

§ 385.1

49 CFR Ch. III (10–1–02 Edition)

- 385.319 What happens after the completion of the safety audit?
- 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?
- 385.323 May the FMCSA extend the period under §385.319(c) for a new entrant to take corrective action to remedy its safety management practices?
- 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?
- 385.327 What happens when a new entrant receives a notice under §385.319(c) that its new entrant registration will be revoked and it believes the FMCSA made an error in its determination?
- 385.329 May a new entrant that has had its U.S. DOT registration revoked and its operations placed out of service (OOS) re-apply?
- 385.331 What happens if a new entrant operates a CMV after having been issued an order placing its interstate operations out of service (OOS)?
- 385.333 What happens at the end of the 18-month safety monitoring period?
- 385.335 If the FMCSA conducts a compliance review on a new entrant, will the new entrant also be subject to a safety audit?
- 385.337 What happens if a new entrant refuses to permit a safety audit to be performed on its operations?
- APPENDIX A TO PART 385 EXPLORATION OF SAFETY AUDIT EVALUATION CRITERIA
- APPENDIX B TO PART 385—EXPLANATION OF SAFETY RATING PROCESS

AUTHORITY: 49 U.S.C. 113, 504, 521(b), 5113, 13901–13905, 31136, 31144, 31148, and 31502; Section 350 of Public Law 107–87; and 49 CFR 1.73.

EFFECTIVE DATE NOTE: At 67 FR 31982, May 13, 2002, the authority citation for part 385 was revised, effective Jan. 1, 2003. For the convenience of the user, the revised text follows:

AUTHORITY: 49 U.S.C. 113, 504, 521(b), 5113, 31136, 31144, 31148, and 31502; and 49 CFR 1.73.

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

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

Subpart A—General

§ 385.1 Purpose and scope.

(a) This part establishes the FMCSA’s procedures to determine the

safety fitness of motor carriers, to assign safety ratings, to direct motor carriers to take remedial action when required, and to prohibit motor carriers receiving a safety rating of “unsatisfactory” from operating a CMV.

(b) The provisions of this part apply to all motor carriers subject to the requirements of this subchapter, except non-business private motor carriers of passengers and motor carriers conducting for-hire operations of passenger CMVs with a capacity of fewer than 16 persons, including the driver.

[65 FR 50934, Aug. 22, 2000]

EFFECTIVE DATE NOTE: At 67 FR 31982, May 13, 2002, §385.1 was amended by redesignating paragraph (b) as paragraph (c) and revising it, and by adding new paragraph (b), effective Jan. 1, 2003. For the convenience of the user, the revised text follows:

§ 385.1 Purpose and scope.

* * * * *

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

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

§ 385.3 Definitions.

Applicable safety regulations or requirements means 49 CFR subtitle B, chapter III, Subchapter B—Federal Motor Carrier Safety Regulations; and 49 CFR subtitle B, chapter I, Subchapter C—Hazardous Materials Regulations.

Commercial motor vehicle shall have the same meaning as described in §390.5 of this subchapter.

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

Reviews. For the purposes of this part:

(1) *Compliance review* means an on-site examination of motor carrier operations, such as drivers’ hours of service, maintenance and inspection, driver

qualification, commercial drivers license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. The compliance review may result in the initiation of an enforcement action.

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

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

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

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

(3) *Unsatisfactory safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in oc-

currences listed in §385.5 (a) through (k).

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

[53 FR 50968, Dec. 19, 1988, as amended at 56 FR 40805, Aug. 16, 1991; 62 FR 60042, Nov. 6, 1997; 67 FR 12779, Mar. 19, 2002]

EFFECTIVE DATE NOTE: At 67 FR 31983, May 13, 2002, §385.3 was amended by revising the section heading and adding definitions and acronyms in alphabetical order, effective Jan. 1, 2003. For the convenience of the user, the revised and added text follows:

§ 385.3 Definitions and acronyms.

* * * * *

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

* * * * *

FMCSA means the Federal Motor Carrier Safety Administration.

FMCSRs mean Federal Motor Carrier Safety Regulations (49 CFR parts 350-399).

HMRs means the Hazardous Materials Regulations (49 CFR parts 100-178).

New entrant is a motor carrier not domiciled in Mexico that applies for a United States Department of Transportation (DOT) identification number in order to initiate operations in interstate commerce.

New entrant registration is the registration (US DOT number) granted a new entrant before it can begin interstate operations in an 18-month monitoring period. A safety audit must be performed on a new entrant's operations within 18 months after receipt of its US DOT number and it must be found to have adequate basic safety management controls to continue operating in interstate commerce at the end of the 18-month period.

§ 385.5 Safety fitness standard.

The satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. To meet the safety fitness standard, the motor carrier shall demonstrate that it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

- (a) Commercial driver's license standard violations (part 383),
- (b) Inadequate levels of financial responsibility (part 387),