

## Requirements

The Federal Motor Carrier Safety Administration sought to enhance the New Entrant program through implementing the following regulatory and non regulatory proposals - Discovery of any one of the 16 specific regulatory violations would result in an automatic failure. The Agency believes that these 16 regulatory requirements are essential to demonstrating that basic safety management controls are in place.

<b>Table to § 385.321(b)</b>	
<b>Violations That Will Result in Automatic Failure of the New Entrant Safety Audit</b>	
<b>Violation</b>	<b>Guidelines for Determining Automatic Failure of the Safety Audit</b>
<ul style="list-style-type: none"> <li>• § 382.115(a)/§ 382.115(b)—Failing to implement an alcohol and/or controlled substances testing program (domestic and foreign motor carriers, respectively).</li> </ul>	Single occurrence.
<ul style="list-style-type: none"> <li>• § 382.201—Using a driver known to have an alcohol content of 0.04 or greater to perform a safety-sensitive function.</li> </ul>	Single occurrence.
<ul style="list-style-type: none"> <li>• § 382.211—Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382.</li> </ul>	Single occurrence.
<ul style="list-style-type: none"> <li>• § 382.215—Using a driver known to have tested positive for a controlled substance.</li> </ul>	Single occurrence.
<ul style="list-style-type: none"> <li>• § 382.305—Failing to implement a random controlled substances and/or alcohol testing program.</li> </ul>	Single occurrence.
<ul style="list-style-type: none"> <li>• § 383.3(a)/§ 383.23(a)—Knowingly using a driver who does not possess a valid CDL.</li> </ul>	Single occurrence.
<ul style="list-style-type: none"> <li>• § 383.37(a)—Knowingly allowing,</li> </ul>	Single occurrence.

<p>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.</p>	
<ul style="list-style-type: none"> <li>• § 383.51(a)—Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle.</li> </ul>	<p>Single occurrence. This violation refers to a driver operating a CMV as defined under § 383.5.</p>
<ul style="list-style-type: none"> <li>• § 387.7(a)—Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.</li> </ul>	<p>Single occurrence.</p>
<ul style="list-style-type: none"> <li>• § 387.31(a)—Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility.</li> </ul>	<p>Single occurrence.</p>
<ul style="list-style-type: none"> <li>• § 391.15(a)—Knowingly using a disqualified driver.</li> </ul>	<p>Single occurrence.</p>
<ul style="list-style-type: none"> <li>• § 391.11(b)(4)—Knowingly using a physically unqualified driver.</li> </ul>	<p>Single occurrence. This violation refers to a driver operating a CMV as defined under § 390.5.</p>
<ul style="list-style-type: none"> <li>• § 395.8(a)—Failing to require a driver to make a record of duty status.</li> </ul>	<p>Requires a violation threshold (51% or more of examined records) to trigger automatic failure.</p>
<ul style="list-style-type: none"> <li>• § 396.9(c) (2)—Requiring or permitting the operation of a commercial motor vehicle declared "out-of-service" before repairs are made.</li> </ul>	<p>Single occurrence.</p>
<ul style="list-style-type: none"> <li>• § 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.</li> </ul>	<p>Single occurrence.</p>

<ul style="list-style-type: none"> <li>• § 396.17(a)—Using a commercial motor vehicle not periodically inspected.</li> </ul>	<p>Requires a violation threshold (51% or more of examined records) to trigger automatic failure.</p>
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Discovery of any one of seven triggering incidents generally determined during a roadside inspection would result in FMCSA taking some form of expedited action against the new entrant. Expedited actions could include a written demand for corrective action, an expedited safety audit, an expedited compliance review or appropriate CSA 2010 intervention. A new entrant that commits any of the following actions, identified through roadside inspections may be subjected to an expedited safety audit or a compliance review or may be required to submit a written response demonstrating corrective action:

(1) Using a driver not possessing a valid commercial driver's license to operate a commercial vehicle as defined under § 383.5 of this chapter. An invalid commercial driver's license includes one that is falsified, revoked, expired, or missing a required endorsement.

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

(3) Being involved in, through action or omission, a hazardous materials reportable incident, as described under 49 CFR 171.15 or 171.16, involving:

(i) 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.

(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.

### Compliance Dates

**This rule is effective: February 17, 2009 and the Compliance date for this rule is required beginning December 16, 2009**