

obtaining additional, more detailed information. These possible actions are not government regulations or mandates. However, we strongly suggest that shippers and carriers consider implementation of security measures that are appropriate to their industry and operations. There are certain cargo security regulations already in place, such as the Federal Aviation Administration's Indirect Air Carrier Security Program set forth under 14 CFR part 109.

## VI. Training of Hazmat Employees

We estimate that over 85 percent of all hazardous materials incidents are caused by human error. Insufficient function-specific training of hazmat employees has been identified as a major contributor in hazmat related incidents. Before any hazmat employee performs a function subject to the HMR, that person must be trained in the performance of that function. Effective training of hazmat employees reduces the potential for incidents and accidents. Training is essential for the protection of people, property, and the environment.

Training is a systematic program (consistent approach, testing, and documentation) that ensures a hazmat employee has knowledge of hazardous materials and the HMR, and can perform assigned hazmat functions properly. The terms "hazmat employee" and "hazmat employer" are defined in detail in § 171.8. Stated briefly, a hazmat employee is anyone who directly affects hazardous material transportation safety. A hazmat employer is anyone who uses employees in connection with transporting hazardous materials in commerce, causing hazardous materials to be transported, or manufacturing or offering packagings as authorized for use in transportation of hazardous materials. Each hazmat employee must be initially trained, and periodically retrained every three years in three areas: (1) General awareness/familiarization training designed to provide familiarity with requirements of the HMR and to enable the employee to recognize and identify hazardous materials; (2) function-specific training concerning requirements of the HMR which are specifically applicable to the functions the employee performs; and (3) safety training concerning emergency response information, measures to protect the employee from the hazards posed by materials, and methods and procedures for avoiding accidents.

## VII. Obtaining Federal Assistance

You may obtain information on hazardous material incidents, most of which involve "spills" (the unintentional release of a hazardous material during transportation), from RSPA's database which is accessible from our website at <http://hazmat.dot.gov>. You can search this database to make sure that you are aware of incidents involving your shipments. To ensure that shippers are informed of incidents involving their shipments, RSPA has proposed to amend the HMR to require a carrier to notify the shipper of any incident required to be reported to RSPA. (See RSPA's notice of proposed rulemaking published in the **Federal Register** on July 3, 2001; 66 FR 35155.)

Our Hazardous Materials Information Center (HMIC) may be reached toll-free at 800-467-4922. The HMIC provides informal guidance concerning requirements of the HMR. The HMIC is staffed with information specialists from 9 am until 5 pm, Eastern time, Monday through Friday, except Federal holidays. When the information line is not staffed, callers may leave a recorded message, which will be answered the next business day. This toll-free number may also be used to voluntarily report suspected violations of the HMR. Reported violations of hazardous materials regulations are forwarded to the Office of Hazardous Materials Enforcement or the appropriate DOT modal administration for appropriate action.

Modal-specific information may be obtained directly from DOT's modal administrations (*i.e.*, the Federal Aviation Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, the U.S. Coast Guard, and the Transportation Security Administration) at their Washington, DC headquarters or field offices.

You may request an informal written interpretation, a regulatory clarification, a response to a question, or offer an opinion concerning hazardous materials transportation by submitting a written request to the RSPA Office of Hazardous Materials Standards (DHM-10), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

We have a variety of training materials and compliance guides available in limited quantities to interested persons. Information on those publications and related materials is available through our website at <http://hazmat.dot.gov/>. In addition our website provides: (1) A complete copy of the

HMR; (2) recently published rulemakings; (3) hyperlinks to government and private vendors who offer training, consulting and other contracted services; (4) our multi-modal training seminar schedule; (5) complementary on-line training modules; and (6) informal interpretations and guidance documents.

Issued in Washington, DC, on May 6, 2002.

**Frits Wybenga,**

*Deputy Associate Administrator for Hazardous Materials Safety.*

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**BILLING CODE 4910-60-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 385

[Docket No. FMCSA-2001-11061]

RIN 2126-AA59

#### New Entrant Safety Assurance Process

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Interim Final Rule (IFR); request for comments.

**SUMMARY:** The FMCSA establishes minimum requirements for new entrant motor carriers to ensure that they are knowledgeable about applicable Federal motor carrier safety standards. After ensuring that they are knowledgeable through the application process, the new entrants will operate for 18 months in which time they must pass a safety audit in order to receive permanent DOT registration.

**DATES:** This rule is effective January 1, 2003. Comments must be received on or before July 12, 2002.

**ADDRESSES:** You can submit comments by mail or by delivery service to the U.S. DOT Docket Management Facility (DMS), Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001, and your signed written comments must refer to the docket number appearing at the top of this document. Comments received from the public will become part of this docket and will be available for inspection and copying at the DMS between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Those desiring acknowledgement of receipt of your comments should include a self-addressed stamped envelope or postcard, or after submitting comments electronically, print the acknowledgment page.

Comments may also be submitted on the Internet by using the universal resource locator (URL) at: <http://dmses.dot.gov/submit>, or by fax to (202) 493-2251. Internet users may view all comments received by the DMS on the Internet at: <http://dms.dot.gov>. Please follow the instructions online for more information and help. In addition, an electronic copy of this document may be downloaded by accessing **Federal Register** publications through the Government Printing Office (GPO) Access service (<http://www.access.gpo.gov/nara>).

