U.S. Department Of Transportation
Federal Motor Carrier Safety
Administration

FINAL RULE

NEW ENTRANT SAFETY ASSURANCE PROCESS

Regulatory Evaluation

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Analysis Division
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Executive Summary

In response to concerns about the safety of new entrant motor carriers, Congress enacted section 210 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). Section 210 required the Secretary of Transportation to establish regulations specifying minimum requirements for motor carriers applying to obtain interstate operating authority. MCSIA also mandated the Secretary to require that each motor carrier granted operating authority undergo a safety audit within the first 18 months of operation.

The Federal Motor Carrier Safety Administration (FMCSA or the Agency) published the New Entrant Safety Assurance Process Interim Final Rule (IFR) on May 13, 2002, and the IFR became effective on January 1, 2003. The IFR established new minimum requirements for all applicant motor carriers domiciled in the United States and Canada seeking to operate in interstate commerce. Each new entrant was provided with educational and technical assistance (ETA) materials at the time it registered for a U.S. DOT number and was required to complete a new supplemental form, entitled Safety Certification for Applications for U.S. DOT Number (MCS-150A). Additionally, during the initial 18-month period of operations, FMCSA evaluated each carrier's safety management practices by conducting a safety audit and monitoring the carrier's on-road performance prior to granting permanent registration. The purpose of the safety audit is to educate the carrier about the applicable safety regulations and to assess the adequacy of its basic safety management controls. Safety audits began in April 2003 when FMCSA's Administrator provided enforcement guidance on the new entrant program to all field offices and their State counterparts. As of September 2007, 145,246 safety audits had been conducted. The failure rate on these audits so far has been 0.5 percent.

The Agency received comments from field staff and the public suggesting that many of the new entrants who passed the safety audit were in fact not operating safely. In response to these comments, the FMCSA established a new entrant working group in the summer of 2003 to review and, if necessary, revise the new entrant program. The working group advocated tightening the standards of the safety audit so potentially unsafe new entrant carriers would fail the safety audit, and thereby enhance new entrant compliance with safety regulations. The working group also suggested clarifying some sections of the regulations and making other administrative changes. The Agency proposed enhancements to the New Entrant Safety Assurance Process in a notice of proposed rulemaking (NPRM) published December 21, 2006.

The accompanying final rule makes several changes intended to make the safety audit a more reliable measure of a motor carrier's safety management. Whereas the scoring algorithm established in the IFR did not fail new entrants unless they committed a combination of certain acute or critical violations, the rule now provides for automatic failure of the safety audit based on noncompliance with any one of sixteen basic safety management regulations. The rule also establishes procedures for the oversight of non-North American motor carriers operating in the United States.

As part of the rulemaking process, this regulatory analysis has been conducted to determine the economic impact of the rule, and estimates the costs and benefits of the changes to the new entrant program. Costs are associated with additional safety audit failures due to stricter audit criteria and the time spent by new entrants to familiarize themselves with the new ETA materials. Costs arising from additional safety audit failures do not necessarily represent new costs because they are already associated with compliance with existing Federal Motor Carrier Safety Regulations (FMCSRs) and any applicable Hazardous Materials Regulations (HMRs). Nevertheless, these costs are considered in the regulatory analysis per guidance issued by the Office of Management and Budget.[1] This guidance suggests that unless the agency believes that that there is full compliance with existing regulations, the costs of increasing compliance are relevant to the evaluation. Indeed, the impetus for the revision to the new entry safety audit program is a perceived lack of full compliance with existing FMCSRs and HMRs.

FMCSA estimates the discounted costs to be $477.2 million for the first 10 years following the implementation of the final rule. The Agency projects that over 10 years this rule will prevent 39,929 crashes and save about 487 lives, yielding discounted benefits of $3,778.0 million. Discounted net benefits are estimated to be $3,300.8 million over the first 10 years.

[1] Circular A-4 (September 2003).

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1 Background

1.1 Safety of New Entrant Motor Carriers

Several studies, some of which were sponsored by the FMCSA or its predecessor, have evaluated the safety experiences of new interstate motor carriers (hereafter, "new entrants"). Although the studies differ in emphasis, they all demonstrate that new entrant crash rates are higher than those of established carriers, and new entrants are more likely to violate federal regulations. Many of these studies are discussed in detail in the report "Background to New Entrant Safety Fitness Assurance Process" (March 2000), a draft report to FMCSA by the John A. Volpe National Transportation Systems Center's Economic Analysis Division. These studies are briefly described below.

In 1988, professors Thomas Corsi of the University of Maryland and Philip Fanara Jr. of Howard University published "Deregulation, New Entrants, and the Safety Learning Curve." This study analyzed data from compliance and safety reviews of carriers regulated by the Interstate Commerce Commission (ICC) that were conducted between September 1986 and April 1988. The authors compared crash rates for three groups of motor carriers: those operating for 3 or fewer years, those operating three to 6 years, and those operating for more than six years. The newest carriers had a reportable crash rate of 0.81 per million vehicle miles traveled (MVMT), carriers with 3 to 6 years of experience had a crash rate of 0.62 per MVMT, and the most-experienced carriers had a rate of 0.55. Corsi and Fanara also found that new entrants were consistently less likely to comply with the FMCSRs.

In 1995, the Volpe Center, with assistance from Dr. Corsi, produced a follow-up report to the Corsi-Fanara study. This analysis used more current data and was expanded beyond only authorized for-hire motor carriers to include all categories of motor carriers. The 1995 study did not find any relationship between motor carrier age and compliance with the FMCSRs. Older motor carriers were not more likely to comply with applicable federal regulations than were their younger counterparts. However, newer motor carriers were found to have a higher crash rate than older carriers. Table 1 presents data on the crash rates of different types of motor carriers, by carrier age. It demonstrates that overall, carrier crash rates fall as carriers become more experienced.

Table 1: Weighted Crash Rate per MVMT, by Years of Experience and Carrier Classification

Years of Experience at Time of Review	All Carriers	Authorized For-hire	Exempt For-hire	Private
< 1 year	0.505	0.556	0.449	0.396
1 to 6 years	0.469	0.467	0.497	0.468
7 to 10 years	0.438	0.439	0.614	0.404
11 + years	0.411	0.425	0.412	0.339

Table 1 also shows that not all types of carriers experience a smooth learning curve. Exempt for-hire motor carriers in operation for 7 to 10 years had the highest crash rate within that class of carriers. A similar phenomenon exists for private motor carriers. In general, the crash rate for all motor carriers does fall over time, indicative of a safety learning curve.

The Volpe Center and Dr. Corsi revisited new entrant safety with "The Analysis of New Entrant Motor Carrier Safety Performance and Compliance Using SafeStat" (March 2000).[1] This study focused on motor carriers' SafeStat scores rather than directly on crash and compliance rates. SafeStat (for Safety Status measurement) is a program that measures the relative safety performance of motor carriers in four Safety Evaluation Areas (SEAs): accident, driver, vehicle, and safety management. SafeStat uses several data sources to score motor carriers, including roadside inspections, compliance reviews, and crash reports. Carriers receive a score for as many SEAs as data are available for, with most carriers having zero or one SEA scores and a small number having two, three, or four scores. The best 75 percent of carriers in each SEA are not scored, but those in the bottom 25 percent are scored between 75 and 100. The SafeStat algorithm is run every six months to reflect the most recent data available. The scores are used to rank motor carriers for compliance reviews and other enforcement actions.

