



MOTOR CARRIER SAFETY ADVISORY COMMITTEE

C/O: Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Room W64-232
Washington, DC 20590

June 21, 2011

The Honorable Anne S. Ferro
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Administrator Ferro:

The Motor Carrier Safety Advisory Committee (MCSAC) accepted Task 11-01 at its December 2010 meeting. The Federal Motor Carrier Safety Administration (FMCSA) tasked the Committee with identifying concepts and ideas that FMCSA should consider in developing standards for patterns of safety violations by motor carrier management to assist FMCSA with implementing the requirements of Section 4113 of SAFETEA-LU.

The Committee met in public meetings to discuss the Task from December 6 –7, 2010, March 30 – April 2, 2011, and June 20 – 21, 2011. On June 21, 2011, the Committee approved the enclosed Task 11-01 report containing its recommendations.

I submit this report to FMCSA for its consideration.

Sincerely,

//signed//

David R. Parker
Chairman, Motor Carrier Safety Administration

Enclosure

Introduction

In considering Task 11-01 on patterns of safety violations by motor carrier management, the Motor Carrier Safety Advisory Committee (MCSAC) discussed the relationship and overlapping elements between the task at hand, and the previous Task 09-03 on the new entrant motor carrier application process. Overlapping elements between the two tasks include: defining persons and entities involved in both the new entrant application process and in patterns of safety violations; and the screening process involved in the new entrant application process, and how this information can be used to help identify those involved in patterns of safety violations. In addition to identifying related components from the Task 09-03 report submitted on September 2, 2009, the Committee identified specific definitions for persons involved in patterns of safety violations, namely “officers,” “re-entrant carriers,” and “reincarnated/chameleon carriers.” The Committee also discussed how to assess, identify, enforce, and track penalties associated with “patterns of safety violations.”

The Committee’s recommendations regarding patterns of safety violations by motor carrier management are summarized below.

I. Overarching recommendations

- A. The Committee suggests that the recommendations submitted under Task 09-03 be implemented (beyond those currently being implemented). The Committee recommends the following amendments to the Task 09-03 report:
 1. Include an additional level of screening up front for all new entrants asking for basic background information, including past violations or practices that would be of concern.
 2. If the new entrants are listed as individual violators, a Pre-Authority Safety Audit will take place.
 3. The guidance in Task 09-03 is no longer limited to “new entrant carriers,” but rather includes any “new registrant.”
 4. The definition of “officer” (see II.A.) included in this Task 11-01 report will supersede the definition included in the Task 09-03 report.
 5. The definition within this Task 11-01 report of “reincarnated” and “re-entrant” carriers have been amended (see II.B.) from those included in the Task 09-03 report.
- B. The Committee looks forward to seeing the results from the Federal Motor Carrier Safety Administration’s (FMCSA) study on minimum levels of financial responsibility for insurance.
- C. As part of the new entrant registration process, FMCSA should compare new registrant information against the database of individual violators to determine whether or not the new registrant should be granted entry.
- D. The Committee encourages FMCSA to conduct an initial safety audit sooner than the 18-month period, and preferably within a 6-month period.

II. Task statement definitions

- A. “Officer”

1. The Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) defines an officer as “an owner, director, chief executive officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier, regardless of title attached to these functions, and any person, however designated, exercising controlling influence over the operations of a motor carrier.”¹
- B. “Re-entrant” and “reincarnated/chameleon carrier”
 1. The Committee defines a “re-entrant carrier,” as “an entrant with prior motor carrier experience who applies for a new United States Department of Transportation (US DOT) number.”
 2. The Committee defines a “reincarnated/chameleon carrier” as “a carrier that attempts to register as a new entrant and attempts to operate as a new entity to evade detection or consequence for a prior or ongoing non-compliance.” (See § 385.306 for more information).

III. Patterns of safety violations of officers

- A. Components of specific safety violations (that would constitute a pattern of safety violations)
 1. MCSIA Section 222.
and/or
 2. Regulatory Guidance for Federal Motor Carrier Safety Regulations: A “serious pattern” constitutes violations that are both widespread and continuing over time. A serious pattern is more than isolated violations. A serious pattern does not require a specific number of violations.²
and/or
 3. FMCSA supplemental policy defines “a ‘pattern of violations’ as occurring when the Agency discovers two or more critical and/or acute violations in each of three or more different regulatory (CFR) parts... A pattern of violations does not require previous enforcement and can be found even during a first time investigation.”³
- B. Description of process to track/enforce violations
 1. Data collection
 - a. Track/build a database of people who have established a pattern of violations (as defined in III.A., “specific safety violations”).
 - b. As part of information gathering, FMCSA should seek Social Security Numbers of individual violators (as determined by the process outlined in IV.B.).
 2. Enforcement tools
 - a. Draw from existing tools (including databases) using real-time availability.

¹ The Committee agreed that the statutory definition of “officer” was sufficient. See SAFETEA-LU section 4113, codified as 49 U.S.C. 31135(d)(2).

² *Regulatory Guidance for Federal Motor Carrier Safety Regulations*, 62 FR 16369, April 4, 1997.

³ *FMCSA Supplemental Policy on Assessing Maximum Fines under the Motor Carrier Safety Improvement Act of 1999 (MCSIA) Section 222*, 74 FR 14184, March 30, 2009.

- b. Give hiring carriers access to the data collected on individual violators (as determined by the process outlined in IV.B.).
- C. Responsibility of reincarnated carriers (successor liability)
 - 1. An employer who knowingly utilizes an individual violator (as determined by the process outlined in IV.B.) is responsible for that violator's past, present, and/or future actions, as described below (see IV.A.).

IV. Principles of due process

- A. Duration for which an entity is labeled as an individual violator (as determined by the process outlined in IV.B.) should be judged using a tiered system:
 - 1. An egregious action will result in permanent revocation of registration and permanent ban from the industry.
 - 2. Less serious offenses will result in penalties that will be determined based on severity, individual culpability, and frequency of offense(s).
- B. Determination of an "officer's" (as defined in II.A.) culpability may be at the discretion of the investigator.
- C. Appeals process
 - 1. When a pattern of safety violations has been established for an individual violator (as determined by the process outlined in IV.B.), FMCSA should be granted authority to suspend a carrier immediately, including for the duration of the appeals process.

Conclusion

In submitting the recommendations contained in this Task 11-01 report, the Committee strives to provide FMCSA with concepts and ideas the Agency should consider in developing standards for patterns of safety violations by motor carrier management to assist with implementing the requirements of Section 4113 of SAFETEA-LU.