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FMCSA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Minor, 202-366-4009, Acting Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration (MC-PSD), 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

This rule is being published as an interim final rule and is being made effective on January 1, 2003. A notice of proposed rulemaking does not precede this rule.

In the fiscal year 2002 Department of Transportation Appropriations Act (Public Law 107-87; December 18, 2001), Congress directed that as a condition of processing applications of Mexico-domiciled motor carriers for authority to operate beyond the commercial zones and municipalities located along the U.S.-Mexico border, the FMCSA must issue an interim final rule to ensure that new entrant carriers are knowledgeable about Federal safety standards. The FMCSA is making the effective date of the rule January 1, 2003 in order to allow the agency sufficient time to put in place the necessary resources to conduct the safety audits prescribed by the rule. Additionally, the FMCSA will need the funds generated by its final fee structure under the Motor Carrier Replacement Information/Registration System to run the program.

It expects to complete that rulemaking by the January 2003 effective date.

Because of Congress' direction, the FMCSA finds that there is good cause that notice and comment are contrary to the public interest under 5 U.S.C. 553(b)(3)(B).

#### **Background**

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (Public Law 106-159). Section 210(a) of MCSIA, now codified as 49 U.S.C. 31144(f), requires the Secretary of Transportation to establish regulations specifying minimum requirements for applicant motor carriers seeking federal interstate operating authority, including a requirement that new entrants undergo a safety audit within the first 18 months of operations.

Although operating authority has generally been construed in the past to mean registration of for-hire carriers subject to the jurisdiction transferred from the Interstate Commerce Commission following enactment of the ICC Termination Act of 1995 (ICCTA) (Public Law 104-88) (referred to herein as authorized for-hire motor carriers), the FMCSA believes section 210 extends this concept to all carriers subject to Federal safety jurisdiction. In other words, all new entrants, regardless of whether they need to register with the FMCSA under 49 U.S.C. 13901, will be required to meet certain minimum safety standards in order to continue operating in interstate commerce during and after the 18-month period following their receipt of a USDOT number.

The FMCSA intends to improve the safety performance of new entrants by providing educational and technical assistance to new carriers as they begin their new business. The intent of the safety audit and 18-month monitoring period is to provide new carriers the opportunity to understand their safety obligations under the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs). The safety audit will consist of a review of the new entrant's safety data, a review of requested motor carrier documents, and an interview session with the motor carrier by an individual certified under FMCSA regulations to perform safety audits. The objective of the safety audit is both to educate the carrier on compliance with the FMCSRs and HMRs and to determine areas where the carrier might be deficient in terms of compliance. Areas covered include the qualification of drivers; driving a commercial motor vehicle; hours of service; vehicle inspection, repair, and

maintenance; transporting and marking hazardous materials; controlled substances and alcohol use and testing; commercial driver's license standards; and financial responsibility. When presented with evidence that carriers cannot or will not exercise basic safety management controls, the FMCSA will require corrective action. If the necessary corrective action is not taken, a carrier will be denied the privilege of operating in interstate commerce.

However, the safety enforcement remedies addressed in the rule are not the exclusive enforcement tools available to the agency to ensure safe operations by new entrants. New entrant carriers are subject, like any other carrier operating in the United States, to all Federal Motor Carrier Safety Regulations and operating requirements. The agency can and will, where necessary, apply the full range of enforcement actions to new entrant carriers. These include, but are not limited to, compliance reviews, civil penalties, and revocation of new entrant registration for serious safety violations.

Currently, an applicant who wishes to begin commercial vehicle operations in interstate commerce is required to submit the Motor Carrier Identification Report, Form MCS-150, to FMCSA before commencing operations. Additionally, unless providing transportation exempt from ICCTA registration requirements, a for-hire motor carrier must also apply for the appropriate operating authority, make the necessary administrative filings as required by the ICCTA, and pay a fee.

This regulation establishes new minimum requirements for all applicant motor carriers domiciled in the United States and Canada seeking to operate in interstate commerce for the first time. Applicants will be provided educational and technical assistance material to assist them in complying with the FMCSRs and applicable HMRs, and will be required to certify that they are knowledgeable about, and will comply, with these regulations. This will help ensure they are knowledgeable about applicable Federal motor carrier safety standards before being granted "new entrant registration" that will continue for a minimum of 18 months. During the 18-month period, FMCSA will evaluate the new entrant's safety management practices through a safety audit and monitor its on-road performance prior to granting the new entrant permanent registration.

Section 210(b) of the MCSIA required the Secretary to consider establishing a proficiency examination as well as other requirements to ensure applicants understand applicable safety regulations

before being granted operating authority. The FMCSA is not requiring a proficiency examination because it believes that the educational and technical assistance materials provided to the new entrants and the safety certifications on the required application forms will demonstrate the new entrants understand applicable safety regulations.

The new MCS-150A form requires the new entrant to certify that it has a system(s) in place to ensure compliance with applicable requirements covering driver qualifications, hours of service, controlled substance and alcohol testing, vehicle condition, accident monitoring, and hazardous materials transportation. The certification reminds the new entrant of its statutory and regulatory responsibilities, which if neglected or violated, may subject the applicant to civil penalties and/or lead to the revocation of the new entrant registration.