The March 2000 analysis compared SafeStat scores of new entrants, defined as motor carriers registered for less than 2 years, with those of established motor carriers. As Table 2 shows, new entrants were more likely than established carriers to have scores of 75 or greater for every SEA, and were twice as likely as established carriers to have accident and driver SEA scores of greater than 75. These results do not imply that the crash rate for new entrants was twice as high as that of established carriers, but that the percentage of new entrants having crash rates which place them among the worst 25 percent of all carriers was double that of established carriers.

Table 2: Percentage of Carriers with SEA Scores of 75 or greater

SEA	New Entrants	Established Carriers
Accident	47.7	23.7
Driver	55.2	26.9
Vehicle	34.1	27.1
Safety Management	41.4	23.8

This study also found that new entrants, who appear to pose larger safety risks than established carriers do, are subject to less oversight. Although they accounted for 17.8 percent of motor carriers, new entrants were subjected to 7.8 percent of all compliance reviews and approximately 11.5 percent of all roadside inspections.

[1] For a detailed description of SafeStat, see "SafeStat: Safety Status Measurement System, Version 8.5." April 2002. http://ai.volpe.dot.gov/SafeStat/SSLonger_4-00.pdf.

In response to comments to the NPRM, FMCSA examined more recent crash data. It found that carriers that began interstate operations in 2005 had a crash rate of about 3.5 crashes per 100 power units in the first 2 years of operation (data through March 2007). The overall industry crash rate was 2.6 per 100 power units. FMCSA also believes that new entrants do not utilize their power units to the same extent as established carriers—that is, they put fewer miles on their vehicles—and therefore have an even higher crash rate per mile as compared to that of the carrier population. FMCSA also notes that crash reporting has been improving over time, and that these more recent data are more complete than those used in earlier studies.

Although it may be the case that there are many experienced drivers working for new carriers, or as owner-operator new entrants themselves, driver behavior is not the only determinant of safety. New entrants as a whole consistently have worse safety performance, however measured, compared to established carriers. Furthermore, FMCSA has not found, nor has any commenter offered, any data or research that refutes this conclusion. FMCSA is confident that the basis for the Congressional mandate and Agency actions on the new entrant program remains valid.

1.2 Interim Final Rule

FMCSA published an IFR for the New Entrant Safety Assurance Process on May 13, 2002. The following paragraphs briefly describe the IFR.

The IFR contains an application and an evaluation phase. The application phase is designed to ensure that the FMCSA has sufficient information about carriers applying to operate in interstate commerce, and that those carriers are familiar with the FMCSRs and HMRs. During the evaluation stage, new entrants receive a safety audit, and only carriers with adequate safety performance are granted permanent registration.

Prior to the IFR, all motor carriers wishing to operate in interstate commerce were required to complete a MCS-150, the Motor Carrier Identification Form. For-hire motor carriers were required to complete additional forms, including an application for operating authority (Form OP-1 or OP-1(P)), a designation of agent for service of process form (Form BOC-3), and various insurance filings. They are still required to complete these extra forms.

Under the IFR, all new entrants wishing to operate in interstate commerce are required to apply with FMCSA for new entrant registration. New entrants include businesses entirely new to the motor carrier business as well as those expanding to interstate from intrastate-only operations. Educational and technical assistance (ETA) materials, the MCS-150 form, the MCS-150A form, and other forms are available to carriers on FMCSA's website; for-hire carriers will also need the appropriate OP-1 form, the application form for operating authority. The ETA material includes various publications explaining the FMCSRs and HMRs, and guidance on developing safety- management practices. The MCS-150A form requests additional information from new entrants,

requires them to acknowledge that they have read and understood the FMCSRs and applicable HMRs, and requires them to certify that they will comply with all the requirements of these regulations. Following receipt of all necessary completed application forms, the FMCSA issues an applicant new entrant authority.

The evaluation stage determines whether the new entrant receives permanent authority. All new entrants should receive a safety audit within 18 months of commencing interstate operations. The safety audit's goal is to provide educational assistance to new entrants and to assess the carrier's safety performance and management controls. It does not assign a safety rating. If a safety audit reveals that the new entrant has adequate safety performance and safety management controls, FMCSA notifies the carrier in writing that, barring any other serious violations in the interim, it will receive permanent registration at the end of the 18-month monitoring period. If the safety audit discovers that a new entrant has inadequate safety performance or management controls, FMCSA sends a letter to the new entrant explaining its deficiencies and detailing what corrective actions the new entrant must take to avoid having its new entrant registration revoked and being subjected to an out-of-service (OOS) order. The carrier has 60 days to correct its deficiencies (45 days if it transports passengers or hazardous materials) and to send a letter to FMCSA demonstrating that it has taken the requisite remedial action. If the response satisfactorily addresses FMCSA's concerns, the Agency will notify the carrier that it will retain its new entrant status and will receive permanent status at the end of the 18-month provisional period barring additional serious violations.

If the new entrant fails to take remedial action within the prescribed time period (60 or 45 days) or the action taken is deemed inadequate by FMCSA, the Agency sends the carrier a notice that its interstate operations will be placed OOS. The carrier may request administrative review after the safety audit or after its operations have been placed OOS. Following the administrative review, FMCSA notifies the new entrant of its decision, which constitutes the final agency action. A new entrant may not reapply for new entrant authority sooner than 30 days after the date of revocation. The reapplicant must demonstrate that it has corrected the deficiencies that resulted in the initial revocation, and that it has adequate safety management controls.

Appendix A of Part 385 explains how the Agency evaluates new entrants during a safety audit. The FMCSRs and HMRs are grouped into six factors based on the characteristics of each regulatory section. These factors are:

1. Factor 1 – General: Parts 387 and 390;
2. Factor 2 – Driver: Parts 382, 383 and 391;
3. Factor 3 – Operational: Parts 392 and 395;
4. Factor 4 – Vehicle: Parts 393 and 396 and inspection data for the last 12 months;
5. Factor 5 – Hazardous Materials: Parts 171, 177, 180 and 397; and
6. Factor 6 – Accident: Recordable accident rate per million miles.

New entrants are given one point for a critical violation and 1.5 points for an acute violation.[2] A score of three or more for any one of factors 1 through 5 indicates that the carrier does not have basic safety management controls for that individual factor. For factor 6, if the recordable accident rate is greater than 1.7 recordable accidents per million vehicle miles traveled (MVMT) for an urban carrier, or 1.5 recordable accidents per MVMT for all other carriers, the carrier is determined to have inadequate basic safety management controls.[3] If the carrier fails three or more factors, it fails the safety audit.

