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accordance with provisions of paragraph (a) of this section, will remain valid until its stated expiration date.

[76 FR 26896, May 9, 2011, as amended at 78 FR 17882, Mar. 25, 2013; 89 FR 90620, Nov. 18, 2024]

§ 384.407 [Reserved]

§ 384.409 Notification of noncompliance.

If FMCSA determines that a State is not in substantial compliance with § 384.209, or if FMCSA issues a decertification order prohibiting a State from issuing commercial driver's licenses, FMCSA will notify commercial learner's permit and commercial driver's license holders of these actions by publication of a FEDERAL REGISTER notice. The notification will advise commercial learner's permit and commercial driver's license holders that they must comply with the self-reporting requirements of § 383.31(a) with respect to convictions obtained in that State until such time that FMCSA determines the State to be in substantial compliance.

[78 FR 24688, Apr. 26, 2013]

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APPENDIX A TO PART 385—EXPLANATION OF SAFETY AUDIT EVALUATION CRITERIA
APPENDIX B TO PART 385—EXPLANATION OF SAFETY RATING PROCESS

AUTHORITY: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901–13905, 13908, 31135, 31136, 31144, 31148, 31151, 31502; sec. 113(a), Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 408, Pub. L. 104–88, 109 Stat. 803, 958; sec. 350, Pub. L. 107–87, 115 Stat. 833, 864; sec. 5205, Pub. L. 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

SOURCE: 53 FR 50968, Dec. 19, 1988, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 385 appear at 66 FR 49872, Oct. 1, 2001.

Subpart A—General

§ 385.1 Purpose and scope.

(a) This part establishes the FMCSA's procedures to determine the safety fitness of motor carriers, to assign safety ratings, to direct motor carriers to take remedial action when required, and to prohibit motor carriers receiving a safety rating of ''unsatisfactory'' from operating a CMV.

(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) This part establishes the safety permit program for a motor carrier to transport the types and quantities of hazardous materials listed in § 385.403.

(d) 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.

(e) Subpart F of this part establishes procedures to perform a roadability review of intermodal equipment providers to determine their compliance with the applicable Federal Motor Carrier Safety Regulations (FMCSRs).

[65 FR 50934, Aug. 22, 2000, as amended at 67 FR 31982, May 13, 2002; 69 FR 39366, June 30, 2004; 73 FR 76818, Dec. 17, 2008; 75 FR 17240, Apr. 5, 2010; 77 FR 28450, May 14, 2012]

§ 385.3 Definitions and acronyms.

Applicable safety regulations or requirements means 49 CFR chapter III, subchapter B—Federal Motor Carrier Safety Regulations or, if the carrier is an intrastate motor carrier subject to the hazardous materials safety permit requirements in subpart E of this part, the equivalent State standards; and 49 CFR chapter I, subchapter C—Hazardous Materials Regulations.

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

Commercial motor vehicle shall have the same meaning as described in § 390.5 of this subchapter, except that this definition will also apply to intrastate motor vehicles subject to the hazardous materials safety permit requirements of subpart E of this part.

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 171–180).

Motor carrier operations in commerce means commercial motor vehicle transportation operations either—

(1) In interstate commerce, or

(2) Affecting interstate commerce.

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 12 months after receipt of its US DOT number for motor carriers of property and 120 days for motor carriers of passengers, 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.

PHMSA means Pipeline and Hazardous Materials Safety Administration.

Preventable accident on the part of a motor carrier means an accident (1) that involved a commercial motor vehicle, and (2) that could have been averted but for an act, or failure to act, by the motor carrier or the driver.

Reviews. For the purposes of this part:

(1) *Compliance review* means an examination of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard in this part. A compliance review may be

conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. The compliance review may result in the initiation of an enforcement action.

(2) *Safety audit* means an examination of a motor carrier's operations to provide educational and technical assistance on safety and the operational requirements of the FMCSRs and applicable HMRs and to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings.

(3) *Safety management controls* means the systems, policies, programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations which ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage.

(4) *Roadability review* means an examination of the intermodal equipment provider's compliance with the applicable FMCSRs.

Safety ratings. (1) *Satisfactory safety rating* means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in § 385.5. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

(2) *Conditional safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in § 385.5 (a) through (k).

(3) *Unsatisfactory safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in § 385.5 (a) through (k).

(4) *Unrated carrier* means that a safety rating has not been assigned to the motor carrier by the FMCSA.

[53 FR 50968, Dec. 19, 1988, as amended at 56 FR 40805, Aug. 16, 1991; 62 FR 60042, Nov. 6, 1997; 67 FR 12779, Mar. 19, 2002; 67 FR 31983, May 13, 2002; 69 FR 39367, June 30, 2004; 72 FR 36788, July 5, 2007; 73 FR 76818, Dec. 17, 2008; 75 FR 17240, Apr. 5, 2010; 77 FR 28450, May 14, 2012; 78 FR 58481, Sept. 24, 2013; 78 FR 60232, Oct. 1, 2013; 80 FR 59073, Oct. 1, 2015; 86 FR 35642, July 7, 2021; 87 FR 59036, Sept. 29, 2022]

§ 385.4 Matter incorporated by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the FMCSA and at the National Archives and Records Administration (NARA). Contact FMCSA at: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Ave. SE, Washington, DC 20590; Attention: Chief, Compliance Division at (202) 366–1812. For information on inspection at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov*. The material may be obtained from the source in the following paragraph of this section.

(b) Commercial Vehicle Safety Alliance (CVSA), 99 M Street SE, Suite 1025, Washington, DC 20003, telephone (202) 998–1002, *www.cvsa.org*.

(1) ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403,'' April 1, 2024; incorporation by reference approved for § 385.415(b).

(2) ''Operational Policy 4: Inspector Training and Certification'', Revised April 29, 2021 (CVSA Operational Policy 4); incorporation by reference approved for § 385.207. (Also available at *www.fmcsa.dot.gov/certification*).

[87 FR 78582, Dec. 22, 2022, as amended at 88 FR 77014, Nov. 8, 2023; 89 FR 67562, Aug. 21, 2024]

§ 385.5 Safety fitness standard.

The satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. For intrastate motor carriers subject to the hazardous materials safety permit requirements of subpart E of this part, the motor carrier must meet the equivalent State requirements. To meet the safety fitness standard, the motor carrier must demonstrate it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

(a) Commercial driver's license standard violations (part 383 of this chapter),

(b) Inadequate levels of financial responsibility (part 387 of this chapter),

(c) The use of unqualified drivers (part 391 of this chapter),

(d) Improper use and driving of motor vehicles (part 392 of this chapter),

(e) Unsafe vehicles operating on the highways (part 393 of this chapter),

(f) Failure to maintain accident registers and copies of accident reports (part 390 of this chapter),

(g) The use of fatigued drivers (part 395 of this chapter),

(h) Inadequate inspection, repair, and maintenance of vehicles (part 396 of this chapter),

(i) Transportation of hazardous materials, driving and parking rule violations (part 397 of this chapter),

(j) Violation of hazardous materials regulations (parts 170–177 of this title), and

(k) Motor vehicle accidents and hazardous materials incidents.

[77 FR 28454, May 14, 2012]

§ 385.7 Factors to be considered in determining a safety rating.

The factors to be considered in determining the safety fitness and assigning a safety rating include information from safety reviews, compliance reviews and any other data. The factors may include all or some of the following:

(a) Adequacy of safety management controls. The adequacy of controls may be questioned if their degree of formalization, automation, etc., is found to be substantially below the norm for similar carriers. Violations, accidents or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or not functioning properly.

(b) Frequency and severity of regulatory violations.

(c) Frequency and severity of driver/vehicle regulatory violations identified during roadside inspections of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

(d) Number and frequency of out-of-service driver/vehicle violations of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

(e) Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews.

(f) For motor carrier operations in commerce and (if the motor carrier operates in the United States) in Canada and Mexico: Frequency of accidents; hazardous materials incidents; accident rate per million miles; indicators of preventable accidents; and whether such accidents, hazardous materials incidents, and preventable accident indicators have increased or declined over time.

(g) Number and severity of violations of CMV and motor carrier safety rules, regulations, standards, and orders that are both issued by a State, Canada, or Mexico and compatible with Federal rules, regulations, standards, and orders.

[53 FR 50968, Dec. 19, 1988, as amended at 58 FR 33776, June 21, 1993; 72 FR 36788, July 5, 2007]

§ 385.9 Determination of a safety rating.

(a) Following a compliance review of a motor carrier operation, the FMCSA, using the factors prescribed in § 385.7 as computed under the Safety Fitness Rating Methodology set forth in appendix B of this part, shall determine whether the present operations of the motor carrier are consistent with the

safety fitness standard set forth in §385.5, and assign a safety rating accordingly.

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

[62 FR 60042, Nov. 6, 1997, as amended at 75 FR 17241, Apr. 5, 2010; 77 FR 28450, May 14, 2012]

§385.11 Notification of safety fitness determination.

(a) The FMCSA will provide a motor carrier written notice of any safety rating resulting from a compliance review as soon as practicable, but not later than 30 days after the review. The notice will take the form of a letter issued from the FMCSA's headquarters office and will include a list of FMCSR and HMR compliance deficiencies which the motor carrier must correct.

(b) If the safety rating is ''satisfactory'' or improves a previous ''unsatisfactory'' safety rating, it is final and becomes effective on the date of the notice.

(c) In all other cases, a notice of a proposed safety rating will be issued. It becomes the final safety rating after the following time periods:

(1) For motor carriers transporting hazardous materials in quantities requiring placarding or transporting passengers by CMV—45 days after the date of the notice.

(2) For all other motor carriers operating CMVs—60 days after the date of the notice.

(d) A proposed safety rating of ''unsatisfactory'' is a notice to the motor carrier that the FMCSA has made a preliminary determination that the motor carrier is ''unfit'' to continue operating in interstate commerce, and that the prohibitions in §385.13 will be imposed after 45 or 60 days if necessary safety improvements are not made.

(e) A motor carrier may request the FMCSA to perform an administrative review of a proposed or final safety rating. The process and the time limits are described in §385.15.

(f) A motor carrier may request a change to a proposed or final safety rating based upon its corrective actions. The process and the time limits are described in §385.17.

[65 FR 50934, Aug. 22, 2000, as amended at 75 FR 17241, Apr. 5, 2010; 77 FR 28450, May 14, 2012]

§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 the FMCSA Safety and Fitness Electronic Records System website at *https://safer.fmcsa.dot.gov*, or by telephone at (800) 832–5660.

(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.

(2) All other motor carriers rated as a result of reviews 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.

(d) *Penalties.* (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.*

(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:

(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

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

(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.

(3) Any motor carrier that operates CMVs in violation of this section is subject to the penalty provisions of 49 U.S.C. 521(b) and appendix B to part 386 of the FMCSRs.

(e) *Revocation of operating authority.* If a proposed ''unsatisfactory'' safety rating or a proposed determination of unfitness becomes final, FMCSA will, following notice, issue an order revoking the operating authority of the owner or operator. For purposes of this section, the term ''operating authority'' means the registration required under 49 U.S.C. 13902 and § 392.9a of this subchapter. Any motor carrier that operates CMVs after revocation of its operating authority will be subject to the penalty provisions listed in 49 U.S.C. 14901.

[65 FR 50934, Aug. 22, 2000, as amended at 72 FR 36788, July 5, 2007; 72 FR 55700, Oct. 1, 2007; 75 FR 17241, Apr. 5, 2010; 77 FR 28450, 28454, May 14, 2012; 84 FR 51432, Sept. 30, 2019]

§ 385.14 Motor carriers, brokers, and freight forwarders delinquent in paying civil penalties: prohibition on transportation.

(a) A CMV owner or operator that has failed to pay civil penalties imposed by the FMCSA, or has failed to abide by a payment plan, may be prohibited from operating CMVs in interstate commerce under 49 CFR 386.83.

(b) A broker, freight forwarder, or for-hire motor carrier that has failed to pay civil penalties imposed by the FMCSA, or has failed to abide by a payment plan, may be prohibited from operating in interstate commerce, and its registration may be suspended under the provisions of 49 CFR 386.84.

[65 FR 78427, Dec. 15, 2000]

§ 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 or final safety rating in accordance with § 385.11.

(b) The motor carrier's request must explain the error it believes the 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 Assistant Administrator, ATTN: Adjudications Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590–0001.

(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 the FMCSA to issue a written decision before the prohibitions outlined in § 385.13 (a)(1) and (2) take effect. Failure to petition within this 15-day period may prevent the FMCSA from issuing a final decision before such prohibitions take effect.

(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 § 385.11 (c) or a final safety rating issued under § 385.11 (b), or within 90 days after denial of a request for a change in rating under § 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, the 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:

(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.

(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 § 385.17.

[65 FR 50935, Aug. 22, 2000, as amended at 72 FR 55701, Oct. 1, 2007; 75 FR 17241, Apr. 5, 2010; 77 FR 28450, 28454, May 14, 2012; 86 FR 57070, Oct. 14, 2021]

§ 385.17 Change to safety rating based upon 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 § 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 §§ 385.5 and 385.7. The request must include a written description of corrective actions taken, and other documentation the carrier wishes the 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:

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

(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 § 385.13(a)(1) for motor carriers transporting passengers or hazardous materials in quantities requiring placarding.

(g) 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'' to continue its 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 proposed ''unsatisfactory'' rating.

(h) If the 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 §§ 385.5 and 385.7, the agency will notify the motor carrier in writing of its upgraded safety rating.

(i) If the 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 §§ 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 § 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.

[65 FR 50935, Aug. 22, 2000, as amended at 72 FR 36788, July 5, 2007; 75 FR 17241, Apr. 5, 2010; 77 FR 28450, May 14, 2012; 77 FR 64762, Oct. 23, 2012]

§ 385.19 Safety fitness information.

(a) Final ratings will be made available to other Federal and State agencies in writing, telephonically or by remote computer access.

(b) The final safety rating assigned to a motor carrier will be made available to the public upon request. Any person requesting the assigned rating of a motor carrier shall provide the FMCSA with the motor carrier's name, principal office address, and, if known, the USDOT number or the docket number, if any.

(c) Requests should be addressed to the Federal Motor Carrier Safety Administration, Office of Registration and Safety Information (MC–RS), 1200 New Jersey Ave. SE, Washington, DC 20590–0001. The information also can be found on the FMCSA Safety and Fitness Electronic Records System website at *https://safer.fmcsa.dot.gov*.

(d) Oral requests by telephone to (800) 832–5660 will be given an oral response.

[62 FR 60043, Nov. 6, 1997, as amended at 66 FR 49872, Oct. 1, 2001; 72 FR 55701, Oct. 1, 2007; 75 FR 17241, Apr. 5, 2010; 77 FR 28450, May 14, 2012; 77 FR 59826, Oct. 1, 2012; 84 FR 51433, Sept. 30, 2019]

§ 385.21 Separation of functions.

(a) An Agency employee engaged in the performance of investigative, advocacy, or prosecutorial functions in a proceeding under § 385.15, § 385.113, § 385.327, § 385.423, § 385.711, § 385.911(e), § 385.913(e), § 385.1009(d), or § 385.1011(d) may not, in that case or a factually-related case, discuss or communicate the facts or issues involved with, or otherwise advise or assist, the Agency decisionmaker or personnel advising the Agency decisionmaker, except as counsel or a witness in a public proceeding, or if the same facts and information are provided to all the parties involved in the matter. The prohibition in this paragraph (a) also includes the staff of those covered by this section.

(b) As used in this section, *decisionmaker* means the FMCSA official authorized to issue a final decision in the applicable proceeding listed in paragraph (a) of this section.

(c) Nothing in this part shall preclude Agency decisionmakers or anyone advising an Agency decision-maker from taking part in a determination to launch an investigation or issue a complaint, or similar preliminary decision.

[86 FR 35642, July 7, 2021]

Subpart B—Safety Monitoring System for Mexico-Domiciled Carriers

SOURCE: 67 FR 12771, Mar. 19, 2002, unless otherwise noted.

§ 385.101 Definitions

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

Provisional certificate of registration means the registration under § 368.6 of this subchapter that the FMCSA grants to a Mexico-domiciled motor carrier to provide interstate transportation of property within the United States solely within the municipalities along the United States-Mexico border and the commercial zones of such municipalities. It is provisional because it will be revoked if the registrant does not demonstrate that it is exercising basic safety management controls during the safety monitoring period established in this subpart.

Provisional operating authority means the registration under § 365.507 of this subchapter that the FMCSA grants to a Mexico-domiciled motor carrier to provide interstate transportation within the United States beyond the municipalities along the United States-Mexico border and the commercial zones of such municipalities. It is provisional because 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.

Safety audit means an examination of a motor carrier's operations to provide educational and technical assistance on safety and the operational requirements of the FMCSRs and applicable HMRs and to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings.

§ 385.103 Safety monitoring system.

(a) *General.* Each Mexico-domiciled carrier operating in the United States 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 Mexico-domiciled carrier that receives provisional operating authority or a provisional Certificate of Registration will be subject to intensified monitoring through frequent roadside inspections.

(c) *CVSA decal.* Each Mexico-domiciled carrier granted provisional operating authority under part 365 of this subchapter must have on every commercial motor vehicle it operates in the United States a current decal attesting to a satisfactory inspection by a Commercial Vehicle Safety Alliance (CVSA) inspector.

(d) *Safety audit.* The FMCSA will conduct a safety audit on a Mexico-domiciled carrier within 18 months after the FMCSA issues the carrier a provisional Certificate of Registration under part 368 of this subchapter.

