

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION  
UNITED STATES DEPARTMENT OF TRANSPORTATION**

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**COMMENTS OF  
THE OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC**

**IN RESPONSE TO  
NOTICE OF PROPOSED RULEMAKING  
REQUEST FOR COMMENTS**

**[FMCSA Docket No. FMCSA-2001-11061]  
RIN 2126-AA59**

**New Entrant Safety Assurance Process**

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**JAMES JOHNSTON  
President  
Owner-Operator Independent  
Drivers Association, Inc**

**February 20, 2007**

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FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

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**I. INTRODUCTION**

**A. Procedural Statement**

These comments are submitted by the Owner-Operator Independent Drivers Association, Inc. (“OOIDA” or “Association”) in response to the Notice of Proposed Rulemaking (“NPRM”) Request for Comments published by the Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”), Docket No. FMCSA- 2001-11061, RIN 2126-AA59 [71 FR 245] (December, 21, 2006) related to proposed changes to the New Entrant Safety Assurance Process that would raise the standard of compliance for passing the new entrant safety audit.

**B. The Interest of the Owner-Operator Independent Drivers Association, Inc**

The Owner Operator Independent Drivers Association, Inc is a not-for-profit corporation incorporated in 1973 under the laws of the State of Missouri, with its principal place of business in Grain Valley, Missouri. The more than 149,000 members of OOIDA are small business men and women located in all 50 states and Canada who collectively own and operate more than 240,000 individual heavy-duty trucks and small truck fleets. Many of OOIDA’s members are small business motor carriers with authority to operate in interstate commerce. The address of the Association is:

Owner-Operator Independent Drivers Association, Inc.  
P.O. Box 1000  
1 NW OOIDA Drive  
Grain Valley, Missouri 64029  
[www.ooida.com](http://www.ooida.com)

OOIDA is the international trade association representing the interest of independent owner-operators and professional drivers on all issues that affect small-business truckers.

The Association actively promotes the views of small business truckers and professional drivers through its interaction with state and federal government agencies, legislatures, the courts, other trade associations, and private business to advocate an equitable and safe environment for commercial drivers. OOIDA is active in all aspects of highway safety and transportation policy, and represents the position of small business truckers on numerous committees and in various forums on the local, state, national, and international levels.

The overwhelming majority of new entrant motor carriers are small business entities, many of which are members of OOIDA. The New Entrant Safety Assurance Process with its requirement to conduct a Safety Audit (“SA”) within eighteen months of issuance of operating authority affects many OOIDA members as well as non-member small businesses who have recently received their interstate operating authority.

## **II. SUMMARY**

Section 210 of the Motor Carrier Safety Improvement Act of 1999 [Public Law 106-159, 113 Stat. 1764, December 9, 1999] (“MCSIA”) added § 31144(g) that directed the Secretary to establish regulations to require each owner and operator to undergo a safety review within eighteen months of starting operations. FMCSA has great latitude in promulgating this proposal and to continue a process genuinely designed to assist small

business motor carriers to institute and certify that procedures are in place for basic safety management controls.

FMCSA makes use of a scientifically challenged study (“Analysis of New Entrant Motor Carrier Safety Performance and Compliance Using SafeStat”) to impute an increase in the safety risks associated with new entrant motor carriers. The reliance on a faulty study that utilized SafeStat as a basis to promulgate this rule leads OOIDA to question if the Agency is responding to a Congressional mandate with a poorly conceived agenda.

Instead of designing the SA procedure to assist a new entrant small business motor carrier to become familiar and comply with the FMCSR’s by providing education and related material, FMCSA’s proposal will increase the small business failure rate. This is not a proactive proposal insofar as it is reactive and punitive to small businesses, in many cases owned and operated by one individual who is responsible for all facets of their operation from driving the truck to maintaining the proper back-office files. These individuals, contrary to a commonly held bias, constitute the bulwark of some of the nations most veteran and safe drivers.

