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BY THE U.S. GENERAL ACCOUNTING OFFICE

## Report To The Honorable Elizabeth H. Dole The Secretary Of Transportation

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### Stronger Enforcement Would Help Improve Motor Carrier Safety

The Department of Transportation's Bureau of Motor Carrier Safety enforces laws and regulations governing the safe operation of interstate motor carriers and hazardous materials shippers. The carriers and shippers maintain records of safety activities such as maintenance and vehicle inspections. The Bureau audits (reviews) these records for compliance with federal regulations. In fiscal year 1984 the Bureau's 94 full-time safety investigator staff were responsible for auditing about 200,000 carriers, about 18,000 shippers, and 4 million commercial vehicles.

GAO found many differences in how (1) safety investigators selected carriers for audit, developed ratings, and identified actions to take on the basis of audit results and (2) enforcement cases were processed. The differences raise questions about the Bureau's management of the enforcement program. GAO noted that the Bureau field staff needed specific guidance on the selecting, rating, and enforcement process and that Bureau headquarters did not have direct control over its field staff, preventing adequate oversight of field activities.

GAO is making a number of recommendations to improve the implementation and oversight of the Bureau's enforcement program. The Department generally agreed with GAO's suggestions.



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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY,  
AND ECONOMIC DEVELOPMENT  
DIVISION

B-219554

The Honorable Elizabeth H. Dole  
The Secretary of Transportation

Dear Madam Secretary:

This report discusses motor carrier safety enforcement issues that need attention. The report contains recommendations to you on pages 20, 33, 44, and 53.

As you know, 31 U.S.C. 720 requires the head of a federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Government Affairs and the House Committee on Government Operations no later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

In addition to the Committees mentioned above, we are sending copies of this report to your Assistant Secretary for Administration and the Administrator, Federal Highway Administration.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "J. Dexter Peach".

J. Dexter Peach  
Director

Enclosure



D I G E S T

The safe operation of commercial motor vehicles on the nation's highways has long been a concern of the federal government.

Within the Department of Transportation's Federal Highway Administration (FHWA), the Bureau of Motor Carrier Safety administers the national program governing the operations of motor carriers (individuals or companies that transport goods by commercial vehicle) and hazardous materials shippers.

The Bureau staff's workload is enormous, with 200,000 motor carriers and 4 million interstate commercial vehicles. In fiscal year 1984 the average ratios of motor carrier companies and commercial vehicles to the Bureau's 94 full-time field investigators were about 2,100 to 1 and 42,500 to 1, respectively. In addition, the Bureau staff was responsible for about 18,000 shippers. (See pp. 2 to 4.)

Because of national concern about highway safety, GAO reviewed the Bureau's motor carrier safety enforcement program. GAO did not attempt to evaluate the quality of the individual safety audits (reviews) that the Bureau's investigators perform. Rather, GAO directed its review at the extent of the Bureau's oversight over such activities as how carriers and shippers are selected for safety audits, how carriers and shippers are rated in terms of their compliance with federal safety regulations, what action is taken on the basis of safety audits, and how the civil penalty (fine) process is carried out. In addition, GAO assessed the Bureau's implementation of a new program that provides grants for state safety enforcement activities. (See pp. 7 to 9.)

THE CARRIER/SHIPPER AUDIT  
SELECTION PROCESS

Each carrier/shipper must maintain records of its safety activities, such as driver qualifications, maintenance, accident reports, and vehicle inspections. The Bureau's safety investigators then "audit" the records of selected carriers/shippers for compliance with federal regulations.

To enable it to focus its small staff of investigators on carriers posing the greatest safety risk, the Bureau rank-orders carriers for audit using criteria such as high accident rates, results of prior safety audits, and whether hazardous materials are being carried. In fiscal year 1984 about 31,600 carriers were prioritized on the basis of their meeting Bureau criteria. (See pp. 11 and 12.)

The Bureau provided safety investigators with a priority list, but did not specifically require them to follow it. It allowed deviations in unusual circumstances and also allowed investigators to investigate third-party complaints and accidents associated with carriers not appearing on the priority list. As a result the four Bureau regional field offices GAO visited used the list differently and relied on varying regional criteria and judgment in deciding which carriers to audit. For example, the Albany, New York, Regional Office instructed its safety investigators to select carriers for audit from the list but left specific selection to the discretion of the investigators. The Homewood, Illinois, Regional Office, on the other hand, developed its own list broken into high- and secondary-priority lists. Investigators were instructed to audit all the carriers on the high-priority list and as many on the secondary-priority list as possible.

Since Bureau headquarters does not oversee the selection of carriers from the list, it was not aware of potential selection differences nor could it identify selection process improvements. (See pp. 11 and 15.)

The Bureau has not established a priority list for shippers similar to that used for motor carriers. Instead, investigators select shippers on the basis of their personal

judgments. The Bureau does not know whether shippers with the worst safety records are being audited. (See p. 18.)

#### CARRIER/SHIPPER RATINGS

After completing the selection and audit, the investigators prepare a recommended safety rating, showing overall carrier/shipper compliance with the regulations as either satisfactory, conditional, or unsatisfactory. The investigators also rate the carrier's compliance with individual parts of the regulations (driver qualifications, vehicle maintenance, etc.) as either acceptable, marginal, or unacceptable. Bureau guidance does not provide criteria to help the investigators decide between rating categories. (See pp. 22 and 23.)

While GAO did not attempt to verify the accuracy of the ratings, its analysis of safety audit records from fiscal years 1981 and 1982 indicated a wide variance among the overall ratings recommended by the 25 investigators included in GAO's review.

One safety investigator, who conducted 41 safety audits during the 2-year period, recommended an overall satisfactory rating 98 percent of the time and never recommended an unsatisfactory rating. In contrast, another investigator's recommended ratings were satisfactory 12 percent of the time, conditional 72 percent of the time, and unsatisfactory 16 percent of the time.

Although in both cases the safety investigators might have prepared the ratings in accordance with the general criteria, the differences GAO noted indicate that the investigators may need more specific criteria. Bureau management has not looked into the reasons for the differences. (See pp. 24 and 25.)

Differences also occurred between a carrier's overall rating and its compliance ratings for individual parts of the regulations. For example, on two carrier audits an investigator rated compliance with all the individual regulations examined as acceptable but recommended an overall satisfactory rating for

one carrier and an overall conditional rating for the other carrier. (See pp. 25 and 26.)

#### ACTIONS TAKEN AS A RESULT OF AUDITS

Bureau policy is to encourage voluntary compliance with the federal regulations, rather than initiate formal enforcement measures that could result in fines. Bureau instructions, however, do not always specify the criteria that should be considered in determining what course of action should be taken or how enforcement actions should be handled. As a result, the action the safety investigator chooses is judgmental, and enforcement actions are not uniform.

GAO found wide differences in the actions taken by individual investigators. For example, three investigators always initiated an enforcement case against carriers with unsatisfactory ratings, and one investigator always scheduled a reaudit for carriers with such a rating. Another investigator initiated an enforcement case 40 percent of the time and took no action 60 percent of the time in cases of overall unsatisfactory ratings. (See pp. 26 to 28.)

#### HANDLING OF ENFORCEMENT CASES

The Bureau's process for fining carriers did not ensure uniform handling or adequate documentation of enforcement cases. (See p. 35.)

--The regional and field offices did not comply with FHWA's processing standards for ensuring timely handling of enforcement cases. For example, although the standard for referring a civil case to a regional office counsel is 90 days, the standard was exceeded from 20 to 84 percent of the time in the four regions GAO reviewed, ranging from a low of 8 days to a high of 1,045 days per case. GAO did not attempt to assess the impact of these processing times. (See pp. 36 to 39.)

--The Bureau does not have criteria for ensuring that assessed fines are consistent with the severity of the violations found. Fines were reduced, for example, because the

carrier/shipper promised to take corrective action or because the carrier's/shipper's attorney claimed his or her client was experiencing financial difficulty. (See pp. 40 and 41.)

--FHWA does not adequately document justifications for assessed fines. (See pp. 41 and 42.)

#### BUREAU ORGANIZATIONAL OVERSIGHT

The ways in which carriers are selected for audit, safety ratings are developed, action is determined on the basis of audit results, and enforcement cases are handled result in part from the Bureau's management of its regional field staff of safety investigators. A 1981 Department of Transportation report concluded that the Bureau headquarters staff did not have commensurate line authority over field personnel charged with the program's implementation and success. Thus a reasonable level of uniformity in the program was difficult to attain.

Bureau officials in headquarters told GAO that the organizational structure did not permit them to direct or supervise the safety investigators' activities and affected their ability to direct inspection resources and activities. (See p. 15.)

In March 1985 FHWA elevated the motor carrier function to an associate administrator level. At the same time FHWA established direct line authority that enabled the Bureau to direct and supervise its safety investigators' activities. (See p. 6.)

The Administrator, FHWA, stated during an April 1985 hearing that because the motor carrier safety program was not operating as effectively as it must, he would develop both a comprehensive program and a review process to achieve uniform, nationwide administration of Bureau rules and regulations. (See p. 6.)

#### NEW STATE GRANT PROGRAM FOR ENFORCEMENT

The Surface Transportation Assistance Act of 1982 established the Motor Carrier Safety Assistance Program to make grants to states to (1) develop or implement programs to enforce federal safety regulations or (2) develop and enforce state regulations that are compatible

with federal motor carrier safety regulations.

The program was authorized for 5 years, with maximum funding of \$150 million for fiscal years 1984 to 1988. Funds appropriated for fiscal years 1984 and 1985 were \$8 million and \$14 million, respectively. FHWA has made progress in getting the program operational by informing states of the program, reviewing applications, and awarding grants to 46 states. However, the program does not include some elements of sound management that should be part of a comprehensive federal program. (See p. 46.)

The Bureau has not

- developed clear, specific goals and objectives,
- defined the federal and state roles and responsibilities,
- established program information needs,
- developed a program-monitoring mechanism, and
- selected methods for evaluating program performance.

Without these elements the Bureau cannot evaluate program performance or be ensured that the overall program intent is being achieved and that resources are being utilized most effectively. (See pp. 49 to 53.)

#### RECOMMENDATIONS TO THE SECRETARY OF TRANSPORTATION

GAO recommends that the Secretary of Transportation direct the Administrator, FHWA, to take action to

- better ensure that carriers and shippers posing the greatest safety risk are selected for audit (see p. 20),
- develop and provide criteria and guidance for preparing safety ratings and determining the appropriate enforcement actions (see p. 33),

- monitor the processing of enforcement cases, and develop and provide to regional attorneys (1) criteria for assessing fines and (2) requirements for documenting justifications for assessments (see p. 44), and
- establish the program elements needed to develop the federal grant program for motor carrier safety (see p. 53).

#### AGENCY COMMENT AND GAO EVALUATION

The Department in commenting on GAO's draft report said that it generally agrees with GAO's findings and recommendations. It added that some of the material in the report, however, has been overtaken by events such as actions initiated in March 1985 by FHWA to implement recommendations of a motor carrier safety review task force. Some of these events will, according to the Department, carry out the intent of many of GAO's recommendations. In GAO's opinion, the proper implementation of the Department's actions has the potential to correct the problems discussed in the report. (See pp. 20, 33, 45 and 53.)



C o n t e n t s

		<u>Page</u>
DIGEST		i
CHAPTER		
1	INTRODUCTION	1
	Federal regulations	1
	Bureau responsibilities	2
	Bureau organization and operations	3
	Organizational changes	6
	Objective, scope, and methodology	7
2	MOTOR CARRIER AND SHIPPER SELECTION PROCESS-- PROGRESS AND PROBLEMS	10
	Use of Bureau selection list for carrier audits varied	11
	Organizational structure impeded Bureau monitoring of selection list use	15
	Selection list use may preclude reaudits of known offenders	15
	Safety rating upgrading reduces a carrier's chance of being reaudited	17
	Need exists for shipper selection list	18
	Conclusions	19
	Recommendations to the Secretary of Transportation	20
	Agency comments and our evaluation	20
3	BETTER CRITERIA AND GUIDANCE NEEDED TO PREPARE RATINGS, DETERMINE ASSESSMENT ACTIONS, AND PERFORM COMPLAINT INVESTIGATIONS	22
	Investigators need better guidance for preparing ratings	22
	Criteria needed for determining what actions to take on the basis of audit results	26
	Complaints concerning carrier or shipper safety should be consistently investigated	31
	Conclusions	32
	Recommendations to the Secretary of Transportation	33
	Agency comments and our evaluation	33
4	THE BUREAU NEEDS TO ENSURE THAT ENFORCEMENT CASES ARE UNIFORMLY TREATED	35
	The enforcement process	35

	<u>Page</u>
FHWA does not monitor its processing standards to ensure compliance	36
FHWA needs more explicit criteria and complete documentation for setting civil penalties	40
Conclusions	43
Recommendations to the Secretary of Transportation	44
Agency comments and our evaluation	45
5 THE STATE GRANT PROGRAM CAN MATERIALLY ASSIST MOTOR CARRIER SAFETY ENFORCEMENT	46
The Bureau's limited resources	46
State enforcement activities	48
The grant program has the potential to improve motor carrier safety	48
Conclusions	52
Recommendation to the Secretary of Transportation	53
Agency comments and our evaluation	53

#### APPENDIX

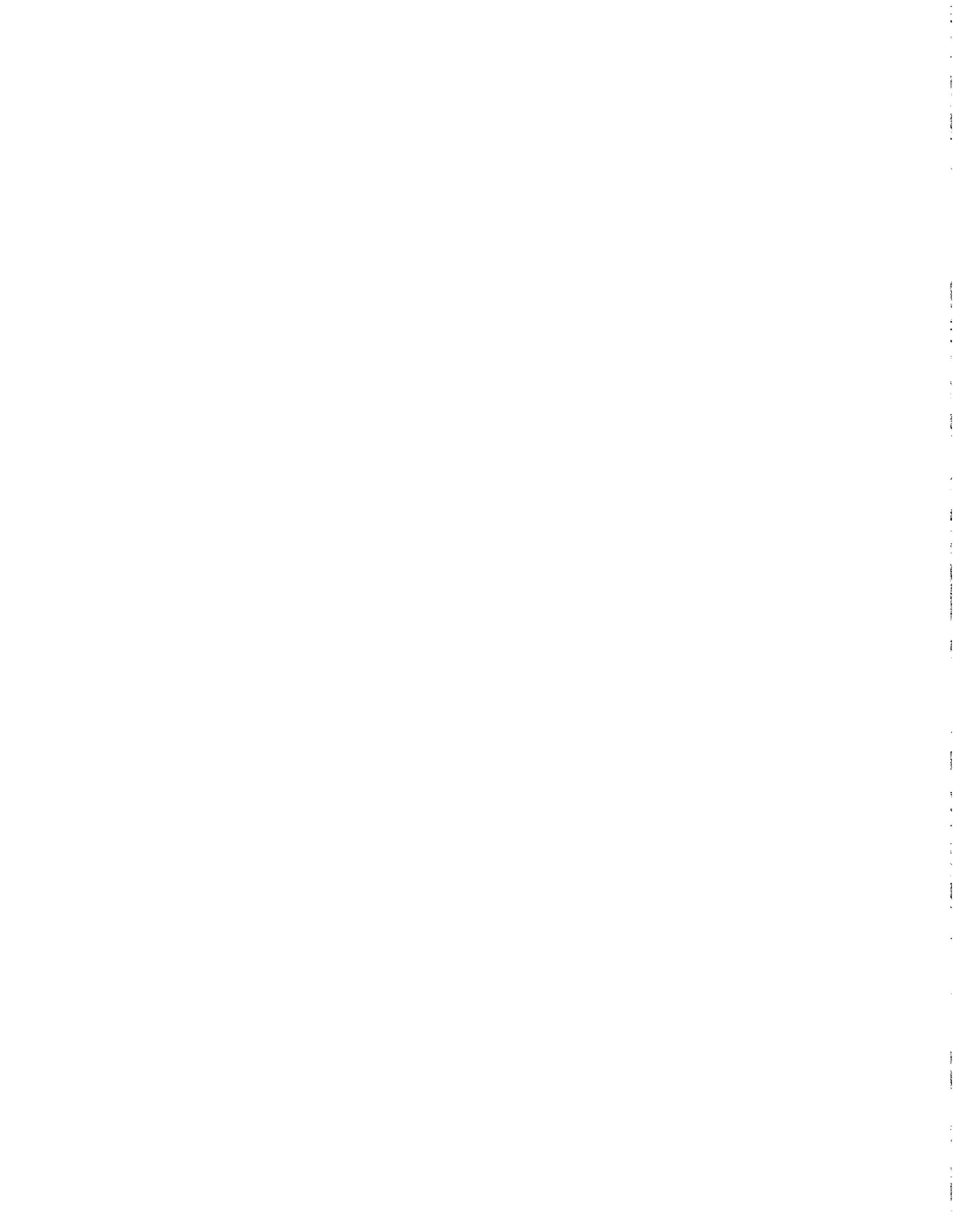
I	Schedule of Recommended Ratings During Fiscal Years 1981 and 1982	55
II	Letter dated July 11, 1985, from the Department of Transportation	56

