

**SIGNIFICANT IMPROVEMENTS IN
MOTOR CARRIER SAFETY PROGRAM
SINCE 1999 ACT BUT LOOPHOLES FOR
REPEAT VIOLATORS NEED CLOSING**

Federal Motor Carrier Safety Administration

Report Number MH-2006-046

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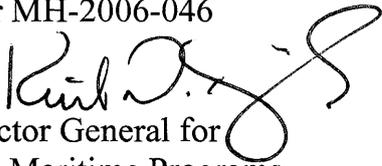


Memorandum

U.S. Department of
Transportation
Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION:** Report on Significant Improvements in
Motor Carrier Safety Program Since 1999 Act, But
Loopholes for Repeat Violators Need Closing
Report Number MH-2006-046

Date: April 21, 2006

From: Kurt W. Hyde 
Assistant Inspector General for
Surface and Maritime Programs

Reply to
Attn. of: JA-40

To: Federal Motor Carrier Safety Administrator

This report presents the results of our audit of the Federal Motor Carrier Safety Administration's (FMCSA) implementation of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). As required by MCSIA, we have assessed FMCSA's progress in implementing the Office of Inspector General's (OIG) 1999 audit recommendations, analyzed the number of violations cited by safety inspectors and the level of fines assessed and collected for such violations, and identified the number of cases with findings of extraordinary circumstances under Section 222(c) of MCSIA.

Congress passed MCSIA to establish FMCSA, enhance safety regulations, provide comprehensive oversight of motor carriers and commercial drivers, and reduce the number and severity of crashes involving large trucks. MCSIA also authorized stronger enforcement authority for FMCSA, such as assessing maximum civil penalties against repeat violators of safety regulations. MCSIA directed FMCSA to initiate safety audits for new motor carriers, complete numerous rulemakings to strengthen oversight of the motor carrier industry, improve the quality of program data, and implement the OIG's 1999 audit recommendations.

Our 1999 audit¹ of the motor carrier safety program concluded that Federal oversight did not sufficiently ensure motor carriers complied with the safety regulations. The basic problem was not with the majority of motor carriers who operate safely, but with the minority who repeatedly violate the safety regulations.

¹ OIG Report Number TR-1999-091, "Motor Carrier Safety Program," April 26, 1999. OIG reports can be found on our website: www.oig.dot.gov.

We made 14 recommendations, shown in Table 1, to strengthen enforcement of the safety regulations and improve data used to regulate motor carriers.

Table 1. April 1999 OIG Audit Recommendations

<p><u>Strengthening Enforcement</u></p> <ul style="list-style-type: none">• Strengthen enforcement policy by taking strong action against repeat violators.• Revise uniform fine assessment program to increase fines.• Establish stiff fines that cannot be considered a cost of doing business.• Remove operating authority from carriers that do not pay fines within 90 days.• Establish criteria for determining when a motor carrier poses an imminent hazard.• Require follow-up visits and monitoring of motor carriers with less than satisfactory ratings.• Require justification when compliance reviews of high-risk carriers are not done.• Establish policies and procedures for closing enforcement cases, including backlogs. <p><u>Improving Data Collection and Analysis</u></p> <ul style="list-style-type: none">• Require applicants to provide vehicle and driver information and require updates.• Use grants to obtain accurate, complete, and timely crash and inspection data.• Withhold grant funds from states that report inaccurate, incomplete, and untimely data.• Train local enforcement agencies about reporting crashes, inspections, and traffic violations.• Standardize crash data requirements and collection procedures.• Evaluate crash causation data to identify safety improvements.

Our audit objective was to assess FMCSA's progress in (1) implementing OIG's 1999 audit recommendations, (2) establishing the new entrant program, and (3) completing MCSIA-required rulemakings. Exhibit A describes the scope of our audit and the methodology we used to achieve our objectives.

RESULTS IN BRIEF

As of 1998, large truck-related fatalities had been on the rise for several years. At the time, the Office of Motor Carriers (OMC), a division of the Federal Highway Administration, was responsible for overseeing motor carrier safety. Our 1999 audit reported that OMC was too close to the trucking industry, emphasizing partnering rather than enforcing the safety regulations. In creating FMCSA, Congress recognized the importance of improving motor carrier safety by providing stronger enforcement tools, increasing budget and personnel resources, and directing the attention necessary to improve oversight of motor carrier safety. Since its creation, FMCSA has faced substantial challenges in meeting its oversight obligations for a range of important safety issues, such as drivers' hours of service, commercial driver's licenses (CDL), and quality of motor carrier data.

Despite these challenges, FMCSA significantly improved oversight of motor carrier safety since our 1999 audit. The absolute number of large truck-related fatalities decreased from 5,395 in 1998 to 4,939 in 2002, but increased to 5,036 in 2003 and 5,190 in 2004. Fatalities generally decreased as FMCSA and the states

increased enforcement of the regulations through compliance reviews² and enforcement actions.³ In addition, FMCSA hired the important executive and legal personnel necessary to implement MCSIA and developed policies, procedures, and practices to address our 14 audit recommendations. FMCSA also implemented a program to improve the safety performance of new motor carriers and issued 27 rulemakings required by or associated with MCSIA provisions. The agency has also started important initiatives to reduce fraud in the CDL program and to re-evaluate its processes for conducting compliance reviews.

Although FMCSA made progress, several significant challenges remain that, if resolved, could help FMCSA further enhance enforcement and oversight. Specifically:

- **FMCSA’s initial repeat violator policy was not properly implemented.** Although our analysis did not find concerns involving FMCSA’s findings of extraordinary circumstances, we did find problems with how the repeat violator provisions were implemented. Motor carriers were allowed to escape maximum fines because FMCSA was slow to fully implement our 1999 audit recommendation to strengthen enforcement against repeat violators of the safety regulations.

FMCSA issued an initial “three strikes” policy in September 2000, but did not properly implement the policy and did not provide sufficient notice of the policy to the motor carrier industry. Consequently, it published a policy clarification in the Federal Register⁴ in December 2004. During this 4-year period, FMCSA enforced maximum civil penalties against 146 motor carriers.

However, we identified 71 additional motor carriers who repeatedly violated the safety regulations but were not assessed maximum penalties. Because of the policy clarification, violations committed before December 2004 may not count against repeat violators. In effect, the 6-year timeframe for accruing violations was delayed by up to 4 years, and motor carriers who committed violations from September 2000 to March 2004 will essentially be given a clean slate, as violations during this period will not count in identifying a pattern of violations.

- **FMCSA’s repeat violator policy allows motor carriers to escape maximum fines.** FMCSA’s consideration of legislative restrictions when assessing fines, such as a motor carrier’s ability to pay, sometimes results in some violations being omitted from the Notice of Claim provided to the motor carrier, even

² A compliance review determines whether a motor carrier meets safety fitness standards for driver qualifications, vehicle maintenance, financial responsibility (insurance), crash involvement, handling of hazardous materials, etc.

³ Enforcement actions include civil penalties, out of service orders, and consent orders.

⁴ Federal Register Docket Number FMCSA-2004-19882, December 28, 2004.

with evidence proving the violations. Because undocumented violations are not considered in identifying a pattern of violations, repeat violators of the same regulation may not always be assessed the maximum penalty. For example, between September 2000 and October 2004, 533 motor carriers repeatedly violated either the hours of service or the drug and alcohol regulations, and 67 repeatedly violated both regulations. Because some violations were not documented, and thus not enforced on the Notice of Claim, only 33 (6 percent) of the 533 motor carriers received the maximum penalty.

This loophole allows hundreds of motor carriers to repeatedly violate significant safety rules without exposure to maximum penalties. Although it is important to consider a motor carrier's ability to pay a fine, this principle should not override congressional concerns about repeat violators. To address both concerns, FMCSA, at its discretion, should assess a no-fine penalty⁵ or use another appropriate mechanism to legally notify a motor carrier that future violations may result in the maximum fine.

Closing this loophole will allow FMCSA to further deter violations of the safety regulations. For example, the driver hours of service rules are among the most frequently violated, accounting for 30 percent of all acute and critical violations. The Safe, Accountable, Fast, and Efficient Transportation Equity Act of 2005—A Legacy for Users⁶ (SAFETEA-LU) increased the maximum fines for recordkeeping and falsification violations. In our view, even with the penalty increases, unscrupulous motor carriers will have an incentive to violate the hours of service rules, especially if FMCSA does not assess the maximum penalties when warranted.

- **Improvements in quality of data required by law are still needed.** FMCSA took positive steps to improve data from motor carriers and the states, but problems remain. Approximately 192,000 (27 percent) of 702,277 existing motor carriers did not update census data on drivers and trucks; and since 2002, only 20 civil penalties were imposed against motor carriers for failing to update census data. Additionally, state crash forms do not consistently define a large truck or a reportable crash, resulting in confusion regarding the crash information FMCSA needs. Data quality is especially important because census and crash data are used by SafeStat to rank the safety performance of motor carriers and target them for compliance reviews and inspections. Without this critical data, FMCSA cannot effectively identify all high-risk motor carriers. Finally, although the Large Truck Crash Causation Study was

⁵ The use of the term “if any” in the following legal description suggests that a no-fine penalty would be permitted on a Notice of Claim. Title 49, United States Code, Section 521 (b)(1)(A) states that a motor carrier should be provided a notice that indicates a violation of a regulation has occurred, specifies the proposed civil penalty, **if any**, and suggests actions that might be taken in order to abate the violation. (Emphasis added.)

⁶ Public Law 109-59, August 10, 2005

completed and the results were provided to Congress in March 2006, FMCSA has not met the MCSIA requirement to provide Congress with legislative recommendations.

- **Continued monitoring needed to maintain timeliness and enhance effectiveness of new entrant safety audits.** FMCSA established regulations and operating procedures to implement the new entrant program. New motor carriers applying for interstate operating authority must register with FMCSA and receive a safety audit⁷ within 18 months of operation. Initially, FMCSA conducted the majority of the safety audits, beginning in April 2003. As funding increased, states gradually increased production as safety auditors were hired and trained.

Our analysis of FMCSA data as of November 1, 2005 indicated that states completed about 78 percent of the 66,373 safety audits, and that only 663 motor carriers were not audited within 18 months as required. However, FMCSA's decision to reclassify 4,751 motor carriers in its database from "inactive" to "active" in July 2005 created a bubble of new entrant motor carriers awaiting an audit – a number nearly twice as large as any other month in our analysis. Although safety audits have been timely, FMCSA needs to monitor safety audit progress to ensure continued timeliness. In addition, based on our analysis and FMCSA's own analysis, further study of the effectiveness of the new entrant program is needed.

- **FMCSA needs to complete a significant medical certificate rulemaking.** Of 29 MCSIA-required rulemakings, 28 have been completed. Although FMCSA plans to issue a Notice of Proposed Rulemaking (NPRM) to combine the CDL and driver medical certificate later in 2006, it is important that FMCSA work diligently towards completing a final rule.

RECOMMENDATIONS

Since our April 1999 audit, FMCSA has made positive strides in improving motor carrier safety through its increased emphasis on enforcement, implementation of the new entrant program, and completion of numerous rulemakings. However, to fully implement our recommendations and to further advance efforts to reduce large truck fatalities, we recommend that FMCSA:

⁷ The purpose of a safety audit is to educate the new entrant motor carrier about the applicable safety regulations and to assess the adequacy of the motor carrier's basic safety management controls.

1. Strengthen the repeat violator policy by:
 - a. enhancing controls, such as automated notification of prior violations in enforcement case software, to ensure that all violations meeting the current three strikes criteria are assessed the maximum penalty allowed by law and
 - b. developing a procedure to count toward a “pattern of violations” under MCSIA Section 222, irrespective of how the violations are treated under UFA, all acute and critical violations that FMCSA discovers during future compliance reviews and either documents for inclusion on the Notice of Claim or obtains the motor carrier’s signed admission. The procedure must include an appropriate mechanism to notify the motor carrier of the agency’s discovery of the violation and of the applicability of Section 222. This recommendation shall neither diminish a motor carrier’s opportunity to challenge the Section 222 “strike”, nor FMCSA’s enforcement discretion to decline charging an arguable violation in appropriate circumstances.
2. Take firm action to increase compliance with the census data updating requirement by intensifying efforts to fine motor carriers that resist compliance or by taking other measures that can be demonstrated to be effective.
3. Establish a system to track attendance for the crash data training course and visits to the crash data website, and compare the results to changes in crash data reporting by states to assess whether training efforts are successful.
4. Rapidly implement the planned actions in the Crash Data Improvement Project plan and establish milestones for improving states’ compliance with standardizing crash reports and data elements.
5. Develop milestones for completing the required legislative recommendations for the Large Truck Crash Causation Study issued in March 2006.
6. Continue monitoring state safety audit activity to ensure timely completion of all safety audits.
7. Continue ongoing efforts to identify needed changes in the new entrant program to increase the enforcement component that would improve safety.
8. Expeditiously complete the driver medical certificate rulemaking.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided FMCSA a draft of this report on December 16, 2005. In its February 14, 2006 written comments, FMCSA identified actions taken or planned

that were responsive to six of our eight recommendations. FMCSA nonconcurred with our recommendation to develop a procedure to ensure that repeat violators are assessed maximum fines (recommendation 1b) and partially concurred with our recommendation to fine motor carriers that do not update census records (recommendation 2). Although FMCSA provided its written perspective on these recommendations, it did not propose actions or plans responsive to our recommendations. FMCSA also did not provide specific milestones for completing planned actions for three recommendations (3, 7, and 8).