Motor carriers domiciled in Mexico seeking to operate in the United States will not be subject to this rule. The FMCSA adopted separate application and safety monitoring procedures for Mexico-domiciled carriers on March 19, 2002, (67 FR 12652, 67 FR 12702, and 67 FR 12758). The FMCSA believes it is necessary to maintain separate procedures for Mexico-domiciled carriers because of: (1) The differences between the Mexican and U. S. regulatory systems, which present unique circumstances in ensuring compliance with the FMCSRs and HMRs by Mexico-domiciled carriers; and (2) the unique requirements imposed on certain Mexico-domiciled carriers by the Department of Transportation Appropriations Act. These differences are discussed in detail in the preambles to the notices of proposed rulemakings for the Mexican carrier rules published on May 3, 2001 (66 FR 22238, 22371 and 22415).

Under the new requirements, an applicant may request an application package by contacting the FMCSA website ([www.fmcsa.dot.gov](http://www.fmcsa.dot.gov)); or by contacting the FMCSA's Washington, DC headquarters by mail, fax or telephone. Applicants are strongly encouraged to complete the applications on line. The application package will contain the following:

1. Educational and technical assistance material regarding the requirements of the FMCSRs and HMRs, if applicable.
2. The Form MCS-150, The Motor Carrier Identification Report.
3. The Form MCS-150A, Safety Certification for Applications for U.S. DOT Number. A copy of Form MCS-

150A is available in the docket described above under **ADDRESSES**.

For-hire motor carriers are also required to complete the application forms OP-1 or OP-1(P), as appropriate, and must submit them to the FMCSA at the same time as the Forms MCS-150 and MCS-150A. The FMCSA is planning to update these forms in the future to implement the provisions of the ICC Termination Act of 1995 (ICCTA).

The educational and technical assistance package will consist of material designed to assist the applicant in complying with the FMCSRs and establishing good safety management practices. It will include information on driver qualifications; controlled substances and alcohol use testing; commercial drivers licenses; minimum levels of financial responsibility; accident reports; requirements applicable to the driving of motor vehicles; vehicle inspection, repair and maintenance; hours of service and records of duty status of drivers; and requirements applicable to the transportation of hazardous materials.

Following completion of the application forms, FMCSA will register the new entrant and assign a United States Department of Transportation (USDOT) number. For-hire motor carriers, unless providing transportation exempt from ICCTA registration requirements, are required to obtain operating authority prior to commencing operations. The new entrant registration begins with the issuance of the USDOT number and will continue for 18 months. During the 18-month new entrant registration period, the new entrant will be required to undergo a safety audit designed to evaluate the adequacy of its safety management practices and to offer guidance and assistance in enhancing those practices. The agency is treating the term "safety audit," which is used in Sec. 211 of the MCSIA regarding the certification of an individual under FMCSA regulations to perform safety audits, as equivalent to the "safety review" mandated by Sec. 210 of MCSIA. The statutory purpose of a "safety review" and a "safety audit" appears to be very similar. In addition, the term "safety audit" avoids any possible confusion with the safety reviews previously conducted by the agency, which were discontinued on September 30, 1994.

The safety audit will generally occur at the new entrant's place of business, upon reasonable notice to the new entrant, which will include notice of what the audit will consist of and when

it will take place. The safety audit will be an assessment of the adequacy of the new entrant's basic safety management controls. It will include, but not be limited to, a review of selected carrier records and operational practices, e.g., driver qualification records, driver records of duty status, and vehicle maintenance files. The safety audit is different than a compliance review in that it focuses on providing safety management and technical assistance and will not result in a safety fitness determination, i.e., a safety rating of satisfactory, conditional, or unsatisfactory. Safety ratings are assigned only after a compliance review. However, the safety audit could result in the new entrant having its new entrant registration revoked if it is found to have inadequate basic safety management controls and fails to take corrective action required by the FMCSA. Appendix A—Explanation of Safety Audit Evaluation Criteria will be used to determine the adequacy of the new entrant's basic safety management controls.

The FMCSA is interested in comments on the advisability of conducting some safety audits at alternate locations. This would enable the agency to provide educational and technical assistance to a number of new entrants at one time and also perform the audits of the systems and records the new entrants will be required to provide. The FMCSA also invites comments on whether it is appropriate for private contractors certified by the FMCSA to conduct safety audits.

Following completion of the safety audit, the auditor will review the findings with the new entrant. If the safety audit reveals that the carrier has basic safety management controls in place that are functioning adequately, the FMCSA will notify the new entrant in writing within 45 days that it has successfully met the safety audit requirements. However, the new entrant registration will remain in place and the carrier's performance will remain closely monitored by the FMCSA until the end of the 18-month period. If a safety audit has not been conducted on a new entrant, through no fault of the carrier, the new entrant designation will continue until such time as a safety audit is conducted. However, a new entrant who has not undergone a safety audit within the 18 months because it has refused to allow the FMCSA to conduct the safety audit may have its new entrant registration revoked ten days after receiving notice from the FMCSA.

