501+ PU (%)
General Population of Carriers with Recent Activity* as of March 2013 (Baseline for comparison)	82.8	11.2	4.4	1.5	0.1
Option 1: Equivalent to 95th percentile for Unsafe Driving and HOS and 98th percentile for Driver Fitness, Vehicle Maintenance, and HM (Based on 11+ inspections with violations)	63.1	22.2	10.8	3.5	0.3
Proposed Option: Equivalent to 96th percentile for Unsafe Driving and HOS and 99th percentile for Driver Fitness, Vehicle Maintenance, and HM (based on 11+ inspections with violations)	63.9	22.3	10.2	3.3	0.3

* Recent Activity means a motor carrier has had any recorded activity in the past 36 months related to an inspection, crash, investigation (including new entrant audit), MCS–150 update, registration activity, insurance or Unified Carrier Registration payment, process agent update or name/ownership change. Also, any carrier with active for-hire operating authority is considered as having ''recent activity.'' Using this definition, FMCSA intends to remove from its motor carrier census motor carriers with ''active status'' that have left the industry years ago but still remain in the census because they never notified FMCSA that they stopped operating CMVs.

Both considered options noted above result in inclusion of a smaller proportion of small (5 or fewer power units) carriers than small carriers represent nationally. Therefore, neither of these options is numerically biased against small carriers, as demonstrated in Tables 15 and 16.

TABLE 15—CRASH RATES OF CARRIERS DETERMINED TO BE UNFIT—BY ALTERNATIVES CONSIDERED

[in crashes per 100 power units (PU)]

Alternatives considered	5 or fewer PU	6 to 15 PU	16 to 50 PU	51 to 500 PU	501+ PU
General Population of Carriers with Recent Activity as of March 2013 (Baseline for comparison)	2.2	2.3	2.4	2.2	1.8
Option 1: Equivalent to 95th percentile for Unsafe Driving and HOS and 98th percentile for Driver Fitness, Vehicle Maintenance, and HM (Based on 11+ inspections with violations)	6.7	5.3	4.8	3.6	2.6

TABLE 15—CRASH RATES OF CARRIERS DETERMINED TO BE UNFIT—BY ALTERNATIVES CONSIDERED—Continued

[in crashes per 100 power units (PU)]

Alternatives considered	5 or fewer PU	6 to 15 PU	16 to 50 PU	51 to 500 PU	501+ PU
Proposed Option: Equivalent to 96th percentile for Unsafe Driving and HOS and 99th percentile for Driver Fitness, Vehicle Maintenance, and HM (Based on 11+ inspections with violations)	6.5	5.2	4.7	3.8	3.5

The highest crash rates identified (between 6.5 and 6.7) are all in the small (5 or fewer power units) carrier population. This suggests that small carriers are not unfairly selected under either of the two proposed models.

Table 16 presents the overall crash rates of carriers identified by two or more failed BASICs from inspections. The nation-wide crash rate of the general carrier population is 2.13 per 100 power units. The general carrier population crash rate was calculated on a consistent time frame as that of the carriers identified under the proposed process.

TABLE 16—NUMBER OF TOTAL FAILED CARRIERS AND THE CORRESPONDING CRASH RATE

Alternatives considered	Number of carriers unfit based on 2 or more failed BASICs (inspection violations only)	Crash rate (crashes per 100 power units)	Active carriers	Crashes for active carriers	Power units for active carriers
Option 1: Equivalent to 95th percentile for Unsafe Driving and HOS/98th percentile for Driver Fitness, Vehicle Maintenance, and HM (Based on 11+ inspections with violations)	479	3.75	387	569	15,161
Proposed Option: Equivalent to 96th percentile for Unsafe Driving and HOS/99th for Driver Fitness, Vehicle Maintenance, and HM (Based on 11+ inspections with violations)	262	8.28	211	300	3,625

Of the two options presented, the proposed option identifies the carriers (262) that have the highest overall crash rate (8.28 crashes per 100 power units).

Although Option 1 has a higher net benefit than Option 2, the Agency notes that selecting Option 1 may require additional resources while Option 2 is largely resource neutral. The Agency can accommodate under Option 2 the number of investigations resulting in proposed unfit determinations based on its current resources. The number of enforcement cases, compliance agreements, and oversight required from this population approaches the capacity of the Agency's existing staff. Option 2 represents the best balance for the Agency with its limited resources. It should be noted that the cost of reallocating Agency resources is not included in this analysis. FMCSA seeks comment on this policy choice.

FMCSA proactively addressed concerns about the SMS in the development of this SFD proposal. In addition to the differences noted above, it is important to point out that other concerns about the system including disparities for long-haul and short-haul carriers; differences for urban and rural motor carriers, and enforcement differences by the States have all been considered. The long and short haul differences are minimized by the combination (long-haul) and straight truck (short haul) segmentation. The impacts of urban and rural transportation are factored into the calculation of the Crash Indicator BASIC failure rates. Lastly, while enforcement differences exist between the States, since the failure standards proposed in this rule are significantly higher than the SMS intervention thresholds, the patterns of non-compliance for the carriers that are proposed unfit are not the result of these disparities but are the result of recurring non-compliance.

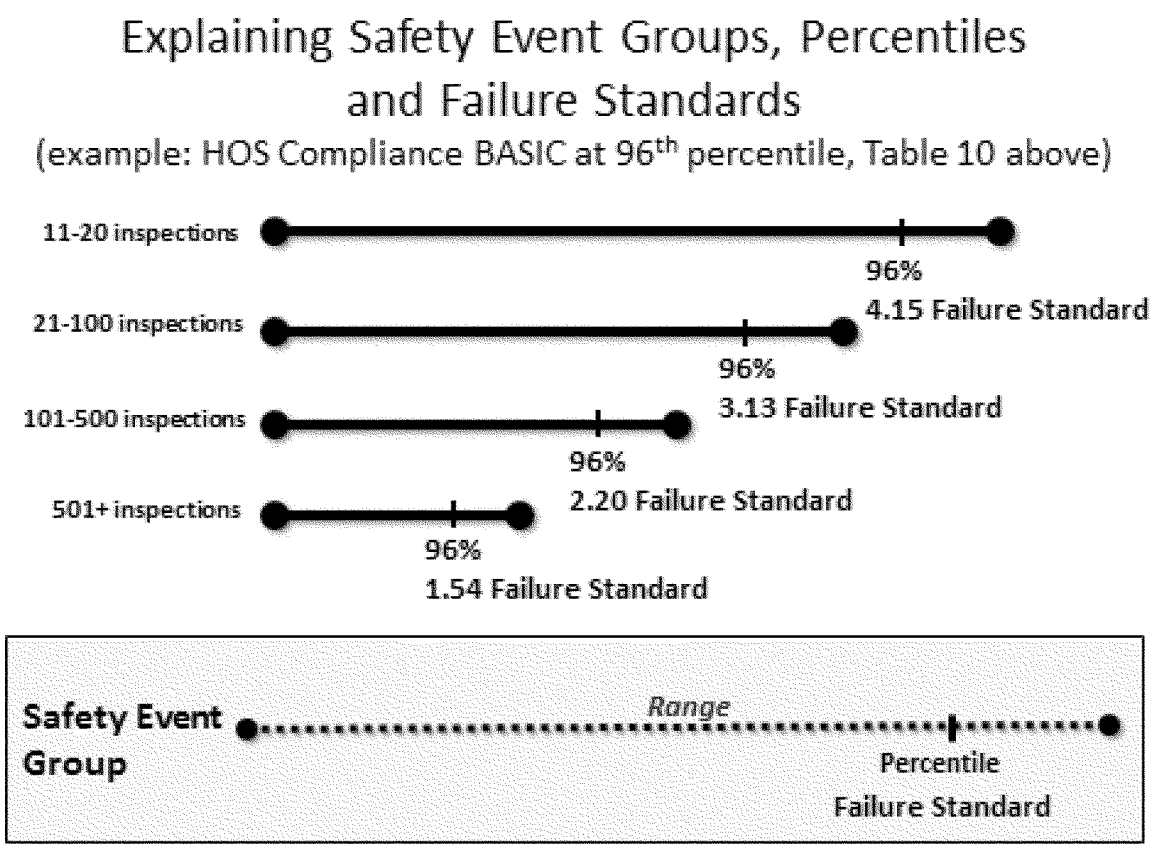
Safety Event Groups

As noted above, the Agency is proposing different SFD failure standards within each BASIC. The applicable failure standard for each motor carrier would be based on its assigned safety event group. If FMCSA did not establish different SFD failure standards for each safety event group, a disproportionately high number of small carriers (*i.e.,* carriers with few safety events) would be found to be unfit. Larger carriers (with many safety events) would rarely fail. The Agency believes the reason for this disparity is attributable to the statistical phenomenon of higher fail rates among carriers with few safety events—''the law of small numbers.'' [60]

Diagram 1 below shows an example of the absolute failure standard that corresponds to the worst performing 4 percent of carriers for the HOS Compliance BASIC. This data comes from Table 10 above.

[60] Tversky, A.; Kahneman, D. (1971). ''Belief in the law of small numbers''. Psychological Bulletin 76 (2): 105–110. *http://psycnet.apa.org/journals/bul/76/2/105/.*

DIAGRAM 1



The above diagram shows that establishing a single failure standard, without reference to the number of safety events to which a motor carrier is exposed, would disproportionately affect those carriers with fewer safety events—typically smaller carriers. For example, if the HOS Compliance BASIC SFD failure standard were set at 4.15 for all carriers, 4 percent of carriers with 11–20 inspections would fail. However, very few carriers in the remaining safety event groups have measures as high as 4.15. A carrier with many inspections (21 or more relevant inspections with violations) would be essentially immune to BASIC failure from on-road safety performance. Therefore, the SFD failure standard needs to be proportionate to the number of safety events.

FMCSA uses the same percentile equivalent (*e.g.* 96 percentile for HOS Compliance BASIC) to make sure all carriers are held to similar safety standards regardless of the number of inspections and the variance associated with number of inspections. This allows the Agency to treat carriers of all sizes as equitably as possible. To adjust the failure standard based on the number of inspections would imply that carriers of a certain size are inherently more unsafe. This would open the Agency to criticism that the rule is biased against small carriers or large carriers (depending on how the percentiles are adjusted). Given that this proposal is designed to get the most non-compliant carriers off the road (regardless of size), the straightforward approach is applying the same percentile equivalent to all safety event groups.

A baseball analogy may provide some insight into this impact. A major league baseball player's number of at-bats is important to evaluating whether his batting average warrants demotion to the minor leagues. Likewise, a motor carrier's number of inspections is important in evaluating whether its performance warrants adverse SFD consequences. For example, 2 hits in 20 at-bats at the beginning of the baseball season (*i.e.,* a 0.100 batting average) would generally not get a baseball player demoted to the minor leagues. However, 80 hits in 400 at-bats (*i.e.,* a 0.200 batting average) across an entire season likely would get a baseball player demoted, even though his batting average is twice as high (0.200 vs. 0.100).[61]

Similarly, motor carriers with few inspections exhibit a wider range of performance measures than carriers with many more inspections. A batter might bat 5 for 10 (0.500 average) in the first week of the season (corresponding to a high absolute measure), but no batter sustains that level through 400 at bats. Similarly, a carrier could have an HOS Compliance BASIC violation in each of 5 inspections, but it would be almost impossible that a carrier would have 500 HOS Compliance BASIC violations in 500 inspections. The greater the number of events, be they at-bats or inspections, the narrower the range of realistic outcomes. Failure standards that incorporate the number of safety events thus ensure that the worst performing motor carriers across all sizes and numbers of safety events are subject to an absolute standard.

When appropriate, the motor carrier's BASICs measures are normalized to reflect differences in inspection and

[61] The average batting average for all of Major League Baseball in 2014 was 0.251. See *http://espn.go.com/mlb/stats/team/_/stat/batting/year/2014/seasontype/2*, accessed on April 6, 2015.

other safety oversight exposure among motor carriers. The HOS Compliance and Driver Fitness measures are normalized by adding the number of time-weighted driver inspections, while Vehicle Maintenance BASIC measures are normalized by adding the number of time-weighted vehicle inspections. The HM Compliance BASIC is normalized by adding the number of time-weighted vehicle inspections where placardable quantities of HM were present. The inspections used to normalize a BASIC measure are considered relevant inspections.

Motor carrier exposure for the Unsafe Driving BASIC is normalized by carrier size using power units and vehicle miles traveled (VMT). Carriers with above-average CMV utilization, in terms of VMT per power unit as reported from MCMIS, receive a positive adjustment to account for the increased exposure to violations that result from miles operated by incorporating an Unsafe Driving Utilization Factor. The Unsafe Driving BASIC accounts for further carrier differences by dividing the carrier population into two segments based on the current mix of vehicles operated. This differentiates the levels of exposure associated with carriers that have fundamentally different types of operations.

The Unsafe Driving Utilization Factor is a multiplier that adjusts the average power unit values based on utilization in terms of VMT per average power unit where VMT data from the past 24 months are available. In cases where the VMT data have been obtained multiple times over the past 24 months for the same carrier, FMCSA proposes to use the most current VMT figure reported by the motor carrier during an investigation, reported online biennially, or reported on Forms MCSA–1 or MCS–150. The Utilization Factor would be calculated as follows:

(1) Determine carrier segment based on the types of vehicles the carrier operates (The types of vehicles are ''combination'' [62] or ''straight truck.'' These different types of power units are defined on the Application for USDOT Registration/Operating Authority (Form MCSA–1) [63] instructions);

(2) Calculate the VMT per average power unit by taking the most recent positive VMT data [64] and dividing it by the average power units;

(3) Use the information in (1) and (2) to find the utilization factor in Tables 2–3 and 2–4 to appendix B to part 385: VMT per Power Unit.

Use of failure standards that consider the number of safety events has precedent. The province of Ontario, Canada uses a similar approach in its Commercial Vehicle Operators Registration (CVOR) motor carrier safety rating system. A technical document that illustrates Ontario's safety rating failure standards based on a motor carrier's number of inspections is included in the docket for this document.[65] The Ontario Ministry of Transportation ''analysed the on-road safety performance of a large sample of carriers operating in Ontario during the two-year period from July 1, 2003 until June 30, 2005. Collision rates and safety related conviction rates for each carrier were plotted and compared for carriers with varying rates of travel, resulting in a standard that identifies acceptable levels of performance. A similar standard was developed for vehicle inspection performance based on frequency of inspection. Performance standards were determined based on monthly kilometric travel. . . . An overall performance level or threshold was established for each carrier by weighting the collision, conviction and inspection performances in the ratios of 2:2:1. In other words, collisions and convictions are given double the weight of inspections in determining an operator's overall violation rate (performance level)'' page 25.

FMCSA proposes that the failure standard for each safety event group be the absolute performance measure corresponding to a given BASIC percentile at the time the standard is set. For example, the absolute failure standards that correspond to the 96th percentile in the HOS Compliance BASIC are presented above in Table 10. FMCSA specifically seeks comments on the use of absolute failure standards based on a motor carrier's number of inspections. In addition, the Agency requests information on the impact to commenters if the Agency were to move to a different safety event grouping approach—similar to Ontario's CVOR process. Under such a different approach, there would be more safety event groups in each BASIC and more corresponding BASIC failure standards. The carrier groupings would be narrower and more closely aligned to the motor carrier's exact number of inspections. For example, rather than grouping all motor carriers with 11–20 inspections for the Vehicle BASIC, as is proposed in this NPRM, a different approach might establish safety event groups and corresponding BASIC failure standards for all motor carriers with, for example, 11–13 inspections, 14–16 inspections, and 17–20 inspections.

FMCSA seeks comment on setting the standard at the same percentile for each safety event group. Would it be appropriate to allow the threshold to vary across safety event groups? If so, please provide data to support your position.

2. Unfit Method 2: Carrier With Violations of the Revised Critical and Acute Regulations Identified Through an Investigation

Unfit Method 2 would use data only from investigations. For example, investigations may begin after receipt of a complaint alleging a substantial violation of a regulation is occurring or has occurred, a crash report suggesting a substantial violation of a regulation occurred, or when a motor carrier's SMS BASIC percentiles meet or exceed intervention thresholds. The Agency proposes to use any of the investigation types used by the Agency during interventions—either an offsite focused, onsite focused, or an onsite comprehensive investigation to issue proposed SFDs. This approach would modify the Agency's current requirement for an onsite investigation in order to issue an SFD. Documentation supporting an unfit determination would be collected using existing enforcement guidelines and standards—including sampling methodologies.

[62] The combination segment includes those carriers that operate either truck tractors or motor coaches. The instructions for ''Application for USDOT Registration/Operating Authority'' (Form MCSA–1) define a ''motor coach'' as ''a vehicle designed for long distance transportation of passengers, usually equipped with storage racks above the seats and a baggage hold beneath the passenger compartment.'' See *http://www.regulations.gov/#!documentDetail;D=FMCSA-1997-2349-0195*. Carriers are placed in the combination category if 70 percent or more of the carrier's total power units meet that definition. The straight truck segment includes all other carriers, including those that operate straight trucks, HM cargo tank trucks, or school buses/mini-buses/limousines/vans with a capacity of 9 or more passengers.

[63] The Motor Carrier Identification Report (Form MCS–150) will be replaced by the Application for USDOT Registration/Operating Authority (Form MCSA–1) for most motor carriers on September 30, 2016, as required by the Unified Registration System final rule published on August 23, 2013 (78 FR 52608) and the extension of effective dates final rule published on October 21, 2015 (80 FR 63695). The form MCS–150 will continue to be used by Mexico-domiciled motor carriers requesting authority to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border. The Agency is considering eliminating the MCS–150 altogether and would do so by separate rulemaking.

[64] Reported by the motor carrier during an investigation, reported online biennially, or reported on Forms MCSA–1 or MCS–150.

[65] Ontario's CVOR and Carrier Safety Rating Public Guideline, Ministry of Transportation, St. Catharines, Ontario, November 2011.

If a motor carrier is cited for a violation of an acute regulation associated with a BASIC, it would fail that BASIC. If a motor carrier is cited for a violation of a critical regulation with violations discovered in a minimum of 10 percent violation of the records examined, it would fail that BASIC. If a motor carrier failed two or more BASICs due to violations of the proposed critical and/or acute regulations, this would result in a proposed unfit determination. This proposed SFD methodology raises the safety standard above that used in the current process. Only one violation of a critical regulation, at a 10 percent or higher violation rate, would be required to fail a BASIC, whereas, in the current process, two violations of critical regulations are generally required to fail a Factor.

The costs and benefits associated with this proposal only use investigation results from a one month period prior to a proposed SFD. FMCSA specifically seeks comments on the length of time that failed BASICs from investigations should be reviewed together with failed BASICS from on-road safety data to potentially result in a proposed SFD.

As a result of its analysis and alternatives development, FMCSA proposes to alter the list of critical and acute regulations. Analysis by FMCSA [66] compared the crash rates of motor carriers with violations of the existing list of critical and acute regulations to the crash rates of motor carriers with violations of the proposed list of critical and acute regulations. The revised, refined list of critical and acute regulations correlated to a higher crash rate. For the purpose of proposing unfit SFDs, the refined list of critical and acute regulations is an equally strong, if not a better, indicator of crash risk. A copy of the analysis is included in the docket for this rulemaking.

Table 17 shows the revised acute and critical violations and the BASIC with which they would align. The current critical and acute regulations may be found at 49 CFR part 385, appendix B, section VII. In contrast to on-road inspection violations, violations cited during an investigation are not time or severity weighted, see section 2.3.7, 2.3.8, and 2.3.9 in proposed appendix B to part 385 below.

TABLE 17—REVISED CRITICAL AND ACUTE REGULATIONS

Acute or critical	49 CFR section	Description of violation	Behavior analysis and safety improvement category (BASIC)
Critical	173.24(b)(1)	Accepting for transportation or transporting a package that has an identifiable release of a HM to the environment.	HM Compliance.
Critical	173.24b(d)(2)	Loading bulk packaging (cargo tank) with an HM which exceeds the maximum weight of lading marked on the specification plate.	HM Compliance.
Critical	173.33(a)(1)	Offering or accepting a HM for transportation in an unauthorized cargo tank.	HM Compliance.
Critical	173.33(a)(2)	Loading or accepting for transportation two or more materials in a cargo tank motor vehicle which if mixed results in an unsafe condition.	HM Compliance.
Critical	173.33(b)(1)	Loading HM in a cargo tank motor would have a dangerous reaction when in contact with the tank.	HM Compliance.
Critical	177.800(c)	Failing to instruct a category of employees in HM regulations	Driver Fitness.
Acute	177.801	Accepting for transportation or transporting a forbidden material	HM Compliance.
Critical	177.817(a)	Transporting a shipment of HM not accompanied by a properly prepared shipping paper.	HM Compliance.
Critical	177.834(i)	Loading or unloading a cargo tank without a qualified person in attendance.	HM Compliance.
Critical	177.848(d)	Failing to store, load, or transport HM in accordance with the segregation table.	HM Compliance.
Critical	180.407(a)	Transporting a shipment of HM in cargo tank that has not been inspected or retested in accordance with § 180.407.	HM Compliance.
Acute	382.115(a)	Failing to implement an alcohol and/or controlled substances testing program (domestic motor carrier).	Controlled Substances.
Acute	382.115(b)	Failing to implement an alcohol and/or controlled substances testing program (foreign motor carrier).	Controlled Substances.
Acute	382.201	Using a driver known to have an alcohol concentration of 0.04 or greater.	Controlled Substances.
Acute	382.211	Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382.	Controlled Substances.
Acute	382.215	Using a driver known to have tested positive for a controlled substance.	Controlled Substances.
Critical	382.301(a)	Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.	Controlled Substances.
Critical	382.303(a)	Failing to conduct post-accident testing on driver for alcohol	Controlled Substances.
Critical	382.303(b)	Failing to conduct post-accident testing on driver for controlled substances.	Controlled Substances.
Acute	382.305	Failing to implement a random controlled substances and/or an alcohol testing program.	Controlled Substances.
Critical	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.	Controlled Substances.
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.	Controlled Substances.

[66] ''Estimating the Safety Impact of Proposed Safety Fitness Determination (SFD) Criteria,'' FMCSA, May 2015.

TABLE 17—REVISED CRITICAL AND ACUTE REGULATIONS—Continued

Acute or critical	49 CFR section	Description of violation	Behavior analysis and safety improvement category (BASIC)
Critical	382.309	Using a driver without a return to duty test	Controlled Substances.
Critical	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.	Controlled Substances.
Critical	383.3(a)/ 383.23(a)	Using a driver who does not possess a valid CDL	Driver Fitness.
Acute	383.37(a)	Knowingly allowing, requiring, permitting, or authorizing an employee who does not have a current CLP or CDL, who does not have a CLP or CDL with the proper class or endorsements, or who operates a CMV in violation of any restriction on the CLP or CDL to operate a CMV.	Driver Fitness.
Acute	383.51(a)	Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a CMV.	Driver Fitness.
Acute	391.11(b)(4)	Using a physically unqualified driver	Driver Fitness.
Acute	391.15(a)	Using a disqualified driver	Driver Fitness.
Critical	391.45(a)	Using a driver not medically examined and certified	Driver Fitness.
Critical	391.45(b)(1)	Using a driver not medically examined and certified during the preceding 24 months.	Driver Fitness.
Critical	391.51(a)	Failing to maintain driver qualification file on each driver employed	Driver Fitness.
Critical	392.2	Operating a motor vehicle not in accordance with the safety laws, ordinances, and regulations of the jurisdiction in which it is being operated.	Unsafe Driving.
Critical	392.6	Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed.	Unsafe Driving.
Critical	392.9(a)(1)	Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured.	Vehicle Maintenance.
Critical	395.1(h)(1)(i)	Requiring or permitting a property-carrying CMV driver to drive more than 15 hours (Driving in Alaska).	HOS Compliance.
Critical	395.1(h)(1)(ii)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty 20 hours (Driving in Alaska).	HOS Compliance.
Critical	395.1(h)(1)(iii)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).	HOS Compliance.
Critical	395.1(h)(1)(iv)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).	HOS Compliance.
Critical	395.1(h)(2)(i)	Requiring or permitting a passenger-carrying CMV driver to drive more than 15 hours (Driving in Alaska).	HOS Compliance.
Critical	395.1(h)(2)(ii)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty 20 hours (Driving in Alaska).	HOS Compliance.
Critical	395.1(h)(2)(iii)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).	HOS Compliance.
Critical	395.1(h)(2)(iv)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).	HOS Compliance.
Critical	395.1(o)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty 16 consecutive hours.	HOS Compliance.
Critical	395.3(a)(1)	Requiring or permitting a property-carrying CMV driver to drive without taking an off-duty period of at least 10 consecutive hours prior to driving.	HOS Compliance.
Critical	395.3(a)(2)	Requiring or permitting a property-carrying CMV driver to drive after the end of the 14th hour after coming on duty.	HOS Compliance.
Critical	395.3(b)(1)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 60 hours in 7 consecutive days.	HOS Compliance.
Critical	395.3(b)(2)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 70 hours in 8 consecutive days.	HOS Compliance.
Critical	395.5(a)(1)	Requiring or permitting a passenger-carrying CMV driver to drive more than 10 hours.	HOS Compliance.
Critical	395.5(a)(2)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty 15 hours.	HOS Compliance.
Critical	395.5(b)(2)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 70 hours in 8 consecutive days.	HOS Compliance.
Critical	395.8(a)	Failing to require driver to make a record of duty status	HOS Compliance.
Critical	395.8(e)	False reports of records of duty status	HOS Compliance.
Critical	395.8(i)	Failing to require driver to forward within 13 days of completion, the original of the record of duty status.	HOS Compliance.
Critical	395.8(k)(1)	Failing to preserve driver's record of duty status for 6 months	HOS Compliance.
Critical	395.8(k)(1)	Failing to preserve driver's records of duty status supporting documents for 6 months.	HOS Compliance.

TABLE 17—REVISED CRITICAL AND ACUTE REGULATIONS—Continued

Acute or critical	49 CFR section	Description of violation	Behavior analysis and safety improvement category (BASIC)
Critical	396.3(b)	Failing to keep minimum records of inspection and vehicle maintenance.	Vehicle Maintenance.
Acute	396.9(c)(2)	Requiring or permitting the operation of a motor vehicle declared ''out-of-service'' before repairs were made.	Vehicle Maintenance.
Acute	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.	Vehicle Maintenance.

In some forums for SMS purposes, the Agency has referred to violations of certain critical and acute regulations as essential safety management violations and fundamental violations, respectively.[67] However, for the purposes of this rulemaking, the Agency is not proposing to change the current terminology. Instead, FMCSA would revise the list in section VII in appendix B to part 385 and retain the terms ''critical'' and ''acute.'' This terminology is included in the Motor Carrier Safety Improvement Act of 1999, and is familiar to law enforcement and the industry. Proposed revisions to 49 CFR part 385, appendix B, are explained in detail in Part IX of this proposed rule.

The critical and acute violations noted in Table 17 above have been used for the analysis in the Regulatory Evaluation accompanying this proposal. But the Agency is also considering whether to include the following violations and seeks comment specifically on these violations.

- § 390.35—Making, or causing to make, fraudulent or intentionally false statements or records or reproducing fraudulent records.
- § 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.
- § 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.
- § 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.
- § 392.16—A commercial motor vehicle which has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself/herself with the seat belt assembly.
- § 392.80(a)—No driver shall engage in texting while driving.
- § 392.80(b)—No motor carrier shall allow or require its drivers to engage in texting while driving.
- § 392.82(a)(1)—No driver shall use a hand-held mobile telephone while driving a commercial motor vehicle.
- § 392.82(a)(2)—No motor carrier shall allow or require its drivers to use a hand-held mobile telephone while driving a CMV.
- § 396.7(a)—Requiring or permitting operation of a motor vehicle in a condition likely to cause an accident or breakdown of the vehicle.
- § 396.17(a)—Using a commercial motor vehicle not periodically inspected.

As a result, the Agency seeks comment and data on these regulations and others that should be considered critical or acute. Lastly, the Agency seeks comment and data on how critical and acute regulations should be determined; is associated crash risk the best measurement, or is there a better or additional reason?

Crashes

The statute requires the Agency to consider crashes in determining safety fitness.[68] A motor carrier's crash experience would impact the SFD only if the carrier's recordable crashes had first been evaluated for preventability as part of an investigation. This is consistent with FMCSA's existing methodology. For this purpose, the Agency will consider only recordable crashes. A crash is recordable if it involves a CMV and meets the definition in 49 CFR 390.5 (defining ''accident'').

The Agency proposes to determine preventability by applying the standards and procedures currently utilized in assessing preventability of recordable crashes when determining a safety rating. Those procedures make use of previously issued guidance for making preventability determinations, set out in FMCSA's *A Motor Carrier's Guide to Improving Highway Safety*.[69]

The Agency calculates a motor carrier's crash rate by multiplying the motor carrier's number of recordable interstate and intrastate crashes in the previous 12 months by 1,000,000. That result is divided by the motor carrier's fleet mileage during the previous 12 months. The failure standard for crash rates is 1.5 for general operations and 1.7 for urban operations. If the motor carrier exceeds the failure standard, the crashes will be reviewed for preventability. The crash rate will then be recalculated using only preventable crashes. If the motor carrier's preventable crash rate remains above the failure standard, the motor carrier would then fail the Crash Indicator BASIC.

In 1997, FMCSA's predecessor, the Federal Highway Administration, published a Final Rule (62 FR 60035) indicating that it would use a carrier's *recordable* crash rate as a factor in determining its safety rating, but would continue to consider the *preventability* of such crashes when challenged by individual carriers. The thresholds for unacceptable crash rates were set using recordable crash data from 1994–1996. FMCSA seeks comment on whether either the recordable crash rate or the preventable crash rate would be more appropriate for use in calculating a carrier's SFD and whether the recordable crash rates currently incorporated into 49 CFR part 385, appendix B, should be retained as thresholds under the new SFD.

3. Unfit Method 3: Combination of Inspection Data and Investigation Results

During an investigation, it may be determined that violations of acute or critical regulations result in only one failed BASIC. However, the motor carrier may also have one additional BASIC over the SFD failure standard based on the most recent 24 months of

[67] See 72 FR 62293, at 62299 (Nov. 2, 2007) and 73 FR 53483, at 53487 (Sept. 16, 2008).

[68] 49 U.S.C. 31144(a)(1).

[69] *A Motor Carrier's Guide to Improving Highway Safety*, FMCSA–ESO–08–003, December 2009. Available at *http://www.fmcsa.dot.gov/safety-security/eta/index.htm*.

on-road safety data. When, at the time of the investigation, there is one failed BASIC as a result of on-road safety data and one or more additional failed BASICs as a result of violations discovered during the investigation, the motor carrier would be proposed unfit. Crash and controlled substances/alcohol information would be considered, as noted above, only during the investigation.

4. Specific Applications

English Language Proficiency

It should be noted that the Agency's analysis, including the estimated number of proposed unfit motor carriers, does not include violations of 49 CFR 391.11(b)(2) for English Language Proficiency (ELP). These violations are also not included in the proposed violation tables in appendix B of part 385. The Agency chose to do the analysis without this violation based on the Commercial Vehicle Safety Alliance's (CVSA) 2014 decision to remove this violation from it's out of service criteria. The Agency specifically seeks comments on this issue.

Passenger Carriers

Congress and FMCSA have both acknowledged the increased risk associated with transportation of passengers. Currently, FMCSA also holds passenger motor carriers to more stringent intervention thresholds in SMS.

The Agency is considering an alternative, more stringent, proposal for passenger carriers that would result in a proposed unfit SFD. The proposal would have two elements. First, a passenger carrier would receive a proposed unfit SFD when it meets or exceeds failure standards comparable to the 75th percentile for either the Unsafe Driving or HOS Compliance BASIC. Under this part of the alternative proposal, a passenger carrier could be proposed unfit for failing either Unsafe Driving or HOS Compliance, without failing a second BASIC. Secondly, and in addition, FMCSA is considering a structure where a proposed unfit SFD would also result if a passenger carrier meets or exceeds SFD failure standards comparable to the 90th percentile when the absolute thresholds in two of the three other BASICs—Vehicle Maintenance, Driver Fitness or HM Compliance.

The Agency estimates that 270 passenger carriers would be proposed as unfit using these alternate failure standards. This would result in 93 more passenger carriers being proposed unfit than would result from using two failed BASICs comparable to the 96th and 99th percentiles, as elsewhere proposed in this document. Using data from on-road safety data and investigation results, the estimated crash rate for these 270 passenger carriers is 2.08 applying the same approach used in the Regulatory Evaluation. The national average for all passenger carriers is 1.09 crashes per 100 power units. The proposed unfit passenger carriers using these alternate failure standards had experienced a crash rate (2.08 per 100 power units) that was almost twice the national passenger carrier rate (1.09 per 100 power units) or an increase of 90% ((2.08–1.09/1.09)).

As a result, the Agency seeks feedback and data on whether passenger carriers should be held to more stringent SFD failure standards, that is, at an absolute value equivalent to the 75th percentile (or some other percentile less than the 96th percentile) for the Unsafe Driving and HOS Compliance BASICs failure standards, and equivalent to the 90th percentile (or some other percentile less than the 99th percentile) for the Driver Fitness, Vehicle Maintenance, HM Compliance, and Crash Indicator BASICs. The Agency also requests comment on whether the proposed failure standards are appropriate.

The Agency is also interested in alternative methods for identifying high risk passenger carriers during an investigation. It is considering lowering the minimum rate of violations for a pattern, for purposes of a critical regulation violation, from 10 percent to 5 percent or a lower number. FMCSA seeks comments on this concept.

Hazardous Materials Carriers

The SMS also has lower intervention thresholds for HM carriers. As a result, the Agency seeks feedback and data on whether these carriers should be held to a more stringent standard (*i.e.,* lower BASIC failure standards). The Agency is specifically interested in feedback on whether the failure standard should be different for HM safety permit carriers.

Under this proposal, HM safety permit applicants would continue to be required to have a comprehensive onsite investigation comparable to the existing CR, conducted at the motor carrier's principal place of business, and would be issued a HM safety permit as long as they were not unfit and met other applicable requirements. Either inspections or another investigation after issuance of the HM safety permit could result in an unfit determination, however, thus affecting the HM safety permit status.

Foreign Motor Carriers

Under this proposal, the Agency notes that Mexican, Canadian, and Non-North American carriers registered with FMCSA could be found to be unfit based on their inspection data and investigation results.

Mexican long-haul carriers permitted to operate in this country beyond border commercial zones are required to have a compliance review before being granted standard authority. In the future, if long-haul authority is granted, the carrier would be required to have a comprehensive investigation comparable to an existing CR within 18 months of FMCSA granting the carrier provisional operating authority registration before being granted standard authority. Additionally, on-road safety data or findings from another investigation could result in an unfit determination, thus affecting the carrier's provisional authority status.

D. MAP–21 Requirements for Motor Carriers of Passengers and Operators of Motorcoach Services

A MAP–21 amendment requires the Secretary to conduct initial and periodic safety reviews of for-hire motor carriers of passengers.[70] Initial reviews of those motor carriers of passengers that are providers of motorcoach services registered with the Secretary after October 1, 2012, are to begin no later than two years after the dates of their respective registrations. Reviews of such providers registered on or before October 1, 2012, are to begin no later than October 1, 2015.[71] An uncodified statutory provision of MAP–21 directs the Secretary to establish requirements to improve the public accessibility of the safety rating information of providers of motorcoach services, and advises that the Secretary should also consider requirements for public display of such information on motorcoaches, at departure terminals, and at ticket sales locations.[72]

MAP–21 requires the Secretary to determine the safety fitness of each motor carrier of passengers through a simple and understandable rating system that allows passengers to compare their safety performance. MAP–21 also requires the Secretary to assign a safety fitness rating to each

[70] 49 U.S.C. 31144(i)(1), (2) and (4).

[71] 49 U.S.C. 31144(i)(1)(B). A ''motorcoach'' is defined for this purpose to be the same as an ''over-the-road bus,'' a bus characterized by an elevated passenger deck located over a baggage compartment, except a bus used by a public transportation agency or a school bus. See Section 32702(6) of MAP–21 and section 3038(a)(3) of TEA–21 (set out as a note to 49 U.S.C. 5310).

[72] MAP–21 section 32707(b), 126 Stat. 814.

such motor carrier, which is reassessed at least once every 3 years, although motor carriers of passengers that serve primarily urban areas with high passenger volume are to be reassessed annually.[73] In addition, section 32707(b) of MAP–21 requires that FMCSA improve public access to safety fitness information for motorcoach services and operations in interstate commerce.

As discussed previously, the Agency is proposing to determine only one category of safety fitness—unfit. This determination would also be made for some motor carriers of passengers through the monthly assessment of the inspection data. If the passenger carrier did not have 11 inspections in the previous 24 months by which to be adequately assessed, an investigation of the carrier's safety performance would be conducted.

Section 32707(b) also requires the Agency to consider requiring the prominent display of safety fitness rating information in each motorcoach terminal of departure, on the inside of the motorcoach vehicle, and at all points of sale for motorcoach services. The public has access to critical information about the safety record and ratings of motor carriers of passengers, including providers of motorcoach services, on the FMCSA Web site and through the Agency's SaferBus application.[74] FMCSA believes that implementing the statutory requirement to consider prominently displaying SFD information at terminals, ticket sale locations, and on motorcoaches could result in fraudulent information being displayed, and, therefore, is better addressed by directing the traveling public to FMCSA's Web site and the SaferBus application. FMCSA seeks comments on whether the public's access to a for-hire motorcoach operator's safety record on the FMCSA Web site and SaferBus application is sufficient to meet the public access and display requirements of section 32707(b)(2) of MAP–21.

