(1) The State computer system does not check the Commercial Driver’s License Information System (CDLIS) and/or National Driver Registry Problem Driver Pointer System (PDPS) as required by §383.73 of this subchapter when issuing, renewing, transferring, or upgrading a CLP or CDL.

(2) The State does not disqualify drivers convicted of disqualifying offenses in commercial motor vehicles.

(3) The State does not transmit convictions for out-of-State drivers to the State where the driver is licensed.

(4) The State does not properly administer knowledge and/or skills tests to CLP or CDL applicants or drivers.

(5) The State fails to submit a corrective action plan for a substantial compliance deficiency or fails to implement a corrective action plan within the agreed time frame.

(c) Standard for considering deficiencies. The deficiencies described in paragraph (b) of this section must affect a substantial number of either CLP and CDL applicants or drivers.

(d) Decertification: Preliminary determination. If the Administrator finds that a State is in substantial noncompliance with subpart B of this part, as indicated by the factors specified in paragraph (b) of this section, among other things, the FMCSA will inform the State that it has made a preliminary determination of noncompliance and that the State’s CDL program may therefore be decertified. Any response from the State, including factual or legal arguments or a plan to correct the noncompliance, must be submitted within 30 calendar days after receipt of the preliminary determination.

(e) Decertification: Final determination. If, after considering all material submitted by the State in response to the FMCSA preliminary determination, the Administrator decides that substantial noncompliance exists, which warrants decertification of the CDL program, he/she will issue a decertification order prohibiting the State from issuing CLPs and CDLs until such time as the Administrator determines that the condition(s) causing the decertification has (have) been corrected.

(f) Recertification of a State. The Governor of the decertified State or his/her designated representative must submit a certification and documentation that the condition causing the decertification has been corrected. If the FMCSA determines that the condition causing the decertification has been satisfactorily corrected, the Administrator will issue a recertification order, including any conditions that must be met in order to begin issuing CLPs and CDLs in the State.

(g) State’s right to judicial review. Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. Chapter 7.

(h) Validity of previously issued CLPs or CDLs. A CLP or CDL issued by a State prior to the date the State is prohibited from issuing CLPs or CDLs in accordance with provisions of paragraph (a) of this section, will remain valid until its stated expiration date.

[76 FR 26896, May 9, 2011]

§ 384.407 Emergency CDL grants.

The FMCSA may provide grants of up to $1,000,000 per State from funds made available under 49 U.S.C. 31107(a), to assist States whose CDL programs may fail to meet the compliance requirements of subpart B of this part, but which are determined by the FMCSA to be making a good faith effort to comply with these requirements.

[67 FR 49764, July 31, 2002]
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Subpart F—Intermodal Equipment Providers
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§ 385.1 Purpose and scope.

(a) This part establishes 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 determined to be unfit from operating a CMV.

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

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

(d) 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).

49 CFR Ch. III (10–1–11 Edition)
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 100–178).

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 18 months after receipt of its US DOT number and it must be found to have adequate basic safety management controls to continue operating in interstate commerce at the end of the 18-month period.

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 on-site examination of motor carrier operations, such as drivers’ hours of service, maintenance and inspection, driver qualification, commercial drivers license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. 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 on-site examination of the intermodal equipment provider’s compliance with the applicable FMCSRs.

RSPA means the Research and Special Programs Administration.

Safety fitness determination means the final determination by FMCSA that a motor carrier meets the safety fitness standard under §385.5.

Safety rating or rating means a rating of “Satisfactory,” “Conditional,” or “Unsatisfactory,” which the FMCSA assigns to a motor carrier using the factors prescribed in §385.7, as computed under the Safety Fitness Rating Methodology (SFRM) set forth in Appendix B to this part and based on the carrier’s demonstration of adequate safety management controls under §385.5(a). A safety rating of “Satisfactory” or “Conditional” is necessary, but not sufficient, to meet the overall safety fitness standard under §385.5.

(1) Satisfactory safety rating means that a motor carrier has in place and
§ 385.4 Matter incorporated by reference.

(a) Incorporation by reference. Part 385 includes references to certain matter or materials, as listed in paragraph (b) of this section. The text of the materials is not included in the regulations contained in part 385. The materials are hereby made a part of the regulations in part 385. The Director of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version in the regulation is incorporated. Material is incorporated as it exists on the date of the approval and a notice of any changes in these materials will be published in the Federal Register.

(b) Matter or materials referenced in part 385. The matter or materials in this paragraph are incorporated by reference in the corresponding sections noted.

§ 385.5 Safety fitness standard.

