Compliance Manual

For

eFOTM Redevelopment

Federal Motor Carrier Safety Administration (FMCSA)

U.S. Department of Transportation

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1.0 Compliance Manual

1.1 Stage 1-Monthly Intervention Selection & Carrier Assignment

1.1.1 Stage 1 - Introduction

Stage 1 identifies carriers in need of intervention. These carriers are prioritized and SI-specific assignments can be made. This Stage is the responsibility of the Manager; however, it also provides Safety Investigators with details surrounding this stage to familiarize you with the process. For information on the investigative sytems referenced throughout the Compliance Manual see Appendix P.

The Activity Center for Enforcement (ACE) provides the Manager with access to the information necessary to conduct the activities in this Stage. This manual also provides details on ACE's recommended intervention type and the business rules associated with the recommendation. The Manager should use the recommended intervention as a foundation for making decisions; however, the Manager has discretion to take other factors into consideration. The Manager may use ACE to record additional comments for the SI, either on the investigation assignment or the carrier, identifying areas of which the SI should be aware.

- On a monthly basis, the Safety Measurement System (SMS) provides quantified performance data and presents Behavior Analysis and Safety Improvement Category (BASIC) percentiles calculated from a carrier's roadside inspection data, State-reported crashes, and the Federal motor carrier census. The system also generates Warning Letters for carriers meeting the Warning Letter criteria. In addition, the system tracks the status of unresolved Acute and Critical Violations.
- Based on BASIC percentiles, intervention history, and unresolved Acute and Critical Violations 1 ACE prioritizes carriers for intervention into the following risk-based prioritization categories:
    - High-Risk;
    - Moderate-Risk;
    - Risk;
    - Warning Letter; and
    - Monitor.
- In addition to prioritizing carriers on the risk-based lists, ACE displays a recommended intervention type based on business rules. The Manager reviews and validates information accessible through ACE, confirms the appropriate intervention Type, and assigns the intervention to an SI. These steps are often done together, but are presented sequentially in this manual for ease of presentation. A manager can make a request to remove a motor carrier from the High-Risk list under certain circumstances.

[1] Violations of Acute and Critical regulations documented in the most recent investigation will factor into prioritization and investigation scope for six years.

1.1.2 Safety Measurement System Assesses Carrier Performance, Generates Warning Letters, and Tracks Acute and Critical Violations

The SMS assesses performance based on a combination of on-road safety performance data and Acute and Critical Violations found during the most recent investigation within the past 6 years. Using this information, ACE identifies the BASICs that merit attention, identifies candidates for interventions, generates Warning Letters, and monitors Acute and Critical Violations.

On-Road Safety Performance

Warning Letters

Acute and Critical Violations

1.1.2.1 On-Road Safety Performance

The SMS quantifies the on-road safety performance of individual carriers and drivers. The data is used to rank an entity's performance relative to carriers in the same safety event grouping in each of the seven BASICs. A carrier is subject to an intervention based on SMS results. The SMS evaluates the safety of individual motor carriers by considering on-road safety performance. This can be from roadside inspections and State-reported crashes that have occurred within the previous 24 months. Regardless of the source of data, a BASIC that is Roadside-Identified means that the BASIC measurement is at or above the threshold for intervention. (See table below). On a monthly basis, all carriers that have patterns of non-compliance documented in the SMS are assigned to one of the five categories:

1. High-Risk;
2. Moderate-Risk;
3. Risk;
4. Warning Letter; and
5. Monitor.

Table: BASIC Thresholds (Percentiles)

BASIC	Passenger Carriers	HM Carriers	All Other Motor Carriers
Unsafe Driving Hours of Service (HOS) Compliance Crash Indicator	50	60	65
Driver Fitness Controlled Substances/Alcohol Vehicle Maintenance	65	75	80
Hazardous Materials (HM) Compliance	80	80	80

Hazardous Materials (HM) thresholds will apply to motor carriers when the following conditions are met:

- At least two HM placardable inspections within the past 24 months, with one inspection occurring within the past 12 months; and
- HM placardable inspections are at least 5% of the motor carrier's total inspections; or
- The carrier has an HM Safety Permit issued by FMCSA.

Passenger carrier thresholds will apply to motor carriers when one of the following criteria is met:

- The motor carrier has active common or active contract passenger authority. The motor carrier must also meet both of the following criteria:
  - Owns, term-leases, or trip-leases a 9−15 passenger vehicle or 16+ passenger vehicle; and
  - Passenger vehicles represent 2% or more of the carrier's total vehicles.
- The operation classification in the Motor Carrier Management Information System (MCMIS) is authorized for-hire or exempt for-hire. The motor carrier must also meet one of the following criteria:

- Owns, term-leases, or trip-leases a 9−15 passenger vehicle or 16+ passenger vehicle; and passenger vehicles represent 2% or more of the carrier's total vehicles; or
- If the carrier has no vehicle data at all in MCMIS and "passengers" is a cargo classification.

- The operation classification in MCMIS is private motor carrier of passengers. The motor carrier must also meet both of the following criteria:
  - Owns, term-leases, or trip-leases a 16+ passenger vehicle; and
  - Passenger vehicles represent 2% or more of the carrier's total vehicles.

1.1.2.2 Warning Letters

The SMS will determine which carriers should receive Warning Letters. These letters will be system-generated and mailed within one month of the carrier being designated. No action is required on the part of the Manager. These carriers have at least one Roadside-Identified BASIC, have not received a prior Warning Letter or investigation within a preset duration, and do not meet any other criteria for placement in any other prioritization category. (See Section 1.1.4 for prioritization criteria.) SIs and Managers can access an electronic version of the Warning Letter through ACE or the FMCSA Portal if a carrier contacts the office with questions following receipt of a Warning Letter. A Warning Letter will not be issued to a carrier whose BASICs are subject to intervention only because Acute and Critical Violations were cited during a previous investigation. Warning Letters are not issued to carriers identified as High-Risk.

Carriers eligible to receive Warning Letters as part of various compliance and enforcement programs are identified in the following table:

Carrier Type/Program*	Receives Automated Warning Letter
New Entrant**	Yes
BASIC Warning Letter	Yes
High-Risk	No
Passenger	Yes
HM Permit	Yes
Household Goods	Yes

*Warning letters are not sent to intrastate carriers unless they are HM Safety Permit carriers.
**Note: Criteria for New Entrant Warning Letters are specified in the Safety Audit Manual section 3.1.1.

The carrier is not required to provide any response to the Warning Letter. However, some carriers may request an in-person meeting. The Division/State Office decides on a case-by-case basis whether to meet with the carrier. If contact with the carrier generates a document or record, it should be scanned into EDMS.

1.1.2.3 Acute and Critical Violations

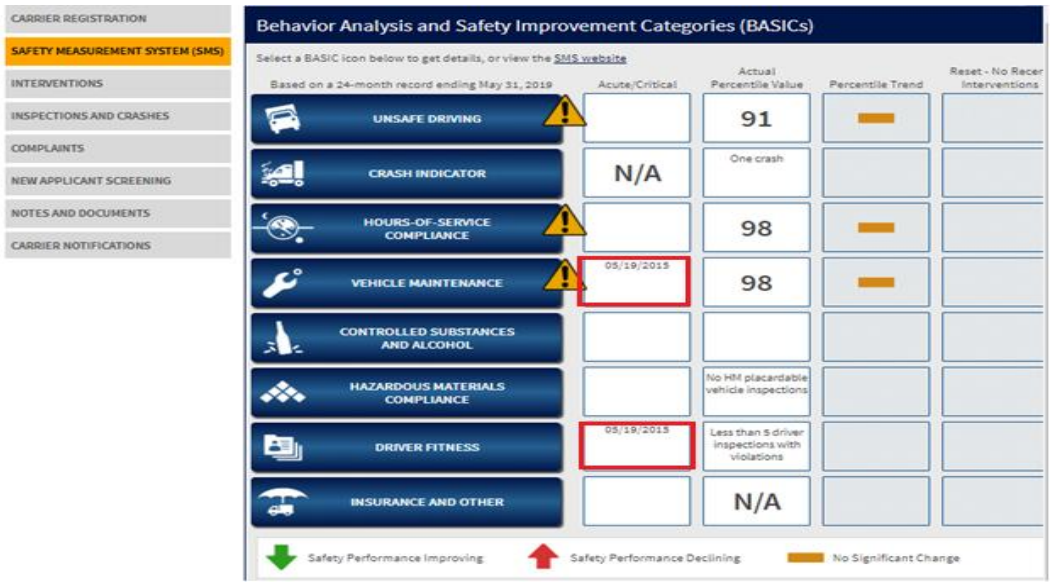
In addition to on-road performance, Acute and Critical Violations documented in the most recent investigation factor into prioritization and investigation scope for six years. If the Acute or Critical Violation is associated with the Hours of Service (HOS) Compliance BASIC, the SI will investigate the full HOS Compliance BASIC (all parts). If the Acute or Critical Violation is not associated with the HOS Compliance BASIC, the SI will only investigate the specific violation(s) cited in the most recent investigation. ACE and AIM will identify the BASIC requiring investigation due to a prior Acute or Critical Violation, and will identify the specific violation requiring investigation.
Acute and Critical Violations are defined as:

- Violations of **Acute** regulations occur where non-compliance is so severe that the violation(s) requires immediate corrective action by a carrier, regardless of its overall safety posture. Violations of a single Acute regulation documented in the most recent investigation factor into prioritization and investigation scope for six years.
- Violations of **Critical** regulations are those that relate directly to the carrier's management and/or operational controls and are indicative of breakdowns in a carrier's management controls. Discovery of violations in at least 10% of the records checked and a pattern (more than one occurrence) may result in a BASIC requiring an investigation.

  *Note: If the prior investigation was conducted Offsite, Critical Violations factor into prioritization and investigation scope only when the offsite sampling was equivalent to onsite sampling. Violations of Critical regulations resulting from an Offsite Investigation will not be displayed publically in the SMS.

For each BASIC, the Safety Measurement System (SMS) captures and displays the safety status of individual motor carriers. BASICs subject to an intervention are indicated as having a status of Roadside-Identified and/or Acute and Critical Violations documented during the most recent investigation occurring within the past six years. Acute and Critical Violations are not shown publically on a carrier's record after one year; however, they are used in prioritization and investigation scope for six years. Critical violations resulting from an Offsite Investigation will not be displayed publically in the SMS at any time. Each status is defined below, followed by a screenshot demonstrating how the BASIC status is depicted in ACE.

Screenshot: BASICs Safety Measurement Summary*



Screenshot from ACE

1.1.3 Carriers Prioritized Based on Risk

On a monthly basis, as described in Section 1.1.2, the SMS calculates carrier BASIC percentiles, based on their on-road performance data. This information—and other information such as intervention history, unresolved Acute and Critical Violations, and operational characteristics—is used to prioritize carriers based on risk and, in some cases, determine a recommended action. This section describes the system-generated risk-based prioritization lists, including the criteria that governs risk-based lists, and the tools to support prioritizing carriers for interventions, beyond those carriers identified as High-Risk.

System Identifies and Prioritizes Carriers Based on Risk

Intervention Types

1.1.3.1 *System Identifies and Prioritizes Carriers Based on Risk*

Prioritizing carriers for interventions based on risk is an automated process in ACE. However, the Manager should understand the general principles that determine placement in each risk-based category, as this will help him or her apply the intervention selection criteria described later in this Stage.

Based on BASIC percentiles, intervention history, and the unresolved Acute and Critical Violations, ACE prioritizes carriers for intervention into the following risk-based prioritization lists:

High-Risk;

Moderate-Risk;

Risk;

Warning Letter; and

Monitor.

Under most circumstances, a Warning Letter is sent to the carriers before an investigation is recommended. Each of these risk-based categories is described in greater detail below. In addition to sorting the carriers into risk-based prioritization categories, carriers are sorted based on their measurement of risk (See Primary Lists below) to help the Manager determine appropriate assignments. This sort order is further displayed on secondary level lists (See "Secondary Level Lists" below, e.g., the estimated risk of carriers designated Moderate-Risk 1 are greater than those on Moderate-Risk 2).

After the carriers identified as High-Risk are assigned, Division Offices can use discretion in deciding which carriers to investigate. When making and managing assignments, use the assignment grid in ACE to review carrier's safety performance to assess their priority for intervention, utilize the tools provided in the assignment grid (*Manager Utilize Tools to Support the Assignment Process*), and consider the availability of resources and other Agency initiatives.