E. Summary Justification for SFD Proposal

FMCSA has structured this SFD proposal to identify those motor carriers with the highest crash risk. Carriers identified through two failed BASICs based solely on on-road safety data (using the 96/99 percentile threshold standard) have a crash rate of 8.28 crashes per 100 power units. All carriers with two failed BASICs (including carriers failing a BASIC due to a finding during an investigation and on-road safety data) have a crash rate of 4.39 crashes per 100 power units. This is compared to the nation-wide average crash rate of 2.13 crashes per 100 power units for all carriers.

The proposed use of on-road safety data would allow the Agency to identify and take action against unsafe motor carriers. Table 18 below illustrates both the number of carriers proposed unfit and the associated crash rate for two different options for failure standards for SFDs. Option 2 is the option proposed in this rulemaking.

TABLE 18—NUMBER OF CARRIERS PROPOSED UNFIT—IDENTIFIED WITH TWO FAILED BASICS

Failure standard option	All proposed unfit methods:			Proposed unfit method 1: Number of carriers proposed unfit based on inspection data (and associated crash rate per 100 PUs)	Proposed unfit method 2: Number of carriers proposed unfit based on investigations (and associated crash rate per 100 PUs)	Proposed unfit method 3: Number of carriers proposed unfit based on inspection and investigation (and associated crash rate per 100 PUs)
	Total number of carriers proposed unfit	Total number of crashes for carriers proposed unfit	Associated crash rate per 100 power units (PUs)			
No. 1—Equivalent to 95 and 98 percentiles	3,291	2,124	3.93	479 (3.75)	2,656 (3.94)	156 (4.66)
No. 2—Equivalent to 96 and 99 percentiles	3,056	1,862	4.39	262 (8.28)	2,674 (3.98)	120 (4.61)

The Agency used lessons learned from SMS and feedback from stakeholders[75] in crafting the proposed SFD process. These include requiring a higher number of inspections before assessing the motor carrier's performance, a higher number of inspections with violations before making an SFD, and using absolute failure standards equivalent to higher compliance levels than SMS uses for prioritization. Because SMS intervention thresholds are lower than the proposed thresholds for SFD, under this proposal it is very unlikely that a proposed unfit SFD would be the first time that the Agency had an intervention with the motor carrier. Most often, the motor carrier would have been subject to previous interventions, such as warning letters, focused reviews, and/or civil penalty enforcement actions. If the safety deficiencies were not corrected, however, the carrier could ultimately meet or exceed the safety failure standards that result in a proposed unfit SFD.

VII. Revised SFD Appeals Process

After receiving a proposed unfit safety fitness determination, a motor carrier would have various administrative proceedings available to it before the proposed determination becomes final.[76] In this proposal, four different administrative proceedings would be available. However, consistent with current procedures, requests for administrative reviews would not automatically stay the unfit determination.

A. Administrative Review of Material Errors

This proposal would continue the existing administrative review procedure to challenge alleged errors committed in assigning the proposed unfit SFD. These requests are decided by FMCSA's Assistant Administrator. The proposed administrative review procedures in revised 49 CFR 385.15 would provide sufficient opportunity

[73] 49 U.S.C. 31144(i)(1), (2) and (4), added by section 32707(a) of MAP–21.

[74] This application is available without charge to Google Android users and Apple iPhone and iPad users from the respective App Stores, or by going to the FMCSA's ''Look Before You Book'' Web site at *www.fmcsa.dot.gov/saferbus.*

[75] See docket FMCSA–2004–18898 titled Comprehensive Safety Analysis 2010 Initiative.

[76] See section IV.A. *History of SFDs* above for an explanation of the 45- and 60-day periods set by statute before a proposed unfit SFD becomes final. 49 U.S.C. 31144(c).

for a motor carrier to allege errors in an SFD, including allegations of error in the validity of violations recorded on a driver/vehicle inspection report, even where State administrative or judicial proceedings might not be adequate or available. The burden of proof for this review would remain with the motor carrier. Such review would now have to be sought within 15 days after service of the notice of proposed unfit SFD. If no such review is sought within 30 days after service of the notice, or the Agency does not agree with the allegations of material error, the proposed unfit SFD may become a final unfit SFD as described above.

As indicated above, FMCSA proposes to reduce the time for filing a petition for administrative review from the current maximum of 90 days to 15 days after the issuance of the proposed unfit SFD. FMCSA specifically requests comment on this proposed change in the general time for filing of petitions for administrative review, which will ensure that decisions will be made before the statutory time periods expire.

B. Claiming Unconsidered Inspection Data

The second proposed administrative review procedure would be new and would provide for review based on missing data. Requests for such review would be decided by FMCSA's Field Administrators [77] of the FMCSA Service Center responsible for the State, province, or country where the carrier's principal place of business is located. Procedures would be added at new § 385.16 for administrative review of an unfit determination that allegedly did not include all reported data from qualifying inspections of the motor carrier's vehicles or drivers, such as missing inspections citing no violations during the SFD period. For this new review, the burden of proof to show that the missing data would impact the proposed unfit SFD would rest with the motor carrier. This review would have to be requested within 10 days after service of the notice of proposed unfit SFD.

C. Requests To Operate Under a Compliance Agreement

The third proposed administrative process would revise FMCSA's existing process by allowing carriers that have a proposed unfit SFD to defer the final unfit SFD and continue to operate under a compliance agreement. The carrier would submit a corrective action plan and would agree to monitoring and performance terms. If the corrective action plan is found to be acceptable to the Agency, the motor carrier could operate under a compliance agreement. This proposal would not remove the proposed unfit determination unless the terms of the compliance agreement were met throughout an agreed upon period of time. In addition, the Agency's Web site would reflect that a motor carrier would be operating under a compliance agreement during the agreement period.

To initiate this process, a carrier would have to submit an acceptable corrective action plan within the time frames specified in proposed § 385.17(d). To be accepted, a corrective action plan would have to demonstrate that the carrier is willing and able to comply with applicable safety statutes and regulations and demonstrate significant changes in its deficient safety management processes. For example the carrier may have to demonstrate clearly defined safety policies and procedures, documented organizational roles and responsibilities for safety compliance, written qualification and hiring standards, training and communication plans, and ongoing compliance monitoring and tracking procedures. Other potential requirements might include, but would not be limited to, installing safety technology, providing reports or other documents, and training. While decisions on the terms of each compliance agreement would be made by FMCSA, standard requirements would include: (1) Monitoring for a defined period of time; and (2) strict safety performance standards that would have to be met or the carrier would be immediately declared unfit. Motor carriers would be expected to maintain performance *below* the SMS intervention thresholds established in the agreement. See Table 3 earlier in this preamble for the current SMS intervention thresholds. Meeting the terms of the compliance agreement for an agreed upon period of time with inspections would provide evidence that the motor carrier was willing and able to comply with applicable statutes and regulations and would result in withdrawal of the proposed unfit SFD. A motor carrier would have limited opportunities for administrative review of any action denying it an entry into a deferral and compliance agreement.

D. Requests To Resume Operations After a Final Unfit Determination

The fourth unfit SFD administrative review available to a motor carrier would be added to establish the new procedures that a motor carrier would follow to resume interstate motor carrier operations following a final unfit SFD. FMCSA would require a motor carrier that has received a final unfit SFD, and wants to begin operating again, to have its safety fitness evaluated. The carrier would also need to have received new safety registration and, if necessary, new operating authority.[78]

Therefore, an unfit motor carrier would be required to submit a corrective action plan with its applications for USDOT and operating authority registration. The corrective action plan must describe the actions the motor carrier completed or is taking to address its safety deficiencies. An unfit motor carrier must receive approval of its corrective action plan from the appropriate Field Administrator before FMCSA would issue a new registration for the motor carrier.

The unfit motor carrier would also be required to demonstrate to FMCSA that it meets the safety fitness standard and is willing and able to comply with all statutory and regulatory requirements before receiving an updated registration to operate. Finally, the unfit motor carrier would have to participate in the New Entrant Safety Assurance Program—subpart D of part 385, or, if applicable, either subpart B of part 385 for Mexico-Domiciled Carriers or subpart H of part 385 for New Entrant Non-North America-Domiciled Carriers, upon resuming motor carrier operations in the United States.

E. Carriers Expected To Receive a Final Unfit SFD

FMCSA estimates that 364 more motor carriers than the number that currently receive a final unsatisfactory safety rating will receive a final unfit SFD after one or more of the administrative review proceedings discussed above. However, these four proceedings provide greater opportunities for motor carriers to comply with the federal safety regulations. For carriers that would have been rated unsatisfactory under the old methodology and would be determined to be unfit under the new methodology, the proposed appeals proceedings give them an opportunity to continue operating while complying with the federal safety regulations under more intense scrutiny from FMCSA. Carriers that do not successfully appeal the proposed unfit SFD, or that choose not to appeal or submit a corrective action plan, would receive a final determination of unfit. In addition, in instances where a motor carrier is

[77] The proposed definition of the term Field Administrator includes the term Regional Field Administrator.

[78] The carrier will retain the same USDOT number. See Unified Registration System final rule, August 23, 2013 (78 FR 52608).

operating under a compliance agreement, a carrier would be issued a final unfit SFD if it violates any of the terms specified in the compliance agreement.

Using MCMIS data from September 2010 to September 2012, the Agency analyzed the hypothetical effect of this proposed compliance agreement rule. The results of the Agency's analysis showed that 490 motor carriers would have received a proposed unfit SFD in the first month of the analysis period—September 2010. To determine how many carriers would receive a final unfit determination within the next 24 months after entering into a compliance agreement in September 2010, the Agency assumed that a carrier with a proposed unfit determination would be required to operate below the more stringent SMS intervention thresholds noted in Table 3 above.

Of the 490 carriers that would have received proposed unfit SFDs in the first analyzed month of September 2010, the Agency's analysis showed that 74 (15%) went inactive or ceased operations within 24 months. Of the remaining 416 carriers, 122 (29%) never had sufficient data in the next 24 months to recalculate their performance measure and, therefore, would be found unfit. Another 169 (41%) would have had sufficient data and would have continued to observe the terms of their compliance agreement and then the proposed unfit would have been retracted, and 125 (30%) would be out of compliance at some time before September 2012 and would be found unfit. This baseline analysis indicated that about half (48%) of the final unfit determinations would occur within the first 6 months of the compliance agreement. The Agency acknowledges that the real rate of carriers becoming unfit is expected to be lower because these carriers would be aware of the consequences of failing to comply with the regulations.

VIII. Implementation of and Transition to Final Rule

A. Proposed MCSAP Requirements

FMCSA proposes one revision to the conditions required for the Agency to provide funds under its MCSAP grant program. FMCSA proposes to amend existing 49 CFR 350.201(a) to add the phrase ''by enforcing orders on commercial motor vehicle safety and HM transportation safety.'' This change would make it clear that States receiving MCSAP grants would be expected to enforce various orders issued by FMCSA, for example, motor carrier out-of-service orders entered by FMCSA under 49 CFR 385.13, 386.72, 386.73, 386.83, or similar provisions. This provision would assist the stopping of vehicles at the roadside when they are operated by motor carriers that disregarded such out-of-service orders, thereby preventing them from continuing to operate CMVs on the Nation's highways. FMCSA notes that for-hire carriers determined to be unfit will have their operating authority revoked. Therefore, each of the company's vehicles are currently required to be placed out of service during a roadside inspection.

For this population of unfit carriers, the proposed change to the MCSAP rules would impose no additional burden on the States. However, for private motor carriers and exempt for-hire carriers, some States may need legislative or regulatory action to enable their roadside inspectors to place CMVs operated by these carriers out of service. The States would have 3 years from the effective date of the final rule to accomplish these legislative or regulatory actions. FMCSA specifically seeks comments on the impacts to the States from these changes and requests information on implementation impacts that should be considered in finalizing this rule.

B. Implementation of a Final Rule and Transition Provisions

FMCSA proposes to begin applying the proposed methodology to all motor carriers registered with the Agency on the effective date of the final rule. FMCSA proposes that the final rule be effective 90 days after publication. As a result, the proposed unfit SFDs would result from failed BASICs resulting from the monthly update of inspection data or from an investigation initiated on or after the 91st day after publication of the final rule.

FMCSA seeks comments on how the Agency might phase in the implementation of the final rule to lessen the initial burden on the motor carrier industry, the Agency, and its enforcement partners.

FMCSA also proposes procedures for carriers that receive a notification of safety rating and fitness determination under the current provisions of 49 CFR 385.11 in the period before this proposed rule is issued as a final rule and becomes effective. Proceedings regarding fitness determinations for such carriers, including administrative reviews under 49 CFR 385.15 and corrective action plans under 49 CFR 385.17, would continue to be handled under the provisions in existence when the proceeding was initiated until those proceedings are completed.

C. General Statements of Enforcement Policy Regarding Violation Severity Weights and Time Weights

The explanation of the SFD methodologies are contained in proposed appendix B to part 385. Although most elements of appendix B are proposed as regulations, FMCSA proposes to issue certain other elements of appendix B as guidance for regulated entities and the public in the form of general statements of enforcement policy. Such statements would be included as part of the text of appendix B and published in the **Federal Register** (and the Code of Federal Regulations), but they would be designated in the final rule as general statements of enforcement policy.

The elements of the proposed SFD methodology that would be treated as statements of enforcement policy in appendix B to part 385 would include the following:

1. Violation Severity Weights in Tables 1 to 5 in section 5 of appendix B to part 385; and
2. Time Weights for violations in BASICs in section 2.3.2 of appendix B to part 385.

Safety-based violations documented through inspections and associated with each BASIC are assigned severity weights. The stronger the relationship between a violation and crash risk, the higher its assigned weight. The Agency based these weights on the ''Carrier Safety Measurement System (CSMS) Violation Severity Weights'' [79] study (December 2010) that quantifies the associations between violation and crash risk. FMCSA adds additional weight for violations that result in a driver or vehicle being placed OOS. This study details how the Agency assigns the violation severity weights.

Publication of the severity and time weights as guidance would advise affected persons and the public of the details of the methodology that the Agency expects to follow. At the same time, it would allow the Agency the flexibility to modify these minor technical elements of the proposed methodology, as needed, based on experience and additional data.

Future revisions or adjustments of these elements would be published in the **Federal Register**, together with an explanation of the basis for the changes. They would not be operative until such publication occurred. If appropriate, public comment would be sought on possible changes in the guidance

[79] John A. Volpe National Transportation Systems Center, ''Carrier Safety Measurement System (CSMS) Violation Severity Weights,'' December 2010.

elements before final publication and implementation.

As explained earlier in this preamble, *American Trucking Associations, Inc.* v. *U.S. DOT*[80] and other judicial decisions recognize that agencies are to be afforded some deference in determining the level of specificity called for in regulation and related interpretive guidance. Publishing some elements of the SFD methodology as guidance is similar to procedures used in other aspects of the Agency's safety regulations. Adjustments to the severity and time weights would be similar, for example, to the adjustments in the threshold crash rates and out-of-service rates for determining when a motor carrier can be issued a Hazardous Materials Safety Permit.[81] If the Agency decides to treat any elements of the proposed methodology as guidance, the final rule will clearly identify those elements, publish them with the final rule, and indicate that they are subject to change in accordance with the procedure outlined above.

IX. Section-by-Section Description of Proposed Rule

To implement the proposed SFD methodology, FMCSA would amend parts 350, 365, 385, 386, 387, and 395. The primary changes would be in subpart A (§§ 385.1 through 385.21) and appendix B to part 385. Most regulatory changes are to the terms used in the proposed new methodology. FMCSA proposes to make conforming changes in all the places where the terms ''satisfactory,'' ''conditional,'' ''unsatisfactory,'' ''less than satisfactory,'' and ''rating'' occur. These include subparts B, D, E, F, H, and I in part 385, as well as part 350, part 365, appendix B to part 386, subparts A and C of part 387, and part 395.

A. Part 350

FMCSA proposes to amend existing 49 CFR 350.201 to add the phrase ''by enforcing FMCSA orders on commercial motor vehicle safety and hazardous materials transportation safety and by'' in paragraph (a). This provision would make it clear that States receiving MCSAP grants would be expected to enforce various orders issued by FMCSA, for example, motor carrier out-of-service orders and Orders to Cease Operations entered by FMCSA under 49 CFR 385.13, 385.325, 386.72, 386.73, 386.83, or similar provisions for for-hire and private motor carriers. This provision would assist FMCSA in stopping vehicles at the roadside that are operated by motor carriers that disregard such out-of-service orders, and would prevent them from continuing to operate CMVs on the Nation's highways.

B. Part 365

FMCSA proposes to revise §§ 365.109(a)(3) and 365.507(f) to make the language consistent with the proposed new methodology.

C. Part 385

Section 385.1 Purpose and Scope

Conforming amendments would be made to paragraph (a) of this section, to delete references to ''safety ratings'' and ''unsatisfactory.'' Current text directing motor carriers to take remedial action when required, and prohibiting motor carriers determined to be unfit from operating a CMV, would remain.

Section 385.3 Definitions and Acronyms

Roughly half of the definitions in § 385.3 would remain substantially the same. However, definitions for the terms ''Reviews'' and ''Safety rating or rating'' (including all four subsidiary definitions) would be removed. Definitions of the terms ''Acute regulation,'' ''Assistant Administrator,'' ''Behavior Analysis and Safety Improvement Category,'' ''Compliance review,'' ''Comprehensive investigation,'' ''Crash,'' ''Critical regulation,'' ''Failure standard,'' ''Field Administrator,'' ''Inspection,'' ''Intervention,'' ''Investigation,'' ''Measure,'' ''Operating authority registration,'' ''Performance standard,'' ''Registration,'' ''Roadability review,'' ''Safety audit,'' ''Safety event group,'' ''Safety management controls,'' ''Safety registration,'' and ''Unfit'' would replace the deleted terms with language to reflect the new SFD terminology and procedures. The new definition of ''Compliance review'' is much shorter than the definition under ''Reviews . . . (1) Compliance review'' that is being removed. The current version has extraneous information, such as when such a review may be done and what a possible outcome could be, which is not directly relevant to defining what the term means. The substantive definition of ''Preventable accident'' would not change, but the term itself would be changed by replacing the word ''accident'' with the word ''crash.'' FMCSA uses the terms ''crash'' and ''accident'' interchangeably, but prefers the term ''crash.''

Section 385.5 Safety Fitness Standard

The section would be revised to add a new paragraph (a) to reflect the inclusion of the alcohol and controlled substances testing requirements in 49 CFR parts 40 and 382. Current paragraphs (a) through (k) would be redesignated as (b) through (l). In addition, in the second sentence of the undesignated introductory paragraph of this section, the words ''To meet the safety fitness standard'' would be replaced by ''To avoid a safety fitness determination of unfit.''

Section 385.7 Factors To Be Considered in Making a Safety Fitness Determination

This section would be revised to add the main data elements of the proposed methodology. The proposed changes to this section would specifically include, in the factors to be considered in the SFD process, information obtained from driver/vehicle inspections, crashes, or investigations. The title of § 385.7 would be changed by replacing the words ''determining a safety rating'' with the words ''making a safety fitness determination,'' so that the title would read ''Factors to be considered in making a safety fitness determination.''

In the first sentence of the undesignated introductory paragraph, all the words after ''The factors to be considered . . .'' would be removed and replaced with language stating that the factors to be considered during a safety fitness determination may include information from operations in the United States, Canada, and Mexico from driver/vehicle inspections, an examination of the carrier's records during investigations, or crash data. FMCSA would also remove the term ''safety review'' because it is obsolete.

Paragraph (a) would be changed by replacing the word ''accidents'' with the word ''crashes.'' As was stated in the analysis for § 385.3, FMCSA uses the terms ''crash'' and ''accident'' interchangeably, but prefers the use of the term ''crash.'' Paragraphs (b), (c), (d) and (e) would be revised to set out the different sources of data and the factors considered in the new methodology. In addition, the word ''accident'' would be replaced with ''crash.'' Existing paragraph (g) would be redesignated as new paragraph (f). In redesignated paragraph (f), the term ''hazardous material,'' would be added between the words ''CMV'' and ''and motor carrier safety rules.'' A new paragraph (g) would be added to provide for the admissibility as evidence in safety fitness proceedings inspection reports

[80] 166 F.3d 374 (D.C. Cir. 1999).

[81] 49 CFR 385.407 and Change to FMCSA Policy on Calculating and Publicizing the Driver, Vehicle, and Hazardous Materials Out-of-Service Rates and Crash Rates, 77 FR 38215 (June 27, 2012).

and data contained in FMCSA's data systems.

Section 385.8 Service and Filing of Documents

A new section 385.8 is proposed to be added to provide specific and clear rules governing the filing and service of documents in safety fitness proceedings.

Section 385.9 Determining a Carrier's Safety Fitness

The title of § 385.9 would be changed to read ''Determining a carrier's safety fitness.''

Paragraph (a) would be revised to describe the new methodology in proposed new appendix B to part 385. The proposed appendix describes in detail the methodology and the standards for determining a carrier's fitness.

Existing paragraph (b) would be redesignated as new paragraph (d) and everything after the phrase ''Unless otherwise specifically provided in this part, a'' would be changed to state that safety fitness determination based upon an investigation of a carrier's safety management controls in accordance with the standard set forth in § 385.5(a) will be issued as soon as practicable. A new paragraph (b) would be added to clarify that a motor carrier's SFD will be based on data received through the date of the proposed SFD under § 385.11(c).

A new paragraph (c) would be added to clarify that the motor carrier's status as unfit would not change during the administrative review process under either § 385.15 or § 385.16, or a review of a request under § 385.18. This new paragraph utilizes a provision moved from current § 385.17(j) with revisions for clarification.

Section 385.11 Notification of Unfit Safety Fitness Determination

Throughout this section, including the heading, changes are made to conform the language to the proposed methodology. In paragraph (a), the words ''safety rating resulting from a compliance review'' and ''the review'' would both be replaced by the words ''unfit safety fitness determination.'' Also, FMCSA is replacing the phrase ''FMCSA's headquarters office'' in the last sentence of paragraph (a) with the word ''FMCSA''. This change would allow the Agency to issue the proposed unfit SFD notice from other FMCSA offices that may be closer to the subject motor carrier or may allow the Agency to realize savings for labor and production costs or contracted services in markets other than Washington, DC Provisions would be added governing service of the notice of proposed unfit SFD on representatives of the carrier in accordance with new § 385.8.

Existing paragraph (b) would be removed because it would no longer be applicable to this proposed rule.

Existing paragraphs (c) through (e) would be redesignated as new paragraphs (b) through (d) with appropriate terminology changes in each paragraph. A new paragraph (e) would be added to alert a motor carrier that it may request FMCSA to perform an administrative review of a proposed or final unfit SFD based upon a claim of unconsidered inspection data as described in proposed new § 385.16.

Existing paragraph (f) would be amended to include appropriate terminology changes to reflect the use of compliance agreements instead of corrective action plans to defer the entry of a final unfit SFD.

A new paragraph (g) would be added to alert a motor carrier of the process set out in new § 385.18 for applying to resume operations after an SFD has become final.

Section 385.12 Revocation Procedures for Unfit Safety Fitness Determinations

A new § 385.12 would provide that issuance of proposed safety fitness determination would also serve as notice to the carrier that its registration would be revoked if the fitness determination becomes final.

Section 385.13 Unfit Motor Carriers: Prohibition on Transportation; Ineligibility for Federal Contracts

Most of the changes we are proposing in this section are conforming amendments to reflect the nomenclature of the proposed methodology. For example, the words ''unsatisfactory safety rating'' would be replaced throughout with ''unfit safety fitness determination.'' Paragraph (a)(2) would be amended by removing the last sentence that allows a motor carrier to operate for up to 60 additional days if FMCSA determines that the motor carrier is making a good-faith effort to improve its safety fitness. Although this provision is allowed by statute,[82] in the interest of safety FMCSA disfavors such extensions, and the Agency is therefore not expressly restating the permissive language in the proposed regulation.

Paragraph (b) would consolidate the existing provisions of paragraphs (b) and (c) prohibiting a Federal agency from using any motor carrier receiving a final unfit determination.

The date the out-of-service order issued under paragraph (d) becomes effective would be the date that the SFD becomes final under paragraph (a). FMCSA seeks comment on this approach. Provisions would also be in revised paragraph (e) to allow for revocation of safety registration and any operating authority registration for any motor carrier receiving a final unfit determination.

Section 385.15 Administrative Review—Material Error

This section is largely based on current administrative review provisions, with some revisions and additions. First, in several paragraphs, the terms ''safety rating'' or ''rating'' would be replaced by the term ''safety fitness determination,'' and the word ''unsatisfactory'' would be replaced with ''unfit.'' The title ''Assistant Administrator'' would be substituted for ''Chief Safety Officer.'' While Assistant Administrator and Chief Safety Officer are titles for the same position within FMCSA, the change in terminology is made for consistency with the administrative review provisions of 49 CFR part 386.

A new paragraph (b) would specify the minimum requirements for the contents of the petition. New provisions would be added to paragraph (c) to require that the original petition for administrative review be served on the appropriate Field Administrator (which would be the official filing). Copies of the petition for administrative review would also be required to be served both on: (1) Adjudications Counsel for the Assistant Administrator; and (2) with the Agency through the U.S. Department of Transportation, Docket Services. Paragraph (c) also provides the time limits within which a motor carrier must petition for administrative review.

A new paragraph (d) provides the Field Administrator with an opportunity to respond to the petition for administrative review.

Paragraph (e) would allow the Assistant Administrator to ask the motor carrier or the Field Administrator for more information or to attend a conference. If the motor carrier did not provide the information, the Assistant Administrator could dismiss the request for review.

Paragraph (f) would establish the time for a decision by FMCSA on the request for review and provide time frames within which FMCSA would complete its review as soon as practicable.

Paragraph (g) would provide for a standard of review that places the burden on the motor carrier to show material error. It also provides a definition of what constitutes material error for the purpose of such review.

[82] 49 U.S.C. 31144(c)(4).

Proposed paragraph (h) provides that the Assistant Administrator makes the final and conclusive decision as to the compliance and inspection data underlying the SFD. It also establishes that in subsequent administrative reviews the Assistant Administrator will not re-review factual matters decided in a prior administrative review.

Proposed paragraph (i) provides that a decision by the Assistant Administrator constitutes final Agency action unless reconsideration is requested.

Proposed paragraph (j) provides the procedures for either the motor carrier or the Field Administrator to petition the Assistant Administrator for reconsideration of a decision. However, the petition does not stay the imposition of a final SFD unless a stay is granted by the Assistant Administrator pursuant to new paragraph (k).

Section 385.16 Request for Review Claiming Unconsidered Inspection Data

Proposed paragraph (a) would provide that a motor carrier may file a request for FMCSA to conduct an administrative review of a proposed unfit SFD because of unconsidered, valid data from an inspection that occurred before the proposed determination. The request would be based on a motor carrier's determination of an FMCSA failure to include inspection data which, if included, would have resulted in a different SFD.

Proposed paragraph (b) would provide that the motor carrier must file its request for administrative review in writing and serve it on the appropriate Field Administrator.

Proposed paragraph (c) would provide that the motor carrier's request for an administrative review of a proposed SFD with unconsidered inspection data must include specific information to be considered a valid request.

Proposed paragraph (d) would provide that such a request must be filed no later than the 10th day after the issuance of the proposed unfit.

Proposed Paragraph (e) would provide that FMCSA would issue a decision and notify the carrier within 10 days after receiving a request from an HM or passenger motor carrier that has received a proposed unfit SFD, and within 20 days after receiving a request from any other motor carrier.

Proposed Paragraph (f) would provide the standard of review of the submitted unconsidered inspection data. The burden of proof would be on the motor carrier to demonstrate that FMCSA did not include all inspection report data.

Proposed paragraph (g) would provide that the decision of the Field Administrator would constitute final Agency action, and no additional request for administrative review by FMCSA would be available. Paragraph (h) would provide that a stay of the final SFD could be requested from and granted by the Field Administrator.

Section 385.17 Request To Defer Final Unfit Safety Fitness Determination and Operate Under a Compliance Agreement

This section is based on the current provisions of § 385.17, with significant revisions, primarily to include the use of compliance agreements between FMCSA and the motor carrier to defer a final unfit determination. Throughout the section, the language would be changed to conform to the proposed SFD methodology. In several places, the term ''safety rating'' or ''rating'' would be replaced by the term ''safety fitness determination.'' FMCSA would also replace the word ''unsatisfactory'' with ''unfit,'' wherever it occurs. In paragraph (a), the Agency would also remove the term ''conditional.''

Existing paragraph (b) would be revised to require service of the request on the appropriate Field Administrator in accordance with proposed new § 385.8. Existing paragraph (c) would be expanded to address the documentation a motor carrier must submit to show that it has taken appropriate corrective action. Paragraph (d) would set the time for submission of a request for deferral and to operate under a compliance agreement. Failure to submit a timely request for deferral and to continue to operate under a compliance agreement would waive any opportunity to seek such administrative relief.

Existing paragraphs (e) through (j) would be removed and replaced with new paragraphs that would establish the procedures and standards for operating under a compliance agreement, as well as providing for the appropriate outcomes if the carrier either complies with or does not comply with the terms of the compliance agreement. Paragraph (f) provides that the Field Administrator's actions either deferring a final SFD or declining to enter into a compliance agreement would not be subject to administrative review, except in certain limited circumstances involving an abuse of discretion, as specified in paragraph (j).

Section 385.18 Resuming Operations After a Final Unfit Determination

A new § 385.18 would be added to describe the procedures a motor carrier would follow to resume interstate and intrastate motor carrier operations following an unfit SFD. In paragraph (a), FMCSA would require a motor carrier that has received a final unfit SFD and wants to begin operating again to demonstrate why it should no longer be considered unfit. The carrier would also need to have received reactivated safety registration and, if required, new operating authority registration. The procedures in this section may be revised in the final rule in order to coordinate with any changes proposed or adopted for the Agency's ''MAP–21 Enhancements and Other Updates to the Unified Registration System,'' Regulatory Identification Number 2126–AB56.

Paragraph (b) would inform the unfit motor carrier that it must submit a corrective action plan (CAP) consistent with § 385.17(c) along with its applications for safety and operating authority registration. The corrective action plan must describe the actions the motor carrier is taking to resolve its safety deficiencies.

Paragraph (c) would provide that the corrective action plan submitted by the unfit motor carrier must be acceptable to FMCSA, and the carrier and the Agency would have to enter into a compliance agreement that conforms to § 385.17(c) and (e) before new registration could be issued.

Paragraph (d) would inform the motor carrier that it may not resume operations until it is notified that it has been granted registration and its USDOT number is active.

Section 385.19 Availability of Safety Fitness Determinations

The heading of § 385.19 would be revised to read, ''Availability of safety fitness determinations.'' In paragraph (a), the word ''ratings'' would be replaced by ''fitness determinations.'' FMCSA would also replace the outdated phrase ''by remote'' with the phrase ''on the Internet available through'' to inform the public that final SFDs will be available on the Agency's Web site.

Paragraph (b) would change the method the Agency would use to make final SFDs and would make information about carriers operating under a compliance agreement available to the public.

Section 385.21 Transition Provisions

A new § 385.21 would be added containing transition provisions that would govern the status of motor carriers that have been issued a final determination of unfit on the basis of an unsatisfactory safety rating under the current procedures. In addition, paragraph (b) contains proposed procedures for carriers that receive a notification of safety rating and fitness determination under the current provisions of 49 CFR 385.11 in the

period immediately before these proposed rules would go into effect.

Subpart B (§§ 385.101–385.117)—Safety Monitoring for Mexico-Domiciled Carriers

FMCSA proposes several conforming amendments to 49 CFR part 385, subpart B, Safety Monitoring System for Mexico-Domiciled Carriers, in light of the proposed changes to the general safety fitness procedures. FMCSA proposes to make conforming amendments to §§ 385.101, 385.105, 385.109, and 385.117.

Currently, Mexico-domiciled carriers seeking permanent operating authority to operate beyond the municipalities and commercial zones on the United States-Mexico border must fulfill certain statutory requirements, including obtaining a satisfactory safety rating after a compliance review under 49 CFR part 385. This proposal, however, would change the number of fitness categories from three to one—''unfit.'' As proposed, a carrier that is not determined to be unfit would have an acceptable degree of safety fitness and would not be prohibited from operating in commerce.[83] Therefore, for the purposes of the requirements of section 350 of the 2002 Department of Transportation Appropriations Act, and subsequent appropriations,[84] a comprehensive investigation resulting in a determination that a Mexico-domiciled motor carrier seeking permanent operating authority is not unfit would be equivalent to a compliance review and finding that the carrier has received a satisfactory rating.

For several reasons, FMCSA believes that the proposed SFD process for long-haul Mexican carriers would be sufficiently stringent to satisfy Congress's intent that carriers possess a satisfactory degree of safety. First, a Mexico-domiciled carrier must satisfactorily complete the FMCSA-administered Pre-Authorization Safety Audit (PASA) required under 49 CFR part 365, to ensure the existence of sound management programs, including compliance with controlled substances, alcohol, and hours-of service regulations, before it is granted provisional authority to operate in the United States. Second, the proposed methodology in Appendix B is more stringent than the current methodology for determining safety fitness, and this proposal for conforming changes ensures continued stringent and comparable oversight of long-haul Mexican carriers. As a result of this proposal, Mexican carriers could be proposed unfit based on on-road safety data, or an investigation, or a combination of these two sources of data. Under 49 CFR 385.119, Mexico-domiciled motor carriers are subject to the safety monitoring system in part 385, subpart B. They are also subject to the general safety fitness procedures established in subpart A of part 385 and to compliance and enforcement procedures applicable to all carriers regulated by the FMCSA.

Subpart C (§§ 385.201–385.205)—Certification of Safety Auditors, Safety Investigators, and Safety Inspectors

FMCSA proposes conforming amendments to 49 CFR part 385, subpart C, Certification of Safety Auditors, Safety Investigators, and Safety Inspectors. In light of the proposed addition of the term ''investigation'' in relation to the types of interventions that may result in an unfit SFD, FMCSA would amend §§ 385.201 and 385.203.

Currently, an FMCSA employee, or a State or local government employee funded through the MCSAP, must be certified to perform a compliance review, safety audit, roadability review, or roadside inspection.[85] Certified FMCSA, State, and local government employees must obtain and maintain certification through quality-control and periodic re-training requirements adopted by FMCSA in 2002 to ensure the maintenance of high standards and familiarity with amendments to the FMCSRs and HMRs.[86]

The proposed SFD relies to a much greater extent on on-road safety data and investigations, regardless of whether the investigations are done offsite, onsite, or are focused or comprehensive. Because this proposal would replace the term ''compliance review'' in many places throughout the FMCSRs, FMCSA needs to add ''investigation'' to the types of interventions for which FMCSA, State, and local government employees must obtain and maintain certification as required by statute.

FMCSA proposes to add the phrase ''an investigation'' before the phrase ''a compliance review'' wherever it appears in §§ 385.201 and 385.203. This proposal would require that any FMCSA, State, or local government employee who performs any review of a motor carrier's operations to determine compliance with the appropriate regulations (*i.e.,* the FMCSRs and HMRs as defined in 49 CFR 385.3) be certified as required by 49 U.S.C. 31148.

Section 385.307—What happens after a motor carrier begins operations as a new entrant?

FMCSA would modify the New Entrant Safety Assurance Program by adding a new paragraph (a) to § 385.307 and redesignating current paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d). This proposed new paragraph (a) would adopt provisions similar to §§ 385.119 and 385.717 on the continuing applicability of safety fitness and enforcement procedures. FMCSA proposes to add this provision to ensure that each new entrant is aware that during the monitoring period under the New Entrant Safety Assurance Program, these new entrants are subject to:

(1) The general safety fitness procedures established in subpart A of part 385 and any final rule modifying subpart A; and

(2) Compliance and enforcement procedures applicable to all carriers regulated by FMCSA.

Part 385, Subpart E (Sections 385.407, 385.409, 385.413, 385.421, and 385.423)—HM Safety Permits

FMCSA proposes conforming amendments to 49 CFR part 385, subpart E, HM Safety Permits. Sections 385.407, 385.409, 385.413, 385.421, and 385.423 would all be changed to reflect changes in the language and procedures for the SFD methodology proposed in this rulemaking.

Section 385.503 Results of Roadability Review

In § 385.503(a), FMCSA proposes to delete the term ''safety rating'' and replace it with the term ''safety fitness determination,'' to conform the language to the proposed SFD methodology.

Part 385 subparts H (§ 385.607) and I (§§ 385.701, 385.707, 385.709, 385.711, 385.713, and 385.715)—Non-North America-Domiciled Carriers

FMCSA proposes conforming and nomenclature changes to the Non-North America-domiciled carrier provisions,

[83] 49 U.S.C. 31144(c).

[84] See sec. 350(a)(2) of the Department of Transportation and Related Agencies Appropriations Act, 2002, Pub. L. 107–87, 115 Stat. 833, 864–865, December 18, 2001, 49 U.S.C. 13902 note.