The OIG met with FMCSA officials on April 5, 2006 to discuss the two issues of disagreement. The meeting resulted in resolution of the nonconcurrence with recommendation 1b, although the disagreement on recommendation 2 was not resolved. Specifically, for recommendation 1b, FMCSA agreed to take action to ensure that repeat violators of the motor carrier safety regulations are not allowed to escape maximum fines, although it will maintain discretion on which violations to document. FMCSA indicated that it will identify specific approaches to implement our recommendation when it responds to our final report.

For recommendation 2, FMCSA indicated that fining motor carriers for failing to update census data would not be cost-effective, and it did not commit to any specific action to further improve compliance. At this time, we consider FMCSA's position to be nonresponsive to our recommendation. However, FMCSA did agree to consider alternative measures to encourage increased compliance with the census data updating requirement. In our view, it is important to increase compliance with the updating requirement because SafeStat uses the census data to rank the safety performance of motor carriers. Without this critical data, FMCSA cannot effectively identify all high-risk motor carriers. The importance of data quality was recently reiterated by the Chairman of the House Subcommittee on Highways, Transit, and Pipelines in requesting that OIG perform a follow-up audit of the quality of SafeStat data.

Based on FMCSA's written and verbal comments, we revised recommendations 1b and 2 to include additional detail and appropriate clarifications. Our analysis of FMCSA's complete comments to our draft report is provided on pages 23 through 27 in the body of the report. FMCSA's complete written comments on the draft report findings and recommendations are in the Appendix to this final report.

ACTIONS REQUIRED

FMCSA's planned actions to address seven of our eight recommendations are responsive. Regarding the remaining recommendation, we request that FMCSA provide specific information and milestone dates for planned alternative actions to increase compliance with census updating requirements (recommendation 2). We also request that FMCSA provide specific information and milestone dates for

planned actions to ensure that repeat violators are not allowed to escape Section 222 maximum penalties (recommendation 1b). Finally, we request that FMCSA provide specific milestone dates for recommendations 3, 7, and 8. In accordance with DOT Order 8000.1C, we request that FMCSA provide a written response within 30 calendar days of this final report.

We appreciate the courtesies and cooperation provided by FMCSA and other Department representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-2017 or Joseph W. Com e, the Program Director, at (202) 366-0377.

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cc: National Highway Traffic Safety Administrator

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BACKGROUND

Congress passed MCSIA to enhance Federal safety regulations and to provide comprehensive oversight of motor carriers and commercial drivers. A key purpose of MCSIA was to reduce the number and severity of crashes involving large trucks. To effect this change, Congress created FMCSA and provided the new agency with enhanced enforcement authority, such as assessing maximum fines against repeat violators of the safety regulations. Congress authorized about \$2.9 billion to fund FMCSA administrative operations and grant programs for FYs 2004-2009. FMCSA provides grants to the states for conducting motor carrier compliance reviews, safety audits, and roadside inspections; improving commercial driver's license controls; and collecting and reporting safety performance data on commercial vehicle crashes and inspections. The Motor Carrier Safety Assistance Program (MCSAP), which is the major grant program, was initially funded at \$8 million in FY 1984 and increased to \$188 million in FY 2006.

Motor Carrier Enforcement Process. FMCSA and state safety investigators conduct compliance reviews of a motor carrier's operations to determine whether the motor carrier meets Federal safety fitness standards. Based on the results of the compliance review, the motor carrier is assigned a safety fitness rating of satisfactory, conditional, or unsatisfactory. If a motor carrier is found to be in violation of the safety regulations, FMCSA may initiate an enforcement action, such as levying a civil penalty. FMCSA can also order a motor carrier out of service if the violations pose an imminent hazard to safety; for failing to pay a civil penalty within 90 days of the date specified for payment; or for maintaining an unsatisfactory rating for more than 45 days for motor carriers that carry passengers or placarded hazardous materials and more than 60 days for all other motor carriers.

New Entrant Program. MCSIA directed FMCSA to establish regulations to ensure new motor carriers applying for Federal interstate operating authority are familiar with the motor carrier safety regulations. FMCSA must ensure a safety audit of each new entrant motor carrier is completed within the first 18 months of the motor carrier's operations. A safety audit is largely an educational tool to determine a new entrant motor carrier's knowledge of Federal safety requirements and to assess its safety management practices. Motor carriers will either pass or fail the safety audit depending on the level of compliance and the existence of basic safety management controls. Congress intended that FMCSA provide direction, guidance, and monitoring of the new entrant program, while the states conduct the majority of the new entrant safety audits. To this end, Congress has provided approximately \$49 million in new entrant grant funds to the states to hire and train safety auditors to conduct the safety audits.

FINDINGS

Trends Show FMCSA's Higher Emphasis on Enforcement

FMCSA significantly increased its enforcement efforts from FY 1998 through FY 2004, although a small decline occurred in FY 2004 due to diverting resources to new entrant safety audits. FMCSA conducted more compliance reviews, opened more enforcement cases, and increased civil penalties for violations of the safety regulations. The agency also combined civil penalty settlement agreements with consent orders⁸ and expanded its use of out-of-service orders to enhance its enforcement program. As a result of these efforts, the percentage of rated motor carriers with a satisfactory safety fitness rating increased from 44 percent in FY 1998 to 61 percent in FY 2004.

Compliance review activity nearly doubled since FY 1998. The number of compliance reviews increased significantly since FY 1998, but declined somewhat in FY 2004, as shown in Table 2. In FY 1998, Federal and state safety investigators performed 6,312 compliance reviews. In FY 2003, FMCSA and the states completed 12,096 compliance reviews, an increase of 92 percent from 1998. However, compliance review activity decreased by 12 percent to 10,658 in FY 2004. FMCSA officials cited the requirement to conduct safety audits of new entrant motor carriers as the cause for the decline in compliance reviews. FMCSA expects the number of compliance reviews to increase accordingly as states take over responsibility for conducting safety audits.

Table 2. Compliance Reviews by Federal and State Safety Investigators (FYs 1998-2004)

Fiscal Year	FMCSA	States	Unknown	Total
1998	4,235	2,032	45	6,312
1999	5,990	2,552	39	8,581
2000	10,121	2,828	26	12,975
2001	9,931	3,116	27	13,074
2002	7,441	2,595	24	10,060
2003	8,901	3,175	20	12,096
2004	7,496	3,158	4	10,658

Source: MCMIS data as of January 31, 2005

Enforcement actions and satisfactory fitness ratings increased. Enforcement actions increased as the number of compliance reviews increased. The number of compliance reviews resulting in enforcement action increased 309 percent from 1,124 cases in FY 1998 to 4,596 in FY 2003, but dropped 17 percent to 3,798 in FY 2004. In addition, the percentage of motor carriers rated conditional or

⁸ A consent order is a negotiated settlement agreement between FMCSA and a motor carrier that commits the motor carrier to take specific actions, beyond that required by law, to achieve full compliance with Federal regulations.

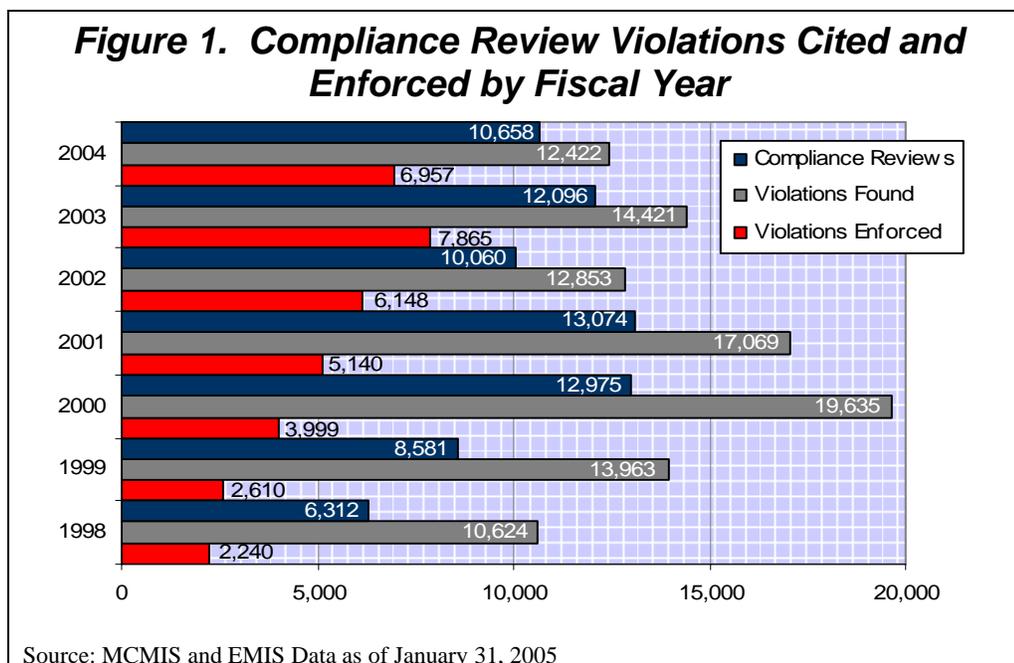
unsatisfactory decreased from 46 percent in FY 1998 to 36 percent in FY 2004. Table 3 shows the number of compliance reviews completed by FMCSA and the states with the distribution of safety fitness ratings during this 7-year period.

Table 3. Distribution of Safety Fitness Ratings (FYs 1998-2004)

Fiscal Year	Compliance Reviews	Satisfactory	Conditional	Unsatisfactory	Not Rated
1998	6,312	44%	30%	16%	11%
1999	8,581	49%	34%	15%	2%
2000	12,975	50%	32%	15%	2%
2001	13,074	57%	29%	10%	4%
2002	10,060	61%	27%	8%	4%
2003	12,096	62%	26%	9%	3%
2004	10,658	61%	28%	8%	3%

Source: MCMIS as of January 31, 2005

FMCSA significantly increased enforcement actions against motor carriers' acute and critical violations of the safety regulations. FMCSA increased its enforcement activity against acute and critical violations during the last 6 years. Most of these violations relate to significant safety concerns such as hours of service, use of controlled substances and alcohol, vehicle inspection and maintenance, and driver qualifications. FMCSA cited most acute and critical violations during compliance reviews, but did not enforce some violations after applying the UFA program. Our analysis of violations and resulting enforcement actions showed the number of violations declined during the last 6 years, but FMCSA enforced a greater percentage of the violations, as shown in Figure 1. FMCSA enforced only 2,240 (21 percent) of 10,624 violations during FY 1998, but enforced 6,957 (56 percent) of 12,422 violations in FY 2004. Civil penalty assessments increased from \$11 million in FY 1998 to \$29 million in FY 2004.



Civil penalty settlements fluctuated. FMCSA's process of negotiating enforcement cases with motor carriers sometimes resulted in a reduced penalty through a settlement agreement, with an average of 14 percent settled since FY 1999. FMCSA often combined settlement agreements with consent orders to offset the penalty reductions. In our opinion, this practice is a good tool to achieve compliance because it can be used to compel motor carriers to take actions to improve safety beyond what is required by existing regulations. The percentage of enforcement cases with settlement agreements declined from 26 percent in FY 1998 to 7 percent in FY 2000, but has gradually increased to 19 percent in FY 2004, as shown in Table 4.

Table 4. Enforcement Cases Settled

Fiscal Year	Enforcement Cases	Settled Cases	Percent of Cases Settled
1998	2,680	703	26
1999	2,921	628	21
2000	4,486	321	7
2001	5,524	420	8
2002	5,950	609	10
2003	5,061	774	15
2004	6,459	1,252	19
Total	33,081	4,707	14

Source: EMIS as of January 31, 2005

In addition, the amount of the average settled civil penalty decreased when compared to the original penalty assessment. Civil penalty settlements increased from 83 cents on the dollar assessed in FY 1998 to 96 cents in FY 2000, but gradually decreased to 87 cents in FY 2004, as shown in Table 5. In our opinion, this decline is not a significant concern because civil penalty assessment and settlement amounts nearly tripled during the same period.

