
Office of Inspector General

Audit Report

Motor Carrier Safety Program

Federal Highway Administration

Report Number: AS-FH-7-006

Date Issued: March 26, 1997





U.S. Department of
Transportation
Office of the Secretary
of Transportation

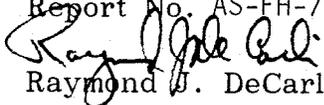
Office of Inspector General

Memorandum

Subject ACTION: Report on the Motor Carrier
Safety Program, FHWA

Date: MAR 26 1997

Report No. AS-FH-7-006

From 
Raymond J. DeCarli
Associate Deputy Inspector General

Reply to
Attn of Stefani:x60500

To
Federal Highway Administrator

I am providing this report for your information and use. Your February 27, 1997, comments to our October 4, 1996, draft report were considered in preparing the report. A synopsis of the report follows this memorandum.

You concurred or concurred in part with all recommendations except for A1, C1, C2, and C3. While your response identified both philosophical and programmatic differences with our report, we share the common goal of improving the safety of our Nation's highways. For all recommendations, you proposed actions or alternative actions. You also responded positively to the "Other Matters" section concerning referral of criminal enforcement to the Office of Inspector General and carrier disputes awaiting legal determinations. Actions taken and planned are responsive to the audit recommendations, and the recommendations are considered resolved subject to the audit followup provisions of Department of Transportation Order 8000.1 C.

We appreciate the courtesies and cooperation extended to us during the review. If I can be of further assistance, please call me on x61964 or Alexis M. Stefani, Director, Office of Transportation Program Audits, on x60500.

#



U.S. Department of
Transportation

Office of Inspector General

Motor Carrier Safety Program

Federal Highway Administration

Report No. AS-FH-7-006

March 26 ,1997

Objective

The audit objective was to evaluate Federal Highway Administration's (FHWA) policies, procedures, and oversight for conducting compliance reviews of motor carriers' operations to ensure compliance with applicable motor carrier safety regulations. In addition, the audit evaluated the adequacy of penalties assessed for violations to ensure that a sufficient deterrent exists for maintaining safe vehicles.

Conclusions

Improvements are needed in the compliance review program to expand review coverage of the motor carrier population, more accurately target carriers for review, induce prompt and sustained motor carrier compliance with safety regulations, and ensure the quality of reviews. During Fiscal Year (FY) 1995, only 8,666 of 345,500 (2.5 percent) interstate motor carriers received compliance reviews, and 64 percent of the Nation's carriers remain unrated. Because of limited resources, FHWA should better target carriers by emphasizing on-the-road performance data in their system to prioritize and select carriers for review. FHWA's enforcement efforts were not effective in inducing prompt and sustained compliance with regulations and safe on-the-road performance. Seventy-five percent of carriers sampled did not sustain a satisfactory rating, and after a series of compliance reviews, 54 percent of the carriers had vehicle out-of-service rates from roadside inspections higher than the FY 1995 national average. In addition, FHWA did not ensure compliance review procedures were followed or that critical review steps were thoroughly performed.

Monetary Impact

While no monetary impact can be quantified, implementing the report's recommendations will improve the effectiveness of compliance reviews in bringing motor carriers into compliance with applicable motor carrier safety regulations and improve the safety of our Nation's highways.

SYNOPSIS



U.S. Department of
Transportation

Office of Inspector General

Recommendations

We made 14 recommendations designed to:

- increase safety fitness determinations of the motor carrier population,
- improve the system to identify and review problem carriers,
- enhance the effectiveness of the enforcement program by taking stronger enforcement actions, and
- ensure the quality of compliance reviews.

Management Position

FHWA concurred or concurred-in-part with 10 of the 14 recommendations. For the four recommendations which FHWA non-concurred and for all other recommendations, FHWA provided either implementing actions or proposed alternative corrective actions. FHWA agreed to:

- increase contacts with motor carrier and improve the effectiveness of compliance reviews,
- use a system which emphasizes on-the-road performance data to identify high risk carriers for review,
- use a new system for assessing increased penalties for continued noncompliance, and
- develop and implement controls to ensure the quality of compliance reviews.

Office of Inspector General Comments

FHWA's actions taken and planned are considered responsive to our recommendations. Therefore the recommendations are considered resolved, subject to the followup provisions of Department of Transportation Order 8000.1C.

TABLE OF CONTENTS

TRANSMITTAL MEMORANDUM

SYNOPSIS

I. INTRODUCTION

Background.....	1
Objectives, Scope, and Methodology.....	3
Management Controls.....	4
Prior Audit Coverage.....	5

II. FINDINGS AND RECOMMENDATIONS

Finding A: Extent of Coverage.....	7
Finding B: Targeting Carriers for Compliance Reviews	18
Finding C: FHWA Enforcement Actions	29
Finding D: Quality of Compliance Reviews	47
Other Matters	54

III. EXHIBITS

Exhibit A: Summary of FHWA Enforcement Actions on 81 Active Carriers Comprising Our Sample.....	56
Exhibit B: Verification of Evidence that Repairs Were Made to Out-of-Service Vehicles	58
Exhibit C: Audit Team Members	59

IV. APPENDIX

FHWA Response to Draft Report.....	60
------------------------------------	----

I. INTRODUCTION

Background

Section 215, of the Motor Carrier Safety Act of 1984, codified in Title 49, United States Code (U.S.C.), Section 31144, directed the Secretary of Transportation in cooperation with the Interstate Commerce Commission (ICC) to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles operating in interstate commerce. The Federal Highway Administration (FHWA) issued Title 49, Code of Federal Regulations (CFR), Part 385, which established a procedure to determine the safety fitness of all interstate motor carriers through the assignment of safety ratings. FHWA also established a "safety fitness standard" which an interstate motor carrier would have to meet to obtain a satisfactory safety rating. In October 1986, FHWA established the safety rating review program to educate motor carriers and assign safety fitness ratings to all interstate motor carriers. As of September 30, 1995, there were 345,500 interstate motor carriers.

Carriers receive safety ratings through compliance reviews¹ conducted by FHWA safety specialists (safety investigators) and state safety investigators. Carriers are selected for compliance reviews as a result of complaints, carrier requests, and enforcement followup. Carriers are also selected for review from the Selective Compliance and Enforcement (SCE) list which prioritizes carriers by their safety risk. During Fiscal Year (FY) 1995, 292 Federal and 237 state safety investigators performed 9,167 compliance reviews.

Compliance reviews are onsite investigations of the motor carrier's operation to determine whether a motor carrier meets the safety fitness standard. To meet the safety fitness standard, a motor carrier must demonstrate that it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements. Upon completion of a compliance review, FHWA assigns the carrier either a satisfactory, conditional, or unsatisfactory rating. A satisfactory rating means the carrier has established and is using adequate safety management controls that meet FHWA's safety fitness standard. A conditional rating means a carrier has inadequate controls that could result in

¹Prior to October 1994, safety reviews were also used to determine a motor carrier's safety fitness rating.

violations of the Federal Motor Carrier Safety Regulations (FMCSR). An unsatisfactory rating means that the carrier has inadequate controls that have resulted in violations of the regulations.

Compliance reviews can result in enforcement actions against a carrier for violations of safety regulations. A civil fine is a primary enforcement tool used by FHWA to induce regulatory compliance. During FY 1995, 2,213 fines were assessed carriers as a result of violations found during compliance reviews.

In addition to compliance reviews, motor carriers are subject to roadside inspections of vehicles and drivers. During FY 1994, 1.9 million roadside inspections were performed primarily by state inspectors funded through the Motor Carrier Safety Assistance Program (MCSAP). Roadside inspections may result in the driver and/or vehicle being placed out-of-service. Out-of-service violations are mechanical defects in the vehicle or driving deficiencies so serious that the truck is legally not allowed to continue the trip until the problems are corrected. Data from inspection reports such as vehicles and drivers placed out-of-service are used in FHWA's SCE process to prioritize carriers for compliance reviews.

The Office of Motor Carriers (OMC) within FHWA is responsible for implementing a comprehensive motor carrier safety program which includes activities such as ensuring that motor carriers comply with Federal safety regulations, promulgating procedures and rules for the safety review program, serving as the principal interface with the motor carrier industry, educating and providing technical support to motor carriers, and determining safety fitness ratings of motor carriers. In addition, MCSAP grants are provided to the states. States use these grants for conducting driver and vehicle roadside inspections and performing motor carrier reviews to assess carrier compliance with safety and hazardous materials regulations. The FY 1995 appropriation for OMC activities and MCSAP grants was \$65.7 million and \$81.9 million, respectively. Compliance reviews conducted by FHWA safety investigators are funded through the appropriation for the Motor Carrier Program.

The following chart summarizes the number of fatalities from crashes involving large trucks from 1990 through 1995.

Fatal Truck Crashes FYs 1990-1995²

Year	Total Fatal Crashes	Fatal Crash Rate (Per 100 Million Miles)	Total Fatalities
1990	4,518	3.0	5,272
1991	4,097	2.7	4,821
1992	3,825	2.6	4,462
1993	4,093	2.6	4,856
1994	4,373	2.6	5,112
1995	4,178	2.3	4,903

Objectives, Scope, and Methodology

The audit objective was to evaluate FHWA's policies, procedures, and oversight for conducting compliance reviews of motor carriers' operations to ensure compliance with applicable motor carrier safety regulations. In addition, we evaluated the adequacy of penalties assessed for violations to ensure that a sufficient deterrent exists for maintaining safe vehicles. We also addressed congressional concerns expressed in FHWA Senate appropriations hearings held in July 1995 to determine (1) ways to increase contact with the commercial motor vehicle industry, (2) ways to improve the efficiency and effectiveness of the compliance review process, and (3) the adequacy of the civil penalty process. We addressed the audit objectives by evaluating the extent that FHWA compliance reviews cover the universe of interstate motor carriers, the adequacy of the enforcement process and enforcement activities, and the quality of compliance reviews.

The audit was conducted from August 1995 through June 1996 at FHWA Headquarters; FHWA OMC Regions 3, 6, 7, and 10; and OMC Division and state offices in Maryland, Pennsylvania, Arkansas, Texas, Kansas, Missouri, Idaho, and Washington. Discussions on the Motor Carrier Program were held with officials from FHWA Region 5, Transport Canada, the American Trucking Association, and the Commercial Vehicle Safety Alliance. The audit primarily covered OMC activities during FYs 1994 and 1995. However, compliance review data and enforcement activity data from FY 1989

²Data were provided by the National Highway Traffic Safety Administration (NHTSA) from the National Accident Sampling System/General Estimates System and the Fatal Accident Reporting System.

through April 1996 were also used to evaluate the effectiveness of FHWA's enforcement efforts. The audit did not include an evaluation of training of FHWA safety investigators because of FHWA's planned review of OMC's Training Program in FY 1996.

Data from FHWA's computerized Motor Carrier Management Information System (MCMIS), SAFETYNET³, and Enforcement Tracking System on compliance review activity, carrier performance, and enforcement actions were obtained and analyzed during the audit. We performed limited testing of these reports to determine the validity, reliability, and timeliness of the data. Errors found during our limited testing were minor and judged not significant enough to change the conclusions reached during the audit. Application controls over the MCMIS, SAFETYNET, and Enforcement Tracking System data were not reviewed.

FHWA management reports, dated March 7, 1996, covering FYs 1989 through 1995 were used to determine the number of compliance reviews conducted and the productivity of FHWA safety investigators. These reports did not identify whether FHWA staff conducting the compliance reviews were safety investigators or other personnel such as hazardous materials specialists, Federal program specialists, civil engineers, officers-in-charge, and state program specialists. Accordingly, we considered all FHWA compliance reviews performed by FHWA staff as reviews performed by safety investigators because safety investigators perform the majority of compliance reviews.

The audit was performed in accordance with the Government Auditing Standards prescribed by the Comptroller General of the United States and included such tests as considered necessary in the circumstances.

Management Controls

To address the objective of evaluating FHWA's policies, procedures, and oversight for conducting compliance reviews, we reviewed the Motor Carrier Training Manual and other instructions issued to field offices. We reviewed OMC oversight of compliance review activities including Compliance Review Quality Management Reports and actions of OMC regional and division officials to ensure safety

³An automated information management system used to monitor the safety performance of commercial motor carriers.

investigator compliance with procedures for conducting compliance reviews. We also observed compliance reviews conducted by OMC safety investigators in seven of eight states included in the audit.

To determine if carriers had evidence to show repairs were made to vehicles placed out-of-service during roadside inspections, two carriers in each state audited were selected for detailed review. Also, the FHWA reports on the accuracy of roadside inspection data and the SAFETYNET Inspection System Edit Confirmation Report at the state level were reviewed to determine if data were recorded in a timely manner in MCMIS.

To determine the adequacy of penalties assessed against carriers, we evaluated enforcement actions against carriers in eight states. A statistical sample of 81 carriers was selected within these 8 states audited. The 81 carriers were randomly selected from the universe of 659 carriers who had enforcement actions taken against them in FYs 1994 and 1995. Data analyzed included compliance reviews, safety ratings, violations of safety regulations, accident data, vehicle and driver out-of-service data, and data on penalties and other enforcement actions. The data analyzed provided a complete historical view of a carrier's performance and generally included carrier information from FY 1989 through April, 1996. We also reviewed OMC enforcement reports and congressional hearings and interviewed OMC Headquarters and field office officials.

Prior Audit Coverage

In January 1991, the General Accounting Office (GAO) issued a report entitled "Truck Safety: Improvements Needed in FHWA's Motor Carrier Safety Program," (Report No. GAO/RCED-91-30). GAO reported FHWA had not (1) rated about 60 percent of the universe of interstate motor carriers and would not meet the agency's September 30, 1992, deadline for rating all carriers, (2) adequately implemented its followup procedures for ensuring carriers rated less than satisfactory corrected deficiencies, and (3) conducted timely followup compliance reviews on carriers rated less than satisfactory. GAO further reported FHWA was reassessing its September 30, 1992, deadline for rating all interstate motor carriers and stated that establishing a realistic goal for safety fitness ratings will permit FHWA to better direct its limited resources. GAO recommended that FHWA improve its followup procedures and take enforcement action, if necessary, when carriers rated less than satisfactory do not submit a certification to FHWA

that deficiencies were corrected. GAO also recommended that FHWA develop an action plan for improving the timeliness of compliance reviews, especially for carriers rated unsatisfactory.

FHWA did not extend the September 30, 1992, deadline and no longer intends to conduct an onsite compliance review of every interstate motor carrier. Instead, FHWA plans to focus on high-risk carriers through the SCE process. FHWA eliminated the requirement for a certification of corrective actions taken by motor carriers rated less than satisfactory. On October 1, 1994, FHWA discontinued safety reviews to assess unrated carriers. FHWA issued guidance to its field offices, as a result of the Motor Carrier Safety Act of 1990, to prohibit carriers rated unsatisfactory from transporting passengers or hazardous materials unless the rating improves within 45 days of notification. Also, procedures were developed requiring enforcement action for serious safety violations. However, our audit found that FHWA had not established goals for conducting compliance reviews, approximately 64 percent of the interstate motor carrier population remained unrated at the end of FY 1995, and enforcement efforts were not effective in inducing prompt and sustained compliance.

The Office of Inspector General (OIG) conducted a coordinated audit of FHWA's Motor Carrier Safety Assistance Program and issued five reports (AS-FH-4-010, AS-FH-4-012, R5-FH-4-006, R6-FH-4-012, R7-FH-4-002) during FY 1994. The audit focused on the adequacy and effectiveness of FHWA's controls for the MCSAP grant program and made recommendations related to state roadside inspection activities, enforcement, and the grant allocation formula.

II. FINDINGS AND RECOMMENDATIONS

Finding A. Extent of Coverage

Compliance reviews provide limited coverage of the universe of 345,500 interstate carriers. During FY 1995, only 8,666 carriers, 2.5 percent of the carriers, received compliance reviews. Further, FHWA's work force of safety investigators is doing fewer compliance reviews. The number of compliance reviews performed by Federal investigators decreased by 41 percent since FY 1991 even though FHWA requested and received 150 more safety investigators during FYs 1990 and 1991. Additionally, FHWA has not optimized its use of available resources. FHWA safety investigators spent significant time on work requirements other than compliance reviews. Annual nationwide and field office goals for conducting compliance reviews were not established, and increasing the number of compliance reviews was not emphasized in OMC's Strategic Plan. As a result, FHWA cannot determine or ensure the safety fitness of the entire population of interstate motor carriers, and over 64 percent of the 345,500 interstate carriers remain unrated.

Discussion

Section 215 of the Motor Carrier Safety Act of 1984 required the Secretary of Transportation in cooperation with the ICC to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles and set specific deadlines for making fitness determinations. The intent of Congress was to ensure that all motor carriers operating on the highways are safe. To implement the requirements of Section 215 of the Act, FHWA established safety fitness procedures in Title 49, CFR, Part 385. In 1986, FHWA developed the safety review program under its larger Educational and Technical Assistance Program (ETA) to educate motor carriers about the FMCSR and Hazardous Materials Regulations (HMR) and to rate motor carriers' safety management controls.

FHWA established July 1990 (later revised to September 30, 1992) as the target date for completing ratings for all interstate motor carriers. However, to achieve this goal, FHWA needed more safety investigators. In its request to Congress for more safety investigators, FHWA stated:

In order for the Motor Carrier Safety Program to be effective in achieving these designated goals, the most important resource is the availability of trained, professional safety inspectors having the ability to complete safety reviews of motor carriers efficiently and effectively. Thus, FHWA is requesting 150 new full-time permanent positions to be hired during FYs 1990 and 1991. As such, full-time equivalent work year needs would be increased by 75 full-time equivalents in FY 1990 and by another 75 full-time equivalents in FY 1991. This staff increase is specifically designated for field safety inspectors to conduct Safety Reviews of previously unrated carriers and Compliance Reviews of motor carriers known to have compliance problems.

