



This document is scheduled to be published in the Federal Register on 08/16/2012 and available online at <http://federalregister.gov/a/2012-20233>, and on [FDsys.gov](http://FDsys.gov)

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

#### **49 CFR Part 385**

#### **FMCSA Policy on the Timeliness of New Entrant Corrective Action Submissions**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of policy.

**SUMMARY:** FMCSA provides notice of the Agency's policy that it must receive a new entrant motor carrier's evidence of corrective action within 15 days of the date of a new entrant safety audit failure notice or within 10 days of the date of an expedited action notice. A new entrant motor carrier that does not submit evidence of corrective action within these time periods could have its registration revoked and be placed out of service.

**DATES:** This decision became effective on July 20, 2012 for expedited action notices and will become effective on August 20, 2012 for safety audit failure notices.

**FOR FURTHER INFORMATION CONTACT:** Thomas Kelly, Office of Enforcement and Program Delivery, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590, (202) 366-1812; e-mail [Thomas.Kelly@dot.gov](mailto:Thomas.Kelly@dot.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

FMCSA's New Entrant Safety Assurance Program, 49 CFR Part 385, subpart D, applies to new entrant motor carriers domiciled in the United States and Canada. FMCSA published an interim final rule on May 13, 2002 (67 FR 31978), establishing the safety audit process for new entrant motor carriers. In order to improve the effectiveness of the program, FMCSA published a Final Rule on December 16, 2008 (73 FR 76472), amending the regulations

to raise the standard of compliance for passing the new entrant safety audit. Appendix A to 49 CFR Part 385 explains the safety audit evaluation criteria. In addition, there are sixteen regulations that FMCSA has identified as essential elements of basic safety management controls necessary to operating in interstate commerce. A violation of any one of these sixteen regulations will result in automatic failure of the new entrant safety audit (49 CFR 385.321(b)). A new entrant must successfully comply with the Appendix A criteria and have no violations of the sixteen automatic failure regulation in order to pass the safety audit (49 CFR 385.321(a)).

A new entrant motor carrier that fails the safety audit must provide evidence demonstrating corrective action for all violations contributing to the carrier's failure. Except for certain passenger carriers and hazardous materials carriers which must take corrective action within 45 days, new entrants must take corrective action within 60 days (49 CFR 385.319(c)). If the new entrant fails to submit timely evidence of corrective action that is acceptable to FMCSA, its new entrant registration will be revoked and its interstate motor carrier operations ordered out of service (49 CFR 385.325(b)).

In addition, a new entrant that commits certain violations listed at 49 CFR 385.308(a) may be subject to an expedited action which may include being subjected to an expedited safety audit or compliance review, or being required to submit evidence demonstrating corrective action (49 CFR 385.308). If the new entrant has already had a safety audit or compliance review, FMCSA will send it a letter advising that it must submit evidence of corrective action within 30 days (49 CFR 385.308(b)(2)). If the new entrant does not respond demonstrating corrective action on the expedited actions within 30 days, its registration will be revoked (49 CFR 385.308(d)).

## **Policy**

FMCSA must receive a new entrant motor carrier's corrective action plan within 15 days of the date of a new entrant safety audit failure notice or within 10 days of the date of an expedited action notice, in order to ensure adequate time for review. Otherwise, the motor carrier risks having its registration revoked and being placed out of service. FMCSA has observed that a number of new entrant carriers have waited until the end of the corrective action periods established in 49 CFR 385.308(b) and 385.319(c) to submit evidence of corrective action, leaving Agency officials little to no time for review. However, § 385.308 requires the carrier to submit evidence demonstrating corrective action within 30 days. Similarly, § 385.325(a) requires the new entrant to submit evidence that is acceptable to FMCSA within the specified corrective action period. If Agency officials do not have sufficient time for review, the Agency cannot make a determination within the appropriate time period as to whether evidence of corrective action has been properly demonstrated, as required by § 385.308, or is acceptable, as required by § 385.325(a).

If FMCSA receives evidence of corrective action within 15 days of the date of the new entrant safety audit failure notice or within 10 days of the date of the expedited action notice, Agency officials will either review and make a decision on whether it is acceptable before the end of the corrective action period or, in the case of new entrant safety audit failures, grant an extension of time to complete the review if the Agency determines that the motor carrier is making a good faith effort to remedy deficiencies. The Agency will not grant an extension in the case of an expedited action notice or for motor carriers that transport passengers or hazardous materials, as defined in 49 CFR 390.5.

If FMCSA receives evidence of corrective action more than 15 days after the date of the new entrant safety audit failure notice or more than 10 days after the date of the expedited action notice, the Agency will not guarantee that the evidence will be considered prior to the expiration of the corrective action period. If the corrective action period expires before the Agency makes a determination, the carrier's registration will be revoked. If the Agency subsequently determines that the corrective action plan is acceptable, the carrier's registration will be immediately reinstated. However, if the Agency subsequently determines that the corrective action plan is not acceptable, the carrier will be required to wait the requisite 30 days before reapplying for new entrant registration in accordance with 49 CFR 385.329.

Issued on: August 8, 2012

---

Anne S. Ferro  
Administrator

[FR Doc. 2012-20233 Filed 08/15/2012 at 8:45 am; Publication Date: 08/16/2012]