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audit, that its USDOT new entrant registration will be revoked and its operations placed out-of-service unless it takes the actions specified in the notice to remedy its safety management practices.

(1) *60-day corrective action requirement.* All new entrants, except those specified in paragraph (c)(2) of this section, 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 paragraph (4) of the definition of a ''Commercial Motor Vehicle'' in §390.5 of this subchapter.

[73 FR 76489, Dec. 16, 2008]

§ 385.321 Safety audit: Failure.

(a) *General.* The failures of safety management practices consist of a lack of basic safety management controls as described in Appendix A of this part or failure to comply with one or more of the regulations set forth in paragraph (b) of this section and will result in a notice to a new entrant that its USDOT new entrant registration will be revoked.

(b) *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
1. §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.
2. §382.201—Using a driver known to have an alcohol content of 0.04 or greater to perform a safety-sensitive function.	Single occurrence.
3. §382.211—Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382.	Single occurrence.
4. §382.215—Using a driver known to have tested positive for a controlled substance.	Single occurrence.
5. §382.305—Failing to implement a random controlled substances and/or alcohol testing program.	Single occurrence.
6. §383.3(a)/§383.23(a)—Knowingly using a driver who does not possess a valid CDL.	Single occurrence.
7. §383.37(b)-Knowingly allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle with a commercial learner's permit or commercial driver's license which is disqualified by a State, has lost the right to operate a CMV in a State or who is disqualified to operate a commercial motor vehicle.	Single occurrence.
8. §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.
9. §387.7(a)—Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.	Single occurrence.
10. §387.31(a)—Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility.	Single occurrence.
11. §391.15(a)—Knowingly using a disqualified driver	Single occurrence.
12. §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.
13. §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.
14. §396.9(c)(2)—Requiring or permitting the operation of a commercial motor vehicle declared ''out-of-service'' before repairs are made.	Single occurrence.
15. §396.11(a)(3)—Failing to correct out-of-service defects listed by driver in a driver vehicle inspection report before the vehicle is operated.	Single occurrence.

TABLE TO § 385.321—VIOLATIONS THAT WILL RESULT IN AUTOMATIC FAILURE OF THE NEW ENTRANT SAFETY AUDIT—Continued

Violation	Guidelines for determining automatic failure of the safety audit
16. § 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.

[73 FR 76489, Dec. 16, 2008, as amended at 77 FR 26989, May 8, 2012; 80 FR 59073, Oct. 1, 2015]

§ 385.323 Safety audit: Extensions for corrective action.

(a) 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.

(b) 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.

[73 FR 76490, Dec. 16, 2008]

§ 385.325 Safety audit: Outcomes of a corrective action notice.

(a) If the new entrant provides evidence of corrective action acceptable to the FMCSA within the time period provided in § 385.319(c), including any extension of that period authorized under § 385.323, the FMCSA will provide written notification to the new entrant that its DOT new entrant registration will not be revoked and it may continue operations.

(b) 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.

(c) The new entrant may not operate in interstate commerce on or after the effective date of the out-of-service order.

[67 FR 31983, May 13, 2002, as amended at 73 FR 76490, Dec. 16, 2008]

§ 385.327 Safety audit: Administrative review.

(a) 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.

(b) FMCSA may request that the new entrant submit additional data and attend a conference to discuss the issues(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.

(c) 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