The FMCSA anticipates that the safety management practices of the large

majority of new entrants will prove to be adequate because of the combined effect of: (1) Providing educational material to the new entrant in the application process; (2) requiring the new entrant to certify that it understands and that it will comply with the FMCSRs; and (3) providing notice to the new entrant of the content of the safety audit. However, in those cases in which the safety audit reveals that the new entrant's safety management practices are inadequate, the FMCSA will notify the new entrant that it is required to take action to improve its practices. The new entrant will have 60 days to take the necessary remedial action, unless it transports passengers or carries hazardous materials, in which case it will have 45 days. These time periods are consistent with the period currently provided to motor carriers to improve proposed safety ratings following a compliance review. Failure by the carrier to make the necessary changes to remedy inadequate basic safety management controls will result in revocation of its new entrant registration and imposition of an out-of-service order (OOS) prohibiting operations in interstate commerce. The FMCSA is interested in comments on the resource cost to the economy of denying permanent registration.

If a new entrant provides the FMCSA with a written response demonstrating that corrective action likely to achieve compliance with the requirements of the FMCSRs and applicable HMRs has been taken, and the FMCSA determines the new entrant's basic safety management controls are adequate, the new entrant will be notified in writing that its safety management practices are acceptable and that its new entrant registration will remain in place until the end of the 18-month period.

The FMCSA believes that in most cases in which corrective action is needed, the remedial action will be taken in the required time frame. However, in those cases in which the new entrant does not take any remedial action, or takes action unlikely to improve its safety performance to an acceptable level, the FMCSA will initiate a proceeding to revoke the new entrant registration.

The FMCSA Division Administrators or State Directors will make the initial determination about the adequacy of a new entrant's basic safety management controls and whether necessary corrective action has been taken. The Field Administrator of the appropriate FMCSA Service Center will conduct administrative review of this decision.

A new entrant may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in determining that its basic safety management controls are inadequate. The new entrant's request must explain the error it believes the FMCSA committed in its determination and include a list of all factual and procedural issues in dispute. In addition, the new entrant must include any information or documents that support its argument. Following the administrative review, the FMCSA will notify the new entrant of its decision, which will constitute the final action of the agency.

A new entrant whose registration has been revoked is prohibited from operating a CMV in interstate commerce and may not reapply for new entrant registration sooner than 30 days after the date of revocation. A new entrant reapplicant will be required to demonstrate to the FMCSA's satisfaction that it has corrected the deficiencies that resulted in revocation and otherwise has in place safety management systems that will function effectively.

The rule provides that at the end of the 18-month period, if the new entrant has successfully met the requirements of the safety audit and is not currently under a notice from the FMCSA to remedy its safety management practices, its DOT registration will become permanent. Thereafter, it will be treated like any other motor carrier. If the carrier is under a notice to remedy its safety management practices, its new entrant designation will continue until FMCSA determines the new entrant has implemented actions necessary to achieve adequate safety management practices.

#### **Rulemaking Analysis and Notices**

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

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). It has been reviewed by the Office of Management and Budget. The subject of requirements for new entrant motor carriers will likely generate considerable public interest within the meaning of Executive Order 12866. We have classified the rule as significant because of the high level of public and congressional interest in the new entrant safety assurance process. OMB has designated the rule as economically

significant. A regulatory evaluation has been prepared and placed in the docket.

A series of analyses and reports have demonstrated that new motor carriers are less likely to comply with safety regulations, and are more likely to be involved in crashes, than established motor carriers. In response to this, Congress directed the FMCSA to develop a program to ensure the safety of new entrants.

The centerpiece of the new entrant program is the safety audit, which will be performed on all new entrants within 18 months of their registration. Individuals certified under the FMCSA regulations will perform these audits. The FMCSA anticipates a volume of approximately 40,000 new entrant safety audits each year. A copy of the complete regulatory evaluation is available in the docket described above under **ADDRESSES**.

##### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FMCSA has considered the effects of this regulatory action on small entities and determined that such entities would not be adversely affected by this rule. We therefore certify that it would not have a significant impact on a substantial number of small entities.

##### *Executive Order 12988 (Civil Justice Reform)*

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

##### *Executive Order 13045 (Protection of Children)*

We have analyzed this rule under Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks." This rule does not concern an environmental risk to health or safety that would disproportionately affect children.

##### *Executive Order 12630 (Taking of Private Property)*

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

##### *Executive Order 13132 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that this action does

not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. It will not impose additional costs or burdens on the States. This action will not have a significant effect on the States' ability to execute traditional State governmental functions. To the extent that States incur costs for conducting these safety audits, they will be reimbursed with federal funds under the Motor Carrier Safety Assistance Program (MCSAP). Since the MCSAP is an "80/20" program, FMCSA would reimburse the States for 80% of the costs incurred in conducting safety audits.

*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*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. An analysis of this interim final rule has been made by the FMCSA, and it has been determined that it will affect a currently-approved information collection covered by OMB Control No. 2126–0013 (Motor Carrier Identification Report). Information collection 2126–0013, with an annual burden of 68,250 hours, expires on May 31, 2004.