A motor carrier must meet the safety fitness standard set forth in this section. Intrastate motor carriers subject to the hazardous materials safety permit requirements of subpart E of this part must meet the equivalent State requirements. To meet the safety fitness standard, the motor carrier must demonstrate the following:

(a) 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:

1. Commercial driver’s license standard violations (part 383 of this chapter),
2. Inadequate levels of financial responsibility (part 387 of this chapter),
3. The use of unqualified drivers (part 391 of this chapter),
4. Improper use and driving of motor vehicles (part 392 of this chapter),
5. Unsafe vehicles operating on the highways (part 393 of this chapter),
6. Failure to maintain accident registers and copies of accident reports (part 390 of this chapter),

(2) Conditional safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with that portion of the safety fitness standard prescribed in §385.5(a), which could result in occurrences listed in §385.5(a)(1) through (a)(11).

(3) Unsatisfactory safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with that portion of the safety fitness standard prescribed in §385.5(a), and this has resulted in occurrences listed in §385.5(a)(1) through (a)(11).

(4) Unrated carrier means that the FMCSA has not assigned a safety rating to the motor carrier.
Federal Motor Carrier Safety Administration, DOT § 385.11

§ 385.11 Notification of safety rating and safety fitness determination.

(a) The Federal Motor Carrier Safety Administration (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

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(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.


§ 385.9 Determination of a safety rating.

(a) Following a compliance review of a motor carrier operation, FMCSA, using the factors prescribed in §385.7 as computed under the Safety Fitness Rating Methodology set forth in appendix B to this part, shall determine whether the present operations of the motor carrier are consistent with that portion of the safety fitness standard set forth in §385.5(a), 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.


§ 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.

[75 FR 17241, Apr. 5, 2010]
§ 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 on the Internet at http://www.safersys.org, or by telephone at (800) 832–5660.

(b) A Federal agency must not use a motor carrier that holds an "unsatisfactory" rating to transport passengers in a CMV or to transport hazardous materials in quantities requiring placarding.

(c) A Federal agency must not use a motor carrier for other CMV transportation if that carrier holds an "unsatisfactory" rating which became effective on or after January 22, 2001.

(d) Penalties. (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, the 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.

§ 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.

§ 385.15 Administrative review.

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

(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 Chief Safety Officer, 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.
§ 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 §380.27 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. If the motor carrier has submitted evidence that corrective actions have been taken pursuant to this section and the FMCSA cannot make a final determination within the 45-day period, the period before the proposed safety rating becomes final may be extended for up to 10 days at the discretion of the FMCSA.

(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.

(k) An upgraded safety rating based upon corrective action under this section will have no effect on an otherwise applicable notice of remedial directive, or proposed determination of unfitness issued in accordance with subpart J of this part.

(l) A motor carrier may not request a rescission of a determination of
unfitness issued under subpart J of this part based on corrective action.

§ 385.19 Safety fitness information.

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

(b) The final safety rating, any applicable remedial directive(s), and the safety fitness determination pertaining to a motor carrier will be made available to the public upon request. Any person requesting information under this paragraph must provide FMCSA with the motor carrier's name, principal office address, and, if known, the USDOT Number or the Interstate Commerce Commission MC (ICMC) docket number if any.

(c) Requests should be addressed to the Federal Motor Carrier Safety Administration, Office of Information Technology (MC-RI), 1200 New Jersey Ave., SE., Washington, DC 20590–0001. The information can also be found at the SAFER website: http://www.saferways.org.

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

§ 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 that receives 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.
§ 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 effective 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;
§ 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 the Associate Administrator for Enforcement and Program Delivery (MC–E), Federal Motor Carrier Safety Administration, 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. The Associate Administrator’s decision will constitute the final agency action.


§ 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.
§ 385.203 What are the requirements to obtain and maintain certification?

(a) After June 17, 2002, a person who is not qualified under §385.201(a) may not perform a compliance review, safety audit, roadability review, or roadside inspection unless he or she 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). These employees must also comply with the maintenance of certification/qualification requirements of paragraph (b) of this section.

(b) Maintenance of certification/qualification. A person may not perform a compliance review, safety audit, roadability review, or roadside inspection unless he or she meets the quality-control and periodic re-training requirements adopted by the 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).

(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.
§ 385.205 How can a person who has lost his or her certification be re-certified?
He or she must successfully complete the requirements of § 385.203(a) and (b).

