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49 CFR Parts 365, 385, 387, and 390
New Entrant Safety Assurance Process; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 365, 385, 387, and 390

[Docket No. FMCSA–2001–11061]

RIN 2126–AA59

New Entrant Safety Assurance Process

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

ACTION: Notice of Proposed Rulemaking (NPRM); request for comments.

SUMMARY: FMCSA proposes changes to the New Entrant Safety Assurance Process that would raise the standard of compliance for passing the new entrant safety audit. The agency has identified 11 regulations that it believes are essential elements of basic safety management controls necessary to operate in interstate commerce and proposes that failure to comply with any one of the 11 regulations would result in automatic failure of the audit. Under this proposal, carriers would also be subject to the current safety audit evaluation criteria in Appendix A of part 385. Additionally, if a roadside inspection discloses certain violations, the new entrant would be subject to expedited actions to correct these deficiencies. The agency proposes to eliminate Form MCS–150A—Safety Certification for Application for USDOT Number. The agency also intends to check compliance with the Americans with Disabilities Act and certain household goods-related requirements in the new entrant safety audit, if they apply to the new entrant's operation. However, failure to comply with these requirements would not impact the outcome of the safety audit. These changes would not impose additional operational requirements on any new entrant carrier. All new entrants would continue to receive educational information on how to comply with the safety regulations and be given an opportunity to correct any deficiencies found. FMCSA recognizes many new entrants are small businesses that are unaware of these requirements and continue to need the agency's assistance. Finally, FMCSA would make clarifying changes to some of the existing new entrant regulations and establish a separate new entrant application procedure and safety oversight program for non-North America-domiciled motor carriers. FMCSA believes this proposal would improve its ability to identify at-risk new entrant carriers and ensure deficiencies in basic safety management controls are corrected before the new entrant is granted permanent registration.

DATES: We must receive your comments by February 20, 2007.

ADDRESSES: You may submit comments, identified by DOT DMS Docket Number FMCSA–2001–11061, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions received must include the agency name and docket number or Regulatory Identification Number (RIN) for this rule. All comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. For a summary of DOT's Privacy Act Statement or information on how to obtain a complete copy of DOT's Privacy Act Statement please see the ''Privacy Act'' heading under Rulemaking Analyses and Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Arturo H. Ramirez, (202) 366–8088, Chief, Enforcement and Compliance Division, Federal Motor Carrier Safety Administration (MC–ECE), 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the DMS web site. If you want us to notify you of receiving your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

Legal Basis for the Rule

Title 49 U.S.C. 31144 requires the Secretary of Transportation (Secretary) to determine whether an owner or operator is fit to operate safely. Section 210 of the Motor Carrier Safety Improvement Act of 1999 [Public Law 106–159, 113 Stat. 1764, December 9, 1999] (MCSIA) added § 31144(g) [1] directing the Secretary to establish regulations to require each owner and operator granted new operating authority to undergo a safety review within 18 months of starting operations. In issuing these regulations, the Secretary was required to: (1) Establish the elements of the safety review, including basic safety management controls; (2) consider their effects on small businesses; and (3) consider establishing alternate locations where such reviews may be conducted for the convenience of small businesses. The Secretary was also required to phase in the new entrant safety review requirements in a manner that takes into account the availability of certified motor carrier safety auditors. Congress mandated increased oversight of new entrants because studies indicated these operators had a much higher rate of non-compliance with basic safety management requirements and were subject to less oversight than established operators.

In addition to expanding the Secretary's authority under § 31144, Section 210 of MCSIA was a specific statutory directive consistent with the more general pre-existing legal authority provided by the Motor Carrier Safety

[1] MCSIA originally codified section 31144(g) as § 31144(c) and directed that it be added at the end of 49 U.S.C. 31144 following preexisting subsections (c), (d), and (e). Section 4114(c)(1) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109–59, 119 Stat. 1144, August 10, 2005) (SAFETEA-LU) recodified this provision as § 31144(g).

Act of 1984 (the 1984 Act) [49 U.S.C. App. 2505 (1988)], which requires the Secretary to prescribe regulations on commercial motor vehicle safety. The regulations required by the 1984 Act must prescribe minimum safety standards for commercial motor vehicles (CMVs). At a minimum, the regulations shall ensure: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators (49 U.S.C. 31136(a)).

This NPRM proposes changes to the New Entrant Safety Assurance Process to improve the agency's ability to identify at-risk new entrant motor carriers through screening and ensure deficiencies are corrected before granting them permanent registration. As such, it implements the § 31136(a)(1) mandate that FMCSA regulations ensure CMVs are maintained and operated safely. It does not propose any new operational responsibilities on drivers pursuant to §§ 31136(a)(2)–(4).

Regulatory History

In response to the MCSIA statutory mandate, on May 13, 2002, FMCSA published an interim final rule (IFR) titled *New Entrant Safety Assurance Process* (67 FR 31978), which became effective January 1, 2003. Although operating authority has generally been construed in the past to mean registration of for-hire carriers subject to the jurisdiction transferred from the former Interstate Commerce Commission following enactment of the ICC Termination Act of 1995 [Public Law 104–88, 109 Stat. 888, December 29, 1995] (ICCTA), FMCSA interpreted Section 210 of MCSIA as extending this concept to all carriers subject to Federal safety jurisdiction (see 67 FR 31979, May 13, 2002). For this reason, FMCSA applied the New Entrant Safety Assurance Process to all domestic and Canada-domiciled new entrants, regardless of whether they needed to register with FMCSA under 49 U.S.C. 13901. Mexico-domiciled new entrants are covered under a separate application process and safety monitoring system (see 67 FR 12652, 67 FR 12701, and 67 FR 12757 published March 19, 2002).

Under the current New Entrant Safety Assurance Process, FMCSA provides applicants with an application package including, upon request, educational and technical assistance materials. The applicant must complete the application, including Form MCS–150A—Safety Certification for Application for USDOT Number, which requires the carrier to certify procedures are in place for basic safety management controls. Following completion of the application forms, FMCSA registers the new entrant and assigns a United States Department of Transportation (USDOT) Number. For-hire motor carriers, unless providing transportation exempt from ICCTA registration requirements, also are required to obtain FMCSA operating authority under 49 U.S.C. 13902, prior to commencing operations. The new entrant safety monitoring period begins when FMCSA issues the new entrant provisional registration via a USDOT Number and continues for 18 months. To maintain its provisional registration, a new entrant must comply with all FMCSA regulations and applicable hazardous materials regulations.

Within the first 18 months of a new entrant's operation, FMCSA will conduct a safety audit (SA) of the carrier's operations to educate the carrier on compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs) and to determine if the carrier is exercising basic safety management controls as defined in 49 CFR 385.3. An SA is not a compliance review. It does not result in a safety rating. These terms are defined in § 385.3.

During the SA, FMCSA gathers information by reviewing the carrier's compliance with ''acute'' and ''critical'' provisions of the FMCSRs and applicable HMRs. Acute regulations are those where the consequences of non-compliance are so severe as to require immediate corrective actions by a motor carrier, regardless of the overall basic safety management controls of the motor carrier (e.g., allowing a driver with a suspended license to operate a vehicle). Critical regulations are defined as those where noncompliance relates to management or operational controls and are indicative of breakdowns in a carrier's management controls (e.g., allowing a driver to operate a vehicle before his/her medical exam). Parts of the FMCSRs and HMRs having similar characteristics are combined together into six regulatory areas called ''factors.'' The SA scoring evaluates each of the following factors and determines the adequacy of the carrier's safety management controls based on this evaluation. The six factors are:

Factor 1—General: Parts 387 and 390.
Factor 2—Driver: Parts 382, 383, and 391.
Factor 3—Operational: Parts 392 and 395.
Factor 4—Vehicle: Parts 393 and 396 and inspection data for the last 12 months.
Factor 5—Hazardous Materials: Parts 171, 177, 180 and 397.
Factor 6—Accident: Recordable Accident Rate per Million Miles.

For each instance of noncompliance with an acute regulation, 1.5 points are assessed against the carrier. For each instance of noncompliance with a critical regulation, 1 point is assessed. For factors 1–5, if the combined violations of acute and critical regulations for each factor are 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 (factor 6) 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 (i.e., the carrier fails the factor). If the carrier's accident rate is anywhere between zero and 1.5 (1.7 for urban carriers), the carrier is considered to have adequate safety management controls in factor 6. A new entrant fails the SA if it fails three or more separate factors. Currently, FMCSA is studying a new approach to assessing the severity of violations as part of its announced CSA 2010 initiative (69 FR 51748). This initiative may ultimately replace the ''acute and critical'' methodology described here.

If the SA discloses the new entrant's basic safety management controls are adequate, the carrier retains the new entrant registration and continues to be monitored until the end of the 18-month period. FMCSA will grant permanent registration only if the new entrant successfully completes the monitoring period. If the basic safety management controls are inadequate, the new entrant is given an opportunity to correct the deficiencies. To provide that opportunity, FMCSA notifies the new entrant that unless the deficiencies are remedied, the registration will be revoked in 45 days (for carriers using passenger vehicles with a capacity to transport 16 or more passengers or vehicles transporting hazardous materials as defined under 49 CFR § 383.5) or 60 days (for all other new entrants). FMCSA may extend the compliance period if it determines the new entrant is making a good faith effort to remedy the problems. If, within the 45 or 60 days, the new entrant fails to respond to the notice or fails to correct the deficiencies, FMCSA issues an out-

of-service order prohibiting further operations in interstate commerce and revokes the new entrant registration.

Discussion of the Proposed Rule

FMCSA decided to publish an NPRM rather than a final rule because today's action proposes substantive changes to the May 13, 2002 IFR. These proposals would benefit from further notice and comment before promulgation as a final rule. Following is a discussion of these proposed changes.

Strengthening the Safety Audit

In FY 2000, FMCSA published a report titled ''Analysis of New Entrant Motor Carrier Safety Performance and Compliance Using SafeStat,'' which compared the safety performance of new entrant carriers to that of experienced carriers. A copy of the report is in the docket for this rule. The report indicated new entrant carriers had significantly higher crash involvement than experienced carriers. New entrant carriers had significantly worse driver safety compliance and performance compared to experienced carriers. To a lesser degree, new entrant carrier vehicle safety compliance and performance were also worse than for experienced carriers. For these reasons, FMCSA intends to ensure all new entrant carriers have basic safety programs and controls in place before granting permanent registration.

In response to comments to the 2002 IFR (see the section below titled ''Discussion of Comments''), as well as feedback from FMCSA field staff and State partners administering the New Entrant Safety Assurance Process, the Administrator convened an internal working group in the summer of 2003 to review and improve the process. The working group identified 11 regulatory violations which reflect a clear lack of basic safety management controls yet are not properly weighted by the existing SA. Under the current system, a new entrant could commit one of these 11 violations and still pass the SA. The group recommended that FMCSA strengthen the SA pass/fail criteria to give more appropriate weight to these 11 basic safety management requirements and clarify several vague regulatory requirements.

Based on this recommendation, FMCSA proposes that committing any one of the following 11 regulatory violations would result in an automatic failure of the SA:

1. § 382.115(a)/§ 382.115(b)—Failing to implement an alcohol and/or controlled substances testing program (domestic and foreign motor carriers, respectively).
2. § 382.211—Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382.
3. § 382.215—Using a driver known to have tested positive for a controlled substance.
4. § 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.
5. § 383.51(a)—Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle.
6. § 387.7(a)—Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.
7. § 391.15(a)—Using a disqualified driver.
8. § 391.11(b)(4)—Using a physically unqualified driver.
9. § 395.8(a)—Failing to require a driver to make a record of duty status.
10. § 396.9(c)(2)—Requiring or permitting the operation of a commercial motor vehicle declared ''out-of-service'' before repairs are made.
11. § 396.17(a)—Using a commercial motor vehicle not periodically inspected.

The agency believes carriers committing these violations do not have the basic safety management controls in place to safely operate in interstate commerce. The working group identified, and FMCSA accepted, these 11 infractions because they are so basic to ensuring safety that no carrier should be allowed to operate if any of these violations are found and not corrected. For example, implementation of an alcohol and controlled substances testing program is a fundamental requirement for any interstate carrier. A carrier that has implemented a program to ensure its drivers do not operate after testing positive for drugs or alcohol will reduce the risk of that carrier/driver being involved in a fatal accident. Allowing drivers who refuse to submit to drug or alcohol testing to drive indicates the carrier does not have an effective drug and alcohol testing program. Similarly, only qualified drivers should be permitted to drive. A carrier does not exercise sufficient safety management controls if it uses drivers who are disqualified from operating a CMV, physically unqualified, or who have had their commercial driver's license suspended, revoked, or canceled.

Additionally, the primary mission of the agency is to reduce crashes, injuries and fatalities involving large trucks and buses. For this mission to succeed, carriers must operate safe vehicles. To accomplish this, vehicles must be periodically inspected and kept in safe operating condition. Therefore, a new entrant would fail the safety audit if it does not inspect its vehicles periodically or operates any vehicle declared out-of-service before making the required repairs.

Further, driver fatigue has been identified as a contributing factor in many CMV crashes. To achieve the highest level of safety, carriers must have a system to safeguard the public against fatigued drivers by ensuring their drivers adhere to the agency's hours-of-service limitations. Hours-of-service violations comprise the largest percentage of driver out-of-service violations at the roadside. One effective safety management control for preventing fatigued drivers from operating a CMV is to have in place a system requiring drivers to submit records of duty status or other records, as appropriate. This recordkeeping requirement is fundamental to an effective driver monitoring system.

Finally, the agency believes it is essential for the traveling public to receive adequate compensation for personal injuries or property damage caused by CMVs operating on the highways. Therefore, carriers lacking required minimum financial responsibility would not be permitted to operate.

FMCSA emphasizes that the purpose of the proposed revision is to improve the safety management of new entrants, not to remove them from operations. The agency believes the regulations identified above are evidence of whether a new entrant has a systemic program to ensure it has the basic safety management controls to operate in interstate commerce.

As discussed above, when a new entrant fails an audit, even for one of the automatic failures described above, it will be afforded due process and given time to correct its failures and improve its safety management controls. This proposal emphasizes FMCSA's commitment to highway safety and would allow the agency to ensure new entrants are not permitted to operate without first correcting serious deficiencies in a timely manner.

FMCSA believes it is incumbent upon all new entrant carriers to be informed about, and familiar with, the FMCSRs prior to receiving a safety audit. To this end, FMCSA provides outreach and educational materials to carriers to help them prepare for the audit. Carriers discovered to have committed one of the

11 violations identified above, after having been informed of the need to comply prior to receiving permanent registration, and found to have not corrected the deficiency, will not be permitted to continue to operate. Establishing these 11 violations as grounds for failing the safety audit would promote public safety by encouraging new entrants to correct serious deficiencies in their safety management controls and reducing the number of potentially unsafe carriers operating on the nation's highways.

It should be noted that most of these 11 regulations correspond to requirements necessary for Mexico-domiciled long-haul carriers to obtain authority to operate in the United States, as established by Congress under Section 350(a)(1)(B) of the Fiscal Year 2002 DOT Appropriations Act [Public Law 107–87, Title III, sec. 350, 115 Stat. 864, Dec. 18, 2001]. The requirements applicable to Mexico-domiciled long-haul carriers are:

- Verification of a controlled substances and alcohol testing program consistent with 49 CFR part 40;
- Verification of a carrier's system of compliance with hours-of-service rules, including hours-of-service records;
- Verification of proof of financial responsibility;
- An evaluation of that motor carrier's safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections; and
- Verification of drivers' qualifications, including a required commercial driver's license.

Expedited Action

Under existing § 385.307(a), having ''an accident rate or driver or vehicle violation rate that is higher than the industry average for similar motor carrier operations' triggers an expedited SA or compliance review of the new entrant. (The reference to a ''driver or vehicle violation rate'' is an error and should read ''driver or vehicle out-of-service rate.'') The agency proposes to replace the abbreviated expedited action provisions under § 385.307(a) with the same ''Expedited Action'' provisions applicable to Mexico-domiciled carriers under § 385.105. As the agency stated in proposing the expedited action provisions for Mexico-domiciled carriers, we believe these violations pose the greatest threat to public safety and raise serious questions about a carrier's willingness and ability to conduct safe operations. See 66 FR 22416 (May 3, 2001). In addition to identifying potentially unsafe new entrant carriers, expanding the expedited action provisions would also make the treatment of Mexico-domiciled new entrants and all other new entrants more uniform.

This change would improve the New Entrant Safety Assurance Process by tightening scrutiny of new entrants before and after the safety audit. New entrants discovered with these violations could be identified during a roadside inspection or by any other means even if the agency had not yet conducted a safety audit.

Discovery of certain violations during a roadside inspection or by any other means would subject the new entrant to expedited action. If the carrier had not already submitted to an audit, the carrier would be flagged for review as soon as practicable. If the carrier already had submitted to an audit before discovery of an ''expedited action violation,'' FMCSA would send the carrier a letter requesting evidence of corrective action within 30 days of the notice or the carrier's registration would be revoked. Additionally, if FMCSA determined the violation warranted a more thorough review of the carrier's operation, the agency would schedule a compliance review. The following actions would trigger expedited action against the motor carrier:

- Using a driver who does not have a valid commercial driver's license.
- Operating vehicles that have been placed out-of-service for violations of the Federal Motor Carrier Safety Regulations or compatible State laws and regulations without taking necessary corrective action.
- Being involved in, through action or omission, a hazardous materials incident involving—
  - A highway route controlled quantity of certain radioactive materials (Class 7).
  - Any quantity of certain explosives (Class 1, Division 1.1, 1.2, or 1.3).
  - Any quantity of certain poison inhalation hazard materials (Zone A or B).
- Being involved in, through action or omission, two or more hazardous materials incidents involving hazardous materials other than those listed above.
- Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required drug or alcohol tests.
- Operating a motor vehicle that is not insured as required.
- Having a driver or vehicle out-of-service rate of 50 percent or more based on at least three inspections within a consecutive 90-day period.

The last item above would replace the ''vehicle or driver violation rate that is higher than the industry average for similar motor carrier operations'' requirement under § 385.307. From an operational standpoint, the ''50 percent or more threshold'' would provide for more effective and efficient monitoring of new entrant performance because it is a non-subjective and easily measured rate.

Applicability of Proposed Requirements to Current New Entrants

The changes in today's notice of proposed rulemaking, if promulgated as a final rule, would apply to motor carriers still subject to the current new entrant safety monitoring process on the final rule's effective date. Assuming all changes are adopted, these new entrants would be subject to expedited enforcement action for committing any of the seven violations or actions identified under the section ''Expedited Action.'' If a current new entrant has not had a safety audit prior to the final rule effective date, it would be audited in accordance with the safety audit procedures adopted in the final rule, including the applicable 11 automatic failure factors identified under the section ''Strengthening the Safety Audit.'' However, the automatic failure factors would not be retroactively applied to safety audits completed prior to the final rule's effective date. The safety audit outcomes determined prior to the final rule's effective date would remain unchanged by the final rule.