Criteria for Risk-Based Prioritization within Primary Lists

Primary List	SMS BASIC Performance	Time Since Last Intervention	Carrier Types Excluded
High-Risk	Two (2) or more of the following BASICs at or above the 90th percentile for two (2) consecutive months (passenger carriers: 1 month): Unsafe Driving, Crash Indicator, Hours-of-Service (HOS) Compliance, Vehicle Maintenance	Passenger carriers: no onsite comprehensive investigation in last 12 months. All other carriers: no onsite intervention in last 18 months.	None excluded
Moderate-Risk	Two (2) or more of the following BASICs at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance	1. No intervention in last 12 months AND 2. No Warning Letter in last 6 months	Excludes the following: 1. High-Risk 2. Warning Letter 3. New Entrant Carriers

Risk	One (1) or more BASICs at or above intervention threshold or with unresolved Acute or Critical Violation(s)	1. No intervention in last 12 months AND 2. No Warning Letter in last 6 months	Excludes Moderate-Risk
Warning Letter	One (1) or more BASICs at or above threshold	1. No intervention or Warning Letter in last 18 months AND 2. If there was a previous intervention, then no BASICs or unresolved Acute or Critical Violations in prior 12 months	Excludes High-Risk *Note:* criteria for New Entrant warning letters are specified in the Safety Audit Manual section 3.1.1
Monitor	One (1) or more BASICs at or above threshold or with unresolved Acute or Critical Violation(s)	1. Has had an intervention in last 12 months, or received a Warning Letter in last 6 months *OR* 2. New entrant motor carrier that has had a Safety Audit or Investigation	Excludes the following carrier 1. High-Risk 2. Warning Letter 3. New Entrant Motor Carriers that have not yet had a Safety Audit or Investigation

SMS Performance Criteria for Secondary-Level Prioritization within Moderate Risk, Risk, and Monitor Lists

Primary List	Secondary List	SMS BASIC Performance
Moderate-Risk	**Moderate-Risk 1**	Three (3) or more of the following BASICs at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	Moderate-Risk 2	Two (2) or more of the following BASICs at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
Risk	**Risk 1**	One (1) of the following BASICs at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	Risk 2	One (1) or more of the following BASICs at or above intervention threshold: Driver Fitness, Controlled Substances/Alcohol, Hazardous Materials (HM) Compliance
	Risk 3	Zero (0) BASICs at or above intervention threshold and 1 or more BASICs with unresolved Acute or Critical violations

Monitor	**Monitor 1**	Two (2) or more of the following BASICs at or above intervention threshold or with unresolved Acute or Critical violations: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	Monitor 2	One (1) of the following BASICs at or above intervention threshold or with unresolved Acute or Critical violations: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	Monitor 3	One (1) or more of the following BASICs at or above intervention threshold or with unresolved Acute or Critical violations: Driver Fitness, Controlled Substances/Alcohol, HM Compliance

1.1.3.1.1 High-Risk Carriers

FMCSA uses the SMS to identify High-Risk motor carriers, consistent with Section 4138 of the Safe, Accountable, Flexible, Efficient, Transportation, Equity Act: A Legacy for Users (SAFETEA-LU). Motor carriers identified as High-Risk are subject to immediate action and should be assigned for an Onsite Investigation, which should be completed within 90 days from the release of the prioritization list. Division Offices should work across State borders, as needed, to address these High-Risk carriers. Under certain circumstances, motor carriers can be removed from the High-Risk list. For guidance for removing carriers from the High-Risk list, see section 1.1.3.2 Manual Removal of Motor Carriers from the High-Risk Prioritization List.

The following table defines "High-Risk" for passenger and non-passenger carriers.

Criteria	High-Risk – Passenger Carrier	High-Risk – Non-Passenger Carrier
SMS BASIC Performance • Two (2) or more of the following BASICs at or above the 90th percentile: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance.	Occurs in any one month	Occurs in two consecutive months
Time Since Last Onsite Investigation	12 months since last onsite comprehensive investigation	18 months since last onsite focused or comprehensive investigation
Target Date	90 Days	90 Days

Division Administrators will ensure that investigations are conducted on interstate motor carriers and interstate and intrastate Hazardous Materials Safety Permit (HMSP) carriers designated High-Risk as defined in the table above and should adhere to the prescribed timeframes.

Timeframes for Conducting Investigations on High-Risk Carriers

A carrier identified as High-Risk should be assigned for an Onsite Investigation, which should be conducted and completed within 90 days from the release of the prioritization list. Deviations from this policy should be documented. The assignment should remain in effect regardless of improvement in performance in subsequent months.

1.1.3.1.2 Moderate-Risk and Risk Carriers

After the carriers identified as High-Risk are assigned, Division Offices are to use the tools provided in the assignment grid described in Section 1.1.3.1.4—and consider the availability of resources and other Agency initiatives—when making and managing assignments. Division Offices have discretion in deciding which

carriers to investigate beyond those identified as High-Risk. Carriers are placed in the Moderate-Risk or Risk categories based on the criteria below:

Primary List	SMS BASIC Performance	Time Since Last Intervention	Carrier Types Excluded
Moderate-Risk	Two (2) or more of the following BASICs at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance	1. No intervention in last 12 months *AND* 2. No warning letter in last 6 months	Exclude the following: 1. High-Risk 2. Warning Letter 3. New Entrant Carriers
Risk	One (1) or more BASICs at or above intervention threshold or with unresolved Acute or Critical Violation(s)	1. No intervention in last 12 months *AND* 2. No warning letter in last 6 months	Exclude Moderate-Risk

1.1.3.1.3 Monitor

The Division Offices should check the Monitor list for carriers whose measured safety risk has increased post-intervention, which can be tracked using the reset tool. When making and managing assignments, Division Offices are to use the tools provided in the assignment grid described in Section 1.1.3.1.4 and consider the availability of resources and other Agency initiatives.

Carriers are placed in the Monitor category based on the criteria below:

Primary List	SMS BASIC Performance	Time Since Last Intervention	Carrier Types Excluded
Monitor	One (1) or more BASICs at or above threshold or with unresolved Acute or Critical Violation(s)	1. Has had an intervention in last 12 months, or received a warning letter in last 6 months *OR* 2. New Entrant motor carrier that has had a Safety Audit or Investigation	Exclude the following carrier designations/types: 1. High-Risk 2. Warning Letter 3. New Entrant Motor Carriers that have not yet had a Safety Audit or Investigation

1.1.3.1.4 Managers Utilize Tools to Support the Assignment Process

To support managing assignments, Managers have access to a series of automated data analysis tools developed by FMCSA. Division Offices should use these tools to prioritize interventions for carriers on the Moderate-Risk, Risk, and Monitor lists, after ensuring that interventions for those on the High-Risk list are completed within designated timeframes. See table below for the Secondary Level list prioritization within Moderate-Risk, Risk, and Monitor Lists.

These tools include:

- A trending tool showing upward/downward trends in the BASIC percentiles;
- A reset tool which shows a measure of safety performance since the last intervention; and
- A driver information tool with the number and percent of drivers with red-flag violations.

Example

The value of using these tools can be illustrated by the following example. Consider two carriers:

Carrier A in Moderate-Risk has three BASICs above the intervention thresholds (Unsafe Driving 69%, Crash Indicator 72%, and Hours-of-Service (HOS) Compliance 67%). The trending tool indicates that performance in each of these BASICs is improving over a period of time due to good inspection performance.

Carrier B has two BASICs above the intervention thresholds (Unsafe Driving 89% and the Crash Indicator 85%), but its performance is degrading.

In this case, the Division Administrator should initiate an investigation of Carrier B before Carrier A because the trends indicate that Carrier B is higher risk due to continued poor performance.

SMS Performance Criteria for Secondary-Level Prioritization within Moderate Risk, Risk, and Monitor Lists

Primary List	Secondary List	SMS BASIC Performance
Moderate-Risk	**Moderate-Risk 1**	Three (3) or more of the following BASICs at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	Moderate-Risk 2	Two (2) or more of the following BASICs at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
Risk	**Risk 1**	One (1) of the following BASICs at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	Risk 2	One (1) or more of the following BASICs at or above intervention threshold: Driver Fitness, Controlled Substances/Alcohol, Hazardous Materials (HM) Compliance
	Risk 3	Zero (0) BASICs at or above intervention threshold and 1 or more BASICs with unresolved Acute or Critical violations
Monitor	**Monitor 1**	Two (2) or more of the following BASICs at or above intervention threshold or with unresolved Acute or Critical violations: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	Monitor 2	One (1) of the following BASICs at or above intervention threshold or with unresolved Acute or Critical violations: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	Monitor 3	One (1) or more of the following BASICs at or above intervention threshold or with unresolved Acute or Critical violations: Driver Fitness, Controlled Substances/Alcohol, HM Compliance

1.1.3.2 Manual Removal of Motor Carriers from the High-Risk Prioritization List

If, prior to assignment, during pre-investigation, or during/after an investigation has been initiated, the SI questions the accuracy of a carrier's High-Risk designation, the SI should present evidence to the assigning Manager that the carrier should not be considered High-Risk. A carrier identified on the High-Risk carrier prioritization list may be removed from this list if it was incorrectly designated as High-Risk. The criteria for removal are listed below.

Criteria for removal

A carrier identified on the High-Risk carrier prioritization list may be removed from this list if it was incorrectly designated as High-Risk for any of the following reasons:

1. The entity was incorrectly identified as an interstate motor carrier or as a Hazardous Material Safety Permit (HMSP) motor carrier and has made the correction by updating its registration (e.g., the motor carrier did not conduct interstate operations in the past 365 days or did not require an HMSP; a broker was incorrectly listed as an interstate motor carrier; etc.).
2. The carrier was mistakenly classified as a passenger carrier and did not meet the High-Risk criteria for a non-passenger carrier, and made the correction by updating its registration.
3. A DataQs Request for Data Review (RDR) was approved that:
    a. Invalidates inspection and/or crash data (e.g., inspections incorrectly assigned to a leasing company or the wrong carrier); and
    b. If this data had been corrected earlier, it is likely that the Behavior Analysis and Safety Improvement Category (BASIC) would have resulted in percentiles less than 90, in the estimation of the assigning Manager.
4. An update to the carrier's registration has been made:
    a. To correct inaccurate safety performance data (e.g., the number of power units or vehicle miles travelled); and
    b. If this data had been accurate, it is likely that the carrier's Unsafe Driving or Crash Indicator BASIC percentile would have resulted in percentiles less than 90, in the estimation of the assigning Manager.

If the Division Office identifies a carrier that should not be High-Risk for some other reason, not specifically addressed, the Division Office may initiate a request for removal with supporting evidence.

For procedures for removing carrier from the High-Risk carrier prioritization list see the Manager Manual (section 6.2.1.1.1 – Manual Removal of Motor Carriers from the High-Risk Prioritization List).

1.1.3.3 Intervention Types

Based on specific business rules, the following interventions types may be assigned as described below:

- **Direct NOCs and NOVs.** Certain carriers may require an NOC or an NOV without an Investigation. The Manager will consider the guidelines provided in Section 1.1.4 to determine if an NOC or an NOV is appropriate.
- **Onsite and Offsite Investigations.** The Manager determines the Investigation type using the business rules provided in Section 1.1.4.3 Guidance for Selecting Investigation Types on the Risk-Based Lists and makes the assignment in ACE. The investigation types are as follows:
    - **Offsite Investigation** – The Offsite Investigation enables FMCSA and its State partners to evaluate safety problems without sending enforcement officials to a carrier's place of business. It involves requests for documentation from the carrier and third parties, followed by an in-depth review of available information to determine the nature and extent of identified safety problems. It follows the same core investigative processes used during an Onsite Investigation; however, the minimum sampling size for an Offsite Investigation may be different than an Onsite Investigation. An Offsite Investigation may result in a violation of an Acute regulation and impact the carrier's SMS BASIC prioritization status. If the offsite sampling is the same as the onsite sampling requirement, an Offsite Investigation may also result in a pattern of violating a Critical regulation and impact SMS BASIC prioritization. However, patterns of violations of Critical regulations discovered during an Offsite Investigation are not displayed publically in the SMS. Offsite Investigations are non-rated reviews.

- **Onsite Focused Investigation** – The Onsite Focused Investigation takes place at the carrier's place of business. It enables FMCSA and its State Partners to focus on the demonstrated safety problem. It involves reviewing records, interviewing personnel, analyzing practices, and identifying corrective actions.
- **Onsite Comprehensive Investigation** – The Onsite Comprehensive Investigation also takes place at the carrier's place of business. It is employed either when the carrier exhibits broad and complex safety problems or in response to national program goals. During an Onsite Comprehensive Investigation, all BASICs and related FMCSR Parts are investigated.
- **Crash BASIC Investigation (CBI)** – If the Crash Indicator BASIC is the only BASIC requiring investigation, CBI procedures and sampling apply. The CBI can be conducted Onsite or Offsite.