#### ILLUSTRATIONS

3.1	Recommended overall ratings	29
4.1	Civil motor carrier safety cases exceeding FHWA standards	37
4.2	Criminal motor carrier safety cases exceeding FHWA standards	38
4.3	Civil hazardous materials cases exceeding FHWA standards	38
4.4	Total processing times (calendar days)	39
4.5	Final civil assessments (regional averages)	42

ABBREVIATIONS

BMCS	Bureau of Motor Carrier Safety
DOT	Department of Transportation
FHWA	Federal Highway Administration
GAO	General Accounting Office
ICC	Interstate Commerce Commission



## CHAPTER 1

### INTRODUCTION

Traffic accidents are one of the leading causes of death and injury in the United States today and are expected to remain a serious national health and socio-economic problem throughout the 1980's. The Department of Transportation's (DOT) National Highway Traffic Safety Administration estimates that motor vehicle fatalities will continue their long-term upward trend for the remainder of the 1980's and reach a level of 50,000 by 1990. Fatalities projected for passengers of multi-vehicle collisions, involving large trucks weighing over 10,000 pounds, are expected to increase 27 percent to 6,800 in 1990, as compared to 5,369 in 1980.

### FEDERAL REGULATIONS

The safe operation of commercial motor vehicles on our nation's highways has been regulated by the federal government since the Motor Carrier Act of 1935, as amended, which authorized the Interstate Commerce Commission (ICC) to establish and enforce safety standards for motor carrier operations.

In 1966 the Department of Transportation Act transferred ICC's responsibility for motor carrier safety and its corresponding personnel to the Department of Transportation. The Department assigned this responsibility to the newly created Bureau of Motor Carrier Safety within the Federal Highway Administration (FHWA) in April 1967. The Bureau's primary responsibility is to reduce commercial vehicle accidents and related fatalities, injuries, and property losses through a national regulatory and enforcement program. The Bureau's responsibilities were expanded by the Hazardous Materials Transportation Act of 1974, which authorized the Secretary of Transportation to regulate shippers of hazardous materials.

Recent legislation--Motor Carrier Act of 1980 (94 Stat. 793) and Surface Transportation Assistance Act of 1982 (96 Stat. 2097)--made it easier for new trucking firms to enter the industry and generally required states to allow larger and heavier trucks on their roads.

The Department's Safety Administration reports that study results to date on the safety impact of operating these larger trucks have been inconclusive, but the increased number and use of large trucks may have a detrimental effect on highway safety. As additional heavier trucks operate along with other traffic, the risk of accidents involving these trucks increases.<sup>1</sup>

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<sup>1</sup>"Traffic Safety Trends and Forecasts," National Highway Traffic Safety Administration, Oct. 1983.

Prior to the Surface Transportation Assistance Act of 1982, states regulated the size of trucks operating within their borders on certain highways. The act provides minimum trailer lengths and prohibits the states from setting overall tractor-semitrailer lengths.

#### BUREAU RESPONSIBILITIES

The Bureau, through the FHWA, administers a national regulatory and enforcement program whereby it is responsible for establishing regulations and enforcing laws and regulations governing the operation of interstate commerce motor carriers. The Bureau has established regulations governing the safe operation of motor carriers. The Federal Motor Carrier Safety Regulations (49 C.F.R. parts 390-396) governing the safe interstate transport of passengers and property establish requirements for driver qualifications, maintenance records to ensure safety vehicular operation, accident reports to identify unsafe carriers, and hours-of-service records to ensure that carriers do not have drivers operate vehicles beyond the hours established as safe. Specifically, the regulations on driver qualifications provide, among other things, that a person must be (1) at least 21 years old, (2) able to read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals, to respond to official inquiries, and to make entries on reports and records, (3) able by reason of experience, training, or both, to safely operate the type of motor vehicle driven, (4) able by reason of experience, training, or both, to determine whether the cargo being transported has been properly located, distributed, and secured in or on the motor vehicle driven, (5) physically qualified to drive a motor vehicle, and (6) the possessor of a currently valid motor vehicle operator's license or permit.

In addition to enforcing the motor carrier safety regulations, the Bureau's safety responsibilities also include

- enforcing regulations for the safe labeling, marking, packaging, and transporting of hazardous materials (Hazardous Materials Transportation Act, 49 U.S.C. 1801);
- setting limits of liability and establishing evidence of financial responsibility for motor carriers of hazardous substances involved in intrastate or interstate commerce (Motor Carrier Act of 1980, Public Law 96-296);
- consulting and coordinating with the Environmental Protection Agency about regulations pertaining to the transportation of hazardous wastes (Resource Conservation and Recovery Act, 42 U.S.C. 6923).

Further, the Surface Transportation Assistance Act (Public Law 97-424) authorized the Department to provide grants to states to

develop and implement safety programs over commercial carriers. Through this effort, referred to as the Motor Carrier Safety Assistance Program, states will be reimbursed for up to 80 percent of expenses incurred when enforcing safety regulations under the program. The Congress appropriated \$8 and \$14 million respectively for the initial 2 years of the program, fiscal years 1984 and 1985. Authorized funding for fiscal years 1986, 1987, and 1988 is \$30 million, \$40 million, and \$50 million, respectively.

While the Bureau regulates the operation of interstate carriers, intrastate carriers are regulated by state authorities. The only exception is that the Bureau's authority extends to intrastate carriers of hazardous materials. However, the Department informed us this authority is exercised only with respect to interstate carriers that operate intrastate and intrastate carriers that transport hazardous waste, hazardous substances, or cryogenics. Many states, to varying degrees, have motor carrier safety enforcement programs and perform roadside inspections; others perform few or no inspections. In contrast, in fiscal year 1984 California spent approximately \$17 million on vehicle inspection, enforcement, and motor carrier safety. Under the Motor Carrier Safety Assistance Program, if a state decides to participate, resources will be available for it to establish safety programs to enforce the federal safety regulations or compatible state regulations.

#### BUREAU ORGANIZATION AND OPERATIONS

The Bureau of Motor Carrier Safety, under the Director, is comprised of a headquarters staff in Washington, D.C., and various field units in each of the nine FHWA regional offices and in each state. The headquarters staff have responsibility for overall administration of the motor carrier safety program. Within each FHWA regional office, the Bureau has an Office of Motor Carrier Safety. Each regional Office of Motor Carrier Safety has a director that supervises the activities of an accident investigation specialist and a hazardous materials specialist. Their duties include investigating accidents and hazardous materials incidences. Regional office officials are responsible for providing technical guidance and direction to Bureau safety investigators throughout the country and for ensuring that Bureau policy and procedures are carried out.

Safety investigators are located in FHWA state offices. The staff of Bureau safety investigators in each state is under the immediate supervision of a senior-level Bureau investigator referred to as the officer-in-charge.

The Bureau staff's workload is enormous, encompassing approximately 200,000 motor carriers and 4 million interstate commercial vehicles. As of May 4, 1984, Bureau staff (including clerical employees) totaled 236--45 in headquarters and 191 in the field offices. In fiscal year 1984 the average ratios of motor

carrier companies and commercial vehicles to the Bureau's 94 full-time safety investigators were about 2,100 to 1 and 42,500 to 1, respectively. In fiscal year 1975, the average ratios of motor carriers and commercial vehicles to investigators were 1,300 to 1 and 32,500 to 1, respectively. The ratios have increased not only because of an increase in motor carriers but also, more importantly, because of a decrease in full-time safety investigators from 123 to 94.

#### Safety management audits

In carrying out its enforcement responsibility, the Bureau conducts safety management audits of carriers and hazardous materials shippers.<sup>2</sup> These audits are performed at the carrier's/shipper's principal place of business and at the terminals where goods and hazardous materials are shipped or received.

Bureau regulations require each carrier/shipper to maintain records of its safety management activities. For example, carrier/shipper files document driver qualifications to operate a motor vehicle, maintenance and inspection records, accident reports, hours-of-service records, as well as interviews with carrier personnel and vehicle inspections to determine compliance with federal safety regulations.

The Bureau investigators then review, or audit, these records to determine that they have been maintained, are current, and meet the Bureau's safety regulations. While these audits emphasize the review of the carrier's/shipper's records, the safety investigators may also inspect the motor vehicles for items such as tires and brakes and the carrier's/shipper's physical facility for other safety aspects. If the carrier also ships hazardous materials, then an audit may also include a review of the practices and records concerning the safe packaging and labeling of hazardous materials. At the completion of the audit, the investigator holds an exit interview with the carrier/shipper management to point out areas needing improvement and to recommend solutions. A written record of the audits is required. Depending on the size of the carrier and what the records disclose, an audit can take from less than a day to a few days to complete.

The Bureau field staff generally select carriers for safety management audits using a priority list of high-risk carriers developed by headquarters. Although the list is the primary method for identifying motor carriers for safety audits, they are also selected on the basis of complaints by third parties or, in some cases, recent carrier accidents.

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<sup>2</sup>Carriers or hazardous materials shippers are hereinafter referred to as carriers/shippers.

In contrast, shippers are selected for audit using a headquarters printout of known shippers. Since the printout does not list shippers in any priority order, safety investigators select the shippers for audit on the basis of personal knowledge and experience.

The Bureau performed audits of 8,909 carriers during fiscal year 1983, or about 4.5 percent of the approximate 200,000 carriers recorded by the Bureau. The Bureau also performed 2,758 shipper audits during fiscal year 1983.

At the conclusion of the audit, the investigator (1) evaluates and rates the carrier's/shipper's compliance with individual parts of the safety regulations and (2) recommends to the Bureau an overall rating for the carrier/shipper. The Bureau headquarters staff assigns carriers a final overall safety rating on the basis of (1) the carrier's level of compliance relative to other carriers of the same class and size, (2) its consideration of the investigator's observations and opinions on the extent of compliance, and (3) the carrier's cooperation during the audit and receptivity to the audit results. According to the Bureau, while the carrier's attitude is taken into consideration, much more weight is given to a carrier's history of vehicle inspections and accidents, as well as improvement, or lack of it, over previous audits. A Bureau official told us the Bureau does not assign shippers an overall safety rating because information on the safety performance of shippers is not requested by organizations such as ICC.

On the basis of the safety investigators' assessments of compliance and judgment, the investigators may choose from a number of courses of action depending on the audit results, ranging from taking no action when none is warranted to initiating an enforcement case that could result a fine.

If infractions are disclosed during the audit, the Bureau tries to obtain voluntary compliance. The Bureau considers its enforcement activities to be remedial, not punitive, and attempts to influence the carriers' or shippers' safety practices instead of fining them. The Bureau's policy is to use fines and penalties only where it finds patterns of serious violations.

Although they are not its primary activity, the Bureau also conducts roadside inspections in cooperation with state enforcement authorities. The Bureau conducted about 26,000 such inspections in fiscal year 1983. These inspections are performed at state weighing stations, roadside rest areas, ports of entry into the United States, and other public places. When conducting these road checks, Bureau investigators check driver requirements and all parts and accessories necessary for the safe operation of the vehicle. If a vehicle is found to be "imminently hazardous," or likely to result in an accident or breakdown, it can be declared "out of service" on the spot and cannot be driven until the violation is corrected. Carriers may also be fined for

violations found during these inspections; however, the Bureau's policy of obtaining voluntary compliance also applies to roadside inspections.

#### ORGANIZATIONAL CHANGES

In a September 1981 report<sup>3</sup> on the Bureau, the Office of Management Planning within the Department's Office of the Secretary said that the Bureau's organizational structure appeared to inhibit effective delivery and control of certain motor carrier safety activities. The report stated that although the headquarters Bureau staff had responsibility for overall administration of the motor carrier safety program, they could not direct the activities of field personnel charged with the program's implementation and success.

Concerns about the management and effectiveness of the Bureau's motor carrier safety enforcement program were also addressed in a November 1983 report entitled Improving the Effectiveness Of The Bureau Of Motor Carrier Safety And Its Enforcement Of Hazardous Materials Regulations by the Subcommittee on Government Activities and Transportation, House Committee on Government Operations. In a September 1984 hearing before the Subcommittee, and in an April 1985 joint hearing before this Subcommittee and the Subcommittee on Telecommunications, Consumer Protection, and Finance, House Committee on Energy and Commerce, we discussed problems with the Bureau's management of its safety enforcement program, including differing practices of field safety investigators and indicated that the lack of direct line authority between Bureau headquarters and field staff may have contributed, in part, to the problems.

FHWA created a task force in October 1984 to review the organizational structure of the motor carrier safety program within FHWA. The task force issued a report in January 1985 with recommendations in two primary categories--organizational structure and program management. As a result of the work of the task force and the recognition on the part of the FHWA Administrator that the Bureau was not operating as effectively as it should and a restructuring was needed, the Administrator on March 22, 1985, among other actions, established an associate administrator position for motor carriers that elevated the motor carrier safety function to a comparable executive level within FHWA as other program functions. The change has the new associate administrator reporting directly to the Administrator. Previously, the Bureau was under the Associate Administrator for Safety, Traffic Engineering, and Motor Carriers. At the same time the Administrator established direct line authority between Bureau headquarters and field staff--a relationship that previously did

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<sup>3</sup>U.S. Department of Transportation, Office of Management Planning, "Bureau of Motor Carrier Safety Study," Sept. 1981.

not exist. In addition, according to the Administrator, particular emphasis will be placed on management of the Motor Carrier Safety Program. This will include a comprehensive monitoring and review process with this process serving as an important tool in achieving nationwide uniformity and consistency in the Bureau's administration of rules and regulations.

These changes, especially the establishing of direct line authority between Bureau headquarters and field staff and the monitoring and review process, if implemented, provide the Bureau an opportunity to more effectively address the problems that were found during our review and are detailed in this report.

#### OBJECTIVE, SCOPE, AND METHODOLOGY

Our overall objective was to evaluate how well the Bureau carried out its management responsibilities for the safety enforcement program. Specifically, we reviewed the management and oversight of the procedures used to select carriers and shippers for audit, the results of audits, and the actions taken on the basis of audit results. To do this we examined the Bureau's safety audit process and enforcement process at the headquarters, region, and state level. We also determined what actions, if any, the agency had taken in the areas of selecting carriers for audit and processing enforcement cases that were discussed, among other issues, in our report The Federal Motor Carrier Safety Program: Not Yet Achieving What The Congress Wanted. (CED-77-62, May 16, 1977). We also reviewed the Bureau's implementation of the newly established motor carrier safety grant program.

