

FMCSA's Maximum Fines Policy

March 26, 2009

3 p.m. to 4 p.m. EDT



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Director, Enforcement and Compliance Division,
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Washington, DC

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Rob Hoffman (Me)

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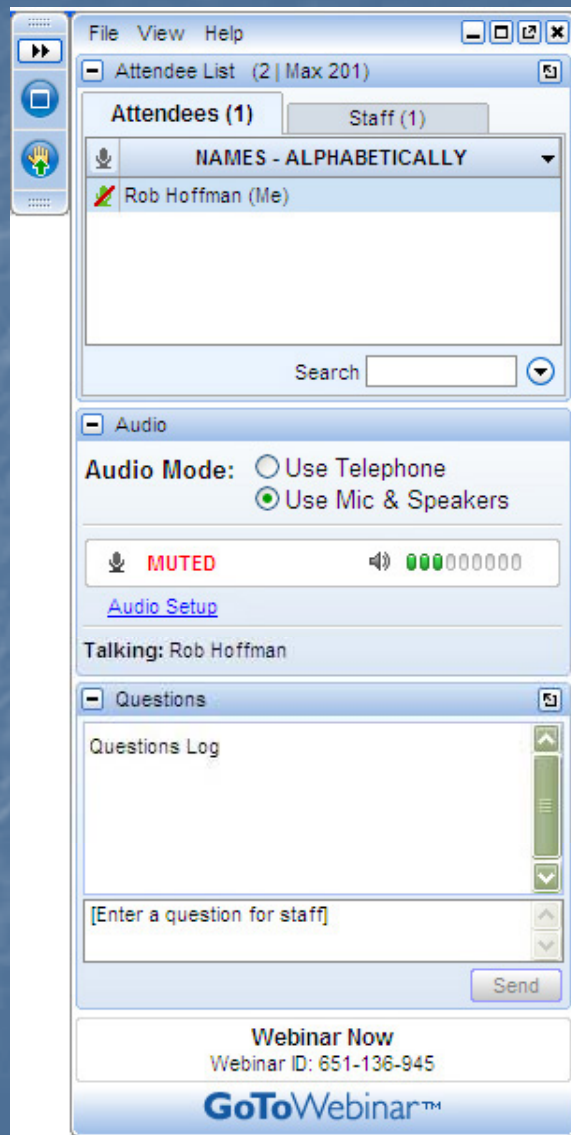
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FMCSA's New Maximum Fines Policy

Jack Van Steenburg

Director, Enforcement and Compliance Division,
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Washington, DC

April 30, 2009



U.S. Department of Transportation
Federal Motor Carrier Safety Administration



Objectives

◆ Objectives of the Webinar:

- Recognize changes prescribed by the new policy
- Understand what constitutes a “pattern of violations”
- Understand “2-Strike” and “3-Strike” violations



Background

Section 222 of the Motor Carrier Safety Improvement Act of 1999

SEC. 222. Minimum and Maximum Assessments.

(b)(2) The Secretary shall assess

- the maximum civil penalty for each violation of a [motor carrier safety or commercial driver's license] law referred to in subsection (a)
- by any person who is found to have committed a pattern of violations of critical or acute regulations issued to carry out such a law
- or to have previously committed the same or related violation of critical or acute regulations issued to carry out such a law



The Old "3-Strikes" Policy

- ◆ Maximum civil penalties are assessed when:
 - A Compliance Review (CR) reveals a repeat violation of the same **acute or critical** regulation as documented by two prior closed CRs occurring within 6 years.
 - Definition: A violation of an **acute regulation** is one that is so severe as to require immediate corrective actions by a motor carrier.
 - Definition: A violation of a **critical regulation** is one that is indicative of breakdowns in a carrier's safety management controls.



OIG & GAO Findings

- ◆ FMCSA's 3-strikes policy did not properly implement Section 222
- ◆ FMCSA was counting only those violations cited in a civil penalty proceeding; not all criticals and acutes discovered
- ◆ FMCSA does not distinguish between carriers with a "pattern of violations" and those that repeat or "previously commit" a serious violation
- ◆ Result:
 - Several motor carriers with a pattern of or repeated serious violations were not being assessed maximum penalties



Supplemental 222 Policy Pattern of Violations

Maximum civil penalties are assessed when:

- ◆ Two or more critical or acute violations (can be a mix of federal and state) are discovered
- ◆ In each of three or more different regulatory parts (i.e., a minimum of six critical and/or acute violations)



Supplemental 222 Policy Pattern of Violations

◆ Example 1: **Van Steenburg Trucking**

During a CR of **Van Steenburg Trucking**, conducted April 30, 2009, the following critical and acute violations are revealed:

- Using a driver known to have tested positive for drugs (382.215)
- No random drug and alcohol testing program (382.305)
- Using a driver not medically examined and certified (391.45)
- No medical card in driver file (391.51(b)(7))
- Driving more than 11 hours (395.3(a)(1))
- False records of duty status (395.8(e))

Van Steenburg Trucking last had CR conducted April 20, 2007. No previous enforcement action.