1.1.4 Manager Determines Intervention Type for Carriers on the Risk-Based Prioritization Lists

The Manager is responsible for determining the appropriate intervention type, using the business rules described below, and making the assignment in ACE. In order to do this, Managers should view the "National Rollout Recommended Intervention and the "NOV/NOC Candidate" columns available from the Carrier Prioritization grid. These columns use the business rules and recommends the type of intervention to be assigned based on the carrier's current record. Managers should use this information as a guide, along with local knowledge, the carrier's record, and underlying violations to select the least intensive intervention that will effectively address the safety problem. For more information on how to assign interventions using ACE, go to the ACE User Guide Available here: https://csa.fmcsa.dot.gov/downloadFile.axd?file=ACE-User-Guide.pdf.

The primary objective is to more effectively intervene with the highest risk carriers more quickly and select the least resource-intensive Intervention necessary to correct the carrier's safety problem.

As discussed in section 1.1.3, the Manager should review the monthly risk-based prioritization lists to prioritize High-Risk carriers for an investigation and then utilize discretion in deciding which carrier to assign for intervention beyond High-Risk (i.e., Moderate-Risk, Risk, and Monitor). This process should consider the availability of resources and other Agency initiatives when making and managing assignments.

Assigning Direct NOCs

Assigning Direct NOVs

Guidance for Selecting Investigation Types

1.1.4.1 Assigning Direct NOCs

If there is sufficient evidence, a Manager can assign an SI to prepare an NOC directly without further investigation. Carriers are candidates for Direct NOCs if the records show evidence of reported activity—either inspections or crashes—while under an Operations Out-of-Service (OOS) Order. These records should be verified before assigning an SI to issue a Direct NOC. If there is not adequate evidence for issuing an NOC for a particular carrier, then the carrier should be examined as a candidate for Investigation.

1.1.4.2 Assigning Direct NOVs

A Manager may assign a carrier for an NOV directly without requiring an investigation for carriers who match either of the following conditions:

- The carrier is Roadside-Identified in the Driver Fitness BASIC only. However, an NOV should only be issued for Driver Fitness violations that are immediately correctible and readily verifiable,

such as driving without valid medical certificates or proper CDLs. If the carrier has any drivers with Red Flag Violations (see Section 1.3.7 in Stage 3), these violations should be included in the Direct NOV and do not require further investigation. Issuing an NOV does not preclude FMCSA from issuing an NOC. An NOC may be issued for the violations cited in the NOV. FMCSA may consider whether adequate evidence of corrective action was submitted in response to the NOV, in deciding whether to issue an NOC.

- The carrier has been prioritized for an intervention because of previous Acute and Critical Violation(s) in the Insurance/Other category only. The Direct NOV would only be appropriate if there was no evidence that the violation had been corrected. For example, if the Acute and Critical Violation was related to no authority and the L&I database shows the carrier currently has authority then a Direct NOV would be inappropriate.

1.1.4.3 Guidance for Selecting Investigation Types on the Risk-Based Lists

The Manager should follow this guidance for selecting the appropriate investigation type for an SI assignment. The business rules described in this section do not change the business rules for carriers that require an Onsite Comprehensive Investigation based on other Agency criteria, such HM carriers requiring an HM Safety Permit, motorcoach providers, or New Entrant carriers that have been designated as High-Risk and not received a Safety Audit.

The Manager should follow this guidance for selecting the appropriate Investigation Type for an SI assignment. However, before assigning an investigation the Manager should determine the scope of an investigation. The scope of an Investigation refers to the number and type of BASICs requiring an investigation which is determined by the BASIC percentiles, time since the previous intervention, carrier characteristics, and the Manager's knowledge of the carrier. These BASICs include, but are not limited to, those that are Roadside-Identified, associated with Acute and Critical Violations, and/or associated with a complaint. Scope considerations for a complaint are discussed in Section 1.1.4.

The Manager should review the Carrier Prioritization grid and the ACE "National Rollout Recommended Intervention" and the "NOV/NOC Candidate" columns and confirm the appropriate intervention. After carriers identified as High-Risk are assigned, Managers have discretion in deciding which carriers to investigate beyond those identified as High-Risk (See Section 1.1.3.1.2 Moderate-Risk and Risk Carriers).

Note: The risk-based lists are separate from Program Office prioritization lists, however, if a carrier on a Program Office list also meets risk-based criteria, it will appear on both lists.

For Onsite Investigations, the Manager will need to determine whether the investigation will be Focused or Comprehensive. For carriers eligible for an Offsite or Onsite Investigation, the Manager will need to determine the appropriate investigation. When deciding the appropriate investigation for the carrier, Managers should consider multiple factors, including, but not limited to: (1) prior interventions; (2) safety performance using trending tools; (3) the number of BASICs at or above the intervention threshold; and (4) the nature and severity of roadside violations.

Presented below are the business rules for carriers on the risk-based lists. The term "BASICs Requiring Investigation" means

- BASICs that meet or exceed intervention thresholds;
- BASICs associated with a violation of an Acute or Critical regulation*; and/or
- BASICs associated with a non-frivolous complaint.

*If a BASIC requires investigation due to a violation of Acute or Critical regulations associated with the HOS BASIC, the full BASIC (all parts) will be investigated. If the Acute or Critical Violation(s) is not associated with the HOS BASIC, the SI will only investigate the specific violation(s) cited on the most recent investigation.

The business rules for carriers on the risk-based prioritization lists are as follows:

- **High-Risk carriers must be investigated onsite.** See section 1.1.3.1.1 for information on High-Risk Carriers.
- **Vehicle Maintenance BASIC Requiring Investigation**
  All carriers whose Vehicle Maintenance BASIC requires investigation must be investigated onsite.
- **Carrier with two (2) or fewer BASICs Requiring Investigation**
  - Offsite Investigations are the recommended intervention type for carriers with two or fewer BASICs Requiring Investigation, unless the carrier requires an Onsite Investigation.
- **Carriers with more than two (2) BASICs Requiring Investigation**
  - An Offsite Investigation may be conducted on non-HM carriers with up to five (5) BASICs or HM carriers with up to six (6) BASICs (excluding the Vehicle Maintenance BASIC), unless an Onsite Comprehensive Investigation* is required.
  - An Onsite Focused Investigation may be conducted on non-HM carriers with up to five (5) BASICs or HM carriers with up to six (6) BASICs, unless an Onsite Comprehensive Investigation* is required.
  - Onsite Comprehensive Investigations are required when all applicable BASICs are to be investigated. An Onsite Comprehensive Investigation is required if all six (6) BASICs are investigated for a non-HM motor carrier or if all seven (7) BASICs are investigated for an HM motor carrier. See below for when an Onsite Comprehensive is required, per policy.*

- **Carriers that require an Onsite Comprehensive Investigation per policy**
  - The following carriers require an Onsite Comprehensive Investigation, per current policy
    - New Entrant carriers that have been designated as High-Risk and have not received a Safety Audit
      Note: When assigning an investigation to a carrier in the New Entrant monitoring program, ensure that there are no pending Safety-Audit-related actions. If there is a pending Safety-Audit-related action, forgo assigning an investigation for the carrier until the completion of the pending Safety-Audit-related action. For example, review letter history for the carrier in the Motor Carrier Management Information System (MCMIS) to ensure that there are no pending Expedited Actions.
  - Passenger carriers with BASICs Requiring Investigation that have not received a Comprehensive Onsite Investigation within the past 12 months.
    - Note: Due to impacts on applications for operating authority, if evidence is discovered that a passenger carrier is operating prior to receiving operating authority, then the following applies and the passenger carrier vetting team should be notified of the activity in order to reject their application for authority:
      - If a Comprehensive Onsite Investigation results in a Conditional or Satisfactory rating, then the review should be uploaded as a non-ratable review type.

- If a Comprehensive Onsite Investigation results in an unsatisfactory rating, then the review should be uploaded as a ratable review.

- Carriers with an Unsatisfactory Safety Fitness Rating issued prior to 2001.[10] (Those carriers with an Unsatisfactory Safety Fitness Intervention Reason category [OOS with Activity] as NOC candidates due to activity while under an OOS Order.)

[10] Insurance/Other Indicator does impact prioritization of a motor carrier but **should not** be counted when determining the number of BASICs requiring an investigation when deciding whether an Offsite, Focused or Comprehensive Investigation is appropriate.

1.1.5 Manager Determines Intervention Type for Carriers on the Monitor or Warning Letter List

Division offices should check the Monitor List (for more information carriers on the Monitor List see Section 1.1.3.1.3) for carriers whose measured safety risk has increased post intervention, which can be tracked using the reset tool.

Carriers who are on the Warning Letter lists will not appear on the Manager's monthly list of carriers to investigate, but they may still be candidates for intervention. This is because not all the reasons for intervention are incorporated in the system recommendation and prioritization algorithm. Interventions may be selected based on national program goals and related initiatives that may require the States to review and assign from the Warning Letter lists.

In all cases, the Manager should also consider other national program goals and priority lists (e.g., Household Goods, Cargo Tank Facility reviews, and Americans with Disabilities reviews).

1.1.6 Manager Determines Intervention Type for Carriers not on the Program Office Lists

There are three Program Office lists in ACE as defined below.

- **Passenger Carrier Program**: The carrier is a passenger carrier OR has any passenger-related reason for intervention, including:
  - Carrier is a MAP-21 motorcoach carrier requiring a safety rating, OR
  - Carrier is an unauthorized active passenger carrier, OR
  - Carrier is a curbside bus carrier requiring an investigation

- **Hazardous Materials Carrier Program:** The carrier is a hazardous materials (HM) carrier OR has any HM-related reason for intervention, which includes HM Safety Permit and HMSP Carrier Enhanced Oversight.

- **Household Goods Carrier Program:** The carrier is a household goods carrier

  Note: The Program Office prioritization lists are different than the Risk based lists; however, if a carrier on a Program Office list also meets risk-based criteria, it will appear on both lists.

1.1.6.1 Improved Oversight of Motorcoach Providers

Based on the provisions of MAP-21, motorcoach operators are now required to receive a comprehensive investigation, resulting in a safety rating, as shown below. As stated above, this provision is currently being applied to all motor coach operators:

- For carriers that began operations after October 1, 2012: Within two (2) years of registration.
  - Carriers that began operations on or prior to October 1, 2012: No later than October 1, 2015.

- The safety fitness of every carrier will be reassessed once every three years after the initial assessment is completed. (See Implementation of the MAP-21 Timeframes policy, dated October 2, 2013.)

1.1.6.2 - HM Carriers requiring a Comprehensive Investigation

- Carriers requiring an HM Safety Permit (HMSP) that do not already hold a Satisfactory Safety Fitness Rating.
    - If FMCSA determines that a motor carrier holds an HMSP or Temporary HMSP (T-HMSP) and has not used the HMSP during the previous 365 days or the T-HMSP during the previous 240 days from the date of discovery, the Agency will remove the HMSP or T-HMSP from the motor carrier's registration in the Motor Carrier Management Information System (MCMIS), in accordance with the Removal of Hazardous Materials Safety Permit policy (MC-SEH-2024-001).

1.1.7 Manager Determines Intervention Type for Carriers not on the Risk-Based Prioritization Lists or the Program Office Lists

Other carriers not on the Risk-Based Prioritization list should be evaluated for investigation using the Guidance for Selecting Investigation Types presented above. These carriers include:

- Carriers involved in Significant Crashes, as defined in the Significant Crash or Post Crash Investigation Memorandum of April 29, 2008, should be investigated.
- Carriers receiving complaints (Detailed guidance for evaluating investigation type for these carriers can be found in the box below).

Selecting the Appropriate Investigation for Carriers receiving Complaints - Carriers that receive a non-frivolous complaint require an investigation. The investigation, however, can be Offsite, Onsite Focused, or Onsite Comprehensive. The scope of the investigation must include the BASIC(s) associated with the complaint. For example, a complaint alleging an HOS violation should include an investigation of the HOS Compliance BASIC and should be conducted as an Offsite Investigation per the business rules discussed in the Guidance for Selecting Investigation Types. In cases where a carrier subject to the complaint has Roadside-Identified BASICs, which are different from the BASICs associated with the complaint, and which have been recently investigated, these BASICs should not be "reinvestigated." For more information on handling Complaints see section 6.2.1.1.7 in the Manager Manual.