Subpart D—New Entrant Safety Assurance Program

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

§ 385.301 What is a motor carrier required to do before beginning interstate operations?
(a) Before a motor carrier of property or passengers begins interstate operations, it must register with the FMCSA and receive a USDOT number. In addition, for-hire motor carriers must obtain operating authority from FMCSA following the registration procedures described in 49 CFR part 365, unless providing transportation exempt from 49 CFR part 365 registration requirements.
(b) This subpart applies to motor carriers domiciled in the United States and Canada.
(c) A Mexico-domiciled motor carrier of property or passengers must register with the FMCSA by following the registration procedures described in 49 CFR part 365 or 368, as appropriate. The regulations in this subpart do not apply to Mexico-domiciled carriers.

§ 385.303 How does a motor carrier register with the FMCSA?
A motor carrier may contact the FMCSA by internet (www.fmcsa.dot.gov); or Washington, DC headquarters by mail at, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001; fax (703) 260-4063; or telephone 1-800-832-5660, and request the application materials for a new entrant motor carrier.

§ 385.305 What happens after the FMCSA receives a request for new entrant registration?
(a) The requester for new entrant registration will be directed to the FMCSA Internet website (www.fmcsa.dot.gov) 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.
(3) Application forms to obtain operating authority under 49 CFR 365, as appropriate.
(c) Upon completion of the application forms, the new entrant will be issued a USDOT number.
(d) For-hire motor carriers, unless providing transportation exempt from 49 CFR part 365 registration requirements, must also comply with the procedures established in 49 CFR part 365 to obtain operating authority before operating in interstate commerce.

§ 385.306 What are the consequences of furnishing misleading information or making a false statement in connection with the registration process?
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.

§ 385.307 What happens after a motor carrier begins operations as a new entrant?
After a new entrant satisfies all applicable pre-operational requirements,
Federal Motor Carrier Safety Administration, DOT

§ 385.309 What is the purpose of the safety audit?

The purpose of a safety audit is to:

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

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

§ 385.308 What may cause an expedited action?

(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 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) Any quantity of certain radioactive materials (Class 7).

(ii) Any quantity of certain explosive materials (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]
§ 385.311 What will the safety audit consist of?
The safety audit will consist of a review of the new entrant’s safety management systems and a sample of required records to assess compliance with the FMCSRs, applicable HMRs and related record-keeping requirements specified in appendix A of this part. The areas for review include, but are not limited to, the following:

(a) Driver qualification;
(b) Driver duty status;
(c) Vehicle maintenance;
(d) Accident register; and
(e) Controlled substances and alcohol use and testing requirements.

§ 385.313 Who will conduct the safety audit?
An individual certified under the FMCSA regulations to perform safety audits will conduct the safety audit.

§ 385.315 Where will the safety audit be conducted?
The safety audit will generally be conducted at the new entrant’s business premises.

§ 385.317 Will a safety audit result in a safety fitness determination by the FMCSA?
A safety audit will not result in a safety fitness determination. Safety fitness determinations follow completion of a compliance review.

§ 385.319 What happens after completion of the safety audit?

(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 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.

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

(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:
Federal Motor Carrier Safety Administration, DOT

§ 385.325

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

<table>
<thead>
<tr>
<th>Violation</th>
<th>Guidelines for determining automatic failure of the safety audit</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 382.115(a)/§ 382.115(b)—Failing to implement an alcohol and/or controlled substances testing program (domestic and foreign motor carriers, respectively).</td>
<td>Single occurrence.</td>
</tr>
<tr>
<td>§ 382.201—Using a driver known to have an alcohol content of 0.04 or greater to perform a safety-sensitive function.</td>
<td>Single occurrence.</td>
</tr>
<tr>
<td>§ 382.211—Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382</td>
<td>Single occurrence.</td>
</tr>
<tr>
<td>§ 382.215—Using a driver known to have tested positive for a controlled substance.</td>
<td>Single occurrence.</td>
</tr>
<tr>
<td>§ 382.305—Failing to implement a random controlled substances and/or alcohol testing program.</td>
<td>Single occurrence.</td>
</tr>
<tr>
<td>§ 383.3(a)/§ 383.23(a)—Knowingly using a driver who does not possess a valid CDL.</td>
<td>Single occurrence.</td>
</tr>
<tr>
<td>§ 383.37(a)—Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver’s license which is suspended, revoked, or canceled by a State or who is disqualified to operate a commercial motor vehicle.</td>
<td>Single occurrence.</td>
</tr>
<tr>
<td>§ 383.51(a)—Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle.</td>
<td>Single occurrence.</td>
</tr>
<tr>
<td>§ 387.31(a)—Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility.</td>
<td>Single occurrence.</td>
</tr>
<tr>
<td>§ 391.15(a)—Knowingly using a disqualified driver.</td>
<td>Single occurrence.</td>
</tr>
<tr>
<td>§ 391.11(b)(4)—Knowingly using a physically unqualified driver.</td>
<td>Single occurrence.</td>
</tr>
<tr>
<td>§ 395.8(a)—Failing to require a driver to make a record of duty status.</td>
<td>Requires a violation threshold (51% or more of examined records) to trigger automatic failure.</td>
</tr>
<tr>
<td>§ 396.9(c)(2)—Requiring or permitting the operation of a commercial motor vehicle declared “out-of-service” before repairs are made.</td>
<td>Single occurrence.</td>
</tr>
<tr>
<td>§ 396.11(c)—Failing to correct out-of-service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again.</td>
<td>Single occurrence.</td>
</tr>
<tr>
<td>§ 396.17(a)—Using a commercial motor vehicle not periodically inspected.</td>
<td>Requires a violation threshold (51% or more of examined records) to trigger automatic failure.</td>
</tr>
</tbody>
</table>

