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# *Office of Inspector General*

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## *Motor Carrier Safety Program*

### *Federal Highway Administration*

*Report Number: TR-1999-091*  
*Date Issued: April 26, 1999*



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# Memorandum

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

Subject: **ACTION:** Report on the Motor Carrier  
Safety Program  
Report No: TR-1999-091

Date: April 26, 1999

From:   
Raymond J. DeCarli  
Deputy Inspector General

Reply To: JA-30  
Attn Of:

To: Federal Highway Administrator

We are providing this report for your action. The audit was performed at the request of the Chairman of the Senate Committee on Commerce, Science, and Transportation and the Chairman of the Subcommittee on Transportation, House Committee on Appropriations. The objective of the audit was to determine the effectiveness of the Office of Motor Carrier (OMC) Safety Program, its impact on motor carrier safety, and whether motor carrier safety oversight would be more effective if OMC's functions were transferred from FHWA to another agency, existing or new, in the Department of Transportation. A synopsis of the report follows this memorandum.

We concluded that OMC was not sufficiently effective in ensuring that motor carriers comply with safety regulations, and that the OMC enforcement program did not adequately deter noncompliance. The majority of motor carriers comply with federal safety regulations. However, a minority of motor carriers repeatedly violate safety regulations. Sanctions imposed by OMC for noncompliance are too often minimal or nonexistent, suggesting a certain tolerance level for violations of safety regulations. For example, only 11 percent of the more than 20,000 violations (for the 29 most significant safety regulations) cited by safety investigators in FY 1998 resulted in assessments (fines), and assessments were settled for 46 percent of the dollar amounts initially assessed. The average settlement per OMC enforcement case was \$1,600. It is apparent that many motor carriers who are fined, see the penalties imposed by OMC as little more than a "cost of doing business."

OMC targets high-risk motor carriers for compliance reviews but OMC cannot identify all of the high-risk motor carriers because its database is incomplete, inaccurate and data entry is not timely. For example, driver and vehicle information on over 70,000 motor carriers, or 16 percent of the total population was not in the OMC database. Although 5,355 lives were lost in 1997 in fatal crashes with large trucks, the latest fatality data the Department has available, the Department does not have information that identifies the causes of the crashes. We recommend substantial strengthening of the enforcement program and significant data improvements.

FHWA's April 22, 1999, comments to our April 9, 1999, draft report were considered in preparing this report. FHWA presented a different perspective on some of the analysis described in our report. Notwithstanding some differences, FHWA acknowledged that the enforcement program should be improved, more compliance reviews are needed, higher penalties should be used to induce compliance, and data improvements are necessary. FHWA's response indicated steps had been taken towards these improvements.

Regardless of where OMC is placed, the responsibility for motor carrier oversight must be placed in an organization where it has strong leadership, a clearly defined mission aimed at safety, and management willing to make tough decisions -- like issuing "shut down" orders to motor carriers when their safety records indicate a need for such action. A range of alternatives exists. The two most viable and practical are leaving the motor carrier safety function in FHWA or creating a Motor Carrier Safety Administration dedicated to motor carrier safety.

One approach available to the Secretary and the Congress is to base the decision, regarding whether a Motor Carrier Safety Administration is necessary, on FHWA's commitment and expeditious implementation of action needed to substantially strengthen enforcement. FHWA's comments on this report make such a pledge. If Congress and the Administration decide on this approach, the measure of success should be bottom-line improvements in motor carrier safety. A one-year timeline should be set to judge the agency's progress before making the final decision.

However, based on our work, together with a 30-year history of congressional and public calls for strengthening motor carrier safety, we, increasingly, are of the view that it would be in the long term interest of public safety to create a Motor Carrier Safety Administration. The simple fact is that under the current organizational arrangement, motor carrier safety, necessarily, will compete for

leadership attention and emphasis with the legitimate, if not primary, FHWA mission of investing over \$20 billion annually in highways and bridges. In light of the increasing number of fatalities associated with large trucks, a high demand for truck drivers and enormous industry growth in the last few years, the safety challenge will be larger and more urgent. This situation justifies an agency with a clear, preeminent safety mission, free of the need to compete with other very important transportation department highway missions.

We are also troubled by the fact that it has taken so long for FHWA to recognize, as it does in comments on this report, that the pendulum has swung too far away from enforcement of safety rules. We hope that FHWA's commitment to change is followed through with a sense of urgency and made permanent, as this would save many lives on our highways, prevent injuries, and avoid economic loss. In our opinion, the likelihood of this occurring would increase if the leadership and charter of the agency responsible for motor carrier safety had motor carrier safety as the exclusive and unambiguous mission, together with a strong safety enforcement program.

We appreciate the cooperation and assistance provided by your staff during the audit. In particular, we appreciate the responses to our survey that we received from the safety investigators, program specialists and OMC State Directors. If I can answer any questions or be of further assistance, please contact me on x66767, or the Assistant Inspector General for Auditing, Lawrence H. Weintrob, on x61992.

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cc: The Secretary

# *Motor Carrier Safety Program*

## *Federal Highway Administration*

*April 26, 1999*

*Report No. TR-1999-091*

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### **Objective**

The objective of this audit was to determine the effectiveness of the Office of Motor Carriers (OMC) Safety Program, its impact on motor carrier safety, and whether motor carrier safety oversight would be more effective if OMC's functions were transferred from the Federal Highway Administration (FHWA) to another agency, existing or new, in the Department of Transportation (DOT). We conducted the audit at the request of the Chairman of the Senate Committee on Commerce, Science, and Transportation and the Chairman of the Subcommittee on Transportation, House Committee on Appropriations.

### **Background**

The Motor Carrier Safety Act of 1984 directed the Secretary of Transportation to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles operating in interstate commerce. The Act states that the intent of Congress is to reduce commercial vehicle crashes and fatalities by emphasizing strong enforcement of motor vehicle safety laws and regulations.

The Office of Motor Carrier Safety, an office within DOT's FHWA, is responsible for establishing and overseeing the Motor Carrier Safety Program. OMC's Fiscal Year (FY) 1999 budget is \$53 million; OMC has approximately 670 staff, 260 of which are safety investigators who provide safety management oversight of motor carriers and initiate enforcement actions.

In addition to safety enforcement, OMC has a research and standards program, under which it promotes advances in safety and establishes regulations, such as limits on how long truck drivers may drive without rest periods. Research performed pertains to commercial vehicles, driver behavior, and technology enhancements to improve safety. OMC also administers the Commercial Driver License program in conjunction with the States. This program is designed to promote truck driver safety by, for example, establishing minimum uniform licensing standards for truck drivers.

As part of its safety program, OMC provides grants to States under the Motor Carrier Safety Assistance Program (MCSAP). This program was initially funded at \$8 million in FY 1984; MCSAP funding increased to \$90 million in FY 1999. MCSAP provides resources to States to augment the OMC workforce by performing compliance reviews (Exhibit A is a glossary of terms) of motor carriers, inspecting trucks and drivers, and collecting safety data.

A key feature of the motor carrier safety program is the conduct of compliance reviews, which are performed by both OMC and State investigators. Compliance reviews examine motor carrier operations to determine whether motor carriers and their drivers meet safety requirements. Based on the results of a compliance review, the motor carrier is assigned a safety rating of satisfactory, conditional, or unsatisfactory. If a compliance review reveals safety violations, OMC can initiate enforcement action, which may lead to fines against the motor carrier.

Motor carriers are also subject to roadside inspections of vehicles and drivers. These inspections are conducted primarily by State safety investigators and may result in drivers and vehicles being removed from service for serious safety violations.

Finally, OMC can order an entire motor carrier company “shut down” or “out of service” if violations pose an imminent hazard (a condition that is likely to result in serious injury or death if not discontinued immediately) to safety or if the motor carrier receives an unsatisfactory rating and transports more than 15 passengers or placarded hazardous materials. OMC officials stated that the definition was broad, and that criteria do not exist to determine when a motor carrier posed an imminent hazard. The Transportation Equity Act for the 21<sup>st</sup> Century strengthened safety enforcement by providing a mandatory “shut down” provision for “unfit” motor carriers on the 61<sup>st</sup> day after the determination that the motor carrier is unsafe.

## **Results**

We found that OMC was not sufficiently effective in ensuring that motor carriers comply with safety regulations, and that the OMC enforcement program did not adequately deter noncompliance. The basic safety problem is not with the majority of motor carriers, who do operate safely and have good maintenance and operating practices. Rather, the problem is with a minority of motor carriers, who repeatedly violate safety rules and have unsatisfactory safety ratings for extended periods of time, and the fact that sanctions imposed by OMC are all too often minimal or nonexistent, thus suggesting a tolerance level for violations of safety requirements. Specifically, we found that:

- The fatality rate for large truck crashes has remained flat since 1995, while the number of fatalities involved in those crashes continues to increase. In 1997, the latest year for which data was available as of April 21, 1999, 5,355 deaths resulted from large truck crashes. This equates to a major airline crash with 200 fatalities every 2 weeks. This number of fatalities is unacceptable.

The Department's truck safety performance measure is based on reducing the fatality rate, which allows the number of fatalities to increase as the number of vehicle miles driven by truckers increases. This measure should be changed to substantially reduce the number of fatalities, irrespective of the fact that there are more trucking firms and that greater distances are traveled. We have been advised that the Department does intend to change its goal accordingly.

- OMC has shifted emphasis from enforcement to a more collaborative, educational, partnership-with-industry approach to safety. This is a good approach for motor carriers that have safety as a top priority, but it has gone too far. It does not work effectively with firms that persist in violating safety rules and do not promptly take sustained corrective action. Strong enforcement with meaningful sanctions, including "shut down" orders in appropriate cases, is needed in these situations. In its April 22, 1999, reply to our draft report, FHWA acknowledged the "pendulum has swung too far towards education/outreach and now must move towards stronger enforcement, particularly for repeat offenders."
- The number of compliance reviews OMC performed has declined by 30 percent since FY 1995, even though there has been a 36 percent increase in the number of motor carriers over this period. Nearly 250 of high-risk carriers recommended for a compliance review in March 1998 did not receive one.

Also, in FY 1995, 1,870 motor carriers received a less-than-satisfactory safety rating. From October 1, 1994 through September 30, 1998, 650 of those same carriers have had over 2,500 crashes resulting in 132 fatalities and 2,288 injuries. There are about 6,000 motor carriers operating with a less-than-satisfactory safety rating that received those ratings from October 1995 through September 1998.

- Only 11 percent of the more than 20,000 violations (for the 29 most significant safety regulations) identified by inspectors in FY 1998 resulted in assessments (fines), and assessments were settled for 46 percent of the dollar amounts initially assessed, which is down from 67 percent of initial assessments in FY 1995. The average settlement was \$1,600, down from \$ 3,700 in FY 1995. It is apparent that many motor carriers who are fined see the penalties imposed as little more than a "cost of doing business."



- Approximately 47 percent of OMC's workforce responding to our survey rated OMC's enforcement program as Poor to Fair. Over 86 percent favored stronger OMC enforcement, such as putting unsafe carriers out of service, assessing larger fines for repeat offenders, and taking more enforcement actions. Exhibit B provides the specific questions and tabulated responses.
- OMC has been referring motor carriers with the most egregious records and indications of criminal conduct to the Office of the Inspector General (OIG) for criminal investigation. These cases target those motor carriers that intentionally defraud OMC's safety program and pose a serious threat to highway safety. OMC, OIG and the Federal Bureau of Investigation signed a letter of agreement establishing a cooperative effort on the criminal investigation of such motor carriers. OIG currently has more than 30 ongoing criminal investigations involving motor carriers. Since January 1, 1997, OIG investigations in this area have resulted in 41 indictments, 35 convictions, and \$2.6 million in recoveries. As part of their sentencing by the courts, motor carriers have also been suspended from operating commercial vehicles, effectively removing the operators from the highways. Exhibit C provides details of the investigative efforts.
- OMC implemented the Safety Status Measurement System (SafeStat) to identify and target motor carriers with high-risk safety records by, for example, targeting compliance reviews of the worst carriers. This system is a major improvement over past practices, and the agency deserves credit for doing this. However, SafeStat cannot target all carriers with the worst records because OMC's database is incomplete and inaccurate, and data input is not timely. For example, driver and vehicle information on over 70,000 carriers, or 16 percent of the total population, was not in the database. Both OMC and the National Highway Traffic Safety Administration (NHTSA) obtain statistical data on crashes but data collection procedures are not standard. Furthermore, neither database contains crash causes or fault data because comprehensive crash evaluations are not performed.
- About 44 percent of trucks entering the United States from Mexico do not meet U.S. safety standards. This rate is unacceptably high in comparison to 17 percent for Canadian and 25 percent for U.S. trucks. Except for California, there are too few safety inspectors at the U.S.-Mexico border --for example at an El Paso border crossing, where 1,300 trucks enter the United States daily, there is only one inspector. He can inspect a maximum of 14 trucks per day. California, which has a good border inspection program, is staffed with sufficient State personnel.

A strong correlation exists between an inspection presence and the safety condition of trucks. This is because there is a significant economic consequence to a trucking firm when its trucks are placed out of service, and there is a substantial likelihood of poorly maintained trucks or unqualified drivers being detected. California's out-of-service rate for Mexican trucks is 28 percent compared with 50 percent in Texas. It is time to resolve this matter and establish a strong inspection presence at the border. Exhibit C discusses our audit report.

- There are no clear-cut answers as to whether the motor carrier safety function would be discharged more effectively if it were transferred from FHWA to an existing or new DOT organization. The suggestion that it should be transferred was made due to the significant number of fatalities associated with large truck crashes and a concern that OMC did not maintain a sufficient "arm's-length" relationship with the industry it regulated. In fact, an OIG investigation found that senior OMC managers did not always maintain an appropriate "arm's length" relationship, calling into question the credibility of OMC's leadership.

A range of organizational options exists, including combining the motor carrier safety function with the NHTSA, creating a new agency dedicated to motor carrier safety, combining the Department's surface safety functions in a new multi-modal Surface Transportation Safety Agency, or keeping OMC in the Federal Highway Administration. There are pros and cons to each option; none is a panacea.

Maintaining an "arm's-length" relationship is critical for any enforcement agency, yet the right type of new leadership can change direction and restore credibility over time. In this regard, we note that the Federal Highway Administrator recently changed the top leadership in OMC. However, our greatest concern with the current organizational placement of motor carrier safety in FHWA is whether safety can receive the priority it needs in an agency whose primary mission is investing billions of dollars in highway and bridge infrastructure. This is not to say that it cannot be done, but it will be a formidable undertaking. In responding to our workforce survey, nearly 48 percent of OMC's safety workforce thought an organizational change was necessary. None of the other organizational options require safety to compete with another mission.

Considering the range of options, the two most viable and practical are leaving the motor carrier safety function in the Highway Administration or creating a Motor Carrier Safety Administration dedicated to motor carrier safety. The principal drawback to the NHTSA option is that NHTSA's mission, though dedicated to safety, is heavily focused on regulating the manufacture of

vehicles. NHTSA has no experience regulating and enforcing the safety of operating trucking companies and their drivers. The Surface Transportation Safety Administration, while appealing in concept, would be the most complex and disruptive to establish. Large pieces of five Department of Transportation agencies would have to be removed from their present organization and merged into one to form the new organization.

One approach available to the Secretary and the Congress is to base the decision on whether a Motor Carrier Safety Administration is necessary on FHWA's commitment and expeditious implementation of action needed to substantially strengthen enforcement. The Highway Administration's comments on this report make such a pledge. If Congress and the Administration decide on this approach, the measure of success should be bottom-line improvements in motor carrier safety and a one-year timeline should be set to judge the agency's progress and make the final decision.

However, based on our work, together with a nearly 30-year history of congressional and public calls for strengthening motor carrier safety, we increasingly are of the view that it would be in the long term interests of public safety to create a Motor Carrier Safety Administration. The simple fact is that under the current organizational arrangement, motor carrier safety necessarily will compete for leadership attention and emphasis with the legitimate, if not primary, Highway Administration mission of investing over \$20 billion annually in highways and bridges. In light of the increasing number of fatalities associated with large trucks, demand for truck drivers and enormous industry growth in the last few years, the safety challenge will be larger and more urgent. This situation justifies an agency with a clear, preeminent safety mission, free of the need to compete with other very important transportation department missions.

We also are troubled by the fact that it has taken so long for the Highway Administration to recognize, as it does in comments on this report, that the pendulum has swung too far away from enforcement of safety rules. Also, almost a year ago, TEA-21 was enacted, which provided additional enforcement authority to the Highway Administration, yet those mandates have not been implemented. The Highway Administration now says it will move to do this immediately and improve the safety program, but this is occurring on the heels of and with prompting by multiple congressional hearings, adverse findings by the DOT Inspector General, the General Accounting Office, and the National Transportation Safety Board.

We hope the Highway Administration's commitments to change are followed through on with a sense of urgency and made permanent, as this would save

many lives on our highways, prevent injuries, and avoid economic loss. In our opinion, the likelihood of this occurring would increase if the leadership and charter of the agency responsible for motor carrier safety had motor carrier safety as its exclusive and unambiguous mission, together with a strong safety enforcement program.

However, it should be recognized that unless visible improvements in safety were achieved and a strong enforcement program adopted, critics would question the new Motor Carrier Safety Administration's closeness to industry, just as they do with the current Office of Motor Carriers. It is pointless to make an organizational change if only the chairs from one agency are shifted to another or by simply changing the organization's name.

- Regardless of where the motor carrier safety function is placed organizationally, strong enforcement action, including "shut down" orders in appropriate cases, will be necessary for significant violations, repeat violators, and motor carriers who have unsatisfactory safety ratings. Other measures will also have a significant bearing on motor carrier safety. These include the long-overdue revision of hours of service regulations, improvements in driver accountability, and performance of required annual vehicle inspections.

Improvements are needed to ensure compliance with Federal Motor Carrier Safety Regulations and to improve the effectiveness of the Motor Carrier Safety Program. Those improvements include the following.

- Strengthen the enforcement program to include comprehensive policies and procedures that:
  - Require strong enforcement actions against repeat violators (to include assessing maximum statutory fines, not negotiating reduced settlements, issuing compliance orders, and placing unsafe motor carriers out of service).
  - Establish stiffer fines that cannot be considered a cost of doing business and, if necessary, seek legislation raising statutory penalty ceilings.
  - Establish criteria to determine when the imminent hazard sanction should be imposed.
  - Require follow-up visits and monitoring of those motor carriers with a less-than-satisfactory safety rating at varying intervals to ensure that safety improvements are sustained. Upon follow-up visits, if safety has deteriorated, ensure appropriate sanctions are invoked.
  - Remove operating authority for motor carriers that do not pay civil penalties.

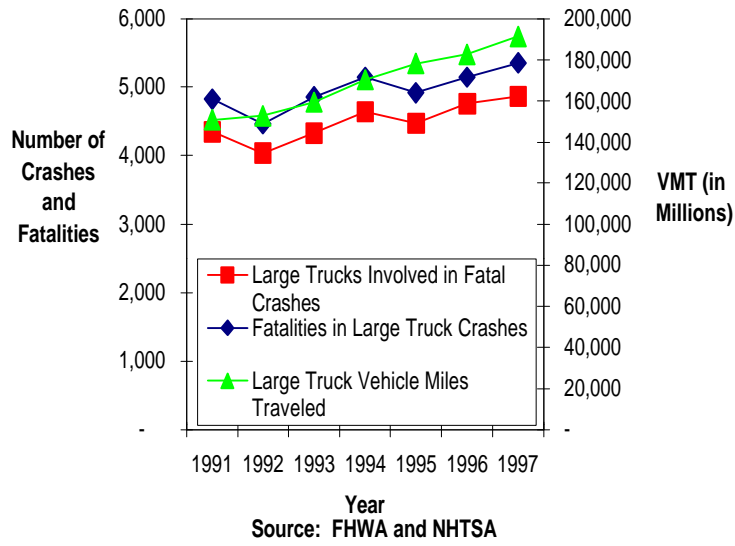
- Establish a control mechanism that requires written justification by the OMC State Director when compliance reviews of high-risk carriers are not performed.
  - Identify criteria and timeframes for closing enforcement cases, including the current backlog.
- Offer incentives to States to provide timely, accurate and complete crash, inspection and traffic violation data, and withhold funds from States that continue to report insufficient data.
  - Require motor carriers to submit information on vehicles and drivers when applying for operating authority and to periodically update this information.
  - Obtain and analyze crash causes and fault data in order to identify trends which can then be focused on reducing fatalities.
  - Standardize OMC and NHTSA crash data requirements, crash data collection procedures, and reports.

### *Performance Measure Does Not Focus on Reducing Fatalities*

The number of fatalities increased from 4,918 deaths in 1995 to 5,355 in 1997, the latest year for which the Department has fatality data. The Department's FY 1999 performance measure established under the Government Performance and Results Act focuses on reducing the fatality rate below the 1995 fatality rate of 2.8 deaths per 100 million commercial vehicle-miles traveled, rather than reducing the absolute number of fatalities involved in commercial vehicle crashes. With a proliferation of new motor carriers in operation (118,228 of 447,603 motor carriers have been in operation less than 4 years) and an expected increase in the number of vehicle miles traveled, the rate could be reduced while the number of fatalities could continue to increase. We have been advised that the Department has revised its goal towards reducing the number of fatalities.