### **III. COMMENTS OF THE ASSOCIATION**

#### **A. Methodology Utilized by FMCSA to Promulgate This Rule**

Within the NPRM the Agency repeatedly cites a study from the Volpe Center, “Analysis of New Entrant Motor Carrier Safety Performance and Compliance Using SafeStat” completed in March of 2000 as a conclusive scientific study to support an assumption that “new entrant carriers had significantly higher crash involvement than experienced carriers.” That study was reviewed by the Center for Transportation Analysis

of Oak Ridge National Laboratory (“ORNL”) and ultimately was the impetus for an audit of SafeStat by the U.S. Department of Transportation, Office of the Inspector General.

The ORNL report, “Review of the Motor Carrier Safety Status Measurement System (SafeStat)” completed in October of 2004 evaluated the Volpe study and made significant observations concerning the faulty methodology that in many cases erroneously assesses motor carrier crash risk.

The Motor Carrier Management Information System (“MCMIS”) crash files utilized by Volpe were found to be missing numerous records and had late submissions. Some States had missing or underreported data while others supplied only partial data. When late data was evaluated there was an increase of 33% in the larger carriers from a not-at-risk category to an at-risk category. The ORNL evaluation also showed that 90% of motor carriers identified in the Volpe study as at-risk did not have a high crash risk when they analyzed the post-selection period. ORNL conclusions significantly call into question the validity of utilizing the Volpe study to promulgate this rule.

ORNL comments within their report stated some of the following:

- (1) The Volpe SafeStat algorithm did not adequately address the inherent variability in the scores when identifying high risk carriers.
- (2) Small carriers are statistically more variable and thus have a tendency to have both higher and lower crash rates merely because of random variation.
- (3) Large carriers represent greater potential for reducing crash frequency.

The Agency sought comments in a Notice published in the Federal Register on May 3, 2006 [Docket No. FMCSA-2005-23239] “Proposed Improvements to the Motor Carrier Safety Status (“SafeStat”) Measurement System”. Within the summary of the

notice FMCSA acknowledged the shortcomings of utilizing SafeStat data by stating, “The proposed improvements are intended to make the algorithm more effective in identifying motor carriers posing a high crash risk.” The genesis of the notice to improve the algorithm utilized in SafeStat was the report from ORNL.

**B. Misstated and Underreported Accidents, and Inconsistent Reporting**

OOIDA continues to object strenuously to the methodology utilized by FMCSA that effectively weighs accident involvement in a manner that can be especially biased to small business truckers and new entrants. In our comments on the SafeStat algorithm, the Association stated that at-fault accident involvement should be the determinate factor considered, not all accident involvement.

Under § 382.303 the Agency tacitly acknowledges “fault” as a requirement for post-accident alcohol testing when a citation has been issued to the operator of a CMV. This includes situations involving disabling damage and/or certain injuries. However, under the § 390.5 definition of an accident, no similar distinction is made, i.e. a citation issued. The conflict between the two regulations, whether a citation is issued, can unfairly expose any motor carrier to a high risk determination when the circumstances may indicate otherwise.

Conversely, there are instances where reportable, at-fault accidents can go unreported. It is not uncommon, for example, for a single vehicle accident to occur where a motor carrier instructs the driver not to call enforcement and quickly gets the vehicle towed away from the scene. It is particularly easy for large, self-insured motor carriers to hide accidents in this manner, simply because there is no need to report to

anyone to get documentation of the accident for the purpose of submitting an insurance claim.

Additionally, many OOIDA members have been legally parked, resting, fueling or loading and unloading only to have their trucks damaged by other trucks severely enough to cause disabling damage. Most often these accidents are the fault of improperly trained and inexperienced drivers employed by large motor carriers. When these accidents occur on private property they do not meet the accident definition under the rule. These private property accidents are a significant indicator of flawed training and hiring practices and, thus, safety management control failures on the part of these motor carriers.

Another area of inconsistency involves jurisdictional differences as to which accidents ultimately get reported to FMCSA. For example, many jurisdictions will not dispatch an officer to complete an accident report occurring on private property, while others will. Once an accident is reported it is often required of the enforcement officer to send all completed accident reports to the appropriate state agency. Once a report is in the hands of a state there may be additional differences between states involving whether a particular state chooses to forward the report to FMCSA. These inconsistencies must be addressed to avoid unfair risk determinations.

