

## DEPARTMENT OF TRANSPORTATION

## Office of the Secretary

## 49 CFR Part 1

[OST Docket No. 1 ; Amdt. 1-288]

**Organization And Delegation Of Powers And Duties; Delegation To The Administrator, Federal Highway Administration**

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Final rule.

**SUMMARY:** The Secretary of Transportation delegates to the Administrator, Federal Highway Administration, the authority to manage the Department's \$400 million loan with the Alameda Corridor Transportation Authority (ACTA). This requires a change to the Code of Federal Regulations.

**EFFECTIVE DATE:** This rule is effective May 28, 1997.

**FOR FURTHER INFORMATION CONTACT:** Gwyneth Radloff, Office of the Assistant General Counsel for Regulation and Enforcement at (202) 366-9305, Department of Transportation, 400 7th Street SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** This rule delegates to the Federal Highway Administrator the responsibility to manage the Department's \$400 million loan with the Alameda Corridor Transportation Authority (ACTA). Title V, Chapter 5 of the Act Making Omnibus Consolidated Appropriations for Fiscal Year 1997 (Act) appropriates funds for direct Federal loans not to exceed \$400 million under the authority of Section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R). The reason for the 4R authorization is unrelated to DOT's institutional organization, and the Act, as well as the applicable language from Section 505, confers loan responsibility with the Secretary of Transportation. In addition to this loan, our financial participation includes Federal-Aid Highway funds administered by FHWA's California division. Delegating loan management to FHWA will assure that administrative, legal, engineering and financial aspects of this unique project are managed by a single operating administration.

This rule is being published as a final rule and is being made effective on the date of publication. It relates to departmental management, organization, procedure, and practice. For this reason, the Secretary for good cause finds, under 5 U.S.C. 553(b) B and

(d)(3), that notice and comment on it are unnecessary and that it may be made effective in fewer than 30 days after publication in the **Federal Register**.

**List of Subjects in 49 CFR Part 1**

Authority delegations (Government agencies), Organization and functions (Government agencies).

For the reasons set forth above, part 1 of title 49, Code of Federal Regulations, is amended as follows:

**PART 1—[AMENDED]**

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

**Authority:** 49 U.S.C. 322; Pub. L. 101-552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.48 is amended by adding a new paragraph (kk) as follows:

**§ 1.48 Delegations to Federal Highway Administrator.**

\* \* \* \* \*

(kk) Carry out the functions vested in the Secretary of Transportation by section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, relating to the Alameda Corridor Project in consultation with the Federal Railroad Administrator.

Issued in Washington, D. C. on May 20, 1997.

**Rodney E. Slater,**

*Secretary of Transportation.*

[FR Doc. 97-13950 Filed 5-27-97; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## 49 CFR Part 385

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

RIN 2125-AC 71

**Safety Fitness Procedures; Safety Ratings**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

**SUMMARY:** This interim final rule is being issued in response to a decision of the U.S. Court of Appeals, District of Columbia Circuit, entered on March 18, 1997. In this interim final rule, the FHWA is publishing its Safety Fitness Rating Methodology (SFRM) as Appendix B to 49 CFR 385 to be used as an interim measure until a notice of proposed rulemaking (NPRM),

published elsewhere in today's **Federal Register**, becomes final. The SFRM, which is a detailed explanation of the means by which the factors comprising a safety rating are evaluated and calculated, will be used during this interim period only to rate motor carriers that are transporting hazardous materials in quantities for which vehicle placarding is required, or transporting more than 15 passengers, including the driver. This is necessary to implement the prohibitions contained in the Motor Carrier Safety Act of 1990.

**DATES:** This rule is effective from May 28, 1997 until November 28, 1997.

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

**ADDRESSES:** Submit written, signed comments to the docket number that appears in the heading of this document to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, D.C. 20590-0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. William C. Hill, Vehicle and Operations Division, Office of Motor Carrier Research and Standards, (202) 366-4009, or Mr. Charles Medalen, Office of Chief Counsel, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Background**

The FHWA promulgated 49 CFR Part 385, Safety Fitness Procedures, in 1988, to determine the safety ratings of motor carriers and to establish procedures to resolve disputes. (See 53 FR 50961, December 19, 1988.)