Since 1992, fatalities have increased by 20 percent and the vehicle miles traveled have increased by 25 percent. We concluded that without a strong enforcement program and a performance goal focused on reducing the number of fatalities, there is limited assurance fatalities will be reduced. Figure 1 shows the magnitude of the fatalities and a general correlation between increased truck miles traveled and increased fatalities from crashes involving large trucks.

**Figure 1: Large Trucks Involved in Fatal Crashes, Fatalities Associated With Those Crashes and Large Truck Vehicle Miles Traveled (VMT)**



### *Enforcement Actions Are Not Effective in Encouraging Future Compliance*

In 1997, OMC issued a policy statement indicating that enforcement actions were to be considered as a last resort in efforts to encourage compliance with safety regulations. In keeping with that policy, fines recommended by OMC’s Uniform Fine Assessment software were lower than statutory maximums for first violations and increased only moderately for repeat violations. In addition, assessed fines were often reduced during the settlement process.

Further, shut down orders were seldom used against flagrant violators to induce compliance. During FYs 1995 through 1998, 846 motor carriers were subjected to multiple enforcement actions. Of these, 127 motor carriers had 3 or more enforcement actions, and 117 motor carriers had multiple violations of the same significant motor carrier safety regulation. For example, one motor carrier repeatedly violated six serious driver and vehicle maintenance safety standards but was not placed out of service.

OMC has the authority to shut down motor carriers that pose an “imminent hazard” (a condition that is likely to result in serious injury or death if not discontinued immediately). Safety investigators and OMC State Directors stated that the definition of “imminent hazard” was broad and clear criteria for determining when a motor carrier posed an “imminent hazard” do not exist. Therefore, the sanction was seldom used even though the same motor carriers

consistently violated serious safety regulations. In only 17 instances were the 117 companies issued shut down orders, 9 because they posed an imminent hazard and 8 due to unsatisfactory safety ratings associated with transporting passengers and hazardous materials. For the 127 motor carriers, the penalty amount agreed upon by OMC and the companies averaged only about \$2,500.

### *OMC Decreased Its Emphasis on Enforcement*

OMC has chosen to concentrate its efforts on initiatives such as education and partnering, while decreasing its use of enforcement actions. The number of compliance reviews performed in FY 1998 decreased by 30 percent compared to those performed in FY 1995. Furthermore, from FY 1995 to FY 1998, the average settlement per enforcement case decreased by 57 percent from \$3,700 to \$1,600.

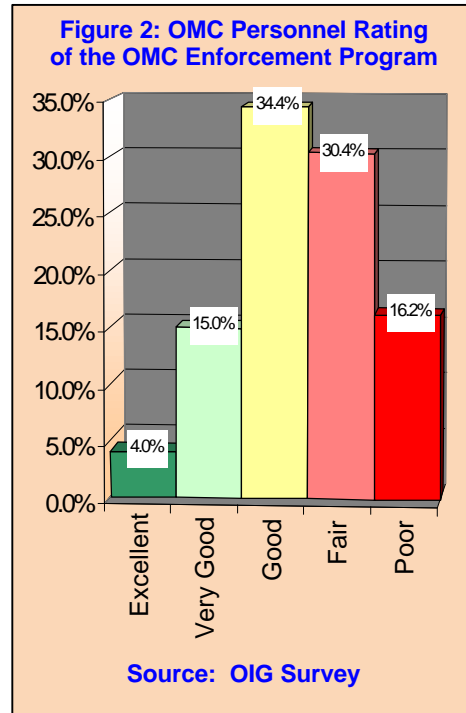
We found evidence of this shift in emphasis in OMC's use of its safety investigators. In FY 1998, OMC safety investigators completed approximately 4,400 compliance reviews (an average of fewer than 2 compliance reviews per month per safety investigator). The States performed about 2,050 compliance reviews during FY 1998. These reviews equate to performance of a compliance review for less than two percent of the almost 450,000 interstate motor carriers in operation in 1998. Seventy-two percent of the motor carrier population does not have a safety rating, and of the 28 percent rated, 38 percent (about 49,000) were rated less than satisfactory.

Motor carriers with less-than-satisfactory safety ratings continue to operate. Approximately 6,000 motor carriers received only one compliance review during FYs 1995 through 1998, and a safety rating of less than satisfactory. These motor carriers maintained the less-than-satisfactory safety ratings through September 30, 1998, and continued operations. Some were also involved in fatal crashes. For example in FY 1995, 1,870 motor carriers received a less-than-satisfactory safety rating and, from October 1, 1994 through September 30, 1998, 650 of those motor carriers have had 2,717 crashes resulting in 132 fatalities and 2,288 injuries.

In addition, 248 (or 15 percent) of the high-risk motor carriers recommended for a compliance review in March 1998, did not receive a compliance review. Since the compliance review is the key tool available to OMC to determine whether a motor carrier is operating safely, the reduction in the number of compliance reviews represents a significant change.

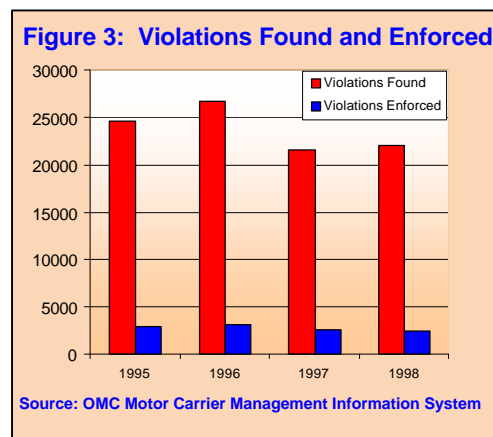
## *OMC's Own Staff Rated the Enforcement Program Poor to Fair*

We surveyed OMC's safety investigators and field level supervisors by questionnaire. Of the 355 individuals sent questionnaires, 256 (73 percent) responded to our survey. Additionally, Figure 2 shows 47 percent of the respondents rated OMC's enforcement program as poor to fair. Almost half of those responding also said that current program direction does not support strong enforcement. In order to make enforcement more effective, more than 94 percent said that attention needs to be placed on putting unsafe motor carriers out of service, 90 percent favored assessing larger fines for repeat offenders, and 86 percent indicated more enforcement actions were needed. From the responses we received, we concluded that the OMC workforce wants to do an effective job, but the current program direction needs to change if they are to do so.



## *Most Violations of Safety Regulations Do Not Result in Enforcement Actions*

Figure 3 shows the number of violations found and included in enforcement actions for FYs 1995 through 1998. During FY 1995, enforcement actions, such as fines, were processed on only 12 percent (2,957 of 24,636) of all violations found during compliance reviews for the 29 most significant regulations being enforced. These included hours-of-service violations, false reports of driver duty status, failure to implement an alcohol and/or controlled substance testing program, and use of drivers with suspended or cancelled commercial driver's licenses. In FY 1998, enforcement actions processed decreased to 11 percent of the violations found.





## *Enforcement Cases Are Being Settled for Significantly Less Than Assessed*

In cases where violations resulted in fines, OMC settled for significantly less than the amount originally assessed. From FYs 1995 through 1998, settlements declined from 67 cents on the dollar assessed to 46 cents. Figure 4 shows the history of assessments and settlements during FYs 1995 through 1998.

**Figure 4: Comparison of Assessments and Settlements by Fiscal Year**

<b>FY</b>	<b>Assessment</b>	<b>Settlement</b>	<b>Settlement Percent of Assessment</b>
1995	\$10.3 million	\$6.9 million	67%
1996	\$9.8 million	\$6.4 million	65%
1997	\$6.4 million	\$3.8 million	59%
1998	\$5.9 million	\$2.7 million	46%

**Source: OMC Motor Carrier Management Information System**

The decrease in enforcement actions and the lower average assessment and settlement amounts indicates OMC has lowered emphasis on strong penalty actions to achieve compliance. Moreover, OMC does not revoke the operating authority of motor carriers for nonpayment of fines. For example, one motor carrier has had \$126,653 in outstanding fines since October 1995 and the motor carrier continues to operate.

In addition, enforcement cases were not closed<sup>1</sup> in a timely manner. As of November 1998, OMC's database showed a backlog of 1,174 enforcement cases that have remained open from 6 months to 8 years. Of the 1,174 open cases, 543 (46 percent) have been open for over 2 years. Open enforcement cases affect selection of motor carriers for compliance reviews because the system that collects and prioritizes motor carriers uses closed enforcement cases as one means of targeting high-risk motor carriers. Without timely closure of enforcement cases, the integrity of the enforcement process is undermined. A critical need to close enforcement cases is demonstrated in the fact that 71 of the 127 motor carriers with three or more enforcement cases also have an open enforcement case.

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<sup>1</sup> Closure of enforcement cases for Safety Status Measurement System purposes mean an assessment was made and settlement was reached on the amount to be paid.

## *Insufficient Data Limits Targeting of High-Risk Motor Carriers*

Since March 1997, OMC has used the SafeStat system to identify high-risk motor carriers, which is a significant improvement over its past practices. SafeStat is an automated, data-driven system designed to incorporate current safety performance data such as crashes, results of roadside inspections of drivers and trucks, results of compliance reviews, and enforcement actions. However, OMC currently cannot target all motor carriers with the worst safety records because its database is incomplete and inaccurate. For example, SafeStat determines a motor carrier's safety risk relative to motor carriers of comparable fleet size. However, we found that driver and vehicle information on 71,145 motor carriers (16 percent of the total population) was not in OMC's Motor Carrier Management Information System. Carriers missing these data normally would not be ranked or prioritized for a review, even if they were high-risk motor carriers.

In addition, neither OMC's nor NHTSA's database contains information on crash causes or fault because comprehensive crash evaluations are not performed when fatal crashes occur. Comprehensive crash evaluations could provide important insights into initiatives OMC could undertake to prevent future crashes and to target high-risk practices and motor carriers.

## *Untimely Data Impacts SafeStat's Rankings*

States did not always enter crash reports timely, which reduced the effectiveness of the SafeStat system in identifying motor carriers with recent crashes. For example, in 1997, 31 percent of the crashes reported by the States were entered into OMC's database more than 180 days after the crash date. Timely entry of crash data is important because SafeStat weighs a recent crash (one that occurs in the past 6 months) three times greater than one that occurred more than 18 months ago.

Under MCSAP, OMC provides the States funds to collect safety performance data; these funds were significantly increased by the Transportation Equity Act for the 21<sup>st</sup> Century. The quality and timeliness of safety performance data are paramount in building and maintaining an information system that supports safety activities and provides the analytical foundation for future safety improvements. It is obvious from the ongoing initiatives that OMC is using technology to enhance its oversight and to improve safety. Without good data, it is difficult to identify technology enhancements that should be developed to improve motor carrier safety. OMC did not provide adequate emphasis to ensuring the quality of the safety performance data entered into its centralized, Motor Carrier Management Information System. This centralized database provides data to other systems

OMC deployed to enhance its oversight capability and to improve safety such as the SafeStat, the Performance and Registration Information Systems Management, and the Inspection Selection System.

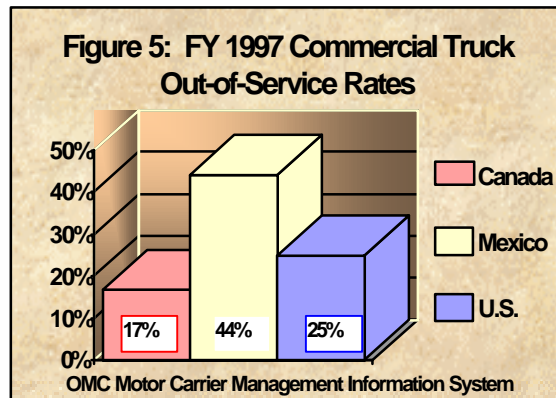
Both NHTSA and OMC provide funds to the States to receive crash information. The data, provided by the States, are derived from the same state accident reporting form and are entered by two different state offices into OMC's and NHTSA's databases. Even though differences exist between the databases, there is opportunity for data standardization.

### *Trucks Entering the United States from Mexico Frequently Do Not Meet U.S. Standards*

In our December 1998 audit report, "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders" (Report No. TR-1999-034), we concluded that neither OMC nor the border states, with the exception of California, are taking sufficient actions to ensure that trucks entering the United States from Mexico meet U.S. safety standards.

Since 1992, when the United States, Canada, and Mexico signed the North American Free Trade Agreement, the Department and the border states have pointed to each other when asked who has the responsibility for inspecting trucks crossing the border. Neither the Federal Government nor the border states (except for California) have provided the necessary resources. For example, in El Paso, Texas, an average of 1,300 trucks enter daily at one border crossing, yet only one inspector is on duty and he can inspect only 10 to 14 trucks daily. At other crossings, there are times when there are no inspectors.

Far too few trucks are being inspected at the U.S.-Mexico border, and too few inspected trucks comply with U.S. safety standards. Of those Mexican trucks inspected, about 44 percent were placed out of service because of serious safety violations. This contrasts with a 25-percent out-of-service rate for U.S. trucks and a 17-percent out-of-service rate for Canadian trucks.



The truck out-of-service rates for the four border states with Mexico ranged from 28 percent in California, where a good inspection program has been in place and the quality of trucks has improved, to 50 percent in Texas.

With the exception of California, a significant increase is urgently needed in the number of inspectors, the number of trucks inspected, and the hours of inspection coverage to make sure trucks entering the United States from Mexico are safe. OMC and the States point to each other as having responsibility for inspecting trucks entering the United States. In view of this continuing debate, we are not confident that the necessary actions are imminent.

### *Strong Leadership Is Needed for an Effective Motor Carrier Safety Program*

Our greatest concern with the current organizational placement of the motor carrier oversight program in FHWA is whether safety can receive the priority it needs in an agency whose primary mission is investing billions of dollars in highway and bridge infrastructure. Also, a recent OIG investigation reported that OMC's senior leadership has not always maintained an "arm's-length" relationship with the motor carrier industry they were responsible for regulating. In order to improve the effectiveness of OMC, 37 percent of the OMC safety workforce who responded to our survey stated that a separate administration was needed. Also, in response to a specific question about moving OMC to NHTSA, 48 percent moderately to strongly favored the move.

A range of alternatives exists: retention in FHWA, placement within NHTSA, creation of a new administration within the Department that would include safety-related issues for all surface transportation modes, and creation of a Motor Carrier Safety Administration. There are pros and cons associated with each alternative.

- Since FHWA's main focus is on infrastructure development and funding, the motor carrier safety program, under FHWA, may not receive the priority it needs. This does not mean that motor carrier safety cannot be effectively managed within FHWA, but doing so will require a very strong effort to ensure that motor carrier safety is not subordinated to infrastructure investment in terms of emphasis and attention.

In October 1998, FHWA restructured its headquarters and field operations giving OMC's State Division Offices the primary role and authority for front-line program delivery such as the motor carrier safety program. Restructuring also eliminated nine Regional Offices and replaced them with four Resource Centers. OMC officials in the State and Regional/Resource Center offices expressed considerable confusion and concern on their roles and responsibilities due to the restructuring. Although the restructuring was ongoing, we found that definitive guidance had not been issued to the Resource Centers or the State Division Offices on their responsibilities.

- NHTSA is a centralized organization with the majority of its workforce in Washington, D.C. This contrasts with the motor carrier mission, which has most of its resources in the field. NHTSA's primary role is to oversee manufacturers of passenger and commercial vehicles, and safety features of those vehicles. NHTSA's enforcement program does not apply to operator safety. Consequently, NHTSA does not deal with the same type and magnitude of enforcement issues as does OMC.
- A separate surface safety organization conceptually has appeal because its sole mission would be safety and it would have the ability to examine issues such as operator fatigue across all modes of transportation. Also, resources would be dedicated to safety and could quickly be realigned if necessary. This concept was proposed by DOT in the early 1990's but was not adopted. Establishing a surface safety organization would most likely be the most costly option, and it would cause significant disruption to DOT's safety program because of the time it would take to establish an effective structure. A surface safety organization would incorporate some functions from FHWA, NHTSA, Federal Railroad Administration, Federal Transit Administration, and Research and Special Programs Administration. Having one organization responsible for the entire safety mission and focused on the Department's primary goal of improving safety, would emphasize DOT's high priority to its safety mission and minimize criticism of having close relationships with industries it had responsibility to oversee.
- A new and separate motor carrier safety administration is another viable option. Such an organization would have safety as its only mission and could focus all its resources on motor carrier safety. This organizational structure has appeal to the motor carrier industry because motor carriers would have a dedicated agency like the other transportation modes, and this would reinforce their stature. Safety improvements within the motor carrier industry would be its primary mission.

Regardless of where OMC is placed, the responsibility for motor carrier oversight must be placed in an organization where it has strong leadership, a clearly defined mission aimed at safety, and management willing to make tough decisions -- like issuing "shut down" orders to motor carriers when their safety records indicate a need for such action. If FHWA is not forthcoming in expeditiously taking corrective action, an organizational change is appropriate.

Actions in addition to strong industry oversight can contribute to significant reductions in fatalities. Specific actions to enhance motor carrier safety and to help prevent crashes and fatalities should be considered regardless of where the

organization is placed. Actions such as improved driver accountability, required vehicle inspections, and revised hours-of-service regulations are identified in Exhibit D. These are only suggestions and are not intended to be an endorsement by the Office of the Inspector General.

## **Management Position and Office of Inspector General Comments**

The Department agreed, in an April 14, 1999, memorandum to FHWA, to revise the motor carrier safety goal in its FY 2000 performance plan to reduce the number of fatalities. The change is to be printed in the Department's revised final performance plan, which is expected to be published within 30 days after FY 2000 appropriations are enacted.

In its reply, FHWA said: "We consider many of the recommendations to be constructive and have actions underway to address them. In other cases, we have proposed alternative actions. However, we do have a different view of some of the analysis described in the report and we believe you may have overlooked some pertinent facts." Notwithstanding some differences, FHWA acknowledged that the enforcement program can be improved, more compliance reviews are needed, higher penalties can be used to induce compliance, and data improvements are necessary. FHWA recognized improvements are needed and said it had taken steps towards this goal.

# I. INTRODUCTION

## **Background**

We performed this audit in response to Congressional requests. Senator John McCain, Chairman of the Senate Committee on Commerce, Science, and Transportation, requested a review relating to the effectiveness of the Office of Motor Carrier<sup>1</sup> (OMC), the impact of the Federal Highway Administration (FHWA) reorganization and the merits of transferring OMC out of FHWA. Congressman Frank Wolf, Chairman of the House Subcommittee on Transportation, Committee on Appropriations, requested a review of the Motor Carrier Safety Program. His concerns were the number of compliance reviews conducted, whether the enforcement program had been strengthened since 1997, the adequacy of penalties assessed, and the moving of OMC out of FHWA.

Congress<sup>2</sup> directed the Secretary of Transportation, in cooperation with the Interstate Commerce Commission, to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles operating in interstate commerce. The FHWA issued Title 49, Code of Federal Regulations (CFR), Part 385, Safety Fitness Procedures, which established a procedure to (i) determine the safety fitness of motor carriers, (ii) assign safety ratings, (iii) take remedial action when required, and (iv) prohibit passenger and hazardous materials motor carriers that received an “unsatisfactory” safety rating from operating a commercial motor vehicle.

OMC is responsible for establishing and overseeing the Motor Carrier Safety Program. As part of its safety program, OMC provides grants to the States under the Motor Carrier Safety Assistance Program (MCSAP) to perform compliance reviews and inspections of commercial trucks and drivers, and to collect safety performance data. This program was initially funded at \$8 million in FY 1984: MSCAP funding increased to \$90 million in FY 1999. Compliance reviews<sup>3</sup> are performed by OMC and state safety investigators at motor carrier facilities to determine whether motor carriers meet safety fitness standards.

Based on the results of a compliance review, the motor carrier is assigned a safety rating of satisfactory, conditional, or unsatisfactory. Enforcement actions may be initiated, such as the levying civil penalties, if motor carriers are found in violation

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<sup>1</sup> On February 2, 1999 FHWA reorganized and OMC became the Office of Motor Carrier and Highway Safety. Throughout this report, we cite the Office of Motor Carriers (OMC) and are specifically referring to the Motor Carrier Safety Program and not the new Highway Safety function.

<sup>2</sup> Section 215 of the Motor Carrier Safety Act of 1984, codified in Title 49, United States Code (U.S.C.), Section 31144.

<sup>3</sup> Exhibit A contains a glossary of terms.

of safety regulations. OMC can order an entire motor carrier company “shut down” or “out of service” if violations pose an imminent hazard to safety or if the motor carrier receives an unsatisfactory rating and transports more than 15 passengers or placarded hazardous materials. Roadside inspections<sup>4</sup> of commercial motor vehicles are conducted primarily by state safety investigators and may result in the vehicle and/or driver being removed from service because of serious safety violations. The Transportation Equity Act (TEA-21) strengthened safety enforcement by providing a mandatory “shut down” provision for “unfit” motor carriers on the 61<sup>st</sup> day after the determination that the motor carrier is unsafe.

The results of compliance reviews and roadside inspections are entered into OMC’s database, Motor Carrier Management Information System (MCMIS), at the state level using SAFETYNET, an automated information management system used to monitor the safety performance of commercial motor carriers. MCMIS contains five files: compliance reviews, roadside inspections, general motor carrier information, crash data, and enforcement case data.

In addition to safety enforcement, OMC has a research and standards program, under which it promotes advances in safety and establishes regulations, such as limits on how long truck drivers may drive without a rest period. Research performed pertains to commercial vehicles, driver behavior, and technology enhancements to improve safety. OMC also administers the Commercial Driver License program in conjunction with the States. This program is designed to promote truck driver safety by, for example, establishing minimum uniform licensing standards for truck drivers.