Form MCS–150A—Safety Certification for Application for USDOT Number

The purpose of the MCS–150A is for a new entrant to certify it has a system in place to ensure compliance with the FMCSRs and applicable HMRs. However, based on the SAs conducted to date, FMCSA has found many new entrants certified on the MCS–150A they are knowledgeable about the FMCSRs and applicable HMRs and have in place the safety management controls necessary to conduct interstate operations, but are not, in fact, in compliance with the FMCSRs and applicable HMRs. Therefore, while the intent of the MCS–150A is valid, in practice it fails. Consequently, FMCSA is proposing to eliminate the form. Conforming amendments are proposed to eliminate mention of the MCS–150A throughout the regulations.

Timing of Administrative Reviews

The administrative review provisions in current § 385.327 are ambiguous with respect to the time during which a carrier is allowed to file a request for administrative review and when it must file a request for administrative review,

if it wants the review to be completed before its registration is revoked. FMCSA is proposing to revise the section to clarify that, if a new entrant disagrees with the findings of an SA, the new entrant must file a request for an administrative review within 90 days of the date of the notice of audit failure or within 90 days of the notice of its corrective action being insufficient. However, if a new entrant wants a decision before the revocation takes effect, the new entrant must file a request for review within 15 days of the date of the notice of audit failure. Requests filed after 15 days will be considered, but it is possible the revocation would take effect before the administrative review process is completed, even if the new entrant eventually prevails and its registration is restored.

''Chameleon'' Carriers

The agency is concerned about carriers attempting to evade enforcement actions and/or out-of-service orders issued against them by re-registering as new entrants and operating as different entities under new USDOT Numbers. We call these entities ''chameleon'' carriers.

Such a carrier might attempt to conceal its former identity by leaving blank the response to items 16 and 17 on the ''Motor Carrier Identification Number—Application for USDOT Number'' (Form MCS–150). Items 16 and 17 of the MCS–150 request the carrier's USDOT Number or MC or MX Number. In other cases, the carrier may attempt to hide the fact that its USDOT Number is revoked by falsifying the response to item 28 on the MCS–150, which asks whether the carrier's USDOT Number registration is currently revoked by FMCSA, and if so, requires the carrier to list this number. Item 30 on the MCS–150 requires the carrier to certify the information provided on the MCS–150 is true, correct and complete. Unfortunately, some carriers deliberately fail to disclose information regarding their history in order to evade civil penalties assessed against the company or to circumvent out-of-service orders and other operational restrictions by obtaining new USDOT Numbers. Often these chameleon carriers go undetected until the agency conducts an SA or compliance review.

The agency is committed to ensuring only safe carriers are permitted to continue operating on our nation's highway. FMCSA has the authority to correct, modify, or revoke new entrant registration issued inadvertently, or obtained by fraud, misrepresentation or other wrongful means. Proposed § 385.306 clarifies what action may be taken against any carrier not providing truthful and complete information on its MCS–150.

If a carrier obtains a new USDOT Number after being ordered to cease operations based on a failed safety audit, prior Unsatisfactory rating, failure to pay a civil penalty or any other reason, and the information is discovered after the carrier received another USDOT Number, the agency will revoke the carrier's new registration and may also take additional enforcement action against the carrier. If a carrier obtains a new USDOT Number, but was not subject to an outstanding order to cease operations under a previous number, the agency may determine the new USDOT Number should not be revoked and, instead, link the history of the two companies by identifying in our database the new USDOT Number as the primary active number. The old USDOT Number would be listed in the database as one under which the carrier has also done business, and its safety history, including enforcement actions against the carrier, would be imputed to the new entity.

A carrier that ceased interstate operations and wishes to reapply should submit an updated MCS–150 and list its old USDOT Number when applying. The agency would reactivate the USDOT Number upon approval of the application.

Reapplication Process

Current § 385.329(a) states a new entrant whose new entrant registration has been revoked and whose operations have been placed out-of-service must wait 30 days after the revocation date to reapply. Current § 385.329(b) states the motor carrier will be required to initiate the application process ''from the beginning,'' demonstrate it has corrected the deficiencies resulting in revocation, and otherwise ensure it has adequate basic safety management controls. Some have interpreted ''from the beginning'' to mean the carrier must resubmit all documents submitted when the new entrant initially applied for new entrant registration and, if the application is accepted, undergo another SA and receive a new USDOT Number. The agency proposes to address the reapplication issue by establishing two separate procedures based upon what caused the revocation.

Under proposed § 385.329(b), a new entrant whose registration is revoked for failing the safety audit would reapply by submitting an updated Form MCS–150 and providing evidence of corrective action (which FMCSA would review for adequacy). If FMCSA concludes the re-applicant has taken adequate corrective action, it would grant the application and the re-applicant would not be subject to a second SA. The carrier would remain a new entrant, retain the same USDOT Number and continue to be monitored for 18 months from the date the new application is approved. For-hire motor carriers must also reapply for operating authority under 49 U.S.C. § 13902, if their operating authority was revoked.

If FMCSA revokes a new entrant's registration because it refused to submit to an audit, the new entrant would be required to submit an updated MCS–150, retain the same USDOT Number, and submit to an SA as soon as practicable once the new application is approved. FMCSA intends to flag these carriers so they will receive an SA as soon as practicable once they reenter the program. In all instances, a carrier reapplying for new entrant authority would be prohibited from operating in interstate commerce until its new application is approved. As in the case above, a new 18-month monitoring period would start upon approval of the new application.

To retain historical information on a revoked new entrant's past performance, FMCSA would require the new entrant to retain the same USDOT Number when reapplying for registration. This is consistent with what FMCSA has done in the past and is currently doing whenever a carrier is placed out-of-service and subsequently remedies whatever deficiencies resulted in the out-of-service order.

Household Goods

Currently, the SA does not evaluate compliance with FMCSA's household goods (HHG) regulations (49 CFR part 375). In order to strengthen its oversight of the HHG industry, FMCSA is proposing to include questions regarding HHG requirements in the audit. Because the HHG requirements are not safety related, however, FMCSA would not count the answers toward the pass/fail determination. Instead, any violations found would be enforced through other means (e.g., a compliance review).

Americans With Disabilities Act

The SA also does not evaluate compliance by passenger carriers with the Americans with Disabilities Act of 1990 [Public Law 101–336, 104 Stat. 327, July 26, 1990] (ADA). DOT regulations at 49 CFR part 37 prohibit discrimination against individuals with disabilities in the provision of transportation services, and require

certain vehicles to be readily accessible to and usable by such individuals. In order to strengthen its oversight over ADA issues, FMCSA is proposing to include questions regarding ADA compliance in audits of new entrant passenger carriers. As with violations of the HHG requirements, FMCSA would not count the answers toward the pass/fail determination. Instead, any violations found would be enforced by forwarding apparent violations to the U.S. Department of Justice or, if the carrier is a recipient of DOT financial assistance, through DOT administrative enforcement action.

Other Changes

Today's proposal would amend § 385.319, which concerns the new entrant's responsibilities for remedying deficient safety management practices discovered during the safety audit. It adds an additional category of passenger carriers to the description of which carriers must remedy deficiencies within 45 days of notification by FMCSA—new entrants that haul passengers in a vehicle used or designed to transport between 9 and 15 passengers for compensation.[2] The corrective action periods in § 385.319(c) were modeled after the 45- and 60-day effective dates of Unsatisfactory safety ratings in 49 CFR 385.11. Section 385.11 subjects all motor carriers transporting passengers by CMV to the 45-day requirement, including CMVs designed to transport between 9 and 15 passengers for compensation. The May 2002 IFR inadvertently failed to apply the 45-day requirement to small vehicle passenger carriers, subjecting them instead to the 60-day period applicable to property carriers not hauling hazardous materials requiring placarding. We propose to amend § 385.319(c), as well as §§ 385.323, 385.325, and 385.327 to make them consistent with § 385.11. Section 385.319 has also been rewritten to cross reference the definition of CMVs relating to hazardous materials carriers in 49 CFR 390.5 for purposes of consistency.

Current § 385.337(a) states: ''The initial refusal to permit an SA to be performed may subject the new entrant to the penalty provisions in 49 U.S.C. § 521(b)(2)(A).'' The term ''initial'' before the word ''refusal'' unnecessarily limits FMCSA's ability to impose penalties against recalcitrant carriers. Therefore, FMCSA is proposing to remove the word ''initial'' before the word ''refusal''; this change would permit FMCSA to consider any refusal as a basis for imposing penalties.

The New Entrant Safety Assurance Process and Non-North America-Domiciled Motor Carriers

Congress ratified the Central American Free Trade Agreement in the summer of 2005. In preparation for implementation of this treaty, FMCSA examined the agency's programs to ensure that any CMVs entering the United States from Central American countries were operating safely. Central American motor carriers, and indeed any motor carrier from a country other than the United States, Canada, or Mexico (non-North America-domiciled motor carriers), are not covered by FMCSA's existing New Entrant oversight programs. There are 64 carriers from Central American countries that have registered with the agency to operate CMVs in the United States.

The registered Central American carriers are domiciled in Guatemala, El Salvador, Belize, Honduras, Panama, and Nicaragua. The average vehicle fleet size for these carriers is one or two tractor-trailers. Sixty-three of the 64 carriers classified their operations as private motor carriers of property. A single carrier listed its operation type as private motor carrier of passengers (business). Most of the Central American carriers contracted with the same processing agent located in Brownsville, Texas, to file the USDOT Number application with FMCSA. Each of the carriers, including the passenger carrier, listed general freight or motor vehicles as its cargo type.

FMCSA has considered several options for a safety monitoring process for non-North America-domiciled motor carriers, including (1) subjecting them to the safety monitoring process for Mexico-domiciled carriers; (2) subjecting them to the New Entrant Safety Assurance Process for U.S. and Canada-domiciled carriers; or (3) developing an alternate oversight program compatible with existing regulatory authority.

The safety monitoring system for Mexico-domiciled carriers is based upon standards set out in the NAFTA Arbitral Panel Report[3] dated February 6, 2001, and the provisions of Section 350 of the FY 2002 Department of Transportation Appropriations Act. The NAFTA Arbitral Panel (the Panel) noted that: (1) The United States is not required to treat applications from Mexico-domiciled trucking firms in exactly the same manner as applications from U.S. or Canadian firms, as long as they are reviewed on a case by case basis; and (2) given the different enforcement mechanisms in place in the United States and Mexico, it may be justifiable for the United States to address legitimate safety concerns through different methods of ensuring compliance with the U.S. regulatory regime. Similarly, the Panel found it may not be unreasonable for the United States to implement different procedures with respect to service providers from another NAFTA country if necessary to ensure compliance with its own local standards by these service providers.

Mexico's motor carrier safety regulatory system lacks several of the components that are central to the U.S. system. As the Panel found, the U.S. is responsible for the safe operation of motor carriers within U.S. territory, regardless of the carriers' country of origin, and FMCSA believes we must ensure each carrier is safe to protect U.S. highway users. The safety monitoring process for Mexico-domiciled carriers provides FMCSA with the necessary level of assurance, in a manner consistent with the Panel's findings, and the relevant provisions of NAFTA. It ensures that Mexican motor carriers seeking U.S. operating authority are capable of complying with the U.S. safety regulatory regime.

The New Entrant Safety Assurance Process for U.S. and Canada-domiciled carriers is based upon an in-depth understanding of the safety systems in each country and a long history of cross-border truck and bus operations. Because FMCSA lacks understanding and experience with the safety systems of Central American and other non-North American countries, the agency deems it appropriate to adopt an alternate method of overseeing the compliance and safety of non-North America-domiciled-motor carriers. The alternate oversight method for non-North America-domiciled motor carriers is similar to FMCSA's oversight program for Mexico-domiciled motor carriers. It also is consistent with sec. 210(a) of MCSIA because it would require a safety

[2] Under existing FMCSA regulations, most of the FMCSRs do not apply to the transportation of passengers in such vehicles within a 75 air-mile radius of the driver's work reporting location, or when the carrier is not directly compensated. See 49 CFR § 390.3(f)(6). However, section 4136 of SAFETEA–LU eliminated the 75 air-mile distance limitation. Therefore, all carriers transporting passengers in CMVs designed to carry between 9 and 15 passengers will be subject to the new entrant requirements, provided such carriers are directly compensated. In a separate rulemaking, § 390.3(f)(6) will be amended to achieve consistency with this statutory change.

[3] *In the Matter of Cross-Border Trucking Services*, Secretariat File No. USA–MEX–98–2008–01, Final Panel, (February 6, 2001).

review of a new entrant non-North America-domiciled motor carrier within the first 18 months of operations. FMCSA would implement the minimum requirements provision of sec. 210(b) for these carriers through Form OP–1(NNA). Because sec. 210(a) of MCSIA requires the Secretary to issue regulations mandating safety reviews of all new entrant carriers, today's action proposes such regulations for non-North America-domiciled motor carriers. Due to FMCSA's lack of knowledge regarding the safety regimes of their home countries (as opposed to Canada and Mexico), FMCSA will use experience gained through the alternate oversight safety monitoring system to determine whether further regulatory changes may be appropriate in the future. The agency requests information on the safety systems of Central American and other non-North American countries.

Monitoring the Safety of Existing Non-North America-Domiciled Motor Carriers

FMCSA will educate, review and monitor the 64 registered non-North America-domiciled motor carriers and any additional non-North American carriers issued a USDOT Number prior to the effective date of any final rule promulgated for today's notice of proposed rulemaking. Compliance reviews will be conducted within three months on all existing non-North America-domiciled motor carriers to assess their compliance with U.S. regulations. With respect to additional non-North America-domiciled carriers that register with FMCSA before the effective date of any final rule promulgated for today's notice of proposed rulemaking, FMCSA will (1) manually review each application for USDOT Number (Form MCS–150) filed by non-North America-domiciled motor carriers to ensure they are complete and accurate; and (2) conduct a compliance review of these carriers within 6–12 months of issuing a USDOT Number registration and/or operating authority. FMCSA will monitor all non-North America-domiciled motor carriers for violations of the 11 regulations that the agency considers as minimum standards for safe operations (the same violations proposed as automatic failure factors in this NPRM) and conduct an expedited compliance review of any non-North America-domiciled motor carrier when a violation of these regulations is discovered. While the consequences of undergoing a compliance review and failing a new entrant safety audit may be somewhat different (civil penalties, a safety rating, and perhaps an operations out-of-service order resulting from a compliance review compared to proposed revocation of new entrant operating authority resulting from a new entrant safety audit), FMCSA believes conducting a compliance review is an equivalent level of oversight due to its comprehensive nature, the resultant safety rating for the carrier, and the possibility of civil penalties. In addition, non-North America-domiciled motor carriers would be subject to the same cross-border inspections as Mexico-domiciled carriers. Vehicles operated by non-North America-domiciled motor carriers will be subject to the same inspection standards as other CMVs entering or operating within the United States and will be inspected at the U.S.-Mexico international border unless displaying a valid safety decal.

Through the agency's process of gathering information on non-North America-domiciled motor carriers, another group of carriers from Central America has been identified. This group of carriers allegedly drives or flies drivers into interior States to purchase used tractor/trailers, school buses, farm equipment, and other vehicles. These vehicles are transported to Central America through the United States and Mexico without proper registration, insurance or licensing. This migration of exports from the United States is funneled primarily through one location—the Los Indios Port of Entry to Mexico.

To address this situation, FMCSA will initially educate southbound non-North America-domiciled motor carriers by providing warnings and informing them of the requirements for complying with the Federal Motor Carrier Safety Regulations. Following the educational period, FMCSA will perform periodic compliance strike force activities targeting non-registered southbound traffic at the Los Indios Port of Entry to Mexico. Non-compliant carriers will receive enforcement action ranging from roadside inspection citations to placing drivers and vehicles out of service, if warranted. FMCSA requests comments on this alternate oversight system for non-North America-domiciled motor carriers.

Proposed Registration and Safety Monitoring Process for Non-North America-Domiciled Motor Carriers Applying for a USDOT Number

Today's action proposes regulations governing the registration and safety monitoring of new entrant non-North America-domiciled motor carriers. The proposals are discussed as follows:

A. Proposed Application Process for Non-North America-Domiciled Motor Carriers
B. Proposed New Form—OP–1(NNA) for Non-North America-Domiciled Motor Carriers Requesting New Entrant Registration
C. Proposed Safety Monitoring System for Non-North America-Domiciled Motor Carriers.

A. Proposed Application Process for Non-North America-Domiciled Motor Carriers

FMCSA proposes to add a new subpart H to part 385 to address the specific requirements of the application process for all non-North America-domiciled motor carriers applying for a USDOT Number. First, proposed § 385.601 explains that subpart H would apply to any non-North America-domiciled motor carrier that wants to operate within the United States to provide transportation of property or passengers in interstate commerce.

Proposed § 385.603 requires these applicants to file—

- Proposed Form OP–1(NNA)—Application for U.S. Department of Transportation (USDOT) Registration by Non-North America-Domiciled Motor Carriers,
- Form MCS–150—Motor Carrier Identification Report, and
- A notification of the means used to designate process agents.

The application would need to be filled out in English and be complete to be considered. Information on obtaining applications is also provided.

Proposed Form OP–1(NNA) would serve the dual purpose as being an application for new entrant registration (for all non-North America-domiciled carriers) and operating authority (for for-hire carriers subject to the requirements of 49 CFR part 365). Together with the MCS–150, the OP–1(NNA) would provide a more complete picture of the carrier's operational characteristics as well as its safety compliance and other key information than could be obtained through either form alone.

FMCSA would not impose a registration fee for new entrant registration unless the applicant also requires operating authority under part 365, for which an application fee is charged. Under FMCSA's current regulations, a non-North America-domiciled for-hire carrier of non-exempt commodities must submit Form OP–1 and pay a $300 application fee. Conforming amendments are proposed to §§ 365.101 and 365.105 to clarify that a non-North America-domiciled motor carrier would request operating authority by using Form OP–1(NNA)

and consequently be subject to the application fee.

Form MCS–150 would be used to obtain a USDOT Number. Conforming amendments have been made to proposed § 390.19 to require a non-North America-domiciled motor carrier to file the MCS–150 before beginning operations within the United States and to submit an updated form every 24 months after issuance of a USDOT Number.

