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Electronic Edition

Compliance News & Commentary

Q&A

We do our best to keep an eye on driver's logs and recently installed a log scanner system. But during a DOT audit several false logs were found. Are we responsible for what we don't know about?

This question was submitted to the DOT when a carrier asked, "What is the liability of a motor carrier for hours of service violations?" The DOT responded: *The carrier is liable for violations of the hours of service regulations if it had or should have had the means by which to detect the violations."*

In a related question they added, "*Neither (a carrier's) intent to commit, nor actual knowledge of a violation is a necessary element of (a carrier's) liability. Carriers 'permit' violations of the hours of service regulations by their employees if they fail to have in place management systems that effectively prevent such violations."*

Key phrases to catch here are, "means by which to detect violations" and "systems that **effectively** prevent such violations."

Scanning systems are a definite assist in processing logs quickly, but you should routinely do random and targeted falsification checks against supporting documents as well if you want to be thorough.

For answers to your compliance questions, contact Standard & Best (503) 922-2009. Or logon to www.standardandbest.com

CSA 2010 to take affect in all states this coming summer

Armed with new tools for measuring safety, the FMCSA will be able to target unsafe carriers *and* drivers more quickly and take corrective action.

■ Twenty-five years of concentrated safety efforts has taught the enforcement community many things, but one stands out above the rest: There's more that can be done.

Beginning with the roadside inspection program in 1984, onsite compliance reviews two years later and SafeStat online in 1999, the fatalities attributed to large truck crashes has been more than halved. Applying new technology and existing data, Comprehensive Safety Analysis 2010 ("CSA 2010") intends to improve on that record even more.

■ **Background** | At present, a motor carrier can operate with serious safety deficiencies for several years without enforcement intervention. After a compliance review, a carrier might continue to operate with a "Conditional" safety fitness rating, even though some drivers falsify logs and might drive while fatigued.

■ **Going forwards** | Under the new system, each month carriers will be rated based on six safety behavior areas and ranked safety-wise relative to their peers. Those with specific safety problems will receive enforcement action appropriate to the severity of the violations and the probability that those violations pose a crash risk.

For lesser violations, a carrier would receive a warning letter. Serious violators will be suspended.

Safety Measurement System (SMS) will rank carriers safety-wise

Using historical SafeStat data and new data generated going forward, the FMCSA will make a Safety Fitness Determination.

■ In the past, motor carriers only received a "fitness rating" after a compliance review ("CR"). Since not all carriers receive a CR, many operate without censure, even though roadside inspections might indicate that the carrier's operations are unsafe. Or, a carrier might have had a CR in the past, received a "Conditional" rating, and operated for years, demonstrating improved safety performance, but while their rating remained static—adversely affecting some business possibilities and unjustly casting them as an undesirable carrier.

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Safety measurement *(Continued)*

The new Safety Measurement System ("SMS") is at the heart of the way carriers will be identified for corrective action in the future.

According to official reports, the SMS will "(D)etermine the specific safety problems exhibited by an entity." And, allow "enforcement officers … to surgically address them through a tailored set of interventions."

■ **SMS focuses on six behaviors linked to crash risk.** The performance of a carrier relative to its peers is based on six Behavior Analysis and Safety Improvement Categories ("BASICS"). The categories are:

➲ **Unsafe driving** | Operation of CMV's in a dangerous or careless manner—Speeding, reckless driving, improper lane change, and inattention.

➲ **Fatigued driving** | Operation of CMV's by drivers who are ill, fatigued, or in violation of hours-of-service rules—False logs, drivers exceeding allowable hours, drivers whose consciousness or ability to react is impaired by illness, drugs or alcohol.

➲ **Driver fitness** | Operation of CMV's by drivers who are unfit to drive due to lack of training, experience, or medical qualifications—Failure to have a valid and appropriate CDL, being medically unqualified.

➲ **Drugs & alcohol** | Operation of CMV's by drivers who are impaired due to alcohol, illegal drugs, and misuse of prescription or over-the-counter medications—Use or possession of drugs or alcohol.

➲ **Vehicle maintenance** | Failure of CMV due to improper or inadequate maintenance—Brakes, lights, and other mechanical defects, and failure to make required repairs.

➲ **Improper loading/cargo securement** | CMV incident resulting from shifting loads, spilled or dropped cargo, and unsafe handling of hazardous materials—Improper load securement, cargo retention, and hazardous materials handling.

What should be immediately obvious to carriers is that *drivers* and *driver* behavior hold a significant role in the SMS. As a result, carriers will see Driver Safety Measurement Systems ("DSMS"), which will track and make available individual driver's roadside inspection and crash history.

DSMS will identify "worst of worst" drivers for direct DOT intervention

■ **Whereas drivers felt relatively safe from enforcement action in the past, they may face disqualification and fines beginning next year.**

Using a time-severity weighting system, the DSMS will identify drivers whose history of violations over a 24-month period indicates they are a high risk for crashes. Depending on the outcome of the FMCSA's investigation with the driver, the driver may be declared disqualified, receive a Notice of Violations, and/or a Notice of Claim resulting in fines, in the same way that carriers do today.

Driver-specific information will become available to carriers once the system is up and running. Driver authorization to obtain the 'driver profile' will be required in the same way that authorization is required to conduct Safety Performance History Investigations today.

■ **Some examples of violation ratings—**

Reckless driving; violating OOS order; driving under influence of drugs/alcohol; driving while ill/fatigued—Severity rating 10.

Flat tire or fabric exposed; tread depth less than 4/32-in, 2/32-in.; tire tread and/or sidewall separation—Severity rating 8.

Non-English speaking driver; no road test/ certificate/class license; inoperative turn signal/; loose steering column—Severity rating 6

No medical certificate; EOBR requirement not met; seatbelt violation—Severity rating 1

Stats

2007 preliminary crash statistics show:

- 136,438 non-fatal large truck crashes—a decline from last year's 141,968.
- 80,752 injury accidents.
- Fatal crash stats aren't available yet. There were 4,732 fatals in 2006.
- 2,231 crashes involving hazmat loads.

According to FMCSA's Statistics & Analysis online:
Oregon had 1,310 non-fatal crashes, of which 413 involved injuries, and 52 involved hazmat.
Washington had 1,523 non-fatal crashes, 149 involved injuries, and 44 involved placarded loads.
Idaho had 770 non-fatal crashes, 494 involved injuries, and 10 involved hazmat loads.

High numbers: States taking honors for the most accidents—**Texas** had 16,942 non-injury crashes and 6,832 injury crashes; **California** had 10,626 non-injury and 3,734 injury crashes.

Low numbers: States reporting the lowest numbers were **Rhode Island** with 272 non-injury and 130 injury crashes. **South Dakota** had just slightly more crashes, 279, but significantly fewer injury crashes, only 30.

-Source: *FMCSA Crash Statistics*

Product highlights

Do you have drivers who need to 'brush up' on their logbook skills? Standard & Best has instructor and student manuals available that are ideal for in-house training.

Upcoming | Watch for information about Standard & Best's first "Strictly Legal" DOT safety conference coming the first of the year.

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