Prior to March 1997, OMC used the Selective Compliance and Enforcement (SCE) system to prioritize motor carriers for compliance reviews. The SCE had seven weighted factors: (i) commodity transported, (ii) annual motor carrier mileage, (iii) months since last review, (iv) vehicle out-of-service rate, (v) driver out-of-service rate, (vi) preventable recordable accident rate, and (vii) overall safety fitness rating. Since March 1997, OMC has used the Safety Status Measurement System (SafeStat) to prioritize motor carriers for compliance reviews. SafeStat allows OMC to continuously quantify and monitor the safety status of motor carriers.

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<sup>4</sup> Roadside inspections are conducted in accordance with Commercial Vehicle Safety Alliance standards, which entail different levels of inspection. Level-1, the most rigorous, is a full inspection of the truck and driver. Level-2 is a “walk-around” inspection that includes a check of the driver and a visual inspection of the truck. Level-3 inspections focus only on the driver and Level-4 and Level-5 inspections are conducted for special purposes, such as a one-time inspection of a particular item. The standards also include criteria for placing trucks and drivers out of service if the inspections find the truck or driver do not meet prescribed minimum safety requirements.



## **Objective, Scope and Methodology**

The objective of the audit was to determine the effectiveness of FHWA's Office of Motor Carriers safety program, and its impact on motor carrier safety enforcement including the concerns raised by Senator McCain and Congressman Wolf. Their concerns focused on motor carrier safety enforcement activities, the impact of FHWA's reorganization on motor carrier safety and whether oversight of the motor carrier industry would be more effective if OMC was not a part of FHWA.

We distributed a survey to 355 OMC field personnel, including safety investigators, program specialists, and state directors, to obtain their perspective regarding the direction and focus of the Motor Carrier Safety Program.

We obtained an electronic copy of the MCMIS database files (December 2, 1998) and used the files to evaluate OMC's effectiveness. We identified active U.S. interstate motor carriers by using the MCMIS general motor carrier information file and linked those motor carriers to the remaining four MCMIS files (compliance reviews, roadside inspection results, crash data and enforcement case data) to identify the motor carriers' performance data for FYs 1995 through 1998. We performed trend analyses, frequency distributions, and stratifications of the motor carriers' performance data (compliance reviews, roadside inspections out-of-service rates, crashes, and enforcement cases both open and closed) to determine the effectiveness of the Motor Carrier Safety Program. We also observed 27 roadside inspections in 7 States to determine the procedures used and to verify the information and results of these inspections that were entered into MCMIS.

From the MCMIS files we judgmentally selected crashes and roadside inspections to verify the information entered and processed by MCMIS to the supporting documentation maintained at the 11 State Law Enforcement offices we visited. We also judgmentally selected crashes, compliance reviews and enforcement cases from the 11 OMC Division and State Law Enforcement offices we visited to trace the information entered into MCMIS. Source documents supporting MCMIS crash data were not available in Idaho, Iowa, and Virginia; and source documents supporting MCMIS roadside inspection data were not available in California, Idaho, and Virginia. These tests were performed to verify the accuracy of the data processed by MCMIS. We did not attempt to verify the accuracy of the data contained in each record. We also compared data in the National Highway Traffic Safety Administration (NHTSA) Fatal Analysis Reporting System (FARS) and in MCMIS to determine if all fatalities in FARS were reported to MCMIS. We reviewed SafeStat to determine the process for selecting the high-risk motor carriers, and to identify the data elements used in the analysis.

We reviewed OMC's current enforcement policies, including the field operations Training Manual, and determined the status of recommendations from our audit of the Motor Carrier Safety Program issued in March 1997. To determine the effectiveness of the OMC enforcement actions, we identified the number of motor carriers with multiple enforcement cases and compared the enforcement data to other motor carrier performance data, such as on-the-road inspections and crashes. To assess whether an organizational change would improve the effectiveness of the Motor Carrier Safety Program, we reviewed the organizations' missions, functions and Strategic Plans to identify similar functions between the organizations, and we reviewed previous studies that proposed alternative placement of the Motor Carrier Safety Program. In addition, we reviewed documentation and discussed with OMC Division and Resource Center/Region officials the impact of FHWA's reorganization on the Motor Carrier Safety Program. We also reviewed applicable public laws and Federal regulations.

The audit was conducted from December 1998 to April 1999 in accordance with the Government Auditing Standards prescribed by the Comptroller General of the United States and accordingly, included such tests of internal controls as were considered necessary. Exhibit E lists the activities visited or contacted.

### **Prior Coverage**

Exhibit C describes prior audit coverage, and other related audit and investigative work.

## **II. FINDINGS AND RECOMMENDATIONS**

### **Finding A. Effectiveness of the Motor Carrier Safety Program**

The Motor Carrier Safety Program was not sufficiently effective in ensuring compliance with the Federal Motor Carrier Safety Regulations. This occurred because (i) OMC established policies and procedures that did not ensure the motor carrier safety regulations were enforced; (ii) OMC did not effectively use available sanctions to deter future noncompliance with regulations; (iii) OMC's safety fitness rating system allowed motor carriers with less than satisfactory ratings for extended periods of time to continue operations; and (iv) the Department's performance measure for motor carrier safety did not focus on reducing the number of fatalities involved in commercial vehicle crashes. As a result, unsafe motor carriers continue to operate on our nation's highways.

### **Discussion**

A civil penalty is a primary enforcement tool available to OMC when a motor carrier is found in violation of safety or hazardous materials regulations. OMC can also issue compliance orders, which direct a motor carrier to take certain actions to bring it into compliance with the regulations. In addition, OMC can order a motor carrier out of service if violations pose an imminent hazard to safety or if a motor carrier that receives an unsatisfactory rating transports more than 15 passengers or placarded hazardous materials.

### **OMC Considered Enforcement a Last Resort**

Although OMC had a variety of enforcement actions available to encourage compliance with safety regulations, it chose to consider those actions as a last resort. In February 1997, OMC issued a policy memorandum that established program priorities for completing compliance reviews. This policy, entitled Enforcement Renaissance, states:

. . .we are NOT first and foremost an "enforcement agency" but rather a "Safety Agency" dedicated to making our nation's highways crash-free. . .enforcement should be the underpinning of our "Safety Agency". However, our activities need to be prioritized in a manner that creates an atmosphere of cooperation with our many partners who also are working devotedly and diligently toward crash-free highways. Our priorities should be to educate, regulate,

and then, if unsuccessful in changing the safety performance of a particular motor carrier, institute appropriate enforcement measures.

Despite this policy statement, OMC is a regulatory agency responsible for the oversight of commercial vehicle safety. OMC has shifted emphasis from enforcement to a more collaborative, educational, partnership-with-industry approach to safety. This is a good approach for motor carriers that have safety as a top priority, but it has gone too far. It does not work effectively with firms that persist in violating safety rules and do not promptly take sustained corrective action.

OMC chose enforcement as a last resort. Enforcement should be a "front-line" tool used to induce compliance with the safety regulations, not a last resort. Congress emphasized the need for strong enforcement of motor vehicle safety laws and regulations to reduce commercial vehicle crashes and fatalities. The Motor Carrier Safety Act of 1984 states:

(1) it is in the public interest to enhance commercial motor vehicle safety and thereby reduce highway fatalities, injuries, and property damage;

(2) improved, more uniform commercial motor vehicle safety measures and **strengthened enforcement** would reduce the number of fatalities and injuries.... (Emphasis added)

## **Available Sanctions Were Not Used**

OMC's penalty assessment software did not result in strong penalties for violations. Title 49, United States Code (U.S.C.), Part 521(b)(7), states penalty schedules shall be "designed to induce timely compliance for persons failing to comply promptly with . . . requirements . . . ." To address this requirement and to standardize civil penalties, OMC implemented the Uniform Fine Assessment (UFA) software in April 1996. UFA considers nine statutorily-mandated factors<sup>5</sup> in determining the amount of a civil penalty. The Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) increased the maximum penalties allowed. For example, non-recordkeeping violations can be assessed up to \$10,000 per violation with no maximum cap. However, the UFA has not incorporated those updates.

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<sup>5</sup> The factors used are (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.

**Reduction of Statutory Penalties.** Although UFA considers the nine statutory factors when assessing civil penalties, OMC established administrative levels of fines in UFA, which were, on average, 35 percent of the statutory maximum fines. The range of fines by type of violation is presented in Figure 1.

**Figure 1. Comparison of OMC and Statutory Fines by Violation**

Type of Violation	Administrative Minimum Fine Per Instance	Statutory Maximum Per Instance*	Percentage of Maximum Penalty
Recordkeeping - Motor Carriers	\$300	\$500	60%
Recordkeeping-Employees	\$200	\$500	40%
Serious Pattern of Safety Violations	\$500	\$1,000	50%
Substantial Health or Safety Violations	\$3,000	\$10,000	30%
Employee Non-Recordkeeping Violations	\$500	\$1,000	50%
	\$4,500	\$13,000	35%

\*Based on statutory limits prior to TEA-21.

For example, a first-time recordkeeping violation by a motor carrier has a maximum statutory penalty of \$500, but, absent any other contributing factors, UFA would recommend a fine of \$300.

**Adjustments for Gross Revenue of the Motor Carrier.** One of the nine statutory considerations used by UFA was the ability to pay a fine, which OMC equated to the motor carrier’s gross revenue. In determining a penalty range, UFA reduced the total allowable penalty proportionally. For example, during a compliance review in May 1998, the safety investigator found a motor carrier in violation of 17 safety regulations (140 instances), for which UFA would normally recommend a maximum penalty of \$2,000. However, based on the motor carrier’s gross revenue of about \$200,000 and its lack of prior enforcement history, the final penalty recommended by UFA was \$1,000 with a range of plus or minus 10 percent (\$900 to \$1,100). As a result, the safety investigator was limited to enforcing only 2 of the 17 violations found. The enforced violations included \$550 for one instance of using a driver not medically examined and certified every 24 months and \$550 for failing to implement an alcohol and/or controlled substance testing program. The motor carrier was not penalized for the remaining 15 violations even though they included such violations as allowing drivers to exceed the hours of service, no records for drivers’ duty status and no medical certificates for drivers. In our opinion, the assessed civil penalty did not provide adequate incentive for the motor carrier to improve compliance with the safety regulations.

**Reduced Penalties in Negotiation and Settlement Process.** OMC's process of negotiating and settling enforcement cases usually resulted in significantly reduced penalties. “Settlement” represents the amount negotiated between OMC and the motor carrier. For example, one motor carrier was assessed a fine of \$20,000 for two violations of qualification of drivers. The fine was ultimately settled for \$8,130.

In addition, the average settlement per enforcement case has been declining when compared to the original assessment. We analyzed enforcement cases in the MCMIS database to determine trends for motor carriers during FYs 1995 through 1998 and compared civil penalties assessed to amounts settled. We found settlements have significantly decreased: from FYs 1995 through 1998, settlements declined from 67 cents on the dollar assessed to 46 cents. Figure 2 presents the history of assessments and settlements during FYs 1995 through 1998.

**Figure 2. Civil Penalty Assessments and Settlements**

Fiscal Year	Total Assessments	Total Settlements	Percent of Assessment
1995	\$10.3 million	\$6.9 million	67%
1996	\$9.8 million	\$6.4 million	65%
1997	\$6.4 million	\$3.8 million	59%
1998	\$5.9 million	\$2.7 million	46%

**Source: OMC Motor Carrier Management Information System**

**Shut Down Orders and Fines for Repeat Violators.** Repeat violators warranted, but often did not receive, stiffer enforcement actions to ensure prompt and sustained compliance with the safety regulations. OMC has the authority to place motor carriers out of service as an enforcement tool, but we found that motor carriers with multiple enforcement actions continued to operate. Since January 1991, motor carriers transporting more than 15 passengers or placarded hazardous materials have 45 days to improve an unsatisfactory safety rating before being placed out of service. In addition, OMC has statutory authority to place imminent hazard motor carriers immediately out of service. OMC officials stated they have difficulty interpreting this broad definition because it does not provide specific criteria for declaring the imminent hazard condition. OMC has seldom used the imminent hazard sanction. In addition, the Transportation Equity Act for the 21<sup>st</sup> Century authorized the mandatory shut down of unfit carriers, except for passenger and hazardous materials motor carriers who have a 45-day improvement period, after a 60-day period for safety improvements. To date, OMC has not defined “unfit” carrier, and has not implemented the provision.

To ensure unsafe motor carriers change their behavior, OMC needs to assess more stringent penalties or, if necessary, order the motor carrier out of service. During FYs 1995 through 1998, 846 motor carriers were subject to multiple enforcement actions. Of these, 127 motor carriers had 3 or more enforcement actions and 117 motor carriers had multiple violations of the same significant safety regulation. Only 17 of these motor carriers were issued out-of-service orders, 9 because they posed an imminent hazard and 8 due to unsatisfactory safety ratings associated with transporting passengers or hazardous materials. For the 127 motor carriers, the penalty amount agreed upon by OMC and the companies averaged only about \$2,500.

For example, one motor carrier was cited for false logs in FY 1995 and again in FY 1997. However, the average settled penalty per instance only increased from \$369 in FY 1995 to \$470 in FY 1997. The same motor carrier was also cited for failing to require a driver to undergo pre-employment alcohol and/or controlled substance testing in FY 1997 and again in FY 1998. The average fines per instance were \$675 and \$783, respectively. In our opinion, an increase of about \$100 per instance does not effect prompt and sustained compliance with the regulations.

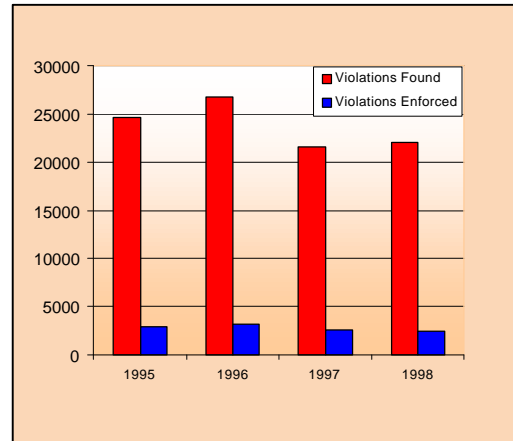
We found indications that these sanctions were not adequate to ensure compliance because these same motor carriers continued to disregard safety regulations. For example, 100 of the 117 motor carriers had vehicles and/or drivers placed out of service during roadside inspections for the same violations for which penalties had been previously assessed. One motor carrier had four compliance reviews that resulted in four enforcement cases for driver violations. After the first enforcement review, 21 percent of its drivers were placed out of service, which is almost 3 times the national average for drivers out of service. In our opinion, OMC should exercise its ability to place motor carriers out of service when it finds repeat violations such as those highlighted in these examples. Ultimately, 100 of the 117 motor carriers were involved in 1,091 crashes resulting in 49 fatalities during FYs 1995 through 1998.

**Revocation of Authority for Lack of Payment.** Standards for administrative collection of penalties, cited in Code of Federal Regulations, Title 4, Volume 1, Section 102.9, allow agencies to suspend or revoke licenses or operating authority for nonpayment of fines. However, OMC has not exercised these sanctions. For example, one motor carrier has had \$126,653 in outstanding fines since October 1995 and continues normal operations. Another motor carrier has a penalty in excess of \$22,000, which has been outstanding for more than 4 years. OMC's records indicate a settlement was reached between this motor carrier and the Department of Justice; however, OMC has not received payment. In addition, OMC's records indicate the motor carrier had a more recent penalty assessment in

excess of \$17,000. The continued practice of permitting motor carriers with outstanding fines or repetitive penalties to continue normal operations limits the effectiveness of OMC's enforcement program.

**Most violations found during compliance reviews did not result in enforcement.** OMC did not include all violations of the most significant safety regulations in enforcement actions. For the purpose of our review, we analyzed the 29 most frequently enforced regulations. In FY 1995, OMC found 24,636 violations during compliance reviews, but processed enforcement actions on only 12 percent (2,957). In FY 1998, enforcement actions processed declined to 11 percent (2,481 of 22,022) of significant violations found. Figure 3 shows the number of violations found and included in enforcement actions for FYs 1995 through 1998. These violations included the following significant safety concerns.

Figure 3: Violations Found and Enforced



Source: OMC Motor Carrier Management Information System

- Driver hours-of-service violations; falsified driver logs; non-current driver logs; false reports of records of driver duty status. OMC enforced only 11 percent of driver log violations in FY 1995 and only 8 percent in FY 1998. Driver log violations, including falsified logs and driving more hours than allowed, are good indicators that a fatigued driver may have operated a motor vehicle. Research has indicated that fatigue is a major factor in commercial vehicle crashes.
- Failure to implement an alcohol and/or controlled substance testing program; failure to conduct random drug and alcohol testing; using a driver who has tested positive for a controlled substance; etc. OMC enforced only 29 percent of drug and alcohol-related regulations in FY 1995. By FY 1998, the percentage dropped to 21 percent. If OMC does not enforce the drug and alcohol regulations, it has no assurance that unsafe drivers are being removed from the roadways.

Enforcement officials stated they did not always enforce every violation found. According to OMC policy, any critical violations discovered have to indicate a pattern of noncompliance of at least 10 percent of the number of records checked in order to be enforceable. Furthermore, UFA considers the nine statutory factors when determining the amount of a civil penalty and may limit penalties based on



factors such as ability to pay and prior safety history of the motor carrier. Although all violations are recorded during the compliance review, penalties assessed may only relate to one or two of the most egregious violations.

## **Cost of Doing Business**

From FYs 1995 to 1998, the average penalty originally assessed per enforcement case decreased by 37 percent from \$5,575 to \$3,517. Furthermore, the average settlement decreased by 57 percent from \$3,734 to \$1,592. In our opinion, these fines do not effectively deter motor carriers from violating the safety regulations. Instead, motor carriers merely consider them a cost of doing business. The decrease in enforcement actions and the lower average assessment and settlement amounts indicate OMC has lowered its emphasis on strong penalty actions to achieve compliance. This trend mirrors management's philosophy that enforcement should be a last resort measure to induce compliance with the safety regulations. The need for a stronger emphasis on enforcement is also reflected in the fact that 86 percent of the OMC field personnel who responded to our survey reported that more enforcement action was needed to bring motor carriers into full compliance. In order to change the behavior of the high-risk motor carriers there must be an economic consequence to them. This consequence should begin with the use of sanctions that include increased fines, maximum statutory fines for repeat violators, and shut down orders when warranted.

## **OMC's Oversight Not Sufficiently Effective**

OMC continued to rate motor carriers but rated fewer and fewer each year without significant consequence to those motor carriers rated less than satisfactory. Also, the majority of the motor carriers remained unrated. While OMC policy required those motor carriers targeted as high-risk to receive compliance reviews, 15 percent did not receive a review. In addition, other motor carriers may have been targeted for review if enforcement cases had been closed timely.

### **Safety Rating System Did Not Ensure Compliance with Safety Regulations.**

The number of compliance reviews completed from FYs 1995 through 1998 declined by 30 percent. The percentage of motor carriers rated conditional or unsatisfactory remained flat at about 40 percent over the last four years, except for FY 1997, when a large number of motor carriers did not receive ratings. From March 18 to November 28, 1997, OMC did not issue compliance review ratings due to its rating process being challenged in court. From May 28 to November 28, 1997, compliance review ratings were only reported for motor carriers transporting more than 15 passengers or placarded hazardous materials. Figure 4

shows the compliance reviews performed by OMC and state safety investigators and the decline in the number of compliance reviews.

**Figure 4. Number of Compliance Reviews Performed by FY**

FY	Compliance Reviews	Satisfactory Ratings	Conditional Ratings	Unsatisfactory Ratings	Motor Carriers Not Rated *
1995	9,240	52%	29%	11%	8%
1996	8,895	53%	29%	10%	8%
1997	6,894	28%	13%	5%	54%
1998	6,473	41%	28%	15%	16%

\* Includes educational and drug and alcohol reviews.

Source: OMC Management Information System

The safety fitness rating system did not ensure motor carriers operated safely. For example, a passenger carrier that received an unsatisfactory rating in May 1996 and upgraded its rating to satisfactory in July 1996 was involved in a fatal crash in December 1998. In February 1999, OMC reviewed the passenger carrier's operations and discovered repeat violations from the 1996 compliance review. These violations included duty status reports and failure to use medically qualified drivers. During the period between the satisfactory rating and the crash, OMC did not review the passenger carrier's safety rating. OMC's assurance that the passenger carrier complied with the safety regulations was limited to the 45-day period reviewed in July 1996.

OMC focuses its compliance reviews on high-risk motor carriers and as of November 1998 nearly 72 percent of the motor carrier population remain unrated. Of the 28 percent of the motor carrier population that received a rating, over 38 percent received a rating of less than satisfactory. We concluded OMC's oversight is not deterring noncompliance.

Motor carriers with less than satisfactory ratings continued to operate. Approximately 6,000 motor carriers received only one compliance review during FYs 1995 through 1998, which was a safety rating of less than satisfactory. These motor carriers maintained the less than satisfactory safety rating as of September 30, 1998. For example in FY 1995, 1,870 motor carriers received a less than satisfactory rating. From October 1, 1994 through September 30, 1998, 650 of those motor carriers have had 2,717 crashes resulting in 132 fatalities and 2,288 injuries. The crash and inspection performance data for the motor carriers who received and maintained less than satisfactory ratings during FYs 1995 through 1998 is illustrated in Figure 5.