Form BOC–3. The non-North America-domiciled motor carrier additionally would be required to notify the agency regarding designation of process agents by either: (1) Submission in the application package of Form BOC–3—Designation of Agents-Motor Carriers, Brokers and Freight Forwarders, or (2) a letter stating that the applicant will use a process agent that will submit the Form BOC–3 electronically.

Proposed § 385.605 would require a non-North America-domiciled carrier to use only drivers who possess a valid commercial driver's license and to subject those drivers to drug and alcohol testing as required under 49 CFR part 382. Acceptable commercial driver's licenses would include: (1) A CDL, (2) Canadian commercial driver's license or (3) a Licencia de Federal de Conductor issued by Mexico. FMCSA believes the CDL and corresponding drug and alcohol testing requirements are justified because drivers' licenses issued by the various non-North American countries may not meet FMCSA standards or State licensing standards regarding commercial motor vehicles not requiring a CDL.

In proposed § 385.607, FMCSA explains how the agency would process an application for new entrant registration filed by a non-North America-domiciled motor carrier. To the extent practicable, the agency would validate the accuracy of information and certifications with data in its databases, and the databases of the governments of the country where the carrier's principal place of business is located. FMCSA would not grant new entrant registration unless the carrier passes a pre-authorization safety audit (discussed later in this section). The criteria governing the pre-authorization safety audit are fully explained in a new Appendix to part 385, subpart H, which is modeled after the pre-authorization safety audit for certain Mexico-domiciled carriers.

After completing the pre-authorization safety audit, FMCSA would issue a USDOT Number if the applicant passes the audit.[4] However, the applicant will not be authorized to, and must not, begin operating within the United States unless it has filed evidence of financial responsibility pursuant to 49 CFR part 387 and designated a process agent.

The proposed Appendix to 49 CFR part 385, subpart H, sets forth criteria governing the pre-authorization safety audit. During the pre-authorization safety audit, FMCSA would validate the accuracy of information provided in the application and determine whether the carrier has basic safety management controls necessary to ensure safe operations. FMCSA would gather information by reviewing a motor carrier's compliance with ''acute'' and ''critical'' regulations in the FMCSRs and HMRs. As stated under the discussion of the New Entrant Safety Assurance Process for U.S. and Canada-domiciled carriers, FMCSA is studying a new approach to assessing the severity of violations as part of its announced CSA 2010 initiative. This initiative may ultimately replace the ''acute and critical'' methodology described in the Appendix to part 385, subpart H.

Conforming amendments are proposed for §§ 387.7 and 387.31 to require all non-North America-domiciled motor carriers—private and for-hire—to maintain and file evidence of financial responsibility with the agency as a condition of registration. FMCSA believes conditioning registration upon receipt of evidence of financial responsibility is appropriate for all non-North America-domiciled motor carriers because the financial responsibility standards within their countries of domicile may not meet U.S. Federal and State requirements. Section 4120 of The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59, 119 Stat. 1762, August 10, 2005] created new Sections 31138(c)(4) and 31139(c) in title 49 of the U.S. Code, authorizing FMCSA to require filing of evidence of financial responsibility by private property and passenger motor carriers under its jurisdiction. However, only those private motor carriers domiciled in non-North American countries would be subject to financial responsibility filing requirements under this proposal. FMCSA plans to address the issue of extending financial responsibility requirements to U.S. and Canada-domiciled private motor carriers in a separate rulemaking.[5]

The new entrant registration would not become permanent unless the carrier successfully completes the proposed 18-month safety monitoring system proposed under new subpart I to part 385. Successful completion of the safety monitoring system includes having each CMV operated in the United States pass a North American Standard commercial motor vehicle inspection every 90 days (as indicated by issuance of a valid safety decal for each of these vehicles) and obtaining a Satisfactory safety rating as a result of the required compliance review.

Under proposed § 385.609, the applicant must notify FMCSA within 45 days of any changes or corrections to certain key information in the Form OP–1(NNA) or the Form BOC–3—the form used to designate a process agent. Failure to do so would be grounds for revocation or suspension of its new entrant registration.

B. Proposed New Form—OP–1(NNA) for Non-North America-Domiciled Motor Carriers Requesting New Entrant Registration

Proposed Form OP–1(NNA) and its instructions are based extensively on the OP–1(MX) form with certain modifications applicable to non-North America-domiciled applicants. Proposed Section I of the form solicits information about the applicant's name, address, official representative, and form of business. Proposed Section IA would require the applicant to disclose any existing operations in the United States, including whether it had previously applied for a USDOT Number. Proposed Section II solicits information about any relationships or affiliations with other entities registered with FMCSA or its predecessor agencies. This information would help FMCSA verify the applicant's domicile in a non-North American country and determine whether the applicant holds similar registration in its country of domicile. Information regarding registration with the applicant's country of domicile would enable FMCSA to confirm motor carrier safety issues with its licensing authority.

Under proposed Section III of the form, the applicant would identify the type(s) of registration requested. FMCSA would require a separate filing fee for each type of registration requested. Section 4303(f) of SAFETEA-LU

[4] Applications by for-hire carriers subject to part 365 would also be subject to a 10-day protest period. In such cases, a USDOT Number would not be issued until after the protest period has elapsed and any protests filed have been denied.

[5] Mexico-domiciled private carriers are subject to the same financial responsibility filing requirements as U.S. for-hire carriers pursuant to 49 U.S.C. 13902(g).

imposed a January 1, 2007, deadline for the agency to modify carrier registrations for non-exempt for-hire motor carriers under 49 U.S.C. chapter 139 to eliminate distinctions between common and contract carriers. Accordingly, FMCSA has removed the common and contract carrier designations from the description of types of registration under proposed Section III and modified the proposed instructions for Section III to explain which for-hire registrations require a registration fee.

Proposed Section IV notifies the applicant of financial responsibility requirements. Consistent with long-haul Mexico-domiciled new entrants, all non-North America-domiciled applicants (private and for-hire) would be required to file evidence of financial responsibility with the agency as a condition of registration. FMCSA also proposes making the cargo insurance requirement for non-North America-domiciled motor carriers consistent with what was proposed in the Unified Registration System NPRM (70 FR 28990 published May 19, 2005). The May 19, 2005, NPRM proposes that only household goods carriers must maintain and file evidence of cargo insurance with the agency. FMCSA would modify proposed Form OP–1(NNA) if the Unified Registration System final rule results in different cargo insurance requirements.

Under proposed Section V, the applicant would certify and substantiate that it has a system in place to ensure compliance with applicable requirements covering driver qualifications, hours of service, drug and alcohol testing, vehicle condition, accident monitoring, and hazardous material transportation. Substantiation would be in the form of narrative responses describing how the applicant will monitor hours of service, how it will maintain an accident register and how it will monitor accidents. FMCSA would also require that the applicant include the names of individuals in charge of its safety program and drug and alcohol testing and identify specific locations where the applicant maintains current FMCSRs. Information obtained under Section V would enable FMCSA to evaluate, upon initial application, the safety compliance program of the applicant. FMCSA would reject an application that could not offer a specific, unambiguous plan to ensure compliance.

Proposed Section VI of the form would include new registration requirements for motor carriers of household goods created under Section 4204 of SAFETEA–LU. Section 4204 amended 49 U.S.C. 13902(a) to require such an applicant to: (1) Provide evidence of participation in an arbitration program and a copy of its notice to shippers about the availability of binding arbitration; (2) identify its tariff and provide a copy of the notice of the availability of the tariff for inspection; (3) certify it has read, and is willing to comply with all U.S. Federal laws regarding consumer protection, estimating, consumers' rights and responsibilities, and options for limiting liability for loss and damage; and (4) disclose certain financial, operational and familial relationship with any other entity involved in the transportation of household goods within 3 years of the proposed date of registration.

Proposed Section VII would require the applicant to specify the scope of registration, indicating intended principal border crossing points.

Under proposed Section VIII, the applicant would be required to make specific certifications regarding compliance with laws of the United States. The applicant would need to affirm its willingness and ability to provide the proposed service and to comply with all pertinent statutory and regulatory requirements. Certifications under proposed Section VIII would remind the applicant of statutory and regulatory responsibilities which, if neglected or violated, might subject the applicant to disciplinary or corrective action by FMCSA. The applicant would need to confirm its understanding that its process agent is deemed its official representative within the United States for receipt of filings and notices relating to the administrative and judicial process in connection with enforcement of Federal statutes and regulations. Finally, the applicant would need to certify that it is not currently disqualified from operating a commercial motor vehicle in the United States.

Proposed Section IX, the final section of the form, includes the applicant's oath attesting to the accuracy and truthfulness of application responses and certification of compliance with certain U.S. Federal and State laws regarding distribution or possession of controlled substances.

C. Proposed Safety Monitoring System for Non-North America-Domiciled Motor Carriers

Today's action proposes a new subpart I to part 385 covering the proposed safety monitoring system for non-North America-domiciled new entrants.

Proposed § 385.701 defines the following terms used in new subpart I to part 385:

(1) Compliance review has the same meaning as in 49 CFR § 385.3.

(2) New entrant registration is the provisional registration under 49 CFR part 385, subpart H 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 subpart I.

(3) 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.

Proposed § 385.703 describes elements of the safety monitoring system for non-North America-domiciled new entrant motor carriers. The safety monitoring system would include roadside monitoring and a compliance review within 18 months of receiving a USDOT Number. Additionally, the non-North America-domiciled carrier would be required—throughout the 18-month safety monitoring period and for three years after its new entrant registration becomes permanent—to display on each CMV in its fleet that is operated within the United States, a valid safety inspection decal. The safety inspection decal would only be valid for three months.

Under proposed § 385.705, a non-North America-domiciled motor carrier found in violation of the seven listed serious violations or infractions would be subject to expedited enforcement action. Such actions would include an expedited compliance review or, in the alternative, a demand that the carrier demonstrate in writing that it has taken immediate corrective action. The proposed infractions parallel those proposed for U.S. and Canada-domiciled motor carriers and those already applicable to Mexico-domiciled carriers. The section clarifies what constitutes a valid commercial driver's license. The type of action taken by FMCSA in response to any violations would depend upon the specific circumstances of the violations.

Proposed § 385.705(b) warns that failure to respond to a request for a written response demonstrating corrective action within 30 days would result in suspension of new entrant registration until the required showing of corrective action is made.

Proposed § 385.705(c) emphasizes that a carrier that successfully responds to a demand for corrective action under this section still would need to undergo a compliance review during the 18-month safety monitoring period if it had not already done so.

Under proposed § 385.707, FMCSA explains potential outcomes of the compliance review—a Satisfactory, Conditional, or Unsatisfactory rating—and FMCSA follow-up actions in response to each rating. The proposed section would require the compliance review to be conducted consistent with existing FMCSA safety fitness evaluation procedures under 49 CFR part 385, Appendix B. These are the same criteria in use for U.S., Canada and Mexico-domiciled carriers.

FMCSA sets forth under proposed § 385.709 the specific time frames for suspension and revocation of new entrant registration. We believe the proposed procedures strike an appropriate balance between the need to protect the public from potentially unsafe carriers and preservation of the carrier's due process rights.

Proposed § 385.711 sets forth procedures for requesting administrative review of the agency's safety rating or its decision to suspend or revoke new entrant registration. The request must explain the error it believes FMCSA committed and a list of all factual and procedural issues in dispute. In addition, the carrier must include any information or documents that support its argument. Following the administrative review, which would be conducted by the FMCSA Associate Administrator for Enforcement and Program Delivery, the agency would notify the carrier of its decision. This decision would constitute the agency's final action. Administrative review would be completed in no more than 10 days after the request is received.

Under proposed § 385.713, a non-North America-domiciled carrier whose registration has been revoked would be prohibited from re-applying for new entrant registration for at least 30 days after the date of revocation. When reapplying, the non-North America-domiciled motor carrier again would be required to pass a pre-authorization safety audit. The carrier would need to demonstrate to the FMCSA's satisfaction that it has corrected the deficiencies that resulted in revocation of its registration and that it otherwise has effectively functioning basic safety management systems in place. If the application is approved, the carrier's USDOT Number—linked to its previous safety record—would be reactivated; a new USDOT Number would not be issued. In this way, the agency could maintain a complete safety record of the non-North America-domiciled motor carrier.

Proposed § 385.715 provides that the safety monitoring period for non-North America-domiciled motor carriers would last for at least 18 months from the date it was issued a USDOT Number.[6] If, at the conclusion of the 18-month safety monitoring period, the carrier has received a Satisfactory safety rating and is not currently under a notice from FMCSA to remedy deficiencies in its basic safety management practices, the carrier's registration would become permanent.

If the carrier is under a notice to remedy deficiencies in its basic safety management practices, the safety monitoring period would be extended—and its new entrant designation would continue—until FMCSA determines the carrier is complying with the Federal safety regulations or revokes its registration under § 385.709.

If FMCSA is unable to conduct a compliance review within the 18-month period, proposed § 385.715(c) would extend the safety monitoring period until such time as the agency completes and evaluates a review.

Proposed § 385.717 emphasizes that the non-North America-domiciled motor carrier also would be subject to the same general safety fitness procedures in 49 CFR part 385, subpart A, and to compliance and enforcement procedures applicable to all carriers regulated by the FMCSA.

Proposed § 390.19 explains filing procedures for the MCS–150 in greater detail and would subject non-North America-domiciled motor carriers to the biennial update requirement. Additionally, § 390.19(h)(2) proposes a technical correction documenting the existing requirement for a Mexico-domiciled long-haul motor carrier to successfully complete a pre-authorization safety audit prior to being issued a USDOT Number.

Discussion of Comments

FMCSA received 29 responses to the IFR from 19 commenters. The commenters were five trade associations, four safety consultants, two public interest groups, three private citizens, a State police department, a safety enforcement organization, an occupational health private practice, a union, and a professional association. Five commenters made multiple submissions.

General Comments. In general, the comments were supportive of the new entrant requirements in the IFR. The American Trucking Associations (ATA), American Society of Safety Engineers (ASSE), Commercial Vehicle Safety Alliance (CVSA), Consolidated Safety Systems (CSS), Daecher Consulting Group, Inc. (Daecher), the Independent Truckers and Drivers Association (ITDA), the National Private Truck Council (NPTC), the Indiana State Police, Schroeder & Associates, the International Brotherhood of Teamsters (IBT) and Tran Services generally supported the IFR and offered comments to improve the rulemaking. The Canadian Trucking Alliance (CTA) supported the IFR to the extent it applies equally to Canada- and U.S.-domiciled carriers. CVSA stated the SA—if properly implemented and accompanied by CDL reforms, technology and increased traffic enforcement—will have a dramatic and measurable impact on safety. CVSA submitted a petition to delay the implementation of the New Entrant Safety Assurance Process until States receive adequate funding and after certain procedural issues relating to the process are resolved.

Several commenters opposed the IFR for various reasons. Advocates for Highway and Automobile Safety (AHAS) and Public Citizen opposed the agency's decision to publish an IFR instead of a notice of proposed rulemaking. Both urged the agency to permit full public involvement in the New Entrant Safety Assurance Process rulemaking. AHAS indicated the quality of FMCSA regulatory drafting and publication would be improved by providing sufficient documentation of agency reasoning and decisions in its final regulations. Public Citizen stated the New Entrant Safety Assurance Process is rooted in self-reporting and devoid of meaningful oversight. According to Public Citizen, only an extremely negligent new entrant would be denied operating authority under this process. Public Citizen urged the agency to:

- Permit full public involvement in the New Entrant rulemaking.
- Eliminate from the process all requirements for uncorroborated self-reporting.
- Make a proficiency examination, and third-party, in-person verification of regulatory compliance and knowledge, prerequisites for granting operating authority.
- Develop a plan that assures the SA will be conducted within an 18-month time period.

[6] If a carrier's USDOT Number was revoked and reinstated under the provisions of proposed § 385.713, the 18-month period would run from the date of reinstatement.

• Establish stricter penalties for noncompliant motor carriers.

The Transportation Lawyers Association (TLA) commented the IFR fails to meet the statutory requirement of ensuring a carrier is knowledgeable about its safety responsibilities prior to commencing operations. ''FMCSA proposes nothing in this proceeding that will reduce the 'safety learning curve' before a new carrier begins operating.'' TLA contended that safety certifications and educational and technical assistance materials have been used by the agency for many years and have already proven inadequate.

FMCSA Response: In a letter dated April 11, 2003, the agency denied the CVSA petition to delay implementation of the New Entrant Safety Assurance Process until January 2004 and addressed CVSA concerns, including those related to adequate State funding for implementing the new entrant process, adequate training for State and Federal personnel charged with conducting safety audits, and recognition of Canadian and current State new entrant programs. A copy of the letter is in the docket to this rule.

In developing this proposal, FMCSA fully considered all comments to the May 2002 IFR and has adopted some of the recommendations. In response to complaints about self-certifications, this NPRM would eliminate the Form MCS–150A because safety audits have confirmed carrier certifications on the MCS–150A and findings at the carrier's place of business are not always consistent (See the ''Form MCS–150A'' subheading). Later in this section under applicable subject headings, the agency addresses specific concerns from AHAS, TLA and Public Citizen regarding the use of proficiency examinations (see the ''Proficiency Examinations'' subheading) and plans to improve the educational and technical assistance (ETA) materials by including information on how to comply with the regulations (see the ''ETA Materials'' subheading). The rule provides additional details about the scoring methodology and how the agency intends to strengthen the New Entrant Safety Assurance Process under the previous section titled ''Discussion of the Proposed Rule'' under the ''Strengthening the Safety Audit'' subheading.

Timing of the SA and 18-month monitoring period. Several commenters took issue with the timing of the SA and the 18-month monitoring period. ASSE stated that the 18-month period is too long, Daecher contended that a 6-month period would be adequate, and Schroeder & Associates believed the best time to conduct an audit is within 6 to 9 months of beginning operations. Only CSS agreed that an 18-month period may be necessary to effectively evaluate a carrier from a regulatory perspective because it affords the carrier an opportunity to execute certain requirements. The Indiana State Police recommended having a certified FMCSA representative conduct the SA within 30 days of issuance of the USDOT Number and CVSA advocated a face-to-face meeting with the new entrant at the time of the application.

FMCSA Response: As noted above, 49 U.S.C. 31144(g)(1) requires FMCSA to establish an 18-month period within which new entrant safety reviews must be conducted. Furthermore, as a practical matter, FMCSA believes carriers will not have sufficient records to allow the agency to review and evaluate the adequacy of a carrier's basic safety management controls until the carrier has been operating for approximately 3 months.

Scope of the Audit. Some commenters took issue with the SA itself and recommended broadening the scope of the audit to address more than just compliance issues. ATA recommended including such topics as employee hiring, bonus and incentive programs, employee training, quality control and safety meetings. CVSA recommended including a CVSA Level 1 or Level 5 inspection on as many of the carrier's vehicles as possible.

