

## **THE NEW ENTRANT SAFETY REVIEW REPORT TO CONGRESS**

Pursuant to Section 5304 of the  
Fixing America's Surface Transportation Act  
Public Law 114-94

April 2017

### **HISTORY OF THE NEW ENTRANT SAFETY AUDIT PROGRAM**

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (P.L. 106-159). Section 210(a) of MCSIA required the Secretary of Transportation to establish regulations specifying minimum requirements for motor carriers seeking Federal interstate operating authority, including a requirement that new entrants undergo a safety audit within the first 18 months of operations. In response to this statutory mandate, the Federal Motor Carrier Safety Administration (FMCSA) published an interim final rule (IFR) titled "New Entrant Safety Assurance Process" (67 FR 31978) on May 13, 2002, which became effective on January 1, 2003. All U.S. and Canada-domiciled new entrants became subject to these requirements.

Based on comments to the IFR and experience operating the program, on December 21, 2006, FMCSA published a notice of proposed rulemaking (NPRM) (71 FR 76730) revising the new entrant program and identifying regulations that were essential elements of basic safety management controls needed to operate in interstate commerce. As a result of feedback on the NPRM, the Agency published a final rule on December 16, 2008 (73 FR 76472) establishing 16 regulations on which an automatic failure of the safety audit could be based.

The New Entrant Safety Audit program was further impacted by section 32102 of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) (P.L. 112-141) which shortened the amount of time that FMCSA had to complete the safety audit from 18 months to 12 months for property carriers and from 12 months to 120 days for passenger carriers operating motorcoaches. The majority of the safety audits are conducted by the Agency's State partners through the New Entrant grant program. Before the MAP-21 change, the average time to complete a New Entrant Safety Audit on a property carrier was 10 months and for a passenger carrier it was 6.5 months.

When the new timeframes became effective, this automatically made the Agency overdue on 212 passenger carriers operating motorcoaches and 18,186 other carriers. As a result, FMCSA's first focus was resolving this backlog and identifying ways to expedite reviews within the program.

The annual volume of interstate new entrant motor carriers has averaged approximately 34,000 from 2011 through 2015.

**Table 1: New Entrant Carriers, Calendar Years 2011 – 2015**

<b>New Entrant Carrier Status</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
New Applications for U.S. DOT numbers	66,555	68,697	70,303	77,702	70,491
Removed from New Entrant Program due to inactivation, change to intrastate, No-Show, No Contact	30,785	33,526	37,587	43,857	37,285
Interstate New Entrants	35,770	35,171	32,716	33,845	33,206

**Table 2: Audits, Calendar Years 2011-2015**

	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Total Audits	34,478	34,248	32,388	33,244	28,857
Pass Rate	67.8%	75.4%	80.1%	80.8%	82.3%

From Fiscal Year (FY) 2011 through 2015, the percentage of the audits completed on time ranged from 77.4 percent to 87.6 percent.

## **GRANTS**

Since the implementation of the Safe, Accountable, Flexible Equity Transportation Act: A Legacy for Users in 2005 (P.L. 109-59), the New Entrant Safety Audits have been funded through grants awarded to the States. In FY 2016, \$32 million was provided for the conduct of these audits. The distribution of FY 2016 grant funds is provided in Appendix 1. The balance of the funding was used for FMCSA staff to conduct on-site audits and for a call center contract that validated new entrant applicant information for all of the States.

The FMCSA expects to distribute a similar amount of funds in FY 2017. However, starting in FY 2017, the New Entrant Safety Audit funds will be part of the Motor Carrier Safety Assistance Program (MCSAP) formula per section 5106 of the Fixing America's Surface Transportation Act (FAST Act). For the FY 2017 interim formula, the FAST Act requires the Agency to average the funding awarded to the State in FYs 2013, 2014, and 2015.

## **OFF-SITE SAFETY AUDITS**

The FMCSA conducted an 18-month Operational Test of the Off-Site Safety Audit Procedures on new entrant motor carriers domiciled in Alaska, California, Florida, Illinois, Montana, and New York, and the Canadian Provinces contiguous to Montana and New York. The Operational Test began July 15, 2013, and concluded on December 31, 2014.

On June 29, 2015, FMCSA announced the beginning of the national implementation of the Off-Site Safety Audit Procedures. These procedures enable the Agency and its MCSAP State partners to complete an off-site audit by allowing an eligible new entrant motor carrier to demonstrate basic safety management controls by submitting compliance documentation to a

safety auditor. To support the Operational Test, FMCSA developed the New Entrant Web System which allowed motor carriers to submit documents through a website. However, the Agency also continues to accept documentation through fax and mail.

