



# Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

**BEFORE THE  
Department of Transportation  
Federal Motor Carrier Safety Administration**

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**Docket No. FMCSA–2001–11061  
New Entrant Safety Assurance Process**

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Comments submitted on behalf of

**COMMERCIAL VEHICLE SAFETY ALLIANCE**

February 23, 2007

## **The Commercial Vehicle Safety Alliance**

The Commercial Vehicle Safety Alliance (Established in 1982) works to improve commercial vehicle safety and security on the highways by bringing federal, state, provincial and local truck and bus regulatory, safety and enforcement agencies together with industry representatives in the United States, Canada, and Mexico. Every state in the United States, all Canadian provinces, the country of Mexico, and all U.S. Territories and Possessions are CVSA Members. Nearly 350 industry companies and organizations are CVSA Associate Members.

## **Background**

The Commercial Vehicle Safety Alliance has been a strong supporter of the New Entrant Program since its promulgation as a result of the Motor Carrier Safety Improvement Act of 1999. Although the program has placed significant additional resource constraints on the States, we appreciate FMCSA's and the Congress' continued support of this program that is critical to motor carrier and commercial motor vehicle safety.

We believe this program can have a significant positive impact on safety and behavior at the motor carrier management level. As FMCSA indicates in its Notice of Proposed Rulemaking, *"In FY 2000 FMCSA published a report titled 'Analysis of New Entrant Motor Carrier Safety Performance and Compliance Using Safestat'...indicated new entrant carriers had a significantly higher crash involvement than experienced carriers. New entrant carriers had significantly worse driver safety compliance and performance compared to experienced carriers. To a lesser degree, new entrant carrier vehicle safety compliance and performance were also worse than for experienced carriers."*

It is our hope and expectation that as the New Entrant Program continues to mature, and with the implementation of this rule, it will serve as both an educational AND enforcement mechanism to help modify behavior that will help save lives.

## **Key Points**

### *Strengthening the Safety Audit*

We agree with and support the 11 regulatory violations FMCSA identifies in the NPRM as reflecting a clear lack of basic safety management control and that these violations should result in a failure of the Audit. We appreciate the fact that FMCSA sought out comments from the federal and state field staff on this point. It has long been our contention that in order to have an effective program, there needs to be a reasonable threshold of knowledge that carriers are expected to have in order to provide credibility in the program, as well as to help level the playing field and to serve as a deterrence for those who wish to circumvent the requirements. Those failing the Safety Audit, and especially those not taking corrective action(s), need to have efficient and effective follow up and/or enforcement action(s) taken. We do not want to repeat the situation we have had for the last number of years where many motor carriers having "Conditional" safety ratings can go for years without any contact from a government representative.

Efficiency for enforcement is critical. The current enforcement process is very labor intensive and needs to be revisited. We understand this is taking place in FMCSA's CSA 2010 initiative, and the New Entrant Program could serve as a place to pilot some of the new and innovative approaches being studied.

#### *Expedited Action*

We support the expedited action provisions in the NPRM. We believe they represent an appropriate balance that provides an indication to the public of the egregious actions that would trigger such activities, while at the same time providing discretion to the enforcement community. However, one of our concerns relative to this provision is what resource impacts would be placed on the states for the follow up actions.

#### *Chameleon Carriers*

We are strongly in favor of the proposed requirements for dealing with those carriers who choose to evade enforcement actions and/or evade regulatory requirements. We are also supportive of FMCSA's proposal to link the previous histories of such carriers should they chose to re-register under a different name. This has been a long-standing problem. To effectively implement this provision there will need to be much coordination with the states, Canada and Mexico since many of these carriers will attempt to jump back and forth between inter and intrastate, and potentially foreign, operations to evade detection. Part of why this problem exists is the current registration processes and information systems used to support them. We are certainly hopeful that FMCSA takes a very close look at this issue and is coordinating the efforts of COMPASS, L&I, CSA 2010, CVISN, UCR, CDLIS Modernization and other efforts. If there is not coordination and redundancy built into these systems from the motor carrier's point of entry into the system, the data quality issue becomes more problematic and creates a domino effect throughout all the other systems -- both at the State and Federal levels. This results in loopholes and the opportunity for exploitation by the unscrupulous motor carriers. As an example, FMCSA may want to investigate Ontario's anti-avoidance legislation (and its experience with implementation) that was put in place in the 1990's in order to restrict the ability of owners of carriers with poor records from creating new companies to avoid their poor operating history.

#### *Alternate Locations for Audits*

We do not believe that group audits provide a proper environment for the Safety Audits. One on one interaction will provide the best opportunity to facilitate the audit process, as well as providing the personal consultation and assistance the motor carriers need to optimize their chance for success.

