



MOTOR CARRIER SAFETY ADVISORY COMMITTEE

C/O: Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Room W64-232
Washington, DC 20590

September 2, 2009

The Honorable Rose A. McMurray
Acting Deputy Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Docket No. FMCSA-2001-11061

Dear Ms. McMurray:

The Motor Carrier Safety Advisory Committee (MCSAC) accepted Task 09-03 at the May 2009 meeting. Workgroup 09-03 was created to conduct work and two Sub Workgroups were chaired by Scott Hernandez and J. Todd Spencer. The Workgroup addressed the Committee Task to provide advice to FMCSA on approaches or strategies the Agency should consider for ensuring that new entrant motor carriers are knowledgeable about the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations, and have the ability to implement and maintain safety management controls and a safety culture in the workplace to achieve full compliance with the regulations and minimize the risks of crashes.

The Workgroup met in person August 31 through September 2, 2009. During the September 2009 meeting, the Workgroup submitted a report to the Committee for review and approval. The Committee met in person at the requisite announced public meeting on September 2, 2009, and discussed and approved the report, which identified the following categories of elements to be addressed in the new entrant process:

- Definition of “new entrant”;
- New entrant application process;
- Time period for new entrant program;
- Education of new entrants;
- Interoperability of intrastate and interstate systems;
- Sanctions;
- Other issues, including continued use of electronic pre-clearance systems; the current new entrant opposition process; revisions to the automatic failure safety audit violations; and hazardous material insurance requirements.

Attached is the detailed report describing the elements under each category. I submit the enclosed report as recommendations to FMCSA for consideration.

Sincerely,

//signed//

David R. Parker
Chair, Motor Carrier Safety Advisory Committee

Enclosure

While we recognize that, over time, safety initiatives have resulted in reduced fatality rates, we believe that there could be even more safety gains if there were improved ways to prohibit unsafe applicants from operating in interstate commerce. Currently, a new entrant may engage in interstate commerce before the Federal Motor Carrier Safety Administration (FMCSA) conducts any kind of safety assessment (whether a roadside inspection, safety audit, or compliance review). The Committee believes that the process for granting new entrant motor carriers permission to engage in interstate operations should emphasize safety by improving the knowledge, capabilities, and commitment of applicants on the front end. FMCSA can ensure that new entrant motor carriers are knowledgeable of Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations by implementing and enhancing communication, training, and testing procedures. Consistent oversight, enforcement, and coordination should be enhanced throughout the new entrant process and beyond to ensure the continued performance and commitment of carriers to operate safely.

The Committee believes that FMCSA should incorporate the below suggestions, in no particular order, when reviewing the new entrant process.

Review the Definition of "New Entrant"

- FMCSA should separate true "new" entrants¹ from entrants who have previous applications. It is our belief the "reincarnated carriers"² or "chameleon carriers"³ are in reality not "new" entrants, and once identified should not be viewed as such by FMCSA. FMCSA should consider whether to remove carriers from the new entrant process based on past history.
- FMCSA should use roadside inspection data and procedures to identify potential "chameleon carriers" and other non-compliant carriers.
- In addition to application information, FMCSA should identify, capture, and review the information that will allow enforcement to trigger and track non-compliant carriers, such as the following:
 - Vehicle Identification Number (VIN)
 - Tag number
 - Driver name and license number
 - Carrier or company name
 - Carrier or company principals
 - Carrier or company phone number and address
 - Operation type
- Per the Motor Carrier Safety Advisory Committee (MCSAC) Task 09-01 Supplemental A report, FMCSA should conduct more thorough investigations of new entrants (e.g., consider applying the Evasion Detection Algorithm (EDA) process to all new entrants) to help detect and deter "chameleon carriers."

Application Process

- FMCSA should allow registration and training at the same time.
- For efficient management of the process, FMCSA should streamline and refine the application process so that it may obtain complete information in a user-friendly manner. To do so, FMCSA should consider the following actions:
 - Implement a web-based application process. This could include an online "smart form" that guides the user in a question-and-answer format to determine whether the applicant is covered under the FMCSRs, state requirements for intrastate commercial carriers, or both.

¹ A "new entrant" is defined in § 385.3.

² The Committee defines a "reincarnated carrier," or "re-entrant carrier," as an entrant with prior motor carrier experience who applies for a new United States Department of Transportation (US DOT) number.

