

March 2012

# MOTOR CARRIER SAFETY

## New Applicant Reviews Should Expand to Identify Freight Carriers Evading Detection



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## Why GAO Did This Study

The Federal Motor Carrier Safety Administration's (FMCSA) mission is to ensure motor carriers operate safely in interstate commerce. FMCSA partners with state agencies to conduct a variety of motor carrier oversight activities, which are carried out by certified auditors, inspectors, and investigators. Some motor carriers have registered under a new identity and begun to operate in interstate commerce, violating federal law in an effort to disguise their former identity and evade detection by FMCSA. Such carriers are known as chameleon carriers.

GAO's objectives were to examine (1) the prevalence of chameleon carriers; (2) how well FMCSA's investigative programs are designed to identify suspected chameleon carriers; and (3) what constraints, if any, FMCSA faces in pursuing enforcement actions against suspected chameleon carriers.

To address these objectives, GAO analyzed data on new applicants; reviewed investigative program guidance, federal motor carrier laws and regulations, GAO and other reports, and selected state corporate successor liability laws; observed two new entrant safety audits; and interviewed FMCSA headquarters and field officials, state officials—including law enforcement agencies—and motor carrier stakeholders.

## What GAO Recommends

FMCSA should expand the vetting program using a data-driven approach; and provide guidance to improve the new entrant program. FMCSA generally concurred with our recommendations.

View [GAO-12-364](#). For more information, contact Susan A. Fleming at (202) 512-2834 or [flemings@gao.gov](mailto:flemings@gao.gov).

## MOTOR CARRIER SAFETY

### New Applicant Reviews Should Expand to Identify Freight Carriers Evading Detection

## What GAO Found

FMCSA does not determine the total number of chameleon carriers within the motor carrier industry. Such a determination would require FMCSA to investigate each of the tens of thousands of new applicants that register annually and then complete a legal process for some of these suspected chameleon carriers, an effort for which FMCSA does not have sufficient resources. Rather, FMCSA's attempt to identify chameleon carriers among new applicants, referred to as the vetting program, is limited to bus companies (passenger carriers) and movers (household goods carriers). These two relatively small groups, representing only 2 percent of all new applicants in 2010, were selected because they present consumer protection and relatively high safety risks. Through the vetting program, FMCSA conducts electronic matching of applicant registration data against data on existing carriers and investigates each application from these two small groups, but does not determine whether all other new applicants, including freight carriers, may be attempting to assume a new identity. Federal internal control standards direct agencies to assess the risks they face to determine the most effective allocation of federal resources, including how best to distribute resources for activities such as investigations and enforcement. GAO demonstrated how analysis of registration data can be used to assess risk by targeting all new applicant carriers that have attributes similar to those of chameleon carriers—for example, company registration data that match data for another carrier with a history of safety violations. Using FMCSA data, GAO found an increasing number of carriers with chameleon attributes, from 759 in 2005 to 1,136 in 2010. GAO also found that 18 percent of the applicants with chameleon attributes were involved in severe crashes compared with 6 percent of new applicants without chameleon attributes.

FMCSA's investigative programs—the vetting and new entrant safety assurance programs—are not well designed to identify suspected chameleon carriers. The vetting program assesses all passenger and household goods carriers applying for operating authority, but it does not cover other groups of carriers, including freight truck carriers, which represented 98 percent of all new motor carrier applicants in 2010 and were more likely to be involved in fatal crashes than passenger carriers. The new entrant safety assurance program—which involves a safety audit for all new entrants, including freight carriers—entails a brief assessment of whether a carrier may be chameleon, but is primarily designed to educate new entrants about federal motor carrier safety regulations. The safety audit includes questions to elicit information on connections between new and previous carriers, but auditors lack necessary guidance on how to interpret the responses to distinguish chameleon carriers from legitimate carriers.

FMCSA faces several constraints in pursuing enforcement actions against suspected chameleon carriers. For example, as a result of a 2010 decision by an FMCSA Assistant Administrator, it is unclear whether FMCSA should use a state or a federal legal standard to demonstrate that a carrier is a chameleon. Thus, evidence is gathered to meet both a state and federal legal standard, which can lead to differing enforcement actions across states and has increased the time necessary to pursue chameleon carrier cases. FMCSA is pursuing several options to achieve a single standard, including providing input to Congress on a legislative proposal, monitoring chameleon carrier cases that could clarify the 2010 decision, and pursuing a separate rulemaking. Other constraints on FMCSA enforcement actions include a resource-intensive legal process, the inability to preclude carriers from obtaining multiple registration numbers, and low maximum fines.

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## Abbreviations

|       |   |
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| D&B   | Dun & Bradstreet                            |
| EIN   | Employer Identification Number              |
| FMCSA | Federal Motor Carrier Safety Administration |
| MCMIS | Motor Carrier Management Information System |
| NOC   | Notice of Claim                             |
| NTSB  | National Transportation Safety Board        |
| SSN   | Social Security Number                      |
| USDOT | U.S. Department of Transportation           |

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**United States Government Accountability Office**  
Washington, DC 20548

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March 22, 2012

The Honorable Patty Murray  
Chairman  
The Honorable Susan Collins  
Ranking Member  
Subcommittee on Transportation, Housing  
and Urban Development, and Related Agencies  
Committee on Appropriations  
United States Senate

The Honorable Tom Latham  
Chairman  
The Honorable John W. Olver  
Ranking Member  
Subcommittee on Transportation, Housing  
and Urban Development, and Related Agencies  
Committee on Appropriations  
House of Representatives

For years, some motor carriers have registered and been operating illegally in interstate commerce by using a new identity in an effort to disguise their former identity and evade enforcement actions issued against them by the Federal Motor Carrier Safety Administration (FMCSA)—the federal agency responsible for overseeing motor carrier safety. Such carriers are referred to as chameleon carriers and may include interstate passenger carriers (intercity and charter or tour bus operators), household goods carriers (hired by consumers to move personal property), or freight truck carriers (shippers of commercial goods).<sup>1</sup>

Chameleon carriers can pose risks to the public. For example, the carrier operating a bus involved in an August 2008 crash in Sherman, Texas, in which 17 passengers were killed and several others were injured, was found by the National Transportation Safety Board (NTSB) to be a

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<sup>1</sup>Using legal terminology, chameleon carriers are the corporate successor of a previous carrier that assumed a new identity in order to evade detection by FMCSA. However, not all motor carriers with a new identity are chameleons seeking to evade detection. Some motor carriers have legitimate reasons to transfer ownership, reincorporate, or both, such as divorce, death, relocation, or new business opportunities.

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chameleon carrier that FMCSA had ordered out-of-service 2 months earlier. Subsequent fatal bus crashes have intensified public scrutiny over passenger carriers and led FMCSA to focus its oversight efforts on passenger carriers that it suspects may be chameleons. FMCSA also recognized the need to strengthen its oversight of household goods carriers to protect consumers from unscrupulous operators.<sup>2</sup>

In a July 2009 report on chameleon carriers,<sup>3</sup> we found evidence suggesting that 20 passenger carriers were chameleons and referred about 500 freight and household goods carriers to FMCSA for further investigation.<sup>4</sup> These carriers had attempted to register with FMCSA in fiscal year 2007 or 2008, and each had submitted registration data that were similar to data submitted by another carrier that FMCSA had ordered out-of-service. We noted that FMCSA had taken steps to improve how it identified suspected chameleons among passenger and household goods carriers, including initiating a vetting program to examine new applications for operating authority, and was planning to expand its actions to other types of carriers if it could obtain the resources to do so.

Recognizing that chameleon carriers are often difficult to catch because they close down and reopen as new companies, you asked us to examine FMCSA's ongoing efforts to identify and pursue enforcement actions against chameleon carriers, including freight carriers. To do so, we addressed the following questions: (1) How prevalent are chameleon carriers? (2) How well are FMCSA's investigative programs designed to identify suspected chameleon carriers? (3) What constraints, if any, does FMCSA face in pursuing enforcement actions against suspected chameleon carriers?

To determine how prevalent chameleon carriers are, we analyzed registration information on all motor carriers from FMCSA's Motor Carrier

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<sup>2</sup>As we previously reported, FMCSA investigates thousands of complaints against interstate household goods carriers each year, including complaints about discrepancies between estimates and final charges, problems with the pickup and delivery of goods, and lost and damaged goods. See GAO, *Household Goods Moving Industry: Progress Has Been Made in Enforcement, but Increased Focus on Consumer Protection Is Needed*, [GAO-10-38](#) (Washington, D.C.: Oct. 30, 2009).

<sup>3</sup>GAO, *Motor Carrier Safety: Reincarnating Commercial Vehicle Companies Pose Safety Threat to Motoring Public; Federal Safety Agency Has Initiated Efforts to Prevent Future Occurrences*, [GAO-09-924](#) (Washington, D.C.: July 28, 2009).

<sup>4</sup>FMCSA is currently investigating some of these carriers.

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Management Information System, enforcement actions taken against carriers in its Enforcement Management Information System, and insurance information from its Licensing and Insurance databases. We used these databases to match registration data in key fields, such as company names, addresses, and phone numbers, between new applicant carriers and carriers with history in the industry. We analyzed data for new applicants from January 1, 2005, through December 31, 2010, against data for all carriers that had registered with FMCSA since June 1, 1974. To assess the reliability of these databases, we reviewed documentation on data collection efforts and quality assurance processes, talked with knowledgeable FMCSA officials about these data, and checked the data for completeness and reasonableness. We determined that the data were sufficiently reliable for describing this population of motor carriers and performing our data-matching analysis.

To determine how well FMCSA's investigative programs are designed to identify chameleon carriers, we reviewed federal motor carrier laws and safety regulations; federal internal control standards; related reports and statements published by GAO, NTSB, and the U.S. Department of Transportation's Office of Inspector General; documentation about FMCSA's applicant review processes and procedures, which FMCSA refers to as the vetting program; FMCSA policy memorandums on the new entrant safety assurance program and the monitoring of potential chameleon new entrant motor carriers; and FMCSA's Field Operations Training Manual. We also observed two new entrant safety audits—one in California of a new passenger carrier and the other in Virginia of a new freight carrier. Finally, to identify constraints FMCSA faces in pursuing enforcement actions against chameleon carriers, we reviewed federal motor carrier laws and regulations; GAO and other reports; FMCSA's summary and analysis of 50 states' corporate successor liability laws, which identified relevant case law and explained the legal standards currently used to determine corporate successor liability; and FMCSA decisions affecting FMCSA's enforcement authority, among other things. In addition, to address all of our objectives, we interviewed officials at FMCSA headquarters in Washington, D.C.; 4 regional service centers; and 10 selected division offices. We also interviewed law enforcement agencies in the 10 states whose division offices we had selected to understand how the agencies are involved in identifying or taking enforcement actions against chameleon carriers. We selected the 10 division offices and states primarily because they were the ones with the most registered interstate carriers. In addition, we interviewed NTSB officials, industry associations, and safety advocacy groups. For further details on our scope and methodology, see appendixes I and II.

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We conducted this performance audit from March 2011 to March 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

FMCSA's mission is to reduce injuries, fatalities, and the severity of crashes involving large commercial trucks and buses conducting interstate commerce.<sup>5</sup> With more than 1,000 staff members at headquarters, 4 regional service centers, and 52 division offices (one in each state, Washington, D.C., and Puerto Rico), FMCSA carries out this mission by administering and enforcing federal motor carrier safety and hazardous materials regulations<sup>6</sup> and by gathering and analyzing data on motor carriers, drivers, and vehicles, among other things. Division offices partner with state agencies to conduct a variety of motor carrier oversight activities carried out by certified auditors, inspectors, and investigators.<sup>7</sup> These oversight activities are funded by Motor Carrier Safety Assistance Program grants, which totaled about \$165 million in fiscal year 2010. FMCSA's total budget for fiscal year 2011 was approximately \$550 million.

The interstate commercial motor carrier industry is large and dynamic. According to Department of Transportation data, there were more than 500,000 active interstate carriers and intrastate hazardous materials carriers in 2010, including about 66,000 new carriers that applied to enter the industry.<sup>8</sup> The vast majority of these carriers apply as freight carriers. While the largest motor carriers operate upwards of 50,000 vehicles, 80 percent of

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<sup>5</sup>Commercial motor vehicles include those with a gross vehicle weight of at least 10,001 pounds, are designed or used to transport more than 8 passengers (including the driver) for compensation, are designed or used to transport more than 15 passengers (including the driver) and are not used to transport passengers for compensation, or are used in transporting hazardous material (see 49 U.S.C. § 31132).

<sup>6</sup>49 C.F.R. § 397.

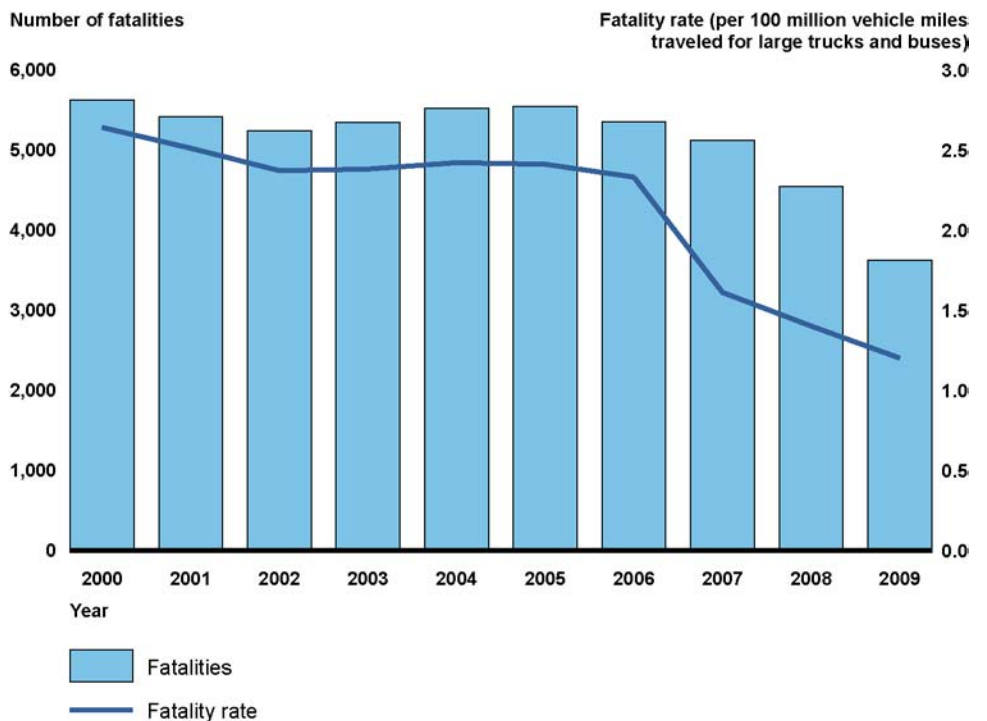
<sup>7</sup>State agencies include state highway patrols, departments of transportation, and public utility commissions.