(e) *Compliance review.* The FMCSA will conduct a compliance review on a Mexico-domiciled carrier within 18 months after the FMCSA issues the carrier provisional operating authority under part 365 of this subchapter.

§ 385.105 Expedited action.

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

(1) Using drivers not possessing, or operating without, a valid Licencia Federal de Conductor. An invalid Licencia Federal de Conductor includes one that is falsified, revoked, expired, or missing a required endorsement.

(2) Operating vehicles that have been placed out of service for violations of the Commercial Vehicle Safety Alliance (CVSA) North American Standard Out-of-Service Criteria, without making the required repairs.

(3) Involvement in, due to carrier act or omission, a hazardous materials incident within the United States involving:

(i) A highway route controlled quantity of a Class 7 (radioactive) material as defined in § 173.403 of this title;

(ii) Any quantity of a Class 1, Division 1.1, 1.2, or 1.3 explosive as defined in § 173.50 of this title; or

(iii) Any quantity of a poison inhalation hazard Zone A or B material as defined in § 173.115, § 173.132, or § 173.133 of this title.

(4) Involvement in, due to carrier act or omission, two or more hazardous material incidents occurring within the United States and involving any hazardous material not listed in paragraph (a)(3) of this section and defined in chapter I of this title.

(5) Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required controlled substances or alcohol tests.

(6) Operating within the United States a motor vehicle that is not insured as required by part 387 of this chapter.

(7) Having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within a consecutive 90-day period.

(b) Failure to respond to an agency demand for a written response demonstrating corrective action within 30 days will result in the suspension of the carrier's provisional operating authority or provisional Certificate of Registration until the required showing of corrective action is submitted to the FMCSA.

(c) A satisfactory response to a written demand for corrective action does not excuse a carrier from the requirement that it undergo a safety audit or compliance review, as appropriate, during the provisional registration period.

§ 385.107 The safety audit.

(a) The criteria used in a safety audit to determine whether a Mexico-domiciled carrier exercises the necessary basic safety management controls are specified in appendix A to this part.

(b) If the FMCSA determines, based on the safety audit, that the Mexico-domiciled carrier has adequate basic

safety management controls, the FMCSA will provide the carrier written notice of this finding as soon as practicable, but not later than 45 days after the completion of the safety audit. The carrier's Certificate of Registration will remain provisional and the carrier's on-highway performance will continue to be closely monitored for the remainder of the 18-month provisional registration period.

(c) If the FMCSA determines, based on the safety audit, that the Mexico-domiciled carrier's basic safety management controls are inadequate, it will initiate a suspension and revocation proceeding in accordance with § 385.111 of this subpart.

(d) The safety audit is also used to assess the basic safety management controls of Mexico-domiciled applicants for provisional operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border under § 365.507 of this subchapter.

§ 385.109 The compliance review.

(a) The criteria used in a compliance review to determine whether a Mexico-domiciled carrier granted provisional operating authority under § 365.507 of this subchapter exercises the necessary basic safety management controls are specified in Appendix B to this part.

(b) *Satisfactory rating.* If the FMCSA assigns a Mexico-domiciled carrier a Satisfactory rating following a compliance review conducted under this subpart, the FMCSA will provide the carrier written notice as soon as practicable, but not later than 45 days after the completion of the compliance review. The carrier's operating authority will remain in provisional status and its on-highway performance will continue to be closely monitored for the remainder of the 18-month provisional registration period.

(c) *Conditional rating.* If the FMCSA assigns a Mexico-domiciled carrier a Conditional rating following a compliance review conducted under this subpart, it will initiate a revocation proceeding in accordance with § 385.111 of this subpart. The carrier's provisional operating authority will not be suspended prior to the conclusion of the revocation proceeding.

(d) *Unsatisfactory rating.* If the FMCSA assigns a Mexico-domiciled carrier an Unsatisfactory rating following a compliance review conducted under this subpart, it will initiate a suspension and revocation proceeding in accordance with § 385.111 of this subpart.

§ 385.111 Suspension and revocation of Mexico-domiciled carrier registration.

(a) If a carrier is assigned an ''Unsatisfactory'' safety rating following a compliance review conducted under this subpart, or a safety audit conducted under this subpart determines that a carrier does not exercise the basic safety management controls necessary to ensure safe operations, the FMCSA will provide the carrier written notice, as soon as practicable, that its registration will be suspended effective 15 days from the service date of the notice unless the carrier demonstrates, within 10 days of the service date of the notice, that the compliance review or safety audit contains material error.

(b) For purposes of this section, material error is a mistake or series of mistakes that resulted in an erroneous safety rating or an erroneous determination that the carrier does not exercise the necessary basic safety management controls.

(c) If the carrier demonstrates that the compliance review or safety audit contained material error, its registration will not be suspended. If the carrier fails to show a material error in the safety audit, the FMCSA will issue an Order:

(1) Suspending the carrier's provisional operating authority or provisional Certificate of Registration and requiring it to immediately cease all further operations in the United States; and

(2) Notifying the carrier that its provisional operating authority or provisional Certificate of Registration will be revoked unless it presents evidence of necessary corrective action within 30 days from the service date of the Order.

(d) If a carrier is assigned a ''Conditional'' rating following a compliance review conducted under this subpart, the provisions of subparagraphs (a) through (c) of this section will apply,

except that its provisional registration will not be suspended under paragraph (c)(1) of this section.

(e) If a carrier subject to this subpart fails to provide the necessary documents for a safety audit or compliance review upon reasonable request, or fails to submit evidence of the necessary corrective action as required by § 385.105 of this subpart, the FMCSA will provide the carrier with written notice, as soon as practicable, that its registration will be suspended 15 days from the service date of the notice unless it provides all necessary documents or information. This suspension will remain in effect until the necessary documents or information are produced and:

(1) A safety audit determines that the carrier exercises basic safety management controls necessary for safe operations;

(2) The carrier is rated Satisfactory or Conditional after a compliance review; or

(3) The FMCSA determines, following review of the carrier's response to a demand for corrective action under § 385.105, that the carrier has taken the necessary corrective action.

(f) If a carrier commits any of the violations specified in § 385.105(a) of this subpart after the removal of a suspension issued under this section, the suspension will be automatically reinstated. The FMCSA will issue an Order requiring the carrier to cease further operations in the United States and demonstrate, within 15 days from the service date of the Order, that it did not commit the alleged violation(s). If the carrier fails to demonstrate that it did not commit the violation(s), the FMCSA will issue an Order revoking its provisional operating authority or provisional Certificate of Registration.

(g) If the FMCSA receives credible evidence that a carrier has operated in violation of a suspension order issued under this section, it will issue an Order requiring the carrier to show cause, within 10 days of the service date of the Order, why its provisional operating authority or provisional Certificate of Registration should not be revoked. If the carrier fails to make the necessary showing, the FMCSA will revoke its registration.

(h) If a Mexico-domiciled motor carrier operates a commercial motor vehicle in violation of a suspension or out-of-service order, it shall be subject to the penalty provisions in 49 U.S.C. 521(b) and the amount as stated in part 386, appendix B, of this chapter.

(i) Notwithstanding any provision of this subpart, a carrier subject to this subpart is also subject to the suspension and revocation provisions of 49 U.S.C. 13905 for repeated violations of DOT regulations governing its motor carrier operations.

[53 FR 50968, Dec. 19, 1988, as amended at 80 FR 18155, Apr. 3, 2015]

§ 385.113 Administrative review.

(a) A Mexico-domiciled motor carrier may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in assigning a safety rating or suspending or revoking the carrier's provisional operating authority or provisional Certificate of Registration under this subpart.

(b) The carrier must submit its request in writing, in English, to FMCSA, ATTN: § 385.113 Request for Administrative Review, 1200 New Jersey Ave., SE., Washington, DC 20590–0001.

(c) The carrier's request must explain the error it believes the FMCSA committed in assigning the safety rating or suspending or revoking the carrier's provisional operating authority or provisional Certificate of Registration and include any information or documents that support its argument.

(d) The FMCSA will complete its administrative review no later than 10 days after the carrier submits its request for review. FMCSA's decision will constitute the final agency action.

[67 FR 12771, Mar. 19, 2002, as amended at 72 FR 55701, Oct. 1, 2007; 86 FR 57070, Oct. 14, 2021]

§ 385.115 Reapplying for provisional registration.

(a) A Mexico-domiciled motor carrier whose provisional operating authority or provisional Certificate of Registration has been revoked may reapply under part 365 or 368 of this subchapter, as appropriate, no sooner than 30 days after the date of revocation.

(b) The Mexico-domiciled motor carrier will be required to initiate the application process from the beginning. The carrier will be required to demonstrate how it has corrected the deficiencies that resulted in revocation of its registration and how it will ensure that it will have adequate basic safety management controls. It will also have to undergo a pre-authorization safety audit if it applies for provisional operating authority under part 365 of this subchapter.

§ 385.117 Duration of safety monitoring system.

(a) Each Mexico-domiciled carrier subject to this subpart will remain in the safety monitoring system for at least 18 months from the date FMCSA issues its provisional Certificate of Registration or provisional operating authority, except as provided in paragraphs (c) and (d) of this section.

(b) If, at the end of this 18-month period, the carrier's most recent safety audit or safety rating was Satisfactory and no additional enforcement or safety improvement actions are pending under this subpart, the Mexico-domiciled carrier's provisional operating authority or provisional Certificate of Registration will become permanent.

(c) If, at the end of this 18-month period, the FMCSA has not been able to conduct a safety audit or compliance review, the carrier will remain in the safety monitoring system until a safety audit or compliance review is conducted. If the results of the safety audit or compliance review are satisfactory, the carrier's provisional operating authority or provisional Certificate of Registration will become permanent.

(d) If, at the end of this 18-month period, the carrier's provisional operating authority or provisional Certificate of Registration is suspended under § 385.111(a) of this subpart, the carrier will remain in the safety monitoring system until the FMCSA either:

(1) Determines that the carrier has taken corrective action; or

(2) Completes measures to revoke the carrier's provisional operating authority or provisional Certificate of Registration under § 385.111(c) of this subpart.

§ 385.119 Applicability of safety fitness and enforcement procedures.

At all times during which a Mexico-domiciled motor carrier is subject to the safety monitoring system in this subpart, it is also subject to the general safety fitness procedures established in subpart A of this part and to compliance and enforcement procedures applicable to all carriers regulated by the FMCSA.

Subpart C—Certification of Safety Auditors, Safety Investigators, and Safety Inspectors

SOURCE: 67 FR 12779, Mar. 19, 2002, unless otherwise noted.

§ 385.201 Qualifications for performing a safety audit or investigation.

(a) An FMCSA employee or contractor, or a State or local government employee or contractor funded through the Motor Carrier Safety Assistance Program, who was qualified to perform a safety audit or investigation, including review, before August 27, 2021, may perform a safety audit or investigation, including review, if the individual complies with § 385.203(b).

(b) An individual who was not qualified to perform a safety audit or investigation, including review, before August 27, 2021, may perform a safety audit or investigation, including review, after complying with the requirements of § 385.203(a).

[86 FR 48044, Aug. 27, 2021]

§ 385.203 Certification requirements for performing a safety audit or investigation.

(a) On and after August 27, 2021, an individual who is not qualified under § 385.201(a) may not perform a safety audit or investigation, including review, unless the individual has been certified by FMCSA or a State or local agency applying the FMCSA standards after successfully completing classroom training and examinations on the FMCSRs and HMRs as described in detail on the FMCSA website (*www.fmcsa.dot.gov/certification*). These individuals must also comply with the

maintenance of certification/qualification requirements of paragraph (b) of this section.

(b) An individual may not perform a safety audit or investigation, including review, unless the individual meets the quality-control and periodic re-training requirements adopted by FMCSA to ensure the maintenance of high standards and familiarity with amendments to the FMCSRs and HMRs. These maintenance of certification/qualification requirements are described in detail on the FMCSA website (*www.fmcsa.dot.gov/certification*).

(c) The requirements of paragraphs (a) and (b) of this section for training, performance, and maintenance of certification/qualification, which are described on the FMCSA website (*www.fmcsa.dot.gov/certification*), are also available in hard copy from the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Ave. SE, Washington, DC 20590; Attention: Chief, Compliance Division at (202) 366–1812.

[86 FR 48044, Aug. 27, 2021]

§ 385.205 Requirements for re-certification.

An individual who has lost certification to perform a safety audit or investigation, including review, can only be re-certified if they successfully complete the requirements of § 385.203(a) and (b).

[89 FR 90620, Nov. 18, 2024]

§ 385.207 Requirements to obtain and maintain certification to conduct driver or vehicle inspections.

(a) An FMCSA employee or contractor, or a State or local government employee or contractor funded through the Motor Carrier Safety Assistance Program, who was qualified to conduct a driver or vehicle inspection before August 27, 2021 or meets requirements as specified in CVSA Operational Policy 4 (incorporated by reference, see § 385.4) may conduct a driver or vehicle inspection. The individual may conduct a driver or vehicle inspection only at a level for which the individual is certified.

(b) An individual who qualifies to conduct driver or vehicle inspections under this section must meet the requirements for maintaining certification or obtaining recertification as specified in CVSA Operational Policy 4.

[86 FR 48044, Aug. 27, 2021]

Subpart D—New Entrant Safety Assurance Program

SOURCE: 67 FR 31983, May 13, 2002, unless otherwise noted.

§ 385.301 Requirements before beginning interstate operations.

(a) Before a motor carrier of property or passengers begins interstate operations, it must register with FMCSA and receive a USDOT Number. In addition, for-hire motor carriers must obtain operating authority from FMCSA, unless exclusively providing transportation exempt from the commercial registration requirements in 49 U.S.C. chapter 139. Both the USDOT Number and operating authority are obtained by following registration procedures described in 49 CFR part 390, subpart E. Part 365 of this chapter provides detailed instructions for obtaining operating authority.

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

(c) The regulations in this subpart do not apply to a Mexico-domiciled motor carrier. A Mexico-domiciled motor carrier of property or passengers must register with FMCSA by following the registration procedures described in 49 CFR parts 365, 368 and 390. Parts 365 (for long-haul carriers) and 368 (for commercial zone carriers) of this chapter provide detailed information about how a Mexico-domiciled motor carrier may obtain operating authority.

[80 FR 63707, Oct. 21, 2015]

EFFECTIVE DATE NOTE: At 82 FR 5304, Jan. 17, 2017, § 385.301 was suspended, effective Jan. 14, 2017. At 89 FR 90620, Nov. 18, 2024, the suspension was lifted and the section heading was revised. In that same document, § 385.301 was again suspended indefinitely, effective Nov. 18, 2024.

§ 385.301T Requirements 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.

[82 FR 5304, Jan. 17, 2017]

§ 385.302 [Reserved]

EFFECTIVE DATE NOTE: At 82 FR 5304, Jan. 17, 2017, § 385.302 was suspended, effective Jan. 14, 2017.

§ 385.303 How to register with FMCSA.

A motor carrier registers with FMCSA by completing Form MCSA–1, the URS online application which is available at *http://www.fmcsa.dot.gov/urs*. Complete instructions for the Form MCSA–1 also are available at the same location.

[80 FR 63707, Oct. 21, 2015]

EFFECTIVE DATE NOTE: At 82 FR 5304, Jan. 17, 2017, § 385.303 was suspended, effective Jan. 14, 2017. At 89 FR 90620, Nov. 18, 2024, the suspension was lifted and the section heading was revised. In that same document, § 385.303 was again suspended indefinitely, effective Nov. 18, 2024.

§ 385.303T How to register with FMCSA.

A motor carrier may contact the FMCSA by internet (*www.fmcsa.dot.gov*); or Washington, DC headquarters by mail at, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001; fax 202–366–3477; or telephone 1–800–832–5660, and request the application materials for a new entrant motor carrier. Forms can also be downloaded from *https://www.fmcsa.dot.gov/registration/registration-forms*. A motor carrier which does not already have a USDOT number must apply online via the Unified Registration System (URS) at *www.fmcsa.dot.gov/urs*.

[82 FR 5304, Jan. 17, 2017]

§ 385.304 [Reserved]

EFFECTIVE DATE NOTE: At 82 FR 5304, Jan. 17, 2017, § 385.304 was suspended, effective Jan. 14, 2017.

§ 385.305 Completing the registration process.

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

(b) The application package will include the following:

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

(2) Form MCSA–1—FMCSA Registration/Update (USDOT Number—Operating Authority Application). This form is used to obtain both a USDOT Number and operating authority.

(c) Upon completion of the application form, the new entrant will be issued an inactive USDOT Number. An applicant may not begin operations nor mark a commercial motor vehicle with the USDOT Number until after the date of the Agency's written notice that the USDOT Number has been activated. Violations of this section may be subject to the penalties under § 392.9b(b) of this chapter.

(d) *Additional requirements for certain for-hire motor carriers.* For-hire motor carriers, unless providing transportation exempt from the commercial registration requirements in 49 U.S.C. chapter 139, must obtain operating authority as prescribed under § 390.201(b) and part 365 of this chapter before operating in interstate commerce.

[67 FR 31983, May 13, 2002, as amended by 80 FR 63707, Oct. 21, 2015; 88 FR 80182, Nov. 17, 2023]

EFFECTIVE DATE NOTE: At 82 FR 5304, Jan. 17, 2017, § 385.305 was suspended, effective Jan.

14, 2017. At 88 FR 80182, Nov. 17, 2023, the suspension was lifted, § 385.305 was amended, and the section was again suspended indefinitely. At 89 FR 90620, Nov. 18, 2024, the suspension was lifted and the section heading was revised. In that same document, § 385.305 was again suspended indefinitely, effective Nov. 18, 2024.