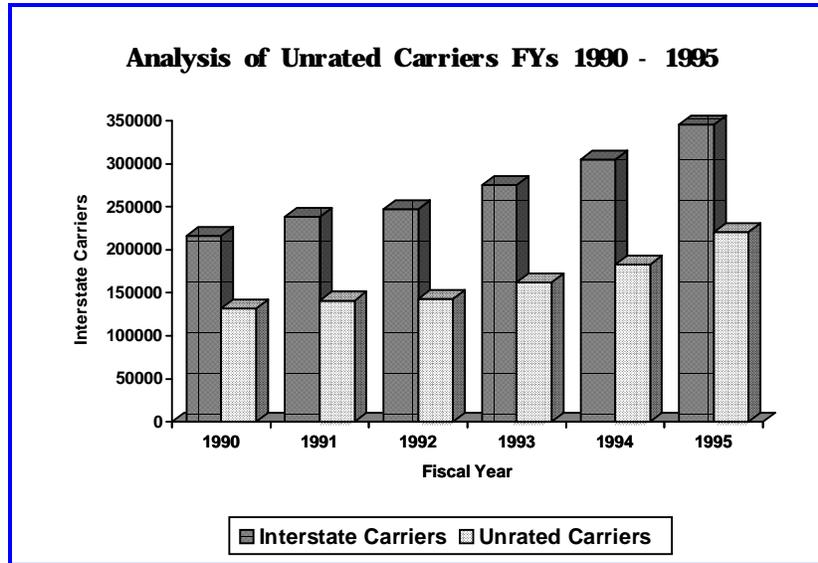
In November 1989, the Congress provided FHWA the authority and funding to hire the 150 additional investigators. These investigators came on board in FYs 1990 and 1991. In FY 1995, FHWA had 292 safety investigators to conduct compliance reviews. To supplement Federal resources, state compliance reviews have been funded with MCSAP grant funds. In FY 1995, 237 state safety investigators conducted compliance reviews.

During FYs 1989 through 1994, FHWA conducted 44,670 compliance reviews and 30,870 safety reviews. In addition, state safety investigators conducted 2,267 compliance reviews and 43,738 safety reviews. After FY 1994, safety reviews were stopped. In FY 1995, FHWA safety investigators conducted 5,383 compliance reviews and state safety investigators conducted 3,784 compliance reviews.

Limited Coverage of Interstate Carriers

Compliance reviews provide limited coverage of the universe of interstate carriers. During FY 1995, 8,666 carriers, only 2.5 percent of the interstate motor carrier population, received compliance reviews. Of the 8,666 carriers reviewed, 4,269, or 49 percent, were not previously reviewed or rated. While each year FHWA tries to provide initial ratings to significant numbers of carriers, the universe of carriers changes with new entrants and carriers ceasing operation. The interstate motor carrier population increased by 40,500 in FY 1995, and the number of unrated carriers increased to 220,500 as of September 30, 1995. Therefore, 220,500, or 64 percent, of approximately 345,500 interstate carriers remained unrated.

As shown on the following chart, FHWA cannot keep pace with the increasing number of carriers and the number of unrated carriers has increased from 132,000 in FY 1990 to 220,500 in FY 1995.



FHWA Safety Investigators Are Conducting Fewer Reviews

While the motor carrier universe is growing, FHWA's work force of safety investigators are conducting fewer reviews. The number of compliance reviews conducted by FHWA has decreased by 41 percent from the high of 9,119 in FY 1991 to 5,383 in FY 1995. This decrease occurred even though FHWA requested and received 150 more safety investigators during FYs 1990 and 1991. Safety reviews conducted by FHWA also declined significantly since FY 1991, until they were discontinued in FY 1995. The decline in the number of FHWA conducted compliance reviews is shown on the following chart.

FHWA Compliance and Safety Reviews October 1, 1988-- September 30, 1995

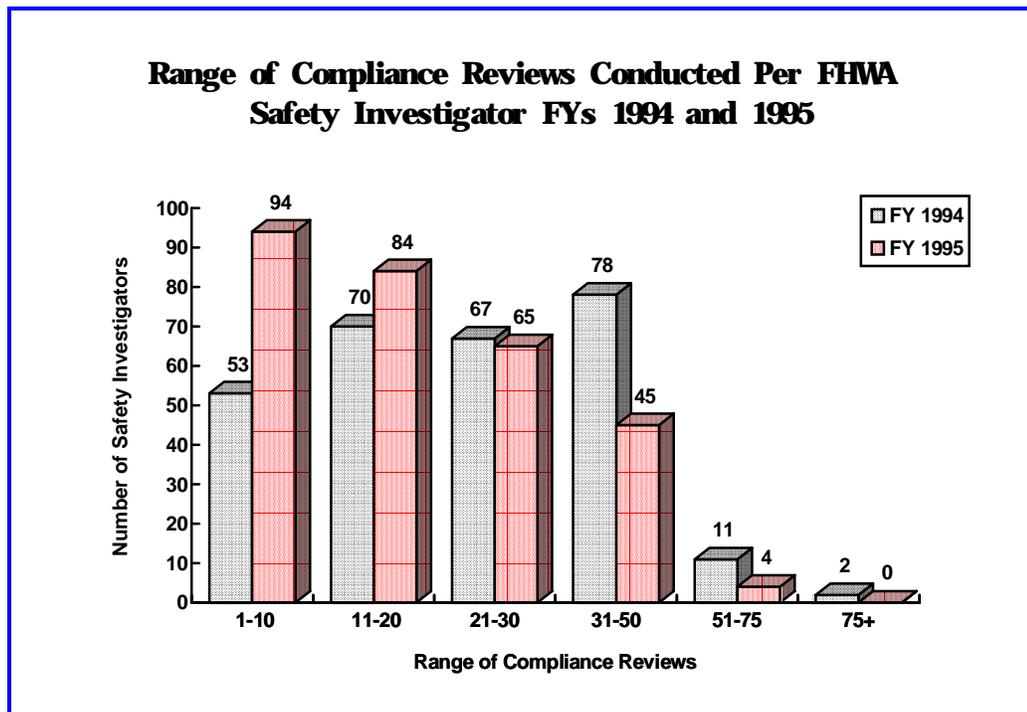
FY	Compliance Reviews	Safety Reviews	Total
1989	6,239	8,437	14,676
1990	6,784	6,674	13,458
1991	9,119	8,973	18,092
1992	7,868	3,921	11,789
1993	7,737	2,449	10,186
1994	6,923	416	7,339
1995	5,383	0	5,383
Total	50,053	30,870	80,923

The productivity of FHWA safety investigators conducting compliance reviews is declining. In fact, the average number of compliance reviews per investigator decreased to less than two per month as shown on the following chart.

Productivity of FHWA Safety Investigators

FY	Compliance Reviews	No. of Safety Investigators	FY Average	Monthly Average
1989	6,239	242	25.8	2.1
1990	6,784	276	24.6	2.0
1991	9,119	348	26.2	2.2
1992	7,868	328	24.0	2.0
1993	7,737	299	25.9	2.2
1994	6,923	281	24.6	2.1
1995	5,383	292	18.4	1.5

A large number of safety investigators performed only a small number of compliance reviews. Of 281 safety investigators, 123, or 44 percent, conducted 20 compliance reviews or less in FY 1994. In FY 1995, 178 of the 292 FHWA safety investigators, or 61 percent, conducted 20 or less compliance reviews during the year. The following chart shows the range of compliance reviews conducted by individual safety investigators.



In addition to compliance reviews conducted by FHWA staff, state safety investigators performed compliance reviews since FY 1989, and have increased their efforts in recent years. State safety investigators are trained by FHWA. In FY 1995, state investigators performed 3,784 reviews to supplement FHWA's 5,383 reviews. This FY 1995 total of 9,167 is only a slight increase in the number of compliance reviews performed by FHWA alone in FY 1991. Therefore, even with the state resources, the number of compliance reviews performed in FY 1995 is slightly less than the total performed in FY 1991, and have not provided any increase in coverage to the overall motor carrier universe. Details are shown on the following chart.

**FHWA and State Compliance Reviews
October 1, 1988-September 30, 1995**

FY	Federal Compliance Reviews	State Compliance Reviews	Total
1989	6,245	6	6,245
1990	6,784	88	6,872
1991	9,119	153	9,272
1992	7,868	236	8,104
1993	7,737	527	8,264
1994	6,923	1,257	8,180
1995	5,383	3,784	9,167
Total	50,053	6,051	56,104

Use of Resources Not Optimized

It is not feasible to rate all 345,500 interstate carriers with 292 FHWA and 237 state safety investigators. However, FHWA could use its limited resources more effectively to maximize compliance review coverage. Concern about the use of FHWA resources and the decrease in the number of compliance reviews was expressed in Senate Report No. 104-126 on the Department of Transportation (DOT) and Related Agencies Appropriations Bill, 1996, dated July 1995.

The Committee believes that too much time spent on total quality management task forces, education and technical assistance on regulatory requirements, economic regulatory compliance issues related to the international fuel tax agreement and the International Registration Program, unnecessary training unrelated to the basic

mission of the Agency, and lengthy strategic planning sessions are interfering with the fundamental mission of OMC. The Office of the Secretary and the FHWA Administrator are urged to reduce unnecessary demands on OMC that interfere with the conduct of basic safety functions, especially those related to enforcement activities.

Time spent on secondary activities needs to be balanced with more time spent on the primary/safety enforcement mission of the Agency. Accordingly, the Committee directs OMC to maximize the safety and compliance benefits derived from the work of OMC specialists. This strategy must include an increase in the number of more effective compliance reviews.

To address congressional concerns, we requested monthly timesheets of safety investigators at OMC Divisions in Maryland, Pennsylvania, Texas, Arkansas, Kansas, Missouri, Washington, and Idaho to determine time spent on compliance reviews in FY 1995. However, with the exception of Missouri, such records are not maintained. The Kansas Division did not have any supporting data. The remaining seven OMC Divisions provided summaries of time spent on compliance reviews and related enforcement activities and other assignments. The time spent by safety investigators on activities other than compliance reviews and related enforcement activities ranged from 25 percent in one Division to 59 percent in another Division.

FHWA safety investigators spent time on other projects such as Educational and Technical Assistance, Accident Countermeasure Program, Motor Carrier Safety Assistance Program, Commercial Driver's License, training, and special projects. OMC officials at Headquarters stated that the decrease in the number of compliance reviews was caused by additional workload requirements resulting from other mandated programs such as Commercial Driver's License, drug testing, Commercial Vehicle Information System (CVIS), Intelligent Transportation Systems, and accident countermeasures. Also, time was used to train state personnel in performing compliance reviews. In FY 1994, 23 states conducted 1,257 compliance reviews and in FY 1995, 38 states conducted 3,784 compliance reviews. However, weaknesses exist in the quality and effectiveness of the states' compliance review efforts. These weaknesses are discussed later in this report.

FHWA has not increased the number of compliance reviews as intended by the Senate Committee on Appropriations nor has FHWA established annual nationwide and field office goals to ensure that increased compliance review coverage is provided to the motor carrier population. The Government Performance and Results Act (GPRA) of 1993 requires agencies to prepare an annual performance plan for each program activity beginning FY 1999 and establish objective, quantifiable, and measurable performance goals. The only quantifiable and measurable objective involving compliance reviews in FHWA's Strategic Plan is a pilot project for obtaining regulatory compliance of the 1,000 highest risk carriers. This limited performance goal does not appear realistic since it established unreasonably low demands of the 292 FHWA safety investigators and 237 state safety investigators.

Alternative Methods To Evaluate Carrier Safety Fitness

FHWA no longer intends to rate the universe of interstate carriers to determine safety fitness. Because of limited resources, FHWA intends to concentrate on high-risk or problem carriers. However, this approach leaves FHWA without a system for determining the safety fitness of each interstate carrier. To determine carrier safety fitness, methods other than compliance reviews should be considered, such as using third-party contractors, the New Entrant Program, the Progressive Compliance Assurance Program (PCAP), and Safety Status (SafeStat).

One method to increase resources for evaluating the safety fitness of carriers is the use of independent third-party contractors. Although third-party contractors would not be used for enforcement, their periodic reviews would be used to determine and certify the carrier's safety fitness. Third-party reviews would allow FHWA to more effectively use its resources to target problem carriers. In addition, third-party contract certifications would provide information on the total universe of interstate motor carriers, which is unavailable under the current system. However, FHWA is opposed to using third-party contractors because of legal considerations and the cost and complexity of developing and monitoring such a system.

Canada plans to use independent third-party contractors to evaluate the safety fitness of its carriers. Under Canada's system, compliance reviews, known as facility audits, are conducted by the provinces. However, since some larger provinces do not have adequate resources to audit carriers, Canada plans to encourage the use of independent third-party contractors to rate carriers every

3 years. Carriers will select third-party auditors and pay for the audits. The provinces will still retain enforcement responsibilities. The target date for implementing the rating system is January 1998.

Other methods to determine carrier safety fitness, such as the New Entrant Program, the PCAP, and SafeStat, were recommended by the Volpe National Transportation Systems Center (the Volpe Center) in an October 1995 report to FHWA. The report concluded that substantive improvements should be made to FHWA's safety fitness determination process, which still relies entirely on onsite compliance reviews. The Volpe Center reported that the current process lacked, among other things, a prequalification program for new carriers, coverage of the motor carrier population, and current ratings of the carriers covered. As one improvement to the safety fitness determination process, the report recommended that FHWA establish The New Entrant Program. This program requires that to obtain the DOT numbers, new carriers must provide information about its operation and successfully complete an examination to measure the carrier's knowledge of the FMCSRs and HMRs. The program should result in the collection of more complete data on new carriers. The Volpe Center is now working on this project. The Volpe Center also recommended that FHWA implement PCAP, which is being tested in the CVIS pilot project in five states, to identify operationally unsafe motor carriers and bring them to safe operational status. To support the New Entrant Program and PCAP, the Volpe Center recommended that FHWA first implement SafeStat. SafeStat is an automated system, also being tested in the CVIS pilot project, to provide FHWA with the capability of continuously quantifying and monitoring the safety status of carriers.

Conclusion

The limited number of compliance reviews is not sufficient for determining the safety fitness of owners and operators of commercial motor vehicles as required by Section 215 of the Motor Carrier Safety Act of 1984. Also, the decreasing number of compliance reviews does not meet the intent of the Senate Committee on Appropriations. To increase the number of compliance reviews, FHWA should establish realistic goals and monitor the use of safety investigator resources to ensure the goals are met. FHWA cannot provide safety ratings to the entire motor carrier universe through the compliance review process and should develop a new system. To provide increased coverage to meet the intent of Congress, FHWA should supplement its resources by using third-party contractors and take action to use its own safety investigator resources more effectively.

FHWA has not received relief from the statutory requirement to determine the safety fitness of each interstate carrier. FHWA needs to

explore alternative methods to the compliance review such as SafeStat to meet this requirement.

Recommendations

We recommend that FHWA:

1. Increase the number of effective compliance reviews by establishing realistic goals in the Strategic Plan and monitoring the use of safety investigator resources to ensure the goals are met.
2. Augment the compliance review process by implementing the use of third-party contractors to perform initial and periodic safety evaluations.
3. Establish a system to determine the safety fitness of interstate carriers which uses factors other than compliance reviews.

Management Position

FHWA did not concur with Recommendation A1, partially concurred with Recommendation A2, and concurred with Recommendation A3. Actions or alternative actions were proposed for each recommendation.

Concerning Recommendation A1, FHWA did not agree that the number of compliance reviews should necessarily be increased, if other compliance or educational initiatives prove to be more effective. FHWA agreed with realistic goal setting in terms of reducing accidents, but did not agree that instituting a compliance review quota is the best way to achieve this goal. FHWA stated that steps will be taken to increase motor carrier contacts, improve the effectiveness of compliance reviews, and improve the safety investigator focus. FHWA expects the nationwide implementation of the CVIS project to increase the number of compliance contacts through the process of sending warning letters to large numbers of “at risk” carriers. FHWA stated that this approach will influence the behavior of a significantly larger number of carriers than can be visited on-site, and provide an opportunity for self-improvement with minimal Government intervention. FHWA plans to improve the coverage of compliance reviews by addressing the highest risk carriers, and to impact the compliance of larger carrier populations

through warning letters, education/outreach, enforcement deterrence, and other initiatives. Further, FHWA plans to increase the scope of program management reports and further emphasize the need to continually monitor resources to improve effectiveness. FHWA believes this comprehensive approach will produce greater results at less cost than a strictly compliance review oriented program. These improvements to the program will be implemented by the end of calendar year (CY) 1997.

For Recommendation A2, FHWA agreed that more data/information concerning more carriers is required, and is considering the use of third-party contractors for compliance review activities. FHWA stated its concerns about the enforcement of serious safety violations, the cost and complexity of developing and monitoring a contractor program, the willingness of motor carriers to fund the cost of third-party reviews, and the legal issues needing resolution before initiating a third-party contractor compliance review program. FHWA plans to review Canada's progress in using third-party contractors and will assess the costs and benefits of such a program. A decision will be made concerning the use of third-party contractors by the end of CY 1998. In the interim, FHWA is planning to pilot the Automated Safety Assessment Program in FY 1997 which allows unrated motor carriers to self-certify information ordinarily obtained during an on-site compliance review. In addition, FHWA plans to implement SafeStat methodology for identifying and monitoring high risk carriers beginning in April 1997. SafeStat will provide automated risk reassessments of a large number of carriers without on-site reviews.

For Recommendation A3, FHWA agreed with the necessity of determining the safety fitness of motor carriers through means other than compliance reviews alone. FHWA stated that implementation of SafeStat in 1997 as a "high risk" identifier will offer the opportunity for performance based fitness assessments without the need for compliance reviews. Further, a proposed rule, scheduled for December 1997, will change compliance review ratings to either "unsatisfactory" or "not unsatisfactory." FHWA anticipates that the two-tiered fitness rating will significantly reduce the burden placed on FHWA relating to carrier requested reviews and rating appeals.