<sup>8</sup>According to FMCSA, thousands of new applicants exit the industry for various reasons shortly after applying.



carriers are small—operating between 1 and 6 vehicles. Fatalities due to accidents involving large trucks (including vehicles operated by both freight and household goods carriers) and buses (operated by passenger carriers) generally declined from 2000 through 2009. FMCSA officials attributed the declines to actions taken by the federal government, the motor carrier industry, and safety groups. Fatalities and the estimated fatality rate for large trucks and buses are shown in figure 1. In 2009, more than 3,600 people were killed in crashes involving large trucks and buses.

**Figure 1: Large Truck and Bus Fatalities and Estimated Fatality Rate, 2000-2009**



Source: GAO analysis of Department of Transportation data.

Notes: Vehicle miles traveled (VMT) is an estimate of the number of miles large trucks and buses traveled. In 2007, the Federal Highway Administration updated its methodology for estimating VMT, which increased the VMT for large trucks and buses. This change contributed to a lower estimated fatality rate from 2007 to 2009 as compared to earlier years, but the estimated fatality rate was also lower in 2007 and 2008 when calculated under the old methodology (data required for this calculation were not available for 2009).

This figure includes data on all large trucks and buses, including interstate, intrastate and government owned vehicles, some of which are not regulated by FMCSA. In addition, for the purposes of this figure, buses are defined using a definition from the National Highway and Traffic Safety Administration, which are those vehicles designed to carry more than 10 passengers, including the driver (49 C.F.R. § 571.3).

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FMCSA oversees two main groups of interstate motor carriers: (1) private carriers, who run an internal trucking operation to support a primary business in another industry, such as a retail store chain, and (2) for-hire carriers that sell their trucking services on the open market. Private and for-hire motor carriers seeking to operate in interstate commerce must register once with FMCSA, and thereby obtain a U.S. Department of Transportation (USDOT) number—a unique identifier used for collecting and monitoring safety information acquired during audits, compliance reviews, inspections, and crash investigations. USDOT numbers are issued after carriers submit information about their business, such as the name of the business and the company’s officers, a mailing address, business and cell phone numbers, the tax number (employer identification number or social security number) used to identify the business entity, and other information.<sup>9</sup> For private carriers, this submission completes the registration process, and they can begin operating. In contrast, for-hire carriers must also obtain operating authority, which dictates the type of operation the carrier may run and the cargo it may carry.<sup>10</sup> In 2010, 36,209 private carriers registered and 29,421 for-hire carriers applied for operating authority with FMCSA.

Before the August 2008 bus crash in Sherman, Texas, FMCSA had no dedicated process to identify and prevent chameleon carriers from applying for and receiving operating authority. At that time, a carrier could take on a new identity by applying online for operating authority using the same information (business name, address, phone number(s), and company officer name(s), or other information) on file for the old carrier. FMCSA did not have a process to identify these applications and thus would have granted operating authority to an apparent new entrant after the carrier submitted the appropriate data.

Immediately after the Sherman crash, FMCSA established the vetting program to review each new application for operating authority submitted by for-hire passenger carriers. Subsequently, in April 2009, FMCSA

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<sup>9</sup>FMCSA is working to complete its Unified Registration System—an effort designed to consolidate data on operating authority and USDOT numbers and thereby make it harder for carriers to register for multiple USDOT numbers.

<sup>10</sup>Some for-hire carriers, called “exempt for-hire carriers,” are not required to obtain operating authority if they ship exempt cargo (e.g., livestock, fish, and unmanufactured agricultural commodities) or solely operate within a designated commercial zone, such as the Virginia-Maryland-Washington, D.C., metropolitan area (49 C.F.R. § 372.219).

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began to apply the vetting program to household goods carriers. Under this program, FMCSA conducts a two-step process:

- First, FMCSA uses a new applicant screening algorithm to electronically compare and match information contained in the carrier's application to data for poorly performing carriers dating back to 2003.<sup>11</sup> This match information is used by a dedicated team (called the vetting team) as indicators for further investigation.
- Second, the vetting team reviews each new for-hire passenger and household goods carrier's application for completeness and accuracy and takes additional steps to determine whether the applicant is a chameleon carrier. For example, the team compares information in the application to information available on the Internet, including a carrier's address; phone number; public filings with the state (e.g., articles of incorporation); and, if available, the company website. The vetting team also works with FMCSA division offices to take advantage of local officials' knowledge of individual carriers.

FMCSA's ability to vet for-hire motor carriers that apply for operating authority stems from the Secretary's statutory authority to withhold registration for operating authority from a carrier that does not meet federal safety fitness standards or is unwilling and unable to comply with all applicable statutes and regulations.<sup>12</sup> It does not have this authority to vet and, therefore, potentially reject the registrations of private carriers, which may begin to operate as soon as they receive a USDOT number.

If the computer-matching process or FMCSA division office review identifies a suspected chameleon carrier, FMCSA requests clarification

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<sup>11</sup>FMCSA developed a prototype of this algorithm in 2006 that field staff used to identify suspected household goods chameleon carriers. At the outset of the vetting program in August 2008, FMCSA revised the algorithm and began to use it to examine passenger chameleon carriers. In October 2011, FMCSA rolled out several revisions to this algorithm. Among other changes, FMCSA plans to enlarge the list of carriers that new applicants are matched against, from the 200,000 carriers that FMCSA believes have a reason to evade oversight to all 2.2 million motor carriers currently in the Motor Carrier Management Information System database. FMCSA also plans to expand the number of new applicants that are entered into the algorithm to include freight and private carriers, but does not plan to immediately expand the vetting program to systematically look at these types of carriers, as it does with for-hire passenger and household goods carriers.

<sup>12</sup>49 USC 13902(a)(4).

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from the applicant. If the carrier does not respond or the response indicates the applicant is attempting to become a chameleon carrier, FMCSA rejects the application. The entire vetting process, including the electronic matching and the application review, can take anywhere from a few weeks to more than 2 months depending on several factors, including how long it takes the applicant to respond to any FMCSA requests.

After a carrier registers for a USDOT number, FMCSA uses the new entrant safety assurance program to examine all new entrants registered to operate in interstate commerce—including all for-hire and private passenger, household goods, and freight carriers—and intrastate hazardous materials carriers.<sup>13</sup> Under this program, which began in 2003, carriers are required to undergo a safety audit within 18 months of obtaining a USDOT number and beginning interstate operations. The purpose of this audit is to determine whether carriers are knowledgeable about and compliant with applicable safety regulations.<sup>14</sup> In 2009, FMCSA added a set of six, yes/no questions to the safety audit designed to elicit information indicative of any connections with other carriers to help the certified auditors and investigators that conduct these audits identify potential chameleon carriers. At the end of the audit, a carrier may pass or fail. If the carrier fails the audit, the carrier may continue to operate, but must submit a plan for corrective action. Upon receiving written confirmation that it has failed the audit, a carrier has between 45 and 60 days to provide an acceptable response or request an administrative review of the safety audit findings before the new entrant registration is revoked and the carrier is no longer permitted to operate in interstate commerce.

FMCSA operates other programs that identify suspected chameleon carriers. For example, officials may identify suspected chameleon carriers during compliance reviews, which are in-depth examinations of carriers identified as high crash risks, or during roadside inspections of vehicles that include checks for compliance with driver and maintenance requirements.<sup>15</sup> FMCSA has also implemented a new safety oversight initiative—the Compliance, Safety, Accountability program—under which

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<sup>13</sup>49 C.F.R. § 385.307.

<sup>14</sup>FMCSA and state officials conducted almost 33,000 safety audits in fiscal year 2010.

<sup>15</sup>In fiscal year 2010, FMCSA and state officials conducted about 15,000 compliance reviews and 3.6 million roadside inspections.

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it plans to introduce several new investigative programs, including targeted roadside inspections, off-site investigations, and on-site focused investigations.<sup>16</sup> Like compliance reviews and roadside inspections, these new oversight programs may identify a suspected chameleon carrier during either a review or a follow-up review or inspection initiated to gather additional evidence on the carrier.<sup>17</sup>

Identifying a suspected chameleon carrier is the first step in determining whether the carrier is attempting to conceal its identity. FMCSA and state officials then conduct an investigation. When federal or state investigators or auditors first suspects that a carrier may be a chameleon, they work with officials in one of FMCSA's 52 division offices and attorneys in four regional service centers to gather evidence and assemble the documentation needed to demonstrate that a new carrier is the same entity as a prior carrier and is attempting to evade a prior FMCSA enforcement action or a poor safety record. After gathering as much information as possible, a division office provides the evidence to a regional service center, where FMCSA attorneys decide whether to initiate a legal process in order to prove that the new carrier is responsible for the actions of the prior carrier (referred to as "corporate successor liability").<sup>18</sup> As part of their evaluation, the attorneys assess the strength of

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<sup>16</sup>As of September 2011, FMCSA had partially implemented these new oversight programs, but has delayed plans to implement off-site investigations and cooperative safety plans nationwide. We recently reported on the Compliance, Safety, and Accountability program and the extent to which FMCSA has implemented these new oversight programs. See GAO, *Motor Carrier Safety: More Assessment and Transparency Could Enhance Benefits of New Oversight Program*, [GAO-11-858](#) (Washington, D.C.: Sept. 29, 2011).

<sup>17</sup>In addition to these programs, FMCSA's Performance and Registration Information Systems Management program provides grants to states that allow state motor vehicle departments to prevent out-of-service carriers from registering or reregistering vehicles (49 USC 31106(b)). These grants enable the motor vehicle administration in the state where a vehicle is registered to check the safety status of the motor carrier, using the carrier's USDOT number and the vehicle identification number, before issuing or renewing the carrier's vehicle registration. For more information on this program, see our recent report on this program: GAO, *Motor Carrier Safety: Commercial Vehicle Registration Program Has Kept Unsafe Carriers from Operating, but Effectiveness Is Difficult to Measure*, [GAO-09-495](#) (Washington, D.C.: May 12, 2009).

<sup>18</sup>From 2006 until 2009, FMCSA tried to apply a federal legal standard to demonstrate corporate successor liability, but an administrative decision in 2010 created uncertainty about whether a federal standard or a state standard should be used. This uncertainty led to changes in FMCSA's approach to enforcement against suspected chameleon carriers, which we discuss later in this report.

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the evidence and give highest priority to those cases involving carriers with serious safety violations. If the attorneys determine that the evidence for a chameleon carrier case is insufficient, FMCSA does not pursue the case and the carrier continues its operations. The carrier is only recognized as a chameleon once FMCSA proves that the carrier is a chameleon based on the applicable legal standard or a carrier admits it created a new identity to evade detection.

Once FMCSA gathers the necessary evidence against a chameleon, FMCSA issues a notice of claim to tie the history of the chameleon carrier to that of its predecessor. The notice of claim may include several enforcement actions, including ordering a carrier to cease operations—called out-of-service orders—for safety violations and failure to pay civil penalties. For example, one of the fines FMCSA assesses on chameleon carriers is for evading regulations, which ranges from \$200 to \$500 for the first violation and \$250 to \$2,000 for any subsequent violation, as established by regulation.<sup>19</sup> FMCSA may assess higher civil penalties for carriers that are proven chameleons and can assess any unpaid penalties of the predecessor carrier to the successor carrier.

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<sup>19</sup>49 C.F.R. Part 386, appendix B.

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## FMCSA Does Not Determine the Prevalence of Chameleon Carriers; Our Analysis Found More than 1,100 New Applicant Carriers with Chameleon Attributes in 2010

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### FMCSA Cannot Readily Determine the Number of Chameleon Carriers

FMCSA does not determine the prevalence of chameleon carriers because doing so would require extensive investigation of the tens of thousands of new applicants that register with FMCSA each year and, in some cases, the completion of a legal process. However, FMCSA, state enforcement officials, and industry and safety association representatives we interviewed offered general, varying impressions of the number of chameleon carriers in the motor carrier industry. For example, a number of FMCSA and state officials with whom we spoke believed that while the number of chameleon carriers is a relatively small proportion of new entrant carriers, it is also a serious or growing problem. In addition, groups of officials from Florida, Georgia, Illinois, and North Carolina stated that chameleon carriers are either a serious or a growing problem that they encounter regularly.

Given the volume of new applicants and the necessary resources to investigate them, FMCSA uses the vetting program to focus its review of new applicants on two groups of carriers—for-hire passenger and household goods carriers. FMCSA has chosen to vet all applicants in these groups for two reasons: (1) according to officials, these two groups pose higher safety and consumer protection concerns than other carrier groups and (2) it does not have the resources to vet all new carriers and these two groups present a manageable number. As part of the vetting program, FMCSA uses registration data to compare information for every applicant in these two groups to information from previously registered carriers to identify any matches. Officials use these results to inform decisions about whether to grant operating authority to the applicants.

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According to FMCSA, however, data analysis by itself cannot positively identify chameleon carriers that are purposefully trying to evade oversight; matches do not always signify an issue. For example, vehicle data can match when new carriers legitimately have purchased and are using vehicles that were once owned by other carriers. Company names also can match when carriers independently selected the same name. Therefore, while data analysis is a helpful tool, FMCSA must conduct further investigation to determine the reasons for an apparent relationship between carriers and, unless the carrier admits to being a chameleon, undertake a legal process to determine whether the carrier is a chameleon. (Our assessment of the processes used to demonstrate a carrier is a chameleon is discussed later in this report.)

While FMCSA's exclusive focus on passenger and household goods carriers limits the vetting program to a manageable number, it does not account for the risk presented by chameleon carriers in the other groups that made up 98 percent of new applicants in 2010. In our view, data analysis can be used to target other types of new applicants—including freight carriers—that are more likely to be chameleons for further investigation as they register or apply for operating authority.<sup>20</sup> While FMCSA only has statutory authority to accept or reject applications of for-hire motor carriers, examining all new applicant carriers, including private carriers, as they register for a USDOT number with FMCSA is important to provide officials with information about all carriers subject to their oversight activities. FMCSA and other federal agencies use data analysis to target entities or items with certain risk factors. Specifically, FMCSA uses state inspection and other data to identify carriers with a poor safety record for follow-up reviews. In addition, the Department of Homeland Security uses a targeting strategy, which includes a computerized model, to help select imported containers for additional review, inspection, or

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<sup>20</sup>FMCSA has used data analysis to target which carriers to investigate as possible chameleons, including carriers belonging to groups other than the two it currently focuses on, but it does not do so regularly. Twice over the past few years, FMCSA has applied the new applicant screening algorithm used during the vetting program to target a population of possible chameleon carriers for further investigation. However, officials that use the new applicant screening algorithm regularly told us the scoring method FMCSA officials used in these two instances to target possible chameleon carriers is not reliable because these scores would often incorrectly indicate a carrier was related to other carriers, or, alternatively, not identify carriers that were related to other carriers. FMCSA removed this scoring method from its algorithm in November 2011.