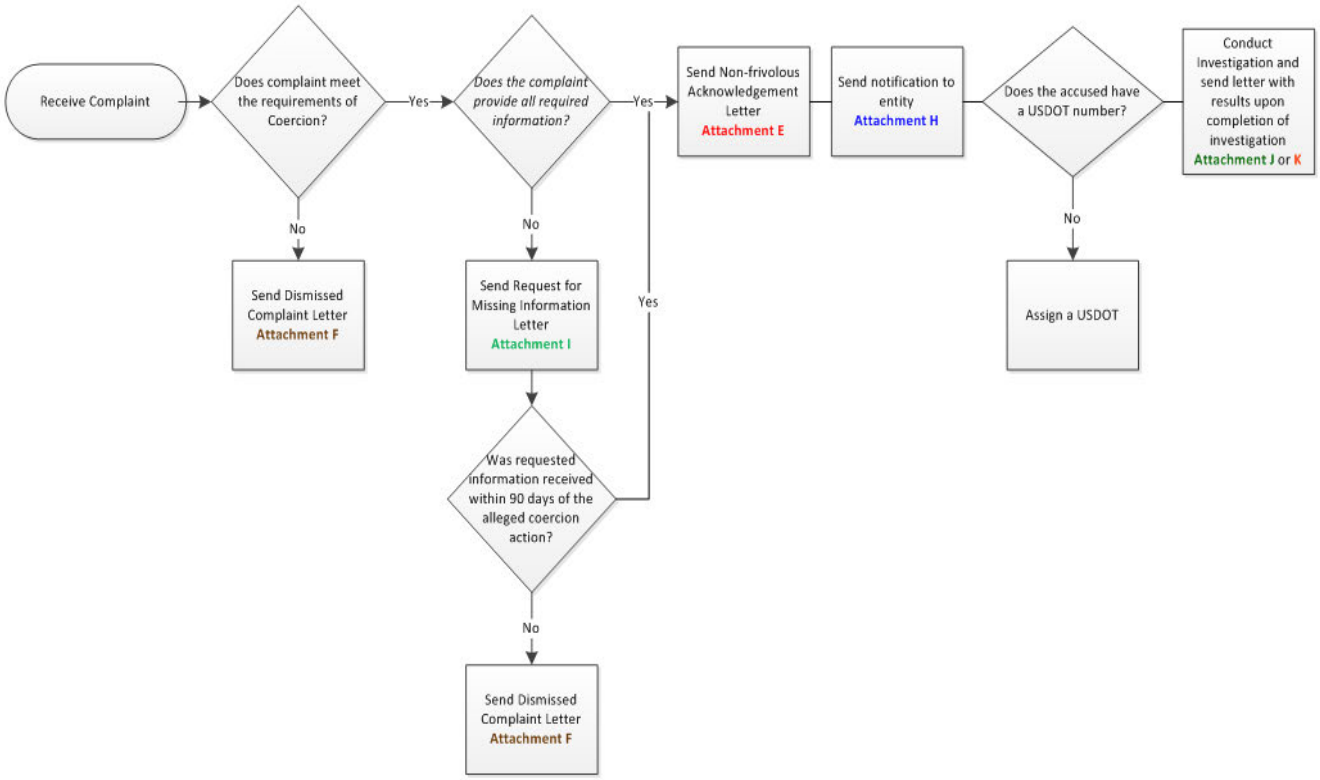
Investigating Coercion and Harassment Complaints

Upon receipt of a written coercion or harassment complaint, the Division Administrator should determine whether the complaint meets the definition of coercion or harassment, as defined in 49 CFR 390.5 and 390.36, respectively, and that the complaint meets the requirements in 49 CFR 386.12. The DA should ensure that all written (non-frivolous and frivolous) coercion or harassment complaints received by the Division Office are entered into the National Consumer Complaint Database (NCCDB).

The driver may file a written complaint either through the NCCDB or with the Division Office for the State where the driver is employed. If a driver contacts the Division Office, the DA may use Attachment D of the "Responding to Coercion and Harassment Complaints" policy (MC-ECE-2016-0004) as a guide to assist the driver to determine whether he or she may have a non-frivolous complaint of harassment or coercion. The DA should inform the driver that complaints must be submitted in written form (either through the NCCDB or by mailing the written complaint to the Division office) and signed by the driver.

Coercion Complaints

The following is a flow chart on how to respond to received coercion complaints:



- ATTACHMENT E_Non-Frivolous Acknowledgement Letter
- ATTACHMENT F_Frivolous Coercion Complaint Letter
- ATTACHMENT H_Carrier Notification Letter
- ATTACHMENT I_Request Missing Information Letter
- ATTACHMENT J_Coercion Complaint Substantiated
- ATTACHMENT K_Coercion Complaint Not Substantiated
- ATTACHMENT L_Harassment Complaint Substantiated
- ATTACHMENT M_Harassment Complaint Not Substantiated

Coercion is a threat by a motor carrier, shipper, receiver, or transportation intermediary or their respective agents, officers, or representatives, to withhold business, employment or work opportunities from, or to take or permit an adverse employment action against, a driver to induce the driver to operate a CMV in a manner that the driver stated would violate covered regulations, or the actual withholding of business, employment, or work opportunities or taking or permitting an adverse employment action to punish a driver for refusing to operate in violation of the FMCSRs or HMRs. The rule also prohibits motor carriers, or their agents, officers, or representatives, from threatening loss of work or other adverse employment actions for refusing to violate the FMCCRs, or taking actions to punish drivers for refusal to violate the regulations. Coercion may be found to have taken place even if the driver is not in violation of the FMCSRs, HMRs, and/or FMCCRs.

The act of coercion only exists if:

- A motor carrier or other involved parties request a driver to perform a task that would result in the driver violating provisions of the FMCSRs, HMRs, or the FMCCRs;

- The driver informs the motor carrier or the other involved parties of the violation that would occur if the task is performed, such as driving over the HOS limits or creating unsafe driving conditions; and
- The motor carrier or the other involved parties make a threat or take action against the driver's business, employment or work opportunities.

Coercion complaints may be submitted against entities that do not require a U.S. Department of Transportation (USDOT) number, such as shippers, receivers, and some transportation intermediaries, the DA should assign a USDOT number, if one has not been assigned to the entity. A USDOT number should not be assigned to frivolous complaints. The assigned USDOT number should be used for any investigation report and/or enforcement action. The USDOT number should be used for internal tracking purposes only, and does not confer any registration on the entity. To assign a USDOT number, the DA should do the following:

- Assign the entity a USDOT number through Motor Carrier Management Information System (MCMIS)
  - Select subsystem MCS150/MCS150B/MCS150C add
  - Select interstate shipper as company type (regardless of the type of entity, unless it is a motor carrier)
  - Populate the required fields in MCMIS with the most accurate information.

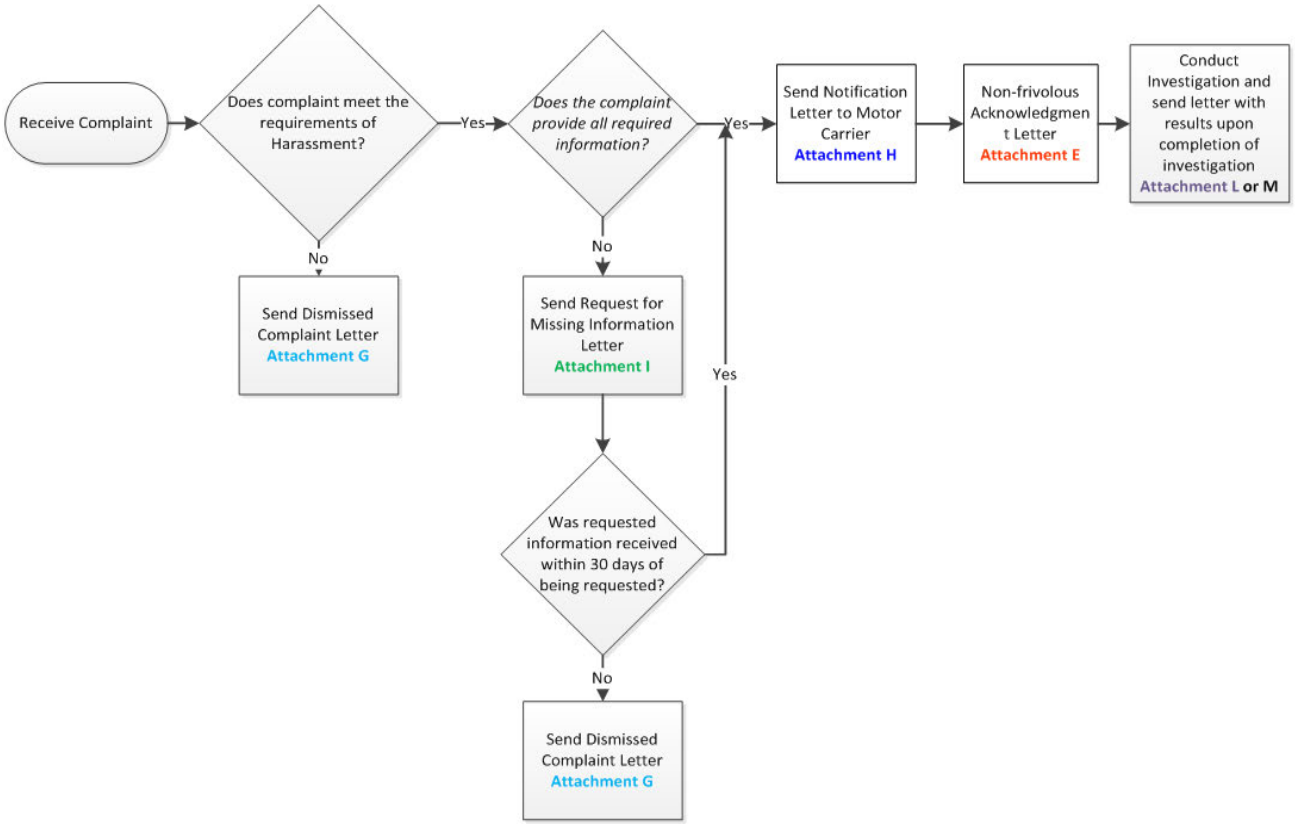
The Unified Registration System applies to some entities that are subject to the coercion rule. Entities that existed prior to December 12, 2015 are not required to apply for a USDOT until September 30, 2016. If an allegation of coercion is received alleging an entity that does not have a USDOT number the DA should assign said entity a USDOT using the guidance provided above.

If the DA determines that the entity has coerced a driver, the entity should be cited on any investigation or enforcement report as follows:

a. 49 CFR 390.6(a)(1): Coercing a driver of a commercial motor vehicle to operate such vehicle in violation of 49 CFR parts 171-173, 177-180, 380-383 or 390-399, or 385.415 or 385.421 (to be used for violations of the FMCSRs and HMRs); or
b. 49 CFR 390.6(a)(2) [Limited to motor carriers]: Coercing a driver of a commercial motor vehicle to operate such vehicle in violation of 49 CFR parts 356, 360, or 365-379 (to be used for violations of the FMCCRs).

Harassment Complaints

The following is a flow chart on how to respond to received harassment complaints:



- ATTACHMENT E_Non-Frivolous Acknowledgement Letter
- ATTACHMENT F_Frivolous Coercion Complaint Letter
- ATTACHMENT H_Carrier Notification Letter
- ATTACHMENT I_Request Missing Information Letter
- ATTACHMENT J_Coercion Complaint Substantiated
- ATTACHMENT K_Coercion Complaint Not Substantiated
- ATTACHMENT L_Harassment Complaint Substantiated
- ATTACHMENT M_Harassment Complaint Not Substantiated

Harassment is action taken by a motor carrier that the carrier knew (or should have known) would result in a driver violating the HOS rules in 49 CFR part 395 or 49 CFR 392.3, which prohibit carriers from requiring drivers to drive when their ability or alertness is impaired due to fatigue, illness, or other causes that compromise safety. The carrier's action must be based on information from an ELD or other technology used in combination with an ELD. A carrier that harasses a driver through an ELD may be cited for harassment (49 CFR 390.36(b)), only if the carrier or driver is cited for the underlying violation (49 CFR 392.3 or part 395) on the investigation report.

When investigating an allegation of a harassment violation, the DA needs to determine whether or not a motor carrier used information available through the ELD that resulted in the driver violating 49 CFR 392.3 or 49 CFR part 395. The ELD and fleet management system (FMS) records should be reviewed, if available, to confirm harassment violations. In particular, electronic records reflecting communications transmitted through an FMS for the driver's 24-hour duty day may provide important supporting evidence that the motor carrier knew, or should have known, the driver was violating 49 CFR 392.3 or 49 CFR part

395. Harassment will be considered in cases of alleged HOS violations and the violation for harassment is in addition to the violation under 49 CFR 392.3 or 49 CFR part 395.

a. If a harassment violation is found, the motor carrier should be cited on any investigation or enforcement report as follows:
    - 49 CFR 390.36(b)(1) – Engaging in harassment of a driver.
b. The motor carrier should also be cited on the investigation or enforcement report for the underlying violation of 49 CFR 392.3 or part 395.