§ 385.305T Completing the registration process.

(a) The requester for new entrant registration will be directed to the FMCSA Internet website (*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) Application forms to obtain operating authority under 49 CFR part 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.

[82 FR 5304, Jan. 17, 2017, as amended at 88 FR 80182, Nov. 17, 2023]

§ 385.306 Consequences of furnishing misleading information or making a false statement.

A carrier that furnishes false or misleading information, or conceals material information in connection with the registration process, is subject to the following actions:

(a) Revocation of registration.

(b) Assessment of the civil and/or criminal penalties prescribed in 49 U.S.C. 521 and 49 U.S.C. chapter 149.

[73 FR 76488, Dec. 16, 2008]

§ 385.307 New entrant safety monitoring procedures.

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.

(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.

[67 FR 31983, May 13, 2002, as amended at 73 FR 76488, Dec. 16, 2008]

§ 385.308 Expedited safety audits and compliance reviews of new entrants.

(a) A new entrant that commits any of the following actions, identified through roadside inspections or by any other means, may be subjected to an expedited safety audit or a compliance review or may be required to submit a written response demonstrating corrective action:

(1) Using a driver not possessing a valid commercial driver's license to operate a commercial motor vehicle as defined under § 383.5 of this chapter. An invalid commercial driver's license includes one that is falsified, revoked, expired, or missing a required endorsement.

(2) Operating a vehicle placed out of service for violations of the Federal Motor Carrier Safety Regulations or compatible State laws and regulations without taking necessary corrective action.

(3) Being involved in, through action or omission, a hazardous materials reportable incident, as described under 49 CFR 171.15 or 171.16, involving—

(i) A highway route controlled quantity of certain radioactive materials (Class 7).

(ii) Any quantity of certain explosives (Class 1, Division 1.1, 1.2, or 1.3).

(iii) Any quantity of certain poison inhalation hazard materials (Zone A or B).

(4) Being involved in, through action or omission, two or more hazardous materials reportable incidents as described under 49 CFR 171.15 or 171.16, involving hazardous materials other than those listed above.

(5) Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required controlled substances or alcohol tests.

(6) Operating a commercial motor vehicle without the levels of financial responsibility required under part 387 of this subchapter.

(7) Having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within a consecutive 90-day period.

(b) If a new entrant that commits any of the actions listed in paragraph (a) of this section:

(1) Has not had a safety audit or compliance review, FMCSA will schedule the new entrant for a safety audit as soon as practicable.

(2) Has had a safety audit or compliance review, FMCSA will send the new entrant a notice advising it to submit evidence of corrective action within 30 days of the service date of the notice.

(c) FMCSA may schedule a compliance review of a new entrant that commits any of the actions listed in paragraph (a) of this section at any time if it determines the violation warrants a thorough review of the new entrant's operation.

(d) Failure to respond within 30 days of the notice to an Agency demand for a written response demonstrating corrective action will result in the revocation of the new entrant's registration.

[73 FR 76488, Dec. 16, 2008, as amended at 80 FR 59457, Oct. 2, 2015]

§ 385.309 Safety audit: Purpose.

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 Safety audit: Scope.

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 Safety audit: Auditor.

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

§ 385.315 Safety audit: Location.

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

§ 385.317 Safety audit: Safety fitness determination.

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

§ 385.319 Safety audit: Completion.

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

(b) *Pass.* If FMCSA determines the safety audit discloses the new entrant has adequate basic safety management controls, the Agency will provide the new entrant written notice as soon as practicable, but not later than 45 days after 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) *Fail.* If FMCSA determines the safety audit discloses the new entrant's basic safety management controls are inadequate, the Agency 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.

(1) *60-day corrective action requirement.* All new entrants, except those specified in paragraph (c)(2) of this section, must take the specified actions to remedy inadequate safety management practices within 60 days of the date of the notice.

(2) *45-day corrective action requirement.* The new entrants listed below must take the specified actions to remedy inadequate safety management practices within 45 days of the date of the notice:

(i) A new entrant that transports passengers in a CMV designed or used to transport between 9 and 15 passengers (including the driver) for direct compensation.

(ii) A new entrant that transports passengers in a CMV designed or used to transport more than 15 passengers (including the driver).

(iii) A new entrant that transports hazardous materials in a CMV as defined in paragraph (4) of the definition of a ''Commercial Motor Vehicle'' in §390.5 of this subchapter.

[73 FR 76489, Dec. 16, 2008]

§ 385.321 Safety audit: Failure.

(a) *General.* The failures of safety management practices consist of a lack of basic safety management controls as described in Appendix A of this part or failure to comply with one or more of the regulations set forth in paragraph (b) of this section and will result in a notice to a new entrant that its USDOT new entrant registration will be revoked.

(b) *Automatic failure of the audit.* A new entrant will automatically fail a safety audit if found in violation of any one of the following 16 regulations:

TABLE TO § 385.321—VIOLATIONS THAT WILL RESULT IN AUTOMATIC FAILURE OF THE NEW ENTRANT SAFETY AUDIT

Violation	Guidelines for determining automatic failure of the safety audit
1. §382.115(a)/§382.115(b)—Failing to implement an alcohol and/or controlled substances testing program (domestic and foreign motor carriers, respectively).	Single occurrence.
2. §382.201—Using a driver known to have an alcohol content of 0.04 or greater to perform a safety-sensitive function.	Single occurrence.
3. §382.211—Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382.	Single occurrence.
4. §382.215—Using a driver known to have tested positive for a controlled substance.	Single occurrence.
5. §382.305—Failing to implement a random controlled substances and/or alcohol testing program.	Single occurrence.
6. §383.3(a)/§383.23(a)—Knowingly using a driver who does not possess a valid CDL.	Single occurrence.
7. §383.37(b)-Knowingly allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle with a commercial learner's permit or commercial driver's license which is disqualified by a State, has lost the right to operate a CMV in a State or who is disqualified to operate a commercial motor vehicle.	Single occurrence.
8. §383.51(a)—Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle.	Single occurrence. This violation refers to a driver operating a CMV as defined under §383.5.
9. §387.7(a)—Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.	Single occurrence.
10. §387.31(a)—Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility.	Single occurrence.
11. §391.15(a)—Knowingly using a disqualified driver	Single occurrence.
12. §391.11(b)(4)—Knowingly using a physically unqualified driver	Single occurrence. This violation refers to a driver operating a CMV as defined under §390.5.
13. §395.8(a)—Failing to require a driver to make a record of duty status.	Requires a violation threshold (51% or more of examined records) to trigger automatic failure.
14. §396.9(c)(2)—Requiring or permitting the operation of a commercial motor vehicle declared ''out-of-service'' before repairs are made.	Single occurrence.
15. §396.11(a)(3)—Failing to correct out-of-service defects listed by driver in a driver vehicle inspection report before the vehicle is operated.	Single occurrence.

TABLE TO § 385.321—VIOLATIONS THAT WILL RESULT IN AUTOMATIC FAILURE OF THE NEW ENTRANT SAFETY AUDIT—Continued

Violation	Guidelines for determining automatic failure of the safety audit
16. § 396.17(a)—Using a commercial motor vehicle not periodically inspected.	Requires a violation threshold (51% or more of examined records) to trigger automatic failure.

[73 FR 76489, Dec. 16, 2008, as amended at 77 FR 26989, May 8, 2012; 80 FR 59073, Oct. 1, 2015]

§ 385.323 Safety audit: Extensions for corrective action.

(a) FMCSA may extend the 60-day period in § 385.319(c)(1) for up to an additional 60 days provided FMCSA determines the new entrant is making a good faith effort to remedy its safety management practices.

(b) FMCSA may extend the 45-day period in § 385.319(c)(2) for up to an additional 10 days if the new entrant has submitted evidence that corrective actions have been taken pursuant to § 385.319(c) and the Agency needs additional time to determine the adequacy of the corrective action.

[73 FR 76490, Dec. 16, 2008]

§ 385.325 Safety audit: Outcomes of a corrective action notice.

(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, and any extension of that period authorized under § 385.323, FMCSA will revoke its new entrant registration and issue an out-of-service order effective on:

(1) Day 61 from the notice date for new entrants subject to § 385.319(c)(1).

(2) Day 46 from the notice date for new entrants subject to § 385.319(c)(2).

(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.

[67 FR 31983, May 13, 2002, as amended at 73 FR 76490, Dec. 16, 2008]

§ 385.327 Safety audit: Administrative review.

(a) If a new entrant receives a notice under § 385.319(c) that its new entrant registration will be revoked, it may request FMCSA to conduct an administrative review if it believes FMCSA has committed an error in determining that its basic safety management controls are inadequate. The request must:

(1) Be made to the Field Administrator of the appropriate FMCSA Service Center.

(2) Explain the error the new entrant believes FMCSA committed in its determination.

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

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

(c) A new entrant must submit a request for an administrative review within one of the following time periods:

(1) If it does not submit evidence of corrective action under § 385.319(c), within 90 days after the date it is notified that its basic safety management controls are inadequate.

(2) If it submits evidence of corrective action under § 385.319(c), within 90 days after the date it is notified that

its corrective action is insufficient and its basic safety management controls remain inadequate.

(d) If a new entrant wants to assure that FMCSA will be able to issue a final written decision before the prohibitions outlined in § 385.325(c) take effect, the new entrant must submit its request no later than 15 days from the date of the notice that its basic safety management controls are inadequate. Failure to submit the request within this 15-day period may result in revocation of new entrant registration and issuance of an out-of-service order before completion of administrative review.

(e) FMCSA will complete its review and notify the new entrant in writing of its decision within:

(1) 45 days after receiving a request for review from a new entrant that is subject to § 385.319(c)(1).

(2) 30 days after receiving a request for review from a new entrant that is subject to § 385.319(c)(2).

(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.

[73 FR 76490, Dec. 16, 2008]

§ 385.329 Re-application.

(a) A new entrant whose USDOT new entrant registration has been revoked, and whose operations have been placed out of service by FMCSA, may reapply for new entrant registration no sooner than 30 days after the date of revocation.

(b) If the USDOT new entrant registration was revoked because of a failed safety audit, the new entrant must do all of the following:

(1) Submit an updated Form MCSA–1, the URS online application.

(2) Submit evidence that it has corrected the deficiencies that resulted in revocation of its registration and will otherwise ensure that it will have basic safety management controls in effect.

(3) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(c) If the USDOT new entrant registration was revoked because FMCSA found that the new entrant had failed to submit to a safety audit, it must do all of the following:

(1) Submit an updated Form MCSA–1, the URS online application.

(2) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(3) Submit to a safety audit.

(d) If the new entrant is a for-hire motor carrier subject to the registration provisions of 49 U.S.C. chapter 139 and also has had its operating authority revoked, it must re-apply for operating authority as set forth in § 390.201(b) and part 365 of this chapter.

[73 FR 76490, Dec. 16, 2008, as amended at 80 FR 63707, Oct. 21, 2015]

EFFECTIVE DATE NOTE: At 82 FR 5304, Jan. 17, 2017, § 385.329 was suspended, effective Jan. 14, 2017. At 89 FR 90620, Nov. 18, 2024, the suspension was lifted and the section heading was revised. In that same document, § 385.329 was again suspended indefinitely, effective Nov. 18, 2024.

§ 385.329T Re-application.

(a) A new entrant whose USDOT new entrant registration has been revoked, and whose operations have been placed out of service by FMCSA, may reapply for new entrant registration no sooner than 30 days after the date of revocation.

(b) If the USDOT new entrant registration was revoked because of a failed safety audit, the new entrant must do all of the following:

(1) Submit an updated MCS–150.

(2) Submit evidence that it has corrected the deficiencies that resulted in revocation of its registration and will otherwise ensure that it will have basic safety management controls in effect.

(3) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(c) If the USDOT new entrant registration was revoked because FMCSA found that the new entrant had failed to submit to a safety audit, it must do all of the following:

(1) Submit an updated MCS–150.

(2) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(3) Submit to a safety audit.

(d) If the new entrant is a for-hire carrier subject to the registration provisions under 49 U.S.C. 13901 and also has had its operating authority revoked, it must re-apply for operating authority as set forth in part 365 of this chapter.

[82 FR 5304, Jan. 17, 2017]

§ 385.331 New entrant violation of out-of-service order.

A new entrant that operates a CMV in violation of an out-of-service order is subject to the penalty provisions in 49 U.S.C. 521(b)(2)(A) for each offense as adjusted for inflation by 49 CFR part 386, appendix B.

[73 FR 76491, Dec. 16, 2008]

§ 385.333 Conclusion of 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 Compliance review in lieu of 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 New entrant refusal to permit safety audit.

(a) If a new entrant refuses to permit a safety audit to be performed on its operations, 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 refusal to permit a safety audit to be performed may subject the new entrant to the penalty provisions of 49 U.S.C. 521(b)(2)(A), as adjusted for inflation by 49 CFR part 386, appendix B.

(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.

[67 FR 31983, May 13, 2002, as amended at 73 FR 76491, Dec. 16, 2008]

Subpart E—Hazardous Materials Safety Permits

SOURCE: 69 FR 39367, June 30, 2004, unless otherwise noted.

§ 385.401 Hazardous materials safety permits: Purpose and scope.

(a) This subpart contains the requirements for obtaining and maintaining a safety permit to transport certain hazardous materials. No one may transport the materials listed in § 385.403 without a safety permit required by this subpart.

(b) This subpart includes:

(1) Definitions of terms used in this subpart;

(2) The list of hazardous materials that require a safety permit if transported in commerce;

(3) The requirements and procedures a carrier must follow in order to be issued a safety permit and maintain a safety permit;

(4) The procedures for a motor carrier to follow to initiate an administrative review of a denial, suspension, or revocation of a safety permit.

§ 385.402 Hazardous materials safety permits: Definitions.

(a) The definitions in parts 390 and 385 of this chapter apply to this subpart, except where otherwise specifically noted.

(b) As used in this part,

Hazardous material has the same meaning as under § 171.8 of this title: A substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under Sec. 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see § 172.101 of this title), and materials that meet the defining criteria for hazard classes and divisions in part 173 of this title.

Hazmat employee has the same meaning as under § 171.8 of this title: A person who is employed by a hazmat employer as defined under § 171.8 of this title, and who in the course of employment directly affects hazardous materials transportation safety. This term includes an owner-operator of a motor vehicle that transports hazardous materials in commerce. This term includes an individual who, during the course of employment:

(1) Loads, unloads, or handles hazardous materials;

(2) Manufactures, tests, reconditions, repairs, modifies, marks, or otherwise represents containers, drums, or packaging as qualified for use in the transportation of hazardous materials;

(3) Prepares hazardous materials for transportation;

(4) Is responsible for the safe transportation of hazardous materials; or

(5) Operates a vehicle used to transport hazardous materials.

Liquefied natural gas (LNG) means a Division 2.1 liquefied natural gas material that is transported in a liquid state with a methane content of 85 percent or more.

Safety permit means a document issued by FMCSA that contains a permit number and confers authority to transport in commerce the hazardous materials listed in § 385.403.

Shipment means the offering or loading of hazardous materials at one loading facility using one transport vehicle, or the transport of that transport vehicle.

§ 385.403 Prohibited transportation without safety permit.

A motor carrier may not transport in interstate or intrastate commerce any of the following hazardous materials, in the quantity indicated for each, unless the motor carrier holds a safety permit:

(a) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this title;

(b) More than 25 kg (55 pounds) net weight of a Division 1.1, 1.2, or 1.3 (explosive) material or articles or an amount of a Division 1.5 (explosive) material requiring placarding under part 172 of this title;

(c) More than one liter (1.08 quarts) per package of a ''material poisonous by inhalation,'' as defined in § 171.8 of this title, that meets the criteria for

''hazard zone A,'' as specified in §173.116(a) or §173.133(a) of this title;

(d) A ''material poisonous by inhalation,'' in a ''bulk packaging,'' both as defined in §171.8 of this title, that meets the criteria for ''hazard zone B,'' as specified in §173.116(a) or §173.133(a);

(e) A ''material poisonous by inhalation,'' as defined in §171.8 of this title, that meets the criteria for ''hazard zone C,'' or ''hazard zone D,'' as specified in §173.116(a) of this title, in a packaging having a capacity equal to or greater than 13,248 L (3,500) gallons; or

(f) A shipment of methane (compressed or refrigerated liquid), natural gas (compressed or refrigerated liquid), or any other compressed or refrigerated liquefied gas with a methane content of at least 85 percent, in bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

[69 FR 39367, June 30, 2004, as amended at 77 FR 59826, Oct. 1, 2012; 80 FR 59073, Oct. 1, 2015; 84 FR 51433, Sept. 30, 2019]

§ 385.405 Application for safety permit.

(a) *Application form.* (1) To apply for a new safety permit or renewal of the safety permit, a motor carrier must complete and submit Form MCSA–1, the URS online application and meet the requirements under 49 CFR part 390, subpart E.

(2) Form MCSA–1, the URS online application, will also satisfy the requirements for obtaining and renewing a USDOT Number.

(b) *How to apply.* Form MCSA–1, the URS online application, is accessible, including complete instructions, at *http://www.fmcsa.dot.gov/urs.*

(c) *Signature and certification.* An official of the motor carrier must sign and certify that the information is correct on each form the motor carrier submits.

(d) *Updating information.* A motor carrier holding a safety permit must report to FMCSA any change in the information on its Form MCSA–1 within 30 days of the change. The motor carrier must use Form MCSA–1, the URS online application, to report the new information.