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both.<sup>21</sup> Regularly using data analysis for targeting new applicants would allow FMCSA to expand its examinations of newly registered carriers to include new applicants of all types using few or no additional staff resources, as discussed in the next section of this report. As we have previously reported, federal agencies need to assess the risks they face to determine the most effective allocation of federal resources, including how best to distribute resources for investigative and enforcement-related activities.<sup>22</sup>

To demonstrate that it is possible to use data analysis to target new applicants for further investigation, we developed a method and applied it to FMCSA data to identify carriers with chameleon attributes. We defined such carriers as those that met two criteria:

1. They submitted registration information that matched information for a previously registered carrier.<sup>23</sup>
2. The previously registered carrier had a motive for evading detection. We use the term “motive” to describe carriers that had a history of safety violations or filed for bankruptcy that might motivate a carrier to become a chameleon carrier.<sup>24</sup>

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<sup>21</sup>For more information on this model see our report, GAO, *Homeland Security: Preliminary Observations on Efforts to Target Security Inspections of Cargo Containers*, [GAO-04-325T](#) (Washington, D.C.: Dec. 16, 2003).

<sup>22</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999). These standards, issued pursuant to the requirements of the Federal Managers' Financial Integrity Act of 1982 (31 USC 3512), provide the overall framework for establishing and maintaining internal control in the federal government. Office of Management and Budget Circular No. A-123 (revised), *Management's Responsibility for Internal Control* (Dec. 21, 2004). See also, GAO, *Federal Lands: Adopting a Formal, Risk-Based Approach Could Help Land Management Agencies Better Manage Their Law Enforcement Resources*, [GAO-11-144](#) (Washington, D.C., Dec. 17, 2010).

<sup>23</sup>The degree of match between the two carriers' registration information had to exceed a defined threshold. For more information on how we identified motor carriers with attributes of chameleon carriers, see appendix II.

<sup>24</sup>For our analysis, motive included at least one of the following: involved in a severe crash, fined by FMCSA, or issued an out-of-service order, an imminent hazard order, or an unsatisfactory or unfit rating by FMCSA. These data elements were selected based on discussions with FMCSA officials indicating that they are possible reasons that a carrier might decide to become a chameleon carrier and on data elements FMCSA used for creating a list of poor performing carriers within its New Applicant Screening algorithm.

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These criteria are similar to those FMCSA uses during the electronic matching step in the current vetting process for for-hire passenger and household goods carriers. However, we applied our method to all carriers and established a threshold for selecting new applicants for further investigation, whereas FMCSA limits its electronic matching to for-hire passenger and household goods carriers and does not have a mechanism or threshold for determining which new applicants to investigate further because it vets all the carriers in these two groups. An example of a carrier that met our criteria was a 2009 new applicant that had submitted registration information with the same company name, company officer, and phone number as a previously registered carrier that had been in a crash and ordered out-of-service by FMCSA. An example of a carrier that did not meet our criteria was a 2008 new applicant that matched a previously registered carrier on six different pieces of information—address, company name, company officer, Dun & Bradstreet number (a unique nine-digit number used to identify a business location), employer identification number, and phone number—but the previously registered carrier did not have a motive for evading detection, as defined by our criteria for this analysis. Because we were interested in demonstrating a method of targeting new applicants as they registered or applied for operating authority, and not specifically in counting the number of chameleons that might currently be operating, we did not attempt to exclude carriers that never operated or ceased to operate after they registered with FMCSA. This approach is consistent with the purpose of our analysis, which was to provide an objective, efficient means of identifying carriers that may warrant additional investigation as they enter the motor carrier industry, not specifically to identify chameleon carriers. For a detailed discussion of our data analysis method, see appendix II.

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### Our Analysis Identified More than 1,100 New Applicant Carriers with Chameleon Attributes in 2010

Through our data analysis, we identified 1,136 new applicant carriers with chameleon attributes in 2010—an increase from 759 in 2005. During this 6-year period, carriers with chameleon attributes accounted for about 1.7 percent of the approximately 326,000 new applicants that registered and were subject to FMCSA oversight activities.<sup>25</sup> Of the carriers with chameleon attributes, freight carriers made up about 94 percent,

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<sup>25</sup>Our analysis only examined new applicants over which FMCSA has oversight authority—interstate carriers and intrastate hazardous materials carriers.

passenger carriers about 3 percent, household goods carriers about 2 percent, and carriers with authority to operate multiple carrier types (any combination of freight, passenger, and household goods) less than 1 percent. These percentages remained fairly stable over the 6-year period. Because freight carriers represented the majority of carriers, they showed the largest numerical increase of carriers with chameleon attributes, from 724 carriers with chameleon attributes in 2005 to 1,082 such carriers in 2010. (See table 1.)

**Table 1: Number and Percentage of New Applicants with Chameleon Attributes by Carrier Type, 2005 through 2010**

| Type of motor carrier <sup>a</sup>                    | Year          |               |               |               |               |               |
|---|---------------|---------------|---------------|---------------|---------------|---------------|
|   | 2005          | 2006          | 2007          | 2008          | 2009          | 2010          |
| Freight   | 724           | 834           | 836           | 907           | 946           | 1,082         |
| Passenger   | 19            | 24            | 36            | 27            | 37            | 27            |
| Household goods                                       | 12            | 14            | 17            | 23            | 22            | 21            |
| Multiple operating authorities <sup>b</sup>           | 4             | 5             | 6             | 8             | 3             | 6             |
| <b>Total</b>  | <b>759</b>    | <b>877</b>    | <b>895</b>    | <b>965</b>    | <b>1,008</b>  | <b>1,136</b>  |
| <b>Total number of all new applicants<sup>c</sup></b> | <b>49,232</b> | <b>50,170</b> | <b>54,581</b> | <b>51,219</b> | <b>55,404</b> | <b>65,631</b> |
| Percentage with chameleon attributes                  | 1.5%          | 1.7%          | 1.6%          | 1.9%          | 1.8%          | 1.7%          |

Source: GAO analysis of FMCSA data.

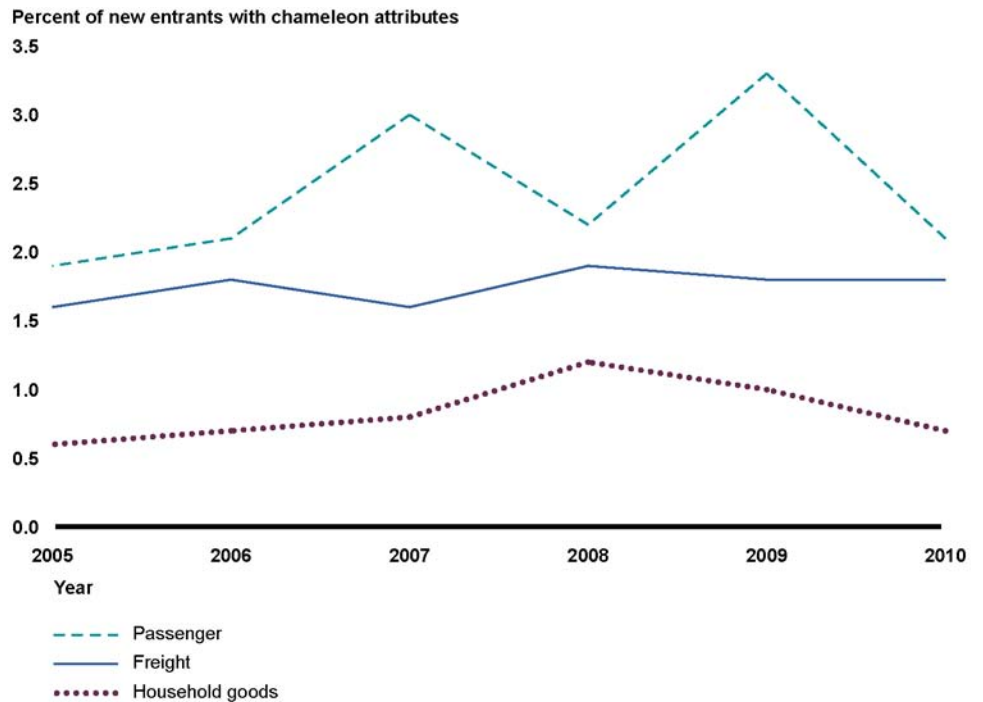
<sup>a</sup>Each type of motor carrier includes both for-hire and private carriers.

<sup>b</sup>These carriers had authority to conduct a combination of freight, passenger, and household goods operations.

<sup>c</sup>Total number of new applicants includes those over which FMCSA has oversight authority—interstate carriers and intrastate hazardous materials carriers.

Although freight carriers accounted for 94 percent of the carriers with chameleon attributes that we identified, freight carriers also made up about the same percentage of all new applicants (about 93 percent). When we looked at the rates at which carriers of different types had chameleon attributes, we found that passenger carriers were more likely to have chameleon attributes than were carriers of other types. Specifically, over the 6-year period from 2005 through 2010, the percentage of new applicant passenger carriers with chameleon attributes was higher in every year (ranging from 1.9 to 3.3 percent) than the percentages for freight carriers (ranging from 1.6 to 1.9 percent) and household goods carriers (ranging from 0.6 to 1.2 percent). (See fig. 2.)

**Figure 2: Carriers with Chameleon Attributes as a Percentage of New Applicants by Carrier Type, 2005 through 2010**



Source: GAO analysis of FMCSA data.

Note: We did not include carriers with multiple operating authorities in this figure.

One concern with our approach, which FMCSA raised in connection with our data-matching efforts as well as its own, is that the matching may not give an accurate picture of the total number of chameleon carriers for two reasons. First, data matching could identify carriers that have legitimate business reasons for registering a new company that appears to be related to an older one, and second, similar or even identical registration information may inadvertently or coincidentally be submitted by unrelated companies. We were able to address this concern in part by analyzing data about whether an older carrier had a motive to evade detection—information that we and FMCSA believe indicates that a new carrier is more likely to be a chameleon. In particular, we looked at the relative likelihood that an old carrier with and without a motive would match a new applicant. If data matches were only the result of carriers having legitimate business reasons for assuming a new identity or coincidental similarities in registration information, then we would expect old carriers with a motive to be no more likely to match new applicants than old carriers without a motive. In fact, however, we found that old carriers with a motive were roughly twice as likely to match a new

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applicant in 2009 or 2010 as were carriers without a motive.<sup>26</sup> This suggests that the data-matching component of our analysis was effective in detecting carriers with chameleon attributes and not just carriers with legitimate reasons to assume new identities or coincidental similarities to previously registered carriers.

While this test demonstrates that our method identified carriers with a motive to evade detection, further investigation would be needed to confirm whether any of the carriers on our list of carriers with chameleon attributes actually are chameleons. We believe using the two criteria of matching registration information and a motive to evade detection provides a sound basis for targeting. Using a risk-based, data-driven approach such as the one we outline would allow FMCSA to use available resources to target all types of carriers, including freight, and then periodically evaluate the effectiveness of the methodology and adjust its method based on the outcomes of follow-up investigations. Without such a method, FMCSA cannot target a manageable group of new applicant carriers of all types for investigation and possible enforcement action, an important caveat given FMCSA's staffing levels.

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## Carriers with Chameleon Attributes Present High Safety Risks

The carriers we identified as having chameleon attributes presented high safety risks relative to new applicants without these attributes. Through our analysis, we found that crashes involving carriers with chameleon attributes resulted in 217 fatalities and 3,561 injuries from 2005 through 2010.<sup>27</sup> Moreover, 2005 through 2010 new applicants with chameleon attributes were three times more likely than all other new applicant carriers to later be involved in a severe crash—one in which there was a fatality or injury. As table 2 shows, 18 percent of carriers with chameleon attributes were involved in a severe crash at some point between their time of registration and the end of 2010, compared with 6 percent of new applicant carriers without these attributes. In addition, carriers with chameleon attributes were three times more likely than all other new

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<sup>26</sup>This difference in likelihood between carriers with a motive and those without depended on the particular threshold match score that was used. We tested a range of match score thresholds, identifying matches with new applicant in 2009 and 2010, and results were statistically significant in all cases. For more detail on the methods used in this matching analysis, see appendix II.

<sup>27</sup>The goal of our analysis was not to assess the effectiveness of FMCSA actions to reduce safety risks over this 6-year period.

applicant carriers to be assessed a fine by FMCSA for violating safety regulations. Specifically, 6 percent of carriers with chameleon attributes were assessed a fine at some point between their time of registration and the end of 2010, compared with 2 percent of the rest of the new applicant population. However, carriers with chameleon attributes were less likely than all other new applicants to be placed out-of-service for safety violations by FMCSA during this same period.

**Table 2: New Applicant Carriers with and without Chameleon Attributes That Were Involved in a Severe Crash, Assessed a Fine, or Placed Out-of-Service, 2005 through 2010**

| Number of new applicant carriers    | Total          | Involved in a severe crash |         | Assessed a fine |         | Placed out-of-service |         |
|-------------------------------------|----------------|----------------------------|---------|-----------------|---------|-----------------------|---------|
|                                     |                | Number                     | Percent | Number          | Percent | Number                | Percent |
| <i>With</i> chameleon attributes    | <b>5,640</b>   | 996                        | 18%     | 349             | 6%      | 415                   | 7%      |
| <i>Without</i> chameleon attributes | <b>320,597</b> | 18,838                     | 6       | 7,257           | 2       | 33,760                | 11      |

Source: GAO analysis of FMCSA data.

Note: The numbers in this table represent carriers that registered as new applicants in the years 2005 through 2010. We assessed whether, after registering, the carrier was involved in a severe crash, assessed a fine, or placed out-of-service. A single carrier could have been involved in a crash, assessed a fine, and placed out-of-service.

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## FMCSA's Investigative Programs Are Not Well Designed to Identify Chameleon Carriers across All New Applicants

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### Vetting Program Is Designed to Identify Chameleon Carriers but Is Neither Comprehensive nor Risk-Based

FMCSA's vetting program, established in August 2008 immediately following the Sherman, Texas, bus crash, is designed to assess the ability of an applicant for new operating authority to comply with FMCSA motor carrier safety regulations and, in part, to determine whether the new applicant may be a chameleon carrier.<sup>28</sup> The program—which is FMCSA's primary effort to identify chameleon carriers—is labor-intensive, according to officials, requiring detailed reviews of each application, national consumer complaint database queries, and outreach to division offices to obtain additional information about new applicants. Carriers that make it through the vetting process having met FMCSA's standards for fitness, willingness, and ability to comply with all applicable federal statutes and regulations are granted operating authority. Reasons for denying operating authority include an assessment that a new applicant may be a chameleon carrier.

