

Patterns of Safety Violations by Motor Carrier Management

49 USC § 31135(b)-(d)
(as added by SAFETEA-LU
§ 4113(a)(2))

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Task Statement

Task #11-01

“Identify concepts the Agency should consider in developing standards for patterns of safety violations by motor carrier management to assist the Agency with implementing the requirements of Section 4113 of SAFETEA-LU.”

Task Statement

Task #11-01 (cont.)

- Furnish definitions and standards
 - “Officer”
 - Ensure persons responsible for the safety violations or their concealment are the persons identified.
 - Note statutory definition in 49 USC § 31135(d)(2)
 - “Pattern or Practice” of avoiding compliance, etc.
 - Resource limits – E.g., should pattern require 2x? 3X? More?
- Consider principles of due process
- Need to increase Agency enforcement and legal staff resources to address the volume of cases and appeals.

49 USC § 31135(b) – “Pattern or Practice of Avoiding Compliance”

- “If the Secretary finds that an officer of a motor carrier engages or has engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with regulations on commercial motor vehicle safety prescribed under this subchapter, while serving as an officer of any motor carrier, the Secretary may suspend, amend, or revoke any part of the motor carrier’s registration under section 13905.”

49 USC § 31135(c) Rulemaking Requirement

- “Not later than 1 year after the date of enactment of this subsection, the Secretary shall by regulation establish standards to implement subsection (b).”

Sec. 31135(d)(2) – “Officer”

- Statutory definition based on controlling influence. 49 USC § 31135(d)(2):
 - “...an owner, director, chief executive officer, chief operating officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier, regardless of the title attached to those functions, and any person, however designated, exercising controlling influence over the operations of a motor carrier.”

Legislative History

“Pattern or practice of avoiding compliance”

- No statutory definition
- Legislative History:
 - References to motor carrier managers or brokers ordering, encouraging or tolerating widespread regulatory violations
 - Understanding that motor carriers file bankruptcy, reorganize or re-name operations to avoid liability for non-compliance

Legislative History – cont.

Officers

- Narrow set of persons:
 - The “*few motor carrier officers who have shown unusual and repeated disregard for safety compliance*”
 - Senate version: “only in the most serious cases.”
 - Total number of such managers is “small” (both House and Senate versions).
- The House provisions were adopted.

Legislative History – cont.

- What action is authorized?
 - “...authorize the Secretary to *force out of the industry*” certain *officers*. (Joint Statement of the Conference Cmte, both House & Sen. bills)
 - But see statute: “...suspend, amend or revoke” registration of *the motor carrier*.
 - Express authority to deny new application was provided in House Bill only, not final. (But likely implicit authority in 49 USC 13902.)

Rulemaking History

- 2005: Regulatory Identification Number (RIN) drawn for “Patterns of Safety Violations by Carrier Management”
- 2006: RIN withdrawn
- Spring 2007: New RIN drawn to establish a rule combining Revocation of Operating Authority and Patterns of Safety Violations
- Fall 2007: Two rulemakings were separated

Rulemaking Challenges

- “Officers”?
- No statutory definition of “pattern or practice of avoiding compliance”
- What is “masking”?
 - No uniform legal standard on successor liability, “reincarnated” carriers

“Officer”

- Who should be penalized?
- How should FMCSA maintain a list of offenders?
 - IT concerns
 - Privacy Act implications
 - Due Process concerns

“Pattern or Practice of Avoiding Compliance...”

- No statutory definition of “pattern or practice”
 - Consider MCSIA 222 policy for determination of maximum penalties.
- “...engages or has engaged in...”
 - No statutory requirement that officers engage in the pattern or practice *at the “new” motor carrier.*
 - How far back should the Agency look?

“...or Masking or Concealing Noncompliance...” – What is a Reincarnated Carrier?

- Is the new motor carrier attempting to mask or conceal non-compliance?
- No statutory or regulatory standard for reincarnated carriers
- *Williamson* decision (2010)
- Is the motor carrier a “substantial continuity” of the predecessor company?

Questions?