On August 16, 1991, the FHWA issued an interim final rule implementing a provision of the Motor Carrier Safety Act of 1990, Pub.L. 101-500, § 15(b)(1), 104 Stat. 1218, 49 U.S.C. 5113, prohibiting the transportation of passengers or placardable quantities of hazardous materials by any motor carrier with an *unsatisfactory* rating (after being afforded 45 days to improve it) (56 FR 40801). At the same time, the agency announced that it was using the Safety Fitness Rating Methodology (SFRM), comprised of six rating factors and a detailed explanation of how each is calculated, to provide guidance to

safety investigators in applying Part 385 during compliance reviews (CRs) of motor carriers. The SFRM is the mechanism the agency uses to determine how well motor carriers are adhering to 49 CFR 385.5, Safety fitness standard. Since August 16, 1991, the FHWA has provided the SFRM to anyone upon request. The contents of the SFRM were the subject of requests for comments from interested members of the public in FHWA Docket Nos. MC-91-8, published on August 16, 1991, at 56 FR 40801, and MC-94-22, published on September 14, 1994, at 59 FR 47203. An analysis of these comments as they are relevant to the SFRM is provided elsewhere in today's **Federal Register** in a notice of proposed rulemaking (NPRM) that proposes to make the SFRM applicable to all motor carriers.

The U.S. Court of Appeals, District of Columbia Circuit, recently ruled in favor of a motor carrier which had appealed its *conditional* safety fitness rating. *MST Express and Truckers United for Safety v. Department of Transportation and Federal Highway Administration*, No. 96-1084, March 18, 1997. The court ruled that the FHWA had failed to carry out its statutory obligation to establish, by regulation, a means of determining whether a carrier has complied with the safety fitness requirements of the Motor Carrier Safety Act of 1984, Pub. L. 98-554, 98 Stat. 2832 (codified at 49 U.S.C. 31144). Because the carrier's *conditional* safety rating was determined, in part, based upon rules that were not promulgated pursuant to notice and comment rulemaking, as 49 U.S.C. 31144(a) requires, the petitioner's *conditional* safety rating was vacated and the matter remanded to the FHWA for such further action as it may wish to take, consistent with the decision.

The FHWA is adopting the SFRM as Appendix B to 49 CFR Part 385, Safety Fitness Procedures, in this interim final rule. This SFRM is the same one that has been used to rate motor carriers since October 1, 1994, with only minor editorial changes. During this interim period, the SFRM will only be used to rate motor carriers that are transporting hazardous materials in quantities for which vehicle placarding is required, or transporting more than 15 passengers, including the driver. Elsewhere in today's **Federal Register**, the FHWA is proposing to use the SFRM with some further modifications, for the rating of all motor carriers.

To meet the legislative requirement of 49 U.S.C. § 31144(a)(1)(C), i.e., to include specific time deadlines for action by the Secretary, the FHWA is

adding a provision to 49 CFR 385.9 requiring a rating to be issued by the FHWA within 30 days following completion of a CR.

#### Rulemaking Analyses and Notices

The Administrative Procedure Act (5 U.S.C. 553(b)) provides that its notice and comment requirements do not apply when an agency for good cause finds that they are impracticable, unnecessary, or contrary to the public interest. Although the FHWA is publishing an NPRM on a modified SFRM elsewhere in today's **Federal Register**, the agency has determined that the current methodology must be implemented for particular segments of the industry immediately without prior notice and comment because to do otherwise would be contrary to the public interest.

