

(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.

[73 FR 76488, Dec. 16, 2008]

§ 385.309 What is the purpose of the safety audit?

The purpose of a safety audit is to:

(a) Provide educational and technical assistance to the new entrant; and

(b) Gather safety data needed to make an assessment of the new entrant's safety performance and adequacy of its basic safety management controls.

§ 385.311 What will the safety audit consist of?

The safety audit will consist of a review of the new entrant's safety management systems and a sample of required records to assess compliance with the FMCSRs, applicable HMRS and related record-keeping requirements as specified in appendix A of this part. The areas for review include, but are not limited to, the following:

- (a) Driver qualification;
- (b) Driver duty status;
- (c) Vehicle maintenance;
- (d) Accident register; and
- (e) Controlled substances and alcohol use and testing requirements.

§ 385.313 Who will conduct the safety audit?

An individual certified under the FMCSA regulations to perform safety audits will conduct the safety audit.

§ 385.315 Where will the safety audit be conducted?

The safety audit will generally be conducted at the new entrant's business premises.

§ 385.317 Will a safety audit result in a safety fitness determination by the FMCSA?

A safety audit will not result in a safety fitness determination. Safety fitness determinations follow completion of a compliance review.

§ 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