

AHERN ADVISORY

CSA 2010 Part 2

I discussed CSA 2010 and the impact it's going to have on the trucking industry:

- Effective December 5, 2010, the FMCSA will replace the Safe Stats,;
- I further indicated that motor carriers need to be prepared since the Safety Regulation Compliance has become, almost impossible, to ignore.

After the article, I received a substantial amount of emails referencing:

1. Where can I receive updated information on the CSA 2010 changes?
2. Most people were under the impression that CSA 2010 was going to take effect in November.

There are several publications available on CSA 2010:

- One is with Foley Services, contact #800- 253-5506.
- Or review their website; www.foleyservices.com.

They have prepared a Motor Carriers Guide to CSA 2010. Additionally, the American Trucking Association has various publications that you can obtain. I've also been advised that there will be a transportation seminar in Portland, Oregon on December 9, 2010;

- It's entitled the Northwest Passage.
- "Navigating the Industry in a CSA 2010 World", and being presented by:

BENESCH LAW FIRM
2300 BP TOWER, 200 PUBLIC SQUARE
CLEVELAND, OH 44114-2378
Telephone: #216-789-8720 (Jim Hill)

Or

Telephone: #216-363-4178 (Eric Zalud)

They can provide you with additional information on the seminar – should you wish to attend. The seminar is worthwhile and will discuss;

- The trends and impact on labor and employment issues.
- Negligent hiring and the influence in insurance.
- The significance of CSA 2010 upon mergers and acquisitions, and;
- Recent legal developments in transportation and logistics that can sink or save a business.

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I would encourage all of you to “check out this event”.

Since my last newsletter, I also received numerous questions about the Federal Motor Carrier’s ability to intervene;

- What’s the intervention process?
- What does it consist of?
- Are there different levels of intervention?
- How can you comply if the FMCSA has contacted you?

It’s important to understand that interventions will range from comprehensive safety audits to warning letters.

The SMS allows FMCSA to monitor safety compliance at an area by area level. This means FMCSA can target a motor Carrier for areas that need improvement, rather than undertaking a much more labor, time, and intensive general compliance review. **The precise nature of this means two key changes;**

1. Carriers are more likely to hear from FMCSA regarding minor safety compliance issues, and;
2. Carriers will have more of a chance to improve before FMCSA has to resort to costly fines and shut down orders.

There are differing levels or intervention. Interventions don’t necessarily mean fines and safety audits. **CSA 2010 introduced various levels of intervention.** For low level infractions (**those deemed less likely to cause an accident**) interventions can include;

1. Warning letters, and/or;
2. Carriers being given access to safety data and measurement information.

The thought process behind this; the more information a Carrier has, the better they’re able to improve their safety rating as they work on compliance.

For more serious infractions, interventions may include;

1. Off sight investigations.
2. On site focused investigations.
3. On site comprehensive investigations, or;
4. The typical compliance review.

When reviewing the Motor Carriers Guide to CSA 2010 (version 2.0), CSA 2010 introduced “Follow On” interventions. These were created to insure that compliance is achieved after a violation has been highlighted and maintained. **These follow on interventions have various levels;**

1. **A Cooperative Safety Plan;** this is a situation where a plan is voluntarily implemented by the carrier. The carrier and MCCA collaborate to build a plan from a standard FMCSA template to address and correct certain problems.
2. **A Notice of Violation;** this is a formal notice that the carrier is out of compliance. FMCSA will use a notice of violation if the problem can be immediately fixed and is not serious enough to require a fine.
3. **A Notice of Claims;** this is a fine for a violation, and;
4. **A Settlement Agreement;** a contract between FMCSA and the carrier. The two parties negotiate to further reduce penalties based on the carrier fixing its problems.

It’s important to understand that there are various levels of intervention. Intervention, by the FMCSA, can start at any level, including shutdown orders. If you have serious compliance infractions, you may be placed out of service, immediately. However, the intent is to cooperatively improve the overall safety compliance issues facing a particular carrier.

Drivers with violations can expect to receive a notice of violation or a notice of a claim. It's important to understand that CSA 2010 looks at drivers. FMCSA reviews driver records, cross references multiple employers. They also contact drivers with severe violations, while conducting interventions for the employee motor carrier.

Last week, one of my readers, Malcolm Winspear from Power Freight, brought to my attention that; all incidents that involve a motor carrier or driver, regardless of cause or culpability, are factored into the rating. This would include warnings issued to drivers (when no ticket was issued), roadside inspections, and moving violations. The rating will be placed against the carrier, not individuals drivers...**and the carrier will not be told which drivers are producing the lower rating. The ratings are visible to the public,** including carrier's current and potential customers.

As vehicle laws, enforcement practices, and reporting processes vary widely by state; if the volume of data is potentially unmanageable by CSA/FMCSA, then the service purchasers/**shippers may be forced to limit or eliminate use of carriers with marginal ratings to avoid litigation and liability risks;** this puts an estimated 76% of US carriers at risk.

In closing, remember there are 7 categories within the Carrier Safety Measurement System that each look at an individual area of safety compliance. Those areas are;

1. Unsafe driving.
2. Driver fatigue.
3. Driver fitness.
4. Control substances and alcohol use.
5. Vehicle maintenance.
6. Improper cargo loading/securement, and;
7. Crash history.

Under the CSA 2010 program, any area where a carrier is out of compliance, will be visible to an auditor. Compliance issues will be discovered, simply by looking at a computer screen. The number of safety audits, fines and other interventions will increase.

For many of my readers that aren't sure whether you're in compliance or not, there are various websites you can access;

1. Csa2010.fmcsa.dot.gov – use this site to review your score.
2. Dataqs.fmcsa.dot.gov – this site allows you to correct any mistakes you find in your basic scores.
3. Mcmiscatalog.fmcsa.dot.gov – this website identifies certain motor carrier data available to the public.
4. Psp.fmcsa.dot.gov – this allows a motor carrier to log in and find out if an applicant has a good safety record.

QUOTE OF THE WEEK: “Effort is a commitment to seeing a goal through to the end, not just until you get tired of it” . (Howard Cato)