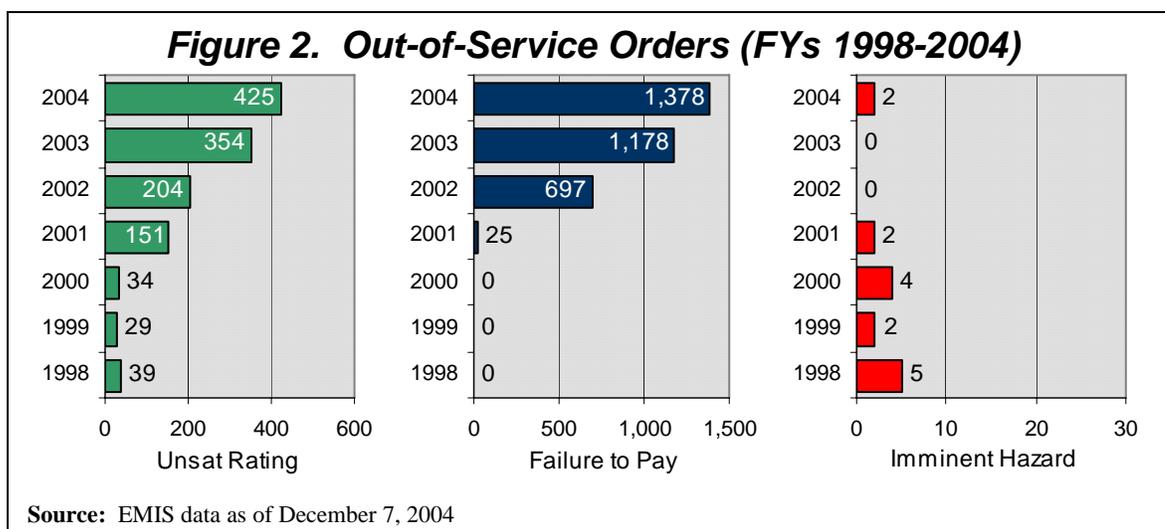
Table 5. Civil Penalty Assessments and Settlements

Fiscal Year	Total Assessments	Total Settlements	Percent of Assessment
1998	\$10.9 million	\$9.1 million	83
1999	\$11.3 million	\$9.9 million	87
2000	\$23.8 million	\$22.9 million	96
2001	\$26.7 million	\$25.5 million	95
2002	\$28.4 million	\$26.3 million	93
2003	\$25.6 million	\$21.9 million	85
2004	\$29.0 million	\$25.2 million	87

Source: EMIS as of January 31, 2005

FMCSA placed more motor carriers out of service. Since 1998, FMCSA substantially expanded its use of out-of-service orders. FMCSA uses three types

of out-of-service orders to achieve compliance with the safety regulations. A motor carrier can receive an out-of-service order for maintaining an unsatisfactory safety fitness rating for more than 60 days, failing to pay a civil penalty after 90 days, or posing an imminent hazard to safety. Figure 2 shows out-of-service orders for unsatisfactory ratings and failure to pay⁹ civil penalties have generally increased each year. In contrast, imminent hazard out-of-service orders, which are normally used as a last resort, have remained flat.



FMCSA's Repeat Violator Policy Needs Strengthening

FMCSA increased its civil penalty structure in accordance with congressional mandates, assessed stronger penalties against motor carriers who violated the safety regulations, and implemented a policy to place motor carriers out of service for delinquent payment of civil penalties. The agency also revised the definition of imminent hazard, implemented follow-up compliance reviews and monitoring of motor carriers with less than satisfactory safety fitness ratings, implemented policies and procedures for closing enforcement cases, and effectively reduced its backlog of open enforcement cases. FMCSA has also started important initiatives to reduce fraud in the CDL program and to re-evaluate its processes for conducting compliance reviews. Although FMCSA made progress in some areas, it was slow in fully implementing our 1999 audit recommendation to strengthen its enforcement against repeat violators. Further action is needed to close a loophole that allows motor carriers who repeatedly violate the motor carrier safety regulations to avoid maximum civil penalties allowed by law.

⁹ In December 1999, MCSI authorized FMCSA to place out of service those motor carriers who fail to pay civil penalties within 90 days. In 2001, FMCSA started issuing out-of-service orders for failure to pay civil penalties.

Six-Year Window for Accruing Violations Under FMCSA's Repeat Violator Policy Delayed Up to 4 Years

Section 222 of MCSIA requires the Secretary to assess the maximum civil penalty for each violation when a motor carrier or individual is found to have committed a pattern of violations of critical or acute regulations. On September 8, 2000, FMCSA revised its enforcement policy to implement Section 222. The policy, known as the "three strikes rule," defined a pattern of violations as three enforcement cases within 6 years that consists of two closed enforcement cases followed by new violations, all of which involve the same regulation. However, FMCSA implemented the three strikes rule without publishing it in the Federal Register. In two decisions issued in November 2003, the FMCSA Chief Safety Officer ruled that FMCSA had failed to properly implement the September 2000 policy and give motor carriers sufficient notice of how subsequent violations of the same or related regulations would trigger the maximum penalty. In response to the rulings, in March 2004, FMCSA inserted new language into its Notice of Claim form to cover the motor carrier's admission of liability. Consequently, violations assessed in enforcement cases closed before March 2004 that do not meet the revised policy criteria will not be considered in establishing a pattern of violations. In effect, the 6-year timeframe for accruing violations was delayed by up to 4 years, and motor carriers who committed violations from September 2000 to March 2004 will essentially be given a clean slate.

FMCSA published its clarified policy in the Federal Register on December 28, 2004. The policy stated that:

- violations associated with enforcement cases closed before September 8, 2000 are not considered in applying the three strikes rule;
- previous enforcement cases would be required to include: (1) an explicit adjudicatory finding of a violation by the FMCSA Assistant Administrator or a Department of Transportation Administrative Law Judge, (2) an express admission of liability by the motor carrier or individual in reply to the FMCSA Notice of Claim and in a settlement agreement, or (3) a Final Agency Order issued by FMCSA under 49 CFR 386.14(e), based on failure to reply to the Notice of Claim; and
- payment of a civil penalty or a settlement agreement for a Notice of Claim lacking language admitting liability would not be considered a prior violation for purposes of applying Section 222.

As of December 7, 2004, FMCSA data showed FMCSA applied a Section 222 maximum penalty against 146 motor carriers. However, we identified 71 additional motor carriers that were not assessed a maximum penalty even

though each had violated the same safety regulation at least three times since September 8, 2000. We attribute these instances to the timing of the clarification policy. Although we did not analyze whether a maximum fine would have prevented crashes, we reviewed the crash records of the 71 motor carriers to determine the extent and the nature of crashes involving these carriers. Our review found that, during this 4-year period, 50 of the 71 motor carriers were involved in 215 crashes resulting in 13 fatalities and 152 injuries. These crashes involved motor carriers ranging from owner-operators to those with up to 57 power units. It is our opinion that aggressive enforcement of the regulations, as intended by Congress, could have a positive impact on the safety performance of the industry.

Loophole in Three Strikes Rule Allows Repeat Violators to Escape Maximum Fines

FMCSA's three strikes enforcement policy was undermined by a loophole created by adherence to a statute that limits the number of enforced violations due to consideration of several factors such as a motor carrier's ability to pay a fine. Because only adjudicated violations are considered under the three strikes rule, some acute and critical violations are not counted in the pattern of violations. As a result, motor carriers who repeatedly violate the safety regulations may not be assessed the maximum penalty allowed by law. Closing this loophole would require publishing another clarification to the repeat violator policy, but it would provide FMCSA an opportunity to further deter significant safety violations.

FMCSA's Uniform Fine Assessment (UFA) program calculates recommended penalty ranges for motor carriers who violate the safety regulations. The UFA program was designed to ensure fair and consistent application of the safety regulations and preclude actions that are arbitrary and capricious.¹⁰ It requires safety investigators to enforce only those violations that will fit into the recommended penalty range. As a result, some violations are not assessed a civil penalty, and are not counted in determining whether a motor carrier has committed a pattern of violations in accordance with Section 222.

For example, between September 2000 and October 2004, 533 motor carriers violated either Part 395, Drivers Hours of Service, or Part 382, Controlled Substances and Alcohol Use and Testing, at least three and up to six times. Our analysis showed that 67 of these motor carriers violated both parts three or more times. However, because some of the cited violations were not documented, and thus not enforced on the Notice of Claim, only 33 (6 percent) of the 533 motor

¹⁰ In calculating the recommended penalty range, the UFA program considers legislative criteria specified in Title 49, United States Code, Section 521(b): the nature, circumstances, extent, and gravity of the violation; degree of the motor carrier's culpability; ability of the motor carrier to pay the fine; effect of the fine on the motor carrier's ability to stay in business; history of prior offenses; and such other matters as justice and public safety may require.

carriers received the maximum penalty. Although we did not analyze whether a maximum fine would have prevented crashes, during the same time period, 383 of the 533 motor carriers were involved in 2,060 crashes that resulted in 123 fatalities and 1,336 injuries.

Although it is important to consider a motor carrier's ability to pay a fine, this principle should not override congressional concerns about repeat violators. Congress stated its concerns regarding repeat violators by including language in MCSIA requiring The Secretary to "assess the maximum civil penalty for each violation of a law...by any person who is found to have committed the same or a related violation of critical and acute regulations...." In addition, SAFETEA-LU authorizes suspension or revocation of operating authority for motor carriers with a pattern of noncompliance.

In our opinion, to eliminate this loophole and still meet the intent of Section 521(b), FMCSA should, at its discretion, consider assessing a no-fine penalty or using another appropriate mechanism to communicate to the motor carrier that future violations may result in a maximum fine. This action would ensure that motor carriers receive a fair civil penalty within the UFA range, but would also put them on notice in regards to the three strikes rule and would ensure that all third violations are adequately enforced with a maximum penalty to provide a strong deterrent to future violations.

The potential for maximum fines could also encourage motor carriers to upgrade their safety policies and practices to prevent repeat violations of significant regulations such as hours of service. For example, the hours of service regulations were violated over 30,000 times since FY 1998 and remain one of the most frequently violated regulations, accounting for 30 percent of all acute and critical violations. With the passage of SAFETEA-LU, Congress strengthened the penalties for multiple violations of recordkeeping and falsification of documents. Specifically, the legislation increases the maximum civil penalty per violation to \$1,000 for "not truthfully maintaining a logbook" and \$10,000 for "falsification of a logbook."

In our opinion, regardless of the driving limits in place, unscrupulous motor carriers will have an incentive to violate the rules, especially if FMCSA does not assess the maximum penalties when warranted. Since January 1998, OIG criminal investigations have resulted in 102 indictments, 73 convictions, and \$1.7 million in recoveries for egregious cases in which motor carriers systematically forced drivers to exceed the limits imposed by the regulations. In our 1999 audit, we supported the adoption of satellite technology for monitoring motor carriers' compliance with hours of service rules. The courts have directed FMCSA to reconsider its rescission of a proposed rulemaking requiring the use of electronic

devices on all large trucks to record driving time and provide key evidence for enforcement efforts.

Quality of Motor Carrier Data Needs Improvement

FMCSA fully implemented two, but only partially implemented four of our six 1999 audit recommendations to improve the quality of motor carrier census, crash, and inspection data. FMCSA took alternative actions to foster improvements in state collection and reporting of quality crash and inspection data, including amending the MCSAP grant allocation formula, establishing an incentive funding program for improved data, and developing a comprehensive data quality plan to ensure reliable data for oversight of safety programs. Despite FMCSA's actions, problems with crash and inspection data quality remain, and FMCSA has not taken sufficient action to achieve full updates of motor carrier census data on drivers and power units, train local enforcement agencies about quality data reporting, standardize crash data requirements and collection procedures, and develop legislative recommendations for the crash causation study.

Census Data Updates from Existing Motor Carriers are Needed

The granting of interstate operating authority is contingent on motor carriers providing census data on the number of drivers they employ and commercial vehicles (power units) they own or lease. MCSIA required interstate motor carriers to periodically report updated census data to FMCSA. In November 2000, FMCSA promulgated rules to require motor carriers who were active on December 26, 2000 to update their census forms every 2 years. Although FMCSA has enforced this requirement for new entrant motor carriers, it has not sufficiently enforced the rule for all motor carriers.

Our February 2004 audit¹¹ reported that about 42 percent of active interstate motor carriers had not met a congressional mandate to update census data every 2 years; and that about 15 percent of the motor carriers had “zero” drivers and 11 percent had “zero” power units. In its response to the February 2004 audit, FMCSA claimed that 40 percent of motor carriers were updating their census data online, and that it sent reminder notices to motor carriers requiring them to file biennial updates, with potential civil penalties for failure to comply. FMCSA also stated that it would verify and update new entrant motor carriers' census information during the new entrant safety audit process.

FMCSA's process for registering new entrant motor carriers is working well. Our analysis of census data as of January 31, 2005 found that substantially all new motor carriers registering for operating authority are reporting the required data. Our review of approximately 87,000 new entrant motor carriers registered since

¹¹ OIG Report Number MH-2004-034, “Improvements Needed in Motor Carrier Safety Status Measurement System,” February 13, 2004.

January 1, 2003 showed that only 432 motor carriers reported “zero” drivers and 397 motor carriers reported “zero” power units.

Additionally, FMCSA made progress in obtaining updated census information from existing motor carriers, but more follow-up and aggressive enforcement action is needed to ensure that all motor carriers are reporting updated information. As of January 31, 2005, approximately 192,000 (more than 27 percent) of 702,277 active motor carriers had not updated their census data since August 2002. Also, 77,295 (11 percent) of the 702,277 motor carriers had “zero” drivers and 59,561 (8 percent) had “zero” power units. Table 6 compares census reporting metrics for January 2003 and January 2005. We noted that motor carriers who did update their census information still reported incomplete data. For example, of the 85,586 motor carriers with “zero” drivers and power units, we identified 20,065 motor carriers with “zero” drivers and 16,623 with “zero” power units had updated their information since August 2002.

Table 6. Motor Carriers with Outdated or Incomplete Census Data

Motor Carriers With:	January 2003	January 2005
Outdated Data	42%	27%
“Zero” Drivers	15%	11%
“Zero” Power Units	11%	8%
Source: MCMIS as of January 31, 2003 and January 31, 2005		

FMCSA has not aggressively pursued enforcement actions against motor carriers who did not submit new or updated census data. Although we identified over 192,000 motor carriers who did not have updated census data on record, FMCSA filed only 20 enforcement cases since January 2002, with an average claimed fine of \$435. The enforcement actions included 7 cases for “Failing to File MCS-150 Before Operating” and 13 cases for “Failing to File MCS-150 Every 24 Months.”¹²

FMCSA cannot effectively rank the safety performance of motor carriers without complete and accurate census information. In the worst case, motor carriers with incorrect census records showing “zero” power units can have crashes, including fatalities, without it negatively impacting their safety ranking. Without aggressive enforcement or some other action to induce compliance, motor carriers will have little incentive to comply with the regulation and will continue to avoid reporting complete and accurate information. Although the majority of the 192,000 existing motor carriers that had not updated their census data are on record as having one to six power units, several thousand larger motor carriers, including three on record as having more than 5,000 power units.