Section 5113(a) of title 49 of the United States Code provides that a motor carrier receiving an *unsatisfactory* safety rating from the Secretary of Transportation has 45 days to improve the rating to *conditional* or *satisfactory*. If it does not, beginning on the 46th day, the motor carrier may not operate a commercial motor vehicle to transport either hazardous materials for which placarding of a motor vehicle is required or more than 15 passengers, including the driver. If the FHWA does not implement the SFRM to enable it to give *unsatisfactory* ratings to motor carriers who may currently be rated as *satisfactory* or *conditional*, the 45-day period will not be triggered and the intent of Congress that *unsatisfactory* motor carriers be precluded from transporting hazardous materials or people will not be realized.

Moreover, 49 U.S.C. 5113(c) prohibits any department, agency, or instrumentality of the United States Government from using a motor carrier with an *unsatisfactory* rating from transporting either hazardous materials for which placarding is required or more than 15 passengers, including the driver. Unlike the requirements set forth in § 5113(a), however, the carrier is not given a 45-day period in which to improve its rating; this prohibition is effective on receipt of the rating. Without the interim final rule, the FHWA would not have a mechanism in place to give *unsatisfactory* safety ratings. Therefore, an unrated carrier could transport hazardous materials or people for the United States Government even if the FHWA were to determine that the carrier should be rated as *unsatisfactory*.

Although the FHWA has authority under 49 U.S.C. 521(b)(5)(A) to place out of service (OOS) all or part of a

carrier's commercial motor vehicle operations if it determines that there is an imminent hazard to safety, the operational conditions creating the imminent hazard must be such that they are likely to result in serious injury or death if not discontinued immediately. That authority, however, is limited to a determination that the imminent hazard results from a violation or violations of provisions of Federal motor carrier safety statutes and the Federal Motor Carrier Safety Regulations. The FHWA does not have similar authority to place carriers OOS if it is determined that an imminent hazard exists as a result of violations of the Hazardous Materials Transportation Act (Pub. L. 93-633, 88 Stat. 2156, as amended) or the Hazardous Materials Regulations. In those cases, a civil action must be brought in a district court of the United States pursuant to 49 U.S.C. 5122(b).

Carriers of hazardous materials and passengers, currently rated as *unsatisfactory*, could also be adversely affected by a decision not to promulgate this interim final rule. Those carriers may have corrected the deficiencies in their operations and seek a review to receive a rating of *conditional* or *satisfactory*. Yet, if the SFRM were not implemented immediately without prior notice and comment, the FHWA would not be able to give those carriers their improved ratings. As a result, carriers which would otherwise have been cleared to carry hazardous materials or people would still be prevented from doing so. This not only would be contrary to Congress' desires—49 U.S.C. 5113(b) requires the Secretary to review the factors that resulted in the *unsatisfactory* rating within 30 days of a motor carrier's request for review—but it would place those carriers at least at a competitive disadvantage to carriers who are currently rated as either *satisfactory* or *conditional* or, in some cases, even those who are unrated. Moreover, without the interim final rule, some carriers who are unable to carry hazardous materials or people because of their *unsatisfactory* ratings—ratings that the FHWA would be precluded from changing even if changes were merited—may be forced out of business.

Accordingly, the FHWA finds that there is good cause to waive prior notice and comment for the limited purposes described above. For the same reasons, the FHWA finds, pursuant to 5 U.S.C. 553(d)(3), that there is good cause for making the interim final rule effective upon publication. Nevertheless, because the FHWA is implementing the SFRM on an emergency basis, it is doing so only until it believes the emergency will

end, that is, until it expects to be able to promulgate a final rule following its analysis of the comments received to this interim final rule and the companion NPRM, which is contained elsewhere in today's **Federal Register**. Therefore, the interim final rule will remain in effect only until November 28, 1997. Comments received will be carefully considered in evaluating whether any changes to this action are required. Indeed, if, as a result of comment analysis, the FHWA believes that a change in the interim final rule is warranted before the expiration date, it will issue an immediate revision.