[85] Section 211 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159), 113 Stat. 1765, Dec. 9, 1999, codified at 49 U.S.C. 31148. Section 211 of the MCSIA required the Secretary of Transportation to improve training and provide for the certification of motor carrier safety auditors, investigators, and inspectors to conduct safety inspection audits and reviews. The legislation also gave the Secretary oversight responsibility for the motor carrier auditors and investigators it certifies, including the authority to decertify them.

[86] 67 FR 12776, March 19, 2002, as amended at 72 FR 55701, Oct. 1, 2007; 73 FR 76819, Dec. 17, 2008.

part 385, subparts H (§ 385.607) and I (§§ 385.701, 385.707, 385.709, 385.711, 385.713, and 385.715). These changes are largely parallel to the changes to all other motor carriers, explained above.

Appendix B to Part 385 Explanation of Safety Fitness Determination Methodology

Because appendix B to part 385 would set out all of the proposed SFD methodology, it would be considerably changed. FMCSA would replace certain terms in the headings and body of appendix B consistent with the changes discussed above for other sections of part 385. Current terms would be replaced with new terms, including ''safety fitness determination'' and ''unfit.'' The codification system for the appendix would be changed to make it easier to reference and amend, and the introductory paragraphs would be considerably revised.

Five Proposed New Sections

Proposed section 1, Safety Fitness Determination (SFD) Background, would serve as a roadmap for appendix B. It incorporates the sense of what is currently in introductory paragraphs (a), (b), and (c) of existing appendix B, much changed to reflect the proposed new methodology. Existing paragraphs (d), (e), and (f) would be removed.

Proposed section 2, Role of BASICs in the SFD Process, describes the BASICs, their data sources and the process for determining a failed BASIC. Under section 2.4, SFD BASIC Failure Standards, sections 2.4.1 through 2.4.7 describe the mechanics for determining the severity for each applicable BASIC violation. They provide tables of failure standards, where appropriate, and descriptions of applicable violations. Tables 2–1 through 2–8 of proposed section 2 show the proposed SFD BASIC failure standards. The proposed failure standards are equivalent to the measures that would place a motor carrier at the 96th percentile for the Unsafe Driving and HOS Compliance BASICs and the 99th percentile for the Driver Fitness, Vehicle Maintenance, and Hazardous Materials (HM) Compliance BASICs for each safety-event group on the day the requirements are established when the final rule is published.

Proposed section 3, Investigation Results in the SFD Process, describes the violations that the Agency would use to determine safety fitness for each motor carrier. The proposed critical violations are listed in Table 3–1 of proposed section 3. The proposed acute violations are listed in Table 3–2. The standards and procedures for assessing a carrier's crash experience for safety fitness purposes are described in section 3.3 of appendix B.

Proposed section 4, SFD Methodology, describes the proposed methodology, including the criteria for a carrier receiving an unfit determination. Section 4 provides an example of a proposed SFD worksheet, and it also gives several examples of how SFDs could be calculated for sample motor carriers.

Proposed section 5, Appendix B Violation Severity Tables, contains five tables that describe violations and the applicable severity weightings for the five BASICs that use such weights as part of the determination of safety performance under SMS. They are:

- Table 1 Unsafe Driving BASIC Violations
- Table 2 HOS Compliance BASIC Violations
- Table 3 Driver Fitness BASIC Violations
- Table 4 Vehicle Maintenance BASIC Violations
- Table 5 Hazardous Materials Compliance BASIC Violations

FMCSA is considering the use of low, medium, and high weightings rather than the numeric weightings currently used in SMS and specifically seeks comments on this issue.

Certain Portable and Cargo Tank Citations in Table 5

In Table 5 of the violation severity tables, HM Compliance BASIC Violations, 43 violations of 49 CFR part 178 have been marked with a (1) or a (2) to indicate their dates of publication in the *Code of Federal Regulations.*[87] These 43 violations are HM portable tank and cargo tank specification packages that PHMSA allows motor carriers to continue to use if the HM tanks are maintained properly in accordance with applicable regulations.[88]

The applicable regulations for MC 330 compressed gas cargo tanks are referenced in Table 5 with a (1). Current PHMSA regulations[89] authorize continued use of specification MC 330 cargo tanks if the tanks are maintained according to the applicable cargo tank testing and inspection regulations.[90]

The applicable regulations for DOT 51, 56, and 57, and IM 101 and 102, portable tanks are also referenced in Table 5 with a (1). DOT 51, 56, and 57, and IM 101 and 102 portable tanks may continue to be used in commerce, if the tanks are maintained according to the applicable portable tank testing and inspection regulations.[91]

The applicable regulations for MC 306, 307, and 312 concerning cargo tanks are referenced in Table 5 with a (2). Current PHMSA regulations[92] authorize continued use of specification MC 306, 307, and 312 cargo tanks if the tanks are maintained according to the applicable cargo tank testing and inspection regulations.[93]

FMCSA will make the applicable former rules for these HM specification tanks, as well as the applicable ICC and DOT final rules concerning these HM specification tanks, available on the FMCSA Web site at *www.fmcsa.dot.gov*. These materials are also available through Federal Depository Libraries.[94] Anyone may visit a Federal depository library and will have free access to all collections.

D. Part 386

Appendix B to part 386 would be changed to conform the language to the new SFD methodology. Throughout paragraph (f), everywhere the phrase ''final 'unsatisfactory' safety rating'' appears it would be replaced by the phrase ''final unfit safety fitness determination.''

A new paragraph (j) would be added to describe the violations that the Agency proposes to take into account for purposes of section 222 of the Motor Carrier Safety Improvement Act of 1999, Public Law 106–159, 49 U.S.C. 521 note (''Minimum and Maximum Assessments'').[95] Section 222 generally

[87] Violation citations from previous editions of 49 CFR part 78 marked with a (1) may also be found at 29 FR 18652 (December 29, 1964) and those violation citations marked with a (2) may also be found at 32 FR 3452 (March 2, 1967).

[88] See 49 CFR 180.405, Qualification of cargo tanks, and 180.603, Qualification of portable tanks. PHMSA, however, forbids manufacturers from building these as new specification cargo and portable tanks after certain dates in 1967, 1990, 1993, and 2005. Because these HM packages are still in use by motor carriers in commerce, FMCSA regularly finds and cites these violations of the old design specification regulations that were in effect before PHMSA and its predecessors removed the regulations from the annual CFRs.

[89] See 49 CFR 173.240(b), 173.241(b), 173.242(b), 173.243(b), 173.244(b), 173.247(b), 173.315(a)(2), 180.405, and 180.603 of the October 1, 2010, edition of the CFRs.

[90] See 49 CFR 180.407, Requirements for test and inspection of specification cargo tanks.

[91] See 49 CFR 180.605, Requirements for periodic testing, inspection and repair of portable tanks.

[92] See §§ 173.33, 173.240, 173.241, 173.242, and 173.247 for authorized DOT 51, 56, 57, and IM 101 and 102 portable tanks and MC 306, 307, 312, and 330 cargo tanks that may be used in commerce, but are no longer allowed to be constructed in the U.S.

[93] See 49 CFR 180.407, Requirements for test and inspection of specification cargo tanks.

[94] See *http://www.gpo.gov/libraries.* Accessed on April 6, 2015.

[95] See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleI-chap5-subchapII-sec521.pdf.* Accessed on April 6, 2015.

requires that the Agency assess maximum civil penalties where it finds that a person has either committed a pattern of violations of critical or acute regulations or has previously committed the same or a related violation of critical or acute regulations. The proposed list in new paragraph (j) is different than the proposed lists of critical and acute regulations found earlier in preamble Table 17 and in Tables 3–1 and 3–2 in proposed appendix B to part 385. The proposed list in paragraph (j) is based on regulations currently designated as critical and acute. The critical and acute regulations set forth in Tables 3–1 and 3–2 above include new regulations. The Agency seeks comment whether these should be included for maximum civil penalty assessments under section 222.

E. Part 387

Sections 387.7 and 387.309 would be changed to reflect the proposed new SFD determination methodology, removing references to the former safety rating system.

F. Part 395

Section 395.15 would be changed to reflect the proposed new SFD determination methodology, removing references to the former safety rating system.

X. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, as supplemented by Executive Order 13563, 76 FR 3821 (January 21, 2011), and within the meaning of the Department of Transportation regulatory policies and procedures, because the annualized net benefits are $231.1 million and because of the level of public interest. Congress, industry, NTSB, and safety advocates alike have significant interest in how FMCSA determines the safety fitness of motor carriers. All of these groups have expressed concerns over how the Agency currently determines the safety fitness of motor carriers.

The revised SFD would be used to identify and take action against unfit motor carriers that have failed to implement and maintain adequate safety management controls for achieving compliance with the FMCSRs and HMRs. It would also evaluate the degree to which a motor carrier complies with applicable regulations. The additional carriers found unfit under the proposed rule may bear compliance costs to return to compliance, which as discussed further in the separate Regulatory Evaluation are not quantified at this stage of the rulemaking. FMCSA expects that the proposed rule would also impose costs on drivers of carriers ordered out-of-service, specifically, those drivers who would have to search for new driving work. Nevertheless, the new SFD methodology would involve more efficient and effective utilization of currently available data and resources. The Agency's proposed approach would ensure that only the worst performing motor carriers would be issued a proposed unfit determination based solely on on-road safety performance data, while striking a balance between the population identified and the ability of enforcement resources to handle the associated workload. The full Regulatory Evaluation is in the docket for this rulemaking, and a brief summary is set out below.

Under the proposed SFD methodology, every month a carrier's performance would be compared to an absolute failure standard that would be set in regulation based on each safety event group. Because the absolute failure standard would not change from month to month, changes in another company's performance would not impact the motor carrier. The carrier's SFD measure reflects its own performance against the failure standard, not other carriers' performance.

The Agency considered options for failure standards based on absolute measures. Using today's levels of safety performance across all carriers in SMS, these measures would equate roughly to the 95th, 96th, 98th, and 99th percentiles for all carriers in SMS. In addition, before failing the BASIC, the carrier would have to have 11 or more inspections, each with 1 or more violations, for the previous 24-month period. The proposed failure standards for each BASIC, as calculated by analyzing inspections with violations, are presented in tables in the NPRM. The Agency's preferred Option 2 proposes to use the absolute failure standards that equate to the 99th percentile for the Driver Fitness, Vehicle Maintenance, and HM Compliance BASICs. This failure standard, which would be set in the final rule, is equivalent to SMS percentile that defines the worst 1 percent of motor carriers with 11 or more inspections, each with 1 or more violations.

The Regulatory Evaluation in the docket examines two options for failure standards used to identify motor carriers for a proposed unfit SFD. For Option 1, identification of unfit carriers under the proposed process uses failure standards equivalent to the measures that would place a motor carrier at the 95th percentile for the Unsafe Driving and HOS Compliance BASICs and the 98th percentile for the Driver Fitness, Vehicle Maintenance, HM Compliance, and Crash Indicator BASICs. For Option 2 (the Agency's preferred option), these failure standards are equivalent to measures based on the 96th and 99th percentiles, respectively. For example, a carrier at the 96th percentile in the Unsafe Driving BASIC has worse safety performance in that BASIC than 96 percent of carriers. Carriers that are identified at or above these failure standards are proposed as unfit and then either placed OOS or remain in service under a compliance agreement subject to approval by FMCSA.

Carriers that are identified at or above these failure standards would be proposed as unfit and then would be either placed OOS or remain in service under a compliance agreement subject to approval by FMCSA. Motor carriers that remain in service but fail to significantly improve their safety performance within a set period of time under the compliance agreement—for example, those that fail to achieve an appropriate level of compliance with the applicable regulations—would be required to cease operations. That is, the initial proposed unfit determination would be made final.

Under this proposal's preferred Option 2—with the failure performance standards at or above the 96th and 99th percentiles—the proposed method identified 1,805 more poor-performing carriers than the current SFD process, while the current SFD process identified 106 carriers that the proposed unfit SFD method would not, and 1,017 carriers were identified by *both* the current and proposed methods.

Given that identification and the final unfit date remove a portion of the poorly-performing carriers from active service while the remainder improve their safety performance and remain in service, a portion of the crashes of these carriers that takes place in the next 12 months (from the time of the final unfit) are thus prevented, and comprise the annual benefits of the rule. The *annual* benefits of the rule are *net reductions in crashes* that come from switching from the current to the proposed process. The proposed process identifies carriers that suffered an additional 41 fatal crashes ($41 = 43 - 2$), 508 injury crashes ($508 = 526 - 18$), and 872 tow-away crashes ($872 = 887 - 15$) when compared with the current process. Table 19 below

presents a comparison of data between the effectiveness of the current SFD and that proposed in this rulemaking.

TABLE 19—ANNUAL CRASH REDUCTION FROM SWITCH FROM CURRENT TO PROPOSED SFD FOR OPTION 2 (96/99)

Carriers identified as unfit under:	Relation	Carriers	Power units	Crashes	Crash rate	Fatal crashes	Injury crashes	Tow-away crashes
Proposed SFD [A]	A	2,822	42,437	1,862	4.39	55	688	1,119
Current SFD [B]	B	1,123	11,365	441	3.88	14	180	247
Both Current and Proposed SFD	C	1,017	10,123	406	4.01	12	162	232
Proposed SFD, But *Not Current* SFD	A—C	1,805	32,314	1,456	4.51	43	526	887
Current SFD, But *Not Proposed* SFD	B—C	106	1,242	35	2.82	2	18	15
Net Gain Attributable to Proposed SFD	A—B	1,699	31,072	1,421	4.57	41	508	872

[A] The ''proposed SFD'' category includes 1,017 of the 1,123 carriers identified under the current SFD. Therefore, the ''proposed SFD'' category is a hybrid of carriers that were proposed unfit that remained in operation by entering into compliance agreements and carriers that would have been proposed unfit if the proposed rule had been in effect during the period studied. Crash rates specific to the subset of carriers identified under the current SFD may reflect improvements in response to receipt of proposed unfit ratings.

[B] The ''current SFD'' category consists solely of the 1,123 carriers that were proposed unfit under the current SFD and remained in operation by entering into compliance agreements. Crash rates specific to carriers identified under the current SFD may reflect improvements in response to receipt of proposed unfit ratings.

In 2011, under the *current* process, 16.1 percent of identified carriers were deemed unfit and ordered OOS upon completion of the SFD process. Relatedly, a pending rating of unsatisfactory under the current process equates such carriers with an SFD of ''proposed unfit'' under the proposed process. Given the performance comparison between the current and proposed SFD-process-identified groups (as measured by both having crash rates per 100 power units considerably greater than the national average), it is assumed that 16.1 percent of the additional carriers identified under the proposed SFD process will ultimately be ordered out of service.

The remaining 83.9 percent of carriers identified but not ultimately shut down improve their safety-performance. These improvements (specifically, those involving the net differential group of carriers identified by the proposed process relative to the current process) should be credited as benefits to the proposed process. The Compliance Review Effectiveness Model (CREM) [96] estimates the safety improvement of carriers that receive a compliance review, in terms of crashes avoided. For the four most recent years of analysis (since measurement based on fiscal years (rather than calendar years) began in 2005), the estimated percentage reduction in the average crash rate due to compliance reviews was 16.3 percent in 2005, 18.6 percent in 2006, 14.7 percent in 2007, and 19.9 percent in 2008.[97] We assume that issuing a proposed unfit SFD to a carrier identified under the proposed process would result in performance improvement similar to that of a compliance review. Given the year-to-year variability in the estimated reduction from 2005–08, the Agency uses the four-year average for the period of 17.4 percent. As such, the safety improvement percentages estimated in the Compliance Review Effectiveness Model can be applied to the crashes attributed to the 83.9 percent of carriers that were *not* ordered out of service.

The CREM has several limitations that are common to transportation safety research. For one, there is no pure control group, because FMCSA does not have the option to not intervene with carriers it knows to be unsafe. Workarounds for the lack of pure statistical control are discussed in more detail in the CREM. The newer model, Carrier Intervention Effectiveness Model (CIEM), which has been peer reviewed, uses size group-specific comparison groups and measures the statistical significance of the net improvement in crash rates of reviewed carriers. While the two models' results are not directly comparable due to their differing methodologies, their estimates of crash rate reductions among reviewed carriers have similar orders of magnitude across the carrier size groups.

There is also the potential for ''regression to the mean'' to obscure the true benefits of interventions. This phenomenon is a possible statistical consequence of the rarity of crash events. It can occur when an individual carrier experiences a period of high crash rate; this is likely to be followed by a period of low crash rate, regardless of interventions or changes in safety practices, simply due to the infrequency of crash events.

However, the low probability of a spike in crashes at any given time makes it unlikely that ''regression to the mean'' is a substantial contributor to the reduction in crash rate attributed by the CREM to the compliance review process. Carriers that receive a compliance review may not be in the midst of a crash spike. Carriers that have a crash spike may not get a compliance review shortly after the spike. This is because carriers are not primarily selected for compliance reviews based on their current crash rate, but rather their overall safety performance as assessed through roadside inspection and/or investigation results. For ''regression to the mean'' to be a substantial issue for this analysis, it would need to be the case that carriers are being identified during a period of usually high crash rate for that carrier. As the intervention process is implemented now, if a carrier's crash rate drops after they receive a compliance review, there is no reason to assume that drop is a correction to the carrier's ''actual'' mean crash rate as opposed to a response to FMCSA's intervention.

Next, consider that most of the services provided by the 16.1 percent of carriers that are ordered out of service are likely to be shifted to new or existing carriers. This contrasts with a crash rate of 4.51 crashes per 100 power units for those carriers identified under the proposed process. This suggests the replacement of an identified carrier with one from the carrier population in general would result in a 52.8 percent improvement ($0.528 = (4.51 - 2.13) \div 4.51$).[98] The Agency believes that the subset of carriers placed OOS would likely perform worse than the total carrier group identified as unfit by the proposed SFD, and therefore that the 52.8 percent improvement is a conservative estimate for the gains in safety resulting from the replacement of

[96] Volpe National Transportation Center, ''FMCSA Safety Program Effectiveness Measurement: Compliance Review Effectiveness Model, Results for Carriers with Compliance Reviews in Fiscal Year 2008''.

[97] *http://ai.fmcsa.dot.gov/PE/PEReport.aspx?rp=crNat* accessed on April 6, 2015.

[98] The crash rate of the general carrier population (2.13 per 100 power units) was calculated on a consistent time frame as that (4.51 per 100 power units) of the carriers identified under the proposed process.

carriers ordered OOS with carriers of average overall safety performance.

In sum, the safety performance and thus the frequency of crashes attributed to the 83.9 percent of carriers that were not ordered OOS realize an improvement of 17.4 percent, and the safety performance and thus the frequency of crashes attributed to the 16.1 percent of carriers put OOS and replaced by an average carrier realize an improvement of 52.8 percent.

As stated above, the 41 fatal, 508 injury, and 872 tow-away crashes (under Option 2) attributable to the additional carriers identified by the proposed SFD process are where the benefits of the change are realized. Assuming the final rule goes into effect in 2017, the carrier population is assumed to increase at an annual rate of 2.17 percent, and applying that rate to these crashes results in 45 fatal ($44.68 = 41 \times (1.0217^4)$), 554 injury ($553.55 = 508 \times (1.0217^4)$), and 950 tow-away crashes ($950.19 = 872 \times (1.0217^4)$ *in 2017*.

Allocating 83.9 percent of these crashes to carriers that improved performance and were not ordered OOS results in 38 fatal, 465 injury, and 797 tow-away crashes apportioned. Allocating the remaining 16.1 percent of crashes to carriers that were permanently put OOS, results in 7 fatal, 89 injury, and 153 tow-away crashes apportioned. Given that the carriers permanently placed OOS are believed by the Agency to have worse safety performance than that of the carriers that improved, proportioning the crashes by percentage results in a conservatively low number of crashes assigned to those put out of service. Since the carriers permanently placed OOS are replaced with ones realizing an improvement of 52.8 percent, rather than 17.4 percent, assigning by proportion results in a conservatively-low estimate of the overall crash reduction of the rule.

The 83.9 percent of carriers opting to make the necessary changes to become compliant realize improvements of 17.4 percent. Given the 17.4 percent improvement, 7 fewer fatal crashes (6.6 = 17.4% of 38), 81 fewer injury crashes (80.9 = 17.4% of 465), and 139 fewer tow-away crashes (138.7 = 17.4% of 797) occur. The 16.1 percent of carriers placed permanently OOS are replaced with carriers realizing improvements of 52.8 percent. Given the 52.8 percent improvement, 4 fewer fatal crashes (3.70 = 52.8% of 7), 47 fewer injury crashes (46.99 = 52.8% of 89), and 81 fewer tow-away crashes (80.78 = 52.8% of 153) occur. So the total estimated crash reduction for 2017, the first year of the rule, is 11 fewer fatal crashes (11 = 7 + 4), 128 fewer injury crashes (128 = 81 + 47), and 220 fewer tow-away crashes (220 = 139 + 81). The same process applies for all subsequent years. The number of carriers—and thus crashes—is increased by 2.17 percent from the previous year; these crashes are allocated as described above to those carriers put permanently OOS and those that opted to make the necessary changes, and then the improvement rates of 52.8 percent and 17.4 percent are applied to the respective groups.

The average cost of a fatal crash is estimated at $11,019,000 (in 2013 dollars), $10,885,000 of which is the monetized value of a statistical life (VSL) component. The remaining $134,000 is comprised of medical costs, emergency services, property damages, lost productivity from roadway congestion, and environmental costs. It is assumed that the VSL increases at a rate of 1.18 percent annually.[99] By 2017 the VSL component (in 2013 dollars) increases from $10,885,000 to $11,408,000 ($11,408,000 = $10,885,000 $\times (1.0118^4)$). Together with the remaining $134,000 in costs, the cost of a fatal crash in 2017 is estimated to be $11,542,000 in 2013 dollars ($11,542,000 = $11,408,000 + $134,000).

The average cost of an injury crash is estimated at $453,000 (in 2013 dollars), $393,000 of which is the monetized VSL component. The remaining $60,000 is comprised of medical costs, emergency services, property damages, lost productivity from roadway congestion, and environmental costs. By 2017, the VSL component (in 2013 dollars) increases from $393,000 to $412,000 ($412,000 = $393,000 $\times (1.0118^4)$). Together with the remaining $60,000 in costs, the cost of a fatal crash in 2017 is estimated to be $472,000 in 2013 dollars ($472,000 = $412,000 + $60,000).

The average cost of a tow-away crash is estimated at $72,000 (in 2013 dollars), $50,000 of which is the monetized VSL component. The remaining $22,000 is comprised of medical costs, property damages, lost productivity from roadway congestion, and environmental costs. By 2017, the monetized VSL component (in 2013 dollars) increases from $50,000 to $52,000 ($52,000 = $50,000 $\times (1.0118^4)$). Together with the remaining $22,000 in costs, the cost of a fatal crash in 2017 is estimated to be $74,000 in 2013 dollars ($74,000 = $52,000 + $22,000).

The same process applies for all subsequent years. The monetized VSL component is increased by 1.18 percent from the previous year, and added to the $134,000 other costs of a fatal crash, resulting in that year's benefits in 2013 dollars.

Given the cost of a fatal crash of $11,542,000, an injury crash of $472,000, and a tow-away crash of $74,000 in 2017 (in 2013 dollars), and given the 11 fewer fatal, 128 fewer injury, and 220 fewer tow-away crashes estimated in 2017, the benefits of the rule for Option 2 that occur in 2017 total $203.7 million. The fatal crash component is $127 .0 million ($126,962,000 = $11,542,000 $\times$ 11), the injury crash component is $60.4 million ($60,416,000 = $472,000 $\times$ 128), and the tow-away crash component is $16.3 million ($16,280,000 = $74,000 $\times$ 220). The same process applies for all subsequent years. Table 20 below summarizes the benefits for the first year of the rule for preferred Option 2.

TABLE 20—ANNUAL BENEFIT (IN 2017) TO CRASH REDUCTION FROM SWITCH FROM CURRENT TO PROPOSED SFD FOR OPTION 2 (96/99)

Net gain to new SFD	Net crash reduction	Cost per crash	Benefit (millions)
Fatal Crashes	11	$11,542,000	$127.0
Injury Crashes	128	472,000	60.4
Tow-Away Crashes	220	74,000	13.3

[99] The real growth rate of the VSL is in keeping with DOT's Office of the Secretary of Transportation guidance, available on the web at *http://www.dot.gov/sites/dot.gov/files/docs/VSL_Guidance_2014.pdf*. This growth factor represents real growth in the median hourly wage at a macroeconomic level and is not specific to drivers or the motor carrier industry. While real median hourly wages are projected to grow at 1.18% per year at a macroeconomic level, this assumption does not apply to drivers, as the real median hourly wage of drivers has declined or remained static in recent years. Nevertheless, the Agency considered a sensitivity analysis regarding real wage growth of drivers to demonstrate the costs of this proposed rule in the event that drivers' wages grow at 1 or 2 percent per year.

TABLE 20—ANNUAL BENEFIT (IN 2017) TO CRASH REDUCTION FROM SWITCH FROM CURRENT TO PROPOSED SFD FOR OPTION 2 (96/99)—Continued

Net gain to new SFD	Net crash reduction	Cost per crash	Benefit (millions)
Benefit of the Switch (Millions)			203.7

For preferred Option 2, ten-year projected benefits are $1.692 billion discounted at seven percent and $1.998 billion discounted at three percent. The rule is proposed to have its first full year of implementation in 2017 based on this proposed rule in 2015 and a final rule in 2016. The costs of the rulemaking are those incurred by:

(1) Drivers who were employed by additional carriers ordered OOS who are now forced to seek new employment. Under preferred Option 2, 1,855 drivers are estimated to be adversely affected in this manner annually.

(2) The additional carriers identified as deficient under the proposed SFD that opt to improve performance, thereby incurring costs to achieve compliance.

(3) FMCSA, resulting from information system update and modification expenses (estimated as a one-time cost of $3.0 million incurred in year 2017 under both Option 1 and Option 2).

The carrier population is assumed to increase at an annual rate of 2.17 percent,[100] so that by 2017 the 1,824 identified carriers under Option 2 would increase to 1,988 (1,988 = 1,824 × (1.0217^4)). Assuming that 16.1 percent remain permanently OOS, 320 carriers (16.1 percent of 1,988) are affected. Given that carriers ordered OOS have on average 4.97 power units per carrier and 1.27 drivers per power unit, this results in 2,020 drivers (2,020 drivers = 1.27 drivers per power unit × 4.97 power units per carrier × 320 carriers) working for carriers ordered OOS that would be adversely affected in this manner.

Assuming that the real wages of drivers remain constant, then the total cost (in 2013 dollars) for each affected driver working for non-compliant carriers ordered OOS affected remains $4,003. So the total cost of the rule to drivers working for non-compliant carriers ordered OOS in 2017, the first year of the rule, is $8.1 million in 2013 dollars ($4,003 per driver × 2,020 drivers = $8,086,060, rounded to the nearest tenth of a million). Assuming the projected 2.17-percent carrier population increase continues through 2026 and real wages for drivers remain constant, then under Option 2, for the ten years from 2017 through 2026, the annualized costs of the rule to drivers working for non-compliant carriers ordered OOS at a seven percent discount rate are $9.4 million ($9.43 million, rounded to the nearest tenth of a million).

In addition to drivers, deficient carriers ordered OOS also adversely affect the shippers, brokers, and freight forwarders that use them regularly. These entities must spend time finding replacement carriers. However, turnover in the trucking and passenger carrying industries is significant enough that establishing new commercial relationships with motor carriers is a routine course of business for shippers, and many shippers have relationships with several carriers that compete for their business. The Agency does not perceive the marginal increase in carrier turnover that may result from this proposed rule as an impact that has quantifiable costs, nor as an impact for which the costs rise to a level of significance. Short-term decreases in the supply of shipping services resulting from deficient carriers being placed OOS may marginally increase the cost of shipping as other carriers adjust to meet the demand for services; however, this also incentivizes market entry by new carriers, thereby minimizing the potential for a shift in the real long-term equilibrium price for shipping services.

Deficient carriers identified by the current or proposed system are either ordered OOS or improve their safety performance to the point that they become compliant. Those carriers opting to improve to achieve compliance incur expenses in making these required improvements. This is true of carriers under both the current and proposed processes, so the additional expenditures related to the rule are those incurred by the additional carriers identified by the proposed process.

FMCSA recognizes that the social benefits of this proposed rule are associated with increased compliance with regulations that motor carriers are already expected to bear the compliance costs of. However, FMCSA notes that a carrier that may be newly identified as deficient under the proposed SFD may under the current SFD be given a conditional safety rating and allowed to continue operating. While the regulations that carriers are expected to be in compliance with are not changing under the proposed SFD, the differing identification methodology introduced with this proposed rule—such that a portion of borderline carriers under the current SFD would be identified as deficient under the proposed SFD—argues in favor of characterizing the costs borne by the newly-identified carriers in order to achieve compliance as new costs resulting from the proposed rule.

The Agency lacks data to evaluate the magnitude of the costs to those additional carriers that would be identified as deficient under the proposed SFD that seek to achieve compliance in order to remain in operation. There are many types of violations that can contribute to a carrier's identification as deficient and the range of compliance costs may differ—even across carriers with similar violations—due to factors such as: Size of carrier, experience and training levels of drivers, and experience of fleet maintenance personnel. For this reason, this cost element is noted as ''not estimated'' throughout summary-level tables in both this document and the supporting Regulatory Evaluation.

The Agency welcomes input on ways to estimate costs that would be borne by these newly-identified carriers to achieve compliance.

FMCSA has placed the complete Regulatory Evaluation for this proposal in the docket identified above. FMCSA seeks comment on any aspect of the Regulatory Evaluation for this proposal.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, Title II, 110 Stat. 857), when an agency issues a rulemaking proposal, the agency must ''prepare and make available for public comment an initial regulatory flexibility analysis'' that will

[100] FMCSA's estimated annual growth rate of 2.17 percent is similar to the BLS estimate of 2.38 percent (Employment by industry, occupation, and percent distribution, 2010 and projected 2020 484000 Truck Transportation. *http://www.bls.gov/emp/ep_table_109.htm*). FMCSA used the growth rate obtained from MCMIS data because it captures the dynamic nature of the industry and allows for a separate growth rate for carriers with recent activity and new entrants.

''describe the impact of the proposed rule on small entities'' (5 U.S.C. 603(a)). The initial regulatory flexibility analysis must cover the following six topics:

(1) A description of the reasons why action by the Agency is being considered.

Utilizing a crash and data driven new process, SFD is an improvement on the efficiency of the current method of determining carrier safety fitness. This rulemaking would (primarily) revise 49 CFR part 385, Safety Fitness Procedures (the Agency's current procedure) through a Notice of Proposed Rulemaking (NPRM; RIN 2126–AB11). It would make conforming amendments to 49 CFR parts 365, 386, 387, and 395.

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule.

The proposed SFD process would improve the effectiveness of the current safety fitness determination. Its goal is a more performance-based method of determining the safety-fitness of motor carriers conducting commercial operations in interstate commerce. The efficiency gains mean more carrier contacts for the same expenditure of resources.

This NPRM is based primarily on the authority of 49 U.S.C. 31144, as amended. It also relies on the provisions of 49 U.S.C. 31133. Delegation of authority is conferred from the Secretary of Transportation to FMCSA under 49 CFR 1.87(f). A full description of the legal basis for this proposal is contained in the Legal Basis section of the NPRM.

(3) A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule will apply.

Because FMCSA does not have direct revenue figures for all carriers, power units serve as a proxy to determine the carrier size that would qualify as a small business given the SBA's revenue threshold. In order to produce this estimate, it is necessary to determine the average revenue generated by a power unit.

With regard to truck power units, the Agency has estimated that a power unit produces about $186,000 in revenue annually (in 2013$). According to the SBA, motor carriers with annual revenue of $27.5 million are considered small businesses. This equates to 148 power units (147.77 = $27,500,000 ÷ $186,100/power unit). Thus, FMCSA considers motor carriers of property with 148 power units or fewer to be small businesses for purposes of this analysis. The Agency then looked at the number and percentage of property carriers with recent activity that would fall under that definition (of having 148 power units or fewer). The results show that over 99 percent of all interstate property carriers with recent activity have 148 power units or fewer. This amounts to about 493,000 carriers. Therefore, the overwhelming majority of interstate carriers of property would be considered small entities.

With regard to passenger-carrying vehicles, the Agency conducted a preliminary analysis to estimate the average number of power units for a small entity earning $15 million annually, based on an assumption that passenger carriers generate annual revenues of $161,000 per power unit. This estimate compares reasonably to the estimated average annual revenue per power unit for the trucking industry ($186,000). A lower estimate was used because passenger-carrying CMVs generally do not accumulate as many vehicle miles traveled (VMT) per year as trucks, and it is therefore assumed that they would generate less revenue per power unit on average. The analysis concluded that passenger carriers with 93 power units or fewer ($15,000,000 ÷ $161,000/power unit = 93.2 power units) would be considered small entities. The Agency then looked at the number and percentage of passenger carriers registered with FMCSA that have no more than 93 power units. The results show that about 98% of active passenger carriers have 93 power units or less, which is about 10,000 carriers. Therefore, the overwhelming majority of passenger carriers would be considered small entities to which this NPRM would apply.

Every active motor carrier would be, in essence, subject to this regulation because each has the chance of being identified under the new system if their performance warrants it (that is, if it is poor enough). Hence the rulemaking would apply to all of the estimated 503,000 motor carriers (493,000 property + 10,000 passenger) that are considered as small entities.

Under Option 2 (FMCSA's preferred option), there are an expected 1,530 additional carriers (1,824—294) identified under the proposed process that would opt to improve to the point of achieving compliance, and all should be considered small entities. However, while all 503,000 small entities are subject to the rule, about 1,824 carriers (this carrier count includes those carriers that went OOS in the year following final unfit determination under the proposed SFD) are expected to be impacted and an estimated 1,530 of them are projected to opt to improve after being identified under the proposed process.

Under Option 1, there are an expected 1,728 additional carriers (2,059—331) identified under the proposed process that would opt to improve to the point of achieving compliance (again, these counts include those carriers that went OOS in the year following final unfit determination under the proposed SFD), and all should be considered small entities. However, while all 503,000 small entities are subject to the rule, about 2,059 carriers are expected to be impacted and an estimated 1,728 of them are projected to opt to improve after being identified under the proposed process; therefore, the proposed rule requires no added burden of any type on compliant small entities.

(4) Reporting, record keeping, and other compliance requirements (for small entities) of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.

The proposed rule would require no additional reporting, record keeping, or other compliance requirement burden on small entities.

(5) Duplicative, overlapping, or conflicting Federal rules.

The FMCSA is not aware of any other rules which duplicate, overlap, or conflict with the proposed action. FMCSA is the sole Federal Agency responsible for determining the safety fitness of motor carriers and operators—and that safety fitness is in fact the subject of this rule.

(6) A description of any significant alternatives to the proposed rule which minimize any significant impacts on small entities.

FMCSA is considering whether to phase the implementation of the final rule over a period of time, such as one or two years. A recent memorandum from the President directed Executive departments and agencies to consider ways of lessening the burden of compliance on small entities, such as a phased or delayed implementation, when a rule may have a significant economic impact on a substantial number of small entities.[101] Although FMCSA has reached a preliminary determination that this proposed rule would cover a substantial number of small entities, it will have a negligible economic impact. Nonetheless, the Agency would like comments from small entities on whether a phased implementation of the SFD proposal should be incorporated into the final

[101] Presidential Memorandum on Regulatory Flexibility, Small Business, and Job Creation, 76 FR 3827 (Jan. 21, 2011).

rule. FMCSA also requests comments on this Initial Regulatory Flexibility Analysis and whether there would be significant economic impacts on substantial numbers of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995,[102] that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $155 million or more in any 1 year based on calendar year 2014 inflation adjustments.[103]

As discussed earlier in this proposed rule, the Agency estimates proposing unfit SFDs for 262 motor carriers per year based on inspection data, 2,674 motor carriers based on investigations, and 120 motor carriers based on a combination of inspection and investigation data. The rule is set to have its first full year of implementation in 2017 based on proposed rule in 2015 and a final rule in 2016. The costs of the rulemaking are those incurred by drivers who were employed by additional carriers ordered OOS who are now forced to seek new employment. The carrier population is assumed to increase at an annual rate of 2.17 percent as noted earlier, so that by 2017 the 1,824 identified carriers under Option 2 would increase to 1,988 (1,988 = 1,824 × (1.0217^4)). Assuming that 16.1 percent remain permanently OOS, 320 carriers (16.1 percent of 1,988) are affected. Given that carriers ordered OOS have on average 4.97 power units per carrier and 1.27 drivers per power unit, this results in 2,020 drivers (2,020 drivers = 1.27 drivers per power unit × 4.97 power units per carrier × 320 carriers) working for carriers ordered OOS that would be adversely affected in this manner.