¹² An MCS-150 form is a vehicle for motor carriers to report census data to FMCSA.

FMCSA should consider using civil penalties or implementing other measures to increase compliance with the census data updating requirement. Taking this action is especially important because the census data are used by SafeStat to rank the safety performance of motor carriers and target them for compliance reviews and inspections. Without this critical data, FMCSA cannot effectively identify all high-risk motor carriers. The importance of data quality was recently reiterated by the Chairman of the House Subcommittee on Highways, Transit, and Pipelines in requesting that OIG perform a follow-up audit of the quality of SafeStat data. When we conduct this follow-up audit, we will further review FMCSA's steps to improve compliance with census updating requirements.

Data Quality Has Improved, but Significant Problems Remain

In March 2000, FMCSA promulgated a final rule that amended the basic MCSAP grant allocation formula and established an incentive funding program to reward states for achieving reductions in fatality crashes and rates and for making improvements in quality of program data.¹³ States that do not report crash and/or inspection data within agency guidelines do not qualify for full incentive funding. Between FYs 2001 and 2004, FMCSA provided over \$43.5 million in MCSAP incentive grants to the states, and the number of states qualifying for incentive funding has increased to the point where all states received a portion of incentive funding allocations for FYs 2003 and 2004.

Our February 2004 audit reported problems associated with the completeness and accuracy of crash and inspection data reported to FMCSA by the states. For example, 6 of 51 states did not report any crashes for a 6-month sample period; and one state reported fatal crashes to FMCSA but did not report 5,816 non-fatal crashes that occurred in 2001. Even when crash and inspection data were reported, errors or omissions occurred in an estimated 13 percent of 21,225 crashes and an estimated 7 percent of 1.02 million inspections reported during the 6-month period. Based on the data problems we identified, we recommended that incentives be expanded to promote improvement in the completeness and accuracy of data reporting. FMCSA responded to our audit by offering alternative actions to improve the quality of crash and inspection data reporting by the states, such as:

- developing a comprehensive data quality plan. FMCSA committed to implementing a data quality improvement plan to ensure reliable data are

¹³ States may earn incentive funding for safety and data improvements in five categories: reduction in fatal crashes involving large trucks, reduction in the large truck fatal crash rate, uploading time for commercial motor vehicle crash reports within 90 days, uploading time of commercial motor vehicle inspection reports within 21 days, and verification of commercial driver's licenses during all roadside inspections.

collected and made available for all FMCSA safety programs. The data quality plan focuses on six objectives: (1) evaluating the completeness, timeliness, accuracy, and consistency of state-reported crash and inspection data; (2) monitoring state reporting of quality crash and inspection records and working with states to resolve problems; (3) supporting and following the Department's guidelines, policies, procedures, and recommendations for ensuring data quality; (4) developing data quality improvement initiatives to ensure reliable data are collected; (5) implementing a data quality module on FMCSA's Analysis and Information Online website to allow states improved access to data; and (6) providing an electronic system, called DataQs, for filing and tracking public challenges to the quality of Federal and state data FMCSA releases to the public. According to FMCSA, DataQs processed more than 5,700 challenges with over 74 percent resulting in data corrections.

- awarding additional grants to 28 states that submitted data quality improvement plans for improving the collection, reporting, and analysis of truck and bus crash data. The FMCSA Division Administrator in each state must endorse the respective plans before the grant can be awarded.
- providing additional information to assist states in reporting truck and bus crashes. Specifically, FMCSA clarified the criteria for selecting truck and bus crashes that must be reported, provided answers to frequently asked questions to aid states in deciding which crashes to report, and conveyed procedures for reporting crashes when carrier information is not available.

Although we did not update the substantial testing of data quality we completed during our February 2004 audit, we did review FMCSA metrics for timeliness (average time to enter and upload data to MCMIS) and accuracy (percentage of non-match data) to determine whether improvements were made. Table 7 shows that FMCSA and the states achieved a noticeable improvement in crash and inspection data timeliness and accuracy during the 2-year period since FY 2002.

Table 7. Data Quality Improvements Since FY 2002

Timeliness (T) and Accuracy (A) Metric	FY 2002	FY 2004	Percent Decrease
Average Time to Enter and Upload Crash Data (T)	158 days	92 days	42
Average Time to Enter and Upload Inspection Data (T)	37 days	18 days	51
Non-Match Crash Data (A)	15.6%	14.2%	9
Non-Match Inspection Data (A)	5.8%	3.3%	43
Source: FMCSA data for FY 2002 as of April 2004 and FY 2004 as of March 2006			

We also reviewed FMCSA's monitoring of the quality of state data reporting. Every 3 months, FMCSA evaluates and rates the quality of state-reported crash and inspection data against FMCSA standards for completeness, accuracy,

timeliness, and consistency. As of December 23, 2004, only 12 states were rated poor, and the rating had improved for 6 states and declined for only 1 state since the previous evaluation on September 24, 2004.

We recognize FMCSA has completed a number of actions with the states to address problems with data quality, and these actions have achieved a certain measure of success. However, significant data quality problems still remain, such as untimely reporting, missing crash information, underreported moving violations, and inaccuracies in crash and inspection records. The challenge to obtain better quality data will require continued and persistent effort and diligence by both FMCSA and the states.

Training On Crash Data Reporting Is Needed To Track Attendance And Target States With Reporting Problems.

MCSIA required the Secretary to set a goal for improving the quality and effectiveness of databases by ensuring that all states accurately and promptly report complete safety information, and to identify training needed for timely and effective accomplishment of the goal. In response, FMCSA established performance measures to track states' completeness, accuracy, and timeliness in reporting crash and inspection data and is using the measures to evaluate improvements made by the states over time. FMCSA also developed a training course on collection and reporting of crash data to improve the quality of data reported by state and local law enforcement agencies. Because training courses specifically designed to improve data quality are essential, FMCSA must ensure that all law enforcement officials have access to and complete its training courses.

Our February 2004 audit reported that data quality problems limited the effectiveness of, and introduced bias into, the motor carrier ranking process. The problems included incomplete crash reporting and late or incomplete inspection reporting, particularly reports on serious moving traffic violations, by state and local law enforcement jurisdictions. FMCSA must rely not only on state law enforcement officials but also on numerous county and municipal authorities to submit crash reports that are consistent with MCSAP requirements and standards. However, law enforcement officials have not adequately interpreted the crash data elements and attributes FMCSA needs to identify, monitor, and prioritize high-risk motor carriers for oversight. For example, law enforcement officers may not know how to distinguish a commercial vehicle from a non-commercial vehicle.

To improve crash data, FMCSA and the states developed and coordinated a training course through the National Institute for Safety Research. The training course is customized to each state's crash report and incorporates the National Governors' Association data elements for recording crashes involving large trucks and buses. As of February 28, 2005, more than 600 state, county, and municipal

law enforcement and support personnel had been trained on how to collect commercial vehicle crash data, and FMCSA plans to train at least 1,000 additional personnel each year. State officials who complete this training will provide the training to other state personnel. For example, California plans to train about 6,000 crash investigating officers using the FMCSA training materials.

FMCSA has achieved some progress in training local law enforcement officials, but their efforts have been impeded by the availability of law enforcement officers and limited training slots. State and local governments generally have a limited number of law enforcement personnel who have other duties in addition to traffic and motor carrier enforcement. The officers' workload makes it difficult to attend scheduled sessions of the crash data collection course. In addition, some states occasionally reserve training slots for state law enforcement officers, thus limiting the number of available slots for local law enforcement officers. To alleviate this problem, FMCSA is developing a supplemental website where law enforcement personnel can access the training materials at their convenience.

We applaud FMCSA's efforts to develop on-site and web-based training to improve the quality of crash and inspection data reported by state and local law enforcement agencies. However, there are potentially hundreds of thousands of law enforcement officers and support personnel nationwide who could benefit from this training course. To ensure that these individuals receive the training, attendance should be tracked against established targets and focused on states that are not meeting FMCSA's primary goals and measures for quality crash data.

Crash Data Collection and Reporting is Not Standardized

In reporting crash data, states provide the basic information necessary for highway and traffic safety oversight. The data are used to identify traffic safety problems, establish goals and performance measures, track the progress of safety programs, and evaluate safety countermeasures. However, the use of state crash data is often hindered by the lack of uniformity between and within states and local law enforcement jurisdictions. Differences persist in the states' treatment of certain elements of crash reporting, such as how reportable crashes are recorded and what definitions are specified for commercial vehicles. Although the states have incorporated the mandatory data elements endorsed by the National Governors' Association (NGA) into their crash forms, many states did not correctly interpret what data were to be collected. Inaccurate interpretation and incomplete reporting limit interstate comparisons of data and skew analytical results.

Section 225 of MCSIA directed FMCSA and the National Highway Traffic Safety Administration (NHTSA) to cooperate in improving collection and analysis of state crash reporting. FMCSA and NHTSA spent several years planning and pilot testing the Commercial Vehicle Analysis Reporting System (CVARS), a

nationwide automated data system with electronic coding of crashes, but concluded that the project was neither feasible, affordable, nor effective. After discontinuing CVARS, the agencies finalized and signed a memorandum of understanding (MOU) in February 2003 to improve the existing crash data collection process and database. FMCSA assumed project planning and implementation, and NHTSA administered the remaining CVARS grants, training funds, and cooperative agreements with the states.

Following the signing of the MOU, the agencies initiated a Crash Data Improvement Project Plan with a short-term goal of improving the completeness of crash reporting for targeted states. The long-term goal was for all states to report complete, accurate, and timely data on all crash elements for at least 95 percent of all eligible large truck and bus crashes by the end of FY 2010. Some progress was made in improving crash data collection. For example, 11 states that were awarded CVARS grants showed a marked increase in the completeness of crash data reports and there was a 25-percent increase in the number of truck and bus crashes entered into MCMIS in 2004. However, more improvement is needed, especially in standardizing crash data and state crash forms. According to FMCSA, 23 states were revising their crash forms as of February 28, 2005.

In response to requests by states interested in improving and standardizing their crash data, FMCSA, NHTSA, the Federal Highway Administration, and the Governors' Highway Safety Association developed the Model Minimum Uniform Crash Criteria (MMUCC). The MMUCC is a voluntary guideline of recommended crash data elements and attributes to provide standardized crash data to improve highway safety. NHTSA is reviewing state crash forms to determine compliance with the MMUCC and has hired a contractor to evaluate state crash data systems; and FMCSA has posted an online data quality map that indicates the quality of states' crash and inspection data. Although we did not validate the methodology for the quality ratings or the validity of the data, a FMCSA review of state crash forms, data elements and attributes, and crash selection criteria preliminarily rated 65 percent of the states "poor." FMCSA's review should help it to make further recommendations to the states that would improve the crash forms and guidelines.

Legislative Recommendations for Crash Causation Study Not Finalized

Section 224 of MCSIA required a comprehensive study to determine the causes of and contributing factors to crashes that involve commercial motor vehicles. MCSIA also required the Secretary to promptly transmit the results of the study, with any legislative recommendations, to Congress. At a cost of \$19 million, the Large Truck Crash Causation Study was conducted as a joint project using FMCSA-funded state truck inspectors and NHTSA National Automotive Sampling System researchers. Between April 2001 and December 2003, the joint

team collected data on a sample of 985 serious large truck crashes in randomly selected sites across the nation. Data on all 985 crashes were uploaded to a relational database created and maintained by the Volpe National Transportation Systems Center. FMCSA, NHTSA, and Volpe Center officials conducted edit, consistency, and quality checks of the data between January 2004 and June 2005. The database should generate reports on issues such as fatigue, vehicle condition, and drug and alcohol use. FMCSA transmitted a report to Congress in March 2006 and is developing milestones for completing analyses of key safety problem areas and making recommendations to Congress. It expects to complete milestone development for the recommendations in June 2006.

New Entrant Program Needs Further Oversight and Study

As Section 210 of MCSIA directed, FMCSA established regulations and operational procedures specifying minimum requirements to ensure that new motor carriers applying for Federal interstate operating authority are familiar with the motor carrier safety regulations. FMCSA's Interim Final Rule, which became effective on January 1, 2003, outlined the new entrant safety assurance process for all new motor carriers domiciled in the United States and Canada. In accordance with the rule, FMCSA and the states must monitor a motor carrier's safety performance through roadside inspection and crash data and conduct a safety audit within the first 18 months of operation. As intended by Congress, FMCSA will direct, guide, and monitor the program, but will rely on the states to conduct the majority of the safety audits. With the exception of new entrant motor carriers domiciled in non-participating states and Canada, FMCSA plans to fully transfer responsibility for safety audits to the states by December 2006. At the time of our analysis, Maine and Oregon were the only states not participating in the program.