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

The FHWA has determined this action is not a significant regulatory action within the meaning of Executive Order 12866, but it is significant within the meaning of Department of Transportation regulatory policies and procedures because there is substantial public interest in the safety fitness determination process. It is unlikely that this regulatory action will have an annual effect on the economy of \$100 million or more. This final rule does not impose new requirements upon the motor carrier industry nor alter the basic outline of the August 16, 1991, interim final rule implementing the provisions of 49 U.S.C. 5113. There should be no negative economic impact resulting from this action because it merely continues in effect, but on a smaller scale, a practice that has been followed for the past eight years. This final rule imposes no costs on motor carriers in addition to those assessed in the Regulatory Evaluation and Regulatory Flexibility Analysis prepared in support of the 1988 final rule. (The 1991 interim final rule amended the 1988 rule in ways that the FHWA believes had minimal economic impact on motor carriers.) Moreover, a negative impact on those carriers presently rated *unsatisfactory* will be averted by allowing them the opportunity to resume business upon an improvement to their rating.

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities and has determined that it would not have a significant economic impact on a substantial number of small entities. The motor carriers economically impacted by this rulemaking will be those who are rated as *unsatisfactory*, and fail to take appropriate actions to

have their rating upgraded. In the past, relatively few small motor carriers had been affected by the statutory consequences of an *unsatisfactory* safety rating, and there is no reason to believe those impacts will increase in any way by this action.

*Executive Order 12612 (Federalism Assessment)*

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

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

*Paperwork Reduction Act*

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

*National Environmental Policy Act*

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

*Regulatory Identification Number*

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 49 CFR Part 385**

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

Issued on: May 21, 1997.

**Jane F. Garvey,**

*Acting Federal Highway Administrator.*

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, Chapter III, Part 385, as follows:

**PART 385—SAFETY FITNESS PROCEDURES**

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

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

**§ 385.9 [Amended]**

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

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

(a) \* \* \*

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

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

**Appendix B to Part 385—Safety Rating Process**

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

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

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

The safety rating process developed by FHWA's Office of Motor Carriers is used to:

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

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

#### Source of Data for Rating Methodology

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

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

#### Converting CR Information Into a Safety Rating

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

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

Critical regulations are those which relate directly to management and/or operational controls. Noncompliance with those regulations is indicative of a breakdown in a carrier's management controls. An example of a critical regulation is § 395.3(a)(1)—Requiring or permitting a driver to drive more than 10 hours.

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

Noncompliance with acute regulations and patterns of noncompliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher than average rates of recordable preventable accidents. The FHWA has used noncompliance with acute regulations and patterns of noncompliance

with critical regulations since 1989 to determine motor carriers' adherence to the § 385.5—Safety fitness standard. Compliance with the regulatory factors, (1) [Parts 387, & 390]; (2) [Parts 382, 383 & 391]; (3) [Parts 392 & 395]; (4) [Parts 393 & 396, when there are less than three vehicle inspections in the last 12 months to evaluate]; and (5) [Parts 397, 171, 177 & 180], will be evaluated as follows:

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

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

#### Vehicle Factor

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

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

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

Nearly two million vehicle inspections occur on the roadside each year. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles. Since many of the roadside inspections are targeted to visibly defective vehicles and since there are a limited number of inspections for many motor carriers, the

use of that data is limited. Each CR will continue to have the requirements of Part 396—Inspection, Repair, and Maintenance reviewed as indicated by the above explanation.

#### Accident Factor

In addition to the five regulatory rating factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable preventable accident rate which the carrier has experienced during the past 12 months. *Recordable preventable accident* means an accident that (1) Involves a commercial motor vehicle; (2) that meets the definition of an accident in § 390.5; and (3) that could have been averted but for an act, or failure to act, by the motor carrier or driver. The sixth factor is assigned a rating based on the carrier's recordable preventable accident rate compared to the national accident rate distribution.