1.3 Final Rule

As of September 2007, 145,246 new entrants had received safety audits, but only about 0.5 percent failed their audits. Although a low failure rate may be evidence of widespread compliance, FMCSA field staff and the public expressed their belief that so few failures reflects that the scoring of the audit is too lenient. In addition, the new entrant working group pointed out that carriers could have significant violations, such as the failure to have a drug and alcohol testing program, and still be allowed to operate. The final rule rectifies these deficiencies in the audit program. New entrants found in noncompliance with any one of the sixteen basic safety provisions listed in Table 3 will automatically fail the safety audit, and will not be allowed to operate unless they demonstrate that they have corrected identified areas of noncompliance.

Table 3: Regulatory Violations That Would Result in Automatic Failure of the New Entrant Safety Audit

Regulatory Violation	Criteria for Automatic Failure
§ 382.115(a)/§ 382.115(b)—Failing to implement an alcohol and/or controlled substances testing program (domestic and foreign motor carriers, respectively).	Single occurrence.
§ 382.201— Using a driver known to have an alcohol content of 0.04 or greater to perform a safety-sensitive function.	Single occurrence.
§ 382.211—Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382.	Single occurrence
§ 382.215—Using a driver known to have tested positive for a controlled substance.	Single occurrence
§382.305—Failing to implement a random controlled substances and/or alcohol testing program.	Single occurrence
§ 383.23(a)/§ 383.3(a)—Knowingly using a driver who does not possess a valid CDL.	Single occurrence.

[2] "Acute" violations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier. "Critical" violations are those where noncompliance relates to deficiencies in management and/or operational controls. See Appendix A to Part 385: Safety Fitness Procedures of the FMCSRs for more information.

[3] For further information on how factor 6 is scored, see the new entrant program IFR.

§ 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 commercial motor vehicle.	Single occurrence
§ 383.51(a)—Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle (as defined under **§ 383.5)**.	Single occurrence.
§ 387.7(a)—Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.	Single occurrence
§387.31(a)—Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility.	Single occurrence
§ 391.15(a)—Knowingly using a disqualified driver.	Single occurrence
§ 391.11(b)(4)—Knowingly using a physically unqualified driver (operating a CMV as defined under **§ 390.5).**	Single occurrence
§ 395.8(a)—Failing to require a driver to make a record of duty status.	51% or more of examined records
§ 396.9(c)(2)—Requiring or permitting the operation of a commercial motor vehicle declared ''out-of-service'' before repairs are made.	Single occurrence
§396.11(c)—Failing to correct out-of-service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again.	Single occurrence
§ 396.17(a)—Using a commercial motor vehicle not periodically inspected.	51% or more of examined records.

This final rule also adds a new § 385.308 identifying violations that will result in expedited action. If a new entrant commits any of these violations and has not had a safety audit or compliance review, FMCSA will schedule the new entrant for a safety audit as soon as practicable. If a new entrant commits any of these violations after successfully undergoing a safety audit or compliance review, FMCSA will send the new entrant a notice advising it to submit evidence of corrective action within 30 days of the service date of the notice. FMCSA may schedule a compliance review of a new entrant that commits any of these violations at any time if it determines the violation warrants a thorough review of the new entrant's operation. The expedited action violations are as follows:

1) Using a driver not possessing a valid commercial driver's license to operate a commercial vehicle as defined under § 383.5. An invalid commercial driver's license includes one that is falsified, revoked, expired, or missing a required endorsement.
2) Operating a vehicle placed out of service for violations of the Federal Motor Carrier Safety Regulations or compatible State laws and regulations without taking necessary corrective action.
3) Being involved in, through action or omission, a hazardous materials reportable incident, as described under 49 CFR § 171.15 or 171.16, involving—

i) A highway route controlled quantity of certain radioactive materials (Class 7).
ii) Any quantity of certain explosives (Class 1, Division 1.1, 1.2, or 1.3).
iii) Any quantity of certain poison inhalation hazard materials (Zone A or B).

4) Being involved in, through action or omission, two or more hazardous materials reportable incidents as described under 49 CFR 171.15 or 171.16, involving hazardous materials other than those listed above.
5) Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required controlled substances or alcohol tests.
6) Operating a commercial motor vehicle without the levels of financial responsibility required under part 387 of this subchapter.
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.

Failure to respond within 30 days to the Agency's demand for a written response demonstrating corrective action will result in the revocation of the new entrant's registration.

The final rule makes several other changes, including:

1) Eliminating the MCS-150A form;
2) Revising § 385.327 to clarify the process for administrative review;
3) Revising § 385.329(b) to clarify how a new entrant whose authority has been revoked can reapply;
4) Revising § 385.337(a) to clarify that refusal to submit to a safety audit may subject a new entrant to civil penalties; and
5) Revising § 385.306 to clarify actions that may be taken against a carrier who provides incomplete or untruthful information on the MCS-150.

The final rule also makes extensive changes in the oversight and registration procedures for non-North America- (NNA) domiciled motor carriers. These procedures are similar to those in effect for Mexico-domiciled long-haul carriers seeking to operate in the United States. NNA-domiciled motor carriers must submit the proposed Form OP-1 (NNA), the MCS-150, and a notification of the means used to designate their process agents. NNA motor carriers will be required to also submit evidence of financial responsibility. They will be required to pass a pre-authorization safety audit (PASA) and, once operations in the United States commence, must receive a satisfactory safety rating within 18 months. Their vehicles will also have to display decals indicating they have passed rigorous safety inspections. The cost to these carriers is likely to be higher than those faced by U.S.- or Canada-domiciled motor carriers because they are subject to PASAs and stricter requirements concerning safety inspection decals. More detail about these revisions can be found in the rule itself.

2 Economic Analysis

2.1 Rationale for a Regulatory Assessment

Executive Order 12866 directs all Federal agencies to develop both preliminary and final regulatory analyses if their regulations are likely to be "significant regulatory actions" that may have an annual impact on the economy of $100 million or more. The Order also requires a determination as to whether a rule could adversely affect the economy or a section of the economy in terms of productivity and employment, the environment, public health, safety, or state, local or tribal governments. In accordance with the regulatory philosophy and principles provided in Sections 1(a) and (b) and Section 6(a) (3) (C) of Executive Order 12866, an economic analysis of the regulatory changes must be conducted. Furthermore, the Regulatory Flexibility Act of 1980, as amended, requires Federal agencies to conduct a separate analysis of the economic impact of rules on small entities, and the Unfunded Mandates Act also requires economic impact analysis.

In accordance with the above directives, FMCSA has evaluated the compliance costs of the rule and identified those benefits that can be expressed in monetary terms. To the extent possible, this is based on the available data and information from a range of sources, including FMCSA's Motor Carrier Management Information System (MCMIS) database. The Agency has estimated that the benefits of this rule would exceed $100 million annually. This rulemaking is significant under Executive Order 12866. The rule would not adversely affect the economy or a section of the economy in terms of productivity and employment, the environment, public health, safety, or State, local or tribal governments. FMCSA has also estimated, as required by the Regulatory Flexibility Act, that the rule would not have a significant economic impact on a substantial number of small entities in the United States, and has included a Regulatory Flexibility Analysis which describes how it arrived at this conclusion. Additionally, it was determined that the rule would not impose annual expenditures of $136.1 million or more on State, local, or tribal governments or the private sector, and thus does not require an Unfunded Mandates Act analysis.