[80 FR 63707, Oct. 21, 2015, as amended at 84 FR 51433, Sept. 30, 2019]

EFFECTIVE DATE NOTE: At 82 FR 5304, Jan. 17, 2017, §385.405 was suspended, effective Jan. 14, 2017. At 84 FR 51433, Sept. 30, 2019, the suspension was lifted and amendments were made to §385.405. In that same document, §385.405 was again suspended indefinitely. At 89 FR 90621, Nov. 18, 2024, the suspension was lifted and the section heading was revised. In that same document, §385.405 was again suspended indefinitely, effective Nov. 18, 2024.

§ 385.405T Application for safety permit.

(a) *Application form(s).* (1) To apply for a new safety permit or renewal of the safety permit, a motor carrier must complete and submit Form MCS–150B, Combined Motor Carrier Identification Report and HM Permit Application.

(2) The Form MCS–150B will also satisfy the requirements for obtaining and renewing a USDOT Number; there is no need to complete Form MCS–150, Motor Carrier Identification Report.

(b) *Where to get forms and instructions.* The forms listed in paragraph (a) of this section, and instructions for completing the forms, may be obtained on the internet at *http://www.fmcsa.dot.gov,* or by contacting FMCSA at Federal Motor Carrier Safety Administration, Office of Registration and Safety Information (MC–RS), 1200 New Jersey Ave. SE, Washington, DC 20590–0001 or by telephone at 1–800–832–5660.

(c) *Registration with the Pipeline and Hazardous Materials Safety Administration (PHMSA).* The motor carrier must be registered with PHMSA in accordance with part 107, subpart G, of this title.

(d) *Updating information on Form MCS–150B.* A motor carrier holding a safety permit must report to FMCSA any change in the information on its Form MCS–150B within 30 days of the change. The motor carrier must use Form MCS–150B to report the new information (contact information in paragraph (b) of this section).

[82 FR 5304, Jan. 17, 2017, as amended at 84 FR 51433, Sept. 30, 2019]

§ 385.407 Requirements for a safety permit.

(a) *Motor carrier safety performance.* (1) The motor carrier must have a ''Satisfactory'' safety rating assigned

by either FMCSA, pursuant to the Safety Fitness Procedures of this part, or the State in which the motor carrier has its principal place of business, if the State has adopted and implemented safety fitness procedures that are equivalent to the procedures in subpart A of this part; and

(2) FMCSA will not issue a safety permit to a motor carrier that:

(i) Does not certify that it has a satisfactory security program as required in § 385.407(b);

(ii) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA Motor Carrier Management Information System (MCMIS);

(iii) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS; or

(iv) Does not have the minimum financial responsibility required by § 387.9 of this chapter or an applicable State requirement.

(b) *Satisfactory security program.* The motor carrier must certify that it has a satisfactory security program, including:

(1) A security plan meeting the requirements of part 172, subpart I of this title, and addressing how the carrier will ensure the security of the written route plan required by this part;

(2) A communications plan that allows for contact between the commercial motor vehicle operator and the motor carrier to meet the periodic contact requirements in § 385.415(c)(1); and

(3) Successful completion by all hazmat employees of the security training required in § 172.704(a)(4) and (a)(5) of this title.

(c) *Registration with the Pipeline and Hazardous Materials Safety Administration (PHMSA).* The motor carrier must be registered with the PHMSA in accordance with part 107, subpart G of this title.

[69 FR 39367, June 30, 2004, as amended at 75 FR 17241, Apr. 5, 2010; 77 FR 28450, May 14, 2012; 78 FR 58481, Sept. 24, 2013; 89 FR 90621, Nov. 18, 2024]

§ 385.409 Temporary safety permit.

(a) If a motor carrier does not meet the criteria of § 385.407(a), FMCSA may issue it a temporary safety permit. To obtain a temporary safety permit, a motor carrier must certify on Form MCSA–1, the URS online application, that it is operating in full compliance with the HMRs, with the FMCSRs, and/or comparable State regulations, whichever is applicable; and with the minimum financial responsibility requirements in part 387 of this subchapter or in State regulations, whichever is applicable.

(b) FMCSA will not issue a temporary safety permit to a motor carrier that:

(1) Does not certify that it has a satisfactory security program as required in § 385.407(b);

(2) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA's MCMIS; or

(3) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS.

(c) A temporary safety permit shall be valid for 180 days after the date of issuance or until the motor carrier is assigned a new safety rating, whichever occurs first.

(1) A motor carrier that receives a Satisfactory safety rating will be issued a safety permit (see § 385.421).

(2) A motor carrier that receives a less than Satisfactory safety rating is ineligible for a safety permit and will be subject to revocation of its temporary safety permit.

(d) If a motor carrier has not received a safety rating within the 180-day time period, FMCSA will extend the effective date of the temporary safety permit for an additional 60 days, provided the motor carrier demonstrates that it is continuing to operate in full compliance with the FMCSRs and HMRs.

[69 FR 39367, June 30, 2004, as amended at 80 FR 63708, Oct. 21, 2015; 89 FR 90621, Nov. 18, 2024]

EFFECTIVE DATE NOTE: At 82 FR 5305, Jan. 17, 2017, § 385.409 was suspended, effective Jan. 14, 2017. At 89 FR 90621, Nov. 18, 2024, the suspension was lifted, the section heading was revised and paragraph (a) was revised and republished. In that same document, § 385.409 was again suspended indefinitely, effective Nov. 18, 2024.

§ 385.409T Temporary safety permit.

(a) If a motor carrier does not meet the criteria in § 385.407(a), FMCSA may issue it a temporary safety permit. To obtain a temporary safety permit a motor carrier must certify on Form MCS–150B that it is operating in full compliance with the HMRs; with the FMCSRs, and/or comparable State regulations, whichever is applicable; and with the minimum financial responsibility requirements in part 387 of this chapter or in State regulations, whichever is applicable.

(b) FMCSA will not issue a temporary safety permit to a motor carrier that:

(1) Does not certify that it has a satisfactory security program as required in § 385.407(b);

(2) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA's Motor Carrier Management Information System (MCMIS); or

(3) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS.

(c) A temporary safety permit shall be valid for 180 days after the date of issuance or until the motor carrier is assigned a new safety rating, whichever occurs first.

(1) A motor carrier that receives a Satisfactory safety rating will be issued a safety permit (see § 385.421T).

(2) A motor carrier that receives a less than Satisfactory safety rating is ineligible for a safety permit and will be subject to revocation of its temporary safety permit.

(d) If a motor carrier has not received a safety rating within the 180-day time period, FMCSA will extend the effective date of the temporary safety permit for an additional 60 days, provided the motor carrier demonstrates that it is continuing to operate in full compliance with the FMCSRs and HMRs.

[82 FR 5305, Jan. 17, 2017, as amended at 89 FR 90621, Nov. 18, 2024]

§ 385.411 State-issued safety permit.

A motor carrier must comply with the requirements of this subpart even if it has a State-issued safety permit. However, if FMCSA is able to verify that a motor carrier has a safety permit issued by a State under a program that FMCSA has determined to be equivalent to the provisions of this subpart, FMCSA will immediately issue a safety permit to the motor carrier upon receipt of an application in accordance with § 385.405T, without further inspection or investigation.

[89 FR 90621, Nov. 18, 2024]

§ 385.413 Proposed safety rating less than Satisfactory.

(a) If a motor carrier receives a proposed safety rating that is less than Satisfactory and does not already have a safety permit, it will not be issued a safety permit (including a temporary safety permit) unless and until a Satisfactory safety rating is issued to the motor carrier.

(b) If a motor carrier receives a proposed safety rating that is less than Satisfactory and holds a safety permit (including a temporary safety permit), the safety permit will be subject to revocation or suspension (see § 385.421).

[89 FR 90621, Nov. 18, 2024]

§ 385.415 Operational requirements for the transportation of a hazardous material for which a permit is required.

(a) *Information that must be carried in the vehicle.* During transportation, the following must be maintained in each commercial motor vehicle that transports a hazardous material listed in § 385.403 and must be made available to an authorized official of a Federal, State, or local government agency upon request.

(1) A copy of the safety permit or another document showing the permit number, provided that document clearly indicates the number is the FMCSA Safety Permit number;

(2) A written route plan that meets the requirements of § 397.101 of this chapter for highway route-controlled Class 7 (radioactive) materials or § 397.67 of this chapter for Division 1.1, 1.2, and 1.3 (explosive) materials; and

(3) The telephone number, including area code or country code, of an employee of the motor carrier or representative of the motor carrier who is familiar with the routing of the permitted material. The motor carrier

employee or representative must be able to verify that the shipment is within the general area for the expected route for the permitted material. The telephone number, when called, must be answered directly by the motor carrier or its representative at all times while the permitted material is in transportation including storage incidental to transportation. Answering machines are not sufficient to meet this requirement.

(b) *Inspection of vehicle transporting Class 7 (radioactive) materials.* Before a motor carrier may transport a highway route controlled quantity of a Class 7 (radioactive) material, the motor carrier must have a pre-trip inspection performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of the ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403'', (incorporated by reference, see §385.4).

(c) *Additional requirements.* A motor carrier transporting hazardous materials requiring a permit under this part must also meet the following requirements:

(1) The operator of a motor vehicle used to transport a hazardous material listed in §385.403 must follow the communications plan required in §385.407(b)(2) to make contact with the carrier at the beginning and end of each duty tour, and at the pickup and delivery of each permitted load. Contact may be by telephone, radio or via an electronic tracking or monitoring system. The motor carrier or driver must maintain a record of communications for 6 months after the initial acceptance of a shipment of hazardous material for which a safety permit is required. The record of communications must contain the name of the driver, identification of the vehicle, permitted material(s) being transported, and the date, location, and time of each contact required under this section.

(2) The motor carrier should contact the Transportation Security Administration's Transportation Security Coordination Center (703–563–3236 or 703–563–3237) at any time the motor carrier suspects its shipment of a hazardous material listed in §385.403 is lost, stolen or otherwise unaccounted for.

[69 FR 39367, June 30, 2004, as amended at 72 FR 55701, Oct. 1, 2007; 77 FR 59826, Oct. 1, 2012; 84 FR 32326, July 8, 2019]

§385.417 Availability of motor carrier's safety permit number.

Upon request, a motor carrier must provide the number of its safety permit to a person who offers a hazardous material listed in §385.403 for transportation in commerce. A motor carrier's permit number also will be available to the public on the FMCSA Safety and Fitness Electronic Records System website at *https://safer.fmcsa.dot.gov*.

[84 FR 51433, Sept. 30, 2019]

§385.419 Effective period of safety permit.

Unless suspended or revoked, a safety permit (other than a temporary safety permit) is effective for two years, except that:

(a) A safety permit will be subject to revocation if a motor carrier fails to submit a renewal application (Form MCSA–1, the URS online application) in accordance with the schedule set forth for filing Form MCSA–1 in part 390, subpart E, of this subchapter; and

(b) An existing safety permit will remain in effect pending FMCSA's processing of an application for renewal if a motor carrier submits the required application (Form MCSA–1) in accordance with the schedule set forth in part 390, subpart E, of this subchapter.

[80 FR 63708, Oct. 21, 2015]

EFFECTIVE DATE NOTE: At 82 FR 5305, Jan. 17, 2017, §385.419 was suspended, effective Jan. 14, 2017. At 89 FR 90621, Nov. 18, 2024, the suspension was lifted and the section heading was revised. In that same document, §385.419 was again suspended indefinitely, effective Nov. 18, 2024.

§385.419T Effective period of safety permit.

Unless suspended or revoked, a safety permit (other than a temporary safety

permit) is effective for two years, except that:

(a) A safety permit will be subject to revocation if a motor carrier fails to submit a renewal application (Form MCS–150B) in accordance with the schedule set forth for filing Form MCS–150 in § 390.19T(a) of this chapter; and

(b) An existing safety permit will remain in effect pending FMCSA's processing of an application for renewal if a motor carrier submits the required application (Form MS–150B) in accordance with the schedule set forth in § 390.19T(a)(2) and (3) of this chapter.

[82 FR 5305, Jan. 17, 2017]

§ 385.421 Revocation or suspension of safety permit.

(a) *Grounds.* A safety permit will be subject to revocation or suspension by FMCSA for the following reasons:

(1) A motor carrier fails to submit a renewal application (Form MCSA–1) in accordance with the schedule set forth in part 390, subpart E, of this subchapter.

(2) A motor carrier provides any false or misleading information on its application form (Form MCSA–1) or as part of updated information it is providing on Form MCSA–1 (see § 385.405(d)).

(3) A motor carrier is issued a final safety rating that is less than Satisfactory;

(4) A motor carrier fails to maintain a satisfactory security plan as set forth in § 385.407(b);

(5) A motor carrier fails to comply with applicable requirements in the FMCSRs, the HMRs, or compatible State requirements governing the transportation of hazardous materials, in a manner showing that the motor carrier is not fit to transport the hazardous materials listed in § 385.403;

(6) A motor carrier fails to comply with an out-of-service order;

(7) A motor carrier fails to comply with any other order issued under the FMCSRs, the HMRs, or compatible State requirements governing the transportation of hazardous materials, in a manner showing that the motor carrier is not fit to transport the hazardous materials listed in § 385.403;

(8) A motor carrier fails to maintain the minimum financial responsibility required by § 387.9 of this chapter or an applicable State requirement;

(9) A motor carrier fails to maintain current hazardous materials registration with the Pipeline and Hazardous Materials Safety Administration; or

(10) A motor carrier loses its operating rights or has its registration suspended in accordance with § 386.83 or § 386.84 of this chapter for failure to pay a civil penalty or abide by a payment plan.

(b) *Determining whether a safety permit is revoked or suspended.* A motor carrier's safety permit will be suspended the first time any of the conditions specified in paragraph (a) of this section are found to apply to the motor carrier. A motor carrier's safety permit will be revoked if any of the conditions specified in paragraph (a) of this section are found to apply to the motor carrier and the carrier's safety permit has been suspended in the past for any of the reasons specified in paragraph (a) of this section.

(c) *Effective date of suspension or revocation.* A suspension or revocation of a safety permit is effective:

(1) Immediately after FMCSA determines that an imminent hazard exists, after FMCSA issues a final safety rating that is less than Satisfactory, or after a motor carrier loses its operating rights or has its registration suspended for failure to pay a civil penalty or abide by a payment plan;

(2) Thirty (30) days after service of a written notification that FMCSA proposes to suspend or revoke a safety permit, if the motor carrier does not submit a written request for administrative review within that time period; or

(3) As specified in § 385.423(c), when the motor carrier submits a written request for administrative review of FMCSA's proposal to suspend or revoke a safety permit.

(4) A motor carrier whose safety permit has been revoked will not be issued a replacement safety permit or temporary safety permit for 365 days from the time of revocation.

[69 FR 39367, June 30, 2004, as amended at 78 FR 58481, Sept. 24, 2013; 80 FR 63708, Oct. 21, 2015]

EFFECTIVE DATE NOTE: At 82 FR 5305, Jan. 17, 2017, § 385.421 was suspended, effective Jan.

14, 2017. At 89 FR 90621, Nov. 18, 2024, the suspension was lifted and the section heading was amended. In that same document, § 385.421 was again suspended indefinitely, effective Nov. 18, 2024.

§ 385.421T Revocation or suspension of safety permit.

(a) *Grounds.* A safety permit will be subject to revocation or suspension by FMCSA for the following reasons:

(1) A motor carrier fails to submit a renewal application (Form MCS–150B) in accordance with the schedule set forth in § 390.19T(a)(2) and (3) of this chapter;

(2) A motor carrier provides any false or misleading information on its application (Form MCS–150B) or as part of updated information it is providing on Form MCS–150B (see § 385.405T(d)).

(3) A motor carrier is issued a final safety rating that is less than Satisfactory;

(4) A motor carrier fails to maintain a satisfactory security plan as set forth in § 385.407(b);

(5) A motor carrier fails to comply with applicable requirements in the FMCSRs, the HMRs, or compatible State requirements governing the transportation of hazardous materials, in a manner showing that the motor carrier is not fit to transport the hazardous materials listed in § 385.403;

(6) A motor carrier fails to comply with an out-of-service order;

(7) A motor carrier fails to comply with any other order issued under the FMCSRs, the HMRs, or compatible State requirements governing the transportation of hazardous materials, in a manner showing that the motor carrier is not fit to transport the hazardous materials listed in § 385.403;

(8) A motor carrier fails to maintain the minimum financial responsibility required by § 387.9 of this chapter or an applicable State requirement;

(9) A motor carrier fails to maintain current hazardous materials registration with the Pipeline and Hazardous Materials Safety Administration; or

(10) A motor carrier loses its operating rights or has its registration suspended in accordance with § 386.83 or § 386.84 of this chapter for failure to pay a civil penalty or abide by a payment plan.

(b) *Determining whether a safety permit is revoked or suspended.* A motor carrier's safety permit will be suspended the first time any of the conditions specified in paragraph (a) of this section are found to apply to the motor carrier. A motor carrier's safety permit will be revoked if any of the conditions specified in paragraph (a) of this section are found to apply to the motor carrier and the carrier's safety permit has been suspended in the past for any of the reasons specified in paragraph (a) of this section.

(c) *Effective date of suspension or revocation.* A suspension or revocation of a safety permit is effective:

(1) Immediately after FMCSA determines that an imminent hazard exists, after FMCSA issues a final safety rating that is less than Satisfactory, or after a motor carrier loses its operating rights or has its registration suspended for failure to pay a civil penalty or abide by a payment plan;

(2) Thirty (30) days after service of a written notification that FMCSA proposes to suspend or revoke a safety permit, if the motor carrier does not submit a written request for administrative review within that time period; or

(3) As specified in § 385.423(c), when the motor carrier submits a written request for administrative review of FMCSA's proposal to suspend or revoke a safety permit.