Audit Comments

Regarding Recommendation A1, we agree with FHWA's proposed actions to increase contacts with motor carriers, improve the effectiveness of compliance reviews, and improve safety

investigator focus. If funded in FHWA's reauthorization proposal, nationwide implementation of the CVIS pilot project would include the issuance of warning letters to "at risk" carriers in lieu of initiating compliance reviews. This approach increases the number of motor carriers contacted on safety compliance issues. Although FHWA did not agree to establish numerical goals for conducting compliance reviews, it is still our position that such goals would provide an effective management tool to increase compliance review coverage of the motor carrier population. Nevertheless, FHWA's proposed actions generally address OIG concerns as expressed in the finding.

Regarding Recommendation A2, we agree with FHWA's plans to consider the use of third-party contractors for compliance review activities. If fully implemented, third-party contractors would expand safety evaluations to the entire motor carrier population, and provide FHWA with needed information on the safety fitness of each motor carrier. Further, the use of third-party contractors would allow FHWA to use its limited resources on higher priority enforcement and safety improvement efforts.

Regarding Recommendation A3, implementation of SafeStat to identify high risk carriers by assessing on-the-road performance using a computerized data base, should assist FHWA in determining the safety fitness of interstate carriers through means other than compliance reviews.

Corrective actions planned, including alternative actions proposed, are responsive to the intent of our recommendations and should result in increased reviews and risk assessments of the motor carrier population. Therefore, we consider these recommendations resolved.

Finding B. Targeting Carriers for Compliance Reviews

FHWA's SCE system does not ensure that carriers with the worst safety records are targeted for compliance reviews. The current SCE system does not define problem carriers and uses factors to prioritize carriers that do not sufficiently emphasize on-the-road performance. Also, the data base used to prioritize carriers contains incomplete, inaccurate, and untimely data. Further, existing laws and FHWA policy requirements limit the use of the SCE system for targeting carriers for compliance reviews. FHWA is taking some action to improve its targeting system. However, more must be done to effectively use the limited FHWA investigator resources to target problem carriers and bring them into compliance with motor carrier safety regulations and thereby improve the safety of our Nation's highways.

Discussion

The Motor Carrier Act of 1991, requires that DOT and states ensure that motor carriers with a pattern of violations of state or local traffic safety laws or commercial motor vehicle safety rules, receive a high priority for reviewing the carrier's compliance with applicable Federal and state commercial motor vehicle safety regulations. To prioritize carriers for onsite reviews, FHWA uses the automated SCE selection process to assign a score for each interstate motor carrier based on seven weighted factors. These factors and their weights are commodity transported (1 to 8), annual carrier mileage (1 to 4), months since last review (0 to 4), vehicle out-of-service rate (1 to 5), driver out-of-service rate (2 to 10), preventable recordable accident rate (1 to 5), and overall safety fitness rating (1 to 5). The higher the point score, the higher the priority for review when carriers are selected from the SCE list. According to FHWA procedures, the ultimate objective of the prioritization process is to focus FHWA and state resources through compliance reviews and enforcement on carriers with the greatest operating risk.

Problem Carriers Not Defined

Although FHWA uses the SCE priority system to rank carriers, the SCE system does not define problem carriers which, in our opinion, are carriers whose performance makes them a higher safety risk. Our review of the SCE data base shows scores as high as 43.9. Although a carrier's SCE score is computed based on the seven factors, there is no score that defines problem carriers. Therefore, the total population of problem carriers is not known.

To determine the effectiveness of the current system for targeting carriers, we analyzed the limited performance data in the SCE system and identified 12,601 carriers with either vehicle out-of-service rates exceeding 33.33 percent, driver out-of-service rates of 10 percent or greater, or preventable/recordable accident rates exceeding 1.00 accident per million vehicle miles of travel. We used these rates because they exceed the FY 1995 national averages of 22.9 percent vehicle out-of-service, 8 percent driver out-of-service, and .466 preventable/recordable accident rate. In our opinion, carriers with these high rates of on-the-road violations and accidents should be targeted for compliance reviews. However, of these 12,601 carriers, 21.9 percent were unrated and 41.6 percent were not reviewed within the past 2 years. Since FHWA has not defined problem carriers, there is no assurance that compliance reviews cover all or even a significant portion of problem carriers.

On-the-Road Performance Not Sufficiently Emphasized

Another weakness of the SCE process is that it does not sufficiently emphasize factors related to on-the-road performance. Only three of the seven weighted factors; vehicle out-of-service rate, driver out-of-service rate, and the preventable/recordable accident rate relate to a carrier's on-the-road performance. These factors, with maximum weights of 5, 10, and 5, respectively, make up less than half of the SCE score a carrier can receive. The balance of the score is computed using mileage, months since last review, overall rating, and commodity transported.

Because on-the-road performance factors are not sufficiently emphasized in the SCE process, carriers with poor on-the-road performance may get lower scores and, therefore, have less chance of being selected than a carrier with high scores in nonperformance factors. For example, a carrier with a vehicle out-of-service rate between 40 and 100 percent will only generate a weight of 5 while a carrier transporting passengers will receive an 8 even though it has a good on-the-road performance. An analysis of the January 30, 1996, Maryland SCE list showed that a passenger carrier rated satisfactory with a 7.2 percent vehicle out-of-service, and 0 percent driver out-of-service rate was ranked 40th on the SCE list. However, a general freight carrier rated satisfactory with a 73.6 percent vehicle out-of-service rate, and a 5.2 percent driver out-of-service rate was ranked 152nd on the same list. OMC Division officials acknowledged that it was unlikely that more than 130 carriers would be reviewed from the SCE list during FY 1996.

Therefore, the passenger carrier would be reviewed this year while the general freight carrier with a vehicle out-of-service rate over 3 times the national average of 22.9 percent would not.

Data Used to Target Carriers Are Incomplete, Inaccurate, and Untimely

FHWA's ability to target carriers is limited because FHWA's data base used for prioritizing carriers is incomplete, inaccurate, and untimely. The data base did not contain on-the-road performance data for over 60 percent of the carriers and did not use state accident data or violations of state or local traffic laws to prioritize carriers. Also, roadside inspection and compliance review reports were not always entered accurately and timely.

Missing Data Elements. The SCE data base did not contain on-the-road performance data for ranking over 60 percent of its carriers. An analysis of the SCE data base identified over 227,000 carriers that did not have the minimum of 10 driver or vehicle inspections needed to rate the carrier's on-the-road performance. Also, approximately 95 percent of the carriers did not have current preventable/recordable accident rates in the SCE. Because of this lack of data, a large percentage of the SCE scores are calculated without the benefit of actual performance results. Consequently, over 50 percent of carriers on the SCE list received scores of less than 6 points which greatly reduced their chances of being selected for a compliance review.

State Accident and Violation Data Not Used. State accident data were not used to prioritize motor carriers for subsequent review. States are required to transmit reports of commercial motor vehicle accidents into SAFETYNET within 180 days of the accident date. As of May 1996, the SAFETYNET data base included 87,308 trucks and buses that were involved in reportable crashes in 1994. However, OMC estimates that this is only slightly more than half of the year's total. Instead of using accident data as a rating factor, FHWA used the preventable/recordable accident rate⁴ which is only determined during a compliance review. Consequently, only approximately 5 percent of all carriers contained a score for this factor.

In addition to the lack of accident data, the SCE data base did not include data on patterns of violations of state or local traffic laws.

⁴Preventable/recordable accidents are when the accident involves a fatality, injury, or towaway and the safety investigator determines that the carrier could have prevented the accident.

Although the Motor Carrier Act of 1991 requires carriers with patterns of violations of state or local traffic laws be considered a high priority for review, this information was not obtained or used in the SCE data for use in selecting carriers for review. This occurred primarily because FHWA had not required the states to transmit traffic violations or convictions into SAFETYNET as a condition for continued MCSAP funding. However, a strong relationship exists between drivers with traffic convictions and accidents. According to Traffic Safety Facts 1994, published by the NHTSA National Center for Statistics and Analysis, almost 30 percent of all large truck drivers involved in fatal crashes in 1994 had at least one prior speeding conviction. Also, speed was a factor in 30 percent of all fatal crashes. Effective use of this data would allow FHWA to target and perform reviews on carriers employing high-risk drivers with poor on-the-road performance.

Inspection and Compliance Review Data Not Accurate or Timely. State vehicle inspection reports were not always accurate in identifying the motor carrier, or entered into SAFETYNET timely. Inaccurate and untimely transmission of vehicle inspection reports into SAFETYNET can affect the motor carrier's safety fitness rating since a 12-month vehicle out-of-service rate is used as a rating factor. While FHWA has made progress in reducing the number of roadside inspection reports that did not match the motor carriers in the MCMIS data base, weaknesses in the accuracy of the SCE data base still exist. According to an OMC official, approximately 25 percent of roadside inspection reports received by FHWA did not match its data base of carriers in 1988. In 1995, approximately 12 percent of the roadside inspection reports did not match the data base. Consequently, almost 150,000 inspection reports could not be used to identify motor carriers with poor on-the-road performance. Also, FHWA requires the states to upload all roadside inspection reports within 90 days of the inspection date. However, during the period January 1995 to January 1996, 10 states exceeded these timeframes by an average of 72 days with a high of 410 days in Puerto Rico.

Another reason for the incorrect SCE data base is that compliance review reports were not always entered into FHWA's MCMIS data base timely by FHWA's Divisions. For example, 261 Federal and state reports for compliance reviews performed during FY 1994 were uploaded into MCMIS at least 432 days after the end of the fiscal year by 26 FHWA Division Offices. Also, 377 reports for compliance reviews performed during FY 1995 were entered into MCMIS by 22 Division Offices at least 67 days after the end of the fiscal year. FHWA has not established timeframes for uploading compliance

review reports by FHWA Division Offices into MCMIS, but allows compliance review reports conducted since October 1989 to be entered into the MCMIS data base.

Use of the SCE System for Targeting Carriers is Limited

Existing laws and FHWA policy requirements limit the use of the SCE system for targeting carriers for compliance reviews. Prior to selecting carriers from the SCE list, safety investigators perform compliance reviews based on other factors such as complaints, carrier requests, and followup reviews. The Motor Carrier Safety Act of 1984 required DOT to investigate timely any nonfrivolous written complaint alleging a substantial violation of any motor carrier safety regulation. Also, the Motor Carrier Safety Act of 1990, allows hazardous material and passenger carriers with unsatisfactory safety ratings to request and receive a review within 30 days after the date of the request. The OMC Motor Carrier Administrative Training Manual requires that complaint investigations be completed within 120 days of receipt. Also, compliance reviews performed as a followup to enforcement action must be completed within 180 days of the enforcement settlement date.

In seven of eight states reviewed, only 27 percent of the compliance reviews were selected from the SCE priority list. The reviews selected from the SCE list varied between 8 percent in Kansas to 44 percent in Idaho. Missouri was excluded from this analysis since information was not available to determine the reasons for review. The number of carriers reviewed from the SCE priority list depended solely on the resources available and FHWA had not established nationwide or field office goals for reviewing the population of problem carriers.

Because of the limited amount of carriers selected from the SCE, carriers with high out-of-service rates on roadside inspections may not receive compliance reviews. For example, six carriers in Maryland were identified with vehicle out-of-service rates between 50 and 73.9 percent that were last reviewed between September 1980 and September 1993. The out-of-service vehicle rates were more than twice the national average of 22.8 percent. The carrier with the 73.9 percent vehicle out-of-service rate received an overall rating of conditional in October 1993 but an unsatisfactory rating in the area of inspection, repair, and maintenance. In Idaho, four carriers with vehicle out-of-service rates between 50 and 73.3 percent were rated satisfactory through safety reviews conducted at least 6 years ago. Division officials in Maryland and Idaho said the

chance of these carriers receiving a compliance review was minimal based on available resources. Only 132 and 94 compliance reviews were conducted during FY 1995 in Maryland and Idaho to provide coverage to their 9,594 and 3,505 interstate carriers.

Actions to Improve Targeting

FHWA is taking some actions to improve its targeting system by reviewing the highest risk carriers and testing systems to monitor carrier performance. However, more must be done to effectively use the limited FHWA investigator resources to target problem carriers and bring them into compliance with motor carrier safety regulations.

In addition to compliance reviews performed using the SCE, FHWA established objectives in its strategic plans for reviewing the worst carriers. OMC's FY 1994 strategic plan included a goal to review the 500 highest risk carriers and the FY 1996 plan established a goal to review the 1,000 highest risk carriers in 1996. Although both projects were based on performance measures and not SCE scores, neither project defined poor on-the-road performance or identified the universe of problem carriers. Therefore, the number of compliance reviews planned had limited meaning since there was no relationship to the number of problem carriers needing review. This was reinforced by an OMC official who stated that the pilot project to review the worst 1,000 carriers was not intended to identify all problem carriers.

Also, FHWA is testing new systems to monitor carrier safety performance. These systems are SafeStat and the PCAP, both recommended by the Volpe Center in their October 1995 report on the safety fitness determination process. SafeStat is an automated system designed to incorporate current on-the-road performance information and enforcement history with onsite review information. This system, which is being tested in the CVIS⁵ pilot project in five states, would provide FHWA with the capability of continuously quantifying and monitoring the safety status of carriers. SafeStat is different from the SCE system because it prioritizes carriers with more emphasis on on-the-road performance. SafeStat uses four safety evaluation areas to score and evaluate carrier safety fitness. These safety evaluation areas relate to the carrier's accidents,

⁵The purpose of the CVIS pilot project, which began in 1992, is to determine the feasibility of denying registration of vehicles to unsafe motor carriers.

drivers, vehicles, and safety management. SafeStat will use all available performance and compliance data to identify carriers with poor safety performance as candidates for PCAP. Once a carrier enters the PCAP, its safety performance will be monitored through SafeStat and actions will be taken to improve the carrier's safety performance.

While SafeStat emphasizes on-the-road performance more than SCE, there are several limitations. SafeStat identifies carriers with the worst on-the-road performance, but there is no assurance that all problem carriers will be identified or reviewed. For example in the CVIS project, problem carriers were identified through SafeStat by taking the worst 25 percent of carriers for which data were available in at least three safety evaluation areas. The decision to identify problem carriers as those in the worst 25 percent was an arbitrary cutoff.

Further, the effectiveness of this system, like the SCE system, depends on the completeness, accuracy, and timeliness of performance data provided by the states. A final report to Congress on the feasibility of CVIS, which includes SafeStat, is to be issued by June 1997. An OMC program official stated that FHWA is considering replacing the existing SCE priority system with the SafeStat system during 1997.

The PCAP provides a process to treat operationally unsafe carriers through progressive warning and sanctioning steps in order to bring them into safe operational status. This process begins with a warning letter to the carrier, rather than a compliance review. The carrier is then placed in PCAP with periodic monitoring of on-the-road performance to ensure improvement or more progressive action, including sanctions, is taken. PCAP is currently being tested in CVIS and as part of the project to conduct compliance reviews on the worst 1,000 carriers.

Other System Changes

Besides reviewing high-risk carriers and testing new systems, FHWA revised procedures for conducting followup reviews and is planning to change procedures for rating carriers. On February 14, 1996, OMC issued guidance to the field stating that followup reviews are not required on every enforcement case, especially if documents are provided to ensure that violations are corrected. On April 29, 1996, FHWA issued a Notice of Proposed Rulemaking proposing to

issue ratings only if a carrier is found "Unsatisfactory." OMC believes this will reduce the number of carrier requests to conduct compliance reviews by eliminating "Conditional" ratings.

FHWA is also taking action to improve the accuracy and timeliness of vehicle inspections uploaded by the states into SAFETYNET. Their primary effort is the pen-based or laptop computers which allow for more accurate identification of the motor carrier at the inspection site and provide information on the carrier's inspection history. These computers allow inspectors to transmit vehicle inspection reports directly to SAFETYNET reducing data processing delays. In FY 1995, FHWA provided states over \$2.3 million in MCSAP and Intelligent Transportation Systems funds to purchase pen-based computers. FHWA has established a goal to have these computers operational at 200 MCSAP inspection sites by June 1997.

Conclusion

FHWA's SCE system for targeting carriers does not ensure that problem carriers, those with poor on-the-road performance, are reviewed. Although our limited review identified 12,601 problem carriers with high out-of-service and accident rates, FHWA has not attempted to define problem carriers or the total number of problem carriers. While FHWA is taking actions to improve its targeting system, additional action is needed to more effectively use limited investigator resources to target problem carriers. Accordingly, the SCE system should be replaced by a system which defines problem carriers in terms of on-the-road performance, establishes goals for reviewing the entire population of problem carriers, and emphasizes on-the-road performance factors to prioritize carriers. In addition, FHWA should improve the data base used to prioritize carriers for compliance reviews. Methods for obtaining performance data on all interstate carriers, rather than the limited number of carriers included in the data base, should be explored. Also, the data used in ranking carriers should include state and local information on accidents and traffic violations. Lastly, FHWA should continue its efforts to improve the quality and timeliness of data from roadside inspections and instruct division offices to promptly enter compliance review reports into the MCMIS.

Recommendations

We recommend that FHWA:

1. Replace the existing system for prioritizing carriers with a system which:
 - a. Defines a problem carrier in terms of on-the-road performance criteria and establishes a goal for reviewing the entire population of problem carriers.
 - b. Uses factors to prioritize carriers based on on-the-road performance.
2. Improve the data base used to prioritize carriers for compliance reviews by:
 - a. Exploring methods for obtaining performance data on all interstate carriers rather than the limited number of carriers included in the data base.
 - b. Including state and local accidents and violations of local traffic laws.
 - c. Continuing to work with the states to increase the accuracy and timeliness of data submitted by states on interstate carriers.
 - d. Establishing timeframes to ensure that compliance review reports are promptly entered into MCMIS to accurately reflect a carrier's rating.

