



State of New York  
Department of Transportation  
Albany, N.Y. 12232  
<http://www.nysdot.gov>

Thomas Madison, Jr.  
Commissioner

Eliot Spitzer  
Governor

February 20, 2007

Docket Management Facility  
US Department of Transportation  
400 Seventh Street, SW  
Nassif Building, PL-401  
Washington, DC 20590-0001

**RE: DMS DOCKET NUMBER  
FMCSA-2001-11061-39**

Dear Docket Manager:

In New York State, the New Entrant Safety Assurance Program is administered by the New York State Department of Transportation (NYSDOT). State investigators conduct an average of 1,200 new entrant safety audits annually and remove more than 1000 carriers each year due to change of status or revocation.

New York supports the elimination of the MCS 150 A. The large number of unintentionally incorrect answers, as well as intentionally misleading answers, has rendered it an ineffective method to gather accurate information regarding carrier operations.

The Department applauds FMCSA efforts to enhance the validity of the new entrant safety audit as an effective safety compliance tool for regulatory agencies and a safety assessment tool for the industry. The proposed changes to the scoring process will provide government and industry with a more accurate assessment of the true rate of carrier compliance. It will also make the new entrant safety audit program a vital tool for identifying compliance trends related to geographical region, cargo type, vehicle configuration and other carrier specific features. In addition, the higher cost of failure to the carriers, in terms of the repercussions of being placed out of service, is a powerful incentive for compliance.

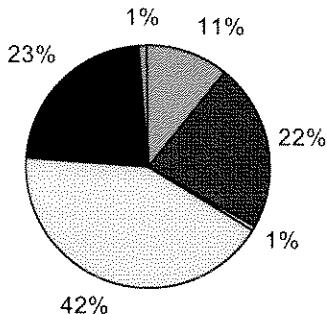
There are two (2) primary concerns the Department feels need to be addressed prior to implementation of the revisions to the safety audit process contained in the rule. Of particular importance is the current lack of appropriate compliance educational information available to newly registered carriers. Access to clear and concise information on regulatory requirements becomes more imperative if carriers are to

face immediate and possibly a substantial financial impact as a result of failing the new entrant safety audit. FMCSA online and hard copy educational outreach materials have not been updated or available for some time. State investigators currently compile and mail new entrant carriers an information packet immediately following the initial contact call to schedule the safety audit. Ideally, the carrier should have easy access to the information prior to this point in order to prepare for the safety audit and to establish safety management operational procedures.

The second significant concern is the additional expenditure of man-hours that will be necessary to address several provisions of the proposed rule. The vastly increased failure rate resulting from the more stringent new entrant rating methodology will generate a corresponding increased need for administrative follow-up actions. The additional audit subject matter (Americans with Disabilities Act (ADA) and Household Goods (HHG) requirements) will increase the time needed to conduct each audit and may require additional man-hours for staff training in these areas.

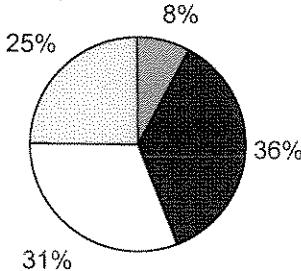
The Department tracked the failure rate of new entrant audits conducted on New York based carriers for the month of January. Audits were “re-rated” using the proposed scoring criteria. The results, illustrated in the following charts, indicated a higher rate of failure statewide (64%) than the 58% projected by FMCSA and a significantly higher rate of failure (74%) for New York City/Long Island carriers, which constituted 67% of the audits conducted in January.