**Figure 5. Crash and Inspection Performance Data on Motor Carriers That Received Less Than Satisfactory Ratings by FY\***

FY	Motor Carriers	Crashes	Fatalities	Injuries	Motor Carriers With Drivers OOS	Motor Carriers with Vehicle OOS
1995	1,870	2,717	132	2,288	1,458	1,408
1996	1,841	3,004	137	2,687	1,401	1,413
1997	588	704	30	660	329	328
1998	1,675	1,348	82	1,108	781	622

- The crash and inspection performance data began with the FY in which the motor carrier received the less than satisfactory rating. The roadside inspection out-of-service numbers include those motor carriers that exceeded the 1997 national averages of 8 percent for drivers and 25 percent for vehicles.

**Source: OMC Motor Carrier Management Information System**

**High-Risk Motor Carriers Not Reviewed.** The SafeStat System identifies and targets high-risk motor carriers for compliance reviews. Motor carriers ranked in SafeStat categories A & B are considered a high safety risk and are expected to receive the highest priority for a compliance review. SafeStat ranks motor carriers in eight categories, A through H. OMC’s December 1997 policy stated compliance reviews must be completed on all SafeStat A & B motor carriers within five months. However, the Regional Director could waive this requirement if the motor carrier had received a compliance review within the previous 12 months and an enforcement action was not initiated as a result of that compliance review.

We reviewed the March 1998 SafeStat A & B lists and found 296 of 1,646 motor carriers did not receive a compliance review. Of the 296 motor carriers, 48 had received a compliance review in the previous year with no enforcement action initiated. Therefore, OMC did not complete a compliance review for the remaining 248 (15 percent) motor carriers required by its 1997 policy.

**Enforcement Cases Not Closed Timely.** Open enforcement cases can affect selection of motor carriers for compliance reviews and penalties assessed. One selection criterion for SafeStat is past enforcement history. Since SafeStat considers only closed enforcement cases when targeting motor carriers for a compliance review, high-risk motor carriers may not be selected if they have an open enforcement case.

In addition, the Uniform Fine Assessment program recommends smaller penalties for violators with open enforcement cases than with closed enforcement cases. Therefore, with a backlog of open enforcement cases, appropriate penalty amounts

in subsequent enforcement cases may not be assessed. The critical need to close enforcement cases is demonstrated by the fact that 71 of 127 motor carriers with three or more enforcement cases since FY 1995 have an open enforcement case.

According to OMC records, as of November 1998, there was a backlog of 1,174 enforcement cases that have remained open from 6 months to 8 years. Of the 1,174 open cases, 543, or 46 percent, have been open for over 2 years. Figure 6 presents the age of open enforcement cases.

**Figure 6. Open Enforcement Cases**

<b>FY Opened</b>	<b>Open Cases</b>	<b>Over 2 Years</b>
1990-94	183	183
1995	139	139
1996	209	209
1997	252	12
1998	391	0
<b>Total</b>	<b>1,174</b>	<b>543</b>

Source: OMC Motor Carrier Management Information System

OMC policy states the Regional Program Manager is responsible for updating the computer-based tracking system. For a case to be closed in the enforcement database, a date has to be entered in specified fields. If a date is entered in the fields, the case is marked as closed with enforcement. During our visits to OMC Division and Region offices, we found the enforcement database listed open cases that should have been closed. For example, on April 15, 1998, one regional office received a motor carrier's check for the full penalty amount. The case file contained a copy of the check, but the enforcement database showed the case was still open as of November 30, 1998. Regardless of the reasons the enforcement cases were shown as open, procedures must be adequate to ensure that appropriate emphasis is given when determining high-risk carriers and when assessing penalties during subsequent enforcement cases.

### **Performance Measure Does Not Focus on Reduced Fatalities**

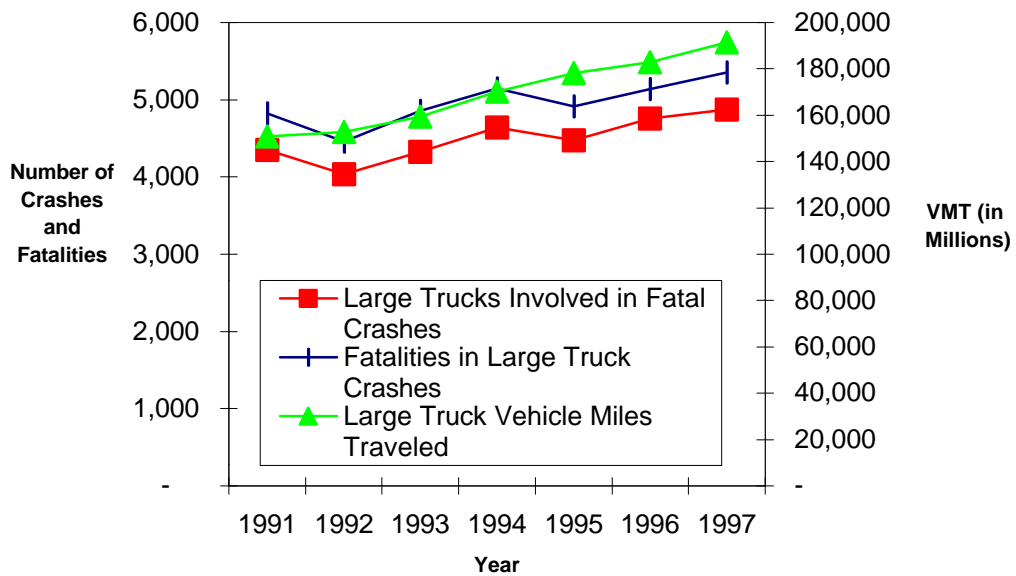
The number of fatalities associated with commercial vehicle crashes increased by 9 percent from 4,918 in 1995 to 5,355 in 1997. While the commercial vehicle fatality rate remained constant during the last 3 years, 437 more people were killed. Even so, the Department's outcome measure for commercial vehicle safety, established under the Government Performance and Results Act, is to reduce the fatality rate - not the absolute number of fatalities. The Department's FY 2000 Performance Plan, released in February 1999, established a goal to reduce the rate of commercial vehicle-related fatalities per 100 million vehicle miles traveled

from 2.8 in 1997 to 2.5 in year 2000. However, this goal allows the number of fatalities to increase as the number of motor carriers and miles driven increases. Since 1995 the number of motor carriers increased by 36 percent (or 118,228) from 329,375 to 447,603. The number of vehicle miles traveled increased 7 percent to 191 billion per year. With the expected increase in the number of motor carriers and vehicle miles traveled, the Department's goal could be achieved even though fatalities could increase.

While the Department's performance measure does not focus on reducing the number of commercial vehicle-related fatalities, FHWA's FY 2000 Performance Plan proposed a goal to reduce the number of fatalities involved in commercial motor vehicle crashes to 4,934 in year 2000. A strong enforcement program will provide FHWA with a greater likelihood of achieving this proposed goal.

Figure 7 shows the magnitude of the fatalities and a general correlation between increased truck miles traveled and increased fatalities from crashes involving large trucks.

**Figure 7. Large Trucks Involved in Fatal Crashes, Fatalities Associated With Those Crashes and Large Truck Vehicle Miles Traveled (VMT)**



Source: FHWA, NHTSA

## **Actions to Improve Motor Carrier Safety**

In accordance with the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), OMC implemented the Performance and Registration Information Systems Management (PRISM) program. The PRISM program, formerly known as the Commercial Vehicle Information System (CVIS), was created by Congress as a 5-state<sup>6</sup> pilot project to explore the potential of improving safety on the highways by linking a motor carrier's state commercial vehicle registrations to the safety of the motor carrier's operations. The intent of Congress, as stated in Section 4003 of ISTEA, was to achieve two purposes: (i) determine the safety fitness of a motor carrier prior to issuing license plates and (ii) cause the motor carrier to improve its safety performance through an improvement process and the application of registration sanctions if necessary. In 1998, Congress authorized additional funding through TEA-21 and directed FHWA to implement the PRISM program nationwide. Currently, six states are participating in the program and FHWA estimates the number will increase to 20 by the end of FY 2000.

## **Conclusion**

OMC did not administer the mission of the Motor Carrier Safety Program as intended by Congress. OMC changed its focus on motor carrier safety from strong enforcement to a more collaborative approach to safety centering on education and partnering with the states and the motor carrier industry. This is a good approach for motor carriers that have safety as a top priority, but it has gone too far. It does not work effectively with firms that persist in violating safety rules and do not promptly take sustained corrective action. Strong enforcement with meaningful sanctions, including “shut down” orders in appropriate cases, is needed in these situations. OMC field personnel believe the current enforcement program is not an effective deterrent to violations of the safety regulations. Without a strong focus on enforcement, OMC cannot induce compliance with the regulations and cannot assure the number of commercial vehicle-related crashes will be reduced.

Motor carriers with multiple enforcement actions continued to operate without paying fines. Repeat violators did not often receive stiffer enforcement actions to ensure compliance. In addition, OMC did not enforce most violations found during compliance reviews. Finally, OMC settled enforcement cases for amounts significantly less than originally assessed. Without an effective enforcement program, motor carriers will continue to use unsafe drivers and vehicles.

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<sup>6</sup> The five states are Colorado, Iowa, Illinois, Minnesota, and Oregon. Pennsylvania began participation in January 1999.

OMC's oversight was not sufficiently effective and could be improved. Motor carriers who had less-than-satisfactory ratings over extended periods of time continued to operate. Effective oversight is necessary to ensure safety improvements are made and compliance with safety regulations is sustained.

The Department's performance measure for motor carrier safety is not focused on reducing the number of fatalities involved in commercial vehicle crashes. While the Department's goal is to reduce the rate of fatalities involving commercial vehicle crashes, it allows the number of fatalities to increase as the number of motor carriers and miles driven increases. However, fatalities have increased by 20 percent since 1992. Without a strong enforcement program to reverse this trend, FHWA has limited assurance it will achieve its goal.

## **Recommendations**

We recommend that the FHWA Administrator:

1. Strengthen its enforcement policy by establishing written policy and operating procedures to take strong enforcement action against motor carriers with repeat violations of the same acute or critical regulation. Strong enforcement actions would include assessing fines at the statutory maximum amount, the issuance of compliance orders, not negotiating reduced assessments, and when necessary, placing motor carriers out of service.
2. Remove all administrative restrictions on fines placed in the Uniform Fine Assessment program and increase the maximum fines to the level authorized by the Transportation Equity Act of the 21<sup>st</sup> Century.
3. Establish stiffer fines that cannot be considered a cost of doing business and, if necessary, seek appropriate legislation raising statutory penalty ceilings.
4. Implement a procedure that removes the operating authority from motor carriers that fail to pay civil penalties within 90 days after final orders are issued or settlement agreements are completed.
5. Establish criteria for determining when a motor carrier poses an imminent hazard.
6. Require followup visit and monitoring of those motor carriers with a less-than satisfactory safety rating, at varying intervals, to ensure that safety improvements are sustained or if safety has deteriorated that appropriate sanctions are invoked.

7. Establish a control mechanism that requires written justification by the OMC State Director when compliance review of high-risk carriers are not performed.
8. Establish a written policy and operating procedures that identify criteria and time frames for closing all enforcement cases, including the current backlog.



## **Finding B. Insufficient Data Impacts the Motor Carrier Safety Program**

OMC cannot identify all the high-risk motor carriers because its database is incomplete and inaccurate, and data entry is not timely. The extent of insufficient data is significant. The data deficiencies exist because data elements used in OMC's targeting system are not always included in its database, information specific to motor carriers and traffic violations are not coded or entered accurately in OMC's database, and the States delay in uploading crash data to the OMC database. As a result, OMC has no reasonable assurance that the motor carriers identified as high-risk motor carriers with the worst safety records represent all high-risk motor carriers.

In addition, although 5,355 lives were lost in fatal crashes with commercial vehicles, the Department does not have information that identifies the causes of the crashes. Neither OMC nor the NHTSA databases contain information on crash causes or fault. The absence of causes and fault information for large truck crashes is because the data are not presently required by the OMC's or NHTSA's databases. The knowledge of causes of crashes would provide the Department opportunity to identify trends and focus its resources on eliminating these causes.

### **System Used to Target High-Risk Motor Carriers**

Since March 1997, OMC has used the Safety Status Measurement System (SafeStat) to measure the safety fitness of motor carriers and to allocate resources to monitor unsafe motor carriers. This system is a significant improvement over past practices OMC used to determine which motor carriers should have a compliance review. SafeStat is an automated, data-driven analysis system designed to incorporate current safety related performance data such as crashes, results of roadside inspections, traffic citations, enforcement actions, and compliance reviews, which are contained in MCMIS. SafeStat continuously assesses the safety status of motor carriers. Biannually, SafeStat identifies high-risk motor carriers and prioritizes them for compliance reviews.

**Data Used by SafeStat.** The data are maintained in MCMIS and the database sources include:

1. **Crash Data** – accidents involving commercial motor vehicles provided by States from accident reports completed by state and local police officials according to standards prescribed by the National Governors Association.

2. **Compliance Reviews** – number and severity of violations found during compliance reviews, number of accidents recorded, and number of vehicle miles traveled in the 12 months preceding the date of the compliance review. The safety investigators that conduct the reviews enter this data.
3. **Closed Enforcement Cases** – age of closed enforcement cases and the number of serious safety violations enforced. OMC personnel enter this information.
4. **Roadside Inspections** – driver and vehicle out-of-service orders and moving traffic violations reported as a result of roadside inspections. The States report this information.
5. **Motor Carrier Census Data** - the unique U.S. Department of Transportation identification number that is assigned to each motor carrier when operating authority is granted for interstate or hazardous material motor carriers, the number of commercial vehicles, and the number of drivers for a specific motor carrier. The motor carrier may provide this data when operating authority is obtained, when a compliance review is conducted, or when a motor carrier voluntarily updates its operating information.

**How SafeStat Works.** Motor carriers are evaluated on four Safety Evaluation Areas, accident, driver, vehicle, and safety management. For the accident evaluation area the motor carrier's performance is compared to other motor carriers with comparable fleet size (based on the number of power units). Power units include owned and term-leased power units (tank, trucks, tractors, motor coaches, and school buses). For example, a medium-sized motor carrier will be compared to other medium-sized (21 to 100 vehicles) motor carriers. According to a November 1998 study by Volpe National Transportation Systems Center, "An Effectiveness Analysis of SafeStat," power units were chosen as a means of measuring risks and to normalize the crash data. The number of power units provides an estimate of the amount of time spent traveling when crashes can potentially occur.

The first calculation for the accident evaluation area is the Accident Involvement Measure. Power units are used in the accident involvement measure. This weighs the age (0 to 6 months, 7 - 18 months, and 19 to 30 months) and the severity of the accident (towed, injury/fatality, hazardous materials released). The number of power units is the denominator for this measure. When the number of power units is zero the results for this measure is infinity.

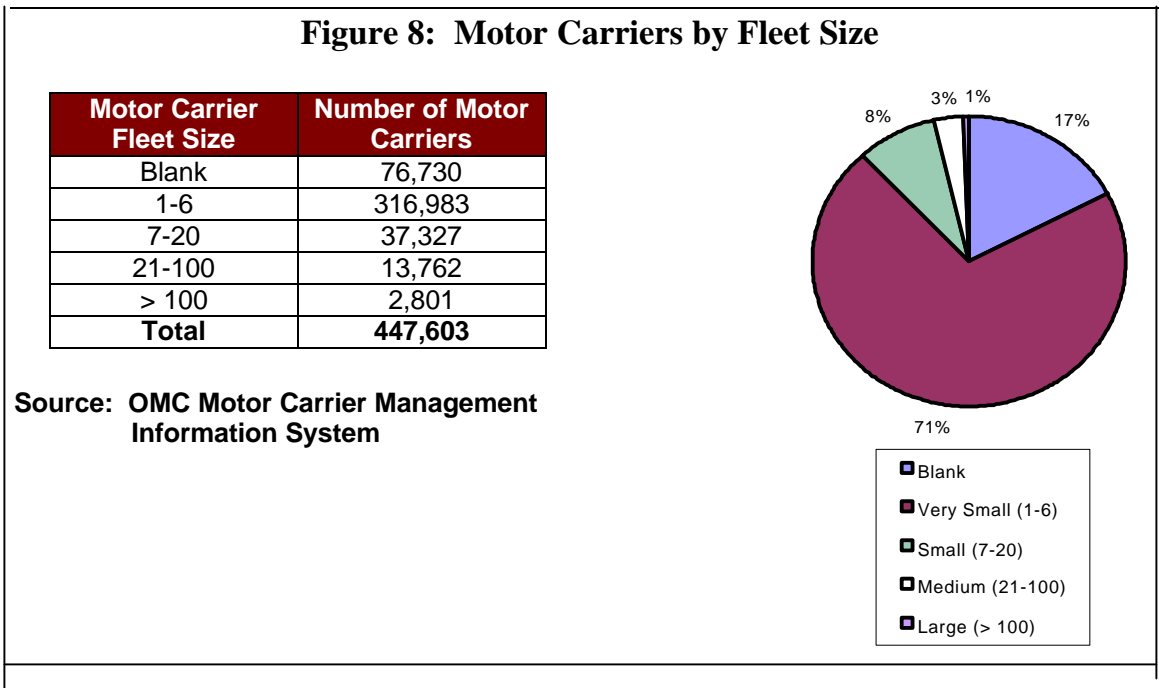
The second calculation in the accident evaluation area is the Accident Involvement Indicator, which uses the results of the Accident Involvement Measure. This indicator groups motor carriers based on the number of accidents.

SafeStat considers the accident history as the most important safety measure therefore, the accident area has twice the weight as the other evaluation areas in determining a motor carrier's safety ranking. A total SafeStat score for the motor carriers with the worst safety record is calculated by multiplying the accident evaluation area by two and the other areas by one, and totaling all four scores. Each evaluation area is calculated using various data, measures and indicators.

Performance data that affect safety ranking and identification of high-risk carriers include crash data, results of roadside inspections, and traffic citations. Our analysis of MCMIS data and reports showed that:

- less than 50 percent of the 1997 large truck fatal fatalities from NHTSA’s Fatality Accident Reporting System matched crash records in MCMIS;
- less than 40 percent of the crashes reported in FY 1997 could be identified to the motor carriers involved in the crashes;
- less than 40 percent of the 447,603 motor carriers had roadside inspections during FY 1998; and
- less than 60 percent of the traffic citations given to commercial drivers during roadside inspections in FY 1998 could be used for ranking purposes because serious traffic violations, such as speeding and reckless driving could not be distinguished from minor violations such as missing mud flaps.

Figure 8 shows the number of motor carriers by fleet size that could be subjected to SafeStat if sufficient performance data were available.



**Identifying High-Risk Motor Carriers.** SafeStat uses performance data to categorize motor carriers with the worst safety records in Categories<sup>7</sup> A and B. OMC policy states that motor carriers scored A or B are recommended for a compliance review. As a result of the September 1998 SafeStat ranking, 1,724 motor carriers were identified in Categories A and B. For example, the number one motor carrier on the “A” list had a score of 475.94 (maximum of 500) and the number one motor carrier on the “B” list had a score of 299.09 (maximum of 300). Figure 9 shows the number of motor carriers by Region with sufficient performance data to be ranked in each SafeStat category in the September 1998 SafeStat run.

**Figure 9: Number of Motor Carriers in Each SafeStat Category**

Region	A	B	C	D	E	F	G	Total
1	37	132	465	186	830	2,705	192	4,447
3	49	101	242	290	480	1,572	83	2,817
4	124	362	964	661	2,176	2,520	220	7,027
5	67	217	704	407	1,384	2,220	399	5,398
6	48	147	939	212	1,644	2,094	249	5,333
7	50	155	363	262	887	1,404	64	3,185
8	24	74	252	104	713	705	143	2,015
9	15	36	273	63	432	1,771	122	2,712
10	12	74	237	125	385	1,269	106	2,208
<b>Total</b>	426	1,298	4,439	2,310	8,931	16,260	1,578	35,242

In addition, SafeStat had an additional 44,291 motor carriers that had acceptable scores (Category H) for the evaluation areas.

## **Incomplete Data Hinders Identification of all High-Risk Motor Carriers**

SafeStat rankings that identify high-risk motor carriers are currently based on incomplete data. Based on our review of the MCMIS motor carrier census file as of November 1998, we determined that 126,455 motor carriers (about 28 percent of motor carriers) were listed as having no commercial vehicles and/or no drivers. Moreover, 71,145 (or 16 percent) had both data elements missing. The number of

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<sup>7</sup> The categories identify the degree of risk by the highest score. Categories in descending value are **Category A** (all 4 evaluation areas or Accident plus two other areas, and in both cases each area has a score greater than 75); **Category B** (3 evaluation areas without Accident or Accident plus one area, and in both cases each area has a score greater than 75); **Category C** (2 evaluation areas other than Accident, each with a score greater than 75), **Category D** (Accident evaluation area only with a score greater than 75), **Category E** (Driver evaluation area only with a score greater than 75), **Category F** (Vehicle evaluation area only with a score greater than 75); and **Category G** (Safety Management area only with a score greater than 75); and **Category H** (no evaluation area with a score greater than 75).

commercial vehicles and drivers is used in SafeStat to compute the Accident Involvement Measure and to normalize crash and driver data.