Management Position

FHWA partially concurred with Recommendation B1 and concurred with Recommendation B2. FHWA stated that maximizing the effectiveness of FHWA's Motor Carrier Program through the targeting of high risk carriers has been the objective for carriers selected for compliance reviews for more than 10 years. The SCE criteria for identifying high risk has been continuously refined since its inception. FHWA stated that many of the weaknesses of the SCE criteria identified in the report are acknowledged and were recognized in developing the Top 500 project, and subsequent

evolution of the SafeStat criteria, under the CVIS pilot. FHWA is changing its system for targeting carriers from SCE to SafeStat and proposed alternatives to address the issues and concerns raised in the report.

Regarding Recommendation B1, FHWA agreed in principal with the recommendation to use on-the-road performance data as the primary measure of risk. As the first step toward implementing the CVIS pilot nationwide, FHWA plans to implement the SafeStat risk assessment criteria for carrier selection beginning in April 1997. On-the-road performance based criteria will identify "at risk" carriers as those in the worst 25 percent of four safety evaluation areas (SEA) which are accidents, drivers, vehicles, and safety management. Since data are not presently available to identify sufficient numbers of carriers meeting the four SEAs, those carriers in the worst 25 percent of one, two, or three SEAs are being considered for activities (including compliance reviews) aimed at problems identified. However, FHWA did not agree with establishing a goal for reviewing all problem carriers. FHWA stated that it was not efficient to try to review large numbers of widely defined "problem" carriers when resources are limited, especially when the universe of problem carriers will continuously change as performance data are updated.

For Recommendation B2, FHWA agreed with the need to improve the performance data used for identifying "at risk" carriers, and will continue to explore improved ways to expand the population included in the data base. SAFETYNET is being expanded to include a driver citation module so that traffic and size and weight citations can be included in the future data base. FHWA stated that this expansion of SAFETYNET will vastly increase the amount of data coverage they have on carriers. In addition, FHWA stated that they are achieving more uniform coverage of carriers with inspections through the Inspection Selection System (ISS), used at the roadside to assure that all carriers are represented in the inspection data base. FHWA officials indicated that the expansion of the SAFETYNET data base and the use of ISS are expected to be implemented during FY 1997. FHWA plans to work through the states to obtain state and local accident data, and information relating to violations of local traffic laws. It should be recognized, however, that obtaining local data is a longer term objective. States should greatly improve local accident reporting data through the full implementation of CVIS. FHWA established a performance objective for each of the Motor Carrier Regional Programs to improve the accuracy and timeliness of state data and is planning to shorten the standard for uploading accident and inspection data.

Implementation of computerized road checks with ISS will improve the accuracy of carrier identification and data accuracy as edit checks are performed right at the roadside for positive carrier identification. FHWA stated that this system of computerized road checks has improved the timeliness of submission of inspection data and plans to establish time frame standards for compliance review uploads to improve the currency of data.

Audit Comments

Regarding Recommendation B1, the implementation of the SafeStat risk assessment criteria for carrier selection identifies the worst carriers for review in terms of on-the-road performance and satisfies the intent of our recommendation. However, SafeStat does not define the entire universe of problem carriers posing a high safety risk. As stated in the finding, defining problem carriers by taking the worst 25 percent of carriers for which data were available in at least three safety evaluation areas, is an arbitrary resource driven cutoff. Nevertheless, use of the SafeStat system should be an improvement over the current SCE system since it emphasizes on-the-road performance data to identify at risk carriers. Regarding Recommendation B2, we agree with FHWA initiatives to improve the data base used to prioritize carriers for compliance reviews. Consequently, the proposed actions are responsive and we consider the recommendations resolved.

Finding C: FHWA Enforcement Actions

FHWA's practice of repetitive compliance reviews to attain carrier compliance with safety regulations is not working. We found 37 percent of the carriers sampled needed three or more reviews to achieve satisfactory safety fitness ratings and 40 of the carriers sampled did not sustain satisfactory ratings once achieved. Furthermore, over 50 percent of the carriers undergoing three or more compliance reviews had vehicle out-of-service rates exceeding the national average. The inability to induce carriers to achieve timely and sustained compliance with regulations and to maintain safe on-the-road operations occurred, in part, because FHWA did not frequently assess severe fines; include all violations in the fines; or use other available enforcement tools to induce compliance. The fines for 81 carriers sampled did not include 280 of the 499 (56 percent) violations of important safety regulations found during compliance reviews. Furthermore, FHWA has not evaluated the effectiveness of various enforcement options to achieve compliance. As a result, carriers with critical safety violations continued to operate on the Nation's highways increasing the risk of fatalities, injuries, and accidents to the motoring public. Furthermore, the need for the safety investigators to perform numerous repeat compliance reviews of the same carriers without obtaining long-term compliance is an inefficient use of resources.

Discussion

Under Title 49, U.S.C., Part 521(b)(7), penalty schedules shall be "designed to induce timely compliance for persons failing to comply promptly with . . . requirements" Similarly, a February 1996 OMC quality team report entitled, "Enforcement Program Quality and Effectiveness," stated an objective of the OMC enforcement process is to initiate actions "to bring about immediate and sustained compliance for those carriers and shippers identified as being in noncompliance" with Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations.

Congress encouraged FHWA to implement strong enforcement actions to bring carriers into compliance. In the Senate Report on DOT and Related Agencies Appropriations Bill for FY 1996, the Committee repeated the finding of Congress in the Motor Carrier Safety Act of 1990 which stated ". . . relying primarily upon voluntary compliance methods has not resulted in an acceptable level of commercial motor vehicle safety." The Senate Report further stated:

Although the extraction of civil penalties is not an end onto itself, there is substantial documentation that this method of promoting compliance gets the attention of many of those truck and bus companies that violate the Federal motor carrier safety regulations. The Committee is concerned that the benefit to be derived from this enforcement tool is not being maximized. OMC needs to remember that a strong civil penalty program helps promote compliance with the safety requirements and reduces risks to the public.

FHWA initiates enforcement action as a result of noncompliance with safety regulations or hazardous materials regulations found during compliance reviews. Compliance reviews, conducted to determine compliance with regulations, result in a safety fitness rating of satisfactory; conditional; or unsatisfactory being assigned to the carrier. A conditional or unsatisfactory rating means a carrier does not have adequate safety management controls in place to ensure acceptable compliance with applicable safety requirements.

FHWA's primary and most commonly used enforcement action is the levying of fines. FHWA is also authorized to issue compliance orders which direct a carrier to perform certain acts to bring it into compliance with regulations. FHWA can also take action leading to criminal penalties and order a carrier out-of-service if violations found are likely to result in serious injury or death if not discontinued. FHWA initiated 2,213 enforcement cases in FY 1995 and assessed \$12.9 million in fines. During FY 1994, carriers were fined on violations found in 2,015 of 8,088 (25 percent) compliance reviews. Compliance orders were issued on 180 of the 2,015 (9 percent) enforcement actions taken. In 1994, approximately 40 percent of the compliance reviews were required to followup on enforcement cases.

Timely and Sustained Compliance Not Achieved

An analysis of compliance review reports and enforcement actions identified four conditions which demonstrate the limited effectiveness of FHWA's practice of repetitive compliance reviews to induce timely and sustained compliance with safety regulations. Our analysis of a random sample of 81 carriers in 8 states showed: (1) 37 percent needed at least three compliance reviews to achieve a satisfactory safety fitness rating, (2) 40 carriers did not sustain a satisfactory safety fitness rating, (3) 63 carriers had acute or critical violations on followup compliance reviews, and (4) 56 percent received civil forfeitures (fines) on followup compliance reviews. Exhibit A summarizes the results of our review of the 81 carriers.

The following paragraphs describe the limited effectiveness in inducing carrier compliance during a series of compliance reviews.

Achieving "Satisfactory" Rating. Thirty⁶ of the eighty-one carriers (37 percent) needed three or more safety and/or compliance reviews to achieve a "Satisfactory" safety fitness rating. A satisfactory safety fitness rating means a carrier has demonstrated adequate compliance with safety regulations but not necessarily full compliance. These 30 carriers continued to operate for an average of 42 months and 5 million vehicle miles, without receiving a satisfactory rating. Five carriers operated in excess of 14 million vehicle miles. A Kansas carrier operated for 100 months and traveled approximately 24 million miles without achieving a satisfactory rating. During the last 3 years, this carrier had 11 accidents, including 1 fatal accident, and currently has a preventable/recordable accident rate of 2.42 accidents per million vehicle miles of travel versus the national average of 0.466.

Sustaining "Satisfactory" Ratings. Forty of fifty-three carriers⁷ (75 percent) did not maintain a "Satisfactory" safety fitness rating during subsequent compliance reviews. Twenty-three of the 40 carriers' (58 percent) ratings decreased to an unsatisfactory level. The following table presents the ratings history of two carriers from their initial review to their most recent rating. The tables demonstrate the inability of the enforcement program to induce sustained compliance with safety regulations.

Examples Of Two Carriers' Compliance Review Ratings History

Carrier A		Carrier B	
Review Date	Rating	Review Date	Rating
June 1987	Conditional	October 1991	Satisfactory
March 1990	Satisfactory	September 1993	Unsatisfactory
February 1992	Satisfactory	November 1993	Satisfactory
July 1993	Conditional	July 1995	Unsatisfactory
February 1994	Satisfactory	September 1995	Satisfactory
July 1995	Unsatisfactory		
March 1996	Conditional		

Acute And/Or Critical Violations On FollowUp Reviews. Sixty-three of eighty-one carriers (78 percent) had acute and/or critical violations

⁶Ten of the thirty carriers had not attained a satisfactory rating as of April 25, 1996, although the carriers received two or more compliance reviews.

⁷Twenty-eight of the eighty-one carriers could not be evaluated in this category because either they did not receive a compliance review after achieving a satisfactory rating (18) or they never received a satisfactory rating (10).

identified during followup compliance reviews. Moreover, 46 carriers (57 percent) violated the same acute or critical regulation in two or more compliance reviews. Acute and critical regulations are those which have the greatest immediate and direct impact on safety. Violation of an acute regulation would create an immediate risk to persons or property such as a carrier using a driver following a positive test for alcohol. Violations of a critical regulation would indicate a breakdown in effective control over essential safety functions such as using drivers beyond their allowable driving or duty hours. We found, for example, a Pennsylvania carrier was in noncompliance with one to five acute or critical safety or hazardous materials regulations during seven compliance reviews. During four of the seven reviews, this carrier was in noncompliance with Part 395.8(e), concerning false reports of record of duty status, a critical regulation.

Fines On FollowUp Compliance Reviews. Forty-five of eighty-one carriers (56 percent) were assessed a second fine because compliance reviews conducted to follow up on prior violations found continuing violations or new violations warranting enforcement action. For example, over a 76-month period, an Idaho carrier was assessed fines on five compliance reviews. However, each successive review continued to identify violations of critical regulations including the latest review which found violations with one acute, two critical, and nine other regulations. For the violations found during the five compliance reviews, the carrier was assessed fines totaling \$21,880 and agreed to pay \$5,400. (The limited effectiveness of fines is discussed on page 34.)

On-the-Road Performance Problems

Despite numerous compliance reviews and enforcement actions, carriers in the eight states continued to receive out-of-service violations at roadside inspections, and the occurrences of vehicle and driver out-of-service violations for these carriers frequently exceeded the national average. In addition, at the time of their latest compliance reviews, 23 of 81 carriers (28 percent) sampled in the 8 states had accident rates higher than the national average even though the carriers had undergone a series of compliance reviews. These conditions further illustrate the limited effect compliance reviews and enforcement actions had on carrier on-the-road performance. The following paragraphs discuss these conditions.

Vehicle Out-Of-Service Violations. After a series of compliance reviews, carriers continue to receive out-of-service violations during roadside

inspections. Thirty-one of fifty-seven⁸ carriers sampled (54 percent) had vehicle out-of-service rates higher than the national average of 22.9 percent since their latest compliance review. Overall, 61 of 73⁹ carriers (84 percent) were cited for vehicle out-of-service violations since their latest compliance review. Out-of-service violations are mechanical defects in the vehicle so serious that the truck is legally not allowed to continue the trip until the problems are corrected. For example, after two compliance reviews, a Missouri hazardous materials carrier had vehicles placed out-of-service during 21 of 40 (52 percent) roadside inspections. After five safety/compliance reviews, a Washington carrier had a vehicle out-of-service rate of 45 percent.

Driver Out-of-Service Violations. Driver out-of-service violations continued after numerous compliance reviews. Twenty-six of fifty-seven¹⁰ carriers sampled (46 percent) had driver out-of-service rates higher than the national average of 8 percent since their latest in a series of compliance reviews. Overall, 44 of 74¹¹ carriers sampled (59 percent) were cited for driver safety violations during state roadside inspections after their last compliance review. Driver out-of-service violations are driver deficiencies so serious that the driver is legally not allowed to continue the trip until the problems are corrected. For example, an Arkansas carrier received eight safety/compliance reviews since 1988. Of the 8 reviews, 6 identified log book deficiencies including 117 instances of log book violations found during the seventh compliance review conducted in August 1994. The log book deficiencies found in this compliance review concerned either failure to complete or preserve record of duty activities or making false reports of duty and resulted in a fine of \$9,000 or less than \$77 for each of the 117 violations identified. The carrier continued to violate safety regulations concerning log books. Roadside inspections conducted since the

⁸Only carriers with five or more roadside inspections of vehicles since their last compliance review were included in our analysis. Fifty-seven of eighty-one carriers met this criteria.

⁹Eight of the eighty-one carriers did not receive any vehicle roadside inspections since their last compliance review.

¹⁰Fifty-seven of eighty-one carriers received five or more roadside inspections of drivers since their last compliance review. Five inspections were considered the minimum needed to determine a trend.

¹¹Seven of the eighty-one carriers did not receive any driver roadside inspections since their last compliance review.

latest compliance review placed 11 drivers out-of-service for log book violations. The carrier's driver out-of-service rate after the last compliance review was 29 percent versus the national average of 8 percent.

Preventable/Recordable Accident Rates. At the time of their latest in a series of compliance reviews, 23 of 81 carriers sampled (28 percent) had preventable/recordable accident rates higher than the national average of .466 accidents per million truck miles. For example, a Texas hazardous materials carrier had two accidents during the 1-year period after its fourth and latest compliance review. The carrier's current preventable/recordable accident rate was .80 accidents per million truck miles.

These conditions demonstrate the carriers' lack of prompt and sustained compliance with motor carrier safety regulations. Furthermore, after undergoing a series of compliance reviews, motor carriers continued to operate in less than full compliance with safety regulations as demonstrated by out-of-service rates and accident data. These conditions also indicate that the current magnitude of fines and penalties are inadequate to induce prompt and sustained compliance with regulations and safe on-the-road performance.

Enforcement Actions Need To Be Stronger

The ineffective cycle of compliance reviews and enforcement actions can be broken by more fully utilizing all available enforcement tools including severe fines and compliance orders. Stronger enforcement actions appear warranted especially when consideration is given to all critical and acute violations and all occurrences of the violations for repeat violators. FHWA's practice of educating carriers during compliance reviews and assessing low fines even on carriers with recurring violations is not effective in inducing timely and sustained compliance. The following paragraphs describe the weaknesses in FHWA's current enforcement practices and areas where enforcement actions could be strengthened.

Not All Violations Cited and Low Fines Assessed. FHWA is not including all violations of acute or critical regulations nor all occurrences of the violations in enforcement actions. As a result, fine amounts are low relative to the extent of violations found. The 81 carriers sampled in the 8 states were not fined for 280 of the 499 (56 percent) acute or critical violations found during compliance reviews. Acute and critical regulations are those which have the greatest immediate and direct impact on safety.

All violations and all occurrences of violations were not cited in enforcement actions because FHWA's position is to include only the violations and occurrences necessary to support a fine amount appropriate to attain improved compliance. FHWA officials further stated, FHWA was not an enforcement agency but rather a regulatory agency and their approach of working with the carriers to achieve improved compliance was the proper approach to improving highway safety. This philosophy of working with motor carriers is included in the OMC Strategic Plan for 1996 which states ". . . a central theme to the OMC Plan is working in partnerships with the states, Commercial Vehicle Safety Alliance, motor carriers, and related associations and industries." The Plan further states "Mechanisms will be implemented to assess and improve communications to carriers, both on regulations and program changes, and on the professionalism of the Federal and state investigators who interact with the carriers -- our customers."

Our audit showed FHWA's practice and approach resulted in low fines which were not effective in inducing prompt or sustained compliance. For example, a Texas carrier was found to have violated five critical regulations during its sixth compliance review. However, one of the violations and many counts of the other four violations were not included in the determination of the fine amount. The results of the sixth compliance review and the accompanying fine amount versus the maximum allowable fine are shown in the following table.

Example of Reduced Violation Counts and Low Fines

Violated Parts	Counts Identified in Compliance Review	Parts Included In Fine	Counts Included In Fine	Amount of Fine Per Count	Total Fine Assessed	Maximum Allowable Fine
391.45(b)/ 391.11(a)	3	Yes	1	\$ 500	\$ 500	\$ 3,000
395.3(b)	42	Yes	2	\$1,000	\$2,000	\$10,000
395.8(a)	32	Yes	2	\$ 500	\$1,000	\$16,000
395.8(e)	19	No	N/A	N/A	N/A	\$ 9,500
396.3(b)	11	Yes	1	\$ 300	\$ 300	\$ 5,500
Totals					\$3,800	\$44,000

As shown in the table, a \$3,800 fine was assessed compared to the maximum allowable fine established by statute of \$44,000 for the violations found. Violations of Part 395, concern driver hours of

service and are intended to prevent driver fatigue by limiting the number of hours a driver can operate a vehicle during a time period. Violations of Part 395.8(e), for which the carrier was not fined, concern either the failure to complete or preserve record of duty activities or making false reports of duty. The importance of citing all violations and assessing meaningful fines is demonstrated in the fact that this carrier (1) received five prior reviews and was assessed two prior fines for similar violations, (2) received an "Unsatisfactory" safety rating as a result of the sixth review, (3) violated two similar critical violations on prior reviews, and (4) had gross revenues of \$10.9 million which appear adequate to justify a more severe fine. The compliance review report did not explain why all the critical parts and more counts were not included in the fine.