Assuming that the real wages of drivers remain constant, then the total cost (in 2013 dollars) for each driver affected remains $4,003. So the total cost of the rule in 2017 to drivers working for non-compliant carriers ordered OOS the first year of the rule, is $8.1 million in 2013 dollars ($4,003 per driver × 2,020 drivers = $8,086,060, rounded to the nearest tenth of a million). Assuming the projected 2.17-percent carrier population increase continues through 2026 and real wages for drivers remain constant, then under Option 2, for the ten years from 2017 through 2026, the annualized costs of the rule to drivers working for non-compliant carriers ordered OOS at a seven percent discount rate are $9.4 million ($9.43 million, rounded to the nearest tenth of a million). Thus, expenditures by State, local, and tribal governments, and the private sector, of $9.4 million annually do not rise to the threshold of $155 million or more in any 1 year for the Unfunded Mandates Reform Act of 1995. Comments are welcome on this analysis.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 12630 (Taking of Private Property)

This proposed rulemaking would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

Executive Order 13132 requires FMCSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under the Executive Order, FMCSA may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this NPRM does have Federalism implications or a substantial direct effect on the States. Under this rule, the States may choose to participate in MCSAP grants to conduct inspections and motor carrier investigations that will be the basis for FMCSA's SFDs. FMCSA has statutory authority to adopt a requirement that States receiving grants from MCSAP enforce orders issued by FMCSA related to CMV safety and HM transportation safety, to include placing an unfit motor carrier's driver and CMV OOS after FMCSA has determined a motor carrier is unfit.[104] FMCSA will develop the detailed procedures for the program in consultation with the States.

FMCSA notes that it has communicated with the States on the proposed requirements for States. Most recently, FMCSA sent a letter to the States through the National Governors' Association advising them this proposed rule would be published this year proposing requirements for the States to make changes to enforce orders issued by FMCSA related to CMV safety and hazardous materials transportation safety. The letter briefly summarized section 49 U.S.C. 31102, and asked them to participate in this NPRM's comment period.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 [105] requires that FMCSA consider the impact of paperwork and other information collection burdens imposed by the Agency. The Paperwork Reduction Act does not apply to collections of information during the conduct of administrative actions or investigations involving an agency against specific individuals or entities, unless the collection of information is to conduct a general investigation undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.[106] This exception applies both before and after formal charges or administrative action is taken.[107]

FMCSA is not proposing to conduct general investigations on a category of individuals or entities. The collections of information in this SFD proposal would be against specific entities on which the Agency has opened a case file. Such a case file would be opened when a motor carrier is charged with one or more applicable violations of Federal, State, or local laws or regulations that occurred while

[102] 2 U.S.C. 1501, *et seq.*

[103] Threshold of Significant Regulatory Actions Under the Unfunded Mandates Reform Act of 1995, DOT Office of Transportation Policy, December 11, 2013. The value equivalent of $100,000,000 in calendar year 1995, adjusted for inflation to calendar year 2014 levels by the Consumer Price Index for All Urban Consumers (CPI–U) as published by the Bureau of Labor Statistics, is $155,000,000. Series CPI–U CUUR0000SA0, may be retrieved at *http://www.bls.gov/data/*. Also see the current DOT guidance regarding this threshold, available at *https://www.transportation.gov/sites/dot.gov/files/docs/2015%20Threshold%20of%20Significant%20Regulatory%20Actions%20Under%20the%20Unfunded%20Mandates%20Reform%20Act%20of%201995.pdf*.

[104] 49 U.S.C. 31102(a) and (b).

[105] 44 U.S.C. 3501 *et seq.*

[106] 44 U.S.C. 3518(c)(1)(B)(ii).

[107] 5 CFR 1320.4(c).

operating CMVs on the highways in the United States.

FMCSA has therefore determined that there are no new information collection requirements associated with this proposed rule requiring approval under the Paperwork Reduction Act of 1995.

National Environmental Policy Act

The Agency analyzed this proposed rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) [108] and our environmental procedures Order 5610.1, published March 1, 2004 (69 FR 9680). The Agency has performed an Environmental Assessment on this action. The analysis of the potential impacts of this proposed rule indicates that, if crash reductions estimated to occur from the implementation of the requirements in the final rule actually occur, there would be a small net benefit to the environment and public health and safety. Projected benefits result mainly from the reduction in air emissions and hazardous materials releases occurring from CMV crashes, from the reduction of lives lost and injuries prevented, and from the reduction of solid waste generated in a CMV crash. FMCSA has preliminarily determined that the environmental impacts from the proposed action are not significant enough to warrant preparation of an environmental impact statement.

FMCSA has also analyzed this proposed rule under the Clean Air Act, as amended, section 176(c),[109] and implementing regulations promulgated by the Environmental Protection Agency. FMCSA performed a conformity analysis according to the procedures outlined in appendix 14 of FMCSA Order 5610.C. This rulemaking would not result in any emissions increase, nor would it have any potential to result in emissions above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the proposed rule change would not increase total CMV mileage, change the routing of CMVs, change how CMVs operate, or change the CMV fleet-mix of motor carriers.

Executive Order 13211 (Energy Effects)

FMCSA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. We have determined preliminarily that it would not be a ''significant energy action'' under that Executive Order, because it would not be economically significant and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12898 (Environmental Justice)

FMCSA evaluated the environmental effects of this NPRM in accordance with Executive Order 12898 and determined that there are neither environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations. None of the alternatives analyzed in the Agency's deliberations would result in high and adverse environmental impacts on these groups.

Executive Order 13045 (Protection of Children)

FMCSA has analyzed this proposal under Executive Order 13045, titled ''Protection of Children from Environmental Health Risks and Safety Risks.'' The Agency does not believe this Executive Order is implicated, because the proposed rule would neither be economically significant, nor would it pose an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

FMCSA analyzed this rulemaking in accordance with the principles and criteria in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. This rulemaking does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on tribal governments. Thus, the funding and consultation requirements of Executive Order 13175 do not apply and no tribal summary impact statement is required.

Privacy Impact

Rulemakings may affect how personally identifiable information (PII) about individuals is kept and shared. FMCSA ownership of the information is not relevant in determining the need to ensure that FMCSA regulations do not impose, or require or encourage others to impose, privacy intrusions that are not reasonably necessary to achieve the purpose of the regulations.

Section 522 of the Transportation, Treasury, Independent Agencies and General Government Appropriations Act, 2005,[110] instructs FMCSA to conduct a privacy impact assessment (PIA) of proposed rules that will affect the privacy of individuals. The PIA should identify potential threats relating to the collection, handling, use, sharing, and security of the data; the measures identified to mitigate these threats, and the rationale for the final decisions made for the rulemaking as a result of conducting the PIA.

In order to ensure the Agency's data handling conforms to applicable legal, regulatory, and policy requirements regarding privacy, FMCSA analyzed this proposed rulemaking to determine whether it would impact the way information is handled. It analyzed the risks and effects the rulemaking might have on collecting, maintaining, and sharing PII and examined and evaluated protections and alternative processes for handling information to mitigate potential privacy risks. PII is any information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means, singly or in combination with other data. Examples of PII include but are not limited to physical and online contact information, Social Security number, and driver's license number.

The Agency does not believe this proposed rulemaking would change the Agency's data collection, handling, use, sharing, and security of PII data. The current PII data handling requirements conform to applicable legal, regulatory, and policy requirements regarding privacy. The proposal would not have any effects on collecting, maintaining, and sharing PII, but would continue the Agency's protections and processes for handling PII to mitigate potential privacy risks.

Waiver of Advance Notice of Proposed Rulemaking

FMCSA is aware of the requirements in section 5202 of the recently enacted Fixing America's Surface Transportation Act, Public Law 114–94 (FAST Act) (Dec. 4, 2015) (adding 49 U.S.C. 31136(g)). FMCSA finds, however, that publication of an advance notice of proposed rulemaking is unnecessary and contrary to the public interest in this case. The rule proposed today has been under development at FMCSA for over 10 years, and it represents a public investment of thousands of Federal employee and contractor hours and

[108] 42 U.S.C. 4321 *et seq.*

[109] 42 U.S.C. 7401 *et seq.*

[110] Public Law 108–447, Div. H, 118 Stat. 2809, 3268–3270 (Dec. 8, 2004).

millions of taxpayer dollars. There have also been several public listening sessions conducted during its development, which served the important purpose of soliciting early public comment to inform this NPRM which would have been one of the goals of an ANPRM. With the benefit of this public outreach and internal research, the decision whether to devote agency resources to developing a proposed rule, which is at the core of any ANPRM, has thus already been made. A full opportunity for public participation in this rulemaking is provided and encouraged through the public comment process, including the opportunity to submit reply comments.

XI. Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments, reply comments, and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

A. Submitting Comments

Initial comments may address any issue raised in the NPRM and the background documents in the docket (*e.g.,* Regulatory Evaluation, studies). Initial comments will be made available promptly online on *http://www.regulations.gov* and for public inspection in room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. In order to allow sufficient opportunity for interested parties to prepare and submit any reply comments, late-filed initial comments will not be considered. Reply comments must address only matters raised in initial comments and must not be used to present new arguments, contentions, or factual material that is not responsive to the initial comments.

If you submit a comment or a reply comment, please include the docket number for this rulemaking (FMCSA–2015–0001), indicate the specific section of this document to which each comment or reply comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments, reply comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment or reply comment online, go to *http://www.regulations.gov* and insert ''FMCSA–2015–0001'' in the ''Search'' box, and then click the ''Search'' button to the right of the white box. Click on the top ''Comment Now'' box which appears next to the document. Fill in your contact information, as desired and your comment or reply comment, uploading documents if appropriate. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments or reply comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments, reply comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert ''FMCSA–2015–0001'' in the ''Search'' box and then click on ''Search.'' Click on the ''Open Docket Folder'' link and all the information for the document, and the list of comments will appear with a link to each one. Click on the comment you would like to read. If you do not have access to the Internet, you may view the docket online by visiting the Docket Services in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

List of Subjects

49 CFR Part 350

Grant programs-transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Mexico, Motor carriers, Moving of household goods.

49 CFR Part 385

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

49 CFR Part 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA proposes to amend title 49, Code of Federal Regulations, chapter III, as follows:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

■ 1. The authority citation for part 350 continues to read as follows:

Authority: 49 U.S.C. 13902, 31101–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502; and 49 CFR 1.87.

■ 2. Amend § 350.201 by revising paragraph (a) to read as follows:

§ 350.201 What conditions must a State meet to qualify for Basic Program Funds?

* * * * *

(a) Assume responsibility for improving motor carrier safety by enforcing FMCSA orders on all commercial motor vehicle safety and hazardous materials transportation safety, and by adopting and enforcing State safety laws and regulations that are compatible with the FMCSRs (49 CFR parts 390 through 397) and the HMRs (49 CFR parts 107 (subparts F and G only), 171 through 173, 177, 178, and 180), except as may be determined by the Administrator to be inapplicable to a State enforcement program.

* * * * *

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

■ 3. The authority citation for part 365 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; and 49 CFR 1.87.

■ 4. Amend § 365.109 by revising paragraph (a)(3) to read as follows:

§ 365.109 FMCSA review of the application.

(a) * * *

(3) All motor carrier applications will be reviewed for consistency with FMCSA's safety fitness determination criteria. Applicants with unfit safety fitness determinations from FMCSA will have their applications rejected.

* * * * *

■ 5. Amend § 365.507 by revising paragraph (f) to read as follows:

§ 365.507 FMCSA action on the application.

* * * * *

(f) FMCSA may grant standard long-haul operating authority to a Mexico-domiciled carrier no earlier than 18 months after the date that provisional operating authority is granted and only after a comprehensive investigation or on-road safety data determines that the Mexico-domiciled carrier is not ''unfit'' as set out in subpart B of part 385 of this chapter and the Mexico-domiciled carrier is not proposed ''unfit'' based on the Agency's safety fitness determination criteria.

PART 385—SAFETY FITNESS PROCEDURES

■ 6. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 31133, 31134, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311, 108 Stat. 1676; Sec. 408, Pub. L. 104–88, 109 Stat. 958 (49 U.S.C. 31136 note); Sec. 350, Pub. L. 107–87, 115 Stat. 864 (49 U.S.C. 13902 note); and 49 CFR 1.87.

■ 7. Amend § 385.1 by revising paragraph (a) to read as follows:

§ 385.1 Purpose and scope.

(a) This part establishes FMCSA's procedures to determine the safety fitness of motor carriers, to direct motor carriers to take corrective action when required, and to prohibit motor carriers determined to be unfit from operating a CMV.

* * * * *

■ 8. Amend § 385.3 as follows:

■ a. Add an undesignated introductory paragraph;

■ b. Remove the definitions of ''Preventable accident,'' ''Reviews,'' and ''Safety ratings''; and

■ c. Add the definitions of ''Acute regulation,'' ''Assistant Administrator,'' ''Behavior Analysis and Safety Improvement Category,'' ''Compliance review,'' ''Comprehensive investigation,'' ''Critical regulation,'' ''Failure standard,'' ''Field Administrator,'' ''Inspection,'' ''Intervention,'' ''Investigation,'' ''Measure,'' ''Operating authority registration,'' ''Performance standard,'' ''Preventable crash,'' ''Registration,'' ''Roadability review,'' ''Safety audit,'' ''Safety event group,'' ''Safety management controls,'' ''Safety registration,'' and ''Unfit,'' in alphabetical order.

The additions read as follows:

§ 385.3 Definitions and acronyms.

The definitions in part 390 of this chapter apply to this part, except where otherwise specifically noted.

Acute regulation means an applicable safety regulation where noncompliance with it, discovered during an investigation, is so serious as to require immediate corrective action, even if the motor carrier's safety record is not otherwise deficient.

* * * * *

Assistant Administrator means the Assistant Administrator of the Federal Motor Carrier Safety Administration. The Assistant Administrator is the Chief Safety Officer of the Agency pursuant to 49 U.S.C. 113(e). Decisions of the Assistant Administrator in administrative review proceedings under this part are administratively final.

Behavior Analysis and Safety Improvement Category (BASIC) means a category into which violations are sorted to identify compliance patterns. The seven BASICs are:

(1) Unsafe driving;

(2) Driver fitness;

(3) Vehicle maintenance;

(4) Hours of service (HOS) compliance;

(5) Hazardous materials (HM);

(6) Controlled substance/alcohol; and

(7) Crash indicator.

* * * * *

Compliance review means a comprehensive or focused review of a motor carrier's operations by an investigator who is certified to perform the review under the provisions of subpart C of this part. It is used to determine if adequate safety management controls are in use.

Comprehensive investigation. See *Compliance review.*

Critical regulation means an applicable safety regulation is related to management or operational systems controls. A pattern of noncompliance with a critical regulation must be found to affect a safety fitness determination. The number of violations required to meet the threshold for a pattern is equal to at least 10 percent of those records sampled and more than one violation must be found.

Failure standard means an absolute measure that if met or exceeded, based on a motor carrier's own safety performance alone, will cause a BASIC to be failed.

Field Administrator means a position in an FMCSA Service Center who has been delegated authority to decide administrative reviews under this part on behalf of FMCSA. Field Administrator includes the term Regional Field Administrator. The geographical boundaries and mailing addresses of each of the four Service Centers are specified in § 390.27 of this chapter.

* * * * *

Inspection means an examination of a commercial motor vehicle and/or its driver by an inspector who is certified to perform the examination under the provisions of subpart C of this part.

Intervention means one of several different means of contacting a motor carrier to advise of observed safety deficiencies. This may include, but is not limited to, warning letters, investigations, Notices of Violation, or the issuance of a Notice of Claim.

Investigation means an examination of a motor carrier's operations to determine compliance with the FMCSRs, Hazardous Materials Regulations (HMRs), or other applicable regulations and statutes by an investigator who is certified to perform the review under the provisions of subpart C of this part.

Measure means an absolute quantifier of an individual motor carrier's safety performance that is derived from that carrier's time-weighted and severity-weighted violations cited during an inspection, divided by the number of inspections or number of vehicles depending on the BASIC.

* * * * *

Operating authority registration means the registration that a for-hire, non-exempt motor carrier is required to obtain under 49 U.S.C. 13901 and 13902.

Performance Standard means an absolute measure, based on a motor carrier's safety performance alone.

* * * * *

Preventable crash on the part of a motor carrier means that if a driver, who exercises normal judgment and foresight could have foreseen the possibility of the crash that in fact occurred, and avoided it by taking steps within his or her control which would not have risked causing another kind of mishap, the crash was preventable. The Agency procedures make use of guidance for making preventability determinations as set out in FMCSA's *A Motor Carrier's Guide to Improving Highway Safety,* FMCSA–ESO–08–003, December 2009 (available at *http://www.fmcsa.dot.gov/safety-security/eta/index.htm*).

Registration includes operating authority registration and/or safety registration.

Roadability review means an onsite examination of the intermodal equipment provider's compliance with the applicable FMCSRs by an investigator who is certified to perform the review under the provisions of subpart C of this part.

Safety audit means an examination of a new entrant motor carrier's operations to gather critical safety data needed to evaluate the carrier's safety performance and basic safety management controls, and to assess the carrier's compliance with safety and operational requirements. Safety audits do not result in a safety fitness determination. Safety audits must be performed by an auditor who is certified to perform the review under the provisions of subpart C of this part.

Safety event group. In the BASICs that are assessed with on road safety data except ''Unsafe Driving,'' means a grouping of motor carriers based on the number of inspections in a 24 month period. In the Unsafe Driving BASIC, means a grouping of motor carriers based on the number of inspections with Unsafe Driving violations in a 24 month period. Safety event groups are used to determine the applicable safety fitness determination failure standard within a BASIC for a specific motor carrier.

Safety management controls means the systems, policies, programs, practices, processes, and procedures used by a motor carrier to ensure compliance with applicable Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations.

Safety registration means the registration an employer or person subject to FMCSA's safety jurisdiction is required to obtain under 49 U.S.C. 31134.

Unfit means a safety fitness determination by FMCSA that a motor carrier does not meet the safety fitness standard in § 385.5 and may not operate a commercial motor vehicle in interstate or intrastate commerce.

■ 9. Revise § 385.5 to read as follows:

§ 385.5 Safety fitness standard.

A motor carrier must meet the safety fitness standard set forth in this section. Intrastate motor carriers subject to the hazardous materials safety permit requirements of subpart E of this part must meet the equivalent State requirements. To avoid a safety fitness determination of unfit, the motor carrier must demonstrate 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) Controlled substances and alcohol use and testing requirement violations (parts 40 and 382 of this title);

(b) Commercial driver's license standard violations (part 383 of this chapter);

(c) Inadequate levels of financial responsibility (part 387 of this chapter);

(d) The use of unqualified drivers (part 391 of this chapter);

(e) Improper use and driving of motor vehicles (part 392 of this chapter);

(f) Unsafe vehicles operating on the highways (part 393 of this chapter);

(g) Failure to maintain crash registers and copies of crash reports (part 390 of this chapter);

(h) Non-compliance with the Agency's Hours of Service Regulations (part 395 of this chapter);

(i) Inadequate inspection, repair, and maintenance of vehicles (part 396 of this chapter);

(j) Transportation of hazardous materials, driving and parking rule violations (part 397 of this chapter);

(k) Violation of hazardous materials regulations (parts 170 through 180 of this title); and

(l) Motor vehicle crashes, as defined in § 390.5 of this chapter, and hazardous materials incidents, as defined in §§ 171.15 and 171.16 of this title.

■ 10. Revise § 385.7 to read as follows:

§ 385.7 Factors to be considered in making a safety fitness determination.

The factors to be considered during a safety fitness determination may include information from operations in the United States, Canada, and Mexico from driver/vehicle inspections, an examination of the carrier's records during investigations, or crash data. The factors may include any or all of the following:

(a) *Adequacy of safety management controls.* Safety management controls may be considered inadequate if they are found to be substantially below the norm for similar carriers. Violations, crashes, 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 identified during investigations and whether similar violations have increased or decreased over time.

(c) Frequency and severity of regulatory violations identified during roadside inspections of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

(d) Number and frequency of out-of-service violations of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

(e) For motor carrier operations in commerce and, if the motor carrier operates in the United States, in Canada and Mexico: Frequency of crashes; hazardous materials incidents; crash rate per million miles; indicators of preventable crashes; and whether such crashes, hazardous materials incidents, and preventable crash indicators have increased or declined over time.

(f) Number and severity of violations of CMV, hazardous material and motor carrier safety rules, regulations, standards, and orders that are both issued by a State, Canada, or Mexico and compatible with Federal rules, regulations, standards, and orders.

(g) *Admissibility of inspection data.* Inspection reports and summaries of inspection data maintained in any existing or future FMCSA data systems, such as the Motor Carrier Safety Measurement System and the Motor Carrier Management Information System, are self-authenticating and are admissible as evidence that violations identified in the inspection report or data system occurred.

■ 11. Add § 385.8 to read as follows:

§ 385.8 Service and filing of documents.

(a) *In general.* Unless the provisions of this part provide otherwise, each of the following papers must be served as described in this part.

(b) *Service; how made.* Unless otherwise provided in this part, a paper is served by:

(1) Handing it to the person;

(2) Leaving it at the person's office with a clerk or other person in charge or, if not one is in charge, in a conspicuous place in the office; or

(3) If the person has no office or the office is closed, at the person's dwelling

or usual place of abode with someone over the age of 18 who resides there;

(4) Mailing it using the United States Postal Service or a commercial delivery service, in which case service is complete upon mailing;

(5) Sending it by electronic means if the person consented in writing and the service is effected in the manner identified in the consent, in which case service is complete upon transmission but is not effective if the serving party learns that it did not reach the person to be served; or

(6) Delivering it by any other means that the person consented to in writing, in which case service is complete when the person making service delivers it to the agent designated to make delivery.

(c) *Presumption of service.* A properly addressed paper served in accordance with this part which is returned as unclaimed or refused is presumed to have been served. A paper is presumed to have been served in accordance with this part if the Agency serves a document on a motor carrier at the address provided by the carrier to the Agency in any filing required to be made by FMCSA's statutes or regulations.

(d) *Certificate of service.* All papers filed after the notice of proposed unfit safety fitness determination must contain a certificate of service showing the date and manner of service and be signed by the person making service.

(e) *Filing of documents.* Every paper served in proceedings under § 385.15 must be filed with U.S. DOT Docket Services in accordance with this part.

(f) *Electronic signatures and filings.* The Agency may permit electronic signature and filing by electronic means. If permitted by the Agency, a paper filed electronically is considered a written paper under this part.

■ 12. Revise § 385.9 to read as follows:

§ 385.9 Determining a carrier's safety fitness.

(a) FMCSA, using the factors prescribed in § 385.7 as computed under the safety fitness determination methodology set forth in Appendix B of this part and based upon data received by FMCSA through the date of the proposed determination, shall determine whether the motor carrier ensures compliance with the regulations set forth in § 385.5 and shall assign a safety fitness determination accordingly.

(b) Except as noted in §§ 385.16 and 385.17, a motor carrier's safety fitness determination will be based on data received by FMCSA through the date of the proposed determination under § 385.11(c).

(c) If the proposed determination becomes final under this part, it shall remain in effect during the period of administrative review under § 385.15 or § 385.16, or any review of a request under § 385.18.

(d) Unless otherwise specifically provided in this part, a safety fitness determination based upon an investigation of a carrier's safety management controls in accordance with the standard set forth in § 385.5(a) will be issued as soon as practicable.

■ 13. Revise § 385.11 to read as follows:

§ 385.11 Notification of unfit safety fitness determination.

(a) FMCSA will provide a motor carrier with written notice of a proposed unfit safety fitness determination as soon as practicable. The notice will take the form of a letter issued from FMCSA and will include a list of FMCSR and HMR safety and compliance deficiencies that resulted in the unfit safety fitness determination which the motor carrier must correct.

(1) The Agency may serve the written notice on the motor carrier by any of the means set forth in § 385.8 that are reasonably calculated to provide notice.

(2) The notice may be made upon:

(i) An individual officer, director, agent, or any representative identified by the motor carrier on filings submitted to the Agency;

(ii) A resident agent appointed in accordance with the laws of the State of formation; or

(iii) An agent designated for service of process as a condition of operating authority registration.

(b) When FMCSA issues a notice of proposed unfit safety fitness determination, that notice becomes the final safety fitness determination 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.

(c) A notice of a proposed unfit safety fitness determination advises the motor carrier that FMCSA has made a preliminary determination that the motor carrier is unfit to continue operating in commerce and that the prohibitions in § 385.13 will be imposed after 45 or 60 days, as provided in § 385.13(a), if necessary safety improvements are not made.

(d) A motor carrier may request FMCSA to perform an administrative review of a proposed unfit safety fitness determination. The process and the time limits are described in § 385.15.

(e) A motor carrier may request FMCSA to perform a data sufficiency review of a proposed unfit safety fitness determination based upon a claim of unconsidered inspection data. The process and the time limits are described in § 385.16.

(f) A motor carrier may request a change to a proposed unfit safety fitness determination when it can demonstrate it has taken action to correct its safety deficiencies that resulted in the unfit safety fitness determination and has executed a compliance agreement with FMCSA. The process and the time limits are described in § 385.17.

(g) When a proposed unfit safety fitness determination becomes final, a motor carrier that has been issued a final unfit safety fitness determination may apply for safety registration and operating authority registration when it can demonstrate it has taken action to correct its deficiencies that resulted in the unfit safety fitness determination based on its corrective action plan. The process and the time limits are described in § 385.18.

■ 14. Add § 385.12 to read as follows:

§ 385.12 Revocation procedures for unfit safety fitness determination.

A proposed safety fitness determination of ''unfit'' under § 385.11 serves as notice to the motor carrier that its safety and, if applicable, operating authority registrations will be revoked within 45 or 60 days, as applicable, if it does not receive approval to operate under a compliance agreement under § 385.17 or the safety fitness determination is not changed as a result of an administrative review proceeding under § 385.15 or § 385.16. The revocation will be effective on or after the date the unfit determination becomes final, in accordance with a further order issued under the provisions of either § 385.13(e) or § 385.17(f).

■ 15. Revise § 385.13 to read as follows:

§ 385.13 Unfit motor carriers: prohibition on transportation; ineligibility for Federal contracts.

(a) Generally, a motor carrier operating in interstate commerce that has been determined to be unfit is prohibited from operating a CMV in interstate or intrastate commerce. Information about motor carriers, including their most current safety fitness determination, is available from FMCSA on the Internet at http://[FMCSA will provide the Web site in the final rule].

(1) Motor carriers transporting hazardous materials in quantities requiring placarding and motor carriers

transporting passengers in a CMV are prohibited from operating a CMV in motor carrier operations in interstate or intrastate commerce beginning on the 46th day after the date FMCSA serves the notice of proposed unfit safety fitness determination.

(2) All other motor carriers with an unfit safety fitness determination are prohibited from operating a CMV in motor carrier operations in interstate or intrastate commerce beginning on the 61st day after the date FMCSA serves the notice of proposed unfit safety fitness determination.

(b) A Federal agency must not use a motor carrier if that carrier holds an unfit safety fitness determination.

(c) [Reserved]

(d) *Consequences.* (1) If a proposed unfit safety fitness determination becomes final, the motor carrier is prohibited from operating in commerce without further order. The prohibition applies to both the motor carrier's operations in interstate commerce and its operations affecting interstate commerce.

(2) If a motor carrier's intrastate operations are declared out-of-service by a State, FMCSA must issue an order placing out-of-service the carrier's operations in interstate commerce. The following conditions apply:

(i) The State that issued the intrastate out-of-service order participates in the Motor Carrier Safety Assistance Program and uses the FMCSA safety fitness determination methodology set forth in appendix B of this part or an equivalent methodology approved by FMCSA; and

(ii) The motor carrier has its principal place of business in the State that issued the out-of-service order.

(iii) The order prohibiting the motor carrier from operating a CMV in interstate commerce shall remain in effect until the State determines that the carrier is not unfit.

(3) Any motor carrier that operates CMVs in violation of this section is subject to the penalty provisions of 49 U.S.C. 521(b) and appendix B to part 386 of the FMCSRs.

(e) Revocation of registration. FMCSA will issue an order revoking the safety and, if applicable, operating authority registrations of a motor carrier effective on the date a proposed unfit safety fitness determination becomes final.

■ 15. Revise § 385.15 to read as follows:

§ 385.15 Administrative review based on material error.

(a) *Request for review.* A motor carrier may ask the Assistant Administrator to review a proposed unfit safety fitness determination based on an allegation of material error by serving a written petition for administrative review under this section. A request for administrative review must demonstrate material error in the assignment of the motor carrier's proposed unfit safety fitness determination.

(b) *Contents of petition for administrative review.* The petition for administrative review must be in writing in English and include as attachments:

(1) A copy of the written notice of proposed safety fitness determination served on the motor carrier, and the investigation report or any other report that formed the basis of the safety fitness determination.

(2) An explanation of the material error(s) the motor carrier believes FMCSA committed in assigning the safety fitness determination;

(3) A list of all factual and procedural issues in dispute and any information or documents that support the motor carrier's argument;

(4) A copy of any pending request for unconsidered inspection data filed under § 385.16.

(c) *Service and time for filing petition for administrative review*—(1) *Service and filing required.* (i) Within 15 days after service of the notice or proposed unfit safety fitness determination, the motor carrier must serve the original petition for review on the Field Administrator for the Service Center identified in the notice of proposed unfit safety fitness determination;

(ii) The motor carrier must also serve a copy of the petition on FMCSA's Adjudications Counsel, by mail, to 1200 New Jersey Ave. SE., Washington, DC 20590–0001; or by fax to 202–366–3602; or by electronic mail to *FMCSA.Adjudication@dot.gov.* Adjudications counsel consents to electronic service of documents in proceedings under this section;

(iii) Upon service, the motor carrier must also promptly file a copy of its petition for administrative review and any attachments, with the U.S. Department of Transportation Dockets, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

(2) *Service of subsequent papers.* All papers served after the petition for administrative review, must be served on the Field Administrator, or if represented, his attorney; the motor carrier, or if represented, his attorney; and Adjudications Counsel, and filed with Docket Services in the same manner as the petition for review.

(3) *Certificate of service.* All documents served in a proceeding under this section must contain a certificate of service showing the date and manner of service and be signed by the person effecting service.

(d) *Field Administrator response to petition.* The Field Administrator may, but is not required to, respond to the petition for administrative review. The Field Administrator's response, if any, should be served within 10 days of the Field Administrator's receipt of the petition for administrative review to ensure that the Assistant Administrator has time to consider the Field Administrator's position before a decision.

(e) *Additional evidence.* The Assistant Administrator may ask the motor carrier and/or the Field Administrator to submit additional information. If the motor carrier does not provide the information requested, the Assistant Administrator may dismiss its request for review.

(f) *Written decision.* The Assistant Administrator will issue a written decision regarding the petition for administrative review within:

(1) Thirty (30) days after Adjudications Counsel receives a petition for review from a hazardous materials or passenger motor carrier that has received a proposed or final unfit safety fitness determination.

(2) Forty-five (45) days after Adjudications Counsel receives a petition for review from any other motor carrier that has received a proposed or final unfit safety fitness determination.

(g) *Standard of review.* In requesting administrative review of a proposed safety fitness determination, the burden of proof is on the motor carrier to demonstrate that FMCSA committed material error in assigning the safety fitness determination. For purposes of this section, material error is a mistake or series of mistakes that resulted in an erroneous safety fitness determination or an erroneous determination that the carrier does not exercise the necessary basic safety management controls.

(h) *Compliance and inspection data.* The Assistant Administrator's decision is final and conclusive as to the compliance and inspection data underlying the safety fitness determination. The determination, with respect to previously reviewed data, is conclusive in any subsequent petition for administrative review. If a motor carrier submits a request for administrative review of a subsequent proposed unfit safety fitness determination that is, in part, based on compliance and inspection data reviewed during a previous request for administrative review, the determination, with respect to the previously reviewed data, is conclusive in any subsequent review.

(i) *Final Agency action.* The Assistant Administrator's decision constitutes final Agency action, unless reconsideration is requested under paragraph (j) of this section, in which case the decision on reconsideration is the final Agency action.

(j) *Reconsideration.* (1) Within 25 days following service of the Assistant Administrator's decision on a petition for administrative review under this section, the motor carrier and/or the Field Administrator may petition the Assistant Administrator for reconsideration of the decision. A petition for reconsideration does not stay the imposition of a final safety fitness determination unless a stay is requested and granted by the Assistant Administrator.

(2) A written petition for reconsideration, including any attachments, must be served and filed in the same manner as a petition for administrative review as specified in this section.

(3) Either the motor carrier or the FMCSA Field Administrator may serve an answer to a petition for reconsideration within 30 days after service of the petition for reconsideration on Adjudications Counsel.

(4) Following the close of the 30-day period, the Assistant Administrator will issue a written decision on the petition for reconsideration.

(5) The decision on the petition for reconsideration will constitute final Agency action.

(k) *Stay.* A petition for administrative review does not stay the imposition of a final safety fitness determination unless a stay is requested and granted by the Assistant Administrator. A request for stay must be served and filed as indicated in this section.

■ 16. Add § 385.16 to read as follows:

§ 385.16 Request for review based on unconsidered inspection data.

(a) A motor carrier may ask an FMCSA Field Administrator to conduct an administrative review of a proposed unfit safety fitness determination because of unconsidered, valid data from inspections that occurred in the 24 month period before the proposed safety fitness determination. The motor carrier is required to prove that recalculating the safety fitness determination using the previously unconsidered data would remove the proposed unfit safety fitness determination. This section provides the exclusive remedy to request review of unconsidered inspection data.

(b) *Service of request.* The motor carrier must serve the original written request for administrative review seeking review of unconsidered inspection data on the FMCSA Field Administrator for the Service Center identified in the notice of proposed unfit safety fitness determination. The request for administrative review and all subsequent filings in proceedings under this section must be served in accordance with § 385.8.

(c) *Contents of request.* A request for an administrative review of a proposed safety fitness determination because of unconsidered inspection data must include:

(1) A copy of the written notice of proposed safety fitness determination served by FMCSA;

(2) Copies of all additional inspection reports that, if included, would have resulted in FMCSA's determination that the carrier met the safety fitness standard in § 385.5;

(3) An explanation of why consideration of the additional inspection would remove the proposed unfit safety fitness determination; and

(4) A copy of any pending request for administrative review made under § 385.15.

(d) *Time for service.* A request for an administrative review because of unconsidered inspection data must be served on the FMCSA Field Administrator within 10 days after service of the notice of the proposed unfit safety fitness determination.

(e) *Written decision.* The Field Administrator will serve a decision:

(1) Within 10 days after service of a request from a hazardous materials or passenger motor carrier that has received a proposed unfit safety fitness determination;

(2) Within 20 days after service of a request from any other motor carrier that has received a proposed unfit safety fitness determination.

(f) *Standard of review.* In an administrative review of a proposed safety fitness determination under this section, the burden of proof is on the motor carrier to demonstrate that FMCSA did not include inspection report data from all inspections of the motor carrier's vehicles or drivers conducted during the assessment period and that, if included, such data would have resulted in FMCSA's determination that the carrier met the safety fitness standard in § 385.5.

(g) *Final Agency action.* The decision of the Field Administrator constitutes final Agency action, and no additional request for administrative review by FMCSA is available.

(h) *Stay.* A petition for administrative review under this section does not stay the imposition of a final safety fitness determination unless a stay is requested and granted by the Field Administrator.

■ 17. Revise § 385.17 to read as follows:

§ 385.17 Request to defer final unfit safety fitness determination and to operate under a compliance agreement.

(a) A motor carrier that has taken action to correct the deficiencies that resulted in a proposed unfit safety fitness determination may request a deferral of a final unfit safety fitness determination and that a Field Administrator permit it to continue to operate under a compliance agreement.

(b) *Service of request.* The motor carrier must serve the original written request seeking deferral of the final unfit safety fitness determination and asking to continue to operate under a compliance agreement on the FMCSA Field Administrator for the Service Center identified in the notice of proposed unfit safety fitness determination. The request for deferral and compliance agreement and all subsequent filings in proceedings under this section must be served in accordance with the provisions of § 385.8.

(c) *Contents of request.* The motor carrier's request must include evidence that it has taken necessary actions to correct its deficiencies that resulted in the proposed unfit safety fitness determination and that its operations, as set forth in a corrective action plan and evidenced by its corrective actions, will meet the safety standard and factors specified in §§ 385.5 and 385.7. The motor carrier's evidence must explain the safety management breakdowns that resulted in the violations, identify and describe clearly defined safety management policies and procedures to prevent ongoing or future violations, document organizational roles and responsibilities for safety compliance, describe written qualification and hiring standards, training and communication plans, and ongoing compliance monitoring and implementation procedures, and describe such other matters as necessary to assure FMCSA that the motor carrier is able to operate safely.

(d) *Time for service.* Requests for deferral and a compliance agreement must be served within:

(1) Fifteen (15) days after service of the notice of a proposed unfit safety fitness determination for motor carriers transporting hazardous materials in quantities requiring placarding or transporting passengers by CMV.

(2) Thirty (30) days after service of the notice of a proposed unfit safety fitness determination for all other motor carriers operating CMVs.

(3) Failure to timely request deferral and a compliance agreement waives the right to seek deferral and to continue to operate under a compliance agreement.

(e) *Evaluation of request.* FMCSA will make a decision on the request for deferral of a final safety fitness determination based on the documentation the motor carrier submits, together with evidence both that the motor carrier has corrected the deficiencies that resulted in its unfit determination, and that it will be able to meet the performance standards set forth in §§ 385.5 and 385.7. As a condition of deferral of a final safety fitness determination, the carrier will also be required to enter into a compliance agreement. A compliance agreement will include, at a minimum, strict safety performance standards that the carrier must meet and a specified period of time for monitoring of the carrier's safety performance before a deferred proposed determination of unfitness may be withdrawn.