Another data element used is vehicle miles traveled, which is used in determining the recordable accident rate. However, this information is only updated during a compliance review. We also determined that only 127,275 (28 percent of 447,603) motor carriers had a safety rating. Therefore, vehicle miles traveled may not be current and for the majority of motor carriers this information may not be available. We concluded that although the SafeStat system is an improvement for targeting high-risk motor carriers, incomplete data prevents it from identifying all the high-risk carriers.

In November and December 1998, OMC sent letters to approximately 17,000 motor carriers with no drivers or commercial vehicles in the MCMIS file in an attempt to obtain the missing data. However, OMC did not track to whom the letters were sent. According to OMC, 10,000 of these 17,000 motor carriers had one or more recorded crashes.

While OMC implemented a data-driven targeting system, it did not aggressively pursue obtaining missing data. In our opinion, this data should be available. When motor carriers apply for operating authority and receive their U.S. DOT identification number and operating license, they should submit the number of commercial vehicles and drivers, and be required to provide periodic updates of this information including the vehicles miles traveled. Currently this is not required. Without this information OMC does not have reasonable assurance that all high-risk motor carriers have been identified.

**Under Reporting of Crashes.** There are three crash databases, two managed by NHTSA-the Fatal Analysis Reporting System (FARS) collecting data only on fatalities, and the General Estimates System that provides only national estimates on crash, vehicle and occupant characteristics obtained from the police crash report for all police-reported crashes; and the MCMIS managed by OMC. The MCMIS Crash file contains data on fatalities, injuries and towaway crashes. We compared the FARS database to the MCMIS crash file and the results indicated that the number of fatal crashes involving large trucks in MCMIS is significantly understated. In 1998, NHTSA added the DOT motor carrier identification number as a data element in the FARS database which is a significant improvement for identifying motor carriers involved in fatal crashes. According to OMC for 1997, the States reported 96,585 large truck vehicles involved in crashes to the MCMIS crash file. The GES estimates that 155,000 large trucks met the reporting criteria and should have been reported to the MCMIS crash file. Therefore, 38 percent of the reportable crashes are not included in the MCMIS crash file. Due to the under reporting of crashes and the double weighting of accidents in SafeStat, we

concluded that the number of motor carriers with an accident evaluation area is understated and all high-risk motor carriers are not identified.

## **Inaccurate Coding of Needed Data**

Driver information is important because research indicates that driver fatigue is a major factor in commercial vehicle crashes. A November 1998 study, by Volpe National Transportation Systems Center “An Effectiveness Analysis of SafeStat” states that the driver evaluation area is the next most effective area after the accident evaluation area to identify high-risk motor carriers. In SafeStat, the driver evaluation area uses the serious moving violations identified during a roadside inspection over the last 30 months as an indicator in ranking motor carriers. OMC determined that during FY 1998, the States reported 551,818 traffic enforcement citations given to drivers during roadside inspections, and 314,281 (57 percent), were coded to general violation codes rather than to a specific violation. For example, California coded all of their 55,258 traffic citations to 392.2 “Local Laws”. Therefore, SafeStat was unable to use this data for ranking purposes because serious violations were not properly coded. The specific codes for categorizing serious traffic violations are shown in Figure 10.

<b>Figure 10: Serious Traffic Violations</b>	
392.2C	Failure to Obey Traffic Control Device
392.2FC	Following Too Closely
392.2LC	Improper Lane Change
392.2P	Improper Passing
392.2R	Reckless Driving
392.2S	Speeding
392.2T	Improper Turn
392.2Y	Failure to Yield Right of Way
392.4	Use or Possession of Drugs
392.5	Use or Possession of Alcohol

Using a general violation code, which combines serious traffic violations (speeding) with less serious or economic violations (missing mud flaps) impacts the accuracy of the driver evaluation area and prevents identification of all high-risk motor carriers.

In addition, the Department of Transportation identification number is used in tracking performance data for motor carriers. In FY 1997, the MCMIS crash file contained over 40,000 motor carrier numbers with a default of “0000000” instead of a valid DOT identification number. The responsible States failed to enter the data properly when entering crashes. This impacts the SafeStat information for the identification of high-risk motor carriers and the targeting of motor carriers for roadside inspections.

## **Untimely Data Impacts SafeStat Rankings**

States did not always enter crash reports timely, which reduced the effectiveness of the SafeStat system in identifying motor carriers with recent crashes. The accident evaluation area includes crashes for the past 30 months. Depending on the crash date, they are given different weights in the SafeStat calculations. For example, if a crash occurs within the past six months prior to the SafeStat run date, it is assigned a weight three times more than if the crash occurred 18 months or longer. OMC requires the States to upload the crash data within 90 days of the crash date. We analyzed the Crash File and determined that during FY 1997, 31 percent of the crashes were uploaded more than 180 days after the crash date. This delay in data entry is significant since the most current six-month period's crashes are the heaviest weighted. This delay has the potential of not identifying the high-risk motor carriers and therefore excluding the most at-risk motor carriers from recommendation for a compliance review.

In 1998, OMC identified the Top Ten Crash Under Reporting States<sup>8</sup>, and requested each State to determine specific reasons why the State was unable to achieve better crash reporting. As a result, 8 of the 10 states received grants for FY 1999 totaling \$828,650 to improve their crash reporting.

## **Data to Support Crash Causes and Fault Are Not Available**

Neither the FARS nor the MCMIS database identifies crash causes or fault information. Crash causes are important in the development of safety improvements to reduce fatalities. This specific information is currently not required. Related factors such as driver-related factors are available, which can point toward problem areas such as traffic violations issued at the scene of the crash. However, these related factors are not based on a comprehensive evaluation of the crash in an attempt to determine the cause. Over 5,300 lives were lost in 1997 fatal crashes with large trucks, which warrants comprehensive evaluations of fatal crashes to identify the needed safety improvements. We recognize that it may not be practical to conduct comprehensive evaluations on all large truck crashes, and that a sampling plan might be more appropriate.

Both NHTSA and OMC have compatible data needs and provide funds to the States to receive crash information. The data, provided by the States, are derived from the same state accident reporting form and are entered by two different state

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<sup>8</sup> The Top Ten States were based on fatal large truck crashes in 1996. They included Arizona, California, Florida, Indiana, Iowa, Massachusetts, Mississippi, New Mexico, Ohio and Tennessee.

offices into OMC's and NHTSA's databases. Even though differences exist between the databases, there is opportunity for data standardization.

Under MCSAP, OMC provides the states funds to collect safety performance data, these funds were significantly increased by the Transportation Equity Act for the 21<sup>st</sup> Century. The quality and timeliness of safety performance data is paramount in building and maintaining an information system that supports safety activities and provides the analytical foundation for future safety improvements. It is obvious from the ongoing initiatives that OMC is using technology to enhance its oversight and to improve safety. Without good data, it is difficult to identify technology enhancements that should be developed to improve motor carrier safety. OMC did not provide adequate emphasis to ensure the quality of the safety performance data entered into its centralized, Motor Carrier Management Information System. This centralized database provides data to other systems OMC deployed to enhance its oversight capability and to improve safety such as the SafeStat, the Performance and Registration Information Systems Management, and the Inspection Selection System.

## **Other Data Initiatives**

SafeStat is also used in the six-state pilot program, Performance & Registration Information Systems Management that links motor carrier's safety fitness to state commercial vehicle registration. Using MCMIS data, SafeStat identifies and monitors motor carriers that are poor performers. Motor carriers who do not improve their safety performance may have their commercial vehicle registrations suspended or revoked. In addition, another new system implemented by OMC, the Inspection Selection System, relies on SafeStat data. This system is designed to target drivers and vehicles for roadside inspections based on the safety fitness of the responsible motor carrier. However, all of these systems rely on the data that are entered into the MCMIS. Therefore, it is imperative that complete, accurate, and timely data be obtained to enhance the Motor Carrier Safety Program.

## **Recommendations**

We recommend that the FHWA Administrator aggressively pursue obtaining quality performance data to identify high-risk motor carriers and to develop crash safety improvements to decrease the number of fatalities. Specifically, we recommend that the FHWA Administrator:

1. Require applicants requesting operating authority to provide the number of commercial vehicles they operate and the number of drivers they employ and require all motor carriers to periodically update this information.



2. Revise the grant formula and provide incentives through the Motor Carrier Safety Assistance Program grants for States to provide accurate, complete and timely commercial vehicle crash reports, vehicle and driver inspection reports and traffic violation data.
3. Withhold funds from the Motor Carrier Safety Assistance Program grants for those States that continue to report inaccurate, incomplete and untimely commercial vehicle crash data, vehicle and driver inspection data and traffic violation data within a reasonable notification period such as one year.
4. Initiate a program to train local enforcement agencies for reporting of crash, roadside inspection data including associated traffic violations.
5. Standardize OMC and NHTSA crash data requirements, crash data collection procedures, and reports.
6. Obtain and analyze crash causes and fault data as a result of comprehensive crash evaluations to identify safety improvements.

## **Finding C. Organizational Placement of the Office of Motor Carriers**

Our greatest concern with the current organizational placement of the motor carrier oversight program in FHWA is whether safety can receive the priority it needs in an agency whose primary mission is investing billions of dollars in highway and bridge infrastructure. Also, a recent OIG investigation reported that OMC's senior leadership has not always maintained an "arm's-length" relationship with the motor carrier industry they were responsible for regulating, calling into question the credibility of OMC's leadership. The reduced effectiveness of the Motor Carrier Safety Program, as discussed in Findings A and B, and the results of the recent OIG investigation shows that improvements are needed in the management of the program.

In order to improve the effectiveness of OMC, 37 percent of the OMC safety workforce who responded to our survey stated that a separate administration was needed. Also, in response to a specific question about moving OMC to NHTSA, 48 percent moderately to strongly favored the move. Regardless of where the motor carrier organization is placed, the organization will require strong leadership, a very high focus on safety and strong enforcement to reduce fatalities, and management willing and supportive of strong sanctions such as issuing shut down orders when warranted.

### **Concerns Over Placement of OMC Are Longstanding**

The debate over the proper placement of OMC is not new. In 1966 various transportation programs were combined into the Department of Transportation (DOT). At that time, there was considerable debate over whether the Bureau of Motor Carrier Safety should remain in the Interstate Commerce Commission (ICC) or be moved to DOT. The Congressional concerns centered on the fact that (1) too few trucks were being inspected, (2) too many inspected trucks (33 percent) were placed out of service, and (3) driver fatigue was a major factor in many accidents. The concerns are similar in 1999. The national average for out-of-service vehicles in 1997 was 25 percent, as compared to 33 percent over 30 years ago.

Congress determined that to increase the safety effectiveness of the Bureau of Motor Carriers, it had to be removed from the ICC. The legislature hearing record states there is an urgent need to centralize authority over all vehicles and drivers to deal with highway safety and accident prevention. As a result, the Bureau of Motor Carriers was placed in FHWA.

In 1987 Senator Ernest Hollings, Chairman of the Senate Commerce Committee, introduced a bill to establish a Motor Carrier Administration within DOT to promote organizational efficiency and enhance the effectiveness of motor carrier safety. The bill had 19 co-sponsors from both parties. The Administration and the Secretary of Transportation opposed the legislation, which failed. However, the Secretary of Transportation did reorganize motor carrier responsibilities by creating the Office of Motor Carriers within the FHWA.

Last year the House Transportation Appropriations Subcommittee recommended that OMC be transferred from FHWA to NHTSA. The subcommittee recommended this transfer because of the increase in truck-related fatalities, concerns of the OMC workforce, and a concern that OMC did not maintain a sufficient "arm's-length" relationship with the industry it regulated. The proposal was not enacted. Regardless of where the motor carrier safety mission is organizationally placed, the organization responsible must have the leadership, direction, and dedication to improve safety.

## **OMC Needs Leadership and FHWA's Priority Attention**

FHWA did not provide OMC the degree of leadership and management attention needed to ensure that an effective oversight program was in place for the motor carrier industry. OMC, as of the end of our audit, continued to be ineffective in performing the motor carrier safety mission as shown in Findings A and B of this report. Also, actions by OMC's senior leadership indicated that an "arms-length" relationship did not always exist with the motor carrier industry it is responsible for overseeing.

A Report of Investigation by the OIG concluded that senior OMC managers had an improper and inappropriate relationship with the motor carrier industry. During the OIG investigation, senior OMC officials said they could not recall the details of their conversations with the motor carrier industry. The relationship between OMC and the motor carrier industry it oversees coupled with the non-supportive attitude shown by OMC senior management officials during the OIG investigation, provides keen insight into the lack of leadership and the management environment and culture that existed within OMC.

Maintaining an "arm's-length" relationship is critical for any enforcement agency, yet the right type of new leadership can change direction and restore credibility over time. In this regard, we note that the Federal Highway Administrator recently changed the top leadership in OMC.

## **FHWA's Focus is Investing and Distributing Funds**

FHWA's mission is primarily directed toward surface infrastructure development, including distribution and management of \$22 billion of grants annually. This mission demands and deserves a significant amount of senior management attention within FHWA.

DOT's primary goal is safety. DOT's FY 2000 Performance Plan cites 17 performance goals including reducing large truck fatality and injury rates. These rates are based on fatalities and injuries per 100 million vehicle miles traveled. A more appropriate goal is to reduce the absolute number of fatalities and injuries resulting from crashes involving large trucks. Even with a stabilized rate of fatalities, the absolute number of individuals killed in crashes involving large trucks has increased each of the last 3 years for which the Department has fatality data.

In 1997, over 5,300 lives were lost in large truck crashes. The Department would not accept that scenario in the aviation or the rail modes, and it must not accept it for large trucks. FHWA did propose a goal in its FY 2000 Performance Plan to reduce commercial vehicle-related fatalities to 4,934.

## **FHWA's Restructuring Plan**

FHWA officials believe the restructuring of FHWA will strengthen the Motor Carrier Safety Program. FHWA's headquarters organization included five core business areas: (1) Infrastructure, (2) Operations, (3) Environment and Planning, (4) Motor Carrier and Highway Safety, and (5) Federal Land Highways. The headquarters restructuring focused on FHWA's strategic goals and objectives, and the restructured organization calls for headquarters to provide technical services and increased emphasis in the five core business areas to its field operations.

The restructuring also eliminated nine regional offices and replaced them with four Resource Centers, effective October 1, 1998. The Resource Centers are to provide, through OMC's State Division Offices, a wide range of guidance and expert assistance. However, based on information provided, this assistance will be provided only if requested by the State offices.

As a result of the restructuring, OMC's State Division Offices, will have the primary role and authority for front-line program delivery to state transportation departments, metropolitan planning organizations, local government, and other partners and customers responsible for providing highway transportation and safety services.

Since the restructuring was not completed during our review, we could not make any tests to determine the effectiveness of the new organization. However, we found that the Resource Centers and OMC State Division Offices had not received definitive guidance on their responsibilities. OMC State Division Offices were given program authority over the OMC's operations; however, OMC State Division officials said they are stretched to the limit and did not have sufficient staff. Without proper resources and definitive guidance on the responsibilities of the Resource Centers and OMC State Division Offices, these offices will not operate effectively.

## **Safety Personnel**

Even though the number of interstate carriers is increasing, the number of Federal safety investigators who perform compliance reviews, and the number of compliance reviews conducted, is decreasing. In FY 1998, OMC safety investigators completed approximately 4,400 compliance reviews (an average of fewer than 2 compliance reviews per month per safety investigator). The OMC operating budget increased from \$40 million in FY 1991 to \$53 million in FY 1999. However, the number of OMC safety investigators peaked at 348 in 1991, but has steadily declined to an estimated 260 in 1998. At the same time, OMC has increased from 618 employees to about 670 employees.

As part of its safety program, OMC provides grants to States under the Motor Carrier Safety Assistance Program (MCSAP). This program was initially funded at \$8 million in FY 1984; MCSAP funding increased to \$90 million in FY 1999. MCSAP provides resources to States to augment the OMC safety workforce.

The responses to our survey showed that when OMC personnel vacated positions in a State Division Office, they were not replaced. With the growth of the motor carrier industry and safety being the number one priority in the Department, it is imperative that safety positions be filled. Not filling safety positions indicates motor carrier safety is not receiving the priority it needs. Thus, we concluded that FHWA has not provided the support and management attention needed to the Motor Carrier Safety Program.

## **Alternatives for Placement of OMC**

There are no clear-cut answers as to whether the motor carrier safety function would be discharged more effectively if it were transferred from FHWA to an existing or new DOT organization. Regardless of where the motor carrier safety function is placed organizationally, strong enforcement action, including "shut

down” orders in appropriate cases, will be necessary for significant violations, repeat violators, and motor carriers who have unsatisfactory safety ratings.

A range of organizational options exists, including combining the motor carrier safety function with the NHTSA, creating a new agency dedicated to motor carrier safety, combining the Department’s surface safety functions in a new multi-modal Surface Transportation Safety Agency, or keeping OMC in the Federal Highway Administration. There are pros and cons to each option; none is a panacea.

**Federal Highway Administration.** Since FHWA’s main focus is on infrastructure development and funding, the motor carrier safety program, under FHWA, may not receive the priority it needs. Also, the credibility of OMC has been significantly harmed by the recent disclosure that its most senior managers did not always have an arm’s-length relationship with the industry it was responsible for overseeing. This does not mean that motor carrier safety cannot be effectively managed within FHWA, but doing so will require a very strong effort to ensure that motor carrier safety is not subordinated to infrastructure investment in terms of emphasis and attention. If given a high level of attention, proper leadership, and a sense of urgency, the stability achieved by leaving the Motor Carrier Safety Program in the FHWA organizational structure could bring about the necessary changes faster than if an organizational change were made.

**National Highway Traffic Safety Administration.** The Chairman, House Transportation Appropriations Subcommittee has suggested an alternative to place the OMC under the direction of the NHTSA. The primary mission of both the organizations is to reduce fatalities and injuries on the Nation’s roadways.

NHTSA is a centralized organization with the majority of its workforce in Washington, D.C. This contrasts with the motor carrier mission, which has most of its resources in the field. NHTSA’s primary role is to oversee manufacturers of passenger and commercial vehicles, and safety features of those vehicles. NHTSA’s enforcement program does not apply to operator safety. Consequently, NHTSA does not deal with the same type and magnitude of enforcement issues as does OMC.

NHTSA conducts enforcement to ensure that vehicles manufactured, including trucks and motor coaches, comply with Federal safety regulations, and initiates defect investigation and safety recalls to remove unsafe vehicles from the highways. However, NHTSA does not have the statutory or operating experience in conducting the type of compliance reviews and inspections, which OMC performs under its oversight of the motor carrier industry. The majority of NHTSA’s staff (550 of 635 employees) are located at the Headquarters in

Washington D.C., while the majority of OMC's staff (489 of 664 employees) are located in the field at the four Resource Centers or the State Division Offices.

Our survey of OMC staff disclosed for the proposed transfer to NHTSA, that 48 percent moderately to strongly favored it, 32 percent neither favored nor opposed it, and only 20 percent voiced opposition. However, when OMC State Division Office personnel were questioned during our field visits, they registered concern that NHTSA would require OMC personnel to perform some of NHTSA's outreach tasks resulting in the State Division Offices continuing to take a back seat to another organization. NHTSA officials stated, if OMC were transferred to NHTSA, that additional resources would be needed to provide adequate administrative oversight for the OMC employees.

**Surface Transportation Safety Administration.** A separate surface safety organization conceptually has appeal because its sole mission would be safety and it would have the ability to examine issues such as operator fatigue across all modes of transportation. Also, resources would be dedicated to safety and could quickly be realigned if necessary. This concept was proposed by DOT in the early 1990's but was not adopted. Establishing a surface safety organization would most likely be the most costly option, and it would cause significant disruption to DOT's safety program because of the time it would take to establish an effective structure. A surface safety organization would incorporate some functions from FHWA, NHTSA, Federal Railroad Administration, Federal Transit Administration, and Research and Special Programs Administration. Having one organization responsible for the entire safety mission and focused on the Department's primary goal of improving safety, would emphasize DOT's high priority to its safety mission and minimize criticism of having close relationships with industries it had responsibility to oversee.

This proposal was made by National Academy of Public Administration in their report Organizing the Administration of Surface Transportation Policies and Programs to Meet National Needs dated August 1991. The Academy's Panel on Surface Transportation Organization wanted to know whether changes could be made in DOT's organization for meeting national needs and improving safety. This would better equip DOT to manage surface transportation in the future. The Academy recommended that DOT should propose and Congress should create a Surface Safety Administration.

The establishment of a Surface Safety Administration would consolidate all surface safety functions under one Administration with its primary mission being the enforcement of safety in the Department. This organization would focus its resources on safety issues, provide a direct conduit to the Secretary on all surface safety problems, and exert a significant impact on achieving the Department's

primary goal to improve safety. In addition, the organization would identify and prioritize safety requirements and the funding needed to complete these requirements without competing with other program issues.

The establishment of a Surface Safety Administration would initially be disruptive to the safety missions of the organizations involved due to the time and cost involved in establishing the new organization. In addition, DOT did not accept this concept when presented by the National Academy of Public Administration in their August 1991 report, it could meet the same resistance today.

**Office of Motor Carrier Safety Administration.** A new motor carrier safety administration would require additional costs and cause disruptions as described above for the surface safety organization, but to a lesser degree. Only FHWA would be impacted by this change. This organizational structure has appeal to the motor carrier industry because motor carriers would have a dedicated agency like the other transportation modes, and this would reinforce their stature. Safety improvements within the motor carrier industry would be its primary mission. Unless visible improvements in safety were achieved and a strong enforcement program adopted, critics would question the organization's closeness to industry.