Although the vetting program is labor-intensive, it is effective because it allows FMCSA to evaluate a carrier's potential for compliance, including any indicators that the carrier may be a chameleon, before the carrier obtains operating authority. At this time the burden is on the carrier to provide FMCSA with any information it needs to evaluate the carrier's application, and FMCSA can withhold operating authority from a carrier that it suspects of being chameleon. After a carrier obtains operating authority, however, FMCSA is required to gather evidence and prove that the carrier is a chameleon—a process that calls for significantly more resources, as discussed later in this report. Therefore, as FMCSA officials and safety advocates have observed, it is more effective for FMCSA to

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<sup>28</sup>49 U.S.C. § 13902.

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identify chameleon carriers up front through vetting than it is to pursue them after they have obtained operating authority.

FMCSA recognizes the benefits of identifying chameleon carriers early, before they obtain operating authority. However, FMCSA officials stated they do not have the resources to vet all for-hire carriers that apply for new operating authority. Therefore, as noted, FMCSA focuses the vetting program on for-hire passenger and household goods carriers, which together account for about 2 percent of the approximately 66,000 new applicant carriers in 2010. FMCSA has selected these two types of carriers because it sees the chameleons among them as presenting risks to consumers. Specifically, crashes involving unsafe passenger carriers, such as the Sherman bus crash, may have multiple fatalities. In addition, passenger carriers with safety violations have a motive to become chameleon carriers to conceal their history of violations from consumers, as well as from FMCSA. Similarly, unscrupulous household goods carriers that have defrauded consumers, such as by holding their property hostage until they have paid more than agreed to have their property delivered, have a reason to become chameleon carriers to avoid association with complaints from defrauded consumers. Having a statutory consumer protection responsibility<sup>29</sup>, FMCSA vets every for-hire passenger and household goods carrier so that consumers will have greater assurance when they buy bus tickets or contract with movers that the carriers they are dealing with are safe, honest, and comply with FMCSA regulations.

From August 2008 through May 2011, FMCSA vetted 5,777 for-hire passenger and household goods carriers. Table 3 shows the results of FMCSA's vetting program, including the number of carriers that were approved or rejected, withdrew, or switched their application to operate as a freight carrier rather than a household goods carrier. FMCSA officials believe, but cannot be certain, that some of these carriers withdrew or switched their application to avoid the vetting program.

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<sup>29</sup>Pub.L. No. 104-88, Sec.101.



**Table 3: Results of FMCSA’s Vetting of New For-Hire Passenger and Household Goods Carrier Applicants from August 13, 2008, through May 18, 2011**

| Type of carrier | Total        | Approved     | Rejected <sup>a</sup> | Withdrew   | Switched to freight carrier application |
|-----------------|--------------|--------------|-----------------------|------------|---|
| Passenger       | 2,775        | 2,075        | 657                   | 43         | Not applicable                          |
| Household goods | 3,002        | 1,173        | 751                   | 551        | 527                                     |
| <b>Total</b>    | <b>5,777</b> | <b>3,248</b> | <b>1,408</b>          | <b>594</b> | <b>527</b>                              |

Source: FMCSA.

<sup>a</sup>FMCSA may reject an application because a carrier failed to respond to an information request or investigative inquiry. FMCSA may also reject an application because after evaluating all of the evidence submitted by a carrier, it has determined that the carrier is unfit, unwilling, and unable to comply with all applicable statutes and regulations. This type of rejection could be based on a determination that the applicant may be a chameleon carrier, or it could be based on the applicant’s safety record, including evidence that the carrier has been operating without authority.

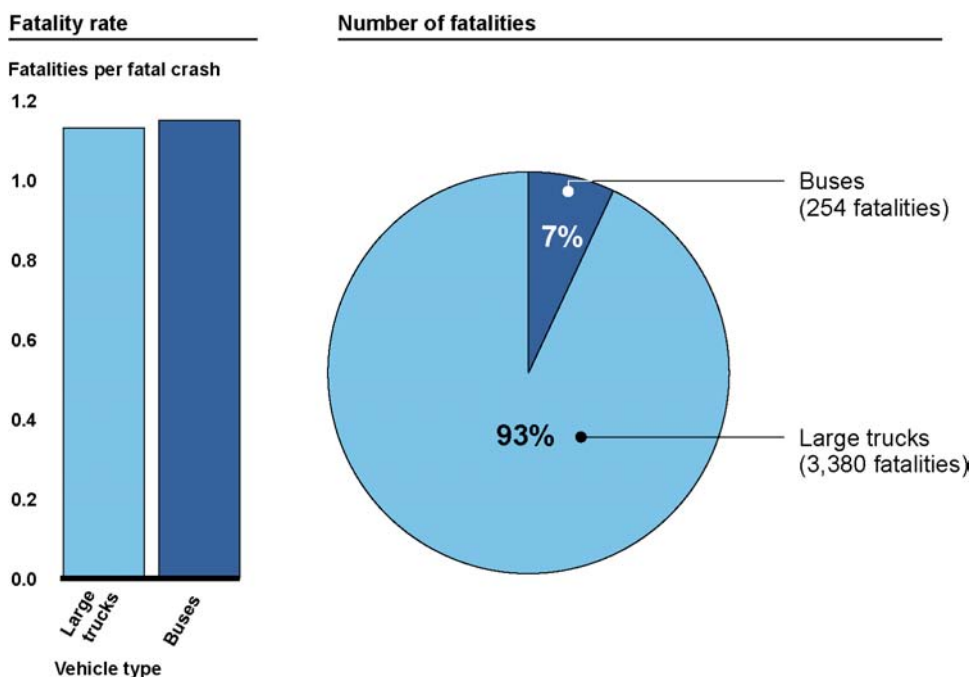
FMCSA officials credit the vetting program with helping to prevent and deter unsafe for-hire passenger and household goods carriers, which can include potential chameleon carriers, from obtaining operating authority. However our analysis found that the vast majority of passenger and household goods carriers do not have chameleon attributes and therefore FMCSA is using the majority of its program resources to vet carriers that may not represent a higher risk of being chameleons. At the same time, the current vetting program excludes 98 percent of all new applicants, such as all freight carriers as well as private passenger carriers.<sup>30</sup> Moreover, according to our analysis, freight carriers present safety risks that are as great as or greater than those presented by passenger carriers. As discussed, freight carriers made up 94 percent of the carriers we identified with chameleon attributes from 2005 through 2010,<sup>31</sup> and carriers with chameleon attributes were about three times more likely than all other new applicants to be involved in a severe crash or to be assessed a fine by FMCSA for a safety violation. In addition, according to 2009 Department of Transportation crash data, the number of fatalities per fatal crash is nearly the same for large trucks (1.13) as for buses (1.15), even though buses have more occupants. Furthermore, the number of people who died in

<sup>30</sup>As previously mentioned, according to FMCSA, it does not have the statutory authority to vet private carriers.

<sup>31</sup>For-hire freight carriers comprise 65 percent of carriers with chameleon attributes and private freight carriers comprise 29 percent of carriers with chameleon attributes, over this same time period. According to FMCSA, it does not have the authority to vet private carriers.

truck crashes in 2009 (3,380) is more than 13 times greater than the number who died in bus crashes (254). (See fig. 3).

**Figure 3: Large Truck and Bus Fatalities Rates and Total Number of Fatalities, 2009**



Source: GAO analysis of Department of Transportation data.

As previously noted, federal agencies must assess the risks they face to determine the most effective allocation of federal resources, including the best distribution of resources for enforcement-related activities. Other federal organizations have reviewed the vetting program and recommended that FMCSA (1) show the program is effective and (2) use a risk-based approach to target its limited resources before expanding the program to all new freight carrier applicants. First, NTSB recommended that FMCSA add a performance evaluation component to the vetting program to show whether the new applicant screening algorithm is effectively preventing carriers with a history of evading safety requirements from continuing to operate.<sup>32</sup> FMCSA agreed with this recommendation and is working to implement it. The results of the vetting

<sup>32</sup>National Transportation Safety Board, Safety Recommendation H-09-21, November 19, 2009.

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program appear to indicate that it has value in preventing many carriers from obtaining operating authority, but its effectiveness remains to be determined. As our presentation of FMCSA's data in table 3 shows, 1,408 of the 5,777 applicants for new operating authority were rejected and another 594 withdrew their applications.

Second, the Department of Transportation's Inspector General reported that expanding the vetting program to include freight carriers would require a risk-based approach, since FMCSA has limited resources to examine all new applicants.<sup>33</sup> Our analysis suggests that a risk-based approach would allow such an expansion with few or no additional staff resources. Specifically, with six dedicated specialists, FMCSA vetted, on average, 175 for-hire passenger and household goods carriers per month from August 13, 2008, through May 18, 2011 (5,777 carriers divided by 33 months). Expanding the program to include all the freight carriers with chameleon attributes that we identified using our data-driven, risk-based approach would require FMCSA to vet, on average, an additional 74 freight carriers per month (5,329 freight carriers divided by 72 months), or a total of 249 carriers per month. If, for example, six specialists can vet an average of 175 carriers per month, or about 29 carriers per specialist, then eight to nine specialists (or two to three more specialists) should reasonably be expected to vet 249 carriers per month, on average, including all the passenger and household goods carriers that FMCSA currently vets, plus the freight carriers we identified with chameleon attributes. Alternatively, if FMCSA were to modify its current program and vet only carriers with chameleon attributes identified through data analysis, it could vet all passenger, household goods, and freight carriers with chameleon attributes using fewer specialists than it now uses. FMCSA officials stated that, given the safety risks associated with passenger carriers, they would be unwilling to exclude any of them from the vetting program. Yet no matter which approach FMCSA takes to vetting passenger carriers, the use of data analysis would allow it to expand the vetting program to include freight carriers with chameleon

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<sup>33</sup>The Department of Transportation, Office of Inspector General. *FMCSA Is Strengthening Motor Carrier Safety Oversight, But Further Action and Attention Are Needed*, Statement for the Record: Hearing before the Committee on Commerce, Science and Transportation, Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety and Security, United States Senate (Washington, D.C., July 21, 2011).

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attributes and give FMCSA an early opportunity to detect and deny operating authority to freight carriers that pose safety risks.

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**New Entrant Safety Assurance Program Audit Includes Questions Designed to Help Identify Chameleon Carriers but Does Not Provide Related Guidance**

Newly registered motor carriers, including those that were vetted, are required to enter the new entrant safety assurance program and undergo a safety audit. This audit is mainly designed to educate new entrant carriers about federal motor carrier safety regulations, ensure they are able to comply with these regulations, and require them correct any deficiencies before continuing to operate.<sup>34</sup> The audit now includes a set of six, yes/no questions that FMCSA added to the audit in 2009 to help auditors elicit information from new entrants about connections they may have with other carriers—a characteristic of chameleon carriers.<sup>35</sup> These questions provide a cursory review of new entrants with regards to whether they may be chameleon carriers.

The new entrant safety assurance program provides the first opportunity for FMCSA to assess freight and private passenger carriers, which are not currently vetted. The program does not, however, allow FMCSA to deny the new entrant registration of a carrier simply because it suspects that the carrier may be a chameleon. Instead, freight and private passenger carriers acquire provisional registration when they submit new entrant applications to FMCSA, often months before they undergo a safety audit, and it is not as easy for FMCSA to prevent them from operating as it is to deny operating authority to for-hire passenger and household goods carriers through the vetting program.<sup>36</sup> FMCSA can place new entrant carriers out-of-service for at least 1 of 16 safety violations, but not because it suspects the carrier of being a chameleon.<sup>37</sup>

According to representatives responsible for safety audits in the states we contacted, the set of six, yes/no questions added to the safety audit helps raise new staff awareness of chameleon carriers and reminds more

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<sup>34</sup>At a minimum, the safety audit covers driver qualifications, driver duty status, vehicle maintenance, accident register, and controlled substances and alcohol use and testing requirements.

<sup>35</sup>These questions are law enforcement sensitive and not available for public release.

<sup>36</sup>All new entrants operating in interstate commerce must undergo a safety audit within 18 months.

<sup>37</sup>49 C.F.R. § 385.321.

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experienced staff to watch for them. Yet, they said the questions may not help them identify chameleon carriers because there is little guidance on how to use the questions. Specifically, FMCSA's electronic Field Operations Training Manual—a guide that helps to standardize audits across all states and includes law enforcement best practices—provides instructions for staff to follow when conducting the safety audit, but contains no guidance for these questions, even though it includes guidance for all other questions asked during the audit. According to FMCSA, the computer application used during the safety audit—called SENTRI—provides some guidance on what constitutes an affiliation with another carrier and how to document responses to these questions. However, this guidance does little to help staff distinguish legitimate carriers from chameleons, does not provide follow-up questions that could help them make this distinction, and does not require them to collect any evidence that could be used during the enforcement process at a later date. As a result, staff lack direction on how to use the yes/no questions to distinguish a chameleon from a legitimate carrier, what follow-up questions to ask when carriers provide information, what documents to request from a suspected chameleon carrier, and how to document suspicions in the safety audit report that a carrier may be chameleon. The representatives told us the lack of guidance on how to use the questions made it difficult to distinguish chameleon from legitimate carriers. For example, according to representatives of Pennsylvania's Bureau of Transportation and Safety, an auditor could mistakenly flag one carrier as a suspected chameleon for leasing vehicles from another carrier when the leasing can be a legitimate business transaction between the two companies. Florida Highway Patrol officers commented that a question about whether a carrier was affiliated with another was not useful because corporate officers may have legitimate professional associations with other corporate officers of other carriers. According to federal internal control standards, federal agencies, such as FMCSA, are to develop and clearly communicate guidance that flows from agency priorities.<sup>38</sup> Without guidance for staff on how to use the six yes/no questions related to identifying chameleon carriers, FMCSA cannot ensure that the new entrant program will effectively identify such carriers. In commenting on

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<sup>38</sup>See [GAO/AIMD-00-21.3.1](#). These standards, issued pursuant to the requirements of the Federal Managers' Financial Integrity Act of 1982, provide the overall framework for establishing and maintaining internal control in the federal government. Office of Management and Budget Circular No. A-123 (revised), incorporated the GAO internal control requirements.

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our findings, FMCSA stated that as part of a larger effort to improve the new entrant program, it is reviewing the questions used to detect chameleon carriers during the safety audit process, which is where FMCSA believes the best impact can be made. In addition, FMCSA plans to ensure that all the questions are clear, including those used to identify chameleon carriers, and auditors understand how to answer them properly in order to obtain the best information. According to FMCSA, these efforts are to be completed by summer 2012, and will include associated guidance and training for all new entrant auditors.