(f) *Final Agency action.* Except as provided in paragraph (j) of this section, the Field Administrator's decision either deferring the final imposition of a proposed unfit safety fitness determination or denying the request for deferral constitutes final Agency action, and is not subject to further administrative review.

(g) *Withdrawal of proposed unfit safety fitness determination.* If, after a monitoring period, FMCSA determines that the motor carrier has taken the corrective actions required, has adhered to the compliance agreement for the complete monitoring period, has met the safety performance standards established in the compliance agreement, and is able to demonstrate through performance data or otherwise that it meets the safety standard and factors specified in §§ 385.5 and 385.7, FMCSA will serve a written notice on the motor carrier withdrawing the proposed unfit safety fitness determination.

(h) *Failure to comply with deferral requirements.* If, after a monitoring period, FMCSA determines that the motor carrier has not taken all the corrective actions required, has not adhered to the terms of the compliance agreement or has not met the safety performance standards established in the compliance agreement, FMCSA will serve a written notice on the motor carrier that its proposed unfit safety fitness determination has become final, order all its motor carrier operations out of out-of-service immediately, and revoke the motor carrier's safety and, if applicable, operating authority registrations.

(i) *Stays.* A request for deferral and compliance agreement does not stay the imposition of a final safety fitness determination during the consideration of the request unless a stay is requested from and granted by the Field Administrator.

(j) *Limited administrative review.* Any motor carrier whose request for a deferral of a final unfit safety fitness determination is denied in accordance with this section may request administrative review under § 385.15. The motor carrier must make the request within 30 days of the denial of the request for a deferral of a final safety fitness determination. Administrative review under this paragraph (j) will be limited to whether the denial of such a deferral was an abuse of the discretion of the Field Administrator to refuse to enter a compliance agreement with the motor carrier. If abuse of discretion is found, the Assistant Administrator may order deferral of the final unfit safety fitness determination pending execution of a compliance agreement within a reasonable period, as specified by order, but substantive elements of a compliance agreement are not subject to administrative review and shall not be imposed or stricken in such order. If the proposed safety fitness determination has become final, it shall remain in effect during the period of any administrative review.

■ 18. Add § 385.18 to read as follows:

§ 385.18 Resuming operations after a final unfit determination.

(a) *General.* A motor carrier that has been prohibited from operating, had its safety and, if applicable, operating authority registrations revoked, and had its USDOT number inactivated following a final unfit safety fitness determination under this subpart must not resume interstate or intrastate transportation until it obtains new registration(s) and its USDOT number is reactivated in accordance with this section.

(b) *Application for registration.* Following a final unfit safety fitness determination, a motor carrier must:

(1) Apply for registration under the provisions of part 390, subpart E, of this chapter and if applicable, part 365 of this chapter; and

(2) File an original corrective action plan covering the items outlined in § 385.17(c), including actions planned or completed to resolve the safety deficiencies that resulted in the unfit safety fitness determination, with the Office of Registration and Safety Information, 1200 New Jersey Ave. SE., Washington, DC 20590.

(c) *Grant of registration.* FMCSA will grant the application for registration and reactivate the motor carrier's USDOT Number after determining that:

(1) The motor carrier has satisfied the requirements of part 390, subpart E, of this chapter and if applicable part 365 of this chapter;

(2) The motor carrier's evidence of corrective action is acceptable; and

(3) The motor carrier agrees to operate under a compliance agreement that conforms to the requirements of § 385.17(c) and (e).

(d) *Resuming operations.* An applicant may not resume operations until it receives notice from FMCSA that it has been granted registration and that its USDOT number is active.

■ 19. Amend § 385.19 by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 385.19 Availability of safety fitness determinations.

(a) Final unfit safety fitness determinations and information about carriers operating under a compliance agreement will be made available to other Federal and State agencies in writing, telephonically, or on the Internet available through computer access.

(b) The final unfit safety fitness determination assigned to a motor carrier and information about carriers operating under a compliance agreement will be made available to the public through the Agency's Web site and other information technology systems.

* * * * *

■ 20. Add § 385.21 to read as follows:

§ 385.21 Transition provisions.

(a) If a motor carrier receives a proposed safety rating of unsatisfactory and a final determination that it is unsatisfactory under the provisions of § 385.11 in effect before [EFFECTIVE DATE OF FINAL RULE], the motor carrier remains subject to the provisions of § 385.13 in effect before [EFFECTIVE DATE OF FINAL RULE].

(b) If a motor carrier receives a notice of a proposed safety rating and safety fitness determination dated before [EFFECTIVE DATE OF FINAL RULE], and issued under the provisions of § 385.11 in effect before [EFFECTIVE DATE OF FINAL RULE] that has not become final, the motor carrier may:

(1) Request an administrative review under the provisions of § 385.15 in effect before [EFFECTIVE DATE OF FINAL RULE]; and/or

(2) Request a change in safety rating under the provisions of § 385.17 in effect before [EFFECTIVE DATE OF

FINAL RULE]. If the notice of safety rating and safety fitness determination thereafter becomes final, the motor carrier is subject to the provisions of § 385.13 in effect before [EFFECTIVE DATE OF FINAL RULE].

■ 21. Amend § 385.101 as follows:

■ a. Add an undesignated introductory paragraph; and

■ b. Revise the definitions of ''Provisional operating authority'' and ''Safety audit.''

The addition and revisions read as follows:

§ 385.101 Definitions.

The following definitions apply to this subpart:

* * * * *

Provisional operating authority means the registration under § 365.507 of this chapter that FMCSA grants to a Mexico-domiciled motor carrier to provide interstate transportation within the United States beyond the municipalities along the United States-Mexico border and the commercial zones of such municipalities. It is provisional because the carrier will be subject to the safety monitoring program under this subpart until it satisfies the requirements of § 385.117, and it may be suspended or revoked in accordance with subpart A of this part.

Safety audit means an examination of a motor carrier's operations to gather critical safety data needed to make an evaluation of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety fitness determinations.

■ 22. Amend § 385.103 by revising paragraph (e) to read as follows:

§ 385.103 Safety monitoring system.

* * * * *

(e) *Comprehensive investigation.* The FMCSA will conduct a comprehensive investigation on a long-haul Mexico-domiciled carrier within 18 months after the FMCSA issues the carrier provisional operating authority under part 365 of this chapter.

■ 23. Amend § 385.105 by revising paragraphs (a) introductory text and (c) to read as follows:

§ 385.105 Expedited action.

(a) A long-haul Mexico-domiciled motor carrier committing any of the following violations identified through inspections, or by any other means, may be subjected to an expedited safety audit or comprehensive investigation, or may be required to submit a written response demonstrating corrective action:

* * * * *

(c) A satisfactory response to a written demand for corrective action does not excuse a carrier from the requirement that it undergo a safety audit or comprehensive investigation, as appropriate, during the provisional operating authority period.

■ 24. Revise § 385.109 to read as follows:

§ 385.109 The safety fitness determination.

(a) The criteria used in an investigation or as a result of on road safety data will be used to determine whether a Mexico-domiciled carrier granted provisional operating authority under § 365.507 of this chapter exercises the necessary basic safety management controls are specified in this subpart and appendix B to this part.

(b) If FMCSA does not assign a Mexico-domiciled carrier a proposed unfit safety fitness determination following a comprehensive investigation conducted under this subpart and consideration of on-road safety data, FMCSA will provide the carrier written notice as soon as practicable, but not later than 45 days after the completion of the comprehensive investigation. The carrier's operating authority will remain in provisional status and its on-road safety performance will continue to be monitored for the remainder of the 18-month provisional registration period.

(c) *Unfit safety fitness determination.* If FMCSA assigns a Mexico-domiciled carrier a proposed unfit safety fitness determination under this subpart FMCSA will initiate a suspension and revocation proceeding in accordance with subpart A of this part.

§ 385.111, 385.113, and 385.115 [Removed and Reserved]

■ 25. Remove and reserve §§ 385.111, 385.113, and 385.115.

■ 26. Amend § 385.117 by revising paragraphs (b) and (c) to read as follows:

§ 385.117 Duration of safety monitoring system for Mexico-domiciled carriers.

* * * * *

(b) If, at the end of this 18-month period, the carrier has passed its most recent safety audit, submitted evidence of acceptable corrective action if applicable, neither an investigation nor on road safety data have resulted in a deferred, proposed or final unfit safety fitness determination, the carrier is neither suspended nor revoked, and no additional enforcement or safety improvement actions are pending, the Mexico-domiciled carrier's provisional operating authority or provisional Certificate of Registration will become standard.

(c) If, at the end of this 18-month period, FMCSA has not been able to conduct a safety audit or comprehensive investigation, the carrier will remain in the safety monitoring system until a safety audit or comprehensive investigation is conducted. If the carrier passes the safety audit or the investigation does not result in a final unfit safety fitness determination, the carrier is neither suspended nor revoked, and the carrier has no additional enforcement or safety improvement actions pending, the carrier's provisional operating authority or provisional Certificate of Registration will become standard.

* * * * *

§ 385.201 [Amended]

■ 27. Amend § 385.201 in paragraphs (a) and (b) by removing the phrase ''a compliance review,'' and adding, in its place, the phrase ''an investigation, compliance review,''.

§ 385.203 [Amended]

■ 28. Amend § 385.203 in paragraphs (a) and (b) by removing the phrase ''a compliance review,'' and adding, in its place, the phrase ''an investigation, compliance review,''.

■ 29. Amend § 385.307 by redesignating paragraphs (a) through (c) as paragraphs (b) through (d) and adding paragraph (a) to read as follows:

§ 385.307 What happens after a motor carrier begins operations as a new entrant?

* * * * *

(a) The new entrant is subject to the safety monitoring system in this subpart, the general safety fitness procedures established in subpart A of this part, and the compliance and enforcement procedures applicable to all carriers regulated by FMCSA.

* * * * *

§ 385.308 [Amended]

■ 30. Amend § 385.308 as follows:

■ a. In paragraph (a), remove the phrase ''safety audit or a compliance review'' and add, in its place, the phrase ''safety audit or an investigation,''.

■ b. In paragraphs (b)(1) and (2), remove the phrase ''safety audit or compliance review,'' and add, in its place, the phrase ''safety audit or an investigation,''.

■ c. In paragraph (c), remove the phrase ''a compliance review,'' and add, in its place, the phrase ''an investigation''.

§ 385.317 [Amended]

■ 31. Amend § 385.317 by removing the phrase ''a compliance review'' and adding, in its place, the phrase ''an investigation or on road safety data''.

§ 385.333 [Amended]

■ 32. Amend § 385.333 as follows:

■ a. In paragraph (b), remove the phrase ''‘unfit’ after a compliance review'' and add, in its place, the word ''unfit,''.
■ b. In paragraph (d), remove the phrase ''safety audit or compliance review,'' in each place it appears and adding, in its place, the phrase ''safety audit or an investigation,''.
■ 33. Revise § 385.335 to read as follows:

§ 385.335 If the FMCSA completes an investigation on a new entrant, will the new entrant also be subject to a safety audit?

If the FMCSA completes an investigation on a new entrant that has not previously been subject to a safety audit and issues a safety fitness determination, the new entrant will not have to undergo a safety audit under this subpart. However, the new entrant will continue to be subject to the 18-month safety-monitoring period prior to removal of the new entrant designation.
■ 34. Amend § 385.407 by revising paragraph (a)(1) to read as follows:

§ 385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?

(a) *Motor carrier safety performance.* (1) The motor carrier must have a comprehensive investigation and must not be issued a proposed or final unfit safety fitness determination by either FMCSA, pursuant to the Safety Fitness Procedures in subpart A of this part, or the State in which the motor carrier has its principal place of business, if the State has adopted and implemented safety fitness procedures that are equivalent to the procedures in subpart A of this part; and
* * * * *
■ 35. Amend § 385.409 by revising paragraph (c) to read as follows:

§ 385.409 When may a temporary safety permit be issued to a motor carrier?

* * * * *

(c) A temporary safety permit is valid for 180 days after the date of issuance or until the motor carrier receives a comprehensive investigation or the Agency has otherwise made a safety fitness determination, whichever comes first.

(1) A motor carrier that receives a comprehensive investigation and has not been issued an unfit safety fitness determination will be issued a safety permit (see § 385.421).

(2) A motor carrier that receives a comprehensive investigation and has been issued a proposed or final unfit safety fitness determination is ineligible for a safety permit and will be subject to revocation of its temporary safety permit.
* * * * *
■ 36. Amend § 385.413 by revising the section heading and paragraph (a) to read as follows:

§ 385.413 What happens if a motor carrier receives a proposed or final unfit safety fitness determination?

(a) If a motor carrier does not already have a safety permit, it will not be issued a safety permit (including a temporary safety permit) unless and until the motor carrier has a comprehensive investigation. A proposed or final unfit safety fitness determination will prevent the issuance of a safety permit.
* * * * *
■ 37. Amend § 385.421 by revising paragraphs (a)(3) and (c)(1) to read as follows:

§ 385.421 Under what circumstances will a safety permit be subject to revocation or suspension by FMCSA?

(a) * * *

(3) A motor carrier is issued a final unfit safety fitness determination or receives a proposed unfit and is subsequently approved to operate under a compliance agreement;
* * * * *

(c) * * *

(1) Immediately after FMCSA determines that an imminent hazard exists, after FMCSA issues a final unfit safety fitness determination, or after a motor carrier loses its operating rights or has its registration suspended for failure to pay a civil penalty or abide by a payment plan;
* * * * *
■ 38. Amend § 385.423 by revising paragraph (a) to read as follows:

§ 385.423 Does a motor carrier have a right to an administrative review of a denial, suspension, or revocation of a safety permit?

* * * * *

(a) *Unfit safety fitness determination.* (1) If a motor carrier is issued a proposed unfit safety fitness determination, it has the right to request the following:

(i) An administrative review of a proposed unfit safety fitness determination, as set forth in § 385.15; or

(ii) A review based on unconsidered inspection data as set forth in § 385.16.

(2) After a motor carrier has had an opportunity for administrative review of a proposed unfit safety fitness determination or review based on unconsidered inspection data, FMCSA's issuance of a final safety fitness determination constitutes final Agency action. A motor carrier has no right to further administrative review of FMCSA's denial, suspension, or revocation of a safety permit when the motor carrier has been issued a final unfit safety fitness determination.
* * * * *
■ 39. Amend § 385.503 by revising paragraph (a) to read as follows:

§ 385.503 Results of roadability review.

(a) FMCSA will not assign a safety fitness determination to an intermodal equipment provider based on the results of a roadability review. However, FMCSA may cite the intermodal equipment provider for violations of parts 390, 393, and 396 of this chapter and may impose civil penalties resulting from the roadability review.
* * * * *
■ 40. Amend § 385.607 by revising paragraph (g) to read as follows:

§ 385.607 FMCSA action on the application.

* * * * *

(g) FMCSA may not re-designate a non-North America-domiciled carrier's registration from new entrant to standard prior to 18 months after the date its USDOT number is issued and subject to successful completion of the safety monitoring system for non-North America-domiciled carriers set out in subpart I of this part. Successful completion includes not receiving a final unfit safety fitness determination as the result of a comprehensive investigation.
■ 41. Amend § 385.701 by adding in alphabetical order a definition for ''Comprehensive investigation'' and revising the definition for ''New entrant registration'' to read as follows:

§ 385.701 Definitions.

* * * * *

Comprehensive investigation. See *Compliance review.*

New entrant registration means the provisional registration under subpart H of this part that FMCSA grants to a non-North America-domiciled motor carrier to provide interstate transportation within the United States. The carrier will be subject to the enhanced monitoring program under this subpart until it satisfies the requirements of § 385.715.
* * * * *
■ 42. Amend § 385.703 by revising paragraphs (b) and (d) to read as follows:

§ 385.703 Safety monitoring system.

* * * * *

(b) *Safety monitoring.* Each non-North America-domiciled carrier new entrant

will be subject to monitoring through inspections.

* * * * *

(d) *Comprehensive investigation.* FMCSA will conduct a comprehensive investigation on a non-North America-domiciled carrier within 18 months after FMCSA issues the carrier a USDOT Number.

■ 43. Amend § 385.705 by revising the introductory text of paragraph (a) and paragraph (c) to read as follows:

§ 385.705 Expedited action.

(a) A non-North America-domiciled motor carrier committing any of the following actions identified through inspections, or by any other means, may be subjected to an expedited comprehensive investigation, or may be required to submit a written response demonstrating corrective action:

* * * * *

(c) A satisfactory response to a written demand for corrective action does not excuse a carrier from the requirement that it undergo a comprehensive investigation during the new entrant registration period.

■ 44. Revise § 385.707 to read as follows:

§ 385.707 The comprehensive investigation.

(a) The criteria used in a comprehensive investigation to determine whether a non-North America-domiciled new entrant exercises the necessary basic safety management controls are specified in appendix B to this part.

(b) *No unfit safety fitness determination.* If FMCSA does not assign a Non-North America-domiciled carrier an unfit safety fitness determination following a comprehensive investigation conducted under this subpart, FMCSA will provide the carrier written notice as soon as practicable, but not later than 45 days after the completion of the comprehensive investigation. The carrier's registration will remain in provisional status and its on-highway performance will continue to be closely monitored for the remainder of the 18-month new entrant registration period.

(c) *Unfit safety fitness determination.* If FMCSA assigns a non-North America-domiciled carrier an unfit safety fitness determination following a comprehensive investigation conducted under this subpart, it will initiate a suspension and revocation proceeding in accordance with subpart A of this part.

§§ 385.709, 385.711, and 385.713 [Removed and Reserved]

■ 45. Remove and reserve §§ 385.709, 385.711, and 385.713.

■ 46. Amend § 385.715 by revising paragraphs (b) and (c) to read as follows:

§ 385.715 Duration of safety monitoring system.

* * * * *

(b) If, at the end of this 18-month period, the carrier's most recent safety fitness determination was not unfit, the carrier is not operating under a compliance agreement, and no additional enforcement or safety improvement actions are pending, the non-North America-domiciled carrier's new entrant registration will become standard.

(c) If, at the end of this 18-month period, FMCSA has not been able to conduct a comprehensive investigation, the carrier will remain in the safety monitoring system until a comprehensive investigation is conducted. If the results of the comprehensive investigation are not unfit the carrier's new entrant registration will become standard.

* * * * *

■ 47. Revise appendix B to part 385 to read as follows:

Appendix B to Part 385—Explanation of Safety Fitness Determination Methodology

1. Safety Fitness Determination (SFD) Background

1.1 Authority

The Secretary of Transportation is required to establish a methodology to determine the safety fitness of owners and operators of commercial motor vehicles (CMVs) operating in commerce. The Secretary delegated this responsibility to the Administrator of the Federal Motor Carrier Safety Administration (FMCSA).

1.2 Safety Fitness Regulation

As directed, FMCSA promulgates regulations that determine the safety fitness of motor carriers. Motor carriers must meet the safety fitness standard through sustained safe performance and compliance with applicable regulations. If the carrier does not meet the standard, FMCSA will issue a proposed and/or final unfit SFD, as appropriate.

1.3 SFD Methodology

1.3.1 The methodology developed by FMCSA evaluates safety fitness and assigns an unfit SFD to motor carriers operating in interstate commerce or in commerce affecting interstate commerce that fail to meet the standard.

1.3.2 This process conforms to § 385.5, Safety fitness standard, and § 385.7, Factors to be considered in making a safety fitness determination, of this part. Under this methodology, a motor carrier's SFD is determined by either or both of the following:

1.3.2.1 *On-Road Safety Data*—Safety-based violation data from driver/vehicle inspections for all domestic and foreign operations may be calculated in the SFD process according to Behavior Analysis and Safety Improvement Categories (BASICs) (See Tables 1–5 Violation Severity Tables in section 5 of this appendix); or

1.3.2.2 *Investigation Results*—Violations of Critical and Acute regulations from investigations are also used in the SFD process. These are regulations that FMCSA has identified as linked to likelihood of future crashes or as otherwise significant indicators of CMV owner or operator safety. They are listed in Tables 3–1 and 3–2 of this appendix. Violations of these critical and acute regulations are used to assess the appropriate BASIC. In addition to violations of the critical and acute regulations, the recordable crash rate per million miles may be determined as part of investigations under section 2.1.7 of this appendix, Crash Indicator BASIC.

1.4 Roadmap to This Appendix

Sections 2 and 3 of this appendix describe the complete methodology used by the two components of the SFD process: (1) On-road safety data and (2) investigation results. Section 4 of this appendix describes in detail the SFD calculation and provides examples. Section 5 of this appendix is a set of five violation severity tables, which provide cross-references to the description of violations in the Code of Federal Regulations (CFR).

2. Role of BASICs in the SFD Process

2.1 Description of BASICs

FMCSA employs: (i) All on-road safety performance data from inspections; (ii) critical and acute regulation violations from investigations; and (iii) crash rates from investigations to evaluate motor carrier performance and compliance in seven BASICs. When a motor carrier exhibits consistent non-compliance during inspections, has violations of critical and/or acute regulations in the BASICs identified through an investigation, or has a preventable crash rate that meets or is greater than established standards, the carrier will fail the BASIC. Any two or more failed BASICs will result in a proposed unfit SFD as described in section 4 of this appendix.

The BASICs are:

2.1.1 *Unsafe Driving—Operation of CMVs by drivers in a dangerous or careless manner.* Examples of violations include: Speeding, reckless driving, improper lane change, inattention, failure to wear safety belt while operating a CMV, and texting or using a mobile telephone while operating a CMV. This BASIC corresponds to the requirement in § 385.5(e) of the safety fitness standard.

2.1.2 *Hours of Service (HOS) Compliance—Operation of CMVs by drivers who are not in compliance with the HOS regulations.* This BASIC includes violations of driving time limitations and violations of regulations regarding the complete and accurate recording of records of duty status (commonly known as log books) as they

relate to HOS requirements. Examples of violations include exceeding HOS limits, falsification of records of duty status, and incomplete records of duty status. This BASIC corresponds to the requirement in § 385.5(h) of the safety fitness standard.

2.1.3 *Driver Fitness—Operation of CMVs by drivers who are unfit to operate a CMV due to lack of training, experience, or medical qualifications.* Examples of violations include: Failure to have a valid and appropriate commercial driver's license (CDL) or being medically unqualified to operate a CMV. This BASIC corresponds to the requirement in § 385.5(b) and (d) of the safety fitness standard.

2.1.4 *Vehicle Maintenance—CMV failure due to improper or inadequate maintenance.* Examples of violations include: brakes, lights, cargo securement, and other mechanical defects or failure to make required repairs. This BASIC corresponds to the requirement in § 385.5(f) and (i) of the safety fitness standard.

2.1.5 *Hazardous Materials (HM) Compliance—CMV incident resulting from shifting HM, a release of HM, and unsafe handling of HM.* Examples of violations include: improper HM load securement and hazardous material handling. This BASIC corresponds to the requirement in § 385.5(j), (k), and (l) of the safety fitness standard.

2.1.6 *Controlled Substances and Alcohol—Operation of CMVs by drivers and motor carriers that fail to comply with requirements on alcohol or illegal controlled substances.* Examples of violations include: Use or possession of controlled substances or alcohol or using a driver before receiving a negative pre-employment result. This BASIC corresponds to the requirement in § 385.5(a) and (e) of the safety fitness standard. This BASIC can only fail based on investigation results.

2.1.7 *Crash Indicator—Preventable recordable crash rate per million vehicle miles traveled (VMT).* A recordable crash, consistent with the definition for ''accident'' in 49 CFR 390.5, means an occurrence involving a CMV on a highway in motor carrier operations in commerce that results in a fatality; in bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the crash; or in one or more motor vehicles incurring disabling damage that requires the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle. This BASIC corresponds to the requirement in § 385.5(l) of the safety fitness standard. This BASIC can only fail from the preventable crash rate recorded during an investigation.

2.2 Data Sources for Assessing On-Road Safety Performance

The data used to assess on-road safety performance in the BASICs are recorded in FMCSA's Motor Carrier Management Information System (MCMIS). The specific data elements are described below.

2.2.1 *Driver/Vehicle Inspections* are examinations of individual CMVs and drivers by certified Federal, State, or local inspectors or officers to determine if the CMVs and drivers are in compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs).

2.2.2 *Violations* are instances of non-compliance recorded and documented during driver/vehicle inspections. The methodology incorporates both out-of-service violations and non-out-of-service violations.

2.2.3 *Motor Carrier Census Data* are first collected when a carrier obtains a USDOT number. This information is recorded in MCMIS by FMCSA and is updated during investigations, during CMV registration in States participating in the Performance and Registration Information Systems Management (PRISM) Program, by the biennial update required by FMCSA regulation (49 CFR 390.19(b)), and at the request of the motor carrier. Census data are used to identify individual motor carriers and enable FMCSA to attribute safety events, *e.g.,* driver/vehicle inspections, crashes, and investigations, to the appropriate motor carrier. Census data are also used in the methodology to normalize on-road safety data to calculate BASIC failure standards. Examples of census data include: Number and types of power units operated, physical location of the carrier's principal place of business, annual Vehicle Miles Traveled, and type of commodities hauled.

2.3 Determining Failed BASICs From Driver/Vehicle Inspection Results

Driver/vehicle inspection and violation data are used to assess SFD in five of the seven BASICs—Unsafe Driving, HOS Compliance, Driver Fitness, Vehicle Maintenance, and Hazardous Materials (HM) Compliance. All safety-based violations of the FMCSRs and HMRs, specified in Tables 1–5 Violation Severity Tables in section 5 of this appendix, are included in calculating the BASICs from Driver/Vehicle Inspections.

2.3.1 *Types of Inspections:* Inspections may include reviews of the driver, vehicle, HM, shipment, and combinations of inspections, as well as special targeted inspections. However, the inspections must include reviews of the appropriate regulations as noted below.

2.3.2 *Driver Inspections:* To qualify for inclusion in the SFD assessment, a driver inspection must include reviews of the driver's compliance with the regulations associated with:

2.3.2.1 Proper licensing
2.3.2.2 Medical qualification
2.3.2.3 Controlled substances and alcohol
2.3.2.4 Hours of service, and
2.3.2.5 Operating authority

2.3.3 *Vehicle Inspections:* To qualify for inclusion in the SFD assessment, a vehicle inspection must include reviews of the vehicles' compliance with the regulations associated with:

2.3.3.1 Brake systems
2.3.3.2 Coupling devices
2.3.3.3 Exhaust systems
2.3.3.4 Frames
2.3.3.5 Fuel systems
2.3.3.6 Lighting devices
2.3.3.7 Cargo securement
2.3.3.8 Steering mechanisms
2.3.3.9 Suspensions
2.3.3.10 Tires
2.3.3.11 Trailer bodies
2.3.3.12 Wheels, rims and hubs
2.3.3.13 Windshield wipers
2.3.3.14 Emergency exits (buses), and
2.3.3.15 Engine and battery electrical cables and systems (buses)

2.3.4 *HM Inspections:* To qualify for inclusion in the SFD assessment, an inspection of HM must include reviews of the shipment's compliance with the applicable regulations associated with:

2.3.4.1 Shipping papers
2.3.4.2 Placarding
2.3.4.3 Bulk packages
2.3.4.4 Transport vehicle markings
2.3.4.5 Poison inhalation hazard markings
2.3.4.6 Non-bulk packaging
2.3.4.7 Loading and securement
2.3.4.8 Forbidden items
2.3.4.9 Radioactive materials and radiation levels, and
2.3.4.10 Emergency response assistance plans

2.3.5 *Walk-Around Driver/Vehicle Inspection:* At a minimum, these inspections must include examination of:

2.3.5.1 Driver's license
2.3.5.2 Medical examiner's certificate
2.3.5.3 Skill Performance Evaluation (SPE) Certificate (if applicable)
2.3.5.4 Alcohol and drugs
2.3.5.5 Driver's record of duty status as required
2.3.5.6 Hours of service
2.3.5.7 Seat belt
2.3.5.8 Vehicle inspection report(s) (if applicable)
2.3.5.9 Brake systems
2.3.5.10 Coupling devices
2.3.5.11 Exhaust systems
2.3.5.12 Frames
2.3.5.13 Fuel systems
2.3.5.14 Lighting devices (headlamps, tail lamps, stop lamps, turn signals and lamps/flags on projecting loads)
2.3.5.15 Securement of cargo
2.3.5.16 Steering mechanisms
2.3.5.17 Suspensions
2.3.5.18 Tires
2.3.5.19 Van and open-top trailer bodies
2.3.5.20 Wheels, rims and hubs
2.3.5.21 Windshield wipers
2.3.5.22 Emergency exits
2.3.5.23 Electrical cables and systems in engine and battery compartments (buses), and
2.3.5.24 HM requirements as applicable. HM required inspection items will be inspected by certified HM inspectors.

It is contemplated that the walk-around driver/vehicle inspection will include only those items that can be inspected without physically getting under the vehicle.

2.3.6 *Quantifying the Violations:* Each carrier's driver/vehicle violations from inspections are classified into the appropriate BASIC and are then time weighted, severity weighted, and normalized by exposure to form a quantifiable absolute measure in each BASIC as calculated in section 2.4 of this appendix.

Inspections and any violations recorded during the previous 24 months in any relevant level driver/vehicle inspection that matches the FMCSR and HMR violations

listed for the appropriate BASIC are used in the calculation. Driver inspections are relevant to the Unsafe Driving, Hours of Service Compliance, and Driver Fitness BASICs. Vehicle inspections are relevant to the Vehicle BASIC and vehicle inspections with placardable hazardous materials are relevant to the Hazardous Materials BASIC. The applicable violations are shown in Tables 1–5, in section 5 of this appendix, Violation Severity Tables. Where multiple counts of the same violation are recorded, the methodology uses each violation recorded only once per inspection.

2.3.7 *Violation Severity:* Applicable safety-based violations of the FMCSRs and HMRs that are associated with each BASIC and documented during an inspection are assigned severity weights that reflect their association with crash risk in terms of crash occurrence and crash consequences. The stronger the relationship between a violation and crash risk, the higher its assigned weight. A separate weighting parameter identifies violations that result in an out-of-service order as defined in 49 CFR 390.5, and additional weight is applied to these violations.

The violation severity weights of 1 to 10 can be found in Tables 1 to 5 in section 5 of this appendix. The Agency uses severity weights to differentiate crash risks relative to particular violations within a particular BASIC only. The level of crash risk is assigned to each applicable violation ranging from 1 (less severe) to 10 (most severe); see the HOS Compliance Table (Table 2 in section 5 of this appendix, Violation Severity Tables) for the violations' corresponding severity weights.

An out-of-service weight of 2 is then added to the severity weight of out-of-service violations, except for violations in the Unsafe Driving BASIC because unsafe driving violations rarely result in an out-of-service condition.

In cases of multiple counts of the same violation, the out-of-service weight of 2 applies only to the most severe count, if any of the counts of the violations are out-of-service.

2.3.8 *Time Weights:* Each inspection and associated violation is assigned a time weight. The time weight of inspections and violations decreases as time elapses, resulting in more recent inspections having a greater impact on a motor carrier's measure within a BASIC than results of older inspections. Events beyond 24 months are not used for SFD. The 24-month time frame was chosen based on FMCSA analysis indicating that using 24 months of inspection data provided an adequate time frame to identify motor carriers with performance deficiencies and to assess improvements or degradation in performance. The inspections and violations are grouped into three time periods and assigned a time weight. Inspections conducted and violations recorded in the most recent time period (recorded in the past 6 months) receive a time weight of 3. Inspections conducted and violations recorded in the next most recent time period (older than 6 months and within the past 12 months) receive a time weight of 2. Inspections conducted and violations recorded in the oldest time period (older than 12 months but within the past 24 months) receive a time weight of 1.

2.3.9 *Time and Severity Weight.* This weight is a violation's severity weight multiplied by its time weight. The sum of all violation severity weights for any one inspection is capped at a maximum of 30, prior to applying time weights.

2.3.10 *Normalization:* When appropriate, the motor carrier's BASICs measures are normalized to reflect differences in inspection and other safety oversight exposure among motor carriers. The normalization approach varies depending on the BASIC being measured.

HOS Compliance and Driver Fitness measures are normalized by adding the number of time-weighted driver inspections, while Vehicle Maintenance BASIC measures are normalized by adding the number of time-weighted vehicle inspections. The HM Compliance BASIC is normalized by adding the number of time-weighted vehicle inspections where placardable quantities of HM were present. The inspections used to normalize a BASIC measure are considered relevant inspections.

The Unsafe Driving BASIC is calculated by reference to carrier size (*i.e.,* a hybrid calculation using power units and VMT) instead of by the number of inspections. Carriers with known above-average truck utilization, in terms of VMT per power unit, have their size adjusted upwards to account for their additional exposure to being found with Unsafe Driving BASIC violations such as speeding. Section 2.4.1.2 of this appendix contains a further explanation of this adjustment.

2.3.11 *Data Sufficiency:* To ensure that a BASIC measure is a viable metric of systemic safety problems, data sufficiency criteria are applied. The data sufficiency criteria require that a motor carrier has had at least 11 inspections with one or more violations in each inspection. These criteria ensure adequate performance data that demonstrate a pattern of violations across multiple inspections are obtained before an unfit SFD is proposed.

2.3.12 *Safety-Event Groups:* The SFD BASIC failure standards are based on the number of safety events (*i.e.,* violations or inspections). Carriers with similar numbers of safety events are grouped together and compared against the failure standard associated with that safety event group. This tiered approach accounts for variability in levels of exposure and enables carriers with similar levels of exposure to be held to the same standards.

2.4 SFD BASIC Failure Standards

The measures for each of a motor carrier's BASICs are calculated and compared to SFD BASIC failure standards. Higher measures indicate a lower level of safety performance; and, therefore, any carrier's measure that equals or is greater than the SFD BASIC failure standard constitutes a failure in that BASIC. These failed BASICs measures are then applied to the SFD calculation described in section 4 of this appendix.

Table 2–1 through Table 2–8 of this appendix show the SFD BASIC failure standards. The failure standards were established at levels equivalent to the measures that would have placed a motor carrier at the 96th percentile for the Unsafe Driving and HOS Compliance BASICs and the 99th percentile for the Driver Fitness, Vehicle Maintenance, and HM Compliance BASICs for each safety-event group as of March 22, 2013.

A carrier's absolute BASIC performance measure, *not the carrier's percentile within a given month,* is used to determine if the carrier failed the BASIC. A carrier with a BASIC measure that equals or is greater than the failure standard for the carrier's safety-event group fails that BASIC.

2.4.1 *Unsafe Driving BASIC:* A motor carrier's measure is calculated through driver inspections as follows:

$$\text{BASIC Measure} = \frac{\text{Sum of time and severity weighted applicable violations}}{\text{Average power units times utilization factor}}$$

The Unsafe Driving BASIC accounts for further carrier differences by dividing the carrier population into two segments based on the current mix of the types of vehicles the carrier operates. This differentiates the levels of exposure associated with carriers that have fundamentally different types of operations.

The two segments are ''combination'' or ''straight truck.'' The combination segment includes those carriers that operate either truck tractors or motor coaches. Carriers are placed in the combination category if 70 percent or more of the carrier's total power units meet that definition. The straight truck segment includes all other carriers, including those that operate straight trucks, HM cargo tank trucks, or school buses/mini-buses/limousines/vans with a capacity of 9 or more passengers. These different types of power units are defined on the Application for USDOT Registration/Operating Authority (Form MCSA–1) instructions.

The BASIC failure standards are shown in Table 2–1 and 2–2 of this appendix. Any carrier with an Unsafe Driving BASIC measure equal to or greater than the safety-event group failure standard fails this BASIC.

TABLE 2–1 TO APPENDIX B TO PART 385—UNSAFE DRIVING FAILURE STANDARDS: STRAIGHT TRUCK SEGMENT

Safety-event group (number of inspections with unsafe driving violations)	BASIC failure standard (equivalent to the 96th percentile)
11–18	9.64
19–49	5.12
50+	1.47

TABLE 2–2 TO APPENDIX B TO PART 385—UNSAFE DRIVING FAILURE STANDARDS: COMBINATION SEGMENT

Safety-event group (number of inspections with unsafe driving violations)	BASIC failure standard (96% threshold)
11–21	14.21
22–57	9.58
58–149	6.26
150+	2.80

2.4.1.1 *Unsafe Driving average power units.* The Unsafe Driving BASIC violations are normalized by the number of owned, term-leased, and trip-leased power units (truck tractors, straight trucks, HM cargo tank trucks, motorcoaches, and school buses/mini-buses/limousines/vans with a capacity of 9 or more passengers) based on FMCSA's census data and are further adjusted for VMT where available, as explained in the ''Utilization Factor'' section of this appendix. The average number of power units for each carrier is calculated using the carrier's current number of power units as recorded in the motor carrier census at 6 months and 18 months prior to the SFD. The average power unit calculation is shown below:

$$\text{Power unit (PU) (average)} = \frac{\text{PU(current)} + \text{PU(6 Months)} + \text{PU(18 Months)}}{3}$$

2.4.1.2 *Unsafe Driving Utilization Factor.* The Unsafe Driving Utilization Factor is a multiplier that adjusts the average power unit values based on utilization in terms of VMT per average power unit where VMT data from the past 24 months are available. In cases where the VMT data has been obtained multiple times over the past 24 months for the same carrier, the most current VMT figure is used. The Utilization Factor is calculated as follows:

(a) Determine carrier segment as ''combination'' or ''straight truck'' based on the types of vehicles the carrier operates, as previously defined in this section.