In addition to completing form MCS–150 (Motor Carrier Identification Report), this interim final rule will also require new entrants to complete a new supplemental form, entitled Safety Certification for Applications for U.S. DOT Number (MCS–150A). The completion of the supplemental form is the only portion of this interim final rule with PRA implications.

Although the rule also involves two other forms new entrants must complete—the BOC–3 and OP forms, there is no impact on burden hours for those information collections resulting from this rule. The BOC–3 form is covered by 2126–0015 (Designation of Agents, Motor Carriers, Brokers and Freight Forwarders), which expires on November 30, 2004. The OP series forms are covered by 2126–0016 (Revision of

Licensing Application Forms of Application Procedures and Corresponding Regulations), which expires on March 31, 2005. However, this rule does not affect the burden hours involved with these two information collections.

The FMCSA estimates that approximately 40,000 new entrants annually will be required to complete this supplemental form (MCS–150A) and that the supplemental form takes approximately 9 minutes to complete. Therefore, we estimate the total annual burden of this interim final rule to be 6,000 burden hours (9 minutes × 40,000, divided by 60 minutes). The new total burden for information collection 2126–0013 would be 74,250 hours (the currently-approved 68,250 hours for completing the MCS–150, plus 6,000 hours for completing the MCS–150A).

We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet its goal of reducing truck crashes, including (1) whether the information is useful to this goal; (2) the accuracy of the estimate of the burden of the information collection; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

You may submit comments on the *information collection burden* addressed by this interim final rule to the Office of Management and Budget (OMB). The OMB must receive your comments by June 27, 2002. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

*National Environmental Policy Act*

The Federal Motor Carrier Safety Administration (FMCSA) is a new administration within the Department of Transportation (DOT). We are striving to meet all of the statutory and executive branch requirements on rulemaking. The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order is consistent with and reflects the

procedures for considering environmental impacts under DOT Order 5610.1C. The FMCSA analyzed this interim final rule under the NEPA and DOT Order 5610.1C. We believe it would be among the type of regulations that would be categorically excluded from any environmental assessment.

*Energy Effects*

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy because it sets standards for new entrant motor carriers and has no direct relation to energy consumption. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

*Unfunded Mandates*

This rule does not impose an unfunded Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. (2 U.S.C. 1531 *et seq.*) Any costs incurred by the States are reimbursable under the Motor Carrier Safety Assistance Program (MCSAP). To the extent that States incur costs for conducting these safety audits, they will be reimbursed with federal funds under MCSAP.

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

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, Safety fitness procedures.

In consideration of the foregoing, Title 49, Code of Federal Regulations, Chapter III, part 385 is amended as set forth below:

**PART 385—SAFETY FITNESS PROCEDURES**

1. The authority citation for part 385 is revised to read as follows:

**Authority:** 49 U.S.C. 113, 504, 521(b), 5113, 31136, 31144, 31148, and 31502; and 49 CFR 1.73.

2. Amend § 385.1 by redesignating paragraph (b) as paragraph (c) and revising it, and by adding new paragraph (b) to read as follows:

**§ 385.1 Purpose and scope.**

\* \* \* \* \*

(b) This part establishes the safety assurance program for a new entrant motor carrier initially seeking to register with FMCSA to conduct interstate operations. It also describes the consequences that will occur if the new entrant fails to maintain adequate basic safety management controls.

(c) The provisions of this part apply to all motor carriers subject to the requirements of this subchapter, except non-business private motor carriers of passengers.

3. Amend § 385.3 by revising the section heading and adding definitions and acronyms in alphabetical order to read as follows:

**§ 385.3 Definitions and acronyms.**

\* \* \* \* \*

*CMV* means a commercial motor vehicle as defined in § 390.5 of this subchapter.

\* \* \* \* \*

*FMCSA* means the Federal Motor Carrier Safety Administration.

*FMCSRs* mean Federal Motor Carrier Safety Regulations (49 CFR parts 350–399).

*HMRs* means the Hazardous Materials Regulations (49 CFR parts 100–178).

*New entrant* is a motor carrier not domiciled in Mexico that applies for a United States Department of Transportation (DOT) identification number in order to initiate operations in interstate commerce.

*New entrant registration* is the registration (US DOT number) granted a new entrant before it can begin interstate operations in an 18-month monitoring period. A safety audit must be performed on a new entrant's operations within 18 months after receipt of its US DOT number and it must be found to have adequate basic safety management controls to continue operating in interstate commerce at the end of the 18-month period.

\* \* \* \* \*

4. Part 385 is amended by adding a new subpart D to read as follows:

**Subpart D—New Entrant Safety Assurance Program**

Sec.

385.301 What is a motor carrier required to do before beginning interstate operations?

385.303 How does a motor carrier register with the FMCSA?

385.305 What happens after the FMCSA receives a request for new entrant registration?

385.307 What happens after a motor carrier begins operations as a new entrant?

385.309 What is the purpose of the safety audit?

385.311 What will the safety audit consist of?

385.313 Who will conduct the safety audit?

385.315 Where will the safety audit be conducted?

385.317 Will a safety audit result in a safety fitness determination by the FMCSA?

385.319 What happens after the completion of the safety audit?

385.321 What failures of safety management practices disclosed by the safety audit will result in a notice to a new entrant that its DOT new entrant registration will be revoked?

