What to Expect During A FMCSA Compliance Review

Presented by | Rich Moldstad, CDS
May 23, 2014
Our Presenter

Rich A. Moldstad, CDS
Safety Consultant
rich.moldstad@cb-sisco.com

Please send questions to rich.moldstad@cb-sisco.com.
Welcome!

- Attendees are in listen-only mode.

- You may ask questions throughout the presentation using the Question panel, however Rich will answer all questions via email after the webinar.

- You may also send your questions directly to Rich with the email address below.

- Supporting information for this Webinar will be emailed out shortly after the presentation.
Training Topics

Compliance Investigation (CI) Process

CSA refresher and the CI process

What to expect during CIs- Overview of major CI areas

Corrective Actions
Compliance Investigation (CI) Process

Core principles:
- Raising the bar for entry
- Maintain high safety standards
- Removing high risk carriers and drivers

Please send questions to rich.moldstad@cb-sisco.com.
## CSA Refresher

**Do you know your BASIC thresholds?**

<table>
<thead>
<tr>
<th>BASIC</th>
<th>General</th>
<th>HM</th>
<th>Passenger</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unsafe Driving,</td>
<td>65%</td>
<td>60%</td>
<td>50%</td>
</tr>
<tr>
<td>HOS Compliance,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crash Indicator</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Driver Fitness,</td>
<td>80%</td>
<td>75%</td>
<td>65%</td>
</tr>
<tr>
<td>Controlled Substances/Alcohol,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vehicle Maintenance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>HM Compliance</td>
<td>80%</td>
<td>80%</td>
<td>80%</td>
</tr>
</tbody>
</table>
CSA Interventions

Off-Site Focused Review

- Carrier directed to send records
- Carrier could be subject to on-site investigation if records are not supplied
CSA Investigations

On-site Focused Investigation

- Investigators come on-site
- Conducting review of records relating to specific area(s)
- Generally two or more BASICs in alert status

Please send questions to rich.moldstad@cb-sisco.com.
CSA Interventions

On-site Comprehensive Investigation

• Basically the equivalent of previous Compliance Reviews
• Review includes all areas of carrier’s operations
• 4 or more BASICs above the threshold
• SMS mandatory investigation
High Risk Carriers

Do you know if you are a high risk carrier?

“High risk” carriers have substantially higher crash rates: more than twice the crash rate of the general carrier population.

- Crash or HOS Compliance or Unsafe Driving > 85

- Any 4 or more BASICS at or above the “all other” motor carrier threshold levels

Carriers that are “High Risk” for 2 consecutive months will be prioritized in the Investigative 1 – Mandatory SMS investigation listing used by the FMCSA to prioritize which carriers they will conduct an investigation.
Sample Carrier Percentile Rank

<table>
<thead>
<tr>
<th>BASICs Overview</th>
<th>PERFORMANCE</th>
<th>BASICs Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Based on a 24-month record ending February 24, 2012)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unsafe Driving</td>
<td>97.6%</td>
<td>!</td>
</tr>
<tr>
<td>Fatigued Driving (Hours-of-Service)</td>
<td>91.4%</td>
<td>!</td>
</tr>
<tr>
<td>Driver Fitness</td>
<td>52.3%</td>
<td></td>
</tr>
<tr>
<td>Controlled Substances and Alcohol</td>
<td>43.1%</td>
<td></td>
</tr>
<tr>
<td>Vehicle Maintenance</td>
<td>83%</td>
<td>!</td>
</tr>
<tr>
<td>Cargo-Related</td>
<td>Not Public</td>
<td>Not Public</td>
</tr>
<tr>
<td>Crash Indicator</td>
<td>Not Public</td>
<td>Not Applicable</td>
</tr>
</tbody>
</table>

*USE OF SMS DATA/INFORMATION*

QUESTIONS Please send questions to rich.moldstad@cb-sisco.com.
Prioritization of CI targets

CI targets are placed in an Investigative “bucket” depending on the time elapsed since the last intervention (CI):

- Investigative 1- Last primary intervention over 24 months
- Investigative 2- Last primary intervention over 18 months
- Investigative 3- Last primary intervention over 12 months
On-site Compliance Investigations

I. **Comprehensive** - 4 or more BASICs above threshold or SMS mandatory

II. **Focused** - 2 or less BASICs above threshold

Carriers with 3 BASICs above threshold may be subject to either CI scope per FMCSA manager discretion.

The following carriers will always receive a Comprehensive CI:
- New Entrant carriers without a Safety Audit.
- HM Permitted carriers.
- Passenger carriers without a CI in the past 12 months.

CI scope may be changed during the CI.
What Do We Do Now???

