

CSA SCORES ARE GOOD, THINK YOU DON'T HAVE TO WORRY ABOUT A COMPLIANCE REVIEW? THINK AGAIN.....

FMCSA INVESTIGATIVE TECHNIQUES

BY

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The FMCSA recently announced that they are changing their process for performing compliance reviews. Specifically they referred to expanded interviews with members within the organization. Truth is - they have been doing this for a while, but recently completed all of the training and therefore made the announcement. Does this mean that compliance reviews have changed?

Yes and No. FMCSA had already trended from full reviews to focused reviews. However, there are some things that we are seeing with regards to compliance reviews. **From our perspective here are five items that we are seeing:**

1. Many reviews are occurring due to complaints vs CSA scores.
2. Hours of service, in particular false logs, is still the most common violation.
3. The DVIR process has now popped up as an easy target with the new DVIR process in place.
4. Changes to the medical card verification process causing compliance concerns.
5. Drivers operating with suspended or invalid CDLs.

Many reviews are occurring due to complaints vs. CSA Scores: Historically complaints were considered a lower priority by FMCSA for causation of a compliance review. CSA scores that had basics on alert was the primary determining factor for a compliance review. However, recently the complaints are taking a much higher priority than previously. There are a couple of reasons for this:

1. Coercion rule: In 2016 the release of the final rule with regards to coercion (different from harassment which is tied to electronic log devices). As a result most complaints are being treated as if coercion has occurred. Thus the visit. What is interesting is that little if any cases of coercion are being found. What is happening is during the investigation the inspector is “discovering” issues which now result in a compliance review being performed while the inspector is at that location. We have seen several carriers who have no scores on alert (in fact have “best in class” scores) but are now receiving a focused

review (usually hours of service – but not always) which is resulting in a “conditional” rating along with a fine.

2. Ease of filing a complaint: FMCSA has made it very easy for someone to file a complaint. Previously the complainant was requested to put something in writing and send in to the FMCSA. Now the complainant can just go the FMCSA website and just enter the complaint.

Hours of service, in particular false logs, is still the most common violation: We are still seeing that hours of service is the most common area where violations are occurring during these focused reviews. Primarily falsification. Carriers need to make sure they are cross referencing time (not just date) documents with the driver’s logs. These documents could include fuel (from fuel reports not paper receipts), tolls, reimbursement receipts, etc.

The DVIR process has now popped up as an easy target with the new DVIR process in place: Prior to December 2015, it was more difficult for an inspector/auditor to be able to do a case with regards to DVIR’s. With drivers turning in a DVIR daily and the requirement of finding a pattern of 10% (critical) in order to do a case (fine), it was very difficult and time consuming for the inspector to gather enough information. However with the new rule of only filing out a DVIR when a defect has occurred, it is much easier to do a case. Throw out all the clean ones and what do you have left? Inspectors are using roadside inspections which had maintenance issues listed and asking for the DVIR that corresponds with that date. No DVIR or an issue not listed? That’s one. Now you need at a minimum of 10 to make up for that one. Other items that could be used against a DVIR would include break down reports filled by the driver to the shop for repairs, maintenance records which show multiple items that it would be obvious the driver should have been aware.

We recommend to carriers to (at a minimum) do the following:

1. Cross reference roadside inspections that have maintenance issues listed with the drivers DVIR
2. Look at your internal processes to see how drivers are communicating to the shop when repairs are needed and cross reference with the driver’s DVIR
3. Train shop to report when they see or perform repairs that should have been seen by the driver and compare to the driver’s DVIR

Changes to the medical card verification process causing compliance concerns: The “grace” period is over. If you are not verifying the physicians license via the national registry and/or not running a CDLIS report. There has been interesting battle as to when a report from a system vs. a CDLIS report are acceptable. We recommend the carrier run the new CDLIS report, but there has been an interpretation that says if “all” the required information is on a report you can use that instead. The issue being “all the required information.”

Drivers operating with suspended or invalid CDLs. It only takes a few of these violations to get a basic on alert status in CSA. You need to make sure (don’t count on the driver) that you have an internal process to monitor and make sure driver’s licenses are not being suspended.

Not updating medical information is a suspension. Many states are now communicating back and forth on suspended licenses too.