



Division Administrators Meeting – Louisville, KY

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U.S. Department of Transportation
Federal Motor Carrier Safety Administration



Recent Policies

- Use of Advanced Information Technology Policy
- SAFETEA-LU Section 4114 Supplemental Policy on Intrastate Operations of Interstate Motor Carriers
- Supplemental Policy on Assessing Maximum Fines Under MCSIA Section 222
- SAFETEA-LU Section 4104 Policy: Revocation of Operating Authority
- SAFETEA-LU Section 4103 Policy: Penalties for Denial of Access to Records
- Determining the Preventability of Crashes



Policy on Use of Advance Information Technology

- Original policy issued in 1997
 - Limited use of advanced technology data during reviews to promote and encourage its use by the industry
 - DA concurrence prior to requesting access to any advanced technology records for purposes of assessing the carrier's compliance
 - Defined critical and non-critical false RODS



Use of Advanced Information Technology Policy

- Agency rescinds its 1997 policy on December 24, 2008 (Federal Register published November 19, 2008)
 - Advanced Information Technology System records are considered supporting documents as they record time, date and location of vehicles and drivers
 - Maintains definition of critical and non-critical false RODS
 - Refusals should be considered a denial of access to records



SAFETEA-LU Section 4114 – Intrastate Operations of Interstate Motor Carriers

- Section 4114 Implemented in Phases
 - Phase I – Issued August 31, 2006
 - Include intrastate mileage, accidents and vehicle OOS inspections to calculate Factors 4 and 6 of the rating
 - Phase II – Issued June 6, 2007
 - Include intrastate violations to calculate the rating
 - Phase III – Issued January 23, 2009
 - Section 4114(b) Final Unsat Federal – Federal will place inter/intrastate operations OOS
 - Section 4114(c) Final Unsat State – When State places intrastate operations OOS Federal will place interstate operations OOS



SAFETEA-LU Section 4114 – Intrastate Operations of Interstate Motor Carriers

- Section 4114 Implemented in Phases
 - Phase IV – Under development
 - Section 4114(c) Final Unsat State – When State places intrastate operations OOS Federal will place interstate operations OOS
 - 49 U.S.C. s. 31144(d), 49 CFR 385.13(d) – Operating a commercial motor vehicle following a prohibition of interstate operations based upon State's determination of unfitness
 - IT updates for placing carrier on notice
 - Standard procedures between Federal and State offices



Assessing Maximum Fines under MCSIA Section 222

- Important Dates
 - September 8, 2000
 - Original three strikes policy
 - 2004 Clarification
 - No reviews or cases prior to September 8, 2000
 - Cases must be closed with admissions or adjudications
 - Six year period
 - 2006 – 2007 Reviews by OIG and GAO
 - Findings and Recommendations
 - April 1, 2009
 - Supplemental Policy



Supplemental 222 Policy

- Important new changes to support expanded Implementation of Section 222
 - Supplemental policy will become effective April 1, 2009
 - Acute violations discovered during a CR or Section 222-eligible investigation must be included in an NOC (at least one instance of every separate violation of an acute regulation)
 - CaseRite and CAPRI language have been modified to provide appropriate notice of the expanded policy
 - The types of investigations that count as “Section 222-eligible” has been expanded
 - State violations may be considered when establishing whether a situation is eligible for maximum fines



Supplemental 222 Policy

- Maximum civil penalties are assessed when:
- Patterns of Violations (pattern)
 - Two or more acute and/or critical violations in 3 or more parts
 - Significant contact
- Two-strikes (repeat)
 - Acute violations
 - One previous closed case with in 6 years & same regulatory part
- Three-strikes (repeat)
 - Acute or critical violations
 - Two previous closed cases with in 6 years & same regulatory part



Extraordinary Circumstances

- If a pattern of violations or a second-strike or third-strike situation is discovered, it must be documented and maximum fines must be assessed unless FMCSA determines and documents that extraordinary circumstances exist
- Extraordinary circumstances are not specifically defined, but may be found to exist when, for example, the agency determines that repetition of a violation does not demonstrate a carrier's failure to take appropriate remedial action
- Extraordinary circumstances must be determined by the Division Administrator in coordination with the Field Administrator or his/her designee



SAFETEA-LU 4104: Revocation of Operating Authority

- Issued on December 17, 2008
- Section 4104 of SAFETEA-LU gave FMCSA the authority to revoke the operating authority of:
 - A motor carrier who has failed to comply with the safety fitness requirements of 49 USC 31144
 - A motor carrier of passengers if FMCSA finds it constitutes an imminent hazard
- FMCSA may revoke a motor carrier's operating authority only after giving notice to the motor carrier



SAFETEA-LU 4104: Revocation of Operating Authority

- Effective December 31, 2008
- Field Administrators are revoking the operating authority of motor carriers who have a final "unsat" or motor carriers of passengers who pose an imminent hazard.
- Motor carriers who have their operating authority revoked must go through the reinstatement process.



SAFETEA-LU Section 4103 Penalties for Denial of Access to Records

- Issued on December 24, 2008
- Section 4103 of SAFETEA-LU established a penalty provision against motor carriers for failing to promptly allow FMCSA access to records
- FMCSA has an additional enforcement tool to compel uncooperative motor carriers to produce records



SAFETEA-LU Section 4103 Penalties for Denial of Access to Records

- Effective on January 26
- Held a Webinar in mid-January.
 - Received approximately 100 questions from participants
 - One of the major issues was how to count denial of access violations
 - It will always be a 1 of 1, 2 of 2, etc. count
 - Publishing Qs and As



Determining the Preventability of Crashes

- Enforcement and Compliance Division has drafted the policy
- We've received comments from MC-F
- Updating and modifying the December 2001 procedures that were issued under the policy entitled "Accident Review Requests".
- Investigators and auditors will now actively inform motor carriers about our crash preventability policy.
- FMCSA will be able to make changes to the crash rate up to the final rating is effective.



Future Memorandums

- Intermodal and New Entrant Information Memos
- Increased Use of Imminent Hazard Authority
- Technology Based Settlement Agreements
- UFA Modernization
- Failing to Register with FMCSA
- Successor Liability



Questions

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