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Before the

SECTION  
10111-017-02

**Federal Motor Carrier Safety Administration**

February 12, 2007

Docket Number FMCSA-2001-11061-37

Comments submitted by the

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and

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# MINNESOTA DEPARTMENT OF PUBLIC SAFETY



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The Minnesota State Patrol – Commercial Vehicle Section (MSP) and the Minnesota Department of Transportation – Office of Freight and Commercial Vehicle Operations (OFCVO) have been responsible for administering the Federal Motor Carrier Safety Administrations - New Entrant Safety Assurance Program in Minnesota since its inception on January 1, 2003. To date, over 3,600 safety audits have been performed with an additional 2,450 motor carriers reclassified to accurately reflect the motor carrier's true operations.

With all due respect and consideration of the State of Minnesota's participation in FMCSA's New Entrant Safety Assurance Program, we respectfully submit the following comments:

When the New Entrant program discussions began between FMCSA and MSP, the program was billed as an "education outreach program" designed to help the new interstate motor carrier become and remain compliant with the Federal Motor Carrier Safety Regulations (FMCSR's). The training and certification of our safety auditors was centered on this basic philosophy to educate the new motor carrier as mandated by the U.S. Congress.

We support the strengthening of the New Entrant program to ensure the safety of all roadway users. However, there are several areas of concern that need to be addressed if the program is to be successful by increasing compliance with the FMCSR's and the reduction of the loss of life on our nation's highways.

As a State, we quickly discovered the woeful inadequacies of FMCSA's Education Outreach Program materials, both in print and online formats. FMCSA's online guides have been unavailable for months and simply advise the viewer to consult the FMCSR's as they are updated quarterly. We have inquired when the materials would be available. However, no date has been given; just assurances they are coming out shortly.



The new motor carriers visited in Minnesota are typically smaller operations who hunger for knowledge and assistance in becoming compliant with the FMCSR's, but quickly become frustrated with the lack of plain English resources available from FMCSA. In case after case, this results in the new motor carrier simply giving up due to their limited knowledge of how the regulations are laid out. It isn't a case where the motor carrier won't comply with the FMCSR's; they are simply overwhelmed by the complexity of the FMCSR's.

With this realization, Minnesota developed a New Entrant CD ROM for the motor carriers we visit. Taking into account the minimal knowledge of most new carriers, the CD is laid out in an easy to read "plain English" format covering the FMCSR's part by part. Our New Entrant CD is not meant to replace the FMCSR's, but to provide an easy to understand overview of each part. Once the carrier is armed with this basic knowledge, they can simply open up the FMCSR's and review specific regulations as they understand how the book is laid out. Both MSP and the OFCVO have an online version of the New Entrant CD. Motor carriers who have already received their New Entrant Safety Audit can easily access any changes made to the information provided at the audit. The CD is updated on a regular basis to ensure it is as current as possible.

The point of the above discussion is to demonstrate that if given the proper tools to succeed, most motor carriers will strive to educate themselves in the regulations and remain in compliance. How does FMCSA justify increasing the safety audit failure rate to an expected 40 percent when you're not providing the ETA resources to ensure the carrier has even the most remote chance of success?

Minnesota does support the elimination of the MCS-150A Safety Certification for Application for USDOT number. This safety management tool has proven to be ineffective, as the new motor carrier quickly learns to answer "yes" to the questions or they do not receive a USDOT number.

With regard to the 11 regulatory violations causing an immediate safety audit failure, there appears to be two sets of standards being applied. If during a safety audit any one of the 11 violations is discovered, it would result in an immediate failure. Using a physically unqualified driver or operating a commercial vehicle without an annual inspection are two violations causing an immediate failure during a safety audit. However, these same violations discovered during a roadside inspection will not trigger an expedited safety audit. The question is why are these violations serious enough to cause an immediate failure of the safety audit yet not serious enough to prompt an expedited action?

There are several unanswered questions of how FMCSA plans to handle the increased work load the proposed rule changes will create.

- If there is a 40 percent failure rate nationwide how is FMCSA prepared to deal with those motor carriers placed on the 60 or 45 day Corrective Action Plans (CAP)?
- Will the CAP be handled by each Division Office or will FMCSA attempt to move this to a national call center initiative?
- Who will be responsible to review, approve/disapprove the CAP's submitted?
- Will there be a move by FMCSA to involve the states in the CAP's process?

With regard to the Americans with Disabilities Act (ADA) noted in the proposed rule making, there are again unanswered questions.

- What impact will compliance with the ADA have with regards to the states/contractors NESAP activities?
- Will additional training be needed for the NESAP auditors to ensure to compliance with the ADA requirements?
- Is there a certification process for the NESAP auditors to comply with this ADA initiative? If so, are there annual recertification issues that must be addressed?
- Will the states/contractors be required to purchase supplies or equipment to comply with the ADA requirements?

In our opinion, the Federal Motor Carrier Safety Administration needs to address the current issues facing the New Entrant Safety Assurance Program as highlighted in this letter before moving forward with the proposed rule changes.

Respectfully,



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