We did not attempt to evaluate the quality of the individual safety audits that the Bureau's safety investigators performed. Rather, we addressed the issue of whether the Bureau had performed adequate oversight of the processes and procedures used to carry out its safety enforcement mission and oversee the activities of its field staff. We also did not review the basis or need for the Bureau's safety regulations, and have used the regulations as criteria for our analysis.

We discussed the Bureau's program policy and procedures, organizational structure, and the Motor Carrier Safety Assistance Program with Department and FHWA officials involved in the Bureau's program both at headquarters and in the field.

At Bureau headquarters we discussed Bureau policy and procedures with the Director and Deputy Director and with officials of the Operations Division responsible for developing the examined policies and procedures and related documents.

We conducted our fieldwork at four of FHWA's nine regional offices located in Baltimore, Maryland; Albany, New York; Homewood, Illinois; and Fort Worth, Texas. These offices were selected judgmentally but with the purpose of reviewing activities at locations across the country. At each location we interviewed

regional staff and reviewed pertinent program records to determine how carriers and shippers are selected for audit, how safety ratings are established, and what actions are taken as a result of audits.

We also visited FHWA Division offices in 13 states-- Pennsylvania, Delaware, Maryland, Virginia, West Virginia, New Jersey, New York, Michigan, Ohio, Illinois, Texas, Arkansas, and Oklahoma--states within the geographic boundaries of the FHWA regional offices we reviewed. We also reviewed pertinent records related to their highway safety programs. These states were also selected judgmentally based on where Bureau inspectors were located and their availability for interviews. At each location we interviewed all the Bureau's officers-in-charge, selected Bureau safety investigators, and FHWA division administrators.

In addition to discussing individual duties and responsibilities with the above regional and division personnel, we obtained their views of the Bureau's resource utilization, organizational structure, information support systems, and enforcement process and procedures.

Thirty-five of the 94 full-time safety investigators were assigned in the 13 states covered by our review. We selected 25 for our detailed review of their activities, including case files. We selected a mix of investigators on the basis of the type and volume of audits performed and the number of enforcement cases initiated in order to obtain the full range of views and operating practices of Bureau investigators. We examined records of 1,600 audits these investigators performed for fiscal years 1981 and 1982. We chose this time period in order to be able to assess the complete process from selection of carriers for audit to the results of any enforcement actions and to assess whether follow up audits were initiated. We also examined records on scheduled reaudits covering a 3-year period--fiscal years 1981 through 1983. During our examinations, we determined the number and types of audits being performed, identified the actions being taken as a result of the audits, and determined whether scheduled reaudits were being conducted as planned. This was done by inspecting files at FHWA regional and state offices and interviewing FHWA and Bureau field personnel.

In evaluating the enforcement process, we examined the 485 completed enforcement cases for the period from October 1, 1980, to October 31, 1983, in the four regions visited, where sufficient records were readily available. We examined the enforcement process for consistency in applying enforcement criteria, timeliness, and ultimate outcome and discussed these issues with Bureau officials and FHWA regional counsels involved in preparing, reviewing, and processing the enforcement cases.

In the 13 states we visited, we interviewed responsible state officials to determine state efforts in motor carrier safety enforcement, cooperation/coordination with Bureau personnel, and

the extent of participation in the Motor Carrier Safety Assistance Program.

We talked to officials of trucking organizations--the Private Truck Council of America, Inc., American Trucking Associations, and International Brotherhood of Teamsters--to obtain their views and opinions on the Bureau's operations as well as proposed and ongoing changes to improve Bureau operations. We also met with staff of the Department's Office of Inspector General to consider its work at the Bureau.

Except for not reviewing the reliability of the agency's safety management information system used to develop the Bureau's priority selection list for carriers, we made the review in accordance with generally accepted government auditing standards. The audit work was done during the period from June 1983 to May 1984.

## CHAPTER 2

### MOTOR CARRIER AND SHIPPER SELECTION

#### PROCESS--PROGRESS AND PROBLEMS

The Bureau of Motor Carrier Safety, beginning with fiscal year 1983, instituted an audit selection process to enable it to focus its limited audit resources on carriers posing the greatest safety risk. Using several criteria for prioritizing carriers, the Bureau annually puts together and distributes a list to field offices that safety investigators are to use when they select carriers to audit.

The Bureau does not specifically require safety investigators to follow the list's priorities. It also allows investigators to investigate third-party complaints and accidents associated with carriers even if they did not appear on the priority list. In addition, use of the selection list is not uniform because the Bureau has not established criteria for selecting carriers from the list. The following variances can prevent the auditing of carriers with the worst safety records.

--Regional criteria for carrier selection vary extensively.

--Headquarters' monitoring of regional/field office implementation of the list does not exist.

Also, until recently, the Bureau upgraded carrier safety ratings without compliance verification--a practice that also may have permitted carriers with poorer safety records to be audited after others with better records.

As a result, the four regional field offices we visited

--used the selection list differently and

--relied on varying regional criteria and judgment in deciding which carriers to audit.

By using different methods of selecting motor carriers from the priority list for audit, some regional offices may not be selecting those carriers most warranting attention, while others may have identified improved means of selection. Since Bureau headquarters does not oversee the implementation of the list, it was not aware of potential selection differences nor could it identify selection process improvements.

One selection criteria the Bureau uses is the carrier's prior safety rating. We noted that the Bureau was upgrading ratings because of promised improvement, without verifying that the carrier made the improvements. Thus these carriers had less opportunity to be selected for audit.

The Bureau also does not prioritize for audit the shippers of hazardous materials. However, the Bureau maintains a shipper list, which the safety investigators use to select shippers for audit on the basis of their personal judgment. The Bureau does not oversee this selection process and thus does not know whether the shippers with the worst safety records are being audited.

USE OF BUREAU SELECTION LIST  
FOR CARRIER AUDITS VARIED

In 1982 the Bureau instituted a ranking system for selecting carriers to audit with provisions for occasional deviation from the system should circumstances justify it. The headquarters selection list gave priority to those motor carriers most warranting safety audits. Carriers were ranked on the Bureau's selection list on the basis of criteria such as the following:

- accident rates,
- less-than-satisfactory safety audits,
- hazardous materials carriers, and
- lack of previous audits.

However, Bureau field offices we visited used the headquarters selection list differently and relied on varying regional criteria in deciding which carriers to audit. As a result, safety investigators may not always select carriers with the highest priority for audit.

We recognize that investigators should retain some judgment in selecting carriers for audit. However, the Bureau should know how investigators use the selection list. Bureau officials told us they did not monitor use of the selection list, in part, because Bureau headquarters did not have direct line authority over its field staff.

Selection list development

In our 1977 report on federal motor carrier safety,<sup>1</sup> we pointed out that safety investigators relied on their memories to track carrier violations and accidents and to determine which motor carriers to audit. As a result, investigators did not always select the carriers with the worst safety records for audit. We recommended the agency develop an information system to identify carriers most in need of safety audits. In 1981 the

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<sup>1</sup>The Federal Motor Carrier Safety Program: Not Yet Achieving What The Congress Wanted (CED 77-62, May 16, 1977).

National Transportation Safety Board made a similar recommendation.<sup>2</sup>

The national criteria developed by Bureau headquarters for both fiscal years 1983 and 1984 are, for the most part, identical except that in fiscal year 1984 the Bureau weighted each factor rather than considering them equally. Factors given more weight were prior unsatisfactory safety ratings and accident ratios above the national average. Other factors such as conditional safety ratings and carriers operating seven or more motor vehicles with no reported accidents in the last 5 years were not weighted as heavily. Of the approximate 200,000 known carriers in April 1984, about 31,600 were on the fiscal year 1984 priority list on the basis of their meeting one or more of the criteria and on the weight of those criteria.

The Bureau guidelines intended but did not specifically require safety investigators to follow the list's priorities. While the Bureau permits regional offices to select carriers not on the list under certain circumstances, deviations are considered unusual circumstances and must be explained. Circumstances justifying deviation from the selection list include

- requests from state and other agencies for assistance with motor carriers' noncompliance with the Federal Motor Carrier Safety Regulations or hazardous materials regulations;
- complaints from third parties concerning carriers not complying with safety requirements, requiring an immediate investigation of a motor carrier's operations according to Bureau policy; and
- investigations of other carriers as long as the data demonstrates the need for focusing limited inspection resources.

#### Regional office use of selection lists varies

In June 1982 FHWA sent the Bureau's selection list and guidance on using the list to FHWA regional administrators. Though use was not required, the intention was that regional offices were to use the list to schedule safety management audits. However, FHWA did instruct regional offices to consider the impact of travel funds in selecting carriers for audit.

Use of the selection list varied significantly among the regions we visited because the regional offices had issued their

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<sup>2</sup>National Transportation Safety Board "Safety Effectiveness Evaluation," Feb. 19, 1981.

own varying guidance on use of the list. However, Bureau officials told us that it had not monitored implementation of the list by regional and field offices to determine if (1) any problems were being experienced in using the list, (2) the list was being followed as intended, or (3) improvements for using the list had been identified.

The following shows how safety investigators used the list and highlights the major differences in regional guidance.

#### Region 1--Albany, New York

In March 1982 Region 1 instructed its safety investigators to select all motor carriers for audit for fiscal year 1983 from the list except as Bureau guidance permitted deviations. However, they were not instructed to select carriers on the basis of their ranking on the list, e.g., by the number of criteria met. Thus, safety investigators had great freedom in selecting motor carriers for audit. No additional regional guidance was provided. A Region 1 official advised us that although regional guidance did not require prior approval to deviate from the list, the officers-in-charge in the two states we visited required investigators to obtain oral approval prior to auditing carriers not on the selection list.

Our review of audits performed by four safety investigators in Region 1 revealed that 98 of the 165 carriers audited met at least one of the established criteria. However, 135 of 159 listed carriers meeting two or more of the established criteria were not audited. The reasons for not auditing more of these carriers were not evident from the documentation available.

#### Region 3--Baltimore, Maryland

Region 3 weighted the fiscal year 1983 criteria on the basis of its determination of the safety significance of each criteria and then numerically ranked motor carriers meeting two or more criteria. For example, carriers meeting two or more established criteria were numbered sequentially, with number one being the carrier in most apparent need of an audit. Safety investigators were instructed to audit carriers as close to the numerical sequence as practical. Any deviation from the list as permitted by Bureau guidance could be made only with prior approval of the Bureau's Regional Director, Office of Motor Carrier Safety.

Implementation of the selection list on the 370 audits conducted by the 9 safety investigators in Region 3 varied. For example, four investigators audited all carriers who met two or more criteria regardless of their numerical rank. Four other investigators audited all carriers who met three or more criteria but did not audit all carriers meeting just two criteria. The ninth investigator had audit responsibility for two carriers that met three criteria but audited only one and did not audit all carriers meeting two criteria, therefore, not following the numerical ranking.

We were unable to determine readily from available records whether these investigators had authorization to deviate from the priority list. We were also not able to determine from investigators the reasons for not consistently implementing the region's priority list because of the large volume of cases involved and the fact that the cases had often occurred 2 to 3 years before.

#### Region 5--Homewood, Illinois

A Region 5 official advised us that using the fiscal year 1983 selection list received from headquarters, Region 5 weighted the established criteria and then calculated point values for each carrier. Carriers with a weighted value of five or more points were placed on an "A" list, and those with a weighted value of four points or less were placed on a "B" list.

Region 5 instructed its safety investigators to complete all of the A list and as much of the B list as possible in fiscal year 1983. Deviations from the A and B lists were permitted on the basis of Bureau guidance. For fiscal year 1984 the Region did not develop A and B lists because Bureau headquarters weighted the criteria prior to forwarding the selection list to regional offices.

We found that in Michigan investigators completed both the A and B lists--a total of 140 carriers. Ohio investigators completed all of the A list except for one carrier--121 carriers--and 11 of the 57 carriers on the B list. We could not determine the extent to which Illinois investigators completed the lists because the officer-in-charge had resigned and left no records, including the selection lists or records indicating which of the carriers on the list had been audited.

#### Region 6--Fort Worth, Texas

For fiscal year 1983 Region 6 instructed its safety investigators that, except for complaints, they were to pick carriers exclusively from the selection list. The region provided further instructions requiring safety investigators to audit all carriers meeting three or more criteria but priority was to be given to (1) hazardous materials carriers and (2) carriers that had been the subject of an enforcement case but had not been audited since September 1, 1980.

Four of the five investigators, whose records we reviewed in Region 6, audited, with only one exception, all 28 carriers on the selection list meeting three or more criteria. However, the fifth investigator did not audit 17 of the 26 carriers meeting 3 or more criteria. The investigator stated that he could not audit these carriers because of higher priority work. He was, however, able to perform 15 audits of carriers meeting 1 or 2 criteria. This investigator gave, as instructed, a higher priority to hazardous

materials carriers and shippers than to carriers on the selection list. He performed 38 audits of hazardous materials carriers or shippers.

ORGANIZATIONAL STRUCTURE IMPEDED  
BUREAU MONITORING OF SELECTION  
LIST USE

The Bureau's organizational structure contributed to the variances we have noted. As discussed in chapter one, no direct line relationship existed between Bureau headquarters and field staff.

The Office of Management Planning within the Department's Office of the Secretary in a September 1981 report on the Bureau said that the Bureau's organizational structure appeared to inhibit effective delivery and control of certain motor carrier safety activities. The report said that although the headquarters staff was responsible for overall administration of the motor carrier safety program, it did not have commensurate line authority over field personnel charged with the program's implementation and success. The report further stated that the procedure was cumbersome and time consuming because of the organizational structure, which made it difficult to attain a reasonable level of uniformity in the program.

The report both concluded that the organizational structure diminished control over program activities and identified options for possible organizational changes to address the findings. The organizational structure did not change until the Administrator, FHWA, made an organizational change on March 22, 1985, that gave Bureau headquarters direct line authority over Bureau field staff.

Bureau officials in headquarters told us that the prior organizational structure had not permitted them to direct, supervise, or monitor the safety investigators' activities; therefore, it affected their ability to direct inspection resources and activities.

SELECTION LIST USE MAY PRECLUDE  
REAUDITS OF KNOWN OFFENDERS

Carriers/shippers found not in compliance with the federal safety regulations may warrant being reaudited to ensure that violations identified during previous audits have been corrected, thereby improving safety. Reauditing may or may not be an appropriate action, depending on the circumstances of each case, but the Bureau has not provided guidance for when reaudits should be conducted. The varying use of the selection list can result in some problem carriers/shippers, such as those with previously identified violations, not being reaudited. Without this follow-up, the Bureau has no assurance that carriers/shippers with identified problems have corrected areas of noncompliance with safety regulations.

When safety investigators discover that a carrier/shipper is violating the regulations, they can initiate an enforcement case leading to the assessment of fines and penalties. However, the Bureau does not uniformly follow up on carriers/shippers known to be in noncompliance with safety regulations and against which completed enforcement actions have occurred.

#### Scheduled reaudits

An investigator scheduling a carrier for a reaudit does not necessarily ensure that it will appear on future selection lists. In order to be placed on the list, carriers would have to meet one or more of the national/regional selection criteria. Being scheduled for a reaudit is not one of the criteria that determine whether a carrier appears on the audit selection list.

Some investigators we reviewed were no longer scheduling or performing reaudits. Two investigators in Region 6 were not performing reaudits because the carrier did not appear on the selection list or because higher priority work did not leave them enough time to perform reaudits. In Region 3, one investigator had stopped scheduling reaudits because he followed the selection list. In Region 5, investigators were told by regional officials not to schedule reaudits because that limited the number of selection list carriers they could visit.