This safety administration would focus solely on the operations of motor carriers with a clearly defined mission that should achieve real reductions in fatalities and injuries associated with large trucks. This would be accomplished by focusing on the investigative/enforcement functions that would identify and react to unsafe practices and motor carriers.

The Office of Motor Carrier Safety Administration would provide a direct conduit to the Secretary on motor carrier safety problems and exert a significant impact in the continuing quest for improved safety in the motor carrier industry. The disruption of staff would be minimized because the investigative/enforcement structure is already in place at the State Division Offices. However, additional staff may be needed at headquarters to administratively support the new organization.

A separate organization for motor carrier safety would not compete with other missions. In the Federal Highway Administration, the majority of the attention is focused on managing Federal-Aid Highway funds. TEA-21 authorized for Title I Federal-Aid Highway funds totaling \$170 billion, while Title IV Motor Carrier Safety funds total \$644 million during FYs 1998 through 2003. Clearly, FHWA devotes the majority of their resources to oversight of the Federal-Aid Highway program.



Our survey of Office of Motor Carrier personnel disclosed that 37 percent of the respondents favored a separate administration for motor carrier operations. In addition, the American Trucking Associations also favor a separate organization for motor carriers.

## **Conclusion**

Regardless of where the motor carrier organization is placed, the organization will require strong leadership, a very high focus on safety and strong enforcement to reduce fatalities, and management willing and supportive of strong sanctions such as issuing shut down orders when warranted.

Considering the range of options, the two most viable and practical are leaving the motor carrier safety function in the Highway Administration or creating a Motor Carrier Safety Administration dedicated to motor carrier safety. The principal drawback to the NHTSA option is that NHTSA's mission, though dedicated to safety, is heavily focused on regulating the manufacture of vehicles. NHTSA has no experience regulating and enforcing the safety of operating trucking companies and their drivers. The Surface Transportation Safety Administration, while appealing in concept, would be the most complex and disruptive to establish. Large pieces of five Department of Transportation agencies would have to be removed from their present organization and merged into one to form the new organization.

One approach available to the Secretary and the Congress is to base the decision on whether a Motor Carrier Safety Administration is necessary on FHWA's commitment and expeditious implementation of action needed to substantially strengthen enforcement. The Highway Administration's comments on this report make such a pledge. If Congress and the Administration decide on this approach, the measure of success should be bottom-line improvements in motor carrier safety and a one-year timeline should be set to judge the agency's progress and make the final decision.

However, based on our work, together with a nearly 30-year history of congressional and public calls for strengthening motor carrier safety, we increasingly are of the view that it would be in the long term interests of public safety to create a Motor Carrier Safety Administration. The simple fact is that under the current organizational arrangement, motor carrier safety necessarily will compete for leadership attention and emphasis with the legitimate, if not primary, Highway Administration mission of investing over \$20 billion annually in highways and bridges. In light of the increasing number of fatalities associated with large trucks, demand for truck drivers and enormous industry growth in the last few years, the safety challenge will be larger and more urgent. This situation

justifies an agency with a clear, preeminent safety mission, free of the need to compete with other very important transportation department missions.

We also are troubled by the fact that it has taken so long for the Highway Administration to recognize, as it does in comments on this report, that the pendulum has swung too far away from enforcement of safety rules. Also, almost a year ago, TEA-21 was enacted, which provided additional enforcement authority to the Highway Administration, yet those mandates have not been implemented. The Highway Administration now says it will move to do this immediately and improve the safety program, but this is occurring on the heels of and with prompting by multiple congressional hearings, adverse findings by the DOT Inspector General, the General Accounting Office, and the National Transportation Safety Board.

We hope the Highway Administration's commitments to change are followed through on with a sense of urgency and made permanent, as this would save many lives on our highways, prevent injuries, and avoid economic loss. In our opinion, the likelihood of this occurring would increase if the leadership and charter of the agency responsible for motor carrier safety had motor carrier safety as its exclusive and unambiguous mission, together with a strong safety enforcement program.

However, it should be recognized that unless visible improvements in safety were achieved and a strong enforcement program adopted, critics would question the new Motor Carrier Safety Administration's closeness to industry, just as they do with the current Office of Motor Carriers. It is pointless to make an organizational change if only the chairs from one agency are shifted to another or by simply changing the organization's name.

## **Management Position and Office of Inspector General Comments**

The Department agreed, in an April 14, 1999, memorandum to FHWA, to revise the motor carrier safety goal in its FY 2000 performance plan to reduce the number of fatalities. The change is to be printed in the Department's revised final performance plan, which is expected to be published within 30 days after FY 2000 appropriations are enacted.

In its reply, FHWA said: "We consider many of the recommendations to be constructive and have actions underway to address them. In other cases, we have proposed alternative actions. However, we do have a different view of some of the analysis described in the report and we believe you may have overlooked some pertinent facts." Notwithstanding some differences, FHWA acknowledged that the enforcement program can be improved, more compliance reviews are needed, higher penalties can be used to induce compliance, and data improvements are necessary. FHWA recognized improvements are needed and said it had taken steps towards this goal. The FHWA response in its entirety is at Exhibit F.

## **GLOSSARY OF TERMS**

<b>Imminent Hazard</b>	Imminent Hazard is defined as any condition of a vehicle, employee, or commercial motor vehicle operations that is likely to result in serious injury or death if not discontinued immediately.
<b>Large Truck</b>	A “large truck” is defined by National Highway Traffic Safety Administration (NHTSA) as having a manufacturer’s gross vehicle weight rating over 10,000 pounds. Office of Motor Carriers defines a “large truck” similar to NHTSA, but adds it must have at least six tires. For purposes of our analyses, large trucks typically exceed a gross vehicle weight rating of 26,000 pounds.
<b>Compliance Reviews</b>	Compliance reviews are examinations of motor carrier operations to determine whether a motor carrier meets the safety fitness standard. The review includes driver qualifications, possessions of commercial driver’s license, driver’s hours of service, maintenance and inspection procedures and records, financial responsibility (insurance) involvement in crashes, handling of hazardous materials, and other safety and transportation records. Based on the review, a safety fitness rating is assigned of either satisfactory, conditional, or unsatisfactory.
<b>Satisfactory Rating</b>	A satisfactory rating means that a motor carrier <b>has adequate</b> safety management controls in place to ensure compliance with safety requirements <b>to reduce the risk</b> associated with commercial drivers license violations, inadequate insurance, use of unqualified drivers, improper use and driving of vehicles, operation of unsafe vehicles, failure to maintain crash registers and crash reports, use of fatigued drivers, and inadequate inspection, repair, and maintenance of vehicles.

**Conditional Rating**

A conditional rating means a motor carrier **does not have adequate** safety management controls to ensure acceptable compliance with the safety fitness standard that could result in the occurrences listed under a satisfactory rating.

**Unsatisfactory Rating**

An unsatisfactory rating means a motor carrier **does not have adequate** safety management controls to ensure acceptable compliance with the safety fitness standard, which **has resulted in the occurrences** listed in a satisfactory rating.

**Safety Status Measurement System (SafeStat)**

SafeStat is an automated, data-driven analysis system designed to incorporate current safety performance data such as crashes, roadside inspections of drivers and trucks, drivers' traffic citations, enforcement actions, and compliance reviews which are contained in the OMC Motor Carrier Management Information System. SafeStat is used to quantify and measure the safety fitness of motor carriers.

**Placards**

Placards are symbols that are placed on the ends and sides of motor vehicles and freight containers indicating the hazards of the cargo. Placarding is the joint responsibility of shippers and motor carriers. Placard designs and rules for providing and affixing placards are specified by 49 Code of Federal Regulations, Part 172.504(b).

**Crash Related Factors**

Crash related factors does not mean fault or crash cause. They represent the judgment of the officer at the crash scene and are not based on a comprehensive evaluation of the crash. The Fatality Analysis Reporting System maintained by NHTSA provides for 91 different driver-related factors, and up to 4 driver-related factors can be entered for each driver involved in a crash. For example driving too fast, drowsy/asleep, and making an improper turn.

**SURVEY OF OFFICE OF MOTOR CARRIER DIVISION PERSONNEL<sup>1</sup>**

1. Are you currently a GS/GM-2123 or GS/GM-2125 with the Office of Motor Carriers?

2123	174	Safety Investigators, and Program Specialists
2125	72	Program Specialists, and State Directors
Unknown	10	Used in TOTAL calculation
TOTAL	256	Eligible respondents
	73%	Adjusted response rate (excluding ineligible)

2. How long have you been with OMC?

2123	8.5 Yrs.	Average
2125	14.2 Yrs	Average

3. During a typical month, what percentage of your work time do you spend on the following activities?

	2123	2125	TOTAL
Compliance reviews	37.49%	4.89%	27.37%
Enforcement activities	12.70%	4.04%	10.14%
Administrative duties	14.06%	19.37%	15.57%
Monitoring programs	6.30%	23.30%	11.47%
Outreach	4.99%	3.57%	4.47%
Attending meetings/seminars	4.15%	9.38%	5.64%
Speaking to associations/trucking companies	2.84%	3.17%	2.88%
Roadside inspections	3.79%	0.26%	3.24%
Reviewing investigators' compliance reviews	2.50%	6.23%	3.68%
Training (attending)	2.09%	2.24%	2.31%
Training (conducting)	1.76%	2.21%	1.97%
Supervising investigators	1.43%	15.40%	5.38%
Accident investigations	1.41%	0.99%	1.28%
Other	4.49%	4.95%	4.60%

4. Prior to the reorganization into four Virtual Resource Centers, there were nine Regional Offices. Which region did you work in before the reorganization? ( Regions number 1,3,4,5,6,7,8,9,&10)

TOTAL

	1	3	4	5	6	7	8	9	10
	12.20%	8.90%	19.50%	15.90%	14.20%	8.10%	6.50%	8.10%	6.50%

<sup>1</sup> Totals include additional respondents for whom job series was unknown.

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5. How do you usually select carriers for compliance reviews?

	2123	2125	TOTAL
Assigned to me	38%	13.64%	35.00%
Regular review cycle	0.67%	0%	0.60%
Complaint	1.33%	4.55%	1.70%
Accident	0%	4.55%	0.60%
Time since last review	0%	0%	0%
SafeStat scores	55.33%	72.73%	57.10%
Other	4.67%	4.55%	5.10%

Questions 5 and 6 exclude respondents who do not perform compliance reviews.

6. In general, when do you conduct follow-up compliance reviews?

	2123	2125	TOTAL
Within 6 months	10.39%	4.55%	10.40%
Within 12 months	16.88%	4.55%	14.80%
After a complaint	0.65%	0%	0.50%
After an accident	0%	4.55%	0.50%
SafeStat scores	51.30%	63.64%	52.70%
Never	2.60%	4.55%	2.70%
Other	18.18%	18.18%	18.10%

7. After a compliance review is completed and an enforcement action is sent forward, how often do you find out the final disposition (i.e., the recommended penalty was paid, a reduced penalty was negotiated, the action was dropped)?

	2123	2125	TOTAL
Rarely or never	26.90%	12.68%	22.30%
Sometimes	24.56%	18.31%	22.70%
About half the time	7.60%	7.04%	7.20%
Most of the time	21.64%	21.13%	21.50%
Always or almost always	19.30%	40.85%	26.30%

8. Where are decisions to drop enforcement actions usually made? At the Division Office, the Resource Centers/Regional Office, or Headquarters (i.e., DOT Washington)?

	2123	2125	TOTAL
Usually at Division Office	32.74%	29.85%	32.80%
Usually Resource Ctr/Reg Off	52.98%	50.75%	51.20%
Usually at Headquarters	4.76%	13.43%	7.00%
Don't know	9.52%	5.97%	9.00%

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9. Are you familiar with the DOT Office of Inspector General's program to criminally prosecute carriers?

	2123	2125	TOTAL
Yes	86.71%	94.44%	89.00%
No	13.29%	5.56%	11.00%

10. How would you rate the quality of the compliance reviews being conducted today compared to the compliance reviews being conducted when you joined OMC?

	2123	2125	TOTAL
Much better than when I joined	41.18%	33.80%	38.60%
Somewhat better	27.06%	25.35%	26.10%
About the same	20.59%	21.13%	21.70%
Worse than when I joined	6.47%	12.68%	8.40%
Much worse than when I joined	4.71%	7.04%	5.20%

11. Overall, how would you rate the OMC enforcement program?

	2123	2125	TOTAL
Excellent	4.62%	2.82%	4.00%
Very good	16.18%	12.68%	15.00%
Good	33.53%	36.62%	34.40%
Fair	29.48%	29.58%	30.40%
Poor	16.18%	18.31%	16.20%

12. How much impact do you think each of the following changes to the OMC operation would have on OMC's effectiveness? (The following were rated as making OMC moderately to much more effective.) Each respondent had the opportunity to rate seven separate actions.

	2123	2125	TOTAL
Put unsafe carriers out-of-service	93.06%	98.59%	94.90%
Larger fines for repeat offenders	88.31%	93.05%	90.10%
More enforcement actions	86.04%	87.50%	86.50%
More compliance reviews	67.06%	75.00%	69.70%
Larger fines for first time offenders	48.24%	50.00%	50.60%
More roadside inspections	41.28%	23.61%	36.80%
Consistent fines*	30.77%	34.28%	32.20%

\* Same dollar fine regardless of carriers size.



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13. What policy and/or procedural changes do you think would make OMC most effective? (Narrative responses fell into 30 categories/subcategories. Of all responses, the most frequently suggested changes are shown below. Because respondents could suggest more than one change, the percentages in the table reflect the total number of answers, rather than the number of respondents.) The following account for over 40 percent of the coded responses.

	2123	2125	TOTAL
Management issues	14.05%	9.41%	12.60%
Return to enforcement agency	7.57%	16.47%	10.50%
More compliance reviews	8.11%	9.41%	8.30%
Repeat offenders out-of-service	8.11%	2.35%	6.50%
Other enforcement actions	5.41%	8.24%	6.10%

14. What is your opinion about moving OMC from FHWA to NHTSA? Are you...

	2123	2125	TOTAL
Strongly in favor	27.06%	23.53%	25.20%
Moderately in favor	19.41%	30.88%	22.40%
Neither in favor nor opposed	32.94%	25.00%	32.10%
Moderately opposed	7.06%	14.71%	8.90%
Strongly opposed	13.53%	5.88%	11.40%

15. Beside moving OMC from FHWA to NHTSA, what other options to improve OMC's effectiveness should be considered? Of all the responses, the most frequently suggested options are shown below.

	2123	2125	TOTAL
Separate agency	31.58%	47.44%	37.30%
Better enforcement	21.05%	11.54%	18.20%
Change structure	17.76%	21.79%	18.60%

16. During the past four years, how many investigators do you personally know of who have left OMC?

	2123	2125	TOTAL
0	12	0	12
1 - 5	66	29	99
6 - 10	58	24	86
11 - 15	18	7	26
More than 15	15	9	24

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17. What would you say are the main reasons that investigators have left OMC?  
(Will sum to more than 100% because respondents were asked to mark all choices that apply.)

	2123	2125	TOTAL
Advancement opportunities	76.25%	91.55%	80.80%
OMC leadership	63.75%	70.42%	65.80%
OMC policies	49.38%	61.97%	53.80%
Change of work	34.38%	33.80%	33.80%
Conflicts with management	26.25%	23.94%	25.00%
Geographical change	16.25%	21.13%	17.10%
Dislike work	15.00%	9.86%	12.90%
Conflicts with co-workers	5.63%	4.23%	5.00%
Other	14.38%	25.35%	17.90%

18. In general, how would you rate the safety for trucking (i.e., trucks are maintained properly and driven safely). Would you say trucking safety is...

	2123	2125	TOTAL
Excellent	0.58%	0.00%	0.80%
Very good	16.86%	13.04%	15.60%
Good	44.77%	62.32%	49.60%
Fair	32.56%	18.84%	28.80%
Poor	5.23%	5.80%	5.20%

19. What is the biggest problem you face in trying to accomplish your job?  
(Of all the responses, the most frequent problems are shown below.)

	2123	2125	TOTAL
Lack of direction-Headquarters	10.07%	16.92%	12.10%
Not enough safety investigators	8.72%	20.00%	12.60%
Personal issues	18.79%	12.31%	16.60%

PERCENTAGES ARE BASED ON THE NUMBER OF RESPONDENTS WHO ANSWERED EACH QUESTION.

PERCENTAGES MAY NOT TOTAL 100% DUE TO ROUNDING.

## PRIOR COVERAGE

### Prior Audit Reports

#### **Office of Inspector General, Motor Carrier Safety Program for Commercial Trucks at U.S. Borders (Report No. TR-1999-034)**

The Office of Inspector General (OIG) issued Audit Report No. TR-1999-034 in December 1998; Motor Carrier Safety Program for Commercial Trucks at U.S. Borders. The audit objective was to determine if FHWA had plans to accomplish inspections or otherwise ensure that commercial trucks entering the United States were safe and drivers were qualified. The audit concluded that greater involvement and leadership from the Federal level was needed to implement cross-border provisions and to ensure that safety was not compromised. In the near term additional inspectors and inspection facilities were needed at the Mexican border to establish sufficient safeguards for truck safety.

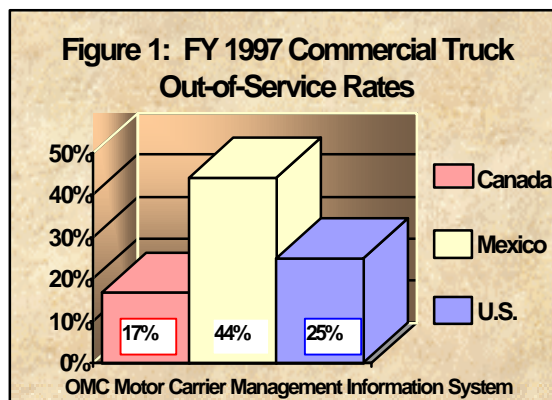
The OIG made recommendations to the Office of the Secretary and the Federal Highway Administrator to: (i) expedite the process for issuing and finalizing the proposed rule changes for granting Mexican motor carriers operating authority under NAFTA, and oversight of such authority; (ii) develop a Department of Transportation identification number that will distinguish between Mexican trucks granted authority to conduct long-haul operations and those restricted to commercial-zone operations; (iii) allocate the funds needed to adequately staff the border-crossing alternative (selected by the Secretary) during the hours crossings are open to commercial trucks, and provide inspectors with needed inspection facilities, including communication lines and computer equipment that will enable inspectors to directly access FHWA safety data files; (iv) establish partnerships with the border States to ensure the requisite inspection presence is maintained at the border and throughout the States to ensure highway safety; (v) establish a NAFTA Program Director position that includes decision-making authority and responsibility for managing a consistent cross-border traffic management program from State to State with the requisite resources to effectively carry out the responsibilities; (vi) adopt Alternative II or III to supplement the border States with the requisite inspectors at border crossings; and (vii) establish and lead a Federal interagency group to coordinate organizational policies, processes, and procedures that will enhance and expedite traffic flows at the southern border.

FHWA's response did not satisfactorily address our recommendations regarding staffing of inspectors at border crossings. The response proposed deploying 27 inspectors in Texas but did not address border crossings in Arizona and New Mexico. The 27 inspectors represent only 53 percent of the minimum number recommended by the OIG for Texas. The following paragraphs highlight the results of this report and its importance to truck safety.

**Trucks Entering the U.S. from Mexico Frequently Do Not Meet U.S. Standards.** Neither OMC nor the border states, with the exception of California, are taking sufficient actions to ensure that trucks entering the United States from Mexico meet U.S. safety standards.

Since 1992, when the United States, Canada, and Mexico signed the North American Free Trade Agreement, the Department and the border states have pointed to each other when asked who has the responsibility for inspecting trucks crossing the border. Neither the Federal Government nor the border states (except for California) have provided the necessary resources. For example, at El Paso, Texas, an average of 1,300 trucks enter daily at one border crossing, yet only one inspector is on duty and he can inspect only 10 to 14 trucks daily. At other crossings there are times when there are no inspectors.

Far too few trucks are being inspected at the U.S.-Mexico border, and too few inspected trucks comply with U.S. safety standards. Of those Mexican trucks inspected, about 44 percent were placed out of service because of serious safety violations. This contrasts with a 25-percent out-of-service rate for U.S. trucks and a 17-percent out-of-service rate for Canadian trucks. The truck out-of-service rates for the four border states with Mexico ranged from 28 percent in California, where a good inspection program has been in place and the quality of trucks has improved, to 50 percent in Texas.



With the exception of California, a significant increase is urgently needed in the number of inspectors, the number of trucks inspected, and the hours of inspection

coverage to make sure trucks entering the United States from Mexico are safe. OMC and the States point to each other as having responsibility for inspecting trucks entering the United States. In view of this continuing debate, we are not confident that the necessary actions are imminent.