2.2 Overview of Analysis

This final rule revises the existing New Entrant Safety Assurance Process as established in the May 2002 interim final rule. Although the costs associated with existing regulations were counted when these measures were first promulgated, Office of Management and Budget (OMB) guidance on regulatory analysis suggests that unless full compliance with these rules and regulations was already being achieved, the compliance costs associated with this rule should be counted.[4]

This rule imposes costs on all new entrants. All of these carriers will face costs associated with the time their staff spends reviewing ETA materials and participating in the safety audit. These would be the only costs borne by new entrants that are found to comply with the applicable FMCSRs and HMRs. New entrants not in compliance with safety regulations will have additional costs associated with actions taken by them to achieve higher levels of compliance to pass the safety audit or to properly correct deficiencies after failing it. FMCSA will place out-of-service any new entrant that opts

[4] Circular A-4 (September 2003).

not to incur the higher compliance costs implicit with this more rigid enforcement scheme. The discussion of costs is followed by a discussion of safety benefits.

OMB guidance also states that an agency's analyses should "focus on benefits and costs that accrue to citizens and residents of the United States."[5] The Agency estimates that only about 3.5 percent of new entrants are based outside of the U.S.[6] This analysis reports the total costs to all new entrants and separately the small fraction of costs borne by non-U.S. entities. However, the estimates of benefits include all carriers because all safety benefits from this rule occur within the United States.

2.3 Number of New Entrants

FMCSA estimates that this final rule will affect about 40,000 motor carriers annually. Although about 68,700 MCS-150A forms are filed each year, data on the number of safety audits that have been performed each year indicate that about 40 percent of these carriers do not remain in the new entrant program through the safety audit phase. Because this final rule imposes new criteria for passing the safety audit, the number of new entrant carriers actually audited is most relevant for the economic analysis of this rule.

2.4 Costs

New entrants will bear costs for time spent reviewing ETA materials, time spent with a safety auditor during the safety audit, and compliance costs to rectify any deficiencies found during the safety audit. FMCSA also assumes that some new entrants, when confronted with a safety audit failure, will choose to end interstate operations. The Agency assumes that these exiting firms will leave a gap to be filled by replacement new entrants, and that these replacement firms will bear some costs to setting up operations and acquiring the equipment of exiting firms. All of these costs are discussed in detail below.

2.4.1 Paperwork Costs

All new entrants will bear a cost of reviewing the ETA materials. FMCSA assumed that it would take 3 hours for the chief safety officer of each new carrier to study the new materials. In the NPRM the Agency assumed that reading this material would take just 1 hour, but after having reconsidered the content of the ETA package, FMCSA reasoned that carriers would be better served by spending considerably more time studying it.

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[5] Ibid.

[6] Derived using data from 1995 through 2002 contained in the Motor Carrier Management Information System (MCMIS). Approximately 96.5 percent of new entrants are based in the U.S., 3.3 percent are based in Canada, 0.2 percent are based in Mexico, and a minor fraction is based in other countries.

Labor costs should account for both average hourly wages and average benefits of motor carrier employees. The Bureau of Labor Statistics' (BLS) National Compensation Survey (NCS) provides estimates of wages, salaries, and benefits for several industries. According to the December 2006 NCS, employer hourly costs for benefits are equal to 52.9 percent of hourly wages in the transportation and warehousing industries.[7] May 2006 wage data from the BLS Occupational Employment Statistics (OES) survey indicate that the median hourly wage for managers in the trucking industry was $34.35.[8] Adding benefits equal to 52.9 percent of that wage yields compensation of $52.52 per hour. The total cost to all new entrants is approximately $6.3 million annually ($52.52 per hour × 3 hours × 40,000 new entrants).

This rule eliminates the Form MCS-150A, Safety Certification for Applications for USDOT Number, which was implemented in the IFR. This form takes 9 minutes to complete. According to May 2006 OES data, the base hourly general clerical wage for the trucking industry[9] is $11.12, and adding benefits equal to 52.9 percent of that wage yields $17 per hour. Although about 40,000 new entrants continue interstate operations through the safety audit, about 68,700 file this form annually. Eliminating this form avoids a $0.2 million annual cost to all new entrants.

2.4.2 Cost of Safety Audit

In 2007, FMCSA commissioned a study on the cost to the Agency and carriers of conducting Safety Audits.[10] This study estimated that the cost to motor carriers consists entirely of the cost of employee time spent with the auditor during the safety audit. A motor carrier manager[11] is assumed to be involved in the audit for 4 hours, 1 hour during the pre-visit telephone interview and 3 hours during the onsite portion of the audit. Based on May 2005 wages estimates, the total cost is estimated to be $216.68; using May 2006 wages, the Agency estimates the cost to be $220.60. FMCSA and its state partners conduct on average about 40,000 safety audits per year, at a total annual cost to new entrants of $8.8 million dollars.

2.4.3 Compliance and Out-of-Service (OOS) Costs

This final rule imposes additional costs on those new entrants who will fail the stricter safety audits implemented by this rule. FMCSA divides these carriers into two

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[7] http://stats.bls.gov/ncs/ebs/home.htm.

[8] http://www.bls.gov/oes/oes_dl.htm. Standard Occupational Classification (SOC) 11-0000, North American Industry Classification System (NAICS) 48400, Truck Transportation. Because passenger carriers (NAICS 485200, Interurban Bus Transportation) account for just 1.5 percent of new entrants, and managers for these entities earn similar wages, including them had essentially no effect on our wage assumption.

[9] SOC 43-9061, NAICS 484000.

[10] "Safety Audit Cost Estimation". http://www.fmcsa.dot.gov/facts-research/research-technology/report/Safety-Audit-Cost-Estimation-Oct2007.pdf.

[11] NAICS 484000, 11-1021 General and Operations Managers in the Truck Transportation Industry.

categories, those that take required action and come into compliance, and those that do not and are placed out of service. Although the normal costs of remedial action for an individual carrier are likely to be small and would seemingly not discourage compliance, the Agency assumes that there will be a substantial number of carriers in both categories.

FMCSA calculated the safety audit failure rate under the provisions of this final rule over a period running from January 2003 through September 2007 and estimated that 69,551 of the 145,246 safety audits performed over this period would have been failures. This translates into a failure rate of 47.9 percent, and applying this failure rate to the 40,000 safety audits conducted each year, the Agency estimates that 19,154 new entrants will fail safety audits annually. These carriers will be required to take the appropriate actions to come into compliance with the applicable regulations and to demonstrate to the Agency that they have remedied deficiencies by submitting corrective action plans.

One would not necessarily expect such a high failure rate to persist after the rule is implemented. Upon implementation of this rule, many carriers will take the appropriate action to pass the stricter new entrant safety audit and, the actual failure rate will be significantly lower than 47.9 percent.[12] Nevertheless, this high failure rate will be used in this analysis because it represents that fraction of carriers who will have to bear additional costs to come into compliance with the rule, whether they do so before or after their safety audit occurs.

