identifies the motor carrier as authorized to operate in the United States. In order to initiate operations in the United States, a non-North America-domiciled motor carrier with new entrant registration must:

(1) Have its surety or insurance provider file proof of financial responsibility in the form of certificates of insurance, surety bonds, and endorsements, as required by §387.7(e)(2), §387.31(e)(2), and §387.301 of this subchapter, as applicable; and

(2) File a hard copy of, or have its process agent(s) electronically submit, Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, as required by part 366 of this subchapter.

(f) A non-North America-domiciled motor carrier must comply with all provisions of the safety monitoring system in part 385, subpart I of this subchapter, including successfully passing North American Standard commercial motor vehicle inspections at least every 90 days and having safety decals affixed to each commercial motor vehicle operated in the United States as required by §385.703(c) of this subchapter.

(g) FMCSA may not re-designate a non-North America-domiciled carrier’s registration from new entrant to permanent 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 part 385, subpart I of this subchapter. Successful completion includes obtaining a Satisfactory safety rating as the result of a compliance review.

§ 385.609 Requirement to notify FMCSA of change in applicant information.

(a)(1) A motor carrier subject to this subpart must notify FMCSA of any changes or corrections to the information in Section I, IA or II of Form OP–1(NNA)—Application for U.S. Department of Transportation (USDOT) Registration by Non-North America-Domiciled Motor Carriers that occurs during the application process or after having been granted new entrant registration.

(2) A motor carrier subject to this subpart must notify FMCSA of any changes or corrections to the information in Section I, IA or II of Form OP–1(NNA)—Application for U.S. Department of Transportation (USDOT) Registration by Non-North America-Domiciled Motor Carriers that occurs during the application process or after having been granted new entrant registration.
III. OVERALL DETERMINATION OF THE CARRIER’S BASIC SAFETY MANAGEMENT CONTROLS
(a) The carrier will not receive new entrant registration if FMCSA cannot:
(1) Verify a controlled substances and alcohol testing program consistent with part 40 of this title;
(2) Verify a system of compliance with the hours-of-service rules of this subchapter, including recordkeeping and retention;
(3) Verify proof of financial responsibility;
(4) Verify records of periodic vehicle inspections; and
(5) Verify the qualifications of each driver the carrier intends to assign to operate commercial motor vehicles in the United States, as required by parts 383 and 391 of this subchapter, including confirming the validity of each driver’s CDL, Canadian Commercial Driver’s License, or Mexican Licencia de Federal de Conductor, as appropriate.
(b) If FMCSA confirms each item under paragraphs III (a)(1) through (5) of this appendix, the carrier will receive new entrant registration, unless FMCSA finds the carrier has inadequate basic safety management controls in at least three separate factors described in part IV of this appendix. If FMCSA makes such a determination, the carrier’s application for new entrant registration will be denied.

IV. EVALUATION OF REGULATORY COMPLIANCE
(a) During the safety audit, FMCSA gathers information by reviewing a motor carrier’s compliance with “acute” and “critical” regulations of the FMCSRs and HMRs.
(b) Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier.
(c) Critical regulations are those where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier’s management controls.
(d) The list of the acute and critical regulations, which are used in determining if a carrier has basic safety management controls in place, is included in Appendix B, VII, List of Acute and Critical Regulations to part 385 of this subchapter.
(e) Noncompliance with acute and critical regulations are indicators of inadequate safety management controls and usually higher than average accident rates.
(f) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into six regulatory areas called...
“factors.” The regulatory factors, evaluated on the adequacy of the carrier’s safety management controls, are:

(1) Factor 1—General: Parts 387 and 390;

(2) Factor 2—Driver: Parts 382, 383, and 391;

(3) Factor 3—Operational: Parts 392 and 395;

(4) Factor 4—Vehicle: Parts 393, 396 and inspection data for the last 12 months;

(5) Factor 5—Hazardous Materials: Parts 171, 177, 180 and 397; and

(6) Factor 6—Recordable Accident Rate per Million Miles.

The results of the review of the OOS rate will affect the Vehicle Factor as follows:

(i) If the motor carrier has had at least three roadside inspections in the twelve months before the safety audit, and the vehicle OOS rate is 34 percent or higher, one point will be assessed against the carrier. That point will be added to any other points assessed for discovered noncompliance with the acute and critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor as follows:

(ii) If the motor carrier’s vehicle OOS rate is less than 34 percent, or if there are less than three inspections, the determination of the carrier’s level of safety management control for that factor.