The safety investigator's narrative in the compliance review report provides added support for assessing a severe penalty against the carrier. The narrative shows the carrier was aware of the safety requirements but unwilling to comply. The safety investigator's report states:

All indications are that although (the safety director) tries to run a good safety program, (the president) overrides much of (the safety director's) authority in the interest of profits. This lack of upper management support for compliance shows in the continued poor reviews and previous enforcement actions for the same violations. (names deleted and titles added.)

The hours of service and records of duty status requirements are not being complied with by the corporation. Drivers are required to make and complete runs apparently without regard to the hours of service available to the driver, and log books are not being maintained in proper form, are not always submitted when required, and are sometimes falsified

* * * * *

This corporation received Compliance Reviews on four previous dates, . . . and two previous enforcement actions, . . . in which they were cited for violations similar to the violations found during this investigation, including hours of service and log violations and for not meeting the requirements for preparing and maintaining proper maintenance records. Either (major stockholder and past

president) or (current president) were present when closing the previous audits, and the (safety director) was also present. These persons are still with the corporation. (names deleted and titles added.)

* * * * *

The meeting of schedules and satisfying customer needs are more important than safety regulations

With the lack of concern by the carrier and the carrier's history of noncompliance, a severe penalty appeared appropriate.

Assessment Process. FHWA assessed fines significantly below the maximum amount allowed by statute even though carriers failed to achieve satisfactory safety fitness ratings and acute or critical violations were found on successive compliance reviews. Our analysis of 11 motor carriers, from the sample of 81 carriers, which had 3 or more fines levied against them showed that 9 of the 11 carriers (82 percent) were not assessed the maximum fine allowed by statute in the last fine assessment. For example, a Texas carrier was fined \$5,500 in a fourth enforcement action for recurring acute and critical violations. The maximum allowable fine for the violations cited was \$10,000. FHWA Headquarters officials stated the fines assessed are at a level appropriate to attain improved regulatory compliance. However, FHWA field office officials believe fines are set at a low level in consideration of a carrier's ability to pay.

FHWA officials are required to consider nine factors in determining the amount of a fine. Section 521(b), Title 49, U.S.C., as amended by Section 213(b) of the Motor Carrier Safety Act of 1984, directs FHWA to consider the (1) nature of the violation; (2) circumstances of the violation; (3) extent of the violation; (4) gravity of the violation; (5) degree of culpability; (6) history of prior offenses; (7) ability to pay; (8) effect on ability to continue to do business; and (9) such other matters as justice and public safety may require. While the Act provides factors to consider, the relative importance of each factor is determined by FHWA.

Discussions with FHWA field officials to determine the basis for assessing low fines showed that FHWA considered all nine factors; however, more emphasis was placed on the carrier's ability to pay and ability to continue to do business. FHWA Headquarters officials stated the fines assessed are appropriate to attain improved compliance by the motor carrier. Our analysis showed that low fine assessments are not achieving prompt or sustained compliance with safety regulations. The fine history of a Pennsylvania carrier violating Part 395.8(e), false records of duty status, is presented in the following table. The table shows that assessing low fines did not result in prompt compliance.

Carrier's History of Violating Part 395.8(e)

Date of Review	395.8(e) Violations
May 1989	Not violated
July 1990	Although violation rate exceeded 10%, regulation not cited in enforcement action.
February 1991	Although violation rate exceeded 10%, no enforcement action taken against carrier.
December 1992	13 occurrences of the violation found (45% violation rate), \$2,800 fine assessed for this part.
June 1993	27 occurrences of the violation found (29% violation rate), \$2,000 fine assessed for this part.
February 1994	14 occurrences of the violation found (47% violation rate), \$2,000 fine assessed for this part.
August 1994	99 occurrences of the violation found (67% violation rate), \$3,000 fine assessed for this part.
February 1995	Violation rate 8% determined to be an acceptable level of compliance.

The above table shows that the carrier did not have an acceptable level of compliance with the regulation during six compliance reviews covering more than 4 years. For example, the results of the June 1993 compliance review showed the carrier was violating the regulation in the fourth consecutive compliance review. FHWA could have fined the carrier \$500 for each of the 27 violations or \$13,500. However, FHWA assessed a low fine of \$2,000, or \$74 per violation, and the carrier continued to violate the regulation during two additional compliance reviews. For the four compliance reviews with penalties, the carrier was assessed fines of \$9,800 for 153 violations, or \$64 per violation. This low fine amount was not effective in inducing prompt compliance and can be considered as

another cost of doing business for the carrier. A more severe fine may have resulted in more timely compliance and precluded the need for additional compliance reviews.

As another example, a Washington carrier violated three hazardous materials regulations. One of the regulations was violated in three previous compliance reviews. The carrier was fined for violating the regulation in two prior enforcement actions. The OMC Division determined the maximum fine amount allowed by statute for the three hazardous materials violations was \$75,000. The OMC Division Office recommended a fine of \$27,500. The OMC Regional Office assessed a \$10,000 fine. Regional officials indicated a factor in assessing a low fine was consideration of the carrier's ability to pay.

In October 1995, FHWA began the nationwide use of the Uniform Fine Assessment System. The system will recommend the same fine amount for similar size carriers with similar enforcement histories. However, the decision on which violated regulations to enter into the Uniform Fine Assessment System will be based on the judgment of FHWA field officials. This practice may result in inconsistent treatment of carriers. For example, if one carrier violated three critical parts but only one violated part is included in the fine and a second carrier has only one violated part which is included in the fine, then the second carrier is not being treated fairly or consistently as compared to the first carrier. To ensure consistent treatment of carriers, additional guidance is needed to ensure the full magnitude of violations are documented in enforcement actions and considered in future enforcement actions.

Current Enforcement Practice Emphasizes Education and Does Not Use All Available Enforcement Tools

Instead of assessing strong fines, FHWA assesses low fines and emphasizes the education of carriers to improve their performance. In addition, FHWA makes only limited use of compliance orders and has not evaluated the effectiveness of enforcement tools toward inducing carrier compliance.

Education Emphasized. Rather than assessing severe fines, FHWA emphasizes education during compliance reviews to bring carriers into compliance. FHWA safety investigators educate carriers by discussing the findings of a compliance review with the carrier and

providing recommendations. The recommendations are intended to be implemented immediately by the carrier to bring its operation into acceptable and timely compliance with safety and hazardous materials regulations.

Another FHWA practice is to use the initial review of a carrier as an educational experience and not to fine a carrier for violations except if a serious violation is discovered. If other than serious violations are found, the compliance review also has the effect of giving the carrier notice that continued noncompliance could result in future enforcement actions. Educating carriers appears an appropriate action. However, as discussed in the previous sections, repetitive reviews and weak enforcement actions do not induce timely and sustained compliance by the carriers. FHWA should work with the motor carrier industry to shift responsibility for educating carriers away from the compliance review process. This would provide a clear distinction between educational efforts and enforcement efforts.

Limited Use of All Available Enforcement Tools. In addition to not assessing severe fines, FHWA rarely used compliance orders or consent orders. In FY 1994¹², FHWA initiated 2,015 enforcement cases and issued a total of 180 (9 percent) compliance orders and consent orders. In addition, FHWA regional offices were inconsistent in their use of the order. Three of the nine FHWA regional offices issued 92 percent of the compliance orders. An analysis of FHWA data for the 81 carriers sampled showed that the 147 enforcement actions taken in FYs 1994 and 1995 included 6 compliance orders and consent orders.

A compliance order is a written direction requiring the carrier to perform certain acts necessary to bring the carrier into compliance. Compliance orders can be issued without assessing a fine. Doing so provides the carrier with another opportunity to improve performance before being fined. However, failure to comply with a compliance order can result in a significant fine of \$1,000 per violation per day to a maximum of \$10,000 per violation. For example, if a carrier continued to violate four regulations identified in the compliance order for 10 days the carrier could incur an additional fine of \$40,000. Opportunities for using compliance orders appear to exist because for the 81 carriers reviewed, 40 carriers did not sustain a satisfactory rating, 63 had acute and/or

¹²As of May 21, 1996, data on compliance orders issued in FY 1995, were not available from FHWA.

critical violations on followup reviews, and 37 percent needed at least three safety or compliance reviews to attain a satisfactory safety rating.

Additional guidance and instruction on the use of compliance orders are needed to ensure these enforcement tools are more frequently and more consistently used. Discussions with FHWA field staff revealed they were reluctant to recommend using orders because they had not received specific guidance and training on when the orders were to be used. In addition, FHWA field staff noted that if a carrier did not comply with an order, regulations allow FHWA to issue severe fines. Furthermore, because of the lack of experience in using compliance orders, field staff did not know if they were effective in improving carrier compliance. The OMC Administrative Training Manual, used as a field reference by safety investigators, does not provide adequate guidance and direction on the use of compliance orders. The manual does not discuss the conditions or circumstances for using the order other than for carriers declared an imminent hazard.

OMC's quality team report entitled, "Enforcement Program Quality and Effectiveness," dated February 1996, also identified weaknesses in the use of compliance orders. The team found that although compliance orders are currently being used, they are not addressed in the training manual. In addition, the enforcement options provided the safety investigators during the compliance review process do not include the use of compliance orders. The quality team report also stated that the lack of policies and procedures for the use of enforcement tools other than fines results in inconsistent and nonuniform use throughout FHWA. The report further stated that the lack of knowledge and understanding of all enforcement tools limits the ability of the safety investigator to select and make recommendations for the use of options other than fines.

Effectiveness of Enforcement Tools Not Assessed. OMC has not evaluated the effectiveness of various enforcement tools in achieving and sustaining carrier compliance. OMC's February 1996, Quality Team analysis of the enforcement program included an analysis of subjects such as the consistency of penalty assessments throughout the Nation, the pros and cons of nonmonetary penalty assessments, and the quality of enforcement actions being initiated. The analysis, however, did not evaluate the effectiveness of individual enforcement tools. Specifically, the analysis did not (1) determine the effectiveness of fines or compliance orders in attaining

compliance or whether nonmonetary tools should be used more frequently, (2) identify criteria for using each enforcement tool, or (3) determine the level at which fines become an effective enforcement tool.

FHWA recognized the importance of analyzing the effectiveness of each enforcement tool and established this analysis as an action item in their FY 1996 Strategic Plan. Specifically, the plan proposes to determine the effectiveness of different types of enforcement actions (including nonmonetary) to improve compliance and reduce accidents, and initiate effective enforcement strategies for each type. In our view, for this analysis to be fully effective, OMC should establish a program with criteria for measuring and evaluating the effectiveness of each enforcement tool on carriers' compliance with regulations. In addition, the evaluation of the enforcement tools should be a continual process. The results of the evaluation should be used to modify the enforcement program to achieve timely and sustained carrier compliance.

Conclusion

Carriers are not being brought into compliance in a timely manner and continue to operate on the highway in less than adequate compliance with safety regulations. Of the 81 carriers reviewed, 30 (37 percent) operated for an average of 42 months and traveled over 5 million miles before achieving a satisfactory safety fitness rating. In addition to the lengthy time period for achieving compliance, FHWA used its limited resources to perform numerous compliance reviews on the same carriers. Forty-seven carriers (58 percent) received 4 or more reviews and 13 carriers (19 percent) received 6 or more reviews. In addition, 40 of 53 carriers did not maintain a satisfactory rating. If more severe fines and other enforcement tools were used, carriers may more promptly achieve and maintain compliance, thereby, allowing FHWA to increase compliance review coverage of the approximately 220,000 carriers which have never received a review.

FHWA has not utilized all available enforcement tools to induce carriers to achieve prompt and sustained compliance with safety regulations. FHWA's practice to educate carriers and assess low fines in the first enforcement action provides carriers with a reasonable opportunity to improve operations and comply with safety regulations. FHWA must recognize that the practice of continuing to take weak enforcement actions against carriers who do not

satisfactorily comply with regulations after a second review needs to be changed. Stronger enforcement actions including fines approaching the statutory maximum for all violated regulations and compliance orders must be the norm not the exception. The approach would allow FHWA to continue the practice of educating carriers during compliance reviews and assessing low fines in the first enforcement action. Second enforcement actions should place added emphasis on degree of culpability and history of prior offenses in determining whether the carrier will be induced to comply through a severe fine or a compliance order.

FHWA also needs to continually evaluate the effectiveness of each enforcement tool in inducing carrier compliance and amend the enforcement program as appropriate. To be fully effective, FHWA should develop criteria for measuring and evaluating the effectiveness of each enforcement tool on carriers' compliance. The enforcement program would be modified to implement the results of the evaluation.

Recommendations

We recommend that FHWA:

1. Establish a written policy and operating procedures to take strong enforcement action against carriers with acute or critical violations after a second compliance review. Strong enforcement actions would include fines at or approaching the statutory maximum and compliance orders.
2. Establish written procedures to include all violations of acute or critical regulations and all occurrences of the violations to support the maximum allowable fine in second and subsequent enforcement actions or document reasons for not pursuing the violations.
3. Establish methods to separate educational efforts from enforcement efforts.
4. Establish additional procedures and provide additional training for the increased use of compliance orders.
5. Establish a program to evaluate, on a continuing basis, the effectiveness of all enforcement tools, including nonmonetary actions to induce timely and sustained compliance.

Management Position

FHWA did not concur with Recommendations C1, C2, and C3, concurred with Recommendation C4, and partially concurred with Recommendation C5. FHWA's response identified both philosophical and programmatic differences with the report and, in some cases, had a differing opinion regarding the significance of the data provided. FHWA proposed actions or alternative actions in response to each recommendation.

For Recommendations C1, and C2, FHWA agreed that a strong and effective enforcement program is essential to promoting regulatory compliance, and that more severe enforcement penalties should be applied for repeat offenders and those committing the most serious violations. FHWA does not agree that establishing a policy to take strong enforcement action against any carrier with acute or critical violations during a second compliance review, or specifying maximum penalties for all acute or critical violations for subsequent enforcement actions, is cost-effective or essential to improve safety. According to FHWA, there is no evidence or data which indicates that maximum fines would produce better results. However, FHWA has implemented, within the past year, the use of Uniform Fine Assessment software which assesses increased penalties for continued noncompliance. FHWA feels that this approach of increasing penalties for repeat offenders is more effective than requiring maximum fines after a second or third offense. During FY 1997, FHWA plans to review the success of this initiative in promoting uniformity and in appropriately penalizing the most severe violations and chronic noncompliance. In addition, nationwide implementation of CVIS will enable FHWA to better track chronic noncompliance. The CVIS process will result in greater incentives for increased voluntary compliance by much larger carrier populations.

Concerning Recommendation C3, FHWA agreed with the concept that the purpose of a compliance review conducted of a carrier which was previously reviewed or prosecuted, is much more "enforcement" oriented than "educational." FHWA does not believe there is much of a divergent opinion regarding this in the field, but will emphasize the point during its in-service training for the field staff this year. Further, FHWA stated that the frequency of educational compliance reviews will decrease significantly with the implementation of the CVIS program. Under this program the issuance of warning letters to motor carriers will be considered an initial contact for enforcement purposes.

Regarding Recommendation C4, FHWA agreed that the frequency and consistency of using compliance orders varies among the Regions. FHWA also indicated that additional efforts will be made to further communicate the purpose and capabilities of this tool to all field staff during in-service training conducted during the next year. Operational program reviews will also specifically address this area in assessing the consistency and effectiveness of Regional programs beginning in January 1997.

For Recommendation C5, FHWA partially concurred. FHWA agreed with the need to determine the effectiveness of each enforcement tool to better enable managers to predict results. Such an analysis is identified in the motor carrier analysis plan. During FY 1997, a review of the Uniform Fine Assessment Software will be initiated to measure its effectiveness in promoting consistency and to identify areas needing improvement. Additionally, in FY 1997, FHWA will initiate a review of the effectiveness of the other enforcement tools and assess whether the tools need to be continually evaluated. Regarding improving the ability to induce timely and sustained compliance, FHWA indicated implementation of SafeStat will significantly improve this situation.

Audit Comments

Regarding Recommendations C1, and C2, FHWA did not agree to establish policy and procedures to take strong enforcement action for continued noncompliance with acute or critical violations. However, FHWA's implementation of the Uniform Fine Assessment system, which increases penalties for repeat violations, is a positive step. Furthermore, FHWA's response indicated that its enforcement efforts were effective since 80 percent of motor carriers' safety ratings improved after an enforcement action. It is important to note, however, that FHWA's definition of improved compliance does not mean motor carriers achieved full compliance with important safety regulations. We believe FHWA should not be satisfied with improved compliance but should take enforcement actions sufficient to achieve prompt and sustained compliance with all acute and critical regulations.

We agree with the corrective actions taken or planned for Recommendations C3, C4, and C5. FHWA's position to be more "enforcement" oriented rather than "education" oriented for carriers which have previously been contacted is responsive to the intent of our recommendations. Further, we agree with FHWA's statement that carriers which have been previously contacted by the Federal or state staffs should be held to a higher standard of acceptable

compliance. Also, FHWA's plan to communicate the purpose and capabilities of compliance orders to field staff and increase the use of these tools where appropriate should strengthen the enforcement program. Similarly, improvement in the use of enforcement tools should occur as a result of FHWA's evaluation of these tools and their ability to achieve sustained compliance by carriers.

Corrective actions planned, including alternative actions proposed, are responsive to the intent of our recommendations and should result in stronger enforcement actions against motor carriers. Therefore, we consider the recommendations resolved.

Finding D. Quality of Compliance Reviews

Although FHWA is required to monitor the program to ensure quality, consistency, uniformity, and efficiency, oversight was limited at all levels and did not ensure that compliance review procedures were followed. Our followup verification of repairs to vehicles placed out-of-service found little or no evidence to support that repairs were made. However, compliance reviews conducted after the out-of-service order rarely cited violations. We also noted to a limited extent that certain investigators did not report violations in three or more compliance reviews in FY 1995. These weaknesses in the quality of compliance reviews were caused by unclear guidance for verifying repairs to vehicles placed out-of-service, limitations in FHWA's Quality Management reporting system, and the lack of periodic reviews of field offices' controls to ensure that compliance review procedures were followed. Without such improvements, FHWA has only limited assurance that procedures for conducting compliance reviews are followed and critical steps are thoroughly performed.