To determine this national distribution, recordable preventable accidents per million miles were computed for each CR performed in a year. Most of these carriers (over 50%) had no recordable accidents. The national average for all carriers reviewed in 1988 was 0.46 per million miles; in 1996, 0.50 per million miles. From these data, the percent of all carriers below or above any proposed accident per million mile breakpoint could be established. The breakpoints shown below were determined from consideration of both the national average and the percentage of carriers below and above alternative breakpoints, i.e.:

The Recordable Preventable Accident Rating Scale (total recordable preventable accidents divided by total mileage times 1 million) is:

Satisfactory=less than .3  
Conditional=0.3 to 1.0  
Unsatisfactory=greater than 1.0

#### Exceptions to the Recordable Preventable Accident Rating Scale

*Single Accident Exception:* The accident factor excludes the accident rates for all motor carriers that have only one recordable preventable accident. One accident occurring in 12 months is too isolated an occurrence to allow it to impact the accident factor.

*Urban Carriers Exception:* Experience has shown that urban carriers, those motor carriers operating entirely within a radius of less than a 100 air miles (normally in urban areas) have a higher exposure to accident situations because of their environment and normally have higher accident rates. Therefore, the rating does not become *unsatisfactory* for an urban carrier until it exceeds the 2.0 recordable preventable accident rate per million miles.

*Small Carrier Exception:* Accident rates for small carriers (fewer than 20 drivers) vary to a great extent from one year to the next. Therefore, the lowest "accident factor" rating assigned to a small carrier is *conditional*.

The Factor rating is determined by the following table.

**FACTOR #6.—RECORDABLE PREVENTABLE ACCIDENT RATE TABLE**

Calculated accident rate	Rating	Rating: urban carriers only
Less than .3	Satisfactory ..	Satisfactory.
0.3 to 1.0 .....	Conditional ...	Conditional.
Greater than 1.0 to 2.0.	Unsatisfactory.	Conditional.
Greater than 2.0.	Unsatisfactory.	Unsatisfactory.

**Factor Ratings**

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

The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor.

**FACTORS**

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

Factor Ratings are determined as follows:  
 "Satisfactory"—if the acute and/or critical=0 points  
 "Conditional"—if the acute and/or critical=1 point  
 "Unsatisfactory"—if the acute and/or critical=2 or more points

**Safety Rating**

The ratings for the five factors, along with the recordable preventable accident rate for the 12 months prior to the review, are then entered into a rating table which establishes the motor carrier's safety rating.

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

**MOTOR CARRIER SAFETY RATING TABLE**

Factor ratings		Overall safety rating
Unsatisfactory	Conditional	
0 .....	2 or less .....	Satisfactory.
0 .....	more than 2	Conditional.
1 .....	2 or less .....	Conditional.
1 .....	more than 2	Unsatisfactory.
2 or more .....	0 or more .....	Unsatisfactory.

**Anticipated Safety Rating**

The *anticipated* (emphasis added) safety rating will appear on the CR.

The following appropriate information will appear after the last entry on the CR, MCS-151, Part B.

"It is anticipated the official safety rating from Washington, D.C. will be SATISFACTORY."

Or

"It is anticipated the official safety rating from Washington, D.C. will be CONDITIONAL. The safety rating will become effective thirty days from the date of the CR."

Or

"It is anticipated the official safety rating from Washington, D.C., will be UNSATISFACTORY. The safety rating will become effective thirty days from the date of the CR."

**Assignment of Rating/Motor Carrier Notification**

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

**Motor Carrier Procedural Rights**

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

**Conclusion**

The FHWA believes this "safety rating methodology" is a reasonable approach for assigning a safety rating which best describes the current safety fitness posture of a motor carrier as required by the safety fitness regulations (§ 385.9).