FMCSA Response: FMCSA proposes broadening the scope of the audit to include additional areas over which it has jurisdiction, such as operating authority, and household goods and ADA regulatory compliance. However, as noted previously, only safety-related questions would count toward the pass/fail determination. The agency also proposes to strengthen the audit by making specific violations, such as operating without a required CDL, result in automatic failure of the audit. Currently, the SA involves a Level 1 or 5 inspection of a sample of the carrier's vehicles. If there are insufficient vehicles on site at the time of the audit, the auditor completes the audit and documents why he/she was unable to conduct the inspections.

Safety Audit and Corrective Actions. Public Citizen opposed having a new entrant self-certify regarding corrective action for deficiencies revealed during the SA and asserted FMCSA should require in-person verification of corrective action. The Teamsters urged the agency to immediately suspend any new entrant found to be lacking basic safety management controls during the SA until it has demonstrated corrective action to the satisfaction of FMCSA. The Indiana State Police urged FMCSA to place both the vehicle and driver out-of-service until corrective action is taken if a carrier is found to be operating without USDOT new entrant registration.

FMCSA Response: The current regulations under § 385.319 provide that FMCSA must notify a carrier of any inadequacies found during an SA and advise the carrier what actions it must take to remedy the inadequacies to avoid having its registration revoked. The carrier must submit written evidence of corrections taken, and FMCSA reserves the right to determine whether they are adequate. FMCSA is required to provide the carrier with official notice of the deficiencies and the opportunity to correct them. The carrier must respond with more than a self-certifying statement. For example, acceptable demonstration of corrective action for a carrier found to not have a drug and alcohol testing program would be evidence documenting membership in a consortium. Under § 385.325, if a carrier does not demonstrate corrective action acceptable to FMCSA, the agency would revoke its new entrant registration and issue an out-of-service order. If the carrier is found to be operating a CMV in violation of an out-of-service order, under § 385.331, it might be fined up to $11,000 per violation in accordance with 49 U.S.C. 521(b)(2)(A) and 49 CFR part 386, Appendix B (a)(3).

Form MCS–150A. Several commenters encouraged FMCSA to eliminate the MCS–150A. ATA contended that many of the certification statements on the form are already collected on the registration application and suggested we retain and incorporate certification statements 18 and 19 into the MCS–150. ITDA urged FMCSA to require each new applicant to provide a written plan demonstrating the applicant's knowledge of motor carrier safety regulations and its ability to safely operate a trucking business. Public Citizen regarded the certifications on the MCS–150A as uncorroborated declarations by the applicant.

FMCSA Response: FMCSA agrees the MCS–150A is not producing the intended results. FMCSA's review of the New Entrant Safety Assurance Process has verified many new entrants are falsely certifying to having safety management controls when they are not actually in place. The agency proposes to eliminate Form MCS–150A.

Proficiency Examination. Several commenters opposed FMCSA's decision to not require a proficiency examination for new entrants. AHAS argued the IFR

does not adequately consider the use of a proficiency examination to measure new entrant safety. CSS supported the use of a proficiency examination as a component of the New Entrant Safety Assurance Process and offered to discuss its current program with the Department of Defense (DOD) and associated procedures with FMCSA. CVSA stated that in addition to using enhanced, comprehensive educational and technical assistance materials, FMCSA should administer a proficiency examination to measure a new entrant's knowledge of Federal motor carrier safety standards. According to CVSA, a new entrant's self-certification alone is insufficient proof of adequate systems to assure compliance with the FMCSRs.

Daecher asserted that giving ETA materials to a carrier does not ensure the carrier will read and understand the information. It encouraged FMCSA to use a proficiency examination to ensure the carrier has knowledge of the regulations and related safety information. Public Citizen urged the agency to make a proficiency examination a prerequisite for receiving operating authority. According to Public Citizen, the examination would be a far more comprehensive evaluation of regulatory knowledge than certifications made on the MCS–150A.

FMCSA Response: The agency believes the planned enhancements to the ETA materials, as discussed in greater detail below, would provide most carriers with sufficient understanding of applicable regulations and assistance on how to comply with the applicable FMCSRs and HMRs and that a proficiency examination is not necessary. However, the agency recognizes knowledge alone does not ensure a carrier is in satisfactory compliance with the regulations. Only a review of the carrier's records and systems could demonstrate such compliance.

ETA Materials. Several commenters addressed the subject of educational and technical materials for new entrants. AHAS and ATA complained FMCSA has not provided an opportunity for public review and comment on those educational and technical assistance materials new entrant carriers will receive. They suggested the agency place the ETA materials in the rulemaking docket or direct readers to where on the agency web site they can be obtained. CTA recommended revising the ETA materials to generally and clearly acknowledge distinctions between U.S. and Canadian rules. According to CTA, this would warn new entrants that rules can, and do, vary depending on the jurisdiction in which one operates. ITDA urged FMCSA to establish a process that encourages a new entrant to seek information and guidance and makes that information and guidance easily accessible. A private citizen recommended classroom instruction for new entrants.

FMCSA Response: FMCSA agrees the ETA materials need to be updated to better inform new entrants about regulatory requirements and how to comply fully with the requirements. The ETA materials are an integral component of the entire New Entrant Safety Assurance Process. One of the reasons stated in the March 2002 IFR for not initiating a proficiency exam was FMCSA's belief that the educational and technical assistance provided to new entrants would ensure they understood the applicable safety regulations. However, it is apparent many new entrants are not fully compliant and one of the reasons is because the ETA materials are not as comprehensive as they need to be. FMCSA plans to review all ETA materials provided to new entrants and improve the quality, content, and format of the material.

The agency believes enhanced ETA materials, including a new entrant safety assurance compact disc, would substantially increase a new entrant's awareness of carrier responsibilities before beginning operations and would, to a great extent, make them proficient in those requirements. FMCSA further believes the anticipated benefits of the enhanced ETA materials more than justify associated agency costs. FMCSA has determined the contents of these materials are not subject to notice and comment because they do not establish standards or procedures, but will place a copy of the updated ETA materials in the docket to this rule for inspection upon completion.

Safety Monitoring During the 18-month Period. ATA requested specific details about how the agency intends to monitor new entrants during the 18-month period. Section 385.307(a) states: ''[t]he new entrant's roadside safety performance will be closely monitored to ensure the new entrant has basic safety management controls that are operating effectively.'' ATA believed this is insufficient information concerning how the agency will monitor new entrants during the 18-month period. CSS and CVSA supported development of a unique registration and USDOT Number to identify new entrants that have not yet passed the SA.

FMCSA Response: FMCSA would continue to monitor a new entrant's on-road performance using agency information systems and roadside inspections. Although the agency does not identify a new entrant that has not yet passed an SA by assigning a unique USDOT Number, FMCSA is able to target such new entrants for an SA or roadside inspection using information systems such as SafeStat, the Inspection Selection System (ISS) and the Motor Carrier Management Information System (MCMIS).

Safety Audit. Other commenters stated FMCSA should disclose the SA Evaluation Criteria, Forms, and Monitoring Procedures. Both ATA and AHAS requested the SA evaluation criteria be placed in the rulemaking docket for review and comment, and complained that FMCSA has not disclosed the criteria by which a new entrant will be evaluated.

FMCSA Response: Appendix A to 49 CFR part 385 explains the SA evaluation criteria, including the source of the data and how FMCSA determines whether a new entrant has basic safety management controls.

Reciprocity. CTA urged FMCSA to exempt from the SA audit requirement Canada-domiciled new entrant carriers that have undergone a provincial facility audit during the 18-month monitoring period.

FMCSA Response: Although FMCSA is engaged in ongoing discussion with its Canadian partners concerning the New Entrant Safety Assurance Process, today's rulemaking is not proposing an exemption for a Canada-domiciled new entrant carrier that has passed a provincial facility audit for several reasons. First, 49 U.S.C. 31144(g)(1) specifies the regulation must require each new entrant to undergo the safety review (audit) within the first 18 months of beginning operations. The statutory language provides no authority to exempt new entrants, including Canada-domiciled carriers that have successfully undergone a provincial facility audit, from the SA. Furthermore, the Canadian provincial facility audit fails to address all of the elements of the new entrant SA. For example, Canada does not require a carrier to have a controlled substance and alcohol testing program for its drivers. FMCSA could verify a Canada-domiciled carrier is aware of, and in compliance with, the agency's controlled substances and alcohol testing requirements only by conducting a new entrant SA under part 385. Moreover, § 31148(b) requires the SA to be conducted by: (1) A motor carrier safety auditor certified under FMCSA regulations or (2) a Federal or State employee who on the date of the enactment of § 31148(b) was qualified to perform such an audit or review.

Canadian provincial officials may not meet these qualifications.

Alternate Locations for Audits. The IFR also requested comments on the advisability of conducting some SAs at alternate locations. ATA agreed the use of locations other than the carrier's place of business for the SA may be beneficial, but recommended that alternate location scheduling remain optional and used at the discretion of the motor carrier scheduled for the audit. CVSA commented that the primary value of the SA is the personalized evaluation and education provided by the safety professional and did not believe an adequate audit could be conducted in a group setting. CVSA supported conducting the SA on-site at the new entrant's place of business. CSS also opposed the use of alternate locations for the SA. Although acknowledging there are obvious economies associated with this approach, CSS contended that the effectiveness and desired results would be significantly reduced, particularly if the primary focus of the SA is to assess the new entrant's safety management controls. Public Citizen acknowledged that conducting multiple audits simultaneously might expedite the number of audits conducted and ease agency backlog. However, Public Citizen contends a new entrant may be reluctant to fully participate in the process for fear of exposing potential vulnerabilities to its competitors. Another commenter stated that effective group audits are not possible because carrier operational types are so varied. Tran Services applauded the use of alternate locations to simultaneously provide educational and technical assistance to multiple new entrant carriers, but opposed conducting SAs in such a setting. The new entrant would need to bring along too many records, and FMCSA may be unable to provide an individual carrier the individual attention necessary to determine if the carrier is in compliance.

FMCSA Response: FMCSA has carefully considered the feasibility of conducting group audits. The agency believes group audits may present an excellent opportunity to simultaneously provide many new entrants with educational and technical assistance in a classroom setting while auditing the systems and records of individual new entrants in a private, one-on-one setting. However, experience has shown group audits are only beneficial in select situations, depending on many factors including, but not limited to, the number of new entrants within the given geographical area. For this reason, FMCSA conducts group audits only in those areas where practicable.

Currently, an SA provides education and technical assistance to a motor carrier that has recently begun operations. In addition, the SA provides FMCSA with the opportunity to ensure the carrier's compliance with applicable Federal safety regulations. Normally, an SA would take from 2 to 4 hours to complete. Unlike the in-depth compliance review for motor carriers that are not in the new entrant program, the SA focuses on education. By conducting these audits at the carrier's place of business rather than in a classroom setting, auditors gain a broader perspective of the company's structure and level of compliance with Federal safety regulations.

Use of Private Contractors to Conduct Safety Audits. The IFR requested comments on whether private contractors certified by FMCSA should conduct SAs. AHAS, ASSE, ATA, CVSA, CSS, Daecher, The Indiana State Police, Public Citizen, Schroeder & Associates, and Tran Services supported the use of qualified, private contractors to conduct SAs. AHAS asserted that use of private contractors would ''provide an opportunity to boost the annual numbers and percentages of motor carriers that are inspected and audited for safety adequacy.'' AHAS acknowledged that substantial safeguards must be built in order to avoid the possibility of fraud and other abuses.

According to ASSE, a certified safety professional (CSP) with appropriate transportation experience would be well qualified to perform the audits without further designation. ASSE recommended the final rule allow the use of private auditors who must be accredited by either the Council on Engineering and Scientific Specialties Board or the National Commission on Certifying Agency (NCCA), two nationally recognized independent accrediting bodies overseeing professional safety designations for safety, health and environmental professionals who are qualified to perform audits such as the new entrant SA.

ATA recommended that private contractors receive the same training as Federal and State investigators and use identical audit and data collection techniques. ATA asserted that industry support of the use of private contractors is contingent upon strict oversight of their work. ATA urged FMCSA to address the use of private contractors for SAs in a notice outlining proposed contractor training, auditing procedures and software, and how the Government will measure program effectiveness.

CSS believed that its own experiences in conducting inspections for DOD support its position that ''there are many well trained and qualified transportation safety professionals in the private sector.''

Indiana State Police supported the use of FMCSA-certified private contractors to conduct abbreviated SAs before the carrier begins operations. Indiana asserted these contractors could provide the basic educational and technical guidance in a classroom setting when the USDOT Number would be granted. Indiana stated the private contractor could bill the new entrant for these services, resulting in a cost savings to FMCSA.

Schroeder & Associates supported the use of private contractors and suggested adopting the expertise levels described in FMCSA's March 19, 2002, IFR titled *Certification of Safety Auditors, Safety Investigators, and Safety Inspectors* (67 FR 12775) as the standard for such contractors. Schroeder suggested that FMCSA certify individuals, not companies, for conducting the SAs. They also suggested that the agency could model the certification for private contractors after the former Interstate Commerce Commission Practitioner certification process, including minimum education and employment standards and a comprehensive 8-hour essay examination. Schroeder further recommended that the FMCSA SA course be accessible to non-government personnel with a waiver for those who successfully test out of the course. Lastly, they recommended FMCSA require private contractors to conduct a minimum of 12 inspections annually to maintain certification.

Tran Services asserted Federal, State and private contractors should be identically certified to ensure uniformity. Tran Services, and other private companies, already provide safety services, including ''mock DOT audits'' to help companies achieve and maintain compliance. ITDA opposed the use of private contractor inspectors, and stated that only Federal and State inspectors should conduct the SA at this time. ITDA believes that only after the New Entrant Safety Assurance Process is fully implemented and there is sufficient experience with the process should FMCSA consider the use of private contractor inspectors.

The IBT interpreted sec. 211 of MCSIA as prohibiting the use of a private contractor to grant operating authority to a carrier and that the SA falls within that prohibition. IBT stated the SA is an integral part of the

procedure for obtaining permanent operating authority, and is a precondition for such authority. IBT contended that SAs are so closely linked with the grant of permanent operating authority that allowing private contractors to conduct SAs would be a *de facto* impermissible delegation of authority.

Due to the anticipated strain on Federal and State enforcement resources, CVSA recommended the agency use private contractors to conduct SAs. CVSA argued, given their limited resources, Federal and State officials should not weaken efforts to conduct compliance reviews, roadside inspections, and traffic enforcement to implement the New Entrant Safety Assurance Process. CVSA made the following specific recommendations regarding the use of private contractors:

- Use only properly trained and certified individuals;
- Exclude the results of private contractor audits when determining a carrier's safety rating or for enforcement purposes; and
- Prohibit private contractors from conducting roadside inspections.

CVSA also recommended FMCSA conduct a multi-State, private contractor pilot program modeled after Canada's third-party auditor pilot program.

Daecher believed FMCSA should exclusively use qualified private auditors to conduct the SAs because it is a more easily managed and cost effective option. According to Daecher, current FMCSA resources are insufficient to handle the anticipated number of new entrants; opting not to use private contractors would be detrimental to the New Entrant Safety Assurance Process and prohibit review of each new entrant within the 18-month monitoring period. Daecher recommended establishing a certification program for private contractors to conduct both safety audits and compliance reviews.

FMCSA Response: Annually, approximately 48,000 motor carriers register with FMCSA to become new entrants. Federal and State compliance officers are able to conduct SAs on many of these carriers, but not all of them. To increase the number of new entrants inspected and monitored for safety compliance under the New Entrant Safety Assurance Process, FMCSA has been using private contractors to conduct safety audits since January 2004.

FMCSA has built into its contracts with private contractors effective safeguards against fraud and other abuses. The contractors are required to follow the same policies and procedures followed by Federal and State safety auditors. In addition, FMCSA closely monitors the activities of private contractors by obtaining monthly activity reports and reviewing their internal administrative procedures.

FMCSA is requiring all individuals performing a privately contracted safety audit to be certified following the same guidelines applicable to Federal and State safety auditors. They must meet the same minimum qualifications as Federal and State safety auditors, including certain education and experience requirements, as well as testing through the FMCSA International Training Division located in Arlington, VA. Private contractors must also pass the same proficiency exams given to Federal and State safety auditors and renew their certification annually. The maintenance of certification requirement currently includes performing a minimum of 24 SAs each year.

Completed SAs performed by private contractors receive the same scrutiny as those performed by Federal and State auditors. Although private contractors perform SAs, the results of any audit are not final until reviewed by FMCSA, thus ensuring Federal oversight of the program.

Since the SA does not result in a safety rating for the motor carrier being audited, private contractor SAs are not used to determine a carrier's safety rating. A safety rating is only issued upon completion of a compliance review. Compliance reviews are only conducted by Federal or State personnel and cannot be performed by a private contractor.

FMCSA agrees that private industry offers many trained and qualified individuals who can be utilized to ensure public safety. The agency acknowledges the strain brought to bear upon Federal and State resources due to the large number of incoming new entrant motor carriers annually registering with FMCSA and hopes to mitigate the situation by continuing to use private contractors.

Rulemaking Analyses and Notices

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

FMCSA has preliminarily determined this proposed rule is a significant regulatory action within the meaning of Executive Order 12866 and the U.S. Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979). While the costs of this NPRM would not exceed the $100 million annual threshold as defined in Executive Order 12866, FMCSA believes the subject of new entrant motor carrier requirements generates considerable public interest and therefore is significant. FMCSA has analyzed the costs and benefits, as discussed below, and has preliminarily determined this proposed rule would not be economically significant. This NPRM has been reviewed by the Office of Management and Budget (OMB).

A number of studies, some of which were sponsored by FMCSA or its predecessor agency, have evaluated the safety experience of new entrants. While the studies differ in emphasis and some particulars, they all demonstrate new entrants have higher crash rates than more established carriers and are less likely to comply with Federal regulations.

As explained previously, this rulemaking makes a number of revisions to how the agency monitors and evaluates new entrant motor carriers operating in the United States, and how these carriers apply for authority. The rulemaking also establishes procedures for the oversight of non-North American motor carriers. Only a very small number of non-North American carriers are currently operating in the United States, and we do not expect this number to grow appreciably in the future.

OMB guidance states that the agency's analyses should ''focus on benefits and costs that accrue to citizens and residents of the United States.'' [7] The analysis of costs is based on the total number of new entrants registering with FMCSA. This rule would impose costs on a small number of Canada-domiciled and non-North America-domiciled motor carriers operating in the United States. The difference between including and excluding non-North America-domiciled carriers is imperceptible after rounding. To obtain cost estimates for the U.S.-domiciled motor carriers, one should reduce the estimates presented by 3.5 percent. Most of the foreign carriers involved are domiciled in Canada.

