



Driving Trucking's Success

ATA Summary of FMCSA's Revised Policy on Assessing Maximum Fines April 2009

Background - On March 30, 2009, the Federal Motor Carrier Safety Administration (FMCSA) changed its policy regarding the assessment of maximum fines under section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA).¹ The policy became effective on April 1, 2009.

The MCSIA originally directed FMCSA to “assess the maximum civil penalty for each violation by any person who is found to have committed a pattern of violations of critical or acute regulations, or to have previously committed the same or a related violation of critical or acute regulations.” In 2000, FMCSA responded to this Congressional directive by enacting a “three strikes” policy that applied to any company with three enforcement cases (resulting from either a compliance review, shipper review or terminal review) over a 6-year period.

In an April 2006 report², the DOT's Office of Inspector General (OIG) concluded that FMCSA's policy did not comply with the MCSIA directive concerning the assessment of maximum civil penalties and recommended that the agency revise its policy. In a similar 2007 report,³ the Government Accountability Office (GAO) also suggested similar changes.

FMCSA's Revised Policy - Based on the OIG and GAO recommendations, FMCSA amended its civil penalty policy as follows:

- **Pattern of Violations:** FMCSA will seek the maximum penalty where a motor carrier exhibits a pattern of violations. A “pattern of violations” exists when the agency discovers that a carrier has two or more critical and/or acute violations in each of three or more different regulatory parts (i.e., a minimum of six acute and/or critical violations). A pattern of violations does not require previous enforcement and can be found even during a first time investigation. A carrier is subject to maximum fines when a ‘pattern’ of critical or acute violations is discovered after having any significant previous contact (e.g., a new entrant safety audit, a warning letter, a notice of violation, etc.) with FMCSA, State motor carrier safety personnel or an FMCSA-designated agent.
- **Two Strikes:** FMCSA has replaced its previous “three strikes” policy with a new two strikes policy. Maximum penalties will be applied when one or more violations of critical or acute regulations in the same regulatory part are discovered during an investigation within six years of a previous enforcement case. In other words, the initial enforcement case involving critical or acute violations is strike one, and a second investigation with discovered critical or acute violations in the same part is strike two.
- **Categories of Investigations:** FMCSA also has expanded the types of investigations that it will use to identify violations of acute and/or critical regulations that may trigger the assessment of the maximum civil penalty. Rated and unrated compliance reviews, terminal reviews, shipper reviews, focused reviews, on and off-site assessment investigations, and on- and off-site investigations arising under the Comprehensive Safety Analysis 2010 program will be used to evaluate carriers under the revised penalty policy.
- **Settlements for Less Than the Maximum Penalty Amount:** Under its new policy, FMCSA will allow its Service Centers to evaluate on a case-by-case basis whether section 222 penalty matters are appropriate for approved settlement options. This is seen by ATA as a positive development because it provides the Service Centers with new flexibility. Under the old policy, FMCSA did not allow its Service Centers to settle section 222 cases for less than the maximum amount.

The impact of this revised penalty policy is likely to be an increase in the number of maximum penalties being assessed against motor carriers. Motor carriers are advised to re-familiarize themselves with the published list of critical and acute violations (Appendix B to 49 CFR Part 385), and take necessary steps to comply with these important safety regulations.

¹ See 74 Federal Register 141184 (March 30, 2009).

² “Significant Improvements for Motor Carrier Safety Program Since 1999 Act but Loopholes for Repeat Violators Need Closing,” (OIG Report No. MH-2006-046, April 21, 2006).

³ “Federal Safety Agency Identifies Many High-Risk Carriers but Does Not Assess Maximum Fines as Often as Required by Law,” (GAO-07-584, August 2007).