(b) Calculate the VMT per average power unit by taking the most recent positive VMT data and dividing it by the average power units, as previously defined in this section.

(c) Using the VMT per average power unit, based on paragraphs (a) and (b) of this section, find the Utilization Factor in the following tables:

Table 2–3 to Appendix B to Part 385: Utilization Factors, Based on VMT per Power Unit For Combination Segment

VMT per Average Power Unit	Utilization Factor
Less than 80,000	1
80,000 - 160,000	$1 + \frac{(\text{VMT per Average PU} - 80{,}000)}{133{,}333}$
160,000 - 200,000	1.6
Greater Than 200,000	1
No Recent VMT Information	1

TABLE 2–4 TO APPENDIX B TO PART 385—UTILIZATION FACTORS, BASED ON VMT PER AVERAGE POWER UNIT FOR STRAIGHT TRUCK SEGMENT

VMT per average power unit	Utilization factor
Less Than 20,000	1.
20,000–60,000	VMT per Power Unit/20,000.
60,000–200,000	3.
Greater Than 200,000	1.
No Recent VMT Information	1.

2.4.2 *HOS Compliance BASIC:* A motor carrier's measure is calculated using driver inspections as follows:

$$\text{BASIC Measure} = \frac{\text{Sum of time- and severity-weighted applicable violations}}{\text{Total time weight of driver inspections}}$$

The failure standards are shown in Table 2–5 of this appendix. Any carrier with an HOS Compliance BASIC measure equal to or greater than the failure standard shown for its safety-event group fails this BASIC.

TABLE 2–5 TO APPENDIX B TO PART 385—HOS COMPLIANCE FAILURE STANDARDS

Safety-event group (number of inspections)	BASIC failure standard (96% threshold)
11–20	4.15
21–100	3.13
101–500	2.2
501+	1.54

2.4.3 *Driver Fitness BASIC:* A motor carrier's measure is calculated using driver inspections as follows:

$$\text{BASIC Measure} = \frac{\text{Sum of time- and severity-weighted applicable violations}}{\text{Total time weight of driver inspections}}$$

The failure standards are shown in Table 2–6 of this appendix. Any carrier with a Driver Fitness BASIC measure equal to or greater than the failure standard shown for its safety-event group fails this BASIC.

TABLE 2–6 TO APPENDIX B TO PART 385—DRIVER FITNESS FAILURE STANDARDS

Safety-event group (number of inspections)	BASIC failure standard (99% threshold)
11–20	2.74
21–100	1.39
101–500	0.50
501+	0.24

2.4.4 *Controlled Substances and Alcohol BASIC:* A motor carrier cannot fail this BASIC through inspection data alone because of the limited amount of such data available through inspections. See sections 3.1, Critical Regulations, and 3.2, Acute Regulations, in this appendix for more information on how this BASIC is evaluated through an investigation of the motor carrier's compliance with controlled substances and alcohol regulations.

2.4.5 *Vehicle Maintenance BASIC:* A motor carrier's measure is calculated using vehicle inspections as follows:

$$\text{BASIC Measure} = \frac{\text{Sum of time- and severity-weighted applicable violations}}{\text{Total time weight of vehicle inspections}}$$

The failure standards are shown in Table 2–7 of this appendix. Any carrier with a Vehicle Maintenance BASIC measure equal to or greater than the failure standard shown for its safety-event group fails this BASIC.

TABLE 2–7 TO APPENDIX B TO PART 385—VEHICLE MAINTENANCE FAILURE STANDARD

Safety-event group (number of inspections)	BASIC failure standard (99% threshold)
11–20	18.79
21–100	16.12
101–500	11.82
501+	8.91

2.4.6 *HM Compliance BASIC:* A motor carrier's measure is calculated using vehicle inspections where placardable quantities of HM are being transported as follows.

$$\text{BASIC Measure} = \frac{\text{Sum of time- and severity-weighted applicable violations}}{\text{Total time weight of relevant inspection}}$$

The failure standards are shown in Table 2–8 of this appendix. Any carrier with a HM Compliance BASIC measure equal to or greater than the failure standard shown for its safety-event group fails this BASIC.

TABLE 2–8 TO APPENDIX B TO PART 385—HM COMPLIANCE FAILURE STANDARDS

Safety-event group (number of inspections)	BASIC failure standard (99% threshold)
11–15	6.87
16–40	4.82

TABLE 2–8 TO APPENDIX B TO PART 385—HM COMPLIANCE FAILURE STANDARDS—Continued

Safety-event group (number of inspections)	BASIC failure standard (99% threshold)
41–100	2.56

TABLE 2–8 TO APPENDIX B TO PART 385—HM COMPLIANCE FAILURE STANDARDS—Continued

Safety-event group (number of inspections)	BASIC failure standard (99% threshold)
101+	1.95

2.4.7 *Crash Indicator BASIC:* See section 3.3 in this appendix for more information on how this BASIC is evaluated during an investigation.

3. Investigation Results in the SFD Process

3.1 Critical Regulations

Violations of critical regulations are identified through investigations. A critical regulation means an applicable safety regulation is related to management or operational systems controls. A pattern of noncompliance with a critical regulation must be found to affect a safety fitness determination. A BASIC is failed when these violations are discovered in at least 10 percent of the carrier's records examined, and more than one violation must be found. Table 3–1 of this appendix provides a list of cross-references of the critical regulations to the appropriate BASICs. These are existing regulations with actual legal prohibitions and requirements set forth in and controlled by the language of the substantive violations in each section of title 49 of the CFR cross-referenced.

TABLE 3–1 TO APPENDIX B TO PART 385—CRITICAL REGULATIONS

49 CFR Section	Description of violation	Behavior analysis and safety improvement category (BASIC)
173.24(b)(1)	Accepting for transportation or transporting a package that has an identifiable release of a HM to the environment.	HM Compliance.
173.24b(d)(2)	Loading bulk packaging with an HM which exceeds the maximum weight of lading marked on the specification plate.	HM Compliance.
173.33(a)(1)	Offering or accepting an HM for transportation in an unauthorized cargo tank	HM Compliance.
173.33(a)(2)	Loading or accepting for transportation two or more materials in a cargo tank motor vehicle which if mixed result in an unsafe condition.	HM Compliance.
173.33(b)(1)	Loading HM in a cargo tank if during transportation any part of the tank in contact with the HM would have a dangerous reaction.	HM Compliance.
177.800(c)	Failing to instruct a category of employees in HM regulations	Driver Fitness.
177.817(a)	Transporting a shipment of HM not accompanied by a properly prepared shipping paper.	HM Compliance.
177.834(i)	Loading or unloading a cargo tank without a qualified person in attendance	HM Compliance.
177.848(d)	Failing to store, load, or transport HM in accordance with the segregation table	HM Compliance.
180.407(a)	Transporting a shipment of HM in a cargo tank that has not been inspected or retested in accordance with § 180.407.	HM Compliance.
382.301(a)	Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.	Controlled Substances.
382.303(a)	Failing to conduct post-accident testing on driver for alcohol	Controlled Substances
382.303(b)	Failing to conduct post-accident testing on driver for controlled substances	Controlled Substances.
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.	Controlled Substances.
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.	Controlled Substances.
382.309	Using a driver without a return to duty test	Controlled Substances.
382.503	Allowing a driver to perform a safety sensitive function, after engaging in conduct prohibited by subpart B, without being evaluated by a substance abuse professional, as required by § 382.605.	Controlled Substances.
383.3(a)/383.23(a)	Using a driver who does not possess a valid CDL	Driver Fitness.
391.45(a)	Using a driver not medically examined and certified	Driver Fitness.
391.45(b)(1)	Using a driver not medically examined and certified during the preceding 24 months.	Driver Fitness.
391.51(a)	Failing to maintain a driver qualification file on each driver employed	Driver Fitness.
392.2	Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated.	Unsafe Driving.
392.6	Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed.	Unsafe Driving.
392.9(a)(1)	Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured.	Vehicle Maintenance.
395.1(h)(1)(i)	Requiring or permitting a property-carrying CMV driver to drive more than 15 hours (Driving in Alaska).	HOS Compliance.
395.1(h)(1)(ii)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty 20 hours (Driving in Alaska).	HOS Compliance.
395.1(h)(1)(iii)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).	HOS Compliance.
395.1(h)(1)(iv)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).	HOS Compliance.
395.1(h)(2)(i)	Requiring or permitting a passenger-carrying CMV driver to drive more than 15 hours (Driving in Alaska).	HOS Compliance.
395.1(h)(2)(ii)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty 20 hours (Driving in Alaska).	HOS Compliance.
395.1(h)(2)(iii)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).	HOS Compliance.
395.1(h)(2)(iv)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).	HOS Compliance.

TABLE 3–1 TO APPENDIX B TO PART 385—CRITICAL REGULATIONS—Continued

49 CFR Section	Description of violation	Behavior analysis and safety improvement category (BASIC)
395.1(o)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty 16 consecutive hours.	HOS Compliance.
395.3(a)(1)	Requiring or permitting a property-carrying CMV driver to drive without taking an off-duty period of at least 11 consecutive hours prior to driving.	HOS Compliance.
395.3(a)(2)	Requiring or permitting a property-carrying CMV driver to drive after the end of the 14th hour after coming on duty.	HOS Compliance.
395.3(b)(1)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 60 hours in 7 consecutive days.	HOS Compliance.
395.3(b)(2)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 70 hours in 8 consecutive days.	HOS Compliance.
395.5(a)(1)	Requiring or permitting a passenger-carrying CMV driver to drive more than 10 hours..	HOS Compliance.
395.5(a)(2)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty 15 hours.	HOS Compliance.
395.5(b)(1)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 60 hours in 7 consecutive days.	HOS Compliance.
395.5(b)(2)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 70 hours in 8 consecutive days.	HOS Compliance.
395.8(a)	Failing to require driver to make a record of duty status	HOS Compliance.
395.8(e)	False reports of records of duty status	HOS Compliance
395.8(i)	Failing to require driver to forward within 13 days of completion, the original of the record of duty status.	HOS Compliance.
395.8(k)(1)	Failing to preserve driver's record of duty status for 6 months	HOS Compliance.
395.8(k)(1)	Failing to preserve driver's records of duty status supporting documents for 6 months.	HOS Compliance.
396.3(b)	Failing to keep minimum records of inspection and vehicle maintenance	Vehicle Maintenance.

3.2 Acute Regulations

Another component in the SFD process is the set of 16 Acute regulations. A BASIC can be failed based on documentation of violation of a single instance of one of the acute regulations discovered during any investigation. Table 3–2 of this appendix contains cross references to acute regulations that are existing legal prohibitions and requirements set forth in and controlled by the language of the substantive violations in each section of title 49 of the CFR cross-referenced herein.

TABLE 3–2 TO APPENDIX B TO PART 385—ACUTE REGULATIONS

49 CFR Section	Description of violation	Behavior analysis and safety improvement category (BASIC)
177.801	Accepting for transportation or transporting a forbidden material	HM Compliance.
382.115(a)	Failing to implement an alcohol and/or controlled substances testing program (domestic motor carrier).	Controlled Substances.
382.115(b)	Failing to implement an alcohol and/or controlled substances testing program (foreign motor carrier).	Controlled Substances.
382.201	Using a driver known to have an alcohol concentration of 0.04 or greater.	Controlled Substances.
382.211	Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382.	Controlled Substances.
382.215	Using a driver known to have tested positive for a controlled substance, or to have otherwise violated § 382.215.	Controlled Substances.
382.305	Failing to implement a random controlled substances and/or an alcohol testing program.	Controlled Substances.
383.37(a)	Knowingly allowing, requiring, permitting, or authorizing an employee who does not have a current CLP or CDL, who does not have a CLP or CDL with the proper class or endorsements, or who operates a CMV in violation of any restriction on the CLP or CDL to operate a CMV.	Driver Fitness.
383.51(a)	Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a CMV.	Driver Fitness.
391.11(b)(4)	Using a physically unqualified driver	Driver Fitness.
391.15(a)	Using a disqualified driver	Driver Fitness.
396.9(c)(2)	Requiring or permitting the operation of a motor vehicle declared "out-of-service" before repairs were made.	Vehicle Maintenance.
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.	Vehicle Maintenance.

3.3 Crash Indicator BASIC

A recordable crash, consistent with the definition for ''crash'' in 49 CFR 390.5, means an occurrence involving a CMV on a highway in motor carrier operations in commerce, including within Canada or Mexico, that results in (i) a fatality; (ii) in bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the crash; or (iii) in one or more motor vehicles incurring disabling damage that requires the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

A motor carrier can only fail the Crash Indicator BASIC if the motor carrier incurs two or more recordable crashes within the 12 months before the investigation. FMCSA will then determine if the reportable crashes were preventable.

For motor carriers with two or more recordable crashes within the 12 months before the investigation, the investigator will:

(1) Determine the carrier's recordable crash rate. The recordable crash rate is the number of recordable crashes per million miles traveled by the carriers CMVs over the previous 12 months.

(2) If the recordable crash rate would cause the carrier to fail the Crash Indicator BASIC, calculate the preventable crash rate for the carrier by evaluating the preventability of the recordable crashes that have occurred in the 12 months before the investigation. 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 crash 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 crash was preventable.''

Preventability will be determined according to the standard set forth above. It is important to note that preventability is a different, higher standard than fault. The standard of preventability for a professional driver includes the expectation that he or she anticipated the possibility of the crash and adjusted his or her driving or behavior to avoid the crash.

In determining preventability, FMCSA may also follow the preventability guidance found on FMCSA's Web site at *http://www.fmcsa.dot.gov/safety-security/eta/index.htm*. This guidance was developed to assist in determining the preventability of a crash. This guidance, however, does not supplant the analytical judgment of FMCSA professionals making preventability determinations. Each crash must be judged individually, taking into account available evidence.

If the motor carrier's preventable crash rate exceeds the failure standard for the Crash Indicator BASIC, the motor carrier will fail that BASIC. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a preventable crash rate greater than 1.7 will fail the Crash Indicator BASIC. All other carriers with a preventable crash rate greater than 1.5 will fail the Crash Indicator BASIC.

4. SFD Methodology

As shown in Figure 4–1 of this appendix, under this methodology there are two major sources that could impact a motor carrier's SFD: (1) Driver/vehicle inspections; and (2) violations of the critical and acute regulations or preventable crashes documented during an investigation. As shown in Figure 4–1, data obtained under sources (1) and (2) align with the seven BASICs and are used to determine whether a carrier has failed any of the BASICs.

4.1 SFD Calculation

4.1.1 *Standards for Failed BASICs:* The BASICs were analyzed for their relationship with carrier crash risk. The BASICs with the strongest associations with crash risk have a stricter failure standard (*i.e.,* equivalent percentile) than those with less crash relationship. As a result, the failure standards for these two BASICs related to driver safety, Unsafe Driving and HOS Compliance, are distinguished from the others to place more emphasis on these types of violations consistent with current FMCSA research, which suggests that the majority of CMV crashes in which the motor carrier can be held accountable involve CMV driver error.

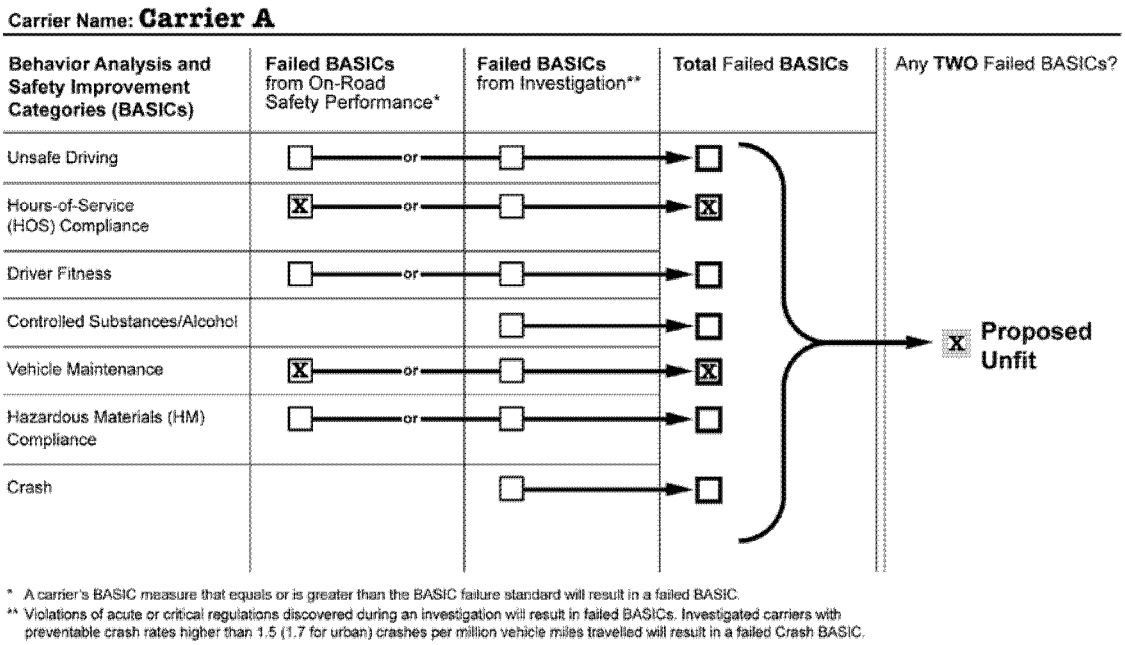
4.1.2 *Unfit.* If the carrier fails two BASICs through (1) inspection data, (2) an investigation, or (3) a combination of inspection and investigation data, then the carrier receives a proposed unfit SFD. For the purposes of the determination, there is no difference between a failed BASIC based on driver/vehicle inspection safety results and a failed BASIC based on violations of the critical and acute regulations found through investigation; either or both circumstances will produce a failed BASIC, and a combination of two or more failed BASICs results in a proposed unfit SFD for the carrier. If the carrier has not failed two BASICs, then the carrier would be permitted to continue operating.

4.2 Calculation Examples

To further demonstrate the methodology, three examples of how a proposed SFD of unfit is calculated are provided below.

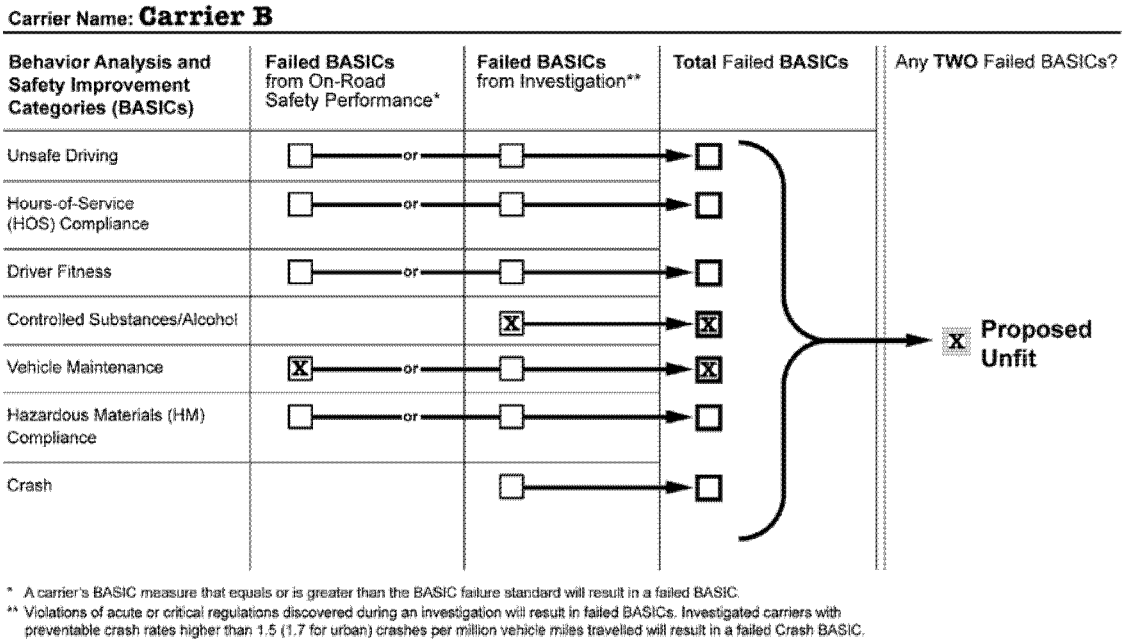
4.2.1 *Example 1—Proposed Unfit SFD Based on Inspection Data:* In the first example (see Figure 4–1 of this appendix), Carrier A had inspections that resulted in the discovery of several HOS Compliance BASIC-related violations. Based on the methodology described in section 2.4.2 of this appendix, the carrier's HOS Compliance BASIC measure exceeded the BASIC failure standard in Table 2–5 of this appendix, which caused the carrier to fail this BASIC. In addition, the motor carrier had violations that caused it to exceed the failure standards in the Vehicle Maintenance BASIC. Because there are two failed BASICs, this carrier would receive a proposed SFD of unfit.

Figure 4-1: Example 1 SFD Worksheet



4.2.2 *Example 2—Proposed Unfit SFD Based on Inspection Data and an Investigation:* In the second example (see Figure 4–2 of this appendix), Carrier B had inspections that resulted in the discovery of several Vehicle Maintenance BASIC-related violations. Based on the methodology described in section 2.4.5 of this appendix, the carrier's Vehicle Maintenance BASIC measure met or exceeded the BASIC failure standard in Table 2–7 of this appendix, which caused the carrier to fail this BASIC. This carrier also received an investigation where at least one critical regulation violation in the Controlled Substances and Alcohol BASIC, listed in section 3.1 of this appendix, was discovered, resulting in a failed Controlled Substances/Alcohol BASIC. Because the motor carrier has two failed BASICs, this carrier would receive an SFD of proposed unfit.

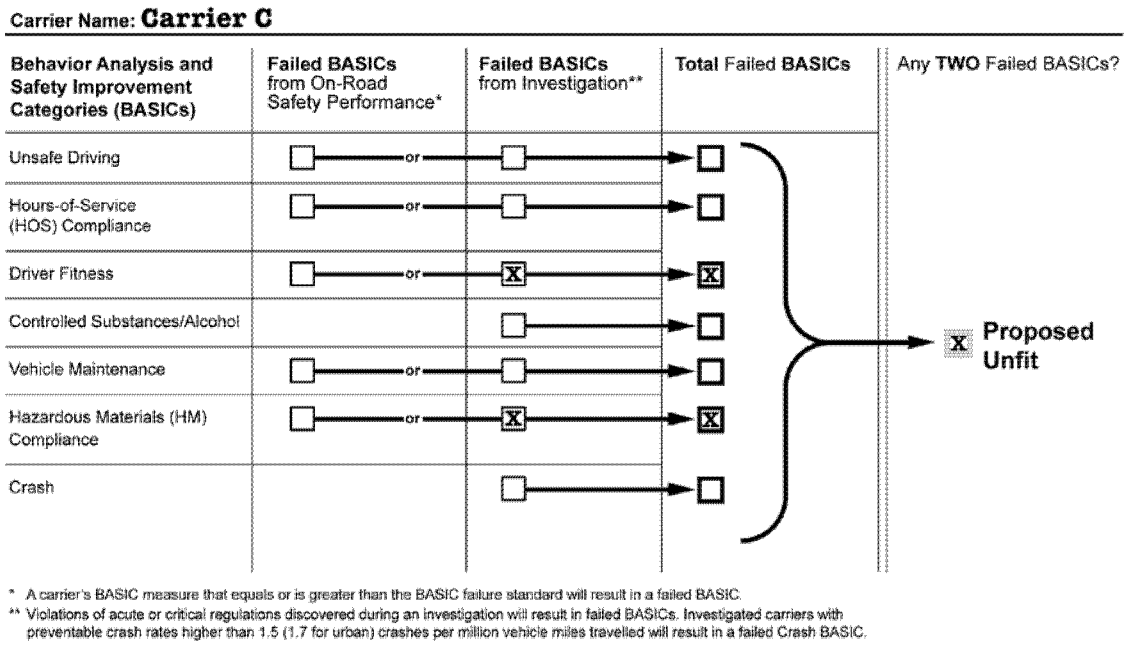
Figure 4-2: Example 2 SFD Worksheet



4.2.3 *Example 3—Proposed Unfit SFD Based on Investigation Findings:* In the third example (see Figure 4–3 of this appendix), Carrier C did not have any BASIC over the unfit threshold based on on-road safety performance, but during an investigation a

sufficient number of violations of either Critical or Acute regulations in two different BASICs were documented. Because two BASICs exceeded the failure standard for this carrier, this carrier would receive an SFD of proposed unfit.

Figure 4-3: Example 3 SFD Worksheet



5. Appendix B Violation Severity Tables

These tables provide cross-references to the violations used in the BASICs. The descriptions of the violations here are for convenience only and have no legal effect. The actual legal prohibitions and requirements are set forth in and controlled by the language of the violations in each section of title 49 of the CFR cross-referenced herein.

The Commercial Vehicle Safety Alliance (CVSA) North American Standard Inspection Levels I, II, IV, V, and VI would be considered compatible with these requirements.

TABLE 1—UNSAFE DRIVING BASIC VIOLATIONS

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
177.800(d)	Unnecessary delay in HM transportation to destination	HM Related	1
177.804(b)	Failure to comply with 49 CFR 392.80—Texting while Operating a CMV—Placardable HM.	Texting	10
177.804(c)	Fail to comply with 392.82—Using Mobile Phone while Operating a CMV—HM.	Phone Call	10
392.2	Failure to obey traffic control device (392.2C)	Dangerous Driving	5
392.2	Headlamps—Failing to dim when required (392.2DH)	Misc Violations	3
392.2	Following too close (392.2FC)	Dangerous Driving	5
392.2	Improper lane change (392.2LC)	Dangerous Driving	5
392.2	Lane Restriction violation (392.2LV)	Misc Violations	3
392.2	Improper passing (392.2P)	Dangerous Driving	5
392.2	Unlawfully parking and/or leaving vehicle in the roadway (392.2PK)	Other Driver Violations	1
392.2	Reckless driving (392.2R)	Reckless Driving	10
392.2	Railroad Grade Crossing violation (392.2RR)	Dangerous Driving	5
392.2	Speeding (392.2S)	Speeding Related	1
392.2	State/Local Laws—Speeding 6–10 miles per hour over the speed limit (392.2–SLLS2).	Speeding 2	4
392.2	State/Local Laws—Speeding 11–14 miles per hour over the speed limit (392.2–SLLS3).	Speeding 3	7
392.2	State/Local Laws—Speeding 15 or more miles per hour over the speed limit (392.2–SLLS4).	Speeding 4	10
392.2	State/Local Laws—Speeding work/construction zone (392.2–SLLSWZ)	Speeding 4	10
392.2	State/Local Laws—Operating a CMV while texting (392.2–SLLT)	Texting	10
392.2	Improper turns (392.2T)	Dangerous Driving	5
392.2	Failure to yield right of way (392.2Y)	Dangerous Driving	5
392.6	Scheduling run to necessitate speeding	Speeding Related	5
392.10(a)(1)	Failing to stop at railroad crossing—bus	Dangerous Driving	5

TABLE 1—UNSAFE DRIVING BASIC VIOLATIONS—Continued

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
392.10(a)(2)	Failing to stop at railroad crossing—chlorine	Dangerous Driving	5
392.10(a)(3)	Failing to stop at railroad crossing—placard	Dangerous Driving	5
392.10(a)(4)	Failing to stop at railroad crossing—Cargo Tank	Dangerous Driving	5
392.14	Failed to use caution for hazardous condition	Dangerous Driving	5
392.16	Failing to use seat belt while operating CMV	Seat Belt	7
392.22(a)	Failing to use hazard warning flashers	Other Driver Violations	1
392.60(a)	Unauthorized passenger on board CMV	Other Driver Violations	1
392.62	Unsafe bus operations	Other Driver Violations	1
392.62(a)	Bus—Standees forward of the standee line	Other Driver Violations	1
392.71(a)	Using or equipping a CMV with radar detector	Speeding Related	5
392.80(a)	Driving a CMV while Texting	Texting	10
392.80(a)	Driving a CMV while Texting (390.17DT)	Texting	10
392.82(a)(1)	Using a hand-held mobile telephone while operating a CMV	Phone Call	10
392.82(a)(2)	Allowing or requiring driver to use a hand-held mobile telephone while operating a CMV.	Phone Call	10
397.3	State/local laws ordinances regulations	HM Related	1
397.13	Smoking within 25 feet of HM vehicle	HM Related	1
398.4	Driving a vehicle to transport migrant workers in noncompliance with part 398.	Other Driver Violations	1

TABLE 2—HOS COMPLIANCE BASIC VIOLATIONS

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
392.2	State/Local Hours-of-Service (392.2H)	Hours	7
392.3	Operating a CMV while ill/fatigued	Jumping OOS/Driving Fatigued	10
392.3	Fatigue—Operate a passenger-carrying CMV while impaired by fatigue. (392.3–FPASS).	Jumping OOS/Driving Fatigued	10
392.3	Fatigue—Operate a property-carrying CMV while impaired by fatigue. (392.3–FPROP).	Jumping OOS/Driving Fatigued	10
392.3	Illness—Operate a CMV while impaired by illness or other cause. (392.3–I).	Jumping OOS/Driving Fatigued	10
395.1(h)(1)	15, 20, 70/80 HOS violations (Alaska-Property)	Hours	7
395.1(h)(2)	15, 20, 70/80 HOS violations (Alaska-Passenger)	Hours	7
395.1(h)(3)	Adverse driving conditions violations (Alaska)	Hours	7
395.1(o)	16 hour rule violation (Property)	Hours	7
395.3(a)(1)	Requiring or permitting driver to drive more than 11 hours	Hours	7
395.3	11 hour rule violation (Property) (395.3A1R)	Hours	7
395.3(a)(2)	Requiring or permitting driver to drive after 14 hours on duty	Hours	7
395.3	14 hour rule violation (Property) (395.3A2R)	Hours	7
395.3	Driving beyond 14 hour duty period (Property carrying vehicle) (395.3A2–PROP).	Hours	7
395.3	Driving beyond 11 hour driving limit in a 14 hour period. (Property Carrying Vehicle) (395.3A3–PROP).	Hours	7
395.3(a)(3)(ii)	Driving beyond 8 hour limit since the end of the last off duty or sleeper period of at least 30 minutes.	Hours	7
395.3(b)	60/70—hour rule violation	Hours	7
395.3(b)(1)	Driving after 60 hours on duty in a 7 day period. (Property carrying vehicle) (395.3B1–PROP).	Hours	7
395.3(b)(2)	Driving after 70 hours on duty in a 8 day period. (Property carrying vehicle)(395.3B2).	Hours	7
395.3(b)	60/70—hour rule violation (Property) (395.3BR)	Hours	7
395.3(c)	34-hour restart violation (Property)	Hours	7
395.5(a)(1)	10-hour rule violation (Passenger)	Hours	7
395.5(a)(1)	Driving after 10 hour driving limit (Passenger carrying vehicle) (395.5A1–PASS).	Hours	7
395.5(a)(2)	15—hour rule violation (Passenger)	Hours	7
395.5(a)(2)	Driving after 15 hours on duty (Passenger carrying vehicle) (395.5A2–PASS).	Hours	7
395.5(b)	60/70—hour rule violation (Passenger)	Hours	7
395.5(b)(1)	Driving after 60 hours on duty in a 7 day period. (Passenger carrying vehicle) (395.5B1–PASS).	Hours	7
395.5(b)(2)	Driving after 70 hours on duty in a 8 day period. (Passenger carrying vehicle) (395.5B2–PASS).	Hours	7
395.8	Driver's record of Duty Status (general/form and manner)	Other Log/Form & Manner	1
395.8(a)	No driver's record of duty status	Incomplete/Wrong Log	5
395.8(e)	False report of driver's record of duty status	False Log	7
395.8(f)(1)	Driver's record of duty status not current	Incomplete/Wrong Log	5

TABLE 2—HOS COMPLIANCE BASIC VIOLATIONS—Continued

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
395.8(k)(2)	Driver failing to retain previous 7 days' logs	Incomplete/Wrong Log	5
395.13(d)	Driving after being declared out-of-service	Jumping OOS/Driving Fatigued	10
395.15(b)	Onboard recording device information requirements not met	Incomplete/Wrong Log	5
395.15(c)	Onboard recording device improper form and manner	Other Log/Form & Manner	1
395.15(f)	Onboard recording device failure and driver failure to reconstruct duty status.	Incomplete/Wrong Log	5
395.15(g)	On-board recording device information not available	EOBR Related	1
395.15(i)(5)	Onboard recording device does not display required information	Other Log/Form & Manner	1
398.6	Violation of HOS regulations—migrant workers	Hours	7

TABLE 3—DRIVER FITNESS BASIC VIOLATIONS

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
177.816	Driver training requirements	General Driver Qualification	4
383.21	Operating a CMV with more than one driver's license	License-related: High	8
383.21(a)	Operating a CMV with more than one driver's license	License-related: High	8
383.23(a)(2)	Operating a CMV without a CDL	License-related: High	8
383.25(a)	Operating on learner's permit without CDL holder (383.23(c))	License-related: High	8
383.25(a)(1)	Operating on learner's permit without CDL holder (383.23(c)(1))	License-related: High	8
383.25(a)(2)	Operating on learner's permit without valid driver's license (383.23(c)(2)).	License-related: High	8
383.51(a)	Driving a CMV (CDL) while disqualified	License-related: High	8
383.51(a)	Driving a CMV while CDL is suspended for a non-safety-related reason and in the state of driver's license issuance. (383.51A–NSIN).	License-related: Medium	5
383.51(a)	Driving a CMV while CDL is suspended for a non-safety-related reason and outside the state of driver's license issuance (383.51A–NSOUT).	License-related: Low	1
383.51(a)A	Driving a CMV while CDL is suspended for a safety-related or unknown reason and in the state of driver's license issuance. (383.51A–SIN).	License-related: High	8
383.51(a)	Driving a CMV while CDL is suspended for safety-related or unknown reason and outside the driver's license state of issuance. (383.51A–SOUT).	License-related: Medium	5
383.91(a)	Operating a CMV with improper CDL group	License-related: High	8
383.93(b)(1)	No double/triple trailer endorsement on CDL	License-related: High	8
383.93(b)(2)	No passenger vehicle endorsement on CDL	License-related: High	8
383.93(b)(3)	No tank vehicle endorsement on CDL	License-related: High	8
383.93(b)(4)	No HM endorsement on CDL	License-related: High	8
383.93(b)(5)	No school bus endorsement on CDL	License-related: High	8
383.93(b)(5)	License (CDL)—Operating a school bus without a school bus endorsement as described in 383.93(b)(5) (383.93B5LCDL).	License-related: High	8
383.95(a)	Violating airbrake restriction	License-related: High	8
386.72(b)	Failing to comply with Imminent Hazard OOS Order	Fitness/Jumping OOS	10
391.11	Unqualified driver	License-related: High	8
391.11(b)(1)	Interstate driver under 21 years of age	General Driver Qualification	4
391.11(b)(4)	Driver lacking physical qualification(s)	Physical	2
391.11(b)(5)	Driver lacking valid license for type vehicle being operated	License-related: High	8
391.11(b)(5)	Driver operating a CMV without proper endorsements or in violation of restrictions. (391.11B5–DEN).	License-related: High	8
391.11(b)(5)	Driver does not have a valid operator's license for the CMV being operated. (391.11B5–DNL).	License-related: High	8
391.11(b)(7)	Driver disqualified from operating CMV	License-related: High	8
391.15(a)	Driving a CMV while disqualified	License-related: High	8
391.15(a)	Driving a CMV while disqualified. Suspended for non-safety-related reason and in the state of driver's license issuance. (391.15A–NSIN).	License-related: Medium	5
391.15(a)	Driving a CMV while disqualified. Suspended for a non-safety-related reason and outside the state of driver's license issuance (391.15A–NSOUT)..	License-related: Low	1
391.15(a)	Driving a CMV while disqualified. Suspended for safety-related or unknown reason and in the state of driver's license issuance. (391.15A–SIN).	License-related: High	8
391.15(a)	Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance. (391.15A–SOUT).	License-related: Medium	5
391.41(a)	Driver not in possession of medical certificate	Medical Certificate	1
391.41(a)	Operating a property-carrying vehicle without possessing a valid medical certificate (391.41A–F)..	Medical Certificate	1

TABLE 3—DRIVER FITNESS BASIC VIOLATIONS—Continued

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
391.41(a)	Operating a property-carrying vehicle without possessing a valid medical certificate. Previously Cited (391.41A–FPC).	Medical Certificate	1
391.41(a)	Operating a passenger-carrying vehicle without possessing a valid medical certificate. (391.41A–P).	Medical Certificate	1
391.43(h)	Improper medical examiner's certificate form	Medical Certificate	1
391.45(b)	Expired medical examiner's certificate	Medical Certificate	1
391.49(j)	No valid medical waiver in driver's possession	Medical Certificate	1
398.3(b)	Driver not physically qualified	Physical	2
398.3(b)(8)	No doctor's certificate in possession	Medical Certificate	1

