§ 385.701 of this appendix (Factors 1 through 5), if the recordable 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 for the accident factor. All other carriers with a recordable accident rate per million miles greater than 1.7 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.

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

(3) Three instances of noncompliance with critical regulations in part 396 scoring three points for Factor 2; 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.

§ 385.707 Expedited action.

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

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

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

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

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

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

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

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

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

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

§ 385.707 The compliance review.

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

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

(c) Conditional Rating. If FMCSA assigns a non-North America-domiciled