1.1.7.1 Guidance for Initiating an Investigation When a Significant Crash or Incident Occurs

Identifying a Significant Crash

Crashes Requiring an Investigation

Division Responsibilities

When to Conduct a Preliminary Crash Investigation (PCI)

PCI Components

Enforcement

Crash/HM Incident Notification Report

1.1.7.1.1 Identifying a Significant Crash

A Significant Crash is a crash involving a commercial motor vehicle (CMV) with multiple fatalities (three or more), an unusually high number of injuries, or a combination thereof, and/or crashes involving a CMV that are likely to result in heightened interest and of which detailed knowledge would be beneficial. Any incident in which the National Transportation Safety Board (NTSB) sends investigators, any incident involving a Mexican commercial vehicle, or any incident including extensive National media coverage, would be a Significant Crash.

1.1.7.1.2 Crashes Requiring an Investigation

An Onsite Investigation shall be conducted after a Significant Crash for the following motor carrier groups:

- High-Risk motor carriers without an Onsite Investigation in the past nine months;
- Unrated passenger carriers;
- All motor carriers with less than satisfactory ratings without an Onsite Investigation in nine months; and,
- Carriers that meet or exceed the BASIC Intervention Thresholds and have driver or vehicle violations discovered during the Preliminary Crash Investigation (PCI).

An investigation may be conducted in other situations when the DA, in the exercise of his or her discretion, determines that a significant crash merits an investigation. Where guidance is required, the DA will consult with his/her FA to determine the best course of action.

1.1.7.1.3 Division Responsibilities

Each Division is responsible for establishing a network with State and local law enforcement agencies for prompt identification and reporting of significant crashes and incidents. The Division shall gather vital information on the significant crash or police report as promptly as possible to include, but not limited to, a synopsis of the crash event, the general location, a status of actual/possible fatalities/injuries, and the motor carrier(s) involved. If the involved motor carrier(s) is domiciled in a State other than the State in which the crash/incident occurred, the DA of the motor carrier's State of domicile must be sent the significant crash/incident report when completed. Copies of the crash/incident report must also be forwarded to

Automated Hazardous Material Incident (AHMI) and your respective FA when the report has been completed. Please use the following number to report crashes and other significant events after normal business hours: 202-366-5373. This number is answered 24 hours/7 days a week and you are also able to leave detailed messages. During normal business hours, please use 202-366-0177 and continue to email your information to AHMI.

1.1.7.1.4 When to Conduct a Preliminary Crash Investigation (PCI)

A PCI of a significant crash shall be conducted by personnel identified by each DA when the actions of the CMV driver may have been a contributing factor to the cause of the crash; preliminary findings from officer's investigation at the scene or post-crash inspection reveal possible violations of the FMCSR or Hazardous Materials Regulations (HMR) that existed prior to or at the time of the crash; or, other factors that indicate that further investigation is warranted (e.g., unknown motor carrier, Mexican-domiciled motor carrier).

1.1.7.1.5 PCI Components

A PCI includes: (1) A review of the driver's: Driver Qualification (DQ) File, including Commercial Driver's License Information System (CDLIS) report; compliance with the controlled substance testing regulations; and HOS during the 8-day period prior to and at the time of the crash; (2) An inspection of the CMV(s) involved in the crash if no State inspection is conducted or a review of the vehicle inspection or investigative report prepared by a State agency; and, (3) A review of the inspection and maintenance records for that vehicle, which are required by 49 CFR Part 396. Violations discovered during the PCI should be documented and if warranted, an enforcement case prepared. Care should be taken to coordinate enforcement case preparation with any enforcement actions contemplated by other Federal, State, or local jurisdictions to avoid duplicating enforcement for the same violations.

1.1.7.1.6 Enforcement

If an investigation is not conducted, enforcement action against a driver or motor carrier may be initiated, when appropriate, based on the documentation gathered during the PCI. An example is if a driver was found to be in violation of the HOS rules of a critical nature at the time of the crash or incident. If an investigation is conducted, enforcement will be handled based on current policy defined in the electronic Field Operations Training Manual (eFOTM).

1.1.7.1.7 Crash/HM Incident Notification Report

Download PDF Form: Crash/HM Incident Notification Report

1. WHY IS THIS A SIGNIFICANT CRASH/HM INCIDENT?
2. TYPE OF CRASH/HM INCIDENT (Passenger, HM, Railroad Grade Crossing, Work Zone, etc.):
3. LOCATION OF CRASH/HM INCIDENT (State/City/County/Route/Milepost/ Railroad, etc.):
4. DATE AND TIME OF CRASH/HM INCIDENT:
5. NUMBER OF INJURIES/FATALITIES:
6. DESCRIPTION OF CRASH/HM INCIDENT:
7. WEATHER AND ROAD CONDITIONS:
8. CARRIER(S) INVOLVED (Name, Address, City, State, Telephone #, DOT #, Current Rating, date of last contact and any additional information that the Division Administrator deems appropriate):
9. VEHICLE(S) INVOLVED (By number and type of configuration, e.g., Tractor & Trailer, Tractor & Cargo Tank, Straight Truck, etc.):

10. DRIVER INFORMATION (Include driving record and additional information which the Division Administrator deems appropriate):
11. HM INVOLVED (Type and Extent):
12. INVESTIGATING AGENCIES (Federal, State, Local, NTSB, etc.):
13. REPORTING OR ASSIGNED DIVISION ADMINISTRATOR (Name, Telephone #, name of on-site Investigator, and cell phone #):
14. STATUS OF INVESTIGATION (Keep headquarters advised of the situation):
15. CARRIER OPERATION (Interstate vs. Intrastate):

Please use the following numbers to report crashes and other significant events after normal business hours: 1-866-875-4447 or 202-366-5373. These numbers are answered 24 hours a day/7 days a week and you are able to leave detailed messages. During normal business hours, please call 202-366-0177 [redacted] and continue to email your information to the accident/incident mailbox (AHMI). Please send all Crash/HM Incident Notification Reports toAlex.Keenan@dot.gov.

1.1.8 Manager Makes Assignments

Discovering a Suspected Reincarnated or Affiliated Motor Carrier

In conducting the activities described in the Carriers Prioritized Based on Risk the Manager compiles a list of carriers and the specific types of Intervention selected for these carriers. The process of assigning carriers to SIs for an intervention is often done in conjunction with determining the appropriate intervention type. It is presented sequentially in this manual for ease of presentation.

Along with the selected investigation type, an assignment should include any required supplemental reviews: (1) Controlled Substances/Alcohol Supplemental Review and/or (2) **HM Supplemental Review**.

Controlled Substances/Alcohol Supplemental Review – When ACE identifies the need for a Controlled Substances/Alcohol supplemental review, the Manager should add this to an investigation assignment if one of the following three criteria is met:

- Carrier has not been subject to an Investigation or Safety Audit that reviewed Part 382/40 in the last five (5) years.
- Carrier had an Acute and/or Critical violation of Part 382 during the most recent investigation.
- Carrier provided adverse responses to Controlled Substances/Alcohol-related questions during a New Entrant Safety Audit.

Note: The SMS and ACE identify carriers that have met these criteria.
HM Supplemental Investigation – A motor carrier is not subject to an HM Supplemental Investigation if the HM Compliance BASIC is investigated as part of an Onsite Comprehensive, Onsite Focused, or Offsite Investigation. For all other motor carriers that transport HM, an HM Supplemental Investigation is required if the motor carrier has not had an investigation that examined HM compliance within the last 24 months AND the motor carrier is subject to:

1. Shipping paper requirements, HM training requirements, security plan requirements, and/or cargo tank testing and inspection requirements; or
2. HM incident reporting requirements and has had an HM incident in the previous 12 months.

For HM Supplemental Investigation investigative procedures, see *HM Supplemental Investigations*.

When making an assignment, the Manager should consider the SI's existing workload as well as location and travel requirements. Assignments are made through the ACE. The assignment can be annotated with additional information that the Manager wishes to communicate to the SI. In addition, the Manager may set

a due date for the intervention. The use of due dates can be an effective way to ensure SIs complete interventions according to the priorities outlined. ACE will require a due date for High-Risk carriers. A carrier identified as High-Risk should be assigned an Onsite Investigation, which should be conducted and completed within 90 days from the release of the prioritization list (See section ***1.1.3.1.1 High-Risk Carriers for additional information***).

1.1.8.1 Discovering a Suspected Reincarnated or Affiliated Motor Carrier

Q3: What do you do if you suspect that the motor carrier is a reincarnation or affiliation of another motor carrier?

A3: Often a suspected reincarnated or affiliated motor carrier is discovered by the Investigator assigned to review a motor carrier's compliance with the applicable regulations. The Investigator may recognize a similarity between the motor carrier assigned for investigation and another motor carrier. The current screening tool should be routinely consulted as part of the Investigator's preparations for the investigation. Often, the first indications of a potential reincarnated or affiliated motor carrier is the physical location being an address previously occupied by another motor carrier, the use of the same telephone numbers, or the same owner(s, /officer(s), and/or operators from another motor carrier that was the subject of FMCSA adverse action. The Investigator's analysis should focus on operational control. In preparation for a potential reincarnation or affiliation investigation, Investigators should review and be familiar with the Agency standard established in 49 CFR § 386.73(c).

When the Investigator observes a potential continuity of operations between the motor carrier assigned for investigation and another motor carrier, the first step is to determine the FMCSA operational status of the suspected predecessor motor carrier. Refer to Appendix K, an investigative reference tool listing key analysis factors that the Investigator should consider when reincarnation or affiliation is suspected. If the predecessor motor carrier is subject to an OOS order, or has a negative safety history, the Investigator should work closely with the Division Administrator (DA) and the Service Center Enforcement Team (SCET) to gather and organize the evidence in order to bring a case against a suspected reincarnating carrier.

- **Coordination:** When the Investigator suspects that a motor carrier has reincarnated or is affiliated with another entity in attempt to evade compliance, the Investigator should contact the appropriate DA immediately. Experience shows that coordination between two or more DAs may be needed, as attempts to reincarnate sometimes include incorporating in another State to avoid detection. The Investigator should begin collecting preliminary information and documents to establish the status of both the predecessor entity and the new entity. Coordination with Field Attorneys is also required. Counsel is a valuable resource in ensuring that the Investigator is able to obtain sufficient information and documentation to support action under 49 CFR part 386.
- **Evidence Collection:** Reincarnation investigations require Investigator analysis and documentation that differs slightly from the usual documentation needed to support typical violations discovered during routine investigations. Appendix K provides a guide to the types of evidence that should be collected in a reincarnation or affiliation investigation. The checklist is intended to enable the Investigator to take notes and comment on the availability of evidence and describe the investigation. For example, Appendix K recommends that three years of tax documents be collected as part of the investigation. These types of tax documents may not be available for the three-year period mentioned, or may not be available at all. If that is the case, Investigators should describe the available evidence and document any information that is still needed. In some instances, subpoenas to third parties may be necessary to obtain documents that the motor carrier is not required to maintain, but may be available from the motor carrier's business contacts such as an accountant, insurance agent, representative, or bank. Accordingly, when the carrier is unable to produce these important documents, the Investigator should obtain the names and necessary identifying information for company accountants, insurers, banks, and other third parties.

- **Summary:** Investigators should prepare a brief summary of the evidence collected that led the Investigator to first suspect reincarnation, explaining the suspected reason the motor carrier reincarnated (e.g., OOSO of the previous entity) and providing a timeline or chronology of events and motor carrier actions. This summary should be provided via a separate Word document to the DA or in the manner (such as an e-mail) directed by the DA.
- **Submission of evidence:** To the extent practicable, follow established procedures and time frames for Agency enforcement actions regarding submission of evidence to the DA. This information should be provided as soon as it is complete. The Division office should be working with the SCET and Field Attorney to ensure that necessary and sufficient evidence has been obtained.
- **Closeout:** A compliance review or investigation should not be closed out until all evidence supporting the reincarnation has been collected and reviewed by the SCET, and a decision to conclude the investigation has been made by the Service Center Director or Service Center Enforcement Program Coordinator, in consultation with the Field Attorney. A compliance review that involves a chameleon or affiliate investigation should not result in a safety rating prior to a determination on the evidence supporting enforcement action under 49 CFR § 386.73.

1.1.9 Types of Carriers that Can be Investigated

Generally, you can only initiate an investigation against a motor carrier that operates a CMV in interstate commerce. However, the Federal Motor Carrier Safety Administration's (FMCSA's) jurisdiction also extends to a motor carrier's intrastate operations in the following areas:

- Part 382 (Controlled Substances and Alcohol Use and Testing)
- Part 383 (CDL)
- Part 385 Safety Fitness Procedures 401-423 (HM Safety Permits)
- Part 387 (Financial Responsibility)
- Part 395 (HOS)
- Parts 107-180 (Hazardous Materials)

Procedures for conducting investigations on other entities, such as HM Shipper Reviews, Cargo Tank Facility Reviews (CTFRs), HHG Carriers, etc., are set forth in separate sections of this eFOTM.