Our review of reaudits brought out the importance of performing reaudits on carriers/shippers. Between October 1, 1980, and October 31, 1983, the investigators we reviewed performed a total of 108 reaudits. On 61 of the reaudits, or 56 percent, the safety investigator recommended that a conditional or unsatisfactory rating be assigned; therefore, the reaudits showed that these carriers/shippers did not fully correct the deficiencies noted, as evidenced by their receiving conditional or unsatisfactory ratings. In 19 of these instances, the safety investigators initiated enforcement cases.

#### Completed enforcement cases

Carriers/shippers with completed enforcement cases are known to have been in noncompliance because they had been audited and fined. Without a reaudit the Bureau cannot ensure that compliance has improved even though a fine may have been imposed and collected.

We found that 54 of the 182 carriers/shippers with enforcement cases concluded during our review had been reaudited following the conclusion of the enforcement case. The official safety ratings assigned by headquarters as a result of the reaudits showed that 39 percent of these carriers/shippers had not satisfactorily complied with the regulations, receiving another conditional or unsatisfactory rating.

Bureau headquarters and regions, with one exception, do not have a policy or criteria for reauditing carriers/shippers once a case is concluded. The exception is Region 1, which requires that motor carrier safety cases negotiated by FHWA Regional Counsel be reaudited within 120 days to verify compliance with the settlement agreement. As a result officers-in-charge and investigators--other than in Region 1--are relying on the selection list for follow-up on these carriers. For example, one safety investigator told us that he would reaudit a carrier with a concluded enforcement case only if it appeared on the selection list. Thus, a carrier may not have its compliance or lack of compliance verified because having had an enforcement case against it does not affect whether it appears on the list. In another instance, one officer-in-charge required investigators in the state to audit all carriers on the selection list with an unsatisfactory rating, reasoning that carriers with concluded enforcement cases should have received initially an unsatisfactory rating. However, 32 of the 134 enforcement cases we examined in the four regions we reviewed for fiscal years 1981 and 1982 resulted from recommended ratings that were either satisfactory or conditional. Further, the Bureau could have subsequently changed the carrier's unsatisfactory rating as discussed below.

SAFETY RATING UPGRADING REDUCES  
A CARRIER'S CHANCE OF BEING REAUDITED

Bureau headquarters officials evaluate the results of each safety management audit and assign an official safety rating (satisfactory, conditional, or unsatisfactory). This rating is entered into the Bureau's management information system, which is used to generate the headquarters selection list in subsequent years. For purposes of the selection list, carriers receiving an unsatisfactory rating are assigned the highest weighted value, five points. They receive one point for a conditional rating and no points for a satisfactory rating. However, headquarters officials may improve a carrier's official safety rating (e.g., from conditional to satisfactory), without the benefit of another safety audit to verify if carrier compliance has improved. Because weighted ratings help determine carrier placement on the selection list, a carrier receiving a changed, more favorable rating may not appear as high on the list as it otherwise might have.

Bureau headquarters has changed carriers' ratings when a carrier with a conditional or unsatisfactory rating wrote a letter to the Bureau explaining what it had done to correct identified violations and improve compliance. Headquarters has also changed ratings when the ICC inquired about a carrier's safety rating in relation to renewing or expanding the carrier's licensing authority.

Prior to changing the rating, headquarters officials will contact cognizant Bureau field personnel; and, if they have not heard any adverse information about the carrier since the previous

safety audit, Bureau headquarters may improve the rating. Prior to August 1984 headquarters did not require that the safety investigator conduct a safety audit to verify that the carrier's compliance had actually improved. Bureau headquarters officials reported to us that they improve ratings because maintaining an unfavorable rating on a carrier for 2 or 3 years, on the basis of that carrier's previous noncompliance, is unfair especially if its compliance improves.

Unless it meets some other selection criteria, a carrier with an unsatisfactory rating that has been changed to conditional or with a conditional rating changed to satisfactory, will either appear so low on the selection list that its chances of being audited are greatly reduced or will not appear on the selection list at all. As a result, the Bureau investigators may not be reauditing those carriers posing the greatest safety risks.

In an effort to determine the frequency with which the Bureau changed carrier ratings, we interviewed the three Bureau staff members responsible for processing requests for rating changes and reviewed headquarters files of safety ratings that they maintained. However, it was not practical to review all rating files to determine which ones the Bureau had changed. We identified one staff member who maintained this information in a personal logbook. The data showed that 34 carriers had had ratings improved in four of the nine FHWA regions. Thirteen of these ratings were changed from unsatisfactory to conditional, 20 from conditional to satisfactory, and 1 from unsatisfactory to satisfactory.

In August 1984, subsequent to our audit of the files, the Bureau instituted an administrative procedure that required that no ratings could be changed without a reinvestigation of the areas of noncompliance. The investigator now must revisit the carrier's principal office to verify that those violations no longer exist. The Chief of the Bureau's Operations Division told us this procedure was not in writing but was orally communicated to the headquarters staff performing this function.

#### NEED EXISTS FOR SHIPPER SELECTION LIST

As of fiscal year 1984, Bureau headquarters had not compiled a selection list for shippers. According to the Chief of the Bureau's Operations Division, the Bureau originally intended to have two selection lists--one for carriers and one for shippers. However, the Chief, Operations Division, told us that because the Bureau had emphasized hazardous materials audits over the previous 2 to 3 years, safety investigators had performed as many shipper audits as time permitted. The Operations Division Chief said that as long as hazardous materials continues to be an emphasis area, the Bureau does not plan to develop a shipper selection list.

The Bureau's Motor Carrier Safety Training Text states that the criteria used for selecting shippers for audit will be developed by the regions, using the following guidelines:

- has reason to believe noncompliance with the hazardous materials regulations exists,
- to determine corrective action taken after a previous audit,
- to evaluate a shipper who has not been previously audited, and
- has not been audited in 5 years, taking into account the type of materials shipped and degree of hazard presented.

In addition to the above guidelines, in a briefing held in June 1983, Region 3 instructed its safety investigators to emphasize hazardous waste shippers.

Shippers are selected for audit in one of two ways. Some shippers are selected because they are also carriers. If the carrier is selected for audit from the selection list, then a shipper audit may also be performed at the same time. For shippers that are not also carriers, however, safety investigators and officers-in-charge identify shippers from a list of shippers developed from input provided by states and information obtained during carrier audits. They select shippers from the list based on their personal knowledge and experience. This method of identifying shippers for audit is not as systematic as that done for carriers.

#### CONCLUSIONS

Through development of the carrier selection list, the Bureau has made significant progress in identifying motor carriers most in need of a safety audit. However, the Bureau's progress in identifying carriers most in need of an audit may have been diminished by the lack of uniform implementation by regional offices and safety investigators. To some extent, this can be attributed to an organizational structure that limited Bureau headquarters' control over its regional motor carrier safety personnel and the lack of monitoring regional implementation of those requirements, including monitoring the safety enforcement activities of safety investigators. Although the headquarters staff was responsible for overall administration of the motor carrier safety program, it did not until recently, as discussed in chapter 1, have direct line authority over field personnel charged with carrying out the program.

Selection list use prevented safety investigators, in some cases, from reauditing carriers/shippers with previously identified violations against which enforcement actions have not

been taken, as well as those against which enforcement actions have been completed. The Bureau should follow up on carriers/shippers with identified violations in order to ensure that the safety regulations have in fact been met.

Because the Bureau does not prioritize shippers for audit, safety investigators may be auditing many shippers unnecessarily, while higher risk shippers are not being audited. Given the Bureau's limited resources, the Bureau needs to prioritize not only carriers for audit but also shippers.

The differences in how the safety audit activities are being performed does not necessarily mean that the activities are not being carried out properly. However, the differences raise questions about the extent of the Bureau's oversight of the motor carrier safety enforcement program, including its guidance to the field staff.

#### RECOMMENDATIONS TO THE SECRETARY OF TRANSPORTATION

To better ensure that carriers and shippers posing the greatest safety risk are selected for audit, we recommend that the Secretary of Transportation direct the Administrator, FHWA, to

- have the Bureau of Motor Carrier Safety directly monitor regional and field office implementation of the motor carrier selection list to ensure that carriers most in need of audit are being audited;
- develop and provide guidance to the investigators that clearly stipulates what conditions need to exist for determining when carriers and shippers not in compliance with the federal safety regulations, including those with completed enforcement cases, should be reaudited; and
- develop a prioritized selection list for shippers and implement its use.

#### AGENCY COMMENTS AND OUR EVALUATION

In a letter dated July 11, 1985 (see app. II), DOT's Director, Office of Management Planning, provided the Department's comments. The Department said that FHWA had underway efforts to design and implement program planning, review, and evaluation procedures for the motor carrier safety program. These procedures would define the rules of the Bureau of Motor Carrier Safety's Washington Headquarters and the motor carrier safety field offices, including program planning and evaluation at the Washington Headquarters level and uniform and consistent program execution at the field level. An effective monitoring mechanism will be developed and implemented to ensure that goals are

achieved at both the Washington Headquarters and field levels. In addition, the Department stated that FHWA was in the process of developing guidance and procedures that should meet the intent of the recommendation dealing with reauditing.

In our opinion, the proposed actions would address the problems outlined in this report, and if properly implemented, correct the problems.

Regarding our recommendation for developing and implementing a prioritized shipper selection list, the Department said that FHWA would consider the feasibility of developing shipper selection criteria. We believe that the Department needs to proceed beyond the consideration of such a list and develop and use a priority list. As we pointed out on pages 18 and 19, shippers are generally selected on the basis of the safety investigator's personal knowledge and experience, rather than a systematic identification process as is done for carriers.

In our draft report, we recommended that procedures be established that would permit changes to a carrier's safety rating only when verified evidence of improved compliance with the safety regulations exists. The Department commented that such requirements were enacted in August 1984. While we have not verified that the procedure had been changed, the action as planned, and if properly carried out as the Department has stated, responds fully to our recommendation. Accordingly, we have deleted this recommendation.

### CHAPTER 3

#### BETTER CRITERIA AND GUIDANCE NEEDED TO PREPARE RATINGS, DETERMINE ASSESSMENT ACTIONS, AND PERFORM COMPLAINT INVESTIGATIONS

After completing the audits, the investigators prepare a motor carrier safety rating showing the carrier's overall compliance with the regulations as either satisfactory, conditional, or unsatisfactory. The investigators also rate the carrier's compliance with individual parts of the regulations (driver qualifications, vehicle maintenance, etc.) as either acceptable, marginal, or unacceptable. However, Bureau guidance does not provide specific criteria to help the investigators decide among rating categories.

Although we did not attempt to verify the accuracy of the ratings, our analysis showed that the records of safety audits performed during fiscal years 1981 and 1982 by the 25 investigators indicated a wide variance among the overall ratings recommended by individual investigators.

Even though the safety investigators might have prepared the ratings in accordance with the general criteria, the differences we noted may indicate that the investigators may need more specific criteria. Bureau management has not looked into the reasons for the differences.

The Bureau encourages its investigators, in deciding what action to take after finding a violation, to work with the carrier to achieve compliance with the federal regulations. If warranted, investigators can initiate enforcement measures that could result in a carrier paying a fine. Headquarters instructions, however, do not specify the criteria that investigators should consider in determining what course of action to take. As a result, the action the safety investigator chooses is judgmental, with wide differences that we noted, in the actions taken by individual investigators.

All third party, written complaints about motor carriers not complying with specific regulations must be investigated ahead of carriers on the priority list. However, because guidance did not specify how complaints are to be handled, differences existed among the four regions we visited in terms of how complaints were investigated and what was investigated.

#### INVESTIGATORS NEED BETTER GUIDANCE FOR PREPARING RATINGS

Bureau guidance on overall and individual ratings does not provide criteria to help investigators choose between rating categories. Because specific criteria and guidance for preparing

ratings were not available, investigators, to a large extent, used individual judgment. As a result wide variances were found (1) among the overall safety ratings recommended by the 25 investigators included in our review and (2) between the ratings for carrier/shipper compliance with individual parts of the safety regulations and the recommended overall rating for the carrier/shipper. Two of the regions we visited recognized this problem and issued additional guidance to bring about more uniformity in safety investigator determinations of carrier/shipper compliance for their respective regions.

Variances exist in overall safety ratings recommended by investigators

Headquarters instructions require safety investigators to rate overall compliance with federal safety regulations and recommend a rating on the basis of audit results. The rating reflects the investigators' opinion of the carriers'/shippers' compliance creating the basis for the investigator's decision on a future course of action. Future courses of action range from taking no action to initiating an enforcement case that could result in a carrier/shipper being fined. The recommended rating is also one factor considered by headquarters officials when assigning an "official" safety rating to a carrier. The Bureau uses this rating (1) to respond to ICC inquiries on the safety record of carriers seeking extended or expanded operating authority and (2) as one of the criteria for prioritizing carriers for future safety audits.

In rating a carrier's overall compliance with federal safety regulations, headquarters' instructions provide that the safety investigator must choose a rating that, in the investigator's opinion, most appropriately describes its overall safety compliance. Rating choices are defined as follows:

- Satisfactory--Records indicate no evidence of substantial noncompliance with safety requirements.
- Conditional--Records indicate that the carrier was recently determined to have been in noncompliance with one or more safety requirements but has had a satisfactory safety record in the past, or has agreed to take steps to bring its operation into compliance.
- Unsatisfactory--Records indicate evidence of substantial noncompliance with safety requirements.

Headquarters, however, does not further define what level of noncompliance is considered "substantial" for purposes of recommending a satisfactory or unsatisfactory safety rating.

Safety investigators are also to consider the following factors in determining the recommended rating:

- violations discovered during audits and roadside inspections in the last 5 years,
- the carrier's improvement or lack of improvement over the previous 5 years,
- federal violations involving falsification of required safety records, and
- federal violations involving failure to submit required reports or records.

Our review of the 1,600 carrier/shipper safety audits performed during fiscal years 1981 and 1982 by the 25 selected investigators revealed that a wide variance existed among the overall safety ratings recommended by individual investigators. Safety investigators assigned satisfactory ratings from 12 to 98 percent of the time, conditional ratings from 2 to 72 percent of the time, and unsatisfactory ratings from 0 to 30 percent of the time. Two investigators never recommended an unsatisfactory rating in the 70 audits they performed.

The following table demonstrates the variance found with eight investigators. These 8 are used as examples to demonstrate the variances and are typical of the 25 selected investigators. A complete listing for all safety investigators reviewed is presented in appendix I.

<u>Investigator</u>	<u>Satisfactory</u>	<u>Conditional</u>	<u>Unsatisfactory</u>	<u>Total audits</u>
	----- (Percent) -----			
#1	98	2	0	41
#2	90	6	4	49
#3	72	19	9	86
#4	40	55	5	62
#5	39	39	23	39
#6	34	51	15	47
#7	14	56	30	43
#8	12	72	16	108

While in each audit, the safety investigators might have prepared the ratings in accordance with the general criteria, the differences we noted may indicate that the investigators need more

specific criteria. Bureau management has not looked into the reasons for the differences.

Differences between overall ratings  
and ratings for individual parts  
of the regulations

Safety investigators evaluate and rate carrier/shipper compliance with individual parts of the federal safety regulations such as driver qualifications to operate motor vehicles and maintenance records, to ensure the vehicle is safe to operate. Bureau instructions require that safety investigators choose a rating that, in the investigator's opinion, is most appropriate. The safety investigator can choose between acceptable, marginal, unacceptable, or not evaluated. Headquarters, however, does not define the conditions under which each rating should be assigned.<sup>1</sup> In addition, Bureau headquarters has not provided guidance on how ratings for individual regulations should affect the overall rating. For example, the safety investigator must use personal judgment in deciding how many parts of the federal regulations must be rated unacceptable before the investigator recommends an overall unsatisfactory rating.