New entrants may also be subject to expedited actions that would require them to take steps to demonstrate that they have taken appropriate actions to come into compliance with applicable FMCSRs. Mexico-domiciled commercial zone carriers are subject to similar expedited action procedures. Therefore, FMCSA used the percentage of Mexico-domiciled commercial zone carriers that have been subjected to expedited actions as a proxy for the fraction of domestic new entrants that will face expedited actions, while recognizing that the overall safety profiles of the two groups of carriers may differ. About 15 percent of Mexico-domiciled border zone carriers that received safety audits were subject to expedited actions, and in almost all cases, the violations associated with these expedited actions occurred after the safety audit.[13] The Agency expects the estimated 15 percent of new entrants that will be subject to expedited actions will incur costs similar to those they would incur to remedy deficiencies found during a safety audit.

The cost of coming into compliance would vary according to many factors. These include the size of the new entrant, the specific violations, and the severity of the violation. For example, provided that all vehicle repairs are undertaken eventually, the remedial action for a one-time violation of 396.9(c), "operating a CMV after it has been

[12] In "Crime and Punishment: An Economic Approach" (1968), economist Gary Becker showed that raising the expected value of punishments serves as a deterrent to potential offenders. The expected value includes both the likelihood of being caught and the severity of the punishment.

[13] The safety monitoring system for Mexico-domiciled carriers contains provisions to extend the duration of the safety monitoring program beyond 18 months. To calculate a percentage of carriers with expedited actions that would be comparable to what might occur under the new entrant program, the Agency has included only expedited actions that occur within the initial 18-month monitoring period.

declared out of service, and before repairs have been made," aside from any business exigency that might motivate non-compliance, has very little cost; a carrier would simply be required to undertake repairs in a timely manner rather than put them off. A small new entrant without a drug and alcohol testing program could join a testing consortium for no more than $1,000 annually. However, a large carrier could spend several thousand dollars to establish a system to periodically inspect its CMVs. After considering the small size of most new entrants and the low cost of complying with most of these violations, the Agency assumes that, if all corrective action scenarios were ranked by cost, the example of the small new entrant joining a drug testing program would be representative of the median cost incurred to correct a deficiency that resulted in a safety audit failure. FMCSA presented the assumption of $1,000 for compliance costs in the NPRM and, after having received no comment on it, continues to believe that it is a reasonable estimate on which to base its cost calculations.

In addition to compliance costs, a motor carrier will bear some small costs for preparing and submitting to FMCSA a corrective action plan that shows that it has remedied deficiencies that were found during its safety audit. Although some carriers will come into compliance before the safety audit occurs, for simplicity the Agency calculated these notification costs for all carriers that will face additional compliance costs. Notifying FMCSA that the appropriate actions have been taken will use about $2.00 in materials (e.g. an envelope, postage, and copies of documents that show what actions the carrier has taken). Assembling this information should take little time, but the motor carrier may have additional contact with FMCSA, so the Agency has assumed that on average a manager at the motor carrier will spend no more than an hour preparing and submitting the corrective action plan. The manager's wage calculated above shows a cost of about $53 per hour of this employee's time. The total cost of submitting a corrective action plan will be $55 per carrier. Total compliance costs are $1,055 per carrier.

Although compliance costs are low, many new entrants may nevertheless not take the steps to avoid being placed out-of-service. These carriers would be able to recover the costs of their equipment and facilities by selling them to new owners, but some other smaller costs, listed in Table 5, are unrecoverable, or "sunk," regardless of whether or not the carrier continues operations. Although exit from the industry is economically costless to an individual carrier, these sunk costs would be borne by the new entrants that replace exiting motor carriers. In this way, carriers placed OOS will increase costs borne by the motor carrier industry as a whole.

Carriers entering the interstate trucking business to replace exiting new entrants will bear several costs. These include application, licensing, and registration fees; and advertising, training, and asset transfer costs. Several third-party firms offer to complete all the administrative requirements for a fee of $500, and the market price for these services is used in this analysis. Advertising costs vary widely among motor carriers, depending upon their location, market, personal taste, and other factors. According to Census Bureau's Business Expense Survey, an average $3900 was spent on advertising in 2002 per trucking establishment.[14] Many new entrants may rely on freight brokers, and

[14] http://www.census.gov/csd/bes/07/part3.htm. Advertising costs were $437 million for the 112,642

therefore spend little or nothing on advertising. Rather than attempt to calculate a precise average based on the composition of the new entrant group, the Agency chose an estimate for advertising in the middle of the range, $2,000. Average transactions cost for transferring assets are assumed to be about $200 each. Costs for training are highly variable and depend on many factors, such as the size and type of the motor carrier and the experience of its staff. FMCSA assumes that this will on average take forty labor hours to accomplish. The median wage in the trucking industry for all employees was $16.95 per hour,[15] and adding 52.9 percent for benefits yields about $26 per hour. This labor rate multiplied by forty hours yields an estimate of learning costs that is slightly over $1000 dollars. Included is another $300 to account for any other small start-up costs. Total costs are $4000 per replacement carrier, and are presented in table 4 below. The assumption of $4000 was presented in the NPRM and, after having received no comment on it, the Agency continues to believe that it is a reasonable estimate on which to base cost calculations.

Table 4: Estimated Industry Entry Costs per New Entrant	
Application Fee	$500
License Fee	
Registration Fee	
Advertising	$2000
Transactions Cost to Transfer Assets	$200
Training and Other Costs	$1300
Total	$4000

For the sake of simplicity, the Agency has assumed that every new entrant that ceases interstate operations will be replaced by another (albeit safer) new entrant. Obviously, the dynamics of entry into and exit from the interstate motor carrier industry are more complex. Many new entrants are not wholly new entities, but carriers who were engaged in intrastate operations; these carriers, upon surrendering interstate authority, may return to intrastate-only operations. Some existing firms will absorb firms placed out of service, and will bear only a portion of these costs. Consequently, the total cost estimated to replace an exiting new entrant likely represents an upper bound.

The estimates of total costs require assumptions on the number of carriers that will remedy deficiencies after having failed a safety audit or having undergone an expedited action, and the number that will exit the industry to avoid compliance costs. Fifteen percent of carriers (6,000) will be required to take the appropriate actions to achieve compliance after an expedited action notice. FMCSA assumes that 50 percent (9,577) of the carriers that would fail the stricter safety audits will take the appropriate actions to achieve compliance, and that the other 50 percent of carriers (9,577) will exit the industry. According to Agency research, the normal motor carrier attrition rate is around 5 percent per year, so this analysis accounts for this fraction of motor carriers that would

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trucking establishments (NAICS code 484000) included in the 2002 Economic Census. See http://www.census.gov/econ/census02/ for Economic Census data.

