



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0298]

Notification of Changes in the New Entrant Safety Assurance Program Operational Test

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of changes to operational test.

SUMMARY: FMCSA announces two changes to the New Entrant Safety Assurance Program Operational Test (Operational Test) discussed in the Agency's September 4, 2013, notice. First, the Agency will update the IT systems so that when an automatic failure violation (as listed in 49 CFR 385.321) is identified by the Agency based on the records the motor carrier provides during the document submission process, the carrier will automatically fail the new entrant safety audit and be placed into the corrective action process. This is consistent with the current new entrant safety audit process for audits conducted at a motor carrier's principal place of business (PPOB). Second, the Agency will extend the Operational Test through December 2014 to ensure sufficient data is available to calculate the established metrics in order to make an informed decision on any future actions.

DATES: The changes take effect [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2013-0298 using any of the following methods:

- Federal eRulemaking Portal: Go to www.regulations.gov. Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the

person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the Federal Register on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Bennett, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone: (202) 365-8324, email: joseph.bennett@dot.gov. If you have questions on viewing or submitting material to the docket, call Ms. Barbara Hairston, Program Manager, Docket Operations, 202-366-3024, Barbara.Hairston@dot.gov.

SUPPLEMENTARY INFORMATION:

I. New Entrant Safety Assurance Program Operational Test

On September 4, 2013, FMCSA published a notice in the Federal Register announcing the New Entrant Safety Assurance Program Operational Test (78 FR 54510). The Agency indicated that the Operational Test began in July 2013 and will be in effect for up to 12 months. The Operational Test procedures allow FMCSA to complete off-site new entrant safety audits, defined as safety audits not conducted at the motor carrier's principal place of business (PPOB), of eligible new entrant motor carriers that can demonstrate basic safety management controls without going to the motor carrier's PPOB by reviewing specific compliance documentation submitted by the motor carrier as requested by FMCSA or its State partners.

In July 2013, this Operational Test included California, Florida, Illinois, New York, Montana, and the Canadian Provinces contiguous to Montana and New York. In December 2013, the state of Alaska was added to the group of test states.

The purpose of the Operational Test is to compare these off-site new entrant audits to the traditional new entrant safety audits conducted at the motor carriers' PPOB. The Agency is assessing each approach's impact on both resource allocation and subsequent safety performance of new entrant motor carriers.

During the first nine months of the Operational Test, eligible new entrant motor carriers submitted requested documents to a new entrant safety auditor who subsequently reviewed the documentation and:

- (1) Prepared a report to document that the motor carrier has passed the new entrant safety audit; or,
- (2) Contacted the motor carrier to request additional documentation to determine whether the carrier satisfied the criteria for passing the audit; or
- (3) Scheduled a new entrant safety audit at the motor carrier's PPOB, as soon as practicable, based upon violations observed from the submitted documentation or the carrier's failure to submit adequate documentation.

II. Changes to the New Entrant Safety Assurance Program Operational Test

Effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, if during the examination of the submitted documentation, a safety auditor discovers automatic failure violation(s) as listed in 49 CFR 385.321, the motor carrier will fail the new entrant safety audit. The carrier will be placed into the corrective action process pursuant to 49 CFR 385.319(c) and if the carrier does not provide adequate corrective action it will be prohibited from operating in interstate commerce. FMCSA notes that the definition of "safety audit" under 49 CFR 385.3 does not limit the activity to on-site interventions as is the case with the definition of "compliance review."

Therefore, the Agency has the discretion under existing regulations to fail carriers during the Operational Test without conducting an on-site safety audit.

FMCSA believes this change needs to be made for the following reasons:

- This process is consistent with the current method concerning automatic failure violations for on-site new entrant audits;
- Since the Operational Test began, when automatic failure violations were discovered during the off-site document review process; many of those carriers still failed the follow-up new entrant safety audit conducted at their PPOB; and,
- Allowing a new entrant motor carrier known to be operating with an automatic failure violation(s) can pose a threat to public safety.

Based on the Agency's experience with the test to date, the Agency will monitor this change and compare the results and workload impacts to the earlier portion of the test.

The evaluation will look at the relative workload of processing the additional corrective action submitted by motor carriers that fail the off-site audit and the resources needed to conduct on-site audits in these cases.

In addition, FMCSA is extending the Operational Test through December 2014 to ensure sufficient data is available to calculate the established metrics in order to make an informed decision on any future actions.

Issued on: August 29, 2014.

T.F. Scott Darling, III,
Acting Administrator.

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