**General Accounting Office, DOT Is Shifting to Performance-Based Standards to Assess Whether Carriers Operate Safely (Report No. GAO/RCED-98-8)**

The General Accounting Office issued Audit Report No. GAO/RCED-98-8 in November 1997; DOT Is Shifting to Performance-Based Standards to Assess Whether Carriers Operate Safely. The audit objective was to examine the efficiency and effectiveness of the OMC's commercial motor vehicle safety programs. The audit concluded that the OMC's Selective Compliance and Enforcement list and other criteria for selecting motor carriers for compliance reviews did not effectively target commercial motor carriers with poor safety performance. The OMC SafeStat system, while designed to better identify motor carriers by using on-the-road performance data, depends on the states to submit complete, accurate and timely data on recordable accidents and the results of roadside inspections and compliance reviews. Some states, however, lack adequate data, which affects the reliability of SafeStat. The report recommended that the Secretary of Transportation (i) identify the barriers that prevent the states from providing complete and timely data and work with the states to develop a strategy for addressing each barrier, and (ii) develop alternative approaches to SafeStat, such as consulting with state and local law enforcement officials to identify problem motor carriers, in the states that have inadequate data.

**Office of Inspector General, Motor Carrier Safety Program (Audit Report No. AS-FH-7-006)**

The OIG issued Audit Report No. AS-FH-7-006 in March 1997; Motor Carrier Safety Program. The audit objective was to evaluate 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. The OIG made recommendations designed to: (i) increase safety fitness determinations of the motor carrier population; (ii) improve the system to identify and review problem carriers; (iii) enhance the effectiveness of the enforcement program by taking stronger enforcement actions; and (iv) ensure the quality of compliance

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reviews. The OMC concurred or concurred in part with 10 of the 14 recommendations. OMC non-concurred for the four recommendations, which pertain to; (i) increasing safety fitness determinations of the motor carrier population; and (ii) enhancing the effectiveness of the enforcement program by taking stronger enforcement actions, OMC proposed and the OIG agreed to alternative corrective actions. In response to our recommendations, the OMC agreed to: (i) increase contacts with motor carriers and improve the effectiveness of compliance reviews; (ii) use a system which emphasizes on-the-road performance data to identify high-risk motor carriers for review; (iii) use a system for assessing increased penalties for continued noncompliance; and (iv) develop and implement controls to ensure the quality of compliance reviews. The current status of OMC’s actions regarding the recommendations is as follows:

<b>Recommendations</b>	<b>Status</b>	<b>Comments</b>
Three recommendations to increase safety fitness determinations of the motor carrier population.	OMC met the intent of the recommendations by taking recommended or alternative actions for all recommendations.	
Two recommendations to improve the system to identify and review problem motor carriers.	One recommendation was completed and one recommendation was partially completed.	OMC reduced States’ timeframes to upload crash and inspection reports and compliance reviews to MCMIS, but States are not meeting these timeframes.
Five recommendations to enhance the effectiveness of the enforcement program by taking stronger enforcement actions.	Two recommendations were completed and three recommendations were not completed.	OMC has not conducted a review of the success of UFA in assessing more severe penalties for repeat offenders.  OMC has not completed procedures to identify criteria for issuing compliance orders.  OMC contracted with Volpe to assess effectiveness of enforcement tools, but did not agree with Volpe’s initial approach.
Four recommendations to ensure the quality of compliance reviews.	Three recommendations were completed and one recommendation was not completed.	OMC did not implement procedures to verify out-of-service repairs on vehicles.

## **Other Audit And Investigative Work**

In FY 1997 the OIG and OMC jointly conducted a pilot program of five high-risk motor carriers in one geographical area. The reviews found that, despite a history of OMC civil penalties<sup>1</sup>, three of the trucking companies continued to operate and violate Federal safety regulations. The 3 companies had from 11 to 27 crashes from 1994 to 1996, including 1 fatal crash. We found that, on average, 75 percent of drivers falsified 45 percent of the driver logs<sup>2</sup> we reviewed. The U.S. Attorney's Office accepted one case for prosecutive consideration.

During these joint reviews, the OIG observed that OMC safety investigators did not aggressively look for driver log fraud, and the safety investigators did not obtain independent evidence to validate log entries. To illustrate, at one company, the safety investigator completed his normal compliance review and did not identify any falsifications of driver logs. However, we obtained fuel purchase reports directly from the credit card company. Using the independent information, we were able to prove driver logs were falsified. In fact, we found drivers frequently exceeded maximum hours of service rules and lied about their driving time.

Since 1997, we have been working with OMC safety investigators to better identify falsification of records as part of their compliance reviews. OIG auditors and criminal investigators conducted in 30 OMC inspection-training sessions. Six hundred Federal and State safety investigators attended these training sessions. OMC is not, however, aggressively using the tools it has available, such as progressive fines and sanctions, and total motor carrier "shut downs."

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<sup>1</sup> For example, in November 1995, one of the motor carriers was put on 45-days probation for (i) transporting hazardous materials without a current Certificate of Registration on file and (ii) falsification of driver logs. The company was never put out of service. On followup compliance reviews conducted in February and August 1996, OMC found falsification of driver logs and assessed the motor carrier over \$8,000 in fines.

<sup>2</sup> Driver Logs - Hours of service rules govern how long a driver can be behind the wheel, or otherwise on duty, without time off for rest. Currently, drivers are not permitted to drive in excess of 10 hours, without taking a mandatory break of at least 8 consecutive hours off duty or in their sleeper berth. Additionally, drivers may not drive after their total on-duty time (driving and non-driving combined) reaches 15 hours, without first taking an 8-hour break. Drivers must record their duty status for each 24-hour period. This recordkeeping is required under U.S. DOT regulations and is a record of the driver's compliance with the hours-of-service restrictions.

We are currently working about 35 investigations involving suspected criminal violations of motor carrier safety requirements. Since January 1, 1997, OIG's investigations of trucking companies have resulted in 41 indictments, 35 convictions, and \$2.6 million in fines, restitutions and recoveries.

The following example demonstrates the seriousness of the problem. OMC referred a trucking company to us for investigation that had (1) a history of serious violations of the regulations dating back several years, (2) continued to operate and violate the regulations despite assessment of civil penalties, and (3) evaded an Out-of-Service Order issued by OMC.

The regulatory enforcement history for this motor carrier is compelling. In 1994, OMC conducted a compliance review that disclosed substantial violations of Federal hours-of-service regulations and failure to drug-test drivers. Specifically, the review found that the motor carrier unlawfully "required or permitted" its drivers to exceed the hours-of-service limits. OMC cited one driver who drove more than 30 hours after having been on duty for the 70-hour limit during a consecutive 8-day period. OMC's review discovered 47 violations of safety regulations, but cited the motor carrier for only 21, resulting in the motor carrier paying a civil penalty of \$10,500.

OMC conducted follow up reviews of the motor carrier in 1995 and 1996. OMC's 1995 review found 116 of 277 driver logs showed that drivers exceeded the hours-of-service regulations. OMC's review also discovered the motor carrier was not testing drivers for controlled substances as required. However, the motor carrier was cited for only 14 violations, which resulted in the motor carrier paying a civil penalty of \$10,750.

The 1996 review resulted in OMC issuing an Out-of-Service Order against the motor carrier, and ordering it to pay a \$10,000 civil penalty. OMC advised OIG that it had no record of collecting the \$10,000 civil penalty.

The Out-of-Service Order declared the motor carrier an imminent hazard to safety and specified that the motor carrier must not attempt to evade the Order by continuing to operate under the name of another person or company without OMC's approval. A few weeks after issuing the Order, OMC contacted the company to determine if it was complying. At that time, OMC was denied access to company records and was told the business was no longer in operation. OMC subsequently learned that the motor carrier was operating under a new name, without OMC's approval, in violation of the Order.



After determining the company was violating the Order, a meeting was held between OMC and a representative of the motor carrier. During that meeting, the individual presented OMC with limited records indicating the company was operating under a new name and in compliance with the motor carrier regulations. OMC allowed the motor carrier to continue its operations.

In 1998, OMC attempted to conduct a compliance review of the motor carrier after receiving allegations that the motor carrier was again violating motor carrier regulations. OMC was again denied access to the motor carrier's records and the motor carrier subsequently refused to comply with an administrative subpoena issued for its records. Consequently, OMC referred the case to the OIG for criminal investigation and potential prosecution.

## **OTHER ACTIONS CAN BE TAKEN TO IMPROVE TRUCK SAFETY**

Organizational realignment and strong industry oversight alone may not achieve significant reductions in fatalities. There are numerous actions to help prevent truck crashes and fatalities that should be considered as part of the current debate. Several warrant further consideration, and they are not affected by OMC's location in DOT.

- **Increasing driver accountability.** Make the driver responsible for inspecting the truck just like a pilot must do for the aircraft. The driver must be held accountable for ignoring safety deficiencies. By implementing this requirement, both the company and the driver could be sanctioned for out-of-service violations related to vehicle condition.
- **Requiring periodic inspections.** Require all trucks to undergo an independent inspection not less than annually, similar to the requirements that exist for automobiles in some states. Companies determined to have good safety inspection processes could be certified to self-inspect their vehicles and perhaps those of other companies as well.
- **Adopting a 60-mile-per-hour maximum truck speed nationwide.** There is no national speed limit. The impact of a full “18-wheeler” weighing as much as 80,000 pounds hitting another vehicle, perhaps an automobile or a minivan weighing about 3,000 pounds, at a speed greater than 60 miles per hour is often fatal. Some of the largest trucking companies in the United States support a truck speed limit of 60 or lower.
- **Continuing to add rumble strips along the major highways.** Rumble strips are an effective means to alert inattentive and tired drivers when they go off the road.
- **Adopting satellite technology for monitoring.** Fatigue is believed to be the number one cause of crashes. Satellites are a very effective means for monitoring compliance with hours-of-service rules.

**EXHIBIT D**  
**Page 2 of 2**

- **Revising Hours of Service Regulations.** This is necessary to ensure they reflect the latest research on fatigue. This was recommended by the National Transportation Safety Board.
  
- **Improving driver awareness.** Mirrors or other sensors now being developed and marketed can alert a driver to his surroundings and thereby help prevent crashes.

## **ACTIVITIES VISITED OR CONTACTED**

### **United States Department of Transportation**

Office of the Secretary, Washington, D.C.

Federal Highway Administration

- Office of Motor Carriers
  - Headquarters (Washington, D.C.)
  - Regional Offices/Resource Centers (California, Colorado, Georgia, Illinois, Maryland, Missouri, New York and Texas)
  - State Division Offices<sup>1</sup> (Arizona, Arkansas, California, Colorado, Florida, Idaho, Iowa, New Jersey, Ohio, Pennsylvania and Virginia)
- National Training Center
- Office of Budget and Finance
- Office of Chief Counsel

Federal Railroad Administration

National Highway Traffic Safety Administration

Research and Special Programs Administration

National Transportation Safety Board

John A. Volpe National Transportation Systems Center,  
Economic Analysis Division

### **State Officials**

Arizona Department of Public Safety

Arkansas Highway Police

Department of California Highway Patrol, Information Management Division

Colorado State Patrol

Florida Department of Highway Safety and Motor Vehicles, Office of  
Management and Planning Services

Florida Department of Transportation, Motor Carrier Compliance Office

Idaho State Police

Iowa State Police

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<sup>1</sup> We contacted all 50 states and the District of Columbia and Puerto Rico to obtain enforcement data and visited those State Division Offices shown above.

## **State Officials (Cont'd)**

New Jersey Department of Transportation  
Public Utilities Commission of Ohio  
Pennsylvania Department of Transportation, Motor Carrier Division  
Virginia Department of State Police, Motor Carrier Safety/Hazardous  
Material Enforcement

## **Roadside Inspections Observed**

California  
Colorado  
Florida  
Georgia  
Illinois  
Missouri  
Texas

## **Associations and Alliances**

American Trucking Associations  
Central Analysis Bureau, Inc.  
Great West Casualty Company  
Parents Against Tired Truckers  
University of Michigan Transportation Research Institute

## FHWA RESPONSE



U.S. Department  
of Transportation  
Federal Highway  
Administration

# Memorandum

ct: **INFORMATION:** FHWA Response to the Office  
of Inspector General's (OIG) April 1999 Draft Report  
on the Motor Carrier Safety Program

Date: APR 22 1999

m: Anthony R. Kane  
Executive Director

Reply to  
Attn. of:

to: Raymond J. DeCarli  
Deputy Inspector General (JA-2)

We have reviewed the draft report and appreciate the opportunity to provide comments for inclusion in your final report. We consider many of the recommendations to be constructive and have actions underway to address them. In other cases, we have proposed alternative actions. However, we do have a different view of some of the analysis described in the report and we believe you may have overlooked some pertinent facts. Our general comments on the report are provided first, followed by specific comments on your findings and recommendations.

The objective of this audit was "... to examine the effectiveness of the Office of Motor Carriers (OMC) Safety Program, its impact on motor carrier safety enforcement, and whether motor carrier safety oversight would be more effective if OMC's functions were transferred from the Federal Highway Administration (FHWA) to another agency, existing or new, in the Department of Transportation (DOT)." The audit primarily addresses the compliance review and sanctioning processes, data/information issues, and an opinion survey of FHWA field staff regarding enforcement activities they perform. It does not address several other aspects of the program such as the Motor Carrier Safety Assistance Program (MCSAP), program analysis, research, or technology and their impact on safety. More importantly, the report does little to acknowledge the Department's efforts to obtain major changes to the motor carrier safety program during reauthorization. The Department's proposals, adopted by Congress in the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), address many of the program deficiencies you have identified. The changes modified the motor carrier penalty provisions, provided new shutdown authority for unfit carriers, provided funding for implementation of the Performance and Registration Information Management System (PRISM), and improvement of FHWA information systems. These provisions will have a substantial impact on program performance and safety when fully implemented.

FHWA continues to recognize that not all motor carriers will voluntarily comply with the safety regulations and that a strong enforcement program is necessary for these carriers. FHWA acknowledges and agrees with the OIG that the enforcement program can be improved, more compliance reviews are needed, higher penalties can be used to induce compliance, and data improvements are necessary. We recognize improvements are needed and have taken steps towards this goal.

- **Increase Compliance Reviews** - We have established a goal of four quality compliance reviews per month on the average for each safety investigator. This will effectively double the current level of reviews. All Category a and B high-risk carriers will be reviewed. Additional compliance reviews will be conducted on some proportion of C through G carriers.
- **Increase Penalties** - We will immediately increase our civil penalty assessments as provided in the transportation Equity Act for the 21<sup>st</sup> Century (TEA-21). This will induce carriers to comply with safety regulations by making it financially unacceptable to ignore them. New penalty guidelines to the Divisions, and the Uniform fine Assessment model will be updated by July 1999. We will now use a penalty of up to \$10,000 for each separate violation without the need to establish that a pattern of violations exists or a violation is likely to lead to serious injury or death. Record keeping violations that conceal a fact constituting a serious violation can lead up to a \$5,000 penalty per violation.
- In addition, we plan an interim final rule on the "unfit carrier" provision of Section 4009 of TEA-21, and will be providing guidance on penalty settlements in the near future.

We believe that a comprehensive safety program must include strong enforcement, technological improvements, and education/outreach. A "one size fits all" approach to enforcement and penalties is inappropriate for the diverse motor carrier population of the 21<sup>st</sup> century. The motor carrier population today is largely made up of small businesses. Our program must satisfy both Congressional direction and Presidential initiatives to encourage compliance through reduced/waived civil penalties for small businesses. Our program is designed to encourage voluntary compliance by the vast majority of carriers and penalize those who fail to improve. It is designed to prevent crashes by reaching the majority of carriers with a general compliance and deterrence message, and punish those carriers found to violate regulations. We acknowledge that the pendulum has swung too far towards education/outreach and now must move towards stronger enforcement, particularly for repeat offenders.

There was an assertion that FHWA is using enforcement "contrary to the intent of Congress." We strive to incorporate Congressional mandates, particularly as they relate to small business, into our programs. As the report indicates in a footnote, 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." In addition, assessments are to be calculated to "induce further compliance". Furthermore the Small Business Regulatory Enforcement Fairness Act of 1996 requires Federal agencies to "establish a policy or program ... to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity." The Congressional direction is clear - FHWA should establish an enforcement program which focuses penalties on achieving compliance of individual carriers to improve safety. The use of maximum fines, particularly for first-time violators, is

inappropriate. The penalty statute itself clearly provides that penalties are to be used to induce compliance, not merely punish violators. While higher fines will now be implemented because of the TEA-21 penalty provisions, maximum fines that disregard the Congressional direction stated above, remain inappropriate.

FHWA has made significant improvements to its data quality and timeliness over the past several years and is taking action to improve it further. Prior to 1992 motor carriers self-reported crash information to FHWA. The FHWA discontinued that practice because of under reporting. Since that time, crash data has been reported from State and local police reports and data has steadily improved. FHWA recognizes that not all crashes are reported and the incomplete data can hinder program effectiveness. It should be recognized, however, that obtaining local crash data is a long-term objective because institutional constraints and costs associated with obtaining it can be prohibitive.

We are expanding SAFETYNET to include driver citation information so that we can include citations in our future data base and thus vastly increase the amount of data we have of carriers. The FHWA will continue to work through the States to obtain crash data and information relating to violations of local traffic laws. Implementation of computerized laptop software for roadside inspectors has improved the accuracy of carrier identification and data accuracy as edit checks are performed right at the roadside. Today, 42 States use the software at the roadside. The software has also dramatically improved the timeliness of submission of inspection data.

FHWA has made major changes in the management of the motor carrier safety program. New management in the Office of Motor Carrier and Highway Safety along with a major restructuring of FHWA will increase the visibility and importance of the safety program and extend the range of safety partners. Safety is now one of five core business units in FHWA. The Office of Motor Carrier and Highway Safety has double the staff resources of any other core business unit in FHWA. The new organization will focus on an integrating highway infrastructure and motor carrier safety, performance-based initiatives that focus on results rather than activity levels, implementing new safety technologies, and stronger enforcement. With the implementation of the TEA-21 changes to strengthen our enforcement program, including higher penalties and revised shutdown authority, motor carrier safety will improve. Combining these program initiatives with new management direction will yield improvements to highway and motor carrier safety.

#### **Finding A - Effectiveness of the Motor Carrier Safety Program**

**General Comments:** The report draws conclusions regarding enforcement practices and penalties that, in some cases, are not substantiated by comprehensive analysis. The report relies heavily on individual examples to bolster its conclusions. We believe this approach, while making an overall plausible argument for program change, does not provide a complete picture of motor carrier enforcement. The discussion provided in the report fails to explain the reasons that enforcement and penalties have been used in the manner they have. It should be made clear to the reader that FHWA's discretion to use fines and penalties is limited by several statutes. While the report recognizes this limitation in a footnote, further explanation is required.



The FHWA's authority to impose civil penalties for violations of the Federal Motor Carrier Safety Regulations is derived principally from 49 U.S.C. 521(b). The statute expressly provides that, in assessing penalty amounts, the FHWA shall take into account the nature, circumstances, extent, and gravity of the violations 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 other matters as justice and public safety may require. In each case, the assessment is calculated to induce further compliance. Congress has amended the motor carrier statutes several times since these standards were imposed in 1984 and has never amended these factors. In 1984 the Department received civil penalty authority for non-recordkeeping and non-hazardous materials violations. Penalties, however, were limited to those that presented significant risk of serious injury or death or those instances when there was a pattern of violations. In the latter case, it is important to note that the Agency was denied civil penalty authority for single violations and that, even in the case of patterns of violations, the Agency's authority was capped at \$10,000 regardless of other factors.

The nine factors impose limitations on the level of fines we can impose and were built into our Uniform Fine Assessment (UFA) Model in 1996. The UFA is used by motor carrier safety specialists to determine fine levels nationwide. As the report indicates the model includes a fine floor for violations. Absent these administrative minimums or penalty floor, penalties could fall below current levels when the nine limiting factors described above are used.

FHWA is further directed by The Small Business Regulatory Enforcement Fairness Act (SBREFA) (Pub. L. 104-121, 110 Stat. 847 at 857, Mar. 29, 1996) to establish a policy or program by March 29, 1997, providing for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. (Sec. 223(a).) Agencies were required to report to Congress by March 29, 1998, on the scope of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions or waivers.

The SBREFA also amended the Equal Access to Justice Act to provide that small entities may, in certain cases, be awarded attorneys fees and other expenses if an adjudicative officer reduces a penalty and the adjudicative officer determines that the agency demand was substantially in excess of the decision of the adjudicative officer and was unreasonable when compared with the adjudicative officer's decision, under the facts and circumstances of the case. (Sec. 231.)

The SBREFA also amended the Small Business Act to provide for the oversight of regulatory enforcement (Sec. 222.). The Administrator of the Small Business Administration (SBA) is required to designate a Small Business and Agriculture Regulatory Enforcement Ombudsman (Ombudsman). The SBA Administrator is also required to establish Regional Small Business Regulatory Fairness Boards to provide the Ombudsman with advice on small business concerns about agency enforcement activity and to report "on substantiated instances" of excessive agency enforcement actions against small businesses. The Ombudsman is required to report annually to Congress and the affected agencies on the enforcement activities of agency

personnel, including a rating of the agency's responsiveness to small businesses, based on substantiated comments received from small businesses and the Regional Boards.

In addition, on April 21, 1995, the President wrote to the heads of Executive agencies concerning "Regulatory reform - Waiver of Penalties and Reduction of Reports" (See 60 FR 20621, Apr. 26, 1995). In this memorandum, the President directed agencies, to the extent permitted by law, to use their discretion to waive or reduce penalties against small businesses when the violation is corrected within an appropriate time period.

Over 80 percent of the motor carriers regulated by FHWA fall into the category of a small business. As such, the statutory limitations incorporated in the UFA meet Congressional intent as described above.

