

DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

New Entry Safety Assurance Process
Regulatory Evaluation

Docket No. FMCSA-2001-11061

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PUCO

COMMENTS
OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

INTRODUCTION

The Public Utilities Commission of Ohio (PUCO) submits these comments pursuant to the request for comments issued by the Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation in this docket. The PUCO is the lead motor carrier safety enforcement agency in Ohio and as such has adopted an extensive body of rules to govern the conduct of motor transportation companies. The PUCO has an active interest in the safety of the motoring public and the ability of regulated motor carriers to conduct their business successfully and safely within the state.

Ohio has been a leader in motor carrier regulatory enforcement since 1951. It was at that time that the PUCO first established a program to regulate the operations of commercial motor carriers in the state. This program has continually evolved into one of the most comprehensive motor carrier safety programs in the nation. Today, under the leadership of the PUCO, Ohio administers a program that addresses a wide range of safety issues. The state is an active participant in the Motor Carrier Safety Assistance Program (MCSAP) with the Federal Motor Carrier Safety Administration (FMCSA) where it conducts driver/vehicle inspections, compliance reviews and especially, new entrant safety

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audits. Since the inception of the New Entrant Motor Carrier Safety Assurance Program in 2003 staff of the Public Utilities Commission of Ohio has conducted over 2000 Safety audits on regulated carriers. The PUCO's new entrant program is widely recognized as one of the leading programs nationwide.

COMMENTS

The PUCO is generally supportive of the changes to the new entrant program outlined for comment in the Proposed Rule. Tightening up requirements for new entrants and designating specific regulatory violations that would result in automatic failure of the safety audit is a sound concept and should provide greater impetus to new entrants to come into compliance. It is understood that there is a significantly higher rate of crash involvement for new entrants and worse driver safety compliance and performance as compared to more experienced drivers. For these reasons, the PUCO applauds these next proposed steps to the new entrant audit process.

The PUCO would like to take this opportunity to offer some specific comments with regard to provisions of the Proposed Rule. It is anticipated that our comments will necessarily be preliminary given the tentative nature of the Proposed rule and the need to work out the "kinks" as the process evolves.

I.

Specifically, the PUCO calls attention to 49 C.F.R. 385.308 which outlines the process for expedited safety audits and compliance reviews. This section sets forth the actions which will mandate an expedited safety audit. The specific provisions calling for

a “potential” expedited safety audit are clear; however, much regarding the implementation of this is left unstated. For example, once a carrier is found to have committed one of the actions identified, will the expedited safety audit be mandatory and applied in every instance? Will the carrier have an opportunity to contest the allegation with due process prior to the implementation of an expedited safety audit or are we to assume the carrier’s guilt? Will all of the criteria outlined mandate the immediately expedited safety audit or are they to be organized into “degrees of concern”?

It is important to note that the PUCO agrees with the goal of this proposal and further agrees that an expedited safety audit would be a rational and helpful response, however, much is left unsaid about the actual implementation of the program. The PUCO, along with its sister agencies in other states need to have information about how to carry out the program prior to its implementation in order to have adequate staff employed to carry out its duties.

II. Safety Audit Scheduling

Under the present process, states are presently faced with a number of situations regarding the timing of safety audits that create scheduling and organizational inefficiency. Although we recognize that a variety of procedures have been implemented to address some of these situations, we are concerned that the proposed rules do not address certain areas.

First, we believe that the rules should directly deal with carriers that enter the program and are then reclassified as a registrant or an intrastate carrier. In some cases these carriers seek to re-enter the program at a later date. When this occurs, we do not believe

they should be credited with the time they were operating as a registrant or an intrastate carrier. Rather, we believe the rules should specify that they must start the 18 month credit anew.

Second, carriers that transfer their operations from one state to another present a particular problem in the safety audit process. We believe that the rules need to provide for these types of carriers and ensure that when such transfers are made, there is sufficient time provided to the new jurisdiction responsible for conducting the safety audit to be able to schedule and conduct the review prior to the end of the 18 month period.

Finally, we recognize that FMCSA has made an effort, in this rule to address “bad actors” and ensure that carriers who try to “game” the system are identified. However, we believe that there is an additional area that may have been overlooked in this effort. Specifically, the proposed new rules should address those carriers who continually switch their status in an effort to avoid having a safety audit. These carriers may keep the same name, but continually change their status. We believe that the rules need to also ensure that such changes are tracked and that such carriers be required to undergo a safety audit or compliance review within a specified period of time.

III. Responsibility for Scheduling and Completing the Audit

In addition to the above mentioned concerns, the PUCO also believes that the responsibility of ensuring that the audit occurs should not be placed solely on the regulatory agency. Currently the practice is such that states responsible for conducting a safety audit are required to go to extreme lengths to contact the carrier multiple times prior to the end of the 18 month time period within which the audit must be

accomplished. This extra administrative burden should not be born by the agency but rather by the new entrant. A carrier should be required to contact the agency and ensure that its audit is accomplished in the prescribed time period. At present, we believe that this is not occurring and that instead, the burden is being borne by FMCSA and the states who are conducting the audits.

IV. Logistics of Handling Verifications

Under this rule it is anticipated that the number of carriers failing their safety audit will greatly increase. As a consequence, more carriers will be required to provide a response pursuant to 49 C.F.R. 385.319, and take corrective measures. With this in mind, the PUCO is unsure about how the FMCSA anticipates implementing these provisions. For instance, is it the intention of FMCSA to delegate this authority to the states? If so, what requirements will be placed upon the states to complete the additional work? The PUCO currently conducts all safety audits in the state and employs internal staff to review them for completeness and accuracy. Although the PUCO would be more than ready and willing to undertake this increased workload, the state would need time and money to hire and train the requisite staff.

In addition to any staffing increases required due to the aforementioned appeals, a greater number of new entrants will also likely be required to undergo a compliance review. Others will also necessitate a safety audit under tighter turn around times putting greater pressure on current staff to perform more work faster. One question that arises is whether or not compliance reviews triggered by these changes will qualify for funding under the new entrant program? Furthermore, will additional funding be made available

for states to increase staffing levels associated with the increased time constraints associated with the short-notice reviews that could drastically increase due to these changes? Therefore, we would encourage FMCSA to consider the staffing and subsequent funding implications of these new rules. To ensure that the same high quality work can be maintained in the future, states like Ohio may need additional funding and require greater flexibility on how those funds can be spent if we are to keep pace with the program changes.

V Advance Notice

In the past FMCSA has instituted new rules with a very short timeline for implementation. In some cases a final rule has been published in the Federal register with an immediate effective date only to ask states to delay implementation and/or only implement portions of the rule. We would ask that FMCSA take into consideration the time for staffing changes, and training that may result due to the implementation of these rules and ensure that their effective date of implementation provides sufficient notice to all parties involved.

CONCLUSION

The PUCO appreciates the opportunity to submit these comments and requests that FMCSA give them careful consideration in designing and implementing its proposed rules regarding the new entrant safety audit process.

Respectfully Submitted,

/s/ Anne L. Hammerstein

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NOTIFICATION REQUEST

The PUCO respectfully requests notification of any additional forums or proceedings involving this docket.