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

(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.

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

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

(b) If a new entrant, after being notified that it is required to take corrective action to improve its safety management practices, fails to submit a written response demonstrating corrective action acceptable to FMCSA within the time specified in § 385.319, and any extension of that period authorized
§ 385.327 May a new entrant request an administrative review of a determination of a failed safety audit?

(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 May a new entrant that has had its USDOT new entrant registration revoked and its operations placed out of service reapply?

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

(a) If a new entrant refuses to permit a safety audit to be performed on its operations, 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.


Subpart E—Hazardous Materials
Safety Permits

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

§ 385.401 What is the purpose and scope of this subpart?
(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 What definitions are used in this subpart?
(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 unreason-
§ 385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?

(a) Motor carrier safety performance.

(i) The motor carrier:

(1) Must be in compliance with any remedial directive issued under subpart J of this part, and

(2) Must have a “Satisfactory” safety rating assigned by either FMCSA, under 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.

(ii) FMCSA will not issue a 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 FMCSA Motor Carrier Management Information System (MCMIS); or
§ 385.409 When may a temporary safety permit be issued to a motor carrier?

(a) Temporary safety permit. 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 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 HMIs.

§ 385.411 Must a motor carrier obtain a safety permit if it has a State permit?

Yes. 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 §385.405, without further inspection or investigation.

§ 385.413 What happens if a motor carrier receives a proposed safety rating that is less than Satisfactory?

(a) If a motor carrier 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 holds a safety permit (including a temporary safety permit), the safety permit will be subject to revocation or suspension (see §385.421).

§ 385.415 What operational requirements apply to 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)(1) 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,” January 1, 2004, which is incorporated by reference. The Director of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Information and copies may be obtained from the Commercial Vehicle Safety Alliance, 1101 17th Street, NW, Suite 803, Washington, DC 20036. Phone number (202) 775–1623.

(2) All materials incorporated by reference are available for inspection at the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC–EC), 1200 New Jersey Ave., SE., Washington, DC 20590–0001; and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(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.

§ 385.417  Is a motor carrier's safety permit number available to others?

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 will also be available to the public on the FMCSA Safety and Fitness Electronic Records System at http://www.safersys.org.

§ 385.419  How long is a safety permit effective?

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 §390.19(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 §390.19(a)(2) and (a)(3) of this chapter.

§ 385.421  Under what circumstances will a safety permit be subject to revocation or suspension by FMCSA?

(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 §390.19(a)(2) and (a)(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 §385.405(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 Research and Special Programs 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
Federal Motor Carrier Safety Administration, DOT

§ 385.423  Does a motor carrier have a right to an 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 Chief Safety Officer 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 Chief Safety Officer, with a copy to FMCSA Chief Counsel, at the following addresses:


(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 Chief Safety Officer 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 Chief Safety Officer 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 Chief Safety Officer 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).
§ 385.501 Roadability review.
(a) FMCSA will review roadability reviews of intermodal equipment providers, as defined in § 390 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 F—Intermodal Equipment Providers

§ 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 F—Intermodal Equipment Providers

§ 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).
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 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 360.3(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 Web site at: http://www.fmcsa.dot.gov/forms/forms.htm.

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

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

(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.

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 record-keeping 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 chapter, 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;
(b) 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 applicable.
(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.

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

(ii) 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 397;
(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 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.
§ 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
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§ 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 the Associate Administrator for Enforcement and Program Delivery, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington DC 20590.

(c) The carrier's request must explain the error it believes FMCSA committed in assigning a 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. The Associate Administrator's decision will constitute the final Agency action.
§ 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 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 §385.607(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 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 §385.607(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 re-apply for operating authority as set forth in part 365 of this subchapter.

§ 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—Remedial Directives

SOURCE: 75 FR 17241, Apr. 5, 2010, unless otherwise noted.