It is important to note that Congress amended the motor carrier safety penalties in TEA-21 at the request of the Department. Fines for safety violations can now range up to \$10,000 per violation. Recordkeeping violations that were knowingly falsified can now range up to \$5,000. The Department pursued these changes based, in part, on recommendations made in a 1997 OIG motor carrier safety audit. Including the new provisions in the UFA should raise overall fines by 100 percent.

Figure 2 on page 8 describes trends in settlement cases for a four-year period 1995 to 1998. The report states that both assessments and settlements have declined and that settlements as a percentage of assessments have declined sharply. We believe that when evaluating these figures, it is important to use closed cases with enforcement for the calculation. Table 1 contains this assumption. Further, we have included all motor carriers, rather than a subset of carriers, in this table. Our examination of data from the Motor Carrier Information System (MCMIS) file reveal differences from the information contained in the report when these assumptions are used.

According to our evaluation, both assessments and settlements declined proportionally and the percentage of assessments has changed very little.

Table 1  
Assessments and Settlements FY 1995 to 1998

FY	Assessments (\$ millions)	Settlements (\$ millions)	% of Assessments
1995	11.9	9.4	79.0%
1996	10.9	8.4	77.1%
1997	7.8	5.9	75.6%
1998	7.9	6.1	77.2%

On Page 8, the OIG provides a discussion of the Agency's imminent hazard shutdown authority.

The report urges that "flagrant violators" be shut down, states that the Agency lets motor carriers with multiple enforcement actions continue to operate, and recommends that the Agency exercise its ability to place motor carriers out of service when it finds repeat violators. We believe it is necessary to clarify the Agency's "imminent hazard" shutdown authority.

The motor carrier statute reads:

(A) If upon inspection or investigation, the Secretary determines that a violation of a provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), or 31502 of this title or a regulation issued under any of those provisions, or combination of such violations, poses an imminent hazard to safety, the Secretary shall order a vehicle or employee operating such vehicle out of service, or order an employer to cease all or part of the employer's commercial motor vehicle operations. In making any such order, the Secretary shall impose no restriction on any employee or employer beyond that required to abate the hazard. Subsequent to the issuance of the order, opportunity for review shall be provided in accordance with section 554 of title 5, except that such review shall occur not later than 10 days after issuance of such order.

(B) In this paragraph, "imminent hazard" means any condition of vehicle, employee, or commercial motor vehicle operations which is likely to result in serious injury or death if not discontinued immediately.  
49 U.S.C. 521(b)(5)(A)-(B).

Only crashes are "likely to result in serious injury or death." Violations of the regulations issued on the authority of the statutes listed in § 521(b)(5)(A) would constitute an "imminent hazard" if the Agency could prove that those violations were likely to result in crashes "if not discontinued immediately." This requires meeting a two-part test: (1) the violations must be likely to cause crashes ("serious injury or death"), and (2) the crashes must be "likely" to happen in the near future ("imminent" hazard). The definition of imminent hazard has nothing to do with repeat violations or flagrant violators. The level of proof required by the statute is therefore high. The OIG has the mistaken impression that a shutdown order is simply a penalty for repeat violations. It is not. Furthermore, any carrier operation (or portion of their operation) found to be an "imminent hazard" must be reinstated the moment that the hazard has been abated — meaning the shutdown will likely be short-lived. It was for this reason the Department pursued changes in TEA-21 that would allow the Agency broader authority to shutdown carriers that were determined to be unfit. When this provision is fully implemented, shutdown orders will increase if carriers do not improve their safety of operations.

On page 9, and in other places, the report states that standards for administrative collection of penalties allow the Agency to "revoke operating authority" for nonpayment of fines. The OIG does not offer a statutory reference for this authority. There are no existing provisions to revoke a U.S. DOT number or the authority of a carrier subject to the Agency's jurisdiction for nonpayment of fines.

For-hire motor carriers are required to register with DOT before performing transportation subject to the Secretary's jurisdiction under 49 USC 13501 et seq. (49 USC 13901). The registration process is prescribed in 49 USC 13902 and culminates with issuance of operating authority to the carrier. The statute requires the Secretary to register a carrier if the carrier is willing and able to comply with applicable commercial statutes and regulations, the FMCSRs and safety fitness regulations under 49 USC 31144, and the insurance requirements under 49 USC 13906 and 31138. Registration is mandatory if the motor carrier meets these standards. Thus the Secretary has no discretion to withhold registration for a reason unrelated to the statutory registration criteria, like the carrier's failure to pay a civil penalty.

Revocation or suspension of a for-hire motor carrier's existing operating authority is also governed by statutory criteria. The FHWA may suspend or revoke registration if a carrier willfully fails to comply with statutes and regulations governing its operations or with a condition of its registration (49 USC 13905(c)). It may suspend registration for failure to comply with the safety requirements, the safety fitness requirements, the insurance requirements, or an order issued under the insurance or safety fitness regulations (49 USC 13905(a)(1)). The operating authority of motor passenger carriers can be suspended if the carrier's operations constitute an imminent hazard (49 USC 13905(e)(2)). Failing to pay a civil penalty is not embraced within any of these provisions.

Private (the predominate type of interstate operation) and for-hire exempt motor carriers do not hold operating authority. They, as well as for-hire regulated carriers, must file an MCS-150, Identification Report, and obtain a DOT number within 90 days of beginning operations (49 CFR 385.21). The DOT number enables the Agency to track carriers for census purposes and to monitor their safety fitness to operate. As this registration system is for identification purposes, not licensing purposes, private and for-hire exempt carriers have no operating authority to be removed for non-payment of civil penalties.

On page 10, Figure 3 describes the number of violations discovered compared to violations enforced. There are several reasons why the number of violations discovered compared to enforced is at this level:

- All of the violations discovered may not meet the prosecution noncompliance standard applied by the field staff.
- Pre-TEA-21 statutory penalty authority, in practice, limits the number of violations that may be cited in "serious pattern" and in recordkeeping cases.
- The number of violations included in a case may be limited to the minimum required to achieve the appropriate penalty specified in the Uniform Fine Assessment (UFA) software. Investigators do not spend time documenting violations which they believe will not be used in the case. Pre-TEA-21 statutory penalty limits (e.g., hours of service violations - \$10,000 per pattern) and the UFA leads to fewer counts being documented. These limits will change when the TEA-21 penalty provisions are implemented.

It should be noted that the percent of violations prosecuted should be replaced by a better measure of enforcement activity since the degree of noncompliance varies significantly among carriers. We believe the percentage of carriers prosecuted as a result of a compliance review is a better overall measure of our compliance and enforcement program. This percentage has consistently been above 30 percent and has been increasing since the SafeStat methodology to identify high-risk carriers was introduced in 1997.

On pages 11 and 12, the OIG states that the safety fitness rating process is ineffective because motor carriers with less than satisfactory ratings (conditional or unsatisfactory) continue to operate and some of those carriers were involved in crashes and fatal crashes.

The Agency has never claimed that a compliance review/rating will prevent all crashes, but rather that the majority of carriers will improve their safety of operations after a review. Using information from the Motor Carrier Management Information System, FHWA compared the FY 1997 crash activity of carriers receiving ratings in FY 1997 to their crash activity in FY 1998. The results shown below in Table 3 show that the majority of carriers receiving a rating improved their crash incidence the next year following the rating. The greatest gain in crash reduction was made by those carriers receiving a unsatisfactory rating.

Table 2  
Crash Activity - FY1997 v.s. FY1998  
For Motor Carriers Reviewed in  
FY1997 By Rating

Rating	Decreased Crashes		Increased Crashes		No Change		Total Carriers
	#Carriers	%	#Carriers	%	#	%	
S	498	60.4%	185	22.4%	141	17.1%	824
C	272	63.5%	83	19.4%	73	17.0%	428
U	99	69.7%	25	17.6%	18	12.7%	142
Grand Total	869	62.3%	293	21%	232	16.6%	1394

\*From March to November 1997 FHWA did not issue ratings due to a court challenge to its rating methodology.

On page 13, it shows that 15 percent of high-risk carriers (defined as A and B carriers) were not reviewed six months following the March 1998 SafeStat list. FHWA surveyed each division office to identify the reasons for not performing reviews on A and B carriers and to determine whether it was within December 1997 policy guidelines.

Some of the valid reasons the reviews were not performed include: a review was completed within the previous 12 month period; the motor carrier was deleted from census and/or out of business; there was a pending enforcement action against the carrier; the carrier was contained in the Performance Registration Information System Management (PRISM) pool and subject to a different review cycle; the review was completed but not shown as completed in MCMIS.

Also on page 13, the OIG provides information on open enforcement cases.

There are many reasons why a backlog of enforcement cases exists. The administrative process itself does not provide for quick closure to civil forfeiture cases. A carrier who is served with a notice of claim (NOC) has a due process right to contest the charges against it and to proceed through the administrative process. That process itself can take years to resolve because of various legal procedures that may be taken on behalf of the carrier and because of scarce FHWA legal resources.

If a carrier defaults by not responding to the NOC, or refuses to pay a penalty after adjudication is completed, collection efforts require three notifications to the carrier that the debt is due. If collection is unsuccessful the matter is assigned to the Department of Treasury. Once a matter is assigned to Treasury, all FHWA collection efforts must cease. These cases remain open in our tracking system until Treasury notifies us of the outcome of its collection efforts.

On page 14, a discussion is provided on the use of fatality rate versus number of fatalities as a measure of program progress. The OIG criticizes the use of fatality rate as a safety performance measure and advocates the use of the number of fatalities instead. Fatality rates and crash rates are valid and generally accepted measures of safety performance. In all modes of transportation, the crash/fatality rate is often used because it includes an exposure factor. The OIG implicitly recognizes that crash rate is a valid measure of safety performance. On Page 21, in the context of SafeStat, the report recognizes that fleet VMT data are needed to provide valid statistics on carrier crash rate. Implicitly, the report recognizes that crash rate would be the best way to compare carriers. If the crash rate is a valid measure of carrier safety performance, why is it not a valid measure of the safety performance of all carriers combined? FHWA recognizes that both the rate and absolute number of crashes and fatalities are needed to assess program progress and has included those two measures in its FY 1999 Performance Plan published in February 1998.

**Recommendations and Responses:** The OIG recommends that FHWA:

**Recommendation 1.** Obtain Departmental approval to revise the motor carrier safety goal to substantially reduce the absolute number of deaths per year.

**FHWA Response.** *Concur.* The FHWA FY 1999 Performance Plan published in February 1998 contained a goal to reduce both the rate and absolute number of fatalities. The FHWA has requested that the motor carrier safety goals in the Departmental Performance Plan and the FHWA Performance Plan be consistent. On April 14 the Assistant Secretary for Budget and Programs approved a change to the goal

by adding a measure of the number of fatalities. A revised plan will be published within 30 days after FY 2000 appropriations are enacted.

**Recommendation 2.** Strengthen its enforcement policy by establishing written policy and operating procedures to take enforcement action against motor carriers with repeat violations of the same acute or critical regulation. Strong enforcement actions would include assessing fines at the statutory maximum amount, the issuance of compliance orders, not negotiating reduced assessments, and when necessary, placing motor carriers out of service.

**FHWA Response.** *Concur, in part.* The FHWA will increase enforcement actions against carriers with repeat violations. Progressive sanctions will be instituted by increasing fines and using the new shutdown authority as provided in TEA-21. However, assessing maximum fines in all cases would violate statutory requirements.

**Recommendation 3:** Remove all administrative minimum fines placed in the Uniform Fine Assessment program and increase the maximum fines to the level authorized by the Transportation Equity Act for the 21<sup>st</sup> Century.

**FHWA Response.** *Concur in part.* The FHWA will increase the maximum fines to the level authorized in TEA-21 and include the fine levels in the UFA. This will increase overall fines by 100 percent. Removing the minimum fine levels or floor in UFA as recommended here will allow fines to fall, potentially to zero, when the nine statutory factors are used in the model. This would be counterproductive to a progressive sanction approach.

**Recommendation 4.** Establish stiffer fines that cannot be considered a cost of doing business and, of necessary, seek appropriate legislation raising statutory penalty ceilings.

**FHWA Response:** *Concur in part.* FHWA will implement the penalty provisions contained in TEA-21. However, it is premature for the Agency to seek additional legislative action to raise the penalty ceiling until the TEA-21 changes are implemented and evaluated.

**Recommendation 5.** Implement a procedure that removes the operating authority from motor carriers that fail to pay civil penalties within 90 days after final orders are issued or settlement agreements are completed.

**FHWA Response:** *NonConcur.* Such authority does not currently exist. New legislation will be required to revoke operating authority, (issued currently only to for-hire carriers), for nonpayment of fines.

**Recommendation 6.** Establish criteria for determining when a motor carrier poses an imminent hazard.

**FHWA Response:** *Concur, in part.* FHWA will issue a rulemaking to implement the new shutdown authority contained in TEA-21. As stated in the text of this response, a two-part test for imminent hazard already exists.

**Recommendation 7.** Require follow up visit and monitoring of those motor carriers with a less-than satisfactory safety rating, at varying intervals, to ensure that safety improvements are sustained or if safety has deteriorated that appropriate sanctions are invoked.

**FHWA Response:** *Concur in part.* A key feature of the nationwide implementation of the PRISM program, is the Motor Carrier Safety Improvement Process (MCSIP). This process adopted, and all PRISM States and their companion Division offices includes, a monitoring program and progressive sanction program. The MCSIP tracks high-risk carriers through compliance reviews and applies progressive sanctions if safety improvement is not made.

**Recommendation 8.** Establish a control mechanism that requires written justification by the OMC State Director when compliance reviews of high-risk carriers are not performed.

**FHWA Response:** *Concur in part.* FHWA already requires State Directors to document the completion of compliance reviews on high-risk carriers.

**Recommendation 9.** Establish a written policy and operating procedures that identify criteria and time frames for closing all enforcement cases, including the current backlog.

**FHWA Response:** *Concur, in part.* FHWA acknowledges a backlog of cases awaiting decisions and has taken steps to improve it. The current backlog of enforcement cases under review in Headquarters is now less than 50. The FHWA will instruct the field to ensure that when enforcement cases are closed the file is properly maintained to reflect it. FHWA will reaffirm existing written policy regarding the timely completion of enforcement cases.

#### **Finding B - Insufficient Data Impacts the Motor Carrier Safety Program**

**General Comments:** The FHWA agrees that improvements are needed to both carrier information and crash data. FHWA and the States have made many dramatic improvements to the quality and timeliness of carrier and crash data. The Department, in its reauthorization



proposal, sought and received additional funding to make improvements to motor carrier information systems and data. In FY 98 special grants were provided to eight States to solve problems associated with their crash data. FHWA has actions planned to address current deficiencies. The FHWA has planned a cooperative effort with the National Highway Traffic Safety Administration (NHTSA) to collect detailed information about causes of large truck crashes. In addition, if funds are available, FHWA has proposed a second cooperative effort to collect data on all truck and bus crashes that must be reported to DOT (towaway, injury, and fatal), approximately 150,000 per year, in a manner very similar to their FARS collection procedures. Analysis in each State would code the necessary information for each crash and upload the data. Edit checks and quality control reports, such as the ones currently in place in the FARS system, would be run on the truck and bus crash data.

FHWA will also improve its census database. If funds are available, FHWA will initially verify all census records. The Agency will continue to implement the Performance and Registration Information System Management (PRISM) program which ensures annual census updates as part of the State commercial vehicle annual registration and renewal process. Finally, FHWA will combine the current State licensing and insurance system, the Federal licensing and insurance system, and the Federal carrier census data system into a single Unified Carrier Registration system that enters the data for all three operations at one time. This will reduce the administration burden on carriers and provide more accurate census information.

Concurrently, with these actions, the FHWA will examine the impediments to State uploads of crash and carrier information and design methods to improve it. FHWA will also evaluate new data collection procedures to determine whether other state-of-the-art procedures could be employed to obtain more timely and accurate crash data. For example, direct access to State crash files to obtain the truck and bus crashes will be examined.

While we agree with the need to improve the data as stated in the report we are concerned that there are numerous technical errors in the report. Specifically on page 9 the report states: "For the accident evaluation area the motor carrier's performance is compared to other motor carriers with comparable fleet size. For example, a medium motor carrier will be compared to other medium (21 to 100 vehicles) motor carriers." This statement is incorrect. Motor carriers are not compared to other motor carriers with comparable fleet size. They are compared with other motor carriers with a comparable number of accidents.

With respect to crashes, carriers with two or more accidents are placed into one of the following groups.

- |                                |                              |
|--------------------------------|------------------------------|
| Group 1 = 2 to 3 Accidents     | Group 2 = 4 to 8 Accidents   |
| Group 3 = 9 to 20 Accidents    | Group 4 = 21 to 38 Accidents |
| Group 5 = 39 or More Accidents |                              |

Carriers with similar numbers of crashes are grouped, compared to one another by their crash

rate per power unit, and then ranked on a percentile basis.

On page 20 the report states: "Category A motor carriers have an unacceptable score in all evaluation areas. Category B motor carriers have an unacceptable score in three evaluation areas one of which may be the Accident evaluation area." This statement is incorrect. Category A motor carriers have an unacceptable score in all evaluation areas OR the Accident area plus two additional areas. Category B motor carriers have an unacceptable score in the Accident area plus one additional area or three areas with an acceptable Accident area.

On page 21 the report states: "The number of commercial vehicles and drivers is used in SafeStat to determine the size of the motor carrier for comparison purposes, since motor carriers are compared to other motor carriers in the same fleet size." This statement is technically incorrect. The number of commercial vehicles is used in SafeStat to determine a crash rate per power unit. It is not used to compare motor carriers of the same fleet size. In addition, the number of drivers is only used to normalize driver moving violation data from roadside inspections for one of three potential driver evaluation area indicators.

Elsewhere on page 21 the report states: "When motor carriers apply for operating authority and receive their US DOT identification number and operating license, they should submit the number of commercial vehicles and drivers, and be required to provide periodic updates of this information including the vehicle miles traveled. Currently this is not required." This is not entirely correct. In the PRISM States of OR, CO, MN, LA, and IN a motor carrier's number of commercial motor vehicles and drivers is updated annually by the States as part of the commercial motor vehicle registration process. The States of PA, ME, CT, GA, TN, and KY have also recently entered into grant agreements to become fully functioning PRISM States. PRISM will provide annual updates of the critical driver and vehicle data.

**Recommendations and Responses:** The OIG recommends that the FHWA Administrator aggressively pursue obtaining quality performance data to identify high-risk motor carriers and to develop crash safety improvements to decrease the number of fatalities. Specifically, we recommend to:

**Recommendation 1.** Require applicants requesting operating authority to provide the number of commercial vehicles they operate and the number of drivers they employ and require all motor carriers to periodically update this information.

**FHWA Response.** *Concur, in part.* FHWA has a pending rulemaking that among other things proposes to require applicants for operating authority to submit an MCS-150 with the application to capture vehicle and driver data. An NPRM was published in February of last year and a Final Rule is expected October 2000. To ensure that the information is updated periodically, the FHWA is also implementing the PRISM program. States participating in PRISM require carriers to update their MC-150 annually when their commercial vehicles are registered.

**Recommendation 2.** Revise the grant formula and provide incentives through the Motor Carrier Safety Assistance Program grants for those States that continue to report accurate, complete and timely commercial vehicle crash data, vehicle and driver

inspection data and traffic violation data within a reasonable notification period such as one year.

**FHWA Response:** *Concur.* The FHWA has produced the March 1999 MCSAP Notice of Proposed Rulemaking on incentive funding to encourage States to meet the target deadlines for reporting accurate, complete, and timely data.

**Recommendation 3.** Withhold funds from the Motor Carrier Safety Assistance Program grants for those States that continue to report inaccurate, incomplete, and untimely commercial vehicle crash data, vehicle and driver inspection data, and traffic violation data within a reasonable notification period such as one year.

**FHWA Response:** *Non-Concur. Alternative Action Proposed.* Withholding State enforcement funding because of data collection problems will be counterproductive. In some cases, the lead enforcement agency which receives the MCSAP funding is not the same State agency that collects the data. In such cases it can be difficult for the State agencies to correct data problems. Alternatively, FHWA is taking steps to amend the MCSAP formula to provide incentives for better data. This will avoid the possible consequence of reducing enforcement.

**Recommendation 4.** Initiate a program to train local enforcement agencies for reporting of crash, roadside inspection data including associated traffic violations.

**FHWA Response:** *Concur.* FHWA has been working with the State of Minnesota to create a crash investigation course for police to improve crash investigation data collection. Course development and pilot testing will be completed in FY 1999. FHWA will offer the course more broadly in FY 2000. FHWA also has planned a study to identify those States with the worst data reporting performance and provide methods to assist them in improving.

**Recommendation 5.** Standardize OMC and NHTSA crash data requirements, crash data collection procedures, and reports.

**FHWA Response:** *Concur.* FHWA and NHTSA have been working together for several years to standardize a core set of data elements that each State would include on their police crash reports. This effort, the Model Minimum Uniform Crash Criteria, would enhance both Agencies crash data.

**Recommendation 6. Obtain and analyze crash causes and fault data as a result of comprehensive crash evaluations to identify safety improvements.**

**FHWA Response:** *Concur.* FHWA and NHTSA have an interagency agreement to conduct a large truck causation study within the framework of the NHTSA National Automotive Sampling System. This effort will collect detailed truck crash data and build a heavy truck crash data base beginning FY 1999. Crash data investigations will begin in pilot States no later than June 2000.