

§ 385.7

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

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

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

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

- (a) Adequacy of safety management controls. The adequacy of controls may be questioned if their degree of formalization, automation, etc., is found to be substantially below the norm for similar carriers. Violations, accidents or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or not functioning properly.
- (b) Frequency and severity of regulatory violations.
- (c) Frequency and severity of driver/vehicle regulatory violations identified in roadside inspections.
- (d) Number and frequency of out-of-service driver/vehicle violations.
- (e) Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews.
- (f) Frequency of accidents; hazardous materials incidents; accident rate per million miles; preventable accident rate per million miles; and other accident indicators; and whether these ac-

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cident and incident indicators have improved or deteriorated over time.

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

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

§ 385.9 Determination of a safety rating.

(a) Following a compliance review of a motor carrier operation, the FMCSA, using the factors prescribed in § 385.7 as computed under the Safety Fitness Rating Methodology set forth in appendix B of this part, shall determine whether the present operations of the motor carrier are consistent with the safety fitness standard set forth in § 385.5, and assign a safety rating accordingly.

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

[62 FR 60042, Nov. 6, 1997]

§ 385.11 Notification of safety fitness determination.

(a) The FMCSA will provide a motor carrier written notice of any safety rating resulting from a compliance review as soon as practicable, but not later than 30 days after the review. The notice will take the form of a letter issued from the FMCSA's headquarters office and will include a list of FMCSR and HMR compliance deficiencies which the motor carrier must correct.

(b) If the safety rating is "satisfactory" or improves a previous "unsatisfactory" safety rating, it is final and becomes effective on the date of the notice.

(c) In all other cases, a notice of a proposed safety rating will be issued. It becomes the final safety rating after the following time periods:

- (1) For motor carriers transporting hazardous materials in quantities requiring placarding or transporting passengers by CMV—45 days after the date of the notice.

(2) For all other motor carriers operating CMVs—60 days after the date of the notice.

(d) A proposed safety rating of “unsatisfactory” is a notice to the motor carrier that the FMCSA has made a preliminary determination that the motor carrier is “unfit” to continue operating in interstate commerce, and that the prohibitions in § 385.13 will be imposed after 45 or 60 days if necessary safety improvements are not made.

(e) A motor carrier may request the FMCSA to perform an administrative review of a proposed or final safety rating. The process and the time limits are described in § 385.15.

(f) A motor carrier may request a change to a proposed or final safety rating based upon its corrective actions. The process and the time limits are described in § 385.17.

[65 FR 50934, Aug. 22, 2000]

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

(a) Generally, a motor carrier rated “unsatisfactory” is prohibited from operating a CMV. Information on motor carriers, including their most current safety rating, is available from the FMCSA on the Internet at <http://www.saftersys.org>, or by telephone at (800) 832-5660.

(1) Motor carriers transporting hazardous materials in quantities requiring placarding, and motor carriers transporting passengers in a CMV, are prohibited from operating a CMV beginning on the 46th day after the date of the FMCSA’s notice of proposed “unsatisfactory” rating.

(2) All other motor carriers rated from reviews completed on or after November 20, 2000 are prohibited from operating a CMV beginning on the 61st day after the date of the FMCSA’s notice of proposed “unsatisfactory” rating. If the FMCSA determines the motor carrier is making a good-faith effort to improve its safety fitness, the FMCSA may allow the motor carrier to operate for up to 60 additional days.

(b) A Federal agency must not use a motor carrier that holds an “unsatisfactory” rating to transport

passengers in a CMV or to transport hazardous materials in quantities requiring placarding.

(c) A Federal agency must not use a motor carrier for other CMV transportation if that carrier holds an “unsatisfactory” rating which became effective on or after January 22, 2001.

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

[65 FR 50934, Aug. 22, 2000]

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

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

(b) A broker, freight forwarder, or for-hire motor carrier that has failed to pay civil penalties imposed by the FMCSA, or has failed to abide by a payment plan, may be prohibited from operating in interstate commerce, and its registration may be suspended under the provisions of 49 CFR 386.84.

[65 FR 78427, Dec. 15, 2000]

§ 385.15 Administrative review.

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

(b) The motor carrier’s request must explain the error it believes the FMCSA committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documents that support its argument.

(c) The motor carrier must submit its request in writing to the Chief Safety Officer, Federal Motor Carrier Safety