For each instance of noncompliance with an acute regulation, 1.5 points will be assessed.

The rates are the result of roughly doubling the United States national average accident rate in Fiscal Years 1994, 1995, and 1996.

(4) FMCSA will continue to consider preventability when a new entrant contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. 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 accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.”

(k) Factor Ratings. (1) The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor. Each carrier’s level of basic safety management controls with each factor is determined as follows:

(i) Factor 1—General: Parts 390 and 387;

(ii) Factor 2—Driver: Parts 382, 383, and 391;

(iii) Factor 3—Operational: Parts 392 and 395;

(iv) Factor 4—Vehicle: Parts 393, 396 and the Out of Service Rate;

(v) Factor 5—Hazardous Materials: Part 171, 177, 180 and 397; and

(vi) Factor 6—Accident: Recordable Accident Rate per Million Miles.

(2) For paragraphs IV (k)(1)(v) through (v) of this appendix (Factors 1 through 5), if the combined violations of acute and/or critical regulations for each factor is equal to three or more points, the carrier is determined not
to have basic safety management controls for that individual factor.

(3) For paragraph IV (k)(1)(vi) of this appendix, if the recordable accident rate is greater than 1.7 recordable accidents per million miles for an urban carrier (1.5 for all other carriers), the carrier is determined to have inadequate basic safety management controls.

(l) Notwithstanding FMCSA verification of the items listed in paragraphs III (a)(1) through (5) of this appendix, if the safety audit determines the carrier has inadequate basic safety management controls in at least three separate factors described in paragraph III of this appendix, the carrier’s application for new entrant registration will be denied. For example, FMCSA evaluates a carrier finding:

(1) One instance of noncompliance with a critical regulation in part 397 scoring one point for Factor 1;
(2) Two instances of noncompliance with acute regulations in part 382 scoring three points for Factor 2;
(3) Three instances of noncompliance with critical regulations in part 396 scoring three points for Factor 4; and
(4) Three instances of noncompliance with acute regulations in parts 371 and 397 scoring four and one-half (4.5) points for Factor 5.

Under this example, the carrier will not receive new entrant registration because it scored three or more points for Factors 2, 4, and 5 and FMCSA determined the carrier had inadequate basic safety management controls in at least three separate factors.

Subpart I—Safety Monitoring System for Non-North American Carriers

SOURCE: 73 FR 76494, Dec. 16, 2008, unless otherwise noted.

§ 385.701 Definitions.

The following definitions apply to this subpart:

Compliance review means a compliance review as defined in §385.3 of this part.

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. It will be revoked if the registrant is not assigned a Satisfactory safety rating following a compliance review conducted during the safety monitoring period established in this subpart.

Non-North America-domiciled motor carrier means a motor carrier of property or passengers whose principal place of business is located in a country other than the United States, Canada or Mexico.

§ 385.703 Safety monitoring system.

(a) General. Each non-North America-domiciled carrier new entrant will be subject to an oversight program to monitor its compliance with applicable Federal Motor Carrier Safety Regulations (FMCSRs), Federal Motor Vehicle Safety Standards (FMVSSs), and Hazardous Materials Regulations (HMRs).

(b) Roadside monitoring. Each non-North America-domiciled carrier new entrant will be subject to intensified monitoring through frequent roadside inspections.

(c) Safety decal. Each non-North America-domiciled carrier must have on every commercial motor vehicle it operates in the United States a current decal attesting to a satisfactory North American Standard Commercial Vehicle inspection by a certified FMCSA or State inspector pursuant to 49 CFR 350.201(k). This requirement applies during the new entrant operating period and for three years after the carrier’s registration becomes permanent following removal of its new entrant designation.

(d) Compliance review. FMCSA will conduct a compliance review on a non-North America-domiciled carrier within 18 months after FMCSA issues the carrier a USDOT Number.

§ 385.705 Expedited action.

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

(1) Using a driver not possessing, or operating without, a valid CDL, Canadian Commercial Driver’s License, or Mexican Licencia Federal de Conductor. An invalid commercial driver’s license includes one that is falsified, revoked, expired, or missing a required endorsement.