The SMS measures and assesses the performance of intrastate motor carriers with U.S. DOT numbers and sufficient data. Intrastate motor carriers are prioritized using the same Risk-Based criteria as described in section 1.1.3. In addition, intrastate HM carriers are included in the intrastate list unless they require a HM Safety Permit. (Intrastate HM Safety Permit carriers are included in the interstate list.) These intrastate lists are available within ACE.

"For more information on the type of carriers that should be investigated please go to: *Type of Carriers That Should be Investigated."*

1.2 Stage 2-Pre-investigation

1.2.1 Introduction to Pre-Investigation and Risk Assessment

This is a critical preparatory stage of the investigative process for both Onsite and Offsite Investigations. The SI should use the Pre-Investigation and Risk Assessment processes to learn as much as possible about the carrier before confirming the investigation's scope, location, and assignment type. The SI will use multiple resources, both internal and external, to verify the carrier's documents and learn as much as possible about the carrier before confirming the investigation type. The SI will use ACE to request and collect documents from the carrier electronically. The SI will use this phase to:

- Gain an understanding of the nature and scope of the carrier's business;
- Review the carrier's past history with FMCSA;
- Use ACE to collect and review documents from the carrier;
- Contact the carrier to explain the investigative process;
- Identify potential safety management breakdowns;
- Begin picking up clues to guide the investigation; and
- Confirm the investigation assignment type.

The tasks in this section are described as being performed by the SI; however, some of the Pre-Investigation tasks may be performed by others. By using available data, much of the Pre-Investigative Stage can be completed prior to contacting the carrier. It is important that you are thoroughly prepared before contacting the carrier to request documentation and to set up a time for the investigation.

In this Stage, your responsibilities are summarized as follows:

- Receive and prioritize new assignments.
- Examine all available data about the carrier prior to contacting the carrier.
- Conduct the Risk Assessment process, which includes using ACE to Generate and send Initial Contact and Document Request Letters. The Document Request Letter will be based on the record sampling criteria explained in this section. This will vary based on the type of investigation, the size of the carrier, which BASICs Require Investigation, and the investigation scope.
    - Investigation scope is based on the following:
        - BASICs on that meet or exceed the intervention threshold (roadside).
        - Acute and/or Critical Violations discovered in the previous six years. If the Acute and/or Critical Violation(s) is associated with the Hours of Service (HOS) BASIC, the SI will investigate the full HOS BASIC (all parts). If the Acute or Critical Violation(s) is not associated with the HOS BASIC, the SI will only investigate the specific violation(s) cited on the most recent investigation.
        - BASICs associated with confirmed, non-frivolous complaint. (For example, a complaint alleging an Hours of Service (HOS) violation should include an investigation of the HOS Compliance BASIC.)
- Use the findings from the Pre-Investigation and Risk Assessment process to continue with the investigation as assigned, or change the scope and location following a discussion with the Manager.

1.2.2 SI Assignment and Prioritization of Tasks

1.2.2.1 SI Receives and Prioritizes Assignment

SI's are notified of new carrier assignments in ACE . The assignment will include details on the carrier along with the type of intervention that has been assigned and a due date. In many circumstances, Managers will assign SIs a batch of interventions at one time. There may be a time lag between the assignment of an investigation and initial contact with the motor carrier. When this occurs, the investigation should be performed based on the number of BASICs Requiring Investigation at the time the investigation is initiated. .

SIs must efficiently schedule their time to manage multiple open and ongoing investigations at the same time. Because of this requirement, it is important to properly prioritize the work. To the extent that is practical, investigations should be initiated in priority order, starting with High-Risk carriers, followed by priorities set by the Manager.. The other factor that should be considered is the due date assigned by the

Manager. The SI must balance these two factors, along with the type of intervention, to determine the best approach to get the work done.

Offsite Investigations allow for flexibility, and SIs can be more productive because they can have more than one investigation open at a time. For example, multiple Offsite Investigations should be open (waiting requested documents) while the SI is conducting an Onsite Investigation. This allows the SI to return from the Onsite Investigation and continue with one of the Offsite Investigations without undue delay related to waiting for carrier documents. If an investigation assignment no longer meets the business rules, in this case the carrier no longer meets the criteria for an Offsite Investigation, (e.g., the Vehicle Maintenance BASIC is now over the intervention threshold), the SI should discuss with the DA or Designee and change the investigation type.

Enforcement actions that do not require an Onsite or Offsite Investigation also lend flexibility to the SI's workload. These include Direct NOCs or NOVs, as described in Section 1.1.3 of Stage 1. After receiving an assignment from the Manager, the SI can proceed to prepare these enforcement actions without opening an investigation. The Manager and SI can coordinate timing or redistribution of these assignments to balance workloads and/or reflect other priorities.

1.2.2.2 SI Locates Carrier and Verifies Contact Information

The SI should make every effort to locate the carrier and verify their contact information. Contact information may not always be accurate, despite the requirement for carriers to update their registration information. If it is discovered that the principal address the motor carrier designatied on its MCS-150 series form, OP-1 series form, and/or on its initial registration after submission through the Unified Registration System (URS) via the Form MCSA-1 will hinder the Agency's ability to complete investigations or access records required to be maintained or produced to the FMCSA at the PPOB., immediately notify the motor carrier of their responsibility to comply with the PPOB requirement. The motor carrier should be directed to the "Registration" page of the FMCSA website (https://www.fmcsa.dot.gov/registration/updating-your-registration) to update its registration and/or authority. If the motor carrier cannot access the online registration system, the Safety Auditor/Investigator should provide the motor carrier with a copy of the MCS-150 form with instructions, and/or MCSA-5889 Motor Carrier Records Change form and provide the motor carrier with a copy of the Federal Register notice titled *"*Regulatory Guidance on the Definition of Principal Place of Business" (74 FR 37653). Enforcement should only be taken if the improper designation of the PPOB prevents the Agency from completing the investigation of a U.S. or Canadian owned and domiciled carrier.

Generally, safety audits and investigations should be performed at the PPOB. The safety audit or investigation may be performed at a mutually agreed upon location other than a motor carrier's PPOB, provided the Safety Auditor/Investigator is able to access all relevant documents, equipment, and personnel at the alternate location. If a motor carrier's designated PPOB is not a location where the carrier conducts operations related to its motor carrier business, and, as a result, the Agency cannot complete an investigation, the Division Office should issue a Notice of Claim or initiate a proceeding to suspend operating authority, or both, using the procedures in the Revised Principal Place of Business Requirements (MC-ECE-2020-0001). A proceeding to suspend operating authority requires evidence that the carrier's designation of a false or misleading PPOB was willful. Division Offices will not take enforcement if the investigation was completed and the only evidence that the PPOB is false or misleading is that the PPOB does not comply with the regulatory guidance.

All actions taken to locate the carrier and attempt to schedule or complete the investigation should be documented and uploaded to EDMS. Safety Auditors and Investigators will not make any address changes

in the Agency's systems to update a motor carrier's PPOB. The motor carrier is responsible for making the changes to its registration form via mail, fax, or online.

If the SI has difficulty locating carriers from the information currently in MCMIS, the following may help:

Federal resources:

- Compare address in MCMIS to other addresses in FMCSA systems, including those listed on roadside inspections.
- Use FMCSA's current screening tool and search phone numbers, plate numbers, or VIN of company vehicles.
- Utilize the Service Center Enforcement Team for assistance with specialized database searches for locating drivers or carriers. The online legal research service Westlaw is a useful tool; contact with the Service Center is appropriate when seeking out this resource.

State resources:

- Check with local State agencies for a different or valid address, e.g., International Registration Plan (IRP).
- Check State CMV Registrations (DMV).
- Check with Highway Patrol, Commercial Vehicle Division (MCSAP).
- Check CDL records to contact employees of carriers for new carrier address and other information.
- Office of the Secretary of State, or any other State agency that issues articles of incorporation, or articles of organization (e.g., LLC) in the State where the carrier is incorporated, if applicable. The State agency may have a website where information is readily available to the public.
- The appropriate State Department of Labor may be able to provide the name of the business reporting earnings for a specific employee.

Public resources:

- Check the Internet address (website) for a business listing.
- Other internet resources/search engines include: google, anywho.com, switchboard.com, 411.com, whitepages.com
- Check utilities company for a new listing (e.g., electric, gas, telephone).
- Drive by the last listed address to see if the carrier can be located or if any leads can be developed for a new address.

The SI should obtain and verify contact information for drivers with Red Flag Violations. This is needed for enforcement of driver violations discussed in Section 1.3.7.

You must obtain country clearance and notify the appropriate Canadian government/provincial representative(s) of our intention to investigate a Canadian motor carrier and/or shipper. The protocol requires obtaining country clearance from the U.S. State Department for Official Foreign Travel no less than 30 days before the trip. Additionally, notification to provincial officials of the upcoming compliance review must be submitted at least 2 weeks in advance of the scheduled review. This advance notice allows for an Investigator to submit a request for any additional information and subsequent information from the province to ensure no current investigation of the carrier by Canadian authorities is ongoing, and to receive notice if provincial representatives will participate in the review and/or wish to receive a copy of the completed report. Finally, if driver license queries are anticipated as part of the review, the Investigator should request additional information from the Canadian Driver Licensing Administration to determine if the driver possesses a valid Canadian license for the period in question. Updated provincial contact information can be found on the FMCSA KnowZone (Compliance and Enforcement/North American Borders (MC-ESB)/Canadian Provincial and Territorial Contact Information. *Per Policy Memorandum MC-ESB-2010-002*.

You must obtain country clearance and notify the appropriate Mexico government/representative(s) of our intention to investigate a Mexican motor carrier and/or shipper.

As a courtesy, notify the Secretaría de Comunicaciones y Transportes of the travel and the carrier under review.

Prior to any visit into Mexico, staff shall:

- Obtain all necessary documentation required for traveling, including official passport, country clearance from the U.S. Embassy in Mexico, visa (if required), and FMCSA credential.
- Carry FMCSA identification and travel documents, including official passport, country clearance, visa (if required), and FMCSA credential.
- Regularly inform supervisors of whereabouts and itinerary.
- Schedule activities in pairs or teams, whenever feasible and appropriate.
- When required, contact the local Consulate for information on consular services' regional security; political, economic, and commercial affairs; and other mission agencies.

Other travel requirements may be found in the FMCSA Travel Manual on the FMCSA KnowZone at http://one10.dot.gov/office/fmcsa/PlansPolicy/Orders/Pages/FMCSA-Travel-Manual.aspx.

Other Foreign Carriers and Enterprise Carriers

If a foreign carrier or a U.S.-domiciled carrier owned or controlled by Persons of Mexico ("Enterprise carrier") has provided false or misleading information in the designation of its PPOB, the Safety Auditor/Investigator will contact their supervisor and gather documentation to support an enforcement action in coordination with the Regional Field Administrator or Field Administrator or designee and the Borders Attorney in the Western Service Center. If a foreign carrier claims a U.S. PPOB or an Enterprise carrier provides false and misleading information in its designation of PPOB and does not, in fact, have a PPOB in the United States, the Investigator, in coordination with their supervisor and the Regional Field Administrator or Field Administrator or designee and the Borders Attorney in the Western Service Center, should gather documentation to support a proceeding for suspension of operating authority.

The Division Administrator or designee will consult with the Office of Compliance International Division, the Regional Field Administrator or Field Administrator or designee, and the Borders Attorney in the Western Service Center prior to issuing a Notice of Claim or initiating a suspension proceeding against a foreign or Enterprise carrier.

1.2.2.3 SI Examines Available Data on Carriers

The Impact of an Emergency Condition Requiring Immediate Response on the Review

An emergency condition requiring an immediate response under this exemption does not include requests to refill empty propane tanks.

Appendix P

The SI will use ACE to begin the Pre-Investigative process, which includes reviewing carrier data on available systems, confirming that an electronic logging device (ELD) is required, and, if applicable, confirming whether an ELD used by the motor carrier is a self-certified and registered ELD or a grandfathered Automated On Board Recording Device (AOBRD). Operation;

- Cargo and segment classifications;
- Exposure to safety risks;
- Insurance coverage;

- Current authority, if applicable;
- Crash history; and
- Issues related to Intervention and contact history, pseudonyms, and annual inspection reports.

There are many data sources and information, including roadside inspections, crash information, and enforcement, that can help you learn about a carrier prior to contacting them for an investigation. Look for information on factors such as compliance issues, violations, past reviews, patterns, prior enforcement, and carrier history.

