

New Entrant Rule Summary

Are you a new entrant?

Are you new to interstate commerce?

Have you been notified that you are subject to a New Entrant Safety Audit?

If so, this subject applies to you!

What is the applicability of the rule?

The changes to the New Entrant Safety Assurance Program (new entrant program) under 49 CFR Part 385, subpart D apply to all new U.S.- and Canada-domiciled motor carrier owners and operators seeking authority to conduct interstate operations within the United States.

The new application process and safety monitoring system under 49 CFR Part 385, subparts H and I respectively, apply to all new non-North America-domiciled motor carrier owners and operators seeking authority to provide transportation of property and passengers in interstate commerce within the United States.

Conforming amendments to 49 CFR Parts 365, 387 and 390 apply to all new U.S.-, Canada-, and non-North America-domiciled motor carrier owners and operators seeking authority to conduct interstate operations within the United States.

NE Rule Questions and Answers (Q&A)

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

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.

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

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.

What may cause an expedited action? (§ 385.308)

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

- (1) Using a driver not possessing a valid commercial driver's license to operate a commercial vehicle as defined under § 383.5. An invalid commercial driver's license includes one that is falsified, revoked, expired, or missing a required endorsement.
- (2) Operating a vehicle placed out of service for violations of the Federal Motor Carrier Safety Regulations or compatible State laws and regulations without taking necessary corrective action.
- (3) Being involved in, through action or omission, a hazardous materials reportable incident, as described under 49 CFR 171.15 or 171.16, involving:
 - (i) A highway route controlled quantity of certain radioactive materials (Class 7).
 - (ii) Any quantity of certain explosives (Class 1, Division 1.1, 1.2, or 1.3).
 - (iii) Any quantity of certain poison inhalation hazard materials (Zone A or B).
- (4) Being involved in, through action or omission, two or more hazardous materials reportable incidents as described under 49 CFR 171.15 or 171.16, involving hazardous materials other than those listed above.
- (5) Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required controlled substances or alcohol tests.
- (6) Operating a commercial motor vehicle without the levels of financial responsibility required under Part 387 of this subchapter.
- (7) Having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within a consecutive 90-day period.

If a new entrant that commits any of the expedited action violations listed above:

- (1) Carrier has not had a safety audit or compliance review; FMCSA will schedule the new entrant for a safety audit as soon as practicable.
- (2) Carrier 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.
 - (a) 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.
 - (b) 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.

What happens after completion of the safety audit? (§ 385.319)

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

- (a) 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 12-month period of new entrant registration.
- (b) 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 to remedy its safety management practices.

- (1) 60-day corrective action requirement. All new entrants, except those specified in paragraph (b) of this section (below), 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 the definition of a "Commercial Motor Vehicle" in § 390.5.

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

The failures of safety management practices consist of a lack of basic safety management controls or failure to comply with one or more of the regulations set forth in the chart below and will result in a notice to a new entrant that its USDOT new entrant registration will be revoked.

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

Table to § 385.321 Violations That Will Result in Automatic Failure of the New Entrant Safety Audit

| Violation | Guidelines for Determining Automatic Failure of the Safety Audit |
|--|---|
| § 382.115(a)/ § 382.115(b) – Failing to implement an alcohol and/or controlled substances testing program (domestic and foreign motor carriers, respectively). | Single occurrence. |
| § 382.201 – Using a driver known to have an alcohol content of 0.04 or greater to perform a safety-sensitive function. | Single occurrence. |
| § 382.211 – Using a driver who has refused to submit to an alcohol or controlled substances test required under Part 382. | Single occurrence. |
| § 382.215 – Using a driver known to have tested positive for a controlled substance. | Single occurrence. |
| § 382.305 – Failing to implement a random controlled substances and/or alcohol testing program. | Single occurrence. |
| § 383.3(a)/ § 383.23(a) – Knowingly using a driver who does not possess a valid CDL. | Single occurrence. |
| § 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. | Single occurrence. |
| § 383.51(a) – Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle. | Single occurrence. This violation refers to a driver operating a CMV as defined under § 383.5. |
| § 387.7(a) – Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. | Single occurrence. |
| § 387.31(a) – Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility. | Single occurrence. |
| § 391.11(b)(4) – Knowingly using a physically unqualified driver. | Single occurrence. This violation refers to a driver operating a CMV as defined under § 390.5 |
| § 391.15(a) – Knowingly using a disqualified driver | Single occurrence. |
| § 395.8(a) – Failing to require a driver to make a record of duty status. | Requires a violation threshold (51% or more of examined records) to trigger automatic failure. |
| § 396.9(c)(2) – Requiring or permitting the operation of a commercial motor vehicle declared “out-of-service” before repairs are made. | Single occurrence. |
| § 396.11(c)-Failing to correct out-of-service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again. | Single occurrence. |
| § 396.17(a)- Using a commercial motor vehicle not periodically inspected. | Requires a violation threshold (51% or more of examined records) to trigger automatic failure. |

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

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.

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

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

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

- (1) Day 61 from the notice date for new entrants subject to § 385.319(c)(1).
- (2) Day 46 from the notice date for new entrants subject to § 385.319(c)(2).
- (3) If an extension has been granted under § 385.323, the day following the expiration of the extension date.

May a new entrant request an administrative review of a determination of a failed safety audit? (§ 385.327)

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.

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.

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.

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

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).

The Field Administrator's decision constitutes the final Agency action.

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

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

If the USDOT new entrant registration was revoked because of a failed safety audit, the new entrant must do all 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.

If the USDOT new entrant registration was revoked because FMCSA found that the new entrant had failed to submit to a safety audit, it must do all 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.

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.

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

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.

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

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 by 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.