[15] May 2006 OES using NAICS 484000 and SOC 11-0000.

have exited the industry regardless of whether or not they were placed OOS after failing a safety audit.[16] Reducing the estimated number of OOS carriers by 5 percent left 9,098 new entrants that would be replaced as a result of the final rule. Annual costs to complying carriers are estimated to be $16.4 million ((6,000 + 9,577) × $1,055), and annual costs associated with new entrants exiting the industry are estimated to be $36.4 million (9,098 × $4000).

2.4.4 Summary of Costs

Costs are summarized in Table 5. Total annual costs are estimated to be $67.9 million, and are identical in all years. Costs discounted over 10 years at a 7 percent rate will be $477.2 million. The 3.5 percent of carriers not based in the U.S. would bear just $16.7 million of these costs; because this small amount does not materially impact the results, it will not be discussed further.

Table 5: Summary of Estimated Costs (Millions)	
Annual Costs	$67.9
Paperwork	$6.3
Safety Audits	$8.8
Compliance Costs	$16.4
OOS Costs	$36.4
Costs over 10 Years, Discounted at 7%	$477.2
Paperwork	$44.3
Safety Audits	$62.0
Compliance Costs	$115.3
OOS Costs	$255.6

2.5 Safety Benefits

FMCSA expects substantial safety benefits from stricter enforcement of FMCSRs during new entrant safety audits. Research from the Volpe Center demonstrates that new entrant driver and carrier violations of regulations are positively correlated with crash rates.[17] As noted earlier, the Agency believes that safety audits have been inadequate in identifying motor carriers that are noncompliant with the FMCSRs. The implementation of this rule will allow safety auditors to better flag noncompliant new entrants, and, because the ultimate goal of this rule is to improve motor carrier safety, the Agency believes that reducing violations of the FMCSRs will consequently lead to reductions in crash rates.

[16] FMCSA calculated the average annual attrition rate using MCMIS and SafeStat data on the numbers of new entrants and active motor carriers over sample periods from five to ten years. The results fell into a range of 3 to 6 percent.
[17] Volpe Center (April 1998). "New Entrant Safety Research, Final Report."

The motor carrier crash rate from MCMIS is 0.75 crashes per MVMT, and the new entrant crash rate is 25 percent higher, 0.94 per MVMT.[18] FMCSA assumes that the new entrants placed out of service are less safe than typical new entrants and crash 1.13 times per MVMT, a 50 percent higher rate than that of established motor carriers. This distribution of crash rates is consistent with recent MCMIS data. For all motor carriers, the crash rate of the worst 25th percentile is 50 to 70 percent higher than the overall rate. According to MCMIS, new entrants average 0.4 MVMT per year.

2.5.1 Safety Benefits of the Safety Audit

The effectiveness of stricter safety audits in reducing crash rates cannot be determined until several years after this rule goes into effect. However, one can make inferences from studies that demonstrate the effectiveness of compliance reviews (CRs) at reducing crash rates. The "Compliance Review Effectiveness Model" (June 2006)[19], created by the Volpe Center, compared the crash rates of motor carriers before and after CRs conducted in years 2000 through 2003. The model shows that motor carriers subject to compliance reviews in 2003 experienced a 17.5 percent reduction in their crash rates relative to the rate from an unreviewed control group one year after the review, and projects extended benefits averaging about 17.5 percent below the control group's crash rate for the subsequent 3 years.

Safety audits are less comprehensive than CRs, and safety issues that may be found during a CR might not be observed in a safety audit. Safety audits may be less successful than CRs at discovering, and mandating corrections to, behavior that leads to crashes. The effectiveness of the safety audit at improving carrier safety will also be enhanced by improved compliance in response to expedited actions. The Agency cannot predict whether all carriers subject to expedited actions would have failed the safety audit, but it assumes that this will be the case. Consequently, the Agency did not separately estimate safety improvements from expedited actions, but assumes that these effects will be contained within the impact of the overall safety audit. Bounded by no effect and the effectiveness of a CR, the Agency assumes that the safety audits implemented under this rule fall in the middle, and will be half as effective as CRs, that is, they hold crash rates 8.75 percent below the baseline rate for 4 years after they have been conducted. An 8.75 percent reduction of the crash rate from the 0.94 rate, multiplied by the number of new entrants that take remedial actions to comply with the FMCSRs, multiplied by the annual new entrant MVMT (0.082 × 9,577 × 0.4) results in the rule having avoided 316 crashes each year in year one. In years two through four, the baseline crash rate will fall slightly as accumulated experience "teaches" new entrants to be safer carriers, so the crash reduction attributed to the safety audit is reduced somewhat. New entrants entering in the second year will experience the same reductions, which will overlap the crash reductions from the first year carriers. About 619 crashes will be avoided in the second year, 928 crashes in the third, and 1,238 crashes the fourth through tenth years. Cumulative over 10 years, 10,529 crashes will have been avoided.

[18] All crash rates are average crash rates weighted by MVMT.
[19] http://ai.volpe.dot.gov/CarrierResearchResults/PDFs/ProgramEffectiveness/CREM_O6.pdf

2.5.2 Safety Benefits from Exiting Carriers

FMCSA assumes new entrants that replace exiting carriers will have an overall crash rate that is the same as the average rate for all new entrants, 0.94 crashes per MVMT. There would be no characteristics of these replacement carriers that would cause them to have an overall crash rate on average any better or worse than that of the new entrant population as a whole. As Table 1 above shows, carriers improve their safety performance as they gain more years of experience. The worst carriers would be improving their safety performance at approximately the same rate as average new entrants. Nevertheless, the difference between in the crash rates of these two groups will decline over time; poor-performing carriers will experience larger declines in their crash rates by virtue of their crash rate having started at a higher level. Over 10 years, the average difference in crash rates would be about 0.17 crashes per MVMT.

As the worst-performing new entrants continually terminate interstate operations, the number of crashes avoided by their exiting the industry will accumulate. As stated, the carriers that replace them will have on average 0.17 fewer crashes per MVMT, and multiplying that difference times the number of replaced carriers and overall new entrant MVMT ($0.17 \times 9{,}098 \times 0.4$) yields 619 crashes in the first year. This group of new entrants will be pared down by 5 percent due to normal attrition in each subsequent year, as would the number of crashes avoided that can be attributed to their exit. New entrants arriving in subsequent years will repeat this pattern for crashes avoided, and these patterns will overlap those of all preceding years. Over 10 years, about 29,400 crashes will be avoided.

2.5.3 Summary of Safety Benefits

Table 6 highlights estimates of the number of crashes avoided in several example years.

Table 6: Crashes Avoided in Individual Years

	Year 1	Year 2	Year 5	Year 10	10-Year Total
Continuing Carriers	316	619	1,238	1,238	10,529
Closed Carriers	619	1,206	2,799	4,965	29,400
Total	935	1,826	4,037	6,203	39,929

FMCSA estimates that about 39,929 crashes will be avoided over 10 years. The average cost of a motor-carrier-involved crash is $146,410.[20] This includes both direct costs such

[20] Zaloshnja, Eduard and Ted Miller (December 2006). "Unit Costs of Medium and Heavy Truck Crashes." Figures are in this report are for 2005. We adjusted the $91,112 cost for a large truck crash and the $3,604,518 cost for a fatal crash to 2006 dollars using the annual percent change in the gross domestic product deflator (http://www.bea.gov/national/index.htm#gdp). Zaloshnja and Miller use a $3.0 million value of a statistical life (VSL) for their estimates; the Agency has recomputed these figures using a $5.8

as medical, emergency services and property damage, and indirect costs such as lost productivity and diminished quality of life. By deterring 39,929 crashes, this rule will yield a 10-year benefit, discounted at a 7 percent rate, of $3,778.0 million.