(4) A motor carrier whose safety permit has been revoked will not be issued a replacement safety permit or temporary safety permit for 365 days from the time of revocation.

[82 FR 5305, Jan. 17, 2017]

§ 385.423 Administrative review of a denial, suspension, or revocation of a safety permit.

A motor carrier has a right to an administrative review pursuant to the following procedures and conditions:

(a) *Less than Satisfactory safety rating.* If a motor carrier is issued a proposed safety rating that is less than Satisfactory, it has the right to request (1) an administrative review of a proposed safety rating, as set forth in § 385.15, and (2) a change to a proposed safety rating based on corrective action, as

set forth in § 385.17. After a motor carrier has had an opportunity for administrative review of, or change to, a proposed safety rating, FMCSA's issuance of a final safety rating constitutes final agency action, and a motor carrier has no right to further administrative review of FMCSA's denial, suspension, or revocation of a safety permit when the motor carrier has been issued a final safety rating that is less than Satisfactory.

(b) *Failure to pay civil penalty or abide by payment plan.* If a motor carrier is notified that failure to pay a civil penalty will result in suspension or termination of its operating rights, it has the right to an administrative review of that proposed action in a show cause proceeding, as set forth in § 386.83(b) or § 386.84(b) of this chapter. The decision by FMCSA's Assistant Administrator in the show cause proceeding constitutes final agency action, and a motor carrier has no right to further administrative review of FMCSA's denial, suspension, or revocation of a safety permit when the motor carrier has lost its operating rights or had its registration suspended for failure to pay a civil penalty or abide by a payment plan.

(c) *Other grounds.* Under circumstances other than those set forth in paragraphs (a) and (b) of this section, a motor carrier may submit a written request for administrative review within 30 days after service of a written notification that FMCSA has denied a safety permit, that FMCSA has immediately suspended or revoked a safety permit, or that FMCSA has proposed to suspend or revoke a safety permit. The rules for computing time limits for service and requests for extension of time in §§ 386.5, 386.6, and 386.8 of this chapter apply to the proceedings on a request for administrative review under this section.

(1) The motor carrier must send or deliver its written request for administrative review to FMCSA Assistant Administrator, with a copy to FMCSA Chief Counsel, at the following addresses:

(i) Assistant Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590–0001 Attention: Adjudications Counsel (MC–CC).

(ii) Chief Counsel (MC–CC), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590–0001.

(2) A request for administrative review must state the specific grounds for review and include all information, evidence, and arguments upon which the motor carrier relies to support its request for administrative review.

(3) Within 30 days after service of a written request for administrative review, the Office of the Chief Counsel shall submit to the Assistant Administrator a written response to the request for administrative review. The Office of the Chief Counsel must serve a copy of its written response on the motor carrier requesting administrative review.

(4) The Assistant Administrator may decide a motor carrier's request for administrative review on the written submissions, hold a hearing personally, or refer the request to an administrative law judge for a hearing and recommended decision. The Assistant Administrator or administrative law judge is authorized to specify, and must notify the parties of, specific procedural rules to be followed in the proceeding (which may include the procedural rules in part 386 of this chapter that are considered appropriate).

(5) If a request for administrative review is referred to an administrative law judge, the recommended decision of the administrative law judge becomes the final decision of the Assistant Administrator 45 days after service of the recommended decision is served, unless either the motor carrier or the Office of the Chief Counsel submits a petition for review to the Assistant Administrator (and serves a copy of its petition on the other party) within 15 days after service of the recommended decision. In response to a petition for review of a recommended decision of an administrative law judge:

(i) The other party may submit a written reply within 15 days of service of the petition for review.

(ii) The Assistant Administrator may adopt, modify, or set aside the recommended decision of an administrative law judge, and may also remand

the petition for review to the administrative law judge for further proceedings.

(6) The Assistant Administrator will issue a final decision on any request for administrative review when:

(i) The request for administrative review has not been referred to an administrative law judge;

(ii) A petition for review of a recommended decision by an administrative law judge has not been remanded to the administrative law judge for further proceedings; or

(iii) An administrative law judge has held further proceedings on a petition for review and issued a supplementary recommended decision.

(7) The decision of the Assistant Administrator (including a recommended decision of an administrative law judge that becomes the decision of the Assistant Administrator under paragraph (c)(5) of this section) constitutes final agency action, and there is no right to further administrative reconsideration or review.

(8) Any appeal of a final agency action under this section must be taken to an appropriate United States Court of Appeals. Unless the Court of Appeals issues a stay pending appeal, the final agency action shall not be suspended while the appeal is pending.

[69 FR 39367, June 30, 2004, as amended at 72 FR 55701, Oct. 1, 2007; 86 FR 57070, Oct. 14, 2021]

Subpart F—Intermodal Equipment Providers

SOURCE: 73 FR 76819, Dec. 17, 2008, unless otherwise noted.

§ 385.501 Roadability review.

(a) FMCSA will perform roadability reviews of intermodal equipment providers, as defined in § 390.5 of this chapter.

(b) FMCSA will evaluate the results of the roadability review using the criteria in appendix A to this part as they relate to compliance with parts 390, 393, and 396 of this chapter.

§ 385.503 Results of roadability review.

(a) FMCSA will not assign a safety rating to an intermodal equipment provider based on the results of a roadability review. However, FMCSA may cite the intermodal equipment provider for violations of parts 390, 393, and 396 of this chapter and may impose civil penalties resulting from the roadability review.

(b) FMCSA may prohibit the intermodal equipment provider from tendering specific items of intermodal equipment determined to constitute an ''imminent hazard'' (See § 386.72(b)(1) of this chapter).

(c) FMCSA may prohibit an intermodal equipment provider from tendering any intermodal equipment from a particular location or multiple locations if the agency determines the intermodal equipment provider's failure to comply with the FMCSRs constitutes an imminent hazard under § 386.72(b)(1).

Subpart G [Reserved]

Subpart H—Special Rules for New Entrant Non-North America-Domiciled Carriers

SOURCE: 73 FR 76491, Dec. 16, 2008, unless otherwise noted.

§ 385.601 Scope of rules.

The rules in this subpart govern the application by a non-North America-domiciled motor carrier to provide transportation of property and passengers in interstate commerce in the United States.

§ 385.603 Application.

(a) Each applicant applying under this subpart must submit an application that consists of:

(1) Form MCSA–1, the URS online application; and

(2) A notification of the means used to designate process agents, either by submission in the application package of Form BOC–3, Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, or a letter stating that the applicant will use a process agent service that will submit the Form BOC–3 electronically.

(b) The FMCSA will process an application only if it meets the following conditions:

(1) The application must be completed in English.

(2) The information supplied must be accurate, complete, and include all required supporting documents and applicable certifications in accordance with the instructions to Form MCSA–1 and Form BOC–3.

(3) The application must include the filing fee payable to the FMCSA in the amount set forth at 49 CFR 360.3(f)(1).

(4) The application must be signed by the applicant.

(c) An applicant must electronically file Form MCSA–1.

(d) Form MCSA–1 is the URS online application and is available, including complete instructions, at *http://www.fmcsa.dot.gov/urs*.

[80 FR 63708, Oct. 21, 2015]

EFFECTIVE DATE NOTE: At 82 FR 5305, Jan. 17, 2017, § 385.603 was suspended, effective Jan. 14, 2017.

§ 385.603T Application.

(a) Each applicant applying under this subpart must submit an application that consists of:

(1) Form OP–1(NNA)—Application for U.S. Department of Transportation (USDOT) Registration by Non-North America-Domiciled Motor Carriers;

(2) Form MCS–150—Motor Carrier Identification Report; and

(3) A notification of the means used to designate process agents, either by submission in the application package of Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders or a letter stating that the applicant will use a process agent service that will submit the Form BOC–3 electronically.

(b) FMCSA will only process an application if it meets the following conditions:

(1) The application must be completed in English;

(2) The information supplied must be accurate, complete, and include all required supporting documents and applicable certifications in accordance with the instructions to Form OP–1(NNA), Form MCS–150 and Form BOC–3;

(3) The application must include the filing fee payable to the FMCSA in the amount set forth at 49 CFR 360.3T(f)(1); and

(4) The application must be signed by the applicant.

(c) An applicant must submit the application to the address provided in Form OP–1(NNA).

(d) An applicant may obtain the application forms from any FMCSA Division Office or download them from the FMCSA website at: *https://www.fmcsa.dot.gov/forms/forms.htm*.

[82 FR 5305, Jan. 17, 2017, as amended at 88 FR 80182, Nov. 17, 2023]

§ 385.605 New entrant registration driver's license and drug and alcohol testing requirements.

(a) A non-North America-domiciled motor carrier must use only drivers who possess a valid commercial driver's license—a CDL, Canadian Commercial Driver's License, or Mexican Licencia de Federal de Conductor—to operate its vehicles in the United States.

(b) A non-North America-domiciled motor carrier must subject each of the drivers described in paragraph (a) of this section to drug and alcohol testing as prescribed under part 382 of this subchapter.

§ 385.607 FMCSA action on the application.

(a) FMCSA will review and act on each application submitted under this subpart in accordance with the procedures set out in this part.

(b) FMCSA will validate the accuracy of information and certifications provided in the application by checking, to the extent available, data maintained in databases of the governments of the country where the carrier's principal place of business is located and the United States.

(c) *Pre-authorization safety audit.* Every non-North America-domiciled motor carrier that applies under this part must satisfactorily complete an FMCSA-administered safety audit before FMCSA will grant new entrant registration to operate in the United States. The safety audit is a review by FMCSA of the carrier's written procedures and records to validate the accuracy of information and certifications provided in the application and determine whether the carrier has established or exercises the basic safety

management controls necessary to ensure safe operations. FMCSA will evaluate the results of the safety audit using the criteria in the Appendix to this subpart.

(d) An application of a non-North America-domiciled motor carrier requesting for-hire operating authority under part 365 of this subchapter may be protested under §365.109(b). Such a carrier will be granted new entrant registration after successful completion of the pre-authorization safety audit and the expiration of the protest period, provided the application is not protested. If a protest to the application is filed with FMCSA, new entrant registration will be granted only if FMCSA denies or rejects the protest.

(e) If FMCSA grants new entrant registration to the applicant, it will assign a distinctive USDOT Number that 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 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.

[73 FR 76491, Dec. 16, 2008, as amended at 80 FR 63708, Oct. 21, 2015]

EFFECTIVE DATE NOTE: At 82 FR 5306, Jan. 17, 2017, §385.607 was suspended, effective Jan. 14, 2017.

§385.607T FMCSA action on the application.

(a) FMCSA will review and act on each application submitted under this subpart in accordance with the procedures set out in this part.

(b) FMCSA will validate the accuracy of information and certifications provided in the application by checking, to the extent available, data maintained in databases of the governments of the country where the carrier's principal place of business is located and the United States.

(c) Pre-authorization safety audit. Every non-North America-domiciled motor carrier that applies under this part must satisfactorily complete an FMCSA-administered safety audit before FMCSA will grant new entrant registration to operate in the United States. The safety audit is a review by FMCSA of the carrier's written procedures and records to validate the accuracy of information and certifications provided in the application and determine whether the carrier has established or exercises the basic safety management controls necessary to ensure safe operations. FMCSA will evaluate the results of the safety audit using the criteria in the appendix to this subpart.

(d) An application of a non-North America-domiciled motor carrier requesting for-hire operating authority under part 365 of this subchapter may be protested under §365.109T(b). Such a carrier will be granted new entrant registration after successful completion of the pre-authorization safety audit and the expiration of the protest period, provided the application is not protested. If a protest to the application is filed with FMCSA, new entrant registration will be granted only if FMCSA denies or rejects the protest.

(e) If FMCSA grants new entrant registration to the applicant, it will assign a distinctive USDOT Number that 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 387.301T 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 subpart I of this part, 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).

(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 subpart I of this part. Successful completion includes obtaining a Satisfactory safety rating as the result of a compliance review.

[82 FR 5306, Jan. 17, 2017]

§ 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 the Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders that occur 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 A of Form MCSA–1 that occur during the application process or after the motor carrier has been granted new entrant registration. The motor carrier must report the changes or corrections within 30 days of the change. The motor carrier must use Form MCSA–1, the URS online application, to report the new information.

(3) A motor carrier must notify FMCSA in writing within 45 days of the change or correction to information under paragraphs (a)(1) or (a)(2) of this section.

(b) If a motor carrier fails to comply with paragraph (a) of this section, FMCSA may suspend or revoke its new entrant registration until it meets those requirements.

[73 FR 76491, Dec. 16, 2008, as amended at 78 FR 52650, Aug. 23, 2013; 80 FR 63708, Oct. 21, 2015]

EFFECTIVE DATE NOTE: At 82 FR 5306, Jan. 17, 2017, § 385.609 was suspended, effective Jan. 14, 2017.

§ 385.609T 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 the Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders that occur 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.

(3) A motor carrier must notify FMCSA in writing within 45 days of the change or correction to information under paragraph (a)(1) or (2) of this section.

(b) If a motor carrier fails to comply with paragraph (a) of this section, FMCSA may suspend or revoke its new

entrant registration until it meets those requirements.

[82 FR 5306, Jan. 17, 2017]

APPENDIX TO SUBPART H OF PART 385—EXPLANATION OF PRE-AUTHORIZATION SAFETY AUDIT EVALUATION CRITERIA FOR NON-NORTH AMERICA-DOMICILED MOTOR CARRIERS

I. GENERAL

(a) FMCSA will perform a safety audit of each non-North America-domiciled motor carrier before granting the carrier new entrant registration to operate within the United States.

(b) FMCSA will conduct the safety audit at a location specified by the FMCSA. All records and documents must be made available for examination within 48 hours after a request is made. Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period.

(c) The safety audit will include:

(1) Verification of available performance data and safety management programs;

(2) Verification of a controlled substances and alcohol testing program consistent with part 40 of this title;

(3) Verification of the carrier's system of compliance with hours-of-service rules in part 395 of this subchapter, including recordkeeping and retention;

(4) Verification of proof of financial responsibility;

(5) Review of available data concerning the carrier's safety history, and other information necessary to determine the carrier's preparedness to comply with the Federal Motor Carrier Safety Regulations, parts 382 through 399 of this subchapter, and the Federal Hazardous Material Regulations, parts 171 through 180 of this title;

(6) Inspection of available commercial motor vehicles to be used under new entrant registration, if any of these vehicles have not received a decal required by §385.703(c) of this subchapter;

(7) Evaluation of the carrier's safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections;

(8) Verification of drivers' qualifications, including confirmation of the validity of the CDL, Canadian Commercial Driver's License, or Mexican Licencia de Federal de Conductor, as applicable, of each driver the carrier intends to assign to operate under its new entrant registration; and

(9) An interview of carrier officials to review safety management controls and evaluate any written safety oversight policies and practices.

(d) To successfully complete the safety audit, a non-North America-domiciled motor carrier must demonstrate to FMCSA that it has the required elements in paragraphs I (c)(2), (3), (4), (7), and (8) of this appendix and other basic safety management controls in place which function adequately to ensure minimum acceptable compliance with the applicable safety requirements. FMCSA developed ''safety audit evaluation criteria,'' which uses data from the safety audit and roadside inspections to determine that each applicant for new entrant registration has basic safety management controls in place.

(e) The safety audit evaluation process developed by FMCSA is used to:

(1) Evaluate basic safety management controls and determine if each non-North America-domiciled carrier and each driver is able to operate safely in the United States; 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, drug 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 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—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:

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

(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 controls will only be based on discovered noncompliance with the acute and critical regulations of part 396 of this chapter.

(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.

(j) 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 390.5, 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; and

(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.

(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 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 three points for Factor 4; and

(4) Three instances of noncompliance with acute regulations in parts 171 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.

(2) Operating a vehicle placed out of service for violations of the Federal Motor Carrier Safety Regulations without taking the necessary corrective action.

(3) Being involved in, through action or omission, a hazardous materials reportable incident, as described under 49 CFR 171.15 or 171.16, within the United States involving—

(i) A highway route controlled quantity of certain radioactive materials (Class 7).

(ii) Any quantity of certain explosives (Class 1, Division 1.1, 1.2, or 1.3).

(iii) Any quantity of certain poison inhalation hazard materials (Zone A or B).

(4) Being involved in, through action or omission, two or more hazardous materials reportable incidents, as described under 49 CFR 171.15 or 171.16, occurring within the United States and involving any hazardous material not listed in paragraph (a)(3) of this section.

(5) Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required controlled substances or alcohol tests.

(6) Operating within the United States a commercial motor vehicle without the levels of financial responsibility required under part 387 of this subchapter.

(7) Having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within a consecutive 90-day period.

(b) Failure to respond to an Agency demand for a written response demonstrating corrective action within 30 days will result in the suspension of the carrier's new entrant registration until the required showing of corrective action is submitted to the FMCSA.

(c) A satisfactory response to a written demand for corrective action does not excuse a carrier from the requirement that it undergo a compliance review during the new entrant registration period.

§ 385.707 The compliance review.

(a) The criteria used in a compliance review to determine whether a non-North America-domiciled new entrant exercises the necessary basic safety management controls are specified in appendix B to this part.

(b) *Satisfactory Rating.* If FMCSA assigns a non-North America-domiciled carrier a Satisfactory rating following a compliance review conducted under this subpart, FMCSA will provide the carrier written notice as soon as practicable, but not later than 45 days after the completion of the compliance review. The carrier's registration will remain in provisional status and its on-highway performance will continue to

be closely monitored for the remainder of the 18-month new entrant registration period.