Recommended data sources and information that you could examine include, but are not limited to:

- The motor carrier's BASIC percentiles in SMS. By reviewing identifying data that contributed to a high BASIC percentile, you will be able to concentrate on those areas for which the carrier has demonstrated problems, such as false RODS. Note, the drivers and vehicles that experience repeated violations and include them in your sampling during the review.
  - In general, drivers who pose the highest potential safety risk should be selected first as part of the sample.
  - Selecting drivers should be based on drivers with the highest DSMS percentiles within each driver-related BASIC under investigation.
  - After the drivers with the highest DSMS percentiles are selected, the sample should include drivers or vehicles involved in crashes, and then a random selection within the applicable criteria/timeframe for the particular part.
- Motor Carrier Management Information System (MCMIS)
- Review census data (MCMIS)
  - Review MCS-150 history (frequent data updates may be a red flag)
  - Review registration information
  - Identify potential PPOB issues
  - Look for potential affiliation issues
- Licensing and Insurance (L&I)
  - Review authority data
  - Determine authority type
  - Determine level of insurance
  - Look for multiple cancellations or changes
  - View the carrier's insurance history
    - Frequent revocations and/or insurance cancellations leading to insurance carrier changes are indicative of a carrier with a high-loss history. For any carriers with a history of inconsistent insurance, investigate further to identify the cause.
    - Determine adequacy of Process Agent filings
- Electronic Document Management System (EDMS)
- Enforcement Management Information System (EMIS)
- Commercial Driver's License Information System (CDLIS)
- DataQs

- Review for any carrier submitted Request for Data Reviews (RDRs) and follow the procedures outlined in 1.3.14.2.1 Crash Preventability Determination Procedures

- Query Central (QC)
- FMCSA's Current Screening tool
  - FMCSA's current screening tool identifies potential "chameleon carriers" within FMCSA's past and present carrier population. This tool provides you with the ability to search for specific carriers and identify relationships to other past and present carriers. Running the current screening tool prior to the start of the investigation can help to tailor the questions during the initial interview, even if is not determined that the carrier is reincarnated. We can use information that is common to two or more carriers, e.g., representatives, consultants, drivers, equipment, and common addresses. Remember that it is common practice in the charter industry to share resources.
  - FMCSA's current screening tool queries MCMIS for similar values in the following categories:
    - Similar company names.
    - Similar names of company officials.
    - Similar addresses, telephone numbers, or other identifying information.
    - Use of the same drivers and/or equipment.
    - FMCSA's current screening tool relies on data. If there is no data, an affiliation may still exist
    - Remember that the current screening tool casts a wide net. The inquiry you use could return extensive results that you will need to analyze.
    - FMCSA's current screening tool uses a broad range of identifiers such as partial names, etc.
  - Please click the link for additional guidance on *Discovering a Suspected Reincarnated or Affiliated Motor Carrier*.
  - Please click the link for *Record Consolidation Order (RCO).*
- State systems and records, as applicable
- Secretary of State or State Corporation Commission information
  - Corporations are required to register in every state where they have official operations. For example, a PPOB is listed in Georgia. This is where the primary records of incorporation are filed. If the company is also doing business in New York and has offices there, such as ticket sales locations/bus terminals where it is selling its product, it has to register the corporation in that state as well. This may be done for tax accounting purposes, to ensure each state gets its share of taxes on services sold. Compare the filings. Look for similarities and differences. An official listed in the New York office may be a completely different person than the person listed on the original records of incorporation where its primary business is based, and may not show up in any other company records.
  - The state filing may be an indicator of a secret owner/partner, especially when the person is not listed on the MCS-150 as an officer of the company.
  - **Note**: If a company files a corporation name change, most states require a new Tax Identification Number to be issued. Look at corporation records to determine if the prior

name/entity has been dissolved or is still operating within the state. Website assistance is at http://www.secstates.com

- DOD Audit Reports:
    - DOD conducts Audit Reports on carriers that are hired to transport military personnel through a contractor (Consolidated Safety Services) using a different platform than CAPRI. Military contractors are reviewed by DOD every 2 years and are scored 1-5, 1 being the highest level of compliance.

  These reports evaluate each carrier based on the company's compliance with the FMCSR. Through a memorandum of understanding (MOU) with DOD, these reports are sent to FMCSA and are uploaded into the carrier file in EDMS. Investigators should check EDMS for these reports, and they should be reviewed as part of your pre-investigation to identify potential problem areas.
- Performance Registration Information Systems Management (PRISM)
- HM Portal (HIP)
- Review of the Company File
    - You should review the field office file and all previous enforcement reports to become familiar with the company's previous safety and regulatory problems. In addition, determine whether safety, financial, drug and alcohol, commercial, and HM regulations apply. The MCMIS reports may also be reviewed. [MCMIS now provides a facsimile of the latest investigation and a summary of previous investigations, roadside inspections, and crashes.]
    - Review all previous safety investigations
        - Check EDMS and any old hard copy files.
        - Do not limit your research to the most recent review.
        - Look for patterns of non-critical and non-acute violations.
        - Look for §385.17 upgrade requests.

- Review Company Safety Profile:
    - Investigations conducted in AIM:
        - In the AIM system, the carrier's historical data is pulled in from ACE and MCMIS and details carrier operations, Safety Ratings and interventions, BASICs, inspections, crashes, and driver lists. The Company Safety Profile will be pulled into AIM on the date the SI begins the investigation. The SI has the ability to refresh the data up until the time they enter a start date. If there is a delay in starting the investigation, the SI will have to update the information manually.
    - Investigations not conducted in AIM:
        - You should also download the XML file for the carrier at the same time you obtain the company profile. Importing this XML file into CAPRI will ensure you have the most accurate data available for this company and prevent data upload errors upon completion of the review. Importing this data is also a time saver, since many sections of the investigative report (Pre-Investigation/Part A and Investigation Report/ Part C) will be automatically filled in, requiring you to only verify the accuracy of the data and not have to fill it in yourself.

- To download the XML file, follow these steps after ordering the Carrier Profile in MCMIS:
  - Right-click on XML file
  - Choose Save Target As, placing the file into a directory of your choice.
  - Do not change the name of the file.
- To import the XML data file, follow these steps in CAPRI:
  - Choose File, Import, Company Data from Profile (XML).
  - Select the directory where you downloaded the XML file.
  - Select OK, a list of available XML files will be shown
  - Place checks in the boxes of the carriers you wish to import, select OK.
- These motor carriers will now be shown on your Manage/Review list. Simply double click on their name to start your review.

- For all investigations the Company Safety Profile should be used to:
  - You must obtain and review the motor carrier's profile. The company profile must be obtained no more than seven (7) days before the investigation.
  - The company profile may reveal noncompliance in certain areas, for example, a company profile may reveal that a motor carrier has an Out-of-service Service (OOS) rate higher than the national average. In this situation, your investigation should be focused on the carrier's vehicle maintenance program.
- When you discover potential violations on the company profile, identify and record the drivers and/or vehicles that had the most violations. Include these in your sampling. Also, if the carrier doesn't have at least three Levels I, II, and/or V driver/vehicle inspections within the previous 12 months, inform the carrier that vehicles will need to be made available for inspections during your investigation. Investigations not conducted in AIM:

A review of the complaint section in ACE may identify safety issues or types of services provided.

1.2.2.3.1 The Impact of an Emergency Condition Requiring Immediate Response on the Review

SAFETEA-LU Section 4147 (Emergency Condition Requiring Immediate Response) created an exemption from the regulations in 49 CFR Parts 390-396, Subpart A of Part 397, and Part 399 for two types of drivers if compliance with those regulations would prevent the drivers from responding to an "emergency condition requiring immediate response." The two types are drivers of CMVs used (1) primarily to transport propane winter heating fuel or (2) to respond to a pipeline emergency.

An "emergency condition requiring immediate response" is defined as, "any condition that, if left unattended, is reasonably likely to result in immediate serious/significant bodily harm, death, or substantial damage to property." To illustrate in the case of propane, such conditions shall include but are not limited to the detection of gas odor, the activation of carbon monoxide alarms, the detection of carbon monoxide poisoning, and any real or suspected damage to a propane gas system following a severe storm or flooding. In the case of pipelines, such conditions include but are not limited to "indication of an abnormal pressure event, leak, release, or rupture."

Consult legal staff at one of the Service Centers before undertaking enforcement action against a driver who claims an exemption under this provision.

1.2.2.3.1.1 An emergency condition requiring an immediate response under this exemption does not include requests to refill empty propane tanks.

Citing Violations

The exemption does not require specific documentation to demonstrate that a driver was operating under the exemption. However, a Safety Investigator (SI) should attempt to demonstrate that the driver does or does not meet the conditions of the exemption. Examples of evidence to support the proper use of the exemption are through carrier/shipper documents, carrier interviews, driver interviews, documents found in the vehicle, contacting state or local officials, contacting fuel/propane associations, or interviewing persons affected by the emergency condition. When it is determined that the driver did not meet all the conditions of the exemption, the driver must comply with all applicable FMCSA regulations and should be cited for violation(s) as outlined below. During an investigation, when it is discovered that a driver claiming the exemption does not meet the conditions of the exemption, the SI must cite all violations of the FMCSR for sections where violations occurred. For example, when the driver exceeds the 14-hour rule on a particular day that the driver did not meet the conditions of the exemption, the SI should cite a violation of 49 CFR Section 395.3(a) (2). Violations will be cited and recommendations made using the selections that already exist in the investigative system. An explanation should be included in the Investigation report/Part C of the report explaining why the exemption does not apply. The time periods for the review of various records are outlined within the eFOTM.

1.2.3 Risk Assessment Process

1.2.3.1 Introduction Risk Assessment Process

All CSA Investigations (Offsite, Onsite Focused, Onsite Comprehensive Investigations) start with a Risk Assessment in ACE during the Pre-Investigation stage. The Risk Assessment process allows the SI to collect and review carrier documents electronically, using ACE, to assist the SI in confirming the assignment type and scope of the safety problem early in the process. The SI should use the information available from FMCSA systems and carrier documents to validate or override the assignment type, except in situations where doing so would significantly hinder the investigation (Significant Crash requiring immediate onsite presence).

1.2.3.2 SI Contacts Carrier and Generates the Initial Contact Letter

1.2.3.2.1 Introduction

After the SI has conducted preliminary research in ACE, the SI should call the carrier to explain that they have been selected for investigation, and inform the carrier that the investigation will begin with an online review of carrier-submitted documents. These documents will assist the SI in determining the scope and location of the investigation. The SI should validate the carrier's information (MCS-150), including email address. ACE allows the SI to record the date of the phone call and any relevant notes, which will be visible to enforcement users in future investigations.

1.2.3.2.2 Contacting the Carrier

When making initial contact, the SI should be prepared to explain the investigation process and respond to specific questions, e.g., how carriers are selected, what data contributes to the BASIC percentile, and what happens next.

During this initial contact with the motor carrier, you will want to ensure the motor carrier's applicability to the FMCSR, FMCCR, and HMR; and gather information including:

- Interstate shipments;
- Use of commercial motor vehicles;

- Physical location of carrier's office(s)/maintenance facilities, including directions;
- If the facility has a lift or pit;
- Name/Title of a responsible contact within the company; and
- Notify the carrier that CMVs need to be available for inspection during review. (Note: This point should only be discussed in the initial contact if the investigation must be conducted onsite.)

The following is a guide to what should be covered during the initial contact with the carrier.

- **For all Investigations**
    - The SI explains the BASIC thresholds and asks the carrier if they have looked at their safety data. The SI talks the carrier through the SMS website and where they can find their safety data if they have not looked in the SMS. The SI should provide the carrier with the program website (http://csa.fmcsa.dot.gov/about/default.aspx)
    - The SI describes the purpose and process of the investigation and explains the emphasis on the Safety Management Cycle.
    - The SI explains the Initial Contact Letter and Document Request Letter that will identify the specific documentation to upload to the SMS, and explains that the carrier will be able to use the SMS to track their upload progress. However, the SI should be as flexible as possible while still maintaining the integrity of the investigative process. The SI has the discretion to accept documents via fax, email, or mail. In these instances, the SI is responsible for uploading documents to ACE. For this reason, SIs should strongly encourage carriers to use the SMS to submit documents.
        - Note: If the SI accepts document by mail, the SI should tell the carrier that they should provide copies of their documents rather than originals. Originals are not accepted. The SI should consider the volume and form of documents requested.
    - The SI describes how the documents aid in the investigative process and will help identify Process Breakdowns and Remedies. The SI provides contact information to the carrier should any questions arise regarding the documentation being requested.
    - The SI answers any questions the carrier may have about the process.
    - The SI should explain that in order to confirm the carrier's Financial Responsibility (Part 387), their insurance policy or self-insurance authorization needs to be reviewed. This will be checked for a valid MCS-90/90B Endorsement, MCS-82/82B, or self-insurance authorization, which should reflect a complete signed document with the appropriate levels of financial responsibility in effect. To expedite this process, the SI should ask the carrier to obtain a copy of their MCS-90 as part of the document request process. For an Onsite Investigation, it should be available when the SI arrives at the company. If the carrier's MCS-90/90B Endorsement is not within the carrier's insurance policy, the SI should ask the carrier to contact its insurance company and request a copy of the MCS-90/90B Endorsement.
    - The SI provides contact information to the carrier should any questions arise about the documentation being requested.
    - The SI asks the carrier background questions to validate and begin to fill in the required information in the investigative system.

