

**Before the
Federal Motor Carrier Safety Administration
Washington, D.C. 20590**

In the Matter of)	
Certification of Safety Auditors, Safety)	Docket No. FMCSA-2001-11060
Investigators, and Safety Inspectors)	

**COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

INTRODUCTION

On March 19, 2002, the Federal Motor Carrier Safety Administration (FMCSA) issued an Interim final rule (IFR) and a request for comments in the above-captioned proceedings. The IFR implements Section 211 of the Federal Motor Carrier Safety Improvement Act of 1999 (Section 211) which pertains to the establishment of certified motor carrier safety auditors. This IFR establishes three types of certification for three different types of inspections, safety audits, compliance reviews and roadside inspections. The IFR does not impose any new training requirements upon those government personnel that are currently qualified to conduct compliance reviews and/or roadside inspections. The IFR requires each state participating in Motor Carrier Safety Assistance Program (MCSAP) to certify that its employees meet the minimum federal training, experience and proficiency standards.

A safety audit is a review of new motor carrier operations and does not result in the issuance of a safety rating. The safety audit provides education and technical assistance to new motor carriers and allows the auditor to make an assessment of the carrier's safety performance and basic safety management controls. Section 211 allows a safety audit to be performed by certified non-government personnel or any federal or state employee who is also qualified to perform a review. The IFR also indicates that the FMCSA or the state MCSAP agency will certify Federal or State personnel to conduct compliance reviews and safety audits. The IFR further states that the training required for a safety auditor is less comprehensive than training required to conduct a compliance review or roadside inspection. The IFR does not include any specific training requirements but maintains that such requirements will be posted on the FMCSA's website. In this IFR the FMCSA is specifically soliciting comments on the "advisability of certifying non-government employees that meet all training and experience criteria to conduct safety reviews."

Initial comments in the above-captioned proceedings were due on May 20, 2002. In order for the Commissioners of the Public Utilities Commission of Ohio (Commission) to review and approve the comments for filing the Commission was unable to file these comments until May 21, 2002. In response to the FMCSA's March 19, 2002 IFR and request for comments, the Commission hereby submits its initial comments.

DISCUSSION

The role and responsibilities of the independent safety auditor under Section 211 are unclear. It is difficult for the Commission to take a position on the feasibility of the independent safety auditor when so many unanswered questions remain concerning the safety audit procedures. Without further clarification by the FMCSA concerning who oversees the safety audit process and who decides which inspector audits each company, the Commission is unable to adequately comment on the feasibility of certifying independent safety auditors. The Commission is unsure of its role, if any, in deciding when to utilize the services of an independent safety auditor. The Commission would certainly not approve of a program that would allow a carrier to choose an audit by an impressionable non-government safety auditor solely to avoid an audit by a proven Commission employee. The FMCSA must clarify the process before the Commission can comment on independent safety auditors.

- I. Prior to certifying non-government personnel to conduct safety audits, the FMCSA should first determine the need for additional personnel beyond the number of federal and state government personnel currently certified to conduct compliance reviews and roadside inspections.**

The IFR includes no information regarding a state's ability to perform safety audits with the current number of state and federal employees. It may be the case that a state's currently certified government personnel are adequate to perform safety audits without the need to employ private non-government personnel to perform safety

audits. Before the FMCSA begins to certify non-government personnel the Commission recommends that it first be determined whether the current federal and state personnel can keep up with the number of safety audits that need to be performed. An unnecessary influx of independent safety auditors could create undesired effects. The concern is that carriers will solicit independent safety auditors to perform the safety audits rather than government employees to bypass the government employee audits. The Commission recommends the FMCSA clarify that government personnel be used first when conducting safety reviews and only when government personnel are unavailable would FMCSA non-government auditors be used.

II. When conducting a safety review, an independent auditor could face conflicts of interest.

The IFR is silent as to what type of non-government personnel may be certified to conduct safety audits. This is significant because a certified non-government safety auditor may be a person from a private consulting firm, trucking association, or persons affiliated in some way with a trucking company. The IFR does not indicate how potential conflicts of interest that could arise may be addressed or how the FMCSR plans to prevent any conflicts of interest. A private contractor who is also a consultant may have an interest in gaining a new carrier's business and could leverage a beneficial audit in exchange for future business activity. A trucking association member might also be interested in persuading a new carrier to become a member of that association to achieve compliance with safety standards after the completion of a safety audit. In

short, an independent auditor may take advantage of its knowledge of the safety rules, expertise in the area, and/or years of experience to gain clients or some benefit in the private sector to influence a carrier that might not otherwise solicit their services.