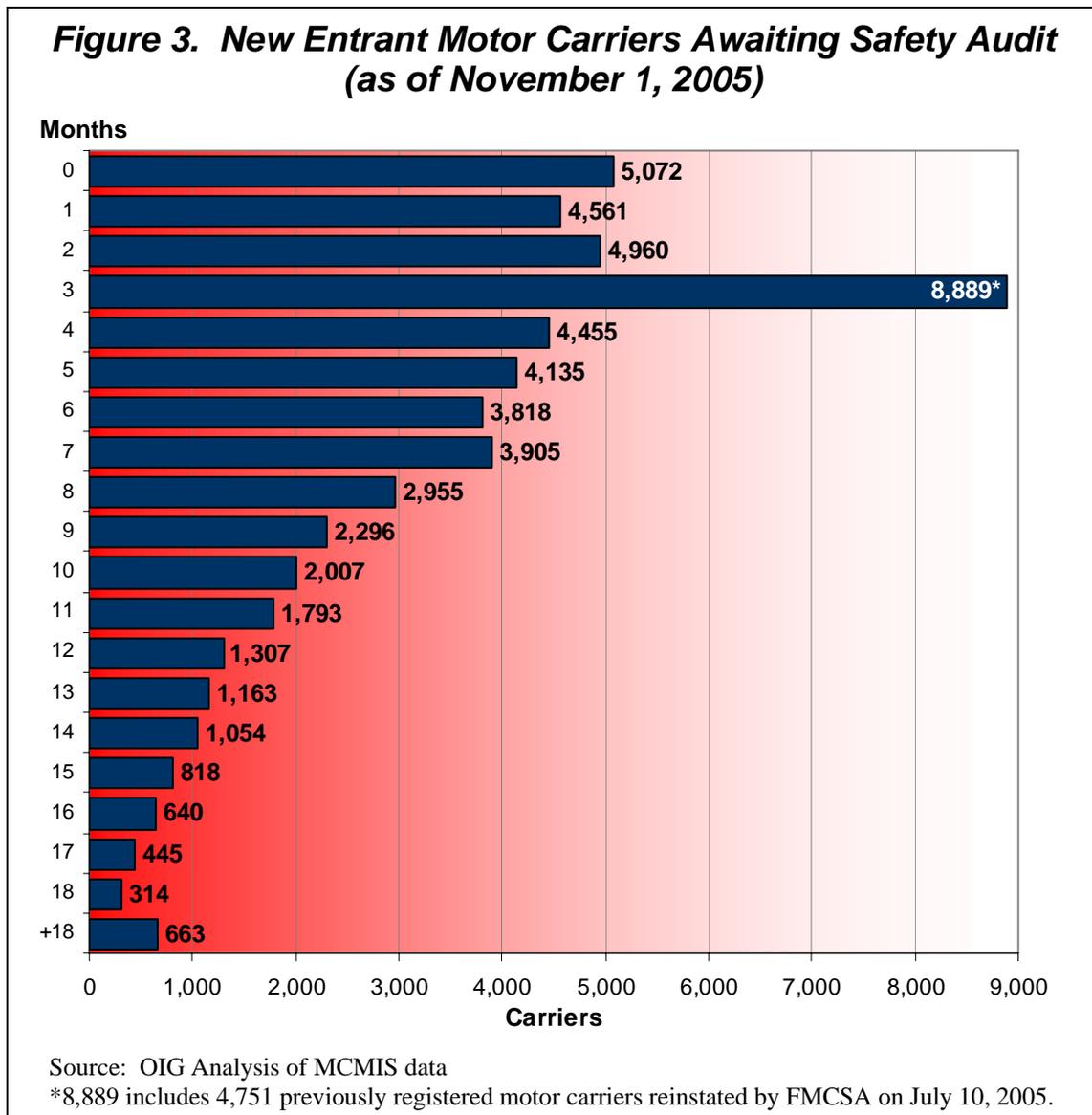
Over 3 years, Congress provided approximately \$49 million in grant funds to the states for conducting safety audits. In FY 2003, FMCSA distributed \$7.4 million in MCSAP basic and high priority funds to selected states for implementing the new entrant program. In FY 2004, FMCSA distributed \$24.4 million in MCSAP and Federal-aid highway funds for the new entrant program. In FY 2005, FMCSA distributed \$17 million in MCSAP new entrant grant funds. As an interim measure, because of the 2-year delay in passing SAFETEA-LU, FMCSA incrementally allocated grant funds for FYs 2003 and 2004 to the states. The incremental funding process delayed states' ability to hire and train safety auditors. As more funds were made available, states gradually hired and trained safety auditors and assumed a more substantial role in conducting safety audits.

Safety Audits Have Been Timely

New motor carriers that register as new entrants must receive a safety audit within the first 18 months of operation. From January 1, 2003 to November 1, 2005, 123,104 new entrant motor carriers had registered with FMCSA as new entrants.

Our analysis of registration rates during the last 2 years estimated that at least 43,000 motor carriers will register each year, but the number of registrants may trend upward. Approximately 35,000 and 50,000 new entrants registered in calendar years 2003 and 2004, respectively, which is consistent with FMCSA's estimate of 45,000 new entrant registrants per year. In addition, FMCSA has taken steps to ensure that new motor carriers are validated as new entrants and to clean up its database of new entrant motor carriers to allow for efficient contacting, scheduling, and performance of timely safety audits.

Initially, FMCSA conducted the majority of safety audits. As funding increased, states gradually increased their production as they hired and trained more safety auditors. Based on FMCSA data as of November 1, 2005, state safety auditors had completed about 78 percent of the 66,373 audits. Our analysis showed the trend in completing safety audits is increasing with time. During the first 18 months of the program, January 2003 through June 2004, 25,975 safety audits were completed. During the 18-month period ending December 2004, 38,457 safety audits were completed. During the 18-month period ending November 2005, 46,874 audits were completed.



As of November 1, 2005,¹⁴ 66,362 of 123,104 new entrant motor carriers had received a safety audit. Our analysis showed 663 motor carriers had not been audited within 18 months as required, as shown in Figure 3 above.

However, we identified 4,025 new entrant motor carriers who were not audited within 18 months of their initial request for registration with FMCSA. According to FMCSA, this occurred due to gaps between the date of initial request for registration and the date of entry of motor carriers into the new entrant program.

¹⁴ We identified new entrant motor carriers registered between January 1, 2003 and November 1, 2005 by analyzing motor carrier census data in MCMIS. We selected motor carrier records coded as current new entrants and those that exited the program after a safety audit or compliance review. We excluded records coded as inactivated new entrants that had their authority revoked for going out of business, changing from interstate to intrastate operations, refusing to schedule a safety audit, or other reasons.

The gaps occur when motor carriers resubmit their registration data after being inactivated by FMCSA for failure to contact or otherwise correspond with FMCSA to schedule a safety audit. In July 2005, FMCSA officials decided that they would not inactivate such motor carriers. FMCSA's decision to reclassify 4,751 motor carriers in its database from "inactive" to "active" created a bubble of new entrant motor carriers awaiting an audit – a number nearly twice as large as any other month in our analysis. Our analysis found these motor carriers among 8,889 motor carriers added to the new entrant program in the month of July 2005 but not audited after 3 months. In our opinion, FMCSA needs to closely monitor safety audit progress to ensure these audits are completed timely.

Effectiveness of New Entrant Program Needs Further Study

Based on both our analysis and FMCSA's analysis of its safety performance ranking data, new entrant motor carriers were not significantly safer than new motor carriers that registered during the 2 years before the start of the new entrant program, nor did crash rates show a significant change. Our analysis showed that motor carriers subject to the new entrant program performed slightly better, with a higher average ranking (21,224 of 45,500 ranked or 47th percentile) when compared to new motor carriers that registered during the 2 years before the start of the new entrant program (19,982 of 43,440 ranked or 46th percentile).

FMCSA's analysis showed no difference in the first year crash rates of new entrant motor carriers and new motor carriers who were not subject to the new entrant program the previous year. FMCSA has proposed to change the pass/fail criteria for safety audits, as its data show the failure rate was less than 1 percent (309 of 40,118 audits conducted) as of January 2005. In our opinion, FMCSA needs to continue monitoring new entrant motor carriers to determine whether they would operate more safely, perhaps through tougher safety audit criteria, enforcement of egregious violations, and/or increased roadside inspections.

One MCSIA Rulemaking Remains Outstanding

Congress mandated that FMCSA establish rulemakings under 11 sections of MCSIA, and FMCSA identified 18 additional sections of MCSIA for which rulemakings should be established. As of September 22, 2005, FMCSA had issued 27 and NHTSA issued 1 of the 29 rulemakings. FMCSA's one outstanding MCSIA-required rulemaking, which requires that the CDL be combined with the medical certificate, is several years behind schedule. FMCSA has set a late 2006 milestone for completing the NPRM for this issue.

Although not covered under the scope of this audit, FMCSA also made progress in completing significant non-MCSIA rulemakings, although a number of these

remain outstanding on its agenda. A 2004 OIG audit¹⁵ showed that FMCSA had 19 significant rulemakings outstanding as of June 30, 2004. Our current review found that FMCSA had 11 significant rulemakings outstanding as of September 30, 2005.

Combining the CDL and Medical Certificate

The Department's Legislative Implementation Plan set a deadline of September 2000 for completing the rulemaking for combining the CDL and medical certificate, but FMCSA has made little progress in meeting the deadline. The increasing number of commercial drivers and the prevalence of medical conditions related to an aging population will have a detrimental effect on the health and safety of commercial drivers and overall highway safety. However, FMCSA officials stated that the medical certificate rule by itself would not be a panacea for this safety issue. The rule will make enforcement of the safety regulations more efficient for inspection officials, but will not eliminate fraud or ensure the health and safety of commercial drivers.

FMCSA's medical certificate rulemaking is only one element in its planned 5-year effort to enhance the commercial driver medical program. Specifically, SAFETEA-LU requires a medical program to include (1) a Medical Review Board of expert medical professionals advising FMCSA on the development of driver qualification standards and guidelines and (2) a National Registry of medical examiners certified to comply with FMCSA medical standards and policies. Until FMCSA develops the overall medical program, unqualified drivers will be able to shop around for a physician to certify that they are medically fit to drive a commercial vehicle.

Querying CDLIS and NDR Before Issuing Driver's Licenses

In July 2005, NHTSA issued a final rule requiring states to check both the CDLIS and the NDR before issuing any motor vehicle license. Up to half of the states are not following MCSIA provisions requiring a check of both informational databases. Consequently, states run the risk of failing to identify ineligible drivers who could successfully use the licensing process of one state to evade the penalties of a criminal conviction or license suspension by another state.

Large Truck Fatality Rate Declined but Achieving Departmental Goals Will Be a Challenge

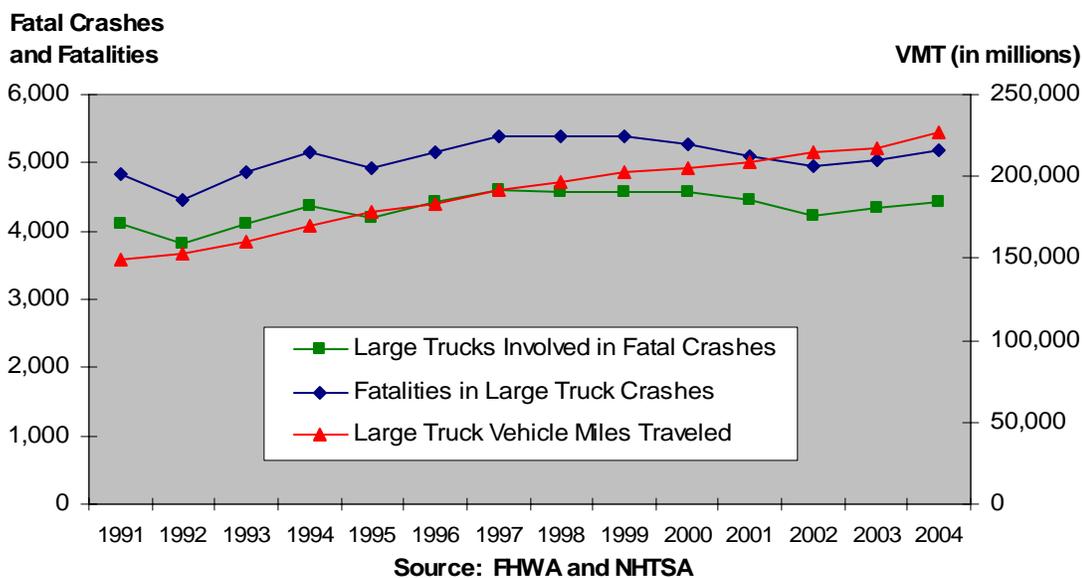
The absolute number of large truck-related fatalities decreased from 5,395 in 1998 to 4,939 in 2002, but increased to 5,036 in 2003 and 5,190 in 2004. The rate of large truck-related fatalities per 100 million Vehicle Miles Traveled (VMT)

¹⁵ OIG Report Number SC-2005-031, "Follow-Up Audit of Department of Transportation's Rulemaking Process and Tracking System," December 21, 2004.

decreased 11 percent from 2.57 in 2000 to 2.29 in 2004, the last year for which official figures are available. Over the next 4 years, to achieve its goal of 1.65 deaths per 100 million VMT, FMCSA must reduce the current rate of 2.29 by more than two and a half times the reduction achieved during the previous 4 years. Assuming VMT remain constant, meeting this goal would save about 1,450 lives between 2005 and 2008.

Figure 4 compares the most recent 7-year trend of large truck-related fatalities and fatal crashes in relation to large truck VMT with the preceding 7-year period. From 1991 to 1997, there was a general correlation between increased large truck VMT and increased fatal crashes and fatalities. From 1998 to 2004, the general trend improved, with a reduction in fatal crashes and fatalities during a period of rising large truck VMT.