385.323 May the FMCSA extend the period under § 385.319(c) for a new entrant to take corrective action to remedy its safety management practices?

385.325 What happens after a new entrant has been notified under § 385.319(c) to take corrective action to remedy its safety management practices?

385.327 What happens when a new entrant receives a notice under § 385.319(c) that its new entrant registration will be revoked and it believes the FMCSA made an error in its determination?

385.329 May a new entrant that has had its U.S. DOT registration revoked and its operations placed out of service (OOS) reapply?

385.331 What happens if a new entrant operates a CMV after having been issued an order placing its interstate operations out of service (OOS)?

385.333 What happens at the end of the 18-month safety monitoring period?

385.335 If the FMCSA conducts a compliance review on a new entrant, will the new entrant also be subject to a safety audit?

385.337 What happens if a new entrant refuses to permit a safety audit to be performed on its operations?

**Subpart D—New Entrant Safety Assurance Program****§ 385.301 What is a motor carrier required to do before beginning interstate operations?**

(a) Before a motor carrier of property or passengers begins interstate operations, it must register with the FMCSA and receive a USDOT number. In addition, for-hire motor carriers must obtain operating authority from FMCSA following the registration procedures described in 49 CFR part 365, unless providing transportation exempt from 49 CFR part 365 registration requirements.

(b) This subpart applies to motor carriers domiciled in the United States and Canada.

(c) A Mexico-domiciled motor carrier of property or passengers must register with the FMCSA by following the registration procedures described in 49 CFR part 365 or 368, as appropriate. The regulations in this subpart do not apply to Mexico-domiciled carriers.

**§ 385.303 How does a motor carrier register with the FMCSA?**

A motor carrier may contact the FMCSA by internet ([www.fmcsa.dot.gov](http://www.fmcsa.dot.gov)); or Washington, DC headquarters by mail at, FMCSA, 400 7th Street SW., Washington, DC 20590; fax (703) 280–4003; or telephone 1–800–832–5660, and request the application materials for a new entrant motor carrier.

**§ 385.305 What happens after the FMCSA receives a request for new entrant registration?**

(a) The requester for new entrant registration will be directed to the FMCSA Internet website ([www.fmcsa.dot.gov](http://www.fmcsa.dot.gov)) to secure and/or complete the application package online.

(b) The application package will contain the following:

(1) Educational and technical assistance material regarding the requirements of the FMCSRs and HMRs, if applicable.

(2) The Form MCS–150, The Motor Carrier Identification Report.

(3) The Form MCS–150A, The Safety Certification for Applications for U.S. DOT Number.

(4) Application forms to obtain operating authority under 49 CFR 365, as appropriate.

(c) Upon completion of the application forms, the new entrant will be issued a USDOT number.

(d) For-hire motor carriers, unless providing transportation exempt from 49 CFR part 365 registration requirements, must also comply with the procedures established in 49 CFR part 365 to obtain operating authority before operating in interstate commerce.

**§ 385.307 What happens after a motor carrier begins operations as a new entrant?**

After a new entrant satisfies all applicable pre-operational requirements, it will be subject to the new entrant safety monitoring procedures for a period of 18 months. During this 18-month period:

(a) The new entrant's roadside safety performance will be closely monitored to ensure the new entrant has basic safety management controls that are operating effectively. An accident rate or driver or vehicle violation rate that is higher than the industry average for similar motor carrier operations may cause the FMCSA to conduct an expedited safety audit or compliance review at any time.

(b) A safety audit will be conducted on the new entrant, once it has been in operation for enough time to have sufficient records to allow the agency to

evaluate the adequacy of its basic safety management controls. This period will generally be at least 3 months.

(c) All records and documents required for the safety audit shall be made available for inspection upon request by an individual certified under FMCSA regulations to perform safety audits.

**§ 385.309 What is the purpose of the safety audit?**

The purpose of a safety audit is to:

(a) Provide educational and technical assistance to the new entrant; and

(b) Gather safety data needed to make an assessment of the new entrant's safety performance and adequacy of its basic safety management controls.

**§ 385.311 What will the safety audit consist of?**

The safety audit will consist of a review of the new entrant's safety management systems and a sample of required records to assess compliance with the FMCSRs, applicable HMRs and related record-keeping requirements as specified in Appendix A of this part. The areas for review include, but are not limited to, the following:

(a) Driver qualification;

(b) Driver duty status;

(c) Vehicle maintenance;

(d) Accident register; and

(e) Controlled substances and alcohol use and testing requirements.

**§ 385.313 Who will conduct the safety audit?**

An individual certified under the FMCSA regulations to perform safety audits will conduct the safety audit.

**§ 385.315 Where will the safety audit be conducted?**

The safety audit will generally be conducted at the new entrant's business premises.

**§ 385.317 Will a safety audit result in a safety fitness determination by the FMCSA?**

A safety audit will not result in a safety fitness determination. Safety fitness determinations follow completion of a compliance review.

**§ 385.319 What happens after the completion of the safety audit?**

(a) Upon the completion of the safety audit, the auditor will review the findings with the new entrant.