Supplemental 222 Policy Pattern of Violations

◆ Example 2: LaHood Transport Express

During a CR of **LaHood Transport Express**, conducted Jan. 12, 2009, the following critical and acute violations are revealed:

- Using a driver known to have tested positive for drugs (382.215)
- No random drug and alcohol testing program (382.305)
- Using a driver not medically examined and certified (391.45)
- No medical card in driver file (391.51(b)(7))
- Driving more than 11 hours (395.3(a)(1))
- False records of duty status (395.8(e))

LaHood Transport Express had previous roadside inspection May 1, 2007. Carrier had no previous enforcement action



Supplemental 222 Policy 2-Strikes

Maximum civil penalties are assessed when:

- ◆ An acute violation is discovered during a Section 222 eligible investigation within six years of one previous closed case containing a violation of a critical or acute regulation in the same Part
- ◆ Previous closed case must have been closed with admissions or adjudication
- ◆ Previous case and the investigation it was based on must have been closed on or after the April 1, 2009, policy effective date.



Supplemental 222 Policy 2-Strikes

◆ 2-Strikes – **Van Steenburg Trucking**

- **Van Steenburg Trucking** has a Terminal Review conducted October 12, 2009, revealing acute violations of:
 - Driver refused drug or alcohol test (382.211)
 - Transporting HM w/o Security Plan (172.800(b))

- **Van Steenburg Trucking** with previous CR-based case closed with a Settlement Agreement (including admissions) dated June 2, 2009, in which it was cited for critical violation of: Using driver before receiving negative test results (382.301(a)). Case resulted from a CR dated May 27, 2009.



Supplemental 222 Policy 3-Strikes

◆ 3-Strikes – LaHood Transport Express

- **LaHood Transport Express** has an On-site CSA 2010-based investigation conducted September 22, 2009, revealing acute violations of:
 - Driver refused drug or alcohol test (382.211)
 - Transporting HM w/o Security Plan (172.800(b))
- **LaHood Transport Express** with previous CR-based case closed with a Settlement Agreement (including admissions) dated April 14, 2007, in which it was cited for an acute violation of: Using driver known to have used drugs (382.213(b)) and critical violation of: Transporting HM w/o shipping paper (177.817(a)). CR was dated February 2, 2007.
- **LaHood Transport Express** with previous CR-based case closed with a Settlement Agreement (including admissions) dated November 4, 2005, in which it was cited for a critical violation of: Not testing for drugs at 50% rate (382.305(b)(2)). CR was dated September 12, 2005.



Extraordinary Circumstances

- ◆ If a pattern of violations or a second-strike or third-strike situation is discovered, it must be documented and maximum fines must be assessed unless FMCSA determines and documents that extraordinary circumstances exist
- ◆ Extraordinary circumstances are not specifically defined, but may be found to exist when, for example, the agency determines that repetition of a violation does not demonstrate a carrier's failure to take appropriate remedial action



Supplemental 222 Policy

◆ Settlement of 222 Cases

- Previously, cases subject to Section 222 could not be settled at the Service Center with the exception of a payment plan
- As a result of this supplemental policy, cases subject to 222 can be settled under strict parameters:
 - Up to an 80% conditional suspension may be offered
 - Conditional suspension may be offered only for significant investment of technology and/or additional safety staff
 - Settlement Agreements must be for a term of conditional suspension for no less than three years
 - Such Settlement Agreements must be approved by the Field Administrator or designee



Follow-Up Questions Contact:

FMCSA.publicaffairs@dot.gov

1-800-832-5660



U.S. Department of Transportation
Federal Motor Carrier Safety Administration

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Improving Driver Safety With Simulation Training

Jim Naatz
Sales Manager, Driving Simulation
MPRI, an L3 division



FMCSA's Crash Statistics

- **Action of Inaction (decision making)** was the critical reason for **88%** of crashes.
 - Passenger vehicle assigned 56% fault.
 - Truck assigned **44%** fault.
 - **Driver recognition & decision errors** were the most frequently coded errors.
 - Fatigue coded twice as often for passenger vehicles.
 - **Excessive speed** coded more often for truck drivers.

See full report at: www.fmcsa.dot.gov



Benefits of Simulation Training

- **50% reduction in DOT reportable accidents** at an average cost of \$195,258 per non-fatal injury crash.
- **10% reduction in driver turnover** at an average cost of \$8,234 to replace each driver.
- **Improved fuel efficiency and reduced idle time** by as much as **7%**.
- **Reduction in fuel usage by 335,000 gallons** annually as a result of simulation training offsetting the training time behind-the-wheel of a truck. This translates into over \$1,000,000 in savings.



Customer Results



Canada's Bison Transport had an **83% reduction in mean time between incidents** as a result of MPRI training + reduced fuel costs.



Since 2004, Schneider National attributes a **64% reduction in preventable major crashes** to use of simulators and their other recurrent training efforts.



Verizon had a **47% improvement in mean time between crashes** after a contracted training engagement with MPRI.