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### Other Investigative Programs May Incidentally Identify Chameleon Carriers

Once a motor carrier passes FMCSA's new entrant safety audit, no other federal investigative program is specifically designed to identify chameleon carriers, including compliance reviews and roadside inspections, which are typically used to examine high-risk carriers. Compliance reviews examine carriers that have been identified as high crash risks through an assessment of accident reports or safety performance records. Roadside inspections check carriers for compliance with driver and vehicle maintenance requirements. Neither of these investigations is designed to identify chameleon carriers, but can incidentally lead to identifying such carriers. For example, safety investigators conducting compliance reviews or roadside inspectors have identified chameleon carriers because they happened to see documentation (e.g., a driver's hours-of-service logbook or vehicle maintenance records) labeled with another carrier's name, noticed the vehicle marked with another carrier's name or USDOT number under a coat of fresh paint, or recognized a suspected chameleon carrier in the local area. During one roadside inspection in Florida, an inspector noticed a freight truck displaying a makeshift cardboard sign with the carrier's name written in magic marker. The crude sign, along with the driver's suspicious behavior, led the inspector to notify FMCSA, which determined the carrier was a suspected chameleon carrier. While such evidence may alert investigators to possible chameleon carriers, New York officers said that it is difficult to identify potential chameleon carriers during roadside inspections because drivers may not carry the documentation inspectors need to evaluate a carrier's legitimacy.

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## FMCSA Faces Several Constraints in Pursuing Enforcement Actions against Suspected Chameleon Carriers

FMCSA faces several constraints in pursuing enforcement actions against suspected chameleon carriers. As a result of a 2010 decision by an FMCSA Assistant Administrator, it is not clear whether a state or a federal legal standard should be used by FMCSA to demonstrate that a carrier is a chameleon. This uncertainty can lead to differing enforcement actions across states and has increased the time necessary to pursue chameleon carrier cases. Other constraints include a resource-intensive legal process and limitations in FMCSA's enforcement authorities. FMCSA is pursuing options to address these constraints.

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## FMCSA Is Constrained by the Lack of a Single Legal Standard for Demonstrating a Carrier Is a Chameleon

The lack of a single standard for demonstrating that a carrier is a chameleon—or, in legal terminology, the corporate successor of a previous carrier that assumed a new identity to evade detection—constrains FMCSA's ability to take enforcement actions. The legal standard for determining corporate successor liability varies among states, and until 2006, FMCSA used the applicable state standard to determine liability. In a 2006 decision, an Administrative Law Judge applied a federal legal standard rather than a state standard to demonstrate corporate successor liability. However, a 2010 decision by an FMCSA Assistant Administrator left an open question as to which standard—federal or state—FMCSA should use to determine motor carrier successor liability. For a more detailed discussion of state corporate successor liability within the motor carrier industry, see appendix III. Absent a single federal legal standard, FMCSA attempts to gather evidence to meet both the federal standard and the state standards that could be applicable in a case. Applying multiple standards may lead to enforcement actions that differ from state to state and, according to FMCSA officials, gathering evidence to meet both the federal and the applicable state standard has increased the amount of time necessary to pursue enforcement actions against chameleon carriers. For example, FMCSA officials in the Southern Service Center told us that before the 2010 decision they spent 3 to 6 weeks pursuing several enforcement actions against chameleon carriers, but now spend between 6 to 12 months pursuing similar actions.

The following illustrates how corporate successor liability laws vary among the states, resulting in enforcement actions that differ from state to state as some carriers may choose to incorporate in states where demonstrating corporate successorship is relatively difficult.

- Under Texas law, an acquiring entity may not be held responsible or liable for any liabilities of the transferring entity unless the acquirer

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clearly assumes responsibility for the liabilities.<sup>39</sup> FMCSA officials recognize that it is difficult to pursue enforcement cases in Texas, unless the carrier admits to being a chameleon.

- It is also difficult to demonstrate corporate successorship in New York, according to FMCSA and state officials. For FMCSA to pursue a chameleon carrier case in New York, the prior carrier must have stopped operating before the new carrier started operating. If the two carriers operated concurrently at any point, FMCSA could have difficulty in pursuing the case under the New York standard.<sup>40</sup>
- In Florida, the same people (officers, directors, and stockholders) must be involved in both the former and the current business for the carrier to be considered a chameleon.<sup>41</sup> Suspected chameleon carriers may identify another person, such as a spouse or other relative, as the officer of the new company, making it difficult for FMCSA to pursue the case.

However, FMCSA officials in the Midwestern and Eastern Service Centers stated that the 2010 decision by the Assistant Administrator did not greatly affect their pursuit of chameleon carrier cases because some of the state standards within their region (e.g., Pennsylvania, Illinois, and Michigan) generally mirror the federal standard. Therefore, collecting evidence to meet both the federal and applicable state standard only slightly increased the amount of evidence needed and had a minimal effect on the amount of work required to pursue chameleon carrier cases.

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## FMCSA's Enforcement Actions Are Constrained by a Resource-Intensive Legal Process

FMCSA's enforcement actions are also constrained by the Notice of Claim (NOC) process, which is a resource-intensive legal process that can take months or even years to complete, limiting the number of chameleon cases FMCSA can pursue. Given its staff, time, and other responsibilities, FMCSA officials said they are able to address only the highest-priority chameleon carrier cases—those with serious safety violations. While these carriers may present the greatest safety risks,

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<sup>39</sup>TEX. BUS. ORGS. CODE ANN. §10.254(b).

<sup>40</sup>*Mitchell v. Suburban Propane Gas Corp.*, 581 N.Y.S.2d 927 (1992); *Morales v. City of New York*, 849 N.Y.S.2d 406 (2007).

<sup>41</sup>*Amjad Munim, M.D. v. Azar*, 648 So.2d 145 (Fla. 4th DCA 1994).



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other suspected chameleon carriers may also pose risks and continue to operate because FMCSA does not have the resources to pursue enforcement actions against them.

Specifically, FMCSA issues a NOC charging the suspected chameleon carriers with violating a federal regulation in effect against the carrier's presumed predecessor, as shown in figure 4.<sup>42</sup> The carrier can decide to pay the fine, contest the NOC, or fail to respond to the NOC. If the carrier fails to respond to the NOC, FMCSA orders the carrier out-of-service after 90 days.<sup>43</sup> If the carrier contests the NOC, the process provides four alternative routes, each with a number of steps. If FMCSA is able to demonstrate that the suspected chameleon carrier and its presumed predecessor are the same entity, the process concludes with a final agency order, which allows FMCSA to take the enforcement actions identified in the order.<sup>44</sup> For example, a final agency order may require the successor carrier to pay the fines owed by the predecessor carrier, adjust the successor carrier's rating to reflect the entire history of the company, or order the successor carrier to cease operations. However, if at any point during the investigation or the NOC process the carrier admits to being a chameleon carrier, pays any penalties associated with violations, and comes into compliance, FMCSA can merge the carrier's histories and records without going through the entire NOC process.<sup>45</sup> Merging the carriers' safety records helps ensure that FMCSA has an accurate account of the carrier's safety record under one USDOT number for monitoring the carrier in the future.

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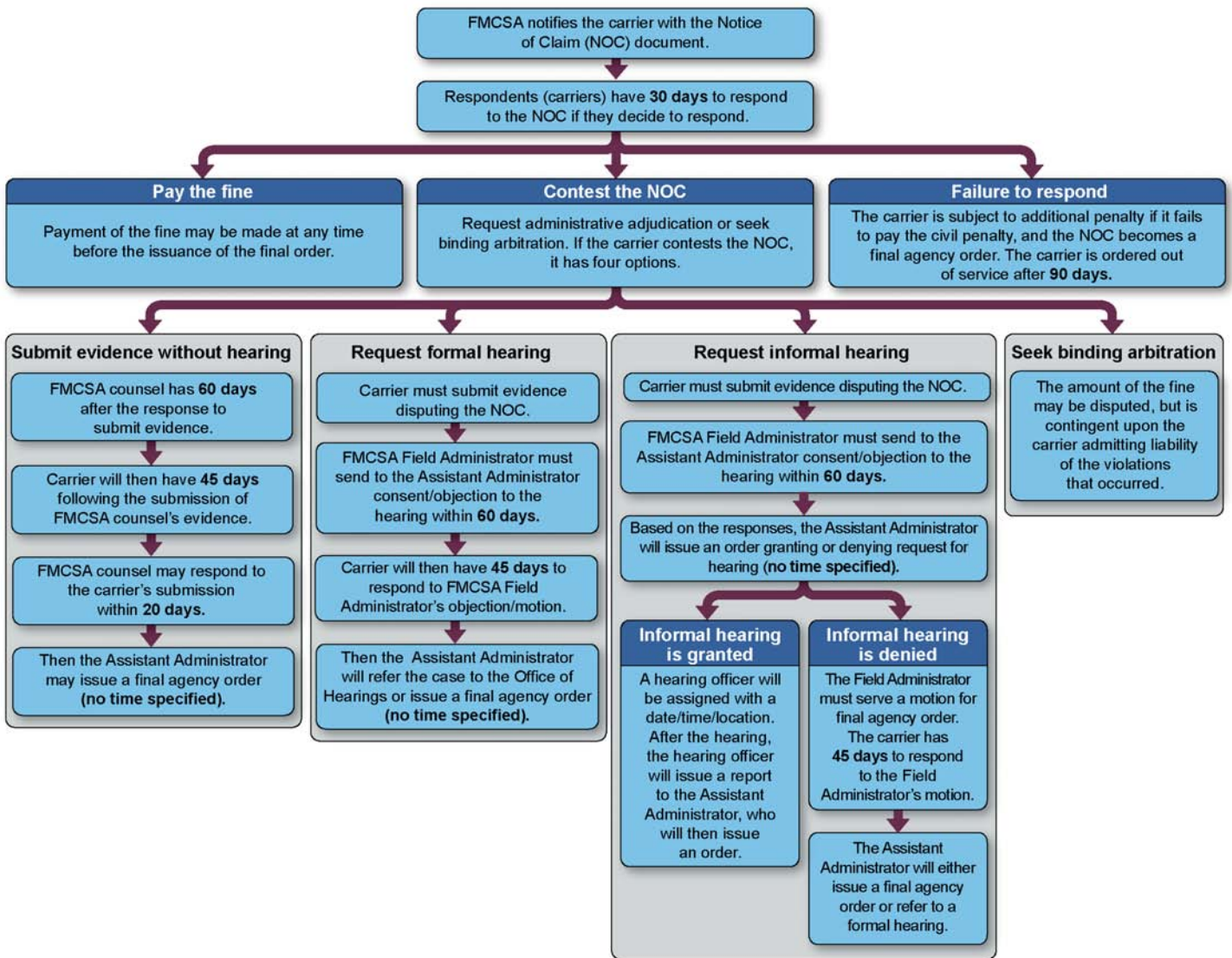
<sup>42</sup>If the successor company is found to have serious safety violations, FMCSA can take separate enforcement actions outside of the NOC process against the successor company, such as issuing an imminent hazard order.

<sup>43</sup>49 C. F. R. § 386.83(a)(1).

<sup>44</sup>The final agency order is considered the final agency action against a carrier. It can include a number of actions, such as penalties or an out-of-service order, among others.

<sup>45</sup>Besides being closed with a final agency order, chameleon carrier cases can be closed with a settlement agreement, a notarized letter, or payment of civil penalty.

Figure 4: Outline of the FMCSA Notice of Claim Process



Source: GAO presentation of 49 CFR 386.

As figure 4 shows, several steps in the NOC process have time frames set for completion while others do not. The required time frames alone add up to several weeks or months, and the additional time that may be needed for the remaining steps, such as a formal hearing, can further prolong the process. The time taken to complete the NOC process varies widely. FMCSA officials said cases usually take weeks—from the NOC to the final agency order—but can take anywhere from months to years.

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## Limited Enforcement Authorities Further Hamper FMCSA's Enforcement Efforts

According to state officials, as well as industry association and safety advocate groups, FMCSA has limitations on its authority that have hampered the effectiveness of its enforcement actions. Specifically, FMCSA cannot preclude carriers, including suspected chameleon carriers, from acquiring a new USDOT number. A new number allows a carrier to operate under a new identity and thus avoid any association with its history operating under another USDOT number, including any fines or out-of-service orders incurred under its former identity. FMCSA officials have stated that it is not illegal for a carrier to apply for multiple USDOT numbers because carriers may have legitimate business reasons for needing more than one number. For example, carriers that operate in different locations may want to separate their business practices across multiple routes or businesses. However, carriers that apply for multiple USDOT numbers may also do so to prevent or avoid subsequent detection as chameleon carriers. To strengthen its enforcement efforts against chameleon carriers, FMCSA stated that it is drafting a rule in response to a congressional mandate<sup>46</sup> that would enable it to deny an application for operating authority of a for-hire motor carrier if any of the company's officers has engaged in a pattern or practice of avoiding compliance, or concealing noncompliance with such regulations. It also stated that a recently issued Notice of Proposed Rulemaking would adopt new procedures for issuing orders to cease operations and consolidating safety records against chameleon carriers.<sup>47</sup> FMCSA anticipates finalizing both rules later this year.

In addition, the maximum fines that FMCSA is legally permitted to impose on motor carriers, including chameleon carriers, are low, which constrains the agency's ability to take enforcement actions. According to a recent NTSB report, the fines imposed on carriers for violations are low and do not serve as an effective deterrent.<sup>48</sup> NTSB further concluded that the fines for serious violations are so low that some carriers, especially passenger carriers, may treat them as a cost of doing business. FMCSA and state officials, as well as industry association representatives, have also expressed concerns about the deterrent value of FMCSA's fines. For

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<sup>46</sup>Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, §4113(c), 119 Stat. 1144, 1725 (2005).

<sup>47</sup>76 Fed. Reg. 77458, December 13, 2011.

<sup>48</sup>National Transportation Safety Board, *Report on Curbside Motorcoach Safety*, Special Report, NTSB/SR-11/01, PB2011-917002.

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example, a civil penalty that can be assessed against chameleon carriers, such as for evasion of regulations, ranges from \$200 to \$500 for the first violation and \$250 to \$2,000 for any subsequent violation.<sup>49</sup> This penalty is potentially less than the cost to apply for operating authority, which is set at \$300. FMCSA officials acknowledged that setting fines at the appropriate levels is a delicate balancing act.<sup>50</sup> The fines must be high enough for carriers to view them as a deterrent and not simply as a cost of doing business, but not so high that carriers choose to become chameleons to avoid payment. Nonetheless, FMCSA is seeking legislation to increase the statutory fines, as discussed in the following section.