2.6 Summary of Costs and Benefits

This rule ensures better compliance with FMCSRs. The costs and benefits over 10 years, discounted at a 7 percent rate, will be $477.2 million and $3,778.0 million, respectively. Net benefits will be $3,300.8 million, and the benefit/cost ratio will be 7.9. FMCSA estimates that 39,929 crashes will be avoided over 10 years. Eliminating these crashes will avoid 487 fatalities.[21] The 10-year discounted cost per life saved will be $1.0 million.

2.7 Sensitivity Analyses

2.7.1 Alternative Assumptions on Improvements in Carrier Safety

Benefits estimates are sensitive to assumptions about the reduction in the crash rates that the implementation of this final rule will achieve. The above estimates indicate that 464 crashes would have to be avoided each year for this rule to yield positive net benefits. Even if safety audits do nothing to improve safety and decrease crash rates, some risky carriers will still end interstate operations as a result of the rule. Positive net benefits would still occur if this rule did nothing but prompt the worst 5.7 percent (about 2,300 carriers per year) of new entrants to exit the industry. Conversely, if all new entrants remained in the industry and took the appropriate corrective actions, safety audits would need to be just 7.1 percent as effective as compliance reviews in reducing crash rates for the rule to yield positive net benefits. The reduction in crash rates needed to produce positive net benefits would be just 1.3 percent of the average new entrant crash rate of 0.94 per MVMT; the safety audit would have to prevent about 0.01 crashes per MVMT.

2.7.2 Alternate Discount Rate and Crash Costs

The Agency also computed costs and benefits using a 3 percent discount rate over a 10-year horizon. Because costs are constant and benefits increase over the time, the ratio of benefits to costs improves as a result of using this lower discount rate. Using a 7 percent discount rate, FMCSA computed benefits using alternate values of a large truck crash cost which incorporate different economic values of statistical life (VSL). The baseline VSL was $5.8 million; here values of $3.2 million and $8.4 million are also used. Even

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million VSL, in accordance with DOT guidance on the treatment of the economic value of a statistical life in Departmental analyses issued February 5, 2008 (http://ostpxweb.dot.gov/policy/reports/080205.htm).

[21] FMCSA's *Large Truck Crash Facts, 2005* indicates that 1 percent of crashes involve fatalities, claiming 1.15 lives per fatal crash.

the lowest VSL still results in strong positive net benefits. Table 7 below shows the results of these analyses.

Table 7: Alternate Discount Rate and Crash Costs					
Discount Rate	Value of Statistical Life (millions)	Average Crash Cost	Costs (millions)	Safety Benefits (millions)	B/C Ratio
3%	$5.8	$146,410	$579.6	$4,813.0	8.3
7%	$5.8	$146,410	$477.2	$3,778.0	7.9
	$3.2	$91,582		$2,363.2	5.0
	$8.4	$201,237		$5,192.8	10.9

3 Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Federal agencies to consider the effects of their regulatory actions on small businesses and other small entities and to minimize any undue disproportionate burden. To achieve this, the Act requires that agencies describe how they have addressed these concerns by including a Final Regulatory Flexibility Analysis (RFA) with each final rule. The Final RFA must include the following five elements:

1) A succinct statement of the objectives of, and need for, the final rule.

2) A summary of the significant issues raised by the public comments in response to the initial RFA, a summary of the Agency's assessment of such issues, and a statement of any changes made in the rule as a result of such comments.

3) A description and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

4) A description of the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

5) A description of the steps the Agency has taken to minimize the significant adverse economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the Agency was rejected.

<u>Succinct statement of the objectives of, and need for, the final rule.</u>

The objective of this final rule is to improve the compliance of new interstate carriers (known in this rule as new entrants) with the existing Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs) and thereby reduce the number and severity of crashes these carriers are involved in. In response to concerns about the safety of new entrant motor carriers, Congress enacted section 210 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). Section 210(a) directed the Secretary to require that each motor carrier granted operating authority undergo a safety audit within the first 18 months of operation. Section 210(b) required the Secretary to establish regulations specifying minimum knowledgeability requirements for motor carriers applying to obtain interstate operating authority. Congress mandated increased oversight of new entrants because studies indicated these operators had a much higher rate of non-compliance with basic safety management requirements and were subject to less oversight than established operators.

To implement this mandate, FMCSA published an Interim Final Rule (IFR) on May 13, 2002, (67 FR 31978), which became effective January 1, 2003 entitled "New Entrant Safety Assurance Process". New entrants are granted provisional operating authority during an 18-month safety monitoring period. When a new entrant registers for a USDOT Number, it must complete Form MCS-150A–Safety Certification for Applications for USDOT Number to certify understanding of applicable safety regulations and receives ETA materials, upon request. Additionally, during the initial 18-month period of operations, FMCSA evaluates the new entrant's safety management practices by monitoring the carrier's on-road performance prior to granting the carrier permanent registration and by conducting an on-site review of its operations called a safety audit.

In response to comments on the IFR indicating new entrants lacking basic safety management controls were passing the safety audit, and after having collected additional data, FMCSA published an NPRM titled "New Entrant Safety Assurance Process" on December 21, 2006 (71 FR 76730). The NPRM proposed enhancements to strengthen and clarify the new entrant program. Notably, the Agency proposed eliminating Form MCS-150A because this form was deemed ineffective at assessing carrier familiarity with safety regulations. To meet the requirements of section 210(b), the Agency would continue to rely on ETA materials to provide an effective foundation for knowledge of safety regulations, and would enhance the currency and availability of these materials to further their support of the knowledgeability provision. In addition, the Agency would confirm knowledge of applicable regulations during the safety audit. The NPRM also proposed to revise the grading criteria for the safety audit so carriers would automatically fail if a violation was found in any one of 11 regulations.

This final rule adopts the following NPRM proposals with consideration to additional public comments. The final rule:

- Eliminates Form MCS-150A. To promote carrier knowledgeability of safety regulations, the Agency has enhanced the currency of ETA materials, provides online access to these materials, and distributes paper copies to motor carriers.

- Adds new § 385.308 to identify violations that will result in expedited action.
- Revises § 385.327 to clarify the process for administrative review.
- Revises § 385.329(b) to clarify how a new entrant whose authority has been revoked can reapply.
- Revises § 385.337(a) to clarify that refusal to submit to a safety audit may subject a new entrant to civil penalties.
- Revises § 385.306 to clarify actions that may be taken against a carrier who provides incomplete or untruthful information on the MCS-150.
- Establishes a new safety monitoring system and application process for NNA-domiciled motor carriers, who were not covered by the IFR.
- Establishes a list of 16 regulatory violations that would result in automatic failure of the safety audit, five more than were proposed by the NPRM. Many of the originally-proposed provisions were clarified, and two of them were adjusted to require a pattern of violations rather than a single occurrence of non-compliance to result in an automatic failure of the safety audit.