(c) *Conditional Rating.* If FMCSA assigns a non-North America-domiciled carrier a Conditional rating following a compliance review conducted under this subpart, it will initiate a revocation proceeding in accordance with § 385.709 of this subpart. The carrier's new entrant registration will not be suspended prior to the conclusion of the revocation proceeding.

(d) *Unsatisfactory Rating.* If FMCSA assigns a non-North America-domiciled carrier an Unsatisfactory rating following a compliance review conducted under this subpart, it will initiate a suspension and revocation proceeding in accordance with § 385.709 of this subpart.

§ 385.709 Suspension and revocation of non-North America-domiciled carrier registration.

(a) If a carrier is assigned an ''Unsatisfactory'' safety rating following a compliance review conducted under this subpart, FMCSA will provide the carrier written notice, as soon as practicable, that its registration will be suspended effective 15 days from the service date of the notice unless the carrier demonstrates, within 10 days of the service date of the notice, that the compliance review contains material error.

(b) For purposes of this section, material error is a mistake or series of mistakes that resulted in an erroneous safety rating.

(c) If the carrier demonstrates that the compliance review contained material error, its new entrant registration will not be suspended. If the carrier fails to show a material error in the compliance review, FMCSA will issue an Order:

(1) Suspending the carrier's new entrant registration and requiring it to immediately cease all further operations in the United States; and

(2) Notifying the carrier that its new entrant registration will be revoked unless it presents evidence of necessary corrective action within 30 days from the service date of the Order.

(d) If a carrier is assigned a ''Conditional'' rating following a compliance review conducted under this subpart, the provisions of paragraphs (a) through (c) of this section will apply, except that its new entrant registration will not be suspended under paragraph (c)(1) of this section.

(e) If a carrier subject to this subpart fails to provide the necessary documents for a compliance review upon reasonable request, or fails to submit evidence of the necessary corrective action as required by § 385.705 of this subpart, FMCSA will provide the carrier with written notice, as soon as practicable, that its new entrant registration will be suspended 15 days from the service date of the notice unless it provides all necessary documents or information. This suspension will remain in effect until the necessary documents or information is produced and:

(1) The carrier is rated Satisfactory after a compliance review; or

(2) FMCSA determines, following review of the carrier's response to a demand for corrective action under § 385.705, that the carrier has taken the necessary corrective action.

(f) If a carrier commits any of the actions specified in § 385.705(a) of this subpart after the removal of a suspension issued under this section, the suspension will be automatically reinstated. FMCSA will issue an Order requiring the carrier to cease further operations in the United States and demonstrate, within 15 days from the service date of the Order, that it did not commit the alleged action(s). If the carrier fails to demonstrate that it did not commit the action(s), FMCSA will issue an Order revoking its new entrant registration.

(g) If FMCSA receives credible evidence that a carrier has operated in violation of a suspension order issued under this section, it will issue an Order requiring the carrier to show cause, within 10 days of the service date of the Order, why its new entrant registration should not be revoked. If the carrier fails to make the necessary showing, FMCSA will revoke its registration.

(h) If a non-North America-domiciled motor carrier operates a commercial

motor vehicle in violation of a suspension or out-of-service order, it is subject to the penalty provisions in 49 U.S.C. 521(b)(2)(A), as adjusted by inflation, not to exceed amounts for each offense under part 386, Appendix B of this subchapter.

(i) Notwithstanding any provision of this subpart, a carrier subject to this subpart is also subject to the suspension and revocation provisions of 49 U.S.C. 13905 for repeated violations of DOT regulations governing its motor carrier operations.

§ 385.711 Administrative review.

(a) A non-North America-domiciled motor carrier may request FMCSA to conduct an administrative review if it believes FMCSA has committed an error in assigning a safety rating or suspending or revoking the carrier's new entrant registration under this subpart.

(b) The carrier must submit its request in writing, in English, to FMCSA, ATTN: § 385.113 Request for Administrative Review, 1200 New Jersey Avenue, SE., Washington DC 20590.

(c) The carrier's request must explain the error it believes FMCSA committed in assigning the safety rating or suspending or revoking the carrier's new entrant registration and include any information or documents that support its argument.

(d) FMCSA will complete its administrative review no later than 10 days after the carrier submits its request for review. FMCSA's decision will constitute the final Agency action.

[73 FR 76494, Dec. 16, 2008, as amended at 86 FR 57070, Oct. 14, 2021]

§ 385.713 Reapplying for new entrant registration.

(a) A non-North America-domiciled motor carrier whose provisional new entrant registration has been revoked may reapply for new entrant registration no sooner than 30 days after the date of revocation.

(b) If the provisional new entrant registration was revoked because the new entrant failed to receive a Satisfactory rating after undergoing a compliance review, the new entrant must do all of the following:

(1) Submit an updated Form MCSA–1, the URS online application;

(2) Submit evidence that it has corrected the deficiencies that resulted in revocation of its registration and will otherwise ensure that it will have basic safety management controls in effect.

(3) Successfully complete a pre-authorization safety audit in accordance with § 385.607(c) of this part.

(4) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(c) If the provisional new entrant registration was revoked because FMCSA found the new entrant failed to submit to a compliance review, the new entrant must do all of the following:

(1) Submit an updated Form MCSA–1, the URS online application;

(2) Successfully complete a pre-authorization safety audit in accordance with § 385.607(c) of this part.

(3) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(4) Submit to a compliance review upon request.

(d) If the new entrant is a for-hire carrier subject to the registration provisions under 49 U.S.C. 13901 and also has had its operating authority revoked, it must reapply for operating authority as set forth in § 390.201(b) and part 365 of this subchapter.

[73 FR 76494, Dec. 16, 2008, as amended at 80 FR 63708, Oct. 21, 2015]

EFFECTIVE DATE NOTE: At 82 FR 5306, Jan. 17, 2017, § 385.713 was suspended, effective Jan. 14, 2017.

§ 385.713T Reapplying for new entrant registration.

(a) A non-North America-domiciled motor carrier whose provisional new entrant registration has been revoked may reapply for new entrant registration no sooner than 30 days after the date of revocation.

(b) If the provisional new entrant registration was revoked because the new entrant failed to receive a Satisfactory rating after undergoing a compliance review, the new entrant must do all of the following:

(1) Submit an updated MCS–150.

(2) Submit evidence that it has corrected the deficiencies that resulted in revocation of its registration and will

otherwise ensure that it will have basic safety management controls in effect.

(3) Successfully complete a pre-authorization safety audit in accordance with § 385.607T(c).

(4) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(c) If the provisional new entrant registration was revoked because FMCSA found that the new entrant had failed to submit to a compliance review, it must do all of the following:

(1) Submit an updated MCS–150.

(2) Successfully complete a pre-authorization safety audit in accordance with § 385.607T(c).

(3) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(4) Submit to a compliance review upon request.

(d) If the new entrant is a for-hire carrier subject to the registration provisions under 49 U.S.C. 13901 and also has had its operating authority revoked, it must re-apply for operating authority as set forth in part 365 of this subchapter.

[82 FR 5306, Jan. 17, 2017]

§ 385.715 Duration of safety monitoring system.

(a) Each non-North America-domiciled carrier subject to this subpart will remain in the safety monitoring system for at least 18 months from the date FMCSA issues its new entrant registration, except as provided in paragraphs (c) and (d) of this section.

(b) If, at the end of this 18-month period, the carrier's most recent safety rating was Satisfactory and no additional enforcement or safety improvement actions are pending under this subpart, the non-North America-domiciled carrier's new entrant registration will become permanent.

(c) If, at the end of this 18-month period, FMCSA has not been able to conduct a compliance review, the carrier will remain in the safety monitoring system until a compliance review is conducted. If the results of the compliance review are satisfactory, the carrier's new entrant registration will become permanent.

(d) If, at the end of this 18-month period, the carrier's new entrant registration is suspended under § 385.709(a) of this subpart, the carrier will remain in the safety monitoring system until FMCSA either:

(1) Determines that the carrier has taken corrective action; or

(2) Completes measures to revoke the carrier's new entrant registration under § 385.709(c) of this subpart.

§ 385.717 Applicability of safety fitness and enforcement procedures.

At all times during which a non-North America-domiciled motor carrier is subject to the safety monitoring system in this subpart, it is also subject to the general safety fitness procedures established in subpart A of this part and to compliance and enforcement procedures applicable to all carriers regulated by the FMCSA.

Subpart J [Reserved]

Subpart K—Pattern or Practice of Safety Violations by Motor Carrier Management

SOURCE: 79 FR 3537, Jan. 22, 2014, unless otherwise noted.

§ 385.901 Applicability.

The requirements in this subpart apply to for-hire motor carriers, employers, officers and persons registered or required to be registered under 49 U.S.C. 13902, 49 CFR part 365, and 49 CFR part 368. When used in this subpart, the term ''motor carrier'' includes all for-hire motor carriers, employers, officers and other persons, however designated, that are registered or required to be registered under 49 U.S.C. 13902, 49 CFR part 365, and 49 CFR part 368.

§ 385.903 Definitions.

As used in this subpart:

Agency Official means the FMCSA employee with delegated authority under this subpart.

Controlling Influence means having or exercising authority, whether by act or omission, to direct some or all of a motor carrier's operational policy and/or safety management controls.

Officer means an owner, director, chief executive officer, chief operating

officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier, regardless of the title attached to those functions, and any person, however designated, exercising controlling influence over the operations of a motor carrier.

Registration means the registration required under 49 U.S.C. 13902, 49 CFR part 365, and 49 CFR part 368.

[79 FR 3537, Jan. 22, 2014, as amended at 86 FR 57070, Oct. 14, 2021]

§ 385.905 Suspension or revocation of registration.

(a) *General.* (1) If a motor carrier engages or has engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with regulations on commercial motor vehicle safety under 49 U.S.C. Chapter 311, subchapter III, FMCSA may suspend or revoke the motor carrier's registration.

(2) If a motor carrier permits any person to exercise controlling influence over the motor carrier's operations and that person engages in or has engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with regulations on commercial motor vehicle safety 49 U.S.C. Chapter 311, subchapter III while acting on behalf of any motor carrier, FMCSA may suspend or revoke the motor carrier's registration.

(b) *Determination.* (1) The Agency Official may issue an order to revoke or suspend a motor carrier's registration, or require compliance with an order issued to redress violations of a statutory or regulatory requirement prescribed under 49 U.S.C. Chapter 311, subchapter III, upon a determination that the motor carrier engages or has engaged in a pattern or practice of avoiding regulatory compliance or masking or otherwise concealing regulatory noncompliance.

(2) The Agency Official may issue an order to revoke or suspend a motor carrier's registration, or require compliance with an order issued to redress violations of a statutory or regulatory requirement prescribed under 49 U.S.C. Chapter 311, subchapter III, upon a determination that the motor carrier permitted a person to exercise controlling influence over the motor carrier's operations if that person engages in or has engaged in a pattern or practice of avoiding regulatory compliance or masking or otherwise concealing regulatory noncompliance.

§ 385.907 Regulatory noncompliance.

A motor carrier or person acting on behalf of a motor carrier avoids regulatory compliance or masks or otherwise conceals regulatory noncompliance by, independently or on behalf of another motor carrier, failing to or concealing failure to:

(a) Comply with statutory or regulatory requirements prescribed under 49 U.S.C., Chapter 311, subchapter III;

(b) Comply with an FMCSA or State order issued to redress violations of a statutory or regulatory requirement prescribed under 49 U.S.C., Chapter 311, subchapter III;

(c) Pay a civil penalty assessed for a violation of a statutory or regulatory requirement prescribed under 49 U.S.C., Chapter 311, subchapter III; or

(d) Respond to an enforcement action for a violation of a statutory or regulatory requirement prescribed under 49 U.S.C., Chapter 311, subchapter III.

§ 385.909 Pattern or practice.

The Agency Official may determine that a motor carrier or person acting on behalf of a motor carrier engages or has engaged in a pattern or practice of avoiding regulatory compliance, or masking or otherwise concealing regulatory noncompliance for purposes of this subpart, by considering, among other things, the following factors, which, in the case of persons acting on behalf of a motor carrier, may be related to conduct undertaken on behalf of any motor carrier:

(a) The frequency, remoteness in time, or continuing nature of the conduct;

(b) The extent to which the regulatory violations caused by the conduct create a risk to safety;

(c) The degree to which the conduct has affected the safety of operations, including taking into account any crashes, deaths, or injuries associated with the conduct;

(d) Whether the motor carrier or person acting on a motor carrier's behalf knew or should have known that the conduct violated applicable statutory or regulatory requirements;

(e) Safety performance history, including pending or closed enforcement actions, if any;

(f) Whether the motor carrier or person acting on a motor carrier's behalf engaged in the conduct for the purpose of avoiding compliance or masking or otherwise concealing noncompliance; and

(g) In the case of a person acting on a motor carrier's behalf, the extent to which the person exercises a controlling influence on the motor carrier's operations.

§ 385.911 Suspension proceedings.

(a) *General.* The Agency Official may issue an order to suspend a motor carrier's registration based on a determination made in accordance with § 385.905(b).

(b) *Commencement of proceedings.* The Agency Official commences a proceeding under this section by serving an order to show cause to the motor carrier and, if the proceeding is based on the conduct of another person, by also serving a copy on the person alleged to have engaged in the pattern or practice that resulted in a proceeding instituted under this section, which:

(1) Provides notice that the Agency is considering whether to suspend the motor carrier's registration;

(2) Provides notice of the factual and legal basis for the order;

(3) Directs the motor carrier to show good cause within 30 days of service of the order to show cause why its registration should not be suspended;

(4) Informs the motor carrier that its response to the order to show cause must be in writing, state the factual and legal basis for its response, and include all documentation, if any, the motor carrier wants considered;

(5) Informs the motor carrier of the address and name of the person to whom the response should be directed and served;

(6) Provides notice to the person(s) alleged to have engaged in the pattern or practice that resulted in the proceeding instituted under this section, if any, of their right to intervene in the proceeding; and

(7) Informs the motor carrier that its registration will be suspended on the 35th day after service of the order, if the motor carrier or an intervening person does not respond to the order.

(c) *Right of individual person(s) to intervene.* A person(s) alleged to have engaged in the pattern or practice that resulted in a proceeding under this section may intervene in the proceeding. The person(s) may—but are not required to—serve a separate response and supporting documentation to an order served under paragraph (b) of this section, within 30 days of being served with the order. Failure to timely serve a response constitutes waiver of the right to intervene.

(d) *Review of response.* The Agency Official will review the responses to the order to show cause and determine whether the motor carrier's registration should be suspended.

(1) The Agency Official may take the following actions:

(i) If the Agency Official determines that the motor carrier's registration should be suspended, he or she will enter an order suspending the registration;

(ii) If the Agency Official determines that it is not appropriate to suspend the motor carrier's registration, he or she may enter an order directing the motor carrier to correct compliance deficiencies; or

(iii) If the Agency Official determines the motor carrier's registration should not be suspended and a compliance order is not warranted, he or she will enter an order terminating the proceeding.

(2) If the Agency Official issues an order to suspend the motor carrier's registration, the order will:

(i) Provide notice to the motor carrier and any intervening person(s) of the right to petition for administrative review of the order within 15 days of service of the order suspending registration, and provide notice of the procedures in paragraph (e) of this section;

(ii) Provide notice that a timely petition for administrative review will stay the effective date of the order unless the Assistant Administrator orders otherwise for good cause; and

(iii) Provide notice that failure to timely serve a petition for administrative review constitutes waiver of the right to contest the order suspending the registration and will result in the order becoming a Final Agency Order 20 days after it is served.

(e) *Administrative review.* The motor carrier or the intervening person(s) may petition the Assistant Administrator for review of an order issued under paragraph (d)(1)(i) of this section. The petition must be in writing and served on the Assistant Administrator. Service on the Assistant Administrator is effected by delivering a copy to USDOT Dockets, Docket Operations, 1200 New Jersey Avenue, West Building Ground Floor, Room 12–140, SE., Washington, DC 20590–0001 or by submitting the documents electronically to *www.regulations.gov*. The petition must also be served on all parties to the proceedings and on Adjudications Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001.

(1) A petition for review must be served within 15 days of the service date of the order for which review is requested. Failure to timely serve a request for review waives the right to request review.

(2) A petition for review must include:

(i) A copy of the order in dispute;

(ii) A copy of the petitioner's response to the order in dispute, with supporting documents if any;

(iii) A statement of all legal, factual and procedural issues in dispute; and

(iv) Written argument in support of the petitioner's position regarding the legal, factual or procedural issues in dispute.

(3) The Agency Official must serve a response to the petition for review no later than 15 days following receipt of the petition. The Agency Official must address each assignment of error by producing evidence or legal argument which supports the Agency Official's determination on that issue. The Agency Official's determination may be supported by circumstantial or direct evidence and the reasonable inferences drawn therefrom.

(4) The Assistant Administrator's review is limited to the legal, factual and procedural issues identified in the petition for review. The Assistant Administrator may, however, ask the parties to submit additional information. If the petitioner does not provide the information requested, the Assistant Administrator may dismiss the petition for review.

(5) The Assistant Administrator will serve a written decision on the petition for review within 60 days of the close of the time period for serving a response to the petition for review or the date of service of the response served under paragraph (e)(3), whichever is later.

(6) If a petition for review is timely served in accordance with this section, the disputed order is stayed, pending the Assistant Administrator's review. The Assistant Administrator may enter an order vacating the automatic stay in accordance with the following procedures:

(i) The Agency Official may file a motion to vacate the automatic stay demonstrating good cause why the order should not be stayed. The Agency Official's motion must be in writing, state the factual and legal basis for the motion, be accompanied by affidavits or other evidence relied on, and be served on all parties.

