

**Motor Carrier Group Chairman's Factual Report  
HWY-05-MH035**

**Attachment #14: CVSA Letter to FMCSA 08/01/2002  
(5 Pages)**

# COMMERCIAL VEHICLE SAFETY ALLIANCE



An Association of State, Provincial and Federal Officials  
Responsible for the Administration and Enforcement of Motor  
Carrier Safety Laws in the United States, Canada and Mexico.

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August 1, 2002

Mr. Joseph M. Clapp  
Administrator  
Federal Motor Carrier Safety Administration  
400 7<sup>th</sup> Street, S.W., MC-A  
Washington, DC 20590

Dear Mr. Clapp:

During the CVSA Spring Workshop in Rapid City, the Executive Committee deliberated on an April 19, 2002 FMCSA Memorandum from Julie Cirillo to its field staff regarding a legal interpretation on the Exclusion of Intrastate Violations from the Safety Rating Process. The purpose of this letter is to request that the Policy Guidance FMCSA issued in this Memorandum be rescinded.

First, I want to emphasize that we want to help in any way possible to amend this policy to appropriately reflect the concerns and needs of the federal government, as well as state and provincial partners. Many people have made us acutely aware that they are unhappy with this legal position. If it is deemed that the FMCSA legal opinion is upheld, we would be pleased to join with you in working with the Congress to affect the necessary legislative changes.

For the past 20 years through CVSA the states, provinces and territories in the U.S., Canada and Mexico have worked with FMCSA to reduce the number and severity of commercial motor vehicle accidents, hazardous material incidents, and promote safer travel on the public highway system throughout North America. The success we have enjoyed has been accomplished by striving for an accident free environment and a reduction of the potential for hazardous materials incidents involving commercial vehicles operating in interstate and intrastate commerce. Performing Driver and Vehicle Roadside Inspections, Traffic Enforcement and Compliance Reviews with follow-up enforcement action, along with officer training and public education plays important roles in achieving safer travel throughout each and every jurisdiction.

The Congress created the Motor Carrier Safety Assistance Program to improve the safety of commercial vehicle operations on public highways. The effectiveness of this program is dependent on how supportive the states/jurisdictions are to the program, their willingness to participate in National Program initiatives, and the perception and involvement of the industry affected by the program. The success of the MCSAP at the state and local levels depends on the efforts and cooperation of state Motor Carrier Safety Administrators, roadside inspectors, and industry. Federal regulations require the states to adopt compatible or identical laws and regulations for interstate and intrastate commerce. However, with this recent interpretation and policy change excluding intrastate violations, FMCSA is sending a strong message to the states and our counterparts in Canada and Mexico, as well as the industry that intrastate commerce does not matter when it comes to safety.

CVSA believes FMCSA has inappropriately interpreted the regulations in Part 385 regarding Safety Fitness Procedures and the assignment of Safety Ratings to motor carriers. Specifically, we do not agree with the policy statement outlined in the memorandum and its ensuing methodology for implementation: *"The purpose of this memorandum is to modify that policy, such that the Federal Motor Carrier Safety Administration's (FMCSA) Safety Rating Process shall incorporate data over which it has jurisdiction."* The CVSA believes violations discovered on interstate motor carriers for trips in intrastate commerce should be included in the determination of a motor carrier's safety rating and that the FMCSA indeed does have jurisdiction over such data. The CVSA strongly believes that the Safety Fitness determination must include intrastate violations and accidents discovered during Compliance Reviews and Roadside Inspections. This belief is supported by the Federal Motor Carrier Safety Regulations in 49 CFR.

We share the concerns of many in the states, provinces and at FMCSA that this policy is detrimental to both safety and cooperation for the following reasons:

- First, the definition of an accident in 49 CFR 390.5 states that an accident means *"an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce..."*
- Second, 49 CFR 385.7, the factors to be considered in the determination of a safety rating, clearly specifies that information and violations gathered from Compliance Reviews, Roadside inspections and other data should be included in the rating determination – for both interstate and intrastate violations.
- Third, this interpretation is not consistent with the intent of the Motor Carrier Safety Assistance Program. One of the tenets of the MCSAP is compatibility and harmonization between federal and state laws and regulations – as well as the compliance and enforcement activities in support of this tenet. FMCSA's policy runs counter to this philosophy. To illustrate this point, on

one hand, FMCSA is saying that states with incompatible laws or regulations pertaining to intrastate commerce are penalized under the MCSAP – and may even lose all funding. Yet at the same time by implementing this policy FMCSA will not utilize very important intrastate data.

- Fourth, CVSA has worked diligently with FMCSA in implementing the process of uploading intrastate accident and inspection data. In fact, MCSAP Incentive Funding is based on the reduction of large truck accidents, timeliness of uploading accident data, timeliness of uploading inspection data, and verification of Commercial Drivers Licenses – irrespective of whether or not these actions were in interstate or intrastate commerce.
- Fifth, this policy change effects the entire industry in terms of those currently rated, the use of SafeStat and ISS, PRISM, and other programs reliant on data produced from Compliance Reviews and Roadside Inspections. Thus, it will create a discrepancy in how motor carrier operations are measured and prioritized for actions.
- Sixth, if FMCSA maintains this policy in its current state, modifying only the CAPRI software will not fully effect this policy change. Additional data collection software and systems must be changed to fully implement this change.
- Lastly, history has shown us that the delivery of a comprehensive and successful commercial vehicle safety program hinges on cooperation and collaboration between FMCSA, the states/jurisdictions and industry. CVSA remains available to fulfill its partnership role with FMCSA by providing pertinent information and knowledge regarding CMV safety matters of this magnitude, in hopes of assisting in the decision making process and to affect efficient outcomes.

In addition, the Memorandum references Policy Guidance (SP-91-017-SA) issued by the Federal Highway Administration's Office of Motor Carriers. There are several statements in this Memorandum we would like to highlight, as we believe they are critical to this issue and relevant to our joint mission of safety and crash reduction.

- *"In FHWA's management of all of its motor carrier responsibilities, including the MCSAP activities, it needs to know what part (inter/intra) of an interstate carriers' operation requires the compliance attention, and which part (Fed/State) of the overall program should handle it."*
- *"As the FHWA partnership with the States matures, it becomes important to consider the information needs of each partner in order to maximize the effectiveness of the program as a whole."*

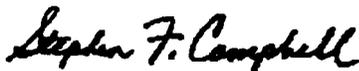
- *"This action is in full accord with our stated goal of full participation by States in OMC Programs."*
- *"Interstate and intrastate noncompliance information will be considered in completing the rating matrix...in order to reflect the safeness of the carrier's total operation on the highway."*

Finally, in the spirit of NAFTA, uniformity and reciprocity, we need to recognize the important efforts of our partners in Canada and Mexico and, to the extent practicable, integrate the information produced from the compliance, inspection and enforcement activities of their countries with that of the U.S. This data should be treated the same as intrastate violation data and be considered in determining the safety rating of motor carriers.

Since its birth in 2000, the FMCSA, together with the states and provinces have made great strides in commercial vehicle safety. We look forward to continuing to work together in support of FMCSA's accident and injury reduction goal of 50 percent by 2010. We stand shoulder to shoulder in partnership with you to make any necessary changes in furtherance of our position and the vital importance of interstate and intrastate commerce and its impacts on safety.

We encourage you to attend the CVSA Executive Committee meeting in Boston to discuss this issue, as well as other important items of interest between CVSA and FMCSA. If you have any additional questions or wish to discuss this further please contact me at any time.

Sincerely,



Stephen F. Campbell  
Executive Director