



ISSUE #2

ESTABLISH A MORE EFFECTIVE COMPLIANCE REVIEW PROCESS

PROBLEM

Currently, the process of conducting Compliance Reviews (CRs) is time consuming and in many cases inefficient. With a motor carrier population of 700,000, and only about 16,000 CRs conducted each year, the CR process should be adjusted and improved to be more “reaching” and “impactful” on the industry. With freight projections expected to increase substantially in the next decade, it will be difficult for government to keep pace with the need to effectively monitor compliance on the entire industry if changes are not made.

There are too many carriers that have a variety of serious violations or have a pattern of repeating one particular type of serious violation. FMCSA is required by law to levy “maximum fines” against operators. However, there are a variety of limits on how and when these fines may be applied. For instance, the maximum penalty cannot be levied until a carrier commits its third violation rather than the first or even second.

The maximum civil penalty levels, as well as the factors that must be considered when levying fines, also contribute to problems with enforcement and need to be examined.

BACKGROUND

Conducting CRs can take as little as one day or several weeks, depending on the nature of the motor carrier’s operation, the reason for the review and the results of the CR (i.e. enforcement action). About two-thirds of all CRs are conducted by federal personnel with the other third done by state personnel.

In addition, many motor carriers are reviewed multiple times over several years. The result is that of the 16,000 reviews done each year, not all are necessarily unique. At one point a few years ago, only 26% of the entire motor carrier census had ever been reviewed by a federal or state compliance/enforcement officer.

The time-consuming nature of the CR process takes resources away from completing a greater number of reviews and/or other compliance and enforcement activities. In addition, the results of compliance reviews conducted on intra-state carriers are not included in FMCSA’s carrier safety rating process.

While CSA 2010 is tackling the CR issues in various ways (i.e. the BASICS and the intervention strategies), CVSA needs to continue to weigh in on this process and in its results. CSA 2010 is currently piloting their process in four states in 2008 (CO, GA, MO and NJ).



CVSA DOT Reauthorization Policy Issues



In a recent study, the GAO reports that from 2004 to 2006, there were more than four times as many companies with a serious violation that constituted a second strike than there were carriers with a third strike. Maximum fines range from \$11,000 for violations such as drivers exceeding the maximum hours-of-service limit to \$32,500 for infractions involving hazardous materials. The GAO recommends carriers with repeated serious violations even once should receive maximum fines versus waiting until their third offense.

Complicating this further is that states typically have much lower civil fine levels when conducting enforcement operations (especially as a result of roadside inspections). The typical fine averages \$200.

The determination of the actual civil penalties assessed in each enforcement proceeding is based on those defined limits or minimums and consideration of information available at the time the claim is made concerning the nature, gravity of the violation and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require.

In addition, rarely are enforcement actions taken against individuals (drivers, safety directors, company officials) for their actions or inactions to help ensure compliance. Criminal proceedings are also rarely initiated.

The typical enforcement case conducted as a result of a CR often times does not incent compliance. Many carriers consider it a cost of doing business and are willing to take the risk of not getting caught for operating out of compliance.

To compound matters, motor carriers going out of business due to safety concerns as ABC Company often times will open up another business the next day as XYZ Company. These entities, referred to as “Chameleon” carriers, must not be allowed to continue to operate. Processes need to be tightened up to prevent this situation from occurring.

SOLUTION(S)

Compliance Reviews should be streamlined and target specific issues or problem areas. If the carrier exhibits a tendency to have problems in a certain area, such as driver hours-of-service, then the ability to target a CR to that specific area should be made possible.

The targeted CR will be a recommendation of CSA 2010. CVSA supports this action, both in terms of providing the authority as well as ensuring that it is an eligible expense under MCSAP.

Furthermore, CVSA supports the intervention strategies being explored through CSA 2010 and should investigate and push for the statutory and regulatory modifications necessary to enable their implementation.



CVSA DOT Reauthorization Policy Issues



It will have to be demonstrated that any change in the process of a compliance review targeting it to a specific area will not mean that the traditional comprehensive CR will be impeded.

The fine schedules in Appendix A and Appendix B to Part 386 should be increased and the factors to be considered in the determination of actual civil penalties assessed in each proceeding should be revised such that the ability to pay and the effect on the ability to continue to do business as found in Part 386.81 should not be a factor when considering the assessment of sanctions. FMCSA should also be required to levy the maximum fines possible against operators with a second major violation.

Statutory and regulatory provisions related to repeat offenders and carriers issued out-of-service orders must be adopted as well as provisions, processes and requirements to ameliorate them from setting up a new business and wiping the slate clean. Such requirements must also ensure that there are tracking mechanisms in place to identify these “chameleon carriers” and include the ability to take action against them, including appropriate sanctions in the event they do slip through the cracks.

Lastly, there are several research studies to support the fact that a proper “safety culture” within a motor carrier leads to improved safety performance. As evidence of this fact, CVSA Associate Member motor carriers (see below) have better safety metrics, by large margins, than the national averages.

2005 CVSA Associate Member Safety Statistics

	OOS Vehicle	OOS Driver	OOS Hazmat	Satisfactory Safety Rating	Conditional Safety Rating	Unsatisfactory Safety Rating	Not Rated	Crash Rate*	Fatal Involvement Rate^
CVSA Associate Members	8.4%	1.4%	8.0%	74.7%	4.5%	0%	20.8%	0.118	1.15
US National Averages	23.4%	6.6%	5.5%	57.9%	30.1%	9.2%	2.9%	0.744	2.15 (2004)

- Data is on 178 CVSA Member Motor Carriers, based on SAFER Snapshots from March 31, 2006
- Inspection results are for the 24 months prior to March 2006
- Crashes are those reported to FMCSA by states for 24 months prior to March 2006
- CVSA Members: 37 carriers had no safety rating, 8 were rated Conditional and 133 were rated Satisfactory

* Recordable crash rate per million miles

^ Fatal involvement crash rate per 100 million miles

Federal and state regulators should encourage policies to incent motor carriers to adopt best practices to enhance and promote this proper safety culture. One example of such an incentive could be to have motor carriers undergo evaluations outside the normal compliance review process by 3rd party companies using certified safety consultants (to FMCSA standards). The results of these actions would not be used for enforcement purposes but should be used as a part of the motor carrier’s safety fitness determination and/or as part of the federal or state selection process (es) for identifying motor carriers for review. These approaches are sometimes referred to as alternative compliance.