The costs associated with the FMCSRs, HMRs, or the New Entrant Safety Assurance Process IFR should not be counted as a cost of this NPRM because these costs were already counted when the various measures were first promulgated. Thus, there are no societal costs associated with the proposed changes. We are not proposing any substantive changes to the

[7] OMB, Circular A–4, September 2003, page 15. Available online at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf.*

operational regulatory requirements; motor carriers, including new entrants, are already required to comply with these regulations. Therefore, this proposal would not place any new substantive burdens upon new entrants or any other entity. Rather, as explained above, the proposed changes would make the enforcement of existing requirements more rigorous. Any motor carrier already complying with the FMCSRs and HMRs would not face any change in practices. This proposal would include modest administrative costs for carriers to become aware of the new consequences for failing to comply with existing requirements.

Between 1995 and 2002, an average of 47,535 [8] new entrants began operations annually. We assumed this number would remain constant. As noted above, this NPRM would not impose any new operational requirements on new entrants. The only truly new cost involved would be the cost to motor carriers of becoming aware of new requirements when this NPRM is promulgated as a final rule. We assumed it would take an extra hour for the appropriate motor carrier official of each new entrant to study the new requirements and discern how to best comply with them. Using Bureau of Labor Statistics [9] (BLS) estimates for hourly wages for Transportation Managers of $33.50 and 31.5 percent employment benefits, we obtain an hourly compensation of $44.05. Assuming learning the new audit consequences takes an hour per firm, we estimate a cost of $2.1 million annually.

As noted above, this NPRM proposes eliminating the Form MCS–150A because of its ineffectiveness in ensuring an understanding of required basic safety management controls. We assume the elimination of this form would save new entrants 10 minutes each. Using a clerical wage of $14 per hour, this provision would save new entrants $111,000 annually. The net administrative cost of this proposed rule to new entrants is thus $2.0 million per year.

Alternative Analysis

We do not believe this proposed rule would impose significant costs or benefits other than those intended and counted in the IFR. As explained previously, this proposed rule would not introduce any new requirements. All carriers, including new entrants, already are required to comply with the FMCSRs and applicable HMRs, including all the standards that would be checked during the safety audit. Therefore, the costs and benefits of the audit should not be ascribed to this NPRM; these costs and benefits were included when these regulations were initially promulgated, so including them now would be double counting.

However, we did attempt to measure these costs and benefits. While they are not properly part of this proposed rule, the information may prove useful for decision makers. This section therefore provides an alternate description of the impact of this proposal.

We calculated the number of crashes that must be avoided to make this proposed rule cost beneficial, meaning the benefits would exceed the costs. We first converted crashes into dollar values to allow for comparison with the cost figures, based on work by Zaloshnja *et al.* They estimated the cost of an average police-reported crash involving trucks with a gross vehicle weight rating of more than 10,000 pounds was $59,153 in 2000 dollars.[10] FMCSA adjusted this figure to 2004 dollars based on the Gross Domestic Product Deflator, which yields a value of $65,183.

New entrant carriers are involved in more crashes than more experienced carriers. According to a 2000 Volpe study, new entrants (defined as motor carriers registered for less than 2 years) were more frequently assessed to have Safety Evaluation Area scores in the worst quartile.[11] In fact, new entrants were about twice as likely to have an Accident SEA score of 75 or above. Therefore, Volpe concludes, SafeStat results show new entrants to have significantly lower levels of safety compliance and performance. The overall motor carrier crash rate from MCMIS is 0.75 crashes per million vehicle miles of travel (MVMT), while the new entrant crash rate is 25 percent higher, 0.94 per MVMT.

The net cost of this proposed rule is $2.0 million per year. For this proposed rule to be cost beneficial, it would have to deter 31 crashes ($2.0 million/ $65,183), or one fatal crash.[12]

Alternative Costs Associated With Proposed Changes to Safety Audit Scoring System

As of October 2004, 33,787 new entrant SAs had been completed. Only 253 of new entrants audited under the program failed the SA under the existing scoring criteria, which is only 0.75 percent of those receiving an SA.

Had the list of proposed automatic failure criteria been incorporated into our regulations at the time these audits were conducted, 19,559 of the audited carriers would have failed, almost 58 percent of those audited. Therefore, the proposed scoring change would have resulted in an additional 19,306 new entrant carriers failing the audit (19,559 − 253 = 19,306). On an annual basis, this translates to 27,162 carriers failing the audit under the new criteria if there is no change in carrier behavior.[13]

However, it is unlikely the number of carriers that would fail the audit or whose new entrant authority would be revoked would be this large. The cost of not correcting violations of the 11 automatic failure provisions is currently low. New entrants cited for one of these violations are not placed out of service. In fact, it is possible for new entrants to continue operating for some time before remedying their violations. This proposal would dramatically raise the cost of failing to comply with these provisions, with violators possibly losing their authority and being placed out of business. Raising the cost of not correcting a violation, therefore, would encourage new entrants to comply with the regulatory requirements, either before they are audited or after they fail the audit.

We believe new entrants would be sensitive to the increased cost of violations and would respond accordingly. We assume half of the new entrants that would otherwise be put out of service instead would adjust their practices and behavior to comply with the regulations. We assume of the 27,162 new entrants failing one or more of the automatic failure criteria, 13,581 would be placed out of service, and 13,581 would make whatever changes are necessary to continue operations. These costs are now discussed in turn.

Alternative Cost of Replacing New Entrants [14]

As discussed in footnote 14, we assume that non-compliant carriers will

[8] These estimates were derived from data contained in the Motor Carrier Management Information System (MCMIS).

[9] See the Bureau of Labor Statistics Web site *http://www.bls.gov/oes/2003/may/oes_11Ma.htm* dated May 2003.

[10] Based on Revised Costs of Large Truck- and Bus-Involved Crashes, by Eduard Zaloshnja, Ted Miller, and Rebecca Spicer (National Technical Information Service, Springfield, VA), 2002.

[11] Volpe Center, Analysis of New Entrant Motor Carriers Safety Performance and Compliance Using SafeStat, March 2000, pp. 3–2, 3–7, and 5–4.

[12] For economic evaluations in the Department of Transportation, the value of a statistical life is to be $3.0 million. However, since there cannot be fractional fatal crashes, we round up to one.

[13] (19,559 − 253) * (47,535/33,787) = 27,162.

[14] Not all non-compliant carriers will be replaced by other new entrants. It is possible that carriers already in operation will absorb freight or passengers previously transported by firms placed out of service. Although it is possible existing

be replaced by other new entrants. These replacement new entrants could purchase equipment from out-of-service carriers, so the cost of equipment and facilities is a transfer between entities. The absolute costs of starting these new firms would include fees for application, licensing, registration, surveying potential markets, advertisements, training, and transactions costs for transferring assets. Our all-inclusive estimate for these costs is $4,000 per carrier replaced in this fashion. Therefore, replacing the 13,581 carriers that would be placed out of service would yield a total cost of $54.3 million annually.

Alternative Cost for New Entrants That Adjust

As discussed above, the costs and benefits of complying with the FMCSRs and HMRs (if applicable) are not attributable to this proposal since we are not proposing to change existing operational requirements. However, this evaluation also includes an estimate of costs and benefits assuming these were new requirements. These estimates are presented to assist decision makers in considering the impacts of this proposal. While these estimates do not represent the real costs of this proposal, they illustrate possible impacts of this proposal.

New entrants that change their practices and remain in service would also face some costs. The cost of coming into compliance would vary, depending on a number of factors, including the size of the new entrant and the specific regulation (or regulations) violated. We conservatively assume the average cost for carriers failing one of the 11 automatic failure criteria but desiring to continue operations would be $1,000. Therefore, the total cost for these 13,581 new entrants would be approximately $13.6 million.

The maximum cost of this proposed rule is estimated at approximately $67.9 million per year ($54.3 million + $13.6 million). The ten-year undiscounted cost would be almost $679 million, while the discounted cost would be $477 million.

Alternative Benefits

The theoretical benefits accrue from removing the least safe carriers from the road and replacing them with safer carriers. This change would result in a difference in expected crashes. Using the Compliance Review Impact Assessment Model, we assumed each failing new entrant removed and replaced would have had a crash rate of 1.13 crashes per million vehicle miles traveled (MVMT), which is 50 percent higher than the crash rate for established motor carriers. According to MCMIS, new entrants average 400,000 VMT per year. We assume freight that had been carried by closed carriers would be carried by replacement new entrants. According to MCMIS, new entrants have an overall crash rate of 0.94 crashes per MVMT. Therefore, closing unsafe carriers results in a 17 percent reduction in the per million mile crash rate ((1.13–0.94)/1.13).

We estimate new entrants eventually placed out of service or required to modify their operations are currently involved in approximately 11,200 baseline crashes annually. This is the sum of two calculations. For carriers that would be placed out of service, the calculation is the sum of 13,581 new entrants times 400,000 miles per new entrant times 1.13 crashes per MVMT. The calculation is similar for new entrants that continue operations, except their crash rate is 0.94 crashes per MVMT.

Closing 13,581 carriers would result in almost 1,020 fewer crashes in the first year, 967 in the second year (since 5 percent of the closed carriers would have gone out of business in any case), and fewer each succeeding year. However, an additional 13,581 carriers would be closed in each succeeding year, so the total crashes deterred by closing carriers increases over the analysis period as the reduction caused by the 5 percent business failure rate would be more than offset by the additional carriers closed each year. Over 10 years, more than 48,000 crashes would be deterred by placing unsafe carriers out of service.

The SAs also would reduce crashes among those new entrants allowed to continue operations after coming into compliance. Over 10 years, almost 5,700 crashes would be deterred from carriers that take action to remedy violations. For both classes of carriers, the SAs would result in 54,000 fewer crashes over 10 years.

As noted above, the average cost of a motor-carrier-involved crash is $65,183. By deterring 54,000 crashes, this proposed rule thus would yield a 10-year savings of $3.5 billion undiscounted. At a 7 percent discount rate, this would translate into a benefit of $2.3 billion. Most of these benefits would come from the crash reduction of closed carriers. This benefit would greatly exceed the costs described previously. The discounted ten-year net benefit of this NPRM would be $1.8 billion, and the benefit cost ratio would be 4.8 to 1.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. § 3501, *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. FMCSA has determined there are three currently approved information collections that would be affected by this NPRM: (1) OMB Control No. 2126–0013 titled ''Motor Carrier Identification Report'' (FMCSA Forms MCS–150, MCS–150A, and MCS–150B), approved at 74,896 burden hours through July 31, 2007; (2) OMB Control No. 2126–0015 titled ''Designation of Agents, Motor Carriers, Brokers and Freight Forwarders (FMCSA Form BOC–3) approved at 5,000 burden hours through April 30, 2008; and (3) OMB Control No 2126–0016 titled ''Licensing Applications for Motor Carrier Operating Authority'' (FMCSA Forms OP–1, OP–1 (FF), OP–1 (MX) and OP–1 (P), approved at 55,738 burden hours through August 31, 2008. Table 1 depicts the current and proposed burden hours associated with the information collections.

carriers may be able to operate more efficiently by increasing existing load factors, they may also have to divert vehicles and drivers from other loads or buy/hire new ones to provide the service. To provide a conservative estimate, we assume the cost of these resources will be mostly the same whether the loads are carried by existing carriers expanding or transferring capacity or by new entrants coming into the market to meet this demand. The only differences would be registration and licensing costs. We assume that there is no possibility that the replacing firm is the non-compliant firm repackaged as a new firm. Without this illegal practice, the replacing firm would either be a completely new motor carrier or an existing motor carrier expanding its operation. Since there is not a big difference, we choose to report the larger of the two cost possibilities.

TABLE 1.—CURRENT AND PROPOSED INFORMATION COLLECTION BURDENS

OMB approval No.	Burden hours currently approved	Burden hours proposed	Change
2126–0013	74,896	66,977	–7,919
2126–0015	5,000	5,002	2
2126–0016	55,738	55,786	48
Net Change			–7,869

The following is an explanation of how each of the information collections shown above would be affected by this proposal.

OMB Control No. 2126–0013. This NPRM would eliminate the requirement for new entrants to complete the Form MCS–150A (Safety Certification for Applications for USDOT Number) because it does not provide the certification intended. Proposed amendments to 49 CFR part 385, subpart E—Hazardous Materials Safety Permits would remove references to the MCS–150A and would not impact the MCS–150B in any way. The estimated annual paperwork burden for this information collection would be 66,977 hours [74,896 currently approved annual burden hours − 7,923 (47,535 new entrants × 10 minutes/60 minutes to complete the MCS–150A form) + 4 (12 non-America-domiciled motor carriers × 20 minutes/60 minutes to complete the Form MCS–150) = 66,977].

OMB Control No. 2126–0015. The non-North America-domiciled motor carriers would also be required to notify the agency regarding designation of process agents by either: (1) submission in the application package of Form BOC–3 (Designation of Agents, Motor Carriers, Brokers and Freight Forwarders), or (2) a letter stating that the applicant will use a process agent that will submit the Form BOC–3 electronically. The estimated annual paperwork burden for this information collections would be 5,002 hours [5,000 currently approved annual burden hours + 2 hours (12 new entrant non-North America-domiciled motor carriers × 10 minutes/60 minutes to complete Form BOC–3) = 5,002 hours].

OMB Control No. 2126–0016. The proposed rule would create a new Form OP–1(NNA) titled ''Application for U.S. Department of Transportation (USDOT) Registration by Non-North America-Domiciled Motor Carriers.'' A non-North America-domiciled motor carrier is one whose principal place of business is located in a country other than the United States, Canada or Mexico. These entities would use the OP–1(NNA) when requesting either a USDOT new entrant registration as a private or exempt for-hire carrier or operating authority as a non-exempt for-hire carrier. The estimated annual paperwork burden for this information collection would be 55,786 hours [55,738 currently approved annual burden hours + 48 hours (12 new entrant non-North America-domiciled motor carriers × 4 hours to complete Form OP–1(NNA)) = 55,786 hours].

The proposals in this NPRM, affecting three currently-approved information collections, would result in a net decrease of 7,869 burden hours in the agency's information collection budget.

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

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the agency certifies the proposed rule will not have a significant economic impact on a substantial number of small entities. FMCSA believes these proposals do not meet the threshold values for requiring a full-blown regulatory flexibility analysis. Nonetheless, because of the public interest in these proposals, we have prepared a regulatory analysis and placed a copy in the docket to this NPRM. The initial regulatory flexibility analysis (IRFA) for the proposed rule is set forth below.

(1) *A description of the reasons why action by the agency is being considered.* FMCSA implemented the New Entrant Safety Assurance Process in January 2003. Under the program, a carrier receives new entrant registration and must undergo an 18-month monitoring period, including an SA. During the audit, FMCSA verifies the carrier has in place basic safety management controls and identifies any areas needing correction. A new entrant is granted permanent registration only after successfully completing the SA and the 18-month monitoring period.

The agency received numerous comments to the May 2002 IFR announcing the New Entrant Safety Assurance Process, including recommendations for improvement and alternatives to the program. By late summer 2003, the agency and its State partners had collected sufficient data and had sufficient experience administering the program to assess its effectiveness. The Administrator formed a working group comprised of field and Headquarters staff to conduct a program review. This group identified several key improvements to clarify, strengthen and correct the new entrant regulations. Today's action proposes measures to make the New Entrant Safety Assurance Process better. It also proposes a separate new entrant application procedure and safety oversight program for non-North America-domiciled motor carriers.

(2) *A succinct statement of the objectives of, and legal basis for, the proposed rule.* Section 210 of MCSIA required the Secretary of Transportation to establish regulations specifying minimum requirements for motor carriers seeking to operate in interstate commerce for the first time to ensure such carriers are knowledgeable about applicable Federal motor carrier safety standards. MCSIA also directed the Secretary to require, by regulation, that each motor carrier granted new operating authority undergo an SA within the first 18 months of operations. MCSIA also required the Secretary to establish the elements of the safety review, including basic safety management controls, to consider the effect the regulations would have on small businesses and to consider establishing alternate locations where the review may be conducted for the convenience of the small businesses.

An IFR, with request for comments, was published May 13, 2002, and became effective January 1, 2003. The IFR established new minimum requirements for all applicant motor carriers domiciled in the United States and Canada seeking to operate in interstate commerce. Under the IFR, all new entrants, regardless of whether they need to register with FMCSA under 49 U.S.C. 13901, are required to complete a Form MCS–150A—Safety Certification for Applications for USDOT Number. Additionally, during the initial 18-month period of operations, FMCSA would evaluate the new entrant's safety management practices through an SA and monitor its on-road performance prior to granting the new entrant permanent registration. The objective of this NPRM is to enhance the safety of new entrants and thereby reduce the number of crashes which involve these carriers.

(3) *A description of and, where feasible, an estimate of the number of small entities to which the proposed rule would apply.* The trucking industry, and to a lesser extent the bus industry, is populated by several very large firms and many small firms. We believe most motor carriers start small. The proposed rule would cover all U.S. and Canada-domiciled carriers and a very small number of motor carriers domiciled outside of North America.

FMCSA estimated in the regulatory evaluation accompanying this proposal that an average of 47,535 motor carriers entered the industry each year from 1995–2002 seeking interstate authority. Roughly 23,400 of these new entrants are estimated to be non-exempt for-hire carriers that must register under 49 U.S.C. 13901, 20,300 are estimated to be exempt for-hire and private carriers not subject to § 13901, and the roughly 3,800 remaining new registrants are of other types (including 1,922 brokers/freight forwarders, 1,200 Mexico-domiciled commercial zone carriers, and 664 other carriers). These estimates were derived from data contained in the Motor Carrier Management Information System (MCMIS).

The Regulatory Flexibility Act requires Federal agencies to analyze the impact of proposed and final rules on small entities. Small Business Administration (SBA) regulations (13 CFR part 121) define a ''small entity'' in the motor carrier industry by average annual receipts, which are currently set at $23.5 million per firm. FMCSA estimated based upon the 1997 Economic Census (U.S. Census Bureau), North American Industrial Classification System (NAICS) Code 484 ''Truck Transportation'' segments, the number of small trucking entities potentially affected by our proposed rules. There are 100,048 for-hire trucking firms within NAICS Code 484. Of these, 75,491, or roughly 75 percent, had annual receipts of less than $21.5 million. While SBA has changed its size definitions, updated data is not yet available. Therefore, this analysis uses the old definition. The actual percent of small businesses is probably somewhat greater than our estimate, but the difference is not likely to be significant. Because FMCSA does not have annual sales data on private carriers, the agency assumed the revenue and operations characteristics of the private new entrant firms would be similar to those of new entrant for-hire carriers. Using these assumptions, the agency estimates almost 35,651 of the total 47,535 new entrants (or 75 percent) are considered small entities. This assumption is generally consistent with an alternative, industry-based approach used to estimate the number of small trucking firms, where size is defined by the number of power units (i.e., tractors or single-unit trucks) owned or leased by motor carriers. Also, MCMIS data indicate 80 percent of new entrant motor carriers within the industry owned or leased six or fewer power units.