TABLE 4—VEHICLE MAINTENANCE BASIC VIOLATIONS

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
385.103(c)	Fail to display current CVSA decal—Provisional Authority	Inspection Reports	4
392.2	Wheel (Mud) Flaps missing or defective (392.2WC)	Windshield/Glass/Markings	1
392.7	No pre-trip inspection	Inspection Reports	4
392.7(a)	Driver failing to conduct pre-trip inspection	Inspection Reports	4
392.7(b)	Driver failing to conduct a pre-trip inspection of intermodal equipment	Inspection Reports	4
392.8	Failing to inspect/use emergency equipment	Emergency Equipment	2
392.9	Failing to secure load	General Securement	1
392.9(a)	Failing to secure load	General Securement	1
392.9(a)(1)	Failing to secure cargo	General Securement	1
392.9(a)(2)	Failing to secure vehicle equipment	General Securement	1
392.9(a)(3)	Driver's view/movement is obstructed	General Securement	1
392.22(b)	Failing/improper placement of warning devices	Cab, Body, Frame	2
392.33	Operating CMV with lamps/reflectors obscured	Lighting	6
392.62(c)(1)	Bus—baggage/freight restricts driver operation	General Securement	1
392.62(c)(2)	Bus—Exit(s) obstructed by baggage/freight	General Securement	1
392.62(c)(3)	Passengers not protected from falling baggage	General Securement	1
392.63	Pushing/towing a loaded bus	Towing Loaded Bus	10
393.9	Inoperative required lamps	Clearance Identification Lamps/ Other.	2
393.9	Inoperative head lamps (393.9H)	Lighting	6
393.9	Inoperative tail lamp (393.9T)	Lighting	6
393.9	Inoperative turn signal (393.9TS)	Lighting	6
393.9(a)	Inoperative required lamps	Clearance Identification Lamps/ Other.	2
393.11	No/defective lighting devices/reflective devices/projected	Reflective Sheeting	3
393.11	Lower retroreflective sheeting/reflex reflectors—Trailer manufactured on or after 12/1/1993 (393.11LR).	Reflective Sheeting	3
393.11	No retroreflective sheeting/reflex reflectors—Trailer manufactured on or after 12/1/1993 (393.11N).	Reflective Sheeting	3
393.11	Retroreflective sheeting not affixed as required—Trailer manufactured on or after 12/1/1993 (393.11RT).	Reflective Sheeting	3
393.11	No side retroreflective sheeting/reflex reflectors—Trailer manufactured on or after 12/1/1993 (393.11S).	Reflective Sheeting	3
393.11	No retro reflective sheeting or reflex reflectors on mud flaps—Truck Tractor manufactured on or after 7/1/1997 (393.11TL).	Reflective Sheeting	3
393.11	No retroreflective sheeting/reflex reflectors—Truck Tractor manufactured on or after 7/1/1997 (393.11TT).	Reflective Sheeting	3
393.11	No upper body corners retroreflective sheeting/reflex reflectors—Truck Tractor manufactured on or after 7/1/1997 (393.11TU).	Reflective Sheeting	3
393.11	No upper reflex reflectors retroreflective sheeting/reflex reflectors—Trailer manufactured on or after 12/1/1993 (393.11UR).	Reflective Sheeting	3
393.13(a)	Retroreflective tape not affixed as required for Trailers manufactured after 12/1/1993.	Reflective Sheeting	3
393.13(b)	No retroreflective sheeting or reflex reflective material as required for vehicles manufactured on or after 12/1/1993.	Reflective Sheeting	3
393.13(c)(1)	No side retroreflective sheeting or reflex reflective material as required for vehicles manufactured before 12/1/1993.	Reflective Sheeting	3
393.13(c)(2)	No lower rear retroreflective sheeting or reflex reflective material as required for vehicles manufactured before 12/1/1993.	Reflective Sheeting	3
393.13(c)(3)	No upper rear retroreflective sheeting or reflex reflective material as required for vehicles manufactured before 12/1/1993.	Reflective Sheeting	3
393.13(d)(1)	Improper side placement of retroreflective sheeting or reflex reflective material as required for vehicles manufactured on or after 12/1/1993.	Reflective Sheeting	3

TABLE 4—VEHICLE MAINTENANCE BASIC VIOLATIONS—Continued

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
393.13(d)(2)	Improper lower rear placement of retroreflective sheeting or reflex reflective material requirements for vehicles manufactured before 12/1/1993.	Reflective Sheeting	3
393.13(d)(3)	Upper rear retroreflective sheeting or reflex reflective material as required for vehicles manufactured on or after 12/1/1993.	Reflective Sheeting	3
393.17	No/defective lamp/reflector-tow-away operation	Lighting	6
393.17(a)	No/defective lamps-towing unit-tow-away operation	Lighting	6
393.17(b)	No/defective tow-away lamps on rear unit	Lighting	6
393.19	Inoperative/defective hazard warning lamp	Lighting	6
393.23	Required lamp not powered by vehicle electricity	Clearance Identification Lamps/Other.	2
393.24(a)	Noncompliance with headlamp requirements	Lighting	6
393.24(b)	Noncompliant fog/driving lamps	Lighting	6
393.24(b)	Noncompliant fog or driving lamps (393.24BR)	Lighting	6
393.24(c)	Improper headlamp mounting	Lighting	6
393.24(d)	Improper head/auxiliary/fog lamp aiming	Lighting	6
393.25(a)	Improper lamp mounting	Lighting	6
393.25(b)	Lamps are not visible as required	Lighting	6
393.25(e)	Lamp not steady burning	Lighting	6
393.25(f)	Stop lamp violations	Lighting	6
393.26	Requirements for reflectors	Reflective Sheeting	3
393.28	Improper or no wiring protection as required	Other Vehicle Defect	3
393.30	Improper battery installation	Other Vehicle Defect	3
393.40	Inadequate brake system on a CMV	Brakes, All Others	4
393.41	No or defective parking brake system on CMV	Brakes, All Others	4
393.42	No brakes as required	Brakes, All Others	4
393.42(a)	Brake—Missing required brake. (393.42A–BM)	Brakes, All Others	4
393.42(a)	Brake—All wheels not equipped with brakes as required. (393.42A–BMAW).	Brakes, All Others	4
393.42(a)	Brake—Missing on a trailer steering axle. (393.42A–BM–TSA)	Brakes, All Others	4
393.43	No/improper breakaway or emergency braking	Brakes, All Others	4
393.43(a)	No/improper tractor protection valve	Brakes, All Others	4
393.43(d)	No or defective automatic trailer brake	Brakes, All Others	4
393.44	No/defective bus front brake line protection	Brakes, All Others	4
393.45	Brake tubing and hose adequacy	Brakes, All Others	4
393.45	Brake Tubing and Hose Adequacy—Connections to Power Unit (393.45PC).	Brakes, All Others	4
393.45	Brake Tubing and Hose Adequacy Under Vehicle (393.45UV)	Brakes, All Others	4
393.45(b)(2)	Failing to secure brake hose/tubing against mechanical damage (393.45(a)(4)).	Brakes, All Others	4
393.45(b)(2)	Failing to secure brake hose/tubing against mechanical damage	Brakes, All Others	4
393.45(b)(2)	Brake Hose or Tubing Chafing and/or Kinking—Connection to Power Unit (393.45B2PC).	Brakes, All Others	4
393.45(b)(2)	Brake Hose or Tubing Chafing and/or Kinking Under Vehicle (393.45B2UV).	Brakes, All Others	4
393.45(b)(3)	Failing to secure brake hose/tubing against high temperatures	Brakes, All Others	4
393.45(d)	Brake connections with leaks/constrictions	Brakes, All Others	4
393.45(d)	Brake Connections with Constrictions—Connection to Power Unit (393.45DCPC).	Brakes, All Others	4
393.45(d)	Brake Connections with Constrictions Under Vehicle (393.45DCUV)	Brakes, All Others	4
393.45(d)	Brake Connections with Leaks—Connection to Power Unit (393.45DLPC).	Brakes, All Others	4
393.45(d)	Brake Connections with Leaks Under Vehicle (393.45DLUV)	Brakes, All Others	4
393.47	Inadequate/contaminated brake linings	Brakes, All Others	4
393.47(a)	Inadequate brakes for safe stopping	Brakes, All Others	4
393.47(b)	Mismatched brake chambers on same axle	Brakes, All Others	4
393.47(c)	Mismatched slack adjuster effective length	Brakes, All Others	4
393.47(d)	Insufficient brake linings	Brakes, All Others	4
393.47(e)	Clamp/Roto-Chamber type brake(s) out of adjustment	Brakes Out of Adjustment	4
393.47(f)	Wedge type brake(s) out of adjustment	Brakes Out of Adjustment	4
393.47(g)	Insufficient drum/rotor thickness	Brakes, All Others	4
393.48(a)	Inoperative/defective brakes	Brakes, All Others	4
393.48(a)	Brakes—Hydraulic Brake Caliper movement exceeds 1/8″ (0.125″) (3.175 mm) (393.48A–BCM).	Brakes, All Others	4
393.48(a)	Brakes—Missing or Broken Components (393.48A–BMBC)	Brakes, All Others	4
393.48(a)	Brakes—Rotor (disc) metal-to-metal contact (393.48A–BRMMC)	Brakes, All Others	4
393.48(a)	Brakes—Severe rusting of brake rotor (disc) (393.48A–BSRFS)	Brakes, All Others	4
393.48(b)(1)	Defective brake limiting device	Brakes, All Others	4
393.50	Inadequate reservoir for air/vacuum brakes	Brakes, All Others	4
393.50(a)	Failing to have sufficient air/vacuum reserve	Brakes, All Others	4

TABLE 4—VEHICLE MAINTENANCE BASIC VIOLATIONS—Continued

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
393.50(b)	Failing to equip vehicle—prevent reservoir air/vacuum leak	Brakes, All Others	4
393.50(c)	No means to ensure operable check valve	Brakes, All Others	4
393.50(d)	No or defective air reservoir drain valve	Brakes, All Others	4
393.51	No or defective brake warning device	Brakes, All Others	4
393.52(a)(1)	Insufficient braking force as percent of GVW or GCW	Brakes, All Others	4
393.53(a)	Automatic brake adjuster CMV manufactured on or after 10/20/1993—hydraulic brake.	Brakes, All Others	4
393.53(b)	Automatic brake adjuster CMV manufactured on or after 10/20/1994—air brake.	Brakes, All Others	4
393.53(c)	Brake adjustment indicator CMV manufactured on or after 10/20/1994—external automatic adjustment.	Brakes, All Others	4
393.55(a)	ABS—all CMVs manufactured on or after 3/1/1999 with hydraulic brakes.	Brakes, All Others	4
393.55(b)	ABS—malfunction indicators for hydraulic brake system	Brakes, All Others	4
393.55(c)(1)	ABS—all tractors manufactured on or after 3/1/1997 air brake system	Brakes, All Others	4
393.55(c)(2)	ABS—all other CMVs manufactured on or after 3/1/1998 air brake system.	Brakes, All Others	4
393.55(d)(1)	ABS—malfunctioning circuit/signal—truck tractor manufactured on or after 3/1/1997, single-unit CMV manufactured on or after 3/1/1998.	Brakes, All Others	4
393.55(d)(2)	ABS—malfunctioning indicator to cab of towing CMV manufactured on or after 3/1/2001.	Brakes, All Others	4
393.55(d)(3)	No or Defective ABS Malfunction Indicator for towed vehicles on vehicles manufactured after February 2001.	Brakes, All Others	4
393.55(e)	ABS—malfunctioning lamps towed CMV manufactured on or after 3/1/1998.	Brakes, All Others	4
393.60	Windshield—Obstructed (393.60EWS)	Windshield/Glass/Markings	1
393.60(b)	Windshields required	Windshield/Glass/Markings	1
393.60(c)	Damaged or discolored windshield	Windshield/Glass/Markings	1
393.60(d)	Glazing permits less than 70 percent of light	Windshield/Glass/Markings	1
393.61	Inadequate or missing truck side windows	Windshield/Glass/Markings	1
393.61	Inadequate or missing truck side windows (393.61(a))	Windshield/Glass/Markings	1
393.62(a)	No or defective bus emergency exits—Bus manufactured on or after 9/1/1994.	Windshield/Glass/Markings	1
393.62(b)	No or defective bus emergency exits—Bus manufactured on or after 9/1/1973 but before 9/1/1994.	Windshield/Glass/Markings	1
393.62(c)	No or defective bus emergency exit windows—Bus manufactured before 9/1/1973.	Windshield/Glass/Markings	1
393.62(d)	No/defective Safety glass/push-out window—Bus manufactured before 9/1/1973.	Windshield/Glass/Markings	1
393.62(e)	No or inadequate bus emergency exit marking—Bus manufactured on or after 9/1/1973.	Windshield/Glass/Markings	1
393.65	Fuel system requirements	Fuel Systems	1
393.65(b)	Improper location of fuel system	Fuel Systems	1
393.65(c)	Improper securement of fuel tank	Fuel Systems	1
393.65(f)	Improper fuel line protection	Fuel Systems	1
393.67	Fuel tank requirement violations	Fuel Systems	1
393.67(c)(7)	Fuel tank fill pipe cap missing	Fuel Systems	1
393.67(c)(8)	Improper fuel tank safety vent	Fuel Systems	1
393.68	Compressed natural gas (CNG) fuel container does not conform to regulations.	Other Vehicle Defect	3
393.70	Fifth wheel	Coupling Devices	3
393.70(a)	Defective coupling device—improper tracking	Coupling Devices	3
393.70(b)	Defective/improper fifth wheel assemblies	Coupling Devices	3
393.70(b)	Defective/improper fifth wheel assembly upper half (393.70B1II)	Coupling Devices	3
393.70(b)(2)	Defective fifth wheel locking mechanism	Coupling Devices	3
393.70(c)	Defective coupling devices for full trailer	Coupling Devices	3
393.70(d)	No/improper safety chains/cables for full trailer	Coupling Devices	3
393.70(d)(8)	Improper safety chain attachment	Coupling Devices	3
393.71	Improper coupling driveaway/tow-away operation	Coupling Devices	3
393.71(g)	Prohibited towing connection/device	Coupling Devices	3
393.71(h)	Towbar requirement violations	Coupling Devices	3
393.71(h)(10)	No/improper safety chains/cables for towbar	Coupling Devices	3
393.75	Tires/tubes (general)	Tires	8
393.75(a)	Flat tire or fabric exposed	Tires	8
393.75(a)(1)	Tire—ply or belt material exposed	Tires	8
393.75(a)(2)	Tire—tread and/or sidewall separation	Tires	8
393.75(a)(3)	Tire—flat and/or audible air leak	Tires	8
393.75(a)(4)	Tire—cut exposing ply and/or belt material	Tires	8
393.75(b)	Tire—front tread depth less than 4/32 of inch	Tires	8
393.75(c)	Tire—other tread depth less than 2/32 of inch	Tires	8

TABLE 4—VEHICLE MAINTENANCE BASIC VIOLATIONS—Continued

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
393.75(d)	Tire—bus regrooved/recap on front wheel	Tires	8
393.75(e)	Tire—regrooved on front wheel of truck/truck-tractor	Tire vs. Load	3
393.75(f)	Tire—exceeding weight rating of tire	Tire vs. Load	3
393.75(f)	Weight carried exceeds tire load limit (393.75(f)(1))	Tire vs. Load	3
393.75(h)(1)	Tire underinflated (393.75(f)(2))	Tire vs. Load	3
393.75(h)	Tire underinflated	Tire vs. Load	3
393.76	Sleeper berth requirement violations	Other Vehicle Defect	3
393.77	Defective and/or prohibited heaters	Other Vehicle Defect	3
393.77(b)(11)	Bus heater fuel tank location	Other Vehicle Defect	3
393.77(b)(5)	Protection of operating controls from tampering	Other Vehicle Defect	3
393.78	Windshield wipers inoperative/defective	Windshield/Glass/Markings	1
393.79	Defroster/Defogger inoperative	Windshield/Glass/Markings	1
393.80	Failing to equip vehicle with two rear vision mirrors	Other Vehicle Defect	3
393.81	Horn inoperative	Other Vehicle Defect	3
393.82	Speedometer inoperative/inadequate	Other Vehicle Defect	3
393.83(a)	Exhaust system location	Exhaust Discharge	1
393.83(b)	Exhaust discharge fuel tank/filler tube	Exhaust Discharge	1
393.83(c)	Improper exhaust—bus (gasoline)	Exhaust Discharge	1
393.83(d)	Improper exhaust—bus (diesel)	Exhaust Discharge	1
393.83(e)	Improper exhaust discharge (not rear of cab)	Exhaust Discharge	1
393.83(f)	Improper exhaust system repair (patch/wrap)	Exhaust Discharge	1
393.83(g)	Exhaust leak under truck cab and/or sleeper	Exhaust Discharge	1
393.83(h)	Exhaust system not securely fastened	Exhaust Discharge	1
393.84	Inadequate floor condition	Cab, Body, Frame	2
393.86	No or improper rearend protection	Cab, Body, Frame	2
393.86(a)(1)	Rear impact guards—all trailers/semitrailers manufactured on or after 1/26/98.	Cab, Body, Frame	2
393.86(a)(2)	Impact guard width—all trailers/semitrailers manufactured on or after 1/26/98.	Cab, Body, Frame	2
393.86(a)(3)	Impact guard height—all trailers/semitrailers manufactured on or after 1/26/98.	Cab, Body, Frame	2
393.86(a)(4)	Impact guard rear—all trailers/semitrailers manufactured on or after 1/26/98.	Cab, Body, Frame	2
393.86(a)(5)	Cross-sectional vertical height—all trailers/semitrailers manufactured on or after 1/26/98.	Cab, Body, Frame	2
393.86(b)(1)	Rear Impact Guards—motor vehicles manufactured after 12/31/52, see exceptions.	Cab, Body, Frame	2
393.87	Warning flag required on projecting load	Warning Flags	1
393.87(a)	Warning flag required on projecting load	Warning Flags	1
393.87(b)	Improper warning flag placement	Warning Flags	1
393.88	Improperly located television receiver	Cab, Body, Frame	2
393.89	Bus driveshaft not properly protected	Cab, Body, Frame	2
393.90	Bus—no or obscure standee line	Cab, Body, Frame	2
393.91	Bus—improper aisle seats	Cab, Body, Frame	2
393.93(a)	Bus—not equipped with seatbelt	Cab, Body, Frame	2
393.93(a)(3)	Seats not secured in conformance with FMVSS	Cab, Body, Frame	2
393.93(b)	Truck not equipped with seatbelt	Cab, Body, Frame	2
393.95(a)	No/discharged/unsecured fire extinguisher	Emergency Equipment	2
393.95(a)(1)(i)	No/discharged/unsecured fire extinguisher	Emergency Equipment	2
393.95(b)	No spare fuses as required	Emergency Equipment	2
393.95(b)	No spare fuses as required (393.95(c))	Emergency Equipment	2
393.95(f)	No/insufficient warning devices	Emergency Equipment	2
393.95(g)	HM—restricted emergency warning device	Emergency Equipment	2
393.100	Failure to prevent cargo shifting	General Securement	1
393.100(a)	Failure to prevent cargo shifting	General Securement	1
393.100(b)	Leaking/spilling/blowing/falling cargo	Improper Load Securement	7
393.100(c)	Failure to prevent cargo shifting	General Securement	1
393.102(a)	Improper securement system (tiedown assemblies)	Tiedown	3
393.102(a)(1)	Insufficient means to prevent movement	Failure to Prevent Movement	3
393.102(a)(1)(i)	Insufficient means to prevent forward movement	Failure to Prevent Movement	3
393.102(a)(1)(ii)	Insufficient means to prevent rearward movement	Failure to Prevent Movement	3
393.102(a)(1)(iii)	Insufficient means to prevent lateral movement	Failure to Prevent Movement	3
393.102(a)(2)	Tiedown assembly with inadequate working load limit	Tiedown	3
393.102(b)	Insufficient means to prevent vertical movement	Failure to Prevent Movement	3
393.102(c)	No equivalent means of securement	Improper Load Securement	7
393.104(a)	Inadequate/damaged securement device/system	Securement Device	1
393.104(b)	Damaged securement system/tiedowns	Securement Device	1
393.104(c)	Damaged vehicle structures/anchor points	Securement Device	1
393.104(d)	Damaged dunnage/bars/blocking-bracing	Securement Device	1
393.104(f)(1)	Knotted tiedown	Tiedown	3

TABLE 4—VEHICLE MAINTENANCE BASIC VIOLATIONS—Continued

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
393.104(f)(2)	Use of tiedown with improper repair.	Tiedown	3
393.104(f)(3)	Loose/unfastened tiedown.	Tiedown	3
393.104(f)(4)	No edge protection for tiedowns (393.104F4R)	Tiedown	3
393.106(a)	No/improper front end structure/headerboard	Securement Device	1
393.106(b)	Cargo not immobilized or secured	Failure to Prevent Movement	3
393.106(c)(1)	No means to prevent cargo from rolling	Failure to Prevent Movement	3
393.106(c)(2)	Cargo without direct contact/prevention from shifting	Failure to Prevent Movement	3
393.106(d)	Insufficient aggregate working load limit	Tiedown	3
393.110	Failing to meet minimum tiedown requirements	General Securement	1
393.110(b)	Insufficient tiedowns; without headerboard/blocking	Tiedown	3
393.110(c)	Insufficient tiedowns; with headerboard/blocking	Tiedown	3
393.110(d)	Large/odd-shaped cargo not adequately secured	Failure to Prevent Movement	3
393.112	Tiedown not adjustable by driver	Securement Device	1
393.114	No/improper front end structure	General Securement	1
393.114(b)(1)	Insufficient height for front-end structure	Securement Device	1
393.114(b)(2)	Insufficient width for front-end structure	Securement Device	1
393.114(d)	Front-end structure with large opening(s)	Securement Device	1
393.116	No/improper securement of logs	General Securement	1
393.116(d)(1)	Short, over ⅓ length past structure	Improper Load Securement	7
393.116(d)(2)	Short, insufficient/no tiedowns	Improper Load Securement	7
393.116(d)(3)	Short, tiedowns improperly positioned	Improper Load Securement	7
393.116(d)(4)	Short, no center stakes/high log not secured	Improper Load Securement	7
393.116(e)	Short, length; improper securement	Improper Load Securement	7
393.118	No/improper lumber/building materials. securement	General Securement	1
393.118(b)	Improper placement of bundles	Improper Load Securement	7
393.118(d)	Insufficient protection against lateral movement	Failure to Prevent Movement	3
393.118(d)(3)	Insufficient/improper arrangement of tiedowns	Tiedown	3
393.120	No/improper securement of metal coils	General Securement	1
393.120(b)(1)	Coil/vertical improper securement	Improper Load Securement	7
393.120(b)(2)	Coils, rows, eyes vertical—improper securement	Improper Load Securement	7
393.120(c)(1)	Coil/eye crosswise improper securement	Improper Load Securement	7
393.120(c)(2)	X-pattern on coil(s) with eyes crosswise	Improper Load Securement	7
393.120(d)(1)	Coil with eye lengthwise-improper securement	Improper Load Securement	7
393.120(d)(4)	Coils, rows, eyes length—improper securement.	Improper Load Securement	7
393.120(e)	No protection against shifting/tipping	Failure to Prevent Movement	3
393.122	No/improper securement of paper rolls	General Securement	1
393.122(b)	Rolls vertical—improper securement	Improper Load Securement	7
393.122(c)	Rolls vertical/split—improper securement	Improper Load Securement	7
393.122(d)	Rolls vertical/stacked—improper securement	Improper Load Securement	7
393.122(e)	Rolls crosswise—improper securement	Improper Load Securement	7
393.122(f)	Rolls crosswise/stacked load—improperly secured	Improper Load Securement	7
393.122(g)	Rolls length—improper securement	Improper Load Securement	7
393.122(h)	Rolls lengthwise/stacked—improper securement	Improper Load Securement	7
393.122(i)	Improper securement—rolls on flatbed/curtain-sided vehicle	Improper Load Securement	7
393.124	No/improper securement of concrete pipe	General Securement	1
393.124(b)	Insufficient working load limit—concrete pipes	Tiedown	3
393.124(c)	Improper blocking of concrete pipe	Improper Load Securement	7
393.124(d)	Improper arrangement of concrete pipe	Improper Load Securement	7
393.124(e)	Improper securement, up to 45 in. diameter	Improper Load Securement	7
393.124(f)	Improper securement, greater than 45 inch diameter	Improper Load Securement	7
393.126	Fail to ensure intermodal container secured	General Securement	1
393.126(b)	Damaged/missing tiedown/securement device	Securement Device	1
393.126(c)(1)	Lower corners of container not on vehicle/structure	Securement Device	1
393.126(c)(2)	All corners of chassis not secured	Improper Load Securement	7
393.126(c)(3)	Front and rear of container not secured independently	Improper Load Securement	7
393.126(d)(1)	Empty container not properly positioned	Improper Load Securement	7
393.126(d)(2)	Empty container, more than 5 foot overhang	Improper Load Securement	7
393.126(d)(4)	Empty container—not properly secured	Improper Load Securement	7
393.128	No/improper securement of vehicles	General Securement	1
393.128(b)(1)	Vehicle not secured—front and rear	Improper Load Securement	7
393.128(b)(2)	Tiedown(s) not affixed to mounting points	Improper Load Securement	7
393.128(b)(3)	Tiedown(s) not over/around wheels	Improper Load Securement	7
393.130	No/improper heavy vehicle/machinery securement	General Securement	1
393.130(b)	Item not properly prepared for transport	Improper Load Securement	7
393.130(c)	Improper restraint/securement of item	Improper Load Securement	7
393.132	No/improper securement of crushed vehicles	General Securement	1
393.132(b)	Prohibited use of synthetic webbing	Securement Device	1
393.132(c)	Insufficient tiedowns per stack cars	Tiedown	3
393.132(c)(5)	Insufficient means to retain loose parts	Improper Load Securement	7

TABLE 4—VEHICLE MAINTENANCE BASIC VIOLATIONS—Continued

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
393.134	No/improper securement of roll/hook container	General Securement	1
393.134(b)(1)	No blocking against forward movement	Failure to Prevent Movement	3
393.134(b)(2)	Container not secured to front of vehicle	Improper Load Securement	7
393.134(b)(3)	Rear of container not properly secured	Improper Load Securement	7
393.136	No/improper securement of large boulders	General Securement	1
393.136(b)	Improper placement/positioning of boulder	Improper Load Securement	7
393.136(c)(1)	Boulder not secured with chain	Improper Load Securement	7
393.136(d)	Improper securement—cubic boulder	Improper Load Securement	7
393.136(e)	Improper securement—non-cubic boulder with stable base	Improper Load Securement	7
393.136(f)	Improper securement—non-cubic boulder with unstable base	Improper Load Securement	7
393.201(a)	Frame cracked/loose/sagging/broken	Cab, Body, Frame	2
393.201(b)	Bolts securing cab broken/loose/missing	Cab, Body, Frame	2
393.201(c)	Frame rail flange improperly bent/cut/notched	Cab, Body, Frame	2
393.201(d)	Frame accessories improperly attached	Cab, Body, Frame	2
393.201(e)	Prohibited holes drilled in frame rail flange	Cab, Body, Frame	2
393.203	Cab/body parts requirements violations	Cab, Body, Frame	2
393.203(a)	Cab door missing/broken	Cab, Body, Frame	2
393.203(b)	Cab/body improperly secured to frame	Cab, Body, Frame	2
393.203(c)	Hood not securely fastened	Cab, Body, Frame	2
393.203(d)	Cab seats not securely mounted	Cab, Body, Frame	2
393.203(e)	Cab front bumper missing/unsecured/protruding	Cab, Body, Frame	2
393.205(a)	Wheel/rim cracked or broken	Wheels, Studs, Clamps, Etc	2
393.205(b)	Stud/bolt holes elongated on wheels	Wheels, Studs, Clamps, Etc	2
393.205(c)	Wheel fasteners loose and/or missing	Wheels, Studs, Clamps, Etc	2
393.207(a)	Axle positioning parts defective/missing	Suspension	7
393.207(b)	Adjustable axle locking pin missing/disengaged	Suspension	7
393.207(c)	Leaf spring assembly defective/missing	Suspension	7
393.207(d)	Coil spring cracked and/or broken	Suspension	7
393.207(e)	Torsion bar cracked and/or broken	Suspension	7
393.207(f)	Air suspension pressure loss	Suspension	7
393.207(g)	No/defective air suspension exhaust control	Suspension	7
393.209(a)	Steering wheel not secured/broken	Steering Mechanism	6
393.209(b)	Excessive steering wheel lash	Steering Mechanism	6
393.209(c)	Loose steering column	Steering Mechanism	6
393.209(d)	Steering system components worn/welded/missing	Steering Mechanism	6
393.209(e)	Power steering violations	Steering Mechanism	6
396.1	Must have knowledge of and comply with regulations	Inspection Reports	4
396.3(a)(1)	Inspection/repair and maintenance parts and accessories	Wheels, Studs, Clamps, Etc	2
396.3(a)(1)	Brakes (general) (396.3A1B)	Brakes, All Others	4
396.3(a)(1)	Brake out of adjustment (396.3A1BA)	Brakes Out of Adjustment	4
396.3(a)(1)	Brake-air compressor violation (396.3A1BC)	Brakes, All Others	4
396.3(a)(1)	Brake-defective brake drum (396.3A1BD)	Brakes, All Others	4
396.3(a)(1)	Brake-reserve system pressure loss (396.3A1BL)	Brakes, All Others	4
396.3(a)(1)	Tires (general) (396.3A1T)	Tires	8
396.5	Excessive oil leaks	Other Vehicle Defect	3
396.5(a)	Failing to ensure that vehicle is properly lubricated	Other Vehicle Defect	3
396.5(a)	Hubs—No visible or measurable lubricant showing in the hub—inner wheel (396.5A–HNLIW).	Wheels, Studs, Clamps, Etc	2
396.5(a)	Hubs—No visible or measurable lubricant showing in the hub—outer wheel (396.5A–HNLOW).	Wheels, Studs, Clamps, Etc	2
396.5(b)	Oil and/or grease leak	Other Vehicle Defect	3
396.5(b)	Hubs—Oil and/or Grease Leaking from hub—inner wheel (396.5B–HLIW).	Wheels, Studs, Clamps, Etc	2
396.5(b)	Hubs—oil and/or Grease Leaking from hub—outer wheel (396.5B–HLOW).	Wheels, Studs, Clamps, Etc	2
396.5(b)	Hubs—Wheel seal leaking—inner wheel (396.5B–HWSLIW)	Wheels, Studs, Clamps, Etc	2
396.5(b)	Hubs—Wheel seal leaking—outer wheel (396.5B–HWSLOW)	Wheels, Studs, Clamps, Etc	2
396.7	Unsafe operations forbidden	Other Vehicle Defect	3
396.9(c)(2)	Operating an OOS vehicle	Vehicle Jumping OOS	10
396.9(d)(2)	Failure to correct defects noted on inspection report	Inspection Reports	4
396.11	No or inadequate driver vehicle inspection report	Inspection Reports	4
396.13(c)	No reviewing driver's signature on Driver Vehicle Inspection Report (DVIR).	Inspection Reports	4
396.17(c)	Operating a CMV without periodic inspection	Inspection Reports	4
398.5(a)	Operating a motor vehicle not in compliance with parts and accessories regulations—migrant workers (398.5).	Other Vehicle Defect	3
398.7	Failure to inspect or maintain motor vehicle to ensure safe and proper operating condition—migrant workers.	Inspection Reports	4
399.207	Vehicle access requirements violations	Cab, Body, Frame	2
399.211	Inadequate maintenance of driver access	Cab, Body, Frame	2

TABLE 5—HAZARDOUS MATERIALS COMPLIANCE BASIC VIOLATIONS

49 CFR section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
171.2(a)	Failure to comply with HM regulations	HM Other	2
171.2(b)	Failure to comply with the requirements for HM transportation (including labeling and handling).	HM Other	2
171.2(c)	Representing a package./container for HM not meeting specs	Markings—HM	5
171.2(f)	Transporting HM not in accordance with this part	Package Integrity—HM	8
171.2(g)	Cargo tank does not comply with HM Regulations	Package Integrity—HM	8
171.2(k)	Representing vehicle with HM, none present	Markings—HM	5
172.200(a)	No shipping paper provided by offeror	Documentation—HM	3
172.201(a)(1)	HM not distinguished from non-HM	Documentation—HM	3
172.201(a)(2)	HM description not printed legibly in English	Documentation—HM	3
172.201(a)(3)	HM description contains abbreviation or code	Documentation—HM	3
172.201(a)(4)	Additional information not after HM basic description	Documentation—HM	3
172.201(c)	Failure to list page number of pages	Documentation—HM	3
172.201(d)	Emergency Response phone number not listed	Documentation—HM	3
172.202(a)(2)	Improper shipping name (172.202(a)(1))	Documentation—HM	3
172.202(a)(3)	Improper hazard class (172.202(a)(2))	Documentation—HM	3
172.202(a)(1)	Wrong or no ID number (172.202(a)(3)	Documentation—HM	3
172.202(a)(4)	No packing group listed	Documentation—HM	3
172.202(a)(5)	Total quantity not listed	Documentation—HM	3
172.202(b)	Basic description not in proper sequence	Documentation—HM	3
172.202(c)	Total quantity improper location	Documentation—HM	3
172.202(e)	Non Hazardous Material entered with class or ID#	Documentation—HM	3
172.203(a)	Exemption number not listed	Documentation—HM	3
172.203(b)	Limited quantity not shown	Documentation—HM	3
172.203(c)(1)	Hazardous substance entry missing	Documentation—HM	3
172.203(c)(2)	RQ not on shipping paper	Documentation—HM	3
172.203(d)(1)	Radionuclide name not on shipping paper	Documentation—HM	3
172.203(d)(10)	No indication for Highway Route Controlled Quantity of Class 7 "HRCQ" on shipping paper.	Documentation—HM	3
172.203(d)(2)	No RAM physical or chemical form	Documentation—HM	3
172.203(d)(3)	No RAM activity	Documentation—HM	3
172.203(d)(4)	No RAM label category	Documentation—HM	3
172.203(d)(5)	No RAM transport index	Documentation—HM	3
172.203(d)(6)	No fissile radioactive entry	Documentation—HM	3
172.203(d)(7)	No DOE/NRC package approval notation	Documentation—HM	3
172.203(d)(8)	Export package or foreign made package not marked with IAEA Certificate.	Documentation—HM	3
172.203(d)(9)	No Exclusive Use notation	Documentation—HM	3
172.203(e)	No empty packaging noted	Documentation—HM	3
172.203(h)(1)	No qt/nqt for anhydrous ammonia	Documentation—HM	3
172.203(h)(2)	No notation for QT/NQT for Liquified Petroleum Gas	Documentation—HM	3
172.203(k)	No technical name for nos entry	Documentation—HM	3
172.203(m)	No Poison Inhalation Hazard and/or Hazard Zone	Documentation—HM	3
172.203(n)	No "hot" on shipping paper	Documentation—HM	3
172.203(o)	No temperature controls noted for Class 4.1 or Class 5.2	Documentation—HM	3
172.205	Hazardous waste manifest not as required	Documentation—HM	3
172.300	Failing to comply with marking requirements	Markings—HM	5
172.301	Non-bulk package marking—general	Markings—HM	5
172.301(a)	No ID number on side/ends of non-bulk package—large quantity of single HM.	Markings—HM	5
172.301(a)(1)	No proper shipping name and/or ID# marking on non-bulk	Markings—HM	5
172.301(b)	No technical name on non-bulk	Documentation—HM	3
172.301(c)	No special permit number on non-bulk package	Documentation—HM	3
172.301(d)	No consignee/consignor on non-bulk	Documentation—HM	3
172.302	Marking requirements bulk packagings	Markings—HM	5
172.302(a)	No ID number (portable and cargo tank)	Markings—HM	5
172.302(b)	Bulk package marking incorrect size	Markings—HM	5
172.302(c)	No special permit number on bulk package	Documentation—HM	3
172.303(a)	Prohibited HM marking on package	Markings—HM	5
172.304(a)(1)	Package marking not durable, English, or print	Markings—HM	5
172.304(a)(2)	Marking not on sharply contrasting color	Markings—HM	5
172.304(a)(3)	Marking obscured by label or attachments	Markings—HM	5
172.304(a)(4)	Marking not away from other marking	Markings—HM	5
172.308(a)	Package marked with unauthorized abbreviation	Markings—HM	5
172.310(a)	No gross weight on radioactive materials package greater than 50 KG	Markings—HM	5
172.310(b)	Radioactive materials package not marked "Type A or B"	Markings—HM	5
172.312(a)(2)	No package orientation arrows	Cargo Protection—HM	4
172.312(b)	Prohibited use of orientation arrows	Cargo Protection—HM	4
172.313(a)	No "inhalation hazard" on package	Markings—HM	5
172.313(b)	No "poison" on non-bulk plastic package	Markings—HM	5

