



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
SOUTHERN SERVICE CENTER
1800 CENTURY BOULEVARD, SUITE 1700
ATLANTA, GA 30345

HOW TO REQUEST AN UPGRADE TO YOUR SAFETY RATING BASED ON CORRECTIVE ACTION

The Federal Motor Carrier Safety Administration (FMCSA) allows a motor carrier to request an upgrade of its safety rating based on corrective action as defined in 49 CFR section 385.17. The motor carrier's request for an upgrade must include a written description of corrective actions taken, documentation of these corrective actions, and an explanation of how its operations meet the safety standards and factors specified in 49 CFR sections 385.5 and 385.7.

The FMCSA requires a description of the corrective taken and will accept a Safety Management Plan (SMP) that outlines how you will prevent future violations as evidence of the safety management controls that have been put into place to satisfy the regulations of 49 CFR sections 385.5 and 385.7. You may at any time request, in writing, a change to your safety rating based on corrective actions. However, if your review resulted in a proposed unsatisfactory safety rating you should do so as soon as possible so that FMCSA has the opportunity to review your request before the effective date of the final safety rating. Your submission should be as detailed as possible and clearly indicate that it is a request for a safety rating upgrade under 49 CFR section 385.17. The regulations require that motor carriers submit their requests to the Field Administrator, Federal Motor Carrier Safety Administration, in which the motor carrier maintains its principal place of business. Two copies of the SMP must be prepared and one submitted to each of the following addresses:

U.S. Department of Transportation
 Federal Motor Carrier Safety Administration
 Southern Service Center
 Darrell Ruban, Field Administrator
 1800 Century Blvd., Suite 1700
 Atlanta, GA 30345

U.S. Department of Transportation
 Federal Motor Carrier Safety Administration
 Mac Kirk, Division Administrator
 300 N. Meridian, Suite 106-N
 Oklahoma City, OK 73107

The safety management plan should include, but not be limited to, the following:

- 1. The request should address each violation discovered during the most recent Compliance Review.
- 2. The request should discuss the actions taken to correct the deficiency or deficiencies that allowed the violations to occur. **Documentation** of this corrective action must be

submitted with your safety rating upgrade request. For example, documentation may include new policies and procedures, training programs and sign-in lists, or copies of missing drug and alcohol tests. **NOTE: When a motor carrier is cited for a violation of 49 CFR Part 395 (Hours of Service of Drivers), the SMP must include a description of the system that the motor carrier will use to control hours of service and verify the accuracy of records of duty status, the types of supporting documents that will be used, documentation showing hours of service checks and false log checks, and progressive disciplinary programs and the results.**

- 3. Outline actions taken to ensure the violations do not reoccur and long term goals of continuing efforts to stay in compliance in the future.
- 4. If Factor 4 (Vehicle Factor) out-of-service rate is 34 percent or higher, a systematic maintenance schedule program should be included with the request. The program should include, but not be limited to, ensuring the safety defects reported by the drivers on their vehicle inspection reports are repaired before the vehicle is re-dispatched and a complete file for each subject vehicle, recording all repairs, maintenance and inspection operations performed.
- 5. If Factor 6 (Accident Factor) is rated unsatisfactory, an accident countermeasure program should be included as part of the request. The program should include, but not be limited to, defensive driving training, winter driving tips, identification of causative factors, and preventive measures implemented to reduce crashes.
- 6. If the request includes actions that will be conducted in the near future, such as training, reorganization of operations, purchasing of computer programs, satellite tracking, etc., a detailed description of the activity or training, including the specific curriculum, with a schedule of when the activity will commence and be completed, should be included.
- 7. Any additional documentation that relates to motor carrier safety and the prevention of accidents and hazardous materials incidents.
- 8. Include a written statement that the motor carrier will operate in compliance with the Federal Motor Carrier Safety Regulations and the Hazardous Material Regulations, and that the motor carrier's operation currently meets the safety standard and factors specified in 49 CFR sections 385.5 and 385.7. The statement must be signed by a corporate official or owner of the company.

NOTE: Failing to adequately respond to each area listed above may result in a denial of your request for an upgrade to your safety rating.

Sections 385.13, 385.15, & 385.17 - Safety Fitness Procedures

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 FMCSA on the Internet at <http://www.safersys.org/>, or by telephone at (800) 832-5660.

(a)(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 commerce beginning on the 46th day after the date of the FMCSA notice of proposed "unsatisfactory" rating.

(a)(2) All other motor carriers rated as a result of reviews completed on or after November 20, 2000, are prohibited from operating a CMV in motor carrier operations in commerce beginning on the 61st day after the date of the FMCSA notice of proposed "unsatisfactory" rating. If FMCSA determines that the motor carrier is making a good-faith effort to improve its safety fitness, 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.

(d)(1) If a proposed "unsatisfactory" safety rating becomes final, FMCSA will issue an order placing out of service the motor carrier's operations in commerce. The out-of-service order shall apply both to the motor carrier's operations in interstate commerce and to its *operations* affecting interstate commerce.

(d)(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:

(d)(2)(i) The State that issued the intrastate out-of-service order participates in the Motor Carrier Safety Assistance Program and uses the FMCSA safety rating methodology provided in this part; and

(d)(2)(ii) The motor carrier has its principal place of business in the State that issued the out-of-service order.