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

**List of Acute and Critical Regulations**

- § 382.115(c) Failing to implement an alcohol and/or controlled substance testing program. (acute)
- § 382.201 Using a driver who has an alcohol concentration of 0.04 or greater. (acute)
- § 382.211 Using a driver who has refused to submit to an alcohol controlled substances test required under Part 382. (acute)
- § 382.213(b) Using a driver who has used a controlled substance. (acute)
- § 382.215 Using a driver who has tested positive for a controlled substance. (acute)
- § 382.301(a) Failing to require driver to undergo pre-employment controlled substance testing. (critical)
- § 382.303(a) Failing to conduct post accident testing on driver for alcohol and/or controlled substances. (critical)
- § 382.305(a) Failing to implement a random controlled substances and/or an alcohol testing program. (acute)

- § 382.305(b)(1) Failing to conduct random alcohol testing at an annual rate of not less than 25 percent of the average number of driver positions. (critical)
- § 382.305(b)(2) Failing to conduct random controlled substances testing at an annual rate of not less than 50 percent of the average number of driver positions. (critical)
- § 382.309(a) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. (acute)
- § 382.309(b) Using a driver who has not undergone a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances. (acute)
- § 382.503 Driver performing safety sensitive function, after engaging in conduct prohibited by Subpart B, without being evaluated by substance abuse professional, as required by § 382.605. (critical)
- § 382.505(a) Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04. (acute)
- § 382.605(c)(1) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than .02 or with verified negative test result, after engaging in conduct prohibited by Part 382, Subpart B. (acute)
- § 382.605(c)(2)(ii) Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up alcohol and controlled substance tests in the first 12 months following the driver's return to duty. (critical)
- § 383.23(a) Operating a commercial motor vehicle without a valid commercial driver's license. (critical)
- § 383.37(a) Allowing, requiring, permitting, or authorizing an employee with a Commercial Driver's License which is suspended, revoked, or canceled by a state or who is disqualified to operate a commercial motor vehicle. (acute)
- § 383.37(b) Allowing, requiring, permitting, or authorizing an employee with more than one Commercial Driver's License to operate a commercial motor vehicle. (acute)
- § 383.51(a) Allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle. (acute)
- § 387.7(a) Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. (acute)
- § 387.7(d) Failing to maintain at principal place of business required proof of financial responsibility. (critical)
- § 387.31(a) Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility. (acute)
- § 387.31(d) Failing to maintain at principal place of business required proof of financial responsibility for passenger vehicles. (critical)

