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Motor Carrier Safety Department – Why You Need One and How To Improve Yours

Client Bulletins

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For-hire and private motor carriers face unique compliance and operations challenges that many other business or company functions do not encounter.

Operating commercial motor vehicles (CMVs) for your business, or as your business, can impact far beyond the stocking of shelves across America. Noncompliance and negligence yield casualty, vehicular accident lawsuits, and failed government audits. The stakes are rarely so high.

The Federal Motor Carrier Safety Regulations (FMCSRs) that apply “to all employers, employees, and commercial motor vehicles (“CMV”) that transport property or passengers in interstate commerce.” The U.S. DOT’s Federal Motor Carrier Safety Administration (FMCSA) has the authority to regulate, fine, and even put a motor carrier, driver, or CMV out of service based on violations of the FMCSRs.

Who within our organization is responsible for overall compliance and how are we managing compliance? This fundamental question stands behind all regulatory compliance programs. When it comes to motor carrier safety, companies of all sizes are well served to have an answer, whether as part of a stand-alone department or by clearly identifying people and processes from among other roles. A carrier’s safety department and personnel are often the first (and last) line of defense.

Why is a Safety Department Needed?

Any form of a safety department addresses three critical needs for any size of for-hire or private carrier: (1) compliance management, (2) liability management, and (3) culture management.

Compliance Management. Violations of the FMCSRs can lead to a multitude of fines and penalties. The regulations are numerous and confusing, and cover everything from proper DOT registration to drivers’ hours of service rules. The onus for knowledgeable compliance is found in Section 390.3, which states that “(e)very employer shall be knowledgeable of and comply with all regulations contained in this subchapter that are applicable to that motor carrier’s operations.” Additionally, it requires that “(e)very driver and employee involved in motor carrier operations shall be instructed regarding, and shall comply with, all applicable regulations contained in this subchapter.” It is therefore incumbent on a motor carrier to ensure that it and its employees are familiar with the FMCSRs. The best way to do so is to have a dedicated safety person or department that is fluent in the regulations to train other employees and drivers to fulfill this obligation.

Liability Management. An effective safety department can be a tremendous tool to minimize risk and liability for a motor carrier. Safety training for drivers can help reduce violations of FMCSRs and traffic laws, as well as reduce potential accidents. Additionally, a proper and documented safety program can protect a motor carrier in any litigation against charges of negligent entrustment or general negligence for not providing proper training or complying with the FMCSRs. For instance, consider that your staff may be called as witnesses during litigation. A well-represented motor carrier can show

it instituted training and a progressive discipline program and will argue that it took adequate steps to prevent the accident prior to it occurring. This together with defense tactics to outflank any so-called “nuclear verdicts” can have a very real impact on the company beyond minimizing accidents.

Culture Management. As with all compliance functions, your culture is paramount. The culture of your company plays a major role in safety. A functional safety department, with the full backing of senior management, will let all carrier personnel know that safety is a priority and an integral part of the entire organization. Having no safety department drive the opposite message. Visible buy-ins from management and all staff members creates a culture of safety within your organization that helps morale, rewards positive behavior, and instills the self-respect that comes from professional driver experiences.

How is a Safety Department Structured?

The last thing anyone wants to do is develop a counterproductive compliance program, including by implementing policies and systems that will not be followed. Understandably, a motor carrier’s size can have a direct impact on the structure and size of its safety department. For a small carrier with only a few drivers and vehicles, one person may wear the hats of a dispatcher, human resources generalist, and safety manager all at once. A larger carrier may have a dedicated safety director and support staff. One size does not fit all. However, there are generally two paths a company can take in structuring its safety department: (1) outsourcing compliance resources and systems or (2) in-house compliance.

Outsourcing Resources and Systems. In today’s digital environment, it is common practice to have electronic records for all parts of a motor carrier’s operations. Safety records are no exception. There is no shortage of third-party vendors who will perform safety training, driver recruiting and qualification, and other functions of a traditional motor carrier safety department. Many of these third parties are consultants that have previously worked in law enforcement or at a motor carrier. While outsourcing can be a cost-effective option for a motor carrier, it is important to remember that responsibility for employee compliance and training still falls on the motor carrier. Therefore, an internal safety contact remains necessary at a minimum.

In-House Compliance. Beyond identifying an internal safety contact, launching a formal internal safety department provides many benefits not found when outsourcing safety functions. A carrier’s own personnel will have more intimate knowledge of its operation and drivers. Internal safety personnel will also be better situated to diagnose and deal with issues that arise on a daily basis. They will also have a better understanding of a motor carrier’s management team, and in fact, with the safety manager or director often being a part of that management team. The chief safety person may be a company’s vice president, director, manager, or specialist, depending on the size and structure of the company. Additionally, a carrier’s operations will also dictate the composition of its safety department. For instance, if a company’s operations qualified for the short-haul exception, then it would not have electronic logging devices (ELDs), and the back-office tasks will be different. Similarly, if a motor carrier hauls hazardous materials, then the individual will need to know the hazardous materials regulations well.