- First, don’t panic!
- Review letter, which is usually sent
- Which agency?
- Specific instructions – documents

Please send questions to rich.moldstad@cb-sisco.com.
Driver / CMV Selection Process

Basic sampling of drivers:
• Drivers involved in crashes
• Red flag drivers
• Positive drivers
• Driver SMS scores (not currently published)
• Drivers who contributed to the carrier’s violation history
• Drivers employed in the last 365 days
Red Flag Drivers

- 383.21 - Driving with more than 1 CDL
- 382.23(a)(2) - Driving without CDL
- 383.51(a) - Disqualified (CDL holder)
- 383.91(a) - No/improper endorsement
- 391.11 - Unqualified driver
- 391.11(b)(5) - No license for CMV operated
- 391.11(b)(7) - Disqualified license
- 391.15(a) - Driving CMV while disqualified
- 392.4(a) - Use/possession of drugs
- 392.5(a) - Use/possession/under influence of alcohol within 4 hrs.
- 395.13(d) - Driving after OOS
- 396.9(c)(2) - Operating an OOS CMV
On-Site Compliance Investigation

Records Reviewed

- Proof of financial responsibility
- Driver Qualification Files
- Drug and alcohol testing records
- Records of duty status and supporting documents
- Driver vehicle inspection reports and maintenance records
- FMCSA accident register
- Hazardous materials records (if applicable)

Please send questions to rich.moldstad@cb-sisco.com.
On-Site Compliance Investigation

1. General – Parts 387, 390
2. Driver – Parts 382, 383, 391
3. Operational – Parts 392, 395
4. Vehicle – Parts 393, 396
5. Hazardous Materials – Parts 397, 177, 180, and 171
6. Accident Factor
Acute Regulations

Single acute = serious violation

One point will be assessed to safety rating factor
Critical Regulations

Non-compliance relates to a breakdown in carrier’s management controls

Generally pattern = 10% or greater
Safety Factors Rated

Each factor then rated:

- **Satisfactory**: If the acute and/or critical = 0 points
- **Conditional**: If the acute and/or critical = 1 point
- **Unsatisfactory**: If the acute and/or critical = 2 points

Please send questions to rich.moldstad@cb-sisco.com.
Ratings of Safety Management Controls

**Satisfactory:** Adequate controls to ensure safety compliance are in place

**Conditional:** Adequate controls are not in place and violations could result

**Unsatisfactory:** Adequate controls not in place and violations have occurred
Opening Conference with Auditor

- Recommend top management involvement
- Be organized, interested, and indicate desire to learn from the process
- Determine where auditor will work
Financial Responsibility

- Form MCS 90B
- Proof of financial responsibility
- Ensure the form is countersigned

Please send questions to rich.moldstad@cb-sisco.com.
Driver Qualification Procedures

• Be able to articulate a comprehensive hiring process.
• Paperwork is not enough, how did you use the records to determine qualifications?
• Be aware if any driver has a chronic medical condition that may be a factor in their qualification.
• Be aware of incomplete documentation. It can be an indicator of concealment of negative information.
Controlled Substances & Alcohol Testing Program

- Have you asked all perspective employees if they have ever tested positive?
- Have all consortium or third party administrator documentation for the past year available.
- Always present the CCF form and test results together.
- Have key personnel received reasonable suspicion training?
- Have post accident testing procedures in place to include documentation as to why a test was not performed?
- Has the carrier met/exceeded the random testing rates?
Hours of Service (HOS)

• Records of Duty Status (RODS) must be maintained for 6 months.
• All supporting evidence must be available during CI. This includes all business records that can help corroborate the accuracy of RODS.
• Be able to articulate the company’s RODS review program.
• A disciplinary policy is not required in the FMCSRs but are a valuable tool to determining compliance. Meaningful enforcement of the policy is imperative.

Please send questions to rich.moldstad@cb-sisco.com.
Vehicle Maintenance

• Ensure all personnel, to include outside sources, are qualified to perform vehicle maintenance and are knowledgeable of the FMCSRs.
• Document their qualifications.
• Preventive maintenance vs. repairs; there is a difference.
• Carrier is ultimately responsible for the maintenance of all leased equipment.
• Paperwork is not enough; is the maintenance program effective?
Crashes

• Present a completed accident register and copies of crash reports.
• Investigator will review insurance loss runs
• Accident countermeasures are not required by the FMCSRs but is a major factor for determining compliance. Present any countermeasures implemented during the CI.
Hazardous Materials

- Employee training records
- Will review a sampling of HM shipping papers
- Security Plan when needed
- Registration as needed

Please send questions to rich.moldstad@cb-sisco.com.
References

- Re-designed FMCSA website- http://www.fmcsa.dot.gov/
- CSA Outreach- https://csa.fmcsa.dot.gov/
- Pre-employment Screening Program (PSP) http://www.psp.fmcsa.dot.gov/Pages/default.aspx
- Medical Registry- http://nrcme.fmcsa.dot.gov/
CI Process – How to Succeed

- Hiring safe, qualified drivers
- Proactive safety policies
- Train, Train, Train
- Track roadside inspections
- Roadside Inspection Violation Review
- Actively challenge violations – Data Q
- Develop incentives
- Internal Audits
Questions?

Rich A. Moldstad, CDS
Safety Consultant
rich.moldstad@cb-sisco.com