

§ 385.1

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?

Subpart E—Hazardous Materials Safety Permits

385.401 What is the purpose and scope of this subpart?

385.402 What definitions are used in this subpart?

385.403 Who must hold a safety permit?

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

385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?

385.409 When may a temporary safety permit be issued to a motor carrier?

385.411 Must a motor carrier obtain a safety permit if it has a State permit?

385.413 What happens if a motor carrier receives a proposed safety rating that is less than Satisfactory?

385.415 What operational requirements apply to the transportation of a hazardous material for which a permit is required?

385.417 Is a motor carrier's safety permit number available to others?

385.419 How long is a safety permit effective?

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

385.423 Does a motor carrier have a right to an administrative review of a denial, suspension, or revocation of a safety permit?

APPENDIX A TO PART 385—EXPLANATION OF SAFETY AUDIT EVALUATION CRITERIA

APPENDIX B TO PART 385—EXPLANATION OF SAFETY RATING PROCESS

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.

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

49 CFR Ch. III (10-1-04 Edition)

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) 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) This part establishes the safety permit program for a motor carrier to transport the types and quantities of hazardous materials listed in § 385.403.

(d) 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.

[65 FR 50934, Aug. 22, 2000, as amended at 67 FR 31982, May 13, 2002; 69 FR 39366, June 30, 2004]

§ 385.3 Definitions and acronyms.

Applicable safety regulations or requirements means 49 CFR chapter III, subchapter B—Federal Motor Carrier Safety Regulations or, if the carrier is an intrastate motor carrier subject to the hazardous materials safety permit requirements in subpart E of this part, the equivalent State standards; and 49 CFR chapter I, subchapter C—Hazardous Materials Regulations.

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

Commercial motor vehicle shall have the same meaning as described in § 390.5 of this subchapter, except that this definition will also apply to intrastate motor vehicles subject to the hazardous materials safety permit requirements of subpart E of this part.

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.

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.

RSPA means the Research and Special Programs Administration.

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 occurrences 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; 67 FR 31983, May 13, 2002; 69 FR 39367, June 30, 2004]

§385.4 Matter incorporated by reference.

(a) *Incorporation by reference.* Part 385 includes references to certain matter or materials, as listed in paragraph (b) of this section. The text of the materials is not included in the regulations contained in part 385. The materials are hereby made a part of the regulations in part 385. The Director of the