What are the Responsibilities of a Safety Department?

The way in which a safety department is structured and staffed, and the degree of outside support for its functions, may reasonably vary across companies. However, the core responsibilities of a safety department remain largely the same. The three categories of responsibility are: (1) regulatory compliance, (2) managing scores, and (3) recordkeeping.

Regulatory Compliance and Driver Programs. The most important function of any motor carrier safety department is ensuring compliance with the FMCSRs, as well as state and local laws. The FMCSRs govern the actions of a motor carrier and their drivers. The safety department lead implements the people, processes, and technology to achieve compliance as best as possible while

reducing the risk of human error. Doing so involves developing tools such as driver handbooks, training programs, incentive programs, and violation tracking. Those tasks require individuals with specific training and knowledge of motor carrier operations rather than other personnel such as human resources generalists, who serve very important but also very different functions.

Managing Compliance, Safety, Accountability (CSA) Scores. Although controversial, the FMCSA's CSA program is the current scorecard used by federal regulators and plaintiff's attorneys to judge motor carrier performance. All motor carriers need someone internally with an understanding of the program. This includes not only knowing where the carrier stands in terms of its scores, but also how to improve scores and how those scores are calculated. This is an essential role for any motor carrier to monitor and prepare for any potential FMCSA intervention.

Recordkeeping. Compliance with the FMCSRs includes observing numerous regulations relating to recordkeeping. Knowing what records to keep (and not to keep) and for how long is a vital function of any motor carrier safety department. A recordkeeping violation is often penalized just as harshly as any other violation of the FMCSRs.

What Other Value Does a Safety Department Bring?

Every company is different, but it is common for a safety department to take on other functional roles to drive value. The skill set required to serve as a strong lead on safety also produces a keen eye and leadership in other related areas.

Driver Recruiting, Progressive Discipline, and Injury Reporting. The safety department will often have responsibility for recruiting and retaining drivers. This is a natural fit in that much of recruiting and retention directly interacts with the FMCSRs. Motor carrier safety department personnel are often charged with developing and enforcing progressive discipline policies for drivers regarding accidents, violations, and other safety-related infractions. A safety department will also often take on non-FMCSR duties, such as managing workplace injuries and non-DOT accidents. The environmental, health, and safety (EHS) function includes compliance with OSHA regulations.

Maintenance and Repair of Vehicles. Motor carriers with formal or informal internal vehicle maintenance departments often assign oversight of this function to the safety department. Many maintenance issues correspond directly with the FMCSRs, and knowledge of the fleet can be invaluable when training drivers.

Fuel Taxes and Registrations. There are a number of ancillary taxes and registrations that must be maintained in the day-to-day operations of both for-hire and private carriers. Those include the International Registration Plan (IRP) for equipment and the International Fuel Tax Agreement (IFTA) for fuel taxes. These responsibilities often fall to a company's safety department due to its handling of related items, such as operating permits and vehicle plating.

Specialized Commodity Compliance. Special commodities require close attention in transportation-related operations. Some require unique use permits that must be managed, such as oversize, overweight, or overlength loads. Some require state-level handling permits, such as alcohol and dairy. Other commodities, such as hazardous materials, bring in an entire set of regulations. Compliance with the Hazardous Materials Regulations (HMRs), for example, often falls upon the safety department. The HMRs, much like the FMCSRs, can be confusing and carry the potential for injuries as well as civil penalties if they are violated. Having personnel or a third party that can effectively navigate the rules related to hazardous materials transportation is essential to any motor carrier handling those commodities.

The Job of Compliance is Never Done

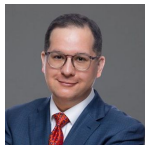
Compliance is a process. Even a long-standing safety department or lead can suffer from human error or accidents. Mistakes happen, and we can always find ways to improve. The imperative is to identify a team and an approach to compliance. From that point forward the task is continuous

improvement. Many companies are shortsighted and do not adequately fund or staff their safety departments. It is sometimes erroneously believed that a safety department does not “make a motor carrier money.” Avoiding fines, penalties, and the costs of accident litigation is the equivalent of “making money.” In addition, having an effective safety department is often the best way to ensure a for-hire carrier can continue to generate the revenue it desires and for a private carrier to achieve the inventory management and customer satisfaction it requires.

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