(4) *A description of the proposed reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which would be subject to the requirements and the type of professional skills necessary for preparation of the report or record.* Except for a small number of non-North America-domiciled motor carriers, this proposed rule would impose no additional reporting, recordkeeping, or other compliance requirement beyond those currently required of all motor carriers. This proposed rule would change the consequences for violating certain existing safety rules. Indeed, this proposed rule eliminates one form, the MC–150A, integrating a few of the data elements from the MC–150A into Form MC–150. Therefore, there will be one less form for motor carriers to complete.

(5) *An identification, to the extent practicable, of all Federal rules, which may duplicate, overlap, or conflict with the proposed rule.* FMCSA is not aware of any areas where this proposed rule would duplicate, overlap, or conflict with any other Federal rules. However, under a separate rulemaking (a notice of proposed rulemaking titled *Unified Registration System* published in the May 19, 2005, **Federal Register** at 70 FR 28989), the agency is proposing to unify three of its information systems for motor carriers into a single, on-line replacement system. The ''replacement system'' NPRM proposes a more streamlined registration process. The USDOT Number registration process for new entrants would be included in the replacement system NPRM.

The replacement system rulemaking is a very complex undertaking and would address the USDOT Number, financial responsibility and commercial aspects of registration; it only touches on ministerial aspects of the New Entrant Safety Assurance Process. Today's proposed rule covers the complete New Entrant Safety Assurance Process, not just registration. It is for these reasons the agency is pursuing these efforts in separate rulemakings. The agency would address any impacts to administrative elements of the New Entrant Safety Assurance Process when the proposed rule announcing the replacement system is promulgated as a final rule.

Accordingly, FMCSA preliminarily determines the proposed action discussed in this document would not have a significant economic impact on a substantial number of small entities.

Privacy Impact Analysis

FMCSA conducted a privacy impact assessment of this proposed rule as required by Section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Pub. L. 108–447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. § 552a]. The assessment considers any impacts of the proposed rule on the privacy of information in an identifiable form and related matters. The entire privacy impact assessment is available in the docket for this proposal.

Unfunded Mandates Reform Act

This proposed rule would not impose a Federal mandate resulting in the net expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $120.7 million or more in any one year. 2 U.S.C. 1531, *et seq.*

National Environmental Policy Act

FMCSA has analyzed this proposed rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and has determined under the agency's National Environmental Policy Act Implementing Procedures, FMCSA Order 5610.1C (published at 69 FR 9680, March 1, 2004, with an effective date of March 30, 2004) this proposed action is categorically excluded under Appendix 2, paragraph 6.f of the Order from further environmental documentation. That categorical exclusion relates to

establishing regulations implementing the following activities, whether performed by FMCSA or by States pursuant to the Motor Carrier Safety Assistance Program (MCSAP), which provides financial assistance to States to reduce the number and severity of crashes and hazardous materials incidents involving commercial motor vehicles: (1) Driver/vehicle inspections; (2) traffic enforcement; (3) safety audits; (4) compliance reviews; (5) public education and awareness; and (6) data collection; and provides reimbursement for the expenses listed under paragraphs 6.d(i) through 6.d(v). This action proposes amendments to the New Entrant Safety Assurance Process for carriers newly registering to operate in interstate commerce. The agency believes the proposed action would include no extraordinary circumstances having any effect on the quality of the environment.

FMCSA has also analyzed this proposal under section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. We performed a conformity analysis of the CAA according to the procedures outlined in appendix 14 of FMCSA Order 5610.1C. This proposed rule would not result in any emissions increase, nor would it have any potential to result in emissions above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable the proposed rule change would not increase total CMV mileage, change the routing of CMVs, change how CMVs operate, or change the CMV fleet-mix of motor carriers. This proposed action would revise the program for assuring the safety of new entrant motor carriers.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been preliminarily determined this proposed action would not have a substantial direct effect or sufficient federalism implications on States, limiting the policymaking discretion of the States. Nothing in this document would directly preempt any State law or regulation. It would not impose additional costs or burdens on the States. This proposed action would not have a significant effect on the States' ability to execute traditional State governmental functions. To the extent that States incur costs for conducting these SAs, they would be reimbursed 100 percent with Federal funds under MCSAP.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Executive Order 13211 (Energy Supply, Distribution, or Use)

This proposed action is not a significant energy action within the meaning of section 4(b) of the Executive Order because it is not economically significant and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

49 CFR Part 385

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

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Motor Carrier Safety Administration proposes to amend title 49, Code of Federal Regulations, chapter III, subchapter B as set forth below:

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

1. The authority citation for part 365 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 16 U.S.C. 1456; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; 49 CFR 1.73.

2. Amend § 365.101 by adding a new paragraph (i) to read as follows:

§ 365.101 Applications governed by these rules.

* * * * *

(i) Applications for non-North America-domiciled motor carriers to operate in foreign commerce as for-hire motor carriers of property and passengers within the United States.

3. Amend § 365.105 by revising paragraph (a) to read as follows:

§ 365.105 Starting the application process: Form OP–1.

(a) All applicants must file the appropriate form in the OP–1 series, effective [effective date of final rule]. Form OP–1 for motor property carriers and brokers of general freight and household goods; Form OP–1(P) for motor passenger carriers; Form OP–1(FF) for freight forwarders of

household goods; Form OP–1(MX) for Mexico-domiciled motor property carriers, including household goods and motor passenger carriers; and Form OP–1(NNA) for non-North America-domiciled motor property and motor passenger carriers. A separate filing fee in the amount set forth at 49 CFR 360.3(f)(1) is required for each type of authority sought in each transportation mode.

* * * * *

PART 385—SAFETY FITNESS PROCEDURES

4. The authority citation continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 31136, 31144, 31148, and 31502; sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

§ 385.305 [Amended]

5. Amend § 385.305 to remove paragraph (b)(3) and to redesignate paragraph (b)(4) as (b)(3).

6. Add § 385.306 to subpart D to read as follows:

§ 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.

7. Amend § 385.307 to revise paragraph (a) to read as follows:

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

* * * * *

(a) The new entrant's roadside safety performance will be closely monitored to ensure the new entrant has basic safety management controls that are operating effectively.

* * * * *

8. Add § 385.308 to subpart D to read as follows:

§ 385.308 What will 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 drivers to operate a commercial motor vehicle as defined under § 383.5 without a valid commercial driver's license. An invalid commercial driver's license 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 Federal Motor Carrier Safety Regulations or compatible State laws and regulations without taking necessary corrective action.

(3) Involvement in a hazardous materials incident, due to carrier act or omission, involving any of the following:

(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.

(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 two or more hazardous materials incidents, due to carrier act or omission, involving any hazardous material not identified 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 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) 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.

9. Revise § 385.319 to read as follows:

§ 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 completion of the safety audit, that it has adequate basic safety management controls. The new entrant's safety performance will continue to be closely monitored for the remainder of the 18-month period of new entrant registration.

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

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

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

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

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

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

10. Revise § 385.321 to read as follows:

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

(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 DOT new entrant registration will be revoked.

(b) *Automatic failure of the audit.* A new entrant will automatically fail the safety audit if found in violation of any one of the following 11 regulations:

(1) § 382.115(a) or (b)—Failing to implement an alcohol and/or controlled substances testing program (domestic and foreign motor carriers, respectively).

(2) § 382.211—Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382.

(3) § 382.215—Using a driver known to have tested positive for a controlled substance.

(4) § 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.

(5) § 383.51(a)—Knowingly allowing, requiring, permitting, or authorizing a driver who is disqualified to drive a commercial motor vehicle.

(6) § 387.7(a)—Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.

(7) § 391.15(a)—Using a disqualified driver.

(8) § 391.11(b)(4)—Using a physically unqualified driver.

(9) § 395.8(a)—Failing to require a driver to make a record of duty status.

(10) § 396.9(c)(2)—Requiring or permitting the operation of a motor vehicle declared ''out-of-service'' before repairs are made.

(11) § 396.17(a)—Using a commercial motor vehicle not periodically inspected.

11. Revise § 385.323 to read as follows:

§ 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 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.

12. Amend § 385.325 to revise paragraph (b) to read as follows:

§ 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) * * *

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

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

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

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

* * * * *

13. Revise § 385.327 to read as follows:

§ 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 issue(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 authority 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.

14. Revise § 385.329 to read as follows:

§ 385.329 May a new entrant that has had its DOT new entrant registration revoked and its operations placed out of service reapply?

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

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

(1) Submit an updated MCS–150.

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

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

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

(1) Submit an updated MCS–150.

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

(3) Submit to a safety audit 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 title.

15. Revise § 385.331 to read as follows:

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

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

16. Amend § 385.337 to revise paragraph (a) to read as follows:

§ 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.

* * * * *

17. Amend § 385.405 to revise paragraph (a) to read as follows:

§ 385.405 How does a motor carrier apply for a safety permit?

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

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

* * * * *

18. Amend § 385.421 by revising paragraph (a)(2) to read as follows:

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

(a) * * *

(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)).

* * * * *

19. Amend part 385 by adding a new subpart H consisting of new §§ 385.601 through 385.609 and an Appendix to subpart H to read as follows:

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

Sec.
385.601 Scope of rules.
385.603 Application.
385.605 New entrant registration driver's license and drug and alcohol testing requirements.
385.607 FMCSA action on the application.
385.609 Requirement to notify FMCSA of change in applicant information.
Appendix to Subpart H of Part 385—Explanation of Pre-Authorization Safety Audit Evaluation Criteria for Non-North America-Domiciled Motor Carriers

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

§ 385.601 Scope of rules.

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

§ 385.603 Application.

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

(1) Form 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) The Federal Motor Carrier Safety Administration (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; and

(3) 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) Applications of non-North America-domiciled motor carriers

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

(e) If FMCSA grants new entrant registration to the applicant, it will assign a distinctive USDOT Number that identifies the motor carrier as authorized to operate in the United States. In order to initiate operations in the United States, a non-North America-domiciled motor carrier with new entrant registration must:

(1) Have its surety or insurance provider file proof of financial responsibility in the form of certificates of insurance, surety bonds, and endorsements, as required by § 387.7(e)(2), § 387.31(e)(2) and § 387.301 of this subchapter, as applicable; and

(2) File a hard copy of, or have its process agent(s) electronically submit, Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, as required by part 366 of this subchapter.

(f) A non-North America-domiciled motor carrier must comply with all provisions of the safety monitoring system in part 385, subpart I of this subchapter, including successfully passing North American Standard commercial motor vehicle inspections at least every 90 days and having safety decals affixed to each commercial motor vehicle operated in the United States as required by § 385.703(c) of this subchapter.

(g) FMCSA may remove a non-North America-domiciled carrier's new entrant designation no earlier than 18 months after the date its USDOT Number is issued and only after successful completion to the satisfaction of FMCSA of the safety monitoring system for non-North America-domiciled carriers set out in part 385, subpart I of this subchapter. Successful completion includes obtaining a Satisfactory safety rating as the result of a compliance review.

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

(a)(1) A motor carrier subject to this subpart must notify FMCSA of any changes or corrections to the information the Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders that occur during the application process or after having been granted new entrant registration.

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

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

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

Appendix to Subpart H of Part 385—Explanation of Pre-Authorization Safety Audit Evaluation Criteria for Non-North America-Domiciled Motor Carriers

I. General

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

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

(c) The safety audit will include:

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

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

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

(4) Verification of proof of financial responsibility;

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

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

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

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

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

(d) To successfully complete the safety audit, a non-North America-domiciled motor carrier must demonstrate to FMCSA that it has the required elements in paragraphs (c)(2), (3), (4), (7), and (8) above 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 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, 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 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. Overall Determination of the Carrier's Basic Safety Management Controls

(a) The carrier will not receive new entrant registration if FMCSA cannot:

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

(2) Verify a system of compliance with the hours-of-service rules of this subchapter, including recordkeeping and retention;

(3) Verify proof of financial responsibility;

(4) Verify records of periodic vehicle inspections; and

(5) Verify the qualifications of each driver the carrier intends to assign to operate commercial motor vehicles in the United States, as required by parts 383 and 391 of this subchapter, including confirming the validity of each driver's CDL, Canadian Commercial Driver's License, or Mexican Licencia de Federal de Conductor, as appropriate.

(b) If FMCSA confirms each item under III(a)(1) through (5) above, 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 below. If FMCSA makes such a determination, the carrier's application for new entrant registration will be denied.

IV. Evaluation of Regulatory Compliance

(a) During the safety audit, FMCSA gathers information by reviewing a motor carrier's compliance with ''acute'' and ''critical'' regulations of the FMCSRs and HMRs.

(b) Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier.

(c) Critical regulations are those where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls.

(d) The list of the acute and critical regulations, which are used in determining if a carrier has basic safety management controls in place, is included in Appendix B, VII, List of Acute and Critical Regulations to part 385 of this subchapter.

(e) Noncompliance with acute and critical regulations are indicators of inadequate safety management controls and usually higher than average accident rates.

(f) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into six regulatory areas called ''factors.'' The regulatory factors, evaluated on the adequacy of the carrier's safety management controls, are:

(1) Factor 1—General: Parts 387 and 390;

(2) Factor 2—Driver: Parts 382, 383 and 391;

(3) Factor 3—Operational: Parts 392 and 395;

(4) Factor 4—Vehicle: Parts 393, 396 and inspection data for the last 12 months;

(5) Factor 5—Hazardous Materials: Parts 171, 177, 180 and 397; and

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

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

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

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

(i) If the motor carrier has had at least three roadside inspections in the twelve months before the safety audit, and the vehicle OOS rate is 34 percent or higher, one point will be assessed against the carrier. That point will be added to any other points assessed for discovered noncompliance with acute and critical regulations of part 396 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.

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

(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) 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.

(3) The recordable accident rate will be used in determining the carrier's basic safety management controls in Factor 6, Accident. It will be used only when a carrier incurs two or more recordable accidents within the 12 months before the safety audit. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable rate per million miles greater than 1.7 will be deemed to have inadequate basic safety management controls for the accident factor. All other carriers with a recordable accident rate per million miles greater than 1.5 will be deemed to have inadequate basic safety management controls for the accident factor. The rates are the result of roughly doubling the United States national average accident rate in Fiscal Years 1994, 1995, and 1996.

(4) FMCSA will continue to consider preventability when a new entrant contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. Preventability will be determined according to the following standard: ''If a driver, who exercises normal judgment and foresight, could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.''

(k) Factor Ratings

(1) The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor. Each carrier's level of basic safety management controls with each factor is determined as follows:

(i) Factor 1—General: Parts 390 and 387;

(ii) Factor 2—Driver: Parts 382, 383, and 391;

(iii) Factor 3—Operational: Parts 392 and 395;

(iv) Factor 4—Vehicle: Parts 393, 396 and the Out of Service Rate;

(v) Factor 5—Hazardous Materials: Part 171, 177, 180 and 397; and

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

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

(3) For paragraphs IV (k)(1)(vi), 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 part III (a)(1) through (5) above, if the safety audit determines the carrier has inadequate basic safety management controls in at least three separate factors described in part III, 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.

20. Amend part 385 by adding a new Subpart I consisting of new §§ 385.701 through 385.717 to read as follows:

Subpart I—Safety Monitoring System for Non-North America-Domiciled Carriers

Sec.
385.701 Definitions.
385.703 Safety monitoring system.
385.705 Expedited action.
385.707 The compliance review.
385.709 Suspension and revocation of non-North America-domiciled carrier registration.
385.711 Administrative review.
385.713 Reapplying for new entrant registration.
385.715 Duration of safety monitoring system.
385.717 Applicability of safety fitness and enforcement procedures.

Subpart I—Safety Monitoring System for Non-North American Carriers

§ 385.701 Definitions.

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

New entrant registration means the provisional registration under part 385, subpart H of this subchapter 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 drivers 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 vehicles that have been placed out of service for violations of the Federal Motor Carrier safety regulations without taking the necessary corrective action.

(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 new entrant registration until the required showing of corrective action is submitted to the FMCSA.

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

§ 385.707 The compliance review.

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

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

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

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

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

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

compliance review contains material error.

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

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

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

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

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

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

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

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

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

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

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

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

§ 385.711 Administrative review.

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

(b) The carrier must submit its request in writing, in English, to the Associate Administrator for Enforcement and Program Delivery, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington DC 20590.

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

(d) FMCSA will complete its administrative review no later than 10 days after the carrier submits its request for review. 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) The non-North America-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.

§ 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.

21. Amend Appendix A to part 385, section III to add new paragraph (i) to read as follows:

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

* * * * *

III. Determining if the Carrier Has Basic Safety Management Controls

* * * * *

(i) FMCSA also gathers information on compliance with applicable household goods and Americans with Disabilities Act of 1990 requirements, but failure to comply with these requirements does not affect the

determination of the adequacy of basic safety management controls.

* * * * *

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

22. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, and 31139; and 49 CFR 1.73.

23. Amend § 387.7 by revising paragraph (e) to read as follows:

§ 387.7 Financial responsibility required.

* * * * *

(e)(1) The proof of minimum levels of financial responsibility required by this section shall be considered public information and be produced for review upon reasonable request by a member of the public.

(2) In addition to maintaining proof of financial responsibility as required by subparagraph (d) of this section, non-North America-domiciled private and for-hire motor carriers shall file evidence of financial responsibility with FMCSA in accordance with the requirements of subpart C of this part.

* * * * *

24. Amend § 387.31 by revising paragraph (e) to read as follows:

§ 387.31 Financial responsibility required.

* * * * *

(e)(1) The proof of minimum levels of financial responsibility required by this section shall be considered public information and be produced for review upon reasonable request by a member of the public.

(2) In addition to maintaining proof of financial responsibility as required by subparagraph (d) of this section, non-North America-domiciled private and for-hire motor carriers shall file evidence of financial responsibility with FMCSA in accordance with the requirements of subpart C of this part.

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

25. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31502, 31504, and sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 217, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

26. Revise § 390.19 to read as follows:

§ 390.19 Motor carrier identification report.

(a) *Applicability.* Each motor carrier must file the Form MCS–150 or Form MCS–150B with FMCSA as follows:

(1) A U.S., Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce must file a Motor Carrier Identification Report, Form MCS–150.