Figure 4. Large Trucks Involved in Fatal Crashes, Fatalities Associated With Those Crashes, and Large Truck VMT



RECOMMENDATIONS

Since our April 1999 audit, FMCSA has made positive strides in improving motor carrier safety through its increased emphasis on enforcement, implementation of the new entrant program, and completion of numerous rulemakings. However, to fully implement our recommendations and to further advance efforts to reduce large truck fatalities, we recommend that FMCSA take the following actions.

1. Strengthen the repeat violator policy by:
 - a. enhancing controls, such as automated notification of prior violations in enforcement case software, to ensure that all violations meeting the current three strikes criteria are assessed the maximum penalty allowed by law and
 - b. developing a procedure to count toward a “pattern of violations” under MCSIA Section 222, irrespective of how the violations are treated under UFA, all acute and critical violations that FMCSA discovers during future compliance reviews and either documents for inclusion on the Notice of Claim or obtains the motor carrier’s signed admission. The procedure must include an appropriate mechanism to notify the motor carrier of the agency’s discovery of the violation and of the applicability of Section 222. This recommendation shall neither diminish a motor carrier’s opportunity to challenge the Section 222 “strike”, nor FMCSA’s enforcement discretion to decline charging an arguable violation in appropriate circumstances.
2. Take firm action to increase compliance with the census data updating requirement by intensifying efforts to fine motor carriers that resist compliance or by taking other measures that can be demonstrated to be effective.
3. Establish a system to track attendance for the crash data training course and visits to the crash data website, and compare the results to changes in crash data reporting by states to assess whether training efforts are successful.
4. Rapidly implement the planned actions in the Crash Data Improvement Project plan and establish milestones for improving states’ compliance with standardizing crash reports and data elements.
5. Develop milestones for completing the required legislative recommendations for the Large Truck Crash Causation Study issued in March 2006.
6. Continue monitoring state safety audit activity to ensure timely completion of all safety audits.
7. Continue ongoing efforts to identify needed changes in the new entrant program to increase the enforcement component that would improve safety.
8. Expeditiously complete the driver medical certificate rulemaking.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided FMCSA a draft of this report on December 16, 2005. In its February 14, 2006 written comments, FMCSA identified actions taken or planned that were responsive to six of our eight recommendations. FMCSA nonconcurred with our recommendation to develop a procedure to ensure that repeat violators are assessed maximum fines (recommendation 1b) and partially concurred with our recommendation to fine motor carriers that do not update census records (recommendation 2). Although FMCSA provided its written perspective on these recommendations, it did not propose actions or plans responsive to our recommendations. FMCSA also did not provide specific milestones for completing planned actions for three recommendations (3, 7, and 8).

The OIG met with FMCSA officials on April 5, 2006 to discuss the two issues of disagreement. The meeting resulted in resolution of the nonconcurrence with recommendation 1b, although the disagreement on recommendation 2 was not resolved. Specifically, for recommendation 1b, FMCSA agreed to take action to ensure that repeat violators of the motor carrier safety regulations are not allowed to escape maximum fines, although it will maintain discretion on which violations to document. FMCSA indicated that it will identify specific approaches to implement our recommendation when it responds to our final report.

For recommendation 2, FMCSA indicated that fining motor carriers for failing to update census data would not be cost-effective, and it did not commit to any specific action to further improve compliance. At this time, we consider FMCSA's position to be nonresponsive to our recommendation. However, FMCSA did agree to consider alternative measures to encourage increased compliance with the census data updating requirement. In our view, it is important to increase compliance with the updating requirement because SafeStat uses the census data to rank the safety performance of motor carriers. Without this critical data, FMCSA cannot effectively identify all high-risk motor carriers. The importance of data quality was recently reiterated by the Chairman of the House Subcommittee on Highways, Transit, and Pipelines in requesting that OIG perform a follow-up audit of the quality of SafeStat data.

Based on FMCSA's written and verbal comments, we revised recommendations 1b and 2 to include additional detail and appropriate clarifications. FMCSA's complete written comments on the draft report findings and recommendations are in the Appendix to this final report.

FMCSA's comments on specific recommendations and OIG responses are summarized below.

FMCSA Comments. For recommendation 1a, regarding automated notification of prior violations, FMCSA stated that it designed a “three strike” data field as an enhancement in EMIS to maintain motor carrier historical data and created a “Summary Report for Section 222 Cases” that shows a detailed status of each enforcement case.

OIG Response. We consider FMCSA’s comments on recommendation 1a to be responsive.

FMCSA Comments. In its written response to our draft report, FMCSA nonconcurred with recommendation 1b to strengthen the repeat violator policy by broadening the definition of a pattern of violations. Specifically, FMCSA objected to the inclusion of an unenforced violation as a "strike" where the motor carrier is not given notice of the potential use of the violation as a factor in a future fine calculation. FMCSA did agree that at least some unadjudicated violations should be included in determining whether a pattern of violations has occurred under Section 222. It stated that more violations in the future will be included since it has begun notifying motor carriers that admission of liability for a violation would result in that violation being counted towards Section 222.

OIG Response. We agree with FMCSA that there are valid legal reasons for its policy allowing exclusion of violations that are not adjudicated or those that preceded its admission of guilt language on the Notice of Claim. However, our recommendation did not intend that FMCSA should retroactively include old unenforced violations. Rather, our recommendation intended that FMCSA change its policy for future enforcement actions to document acute and critical violations, either through a civil penalty, a no-fine penalty, or some other means. This action would legally notify motor carriers of the violation, but motor carriers would still have the opportunity to provide evidence that the violation did not occur or was not warranted.

We also agree that FMCSA should have discretion in determining whether to document for Section 222 purposes an acute or critical violation that does not fall within the UFA-recommended penalty range. We are not limiting FMCSA’s discretion, but rather, we are recommending an additional tool for FMCSA to use in strengthening the enforcement program. Congress has stressed its intent and dedication to strengthening safety and reducing large truck-related fatalities and injuries. We continue to believe that safety would be best enhanced by a strong and vibrant enforcement program that meets the intent of Section 222—to reduce the number of repeat violators of the regulations.

The intent of our recommendation is to ensure that motor carriers are not provided a “loophole” to continually violate the regulations simply because the UFA limits

the range of the civil penalties that can be charged. A motor carrier's financial condition, while a fair criterion for its ability to pay fines for initial violations, should not be used to justify a motor carrier's continued violation of the same regulations. There must be some disincentive to the motor carrier that discourages repeat violations. The use of a no-fine penalty or other appropriate mechanism would allow penalties for initial violations to remain within the UFA recommended penalty range while also meeting Congress' intent to bolster FMCSA's enforcement program as a deterrent to frequent violators.

FMCSA also objected to a statement in our report that set forth certain crash, injury, and fatality data for September 2000 through December 2004. FMCSA was of the opinion that our statement implied that crashes, fatalities, and injuries could be directly attributed to delays in FMCSA's implementation of Section 222 policy. Our statements regarding crashes, fatalities, and injuries were intended to emphasize the point that motor carriers who repeatedly violate regulations have been involved in crashes with fatalities. We revised our final report to clarify our attribution.

FMCSA Comments. For recommendation 2, regarding civil penalties for failure to update census information, FMCSA concurred in part but did not propose alternative actions or plans that would satisfy the intent of the recommendation. FMCSA did not dispute our point that only a small number of penalties were assessed against motor carriers for failure to comply with the census data updating requirement. However, FMCSA stated that its typical approach during a compliance review is to direct a motor carrier not in compliance with the census data updating requirement to update the information on the spot rather than assess a penalty. During our April 5, 2006 meeting, FMCSA indicated that it was doubtful that fining motor carriers for failing to report updates of census information would be cost effective, but it was willing to consider alternative measures that would encourage increased compliance with the census data reporting requirement.

OIG Response. In response to a similar recommendation in our February 2004 report, FMCSA added stronger warning language to reminder letters sent to motor carriers when a census update was due. The warning language stated that motor carriers were subject to civil penalties for failure to comply with the updating requirement. We continue to believe civil penalties would be the strongest incentive for motor carriers to comply, but we are amenable to alternative actions that achieve compliance. It is crucial that motor carrier census data are timely updated because the information is used by SafeStat to rank the safety performance of all motor carriers and to identify high-risk motor carriers. During our April 5, 2006 meeting, FMCSA did not commit to any specific actions to further improve compliance, but indicated a willingness to identify specific alternative actions. Based on FMCSA's written and verbal comments, we revised

recommendation 2 to specify that FMCSA implement civil penalties or other measures to increase motor carriers' compliance with the census data updating requirement. At this time, we consider FMCSA's position to be nonresponsive to our recommendation.

FMCSA Comments. For recommendation 3, regarding the tracking of crash data training, FMCSA stated that it: (1) currently tracks attendance and compiles a database for all participants in the Crash Data Collection class, (2) can track data challenges by state to its DataQs internet site, (3) added web-based Crash Data Collection Training materials to the Data Quality Module of its Analysis and Information internet site, and (4) will assess pre- and post-training crash data reporting for completeness, timeliness, and accuracy for those states that participate in the training program 1 year after the training has been conducted.

OIG Response. We consider FMCSA's comments on recommendation 3 to be responsive. However, we request that FMCSA provide a more specific milestone for assessing pre- and post-crash data reporting.

FMCSA Comments. For recommendation 4, regarding the implementation of the Crash Data Improvement Project plan, FMCSA stated that it:

- is implementing and reviewing milestones for the planned actions in the Crash Data Improvement Plan and is investigating additional ways to measure the quality of crash data to include in this plan. FMCSA will complete its review in September 2006.
- developed a State Crash Report Form quality measure, to be provided to states in June 2006, for evaluating whether the states' crash reports have the required data elements.
- will work with states to revise crash report forms or make any other changes necessary to encourage adoption of all required data elements in June 2006.

OIG Response. We consider FMCSA's planned actions responsive to recommendation 4.

FMCSA Comments. For recommendation 5, regarding the implementation of the Large Truck Crash Causation Study, FMCSA stated that it was (1) awaiting final approval from the Office of the Secretary on its draft report and planned to transmit the report to Congress in March 2006 and (2) developing milestones for completing analyses of key safety problems and recommendations to Congress in June 2006. FMCSA issued the Crash Causation Study in March 2006.

OIG Response. We consider FMCSA's planned actions responsive to recommendation 5.

FMCSA Comments. For recommendation 6, regarding continued monitoring of state safety audit activity, FMCSA stated that it hired a contractor to contact every motor carrier who enters the new entrant program and that it has tools in place to ensure that safety audits are completed before they are overdue. Both the MCMIS database and the GOTHAM Information and Analysis internet sites have built-in reports that allow FMCSA personnel to identify motor carriers that have not been contacted.

OIG Response. We consider FMCSA's planned actions responsive to recommendation 6.

FMCSA Comments. For recommendation 7, regarding efforts to identify needed changes in the new entrant program, FMCSA stated that it plans to conduct an initial assessment of the effectiveness of the new entrant program to determine its impact on safety. FMCSA plans to begin this initial assessment in FY 2006 and anticipates its completion in FY 2008. It is also planning a full program evaluation beginning in FY 2008.

OIG Response. We consider FMCSA's comments responsive to recommendation 7. However, we request that FMCSA provide more specific milestones for these evaluations.

FMCSA Comments. For recommendation 8, regarding completion of the driver medical certificate rulemaking, FMCSA stated that it is developing a Notice of Proposed Rulemaking (NPRM) to link the medical certification to the CDL, and plans to issue it in late 2006.

OIG Response. We consider FMCSA's comments responsive to recommendation 8. However, we request that FMCSA provide more specific milestones for issuing the NPRM on the medical certificate rulemaking.

EXHIBIT A. OBJECTIVES, SCOPE, AND METHODOLOGY

Our audit objective was to assess FMCSA's progress in (1) implementing OIG's 1999 audit recommendations to strengthen enforcement and improve motor carrier data, (2) establishing the new entrant program to improve the safety performance of new motor carriers, and (3) completing MCSIA-required rulemakings. The audit was conducted from December 2003 through September 2005, which included a suspension of audit work from May 2004 to October 2004 due to a requirement to conduct an audit of the North American Free Trade Agreement Cross-Border Trucking Provisions. We conducted our work in accordance with Generally Accepted Government Auditing Standards as prescribed by the Comptroller General of the United States and included tests of internal controls as were considered necessary.

We used computer-generated data from FMCSA's Motor Carrier Management Information System (MCMIS) and Enforcement Management Information System (EMIS). Although we did not assess the general and application controls for each system, we did selectively test the data to ensure completeness. We also verified the reliability of data related to new entrant motor carrier safety audits.

To accomplish our audit objectives, we interviewed FMCSA and state officials, reviewed supporting documentation, and independently analyzed MCMIS and EMIS data. In doing so, we directly accessed the MCMIS and EMIS databases instead of relying on downloaded information from FMCSA. Specifically, we completed the following audit steps.

Enforcement Trends. The scope of our review focused on active motor carriers and enforcement activity for FYs 1998 through 2004. We identified trends in the enforcement of motor carrier regulations from MCMIS and EMIS database files. We performed trend analyses and stratifications on the number of compliance reviews, enforcement cases, and roadside inspections, including the resulting violations and driver/vehicle out-of-service orders. We also analyzed civil penalty assessments, safety fitness ratings, and motor carrier out-of-service orders.

Repeat Violators. Using compliance review data from the MCMIS database, we determined whether motor carriers were assessed repeatedly for the same violation during the compliance review/enforcement process and whether a third violation was assessed a maximum penalty. We counted only acute and critical violations of drug and alcohol and hours of service regulations for this analysis.