(b) If the FMCSA determines that the safety audit discloses that the new entrant has adequate basic safety management controls, the FMCSA will provide the new entrant written notice as soon as practicable, but not later than 45 days after the completion of the safety audit, that it has adequate basic

safety management controls. The new entrant's safety performance will continue to be closely monitored for the remainder of the 18-month period of new entrant registration.

(c) If the FMCSA determines that the findings of the safety audit disclose that the new entrant's basic safety management controls are inadequate, it will provide the new entrant written notice, as soon as practicable, but not later than 45 days after the completion of the safety audit, that its USDOT new entrant registration will be revoked and its operations placed out-of-service unless it takes the actions specified in the notice to remedy its safety management practices within:

(1) 45 days of the date of the notice if the new entrant transports passengers in a CMV designed or used to transport 16 or more passengers, including the driver, or transports hazardous materials requiring placarding; or

(2) 60 days of the date of the notice for all other new entrants.

**§ 385.321 What failures of safety management practices disclosed by the safety audit will result in a notice to a new entrant that its DOT new entrant registration will be revoked?**

The failures of safety management practices consist of a lack of basic safety management controls as described in Appendix A of this part and will result in a notice to a new entrant that its DOT new entrant registration will be revoked.

**§ 385.323 May the FMCSA extend the period under § 385.319(c) for a new entrant to take corrective action to remedy its safety management practices?**

(a) If a new entrant that transports passengers in a CMV designed or used to transport 16 or more passengers, including the driver, or transports hazardous materials in quantities requiring placarding, has submitted evidence that corrective actions have been taken pursuant to § 385.319(c) and the FMCSA cannot make a determination regarding the adequacy of the corrective actions within the 45 day period, the period may be extended for up to 10 days at the discretion of the FMCSA.

(b) The FMCSA may extend the 60-day period in § 385.319(c)(2), for up to an additional 60 days provided FMCSA determines that the new entrant is making a good faith effort to remedy its safety management practices.

**§ 385.325 What happens after a new entrant has been notified under § 385.319(c) to take corrective action to remedy its safety management practices?**

(a) If the new entrant provides evidence of corrective action acceptable

to the FMCSA within the time period provided in § 385.319(c), including any extension of that period authorized under § 385.323, the FMCSA will provide written notification to the new entrant that its DOT new entrant registration will not be revoked and it may continue operations.

(b) If a new entrant, after being notified that it is required to take corrective action to improve its safety management practices, fails to submit a written response demonstrating corrective action acceptable to FMCSA within the time specified in § 385.319(c), including any extension of that period authorized under § 385.323, the FMCSA will revoke its new entrant registration and issue an out-of-service order effective on:

(1) Day 46 from the date of notification if the new entrant transports passengers in a CMV designed to transport 16 or more passengers, including the driver, or transports hazardous materials in quantities requiring placarding; or

(2) Day 61 from the date of notification for all other new entrants; or

(3) If an extension has been granted under § 385.323, the day following the expiration of the extension date.

(c) The new entrant may not operate in interstate commerce on or after the effective date of the out-of-service order.

**§ 385.327 What happens when a new entrant receives a notice under § 385.319(c) that its new entrant registration will be revoked and it believes the FMCSA made an error in its determination?**

(a) If a new entrant receives a revocation notice, it may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in determining that its basic safety management controls were inadequate.

(1) The request must be made to the Field Administrator of the appropriate FMCSA Service Center.

(2) The request must explain the error the new entrant believes the FMCSA committed in its determination.

(3) The request must include a list of all factual and procedural issues in dispute, and any information or documents that support the new entrant's argument.

(b) The new entrant should submit its request no later than 15 days from the date of the notice of the inadequacy of its basic safety management controls. Submitting the request within 15 days will allow the FMCSA to issue a written decision before the prohibitions outlined in § 385.319(c) take effect. Failure to petition within this 15-day

period may prevent the FMCSA from issuing a final decision before the prohibitions take effect.

(c) The FMCSA may request that the new entrant submit additional data and attend a conference to discuss the issue(s) in dispute. If the new entrant does not attend the conference, or does not submit the requested data, the FMCSA may dismiss the new entrant's request for review.

(d) The FMCSA will complete its review and notify the new entrant in writing of its decision within 30 days after receiving a request for review from a hazardous materials or passenger new entrant and within 45 days from any other new entrant.

(e) A new entrant must make a request for an administrative review within:

(1) 90 days of the date when it was initially notified under § 385.319(c) that its basic safety management controls were inadequate; or

(2) 90 days after it was notified that its corrective action under § 385.319(c) was insufficient and its basic safety management controls remain inadequate.

(f) The Field Administrator's decision constitutes the final agency action.

(g) Notwithstanding this subpart, a new entrant is subject to the suspension and revocation provisions of 49 U.S.C. 13905 for violations of DOT regulations governing motor carrier operations.

**§ 385.329 May a new entrant that has had its U.S. DOT registration revoked and its operations placed out of service (OOS) reapply?**

(a) A new entrant whose U.S. DOT registration has been revoked and whose operations have been placed OOS by the FMCSA may reapply under § 385.301 no sooner than 30 days after the date of revocation.

(b) The motor carrier will be required to initiate the process from the beginning, and will be required to demonstrate that it has corrected the deficiencies that resulted in revocation of its registration and otherwise will ensure that it will have adequate basic safety management controls.