### **Suggestions for consideration**

#### **Stronger Documentation Upon Carrier Registration**

Just as drivers need to provide identity documentation during the licensing process, FMCSA should consider doing something similar for motor carriers upon their registration. One of the difficult challenges the agency has had over the years is the quality of the data being input into the Motor Carrier Management Information System. Just as FMCSA “measures” the states on their data quality, accuracy and timeliness, so should they have a stronger mechanism for overseeing the data supplied by motor carriers. FMCSA might consider requiring the motor carrier to submit identification information on their drivers and equipment along with the application form. We recognize that this data changes often, but at least it will establish a baseline and a documentation trail, and it will help the safety audit process as well as enforcement, not to mention the SafeStat algorithm. Taking this further, FMCSA might want to consider exploring the concept of charging the carrier with perjury if they are untruthful on the MCS-150.

### **Prioritization Scheme**

As more motor carriers “Fail” Safety Audits and are in need of “Expedited Action” and/or “Corrective Action” follow-up, there will be a significant impact on field operations at both the state and federal level. We encourage FMCSA to assess the utility of modifying its internal prioritization list and Field Operations Training Manual for carrier visits, and work with the States, Canada and Mexico to determine the best strategy for handling this moving forward. As a part of this effort, reciprocity agreements should be put in place with Canada and Mexico. This approach also should assist FMCSA and the States in allocating the resources for the activities needed, some of which could be handled by private contractors.

### **Program Review**

The New Entrant Program has been in place for several years now, and there are tens of thousands of reviews that have been conducted. We would suggest that FMCSA conduct a thorough program assessment to examine what the impact of the Safety Audit has been to those motor carriers that have been exposed to it. This would serve to help understand what has worked, what has not worked, and what modifications might need to be made at the state, national and international level for the future.

### **Notification to Jurisdictions**

As more oversight and enforcement is brought to bear through these changes (should they be promulgated), it will be more incumbent on FMCSA to proactively and in a timely manner notify the States and (as appropriate) Canada and Mexico when motor carriers fail, or are under an expedited action proceeding or a notification to take corrective action. Such notification must be incorporated into the “tools” available to roadside enforcement personnel such that they are able to identify if, and take action on, a carrier that is operating in violation. Since the agencies charged with monitoring and enforcing these requirements are in various stages of technology adoption and their information systems are on various schedules in terms of updates to the field, these notifications need

to take place in several different media types and formats, both electronic and print. This is crucial to enabling timely and effective compliance and enforcement operations.

### **Management of Effort**

If this proposal is to be implemented, there will be added burdens placed on FMCSA and the States. It is our hope that these resourcing decisions (and their associated costs) will not just be borne by the States. The added tasks will consume a significant level of effort, and it is important to fully understand the impacts and if necessary, make more resources available to the States to implement the program. We want to make sure to the extent practicable that resources are not siphoned off from other very important compliance and enforcement functions such as Roadside Inspections and Compliance Reviews.

### **Proficiency Assessment**

CVSA supports having BOTH a strong education and enforcement component to the New Entrant Program. As indicated above, we foresee some significant resource challenges that will go along with strengthening the rule. Therefore, it is important that we try and manage the problem as far upstream as possible, even when the motor carrier files his/her application for authority and/or U.S. DOT number and purchases their vehicle(s). We would recommend that the agency work with the states to develop a more systematic approach to education and technical assistance, which includes a proficiency assessment. The proficiency assessment would be required as part of the application process and could be issued in paper or electronic format. The State of Missouri has recently developed a web enabled tool to assist motor carriers with understanding the rules and regulations. This type of approach could be launched nationwide. The proficiency assessment can assist in several ways:

1. It will help the uninformed motor carriers more fully understand what they are “signing up for” when they become a motor carrier. For many private motor carriers, most of whom are not in the “transportation business”, it may help them make a decision to outsource this part of their business to a motor carrier who is more knowledgeable of the rules and regulations;
2. It would help the motor carrier understand where their strengths and weaknesses are, and where to focus their efforts;
3. It would assist the state and federal governments in evaluating the motor carrier’s safety fitness and assigning resources commensurate with the risk posed by the motor carrier;
4. It should assist the motor carrier to become more knowledgeable about the rules and regulations prior to the actual on-site Safety Audit. This ultimately should help the Safety Audit to be more efficient and valuable for both the motor carrier and the safety official conducting the audit; and

5. It should help in cleansing the data related to the motor carrier at the point it enters the state and federal databases. This is extremely important for a number of reasons, not the least of which is the efficient management of resources.

## **Conclusion**

The New Entrant Program has in a few short years grown to be a substantial program which is having a positive effect on safety. The States, with strong assistance from FMCSA, have taken ownership of this program and want to continue to do so. Strengthening the program and holding motor carriers more accountable is something we believe is the proper path to follow.

CVSA appreciates all the efforts FMCSA is making on this issue, and is willing to provide further assistance should the Agency so choose.