Improving Data Quality. As part of our February 2004 SafeStat audit, we analyzed data quality problems and issues. We, therefore, used analysis from the

SafeStat audit in our discussion of problems associated with the completeness and accuracy of crash and inspection data reported to FMCSA by the states, and updated the information to a limited extent wherever necessary.

Motor Carrier Census Data. Granting of interstate operating authority is contingent on motor carriers providing census data on the number of drivers they employ and commercial vehicles (power units) they own or lease. We compared motor carrier census data results from the SafeStat audit as of January 2003 to updated census data analysis as of January 2005. For both analyses, we identified the total number of active motor carriers in MCMIS and tested the quality of data in two areas: MCS-150 submissions¹⁶ and the presence of zeros¹⁷ in the number of drivers and power units. An MCS-150 submission was counted as valid if a date was present in the MCS-150 date field. We looked for zeros, but did not verify whether numbers found in the database represented the number of drivers and power units actually employed and maintained by the motor carrier.

Improving the Quality of Motor Carrier Operating Data. We interviewed FMCSA officials regarding efforts to ensure states accurately report crash, vehicle, driver, and violation data and motor carrier safety training programs for local enforcement personnel addressing crash, inspection, and traffic violation reporting. We reviewed FMCSA and NHTSA's joint efforts to improve crash data and collection, to support standardized reporting of commercial motor vehicle crashes in MCMIS, and to promote adoption of the Model Minimum Uniform Crash Criteria. We also monitored metrics for improving crash and inspection data completeness, accuracy, and timeliness; reviewed MCSAP formula state funding distributions; and monitored the status of the Large Truck Crash Causation Study. To avoid overlap with the Government Accountability Office's audit of FMCSA enforcement issues, we did not validate the methodology for the data quality ratings or the data used to develop FMCSA's online map indicating the quality of states' crash and inspection data.

Safety Audit Workload. Using MCMIS data, we identified the number of safety audits and compliance reviews conducted as of November 1, 2005, and the number of new entrant registrants per month. We focused on current new entrant motor carriers and motor carriers that exited the new entrant program after a safety audit or compliance review. We stratified the new entrant motor carriers by month using the date of registration and completed an aging analysis of the safety audits to determine whether they were completed on time.

¹⁶ FMCSA promulgated rules, established in November 2000, to require motor carriers that were active on December 31, 2000 to update their census forms every 2 years by submitting an MCS-150 Form to FMCSA.

¹⁷ The presence of zeros in the number of drivers or power units is recognized as a data error and causes subsequent errors in analysis of the relative safety of motor carriers by FMCSA in targeting carrier for compliance reviews.

Effectiveness of New Entrant Program. Using relative SafeStat rankings, we attempted to demonstrate whether new entrant carriers were better or worse than an equivalent group of non-new entrant motor carriers. Using SafeStat historical data in MCMIS, we compared the first full two years of new entrant motor carriers to new carriers from an earlier two-year period that were not required to register for the new entrant program. To determine the SafeStat ranking of the new motor carrier groups, we linked the non-new entrant group to the April 28, 2003 SafeStat rankings and the new entrant group to the April 22, 2005 SafeStat rankings.

Statistical Analysis of Safety Audit Data Reliability. We verified records of new entrant safety audits by statistically testing 389 files from a universe of 14,544 safety audits from MCMIS, using stratified random sampling with a 5 percent relative precision and 95 percent confidence level. We requested signed original documents for 389 selected safety audits from FMCSA for comparison to computer-processed data records. FMCSA was unable to provide 21 of the 389 signed original documents from nine states and one Canadian province. We matched and verified data fields and motor carrier attributes such as legal name, state, safety audit date, fleet miles, and number of drivers with CDLs. We also verified critical and acute responses to questions related to two safety performance factors on driver regulation and motor carrier management operations. We compared the number of non-matched data entries to the number of total possible matches. Of a possible 5,981 entries checked, there were 356 (or 5.95 percent) missing and non-matching data entries, including 330 missing data entries from the 21 safety audit documents that FMCSA was unable to provide. We identified only 26 non-matching entries (or 0.4 percent). Based on these results, we concluded the safety audit data were reliable for audit.

Completion of MCSIA-related Rulemakings. Our review was limited to determining the status of MCSIA-related rulemakings. To determine the status of these rulemakings, we monitored the MCSIA Legislative Implementation Plan, the Department's Docket Management System, and the semiannual Unified Agenda Report. We also interviewed FMCSA and NHTSA officials to identify milestones for completing outstanding rulemakings, the reasons for the delays, and the related safety impacts. In addition, although outside the scope of our audit, we identified the number of outstanding significant rulemakings on FMCSA's and NHTSA's rulemaking agendas to provide proper disclosure of the status of rulemakings.

EXHIBIT B. MAJOR CONTRIBUTORS TO THIS REPORT

THE FOLLOWING INDIVIDUALS CONTRIBUTED TO THIS REPORT.

<u>Name</u>	<u>Title</u>
Kurt W. Hyde	Assistant Inspector General for Surface and Maritime Programs
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Thomas K. Lehrich	Chief Counsel
Katherine Ovalle	Associate Counsel
William E. Savage	Information Technology Specialist

APPENDIX. AGENCY COMMENTS



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

Memorandum

Subject: **INFORMATION:** Response to the Office of Inspector General's (OIG) Draft Report "Significant Improvements in Motor Carrier Safety Program Since 1999 Act But Loopholes For Repeat Violators Need Closing," Project Number: 04M3002M000

Date:

FEB 14 2006

From: Annette M. Sandberg
Administrator

In Reply Refer To: MC-P

To: Kurt Hyde
Assistant Inspector General
for Surface and Maritime Programs (Attn: JA-40)

This memorandum is in response to your December 16, 2005, draft report titled, "Significant Improvements in Motor Carrier Safety Program Since 1999 Act But Loopholes For Repeat Violators Need Closing." The report was a follow-up to OIG's 1999 audit of the motor carrier safety program and focuses on the Federal Motor Carrier Safety Administration's (FMCSA) implementation of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). The objective of the audit was to assess FMCSA's progress in implementing OIG's 1999 audit recommendations to strengthen enforcement and improve motor carrier data, establishing the New Entrant program to improve the safety performance of new motor carriers, and completing MCSIA-required rulemakings. We have reviewed the report and provided general comments as well as responses to the eight recommendations below. Although we have a difference in perspective in some areas, we consider many of the findings and recommendations to be constructive and already have actions underway to address them.

COMMENTS

FMCSA acknowledges and agrees with OIG that our enforcement program needs to be further strengthened, motor carrier data improvements need enhancement, improvements to the New Entrant program need to be made to enhance the safety performance of new motor carriers, and the one outstanding MCSIA-required rulemaking needs to be closed. We have taken major steps towards these goals. We are pleased that OIG acknowledges FMCSA has significantly improved oversight of motor carrier safety since the 1999 audit. FMCSA has worked diligently to implement the recommendations from the 1999 audit and we have increased enforcement of the regulations by conducting more compliance reviews, opening more enforcement cases,

increasing civil penalties for violations of the safety regulations, combining civil penalty settlement agreements with consent orders, and expanding our use of out-of-service orders. We have also instituted important initiatives to reduce fraud in the commercial driver's license (CDL) program, in addition to implementing a New Entrant program to ensure new motor carriers applying for Federal interstate operating authority are familiar with the safety regulations. Since implementing the program, and as acknowledged by OIG, our safety audits have been timely.

On pages 8 and 9, OIG sets forth certain crash, injury and fatality data for the period September 2000, when FMCSA first began implementing the Section 222 policy, through December 2004, when FMCSA issued its clarification of that policy. The report states that "FMCSA enforced maximum civil penalties against 146 motor carriers. However, 71 additional motor carriers repeatedly violated the safety regulations, but were not assessed maximum penalties. Of these motor carriers, 50 were involved in 215 crashes resulting in 13 fatalities and 152 injuries." The report further states that "one motor carrier with 55 commercial vehicles was assessed a civil penalty three times for violating the hours of service regulations, but was not assessed a maximum penalty under the three strikes rule. During the same period, the motor carrier was involved in a fatal crash. We attribute these instances to the delay in the issuance of the policy clarification." We are concerned that OIG offers no evidence or analysis to indicate what number of crashes, if any, would have been prevented had the maximum civil penalty been imposed on these motor carriers. It is reasonable to assume that even a maximum fine would not have driven *all* of the affected carriers out of business; so, at least some of the carriers would have continued in operation, and it is likely that at least some crashes would still have occurred. We believe OIG's conclusion that 100 percent of these crashes, fatalities and injuries should be "attributed" to the Agency's "delay" grossly overstates the effects of the circumstances giving rise to our policy clarification. We request OIG delete this sentence.

On page 14, the report states "Although much progress was made in completing MCSIA-required rulemakings, a number of significant rulemakings remain outstanding on the agencies' agenda. Although not covered under the scope of this audit, as of August 24, 2005, FMCSA had 16 significant outstanding rulemakings on its agenda, 9 of which are at least 2 years old. NHTSA had 10 outstanding significant rulemakings, but only 1 is more than 2 years old." We are concerned that this paragraph is ambiguous and is contradicted by the next sentence which notes that only one FMCSA MCSIA-required rulemaking remains outstanding. As FMCSA staff discussed with OIG staff at the September 15, 2005, Exit Conference, and as noted later in this same paragraph of the draft report, only one of the outstanding rulemakings is related to MCSIA. FMCSA believes references to rulemakings unrelated to MCSIA are not relevant to the OIG audit, and we request OIG delete references to material outside the scope of the audit.

RESPONSES TO SPECIFIC RECOMMENDATIONS

RECOMMENDATION 1a. *Strengthen the repeat violator policy by enhancing controls, such as automated notification of prior violations in enforcement case software, to ensure that all violations meeting the current three strikes criteria are assessed the maximum penalty allowed by law.*

Response: CONCUR. A "three strikes" data field was designed as an enhancement to FMCSA's primary Enforcement Management Information System (EMIS). This field facilitates the Agency's maintaining carrier historical data, thereby enabling the agency to target those carriers with prior violation histories of the same regulatory part so that we may assess the maximum penalty allowed by law for repeat violations. A "Summary Report for Section 222 Cases" was also created that shows, by Division, Service Center, or entire country, the case number, status of the case, total counts claimed, total monetary amount claimed and amount settled as well as the regulatory cite and violation description for the third strike violation.

RECOMMENDATION 1b. *Strengthen the repeat violator policy by broadening the definition of a pattern of violations to include unenforced violations from previous compliance reviews.*

Response: NON CONCUR. The OIG recommendation to include "unenforced violations" as "found" violations for purposes of Motor Carrier Safety Improvement Act of 1999 (MCSIA) section 222 violates principles of due process and fair play and is inconsistent with the Assistant Administrator's Final Orders *In the Matter of Starving Students Moving Sys., Inc.*, FMCSA 2001-10187 (Mar. 17, 2005); *In the Matter of L&W Trucking, LLC*, FMCSA-2001-11002 (Mar. 17, 2005); *In the Matter of Charley Transportation*, FMCSA 2001-10952 (Mar. 18, 2005); *In the Matter of G.E. Robinson Co., Inc.*, FMCSA 2003-14980 (Mar. 18, 2005); and *In the Matter of MP Livestock Trust*, FMCSA 2001-10610 (Mar. 17, 2005). Those Final Orders, *inter alia*, struck down the Agency's use, for purposes of the "History" and "Extent" elements of the Uniform Fine Assessment (UFA) algorithm, motor carrier violations that the Agency discovered during compliance reviews but did not document. The recommendation is also inconsistent with FMCSA's revised policy on enforcement procedures that was adopted following the *Starving Students* decisions. OIG was advised of the Agency's concern regarding this recommendation at the Exit Conference in September 2005.

FMCSA objects to the inclusion of an unenforced violation as a "strike" where the carrier is not given notice of the potential use of the violation as a factor in a future fine calculation. Until a violation is "enforced," i.e., until it is included in an enforcement case that results in an adjudication, settlement, penalty payment or default, the carrier has no notice under current practice that the alleged violation may count toward some future penalty.

The OIG's suggestion that the Agency might revise its practice to impose nominal fines for such violations "as a warning that future violations could result in the maximum fine" simply changes the recommendation. Once *any* fine is imposed, the violation is no longer "unenforced." The Agency also objects on the basis that the formal recommendation improperly impinges on the Agency's discretion in carrying out enforcement policy.

The language of MCSIA Section 222 is problematic. The statute requires the Agency to impose the maximum civil penalty only if the person is "*found* to have committed a pattern of violations." 49 U.S.C. § 521 note, quoting § 222(b)(2) (emphasis added). The Agency's December 28, 2004, Federal Register (FR) notice clarified that the Agency will interpret this statutory language "as requiring an *adjudication or admission*" in "a previous *enforcement case*." 69 FR at 77829 (emphasis added). Such adjudication or admission could take the form of either:

1. An explicit adjudicatory finding of a violation by the Agency (Assistant Administrator or a DOT Administrative Law Judge);
2. An express admission of liability by the respondent in its reply to the Notice of Claim (NOC) and in a settlement agreement;
3. A Final Agency Order under 49 CFR 386.14(e), based on respondent's failure to reply to the NOC; or
4. Payment of a civil penalty in response to a NOC advising respondent that payment will constitute an admission of the violations set forth in the NOC.