(d)(2)(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 fit.

(d)(3) Any motor carrier that operates CMV in violation of this section is subject to the penalty provisions of 49 USC 521(b) and Appendix B to Part 386 of the FMCSR.

[56 FR 40806, Aug. 16, 1991; 62 FR 60042-60043, November 6, 1997; 65 FR 50934, Aug. 22, 2000; 72 FR 36788, July 5, 2007; 72 FR 55700, Oct. 1, 2007]

385.15 Administrative review.

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

(b) The motor carrier's request must explain the error it believes 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 Administration, 1200 New Jersey Avenue, SE, Washington DC 20590-0001.

(c)(1) If a motor carrier has received a notice of a proposed "unsatisfactory" safety rating, it should submit its request within 15 days from the date of the notice. This time frame will allow FMCSA to issue a written decision before the prohibitions outlined in Sec. 385.13(a)(1) and (2) take effect. Failure to petition within this 15-day period may prevent FMCSA from issuing a final decision before such prohibitions take effect.

(c)(2) A motor carrier must make a request for an administrative review within 90 days of the date of the proposed safety rating issued under Sec. 385.11(c) or a final safety rating issued under Sec. 385.11(b), or within 90 days after denial of a request for a change in rating under Sec. 385.17(i).

(d) The FMCSA may ask the motor carrier to submit additional data and attend a conference to discuss the safety rating. If the motor carrier does not provide the information requested, or does not attend the conference, FMCSA may dismiss its request for review.

(e) The FMCSA will notify the motor carrier in writing of its decision following the administrative review. The FMCSA will complete its review:

(e)(1) Within 30 days after receiving a request from a hazardous materials or passenger motor carrier that has received a proposed or final "unsatisfactory" safety rating.

(e)(2) Within 45 days after receiving a request from any other motor carrier that has received a proposed or final "unsatisfactory" safety rating.

(f) The decision constitutes final agency action.

(g) Any motor carrier may request a rating change under the provisions of Sec. 385.17.

[56 FR 40806, Aug. 16, 1991; 62 FR 60043, November 6, 1997; 65 FR 50935, Aug. 22, 2000; 72 FR 55701, Oct. 1, 2007]

385.17 Change to safety rating based on corrective actions.

(a) A motor carrier that has taken action to correct the deficiencies that resulted in a proposed or final rating of "conditional" or "unsatisfactory" may request a rating change at any time.

(b) A motor carrier must make this request in writing to the FMCSA Service Center for the geographic area where the carrier maintains its principal place of business. The addresses and geographical boundaries of the Service Centers are listed in Sec. 390.27 of this chapter.

(c) The motor carrier must base its request upon evidence that it has taken corrective actions and that its operations currently meet the safety standard and factors specified in Secs. 385.5 and 385.7. The request must include a written description of corrective actions taken, and other documentation the carrier wishes FMCSA to consider.

(d) The FMCSA will make a final determination on the request for change based upon the documentation the motor carrier submits, and any additional relevant information.

(e) The FMCSA will perform reviews of requests made by motor carriers with a proposed or final "unsatisfactory" safety rating in the following time periods after the motor carrier's request:

(e)(1) Within 30 days for motor carriers transporting passengers in CMVs or placardable quantities of hazardous materials.

(e)(2) Within 45 days for all other motor carriers.

(f) The filing of a request for change to a proposed or final safety rating under this section does not stay the 45-day period specified in Sec. 385.13(a)(1) for motor carriers transporting passengers or hazardous materials. If the motor carrier has submitted evidence that corrective actions have been taken pursuant to this section and FMCSA cannot make a final determination within the 45-day period, the period before the proposed safety rating becomes final may be extended for up to 10 days at the discretion of FMCSA.

(g) The FMCSA may allow a motor carrier (except a motor carrier transporting passengers or a motor carrier transporting hazardous materials in quantities requiring placarding) with a proposed rating of "unsatisfactory" (except those transporting passengers in CMV or placardable quantities of hazardous materials) to continue to motor carrier operations in commerce for up to 60 days beyond the 60 days specified in the proposed rating, if FMCSA determines that the motor carrier is making a good faith effort to improve its safety status. This additional period would begin on the 61st day after the date of the notice of the proposed "unsatisfactory" rating.

(h) If FMCSA determines that the motor carrier has taken the corrective actions required and that its operations currently meet the safety standard and factors specified in sections. 385.5 and 385.7, the agency will notify the motor carrier in writing of its upgraded safety rating.

(i) If FMCSA determines that the motor carrier has not taken all the corrective actions required, or that its operations still fail to meet the safety standard and factors specified in Secs. 385.5 and 385.7, the agency will notify the motor carrier in writing.

(j) Any motor carrier whose request for change is denied in accordance with paragraph (i) of this section may request administrative review under the procedures of Sec. 385.15. The motor carrier must make the request within 90 days of the denial of the request for a rating change. If the proposed rating has become final, it shall remain in effect during the period of any administrative review.

[56 FR 40806, Aug. 16, 1991; 62 FR 60043, November 6, 1997; 65 FR 50935, Aug. 22, 2000; ; 72 FR 36789, July 5, 2007]

For the entire 49 CFR Part 385 regulations, please consult the Code of Federal Regulations.