We reviewed the 1,600 safety audits performed by the 25 selected investigations during fiscal years 1981 and 1982. Because of the volume of audits, it was not practical to examine the ratings in detail and aggregate the information. However, we analyzed the information in enough detail to determine that safety investigators recommended overall ratings that were not consistent with the ratings assigned to individual regulations. For example, we found differences (1) between the same investigator's overall rating of carriers/shippers with similar safety violations and (2) with different investigators' overall recommended ratings for carriers/shippers with similar violations. In comparing ratings assigned two different carriers/shippers by the same investigator, we found instances where the investigator

--rated compliance with individual parts of the regulations the same but recommended different overall ratings and

--rated compliance with individual parts of the regulations differently but recommended the same overall ratings.

On some audits, this investigator rated compliance with individual parts of the regulations exactly the same but gave the carriers different overall ratings. For example, on two carrier audits, the investigator rated compliance with all the individual regulations examined as acceptable, but he recommended an overall

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<sup>1</sup>The Bureau has provided national averages of violations of each safety regulation to the regions.

satisfactory rating for one carrier and an overall conditional rating for the other carrier.

Regional efforts to achieve uniformity and consistency in ratings

Two of the regions we visited have recognized the need to ensure consistency in ratings. In fiscal year 1983, they issued additional regional explanation and guidance to produce more uniformity and consistency in rating carriers/shippers. Region 5 provided to all of its field personnel the methods and procedures Bureau headquarters uses to determine the official carrier rating. With this fuller explanation, the Region hoped to achieve more uniformity and consistency in its ratings. Region 1, on the other hand, developed its own criteria for ratings as follows:

--When rating two or more regulations marginal and others acceptable, assign an overall conditional rating.

--When rating two or more regulations unacceptable, assign an overall unsatisfactory rating.

At the time of our review, not enough data existed to assess whether more uniformity and consistency occurred in Region 5. However, information developed by Region 1 officials indicated improved uniformity and consistency was being achieved as a result of its new guidance.

CRITERIA NEEDED FOR DETERMINING WHAT ACTIONS TO TAKE ON THE BASIS OF AUDIT RESULTS

At the conclusion of an audit, the investigator must decide the necessary future course of action in dealing with the carrier/shipper. On the basis of audit results, the investigator chooses from a number of alternative courses of action, ranging from no action to initiating an enforcement case. Safety investigators, for the most part, rely on their individual judgment to determine what to do following a safety audit and do not forward their decisions to headquarters for review.

Headquarters' instructions do not specify what conditions or factors should be used to determine what action is appropriate. In addition, the regional offices included in our review have provided little additional guidance for aiding investigators in determining the appropriate action. Further, headquarters, in part because of the organizational problems discussed in chapters 1 and 2, does not monitor investigator selection of courses of action. As a result, we found wide variances in actions chosen by the investigators we reviewed.

Guidance on courses of action

Bureau policy is to encourage voluntary compliance with federal safety regulations. If voluntary compliance cannot be

obtained, the Bureau can initiate an enforcement action for violation of these regulations that could result in fines. In addition, safety investigators may choose from a number of actions available to them for remedial, rather than punitive, purposes. The following are the types of remedial and punitive actions safety investigators may take.

--Continue administrative handling--This means no specific future action is planned on the basis of current information.

--Letter requesting compliance--This is a letter from the Bureau to the carrier requesting a written response stating what plans are being taken to correct violations found during the audit.

--Reaudit--A reaudit may be planned in 3, 6, 9, or 12 months.

--Case report without evidence--This action is used to close out special investigations when the investigation does not warrant further enforcement action.

--Case report with evidence--This action is taken to initiate an enforcement action to fine the carrier/shipper.

"Continue administrative handling," according to the Motor Carrier Safety Training Text, means that the carrier/shipper is in substantial compliance and a reaudit within the next year will not be performed unless additional violations are brought to the Bureau's attention.

Headquarters has not developed criteria or guidance detailing when a "letter requesting compliance" is to be used, and only Region 1 of the regions we visited had developed its own criteria. Region 1 criteria state that a safety investigator must ask for a "letter requesting compliance" for carriers'/shippers' recommended ratings of conditional or unsatisfactory. Officers-in-charge and safety investigators told us that they choose this course of action when they need to document carrier/shipper knowledge of the violations by having them put the planned corrective actions in writing. According to the Bureau, if the same violations are identified on future audits, the letter is then used to show the carrier/shipper knowingly and willfully violated the federal safety regulations.

No headquarters policy or guidance exists that describes the circumstances for scheduling a carrier/shipper for a reaudit. However, two of the four regions provided some guidance. Region 5 investigators have been directed not to schedule reaudits because reaudits limit the number of selection list carriers investigators can audit. Region 3, on the other hand, issued an August 1983

policy memorandum that states that if a safety investigator rates a carrier/shipper unsatisfactory, the investigator must either initiate an enforcement case or schedule the carrier/shipper for a reaudit.

Bureau headquarters has not provided guidance to safety investigators to assist them in determining when to prepare a "case report without evidence." Accordingly, when this action is used to close out special investigations, investigators must rely on their own judgment; and therefore, differences can occur.

Bureau headquarters has provided criteria for safety investigators to consider prior to initiating a "case report with evidence," that is an enforcement case. Factors to be considered include the carrier's/shipper's past performance, evidence that it knowingly and willfully violated the regulations, evidence that the violation reveals a pattern of indifference or disregard for the regulations, and the investigator's belief that compliance cannot be obtained without preparing an enforcement case. While such headquarters' guidance provides criteria for initiating enforcement cases, it does not provide guidance for determining when compliance cannot be achieved without an enforcement case but rather relies on the investigator's judgment to determine this. Further, the guidance does not define what constitutes a pattern of carrier/shipper indifference or disregard. Therefore, different judgments by the investigators can occur.

Variances exist between  
recommended ratings and  
planned courses of action

We could not identify a uniform pattern between investigators' recommended safety ratings and the courses of action that they chose. Overall, a wide variance existed in the actions taken by the 25 investigators included in our review. Some actions, in our opinion, differed from the investigators' assessment of carrier/shipper compliance as indicated by their recommended overall rating. For example, three investigators always initiated an enforcement case against carriers/shippers with unsatisfactory ratings, one investigator never initiated an enforcement case but always scheduled a reaudit with unsatisfactory ratings, and another investigator initiated an enforcement case 40 percent of the time and took no action 60 percent of the time with overall unsatisfactory ratings.

On the other hand, 12 investigators initiated enforcement cases against carriers/shippers with conditional ratings from 2 to 25 percent of the time. Two investigators, on two different audits, gave satisfactory ratings yet initiated an enforcement case.

The following table shows how often each action was chosen by the 25 investigators reviewed.

Table 3.1: Recommended Overall Ratings

<u>Type of action</u>	<u>Satisfactory</u>		<u>Conditional</u>		<u>Unsatisfactory</u>	
	<u>Number of cases</u>	<u>Percent of total</u>	<u>Number of cases</u>	<u>Percent of total</u>	<u>Number of cases</u>	<u>Percent of total</u>
Administrative handling (no future action planned)	581	82	294	46	20	10
Letter requesting compliance	72	10	147	23	24	12
Reaudit	14	2	95	15	48	24
Case report without evidence	41	6	71	11	9	4
Case report with evidence (enforcement case)	<u>2</u>	<u>0</u>	<u>30</u>	<u>5</u>	<u>102</u>	<u>50</u>
Total	<u>710</u>	100	<u>637</u>	100	<u>203</u>	100

Our analysis of safety investigator use of the five available courses of action also revealed variances in their selection.

1. Administrative handling

When they recommended a satisfactory rating, the safety investigators used administrative handling 82 percent of the time. However, investigators also used this course of action for 46 percent of their recommended conditional ratings and 10 percent of their unsatisfactory ratings. The table below shows the variance found among the 25 investigators included in our review.

<u>Recommended rating</u>	<u>Number of investigators selecting administrative handling</u>	<u>Percentage of time this option was chosen</u>
Satisfactory	25	25 to 100
Conditional	21	7 to 87
Unsatisfactory	7	6 to 60

## 2. Letter requesting compliance

Use of this action also varied significantly among safety investigators. The following table demonstrates the variance found.

<u>Recommended rating</u>	<u>Number of investigators selecting letter requesting compliance</u>	<u>Percentage of time this option was chosen</u>
Satisfactory	15	2 to 75
Conditional	15	2 to 87
Unsatisfactory	9	6 to 50

## 3. Reaudit

We also found variance in the use of this action among the investigators reviewed as shown in the table below.

<u>Recommended rating</u>	<u>Number of investigators selecting reaudit</u>	<u>Percentage of time this option was chosen</u>
Satisfactory	6	2 to 16
Conditional	19	3 to 100
Unsatisfactory	14	7 to 100

## 4. Case report without evidence

A case report without evidence is prepared primarily for administrative purposes to document that the investigation was performed and no violations found or for closeout of the investigation when violations have been discovered but corrective action is obtained through some other means. Investigators generally prepare a case report without evidence to close out (1) accident investigations, (2) special assignments performed at the request of regional officials, and (3) complaint investigations.

For the 25 investigators included in our review, 82 percent of the case reports without evidence were prepared to close out complaint investigations, some of which resulted in less than satisfactory ratings. For example, six investigators chose this action for nine audits with recommended unsatisfactory ratings. The table below shows the results of our analysis.

<u>Recommended rating</u>	<u>Number of investigators selecting case report without evidence</u>	<u>Percentage of time this option was chosen</u>
Satisfactory	16	2 to 29
Conditional	13	3 to 65
Unsatisfactory	6	5 to 20

#### 5. Case report with evidence

Investigator selection of this course of action also varied. For example, 11 of the 25 investigators initiated enforcement cases against carriers/shippers with recommended unsatisfactory ratings less than 50 percent of the time, although 3 investigators always initiated an enforcement case with this recommended rating. Two other investigators initiated enforcement cases when they recommended a satisfactory rating. The table below shows the range for the 25 investigators reviewed.

<u>Recommended rating</u>	<u>Number of investigators selecting case report with evidence</u>	<u>Percentage of time this option was chosen</u>
Satisfactory	2	3 to 4
Conditional	12	2 to 25
Unsatisfactory	22	25 to 100

While the above examples show that variances in investigator rating practices did occur, we were not able to determine the reasons for the decisions made by the investigators except that they told us that they relied, to a large extent, on their judgment. Further, to expect them to cite their reasons on cases that had occurred 2 to 3 years before was not practical.

#### COMPLAINTS CONCERNING CARRIER OR SHIPPER SAFETY SHOULD BE CONSISTENTLY INVESTIGATED

The Bureau also conducts investigations to determine the validity of complaints received from the public concerning carrier/shipper compliance with the federal safety regulations. Headquarters guidance provides that all written complaints are to be investigated. It does not, however, discuss the manner in

which complaints are to be investigated and what is to be included in the investigation. As a result, complaints, which nationwide numbered approximately 800 in calendar year 1984, were being handled differently among the regions we reviewed.

We identified two major differences in how complaints were handled. The first concerns whether complaints were to be investigated by (1) phone or mail or (2) in person. In three of the four regions we visited, safety investigators visited the carrier's/shipper's place of business to investigate a complaint. However, Region 5 guidelines allowed investigators to write a letter to carrier/shipper management to request a response to the alleged allegation. If the investigator believed the written response was satisfactory, then the complaint could be closed without visiting the carrier's/shipper's place of business. According to the officers-in-charge in this region, some complaints had been handled and closed out by phone or mail. However, in one state in Region 5, one officer-in-charge stopped this practice because he did not believe it was an appropriate way to investigate a complaint.

We brought this matter to the Bureau's attention when we testified before the Subcommittee on Government Activities and Transportation, House Committee on Government Operations, on September 6, 1984. As a result Bureau headquarters advised Region 5 that complaint investigations must be conducted in person by visiting the carrier/shipper and that the Bureau's procedures would be revised to clarify this matter. On September 7, 1984, Region 5 rescinded its practice of permitting complaints to be investigated by letter.

The second area of difference concerns the extent to which an investigator audits as a result of complaints. Investigators can take different types of action in responding to a complaint. One is that the investigator investigates only those areas contained in the complaint. Another is that since the investigator is at the carrier/shipper terminal, a complete safety audit should be performed. A third is that initially only the areas of the complaint should be examined; and if the safety investigator finds problems in the areas complained about, a full audit will be performed. Officers-in-charge and division office officials in the states we visited advised us that all three approaches were being followed in varying degrees.

Subsequent to our audit on May 1, 1985, the Bureau changed its Motor Carrier Safety Training Text to provide specific guidance covering how to conduct complaint investigations. Since our audit was complete, we were not able to evaluate the training text's implementation.

## CONCLUSIONS

To ensure uniform and consistent ratings and action taken on the basis of ratings, the Bureau needs to improve its

criteria and guidance to the regions. It also needs to develop procedures to determine whether its criteria and guidance are followed. Without the necessary criteria, guidance, and feedback, investigators will continue to rely on their individual judgment when (1) rating carrier/shipper compliance with federal safety regulations and (2) determining future courses of action based on audit results. As a result wide variances were found in both areas during our review. Since Bureau headquarters does not monitor the activities of its safety investigators, it is not fully aware of these variances.

We recognize that differences in the audit process will occur because of the differing conditions and circumstances of carrier operations. However, without clear criteria to guide the audit process, the Bureau has no assurance that the appropriate decisions are being made and the most effective enforcement actions are being taken. Further, without specific criteria by which to measure the success or failure of its safety efforts, the Bureau has no assurance that its resources are being used in the most effective and efficient manner and that its enforcement efforts ensure compliance with the federal safety regulations in a way that is consistent, fair, and equitable.

The recent organizational changes and the proposed program monitoring discussed in chapters 1 and 2 provide the opportunity to deal more effectively with these matters.

#### RECOMMENDATIONS TO THE SECRETARY OF TRANSPORTATION

We recommend that the Secretary of Transportation direct the Administrator, FHWA, to

- develop and provide criteria for safety investigators that identify specific conditions and factors to be used for rating individual parts of the regulations as well as for the overall ratings;
- develop and provide criteria for investigators that specify the conditions or factors for determining and selecting a course of action to take following a safety audit; and
- establish procedures for monitoring adherence to the above-mentioned criteria, guidance, and procedures to ensure uniform implementation by regional offices and safety investigators.

#### AGENCY COMMENTS AND OUR EVALUATION

The Department said that in regard to the recommendations concerning the development of criteria for rating conditions and factors and courses of action to take following a safety audit, FHWA plans action that will provide for the development and

issuance of such criteria. The Department also said that a safety audit training course, which will be presented in the latter part of fiscal year 1986, also will stress these points. With respect to the recommendation dealing with monitoring activities, the Department stated that FHWA, in implementing the recommendations of its motor carrier safety task force, has initiated several efforts that will accomplish the intent of our recommendation. (See p. 20 for additional discussion of FHWA's proposed monitoring activities.)

In our opinion, the Department's proposed action addresses the problems discussed in the report, and if properly implemented would correct the problems.

In our draft report, we recommended that FHWA establish and provide specific procedures to investigators for investigating third-party complaints. The Department said that FHWA has already taken action that in effect would implement the recommendation-- that a new chapter of a training text covering complaint investigations had been issued. We verified that the training text was issued in May 1985 and our review of the text showed that it provides very specific procedures for handling complaints. Accordingly, we have deleted our recommendation.

## CHAPTER 4

### THE BUREAU NEEDS TO ENSURE THAT ENFORCEMENT

#### CASES ARE UNIFORMLY TREATED

If carriers/shippers do not comply with the federal safety regulations, safety investigators can recommend initiating an enforcement case that can result in a fine. However, the Bureau's process for fining carriers/shippers does not appear to ensure uniform handling of enforcement cases. Specifically,

- Wide variances in compliance with FHWA's processing standards for ensuring timely handling of enforcement cases exist in its regional and field offices.
- The Bureau does not have criteria for ensuring that assessed fines are consistent with the severity of the violations found.
- FHWA does not adequately document justifications for assessed fines.