TABLE 5—HAZARDOUS MATERIALS COMPLIANCE BASIC VIOLATIONS—Continued

49 CFR section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
172.316(a)	Other regulated material non-bulk package not marked	Markings—HM	5
172.320(a)	Class 1 package not marked with ex-number	Markings—HM	5
172.322(b)	No marine pollutant marking on bulk packaging	Markings—HM	5
172.324	Non-bulk hazardous substance not marked	Markings—HM	5
172.325(a)	No ''hot'' marking for bulk elevated temperature (172.325)	Markings—HM	5
172.325(a)	Elevated temperature not marked ''Hot''	Markings—HM	5
172.325(b)	Improperly marked molten aluminum/sulphur	Markings—HM	5
172.326(a)	Portable tank not marked with proper shipping name or ID#	Markings—HM	5
172.326(b)	No portable tank owner or lessee marking	Markings—HM	5
172.326(c)(1)	No ID number marking on vehicle carrying portable tank	Markings—HM	5
172.326(c)(2)	Shipper failed to provide ID number to carrier	Markings—HM	5
172.328	No ID number displayed on a cargo tank	Markings—HM	5
172.328(a)	Shipper failed to provide or affix ID number for cargo tank	Markings—HM	5
172.328(b)	Cargo tank not marked for class 2	Markings—HM	5
172.328(c)	No quenched and tempered steel (QT)/other than quenched and tempered steel (NQT) marked on cargo tank (MC 330/331).	Markings—HM	5
172.328(d)	Fail to mark manual remote shutoff device	Markings—HM	5
172.330(a)(2)	Tank car tank (non cylinder) not marked as required	Markings—HM	5
172.330(b)	Motor vehicle with tank not marked	Markings—HM	5
172.331	Markings for other bulk packages	Markings—HM	5
172.332	Required ID markings displayed	Markings—HM	5
172.334	Prohibited ID number marking	Markings—HM	5
172.334(a)	ID # displayed on Class 7/Class 1/Dangerous or Subsidiary placard	Markings—HM	5
172.336(b)	ID numbers not properly displayed	Markings—HM	5
172.336(c)(1)	Failing to display ID numbers on compartment cargo tank in sequence	Markings—HM	5
172.338	Carrier failed to replace missing ID number	Markings—HM	5
172.400	Labeling requirements	Markings—HM	5
172.400(a)	Package/containment not labeled as required	Markings—HM	5
172.401	Prohibited labeling	Markings—HM	5
172.402	Failing to affix additional labels when required	Markings—HM	5
172.402(a)	No label for subsidiary hazard	Markings—HM	5
172.402(b)	Display of class number on label	Markings—HM	5
172.402(d)	Subsidiary labeling for radioactive materials	Markings—HM	5
172.402(e)	Subsidiary labeling for class 1 (explosive) materials	Markings—HM	5
172.403(a)	Radioactive material label requirement	Markings—HM	5
172.403(f)	Radioactive material package-2 labels on opposite sides	Markings—HM	5
172.403(g)	Failed to label radioactive material properly	Markings—HM	5
172.403(g)(2)	Class 7 label—no activity/activity not in SI units	Markings—HM	5
172.404(a)	Mixed package not properly labeled	Markings—HM	5
172.404(b)	Failed to properly label consolidated package	Markings—HM	5
172.406(a)(1)	Label placement not as required	Markings—HM	5
172.406(c)	Multiple label placement not as required	Markings—HM	5
172.406(d)	Label not on contrasting background or no border	Markings—HM	5
172.406(e)	Failed to display duplicate label as required	Markings—HM	5
172.406(f)	Label obscured by marking or attachment	Markings—HM	5
172.502(a)(1)	Prohibited placarding	Markings—HM	5
172.502(a)(2)	Sign or device could be confused with HM placard	Markings—HM	5
172.504	Placards not in table 1 or 2	Markings—HM	5
172.504(a)	Vehicle not placarded as required	Markings—HM	5
172.504(b)	Dangerous placard violation	Markings—HM	5
172.505(a)	No placard for poison inhalation hazard	Markings—HM	5
172.505(b)	Not placarded for RAM and Corrosive when required	Markings—HM	5
172.505(c)	Placard for subsidiary dangerous when wet	Markings—HM	5
172.506(a)	Failed to provide placards shipper	Markings—HM	5
172.506(a)(1)	Placards not affixed to vehicle	Markings—HM	5
172.507	Not placardarded for RAM highway route controlled quantity	Markings—HM	5
172.512(a)	Freight container not placarded	Markings—HM	5
172.514(a)	Bulk package offered without placard	Markings—HM	5
172.514(b)	Bulk package with residue of HM not properly placarded	Markings—HM	5
172.516(a)	Placard not visible from direction it faces	Markings—HM	5
172.516(c)(1)	Placard not securely affixed or attached	Markings—HM	5
172.516(c)(2)	Placard not clear of appurtenance	Markings—HM	5
172.516(c)(4)	Placard improper location	Markings—HM	5
172.516(c)(5)	Placard not reading horizontally	Markings—HM	5
172.516(c)(6)	Placard damaged, deteriorated, or obscured	Markings—HM	5
172.516(c)(7)	Placard not on contrasting background or border	Markings—HM	5
172.519	Placard does not meet specifications	Markings—HM	5
172.600(c)	Emergency Response (ER) information not available	Documentation—HM	3
172.602(a)	Emergency response information missing	Documentation—HM	3
172.602(b)	Form and manner of emergency response information	Documentation—HM	3

TABLE 5—HAZARDOUS MATERIALS COMPLIANCE BASIC VIOLATIONS—Continued

49 CFR section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
172.602(c)(1)	Maintenance/accessibility of emergency response information	Documentation—HM	3
172.604(a)	Failing to provide an emergency response phone number	Documentation—HM	3
173.24(a)	Non-bulk package mixed contents requirements	Cargo Protection—HM	4
173.24(b)	Failed to meet general package requirements	Load Securement—HM	10
173.24(b)(1)	Release of HM from package	Load Securement—HM	10
173.24(b)	Bulk package outage or filling limit requirements	Load Securement—HM	10
173.24b(d)(2)	Exceed max weight of rating on spec plate	Load Securement—HM	10
173.24(c)	Unauthorized packaging	Load Securement—HM	10
173.24(f)(1)	Closures for packagings must not be open or leaking	Load Securement—HM	10
173.25(a)	Failed to meet overpack conditions	Markings—HM	5
173.25(c)	Failure to label and package poison properly, when transported with edible material.	Markings—HM	5
173.29(a)	Empty package improper transportation	Cargo Protection—HM	4
173.30	Loading/unloading transport vehicles	Cargo Protection—HM	4
173.32(h)(3)	IM101/102 bottom outlets prohibited	Fire Hazard—HM	6
173.32(h)(3)(i)	IM101/102 bottom outlets authorized	Fire Hazard—HM	6
173.33(a)	Cargo tank general requirements	Cargo Protection—HM	4
173.33(b)	HM in cargo tank which had dangerous reaction with cargo tank	Cargo Protection—HM	4
173.33(c)(2)	Cargo tank not marked with design or maximum allowable working pressure (MAWP).	Cargo Protection—HM	4
173.35(a)	Intermediate bulk container requirements	Package Integrity—HM	8
173.35(d)	Liquid filled IBC with Ullage over 98%	Load Securement—HM	10
173.35(f)(2)	Intermediate bulk container (IBC) not secured to or within vehicle	Load Securement—HM	10
173.40	General packages requirements for poisons in cylinders	HM Other	2
173.54	Forbidden explosives, offering or transporting	Fire Hazard—HM	6
173.60	General packaging requirements for explosives	HM Other	2
173.315(a)	Cargo or portable tank class 2 exceeds maximum filling density	Load Securement—HM	10
173.315(j)(3)	Residential gas tank not secure in transport	Fire Hazard—HM	6
173.318(b)(10)	Fail to mark inlet, outlet, pressure relief device, or pressure control valve of cryogenic tanks.	Package Integrity—HM	8
173.318(g)	No or Improper One Way Travel Time (OWTT) marking on cryogenic cargo tank.	Markings—HM	5
173.412	General Type A package failing to meet additional design requirements	Package Integrity—HM	8
173.421(a)	Transporting limited quantity-radioactive material exceeds 0.5 millirem/hour.	Cargo Protection—HM	4
173.427(a)(6)(iv)	No instructions for exclusive use packaging-low specific activity	Cargo Protection—HM	4
173.427(a)(6)(vi)	Exclusive use low specific activity (LSA) radioactive material not marked ''Radioactive-LSA''.	Markings—HM	5
173.427(a)(6)(iv)	No instructions for exclusive use packaging-low specific activity	Cargo Protection—HM	4
173.427(a)(vi)	Exclusive use low specific activity (LSA) radioactive material not marked ''Radioactive-LSA''.	Markings—HM	5
173.431	Exceeded activity limits Type A or Type B package	Load Securement—HM	10
173.441(a)	Exceeding radiation level limitations allowed for transport	Cargo Protection—HM	4
173.441(b)	Exceeding radiation level allowed for transport of RAM under exclusive use provisions.	Load Securement—HM	10
173.442(b)(1)	External temperature of package exceeds 50 degrees Celsius (122 degrees F).	Cargo Protection—HM	4
173.442(b)(2)	External temperature of package exceeds 85 degrees Celsius (185 degrees F).	Cargo Protection—HM	4
173.443(a)	Radioactive contamination exceeds limits	Load Securement—HM	10
173.447	RAM transport storage violation	Cargo Protection—HM	4
173.448	General RAM transport requirements	Cargo Protection—HM	4
177.801	Accepting/transporting HM not prepared properly	HM Other	2
177.804	Failure to comply with FMCSR 49 CFR part 383 and 49 CFR parts 390 through 397.	HM Other	2
177.817	Shipping papers required	Documentation—HM	3
177.817(a)	No shipping papers (carrier)	Documentation—HM	3
177.817(b)	Shipper certification missing (when required)	Documentation—HM	3
177.817(e)	Shipping paper accessibility	Documentation—HM	3
177.823(a)	No placards/markings when required	Markings—HM	5
177.834	Load securement of different HM packages	Fire Hazard—HM	6
177.834(a)	Package not secure in vehicle	Load Securement—HM	10
177.834(b)	Package not loaded according to orientation marks	Cargo Protection—HM	4
177.834(c)	Smoking while loading or unloading	Fire Hazard—HM	6
177.834(f)	Using a tool likely to cause damage to the closure of any package or container.	Load Securement—HM	10
177.834(i)	Attendance of cargo tank—(load or unload)	Cargo Protection—HM	4
177.834(j)	Manholes and valves not closed or leak free	Cargo Protection—HM	4
177.834(m)(1)	Securing specification 106a or 110a tanks	Cargo Protection—HM	4
177.834(n)	Improper loading-specification 56, 57, IM101, and IM102	Fire Hazard—HM	6

TABLE 5—HAZARDOUS MATERIALS COMPLIANCE BASIC VIOLATIONS—Continued

49 CFR section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
177.835	Improper transportation of explosives (Class 1)	Fire Hazard—HM	6
177.835(a)	Loading/Unloading Class 1 with engine running	Fire Hazard—HM	6
177.835(c)	Transporting Class 1 in combination vehicles	Fire Hazard—HM	6
177.835(j)	Transfer of Class 1 materials en route	Fire Hazard—HM	6
177.837	Improper transporting of Class 3 HM	Fire Hazard—HM	6
177.837(c)	Cargo tanks not properly bonded/grounded	Cargo Protection—HM	4
177.837(d)	Improper unloading of combustible liquids	Cargo Protection—HM	4
177.838	Improper transport of class 4, 5 or division 4.2	Fire Hazard—HM	6
177.839	Improper transportation of Class 8 HM	Cargo Protection—HM	4
177.840	Improper transportation of Class 2 HM	Fire Hazard—HM	6
177.840(g)	Discharge valve not closed in transit class 2	Cargo Protection—HM	4
177.840(o)	Fail to test off-truck remote shutoff device	Cargo Protection—HM	4
177.840(s)	Fail to possess remote shutoff when unloading	Cargo Protection—HM	4
177.841	Improper transportation of Division 6.1 or Division 2.3 HM	Fire Hazard—HM	6
177.841(e)	Poison label loaded with foodstuffs	HM Other	2
177.842(a)	Total transport index exceeds 50- non-exclusive use	HM Other	2
177.842(b)	Distance from package to person-radioactive material	HM Other	2
177.842(d)	Blocking and bracing of radioactive material packages	HM Other	2
177.848(d)	Prohibited load/transport/storage combination	Fire Hazard—HM	6
177.848(f)	Class 1 load separation or segregation	HM Other	2
177.870(b)	Transporting unauthorized HM in a passenger-carrying vehicle	Load Securement—HM	10
177.870(c)	Prohibited HM on passenger carrying vehicle	Load Securement—HM	10
178.245–4[1]	DOT51 integrity and securement	Package Integrity—HM	8
178.245–5[1]	DOT51 valve protection	Package Integrity—HM	8
178.245–6(a)[1]	DOT51 name plate Markings—HM	Package Integrity—HM	8
178.245–6(b)[1]	Tank outlets not marked	Package Integrity—HM	8
178.251–4[1]	DOT 56/57 integrity and securement	Package Integrity—HM	8
178.251–7(b)[1]	DOT 56/57 spec Markings—HM	Package Integrity—HM	8
178.255–14	DOT 60 ID plate	Package Integrity—HM	8
178.255–4	DOT 60 manhole	Package Integrity—HM	8
178.255–7[1]	DOT 60 valve protection	Package Integrity—HM	8
178.270–1[1]	IM101/102 general design	Package Integrity—HM	8
178.270–11(d)(1)[1]	IM101/102 pressure relief	Package Integrity—HM	8
178.270–14[1]	IM101/102 spec plate	Package Integrity—HM	8
178.270–4[1]	Structural integrity	Package Integrity—HM	8
178.270–6[1]	IM101/102 frames	Package Integrity—HM	8
178.270–8[1]	IM101/102 valve protection	Package Integrity—HM	8
178.270–9[1]	IM101/102 manholes	Package Integrity—HM	8
178.336–1	Protecting of fittings MC330	Package Integrity—HM	8
178.336–13	Anchoring of tank MC330	Package Integrity—HM	8
178.336–17	Metal ID plate marking MC330	Package Integrity—HM	8
178.336–17(a)	Certification plate MC330	Package Integrity—HM	8
178.336–9(a)	Safety relief devices MC330	Package Integrity—HM	8
178.336–9(c)	Marking of inlets/outlets MC330	Package Integrity—HM	8
178.337–10(a)	Protection of fittings MC331	Package Integrity—HM	8
178.337–11(a)	Internal valve MC331 (178.337–11(a)(2))	Package Integrity—HM	8
178.337–13	MC331 supports and anchoring	Package Integrity—HM	8
178.337–17(a)	Metal ID plate missing MC331	Package Integrity—HM	8
178.337–8(a)	Outlets general requirements MC331	Package Integrity—HM	8
178.337–8(a)(2)	Outlets MC331	Package Integrity—HM	8
178.337–8(a)(3)	Internal or back flow valve MC331	Package Integrity—HM	8
178.337–8(a)(4)(i)	Remote closure device greater than 3500 gallons MC331	Package Integrity—HM	8
178.337–8(a)(4)(ii)	Remote closure device less than 3500 gallons MC331	Package Integrity—HM	8
178.337–9	Pressure relief devices MC331	Package Integrity—HM	8
178.337–9(c)	Marking inlets/outlets MC331	Package Integrity—HM	8
178.338–10(a)	Protection of fittings MC338	Package Integrity—HM	8
178.338–10(c)	Rear end protection MC338	Package Integrity—HM	8
178.338–11(b)	Manual shutoff valve MC338	Package Integrity—HM	8
178.338–12	Shear section MC338	Package Integrity—HM	8
178.338–13	Supports and anchoring MC338	Package Integrity—HM	8
178.338–18(a)	Name plate/Specification plate missing MC338	Package Integrity—HM	8
178.338–18(b)	Specification plate missing MC338	Package Integrity—HM	8
178.338–6	Manhole MC338	Package Integrity—HM	8
178.338–8	Pressure relief devices MC338	Package Integrity—HM	8
178.340–10(b)[2].	MC306/307/312 metal certification plate missing	Package Integrity—HM	8
178.340–6[2]	MC306/307/312 supports and anchoring	Package Integrity—HM	8
178.340–7(a)[2]	MC306/307/312 ring stiffeners	Package Integrity—HM	8
178.340–7(c)[2]	MC306/307/312 double bulkhead drain	Package Integrity—HM	8
178.340–7(d)(2)[2]	MC306/307/312 ring stiffener drain hole	Package Integrity—HM	8

TABLE 5—HAZARDOUS MATERIALS COMPLIANCE BASIC VIOLATIONS—Continued

49 CFR section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
178.340–8(a)[2]	MC306/307/312 appurtenances attachment	Package Integrity—HM	8
178.340–8(b)[2]	MC306/307/312 rearend protection	Package Integrity—HM	8
178.340–8(c)[2]	MC306/307/312 overturn protection	Package Integrity—HM	8
178.340–8(d)[2]	MC306/307/312 piping protection	Package Integrity—HM	8
178.340–8(d)(1)[2]	MC306/307/312 piping protection	Package Integrity—HM	8
178.340–8(d)(2)[2]	MC306/307/312 minimum road clearance	Package Integrity—HM	8
178.341–3(a)[2]	MC306 no manhole closure	Package Integrity—HM	8
178.341–4[2]	MC306 venting	Package Integrity—HM	8
178.341–4(d)(1)[2]	MC306 inadequate emergency venting	Package Integrity—HM	8
178.341–4(d)(2)[2]	MC306 pressure activated vents	Package Integrity—HM	8
178.341–4(d)(3)[2]	MC306 no fusible venting	Package Integrity—HM	8
178.341–5(a)[2]	MC306 internal valves	Package Integrity—HM	8
178.341–5(a)(1)[2]	MC306 heat actuated safety	Package Integrity—HM	8
178.341–5(a)(2)[2]	MC306 remote control shutoff	Package Integrity—HM	8
178.342–3[2]	MC307 manhole closure	Package Integrity—HM	8
178.342–4[2]	MC307 venting	Package Integrity—HM	8
178.342–4(b)[2]	Inadequate venting capacity	Package Integrity—HM	8
178.342–5(a)[2]	MC307 internal valve	Package Integrity—HM	8
178.342–5(a)(1)[2]	MC307 heat actuated safety	Package Integrity—HM	8
178.342–5(a)(2)[2]	MC307 remote control shutoff	Package Integrity—HM	8
178.343–3[2]	Manhole closure MC312	Package Integrity—HM	8
178.343–4[2]	Venting MC312 (show calculations)	Package Integrity—HM	8
178.343–5(a)[2]	MC312 top outlet and valve	Package Integrity—HM	8
178.343–5(b)(1)[2]	MC312 bottom valve/piping protection	Package Integrity—HM	8
178.345–1	DOT406/407/412 pressure relief	Package Integrity—HM	8
178.345–11(b)	DOT406/407/412 tank valves	Package Integrity—HM	8
178.345–11(b)(1)	DOT406/407/412 remote control	Package Integrity—HM	8
178.345–11(b)(1)(i).	DOT406/407/412 remote control	Package Integrity—HM	8
178.345–14(b)	DOT406/407/412 name plate	Package Integrity—HM	8
178.345–14(c)	DOT406/407/412 specification plate	Package Integrity—HM	8
178.345–1(i)(2)	DOT 406, 407, 412 Obstructed double bulkhead drain/vent	Package Integrity—HM	8
178.345–5(d)	DOT406/407/412 manhole securement	Package Integrity—HM	8
178.345–5(e)	DOT406/407/412 manhole marking	Package Integrity—HM	8
178.345–6	DOT406/407/412 supports and anchoring	Package Integrity—HM	8
178.345–7(d)(4)	DOT406/407/412 ring stiffener drain	Package Integrity—HM	8
178.345–8(a)	DOT406/407/412 accident protection	Package Integrity—HM	8
178.345–8(a)(5)	DOT406/407/412 minimum road clearance	Package Integrity—HM	8
178.345–8(b)	DOT406/407/412 bottom damage protection	Package Integrity—HM	8
178.345–8(c)	DOT406/407/412 rollover damage protection	Package Integrity—HM	8
178.345–8(d)	DOT406/407/412 rear end protection	Package Integrity—HM	8
178.703(a)	Intermediate bulk container (IBC) manufacturer Markings—HM	Package Integrity—HM	8
178.703(b)	Intermediate bulk container additional Markings—HM	Package Integrity—HM	8
178.704(e)	Intermediate bulk container bottom discharge valve protection	Package Integrity—HM	8
179.300–12	DOT106/110aw protection of fittings	Package Integrity—HM	8
179.300–13	DOT106/110aw venting and valves	Package Integrity—HM	8
179.300–15	DOT106/110aw safety relief devices	Package Integrity—HM	8
179.300–18	DOT106/110aw stamping of tanks	Package Integrity—HM	8
180.205(c)	Periodic re-qualification of cylinders	Package Testing—HM	7
180.213(d)	Re-qualification Markings—HM	Package Testing—HM	7
180.352(b)	Intermediate bulk container retest or inspection	Package Testing—HM	7
180.352(d)	IBC retest date marking	Package Testing—HM	7
180.352(f)	IBC retest date marking (180.352(e))	Package Testing—HM	7
180.405(b)	Cargo tank specifications	Package Testing—HM	7
180.405(j)	Certification withdrawal (failed to remove/cover/obliterate spec plate)	Package Testing—HM	7
180.407(a)(1)	Cargo tank periodic test and inspection	Package Testing—HM	7
180.407(c)	Failing to periodically test and inspect cargo tank	Package Testing—HM	7
180.415(b)	Cargo tank test or inspection Markings—HM	Package Testing—HM	7
180.605	Periodic testing of portable tanks	Package Testing—HM	7
180.605(k)	Test date marking	Package Testing—HM	7
385.403	No HM Safety Permit	Documentation—HM	3
397.1(a)	Driver/carrier must obey part 397	HM Other	2
397.1(b)	Failing to require employees to know/obey part 397	HM Other	2
397.2	Must comply with rules in parts 390–397-transporting HM	HM Other	2
397.5(a)	Unattended explosives 1.1/1.2/1.3	Fire Hazard—HM	6
397.5(c)	Unattended hazmat vehicle	Cargo Protection—HM	4
397.7(a)	Improperly parked explosives vehicle	Fire Hazard—HM	6
397.7(b)	Improperly parked HM vehicle	Fire Hazard—HM	6
397.11(a)	HM vehicle operated near open fire	Fire Hazard—HM	6
397.11(b)	HM vehicle parked within 300 feet of fire	Fire Hazard—HM	6

TABLE 5—HAZARDOUS MATERIALS COMPLIANCE BASIC VIOLATIONS—Continued

49 CFR section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
397.15	HM vehicle fueling violation	Fire Hazard—HM	6
397.17	No tire examination on HM vehicle	HM Other	2
397.19	No instructions/documents when transporting Division 1.1/1.2/1.3 (explosive) materials.	Documentation—HM	3
397.19(c)	Required documents not in possession-explosive materials	Documentation—HM	3
397.67	HM vehicle routing violation (non-radioactive materials)	HM Route	1
397.101(b)	Radioactive materials vehicle not on preferred route	HM Route	1
397.101(d)	No or incomplete route plan-radioactive materials	HM Route	1
397.101(e)(2)	Driver not in possession of training certificate	HM Route	1
397.101(e)(3)	Driver not in possession of written route plan	HM Route	1

Citations marked with a ([1]) in this table 5 may be found at 49 CFR part 178 (revised as of October 1, 1965) and citations marked with a ([2]) may be found at 49 CFR part 178 (revised as of October 1, 1967).

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

■ 50. The authority citation for part 386 continues to read as follows:

Authority: 49 U.S.C. 113, chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315; 49 U.S.C. 5123; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; Sec. 206, Pub. L. 106–159, 113 Stat. 1763; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.81 and 1.87.

■ 51. Amend appendix B to part 386 by revising paragraph (f) and adding paragraph (j) to read as follows:

Appendix B to Part 386—Penalty Schedule; Violations and Monetary Penalties

* * * * *

(f) *Operating after being declared unfit by assignment of a final unfit safety fitness determination.* (1) A motor carrier operating a commercial motor vehicle in interstate commerce or intrastate commerce that affects interstate commerce (except owners or operators of commercial motor vehicles designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51) is subject, after being ordered out-of-service because of receiving a final unfit safety fitness determination, to a civil penalty of not more than $25,000 (49 CFR 385.13). Each day the transportation continues in violation of a final unfit safety fitness determination constitutes a separate offense.

(2) A motor carrier operating a commercial motor vehicle designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51 is subject, after being ordered out-of-service because of receiving a final unfit safety fitness determination, to a civil penalty of not more than $75,000 for each offense. If the violation results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than $175,000 for each offense. Each day the transportation continues in violation of a final unfit safety fitness determination constitutes a separate offense.

* * * * *

(j) *Violations considered for penalty assessment.* The violations listed in the table in this paragraph (j) are violations that the Agency may take into account for purposes of section 222 of the Motor Carrier Safety Improvement Act of 1999, Public Law 106–159, 49 U.S.C. 521 note (''Minimum and Maximum Assessments'').

TABLE TO PARAGRAPH (j) OF APPENDIX B TO PART 386—MINIMUM AND MAXIMUM PENALTY REGULATIONS

49 CFR 171.15	Carrier failing to give immediate telephone notice of an incident involving HM.
49 CFR 171.16	Carrier failing to make a written report of an incident involving HM.
49 CFR 172.313(a)	Accepting for transportation or transporting a package containing a poisonous-by-inhalation material that is not marked with the words ''Inhalation Hazard.''
49 CFR 172.704(a)(4)	Failing to provide security awareness training.
49 CFR 172.704(a)(5)	Failing to provide in-depth security awareness training.
49 CFR 172.800(b)	Transporting HM without a security plan.
49 CFR 172.800(b)	Transporting HM without a security plan that conforms to Subpart I requirements.
49 CFR 172.800(b)	Failure to adhere to a required security plan.
49 CFR 172.802(b)	Failure to make copies of security plan available to HM employees.
49 CFR 173.24(b)(1)	Accepting for transportation or transporting a package that has an identifiable release of a HM to the environment.
49 CFR 173.24b(d)(2)	Loading bulk packaging (cargo tank) with an HM which exceeds the maximum weight of lading marked on the specification plate.
49 CFR 173.33(a)(1)	Offering or accepting a HM for transportation in an unauthorized cargo tank.
49 CFR 173.33(a)(2)	Loading or accepting for transportation two or more materials in a cargo tank motor vehicle which if mixed results in an unsafe condition.
49 CFR 173.33(b)(1)	Loading HM in a cargo tank motor would have a dangerous reaction when in contact with the tank.
49 CFR 173.421(a)	Accepting for transportation or transporting a Class 7 (radioactive) material described, marked, and packaged as a limited quantity when the radiation level on the surface of the package exceeds 0.005mSv/hour (0.5 mrem/hour).
49 CFR 173.431(a)	Accepting for transportation or transporting in a Type A packaging a greater quantity of Class 7 (radioactive) material than authorized.
49 CFR 173.431(b)	Accepting for transportation or transporting in a Type B packaging a greater quantity of Class 7 (radioactive) material than authorized.
49 CFR 173.441(a)	Accepting for transportation or transporting a package containing Class 7 (radioactive) material with external radiation exceeding allowable limits.

TABLE TO PARAGRAPH (j) OF APPENDIX B TO PART 386—MINIMUM AND MAXIMUM PENALTY REGULATIONS—Continued

49 CFR 173.442(b)	Accepting for transportation or transporting a package containing Class 7 (radioactive) material when the temperature of the accessible external surface of the loaded package exceeds 50 degrees C (122 degrees F) in other than an exclusive use shipment, or 85 degrees C (185 degrees F) in an exclusive use shipment.
49 CFR 173.443(a)	Accepting for transportation or transporting a package containing Class 7 (radioactive) material with removable contamination on the external surfaces of the package in excess of permissible limits.
49 CFR 177.800(c)	Failing to instruct a category of employees in HM regulations.
49 CFR 177.817(a)	Transporting a shipment of HM not accompanied by a properly prepared shipping paper.
49 CFR 177.817(e)	Failing to maintain proper accessibility of shipping papers.
49 CFR 177.823(a)	Moving a transport vehicle containing HM that is not properly marked or placarded.
49 CFR 177.834(i)	Loading or unloading a cargo tank without a qualified person in attendance.
49 CFR 177.835(a)	Loading or unloading a Class 1 (explosive) material with the engine running.
49 CFR 177.835(j)	Transferring Division 1.1, 1.2, or 1.3 (explosive) materials between containers or motor vehicles when not permitted.
49 CFR 177.835(c)	Accepting for transportation or transporting Division 1.1, 1.2, or 1.3 (explosive) materials in a motor vehicle or combination of vehicles that is not permitted.
49 CFR 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)(1)(i) or (ii) is met.
49 CFR 177.848(d)	Failing to store, Load, or transport HM in accordance with the segregation table.
49 CFR 180.407(a)	Transporting a shipment of HM in cargo tank that has not been inspected or retested in accordance with § 180.407.
49 CFR 180.415	Failing to mark a cargo tank which passed an inspection or test required by § 180.407.
49 CFR 180.417(a)(1)	Failing to retain cargo tank manufacturer's data report certificate and related papers, as required.
49 CFR 180.417(a)(2))	Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required.
49 CFR 382.115(a)	Failing to implement an alcohol and/or controlled substances testing program (domestic motor carrier).
49 CFR 382.115(b)	Failing to implement an alcohol and/or controlled substances testing program (foreign motor carrier).
49 CFR 382.201	Using a driver known to have an alcohol concentration of 0.04 or greater.
49 CFR 382.211	Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382.
49 CFR 382.213(b)	Using a driver known to have used a controlled substance.
49 CFR 382.215	Using a driver known to have tested positive for a controlled substance.
49 CFR 382.301(a)	Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.
49 CFR 382.303(a)	Failing to conduct post-accident testing on driver for alcohol.
49 CFR 382.303(b)	Failing to conduct post-accident testing on driver for controlled substances.
49 CFR 382.305	Failing to implement a random controlled substances and/or an alcohol testing program.
49 CFR 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.
49 CFR 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.
49 CFR 382.309	Using a driver without a return to duty test.
49 CFR 382.503	Allowing a driver to perform safety sensitive function, after engaging in conduct prohibited by subpart B of part 382, without being evaluated by substance abuse professional, as required by § 382.605.
49 CFR 382.505(a)	Using a driver within 24 hours after the driver was found to have an alcohol concentration of 0.02 or greater but less than 0.04.
49 CFR 382.605	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.
49 CFR 383.23(a)	Operating a CMV without a valid CDL.
49 CFR 383.3(a)	Using a driver who does not possess a valid CDL (removed knowingly).
49 CFR 383.37(a)	Knowingly allowing, requiring, permitting, or authorizing an employee who does not have a current CLP or CDL, who does not have a CLP or CDL with the proper class or endorsements, or who operates a CMV in violation of any restriction on the CLP or CDL to operate a CMV.
49 CFR 383.37(b)	Knowingly allowing, requiring, permitting, or authorizing an employee with a CDL that is suspended, revoked, or canceled by a State or who is disqualified to operate a CMV.
49 CFR 383.51(a)	Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a CMV.
49 CFR 387.31(d)	Failing to maintain at the principal place of business required proof of financial responsibility for passenger carrying vehicles.
49 CFR 387.7(d)	Failing to maintain at the principal place of business required proof of financial responsibility.
49 CFR 390.15(b)(2)	Failing to maintain copies of all accident reports required by State or other governmental entities or insurers.
49 CFR 390.35	Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records.
49 CFR 391.11(b)(4)	Using a physically unqualified driver.
49 CFR 391.11(b)(5)	Using a driver without a currently valid motor vehicle operator's license or permit.
49 CFR 391.15(a)	Using a disqualified driver.
49 CFR 391.23(a)	Failing to investigate a driver's background.
49 CFR 391.45(a)	Using a driver not medically examined and certified.
49 CFR 391.45(b)(1)	Using a driver not medically examined and certified during the preceding 24 months.
49 CFR 391.51(a)	Failing to maintain driver qualification file on each driver employed.
49 CFR 391.51(b)(2)	Failing to maintain inquiries into driver's driving record in driver's qualification file.

TABLE TO PARAGRAPH (j) OF APPENDIX B TO PART 386—MINIMUM AND MAXIMUM PENALTY REGULATIONS—Continued

49 CFR 391.51(b)(7)	Failing to maintain medical examiner's certificate in driver's qualification file.
49 CFR 392.2	Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated.
49 CFR 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.
49 CFR 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.
49 CFR 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.
49 CFR 392.6	Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed.
49 CFR 392.9(a)(1)	Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured.
49 CFR 395.1(h)(1)(i)	Requiring or permitting a property-carrying CMV driver to drive more than 15 hours (Driving in Alaska).
49 CFR 395.1(h)(1)(ii)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty 20 hours (Driving in Alaska).
49 CFR 395.1(h)(1)(iii)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).
49 CFR 395.1(h)(1)(iv)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).
49 CFR 395.1(h)(2)(i)	Requiring or permitting a passenger-carrying CMV driver to drive more than 15 hours (Driving in Alaska).
49 CFR 395.1(h)(2)(ii)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty 20 hours (Driving in Alaska).
49 CFR 395.1(h)(2)(iii)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).
49 CFR 395.1(h)(2)(iv)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).
49 CFR 395.1(o)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty 16 consecutive hours.
49 CFR 395.3(a)(1)	Requiring or permitting a property-carrying CMV driver to drive without taking an off-duty period of at least 11 consecutive hours prior to driving.
49 CFR 395.3(a)(2)	Requiring or permitting a property-carrying CMV driver to drive after the end of the 14th hour after coming on duty.
49 CFR 395.3(b)(1)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 60 hours in 7 consecutive days.
49 CFR 395.3(b)(2)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 70 hours in 8 consecutive days.
49 CFR 395.3(c)(1)	Requiring or permitting a property-carrying CMV driver to restart a period of 7 consecutive days without taking an off-duty period of 34 or more consecutive hours.
49 CFR 395.3(c)(2)	Requiring or permitting a property-carrying CMV driver to restart a period of 8 consecutive days without taking an off-duty period of 34 or more consecutive hours.
49 CFR 395.5(a)(1)	Requiring or permitting a passenger-carrying CMV driver to drive more than 10 hours.
49 CFR 395.5(a)(2)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty 15 hours.
49 CFR 395.5(b)(1)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 60 hours in 7 consecutive days.
49 CFR 395.5(b)(2)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 70 hours in 8 consecutive days.
49 CFR 395.8(a)	No records of duty status.
49 CFR 395.8(a)	Failing to require driver to make a record of duty status.
49 CFR 395.8(e)	False reports of records of duty status.
49 CFR 395.8(i)	Failing to require driver to forward within 13 days of completion, the original of the record of duty status.
49 CFR 395.8(k)(1)	Failing to preserve driver's record of duty status and/or supporting documents for 6 months.
49 CFR 395.13(c)(1)	Requiring or permitting a driver declared out of out-of-service to operate a CMV before that driver may lawfully do so under the rules of part 395 (removed knowingly).
49 CFR 396.3(b)	Failing to keep minimum records of inspection and vehicle maintenance.
49 CFR 396.9(c)(2)	Requiring or permitting the operation of a motor vehicle declared ''out-of-service'' before repairs were made.
49 CFR 396.11(a)	Failing to require driver to prepare driver vehicle inspection report*(s)*.
49 CFR 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.
49 CFR 396.17(g)	Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards.
49 CFR 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.
49 CFR 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.
49 CFR 397.7(b)	Parking a motor vehicle containing HM(s) other than Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street.
49 CFR 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.

TABLE TO PARAGRAPH (j) OF APPENDIX B TO PART 386—MINIMUM AND MAXIMUM PENALTY REGULATIONS—Continued

49 CFR 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.
49 CFR 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.
49 CFR 397.101(d)	Requiring or permitting the operation of a motor vehicle containing highway route-controlled quantity, as defined in § 173.403, of radioactive materials that is not accompanied by a written route plan.

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

■ 52. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 13908, 14701, 31138, 31139, and 31144; and 49 CFR 1.87.

■ 53. Amend § 387.7 by revising paragraph (d)(3) to read as follows.

§ 387.7 Financial responsibility required.

* * * * *

(d) * * *

(3) A written decision, order, or authorization of the Federal Motor Carrier Safety Administration authorizing a motor carrier to self-insure under § 387.309, provided the motor carrier has not been issued an unfit safety fitness determination as determined by the Federal Motor Carrier Safety Administration under part 385 of this chapter.

* * * * *

■ 54. Amend § 387.309 by revising paragraph (a)(3) to read as follows.

§ 387.309 Qualifications as a self-insurer and other securities or agreements.

(a) * * *

(3) *The existence of an adequate safety program.* Applicant must submit evidence that the carrier's operations meet the safety fitness standard in § 385.5 of this chapter. Carriers need only certify that they have not received an unfit safety fitness determination. Applications by carriers with an unfit safety fitness determination will be summarily denied. Any self-insurance authority granted by FMCSA will automatically expire 30 days after a carrier receives a final unfit safety fitness determination from FMCSA.

* * * * *

PART 395—HOURS OF SERVICE OF DRIVERS

■ 55. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31137, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106–159 (as transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Pub. L. 109–59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110–432, 122 Stat. 4860–4866; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 56. Amend § 395.15 by revising paragraph (j)(2)(i) to read as follows:

§ 395.15 Automatic on-board recording devices.

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(j) * * *

(2) * * *

(i) The motor carrier has been issued an unfit safety fitness determination by the FMCSA;

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Issued under the authority delegated in 49 CFR 1.87 on: December 29, 2015.

T.F. Scott Darling, III,

Acting Administrator.

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