(ii) Within 10 days of service of the motion to vacate the automatic stay, the petitioner may serve an answer in opposition, accompanied by affidavits or other evidence relied on.

(iii) The Assistant Administrator will issue a decision on the motion to vacate within 10 days of the close of the time period for serving the answer to the motion. The 60-day period for a decision on the petition for review in paragraph (e)(5) of this section does not begin until the Assistant Administrator issues a decision on the motion to vacate the stay.

(7) The Assistant Administrator's decision on a petition for review of an order issued under this section constitutes the Final Agency Order.

§ 385.913 Revocation proceedings.

(a) *General.* The Agency Official may issue an order to revoke a motor carrier's registration, if he or she:

(1) Makes a determination in accordance with § 385.905(b), and

(2) Determines that the motor carrier has willfully violated any order directing compliance with any statutory or regulatory requirement prescribed under 49 U.S.C., Chapter 311, subchapter III for a period of at least 30 days.

(b) *Commencement of proceedings.* The Agency Official commences a proceeding under this section by serving an order to show cause to the motor carrier and, if the proceeding is based on the conduct of another person, by also serving a copy on the person alleged to have engaged in the pattern or practice that resulted in a proceeding instituted under this section, which:

(1) Provides notice that the Agency is considering whether to revoke the motor carrier's registration;

(2) Provides notice of the factual and legal basis for the order;

(3) Directs the motor carrier to comply with a statute, regulation or condition of its registration;

(4) Informs the motor carrier that the response to the order to show cause must be in writing, state the factual and legal basis for its response and include all documentation, if any, the motor carrier wants considered;

(5) Informs the motor carrier of the address and name of the person to whom the response should be directed and served;

(6) Provides notice to the person, if any, of his or her right to intervene in the proceeding within 30 days of service of the order; and

(7) Informs the motor carrier that its registration may be revoked on the 35th day after service of the order issued under this section if the motor carrier or intervening person has not demonstrated, in writing, compliance with the order, or otherwise shown good cause why compliance is not required or the registration should not be revoked.

(c) *Right of individual person(s) to intervene.* A person(s) alleged to have engaged in the pattern or practice that resulted in a proceeding instituted under this section may intervene in the proceeding. The person(s) may—but are not required to—serve a separate response and supporting documentation to an order served under paragraph (b) of this section, within 30 days of being served with the order. Failure to timely serve a response constitutes waiver of the right to intervene. If the Agency Official previously issued an order under § 385.911 based on the same conduct, a person who was given the opportunity to but did not intervene under § 385.911(c) may not intervene under this section.

(d) *Review of response.* The Agency Official will review the response(s) to the order and determine whether the motor carrier's registration should be revoked.

(1) The Agency Official will take one of the following actions:

(i) If the Agency Official determines the motor carrier's registration should be revoked, he or she will enter an order revoking the motor carrier's registration; or

(ii) If the Agency Official determines the motor carrier's registration should not be revoked, he or she will enter an order terminating the proceeding.

(2) If the Agency Official issues an order to revoke the motor carrier's registration, the order will:

(i) Provide notice to the motor carrier and any intervening person(s) of the right to petition for administrative review of the order within 15 days of service of the order revoking the motor carrier's registration, and provide notice of the procedures in § 385.911(e);

(ii) Provide notice that a timely petition for review will stay the effective date of the order unless the Assistant Administrator orders otherwise for good cause; and

(iii) Provide notice that failure to timely serve a petition for review constitutes waiver of the right to contest the order revoking the motor carrier's registration and will result in the order becoming a Final Agency Order 20 days after it is served.

(iv) Provide notice that a Final Agency Order revoking the motor carrier's registration will remain in effect and bar approval of any subsequent application for registration until rescinded by the Agency Official pursuant to § 385.915.

(e) *Administrative review.* The motor carrier or intervening person may petition the Assistant Administrator for

review of an order issued under paragraph (d)(1)(i) of this section by following the procedures set forth in § 385.911(e).

§ 385.915 Petitions for rescission.

(a) A motor carrier or intervening person may submit a petition for rescission of an order suspending or revoking registration under this subpart based on action taken to correct the deficiencies that resulted in the suspension or revocation.

(b) A petition for rescission must be made in writing to the Agency Official.

(c) A petition for rescission must include a copy of the order suspending or revoking the motor carrier's registration, a factual statement identifying all corrective action taken, and copies of supporting documentation.

(d) The Agency Official will issue a written decision on the petition within 60 days of service of the petition. The decision will state the factual and legal basis for the decision.

(e) If the Agency Official grants the petition, the written decision under paragraph (d) is the Final Agency Order. Rescinding an order suspending a motor carrier's registration permits that motor carrier to resume operations so long as it is in compliance with all other statutory and regulatory requirements. Rescinding an order revoking a motor carrier's registration does not have the effect of reinstating the revoked registration. In order to resume operations in interstate commerce, the motor carrier whose registration was revoked must reapply for registration. If registration is granted, the motor carrier would also become subject to the new entrant regulations at 49 CFR part 385.

(f) If the Agency Official denies the petition, the petitioner may petition the Assistant Administrator for review of the denial. The petition must be in writing and served on the Assistant Administrator. Service on the Assistant Administrator is effected by delivering a copy to USDOT Dockets, Docket Operations, 1200 New Jersey Avenue, West Building Ground Floor, Room 12–140 SE., Washington, DC 20590–0001 or by submitting the documents electronically to *www.regulations.gov*. The petition must also be served on all parties to the proceedings and on Adjudications Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001. The petition for review of the denial must be served within 15 days of the service of the decision denying the petition for rescission. The petition for review must identify the legal, factual or procedural issues in dispute with respect to the denial of the petition for rescission. The petition for review may not, however, challenge the basis of the underlying suspension or revocation order.

(g) The Agency Official may file a written response within 15 days of receipt of the petition for review.

(h) The Assistant Administrator will issue a written decision on the petition for review within 60 days of service of the petition for review or a timely served response, whichever is later. The Assistant Administrator's decision constitutes the Final Agency Order.

§ 385.917 Other orders unaffected; not exclusive remedy.

If a motor carrier subject to an order issued under this subpart is or becomes subject to any other order, prohibition, or requirement of the FMCSA, an order issued under this subpart is in addition to, and does not amend or supersede the other order, prohibition, or requirement. Nothing in this subpart precludes FMCSA from taking action against any motor carrier under 49 U.S.C. 13905 or 49 U.S.C. 31134 for other conduct amounting to willful failure to comply with an applicable statute, regulation or FMCSA order.

§ 385.919 Penalties.

(a) Any motor carrier that the Agency determines engages or has engaged in a pattern or practice of avoiding regulatory compliance or masking noncompliance or violates an order issued under this subpart shall be subject to the civil or criminal penalty provisions of 49 U.S.C. 521(b) and applicable regulations.

(b) Any motor carrier who permits the exercise of controlling influence over its operations by any person that the Agency determines, under this subpart, engages in or has engaged in a

pattern or practice of avoiding regulatory compliance or masking noncompliance while acting on behalf of any motor carrier, shall be subject to the civil or criminal penalty provisions of 49 U.S.C. 521(b) and applicable regulations.

§ 385.921 Service and computation of time.

Service of documents and computations of time will be made in accordance with §§ 386.6 and 386.8 of this subchapter. All documents that are required to be served or filed must be served or filed with a certificate of service.

Subpart L—Reincarnated Carriers

SOURCE: 79 FR 3540, Jan. 22, 2014, unless otherwise noted.

§ 385.1001 Applicability.

The requirements in this subpart apply to for-hire motor carriers registered or required to be registered under 49 U.S.C. 13902, 49 CFR part 365, and 49 CFR part 368.

§ 385.1003 Definitions.

As used in this subpart:

Agency Official means the FMCSA employee with delegated authority under this subpart.

Registration means the registration required under 49 U.S.C. 13902, 49 CFR part 365, and 49 CFR part 368.

Reincarnated or *affiliated motor carriers* means motor carriers with common ownership, common management, common control or common familial relationship.

[79 FR 3540, Jan. 22, 2014, as amended at 86 FR 57071, Oct. 14, 2021]

§ 385.1005 Prohibition.

Two or more motor carriers shall not use common ownership, common management, common control, or common familial relationship to enable any or all such motor carriers to avoid compliance, or mask or otherwise conceal non-compliance, or a history of noncompliance, with statutory or regulatory requirements prescribed under 49 U.S.C. Chapter 311, subchapter III, or with an order issued under such requirements.

§ 385.1007 Determination of violation.

(a) *General.* The Agency Official may issue an order to suspend or revoke the registration of one or more motor carriers if he or she determines that the motor carrier or motor carriers have reincarnated or affiliated to avoid regulatory compliance or mask or otherwise conceal regulatory noncompliance, or a history of noncompliance.

(b) *Reincarnation or affiliation.* The Agency Official may determine that one or more motor carriers are reincarnated if there is substantial continuity between entities such that one is merely a continuation of the other. The Agency Official may determine that motor carriers are affiliates if business operations are under common ownership, common management, common control or common familial relationship. To make these determinations, the Agency Official may consider, among other things, the factors in 49 CFR 386.73(c) and examine, among other things, the records identified in 49 CFR 386.73(d).

(c) *Regulatory noncompliance.* The Agency Official may determine that a motor carrier or its officer, employee, agent, or authorized representative, avoids regulatory compliance or masks or otherwise conceals regulatory noncompliance, or a history of noncompliance by operating or attempting to operate a motor carrier as a reincarnated or affiliated entity to:

(1) Avoid complying with an FMCSA order;

(2) Avoid complying with a statutory or regulatory requirement;

(3) Avoid paying a civil penalty;

(4) Avoid responding to an enforcement action; or

(5) Avoid being linked with a negative compliance history.

§ 385.1009 Suspension proceedings.

(a) *General.* The Agency Official may issue an order to suspend a motor carrier's registration based on a determination made in accordance with § 385.1007.

(b) *Commencement of proceedings.* The Agency Official may commence a proceeding under this section by serving

an order to one or more motor carriers which:

(1) Provides notice that the Agency is considering whether to suspend the motor carrier's registration;

(2) Provides notice of the factual and legal basis for the order;

(3) Directs the motor carrier to comply with a regulation or condition of its registration;

(4) Informs the motor carrier that the response to the order must be in writing, state the factual or legal basis for its response, and include all documentation, if any, the motor carrier wants considered;

(5) Informs the motor carrier of the address and name of the person to whom the response should be directed and served;

(6) Informs the motor carrier that its registration may be suspended on the 35th day after service of the order issued under this section if the motor carrier has not demonstrated, in writing, compliance with any compliance directive issued, or otherwise shown good cause why compliance is not required or the registration should not be suspended.

(c) *Review of response.* The Agency Official will review the responses to the order and determine whether the motor carrier's registration should be suspended.

(1) The Agency Official will take one of the following actions:

(i) If the Agency Official determines the motor carrier's registration should be suspended, he or she will enter an order suspending the motor carrier's registration; or

(ii) If the Agency Official determines the motor carrier's registration should not be suspended, he or she will enter an order terminating the proceeding.

(2) If the Agency Official issues an order to suspend the motor carrier's registration, the order will:

(i) Provide notice to the motor carrier of the right to petition the Assistant Administrator for review of the order within 15 days of service of the order suspending the registration, and provide notice of the procedures in § 385.911(e);

(ii) Provide notice that a timely petition for review will stay the effective date of the order unless the Assistant Administrator orders otherwise for good cause; and

(iii) Provide notice that failure to timely serve a petition for review constitutes waiver of the right to contest the order suspending the motor carrier's registration and will result in the order becoming a Final Agency Order 20 days after it is served.

(iv) Provide notice that a Final Agency Order suspending the motor carrier's registration will remain in effect and bar approval of any subsequent application for registration until rescinded by the Agency Official pursuant to § 385.1013.

(d) *Administrative Review.* The motor carrier may petition the Assistant Administrator for review of an order issued under paragraph (c)(1)(i) of this section by following the procedures set forth in § 385.911(e).

§ 385.1011 Revocation proceedings.

(a) *General.* The Agency Official may issue an order to revoke a motor carrier's registration, if he or she:

(1) Makes a determination in accordance with § 385.1007, and

(2) Determines that the motor carrier has willfully violated an order directing compliance for a period of at least 30 days.

(b) *Commencement of proceedings.* The Agency Official commences a proceeding under this section by serving an order to one or more motor carriers, which:

(1) Provides notice that the Agency is considering whether to revoke the motor carrier's registration;

(2) Provides notice of the factual and legal basis for the order;

(3) Directs the motor carrier to comply with a statute, regulation or condition of its registration;

(4) Informs the motor carrier that the response to the show cause order must be in writing, state the factual or legal basis for its response, and include all documentation, if any, the motor carrier wants considered;

(5) Informs the motor carrier of the address and name of the person to whom the response should be directed and served; and

(6) Informs the motor carrier that its registration may be revoked on the 35th day after service of the order

issued under this section if the motor carrier has not demonstrated, in writing, compliance with any order directing compliance, or otherwise shown good cause why compliance is not required or the registration should not be revoked.

(c) *Review of response.* The Agency Official will review the response(s) to the order and determine whether the motor carrier's registration should be revoked.

(1) The Agency Official will take one of the following actions:

(i) If the Agency Official determines the motor carrier's registration should be revoked, he or she will enter an order revoking the motor carrier's registration; or

(ii) If the Agency Official determines the motor carrier's registration should not be revoked, he or she will enter an order terminating the proceeding.

(2) If the Agency Official issues an order to revoke the motor carrier's registration, the order will:

(i) Provide notice to the motor carrier and any intervening person(s) of the right to petition the Assistant Administrator for review of the order within 15 days of service of the order revoking the motor carrier's registration, and provide notice of the procedures in §385.911(e);

(ii) Provide notice that a timely petition for review will stay the effective date of the order unless the Assistant Administrator orders otherwise for good cause; and

(iii) Provide notice that failure to timely serve a petition for review constitutes waiver of the right to contest the order revoking the motor carrier's registration and will result in the order becoming a Final Agency Order 20 days after it is served.

(iv) Provide notice that a Final Agency Order revoking the motor carrier's registration will remain in effect and bar approval of any subsequent application for registration until rescinded by the Agency Official pursuant to §385.1013.

(d) *Administrative review.* The motor carrier or intervening person may petition the Assistant Administrator for review of an order issued under paragraph (c)(1)(i) of this section by following the procedures set forth in §385.911(e).

§385.1013 Petitions for rescission.

A motor carrier may submit a petition for rescission of an order suspending or revoking registration under this subpart by following the procedures set forth in §385.915.

§385.1015 Other orders unaffected; not exclusive remedy.

If a motor carrier subject to an order issued under this subpart is or becomes subject to any other order, prohibition, or requirement of the FMCSA, an order issued under this subpart is in addition to, and does not amend or supersede the other order, prohibition, or requirement. Nothing in this subpart precludes FMCSA from taking action against any motor carrier under 49 U.S.C. 13905 for other conduct amounting to willful failure to comply with an applicable statute, regulation or FMCSA order.

§385.1017 Penalties.

Any motor carrier that the Agency determines to be in violation of this subpart shall be subject to the civil or criminal penalty provisions of 49 U.S.C. 521(b) and applicable regulations.

§385.1019 Service and computation of time.

Service of documents and computations of time will be made in accordance with §§386.6 and 386.8 of this subchapter. All documents that are required to be served or filed must be served or filed with a certificate of service.

APPENDIX A TO PART 385—EXPLANATION OF SAFETY AUDIT EVALUATION CRITERIA

I. GENERAL

(a) Section 210 of the Motor Carrier Safety Improvement Act (49 U.S.C. 31144) directed the Secretary to establish a procedure whereby each owner and each operator granted new authority must undergo a safety review within 12 months after receipt of its US DOT number for motor carriers of property and 120 days for motor carriers of passengers. The Secretary was also required

to establish the elements of this safety review, including basic safety management controls. The Secretary, in turn, delegated this to the FMCSA.

(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.

(c) The safety audit evaluation process developed by the FMCSA is used to:

1. Evaluate basic safety management controls and determine if each owner and each operator is able to operate safely in interstate commerce; and

2. Identify owners and operators who are having safety problems and need improvement in their compliance with the FMCSRs and the HMRs, before they are granted permanent registration.

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. This tool was developed to assist auditors and investigators in assessing the adequacy of a new entrant's basic safety management controls.

(b) The safety audit is a review of a Mexico-domiciled or new entrant 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;

2. Meet the requirements of Section 350 of the DOT Appropriations Act; and

3. In the event that a carrier is found not to be in compliance with applicable FMCSRs and HMRs, the safety audit can be used to educate the carrier on how to comply with U.S. safety rules.

(c) Documents such as those contained in the driver qualification files, records of duty status, vehicle maintenance 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. Determining if the Carrier Has Basic Safety Management Controls

(a) During the safety audit, the 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.

(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 basis of 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: Part 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) FMCSA also gathers information on compliance with applicable household goods and Americans with Disabilities Act of 1990 requirements, but failure to comply with these requirements does not affect the determination of the adequacy of basic safety management controls.

A. Vehicle Factor

(a) 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 to determine the carrier's level of safety management control for that factor; and

2. 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 controls will only be based on discovered noncompliance with the acute and critical regulations of part 396.

(b) Over two million inspections occur on the roadside each year. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles, thus preventing them from being placed OOS during roadside inspections. Each safety audit will continue to have the requirements of part 396, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

B. The Accident Factor

(a) 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 390.5, 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.