Because the Bureau does not monitor the regions and field office's management activities, the Bureau does not know whether its civil penalty assessments process is being administered effectively and is not able to fully evaluate the effectiveness of its own enforcement program.

The Bureau also has not developed explicit criteria for assessing fines and collects insufficient documentation to show the basis for assessed amounts. Its records did not adequately document justifications either for the assessed fines or for the reductions in those fines negotiated by FHWA attorneys and carriers/shippers.

#### THE ENFORCEMENT PROCESS

Monetary penalties can be assessed against motor carriers through either civil or criminal proceedings. When safety investigators think penalties are necessary, they collect evidence of violations and prepare case reports. Case reports and related evidence are reviewed by the Bureau's Regional Director, Office of Motor Carrier Safety, and sent to FHWA's Regional Counsel, who reviews the case report for merit and decides which, if any, violations to prosecute. Hazardous materials civil cases are forwarded directly to Bureau Headquarters after Regional Director review.

FHWA's regional counsels generally handle negotiations of claim settlements for motor carrier safety cases, and FHWA's Office of Chief Counsel generally negotiates civil cases involving violations of the hazardous materials regulations.

Criminal cases are sent to a United States Attorney for prosecution. If the attorney decides that the case has no merit, then no prosecution is undertaken. Cases with merit can be prosecuted in court or disposed of through a plea bargaining process similar to the process FHWA uses for civil cases. In either event, it is the court, and not FHWA, that has final say over the penalty.

The Motor Carrier Safety Act of 1984 was enacted on October 30, 1984, subsequent to our audit. The act makes the civil penalty process applicable to all violations of the safety regulations not just for cases involving record-keeping and reporting requirement violations. Further, the act increased the maximum penalty dollar amounts for various violations.

#### FHWA DOES NOT MONITOR ITS PROCESSING STANDARDS TO ENSURE COMPLIANCE

Our 1977 report, as well as regional counsel reviews performed by FHWA's Office of Chief Counsel between April 1977 and March 1978, revealed excessive delays in processing motor carrier safety enforcement cases. These studies attributed the delays, in part, to FHWA's not having time guidelines for processing enforcement cases. In response to these studies, FHWA issued guidance in April 1978, establishing standard processing times for various stages of the enforcement process.

Our review revealed that processing times varied widely among the regions we reviewed and frequently exceeded FHWA standards. However, neither the Bureau nor FHWA's Office of Chief Counsel monitors compliance with FHWA's processing guidance. Thus, FHWA has no assurance that its standards are being followed and that excessive delays are not occurring.

Although the Bureau is developing an automated system that will be capable of tracking enforcement cases through the process, it has experienced delays in bringing the system on line.

#### FHWA processing standards

FHWA guidelines specify time frames for both civil and criminal cases. Civil case guidelines follow:

- 90 days--from the date the safety investigator begins working on a case--for referring motor carrier safety cases to regional counsel,
- 60 days for referring hazardous materials cases to the Office of Chief Counsel,
- 30 days for Counsel to send the initial claim notice to the carrier, and
- 120 days--from the time the initial claim letter is sent--for case resolution.

FHWA has no control over criminal motor carrier safety cases once they are referred to the U.S. Attorney. FHWA, however, for this kind of case, has set standards for those stages of the enforcement process under its control. These guidelines are

--90 days for referral to regional counsel and

--30 days for regional counsel to refer the case to the U.S. Attorney.

Limited compliance with  
FHWA processing standards

To evaluate timeliness and determine compliance with FHWA standards, we analyzed data obtained on 485 enforcement cases where sufficient records were readily available--253 civil motor carrier safety cases, 108 criminal motor carrier safety cases, and 124 civil hazardous materials cases--concluded between October 1, 1980, and October 31, 1983. We found that FHWA's processing standards were often exceeded and wide variances existed among the regions. We were not able, in some instances, to obtain information on each case for every phase of the process.

FHWA processing standards are  
often exceeded

As shown below, in Region 3 all FHWA processing standards were exceeded the majority of the time; in Regions 1 and 5, delays most often occurred when transmitting the claim letter; and in Region 6, in settling the claim. The following table demonstrates the variances found.

Table 4.1: Civil Motor Carrier Safety Cases Exceeding FHWA Standards

<u>Regions</u>	<u>Number of cases</u>	<u>Refer to regional counsel</u>		<u>Transit claim letter</u>		<u>Case settlement</u>	
		<u>Range in calendar days</u>	<u>Percent exceeding 90 days</u>	<u>Range in calendar days</u>	<u>Percent exceeding 30 days</u>	<u>Range in calendar days</u>	<u>Percent exceeding 120 days</u>
1	51	7-252	20	8-400	91	15-401	24
3	35	43-535	84	7-106	56	38-789	58
5	101	15-416	33	0-385	78	0-401	14
6	66	8-402	20	1-184	11	10-328	45

Our analysis of 108 criminal motor carrier safety cases revealed delays in both steps of the process. Regions 3 and 6 experienced the most delays in not meeting the 90-day standard for referral to FHWA Regional Counsel. In Regions 1, 3, and 5,

80 percent or more of the criminal cases had not been referred to the U.S. Attorney within the 30-day standard. Region 1 experienced the longest delays--22 percent of its criminal cases remained over 100 days with Regional Counsel before they were referred to the U.S. Attorney.

Table 4.2: Criminal Motor Carrier Safety Cases Exceeding FHWA Standards

<u>Region</u>	<u>Number of cases</u>	<u>Refer to regional counsel</u>		<u>Refer to U.S. Attorney</u>	
		<u>Range in calendar days</u>	<u>Percent exceeding 90 days</u>	<u>Range in calendar days</u>	<u>Percent exceeding 30 days</u>
1	58	19-374	38	4-423	80
3	20	49-436	85	40- 66	100
5	16	42-142	21	28-116	93
6	14	12-324	53	8- 65	25

Our analysis of 124 civil hazardous materials cases revealed that delays occurred in all stages of the process, some of which were excessive. For example, 58 to 92 percent of the cases exceeded the 60-day standard for referral to the Office of Chief Counsel, with 35 to 75 percent of these cases taking longer than 100 days and 16 to 42 percent taking longer than 200 days. The following table shows the percent of cases exceeding each standard.

Table 4.3: Civil Hazardous Materials Cases Exceeding FHWA Standards

<u>Region</u>	<u>Number of cases</u>	<u>Refer to chief counsel</u>		<u>Transmit claim letter</u>		<u>Case settlement</u>	
		<u>Range in calendar days</u>	<u>Percent exceeding 60 days</u>	<u>Range in calendar days</u>	<u>Percent exceeding 30 days</u>	<u>Range in calendar days</u>	<u>Percent exceeding 120 days</u>
1	35	23-510	58	19-246	83	16-329	41
3	18	50-392	92	14- 44	50	43-169	50
5	46	49-249	85	0-268	74	17-445	20
6	25	21-506	88	12-129	86	19-935	38

Variations in processing times  
exist among FHWA regions

We examined total processing times for 253 civil motor carrier safety cases and 124 civil hazardous materials cases and found wide variations in the regions we reviewed. We also compared average total processing times for civil motor carrier safety cases to the average for civil hazardous materials cases to see if one type of case took longer than the other. However, as shown below, we found no clear trend. Instead, among the regions, we found wide variations in total processing times in both types of cases.

Table 4.4: Total Processing Times (calendar days)

Region	Civil motor carrier safety cases			Civil hazardous materials cases		
	Number of cases	Average total processing time	Range	Number of cases	Average total processing time	Range
1	51	201	8 to 636	35	296	38 to 843
3	35	404	148 to 1,045	18	307	148 to 541
5	101	211	66 to 538	46	153	101 to 787
6	66	218	56 to 507	25	311	125 to 1,219

Lack of monitoring by FHWA and  
the Bureau

The Bureau and FHWA's Office of Chief Counsel each have responsibility for processing enforcement cases for various phases of the process. However, neither the Bureau nor FHWA's Office of Chief Counsel monitors either for compliance with FHWA's processing guidance or to identify delays or problems as they occur. Until April 1983 FHWA's Office of Chief Counsel monitored processing times of Bureau enforcement cases. However, during an FHWA-wide effort to reduce duplicate internal reporting, the Office of Chief Counsel determined that similar data would be collected by the Bureau's automated enforcement information system, which was under development and, at that time, scheduled to be completed by September 30, 1983.

Although the Office of Chief Counsel agreed to maintain its enforcement case information system until the Bureau's system was in use and operating properly, the Office of Chief Counsel discontinued its system in April 1983. According to an official in the Office of Chief Counsel, the system was discontinued because it lost a secretary through a reduction-in-force and did not have the resources to maintain the system.

As of May 15, 1985, the Bureau had collected data on enforcement cases for calendar year 1982, to date; however, some of the data were incomplete in that data on processing times for various stages of the process were not available. Although the Bureau envisions that the system will be used to track enforcement cases, its only plans to date are to analyze the data and periodically distribute printouts of collected data to headquarters and regional offices. The Bureau has not yet planned for actions such as (1) how the data is to be analyzed, (2) whether periodic reporting will be required, and (3) what type of follow-up of identified problems will be required.

#### FHWA NEEDS MORE EXPLICIT CRITERIA AND COMPLETE DOCUMENTATION FOR SETTING CIVIL PENALTIES

FHWA has not established specific criteria relating penalties to the relative severity of the violations. Instead, assessments of fines are left to the individual attorney. However, attorneys differ in their judgments of the appropriate assessments, even for similar violations, and in their reactions to the arguments from carriers/shippers. Moreover, FHWA attorneys often do not adequately document their justifications for fines.

Because no criteria exist, we evaluated FHWA's penalty assessment process by (1) comparing the amount of the initial assessments to the final assessments for motor carrier safety and hazardous materials cases and (2) trying to identify the basis, if any, for the differences.

We found that initial assessments are not always made for all the violations found in the safety audit, but FHWA records do not adequately document why fines for some violations are dropped. The final negotiated assessments generally average about one half of the attorneys' initial assessment; but FHWA records, again, do not adequately document the reasons why a lower fine was accepted.

#### Criteria needed for penalty assessments

In our 1977 review and in subsequent studies performed by DOT's Inspector General, DOT's General Counsel, and the National Transportation Safety Board, the Bureau's penalty assessment process was criticized because it lacked criteria for setting initial and final assessments. These studies found inconsistencies in the penalties and little resemblance between penalties and the safety significance of the violations. As a result, the studies recommended that FHWA develop guidelines that relate fines to the severity of the violation. However, as yet neither the Bureau nor FHWA has established such guidelines.

The guidance given FHWA attorneys for assessing initial penalties and negotiating final assessments is general and

provides no basis for relating fines to the severity of the violations. FHWA regional counsels are advised only that initial and final assessments should bear a relationship to, among other factors, the "nature, circumstances, extent, and gravity of the violations committed."

FHWA regional counsels are also advised to consider such things as the carrier's/shipper's compliance record, ability to pay, and ability to continue business. Also, attorneys are to consider FHWA's treatment of similar cases. The guidance, however, does not aid FHWA attorneys in determining the relative weight to be given each factor. Penalty assessments, by necessity, are determined to a large extent by the attorneys' individual judgments. To assist attorneys in assessing initial penalties and negotiating final assessments, the guidance could be enhanced by providing more specific types of action based on the number and severity of violations. For example, fines for violations resulting in deaths, injuries, or property damage could be stated in dollar ranges. Also, the guidance could provide a range for the proposed fine in cases where one or more drivers are not properly licensed or qualified to operate a specific vehicle or transport hazardous materials. The guidance could also provide for larger fines for repeated violations of the same regulations.

FHWA should fully document its basis  
for penalty assessments

FHWA does not always keep documentation supporting assessed fines. Past studies by both the DOT Inspector General and the DOT General Counsel found that FHWA provides almost no documentation of its reasons for initial and final assessments. It also does not adequately document the carriers' challenges of initial assessments or the FHWA attorneys' disposal of these challenges.

Because the Bureau lacks exact criteria, our review was limited to comparing initial assessments to actual assessed fines and determining why actual fines varied from initial assessments.

We examined headquarters and regional office records of civil enforcement cases concluded between October 1, 1980, and October 31, 1983, for the four regions covered in our review. We reviewed records of 549 cases where sufficient records were readily available to determine initial and final amounts assessed.

To determine justifications for differences between violations found during the safety audit, the initial assessment,

and/or the final assessment, we examined files for cases initiated by 18 safety investigators.<sup>1</sup> Our analysis revealed that

- final penalty assessments generally averaged one half the initial assessments and
- FHWA records do not adequately contain justifications for these differences.

We were not able, in some instances, to obtain information on cases to make every assessment calculation.

Final assessments differed  
from initial assessments

Final assessments generally averaged one half of the initial assessment. Region 5 officials informed us that an unwritten regional policy existed to collect 50 percent of the initial claim from first-offense carriers and that less than 50 percent could be accepted for a sufficient reason--for example, when the carrier was experiencing financial difficulty. In the other three regions, no specific policy existed.

As shown below, final assessments as compared to initial assessments varied between regions.

Table 4.5: Final Civil Assessments (regional averages)

<u>Region</u>	<u>Number of cases</u>	<u>Average percent of initial claim</u>	
		<u>Motor carrier safety cases</u>	<u>Hazardous materials cases</u>
1	159	57	50
3	73	81	46
5	172	53	49
6	145	50	72

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<sup>1</sup>We did not obtain case data from the other seven safety investigators because we only performed this work only in Regions 1, 3, and 6.

### Better documentation needed justifying the basis for assessments

For each claim, FHWA guidance requires that a file be created to include a complete set of the evidence, review memoranda, litigation reports, and compromise memoranda. However, the guidance does not specify what the memoranda should contain and leaves much to the judgment of the regional counsels.

We reviewed all 549 case files in a cursory manner because the large number of cases precluded a detailed review of each file. We reviewed a limited number of case files in each of the four regions visited to focus on the documentation for assessed fines. In the case files we examined, documentation did not always exist. When it did, it often did not adequately justify the action taken--for example, reducing the fine because the carrier/shipper promised to take corrective action or because the carrier's/shipper's attorney claimed his client was experiencing financial difficulty. In 54 of the 145 cases we examined in Region 6, the justification for the amount of the negotiated fine was classified as "other." In 30 of these cases, the files contained the statement that the compromise was "in line with settlements in other similar type cases."

After reviewing the initial assessment, FHWA attorneys may decline to prosecute any or all violations found during safety audits. According to FHWA officials in the Offices of Chief Counsel and Regional Counsel, a number of acceptable reasons exist for dropping violations--for example, if no clear evidence of guilt exists, if there is inadequate documentation that the carrier knowingly and willfully violated the regulations, or if the carrier is not a repeat offender. Agency records, however, do not always adequately document the reasons.

Documentation for reducing fines during the negotiations phase is also often inadequate. For example, one frequently used justification for reducing a fine is the carrier's/shipper's claim that corrective action had been taken. However, we found no evidence in the files of efforts to verify such claims. In addition, we found instances where FHWA counsel relied on statements by the carrier's/shipper's attorney as sufficient evidence that corrective action had been taken. Another reason often cited in the files for reducing fines was the carrier's financial condition. However, in the case files we examined, we were unable to determine either the validity of such claims or what FHWA did to ensure the claims were valid.

### CONCLUSIONS

In response to concerns about delays in processing enforcement cases, FHWA established standard time frames for processing cases through the various stages of the enforcement

process. However, neither the Bureau nor FHWA's Office of Chief Counsel currently monitors the process to ensure compliance as well as uniform and consistent implementation of the standards. As a result, we found limited compliance and wide variances in processing times among the four regions we reviewed.