- § 390.15(b)(2) Failing to maintain copies of all accident reports required by State or other governmental entities or insurers. (critical)
- § 390.35 Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records. (acute)
- § 391.11(a)/391.95 Using an unqualified driver, a driver who has tested positive for controlled substances, or refused to be tested as required. (acute)
- § 391.11(b)(6) Using a physically unqualified driver. (acute)
- § 391.15(a) Using a disqualified driver. (acute)
- § 391.45(a) Using a driver not medically examined and certified. (critical)
- § 391.45(b) Using a driver not medically examined and certified each 24 months. (critical)
- § 391.51(a) Failing to maintain driver qualification file on each driver employed. (critical)
- § 391.51(b)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)
- § 391.51(c)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)
- § 391.51(c)(3) Failing to maintain inquiries into driver's driving record in driver's qualification file. (critical)
- § 391.51(d)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)
- § 391.87(f)(5) Failing to retain in the driver's qualification file test finding, either "Negative" and, if "Positive", the controlled substances identified. (critical)
- § 391.93(a) Failing to implement a controlled substances testing program. (acute)
- § 391.99(a) Failing to require a driver to be tested for the use of controlled substances, upon reasonable cause. (acute)
- § 391.103(a) Failing to require a driver-applicant whom the motor carrier intends to hire or use to be tested for the use of controlled substances as a pre-qualification condition. (critical)
- § 391.109(a) Failing to conduct controlled substance testing at a 50% annualized rate. (critical)
- § 391.115(c) Failing to ensure post-accident controlled substances testing is conducted and conforms with 49 CFR Part 40. (critical)
- § 392.2 Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. (critical)
- § 392.4(b) Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle. (acute)
- § 392.5(b)(1) Requiring or permitting a driver to drive a motor vehicle while under the influence of, or in possession of, an intoxicating beverage. (acute)
- § 392.5(b)(2) Requiring or permitting a driver who has consumed an intoxicating beverage within 4 hours to operate a motor vehicle. (acute)
- § 392.6 Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed. (critical)
- § 392.9(a)(1) Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured. (critical)
- § 395.1(i)(1)(i) Requiring or permitting a driver to drive more than 15 hours. (Driving in Alaska.) (critical)
- § 395.1(i)(1)(ii) Requiring or permitting a driver to drive after having been on duty 20 hours. (Driving in Alaska.) (critical)
- § 395.1(i)(1)(iii) Requiring or permitting driver to drive after having been on duty more than 70 hours in 7 consecutive days. (Driving in Alaska.) (critical)
- § 395.1(i)(1)(iv) Requiring or permitting driver to drive after having been on duty more than 80 hours in 8 consecutive days. (Driving in Alaska.) (critical)
- § 395.3(a)(1) Requiring or permitting driver to drive more than 10 hours. (critical)
- § 395.3(a)(2) Requiring or permitting driver to drive after having been on duty 15 hours. (critical)
- § 395.3(b) Requiring or permitting driver to drive after having been on duty more than 60 hours in 7 consecutive days. (critical)
- § 395.3(b) Requiring or permitting driver to drive after having been on duty more than 70 hours in 8 consecutive days. (critical)
- § 395.8(a) Failing to require driver to make a record of duty status. (critical)
- § 395.8(e) False reports of records of duty status. (critical)
- § 395.8(l) Failing to require driver to forward within 13 days of completion, the original of the record of duty status. (critical)
- § 395.8(k)(1) Failing to preserve driver's record of duty status for 6 months. (critical)
- § 395.8(k)(1) Failing to preserve driver's records of duty status supporting documents for 6 months. (critical)
- § 396.3(b) Failing to keep minimum records of inspection and vehicle maintenance. (critical)
- § 396.9(c)(2) Requiring or permitting the operation of a motor vehicle declared "out-of-service" before repairs were made. (acute)
- § 396.11(a) Failing to require driver to prepare driver vehicle inspection report. (critical)
- § 396.11(c) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report. (acute)
- § 396.17(a) Using a commercial motor vehicle not periodically inspected. (critical)
- § 396.17(g) Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards. (acute)
- § 397.5(a) Failing to ensure a motor vehicle containing Class A or B explosives (Class 1.1, 1.2, or 1.3) is attended at all times by its driver or a qualified representative. (acute)
- § 397.7(a)(1) Parking a motor vehicle containing Class A or B explosives (1.1, 1.2, 1.3) within 5 feet of traveled portion of highway. (critical)
- § 397.7(b) Parking a motor vehicle containing hazardous material(s) within 5 feet of traveled portion of highway or street. (critical)
- § 397.13(a) Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 25 feet of a motor vehicle containing explosives, oxidizing materials, or flammable materials. (critical)
- § 397.19(a) Failing to furnish driver of motor vehicle transporting Class A or B explosives (Class 1.1, 1.2, 1.3) with a copy of the rules of Part 397 and/or emergency response instructions. (critical)
- § 397.67(d) Requiring or permitting the operation of a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material that is not accompanied by a written route plan. (critical)
- § 171.15 Carrier failing to give immediate telephone notice of an incident involving hazardous materials. (critical)
- § 171.16 Carrier failing to make a written report of an incident involving hazardous materials. (critical)
- § 177.800(a) Failing to instruct a category of employees in hazardous materials regulations. (critical)
- § 177.817(a) Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper. (critical)
- § 177.817(e) Failing to maintain proper accessibility of shipping papers. (critical)
- § 177.823(a) Moving a transport vehicle containing hazardous material that is not properly marked or placarded. (critical)
- § 177.841(e) Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals. (acute)
- § 180.407(a) Transporting a shipment of hazardous material in cargo tank that has not been inspected or retested in accordance with § 180.407. (critical)
- § 180.407(c) Failing to periodically test and inspect a cargo tank. (critical)
- § 180.415 Failing to mark a cargo tank which passed an inspection or test required by § 180.407. (critical)
- § 180.417(a)(1) Failing to retain cargo tank manufacturer's data report certificate and related papers, as required. (critical)
- § 180.417(a)(2) Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required. (critical)