³ The Committee defines a "chameleon carrier" as a carrier that attempts to register as a new entrant and attempts to operate as a new entity to evade detection for a prior non-compliance. (See § 385.306 for more information)

- Review the content and format of the Form MCS-150 for clarity, redundancy, and ease of use.
- Provide incentives for use of the web-based process, such as timeliness of processing.
- Provide on-line assistance during the applications process.
- FMCSA should require that the person who signs the Form MCS-150 to apply for a US DOT number be a high-level carrier official.
- FMCSA should issue a US DOT number at the same time operating authority is issued. Also, FMCSA should consolidate the US DOT number and various operating authority forms into a single multi-part user-friendly form.
- FMCSA should seek statutory authority to require registered entities holding a US DOT number to update Form MCS 150 annually and whenever updates are triggered by another event.⁴
- FMCSA should periodically review the new applicant process to evaluate whether the process continues to serve educational and safety purposes, and update data to track progress selecting an appropriate baseline (i.e., industry averages for success of new entrant program). Measures for progress could include metrics such as out of service (OOS) rates, crash rates, and compliance rates as measured from safety audits.
- FMCSA should determine the actual cost of the new entrant process. Such costs shall be paid in full by the applicant at the time of registration for a US DOT number or authority.
- FMCSA should consider assessing a lower fee for using the web-based process.

Time Period for New Entrant Program

- The new entrant Safety Audit should occur as soon as possible, with an average time period no greater than 12 months and no single audit occurring after 15 months.
- FMCSA should assess whether 30 days is the appropriate amount of time for reapplication for a carrier whose temporary authority has been revoked.

Education of New Entrants

- FMCSA should better communicate and characterize the applicant's responsibilities so the applicant knows – or is advised – as early as possible in the process about its obligations for compliance.
- FMCSA should offer a voluntary education program prior to a front-end knowledge test that requires new applicants to show knowledge of the FMCSRs and basic safety management controls. If the user fails the test, then he or she must participate in a mandatory education course prior to a retest.
- The FMCSA should ensure that the new entrant be tested to assess knowledge of the following elements:
 - FMCSRs
 - Hazardous Materials Regulations, if applicable
 - Penalties for failure to comply
 - Safety management practices, with a focus on driver performance measurement and distracted driver issues such as driver fatigue
 - Overview of Comprehensive Safety Analysis (CSA) 2010, including what it is, how to use it
 - The 16 automatic failure violations of the Safety Audit
- FMCSA should ensure the integrity of the testing process.
- FMCSA should provide carriers with ongoing resources to sustain a knowledge of safety improvements or regulatory changes.
 - FMCSA should ensure that all materials pertinent to the application (e.g., the Education and Technical Assistance (ETA) package, "A Motor Carrier's Guide to

⁴ MCSAC is in favor of statutory authority that would require all states to be Performance Registration and Information Systems Management (PRISM) compliant.

Improving Highway Safety”) and educational processes of the new entrant program are available in multiple formats to ensure accessibility to all participants. Also, a new entrant materials package should be provided to new entrants through multi-media outlets upon request.

- Perform periodic review of ETA package
 - FMCSA should provide information on non-regulatory best practices, such as the MCSAC Task 07-02 Report.
- In addition to the \$28 million existing Motor Carrier Safety Assistance Program (MCSAP) funds, FMCSA should seek significant additional federal funding for overall program implementation, including funds for improving education, training, proficiency examinations, and compliance.

Interoperability of Intrastate and Interstate Systems

- If state and federal new entrant and compliance programs are duplicative, FMCSA should accept reciprocity between programs.
- DOT should consider reciprocity (e.g., Memorandum of Understanding) with other agencies’ transportation inspection requirements (i.e., Department of Defense bus safety program).

Sanctions

- FMCSA should seek the authority to stop carriers from operating in violation of a shut-down order.
- FMCSA should more aggressively use its existing authority to seek criminal penalties for carriers operating fraudulently or operating in violation of a shut-down order.
- FMCSA should seek authority to increase the fines and penalties on non-compliant carriers.

Other Considerations

- New entrant carriers should not be allowed to participate in an electronic pre-clearance system until they have successfully completed a new entrant Safety Audit.
- FMCSA should assess the continued use of the new entrant opposition process currently in place (i.e., posting on the FMCSA Register).
- FMCSA should amend number 13 of the 16 automatic failure Safety Audit violations to include hours of service (HOS) violations under 49 CFR §§ 395.3 and 395.8(a). However, there should be no change to the 51 percent guideline threshold for determining automatic failure of a Safety Audit for HOS violations.
- FMCSA should revise §§ 387.3 and 387.9 to require \$1 million of insurance only when carriers are subject to § 107.601.

Should FMCSA undertake a revision to the new entrant registration and application forms, MCSAC hereby offers its assistance if the Agency determines that our input would be advantageous.

Appendix A: MCSAC Concept of New Entrant Process