### **C. Unfounded Bias Against New Entrant Motor Carriers**

Undoubtedly, FMCSA has correctly identified certain new entrant motor carriers that pose a high crash risk. However, by relying on a flawed SafeStat methodology FMCSA allows an inherent bias against new entrants to continue.

OOIDA assists many of its members in getting their operating authority. These individuals are not new-comers to the trucking industry. They are stable business people who have been driving a Commercial Motor Vehicle (“CMV”) for decades according to scientifically based survey’s OOIDA conducts on its membership. These individuals often get their primary liability insurance through a subsidiary of the Association. Our practical business experience in providing liability coverage to these new entrant motor carriers is completely at odds with FMCSA indicators showing them to present a greater risk.

The process to become a motor carrier certainly is not difficult. It is much more difficult as a new entrant to secure liability insurance coverage without a sound track record predicated upon previous years of safe driving and truck ownership. It does not logically follow that an individual who has operated a CMV for years safely suddenly becomes an increased risk for crashes simply because they now operate as a motor carrier.

What can be said about new entrant motor carriers where they are primarily single truck operations is they may require help to develop the business acumen to properly maintain the back-office requirements to comply with the FMCSR’s. Conducting a SA that is effectively a compliance review is a misdirected use of Agency resources and unlikely to target those carriers that actually present a risk of higher crash involvement. The ORNL report stated on page 21 of their study “Incorrectly identifying carriers as high-risk may cause unnecessary concern for carriers and can waste auditing and inspection resources that could be assigned to true high-risk carriers.”

#### **D. Chameleon Carriers and Freight Brokers**

OOIDA appreciates that FMCSA has acknowledged that certain motor carriers labeled “chameleon” carriers attempt to evade enforcement action and/or out-of-service orders by shutting down and reregistering as a new entrant. OOIDA believes these carriers represent a significant target to help the Agency actually realize its safety goals. While OOIDA disagrees with lumping all new entrants together under the assumption they carry a higher risk of accident involvement, increased oversight and enforcement against chameleon new entrants would very efficiently and effectively make use of Agency resources.

Relying on ownership interests to honestly fill out the MCS-150 is the precise problem not adequately addressed. OOIDA suggests the Agency include language within the final rule that seeks out more detailed information regarding associated companies under management control. For instance, often “chameleon” carriers will utilize a related company for ownership of vehicles. These vehicles are easily rolled to another carrier through simple leasing or rental agreements. By requiring detailed ownership disclosure of related companies, FMCSA would have an invaluable tool that when used in conjunction with the Performance & Registration Information Systems Management (“PRISM”) could easily track the movement of equipment from suspected chameleon carriers to another entity.

OOIDA would also point out that chameleon freight brokers exist that, through their business practices of not paying motor carriers for their services, are significantly linked to safety. Individuals who have made a practice of cheating motor carriers out of money should not be allowed to reopen shop under a different business name. The

oversight actions clarified in § 385.306 for any motor carrier should be a template for freight brokers. The unscrupulous business practices of some freight brokers significantly impact business viability for all motor carriers' and especially new entrants who are most likely become the victims of these brokers. Undue economic pressures always filter their way into everyday business operations with the potential ancillary impact on safety.

#### **IV. CONCLUSION**

FMCSA has an opportunity to create a New Entrant Safety Assurance Process that truly aids compliance with the FMCSR's. This proposal responds to fear-mongering concerning certain new entrant motor carriers and poor scientific study with additional bureaucracy unlikely to achieve the estimated reduction in accidents.

FMCSA should seriously address the issue of at-fault, private property and inconsistent reporting of accidents and how that can be utilized as a better indicator of a motor carrier's likelihood to be involved in accidents. This effect conversely makes small business and new entrant motor carriers' accident history appear worse than that of established carriers. Finally, the Agency must do a better job of identifying and permanently shutting down unsafe and unscrupulous chameleon motor carriers and freight brokers.

Respectfully submitted,



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