Discussion

Volume 2, Chapter 16 of the Motor Carrier Training Manual, provides procedures for conducting compliance reviews. These procedures include reviewing carrier profiles¹³, interviewing carrier officials, taking a facility tour, and sampling carrier records to determine compliance with the FMCSRs and HMRs. While procedures for conducting compliance reviews are well documented in the Motor Carrier Training Manual, there is no requirement to document the extent of coverage actually provided by safety investigators unless violations are found.

Volume 1, Chapter 3 of the Motor Carrier Administrative Training Manual, establishes policy for monitoring motor carrier programs. OMC Field Operations Office at Headquarters is required to closely monitor the performance of regional programs to ensure maximum program consistency, uniformity, and efficiency. Monitoring includes using production data to review program accomplishments and program reviews to evaluate the efficiency, effectiveness, and quality of regional operations and procedures. As part of the requirement to conduct program reviews, OMC Field Operations at Headquarters is required to perform at least three regional office operational reviews each fiscal year. The purpose of these reviews

¹³Carrier profiles contain general information on the carrier's operation and a history of accidents and roadside inspections.

is to ensure that the various regional activities are managed in a uniform, consistent, and high quality manner. OMC Field Operations is also required to develop and carry out a long-term schedule of in-depth reviews of major aspects of regional programs to determine the efficiency and effectiveness of regional policies, procedures, and processes.

OMC Regional Directors are responsible for ensuring that the quality of work submitted by division officials complies with prescribed policies and procedures. Federal Program Managers support the Regional Directors in this effort. At the division level, state directors are responsible for supervising safety investigators and for overseeing the state's MCSAP activities, which may include a compliance review program.

Repairs to Out-of-Service Vehicles Not Verified

We conducted a followup verification of repairs to vehicles placed out-of-service for two carriers in each of eight states and found little evidence to support that repairs were made. Only 4 of 16 carriers reviewed were able to provide evidence to support that repairs were made to all vehicles placed out-of-service. Forty-six out of seventy-nine, or 58 percent, of the inspection reports reviewed were not supported by evidence that out-of-service violations were corrected. This lack of evidence is contrary to Title 49, CFR, Part 396.3(c), which requires repair records to be retained at the carrier's principal place of business or where the vehicle is housed or maintained for 1 year. Exhibit B contains details of our review of carriers' evidence to support repairs.

We found that inspection reports were not always turned in to the carrier by owner/operators, carriers certified to the state that repairs were made before repairs were actually performed, and a vehicle appeared to have been driven in violation of the out-of-service order. For instance, for a carrier located in Pennsylvania, inspection reports for two of the five inspections selected for review were not turned in by owner/operators. A carrier located in Idaho had a vehicle placed out-of-service on July 7, 1995, for an exhaust leak and certified to the state on July 20, 1995, that the repair was corrected. However, there was no evidence to support the repair. According to the carrier's safety director, the repair was not made until August 24, 1995. Also, a carrier in Maryland had a vehicle

placed out-of-service for a brake hose with an audible air leak and a brake out of adjustment on March 15, 1995. On March 28, 1995, the carrier returned the inspection report to the state certifying that the repairs had been corrected. However, the carrier did not have evidence in its maintenance files to show that repairs had been corrected. Mileage logs show that the vehicle was driven six times for a total of 1,546 miles between these dates. A Division safety investigator stated that it appeared that this vehicle was driven in violation of the out-of-service order.

We found that 12 carriers could not provide evidence to support that repairs were made to vehicles placed out-of-service. However, 11 of 12 compliance reviews conducted after the date of the out-of-service order did not cite such violations. This occurred because guidance to verify that repairs were made to out-of-service vehicles was unclear. Volume 2, Chapter 16, Paragraph 2.d.(6) of FHWA's Motor Carrier Training Manual, requires safety investigators to review a sample of vehicles or maintenance files including vehicles involved in accidents and vehicles which have been subject to roadside inspections and cited for equipment violations. However, the guidance was not specific on the extent vehicle out-of-service repairs should be reviewed, and this was left to the discretion of the safety investigator. Also, documentation of the safety investigator's review of maintenance records for vehicles placed out-of-service was not required unless a violation was cited. As a result, FHWA has no assurance that safety investigators verified that carriers had support to show that repairs were made to vehicles placed out-of-service. An OMC Headquarters official agreed that guidance was unclear and should be revised.

Little or No Violations Reported

We also noted to a limited extent that certain investigators did not find violations in three or more compliance reviews. An OMC official indicated that reports with no violations are a rare occurrence. While this does not appear to be a widespread problem, we found that 14 FHWA investigators and 17 state investigators did not cite any violation on at least 3 compliance reviews in FY 1995. In one state, 5 of 25 investigators did not find any violations on at least 3 compliance reviews.

Consistent compliance review reports with no violations are indications of quality problems. One state investigator did not report any violations on 18 of 28 compliance reviews conducted in FY 1995 and continued to report no violations in FY 1996. Division

officials indicated that in November 1995, this investigator and his supervisor found no violations on a compliance review of a major carrier. The carrier, which had 140 drivers, was given a satisfactory safety rating and the compliance review report stated that the carrier had an "excellent system in place to ensure continued compliance." The review was conducted by the state investigator and his supervisor in only 6 hours, which was low for a carrier with 140 drivers. An FHWA safety investigator conducted a followup review in February 1996 and cited 10 violations including violations involving false records of duty status, CFR section 395.8e. The carrier received a conditional rating instead of the satisfactory rating given by state investigators.

Quality problems in this state were not isolated to this investigator and have existed since 1992. Besides investigators frequently finding no violations, other recent quality problems included state safety investigators not sampling an adequate number of records to determine violations. An OMC Division official notified the state that, despite substantial funding and training, there is an unwillingness and inability of investigators to properly conduct compliance reviews.

Quality problems also existed in another state. For example, 5 of 11 investigators frequently did not report violations of Title 49, CFR, Part 395.8e, "false reports of record of duty status," which was a rare occurrence nationally. A Compliance Review Quality Management Report for the period of March 1, 1994, through March 1, 1995, showed that 4 state safety investigators completed 10 or more compliance reviews, yet over 90 percent of their reports failed to cite violations of 395.8e. Another state investigator did not cite violations of 395.8e, on any of seven reports. As a result, additional training was provided in November 1995 and January 1996 to investigators from this state.

Oversight Needs Improvement

Although FHWA is required to monitor the program to ensure quality, consistency, uniformity, and efficiency, oversight was limited at all levels. Headquarters did not ensure that FHWA Regions and Divisions had adequate controls to determine whether safety investigators complied with OMC procedures for conducting compliance reviews. Operational reviews of regional offices, which the Administrative Training Manual requires to determine if regional activities were managed in a uniform, consistent, and high quality manner were discontinued in 1993. In addition, in-depth reviews

were not performed in FYs 1994 and 1995. In May 1996, an OMC program official stated that Headquarters planned to resume operational program reviews this fiscal year.

Instead of operational and in-depth reviews, Headquarters used Quality Management Reports to oversee compliance review activities and provided these reports to the regions and divisions approximately every 12 months. However, these reports did not include all investigators. For instance, the reports on low citations of Title 49, CFR, Part 391, and 395.8e, are restricted to safety investigators who conduct 10 or more compliance reviews in a year. In FY 1995, 29 percent of FHWA safety investigators and 62 percent of state investigators did not conduct 10 reviews. Also, Quality Management Reports did not identify safety investigators who did not report any violations or cite maintenance deficiencies. Such reports over a period of time may help to identify possible quality problems.

In addition to the limited Headquarters oversight, the oversight provided by regional and division offices was inconsistent. For example, Region 10 reviewed all compliance review reports with enforcement action whereas Region 6 only reviewed about 10 percent of compliance reviews with enforcement. At the division level, the Idaho Division reviewed all compliance reviews and enforcement cases and made onsite reviews with safety investigators. However, the Texas Division did not review any compliance review reports and did not conduct any onsite reviews.

Conclusion

FHWA should improve its monitoring of compliance reviews. FHWA should ensure that procedures are followed, especially since documentation of the extent of coverage by the safety investigator is not required unless a violation is found. Close monitoring is especially essential for compliance reviews conducted by state investigators. Guidance for verifying that carriers made repairs to vehicles placed out-of-service should be clarified. Quality Management Reports should be developed to identify safety investigators who do not report any violations or cite maintenance deficiencies. Quality Management Reports should include all safety investigators and should not be restricted to safety investigators who performed 10 or more reviews. Further, OMC Headquarters should conduct periodic reviews at region and division offices to evaluate controls for ensuring that procedures are being followed.

Without such improvements, FHWA has only limited assurance that procedures for conducting compliance reviews are followed and critical steps are thoroughly performed.

Recommendations

We recommend that FHWA improve its monitoring of the quality of compliance reviews by:

1. Clarifying guidance in the Motor Carrier Training Manual to ensure that safety investigators verify carrier evidence supporting repairs to vehicles placed out-of-service.
2. Developing Quality Management Reports to identify safety investigators who do not report any violations and investigators who do not cite maintenance deficiencies.
3. Revising Quality Management Reports to include all safety investigators.
4. Conducting periodic reviews at region and division offices to ensure that safety investigators are complying with compliance review procedures.

Management Position

FHWA concurred with Recommendations D1, D2, and D4 and partially concurred with Recommendation D3. For Recommendation D1, FHWA agreed to develop and implement procedures to verify carrier evidence of corrected out-of-service violations discovered during roadside inspections. For Recommendation D2, FHWA plans to develop and distribute Quality Management Reports which identify investigators who do not report violations and those not reporting maintenance violations. Regarding Recommendation D3, instead of modifying existing reports, FHWA plans to develop separate management reports to address the audit concerns and include all safety investigators. In response to Recommendation D4, FHWA conducted a pilot Operational Program Review of Regional and Divisional Offices in August 1996, after our audit was completed. FHWA plans to conduct three additional reviews in FY 1997. FHWA plans to complete corrective action on these recommendations by September 30, 1997.

Audit Comments

Corrective actions planned are responsive to our recommendations and should result in improvements to the quality of compliance reviews. Therefore, we consider the recommendations resolved.

Other Matters

During the audit, two additional areas surfaced which warrant the attention of FHWA management. The areas are referral of compliance review violations to the OIG for investigation and the backlog of enforcement cases awaiting determination for an administrative hearing. These areas are discussed in the following paragraphs.

Referrals To OIG. FHWA was not referring all potentially false statements or fraudulent activities to the OIG for investigation. The Inspector General Act of 1978, provided the Inspector General broad authority to conduct and supervise investigations relating to the programs and operations of the Department, and to prevent and detect fraud and abuse in such programs and operations. The investigative responsibilities of the OIG were described in DOT Order 8000.4. DOT Order 8000.4 lists false or fraudulent claims, statements, or certifications as types of activities which must be referred to the OIG for evaluation or investigation.

According to Title 49, USC, Part 521, any person who knowingly and willfully violates motor carrier regulations is subject to criminal prosecution. It appears many of the violations found during compliance reviews should be referred to the OIG for possible investigative action. For example, the audit found 46 of the 81 carriers sampled violated the same regulation in two or more compliance reviews. In addition, 37 of the 81 carriers violated Title 49, CFR, Part 395.8(e). Part 395.8(e), concerns the failure to complete or preserve the record of drivers' duty activities or making false reports in connection with such duty activities. According to the regulation, violation of this part ". . . shall make the driver and/or carrier liable to prosecution." None of the 37 carriers with Part 395.8(e), violations were referred to the OIG for investigation. Discussions with FHWA officials indicated a limited understanding of the Inspector General's role in investigating potential criminal violations committed by individuals and companies regulated by FHWA. A more definitive procedure should be established between the OIG and FHWA to refer potential criminal activity to the OIG for investigation. As a minimum, the procedure should inform the safety investigators of the Inspector General's role in investigating potential criminal activity and provide a point of contact in the OIG for referrals.

Carrier Disputes Awaiting Legal Determinations. Carrier disputes of Notices of Claim are not being resolved expeditiously. A Notice of Claim notifies the carrier of the violations of regulations found during a compliance review, provides a brief statement of the facts constituting each violation, indicates the amount of fine to be paid and the maximum amount which could have been assessed, and notifies the carrier of its options to pay the claim or contest the notice. According to Title 49, CFR, Part 386.14, a motor carrier has 15 days after receiving a Notice of Claim to notify FHWA it is contesting the notice and provide a detailed listing of all factual issues believed to be in dispute. After receiving the carrier's written reply, an FHWA attorney evaluates the response to determine if adequate grounds exist to grant the carrier a hearing. A hearing is granted only if there are factual issues in dispute relating to the violations in the Notice of Claim.

As of April 24, 1996, FHWA's Motor Carrier Law Division had 85 disputes awaiting evaluation. A review of the disputes showed 48 of 85 (56 percent) were initiated prior to FY 1995, and 8 disputes (9 percent) were initiated in FY 1992. According to FHWA officials, the backlog of disputed notices occurred because FHWA lacked adequate resources in the Motor Carrier Law Division to review and process the disputes. An FHWA official indicated an attorney was hired in June 1996 with the responsibility for reviewing the disputes. Nevertheless, a backlog will continue into the foreseeable future. Without timely adjudication of enforcement cases, the credibility of the enforcement process is weakened. In addition, prior violations are considered in determining the amount of fines for violations found in compliance reviews. However, the appropriate penalty amount may not be assessed because the penalty will not reflect violations awaiting adjudication. FHWA should monitor the efforts of the Motor Carrier Law Division to eliminate the backlog.

**SUMMARY OF FHWA ENFORCEMENT ACTIONS
ON 81 ACTIVE CARRIERS COMPRISING OUR SAMPLE**

State	Sample Number	Carrier Took At Least 3 CRs To Achieve Satisfactory Rating	Number of Reviews/Months To Achieve Satisfactory Rating	Satisfactory Rating Not Sustained	Number of Acute/ Critical Violations		Total Amount Of Fines Assessed	Total Number Of CRs Performed	Number Of CRs Resulting In Fines
					Found On CR	Included In Fine			
MD	1	No	@	Yes	5	4	\$52,600	6	4
	2	Yes	5Rs/29mos	No	7	3	\$12,150	6	2
	3	Yes	3Rs/27mos	No	4	1	\$1,850	4	2
	4	Yes	3Rs/35mos #	N/A #	5	3	\$8,000	3	1
	5	No	@	Yes	4	1	\$36,400	5	2
	6	Yes	4Rs/34mos #	N/A #	4	3	\$6,390	4	3
Totals	6	4 of 6		2 of 4	29	15	\$117,390	28	14
PA	7	No	@	Yes	2	2	\$4,900	4	2
	8	Yes	3Rs/40mos	No	8	3	\$12,825	5	2
	9	No	@	No	0	0	\$1,500	3	1
	10	No	@	No	10	4	\$281,700	6	5
	11	No	@	N/A (1)	1	1	\$1,000	2	1
	12	Yes	3Rs/21mos	Yes	23	7	\$24,010	8	5
	13	No	@	No	1	1	\$7,500	3	1
	14	No	@	Yes	12	5	\$17,410	6	3
	15	No	@	Yes	5	2	\$12,650	6	3
	16	Yes	3Rs/11mos	N/A (1)	3	2	\$3,500	3	2
	17	No	@	Yes	13	7	\$38,720	8	5
	18	Yes	3Rs/69mos	N/A (1)	4	1	\$10,000	3	1
Totals	12	4 of 12		5 of 9	82	35	\$415,715	57	31
AR	19	Yes	3Rs/28mos	N/A (1)	3	1	\$2,500	3	1
	20	Yes	3Rs/55mos	Yes	9	2	\$10,500	6	2
	21	No	@	No	1	0	\$4,000	3	1
	22	No	@	No	3	0	\$1,000	3	1
	23	No	@	Yes	10	4	\$18,150	5	2
	24	No	@	No	3	0	\$8,000	4	2
	25	No	@	Yes	11	2	\$20,000	8	3
Totals	7	2 of 7		3 of 6	40	9	\$64,150	32	12
TX	26	No	@	Yes	3	2	\$10,000	4	2
	27	No	@	Yes	4	3	\$8,400	4	2
	28	Yes	3Rs/21mos	N/A (1)	0	0	\$1,100	3	1
	29	Yes	3Rs/27mos #	N/A #	10	2	\$5,000	3	1
	30	Yes	5Rs/72mos #	N/A #	14	5	\$36,100	5	4
	31	No	@	Yes	1	0	\$3,000	3	1
	32	No	@	Yes	5	3	\$12,650	4	2
	33	Yes	4Rs/23mos #	N/A #	10	7	\$50,700	4	4
	34	Yes	4Rs/44mos	N/A (1)	15	10	\$24,300	4	2
	35	No	@	Yes	5	2	\$1,800	3	1
	36	Yes	3Rs/31mos	N/A (1)	2	1	\$2,000	3	1
	37	Yes	6Rs/60mos	N/A (1)	16	6	\$13,800	6	4
	38	No	@	Yes	7	7	\$17,750	4	3
	39	No	@	Yes	0	0	\$1,000	3	1
	40	Yes	3Rs/48mos	No	9	3	\$40,000	4	4
	41	No	@	Yes	10	7	\$11,850	7	3
	42	No	@	Yes	3	1	\$8,000	4	1
	43	No	@	Yes	2	2	\$13,500	3	1
	44	No	@	No	1	1	\$1,600	2	1
	45	No	@	No	0	0	\$2,000	3	1
46	No	@	N/A (1)	0	0	\$3,200	1	1	
Totals	21	8 of 21		10 of 13	117	62	\$267,750	77	41