Thus, even after the December 2004 clarification, the Agency required that carriers be given notice that a violation could count toward a future imposition of the maximum penalty only in enforcement cases, i.e., with respect to violations that were being enforced. Violations discovered in a compliance review (CR) but not enforced did not trigger the section 222 fair warning language.

FMCSA's May 23, 2005, implementing guidance on UFA, issued in response to *Starving Students*, was consistent with the December 2004 section 222 policy clarification. The UFA implementing guidance stated with respect to history of prior offences that, effective immediately, the only prior cases used in the "history" factor applicable to the civil penalty computations under UFA are those cases for which there is:

1. A final order in favor of the Agency by the Assistant Administrator or a DOT Administrative Law Judge;
2. A settlement agreement containing an express admission of liability;
3. Payment of the penalty in response to NOC which contained "warning language" that payment will constitute an admission of liability; or
4. A final Agency order issued pursuant to 49 CFR 386.14(e) for respondent's failure to reply (a "default").

The May 2005 UFA/*Starving Students* implementing guidance also states that the NOC will inform the carrier that, where applicable, the carrier's history will be used in the calculation of the penalty. The section 222 "warning language" in the current NOC advises the carrier:

Under section 222 of the Motor Carrier Safety Improvement Act of 1999, recurring violations of the same or related acute or critical regulations (violations of the same Part in Title 49 of the Code of Federal Regulations) which result in three or more enforcement actions within a six-year period will cause the maximum penalties allowed by law to be assessed for the third and subsequent enforcement actions. Any violation with a checkmark in the "§ 222 Applied" column in the penalty table below are [sic] subject to the "Section 222" provision and the maximum penalties have been assessed. See 49 USC § 521(b), 49 USC § 5123, 49 USC Chapter 149, and 49 CFR Part 386, Appendix A.

Thus, carriers currently are given notice that check marked violations will count as section 222 strikes. However, the notice does not address violations discovered but *unenforced*, and these are the additional violations that the OIG would have the Agency include within the definition of a “found...pattern of violations.”

The UFA/*Starving Students* guidance also changed the Agency’s CR practice to require Safety Investigators to document all violations discovered, even those not charged. Many unenforced violations prior to *Starving Students* and the FMCSA implementing guidance, however, were not documented. The OIG’s recommendation arguably would have the Agency include even these undocumented, pre-*Starving Students* violations as section 222 strikes.

FMCSA and OIG agree that at least some *unadjudicated* violations should and will be included in determining whether there has been a pattern of violations under section 222, i.e., those to which the carrier has admitted liability after receiving notice that the admission will count as a section 222 strike. However, the broad language of the OIG recommendation applies to *unenforced* violations -- *all* unenforced violations -- with no requirement that the carrier be given notice that the unenforced violation would count against it in the current or a future penalty calculation, let alone as a basis for a maximum penalty. Therefore, the OIG recommendation exceeds the scope of both the December 2004 FR clarification and the May 2005 UFA implementing guidance.

The OIG argues that FMCSA should be charging every alleged violation discovered during a CR and that by not doing so the Agency created “loopholes” that must be closed by changing enforcement policy. We believe this argument is overly simplistic. This is not a situation where the Agency has created or acquiesced to loopholes that allow motor carriers to escape maximum fines. The Agency enforcement program is in the best position to determine an effective enforcement posture. The Agency believes its mission is better served by the use of discretion in assessing penalties and the carrier can be educated for future compliance. The Agency has limited resources to conduct both CR and enforcement actions. If the Agency is required to cite every violation, the number of reviews and enforcement actions would be diminished, especially with the increasing motor carrier population. Frequently, there are compelling tactical reasons for not assessing penalties -- either because it would be unnecessary or because it would be advantageous in the context of achieving compliance -- analogous to plea negotiations or charging decisions in criminal cases.

Thus, in keeping with *Starving Students*, the Agency believes that violations discovered during a CR, but unenforced, should not be included in determining whether there is “a pattern of violations” under section 222, because such violations have neither been subjected to the rigors of adjudication nor has the carrier admitted them. Moreover, FMCSA’s mission is not simply to assess and collect fines. Rather it is to induce compliance.

RECOMMENDATION 2. *Enforce fines against motor carriers for failure to comply with the census data updating requirement.*

Response: CONCUR IN PART. As noted in the OIG report, FMCSA has assessed penalties against carriers for failure to comply with the census data updating requirement in only a small number of instances. The Agency's policy is to assess penalties primarily where there have been violations of acute and/or critical violations. FMCSA's Field Operations Training Manual (*Investigator's Manual*, page 278) recommends, "The enforcement case should reflect the carrier's safety posture by penalizing the carrier for each of the acute and critical violations recorded on the compliance review, if possible." Failure to comply with the census data updating requirement (49 CFR 390.19(e)) is neither an acute nor a critical violation. An investigator may assess penalties for failure to provide the required update in certain circumstances, such as the discovery of other violations that are acute or critical. However, the typical approach is for the investigators to review the carrier's data during compliance reviews. If the carrier has failed to update its census data as required, the investigator directs the carrier to update the information on the spot rather than assess a penalty for the violation.

RECOMMENDATION 3. *Establish a system to track attendance for the crash data training course and visits to the crash data web site, and compare the results to changes in crash data reporting by states to assess whether training efforts are successful.*

Response: CONCUR. FMCSA currently tracks attendance and compiles a database that includes the name, contact information, and enforcement affiliation for all participants in the Crash Data Collection for Commercial Motor Vehicles class. Using current FMCSA data quality measurement tools, specifically the measures used in the Data Quality map for completeness, timeliness and accuracy, FMCSA will assess pre and post training crash data reporting for those States that participate in the training program to measure the effectiveness of the training. This assessment will begin one year after the training has been conducted. FMCSA can track data challenges to our DataQs Web site by State of challenge and can also use this information in our evaluation. In addition, FMCSA is adding web-based Crash Data Collection Training materials to the Data Quality Module of its Analysis and Information Online Web site by the end of January 2006. These materials will serve as an educational resource for law enforcement officers, CMV inspection authorities, crash investigation trainers, and State department of transportation crash records developers and users, with the goal of improving the quality of crash data reported by the States to FMCSA.

RECOMMENDATION 4. *Rapidly implement the planned actions in the Crash Data Improvement Project plan and establish milestones for improving states' compliance with standardizing crash reports and data elements.*

Response: CONCUR. FMCSA is in the process of implementing and reviewing milestones for the planned actions in the Crash Data Improvement Plan. FMCSA is also investigating additional ways to measure the quality of crash data to include in this plan. Although FMCSA does not have the authority to require States to standardize their report forms, FMCSA has developed a State Crash Report Form measure to evaluate whether the State's crash report has the SAFETYNET data elements that are reportable to FMCSA. FMCSA will work with States

to revise crash report forms or make any other changes necessary to encourage adoption of all SAFETYNET data elements required by FMCSA. In June 2006, FMCSA will provide States with the State Crash Report Form quality measure. In September 2006, FMCSA will complete our review of the status and milestones in the Crash Data Improvement Plan.

RECOMMENDATION 5. *Transmit the Large Truck Crash Causation Study results to Congress, and develop milestones for completing the required legislative recommendations.*

Response: CONCUR. FMCSA drafted a report to Congress on the Large Truck Crash Causation Study and is awaiting final approval from the Department of Transportation Office of the Secretary before the report is transmitted to Congress. FMCSA is also developing milestones for completing analyses of key safety problem areas and making recommendations to Congress. However, FMCSA has already begun shifting emphasis to driver issues based on the first results from the study that validate the importance of the driver in preventing crashes. We anticipate transmitting the report to Congress in March 2006 and completing milestone development in June 2006.

RECOMMENDATION 6. *Continue monitoring state safety audit activity to ensure timely completion of all safety audits.*

Response: CONCUR. FMCSA hired a contractor to contact every motor carrier who enters the New Entrant program. This contractor contacts every new entrant within their first 90 days in the program. During this contact, the carrier is validated to ensure they are truly subject to the program, more carrier data is collected, the company is educated on the new entrant safety regulations and directed to contact the appropriate office for scheduling of a safety audit. The efforts of this new initial contact by the contractor will result in a much cleaner database of new entrant carriers in the Motor Carrier Management Information System (MCMIS). With the additional information that the contractor is collecting at the time of this contact (cell phone numbers, fax numbers, etc.), it will be easier to establish and maintain communication with the carrier throughout its presence in the new entrant process. This will allow FMCSA and its partners in the New Entrant program to be more efficient in contacting, scheduling, and performing safety audits. Additionally, FMCSA has tools in place to ensure that safety audits are completed before they become overdue. Both the MCMIS database and the GOTHAM Information and Analysis web site have reports built into them that allow FMCSA personnel to see which carriers have not been contacted. Reports are also available that list carriers who are within 6 months of becoming overdue and in need of a safety audit. Proper use of these tools, together with all other available resources, including use of third-party auditors, should ensure carriers do not stay in the New Entrant program longer than 18 months without a safety audit being completed.

RECOMMENDATION 7. *Continue ongoing efforts to identify needed changes in the new entrant program to increase the enforcement component that would improve safety.*

Response: CONCUR. The New Entrant program was implemented because studies showed that new entrant motor carriers had a higher crash rate than other carriers. The program will

need additional time to determine if the New Entrant program is working to decrease these crashes. FMCSA is planning to conduct an initial assessment of the effectiveness of the New Entrant program in terms of its impact on safety. We plan to begin this initial assessment in fiscal year 2006 and anticipate completion in fiscal year 2008. In addition, we are planning a full program evaluation beginning in fiscal year 2008.

RECOMMENDATION 8. *Expediently complete the driver medical certificate rulemaking.*

Response: CONCUR. FMCSA is currently developing a Notice of Proposed Rulemaking (NPRM) to link the medical certification to the CDL. We anticipate the NPRM being issued later in 2006.

We look forward to working with OIG to strengthen enforcement of the safety regulations and improve data used to regulate motor carriers. If you need additional information or clarification, please do not hesitate to contact me, or Rose McMurray, Associate Administrator for Policy and Program Development at 202-366-8773.

The following pages contain textual versions of the graphs and charts found in the preceding document. These pages were not in the original document but have been added here to accommodate screenreaders and other assistive technology.

Textual Translation of Figures in the Report

Compliance Review Violations Cited and Enforced by Fiscal Year

Figure 1, located on page vi of the report (also shown on page 3 as Figure 3), provides a chart showing the trends of number of compliance reviews and the violations found and enforced from FY 1998 to FY 2004. The chart indicates the following.

The number of compliance reviews increased each year from 6,312 in FY 1998 to 13,074 in FY 2001—which was the highest total for compliance reviews in the period reviewed—then declined to 10,658 in FY 2004. The number of violations found increased each year from 10,624 in FY 1998 to 19,635 in FY 2000—which was the highest total for violations found in the period reviewed—then declined to 12,422 in FY 2004. The number of violations enforced increased each year from 2,240 in FY 1998 to 7,865 FY 2003—which was the highest total for violations enforced in the period reviewed—then declined to 6,957 in FY 2004.

Out-of-Service Orders

Figure 2, located on page vii of the report (also shown on page 5 as Figure 4), provides three charts that identifies the number of out-of-service orders for each motor carrier category and shows the trend in out-of-service orders from 1998 to 2004. A motor carrier can receive an out-of-service order for maintaining: (1) an unsatisfactory safety fitness rating for more than 60 days, (2) failing to pay a civil penalty after 90 days, or (3) posing an imminent hazard to safety. The charts indicate the following.

Out-of-service orders for motor carriers with unsatisfactory safety fitness rating declined from 39 in FY 1998 to 29 in FY 1999, then increased each year to 425 in FY 2004. For out-of-service orders for failure to pay civil penalties, there were none prior to FY 2001, then increased each year from 25 in FY 2001 to 1,378 in FY 2004. Imminent hazard out-of-service orders have remained flat, generally, declining from 5 in FY 1998 to 2 in FY 2004.

New Entrant Motor Carriers Awaiting Safety Audit

Figure 5, located on page 17 of the report, provides a chart showing the number of new entrant motor carriers segmented by the number of months awaiting a safety audit as of November 1, 2005. The segment categories range from zero months to +18 months. These segment categories are periods of time of one calendar month except for the +18 months category, which lumps together new entrant motor carriers that had not received a safety audit within an 18-month period. The chart indicates the following.

As the months segment categories increased from the zero months (less than one month) category to the 18 months category, the number of new entrant carriers

awaiting a safety audit generally declined from 5,072 in zero months to 314 in 18 months except the 3 months category had a total of 8,889 motor carriers. The unusually high total in the 3 months category was due to 4,751 previously inactivated new entrant motor carriers reinstated by FMCSA on July 10, 2005. Only 663 motor carriers were found in the +18 months category.

Large Trucks Involved in Fatal Crashes, Fatalities Associated With Those Crashes, and Large Truck VMT

Figure 6, located on page 20 of the report, provides a chart showing a comparison between the most recent 7-year trend of large truck-related fatalities and involvement in fatal crashes in relation to large truck vehicle miles traveled (VMT) with the preceding 7-year period. The chart indicates the following.

The chart shows a steady increase in large truck VMT during the entire period 1991 to 2004. Also, over the period, there was a close correlation between large truck related fatalities and large truck involvement in fatal crashes. From 1991 to 1997, fatalities and involvement in fatal crashes increased. From 1998 to 2002, fatalities and involvement in fatal crashes declined. In 2003 and 2004, there was a slight increase in fatalities and involvement in fatal crashes.