§ 385.801 Purpose and scope.

(a) This subpart establishes procedures for FMCSA’s issuance of notices of remedial directives and proposed determinations of unfitness.

(b) This subpart establishes the circumstances under which FMCSA will direct motor carriers (including owner-operators leased to motor carriers, regardless of whether the owner-operator has separate operating authority under part 365), in accordance with §385.1(a), to install electronic on-board recorders (EOBRs) in their commercial motor vehicles as a remedy for threshold rate
violations, as defined by §385.803, of the part 395 hours-of-service regulations listed in appendix C to this part.

(c) This subpart establishes the procedures by which motor carriers may challenge FMCSA’s issuance of proposed determinations of unfitness and remedial directives.

(d) The provisions of this subpart apply to all motor carriers subject to the requirements of part 395 of this chapter.

§ 385.803 Definitions and acronyms.

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

(b) As used in this subpart, the following terms have the meaning specified:

Appendix C regulation means any of the regulations listed in appendix C to part 385 of this chapter.

Appendix C violation means a violation of any of the regulations listed in appendix C to part 385 of this chapter.

Electronic on-board recording device (EOBR) means an electronic device that is capable of recording a driver’s duty hours of service and duty status accurately and automatically and that meets the requirements of §395.16 of this chapter.

Final determination for purposes of part 385, subpart J means:

(1) An adjudication under this subpart upholding a notice of remedial directive and proposed unfitness determination;

(2) The expiration of the period for filing a request for administrative review of remedial directive and proposed unfitness determination under this subpart; or

(3) The entry of a settlement agreement stipulating that the carrier is subject to mandatory EOBR installation, use, and maintenance requirements.

Motor carrier includes owner-operators leased to carriers subject to a remedial directive, regardless of whether the owner-operator has separate operating authority under part 365 of this chapter.

Proposed determination of unfitness or proposed unfitness determination means a determination by FMCSA that a motor carrier will not meet the safety fitness standard under §385.5 on a specified future date unless the carrier takes the actions necessary to comply with the terms of a remedial directive issued under this subpart.

Remedial directive means a mandatory instruction from FMCSA to take one or more specified action(s) as a condition of demonstrating safety fitness under 49 U.S.C. 31144(b).

Threshold rate violation for the purposes of this subpart means a violation rate for any appendix C regulation equal to or greater than 10 percent of the number of records reviewed.

§ 385.805 Events triggering issuance of remedial directive and proposed determination of unfitness.

A motor carrier subject to 49 CFR part 395 will be subject to a remedial directive and proposed unfitness determination in accordance with this subpart for threshold rate violations of any appendix C regulation or regulations that have been documented during a compliance review. A remedial directive and proposed unfitness determination will be issued if a compliance review conducted on the motor carrier resulted in a final determination of one or more threshold rate violations of any appendix C regulation are discovered.

§ 385.807 Notice and issuance of remedial directive.

(a) Following the close of the compliance review described in §385.805, FMCSA will issue the motor carrier a written notice of remedial directive and proposed determination of unfitness. FMCSA will issue the notice and proposed determination as soon as practicable, but not later than 30 days after the close of the review.

(b) The remedial directive will state that the motor carrier is required to install and maintain EOBRs compliant with §395.16 of this chapter in all of the motor carrier’s CMVs and to use the EOBRs to record its drivers’ hours of service pursuant to §395.16. The motor carrier shall provide proof of the installation to FMCSA in accordance with §385.811 within the following time periods:
§ 385.809 49 CFR Ch. III (10–1–11 Edition)

(1) Motor carriers transporting hazardous materials in quantities requiring placarding, and motor carriers transporting passengers in a CMV, must install EOBRs and provide proof of the installation by the 45th day after the date of the notice of remedial directive.

(2) All other motor carriers must install EOBRs and provide proof of installation by the 60th day after the date of FMCSA's notice of remedial directive. If FMCSA determines the motor carrier is making a good-faith effort to comply with the terms of the remedial directive, FMCSA may allow the motor carrier to operate for up to 60 additional days.

(3) A motor carrier may challenge the notice of remedial directive and proposed determination of unfitness in accordance with § 385.817.


§ 385.809 [Reserved]

§ 385.811 Proof of compliance with remedial directive.

(a) Motor carriers subject to a remedial directive to install EOBRs under this section must provide proof of EOBR installation by one of the following:

(1) Submitting all of the carrier's CMVs for visual and functional inspection by FMCSA or qualified State enforcement personnel.

(2) Transmitting to the FMCSA service center for the geographic area where the carrier maintains its principal place of business all of the following documentation:

(i) Receipts for all necessary EOBR purchases.