#### METROPOLITAN NYC AREA (123 TOTAL VIOLATIONS)

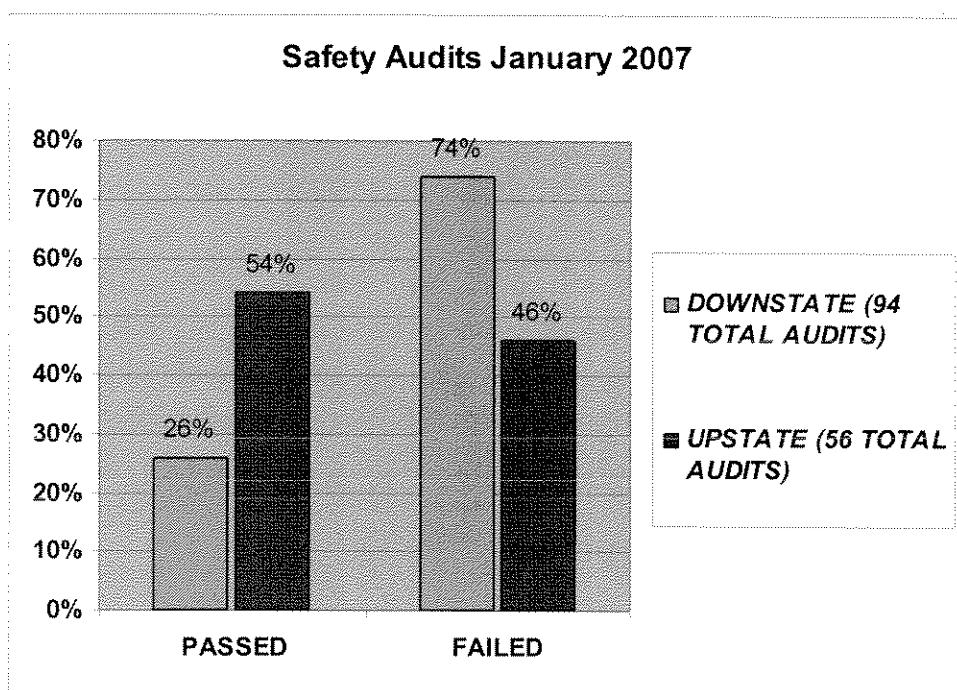
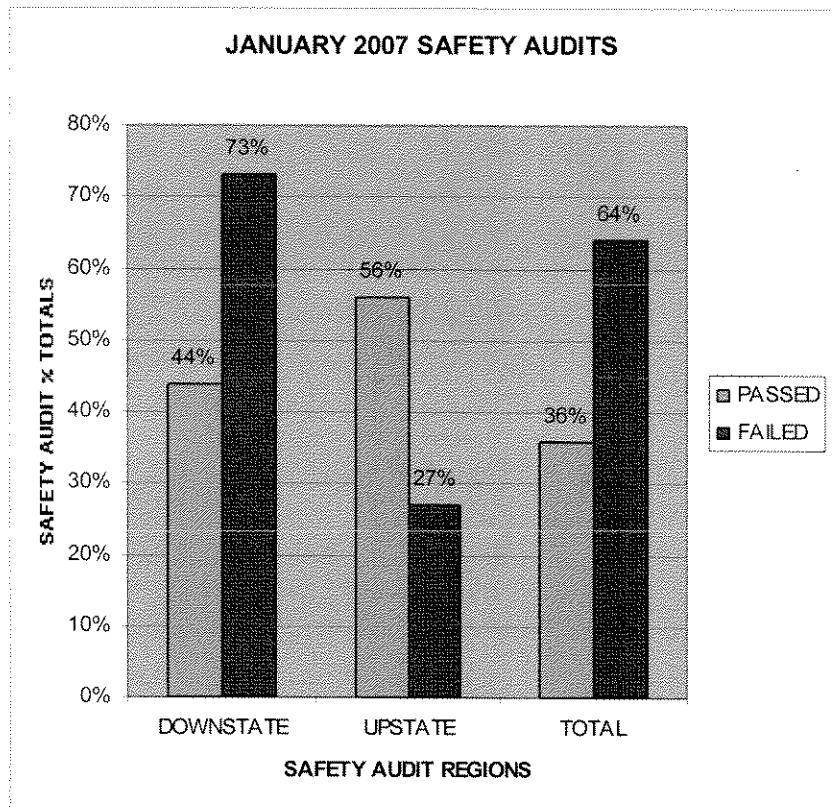


- V1 - General #1-Section #387.7(a) - Operating a CMV without having in effect the required minimum levels of financial responsibility coverage
- V4 - Driver #6-Section #382.115(a) - Failing to implement an alcohol and/or controlled substances testing program
- V7 - Driver #21-Section #383.37(a) - Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver's license, which is suspended, revoked, or canceled by a state or who is disqualified, to operate a CMV
- V9 - Operation #1-Section #395.8(a) - Failing to require a driver to make a record of duty status
- V10 - Maintenance #2-Section #396.17(a) - Using a CMV not periodically inspected
- V11 - Maintenance #5-Section #396.9(c)(2) - Requiring or permitting the operation of a CMV declared "out of service" before repairs are made

#### UPSTATE (36 TOTAL VIOLATIONS)



- V1 - General #1-Section #387.7(a) - Operating a CMV without having in effect the required minimum levels of financial responsibility coverage
- V4 - Driver #6-Section #382.115(a) - Failing to implement an alcohol and/or controlled substances testing program
- V9 - Operation #1-Section #395.8(a) - Failing to require a driver to make a record of duty status
- V10 - Maintenance #2-Section #396.17(a) - Using a CMV not periodically inspected



New entrant safety audits for carriers located in the five boroughs of New York City are almost exclusively conducted on a seminar basis. This is necessary due to the sheer volume of carriers, traffic congestion and chronic shortage of staff in this region of the state. Currently, the majority of the new entrant carriers requiring a safety audit are addressed within the required nine to 18 month timeframe. The addition of new subject material (ADA and HHG) to the individual audits could affect the number of audits that can be completed in the current timelines. Any staff training that may be required in relation to the additional subject areas would also detract from man hours available for conducting safety audits.

It is unclear from the proposed rule what role the state will play in the administrative follow-up actions. If state staff were to be responsible for any portion on the administrative follow actions, without a corresponding extension of the 9/18 month completion timeframe, the number of carriers overdue for an audit at any given time could increase substantially.

FMCSA asserts that the audit failure rate will not be as high as may be anticipated due to the higher cost of failure under the new guidelines. The state concedes that this is likely to be true in the long term, once the industry is familiar with the implications of a more stringent audit process. In the extended short term, however, it is likely that the failure rate and number of subsequent administrative follow up activities would be higher than anticipated.

To adequately gauge the potential impact of the ruling on program delivery, the state would need the following questions addressed:

- What role will the state play in the administrative follow-up resulting from a failed new entrant SA?
- How much time will the additional subject areas add to the length of the individual new entrant safety audit?
- Will investigator training be required to cover the added subject areas of HHG and ADA compliance?
- Will a visual inspection of the vehicle(s) be required to judge compliance with ADA requirements?

Sincerely,



William B. Leonard  
Director, Motor Carrier Compliance Bureau