EXHIBIT A

State	Sample Number	Carrier Took At Least 3 CRs To Achieve Satisfactory Rating	Number of Reviews/Months To Achieve Satisfactory Rating	Satisfactory Rating Not Sustained	Number of Acute/Critical Violations		Total Amount Of Fines Assessed	Total Number Of CRs Performed	Number Of CRs Resulting In Fines
					Found On CR	Included In Fine			
KS	47	Yes	4Rs/68mos	N/A (1)	5	4	\$8,500	4	2
	48	No	@	Yes	10	4	\$9,850	3	1
	49	Yes	3Rs/39mos	N/A (1)	5	4	\$2,500	3	1
	50	No	@	Yes	5	3	\$17,150	4	1
	51	Yes	3Rs/68mos #	N/A #	3	1	\$3,800	3	1
	52	Yes	3Rs/48mos	N/A (1)	6	2	\$2,900	3	1
	53	Yes	3Rs/100mos #	N/A #	5	2	\$6,100	3	1
	54	No	@	Yes	5	2	\$18,300	4	2
	55	No	@	Yes	14	9	\$126,100	6	5
	56	Yes	3Rs/10mos	N/A (1)	7	3	\$90,500	3	3
	<u>57</u>	<u>No</u>	<u>@</u>	<u>Yes</u>	<u>12</u>	<u>4</u>	<u>\$92,300</u>	<u>5</u>	<u>3</u>
Totals	11	6 of 11		5 of 5	77	38	\$378,000	41	21
MO	58	Yes	3Rs/49mos	Yes	7	1	\$2,500	4	1
	59	No	@	Yes	7	3	\$2,900	3	1
	60	No	@	N/A (1)	4	3	\$4,650	2	1
	61	No	@	Yes	9	2	\$18,500	5	2
	62	No	@	Yes	8	3	\$9,400	4	1
	63	No	@	Yes	6	1	\$4,200	4	1
	64	No	@	Yes	8	7	\$12,800	4	2
	65	No	@	N/A (1)	2	0	\$0	2	0
	66	<u>No</u>	<u>@</u>	<u>No</u>	<u>5</u>	<u>2</u>	<u>\$16,800</u>	<u>7</u>	<u>2</u>
Totals	9	1 of 9		6 of 7	56	22	\$71,750	35	11
ID	67	No	@	Yes	3	2	\$5,980	4	2
	68	Yes	2Rs/25mos #	N/A #	4	2	\$7,600	2	1
	69	No	@	Yes	8	2	\$6,900	4	2
	70	Yes	4Rs/103mos #	N/A #	10	1	\$5,600	4	1
	71	No	@	Yes	5	2	\$1,100	3	1
	72	No	@	Yes	2	1	\$11,800	4	3
	73	<u>No</u>	<u>@</u>	<u>Yes</u>	<u>17</u>	<u>11</u>	<u>\$21,880</u>	<u>5</u>	<u>5</u>
Totals	7	2 of 7		5 of 5	49	21	\$60,860	26	15
WA	74	No	@	Yes	10	4	\$7,670	5	2
	75	Yes	4Rs/44mos	N/A (1)	4	1	\$3,950	4	1
	76	Yes	2Rs/23mos #	N/A #	4	2	\$4,300	2	2
	77	No	@	Yes	7	1	\$19,000	5	2
	78	No	@	Yes	8	4	\$10,575	5	2
	79	No	@	Yes	12	3	\$14,850	5	2
	80	Yes	3Rs/11mos	N/A (1)	3	2	\$15,480	3	2
	81	<u>No</u>	<u>@</u>	<u>N/A (1)</u>	<u>1</u>	<u>0</u>	<u>\$0</u>	<u>2</u>	<u>0</u>
Totals	8	3 of 8		4 of 4	49	17	\$75,825	31	13
Grand Totals	81	30 of 81		40 of 53	499	219	\$1,451,440	327	158

Footnotes:

@ - Carrier achieved a satisfactory rating within two safety/compliance reviews.

- Carrier has not achieved a satisfactory rating.

(1) - No reviews were performed after the first "Satisfactory" rating was achieved.

CR - Compliance Reviews (could also include Safety Reviews).

R - Reviews (could be either a SR or CR).

**VERIFICATION OF EVIDENCE THAT REPAIRS
WERE MADE TO OUT-OF-SERVICE VEHICLES**

Region and Carrier	State	Number of Inspection Reports Reviewed	Carrier Had No Evidence of Repair	Maintenance Deficiency Noted in CR (Y/N)
REGION 3				
Carrier 1	MD	7	5	N
Carrier 2	MD	2	1	Y
Carrier 3	PA	5	2	N
Carrier 4	PA	4	0	N/A
REGION 6				
Carrier 1	TX	9	8	N
Carrier 2	TX	7	1	N
Carrier 3	AR	9	4	N
Carrier 4	AR	7	7	N
REGION 7				
Carrier 1	KS	2	0	N/A
Carrier 2	KS	1	0	N/A
Carrier 3	MO	2	1	N
Carrier 4	MO	3	0	N/A
REGION 10				
Carrier 1	WA	3	3	N
Carrier 2	WA	10	10	N
Carrier 3	ID	5	3	N
Carrier 4	ID	3	1	N
TOTALS		79	46	

AUDIT TEAM MEMBERS

The following is a listing of the team members who participated in the Audit of the Motor Carrier Safety Program in the Federal Highway Administration.

HEADQUARTERS

Robert Kerr	Program Director
Richard Kaplan	Project Manager
Edward Stulginsky	Project Manager
Clarence Brown	Auditor-in-Charge
William Obinger	Auditor-in-Charge
Mark Rielly	Auditor-in-Charge
Anthony Mitchell	Auditor
Richard Hatcher	Auditor
Petra Rose	Statistician

REGIONAL AUDITORS**Region 6**

Stanley Stancukas	Project Manager
Maurice Toval	Auditor-in-Charge
Kerry Barras	Auditor
Carlton Hamilton	Auditor
Albert Ruth	Auditor
Stanley Sabourin	Auditor

Region 7

Sara VanOsdol	Project Manager
Ted Sikora	Auditor-in-Charge
Gregory Huff	Auditor
James Nelson	Auditor
Gary Stivers	Auditor

Region 10

Donald Nellis	Project Manager
Jeffrey Mortensen	Auditor-in-Charge
Gloria Echols	Auditor
Deborah Kloppenburg	Auditor
Ginny Liu	Auditor



U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

APPENDIX

(13 pages)

Subject: INFORMATION: FHWA Response to the Office
of Inspector General's (OIG) Draft Report on the
Motor Carrier Safety Program

Date February 27, 1997

From Associate Administrator for Administration

Reply to
Attn. of

⁴⁰Mr. Lawrence H. Weintrob
Assistant Inspector General for Auditing (JA-1)

We have reviewed the draft report and appreciate the opportunity to provide our position regarding your findings and recommendations. We consider most of the recommendations to be constructive, and where there is disagreement, both philosophical and programmatic, we have proposed alternative actions. In addition, in some cases, we have a differing opinion regarding the significance of the data provided. Following general comments, our specific comments in response to the recommendations coincide with your structure of Findings A-D.

The objective of this audit was "... to evaluate the Federal Highway Administration's (FHWA) policies, procedures, and oversight for conducting compliance reviews of motor carriers' operations to ensure compliance with applicable motor carrier safety regulations." The scope of the audit differs from the FHWA Office of Motor Carriers' primary goal, "to reduce commercial motor vehicle crashes." The audit addresses only a limited number of tools being used by FHWA to influence motor carrier and driver behavior, and does not, within the scope of the audit, consider the benefits and related costs of the others. In our comments, we have tried to provide a comprehensive picture of the program which includes enforcement, but does not view it in isolation from other program activities.

In the past 4 years, the FHWA Motor Carrier Program, in response to the President's initiatives in reinventing Government and regulatory reform, has been transitioning from a compliance and enforcement agency to a comprehensive "safety" agency. This transition has led FHWA to become more focused on the results of its Motor Carrier Program rather than the activities it conducts. A basic premise of this effort is that the motor carrier industry is too large and diverse to significantly impact safety if we only use compliance and enforcement measures. A second major premise is that the vast majority of motor carriers recognize the societal and business costs of accidents, and will take steps to avoid them when they know how.

Through partnerships with businesses and State and local governments, FHWA has initiated significant measures to identify and address serious safety problems ranging from "fatigue" to "braking performance" in order to develop more performance based regulations and to better educate the industry. FHWA has expanded its "toolbox" of safety measures to achieve reduced accidents through: improving motor carrier analysis; promoting new technologies which affect highway safety initiating "outreach" and educational activities; expanding the number of business, government, and safety advocate partners participating in crash reduction initiatives;

actively pursuing performance based motor carrier safety pilot programs; and working to provide regulatory incentives to safe motor carriers and those which are willing to improve their level of safety. FHWA also recognizes that not all motor carriers are willing to voluntarily comply with the safety regulations and that a strong enforcement program is necessary for these carriers. Publicizing the results of high profile enforcement cases has done much to promote general deterrence by large segments of the industry (similar to the success sobriety check points have had in reducing the number of drunk drivers on the road). While non-traditional safety initiatives do require a redirection of limited resources, FHWA believes the investment in and development of a comprehensive safety model is critical to the continued success of the program.

As indicated in the report, FHWA is working on new areas to significantly improve its management of the Motor Carrier Program. The development and implementation of the SAFESTAT risk assessment criteria as part of the Commercial Vehicle Information System (CVIS) pilot, has greatly improved our ability to measure on-the-road safety performance and to focus our compliance and enforcement resources on the carriers which are having, or will have, commercial vehicle accidents. This improved targeting will only increase as ongoing data improvements are achieved. In order to improve the quality and consistency of the compliance and enforcement program, FHWA has continually been refining its quality management reports, has implemented and is expanding its uniform fine assessment procedures, and is conducting operational program reviews of the field safety programs. The FHWA is currently evaluating the benefits to be achieved through third party contracting of some of its activities. It has conducted a series of Peer Reviews dealing with “out-of-service verification” and “hours of service enforcement” with its State partners to promote innovation and to identify and communicate the “best practices” to achieve results. The FHWA has also integrated “performance-based management” strategies throughout its field program. Measurable performance objectives have been developed with the Regional Directors to continually focus our resources on the reduction of accidents and hazardous materials incidents, improved data and improved quality and consistency of field operations. Each region and State has been charged with identifying the most serious motor carrier safety problems and with developing comprehensive “safety plans” which best utilize Federal and State resources. We believe the new approaches outlined above serve as a model for the Motor Carrier Program of the future. This model focuses on results and innovative solutions rather than a strict enforcement approach.

These new safety initiatives combined with the streamlined and better focused management direction, have been widely supported both within the FHWA and the Department, and by Congress and the motor carrier industry, and follow the model of the President’s effort to reinvent Government. The results of this redirection have proven to be successful. Specific comments which follow will further support this position.

Finding A - Extent of Coverage

General Comments: The report indicates that the Motor Carrier Safety Act of 1984 required the FHWA to rate all interstate motor carriers and that FHWA’s failure to do so limits FHWA’s ability to “... determine or ensure the safety fitness of the entire population of interstate motor

carriers...” The report further criticizes the reduced level of compliance reviews performed since FY 1989, considering the additional 150 safety investigators hired during FY 1990 and FY 1991. The report further suggests that the lack of compliance review productivity goals reduces our ability to increase the number of reviews.

The report correctly notes that the total number of safety and compliance reviews has dropped from 14,676 in FY 1989 to 5,383 in 1995. However, the safety review, a cursory examination of the carriers, was discontinued for the most part after 1993, because its utility was questionable. Comparing just the number of compliance reviews over the same period shows a less dramatic decline. In FY 1989, 6,239 compliance reviews were performed. The number of compliance reviews jumped in 1991 to 9,119 and declined more slowly to 5,383 in FY 1995. We believe the comparison in the number of reviews performed is best done by examining only the number of compliance reviews. The decline, to a great extent, is explained by the increase in enforcement actions taken over the time period and the increasing complexity of the compliance review process.

The FHWA believes that while the Motor Carrier Safety Act of 1984 did much to further the effectiveness of compliance and enforcement efforts to improve safety, it did not require that FHWA rate all motor carriers. The FHWA administratively decided to expand the fitness process to all motor carriers and then set goals to rate all carriers by 1990, and subsequently 1992.

Experience during the 8 years of conducting safety reviews illustrated the futility of simultaneously trying to rate all carriers in an industry with high turnover, deal with identifiable “high risk” carriers through compliance reviews and enforcement, handle legislatively mandated complaint investigations, and achieve our primary goal to reduce accidents. In recognition of this, and the enforcement provisions of the Motor Carrier Safety Act of 1990, the decision was made to discontinue Federal safety reviews and focus on further refining the Selective Compliance and Enforcement Program (SCE) to identify the highest risk carriers and targeting these carriers for compliance and enforcement activities rather than rate all carriers. As a result of these initiatives, enforcement actions resulting from compliance reviews increased by 50 percent during the period between FY 1990 and FY 1995. Increased enforcement activity creates a more time consuming compliance review process. This, in addition to the increased review time required for controlled substance testing, accident countermeasure activities, Commercial Drivers License Information System (CDLIS) checks, and other safety related activities, reduced the number of compliance reviews conducted. The demand on investigator time was compounded by the need to train both the newly hired Federal staff on compliance reviews and enforcement as well as the State Motor Carrier Safety Assistance Program (MCSAP) staff who were beginning to conduct compliance reviews. As the data in the report indicates, the total number of compliance reviews being conducted by Federal and State resources began to increase in FY 1995. Unfortunately, this increase was hampered in FY 1996 due to travel budget reductions. As the resource and data situation improves, and our targeting capabilities are further enhanced, it is important to note there may be fewer, but more intrusive, compliance reviews conducted. FHWA’s concern is with the end result, not the incremental means to get there.

In summary, FHWA does not believe rating all carriers is required by law, nor is it necessary to do so. Significant efforts have recently been taken to increase the effectiveness of compliance reviews being conducted by Federal and State resources, and to reduce the number of complaint and enforcement follow-up investigations. Over the past few years, FHWA has reduced the number of non-safety related activities, but it has also begun to address the increased demands of Intelligent Transportation System/Commercial Vehicle Operations Program (ITS/CVO) implementation, Commercial Drivers License (CDL) improvement and other safety related responsibilities which contribute to our overall mission. The Government Performance and Results Act of 1993 (GPRA) requires a focus on “results” and “performance based management,” not on “activities” such as the number of compliance reviews conducted. The FHWA’s Motor Carrier Program, working in conjunction with the other safety administrations in the Department, have identified “results” to mean a reduction in commercial motor vehicle fatal accidents. Major efforts are being made to improve our targeting of carriers (SAFESTAT), to streamline our compliance and enforcement activities, to improve our education/outreach initiatives, and to improve the quality of our data. The FHWA believes that a comprehensive and proactive program to improve safety will offer greater opportunity for the results being sought. The FHWA Motor Carrier Program is not a “compliance and enforcement” program, nor is it a “regulatory” or “educational” program. It is a comprehensive “safety” program which incorporates each of these and several other elements in its effort to reduce accidents. In fact, the fatal and injury crash rates for large trucks in 1995 are the lowest ever, 2.5 per 100 million vehicle miles traveled (VMT) and 47 per 100 million VMT, respectively. While the “mix” of the elements can be debated, the mission of the Motor Carrier program should not.

Recommendations and Responses: The OIG recommends that FHWA:

- * Recommendation 1. Increase the number of effective compliance reviews by establishing realistic goals in the Strategic Plan and monitoring the use of safety investigator resources to ensure the goals are met.

FHWA Response. *Nonconcur-alternative action proposed.* A number of streamlining initiatives have been taken to improve effectiveness of compliance reviews. Other enhancements will be implemented as a result of recommendations from an internal quality improvement team scheduled to report by January 1997. In FHWA’s Reauthorization proposal, we request funding to implement significant portions of the CVIS pilot nationwide. This will result in increased numbers of compliance contacts with motor carriers for purposes of reducing the risk they present on the highway. One element of this pilot which has proven successful involves the use of warning letters mailed to large numbers of “at risk” carriers. This element of the pilot will be implemented by the end of CY 1997. This approach will influence the behavior of significantly larger numbers of carriers than we can visit on site, and provides an opportunity for carrier self-improvement with minimal Government intervention, though it may reduce the number of compliance reviews necessary in the future. As such, we cannot agree that the number of CRs should necessarily be increased, if other compliance or educational initiatives prove to be more effective. The FHWA agrees with realistic goal setting in terms of reducing accidents and has taken steps to improve the safety investigator focus, but does not believe the institution of a CR quota is the best way to

achieve our goals. The GPRA of 1993 requires Performance Plans and Strategic Plans to identify what agencies will accomplish *over* single and multiple years. The, accomplishments must be results oriented and will deal with the reduction of accidents, improved compliance, and reduced risks, not the number of field activities conducted. The FHWA will improve the coverage of compliance reviews using both Federal and State resources to address the highest risk carriers, and will further impact the compliance of larger carrier populations through warning letters, education/outreach, enforcement deterrence, and other initiatives. Additionally, FHWA will increase the scope of the program management reports and further emphasize the need to continually monitor our resources to improve effectiveness. The FHWA believes this comprehensive approach will produce greater results, at less cost than a strictly compliance review oriented program.

- * Recommendation 2. Augment the compliance review process by implementing the use of third-party contractors to perform initial and periodic safety evaluations.

FHWA Response. *Concur, in part.* We agree with the premise that more data/information concerning more carriers is required. As reported and recommended by the OIG, FHWA is considering the use of third-party contractors for compliance review activities. Concerns related to enforcement of "serious safety violations". (MCS Act of 1990), the cost and complexity of developing and monitoring a contractor program, the willingness of the U.S. motor carrier industry to accept the cost (as in Canada), and additional legal considerations need to be resolved prior to initiating such an effort. The progress Canada makes in their current pilot will be reviewed to assess the cost and benefits available. In the interim, FHWA is also considering an Automated Safety Assessment Program (ASAP), which is equivalent to the New Entrant Program, in order to better address unrated motor carriers and improve the information FHWA has in its data base regarding them. The ASAP basically allows the motor carrier to self-certify information ordinarily collected during a on-site compliance review. We plan to pilot the ASAP initiative during FY 1997. Regarding periodic evaluations, FHWA plans to implement the SAFESTAT methodology for identifying and monitoring the high risk carriers beginning in February 1997, This measure will provide 6-month automated risk reassessments of large numbers of carriers without on-site reviews, and will continue to include more carriers as the data is collected. Consequently, while we will continue to assess the potential use of third party contractors to assist us, we believe we have soon-to-redeployed initiatives that will achieve our objective -- focus our resources on the highest risk carriers. A decision will be made concerning the use, of third party contractors by the end of CY 1998.