Monitoring was discontinued in April 1983 principally because the Bureau was automating its enforcement management information system. However, delays have occurred in bringing the system on line. The Bureau has no target date for when its enforcement management information system will be fully operational, nor has it determined how the information will be used once it becomes available.

FHWA has not established explicit criteria for ensuring penalties are consistent with the relative severity of the violations. Bureau and FHWA guidance is general and leaves much to the judgment of individual attorneys processing cases. As a result, FHWA has no assurance that assessed fines are appropriate, fair, equitable, and consistent with the safety violations involved.

FHWA guidance requires that a file be maintained on each enforcement case and that it contain, among other things, a complete set of evidence. However, the guidance does not specify what type of evidence is acceptable. Moreover, FHWA records often do not adequately document why violations are dropped or why fines are reduced. Documentation would provide the Bureau with a basis to evaluate the action taken by the attorneys and decide whether more specific direction to the attorneys might be needed.

#### RECOMMENDATIONS TO THE SECRETARY OF TRANSPORTATION

To ensure timely processing of all enforcement cases and appropriate, uniform, and consistent treatment of carriers when assessing penalties, the Secretary of Transportation should direct the Administrator, FHWA to

- establish procedures for monitoring the processing of enforcement cases to include the time taken between the various stages in the penalty process, analyzing and comparing time taken to process civil assessment cases, following up when FHWA standards are not met, and taking the necessary corrective actions;
- develop and provide to regional attorneys criteria for assessing fines that relate the fines to the relative risks and severity of the violations committed; and
- develop and provide to regional attorneys requirements for fully documenting justifications for assessing and negotiating fines.

AGENCY COMMENTS AND OUR  
EVALUATION

The Department said that with respect to the recommendation dealing with monitoring activities, FHWA, in implementing the recommendations of its motor carrier safety task force, has initiated several efforts that will accomplish the intent of our recommendations. (See p. 20 for additional discussion on its proposed monitoring activities.) With respect to the recommendations concerning the development of criteria for assessing fines and requirements for fully documenting justifications for assessing and negotiating fines, the Department stated that FHWA is currently developing guidelines for the assessment of civil penalties under the Motor Carrier Safety Act of 1984. The guidelines also will include more detailed guidance to regional attorneys for documenting justification for assessing and negotiating fines.

In our opinion, the proposed actions address the concerns discussed in this report, and if properly implemented, would correct the problems.

## CHAPTER 5

### THE STATE GRANT PROGRAM CAN MATERIALLY

### ASSIST MOTOR CARRIER SAFETY ENFORCEMENT

Between 1975 and 1983 the number of Bureau safety investigators compared to the number of carriers has decreased; and the question of whether the Bureau has the resources to monitor interstate motor carriers effectively has become the subject of concern by the National Transportation Safety Board, the Department itself, and us. Some states had their own motor carrier safety enforcement programs, which supplemented the federal efforts, but state activities varied.

The Surface Transportation Assistance Act of 1982 gave the Secretary the authority to make grants to states for the development and implementation of the Motor Carrier Safety Assistance Program for commercial carriers. States would assist in enforcing the federal safety regulations or compatible state regulations. Authorized for 5 years, with maximum funding of \$150 million for fiscal years 1984 to 1988, the program has the potential to assist efforts materially in motor carrier safety enforcement. Funds appropriated for fiscal years 1984 and 1985 were \$8 million and \$14 million, respectively. In the first year of the program, the Bureau successfully informed states of the program, reviewed applications, and awarded grants to 46 states. However, the Bureau's program appears to lack some elements of sound management that should be part of a comprehensive federal program.

### THE BUREAU'S LIMITED RESOURCES

The number of safety investigators has increased 16 percent from fiscal years 1975 to 1984; but the interstate motor carrier industry has grown 33 percent, about twice as fast. The Bureau has repeatedly been cited for not having enough safety investigators. Nevertheless, the Department has not taken action to obtain the necessary budgetary increases to hire additional safety investigators.

### Safety investigator resources have not kept pace with industry

In fiscal year 1975, 123 safety investigators monitored the operations of 149,000 carriers, a ratio of about 1,200 to 1. In fiscal year 1980, despite an increase in staff of 32 percent since fiscal year 1975, the ratio of motor carriers to safety investigators was 1,100 to 1, nearly the same as in fiscal year 1975. However, since fiscal year 1980, the size of the federal staff has decreased. In fiscal year 1983, there were 144 safety investigators, a decrease of about 12 percent from fiscal year 1980. By contrast, the industry has continued to grow--from fiscal year 1980 to 1983 by 22 percent. As a result, in fiscal

year 1983 the ratio of motor carriers to safety investigators was 1,500 to 1.

The magnitude of implementing the motor carrier safety program can be seen with a few more numbers. In fiscal year 1983, 198,000 interstate motor carriers and 18,000 hazardous materials shippers were subject to federal regulations. During that year the Bureau conducted 8,909 carrier audits; in other words, fewer than 5 percent of the carriers subject to the regulations were audited. In addition, the Bureau conducted 2,758 shipper audits, but most of these were performed in conjunction with carrier audits. Furthermore, recognizing variances in the number of carriers/shippers and safety investigators per state, the safety investigators in our review estimated that on average they would be able to visit every interstate carrier/shipper in their territories only once every 20 years.

Previous concerns over  
Bureau resources

The federal staff devoted to motor carrier safety has been the subject of past reports by such disparate groups as GAO, National Transportation Safety Board, and the Department's Office of the Secretary. Following are statements from those reports concerning the Bureau:

--A 1977 GAO report pointed out that

"The Department of Transportation's annual budget justifications since 1968 have continually reported that the Bureau's limited funding and staffing have prevented the Bureau from conducting a balanced program adequate to monitor the operations of the growing number of interstate carriers."

--A 1981 National Transportation Safety Board evaluation concluded

". . . the DOT's Bureau of Motor Carrier Safety (BMCS) alone cannot conduct an effective program aimed at identifying and removing unsafe vehicles and drivers from the road."

--A 1981 Department internal assessment stated that

"Given the current level of resources associated with the motor carrier safety program, the ability of BMCS to fulfill its responsibilities is questionable."

We noted in reviewing departmental budget requests between fiscal years 1979 and 1984 that the Congress appropriated the total dollars requested by the Department for motor carrier safety. The officer-in-charge concept was also adopted in fiscal year 1979 to strengthen motor carrier safety work in the field.

Implementation of this concept shifted 51 safety investigators from performing safety audits on a full-time basis and to part-time or full-time management/supervisory positions. For example, five of the seven officers-in-charge included in our review spent more than 50 percent of their time in management-type activities.

#### STATE ENFORCEMENT ACTIVITIES

Prior to the grant program, state motor carrier safety activities varied. Some states had active inspection programs, others had minimal programs, and a few had no programs at all. Although most of the 32 states and territories for which information was available conducted roadside vehicle inspections, the procedures used and the types of carriers inspected varied. Some states used the Bureau's procedures, some developed a common set of inspection procedures, and others checked only defects that were visually apparent such as bad tires. Finally, we identified four states and territories that had no program at all.

Recognizing that individual attempts by states and federal agencies to improve highway safety through vehicle inspections have not always been successful, a group of states joined together to form the Commercial Vehicle Safety Alliance. As of July 1984, 17 states belonged. Members use the inspection procedure developed by the California Highway Patrol. Member states issue decals that are good for 3 months and recognized by all members. This allows state inspectors to concentrate on vehicles not previously inspected, conserves manpower, and avoids duplication of inspection.

#### THE GRANT PROGRAM HAS THE POTENTIAL TO IMPROVE MOTOR CARRIER SAFETY

The Motor Carrier Safety Assistance Program can greatly enhance the federal effort. The program--which has the broad objective of achieving a uniform, consistent, and effective safety enforcement program--provides grant money to states for adopting and enforcing federal or compatible state regulations.

The Bureau made progress both in planning and implementing the grant program during the first year. It issued interim guidelines for administering the program; announced the program to the states; reviewed state applications; briefed Bureau regional staff and state personnel on the program; established procedures for approving state grants; and decided which states would be issued development grants for the first year and which would be issued implementation grants. The Bureau placed significant emphasis on getting the program operational during the first year.

Though progress has been made in getting the program operational, the program does not have goals and objectives, defined federal and state roles, established program information needs, a program-monitoring mechanism, or method for evaluating program performance. Such activities would help ensure that state efforts are coordinated and working towards common objectives.

## Framework of the grant program

The objective of the Motor Carrier Safety Assistance Program is to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles. It aims to do so by substantially increasing the (1) level of enforcement activity and (2) likelihood that safety defects, driver deficiencies, and unsafe carrier practices will be detected and corrected. Participating states must adopt and enforce federal safety regulations applicable to motor carrier safety, including those related to transporting hazardous materials, or develop and enforce state regulations that are compatible with federal motor carrier safety regulations. FHWA policy is to encourage states to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. The safety standards of states should also be reasonably consistent. Further, a coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, promote compliance with uniform safety requirements by all types of motor carriers, and provide a basis for taking action against carriers for poor safety performance. All 55 states and territories and the District of Columbia are eligible to participate either as a development or implementation state. Specifically, development funds are available to states to establish state enforcement programs or substantially modify or improve existing programs. In addition, implementation funds are available for states ready to initiate, or that already have established, enforcement programs.

As funded under the grant program, state enforcement activities are primarily roadside driver/vehicle safety inspections of interstate and intrastate commercial motor vehicle traffic. Under the program, states must develop and submit state enforcement plans that describe the safety objectives to be achieved, specify the quantity and content of state activity, relate these activities to costs, and provide a method for evaluating the effectiveness of the programs. The plans are reviewed to determine that the objectives of the program are being pursued and that the states meet the requirements of uniformity, consistency, and effectiveness in their enforcement efforts.

Forty-six of the 55 entities eligible for the program applied for grants during the first year of the program. As of June 26, 1984, all applicants had been approved for program participation-- 29 states and territories for development grants in the amount of \$1,365,298 and 17 states and territories for implementation grants amounting to \$6,572,776.

### Program elements are not yet in place

Sound management practice requires that certain elements be present in a comprehensive federal program. These elements, as

related to the grant program and the Bureau's safety enforcement responsibilities, should include

- establishing clear, specific goals and objectives;
- defining the federal and state roles and responsibilities;
- determining what information is to be collected and analyzed;
- developing a program monitoring mechanism; and
- selecting methods for evaluating program performance.

The Bureau had not yet incorporated these five elements in the program as of May 15, 1985.

Two factors adversely affected on the Bureau's ability to put the program elements in place. First, funds for the program were not available until the start of fiscal year 1984 when the program was to begin. In order to provide grant money to states, the Bureau staff did not have sufficient time to also address the five planning elements. Secondly, the Bureau temporarily detailed staff from various Bureau divisions and branches to administer the program. This changed in July 1984 when a separate branch with four full-time staff members was created to manage the program. Bureau officials told us that they emphasized getting the program operational during the first year at the expense of overall planning. These officials agreed that the program elements were important and needed and indicated that they would be addressed in the near future.

A discussion of progress made in the five elements follows.

#### Goals and objectives

The Bureau has established some very broad goals and objectives for the program, including reducing accidents and hazardous materials incidents. Another overall goal of the program, according to the Bureau's Deputy Director, is to involve all 55 states and territories and the District of Columbia in the grant program and ideally in the implementation phase of the program. In addition to these broad goals and objectives, each state is required to include goals and objectives of its particular state activities in its annual enforcement plan. State goals and objectives should help fulfill the Bureau's larger objective of reducing accidents.

The Bureau's broad goals and objectives are a step in the right direction. However, the Bureau needs to develop more specific objectives to guide program policy and measure success or failure. The Bureau's Deputy Director told us that it is difficult to develop more specific goals and objectives that will recognize all the states' differences. He indicated that goals

should be established after the Bureau has been able to evaluate the progress of the states operating under implementation grants. However, we believe goals and objectives should precede program implementation. In a program involving potentially 55 states and territories and the District of Columbia, it is necessary to have common goals. Without common goals and objectives the potential exists for 56 different programs, which may not be working toward a common, consistent purpose.

#### Definition of federal and state roles

The Bureau has not firmly defined federal and state roles for the program. Bureau officials were able to verbally communicate their concept of the federal and state roles to us. However, as yet these roles have not been communicated to both federal and state personnel, and the lack of clear role responsibilities has created confusion. For example, Bureau officials responsible for program implementation said that they do not envision that the Bureau will completely relinquish responsibility for conducting roadside inspections, even though this function will be primarily carried out by state personnel. However, the Bureau Director stated that he anticipates that the Bureau would completely relinquish roadside inspections to the states. Additionally, state personnel advised us that they understood the Bureau would no longer perform vehicle inspection and that the Bureau, because of staffing constraints, would no longer be involved in active enforcement in this area.

#### Data collection and analysis

Data collection and analysis are needed to provide (1) a basis for program evaluation, (2) feedback to the states about such matters as problem carriers, and (3) a basis for taking action against interstate carriers. As of May 15, 1985, the Bureau had required only limited data from implementation states, such as the number of vehicles inspected and the number placed out-of-service. To determine its program data needs, the Bureau contracted for a study in July 1983 to

- review the existing Bureau management information system and identify additional information requirements;
- assess commercial motor vehicle safety-related data systems focusing on (1) existing capabilities to collect and process information, for example on accidents and inspection activities, and (2) the data states need to generate for compatibility with the Bureau system;
- develop recommendations on the design and implementation of a nationwide management information system containing both Bureau and state data;
- develop an information system user's guide for state enforcement agencies; and

--develop an operations manual to cover all subsystems.

Bureau officials advised us the contract study dealing with the feasibility of an integrated federal/state data system was completed on October 24, 1984. It included determining the general federal and state data needs and developing the general types of elements to meet the common needs. The contractor is now looking at the specific federal and state data needs and system hardware and software requirements and is assessing the compatibility of state and federal data processing equipment. Bureau officials do not expect the system to be operational until fiscal year 1986, the third year of the program. The Bureau also plans to take steps to make sure that the data it obtains from the states are consistent and uniform in the third year of the program.

#### Grant monitoring mechanism

Assuming good plans are approved, a mechanism should be in place to ensure compliance with the approved plan. However, the Bureau does not have a program-monitoring mechanism that ensures consistent and uniform implementation. The actual monitoring, together with planning for the monitoring, has been delegated to FHWA field offices. However, the guidance on monitoring is general and can lead to varied interpretations. As a result the Bureau developed model plans for monitoring both implementation and development grants. However, Bureau officials advised us that the guidance and model plans were not sufficient to ensure uniformity. As a result, the Bureau is planning to train its staff and the states' staffs in late 1985 to assist in achieving more uniformity in this area.

#### Program evaluation

Program evaluation is an integral part of effective management. However, as of May 15, 1985, the Bureau had not developed any overall evaluative factors, such as the program's impact on accident rates, even though it has required states to develop evaluative factors for their own programs. According to the Chief of the Bureau's Operations Division, the Bureau will use the states' evaluative factors to determine overall program effectiveness. According to that same official, the Bureau has no plans to develop any national evaluative factors in the near future. However, without national evaluative factors, the Bureau cannot adequately determine the success or failure of the program nationally.

#### CONCLUSIONS

The Motor Carrier Safety Assistance Program can greatly enhance and complement federal motor carrier safety enforcement. FHWA has made progress in getting the program operational, but it has not developed some elements of sound management that are

integral parts of a comprehensive federal program. These essential planning elements include goals and objectives, definition of roles, data collection and analysis, monitoring mechanisms, and evaluation. Without these elements, management does not have a frame of reference for approving grants, monitoring state activities, and evaluating success or failure of the program. In addition, FHWA cannot be ensured that the desired uniformity between states is being achieved, the overall intent of the program is being achieved, and resources are being utilized most effectively. This information would be needed for the Bureau to adequately justify the program beyond its currently authorized 5 years.