Accident frequency dropped 70% during their highest frequency months of May thru October in the first year of their simulator program.



Customer Results Continued



A **50% drop in accident frequency** over the last 12 months comparing their two training centers (one center has the sims, one center doesn't). A **15% improvement in driver retention** for the center with the sims versus center without the sims.



In 2007 United Rentals trained 8,000 CDL and non-CDL drivers using MPRI's Space Management curriculum course, resulting in an overall **42% accident reduction rate**.



The Pepsi bottling group saw a **37% reduction in crashes** after MPRI trained 3000 of their drivers.



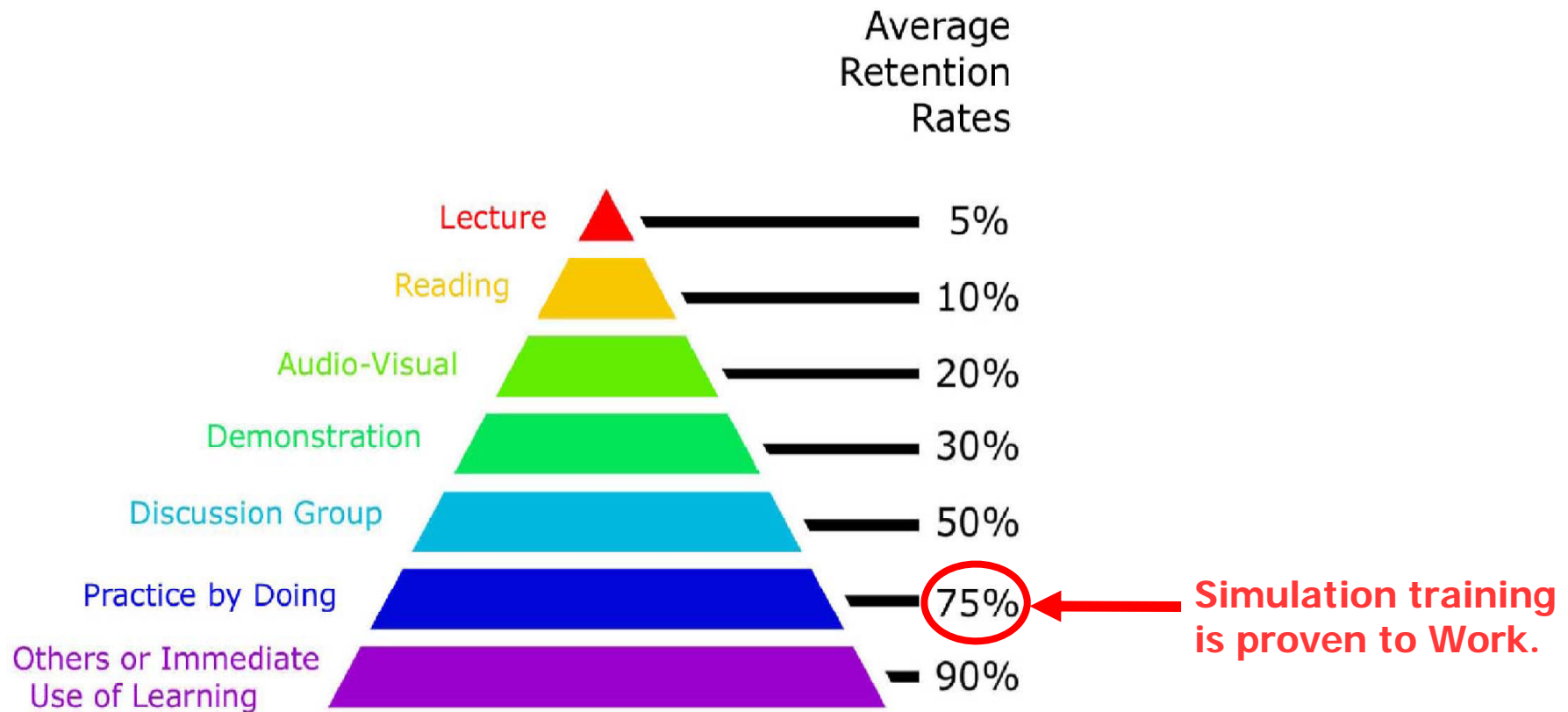
Landstar realized a **10% decline in accidents** using MPRI's simulators as part of their training program



Customer Base



Why Simulation Training?



Source: National Training Laboratories. Bethel, Maine

TranSim VS IV

Increase Driver Retention
With Our Proven Training
Curriculum.

Reduce Preventable
Accidents By 20% Or
More.

Lower Fuel Costs and
Increase Fuel Efficiency
by 2.8% - 7+%.



TranSim VS IV Driver Simulator

Safety. Productivity. Retention.



The Risks Are Simulated. The Benefits Are Real.

Thank you for your time.

To view a video of our simulator in action
go to www.mpri.com/driver or
www.ccjdigital.com and click on the magazine.

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Questions?

Join us for our next webinar:

Current outlook for trucking and the economy

May 28, 2009

3 p.m.-4 p.m. EDT

Register at

www.ccjwebinars.com