(ii) Receipts for the installation work.

(iii) Digital or other photographic evidence depicting the installed devices in the carrier's CMVs.

(iv) Documentation of the EOBR serial number for the specific device corresponding to each CMV in which the device has been installed.

(3) If no receipt is submitted for an installed device or the installation work in accordance with paragraph (a)(2) of this section, the carrier must submit a written statement explaining who installed the devices, how many devices were installed, the manufacturer and model numbers of the devices installed, and the vehicle identification numbers of the CMVs in which the devices were installed.

(b) Visual and functional EOBR inspections may be performed at any FMCSA roadside inspection station or at the roadside inspection or weigh station facility of any State that receives Motor Carrier Safety Assistance Program funds under 49 U.S.C. 31102 and that provides such inspection services. The carrier may also request such inspections be performed at its principal place of business.

(c) Motor carriers issued remedial directives pursuant to this section must install in all of their CMVs EOBRs meeting the standards set forth in 49 CFR 395.16. Such motor carriers must maintain and use the EOBRs to verify compliance with part 395 for a period of 2 years following the issuance of the remedial directive. In addition to any other requirements imposed by the FMCSRs, during the period of time the carrier is subject to a remedial directive the carrier must maintain all records and reports generated by the EOBRs and, upon demand, produce those records to FMCSA personnel.

(d) Malfunctioning devices. Motor carriers subject to remedial directives under this part must maintain EOBRs installed in their CMVs in good working order. Such carriers must cause any malfunctioning EOBR to be repaired or replaced within 14 days from the date the carrier becomes aware of the malfunction. During this repair or replacement period, carriers subject to a remedial directive under this part must prepare a paper record of duty status pursuant to § 395.8 of this chapter as a temporary replacement for the non-functioning EOBR unit. All other provisions of the remedial directive will continue to apply during the repair and replacement period. Failure to comply with the terms of this paragraph may subject the affected CMV and/or driver to an out-of-service order pursuant to § 396.9(c) and § 395.13 of this chapter, respectively. Repeated violations of this paragraph may subject the motor carrier to the provisions of § 385.819.
§ 385.813 Issuance and conditional rescission of proposed unfitness determination.

(a) Simultaneously with the notice of remedial directive, FMCSA will issue a proposed unfitness determination. The proposed unfitness determination will explain that, if the motor carrier fails to comply with the terms of the remedial directive, the carrier will be unfit under the fitness standard in §385.5, prohibited from engaging in interstate operations and intrastate operations affecting interstate commerce, and, in the case of a carrier registered under 49 U.S.C. 13902, have its registration revoked.

(b) FMCSA will conditionally rescind the proposed determination of unfitness upon the motor carrier's submission of sufficient proof of EOBR installation in accordance with §385.811.

(c) During the period the remedial directive is in effect, FMCSA may reinstate the proposed unfitness determination and immediately prohibit the motor carrier from operating in interstate commerce and intrastate operations affecting interstate commerce if the motor carrier violates the provisions of the remedial directive.

§ 385.815 Exemption for AOBRD users.

(a) Upon written request by the motor carrier, FMCSA will grant an exception from the requirements of remedial directives under this section to motor carriers that already had installed in all commercial motor vehicles, at the time of the compliance review immediately preceding the issuance of the notice of remedial directive, AOBRDs compliant with 49 CFR 395.15 of this chapter.

(b) The carrier will be permitted to continue using the previously installed devices if the carrier can satisfactorily demonstrate to FMCSA that the carrier and its employees understand how to use the AOBRDs and the information derived from them.

(c) The carrier must either use and maintain the AOBRDs currently in its CMVs or install new devices compliance with §395.16 of this chapter.

(d) Although FMCSA may suspend enforcement for noncompliance with the remedial directive, the directive will remain in effect; and the hours-of-service compliance of any motor carrier so exempted, will be subject to ongoing FMCSA oversight.

(e) The exemption granted under this section shall not apply to CMVs manufactured on or after June 4, 2012.


§ 385.817 Administrative review.

(a) A motor carrier may request FMCSA to conduct an administrative review if the carrier believes FMCSA has committed an error in issuing a notice of remedial directive under §385.807 and proposed unfitness determination under §385.813. Administrative reviews of notices of remedial directive and proposed unfitness determinations are limited to findings in the compliance review immediately preceding the notice.

(b) The motor carrier’s request must explain the error it believes FMCSA committed in issuing the notice of remedial directive and proposed unfitness determination. 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, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. The motor carrier must submit on the same day a copy of the request to FMCSA counsel in the FMCSA service center for the geographic area where the carrier maintains its principal place of business.