During the Off-Site pilot, a safety auditor conducts the safety audit remotely, assessing the new entrant's safety performance and determining if it has adequate safety management practices pursuant to 49 CFR part 385, subpart D. New entrant carriers subject to off-site safety audits had the same regulatory requirements and privileges under 49 CFR part 385 subpart D as those carriers subject to on-site safety audits. New entrant motor carriers that transported either hazardous material or passengers were not eligible for an off-site safety audit. New entrant motor carriers with a known safety issue were also ineligible for an off-site safety audit.

Using several performance metrics, FMCSA monitored and evaluated the effectiveness, efficiency, innovation, and flexibility of the Operational Test procedures in comparison to the current New Entrant Safety Assurance Program during and after the test. Upon conclusion of the 18-month Operational Test, the Agency determined that the data supported the effectiveness of the off-site procedures in determining the safety fitness of eligible new entrant carriers. The off-site procedures further allowed FMCSA to better meet the obligation of conducting safety audits on all new entrant carriers within the MAP-21 timeframes.

Results from the Operational Test showed that:

- 60 percent of new entrant carriers were eligible for, and received, off-site safety audits.
- Average efficiency increased by approximately 20 percent as measured by the number of audits completed during comparable test periods.
- Off-site safety audits take 33 percent less time to conduct than on-site safety audits.
- Off-site safety audits saved 58 percent on travel costs.
- Carriers identified for the less resource-intensive off-site safety audit performed well during subsequent roadside inspections.
- While in the New Entrant program, carriers receiving off-site safety audits have, on average, equivalent or fewer subsequent expedited actions and violations than carriers receiving an on-site safety audit.

The FMCSA anticipates completion of the nationwide implementation of the Off-Site Safety Audit Procedures during FY 2017.

## **FAST ACT**

Section 5304 of the FAST Act requires the Secretary of Transportation to conduct an assessment of the "new operator safety review program," which is otherwise known as the new entrant safety audit program, including the program's effectiveness in reducing crashes, fatalities, and injuries involving commercial motor vehicles and improving commercial motor vehicle safety. Additionally, section 5304 requires that, not later than 1 year after the date of enactment of the FAST Act, the Secretary publish on a publicly accessible Internet Web site of the Department and submit to the Committee on Commerce, Science, and Transportation of the Senate and the

Committee on Transportation and Infrastructure of the House of Representatives a report on the results of the assessment conducted, including any recommendations for improving the effectiveness of the program including recommendations for legislative changes. This report conveys the results of the assessment conducted and recommendations for improving the program's effectiveness.

### **PERFORMANCE METRICS**

As reflected in Table 3 below, the crash rates of new entrants as a group is 50 percent higher than the non-new entrant population. However, FMCSA has determined that this increase is largely the result of a subset of new entrant carriers with higher than average crash rates. Specifically, FMCSA has identified one expedited action violation that is correlated to a higher crash rate. The correlated expedited action violation is 49 CFR 385.308(a)(7) - Having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within a consecutive 90-day period. The Calendar Year (CY) 2015 Crash Rates are shown below in Table 3.

**Table 3: Crash Rate Comparison**

<b>Carrier Population – CY 2015</b>	<b>Crash Rate per 100 Power Units</b>
Non-New Entrant Average	2.1046
All New Entrant Carriers	3.3069
New Entrant Carriers with violations of 49 CFR 385.308(a)(7)	7.1230

Table 4 below shows the improvement in violation rates over time. FY 2014 is the last year in which the full data set is available. In addition, Table 5 shows the trend of violation rates for all non-new entrant carriers, which is generally stable over time.

**Table 4: Carrier Performance on Inspection Measures Improves over the New Entrant Period**

<b>Fiscal Year</b>	<b>Percent of Inspections with Driver Out-of-Service Violations</b>	<b>Percent of Inspections with Driver Violations</b>	<b>Percent of Inspections with Vehicle Out-of-Service Violations</b>	<b>Percent of Inspections with Vehicle Violations</b>	<b>Percent of All Inspections with Out-of-Service Violations</b>	<b>Percent of All Inspections with Violations</b>
<b>2012</b>						
Month 1	11.77%	42.02%	27.72%	73.80%	28.60%	75.58%
Month 18	8.91%	36.26%	23.98%	67.87%	22.38%	66.36%
<b>Percent Change</b>	<b>-2.86%</b>	<b>-5.76%</b>	<b>-3.74%</b>	<b>-5.93%</b>	<b>-6.22%</b>	<b>-9.22%</b>
<b>2013</b>						
Month 1	12.71%	40.83%	28.24%	74.62%	29.57%	74.93%
Month 18	9.37%	37.91%	24.18%	67.48%	22.92%	67.09%
<b>Percent Change</b>	<b>-3.34%</b>	<b>-2.92%</b>	<b>-4.06%</b>	<b>-7.14%</b>	<b>-6.65%</b>	<b>-7.84%</b>
<b>2014</b>						
Month 1	12.20%	40.53%	28.07%	74.36%	29.62%	75.92%
Month 18	9.05%	36.33%	24.17%	66.32%	22.55%	65.68%
<b>Percent Change</b>	<b>-3.15%</b>	<b>-4.20%</b>	<b>-3.90%</b>	<b>-8.04%</b>	<b>-7.07%</b>	<b>-10.24%</b>

