

An Overview of the New Transportation Regulations

Where are your drivers' safety records? The answer to that question could very well determine whether your motor carrier operation will face steep penalties, or even be shut down.

The Federal Motor Carrier Safety Administration (FMCSA) recently rolled out a new safety compliance program to reduce truck-involved accidents through additional regulations and monitoring of motor carriers and their drivers for unsafe transportation practices. The FMCSA implemented this new program, dubbed the Compliance Safety & Accountability Program (CSA), under the belief that its prior enforcement effort failed to focus sufficient attention on individual unsafe drivers. Part of the problem, some contend, is that the old regulations allowed drivers to elude safety rules by "jumping" from one employer to another.

Under the new program, every recorded violation, citation, and warning to a driver will be used to calculate a motor carrier's safety fitness rating. Thus, motor carriers must now be more aware of and proactive in their driver's compliance with local, state, and federal regulations or risk steeper penalties and fines, including harsh actions such as shutting down a motor carrier's operation.

An Overview of the CSA

The CSA is a data-driven safety scoring system which gives each motor carrier and its drivers a "score" that is based on several safety performance categories. Under this new system, the lower the score, the better, and each motor carrier is ranked with other fleets that have similar exposure to risk of accidents. This new system is comprised of three key elements: measurement, safety evaluation, and intervention.

The "measurement" category takes into account seven specific categories of information, including unsafe driving, fatigued driving, driver fitness, use of controlled substances and alcohol, vehicle maintenance, cargo-related incidents, and a crash indicator. The FMCSA takes data on these categories and uses its own formula to arrive at the motor carrier's overall score, which is then compared to the scores of similar motor carriers. The safety evaluation component determines how to address carriers with poor safety performance. While this aspect is similar to the pre-existing methodology, the new system expands the use of on-road performance measures and includes the results of all government investigations. This allows the FMCSA to determine the safety fitness on a larger segment of the industry.

The intervention component of the Compliance Safety & Accountability Program allows the FMCSA to determine if a carrier is deficient in one or more basic areas, and then provides for three discreet steps of enforcement: intervention, investigation, and follow-up. A component of this new aspect of the regulations includes a "traffic ticket" system that involves a warning in lieu of a citation, but does require that a carrier respond to a notice of a violation and inform the FMCSA of how the carrier intends to address the alleged violation. Separate from the notice of a violation, a Notice of Claim begins the penalty phase and is the most severe level of punishment available. Following service of a Notice of Claim, the motor carrier has 30 days to reply and, similar to a traffic ticket, can either pay the amount of the fine, contest the claim, or seek some alternative dispute resolution.

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New Cell Phone Regs

The Department of Transportation recently issued two new rules governing commercial motor carriers, including a ban on the use of cell phones by interstate truck and bus drivers and increased requirements on hours of service. There is no doubt that driver inattention is an important factor that results in many accidents and fatalities. The most recent numbers from National Highway Traffic Safety Administration research showed that almost 5,500 people died and half a million were injured in motor vehicle accidents involving distracted drivers. Studies have also shown that the odds of being involved in a safety-critical event (i.e., a crash, a near-crash, crash-relevant conflicts, or an unintentional lane deviation) are three times greater when the driver is reaching for an object such as a cell phone than when the driver is not otherwise distracted. Perhaps even more alarming, the odds of being involved in a safety-critical event are six times greater while a driver is dialing a cell phone.

Harsher Penalties

In an effort to combat these types of incidents, the FMCSA promulgated a new rule restricting the use of hand-held cell phones by interstate drivers. Certain hands-free options are available so long as the device is within the driver's reach. This particular rule applies while a vehicle is operating on a highway, even if it is temporarily idling due to traffic or other delays. This new rule imposes harsh penalties on drivers and their employers for violations. Drivers who violate this rule may face a fine of up to \$2,750 per offense and potential disqualification from operating a commercial motor vehicle for multiple offenses. Drivers may also face suspension of their commercial driver's license after two or more serious violations of state or local laws prohibiting cell phone use while driving. In turn, carriers may also face penalties of up to \$11,000 for allowing drivers to use cell phones while on duty.

Shortened Workweek

The hours-of-service regulations have been in place for years, and motor carriers are acutely aware of the regulations and penalties for violations. As such, understanding the recent changes to the hours of service regulations is crucial for any carrier who wishes to avoid the long arm of the FMCSA.

There was certainly much debate centered on changing the current 11-hour limit to a 10-hour limit, culminating in no less than two lawsuits. While the FMCSA elected not to change the current 11-hour limit, the new regulations cut the maximum number of hours that a driver can work within one week. Under the old rule, drivers could work an average of up to 82 hours within a seven-day period, but the new rule limits a driver's work week to 70 hours. Further, a minimum 30-minute break is required for all drivers who have been on the road for eight hours.

The new rule also modifies the 34-hour restart to include at least two nights' rest when the body demands sleep the most – from 1 a.m. to 5 a.m. Another change to the new regulations relates to the definition of "on-duty time." The old rule defined it as any time a driver spends in the truck, except while in the sleeper. The new definition of "on-duty time," however, does not include any time a driver spends resting in a parked commercial vehicle. The new definition also does not include time a driver spends in the passenger seat immediately before or after eight consecutive hours in the sleeper. Finally, the new rule does not permit drivers to count loading or unloading time as off-duty, unless a driver is released from all responsibility for the vehicle during that time.

Navigating the New Regulations

The implementation of the Compliance Safety & Accountability Program and the adoption of the new rules by the FMCSA will drastically impact the oversight motor carriers must place on their operations. While there is nothing new to the effective management practices, some of the best ways to avoid infractions is in maintaining adequate documentation and prevention. As Ben Franklin famously stated, "An ounce of prevention is worth a pound of cure."

Because the CSA relies exclusively on data supplied from local law enforcement officials and the federal government, motor carriers should take all steps necessary to ensure the accuracy of their data, as data can mutate and faulty information can worm its way into driver and motor carrier scores. While the scores can be contested, the CSA will not revise its calculation unless the carrier can produce the correct data. Thus, a carrier is best served by maintaining pristine documentation and training all employees and drivers on the new regulations.

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