(b) Experience has shown that urban carriers, those motor carriers operating entirely within a radius of less than 100 air miles (normally urban areas), have a higher exposure to accident situations because of their environment and normally have higher accident rates.

(c) 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 national average accident rate in Fiscal Years 1994, 1995, and 1996.

(d) The 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.''

C. Factor Ratings

For 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.

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.

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.

(b) 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 three points for Factor 4; and

(4) Three instances of noncompliance with acute regulations in parts 171 and 397 scoring four and one-half (4.5) points for Factor 5.

(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.

[67 FR 12773, Mar. 19, 2002, as amended a6 67 FR 31985, May 13, 2002; 73 FR 76496, Dec. 16, 2008; 78 FR 60232, Oct. 1, 2013]

APPENDIX B TO PART 385—EXPLANATION OF SAFETY RATING PROCESS

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

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

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

(d) The safety rating process developed by FMCSA is used to:

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

2. Identify motor carriers needing improvement in their compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs). These are carriers rated *unsatisfactory* or *conditional*.

2. Identify motor carriers needing improvement in their compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs). These are carriers rated Unsatisfactory or Conditional.

(e) The hazardous materials safety permit requirements of part 385, subpart E apply to intrastate motor carriers. Intrastate motor carriers that are subject to the hazardous materials safety permit requirements in subpart E will be rated using equivalent State requirements whenever the FMCSRs are referenced in this appendix.

(f) The safety rating will be determined by applying the SFRM equally to all of a company's motor carrier operations in commerce, including if applicable its operations in Canada and/or Mexico.

I. SOURCE OF DATA FOR RATING METHODOLOGY

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

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

II. CONVERTING CR INFORMATION INTO A SAFETY RATING

(a) The FMCSA gathers information through an in-depth examination of the motor carrier's compliance with identified ''acute'' or ''critical'' regulations of the FMCSRs and HMRs.

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

(c) Critical regulations are those identified as such where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls. An example of a critical regulation is §395.3(a)(1), requiring or

permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.

(d) The list of the acute and critical regulations which are used in determining safety ratings is included at the end of this document.

(e) Noncompliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates. The FMCSA has used noncompliance with acute regulations and patterns of noncompliance with critical regulations since 1989 to determine motor carriers' adherence to the Safety fitness standard in §385.5.

(f) The regulatory factors, evaluated on the basis of the adequacy of the carrier's safety management controls, are: (1) Parts 172 and 173; (2) Parts 387 and 390; (3) Parts 382, 383, and 391; (4) Parts 392 and 395; (5) Parts 393 and 396 when there are less than three vehicle inspections in the last 12 months to evaluate; and (6) Parts 397, 171, 177 and 180.

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

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

A. Vehicle Factor

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

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

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

(b) Nearly two million vehicle inspections occur on the roadside each year. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles, thus preventing them from being placed OOS during roadside inspections. Since many of the roadside inspections are targeted to visibly defective vehicles and since there are a limited number of inspections for many motor carriers, the use of that data is limited. Each CR will continue to have the requirements of Part 396, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

B. Accident Factor

(a) In addition to the five regulatory rating factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate for the past 12 months. A recordable accident, consistent with the definition for ''accident'' in 49 CFR 390.5, means an occurrence involving a commercial motor vehicle on a highway in motor carrier operations in commerce or within Canada or Mexico (if the motor carrier also operates in the United States) that results in a fatality; in bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or in one or more motor vehicles incurring disabling damage that requires the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) Recordable accidents per million miles were computed for each CR performed in Fiscal Years 1994,1995 and 1996. The national average for all carriers rated was 0.747, and .839 for carriers operating entirely within the 100 air mile radius.

(c) Experience has shown that urban carriers, those motor carriers operating primarily within a radius of less than 100 air miles (normally in urban areas) have a higher exposure to accident situations because of their environment and normally have higher accident rates.

(d) The recordable accident rate will be used to rate Factor 6, Accident. It will be used only when a motor carrier incurs two or more recordable accidents occurred within the 12 months prior to the CR. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable accident rate greater than 1.7 will receive an *unsatisfactory* rating for the accident factor. All other carriers with a recordable accident rate greater than 1.5 will receive an *unsatisfactory* factor rating. The rates are a result of roughly doubling the national average accident rate for each type of carrier rated in Fiscal Years 1994, 1995 and 1996.

(e) The FMCSA will continue to consider preventability when a motor carrier contests a rating 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.''

C. Factor Ratings

(a) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into five regulatory areas called ''factors.''

(b) The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor. Factor Ratings are determined as follows:

FACTORS

Factor 1 General = Parts 387 and 390
Factor 2 Driver = Parts 382, 383 and 391
Factor 3 Operational = Parts 392 and 395
Factor 4 Vehicle = Parts 393 and 396
Factor 5 Haz. Mat. = Parts 397, 171, 177 and 180
Factor 6 Accident Factor = Recordable Rate
''Satisfactory''—if the acute and/or critical = 0 points
''Conditional''—if the acute and/or critical = 1 point
''Unsatisfactory''—if the acute and/or critical = 2 or more points

III. SAFETY RATING

A. Rating Table

(a) The ratings for the six factors are then entered into a rating table which establishes the motor carrier's safety rating.

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

MOTOR CARRIER SAFETY RATING TABLE

Factor ratings		Overall Safety rating
Unsatisfactory	Conditional	
0	2 or fewer	Satisfactory
0	more than 2	Conditional
1	2 or fewer	Conditional
1	more than 2	Unsatisfactory
2 or more	0 or more	Unsatisfactory

B. Proposed Safety Rating

(a) The proposed safety rating will appear on the CR. The following appropriate information will appear after the last entry on the CR, MCS–151, part B.

''Your proposed safety rating is SATISFACTORY.''

OR

''Your proposed safety rating is CONDITIONAL.'' The proposed safety rating will become the final safety rating 45 days after receipt of this notice.

OR

''Your proposed safety rating is UNSATISFACTORY.'' The proposed safety rating will become the final safety rating 45 days after receipt of this notice

(b) Proposed safety ratings of *conditional* or *unsatisfactory* will list the deficiencies discovered during the CR for which corrective actions must be taken.

(c) Proposed *unsatisfactory* safety ratings will indicate that, if the *unsatisfactory* rating becomes final, the motor carrier will be subject to the provision of §385.13, which prohibits motor carriers rated *unsatisfactory* from transporting hazardous materials requiring placarding or more than 15 passengers, including the driver.

IV. ASSIGNMENT OF FINAL RATING/MOTOR CARRIER NOTIFICATION

When the official rating is determined in Washington, D.C., the FMCSA notifies the motor carrier in writing of its safety rating as prescribed in §385.11. A proposed *conditional* safety rating (which is an improvement of an existing *unsatisfactory* rating) becomes effective as soon as the official safety rating from Washington, D.C. is issued, and the carrier may also avail itself of relief under the §385.15, Administrative Review and §385.17, Change to safety rating based on corrective actions.

V. MOTOR CARRIER RIGHTS TO A CHANGE IN THE SAFETY RATING

Under §§385.15 and 385.17, motor carriers have the right to petition for a review of their ratings *if there are factual or procedural*

disputes, and to request another review after corrective actions have been taken. They are the procedural avenues a motor carrier which believes its safety rating to be in error may exercise, and the means to request another review after corrective action has been taken.

VI. Conclusion

(a) The FMCSA believes this ''safety fitness rating methodology'' is a reasonable approach for assigning a safety rating which best describes the current safety fitness posture of a motor carrier as required by the safety fitness regulations (§385.9). This methodology has the capability to incorporate regulatory changes as they occur.

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

VII. List of Acute and Critical Regulations.

§382.115(a) Failing to implement an alcohol and/or controlled substances testing program (domestic motor carrier) (acute).

§382.115(b) Failing to implement an alcohol and/or controlled substances testing program (foreign motor carrier) (acute).

§382.201 Using a driver known to have an alcohol concentration of 0.04 or greater (acute).

§382.211 Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382 (acute).

§382.213(c) Using a driver known to have used a controlled substance (acute).

§382.215 Using a driver known to have tested positive for a controlled substance (acute).

§382.301(a) Using a driver before the motor carrier has received a negative pre-employment controlled substance test result (critical).

§382.303(a) Failing to conduct post accident testing on driver for alcohol (critical).

§382.303(b) Failing to conduct post accident testing on driver for controlled substances (critical).

§382.305(a) Failing to implement a random controlled substances and/or an alcohol testing program (acute).

§382.305(b)(1) Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions (critical).

§382.305(b)(2) Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions (critical).

§382.309 Using a driver who has not undergone return-to-duty testing with a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 in accordance with 49 CFR 40.305 (acute).

§382.503 Allowing a driver to perform safety sensitive function, after engaging in conduct prohibited by subpart B, without being evaluated by substance abuse professional, as required by §382.605 (critical).

§382.505(a) Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04 (acute).

§382.605 Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up drug and/or alcohol tests in the first 12 months following the driver's return-to-duty in accordance with 49 CFR 40.307 (critical).

§383.23(a) Operating a commercial motor vehicle without a valid commercial driver's license (critical).

§383.37(a) Allowing, requiring, permitting, or authorizing a driver to operate a CMV who the employer knew or should reasonably have known does not have a current CLP or CDL, does not have a CLP or CDL with the proper class or endorsements, or operates a CMV in violation of any restriction on the CLP or CDL (acute).

§383.37(b) Allowing, requiring, permitting, or authorizing a driver to operate a CMV who the employer knew or should reasonably have known has a CLP or CDL disqualified by a State, has lost the right to operate a CMV in a State, or has been disqualified (acute).

§383.37(c) Allowing, requiring, permitting, or authorizing a driver to operate a CMV who the employer knew or should reasonably have known has more than one CLP or CDL (acute).

§383.51(a) Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle (acute).

§387.7(a) Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage (acute).

§387.7(d) Failing to maintain at principal place of business required proof of financial responsibility (critical).

§387.31(a) Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility (acute).

§387.31(d) Failing to maintain at principal place of business required proof of financial responsibility for passenger carrying vehicles (critical).

§390.15(b)(2) Failing to maintain copies of all accident reports required by State or other governmental entities or insurers (critical).

§390.35 Making, or causing to make fraudulent or intentionally false statements or

records and/or reproducing fraudulent records (acute).
§391.11(b)(4) Using a physically unqualified driver (acute).
§391.15(a) Using a disqualified driver (acute).
§391.45(a) Using a driver not medically examined and certified (critical).
§391.45(b) Using a driver not medically examined and certified during the preceding 24 months (critical).
§391.51(a) Failing to maintain driver qualification file on each driver employed (critical).
§391.51(b)(2) Failing to maintain inquiries into driver's driving record in driver's qualification file (critical).
§391.51(b)(6) Failing to maintain medical examiner's certificate in driver's qualification file (critical).
§392.2 Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated (critical).
§392.4(b) Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle (acute).
§392.5(b)(1) Requiring or permitting a driver to drive a motor vehicle while under the influence of, or in possession of, an intoxicating beverage (acute).
§392.5(b)(2) Requiring or permitting a driver who shows evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle (acute).
§392.6 Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed (critical).
§392.9(a)(1) Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured (critical).
§395.1(h)(1)(i)(A) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska) (critical).
§395.1(h)(1)(i)(B) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska) (critical).
§395.1(h)(1)(i)(C) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska) (critical).
§395.1(h)(1)(i)(D) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska) (critical).
§395.1(h)(2)(i) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska) (critical).
§395.1(h)(2)(ii) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska) (critical).
§395.1(h)(2)(iii) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska) (critical).
§395.1(h)(2)(iv) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska) (critical).
§395.1(o) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 16 consecutive hours (critical).
§395.3(a)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive without taking an off-duty period of at least 10 consecutive hours prior to driving (critical).
§395.3(a)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after the end of the 14th hour after coming on duty (critical).
§395.3(a)(3)(i) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours (critical).
§395.3(a)(3)(ii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive if more than 8 hours of driving time have passed without a consecutive interruption in driving status of at least 30 minutes, either off-duty, sleeper berth or on-duty not driving (critical).
§395.3(b)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days (critical).
§395.3(b)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days (critical).
§395.5(a)(1) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours (critical).
§395.5(a)(2) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours (critical).
§395.5(b)(1) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days (critical).
§395.5(b)(2) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days (critical).

§395.8(a)(1) Failing to require a driver to prepare a record of duty status using appropriate method (critical).
§395.8(a)(2)(ii) Failure to require a driver to submit record of duty status (critical).
§395.8(e)(1) Making, or permitting a driver to make, a false report regarding duty status (critical).
§395.8(e)(2) or (3) Disabling, deactivating, disengaging, jamming, or otherwise blocking or degrading a signal transmission or reception; tampering with an automatic onboard recording device or ELD; or permitting or requiring another person to engage in such activity (acute).
§395.8(k)(1) Failing to preserve a driver's record of duty status or supporting documents for 6 months (critical).
§395.11(b) Failing to require a driver to submit supporting documents (critical).
§395.11(c) Failing to retain types of supporting documents as required by §395.11(c) (critical).
§395.11(e) Failing to retain supporting documents in a manner that permits the effective matching of the documents to the driver's record of duty status (critical).
§395.11(f) Altering, defacing, destroying, mutilating, or obscuring a supporting document (critical).
§395.30(f) Failing to retain ELD information (acute).
§396.3(b) Failing to keep minimum records of inspection and vehicle maintenance (critical).
§396.9(c)(2) Requiring or permitting the operation of a motor vehicle declared ''out-of-service'' before repairs were made (acute).
§396.11(a) Failing to require driver to prepare driver vehicle inspection report (critical).
§396.11(a)(3) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again (acute)
§396.17(a) Using a commercial motor vehicle not periodically inspected (critical).
§396.17(g) Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards (acute).
§397.5(a) Failing to ensure a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material is attended at all times by its driver or a qualified representative (acute).
§397.7(a)(1) Parking a motor vehicle containing Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (critical).
§397.7(b) Parking a motor vehicle containing hazardous material(s) other than Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (critical).
§397.13(a) Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 25 feet of a motor vehicle containing Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2 (critical).
§397.19(a) Failing to furnish driver of motor vehicle transporting Division 1.1, 1.2, or 1.3 (explosive) materials with a copy of the rules of part 397 and/or emergency response instructions (critical).
§397.67(d) Requiring or permitting the operation of a motor vehicle containing explosives in Class 1, Divisions 1.1, 1.2, or 1.3 that is not accompanied by a written route plan (critical).
§171.15 Carrier failing to give immediate telephone notice of an incident involving hazardous materials (critical).
§171.16 Carrier failing to make a written report of an incident involving hazardous materials (critical).
§172.313(a) Accepting for transportation or transporting a package containing a poisonous-by-inhalation material that is not marked with the words ''Inhalation Hazard'' (acute).
§172.704(a)(4) Failing to provide security awareness training (critical).
§172.704(a)(5) Failing to provide in-depth security awareness training (critical).
§172.800(b) Transporting HM without a security plan (acute).
§172.800(b) Transporting HM without a security plan that conforms to Subpart I requirements (acute).
§172.800(b) Failure to adhere to a required security plan (acute).
§173.24(b)(1) Accepting for transportation or transporting a package that has an identifiable release of a hazardous material to the environment (acute).
§173.421 Accepting for transportation or transporting a Class 7 (radioactive) material described, marked, and packaged as a limited quantity when the radiation level on the surface of the package exceeds 0.005mSv/hour (0.5 mrem/hour) (acute).
§173.431(a) Accepting for transportation or transporting in a Type A packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).
§173.431(b) Accepting for transportation or transporting in a Type B packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).
§173.441(a) Accepting for transportation or transporting a package containing Class 7 (radioactive) material with external radiation exceeding allowable limits (acute).
§173.442(b) Accepting for transportation or transporting a package containing Class 7 (radioactive) material when the temperature of the accessible external surface of the loaded package exceeds 50 °C (122 °F) in other than an exclusive use shipment, or 85 °C (185 °F) in an exclusive use shipment (acute).

§ 173.443(a) Accepting for transportation or transporting a package containing Class 7 (radioactive) material with removable contamination on the external surfaces of the package in excess of permissible limits (acute).

§ 177.800(c) Failing to instruct a category of employees in hazardous materials regulations (critical).

§ 177.801 Accepting for transportation or transporting a forbidden material (acute).

§ 177.835(a) Loading or unloading a Class 1 (explosive) material with the engine running (acute).

§ 177.835(c) Accepting for transportation or transporting Division 1.1 or 1.2 (explosive) materials in a motor vehicle or combination of vehicles that is not permitted (acute).

§ 177.835(j) Transferring Division 1.1, 1.2, or 1.3 (explosive) materials between containers or motor vehicles when not permitted (acute).

§ 177.817(a) Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper (critical).

§ 177.817(e) Failing to maintain proper accessibility of shipping papers (critical).

§ 177.823(a) Moving a transport vehicle containing hazardous material that is not properly marked or placarded (critical).

§ 177.841(e) Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals unless an exception in § 177.841(e)(i) or (ii) is met (acute).

§ 180.407(a) Transporting a shipment of hazardous material in cargo tank that has not been inspected or retested in accordance with § 180.407 (critical).

§ 180.407(c) Failing to periodically test and inspect a cargo tank (critical).

§ 180.415 Failing to mark a cargo tank which passed an inspection or test required by § 180.407 (critical).

§ 180.417(a)(1) Failing to retain cargo tank manufacturer's data report certificate and related papers, as required (critical).

§ 180.417(a)(2) Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required (critical).

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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting appendix B to part 385, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

PART 386—RULES OF PRACTICE FOR FMCSA PROCEEDINGS

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