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### FMCSA Has Provided Input to Congress on a Legislative Proposal to Address Constraints on Its Enforcement Efforts

To address constraints on its enforcement efforts and make it easier to identify chameleon carriers, FMCSA provided input to congressional committees on a legislative proposal.<sup>51</sup> This proposal included language establishing a federal legal standard for determining corporate successorship that would set a single standard nationwide. This standard would expressly preempt state corporation successor laws applying only to federal motor carrier safety. According to FMCSA officials, the federal standard would be consistent with FMCSA's mission to ensure motor carrier safety and would establish FMCSA's authority over the chameleon carrier corporate successorship issues. The federal standard would include specific criteria for determining what constitutes a successor carrier and would eliminate the need for FMCSA to apply various state laws in its chameleon carrier cases. Furthermore, a single nationwide standard would provide uniformity in FMCSA's enforcement actions against chameleon carriers. In addition, such a standard could discourage carriers from incorporating their business in states where corporate successorship is difficult to demonstrate—a phenomenon that FMCSA

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<sup>49</sup>49 U.S.C. § 524 and 49 U.S.C. § 14906.

<sup>50</sup>To calculate its civil penalties, FMCSA uses an automated policy tool called the Uniform Fine Assessment, whose methodology FMCSA is currently updating. The Uniform Fine Assessment uses an algorithm that takes statutory penalties factors into account, such as the carrier's ability to pay and the extent and gravity of the violation committed, among others. 76 Fed. Reg. 71431, November 17, 2011. Department of Transportation, Federal Motor Carrier Safety Administration, Civil Penalty Calculation Methodology.

<sup>51</sup>Legislation recently passed in the Senate, the Commercial Motor Vehicle Safety Enhancement Act of 2012, would establish a single federal standard for motor carrier corporate successor liability. S. 1813, § 32101, 112th Cong., (2012).

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officials suspect takes place now. For example, corporate successor liability is generally more difficult to prove in New York than it is in New Jersey and Pennsylvania, which may encourage carriers that understand the legalities of corporate successorship to consider reincorporating in New York. In addition, FMCSA is pursuing two other means to achieve a single federal legal standard. First, officials are monitoring chameleon carrier cases to identify one that could be used to clarify the 2010 Assistant Administrator's decision. An Administrative decision indicating FMCSA should use a single federal standard would have a similar effect to congressional action included in FMCSA's legislative proposal. Second, FMCSA is also pursuing a separate rulemaking effort to modify its enforcement regulations by codifying a single standard into regulation and by adopting expedited procedures for administrative adjudication of chameleon carrier cases. This rulemaking would articulate a standard that would be refined based on subsequent FMCSA decisions.<sup>52</sup>

The legislative proposal also includes changes that would increase the fines and penalties FMCSA is legally permitted to give carriers for noncompliance so that the penalties are not so low as to be viewed simply as a cost of doing business. For example, current law sets the minimum fine for evasion of regulation, which ranges from \$200 to \$500, would be increased to \$2,000 to \$5,000, and the maximum fine, which now ranges from \$250 to \$2,000, would be increased to \$2,500 to \$7,500. Other penalties associated with serious safety violations would also be increased.<sup>53</sup>

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## Conclusions

Preventing chameleon motor carriers from operating under a new identity is important because they present significant safety risks to the motoring public and, in the case of for-hire carriers, FMCSA faces constraints in removing them from the road after they have obtained operating authority. FMCSA has made strides toward protecting consumers from some of these unscrupulous carriers by vetting for-hire passenger and household

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<sup>52</sup>Amendment to Agency Rules of Practice, 76 Fed. Reg. 77458, 77463-77464 (Dec. 13, 2011).

<sup>53</sup>We did not evaluate how FMCSA's proposals would affect the motor carrier industry. Determining what penalty levels are appropriate will involve assessing the burden higher fines would impose on the motor carrier industry. As part of this analysis, it will be important to determine what penalty levels will promote compliance without creating an incentive for carriers to become chameleons in order to avoid payment.

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goods carriers to identify and deny operating authority to those that may be chameleon carriers. However, these two types of carriers together accounted for only about 2 percent of the new motor carrier population in 2010, leaving the remaining 98 percent unvetted and free to operate before they undergo a new entrant safety audit—a program that provides some opportunity for auditors to identify potential chameleon carriers, but is not primarily designed to do so. Our analysis of FMCSA data found that of the more than 1,100 new motor carrier applicants in 2010 that had chameleon attributes, the vast majority were freight carriers. Given that the number of fatalities is far greater for freight carriers than for passenger carriers, we believe that FMCSA should not exclude freight carriers from its vetting program. Even with the large number of new applicant carriers and constraints on its resources, FMCSA could target the carriers that present the highest risk of becoming chameleons by using a data-driven, risk-based approach. Targeting could reduce the population of carriers to be vetted to a manageable number. FMCSA could choose to apply a data-driven, risk-based approach to all types of carriers, or could limit its use to freight carriers while continuing its current practice of vetting all for-hire passenger and household goods carriers. We believe that our targeting method, which considers both matching on registration information and having a motive to evade detection, provides a sound basis for FMCSA to select new applicant carriers for further investigation. Yet we also recognize that FMCSA will need to periodically evaluate the effectiveness of this approach as officials investigate carriers and learn more about the attributes of chameleon carriers. By applying a risk-based approach and expanding the vetting program to include freight carriers, FMCSA would help keep unsafe carriers off the road and reduce the amount of time, effort, and money necessary to investigate and prosecute chameleon carriers at a later date.

In addition, FMCSA is not taking full advantage of the new entrant safety assurance program audit to identify potential chameleon carriers, including those that slipped through the vetting program and those that are freight carriers undergoing scrutiny for the first time. While the audit includes a set of questions designed to help auditors identify chameleon carriers, FMCSA's electronic Field Operations Training Manual lacks guidance on how to use the questions during the audit to distinguish chameleons from legitimate carriers. For example, the guidance should prompt auditors on what types of follow-up questions to ask and what further evidence should be collected based on carrier's responses. FMCSA is reviewing the new entrant audit questions, but unless the guidance contains such aspects, FMCSA lacks assurance that the new entrant auditors can effectively identify chameleon carriers.

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Absent a single standard for determining corporate successor liability, FMCSA can take months to develop a case to meet both a federal and the applicable state standard in order to prove that the carrier is a chameleon, and subsequently carry out enforcement actions. A federal standard would make the enforcement process parallel across all states, especially in states where FMCSA currently faces difficulties demonstrating corporate successor liability. A federal standard would also discourage carriers from incorporating across state lines to evade detection. FMCSA is currently exploring three different avenues for establishing a federal standard: (1) congressional action, (2) monitoring a case that could lead to the establishment of a single federal legal standard for chameleon carrier cases in all states, and (3) rulemaking. We support these efforts and believe establishing a federal standard is important to ensure a more efficient, consistent, and uniform enforcement process.

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## Recommendations for Executive Action

To help FMCSA better identify chameleon carriers through its vetting program, the Secretary of Transportation should direct the FMCSA Administrator to take the following three actions:

- Develop a data-driven, risk-based vetting methodology that incorporates matching and motive components for targeting carriers with chameleon attributes.
- Using this new methodology, expand the vetting program as soon as possible to examine all motor carriers with chameleon attributes, including freight carriers.
- Periodically evaluate the effectiveness of this methodology using the results of investigations and refine as necessary.

In addition, to help FMCSA identify chameleon carriers that present safety risks, FMCSA should strengthen the new entrant safety assurance program audit by developing guidance to the questions contained in the electronic Field Operations Training Manual designed to help the new entrant auditor identify chameleon carriers, including (1) how to use the questions to distinguish chameleon from legitimate carriers, (2) what types of follow-up questions to ask, and (3) what evidence to collect.

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Transportation for its review and comment. FMCSA generally concurred with our recommendations. In commenting on a draft of this report, officials provided additional information on how they plan to implement these recommendations, including developing plans to expand the vetting program to include for-hire freight carriers, but did not indicate when they would do so.

FMCSA had several comments on our methodology for identifying carriers with chameleon attributes. Specifically, officials questioned the inclusion of currently inactive carriers—carriers that never operated or eventually ceased to operate in the motor carrier industry. The purpose of our analysis was to identify carriers that may warrant additional investigation as they apply to enter the motor carrier industry, not to identify the number of chameleon carriers that currently exist. Therefore, it would have been inappropriate to remove inactive carriers from our analysis. Officials also had methodological concerns about (1) using motive to select carriers with chameleon attributes, which could allow some chameleon carriers to go undetected, including those carriers that have consistently evaded FMCSA enforcement actions (i.e. carriers that take on new identities before FMCSA has an opportunity to document safety violations), and (2) including bankruptcy, which is not a safety violation, as one of our six motive criteria. However, as our report indicates, we believe that a risk-based targeting method that includes motives, such as bankruptcy, provides a sound basis for FMCSA to examine those carriers that are more likely than others to be chameleons. Yet we also recognize that FMCSA will need to evaluate the effectiveness of its approach and alter it, as necessary.

In its comments, FMCSA agreed with us that using a risk-based approach to expand vetting to freight carriers, such as the one recommended, would require additional staffing resources. However, they indicated that such an approach would require more resources than the 2-3 staff we mentioned in the report. We believe that developing a risk-based approach to vetting is the first step FMCSA must take before determining the level of resources that may be needed for the vetting team.

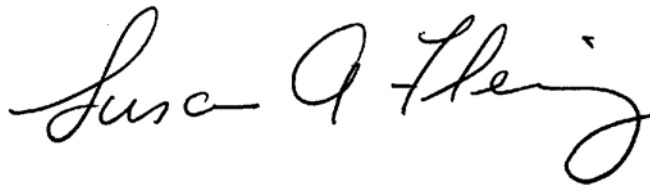
FMCSA also provided technical corrections, which we have incorporated throughout the report.



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We are sending copies of this report to congressional committees interested in motor carrier safety issues; the Secretary of Transportation; the Administrator of FMCSA; and the Director of the Office of Management and Budget. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact me at (202) 512-2834 or [flemings@gao.gov](mailto:flemings@gao.gov). Contact points for Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Staff who made key contributions to this report are listed in appendix IV.

A handwritten signature in black ink that reads "Susan A. Fleming". The signature is written in a cursive style with a large, looping 'S' and 'F'.

Susan A. Fleming  
Director  
Physical Infrastructure Issues

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# Appendix I: Objectives, Scope, and Methodology

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Our objectives were to determine the prevalence of chameleon carriers, how well the Federal Motor Carrier Safety Administration's (FMCSA) investigative programs are designed to identify suspected chameleon carriers, and what constraints, if any, FMCSA faces in pursuing enforcement actions against suspected chameleon carriers.

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## Data Analysis

To identify new applicant carriers with chameleon attributes, we conducted a data analysis that involved two basic steps: (1) comparing registration information submitted by new applicants against that provided by all existing motor carriers and (2) determining whether carriers had a motive for concealing their histories. We obtained this information from several U.S. Department of Transportation databases: the Motor Carrier Management Information System (MCMIS), the Licensing & Insurance system, and the Enforcement Management Information System, as of May 2011. To assess the reliability of these databases, we reviewed documentation on data collection efforts and quality assurance processes, talked with knowledgeable FMCSA officials about these data, and checked the data for completeness and reasonableness. We determined that the data were sufficiently reliable for the purpose of our data analysis. We analyzed data for new applicants from January 1, 2005, through December 31, 2010, against data for all carriers that had registered with FMCSA since June 1, 1974. For a detailed technical discussion of the scope and methodology for our data analysis, see appendix II.

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## Assessing FMCSA's Investigative Programs

To determine how FMCSA's investigative programs are designed to identify chameleon carriers, we reviewed federal motor carrier laws and safety regulations; federal internal control standards; related reports and statements published by GAO, the National Transportation Safety Board (NTSB), and the Department of Transportation's Office of Inspector General; documentation about FMCSA's vetting processes and procedures, which FMCSA refers to as the vetting program; FMCSA policy memorandums on the new entrant safety assurance program and the monitoring of potential chameleon new entrant motor carriers; and the Field Operations Training Manual. We also conducted a content analysis of all our interviews to obtain views from federal and states officials on the effectiveness of the vetting and new entrant safety assurance programs. In June 2011, we observed two new entrant safety audits—one in Los Angeles, California, of a new passenger carrier, and the other in Triangle, Virginia, of a new freight carrier.

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## Identifying Constraints on Taking Enforcement Action

To identify the constraints FMCSA faces in pursuing enforcement action against suspected chameleon carriers and how it is addressing them, we reviewed federal motor carrier safety laws and regulations related to FMCSA enforcement actions (Notice of Claims and Notice of Violations); an FMCSA summary of State Successor Liability Case Law (July 2010), which describes corporate successor liability law for all 50 states; two key decisions related to corporate successor liability—the Williamson Transport decisions of January 2009 and July 2010; a multipage, corporate successor liability worksheet used to gather evidence against a suspected chameleon carrier; and a legislative proposal provided to congressional reauthorization committees in 2011 that is intended to help address FMCSA constraints. We performed a legal analysis of select case law to determine current FMCSA enforcement constraints. We also interviewed FMCSA counsel to determine how the legislative proposal would help alleviate those constraints. In addition, we reviewed other documentation, including publications and testimonies, to assess how FMCSA is addressing the constraints.

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## Interviews

To address these objectives, we interviewed FMCSA officials (data analysts, program managers, and counsel) in Washington, D.C.; Field Administrators, attorneys, managers and enforcement staff in all four regional service centers (Eastern, Southern, Midwestern, and Western); and Division Administrators in 10 of FMCSA's division offices. In the same 10 states where we interviewed FMCSA division officials, we also interviewed law enforcement officials who were directly involved in attempting to identify or in taking enforcement actions against chameleon carriers. We selected these 10 states primarily because they had the largest total number of interstate and hazardous materials intrastate carriers identified in FMCSA's Analysis and Information Resources database as of May 2011. In addition, we considered other factors in selecting these states, including the number of new entrant audits and roadside inspections conducted in fiscal year 2010, the estimated fatality rates per 100 million miles traveled in 2008, the level of participation in the Performance and Registration Information Systems Management and the new entrant safety assurance programs, suggestions made by FMCSA and by industry and safety organizations, and the legal requirements for determining corporate successor liability. Table 4 lists the 10 state agencies we interviewed.

**Table 4: State Agencies Interviewed**

| <b>State</b>   | <b>Agency</b>                         |
|----------------|---------------------------------------|
| California     | California Highway Patrol             |
| Florida        | Florida Highway Patrol                |
| Georgia        | Georgia Department of Public Safety   |
| Illinois       | Illinois Department of Transportation |
| Michigan       | Michigan State Police                 |
| New Jersey     | New Jersey State Police               |
| New York       | New York Department of Transportation |
| North Carolina | North Carolina Highway Patrol         |
| Pennsylvania   | Pennsylvania State Police             |
| Texas          | Texas Highway Patrol                  |

Source: GAO.