(2) A motor carrier conducting operations in intrastate commerce and requiring a Safety Permit under 49 CFR part 385, subpart E of this chapter must file the Combined Motor Carrier Identification Report and HM Permit Application, Form MCS–150B.

(b) *Filing schedule.* Each motor carrier must file the appropriate form under paragraph (a) of this section at the following times:

(1) Before it begins operations; and

(2) Every 24 months, according to the following schedule:

USDOT Number ending in	Must file by last day of
1	January.
2	February.
3	March.
4	April.
5	May.
6	June.
7	July.
8	August.
9	September.
0	October.

(3) If the next-to-last digit of its USDOT Number is odd, the motor carrier shall file its update in every odd-numbered calendar year. If the next-to-last digit of the USDOT Number is even, the motor carrier shall file its update in every even-numbered calendar year.

(c) *Availability of forms.* The forms described under paragraph (a) of this section and complete instructions are available from the FMCSA Web site at *http://www.fmcsa.dot.gov* for (Keyword ''MCS–150,'' or ''MCS–150B'') from all FMCSA Service Centers and Division offices nationwide; or by calling 1–800–832–5660.

(d) *Where to file.* The required form under paragraph (a) of this section must be filed with FMCSA Office of Information Management. The form may be filed electronically according to the instructions at the agency's web site, or it may be sent to Federal Motor Carrier Safety Administration, Office of Information Technology, MC–RIO, 400 Seventh Street, SW, Washington, DC 20590.

(e) *Special instructions for for-hire motor carriers.* A for-hire motor carrier should submit the Form MCS–150, or Form MCS–150B, along with its application for operating authority (Form OP–1, OP–1(MX), OP–1(NNA) or OP–2), to the appropriate address referenced on that form, or may submit it electronically or by mail separately to the address mentioned in paragraph (d) of this section.

(f) Only the legal name or a single trade name of the motor carrier may be used on the forms under paragraph (a) of this section (Form MCS–150 or MCS–150B).

(g) A motor carrier that fails to file the form required under paragraph (a) of this section, or furnishes misleading information or makes false statements upon the form, is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B).

(h)(1) Upon receipt and processing of the form described in paragraph (a) of this section, FMCSA will issue the motor carrier an identification number (USDOT Number).

(2) The following applicants must additionally pass a pre-authorization safety audit as described below before being issued a USDOT Number:

(i) A Mexico-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border must pass the pre-authorization safety audit under § 365.507 of this subchapter. The agency will not issue a USDOT Number until expiration of the protest period provided in § 365.115 of this subchapter or—if a protest is received—after FMCSA denies or rejects the protest.

(ii) A non-North America-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce within the United States must pass the pre-authorization safety audit under § 385.607(c) of this subchapter. If the carrier also requests operating authority under part 365 of this chapter, the agency will not issue a USDOT Number until expiration of the protest period or—if a protest is received—after FMCSA denies or rejects the protest.

(3) The motor carrier must display the number on each self-propelled CMV, as defined in § 390.5, along with the additional information required by § 390.21.

(i) A motor carrier that registers its vehicles in a State that participates in the Performance and Registration Information Systems Management (PRISM) program (authorized under section 4004 of the Transportation Equity Act for the 21st Century [(Pub. L. 105–178, 112 Stat. 107]) is exempt from the requirements of this section,

provided it files all the required information with the appropriate State office.

Issued on: December 11, 2006.

John H. Hill,

Administrator.

Note: The following form will not appear in the Code of Federal Regulations.

BILLING CODE 4910–EX–P

U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Form Approved
OMB No. 2126-0016
Expires:_____

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

Please read these instructions before completing the application form. Retain the instructions and a copy of the complete application for the applicant's records. These instructions will assist an applicant in preparing an accurate and complete application. Applications that do not contain the required information will be rejected and may result in a loss of the application fee, if applicable. **The application must be completed in English** and typed or printed in ink. If additional space is needed to provide a response to any item, use a separate sheet of paper. Identify the applicant on each supplemental page and refer to the section and item number in the application for each response.

PURPOSE OF THIS APPLICATION FORM:

The Form OP-1(NNA) is required to be filed by Non-North America-domiciled for-hire motor carriers of passengers or property and motor private carriers who wish to register to transport property or passengers in the United States.

WHAT TO FILE:

All applicants must submit the following:

1. An original and one copy of a completed revised FORM OP-1(NNA) Application for U.S. Department of Transportation (USDOT) Registration by Non-North America-Domiciled Motor Carriers.

2. A signed and dated Form BOC-3, Designation of Agents for Service of Process, which reflects the applicant's full and correct name, as shown on the Form OP-1(NNA), and applicant's address, including the street address, the city, State, country and zip code, must be attached to the application, unless the applicant attaches a letter stating it will use a process agent service that will submit the Form BOC-3 electronically. The BOC-3 form must show street address(es), and not post office box numbers, for the person(s) designated as the agent(s) for service of process and administrative notices in connection with the enforcement of any applicable Federal statutes or regulations. A person must be designated in each State in which the applicant will operate. Please refer to the section "Legal Process Agents" for instructions for filing the Form BOC-3 when using a Process Agent Service. **The applicant may not begin operations unless the Form BOC-3 has been filed with the FMCSA.**

3. A completed and signed Form MCS-150 Motor Carrier Identification Report.

4. If required under Section III, a filing fee of $300 payable in U.S. dollars on a U.S. bank to the Federal Motor Carrier Safety Administration, by means of a check, money order, or an approved credit card. Cash is not accepted.

GENERAL INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM:

- All questions on the application form must be answered completely and accurately. If a question or supplemental attachment does not apply to the applicant, it should be answered "not applicable."

- The application must be typewritten or printed in ink. Applications written in pencil will be rejected.

- The application must be completed in English.

- The completed certification statements and oath must be signed by the applicant only. For example:

    - If the company is a sole proprietorship, the owner must sign.

    - If the company is a partnership, one of the partners must sign.

    - If the company is a corporation, an official of the company must sign (President, Vice President, Secretary, Treasurer, etc.).

  The same person must sign the oath and certifications. An applicant's attorney or any other representative is not permitted to sign.

- Use the attachment pages included, as appropriate, to provide any descriptions, explanations, statements or other information that is required to be furnished with the application. If additional space is needed to respond to any question, please use separate sheets of paper. Identify the applicant on each supplemental page and refer to the section and item number in the application for each response.

- Include only the city code and telephone number for telephone phone numbers. **Do not** include the international access codes, such as (011-52).

ADDITIONAL ASSISTANCE

Form OP-1(NNA)

FORM OP-1(NNA) OR MCS-150

Call 1-800-832-5660 for additional information on obtaining FMCSA registration numbers (USDOT or MC) or to monitor the status of an application.

SAFETY RATINGS

For information concerning a carrier's assigned safety rating, call: 1-800-832-5660.

U.S. DOT HAZARDOUS MATERIALS REGULATIONS

To obtain information on whether the commodities an applicant intends to transport are considered as hazardous materials:

Refer to the provisions governing the transportation of hazardous materials found under Parts 100 through 180 of Title 49 of the Code of Federal Regulations (CFR), particularly the Hazardous Materials Table at 49 CFR § 172.101 or visit the U.S. DOT, Pipeline and Hazardous Materials Safety Administration web site: http://hazmat.dot.gov. The web site also provides information about DOT hazardous materials transportation registration requirements.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION I - APPLICANT INFORMATION

APPLICANT'S LEGAL BUSINESS NAME and DOING BUSINESS AS NAME.
The applicant's name should be its full legal business name -- the name on the incorporation certificate, partnership agreement, tax records, etc. If the applicant uses a trade name that differs from its official business name, indicate this under "Doing Business As Name." Example: If the applicant is John Jones, doing business as Quick Way Trucking, enter "John Jones" under LEGAL BUSINESS NAME and "Quick Way Trucking" under DOING BUSINESS AS NAME.

Because the FMCSA uses computers to retain information about licensed carriers, it is important to spell, space, and punctuate any name the same way each time the applicant writes it. Example: John Jones Trucking Co., Inc.; J. Jones Trucking Co., Inc.; and John Jones Trucking are considered three separate companies.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

BUSINESS ADDRESS/MAILING ADDRESS. The business address is the physical location of the business. Example: 24 Calle 10-08 Zona 11 Granai 2 Quetzaltenago, Guatemala.

If applicant receives mail at an address different from the business location, also provide the mailing address. Example: P. O. Box 3721. **NOTE:** To receive FMCSA notices and to ensure that insurance documents filed on applicant's behalf are accepted, notify in writing the Federal Motor Carrier Safety Administration, Room 8218, 400 7th Street, SW., Washington, DC 20590, if the business or mailing address changes. If applicant also maintains an office in the United States, that information should also be provided.

REPRESENTATIVE. If someone other than the applicant is preparing this form, or otherwise assisting the applicant in completing the application, provide the representative's name, title, position, or relationship to the applicant, address, and telephone and FAX numbers. Applicant's representative will be the person contacted if there are questions concerning this application.

U.S. DOT NUMBER. Applicants are required to obtain a U.S. DOT Number from the U.S. Department of Transportation (U.S. DOT) before initiating service. Motor carriers that already have been issued a U.S. DOT Number should provide it. Applicants that have not previously obtained a U.S. DOT Number will be issued a U.S. DOT number along with their DOT registration.

NOTE: A completed and signed Form MCS-150 Motor Carrier Identification Report **must** be submitted along with this application.

FORM OF BUSINESS. A business is a corporation, a sole proprietorship, or a partnership. If the business is a sole proprietorship, provide the name of the individual who is the owner. In this situation, the Owner is the registration applicant. If the business is a partnership, provide the full name of each partner.

SECTION IA – ADDITIONAL APPLICANT INFORMATION

All applicants must answer each question in this section. The applicant must provide the requested information concerning its current operations in the United States and any motor carrier registration issued by any Non-North American government.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION II - AFFILIATIONS INFORMATION

All applicants must disclose pertinent information concerning any relationships or affiliations which the applicant has had with other entities registered with FMCSA or its predecessor agencies. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles anywhere in the United States.

SECTION III – TYPE (S) OF REGISTRATION REQUESTED

Check the appropriate box(es) for the type(s) of registration the applicant is requesting. A separate filing fee is required for certain types of registration requested. Filing fees are waived for for-hire motor carriers exempt under 49 United States Code, Chapter 135, Subchapter I. Please see Section III for more information.

SECTION IV - INSURANCE INFORMATION

Check the appropriate box(es) that describes the type(s) of business the applicant will be conducting.

If the applicant is applying for motor passenger carrier registration, check the box that describes the seating capacity of its vehicles. If all the vehicles the applicant operates have a seating capacity of 15 passengers or fewer, the applicant must maintain $1,500,000 minimum liability coverage. If any one of the vehicles the applicant operates has a seating capacity of 16 passengers or more, the applicant must maintain $5,000,000 minimum liability coverage.

If the applicant is applying for motor property carrier registration and it operates vehicles with a gross vehicle weight rating of 10,000 pounds or more and hauls only non-hazardous materials, the applicant must maintain $750,000 minimum liability coverage for the protection of the public. Hazardous materials referred to in the FMCSA's insurance regulations in item (c) of the table at 49 CFR 387.303 (b)(2) require $1 million minimum liability coverage; those in item (b) of the table at 49 CFR 387.303 (b)(2) require $5 million minimum liability coverage.
If the applicant operates only vehicles with a gross vehicle weight rating of less than 10,000 pounds but will be transporting any quantity of Division 1.1, 1.2 or 1.3 explosives, any quantity of poison gas (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group 1, Hazard Zone A materials), or

highway route controlled quantity of radioactive materials, the applicant must maintain $5 million minimum liability coverage.

Applicant does not have to submit evidence of insurance with the application. However, applicant will be required to present acceptable evidence of necessary insurance coverage to the FMCSA as part of a pre-authorization safety audit. Appropriate insurance forms must be filed within **90 days** after the applicant submits it application: These include Form BMC-91 or BMC-91X for bodily injury and property damage for all applicants and Form BMC-34 for cargo insurance (household goods carriers only).

The FMCSA does not furnish copies of insurance forms. The applicant must contact its insurance company to arrange for the filing of all required insurance forms.

If an application is granted by the FMCSA, DOT registration is still not effective and operations under that registration may not begin unless an insurance filing has been made with and accepted by the FMCSA as required under 49 CFR 387.7, 387.31 and 387.301.

SECTION V - SAFETY CERTIFICATIONS

Applicants for motor carrier registration must complete the safety certifications. The applicant should check the "YES" response only if the applicant can attest to the truth of the statements. The carrier official's signature at the end of this section applies to the Safety Certifications. The "Applicant's Oath" at the end of the application form applies to all certifications. False certifications are subject to the penalties described in that oath.

Applicants should complete all applicable Attachment pages and, if necessary to complete the responses, attach additional pages identifying the applicant on each supplemental page and referring to the section and item number in the application for each response.

SECTION VI - HOUSEHOLD GOODS REQUIREMENTS

Applicants applying for registration as a household goods motor carrier as defined in 49 U.S.C. 13102(12) must provide certain information regarding their arbitration program and tariff. They must also certify they are familiar with FMCSA's consumer protection requirements applicable to household

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

goods transportation. Applicants must disclose all relationships involving common stock, common ownership, common management, or common familial relationships between the applicant and any other motor carrier, freight forwarder, or broker of household goods within 3 years of the date of the filing of this application. The signature should be that of the same company official who completes the Applicant's Oath.

SECTION VII - SCOPE OF OPERATING REGISTRATION SOUGHT

Applicant must indicate, by checking one or more boxes, the description(s) of the registration(s) for which application is being made.

SECTION VIII - COMPLIANCE CERTIFICATIONS

All applicants are required to certify accurately to their willingness and ability to comply with statutory and regulatory requirements and to their understanding that their agent for service of process is their official representative in the U.S. to receive filings and notices in connection with enforcement of any Federal statutes and regulations.

Applicants are required to certify their willingness to produce records for the purpose of determining compliance with the applicable safety regulations of the FMCSA.

Applicants are required to certify that they are not now prohibited from filing an application because a previously granted FMCSA registration is currently under suspension or was revoked less than 30 days before the filing of this application.

SECTION IX - APPLICANT'S OATH

The applicant or an authorized representative may prepare applications. In either case, the applicant must sign the oath and all safety certifications. (For information on who may sign, see "General Instructions for Completing the Application Form" in the instructions for this application.)

LEGAL PROCESS AGENTS

All motor carrier applicants must designate a process agent in each State where operations are conducted. For example, if the applicant will operate only in California and Arizona, it must designate an agent in each of those States; if the applicant will operate in only one State, an agent must be designated for that State only. Process agents who will accept filings and notices on behalf of the applicant are designated on FMCSA Form BOC-3. Form BOC-3 must be filed

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

with the application, unless the applicant uses a Process Agent Service. If the applicant opts to use a Process Agent Service, it must submit a letter with the application informing the FMCSA of this decision and have the Process Agent Service electronically file the BOC-3 with FMCSA within 90 days after the applicant submits its application. **Applicants may not begin operations unless the Form BOC-3 has been filed with the FMCSA.**

STATE NOTIFICATION

Before beginning operations, all applicants must contact the appropriate regulatory agencies in every State in and through which the carrier will operate to obtain information regarding various State rules applicable to interstate registrations. It is the applicant's responsibility to comply with registration, fuel tax, and other State regulations and procedures. Please refer to the additional information provided in the application packet for further information.

MAILING INSTRUCTIONS:

To file for registration an applicant must submit an ***original and one copy*** of this application with the appropriate filing fee to FMCSA. **Note:** Retain a copy of the completed application form and any attachments for the applicant's records.

Mailing address for applications:

FOR REGULAR MAIL (CHECK OR MONEY ORDER PAYMENT)
Federal Motor Carrier Safety Administration
P. O. Box 100147
Atlanta, GA 30384-0147

FOR EXPRESS MAIL (CHECK OR MONEY ORDER PAYMENT)
Bank of America, Lockbox 100147
6000 Feldwood Road
3rd Floor East
College Park, GA 30349

FOR CREDIT CARD PAYMENT
FMCSA Trans-border Office
P.O. Box 530870
San Diego, CA 92153-0870

U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Form Approved
OMB No. 2126-0016
Expires:_____

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

For FMCSA Use Only

Docket No. MC_____

DOT No. _____

Filed _____

Fee No. _____

CC Approval Number _____

Application Tracking Number _____

PAPERWORK BURDEN

The collection of this information is authorized under the provisions of 49 U.S.C. 31144 and 13902. Public reporting for this collection of information is estimated to be 4 hours per response, including the time for reviewing instructions and completing and reviewing the collection of information. All responses to this collection of information are mandatory, and will be provided confidentiality to the extent allowed by law. Not withstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The valid OMB Control Number for this information collection is 2126-0016. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Motor Carrier Safety Administration, MC-MMI, U.S. Department of Transportation, Washington, D.C. 20590

SECTION I - APPLICANT INFORMATION

LEGAL BUSINESS NAME: _____

DOING BUSINESS AS NAME: (Trade Name, if any) _____

_____

BUSINESS ADDRESS: (Actual Street Address):

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

MAILING ADDRESS: (If different from above)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

U.S. ADDRESS: (Does the applicant currently have an office in the United States? If yes, give address and telephone number.)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

APPLICANT'S REPRESENTATIVE: (Person who can respond to inquiries)

_____
(Name and title, position, or relationship to applicant)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

US DOT NUMBER (If available) _____

Form OP-1(NNA)

FORM OF BUSINESS (Check one)

☐ CORPORATION (Give foreign, U.S. or other State of Incorporation) _____

_____

☐ SOLE PROPRIETORSHIP (Give full name of individual)

_____

(First Name) (Middle Name) (Surname)

☐ PARTNERSHIP (Give full name of each partner)_____

_____

SECTION IA – ADDITIONAL APPLICANT INFORMATION

1. Does the applicant currently operate in the United States?

☐ Yes ☐ No

1a. If yes, indicate the locations where the applicant operates and the ports of entry utilized.

_____

_____

_____

2. Has the applicant previously completed and submitted a Form MCS-150?

☐ Yes ☐ No

2a. If yes, give the name under which it was submitted.

_____

_____

3. Does the applicant presently hold, or has it ever applied for operating authority or registration from the former U.S. Interstate Commerce Commission, the U.S. Federal Highway Administration, the Office of Motor Carrier Safety, or the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation under the name shown on this application, or under any other name?

☐ Yes ☐ No

3a. If yes, please identify the lead docket number(s) assigned to the application or grant of authority or registration.

_____

_____

3b. If the application was rejected before the time a lead docket number(s) was assigned, please provide the name of the applicant shown on the application.