III. The existence of an independent non-government safety auditor creates a number of practicable problems in relation to the maintenance of the State program.

A. Communication Issues

The IFR is unclear as to whom a non-government safety auditor will report for safety review assignments or what the auditor will do with the information it collects from the safety audit. If the non-government safety auditor is going to receive assignments from the FMCSA, then the state personnel should also be advised of the location of the safety auditor to avoid a duplication of effort on behalf of the state investigator and the non-government auditor. The Commission would like to ensure that an effective flow of communication between the non-government auditor and the government auditor will occur. The IFR does not address communication coordination requirements placed upon either the non-government or government auditor. Without knowing the specific requirements of the independent auditor it is difficult to comment on the advisability of certifying non-government employees to conduct safety audits. The Commission recommends information pertaining to the responsibilities and coordination of the independent auditors be published for comment before the program takes effect.

B. Technological Challenges

The IFR does not address how the non-government safety auditor is going to upload data, presumably to Safety-Net, or share the data with government enforcement personnel that will perform compliance reviews or roadside inspections. The exchange of information is a key element to any enforcement program as well as the accuracy of information. The Commission's experience in the area of technology has shown that the uploading of information from a laptop computer to a database is something that requires a significant amount of monitoring and trouble-shooting to maintain a constant and accurate flow of information. The Commission Staff are constantly repairing, trouble-shooting and updating hardware on its field staff's computers as well as maintaining the network databases required to store and analyze the safety information collected. In addition, it is not clear in the IFR whether independent auditors who conduct safety reviews would be required to use new software and how the safety review data would be uploaded. The Commission feels that it is critical for both non-government safety review auditors and government safety review auditors to transmit data using similar methods, standards, formats, and time-tables. In addition, the IFR does not indicate what a state's role will be in the uploading of the non-governmental auditor's safety review data. If a state is going to be required to upload the safety review data from non-governmental personnel, it would also follow that a state is going to have to maintain the hardware to perform a safety review. While the FMCSA stated no new

funding is needed for future training of government employees, the state could become the communication liaison between the independent safety auditor and the FMCSA and undertake a financial burden to ensure that safety review information from non-government employees is transmitted correctly. The Commission recommends further funding be provided to pay for any additional burden passed to the State relating to the incorporation of the independent auditor into the state system.

C. Enforcement Challenges

Safety audits will be used as an important reference when performing compliance reviews or when determining enforcement actions. The IFR does not address if, or how, safety audits done by independent safety auditors will be reviewed for accuracy and corrected if needed. Having readily available and accurate safety audit information assists the enforcement personnel in establishing a compliance plan with the company. The Commission Staff will also take into consideration the company's safety audit information to determine if they have improved their operations pertaining to safety plans. The Commission assesses civil penalties against those carriers that are found to be in violation of the Federal Motor Carrier Safety Regulations or the Federal Hazardous Materials Regulations. The Commission will take into consideration the results of safety audits when determining the amount of a civil forfeiture. Consequently, the inability to obtain such information from an independent auditor in a timely, accurate

manner may inhibit, delay or prevent the Commission from taking appropriate enforcement action. Therefore, it is critical to every aspect of the Commission's enforcement program to ensure that safety audit information is reliable and readily available whether it is from non-government or government personnel. The Commission recommends the practical implications of using non-government personnel be carefully addressed and published for comment prior to implementation of the certification of non-government safety auditors.

CONCLUSION

The Commission hopes the FMCSA will consider its comments concerning the March 19, 2002 IFR. As always, the Commission is available for future comments or consultation.

Respectfully submitted,

Betty D. Montgomery
Attorney General

Duane W. Luckey, Chief
Public Utilities Section



Matthew J. Satterwhite
Assistant Attorney General
Public Utilities Section
180 E. Broad St., 9th Floor
Columbus, OH 43215
614-466-4396
Fax: (614) 644-8764
Email: matthew.satterwhite@puc.state.oh.us

**ON BEHALF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO**

Dated this May 21, 2002, at Columbus, Ohio