**§ 385.331 What happens if a new entrant operates a CMV after having been issued an order placing its interstate operations out of service (OOS)?**

If a new entrant operates a CMV in violation of an out-of-service (OOS) order and § 385.325(b), it is subject to the penalty provisions in 49 U.S.C. 521(b)(2)(A), not to exceed \$10,000 for each offense.

**§ 385.333 What happens at the end of the 18-month safety monitoring period?**

(a) If a safety audit has been performed within the 18-month period, and the new entrant is not currently subject to an order placing its operations out-of-service under § 385.325(b) or under a notice ordering it to take specified actions to remedy its safety management controls under § 385.319(c), the FMCSA will remove the new entrant designation and notify the new entrant in writing that its registration has become permanent. Thereafter, the FMCSA will evaluate the motor carrier on the same basis as any other carrier.

(b) If a new entrant is determined to be "unfit" after a compliance review its new entrant registration will be revoked. (See § 385.13)

(c) A new entrant that has reached the conclusion of the 18-month period but is under an order to correct its safety management practices under § 385.319(c) will have its new entrant registration removed following FMCSA's determination that the specified actions have been taken to remedy its safety management practices. The motor carrier will be notified in writing that its new entrant designation is removed and that its registration has become permanent. Thereafter, the FMCSA will evaluate the motor carrier on the same basis as any other carrier.

(d) If a safety audit or compliance review has not been performed by the end of the 18-month monitoring period through no fault of the motor carrier, the carrier will be permitted to continue operating as a new entrant until a safety audit or compliance review is performed and a final determination is made regarding the adequacy of its safety management controls. Based on the results of the safety audit or compliance review, the FMCSA will either:

(1) Remove the new entrant designation and notify the new entrant in writing that its registration has become permanent; or

(2) Revoke the new entrant registration in accordance with § 385.319(c).

**§ 385.335 If the FMCSA conducts a compliance review on a new entrant, will the new entrant also be subject to a safety audit?**

If the FMCSA conducts a compliance review on a new entrant that has not previously been subject to a safety audit and issues a safety fitness determination, the new entrant will not have to undergo a safety audit under this subpart. However, the new entrant will continue to be subject to the 18-

month safety-monitoring period prior to removal of the new entrant designation.

**§ 385.337 What happens if a new entrant refuses to permit a safety audit to be performed on its operations?**

(a) If a new entrant refuses to permit a safety audit to be performed on its operations, the FMCSA will provide the carrier with written notice that its registration will be revoked and its operations placed out of service unless the new entrant agrees in writing, within 10 days from the service date of the notice, to permit the safety audit to be performed. The initial refusal to permit a safety audit to be performed may subject the new entrant to the penalty provisions in 49 U.S.C. 521(b)(2)(A).

(b) If the new entrant does not agree to undergo a safety audit as specified in paragraph (a) of this section, its registration will be revoked and its interstate operations placed out of service effective on the 11th day from the service date of the notice issued under paragraph (a) of this section.

5. Amend appendix A to part 385 as follows:

a. In section I. General, revise paragraph (b);

b. In section II. Source of the Data for the Safety Audit Evaluation Criteria, revise the introductory text of paragraph (b);

c. In section IV. Overall Determination of the Carrier's Basic Safety Management Controls, designate the first paragraph as paragraph (a) and revise it, designate the second paragraph as paragraph (b), and designate the last paragraph as paragraph (c) and revise it.

The revisions read as follows:

**Appendix A to Part 385—Explanation of Safety Audit Evaluation Criteria**

**I. General**

\* \* \* \* \*

(b) To meet the safety standard, a motor carrier must demonstrate to the FMCSA that it has basic safety management controls in place which function adequately to ensure minimum acceptable compliance with the applicable safety requirements. A "safety audit evaluation criteria" was developed by the FMCSA, which uses data from the safety audit and roadside inspections to determine that each owner and each operator applicant for new entrant registration, provisional operating authority, or provisional Certificate of Registration has basic safety management controls in place. The term "safety audit" is the equivalent to the "safety review" required by Sec. 210. Using "safety audit" avoids any possible confusion with the safety reviews previously conducted by the agency that were discontinued on September 30, 1994.

\* \* \* \* \*



**II. Source of the Data for the Safety Audit Evaluation Criteria**

\* \* \* \* \*

(b) The safety audit is a review of a Mexico-domiciled or new entrant motor carrier's operation and is used to:

\* \* \* \* \*

**IV. Overall Determination of the Carrier's Basic Safety Management Controls**

(a) If the carrier is evaluated as having inadequate basic safety management controls in at least three separate factors, the carrier

will be considered to have inadequate safety management controls in place and corrective action will be necessary in order to avoid having its new entrant registration, provisional operating authority, or provisional Certificate of Registration revoked.

\* \* \* \* \*

(c) In this example, the carrier 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. FMCSA will

require corrective action in order to avoid having the carrier's new entrant registration revoked, or having the provisional operating authority or provisional Certificate of Registration suspended and possibly revoked.

\* \* \* \* \*

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**Joseph M. Clapp,**  
*Administrator.*

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