Bureau officials advised us that they would be addressing the program elements in the near future.

#### RECOMMENDATION TO THE SECRETARY OF TRANSPORTATION

We recommend that the Secretary of Transportation direct the Administrator, FHWA, to develop a comprehensive federal program process including

- establishing goals and objectives,
- defining the respective federal and state roles,
- establishing program information needs,
- developing monitoring mechanisms, and
- establishing how the program is to be evaluated on a national scale.

#### AGENCY COMMENTS AND OUR EVALUATION

The Department said that in order to gain the greatest effectiveness from the Motor Carrier Safety Assistance Program, a separate effort has been initiated to establish pre-program planning procedures. Utilizing these procedures motor carrier safety personnel will work with the states to establish both short- and long-term goals that are consistent with the overall national motor carrier safety program goals. These formalized goals, once they are established, will serve as the basis for evaluating the various activities of the states from the standpoint of their contribution to overall program objectives. The Department also said that with regard to our recommendation on establishing program information needs, FHWA is in the process of determining such needs through a contract study.

The Department said that its motor carrier safety task force implementation efforts would largely satisfy our recommendations

regarding establishing goals and objectives, defining the federal and state roles, developing monitoring mechanisms, and establishing a national program evaluation effort.

In our opinion, the proposed actions address the problems we discuss, and if properly implemented would correct the problems.

SCHEDULE OF RECOMMENDED RATINGSDURING FISCAL YEARS 1981 AND 1982

<u>Investigator</u>	<u>Satisfactory</u>	<u>Conditional</u>	<u>Unsatisfactory</u>	<u>Number</u> <u>of audits</u>
	----- (percent) -----			
#1	98	2	0	41
#2	90	6	4	49
#3	72	19	9	86
#4	40	55	5	62
#5	39	39	23	39
#6	34	51	15	47
#7	14	56	30	43
#8	12	72	16	108
#9	64	33	3	70
#10	69	23	8	61
#11	41	41	18	114
#12	23	50	27	52
#13	56	37	7	54
#14	54	26	20	50
#15	22	71	7	59
#16	33	46	21	63
#17	41	36	23	56
#18	77	11	11	35
#19	46	43	11	135
#20	29	58	13	125
#21	50	46	4	90
#22	71	24	6	34
#23	59	21	20	66
#24	22	63	16	32
#25	79	21	0	29
Total				<u>1,600</u>



**U.S. Department of  
Transportation**  
Office of the Secretary  
of Transportation

400 Seventh St., S.W.  
Washington, D.C. 20590

JUL 11 1985

Mr. Dexter Peach, Director  
Resources, Community, and Economic  
Development Division  
U. S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Peach:

Enclosed are two copies of the Department of Transportation's comments concerning the U.S. General Accounting Office draft report entitled "A Stronger Enforcement Program Would Help Improve Motor Carrier Safety."

Thank you for the opportunity to review this report. If you have any questions concerning our reply, please do not hesitate to call me.

Sincerely,

  
Bruce T. Barkley  
Director, Office of  
Management Planning

Enclosure

[GAO note: The page references have been changed to reflect their location in the final report. The Department's summary position and position statement have been incorporated in the text where appropriate. The report has been changed to include the Department's other comments except where noted.]

DEPARTMENT OF TRANSPORTATION  
REPLY TO  
GAO REPORT OF MAY 28, 1985  
ON A STRONGER ENFORCEMENT PROGRAM  
WOULD HELP IMPROVE CARRIER SAFETY

SUMMARY OF GAO FINDINGS AND RECOMMENDATIONS

The GAO found many differences in the manner in which (1) safety investigators were selecting carriers/shippers for safety audits, developing ratings of carriers' and shippers' compliance with Federal regulations, and identifying actions to take based on safety audit results and (2) enforcement cases were being processed. The GAO concluded that two major reasons for these differences were that the Bureau of Motor Carrier Safety (BMCS) has not provided specific guidance to its field staff regarding how the selecting, rating, and enforcement process should be carried out, and that BMCS Headquarters office did not have direct control over its field staff which would have permitted better oversight of field activities.

The GAO recommends, in summary, that the Secretary of Transportation direct the Federal Highway Administrator to take a number of actions to :

- better ensure that carriers and shippers posing the greatest safety risk are selected for audit (see page 20);
- develop and provide criteria and guidance for preparing safety ratings and determining the appropriate enforcement actions (see page 33);
- establish procedures for monitoring the processing of enforcement cases, develop and provide to regional attorneys (1) criteria for assessing fines and (2) requirements for documenting justification for assessments (see page 44); and
- establish the program elements needed to develop the Federal grant program for motor carrier safety (see page 53).

The audit work was done during the period from June 1983 to May 1984.

SUMMARY OF DEPARTMENT OF TRANSPORTATION POSITION

The Department generally agrees with the GAO's findings and recommendations with the exception of the comments provided in the POSITION STATEMENT. Some of the material in the report, however, has been overtaken by events such as the enactment of the Motor Carrier Safety Act of 1984 and the actions taken by the FHWA to implement the organizational and program recommendations of the FHWA Motor Carrier Safety (MCS) Organization Review Task Force.

As mentioned in the report, on March 22, 1985, an Associate Administrator for Motor Carriers was established, the BMCS was transferred to the jurisdiction of the new Associate Administrator, and the Director, BMCS, was given direct line authority to

the Regional Directors of Motor Carrier Safety and through the Regional Directors, to the Officers-in-Charge in each State. Additionally, the FHWA has developed and submitted to the Office of the Secretary for approval, a proposed substructure for the Associate Administrator for Motor Carriers. The FHWA also issued on May 14, 1985, a comprehensive statement of FHWA policy and program objectives relative to the Motor Carrier Safety program and is in the process of implementing the program-related recommendations of the MCS Task Force, such as establishing a national motor carrier safety (MCS) program planning system, establishing requirements for the Motor Carrier Safety Assistance Program (MCSAP) pre-program reviews with the States and for State long- and short-range planning and programming of MCSAP activities, and establishing and initiating a comprehensive, ongoing program review procedure at all levels of the MCS organization. These implementing actions will, in effect, carry out the intent of many of the GAO's recommendations.

### POSITION STATEMENT

#### Comments on Recommendations

As pointed out in the following comments, the actions planned or being taken by the FHWA to implement the recommendations of its Motor Carrier Safety (MCS) Program Review Task Force, will satisfy the intent of many of the GAO recommendations.

#### Program Monitoring Recommendations (pages 20, 33, and 44)

With respect to those recommendations dealing with monitoring activities, the FHWA, in implementing the recommendations of its MCS Task Force, has initiated several efforts which will accomplish the intent of these GAO recommendations.

The FHWA currently has underway efforts to design and implement program planning, review, and evaluation procedures for the motor carrier safety program. These procedures will define the roles of the BMCS Washington Headquarters and the motor carrier safety field offices, including program planning and evaluation at the Washington Headquarters level and uniform and consistent program execution at the field level. An effective monitoring mechanism will be developed and implemented to ensure that goals are achieved at both the Washington Headquarters and field levels.

#### MCSAP Recommendations (page 53)

Similarly, MCS Task Force implementation efforts will largely satisfy the first, second, fourth, and fifth recommendations on page 53 of the report. In order to gain the greatest effectiveness from the Motor Carrier Safety Assistance Program (MCSAP), a separate effort has been initiated to establish pre-program planning procedures in which motor carrier safety personnel will work with the States to establish both short- and long-term goals that are consistent with the overall national motor carrier safety program goals. These formalized goals, once they are established, will serve as the basis for evaluating the various activities of the States from the standpoint of their contribution to overall program objectives.

With regard to the third recommendation on page 53 relative to the establishment of program information needs, the FHWA is currently in the process of determining its MCSAP program information needs through a contract study. This is noted on pages 51 and 52 of the report.

### Reauditing and Safety Ratings Recommendations (page 20)

The FHWA is in the process of developing guidance and procedures which should meet the intent of the recommendations dealing with reauditing and safety ratings.

### Shippers Selection List Recommendation (page 20)

The FHWA will consider the feasibility of developing shipper selection criteria.

### Rating Criteria and Course of Action Criteria Recommendations (Page 33)

In regard to the first two recommendations on page 33 concerning the development of criteria for rating conditions and factors and courses of action to take following a safety audit, the FHWA plans action which will provide for the development and issuance of such criteria. A safety audit training course which will be presented in the latter part of FY 1986 also will stress these points.

### Third Party Complaint Recommendations

The FHWA has already taken action which, in effect, would implement the third recommendation dealing with the development of procedures for investigating third party complaints. A new Chapter 10 of the Motor Carrier Safety Training Text covering complaint investigations has been issued.

[GAO note: On the basis of Department comments, this recommendation has been deleted.]

### Fine Assessment Recommendations (Page 44)

With respect to the second and third recommendations on page 44 concerning the development of criteria for assessing fines and requirements for fully documenting justifications for assessing and negotiating fines, the FHWA is currently developing guidelines for the assessment of civil penalties under the Motor Carrier Safety Act of 1984. The guidelines also will include more detailed guidance to regional attorneys for documenting justification for assessing and negotiating fines.

### Other Comments

Pages ii and 12. In the third paragraph on page ii and second paragraph on page 12, regarding the selection of which motor carriers to audit and the list supplied to investigators by BMCS, the report states that the "Bureau provided but did not specifically require safety investigators to follow the list's priorities."

These statements are not entirely accurate. The Motor Carrier Safety Training Text clearly states in Vol. 2, Ch. 7, page 4 (4.a.2), "Washington Headquarters will prepare a computer list of motor carriers (master list) for the use of each Region in scheduling safety management audits. Each Region will select carriers from this list and prepare an audit schedule". Deviations from this list are considered "unusual circumstances" and must be explained on Form MCS-32D.

Page iii. In the first paragraph on the page, insert the word "recommended", to make the first sentence read in part "...the investigators prepare a recommended safety rating..."

4

Page iii. In the first paragraph, it is stated that ". . . Bureau guidance does not provide criteria to help the investigators decide between rating categories." On December 7, 1982, the field staff was supplied a memorandum entitled "Performance of Safety Ratings - Proper Procedures" which describes the rating process. This process utilizes tables of national averages of violations of each CFR code. These tables were also supplied at this time and again in 1983.

Basically, the rating procedure has not changed since it was initiated, however, the national averages may have changed. The BMCS plans to supply these new figures to the field staff.

Page iv. In the last paragraph, it is stated that "The Bureau does not have criteria for ensuring that assessed fines are consistent with the severity of the violations found." The FHWA believes criteria for assessing fines is an absolute must and is currently in the process of developing criteria.

The third paragraph states that "The investigators do not adequately document justifications for assessed fines". The investigator does not assess fines in the preparation of an enforcement case; consequently, this third paragraph should be deleted.

Page v. In the third complete paragraph, insert the word "Associate" in the paragraph to read "In March 1985, FHWA elevated the motor carrier function to Associate Administrator level".

Page 3. In the first complete paragraph, the statement "The only exception is that the Bureau regulates all vehicles which carry hazardous materials", is somewhat misleading. The Bureau has authority over intrastate hazardous materials transportation; however, this authority is exercised only with regard to intrastate transportation by an interstate carrier except when that intrastate carrier is transporting hazardous waste, hazardous substances, or cryogenics.

Page 5. In the third paragraph, revise the second sentence to read in part "The Bureau Headquarters staff assigns carriers..."

Page 5. The report identifies three major criteria for establishing a safety rating. The first two are (1) comparison to the carrier's peers in adherence to Federal regulations and (2) recommendations by the field staff. The report lists as the third major consideration the carrier's cooperation and receptivity to the audit's results. Although the carrier's attitude is taken into consideration, much more weight is given to the carrier's history of vehicle inspections and accidents. Heavy weight is also given to improvement, or lack of it, over previous audits.

Pages 10 and 18. The report notes that ratings are subject to change without verification of the carrier's increased compliance by the field staff. The Bureau was aware of this condition, and in August 1984, instituted a procedure whereby no ratings are changed without a re-investigation of the areas of non-compliance. The investigator must revisit the carrier's principal office to verify those violations no longer exist.

[GAO note: On basis of Department comments, this recommendation has been deleted.]

Pages 18-19. Under the section entitled "Need Exists for Shipper Selection List," the GAO report implies that a need exists to maintain a shipper selection list. The FHWA will consider the feasibility of developing shippers selection criteria.

Page 22. In the fourth paragraph, it is stated that ". . . investigators can initiate enforcement measures, such as fining the carrier". This statement is not accurate. An investigator may initiate an enforcement case which could result in a carrier paying a fine; however, the investigator himself does not "fine the carrier".

5

Page 25. In the first paragraph, it is stated that ". . . Bureau Headquarters has not provided guidance on how ratings for individual regulations should affect the overall rating". Guidance, in the form of National ratios and procedures were supplied in 1982 and 1983 to the regions. The BMCS plans to provide these items annually and ensure they reach the investigator level.

Page 30. In the first paragraph under 4. Case report without evidence, it states that "A case report without evidence is prepared primarily for administrative purposes to document that the investigation was performed and no violations found." An investigation report without evidence is prepared not only when no violations are found, but also when violations are discovered, but through action taken by other means; corrective action is obtained from the carrier/shipper.

Pages 35-36. In view of the fact that the GAO audit, on which the report is based, was conducted from June 1983 to May 1984, some of the material in the report has been overtaken by events, in particular the enactment of the Motor Carrier Safety Act of 1984. As a result, the enforcement process described on pages 35-36 is inaccurate to the extent that it describes the types of cases handled by civil forfeitures, and the penalties involved, prior to the 1984 Act. Also, because the report's conclusions are based on a review of cases concluded between October 1, 1980, and October 31, 1983, the conclusions with regard to the initial and final assessments would no longer be valid with regard to initial and final assessments for motor carrier safety violations under the 1984 Act.

[GAO note: On the basis of Department comments, this section of the report has been changed to reflect the enactment of this act, which provides that the civil penalty process can be used for all violations of the safety regulations and which increases the maximum penalty dollar amounts for various violations.]

Page 40. The second full paragraph concerning purported delays in developing a BMCS enforcement management information system should be deleted. The software system as presently designed was completed and operational in July, 1984.

[GAO note: This paragraph has been deleted.]

Page 42. The FHWA believes that the portion of the report captioned "Penalty assessments differ from limits allowed by law" is misleading. The report's analysis reflects an example of comparing apples with oranges. As indicated on page 42, the results of the analysis were obtained by calculating the maximum fine in each case by multiplying the number of identified violations by the maximum statutory fine for each violation. An example will illustrate what could result from such an analysis. Assume tht GAO received a hazardous materials case which documented 20 violations. Assume further that all 20 were minor shipping-paper violations, 18 of which lacked adequate proof to warrant prosecution, and that the violations were by a small carrier of very limited resources. Applying the statutorily mandated criteria to the assessment process might warrant an appropriate assessment for the two provable violations of as total of \$3,000. The GAO would calculate the "maximum allowable fine," based on 20 "identified" violations, of a total of \$200,000. Such a fine would in fact not be allowable because it would totally disregard the statutory criteria.

Further, the FHWA believes it is inappropriate to calculate the "maximum allowable fine" in a case based on the total "identified" violations for another reason. In order to promote the fair administration of justice, as well as the perception of justice, the attorney should include in the civil forfeiture claim letter as few separate counts as are reasonably necessary to impose an appropriate penalty under all the circumstances of the case. It is not necessary to charge an alleged violator with every offense for which the respondent may be technically liable. The FHWA believes this is sound prosecutive policy, and it is fully consistent with established Department of Justice prosecutive policy.

[GAO note: On the basis of the Department comments, the final report was revised to eliminate comparison between actual and maximum allowable fines.]

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