To address all three of our reporting objectives, we also interviewed representatives of the following organizations:

- Advocates for Highway and Auto Safety
- American Bus Association
- American Trucking Association
- American Automobile Association
- Commercial Vehicle Safety Alliance
- International Registration Plan
- Motor Carriers Safety Advisory Council
- National Private Truck Council
- National Transportation Safety Board
- Owner-Operator Independent Drivers Association
- Truck Safety Coalition
- United Motorcoach Association

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We conducted this performance audit from March 2011 to March 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: Additional Information on the Scope and Methodology of Our Data Analysis

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This appendix contains additional information on our analysis of data on carriers with chameleon attributes. The method presented here is used to demonstrate the feasibility of using data to target carriers with chameleon attributes. We did not conduct additional work to investigate the carriers we identified and determine whether our approach is the most effective means to target chameleon carriers. FMCSA may wish to consider adjusting several elements of this approach, including our standardization techniques, our match score formula, and the way we assessed motive to become a chameleon carrier.

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## Criteria for Determining That a Carrier Had Attributes Consistent with Those of a Chameleon Carrier

We defined a carrier with chameleon attributes as one that met the following two criteria:

1. *Match criterion.* The new applicant carrier submitted registration information that matched information for a previously registered carrier.
2. *Motive criterion.* The old carrier had a motive to become a chameleon, which we defined as a history of safety violations or filed for bankruptcy that might motivate a carrier to become a chameleon.

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## Data Sources

To identify new applicants<sup>1</sup> with chameleon carrier attributes, we took two basic steps: (1) compared registration information submitted by new applicants against that provided by all previously registered motor carriers (match criterion) and (2) determined whether the previously registered carriers had a motive for concealing their histories (motive criterion). We used information from the following Department of Transportation databases: MCMIS, the Licensing and Insurance system, and the Enforcement Management Information System, as of May 2011. To create our population of motor carriers that had submitted registration information to the department, we used data from MCMIS to generate a list of all unique U.S. Department of Transportation (USDOT) numbers (i.e., motor carriers) that had ever registered with the Department of Transportation, including the date that these USDOT numbers were added to the database (add date) and the most recent date that the

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<sup>1</sup>Our analysis only examined new applicants over which FMCSA has oversight authority—interstate carriers and intrastate hazardous materials carriers.

carrier entered the new entrant program (new entry date). Because we were interested in demonstrating a method of targeting new applicant carriers as they registered or applied for operating authority, and not specifically in counting the number of chameleon carriers that might currently be operating, we did not attempt to exclude carriers that might be inactive or might have ceased to operate. Therefore, our list of carriers with chameleon attributes likely includes carriers that are no longer operating.

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## Matching

We selected a number of data fields on which to compare new carriers to all previously registered carriers. Initially we considered the following fields: carrier name, company officer name, employer identification number (EIN), social security number (SSN), Dun & Bradstreet (D&B) number,<sup>2</sup> phone number (includes all possible comparisons among cell, fax, and main numbers), address (includes physical and mailing), vehicle identification number, vehicle license plate, driver license number, and driver name. Based on conversations with FMCSA officials and an initial analysis of the frequency of matches across these different fields, we selected seven fields that we believe can be used to identify carriers with chameleon attributes: carrier name, company officer name, EIN, SSN, D&B number, phone number, and address.

We took several steps to improve the validity of our matches. We standardized values in some fields, including addresses and names. We also excluded records with missing or unusable values on key variables. For example, we excluded records with missing values on any of our match variables (listed earlier). For a number of the variables, we also excluded records consisting of a single character or digit, records with values consisting entirely of zeros or nines, and records with values that would result in matches unrelated to chameleon attributes (e.g., used terms like “unknown,” “none,” and “n/a”). Table 5 provides more details on the standardization and cleaning we conducted.

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<sup>2</sup>D&B number is a unique nine-digit number used to identify a business location.

**Table 5: Steps Taken to Standardize Fields Prior to Matching**

| Standardization step  | Phone numbers | EIN, SSN, and D&B numbers | Address | Carrier name | Company officer |
|---|---------------|---------------------------|---------|--------------|-----------------|
| Excluded records with missing values  | •             | •                         | •       | •            | •               |
| Excluded records with a single character or digit   |               | •                         |         |              |                 |
| Excluded records that were not 7 or 10 characters or digits long (there were no parenthesis)  | •             |                           |         |              |                 |
| Excluded records with values consisting entirely of zeros or nines  | •             | •                         |         |              |                 |
| Excluded records with no number   |               | •                         |         |              |                 |
| Excluded records with garbage values. Specifically if the values were: “, *, -, n/a, na, unknown, owner, c/o, none, test, and same. Also, records where the length of the value was less than 3 or where the value was only numbers (no alphabetical characters). |               |                           | •       | •            | •               |
| Standardize values (correct for spelling variations, differences in abbreviations, etc.).   |               |                           | •       | •            |                 |

Source: GAO summary of steps taken to standardize FMCSA data.

If two carriers had an exact match on at least one of these data fields, we then added them to our list of “carrier match pairs.” Within the pairs, we coded each USDOT number as either a new carrier or an old carrier based on the date that the USDOT number was added to the database.<sup>3</sup> In a number of instances, a new carrier matched more than one old carrier. Because we were interested in identifying new carriers with chameleon attributes, and not in counting the number of older carriers to which they matched, we took just the strongest match for each new carrier and discarded the others.<sup>4</sup>

We calculated the strength of each match using a weighting formula through which we assigned different weights to different fields. Our weighting formula was based on (1) conversations with FMCSA and state

<sup>3</sup>For matching purposes, we used the date a carrier was added to the system (“add date”) rather than the date a carrier entered the new entrant program (“new entry date”) because, according to FMCSA officials, the add date is a more accurate reflection of when registration information was provided by a new carrier. In contrast, because carriers can exit and enter the new entrant program several times, the new entry date might not show when a carrier submitted its registration information.

<sup>4</sup>In cases where a new carrier had multiple equally strong matches to different older carriers, we selected one at random.



officials who indicated that certain data field matches were more likely to indicate that a carrier was potentially a chameleon and (2) an evaluation of data fields that carriers matched on.<sup>5</sup> Based on these sources of information, we derived a formula in which the seven data fields were weighted and combined in the following way:

$$\text{Match score} = (\text{carrier name} \times \text{company officer name}) + 2(\text{SSN}) + 2(\text{EIN}) \\ + 2(\text{D\&B number}) + \text{phone} + 0.5(\text{address})$$

In this formula, each of the variables is coded 1 if the two carriers match on the corresponding data field and 0 otherwise. Thus, for example, if a new carrier matched an old carrier on company officer, company name, SSN, and phone, the new carrier would receive a match score of  $(1 \times 1) + 2 + 1 = 4$ . Alternatively, if a new carrier matched an old carrier on carrier name and address, but not on company officer name (or any other fields), the new carrier would receive a score of  $(1 \times 0) + 0.5 = 0.5$ . Note that because of how carrier name and company officer name are combined in the formula, neither of these fields counts toward a match unless matches on *both* fields are present.

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## Motive

After completing our match of registration information, we coded each carrier in the MCMIS universe according to whether it might have a motive to evade detection, which meant having at least one of the following attributes: filed for bankruptcy; involved in a severe crash; fined by FMCSA; or issued an out-of-service order, an imminent hazard order, or an unsatisfactory or unfit rating by FMCSA. We selected these attributes based on discussions with FMCSA officials indicating that they are possible reasons that a carrier might attempt to become a chameleon and are attributes that FMCSA used for creating a list of poorly performing carriers within its new applicant screening algorithm. Because

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<sup>5</sup>Specifically, our data showed that address matches were very common (10,032,429 pair matches), which indicated that these matches are less helpful in identifying the carriers at the highest risk of being chameleons. In addition, we expect EIN, SSN, and D&B matches to be a strong indication that the new carrier is associated with a prior carrier because these numbers are universal, unique identifiers. This is supported by our data, which show far fewer matches across SSN (201 pair matches), EIN (231 pair matches), and Dun & Bradstreet (909 pair matches). We also linked carrier name and company officer matches because the data indicated that matches on each of these fields alone were not uncommon (3,073,264 pair matches for carrier name and 251,337 pair matches for company officer name).

we did not have evidence indicating that any one motive was more likely to result in a carrier becoming a chameleon we weighted all motives equally. That is, the motive criterion was binary—a carrier either had a motive or did not have a motive. In addition, we counted a carrier as having a motive only if the first appearance of the motive predated the new carrier’s registration with FMCSA. For example, a filing for bankruptcy was counted as motive only if the old carrier filed for bankruptcy before the new carrier registered. However, we were unable to determine whether a motive, having initially appeared, was still present at just the time when the new carrier registered. For example, FMCSA may have rescinded an out-of-service order on an old carrier before the new carrier attempted to register, and our data analysis did not specifically exclude these types of cases.

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## Combining Matching and Motive

We incorporated motive to evade detection into our analysis in three distinct ways. First, we used motive to assess whether the matching component of our analysis was identifying carriers with a reason to be a chameleon, as opposed to carriers with legitimate reasons to reincarnate and carriers with registration information accidentally resembling an older carrier’s. Second, we used motive to select a particular match score threshold to be used in our definition of a carrier with chameleon attributes—that is, a match score (calculated according to the above formula) beyond which we classify a carrier as meeting the match criterion. Finally, as noted earlier, motive was a component, separate from matching, of our definition of a carrier with chameleon attributes. In the following sections, we discuss these three uses of motive.

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## Using Motive to Assess Whether the Matching Component of Our Analysis Was Identifying Carriers with a Reason to be Chameleons

One concern with our approach is that data matching may not give an accurate picture of the total number of chameleon carriers for two reasons. First, data matching could identify carriers that have legitimate business reasons for registering a new company that appears to be related to an older one. Second, similar or even identical registration information may inadvertently be submitted by unrelated companies. In order to address this issue, we used information about whether an older carrier had a motive to evade detection—a feature that we and FMCSA believe indicates that a new carrier is more likely to be a chameleon than a carrier without such a feature. In particular, we looked at the likelihood that an older carrier with a motive would match a new applicant, as compared to the likelihood that an older carrier without a motive would match a new applicant. If the only causes of data matches were carriers that had legitimate business reasons for assuming a new identity and

accidental similarities in registration information, then we would expect older carriers with a motive to be no more likely to match new applicants than older carriers without a motive. However, if matches do occur because of chameleons registering, then we would expect older carriers with a motive to be more likely to match new applicants than older carriers without a motive. We formalize this reasoning as follows:

$$\text{Match rate for carriers with motive} = \frac{\text{Number of old carriers with motive that match a new applicant}}{\text{Total number of old carriers with motive}}$$

$$\text{Match rate for carriers without motive} = \frac{\text{Number of old carriers without motive that match a new applicant}}{\text{Total number of old carriers without motive}}$$

$$R = \frac{\text{Match rate for carriers with motive}}{\text{Match rate for carriers without motive}}$$

Using these formulas in conjunction with several different match score thresholds, we found that a difference in the likelihood of a match for carriers with a motive and those without depended on the particular match score threshold that was used (see tables 6 and 7).

**Table 6: Match Rates for Carriers with and without Motive Based on New Applicants in 2009**

| Match score threshold | Old carriers with a motive that matched a 2009 new applicant | Old carriers prior to 2009 with a motive | Match rate for old carriers with a motive | Old carriers without a motive that matched a 2009 new applicant | Old carriers prior to 2009 without a motive | Match rate for old carriers without a motive | R   |
|-----------------------|--|--|---|---|---|--|-----|
| 1.0                   | 2,598  | 207,146                                  | 0.012542                                  | 5,318   | 910,160                                     | 0.005843                                     | 2.1 |
| 1.5                   | 1,198  |  | 0.005783                                  | 2,064   |   | 0.002268                                     | 2.6 |
| 2.0                   | 79   |  | 0.000381                                  | 139   |   | 0.000153                                     | 2.5 |
| 2.5                   | 54   |  | 0.000261                                  | 105   |   | 0.000115                                     | 2.3 |

Source: GAO analysis.

In table 6, the number in the final column, *R*, can be interpreted as follows: when we used a match score threshold of 1.0 (see the first row of the table), pre-2009 carriers with a motive were 2.1 times more likely to match a new applicant in 2009 than were pre-2009 carriers without a motive. Similarly, when we used a threshold of 1.5, pre-2009 carriers with a motive were 2.6 times more likely to match a new applicant in 2009 than were pre-2009 carriers without a motive.

As shown in table 7, we conducted a similar analysis for 2010:

**Table 7: Match Rates for Carriers with and without Motive Based on New Applicants in 2010**

| Match score threshold | Old carriers <i>with</i> a motive that matched a 2010 new applicant | Old carriers prior to 2010 <i>with</i> a motive | Match rate for old carriers <i>with</i> a motive | Old carriers without a motive that matched a 2009 new applicant | Old carriers prior to 2009 <i>without</i> a motive | Match rate for old carriers <i>without</i> a motive | R   |
|-----------------------|---|---|--|---|--|---|-----|
| 1.0                   | 3,010   | 218,769   | 0.013759   | 7,148   | 95,941   | 0.007493  | 1.8 |
| 1.5                   | 1,331   |   | 0.006084   | 2,685   |  | 0.002815  | 2.2 |
| 2.0                   | 62  |   | 0.000283   | 183   |  | 0.000192  | 1.5 |
| 2.5                   | 39  |   | 0.000178   | 112   |  | 0.000117  | 1.5 |

Source: GAO analysis.

As the tables show, the difference in likelihood between carriers with a motive and those without depended on the particular match score threshold that we used. For both 2009 and 2010, we tested a range of match score thresholds (from 1.0 to 2.5), and in all cases carriers with motive were statistically significantly more likely to match a new applicant than were carriers without motive.

These results suggest that the matching component of our analysis did not merely detect accidental or benign matches, such as carriers that registered a new company for legitimate business reasons, but rather identified carriers seeking to evade detection. Specifically, if matches occurred only for benign or accidental reasons, then we would expect matching to be no more likely among carriers with a motive than among carriers without. That is, we would expect *R* to be near 1.0. In fact, we found that older carriers with a motive were roughly twice as likely to match a new applicant in 2009 or 2010 as were older carriers without a motive. This suggests that the data-matching component of our analysis was effective in detecting carriers with chameleon attributes and not just carriers with legitimate reasons to assume new identities or accidental similarities to previously registered carriers. While this test demonstrates that our method identified carriers with a motive to evade detection, further investigation would be needed to confirm whether any of the carriers on our list of carriers with chameleon attributes actually are chameleons.