_____

_____

3c. If yes, did FMCSA revoke the applicant's operating authority or provisional registration because the applicant failed to receive a Satisfactory safety rating or because the FMCSA otherwise determined the applicant's basic safety management controls were inadequate.

☐ Yes ☐ No

3d. If the applicant answered yes to 3c above, it must explain how it has corrected the deficiencies that resulted in revocation, explain what effectively functioning basic safety management systems the applicant has in place, and provide any information and documents that support its case. (If the applicant requires more space, **attach the information to this application form**.)

_____

_____

_____

_____

4. Does the applicant hold a Federal Tax Number from the U.S. Government?

☐ Yes ☐ No

4a. If yes, enter the number here: _____

5. Is the applicant required to register as a motor carrier with any non-North American government?

☐ Yes ☐ No

5a. If yes, give the name under which the applicant is registered with the non-North American government, the applicant's registration number, and the name of the non-North American government that issued the registration.

_____

_____

_____

_____

_____

5b. If applicant has applied to register with a non-North American government but has not yet been registered, indicate the application date.

_____

SECTION II – AFFILIATIONS INFORMATION

Disclose any relationship the applicant has, or has had, with any U.S. or foreign motor carrier, broker, or freight forwarder registered with the former ICC, FHWA, Office of Motor Carrier Safety, or Federal Motor Carrier Safety Administration within the past 3 years. For example, this relationship could be through a percentage of stock ownership, a loan, a management position, a wholly-owned subsidiary, or other arrangement.

If this requirement applies to the applicant, provide the name of the affiliated company, the latter's MC or MX number, its U.S. DOT Number, if any, and the company's latest U.S. DOT safety rating. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles anywhere in the United States. (If the applicant requires more space, **attach the information to this application form**.)

Name of affiliated company	MC or MX Number	U.S. DOT Number	U.S. DOT Safety Rating	Ever Disqualified from operating CMVs in the U.S.?

SECTION III – TYPE(S) OF REGISTRATION REQUESTED

Applicant must submit a filing fee for certain types of registration requested (for each checked box).

Applicant seeks to provide the following transportation service:

PASSENGER REGISTRATION
❑ **For-hire Motor Carrier** of Passengers. ($300 fee required, fee is waived if carrier is exempt under 49 U.S.C. Chapter 135, Subchapter I.)
❑ **Private Motor Carrier** of Passengers. (No fee required)
PROPERTY REGISTRATION
❑ **For-hire Motor Carrier of Property (except Household Goods).** ($300 fee required; fee is waived if carrier is exempt under 49 U.S.C. Chapter 135, Subchapter I.)
❑ **For-hire Motor Carrier of Household Goods.** ($300 fee required)
❑ **Motor Private Carrier.** (No fee required)

SECTION IV – INSURANCE INFORMATION

MOTOR PASSENGER CARRIER APPLICANTS

All motor passenger carriers operating in the United States, including non-North America-domiciled carriers, must maintain public liability insurance. The amounts in parentheses represent the minimum amount of coverage required.

Applicant will use (*check only one*):

- ❑ Any vehicle has a seating capacity of 16 passengers or more ($5,000,000)
- ❑ All vehicles have seating capacities of 15 passengers or fewer only ($1,500,000)

MOTOR PROPERTY CARRIER APPLICANTS *(including Household Goods Carriers)*

NOTE: Refer to **SECTION IV** under the *Instructions to the Form OP-1(NNA)* for information on cargo insurance filing requirements for household goods carriers.

- ❑ Applicant will operate vehicles having a gross vehicle weight rating (GVWR) of 10,000 pounds or more to transport:
  - ❑ Non-hazardous commodities ($750,000)
  - ❑ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(c) ($1,000,000).
  - ❑ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(b) ($5,000,000).
- ❑ Applicant will operate only vehicles having a GVWR under 10,000 pounds to transport:
  - ❑ Any quantity of Division 1.1, 1.2 or 1.3 explosives; and quantity of poison gas (Division 2.3, Hazard Zone A or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials ($5,000,000).

Does the applicant presently hold public liability insurance?

☐ Yes ☐ No

If applicant does hold such insurance, please provide the information below:

Insurance Company: _____

Address: _____

_____

Maximum Insurance Amount: _____

Policy Number: _____

Date Issued: _____

Insurance Effective Date: _____

Insurance Expiration Date: _____

SECTION V – SAFETY CERTIFICATIONS

Applicant maintains current copies of all U.S. DOT Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards, and the Hazardous Materials Regulations (if a property carrier transporting hazardous materials), understands and will comply with such Regulations, and has ensured that all company personnel are aware of the current requirements.

_____Yes

Applicant certifies that the following tasks and measures will be fully accomplished and procedures fully implemented before it commences operations in the United States:

1. Driver qualifications:

The carrier has in place a system and procedures for ensuring the continued qualification of drivers to operate safely, including a safety record for each driver, procedures for verification of proper licensing of each driver, procedures for identifying drivers who are not complying with the U.S. safety regulations, and a description of a retraining and educational program for poorly performing drivers.

_____Yes

The carrier has procedures in place to review drivers' employment and driving histories for at least the last 3 years, to determine whether the individual is qualified and competent to drive safely.

_____Yes

The carrier has established a program to review the records of each driver at least once every 12 months and will maintain a record of the review.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all of its drivers operating in the United States are at least 21 years of age and possess a valid Commercial Drivers License or Non-resident Commercial Drivers license.

_____Yes

2. Hours of service:

The carrier has in place a record keeping system and procedures to monitor the hours of service performed by drivers, including procedures for continuing review of drivers' log books, and for ensuring that all operations requirements are complied with.

_____Yes

The carrier has ensured that all drivers to be used in the United States are knowledgeable of the U.S. hours of service requirements, and has clearly and specifically instructed the drivers concerning the application to them of the 11 hour, 14 hour, and 60 and 70 hour rules, as well as the requirement for preparing daily log entries in their own handwriting for each 24 hour period.

_____Yes

The carrier has **attached to this application** statements describing the carrier's monitoring procedures to ensure that drivers complete logbooks correctly, and describing the carrier's record keeping and driver review procedures.

_____Yes

The carrier will ensure, once operations in the United States have begun, that its drivers operate within the hours of service rules and are not fatigued while on duty.

_____Yes

3. Drug and alcohol testing:

The carrier is familiar with the alcohol and controlled substance testing requirements of 49 CFR part 382 and 49 CFR part 40 and has in place a program for systematic testing of drivers.

_____Yes

The carrier has **attached to this application** the name, address, and telephone number of the person(s) responsible for implementing and overseeing alcohol and drug programs, and also of the drug testing laboratory and alcohol testing service that are used by the company.

_____Yes

4. Vehicle condition:

The carrier has established a system and procedures for inspection, repair and maintenance of its vehicles in a safe condition, and for preparation and

maintenance of records of inspection, repair and maintenance in accordance with the U.S. DOT's Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations.

_____Yes

The carrier has inspected all vehicles that will be used in the United States before the beginning of such operations and has proof of the inspection on-board the vehicle as required by 49 CFR 396.17.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all vehicles it operates in the United States were manufactured or have been retrofitted in compliance with the applicable U.S. DOT Federal Motor Vehicle Safety Standards in effect at the time of manufacture.

_____Yes

The carrier will ensure that all vehicles operated in the United States are inspected at least every 90 days by a certified inspector in accordance with the requirements for a Level I Inspection under the criteria of the North American Standard Inspection, as defined in 49 CFR 350.105, once operations in the United States begin and until such time as the carrier has held permanent registration from the FMCSA for at least 36 consecutive months. After the 36-month period expires, the carrier will ensure that all vehicles operated in the United States are inspected in accordance with 49 CFR 396.17 at least once every 12 months thereafter.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all violations and defects noted on inspection reports are corrected before vehicle and drivers are permitted to enter the United States.

_____Yes

5. Accident monitoring program:

The carrier has in place a program for monitoring vehicle accidents and maintains an accident register in accordance with 49 CFR 390.15.

_____Yes

The carrier has **attached to this application** a copy of its accident register for the previous 12 months, or a description of how the company will maintain this register once it begins operations in the United States.

_____Yes

The carrier has established an accident countermeasures program and a driver training program to reduce accidents.

_____Yes

The carrier has **attached to the application** a description and explanation of the accident monitoring program it has implemented for its operations in the United States.

_____Yes

6. Production of records:

The carrier can and will produce records demonstrating compliance with the safety requirements within 48 hours of receipt of a request from a representative of the USDOT/FMCSA or other authorized Federal or State official.

_____Yes

The carrier is including as an **attachment to this application** the name, address and telephone number of the employee to be contacted for requesting records.

_____Yes

7. Hazardous Materials (to be completed by carriers of hazardous materials only).

The HM carrier has full knowledge of the U.S. DOT Hazardous Materials Regulations, and has established programs for the thorough training of its personnel as required under 49 CFR part 172, Subpart H and 49 CFR 177.816. The HM carrier has **attached to this application** a statement providing information concerning (1) the names of employees responsible for ensuring compliance with HM regulations, (2) a description of their HM safety functions, and (3) a copy of the information used to provide HM training.

_____Yes

The carrier has established a system and procedures for inspection, repair and maintenance of its reusable hazardous materials packages (cargo tanks, portable tanks, cylinders, intermediate bulk containers, etc.) in a safe condition, and for preparation and maintenance of records of inspection, repair, and maintenance in accordance with the U.S. DOT Hazardous Materials Regulations.

_____Yes

The HM carrier has established a system and procedures for filing and maintaining HM shipping documents.

_____Yes

The HM carrier has a system in place to ensure that all HM trucks are marked and placarded as required by 49 CFR part 172, Subparts D and F.

_____Yes

The carrier will register under 49 CFR part 107, Subpart G, if transporting any quantity of hazardous materials requiring the vehicle to be placarded.

_____Yes

7A. For Cargo Tank (CT) Carriers (of HM):

The carrier **submits with this application** a certificate of compliance for each cargo tank the company utilizes in the U.S., together with the name, qualifications, CT number, and CT number registration statement of the facility the carrier will be utilizing to conduct the test and inspections of such tanks required by 49 CFR part 180.

_____Yes

_____

Signature of applicant

By signing these certifications, the carrier official is on notice that the representations made herein are subject to verification through inspections in the United States and through the request for and examination of records and documents. Failure to support the representations contained in this application could form the basis of a proceeding to assess civil penalties and/or lead to the revocation of the authority granted.

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Safety and Compliance Information and Attachments for Section V

1. Individual responsible for safe operations and compliance with applicable regulatory and safety requirements.

NAME	ADDRESS	POSITION

2. Location where current copies of the Federal Motor Carrier Safety Regulations and other regulations are maintained.

_____

_____

_____

_____

_____

ATTACHMENT FOR SECTION V, NO. 1, DRIVER QUALIFICATIONS
Intentionally Left Blank

ATTACHMENT FOR SECTION V, NO. 2, HOURS OF SERVICE

MONITORING STATEMENTS

Statements describing monitoring procedures for ensuring correctness of logbook completion by drivers and describing record keeping and driver review procedures.

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ATTACHMENT FOR SECTION V, NO. 3, DRUG AND ALCOHOL TESTING

Person(s) responsible for implementing and overseeing alcohol and drug programs.

NAME	ADDRESS	POSITION

The drug testing laboratory and the alcohol testing service that are used by the carrier.

NAME	ADDRESS	TELEPHONE NO.

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ATTACHMENT FOR SECTION V, NO. 4,
Intentionally Left Blank

ATTACHMENT FOR SECTION V, NO. 5, ACCIDENT MONITORING PROGRAM

1. Describe how company will maintain accident register (49 CFR 390.15(b)) once it begins operations in U.S.

ATTACHMENT FOR SECTION V, NO. 5, ACCIDENT MONITORING PROGRAM

2. Describe and explain accident monitoring program for operations in U.S. (49 CFR 391.25 and 391.27).

ATTACHMENT FOR SECTION V, NO. 6, PRODUCTION OF RECORDS

Contact person(s) for requesting records:

Name	Address	Telephone Number

ATTACHMENT FOR SECTION V, NO. 7, HAZARDOUS MATERIALS (TO BE COMPLETED BY CARRIERS OF HAZARDOUS MATERIALS ONLY)

Statement respecting person(s) (other than drivers) responsible for ensuring compliance with HM regulations (49 CFR 172.704) for HM activities.

ATTACHMENT FOR SECTION V, NO. 7A, (FOR CARGO TANK CARRIERS OF HM)

Cargo Tank Information (HM) (49 CFR part 180, Subpart E):

SECTION VI - HOUSEHOLD GOODS REQUIREMENTS

Household Goods Motor Carrier Applicants must :

1. Provide evidence of participation in an arbitration program and a copy of the notice they provide to shippers of the availability of binding arbitration.

2. Identify their tariff and provide a copy of the notice to shippers of the availability of that tariff for inspection, indicating how that notice is provided.

3. Disclose all relationships involving common stock, common ownership, common management, or common familial relationships between the applicant and any other motor carrier, freight forwarder, or broker of household goods within 3 years of the date of the filing of this application.

Applicant certifies that it has access to, has read, is familiar with, and will observe all applicable Federal laws relating to consumer protection, estimating, consumers' rights and responsibilities, and options for limitations of liability for loss and damage.

_____

Signature

Name of affiliated person or company	Common Stock (Yes/No)	Common Ownership (Yes/No)	Common Management (Yes/No)	Family Relation (Yes/No)

SECTION VII – SCOPE OF REGISTRATION SOUGHT

1. Applicant seeks to provide the following transportation service in foreign/international commerce:

   - ❑ For a non-North American carrier to transport property between points outside of United States and all points in the United States.
   - ❑ For non-North American passenger carriers, charter and tour bus operations between points outside of United States and points in the United States.
   - ❑ For a non-North American passenger carrier to provide transportation services as a private motor carrier of passengers.

2. Indicate the principal border crossing points which applicant intends to utilize.

   _____

   _____

   _____

SECTION VIII – COMPLIANCE CERTIFICATIONS

All applicants must certify as follows:

- Applicant is willing and able to provide the proposed operations or service and to comply with all pertinent statutory and regulatory requirements and regulations issued or administered by the U.S. Department of Transportation, including operational regulations, safety fitness requirements, motor vehicle safety standards, and minimum financial responsibility requirements.

  _____ Yes

- Applicant understands that the agent(s) for service of process designated on FMCSA Form BOC-3 will be deemed applicant's official representative(s) in the United States for receipt of filings and notices in administrative proceedings under 49 U.S.C. 13303, and for receipt of filings and notices issued in connection with the enforcement of any Federal statutes or regulations.

  _____ Yes

- Applicant is willing and able to produce for review or inspection documents which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the Department of Transportation, including the Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards and Hazardous Materials Regulations, within 48 hours of any written request. Applicant understands that the written request may be served on the person identified in the attachment for Section V, number 6, or the designated agent for service of process.

  _____ Yes

- Applicant is willing and able to have all vehicles operated in the United States inspected at least every 90 days by a certified inspector and have decals affixed attesting to satisfactory compliance with applicable inspection criteria. This requirement will end after applicant has held permanent registration from FMCSA for three consecutive years.

  _____ Yes

- Applicant is not presently disqualified from operating a commercial vehicle in the United States.

  _____ Yes

- Applicant is not prohibited from filing this application because its FMCSA registration is currently under suspension or was revoked less than 30 days before the filing of this application.

  _____ Yes

_____
Signature

All motor carriers operating within the United States, including non-North American motor carriers applying for operating authority under this form, must comply with all pertinent Federal, State, local and tribal statutory and regulatory requirements when operating within the United States. Such requirements include, but are not limited to, all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or by an OSHA state plan agency pursuant to Section 18 of the Occupational Safety and Health Act of 1970. Such requirements also include all applicable statutory and regulatory environmental standards and requirements administered by the U.S. Environmental Protection Agency or a State, local or tribal environmental protection agency. Compliance with these statutory and regulatory requirements may require motor carriers and/or individual operators to produce documents for review and inspection for the purpose of determining compliance with such statutes and regulations.

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SECTION IX – APPLICANT'S OATH

APPLICANT'S OATH MUST BE COMPLETED (SIGNED) BY APPLICANT

I, _____,

(First Name) (Middle Name) (Surname) (Title)

verify under penalty of perjury, under the laws of the United States of America, that I understand the foregoing certifications and that all responses are true and correct. I certify that I am qualified and authorized to file this application. I know that willful misstatement or omission of material facts constitute Federal criminal violations under 18 U.S.C. §§ 1001 and 1621 and that each offense is punishable by up to 5 years imprisonment and a fine under Title 18, United States Code, or civil penalties under 49 U.S.C. §521(b)(2)(B) and 49 U.S.C. Chapter 149.

I further certify that I have not been convicted in U.S. Federal or State courts, after September 1, 1989, of any offense involving the distribution or possession of controlled substances, or that if I have been so convicted, that I am not ineligible to receive U.S. Federal benefits, either by court order or operation of law, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862).

_____ _____

(Signature) (Date)

_____

(Applicant's Title, e.g., President or Owner)

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FMCSA FILING FEES

Fee Schedule effective January 1996
Fee for Registration . . . $300.00

FEE POLICY

- Filing fees apply only to For-hire carriers of passengers or property. The fee is waived if a For-hire carrier is exempt under 49 U.S.C. Chapter 135, Subchapter I.
- Filing fees must be payable to the **Federal Motor Carrier Safety Administration**, by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.
- Separate fees are required for each **type of registration** requested. If applicant requests registration as a for-hire motor carrier and as a motor private carrier, multiple fees are required. The applicant may submit a single payment for the sum of the applicable fees.
- Filing fees must be **sent along with the original and one copy of the application** to the appropriate address under the paragraph titled **MAILING INSTRUCTIONS** on page 10 of the instructions to this form.
- After an application is received, the filing fee is non-refundable.
- An application submitted with a personal check will be held for 30 days from the date received. The FMCSA reserves the right to discontinue processing any application for which a check is returned due to insufficient funds. No application will be processed until the fee is paid in full.

FILING FEE INFORMATION

Applicants must submit a filing fee of $300.00 for each type of registration that requires a filing fee. The total amount due is equal to the fee(s) times the number of boxes checked in ***Section III*** (where a filing fee applies) of the Form OP-1(NNA). Fees for multiple authorities may be combined in a single payment.

Total number of boxes
checked in ***Section III*** (requiring a filing fee) ___ x filing fee $ _____ = $_____

INDICATE AMOUNT $_____ AND METHOD OF PAYMENT:

☐ CHECK OR ☐ MONEY ORDER, PAYABLE TO: **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

☐ VISA ☐ MASTERCARD

Credit Card Number _____

Expiration Date: _____

Signature _____ Date: _____

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