**Table 5: Carrier Performance on Inspection Measures for Non-New Entrant Carriers**

<b>Fiscal Year</b>	<b>Driver Inspections</b>		<b>Vehicle Inspections</b>		<b>All Inspections</b>	
	<b>Percent of Inspections with Out-of-Service Violations</b>	<b>Percent of Inspections with Violations</b>	<b>Percent of Inspections with Out-of-Service Violations</b>	<b>Percent of Inspections with Violations</b>	<b>Percent of Inspections with Out-of-Service Violations</b>	<b>Percent of Inspections with Violations</b>
<b>2012</b>	4.16%	28.15%	17.93%	59.19%	15.36%	58.54%
<b>2013</b>	4.10%	28.05%	17.84%	58.68%	15.28%	58.12%
<b>2014</b>	4.27%	28.85%	18.20%	58.02%	15.69%	58.08%
<b>2015</b>	4.05%	27.68%	18.15%	56.42%	15.30%	56.15%
<b>2016</b>	3.99%	27.55%	17.91%	55.50%	15.09%	56.02%

## RECOMMENDATIONS

As noted above, the statute, as modified by MAP-21, requires FMCSA to conduct safety audits within 120 days for all new passenger carriers and 12 months for all new property carriers. This statutory requirement means that FMCSA must conduct an off-site or on-site safety audit on all carriers, regardless of evidence of non-compliance or crash risk. The lack of improvement in crash performance among the total new entrant carrier group is likely a result of those carriers with high crash rates being obscured by the total number of carriers in the group. If those carriers with demonstrated non-compliance or crash risk could be isolated and safety audit resources directed based on safety risk, FMCSA expects there to be significant opportunities for safety improvements.

In addition, the FAST Act changed the New Entrant program from a discretionary grant program to part of the MCSAP formula grants. The FMCSA established an interim formula for FY 2017 based on the historic distribution of new entrant audits. However, the funds are still limited to use for the safety audits. By not requiring new entrant safety audits for all new carriers, the States could flex MCSAP funds and design their New Entrant programs to include an appropriate mix of activities without the requirement for audits. Such programs might include increased inspections on new entrants, monitoring, education, and outreach.

Therefore, the Agency recommends removing the requirement for all carriers to be audited. If the mandate for an audit were eliminated, and FMCSA was permitted to use a risk-based methodology to determine when an audit is required, resources could be directed more quickly to those motor carriers demonstrating a pattern of non-compliance. However, for other motor carriers that do not have sufficient indicators of safety problems, the Agency and the States could continue monitoring until the end of the 18-month provisional period.

### Appendix 1: Fiscal Year 2016 New Entrant Grant Awards

<b>State</b>	<b>Amount</b>
Alabama	\$790,730.00
Alaska	\$180,194.00
Arizona	\$481,643.00
Arkansas	\$390,716.00
California	\$1,757,125.00
Colorado	\$363,624.00
Connecticut	\$302,683.00
Delaware	\$194,044.00
Florida	\$1,337,544.00
Georgia	\$1,220,738.00
Idaho	\$272,809.00
Illinois	\$1,562,254.00
Indiana	\$889,335.00
Iowa	\$545,479.00
Kansas	\$492,840.00
Kentucky	\$428,032.00
Louisiana	\$493,400.00
Maine	\$111,325.00
Massachusetts	\$650,422.00
Michigan	\$783,707.00
Minnesota	\$572,254.00
Mississippi	\$328,163.00
Missouri	\$725,409.00
Montana	\$233,456.00
Nebraska	\$637,865.00
Nevada	\$168,247.00
New Hampshire	\$180,875.00
New Jersey	\$1,469,993.00
New Mexico	\$223,684.00
New York	\$1,395,596.00
North Carolina	\$1,069,569.00
North Dakota	\$291,963.00
Ohio	\$1,075,092.00
Oklahoma	\$644,725.00
Pennsylvania	\$1,182,567.00
Rhode Island	\$255,451.00

South Carolina	\$388,369.00
South Dakota	\$205,877.00
Tennessee	\$713,090.00
Texas	\$1,780,430.00
Utah	\$324,406.00
Vermont	\$98,220.00
Virginia	\$653,234.00
Washington	\$1,103,498.00
West Virginia	\$295,047.00
Wisconsin	\$669,218.00
Wyoming	\$77,726.00
<b>Total</b>	<b>\$30,012,668.00</b>