entrant registration until it meets those requirements.

Effective Date Note: At 78 FR 52860, Aug. 23, 2013, §385.609 was amended by revising paragraph (a)(2), and removing paragraph (a)(3), effective Aug. 23, 2015. For the convenience of the user, the revised text is set forth as follows:

385.609 Requirement to notify FMCSA of change in applicant information.

(a) * * *

(1) Determine if a carrier has the basic safety management controls required by 49 U.S.C. 31144; and

(2) Identify motor carriers and drivers who are having safety problems and need improvement in their compliance with the FMCSRs and the HMRs, before FMCSA issues new entrant registration to operate within the United States.

II. SOURCE OF THE DATA FOR THE SAFETY AUDIT EVALUATION CRITERIA

(a) The FMCSA’s evaluation criteria are built upon the operational tool known as the safety audit. FMCSA developed this tool to assist auditors, inspectors, and investigators in assessing the adequacy of a non-North America-domiciled carrier’s basic safety management controls.

(b) The safety audit is a review of a non-North America-domiciled motor carrier’s operation and is used to:

(1) Determine if a carrier has the basic safety management controls required by 49 U.S.C. 31144; and

(2) In the event that a carrier is found not to be in compliance with applicable FMCSRs and HMRs, educate the carrier on how to comply with U.S. safety rules.
(c) Documents such as those contained in driver qualification files, records of duty status, vehicle maintenance records, and alcohol testing records, and other records are reviewed for compliance with the FMCSRs and HMRs. Violations are cited on the safety audit. Performance-based information, when available, is utilized to evaluate the carrier’s compliance with the vehicle regulations. Recordable accident information is also collected.

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 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 396;
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—Accident: Recordable Accident Rate per Million Miles.

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

(h) For each instance of noncompliance with a critical regulation, 1 point will be assessed.

(i) Vehicle Factor. (1) When at least three vehicle inspections are recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months before the safety audit or performed at the time of the review, the Vehicle Factor (part 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and noncompliance with acute and critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor as follows:

1. 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 acute and critical regulations of part 396 of this chapter to determine the carrier’s level of safety management control for that factor.

2. Roadside inspection information is retained in the MCMIS and is integral to evaluating a motor carrier’s ability to successfully maintain its vehicles, thus preventing being placed OOS during a roadside inspection. Each safety audit will continue to have the requirements of part 396 of this chapter, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.
§ 385.701 Accident Factor. (1) In addition to the five regulatory factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate, which the carrier has experienced during the past 12 months. Recordable accident, as defined in 49 CFR 396.5, means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(2) [Reserved]

(3) The recordable accident rate will be used in determining the carrier’s basic safety management controls in Factor 6, Accident. It will be used only when a carrier incurs two or more recordable accidents within the 12 months before the safety audit. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable rate per million miles greater than 1.7 will be deemed to have inadequate basic safety management controls for the accident factor. All other carriers with a recordable accident rate per million miles greater than 1.5 will be deemed to have inadequate basic safety management controls for the accident factor. 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;

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

(2) For paragraphs IV (k)(1)(i) 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.

(4) 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 387 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 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