- * Recommendation 3. Establish a system to determine the safety fitness of interstate carriers which uses factors other than compliance reviews.

FHWA Response. *Concur.* The FHWA agrees with the necessity of determining the safety fitness of motor carriers through a means other than compliance reviews alone. Current rulemaking described in the report offers a two-tiered fitness rating. Carriers will

be either “unsatisfactory” “not unsatisfactory.” This proposal, if it becomes a final rule (target date: 12/31/97), will meet the requirements identified in the Motor Carrier Safety Acts of 1984 and 1990, and will significantly reduce the burden placed on the FHWA relating to carrier requested reviews and rating appeals. Implementation of SAFESTAT as a “high risk” identifier, by February 1997, will offer the opportunity for performance based fitness assessments without the need for compliance reviews. This would provide a performance based (accidents, inspections, etc.) fitness determination for large numbers of carriers on a 6-month basis and permit performance tracking of large populations of at-risk carriers.

Finding B - Targeting Carriers for Compliance Reviews

General Comments: Maximizing the effectiveness of FHWA’s Motor Carrier Program through the targeting of high risk carriers has been the objective for carriers selected for compliance reviews for more than 10 years. The SCE criteria for identifying high risk carriers has been continually refined since its inception. The FHWA’s transition toward on-the-road performance based criteria began in 1994 with the Top 500 project and the CVIS pilot. The success of that criteria in identifying problem carriers led to the Top 1,000 project, which has been superseded by the implementation of SAFESTAT planned for February 1997. Many of the weaknesses of the SCE criteria identified in the report are acknowledged and were recognized in developing the Top 500 project, and subsequent evolution of the SAFESTAT criteria under the CVIS pilot.

Recommendations and Responses: The OIG recommends that FHWA:

- * Recommendation 1. Replace the existing system for prioritizing carriers with a system which: (a) defines a problem carrier in terms of on-the-road performance criteria and establishes a goal for reviewing the entire population of problem carriers; and (b) uses factors to prioritize carriers based on on-the-road performance.

FHWA Response. *Concur, in part.* FHWA agrees in principal with the recommendation to use on-the-road performance data as the primary measure of risk. As the first step toward implementing the CVIS Pilot nationwide, FHWA plans to implement the SAFESTAT risk assessment criteria for carrier selection starting in February 1997. Implementation plans have been developed to educate the industry and to train the Federal and State field staffs involved in conducting compliance reviews. On-the-road performance based criteria will identify “at risk carriers” as those in the worst 25 percent , of four safety evaluation areas (SEA) dealing with accidents, drivers, vehicles, and safety management. Presently the data available does not identify sufficient numbers of carriers meeting the four SEA definition criteria. As such, those carriers in the worst 25 percent of one, two, or three SEAS are being considered for stratification using strategies of activities (including compliance reviews) specifically geared for the problems identified. The FHWA believes such an approach is more risk-based and cost-beneficial than its current method of assessing risk and the “single criteria” approach suggested in the report. We do not believe it is efficient to try to review large numbers of widely defined

“problem” carriers when resources are limited, especially when the universe of problem carriers will continually change as performance data is updated. We find it more “resource maximizing” to target the highest risk carriers for compliance reviews and enforcement actions, while using additional educational, compliance, and enforcement strategies to improve the safeness of significantly larger numbers of carriers.

- * Recommendation 2. Improve the database used to prioritize carriers for compliance reviews by: (a) exploring methods for obtaining performance data on all interstate carriers rather than the limited number of carriers included in the data base; (b) including State and local accidents and violations of local traffic laws; (c) continuing to work with the States to increase the accuracy and timeliness of data submitted by States on interstate carriers; and (d) establishing time frames to ensure that compliance review reports are promptly entered into MCMIS to accurately reflect a carrier’s rating.

FHWA Response. *Concur.* The FHWA agrees with the need to improve the performance data used for identifying “at risk” carriers, and will continue to explore improved ways to expand the population included in the database. We are expanding SAFETYNET to include a driver citation module so that we can include citations (traffic and size and weight) in our future data base and thus vastly increase the amount of data coverage we have of carriers. In addition we are achieving more uniform coverage of carriers with inspections through the Inspection Selection System (ISS), used at the roadside to assure that all carriers are represented in the inspection data base. The FHWA will work through the States to obtain State and local accident data and information relating to violations of local traffic laws. It should be recognized, however, that obtaining local data is a longer-term objective since costs associated with obtaining it can be prohibitive. We hope that through the full implementation of CVIS, States will greatly improve local accident reporting data. The FHWA has identified improving the accuracy and timeliness of State data as a performance objective for each of the Motor Carrier Regional Programs, as such is critical to achieving our objectives. The FHWA is presently reviewing the time frames for accident and inspection uploads, with a view toward shortening the standard. We are decreasing the elapsed time allowed for inspections and accidents to be submitted by States to the data base. Implementation of ASPEN-computerized road checks-(with ISS) will improve the accuracy of carrier identification and data accuracy as edit checks are performed right at the roadside and carriers positively identified in the ISS. The ASPEN has also shown a vast improvement in the timeliness of submission of inspection data and will also establish time frame standards for compliance review uploads to improve the currency of data.

Finding C - FHWA Enforcement Actions

General Comments: The FHWA has been very responsive to concerns relating to the need for an effective enforcement program as part of a comprehensive safety program to promote compliance and improve the safeness of motor carrier operations. Using improved carrier selection criteria and tools provided in the Motor Carrier Safety Acts of 1984 and 1990, FHWA

has increased by 50 percent the frequency of enforcement resulting from compliance reviews. The FHWA has also demonstrated a carrier fitness rating improvement of nearly 80 percent following the completion of an enforcement action. While FHWA believes that enforcement is only one of the tools available to improve motor carrier safety, it recognizes the importance that it be effective, and the deterrent effect that publicizing significant enforcement actions has on large segments of the industry.

Some of the seeds of disagreement FHWA has with the report findings and recommendations in this section of the report stem from the sampling technique used in the review. The report indicates that a random sample of 81 carriers located in eight States were reviewed, and based on the results, purports that there are problems with the enforcement program as a whole. The FHWA believes that the sample is representative of the enforcement activity in the eight States only, since they do not reflect the results of the enforcement effort nationally. The level of enforcement (enforcement case per CR) for the eight States included in the OIG sample is significantly higher (29 percent) than the national average for FY 1995. Without further information regarding the sample selection criteria the FHWA can only acknowledge that the findings are reflective of enforcement activity occurring in the eight States located in four different regions.

The FHWA currently measures the effectiveness of its enforcement actions based on the resulting safety fitness of the motor *carrier*. For example, if a carrier is selected for review and prosecuted based on the unsafe nature of its operation, FHWA measures the effectiveness of its efforts on the resulting rate of improvement in the carrier's fitness rating, not the number of "satisfactory" ratings achieved. As previously indicated, FHWA's rate of improvement resulting from enforcement is approximately 80 percent nationally. The FHWA then incorporates this new fitness rating, with all other information in its prioritization methodology, to generate a new listing of "high risk carriers." FHWA believes it is more responsible to continually address the highest risk carriers rather than devote resources trying to improve a lower risk "conditional" carrier to "satisfactory." While this fitness improvement maybe short lived in a few situations, FHWA's move toward more real-time performance criteria will continue to reassess a carrier's risk rather than insulate it with a short term "snap shot" safety rating. This strategy also offers the greatest opportunity for the reduction of accidents. Current performance objectives for FHWA Regional Directors and State Directors are directly tied to the reduction of commercial vehicle accidents.

Another philosophical difference is in the area of applying hard and fast enforcement policies regarding initiating enforcement actions and applying maximum penalties. There is no data to support the theory that maximum fines will improve compliance or safety to a greater extent than we are accomplishing. In fact such a policy reduces the effectiveness of the enforcement program from a larger perspective by making the process less responsive to individual situations and more burdensome for the Agency. Improving the safety behavior of large numbers of motor carriers cannot be accomplished solely by mandatory enforcement actions and maximum fines. The FHWA has learned through experience that not all motor carriers are the same. What motivates one carrier to operate safely won't work with all of them. This is the reason FHWA employs various general deterrence strategies to influence' safe operations. Publicizing large

successful enforcement actions does much to improve the compliance of large segments of the industry. Very much like the sobriety check points for drunk driving enforcement, the thrust of the effort is not to discover how many drunk drivers are on the road, but rather to deter a much larger number of people from drinking and driving.

It is important to remember that all subjectivity cannot be eliminated from the enforcement process as suggested in the report. The FHWA empowers its investigators, within certain guidelines, to decide what type of compliance or enforcement tool will produce the best results in terms of safe motor carrier operations. Dedicating significant resources to enforcement when other less cost intensive techniques will effect improvement, would waste limited resources and reduce our ability to influence other carriers. For example, a major step toward improving the consistency and fairness of enforcement is the Uniform Fine Assessment Software implemented in FY 1996. Escalation of penalties are built into the software for repeat offenders, more culpable violators, and very serious violations. Therefore, if a motor carrier fails to adapt improvement measures, it will receive progressively severe penalties.

Another enforcement problem which is magnified by maximum fines is the penalty collection process. Uncollected penalties severely damage the credibility of enforcement programs, Policy directed maximum fines lend themselves to a refusal to arbitrate and refusal to pay. Finally, the Motor *Carrier Safety* Act of 1984 (MCS Act of 1984) specifically requires FHWA when assessing penalties to take "... into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such matters as justice and public safety may require." The Congressional intent clearly indicates FHWA should establish an enforcement program which focuses penalties toward achieving the compliance of individual carriers in order to improve safety. The FHWA believes it is heading in this direction through initiatives such as the Uniform Fine Assessment Software.

Recommendations and Responses: The OIG recommends that FHWA:

- * Recommendation L Establish a written policy and operating procedures to take strong enforcement action against carriers with acute or critical violations after a second compliance review. Strong enforcement actions would include fines at or approaching the statutory maximum and compliance orders.
- * Recommendation 2. Establish written procedures to include all violations of acute or critical regulations and all occurrences of the violations to support the maximum allowable fine in second and subsequent enforcement actions or document reasons for not pursuing the violations.

FHWA Response to Recommendations 1 & 2. *Nonconcur--alternative action proposed.* The FHWA agrees that a strong and effective enforcement program is essential to promoting regulatory compliance, and that more severe enforcement penalties should be applied for repeat offenders and to those committing the most serious violations. The FHWA does not necessarily agree, however, that establishing a policy to

take “strong enforcement action” against any carrier with acute or critical violations (of any degree of severity) discovered during a second compliance review, or specifying maximum penalties for all acute and critical violations for subsequent enforcement actions is cost-effective or essential to improving safety. In fact, the MCS Act of 1984 mandates that the level of enforcement only be sufficient enough to improve compliance to the regulations, considering the nine factors for penalty assessments. Using national enforcement statistics, FHWA has proven the effectiveness of its enforcement actions in nearly 80 percent of its cases. We have seen no evidence or data which indicates that maximum fines would produce better results, and we believe that doing so would be counterproductive to our overall objectives, since it would increase the number of contested fines and nonpayment of penalties. The recommended policy would ultimately reduce the ability of FHWA to review additional high risk motor carriers and would redirect resources from other activities which could better impact safety.

The FHWA has implemented, within the past year, the use of Uniform Fine Assessment Software which weights the nine Congressionally mandated factors and assesses increased penalties for continued noncompliance. During FY 1997, FHWA plans to review the success of this initiative in promoting uniformity and in appropriately penalizing the most severe violations and chronic noncompliance. Any deficiencies identified will be corrected.

Finally, nationwide implementation of the CVIS pilot is part of FHWA’s reauthorization proposal and, if funded, will enable FHWA to better track chronic noncompliance, using 6-month SAFESTAT scores, for multiple years. The CVIS process will result in greater incentives for increased voluntary compliance by much larger carrier populations.

* Recommendation 3. Establish methods to separate educational efforts from enforcement efforts.

FHWA Response. *Nonconcur—alternative action proposed* The FHWA agrees with the concept that the purpose of a compliance review conducted of a carrier which has previously been reviewed or prosecuted, is much more “enforcement” oriented than “educational.” We do not believe that there is much of a divergent opinion regarding this in the field, but we will emphasize the point during our in-service training for the field staff this year. We consider all of our compliance reviews to further the education of motor carriers, since they identify the deficiencies discovered. However, carriers which have been previously contacted by the Federal or State staffs are held to a higher standard of acceptable compliance. Other educational/outreach activities by FHWA are already separated from enforcement efforts, but they are collectively used in the management of the program to achieve our end result, the reduction of commercial motor vehicle accidents.

If FHWA’s reauthorization proposal is funded and the CVIS pilot becomes fully implemented in the field, the frequency of an educational compliance review will decrease significantly since the issuance of warning letters to large numbers of motor carriers will be considered an initial contact for enforcement purposes.

- * Recommendation. Establish additional procedures and provide additional training for the increased **use** of compliance orders.

FHWA Response. Concur. The FHWA agrees that the frequency and consistency of using compliance orders varies among the regions. Policy decisions regarding when compliance orders should be considered will be communicated throughout the field staff. Although the use of compliance orders has been thoroughly discussed in the Motor Carrier Enforcement Course, additional efforts will be made to further communicate the purpose and capabilities of this tool to all field staff during in-service training conducted during the next year. Since Federal Program Managers initiate the issuance of consent orders and compliance orders, efforts will be made to increase the use of these tools where the appropriate situation exists. Operational program reviews conducted after December 1996 will also more specifically address this area in assessing the consistency and effectiveness of regional programs.

- * Recommendation 5. Establish a program to evaluate, on a continuing basis, the effectiveness of all enforcement tools, including nonmonetary actions to induce timely and sustained compliance.

FHWA Response. Concur in part. The FHWA agrees with the need to determine the effectiveness of each enforcement tool to better enable our managers to predict results, and such is identified as an objective in the motor carrier analysis plan. During FY 1997, a review of the Uniform Fine Assessment Software will be initiated to measure its effectiveness in promoting consistency and to identify areas needing improvement. Additionally, in FY 1997, a review of the effectiveness of the other enforcement tools will be initiated and an assessment will be made regarding whether we need to continually evaluate them. If such is considered necessary to the continued success of the program, it will be continued. Regarding improving the ability to induce timely and sustained compliance, implementation of SAFESTAT will significantly improve this situation.

Finding D -Quality of Compliance Reviews

General comments: The FHWA welcomes any suggestions which supports our objective to continually improve the quality of the Motor Carrier Program. The points made in this section are specific and very well documented. Discussions which occurred during the review regarding these matters were very constructive and appreciated.

Recommendations and Responses: The OIG recommends that FHWA improve its monitoring of the quality of compliance reviews by:

- * **Recommendation 1.** Clarifying guidance in the Motor Carrier Training Manual to ensure that safety investigators verify carrier evidence supporting repairs to vehicles placed out-of-service.

FHWA Response. *Concur*, FHWA will develop and implement by 9/30/97, procedures to verify carrier evidence of corrected out-of-service violations discovered during roadside inspections. This will supplement previous efforts to communicate verification “best practices” to State inspection personnel via the Out-of-Service Verification Peer Review conducted in May 1995.

- * **Recommendation 2.** Developing Quality Management Reports to identify safety investigators who do not report any violations and investigators who do not cite maintenance deficiencies.

FHWA Response. *Concur.* By 9/30/97, FHWA will increase the number of Quality Management Reports it provides to its managers by developing and distributing reports which identify investigators who don't report violations and those not reporting maintenance violations.

- * Recommendation 3. Revising Quality Management Reports to include all safety investigators.

FHWA Response. *Concur in part.* Rather than modify existing reports which focus on potential problem areas, by September 30, 1997, separate reports will be developed to address the finding concerns, and will include all safety investigators. The existing reports target “specific aspects of the compliance review activity which might reflect training or performance problems. Including all safety investigators in these reports would produce too many false alarms.

- * **Recommendation 4.** Conducting periodic reviews at region and division offices to ensure that safety investigators are complying with compliance review procedures.

FHWA Response. *Concur.* The FHWA has begun conducting Operational Program Reviews of Regional and Division Offices. The pilot was conducted during August 1996 and three are planned for FY 1997. The reviews are comprehensive in scope and focus primarily on management of the specific programs being delivered in the field. Headquarters reviews include reviewing follow-up work resulting from the use of the various management reports provided to the field. Regional reviews will focus more into the individual work performed by safety investigators.

Other Matters;*

Referrals to OIG. Regarding referrals of criminal enforcement to the OIG, FHWA is interested in pursuing any avenue which expedites enforcement handling or makes enforcement more effective. The FHWA would like to engage in discussions with the OIG regarding which cases should be referred and will certainly work to develop a point of contact in the OIG for referrals. One concern is the fact that the OIG works through the U.S. Attorney's Office to effect enforcement. Our experience has not always been good in terms of timeliness and results in that

area, especially with record keeping violations (e.g. false records of duty status). If it is determined to be effective and expeditious, FHWA would appreciate the OIG's assistance in that regard.

Carrier Disputes Awaiting Legal Determinations. FHWA acknowledges the backlog of cases awaiting a decision and has taken steps to improve it, by obtaining dedicated legal support for carrier disputes. We will assess whether this level of staffing is sufficient to address the backlog of cases in a timely manner and will seek additional legal assistance if needed. Once the backlog is resolved, we believe the designated adjudicator hired last June will be able to keep up with the workload.


George S. Moore, Jr.