A summary of the significant issues raised by the public comments in response to the initial RFA, a summary of the assessment of the Agency of such issues, and a statement of any changes made in the rule as a result of such comments.

The comment period for the NPRM ended on February 20, 2007. FMCSA received a total of 17 comments, representing 21 entities. No comments addressed the initial RFA directly. However, one commenter, the Owner-Operator Independent Drivers Association (OOIDA) submitted a comment relevant to the RFA. Specifically, OOIDA stated that the FMCSA proposal will increase the small business failure rate and is "reactive" and "punitive" to small businesses.

FMCSA is mandated under section 210 of the MCSIA to establish regulations specifying minimum knowledgeability requirements for motor carriers applying to obtain interstate operating authority, and furthermore to require new entrants to undergo a safety audit within the first 18 months of operation. FMCSA carefully considered how best to implement an educational program and a safety audit that was strict enough to require carriers to demonstrate basic safety management controls without becoming a *de facto* compliance review. Failure of the safety audit will occur when a carrier fails to comply with safety regulations that the Agency has determined to be essential in demonstrating effective safety management controls.

It is worth noting that no matter how the new entrant program could have been structured, for it to be effective as envisioned by Congress, some new entrants would have to change their behavior to come into compliance with existing FMCSRs. The Agency's analysis of past safety audits indicates that the majority of new entrants already demonstrate adequate safety management controls, even under the more stringent safety audit standards imposed by this rule. New entrants have many opportunities to educate themselves on and come into compliance with the existing FMCSRs. Nevertheless, FMCSA expects that some new entrants will still surrender interstate operating authority

rather than comply with the safety regulations (although they would not necessarily be precluded from engaging in intrastate-only operations). The only way for the Agency to eliminate all adverse business impacts on small carriers would be to allow non-compliance by a small subset of carriers. This is not in the public's interest and the interest of other motor carriers, small and large.

A description and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

New entrants tend to be the smallest firms in the industry. FMCSA estimates that an average of 68,700 motor carriers apply for interstate authority each year, as evidenced by a count of filings of the MCS-150A form. About 40,000 of these carriers remain in the new entrant program through the safety audit phase. The Small Business Administration (SBA) regulations (13 CFR part 121) specify the small business size standard in the motor carrier industry as not more than $23.5 million in average annual receipts per firm. Revenue data for most carriers are not available, but motor carriers are required to report to the Agency on Form MCS-150 the number of power units they own. A survey by OOIDA indicates that revenue per tractor is about $120,539[22], and using this amount, FMCSA assumes that firms possessing fewer than 195 power units would fall below the $23.5 million revenue threshold for small business designation. Data from MCMIS indicate that about 99.8 percent of new entrants—effectively all of them—are small businesses.

A description of the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

This rule improves the efficacy of the new entrant safety audits in identifying instances of poor compliance and directing new entrants to correct their business practices. Although FMCSA estimates that non-compliant carriers could spend on average $1,000 to come into compliance with safety regulations, these costs are associated with requirements of existing regulations, and are borne by the majority of motor carriers that already comply with the FMCSRs. This rule imposes no new substantive requirements on any motor carrier. It is also important to note that the safety audit is not a compliance intervention, i.e., no civil penalties for non-compliance are imposed.

The rule does impose some small administrative and paperwork requirements. FMCSA will continue to provide online access to and distribute hard copies of ETA materials, which all new entrants should spend time reviewing. The Agency estimates that a manager or company official at each carrier will spend about 3 hours with the enhanced ETA materials, at a labor cost of about $157. The cost of a carrier's time spent during the safety audit is estimated to be $220.60. In total, the new entrant program imposes a total one-time expense of $377.60 on each new entrant. A new entrant that fails its safety

[22] OOIDA 2003 Cost of Operations Survey. http://www.ooida.com/Documents/2003_Cost_Ops.pdf. Survey is $110,527 per tractor; FMCSA adjusted this to 2006 prices using the GDP deflator.

audit or receives an expedited action demand letter will also be required to submit a corrective action plan, proof that that it has remedied deficiencies in key areas of regulatory compliance. This will also be handled by a manager or company official, and FMCSA estimates that the total cost of submitting a corrective action plan is $55, including materials and labor. With average revenue per tractor estimated to be $120,539, the maximum cost the smallest new entrant, a carrier with just one power unit, would incur costs equal to about 0.3 percent of a single year's revenue. In most cases, these new costs would be borne only once. Consequently, FMCSA does not judge the cost of this rule to be significant.

A description of the steps the Agency has taken to minimize the significant adverse economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the Agency was rejected.

Because an interim final rule has been in effect for several years before this final rule, FMCSA has been able to implement the best policies based on several years of experience.

The safety audit received perhaps the greatest amount of consideration. The purpose of the safety audit is to educate the carrier about the applicable safety regulations and to assess the adequacy of its basic safety management controls. If a carrier's safety management controls are deemed inadequate, the Agency also requires corrective actions by the carrier before granting permanent operating authority. When the new entrant program was implemented in 2003, FMCSA established a safety audit that, while educational, had such lenient assessment criteria—the pass rate was greater than 99 percent—that it did very little to compel carriers who lacked basic safety management controls to improve. The Agency did not believe that education alone was enough to encourage voluntary compliance: Analysis of recent crash data indicates that the crash rate of new entrants is still significantly higher than that of the overall carrier population. Because improved safety is the ultimate goal of the new entrant program, a stricter safety audit seemed absolutely necessary. However, in adopting 16 automatic failure criteria, FMCSA has been careful to implement standards that are designed to flag substantial deficiencies in the new entrant's basic safety management controls. Even then, FMCSA will provide guidance to carriers as they make the required corrective actions.

FMCSA has also made other changes to better educate carriers on safety regulations before their safety audits. To enhance the content and availability of the ETA materials, FMCSA has improved the information content. In addition, the Agency has published the ETA materials online and will also mail ETA materials to new entrants. FMCSA will keep the ETA materials up to date. FMCSA is eliminating the requirement to self-certify knowledge of Federal safety requirements during the application process (Form MCS-150A--Safety Certification for Applications for USDOT Number) because the Agency believes it fails to demonstrate that carriers have the requisite familiarity with motor carrier safety regulations. The Agency anticipates that the educational focus at the

beginning of the new entrant program resulting from the improved, updated, and more accessible ETA materials will increase the likelihood that carriers will begin their operations with adequate safety management controls, which, in addition to reducing safety audit failures, could also help avert costly mistakes later, such as crashes and violations caught at roadside inspections..

FMCSA will conduct group audits when practicable, while being careful to maintain carrier privacy. FCMSA believes conducting audits at locations other than a carrier's principal place of business is beneficial, practical, and cost effective for both the Federal Government and the carriers, given the right circumstances.