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### Using Motive to Select a Match Score Threshold

Having verified that data matching, as defined in our analysis, was related to motive, we then used motive to select a match score threshold. Our goal was to identify a match score threshold that was high enough to avoid capturing many “false alarms”—that is, matches that occur for accidental or benign reasons—and yet low enough so that our matching criterion was not overly restrictive. To identify such a match score threshold, we tested several different thresholds to identify the one with the strongest relationship between whether an older carrier had a motive and whether it matched a new applicant in 2009 or 2010. As the tables above show, the highest value of *R* occurred at a threshold of 1.5 for both 2009 and 2010. Based on this analysis, we selected a 1.5 match score as the optimal threshold. That is, the degree of match between the two carriers’ registration information had to exceed the defined threshold of 1.5 for the new carrier to be classified as having chameleon attributes.

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### Using Motive as One Component of Our Definition of Carriers with Chameleon Attributes

Having used motive to refine the matching component of our definition, we also used motive as a second component, in its own right, of a carrier with chameleon attributes. Only if a carrier met both the match criterion and the motive criterion was it classified as a carrier with chameleon attributes.

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### Categorizing Carriers by Carrier Type

To determine carrier type—freight, passenger, household goods, or multiple—we requested guidance from FMCSA officials. Following this guidance, we took the following steps: (1) identified carrier types (freight, passenger, household goods, and multiple operating authorities) for for-hire carriers using the demo carrier summary table in the Licensing and Insurance database; (2) identified private carriers with passenger and household goods operating authorities using the operation classification, cargo classification, and carrier equipment tables in the MCMIS database; and (3) classified the remaining carriers as private freight carriers. For some part of our analysis, we combined for-hire and private carriers to yield four categories: passenger, household goods, freight, and multiple (where “multiple” included any combination of passenger, household goods, and freight).

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# Appendix III: Standards for Corporate Successor Liability

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FMCSA takes a series of steps to investigate whether a new carrier is a chameleon—or in legal terminology, the corporate successor of a previous carrier that assumed a new identity to evade detection by the agency. Once FMCSA identifies a carrier as a potential chameleon carrier that was either ordered out-of-service or had enforcement action taken against it, FMCSA must demonstrate, by law, that the new carrier is the “corporate successor” of the old carrier in order for the liability of the old entity to attach to the new carrier.<sup>1</sup> This linkage allows FMCSA to deny or revoke operating authority or take enforcement action against the new carrier.<sup>2</sup>

The traditional common law rule of corporate successor liability states that a corporation that acquires all or part of the assets of another corporation does not acquire the liabilities and debts of the predecessor.<sup>3</sup> However, there are four traditional and widely accepted exceptions to this rule. The majority of states follow the traditional rule for successor liability, subject to the four traditional exceptions. There is also a federal rule used to determine corporate successorship.

Currently, the applicable standard FMCSA is required to follow to demonstrate corporate successorship is unclear. Laws pertaining to corporate successor liability vary among the states, and until 2006, U.S. Department of Transportation Administrative Law Judges applied the law of the state in which the action arose. In 2006, however, an Administrative Law Judge issued a decision—*Williamson Transport Co., Inc.*—holding that FMCSA should be using a federal standard to determine successor liability rather than the rule of a particular state.<sup>4</sup> Upon review, in 2009, an FMCSA Assistant Administrator issued a final order overruling this decision.<sup>5</sup> The Assistant Administrator determined that the federal

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<sup>1</sup>See *Upholsterers’ Int’l Union Pension Fund v. Artistic Furniture of Pontiac*, 920 F.2d 1323, 1325-1326 (7th Cir. 1990); *In the matter of: Williamson Transport Co., Inc.*, Final Order: Decision on Review, Docket No. FMCSA-2004-17247 (Jan. 2009). See also 63 Am. Jur. 2d, Products Liability § 119 (2011).

<sup>2</sup>49 U.S.C. § 31144.

<sup>3</sup>See, e.g., *Bud Antle v. Eastern Foods*, 758 F.2d 1451, 1456 (11th Cir. 1985); *Mozingo v. Correct Mfg. Co.*, 752 F. 2d 168, 174 (5th Cir. 1985).

<sup>4</sup>*Williamson Transport Co., Inc.*, Docket No. FMCSA-2004-17247 (March 2006).

<sup>5</sup>*In the matter of: Williamson Transport Co., Inc.*, Final Order: Decision on Review, Docket No. FMCSA-2004-17247 (Jan. 2009).

standard was not the proper test for determining motor carrier successor liability, and that state law should have been used instead. However, in response to a petition for reconsideration, the Assistant Administrator found that “it is not necessary in this case to determine whether the standard...should be the traditional common law, the particular state law, or the federal doctrine of ‘substantial continuity,’” because the claimant (FMCSA) did not succeed under any standard.<sup>6</sup> This decision left an open question as to which standard FMCSA should use to determine motor carrier successor liability.

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## Standards for Successor Liability

**The Federal Standard.** The federal doctrine of “substantial continuity” is an eight-pronged, judicially created test that attaches liability to a successor company if it (1) retains the same employees, (2) retains the same supervisory panel, (3) retains the same production facilities in the same location, (4) continues producing the same products, (5) retains the same name, (6) maintains continuity of assets, (7) maintains continuity of general business operations, or (8) holds itself out to the public as a continuation of the previous corporation.<sup>7</sup> FMCSA officials have stated that not all of these prongs need to apply in a given case, but rather that these are the different factors that are weighed equally in determining whether “substantial continuity” is established.

**State Standards.** State corporate successor liability laws vary from state to state, based either on case law within the state or, in some instances, state legislation.<sup>8</sup> Most jurisdictions recognize the traditional rule for successor liability, also referred to as the common law rule, as their state

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<sup>6</sup>*In the matter of: Williamson Transport Co., Inc.*, Order Denying Petition for Reconsideration, Docket No. FMCSA-2004-17247 (July 2010).

<sup>7</sup>*In the matter of: Williamson Transport Co., Inc.*, Final Order: Decision on Review, Docket No. FMCSA-2004-17247 (January 2009) (citing *United States v. Carolina Transformer Company*, 978 F.2d. 838 (4th Cir. 1992)).

<sup>8</sup>Successor liability is a concept derived by courts from the common law. The general rule was developed within the framework of corporate and tax law, but courts have routinely applied it to commercial cases, torts, and products liability cases. Tim Orr, *Not Just for Contracts Anymore: Successor Liability*, 17 S. Carolina Lawyer 32, 35 (2006). Additionally, corporate successor laws apply in many different contexts, including, but not limited to, corporate mergers, products liability, and negligence.

standard.<sup>9</sup> This rule states that a corporation that acquires all or part of the assets of another corporation does not acquire the liabilities and debts of the predecessor, subject to several exceptions.<sup>10</sup> Most jurisdictions also recognize four traditional exceptions:

1. The purchasing company explicitly or implicitly agrees to assume the debts or liabilities of the seller.
2. The transaction amounts to a consolidation or merger (or “de facto merger”).
3. The successor entity is a mere continuation of the predecessor entity (“mere continuation”). In most states, the key elements of mere continuation are a common identity of the officers, directors, and stockholders between the predecessor and successor.<sup>11</sup> This exception is aimed at owners or directors who may dissolve one company and begin another to avoid debts and liabilities.<sup>12</sup>
4. The transaction was entered into fraudulently in order to escape liability.<sup>13</sup>

When this state standard is applied, if an exception is met, the liability of the predecessor will attach to the new corporation. For a suspected chameleon, FMCSA must demonstrate that one of the exceptions is met in order to attach the liabilities of the prior carrier to the new carrier, including, for example, revoking the carrier’s operating authority or taking

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<sup>9</sup>See *Amjad Munim, M.D., P.A. v. Azar*, 648 So.2d 145, 151 (Fla. Dist. Ct. App. 1994) (recognizing that Florida follows the vast majority of jurisdictions in honoring the traditional rule of corporate successor liability); *Vernon v. Schuster*, 179 Ill.2d 338, 345 (Ill. 1977) (stating that the traditional rule, along with the four exceptions, is recognized in the majority of American jurisdictions).

<sup>10</sup>See *Bud Antle v. Eastern Foods*, 758 F.2d 1451, 1456 (11th Cir. 1985).

<sup>11</sup>Tim Orr, *Not Just for Contracts Anymore: Successor Liability*, 17 S. Carolina Lawyer 32, 36 (2006).

<sup>12</sup>*Id.*

<sup>13</sup>See, e.g., *Bud Antle, Inc.*, 758 F.2d at 1456; *Travis v. Harris Corp.* 565 F.2d 443, 447 (7th Cir. 1977); *Leannais v. Cincinnati, Inc.* 565 F.2d 437, 439 (7th Cir. 1977); *Ray v. Alad Corporation*, 560 P. 2d 3, at 7 (Cal. 1977).



enforcement actions.<sup>14</sup> These exceptions delineate elements that must be met in order for the exception to apply and for liability to attach to the new corporation. FMCSA officials have told us that the agency typically uses the “mere continuation” theory to attach liability to the successor carrier, but other theories (such as “de facto merger” or “fraud”) may be used.

As noted previously, most jurisdictions follow the traditional principle of successor liability along with the four traditional exceptions.<sup>15</sup> For example, Florida,<sup>16</sup> Georgia,<sup>17</sup> Illinois,<sup>18</sup> New York,<sup>19</sup> and North Carolina<sup>20</sup> have adopted the traditional rule of successor liability and the four traditional exceptions. In addition, a limited number of states have adopted a nontraditional exception, the “continuity of enterprise” exception.<sup>21</sup>

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<sup>14</sup>There are additional claims that FMCSA may pursue in an action against a reincarnated carrier; for example, evasion of FMCSA regulations (49 U.S.C. § 14906).

<sup>15</sup>See, e.g., *Amjad Munim*, 648 So.2d at 151 (recognizing that Florida follows the vast majority of jurisdictions in honoring the traditional rule of corporate successor liability); *Vernon v. Schuster*, 179 Ill.2d 338, 345 (Ill. 1977) (stating that the traditional rule, along with the four exceptions, is recognized in the majority of American jurisdictions).

<sup>16</sup>See, e.g., *Amjad Munim*, 648 So.2d 145 at 151; *Patin v. Thoroughbred Motor Boats*, 24 F.3d 640, 650-651 (5th Cir. 2002).

<sup>17</sup>See, e.g., *Bullington v. Union Tool Corp.*, 328 S.E.2d 726 (Ga. 1985); *Perimeter Realty v. GAPI, Inc.*, 533 S.E.2d 136, 145-146 (Ga. Ct. App. 2000) (applying traditional definition to a corporation’s acquisition of a partnership and rejecting its application to the facts of the case). See also *Bridge Capital Investors II v. Small*, 144 Fed. Appx. 762, 764 (11th Cir. 2005) (not for publication).

<sup>18</sup>*Vernon v. Schuster*, 179 Ill.2d 338 (Ill. 1977) (applying the traditional successor liability rules in Illinois). See also *Pielet v. Pielet*, 942 N.E.2d 606, 636-640 (Ill. App. Ct. 2010) (applying the traditional rule in Illinois).

<sup>19</sup>*Schumacher v. Richards Shear Co.*, 451 N.E.2d 195 (N.Y. 1983) (applying traditional rule and exceptions and refusing the invitation to adopt the “product line” or “continuity of enterprise” exceptions). *Meadows v. Amsted Industries, Inc.*, 760 N.Y.S.2d 604 (N.Y. App. Div. 2003) (applying traditional rules and exceptions to products liability and negligence action); *Mitchell v. Suburban Propane Gas Corp.*, 581 N.Y.S.2d 927 (N.Y. App. Div. 1992) (applying traditional rule and two traditional exceptions); *Morales v. City of New York*, 849 N.Y.S.2d 406 (N.Y. Sup. Ct. 2007).

<sup>20</sup>*G.P. Publications, Inc. v. Quebecor Printing*, 481 S.E.2d 674 (N.C. Ct. App. 1997) (applying traditional rules); *Budd Tire Corp. v. Pierce Tire Corp.*, 370 S.E.2d 267 (N.C. Ct. App. 1988).

<sup>21</sup>States have also applied a “product line” exception, but this only applies to product liability actions, and therefore, is not applicable to FMCSA motor carrier successor liability.

The “continuity of enterprise” exception uses factors similar to those used in the federal “substantial continuity” standard. Factors other than the traditional ones that are typically taken into account under this exception are (1) retention of the same employees, (2) retention of the same supervisory personnel, (3) retention of the same production facilities in the same physical location, (4) production of the same product, (5) retention of the same name, (6) continuity of assets, (7) continuity of general business operations, and (8) whether the successor holds itself out as the continuation of the previous enterprise.<sup>22</sup>

In addition, there are states that have enacted legislation in place of traditional common law rules and exceptions. For example, Texas has enacted a statutory provision overriding the traditional rules and exceptions. Under Texas law, an acquiring entity may not be held responsible or liable for any obligations or liabilities of the transferring domestic entity unless they are expressly assumed by the person.<sup>23</sup> Table 8 provides a list of the successor liability laws in the 10 states we examined.

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<sup>22</sup>*Mozingo*, 752 F. 2d at 175.

<sup>23</sup>Tex. Bus. Orgs. Code Ann. § 10.254(b). See *Ford Bacon & Davis, L.L.C. v. Travelers Insurance Co.*, 635 F.3d 734 (5th Cir. 2011)(applying revised Texas statute in refusing to adopt product line exception). See also *C.M. Asfahl Agency v. Tensor, Inc.*, 135 S.W.3d 768 (Tex. App. 2004) (applying statute and finding no liability because it was not expressly assumed by the successor).

**Table 8: Ten Selected States' Corporate Successor Liability Rules**

| <b>State</b>       | <b>Follows traditional rules and exceptions only</b> | <b>Follows traditional rules and exceptions plus nontraditional exceptions</b> | <b>Applies "continuity of enterprise" theory</b> |
|--------------------|--|--|--|
| California         |  | •  |  |
| Florida            | •  |  |  |
| Georgia            | •  |  |  |
| Illinois           | •  |  |  |
| Michigan           |  | •  | •  |
| New Jersey         |  | •  |  |
| New York           | •  |  |  |
| North Carolina     | •  |  |  |
| Pennsylvania       |  | •  |  |
| Texas <sup>a</sup> |  |  |  |

Source: GAO and FMCSA.

<sup>a</sup>As stated previously, Texas has adopted a statute that only holds an acquiring entity liable for any obligations or liabilities of the transferring domestic entity when they are expressly assumed by the person. Tex. Bus. Orgs. Code Ann. § 10.254(b).

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

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## Staff Acknowledgments

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