(1) If a motor carrier has received a notice of remedial directive and proposed unfitness determination, the carrier should submit its request in writing within 15 days from the date of the notice. This timeframe will allow FMCSA to issue a written decision before the prohibitions outlined in §385.819(a) take effect. If the carrier submits its request for administrative review within 15 days of the issuance of the notice of remedial directive and proposed unfitness determination, FMCSA will stay the finality of the proposed unfitness determination until the Agency has ruled on the carrier’s request. Failure to submit the request
§ 385.819 Effect of failure to comply with remedial directive.

(a) A motor carrier that fails or refuses to comply with the terms of a remedial directive issued under this subpart, including a failure or refusal to provide proof of EOBR installation in accordance with § 385.811, does not meet the safety fitness standard set forth in § 385.5(b). With respect to such carriers, the proposed determination of unfitness issued in accordance with § 385.813 becomes final, and the motor carrier is prohibited from operating, as follows:

(1) Motor carriers transporting hazardous materials in quantities requiring placarding and motor carriers transporting passengers in a CMV are prohibited from operating CMVs in interstate commerce and in operations that affect interstate commerce beginning on the 46th day after the date of FMCSA’s notice of remedial directive and proposed unfitness determination. A motor carrier subject to the registration requirements of 49 U.S.C. 13901 will have its registration revoked on the 46th day after the date of FMCSA’s notice of remedial directive and proposed unfitness determination.

(b) If a proposed unfitness determination becomes a final determination, FMCSA will issue an order prohibiting the motor carrier from operating in interstate commerce. If the motor carrier is required to register under 49 U.S.C. 13901, FMCSA will revoke the motor carrier’s registration on the dates specified in § 385.819(a)(1) and (a)(2).

(c) If FMCSA has prohibited a motor carrier from operating in interstate commerce under paragraph (a) of this section and, if applicable, revoked the carrier’s registration, and the motor carrier subsequently complies with the terms and conditions of the remedial directive and provides proof of EOBR installation under § 385.811, the carrier may request FMCSA to lift the prohibition on operations at any time after the prohibition becomes effective. The
request should be submitted in writing in accordance with §385.817(c).

(d) A Federal Agency must not use for CMV transportation a motor carrier that FMCSA has determined is unfit.

(e) Penalties. If a proposed unfitness determination becomes a final determination, FMCSA will issue an order prohibiting the motor carrier from operating in interstate commerce and any intrastate operations that affect interstate commerce and, if applicable, revoking its registration. Any motor carrier that operates a CMV in violation of this section will be subject to the penalty provisions listed in 49 U.S.C. 521(b).

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 18 months after the owner or operator begins operations. 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 non-compliance 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 non-compliance 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.

(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 386 scoring three points for Factor 3; 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.


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” that a motor carrier must meet to obtain a “Satisfactory” safety rating. FMCSA later amended the safety fitness standard to add a distinct requirement that motor carriers also be in compliance with applicable remedial directives.

(c) To meet the safety fitness standard, a motor carrier must meet two requirements. First, the carrier must demonstrate to FMCSA it has adequate safety management controls in place that function effectively to ensure acceptable compliance with the applicable safety requirements. (See §385.5(a)). A “safety fitness rating methodology” (SFRM) developed by FMCSA uses data from compliance reviews (CRs) and roadside inspections to rate motor carriers. Second, a motor carrier must also be in compliance with any applicable remedial directives issued in accordance with subpart J. This second requirement is set forth in §385.5(b).

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

1. Evaluate the first component of the safety fitness standard, under §385.5(a), and assign one of three safety ratings (Satisfactory, Conditional, or Unsatisfactory) to motor carriers operating in interstate commerce. This process conforms to §385.5(a), 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.

(e) The hazardous materials safety permit requirements of part 383, subpart E apply to intrastate motor carriers. Intrastate motor carriers that 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 FMCSR 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 FMCSR 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 §396.3(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 noncompliance 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 385 and 390 or chapters 382, 383, and 391; (2) Parts 391 and 396; (3) Parts 392 and 395; (4) Parts 393 and 396 when there are less than three vehicle inspections in the last 12 months to evaluate; and (5) 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 396, 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, 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.
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:

<table>
<thead>
<tr>
<th>FACTORS</th>
<th>DESCRIPTION</th>
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<tbody>
<tr>
<td>Factor 1</td>
<td>General=Parts 387 and 390</td>
</tr>
<tr>
<td>Factor 2</td>
<td>Driver=Parts 382, 383 and 391</td>
</tr>
<tr>
<td>Factor 3</td>
<td>Operational=Parts 392 and 398</td>
</tr>
<tr>
<td>Factor 4</td>
<td>Vehicle=Parts 393 and 396</td>
</tr>
<tr>
<td>Factor 5</td>
<td>Haz. Mat.=Parts 397, 171, 177 and 180</td>
</tr>
<tr>
<td>Factor 6</td>
<td>Accident Factor=Recordable Rate</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>MOTOR CARRIER SAFETY RATING TABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unsatisfactory</td>
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<tr>
<td>----------------</td>
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<td>0</td>
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<td>0</td>
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<td>1</td>
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<tr>
<td>2 or more</td>
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</table>

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 you receive this notice.
as prescribed in §385.11. A proposed motor carrier in writing of its safety rating to the FMCSA in Washington, D.C., the FMCSA notifies the transportation company or individual of its proposed safety rating. The motor carrier may also avail itself of relief from unsatisfactory rating 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) FMCSA believes this “safety fitness rating methodology” is a reasonable approach to assignment of a safety rating, as required by the safety fitness regulations (§385.9), that most closely reflects the motor carrier’s current level of compliance with the safety fitness standard in §385.5(a). 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(b) 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 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(a) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 (acute).
§382.309(b) Using a driver who has not undergone a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances (acute).
§382.309(c)(1) 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).
§382.501(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).
§382.501(c)(1) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 or with verified negative test result, after engaging in conduct prohibited by part 382 subpart B (acute).
§ 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)(7) 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 more than 15 hours (Driving in Alaska) (critical).
§ 395.1(h)(1)(i) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska) (critical).
§ 395.1(h)(1)(ii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 20 hours (Driving in Alaska) (critical).
§ 395.1(h)(1)(iii) 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)(iv) 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 more than 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).
§ 396.1(c) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 16 consecutive hours (critical).

§ 395.8(a) Failing to require a driver to make a record of duty status (critical).

§ 395.8(b)(1) 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).

§ 395.8(b)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 16 consecutive hours (critical).

§ 395.8(c)(2) Requiring or permitting the operation of a motor vehicle declared “out-of-service” before repairs were made (acute).

§ 396.11(c) Failing to correct Out-of-Service defects listed by a driver in a 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 materials other than Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (critical).

§ 397.10(a) Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 50 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).

§ 397.10(b) Requiring or permitting a driver to smoke while driving a motor vehicle (critical).

§ 397.10(c) Requiring or permitting the operation of a motor vehicle containing explosive materials with a copy of the rules of part 397 and/or emergency response instructions (critical).

§ 397.10(d) Failing to require or permit transportation of a motor vehicle containing Class 1, Divisions 1.1, 1.2, or 1.3 that is not accompanied by a written route plan (critical).

§ 397.10(e) Accepting for transportation or transporting a package containing a poisonous-by-inhalation material that is not marked with the words “Inhalation Hazard” (acute).

§ 397.10(f) Failing to provide security awareness training (critical).

§ 397.10(g) 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).
§ 172.802(b) Failure to make copies of security plan available to hazmat employees (critical).
§ 172.841(e) Failing to maintain proper accessibility of shipping papers (critical).
§ 177.800(c) Failing to instruct a category of employees in hazardous materials regulations (critical).
§ 177.801 Accepting for transportation a category of employees in hazardous materials regulations (critical).
§ 177.805(a) Loading or unloading a Class 1 (explosive) material with the engine running (acute).
§ 177.805(c) Accepting for transportation or transporting Division 1.1, 1.2, or 1.3 (explosive) materials in a motor vehicle or combination of vehicles that is 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 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).

APPENDIX C TO PART 385—REGULATIONS PERTAINING TO REMEDIAL DIRECTIVES IN PART 385, SUBPART J

§ 395.1(h)(1)(i) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska).
§ 395.1(h)(1)(ii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska).
§ 395.1(h)(1)(ii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 7 consecutive days (Driving in Alaska).
§ 395.1(h)(1)(iv) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 20 hours (Driving in Alaska).

§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).

§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).

§395.1(o) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 16 consecutive hours.

§395.3(a)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.

§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.

§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.

§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.

§395.3(c)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 7 consecutive days without taking an off-duty period of 34 or more consecutive hours.

§395.3(c)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 8 consecutive days without taking an off-duty period of 34 or more consecutive hours.

§395.5(a)(1) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours.

§395.5(a)(2) 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.

§395.5(b)(1) 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.

§395.5(a)(1) Failing to require driver’s records of duty status supporting documents for 6 months.

[75 FR 17244, Apr. 5, 2010]

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, INTER-MODAL EQUIPMENT PROVIDER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

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