- Since the investigation is not conducted in the carrier's presence, displaying credentials is not an option. If necessary, the SI should have the carrier make a call to the Division/State Office to verify his or her status and objectives. Some carriers will also accept a faxed business card on letterhead. This will usually satisfy the carrier's concerns regarding authority. The Offsite Investigation is voluntary on the part of the carrier; if the carrier insists on an in-person proper display of credentials, the Offsite Investigation would need to be converted to an Onsite.

For Onsite Investigations

If the investigation must be conducted Onsite due to policy (e.g. the carrier is High-Risk), the SI should still follow the Risk Assessment process used for all investigations, letting the carrier know that the investigation will begin with a preliminary online review of carrier-submitted documents. Following the online document review, the bulk of the investigation will take place in-person. In these cases, the SI can schedule the investigation during the initial call, or after reviewing the carrier's initial documents. When scheduling the date and time of the onsite investigation, the SI should explain the purpose of the visit and suggest staff that should be present, including a motor carrier official who has knowledge of the entire operation (e.g., President, Vice President, General Manager, etc.).

1.2.3.2.3 Generating the Initial Contact Letter

Using ACE, the SI will send the Initial Contact Letter to the carrier (available in Appendix R). The letter contains instructions that the carrier will need to access the SMS website and upload requested documents. The SI is responsible for emailing or mailing the letter generated by ACE to the carrier. The website will not allow carriers to upload documents to the SMS unless the SI generates one of the three (3) letter templates available in ACE (Initial Contact Letter, Document Request Letter, Follow-on Letter). During the introductory phone call, the SI should inform the carrier that they will be sending the Initial Contact Letter to request the following documents using the electronic system:

- Driver List;
- Equipment List;
- Accident Register;
- Questionnaire;
- Other Documents (as identified by the SI).

Start Date:

Investigations conducted in AIM will have different start dates depending on the assigned investigation type. Investigations that are conducted Offsite will use the date the Initial Contact Letter as the start date. Investigations that are conducted Onsite will use the date the SI arrives at the carrier's place of business.

1.2.3.2.4 SI Reviews Documentation from Carrier

The SI will receive an email notification once the carrier has uploaded and certified the documents requested in the Initial Contact Letter. The SI will review the documentation the carrier has uploaded and use ACE to either accept the documents or require a revision of each document by the carrier. If the SI requires a revision of specific documents, the system will prompt the SI to add a note to the carrier which, the SI should use to explain the reason for requesting a revision. Notes to the carrier are displayed in the SMS, but will not be automatically emailed to the carrier. The SI is responsible for contacting the carrier to request that the carrier complete the revision and re-upload and certify the revised document. If the revised documents satisfy the SI's request, the SI will approve the documents in ACE, and can then proceed to send the Document Request Letter to obtain more specific documents.

1.2.3.2.5 Records Content and Documents Requested

Throughout the process, the SI should record information to maintain historical records of the investigation. This includes items like documents requested and received, and details of each contact with the carrier (phone calls, visits, emails, etc.). This information allow SIs to benefit from the knowledge of how the investigation progressed, and may help to provide insights, indications, and expectations for future investigations.

1.2.3.3 SI Generates Document Request Letter

1.2.3.3.1 Introduction

To prepare a Document Request Letter for the carrier prior to an investigation and gain insight into the scope of the carrier's safety problems, the SI should go through the following multi-step process:

- Identify documents to request from the carrier based on BASICs Requiring Investigation
- Determine number of documents to request based on investigation type and sampling requirements for the BASICs Requiring Investigation.
- Identify drivers and vehicles that should be included in the sample of documents that apply to individual drivers and vehicles.

1.2.3.3.2 Identify Documents to Request

In addition to revealing specific violations, documents kept by the carrier can provide insight into a carrier's Safety Management Processes. The Document Request Letter allows the SI to request specific documents from the carrier to probe BASICs Requiring Investigation and determine the scope of the safety problems.

The SI will use ACE to create a Document Request Letter that allows the SI to request documents for specific drivers and time frames, based on the BASICs Requiring Investigation. In some instances, the SI may decide to accept the documents through mail, fax, or email. When this occurs, the SI is responsible for uploading the documents into ACE. The number and type of documents to request during the Pre-Investigation Risk Assessment process depends on whether the investigation will be conducted Offsite or Onsite and is provided in Appendix N. If the investigation is going to be performed Offsite, the SI should request all required documents during the Risk Assessment. If the Investigation is assigned as Onsite, the SI has the discretion to determine the number of documents to request electronically during the Risk Assessment, leaving other documents to review onsite.The type of records needed to conduct an investigation depends on which BASICs or Acute and/or Critical Violations are investigated, as determined by the assignment.

- An Onsite Comprehensive Investigation requires a review of all BASICs. In addition, an investigation in which the where the Crash BASIC is the only BASIC Requiring Investigation requires a review of all BASICs using Crash BASIC Sampling provided in *Appendix N: Record Sampling*. If the Investigation includes the Crash Indicator BASIC and additional BASICs Requiring Investigation, only the additional BASICs will be sampled based on the investigation type (Offsite Investigation, Onsite Focused, or Onsite Comprehensive).
- A Focused Investigation, whether performed Onsite or Offsite, is limited to a review of a subset of BASICs. Guidance on which CFRs and Parts should be included given the scope of Focused Investigation is provided in *Appendix J: Investigating CFR Parts by BASIC.* With a Focused Investigation, only request documents associated with the Parts indicated by the Parts by BASIC table for the BASICs Requiring Investigation.

- If the SI is assigned to conduct a Controlled Substances/Alcohol and/or an HM Supplemental Review based on the criteria described in Section 1.1.8, the SI should also request information needed to complete the supplemental review as part of the Document Request Letter.
- The specific documents or records to request depend on the assigned type of investigation, the BASICs Requiring Investigation, and unresolved Acute and/or Critical Violations. There are four types of documents that an SI may request from a carrier:
    - One-of-a-kind documents that a carrier is required to have on file, e.g., Accident Register, List of Testing Labs/Collection Facilities for Controlled Substances and Alcohol Testing, and Security Plan (for HAZMAT carriers).
    - Documents that the carrier is required to have on file where there are multiple records; e.g. Records of Duty Status (RODS) reports, Driver Qualification files, and Vehicle Maintenance files. In this case the SI should follow specific guidelines provided in *Appendix N: Record Sampling to determine which documents are required.*
    - Other sources of information that can help get an understanding of a carrier's safety operations both before and during an Investigation.
    - As part of the pre-audit/investigation the Safety Auditor/Investigator should request the Electronic Logging Device (ELD) data be transferred, and the data should be reviewed prior to beginning the onsite portion of the investigation. HOS violations identified by eRODS must be verified by reviewing supporting documents and interviewing drivers.

1.2.3.3.3 Determine Number of Documents to Request Based on Investigation Type and Sampling Requirements

For those record types that require sampling, the SI should refer to *Appendix N: Record Sampling* for guidelines on sampling Offsite, Onsite Focused, Onsite Comprehensive Investigations, and CBIs. The tables in *Appendix N: Record Sampling* will provide the SI with the minimum sample size required based on the type of investigation and criteria such as carrier size and number of drivers/vehicles. As described in 1.2.2.5.1, the number and type of documents to request during the Pre-Investigation Risk Assessment process depends on whether the investigation will be conducted Offsite or Onsite and is provided in *Appendix N: Record Sampling*. During the Risk Assessment, the SI should request all documents if the investigation is going to be performed Offsite. If the investigation is going to be performed Offsite, the SI should request all required documents during the Risk Assessment. If the Investigation is assigned as Onsite, the SI has the discretion to determine the number of documents to request electronically during the Risk Assessment, leaving other documents to review onsite. Additionally, if the Hours of Service BASIC requires investigation and the motor carrier uses an Electronic Logging Device (ELD) the SI should request a data transfer of the required number of ELD file(s) for review using eRODS during the Risk Assessment to the extent the drivers to be sampled can be identified prior to the onsite portion of the review.

1.2.3.3.4 Identify Drivers and Vehicles for Sampling

In general, the drivers and vehicles that pose the highest potential safety risk should be selected as part of the sample. These include the drivers with the highest DSMS percentiles within the driver-related BASIC under investigation. When generating a Document Request Letter in ACE, drivers with the highest DSMS percentiles are listed at the top of each driver list within each driver-related BASIC under investigation, for convenience. To complete the sample, the SI should select drivers or vehicles that have been involved in crashes or placed OOS within the applicable criteria/timeframe for the particular Part, as detailed in Appendix N: Record Sampling.

Below are sampling criteria for selecting these drivers and vehicles based on the BASIC Requiring Investigation.

- **Unsafe Driving, HOS Compliance, Driver Fitness, Controlled Substances/Alcohol—** The investigation of these BASICs requires the sampling of drivers. The SI should sample from those drivers with the highest BASIC percentile within the carrier's BASICs above the intervention threshold. If this does not produce enough drivers to reach the required sample size, then as an additional criteria the SI should select drivers who have been involved in crashes, those placed OOS during roadside inspections, and finally those in violation during roadside inspections.
- **Vehicle Maintenance, HM Compliance**—Vehicles should be sampled in the following order: those involved in recordable interstate crashes, those placed OOS during roadside inspections, and those found to be in violation during roadside inspections.
- **Crash**—
    - If the Crash BASIC is the only BASIC Requiring Investigation, the SI should use Crash BASIC only sampling detailed in Appendix N: Record Sampling. The sample size will generally be derived from the number of vehicles and drivers involved in crashes (not the total number of drivers employed and vehicles operated). The SI should focus on selecting drivers and vehicles involved in crashes as a priority when selecting the sample.
    - If the investigation includes the Crash BASIC and additional BASICs, the SI will sample only the additional BASICs requiring investigation, and the sample size will be based on the investigation type (e.g., an Offsite Investigation would use Offsite Sampling). The samples selected would be based on Driver Safety Measurement System (DSMS) sampling for the additional BASICs requiring investigation.

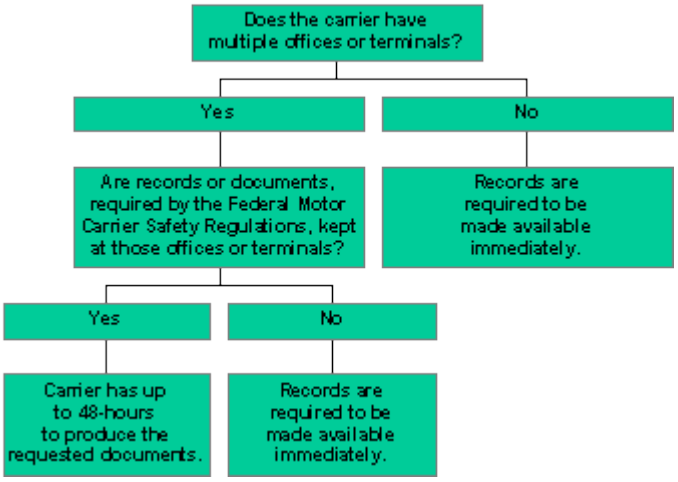
The SI has some flexibility and discretion in this selection process and should use his or her judgment. For example, if two drivers have BASIC percentiles that are very close to each other, but one has been involved in more crashes, then the SI could decide to include the driver who has been involved in more crashes, regardless of which driver has the higher BASIC percentile.

The SI should keep in mind that drivers with Red Flag Violations will not always be part of the drivers being sampled. Prior to any Investigation, the SI should review the drivers with Red Flag Violations (regardless of the BASICs requiring review) and should request documents to confirm these violations. For drivers identified with Red Flag Violations, the SI should follow the procedures described in Section 1.3.7 of Stage 3.

1.2.3.3.5 Request Company Files Maintained at Carrier's Location(s) – Onsite Investigations

A motor carrier with a single place of business may designate only its actual place of business as the PPOB and must make the required records available for inspection at that single place of business, or other location specified by FMCSA, upon request. Notwithstanding this restriction, the motor carrier and an authorized representative of FMCSA may agree that a CR or other investigation of a motor carrier may be conducted at a mutually acceptable location other than the motor carrier's PPOB, if all necessary documents are made available.

A motor carrier with multiple business locations may maintain some records at business locations of the motor carrier other than, or in addition to, its PPOB. However, after a request is made by an FMCSA authorized representative, a motor carrier with multiple business locations must make the required records available for inspection at the PPOB, or other location specified by FMCSA, within 48 hours upon your request. Saturday, Sunday, and Federal holidays are excluded from the computation of the 48-hour period. When requesting records 48 hours before your scheduled appointment, be sure the motor carrier understands this is an official request, when the 48-hour period begins and ends, and you are expecting the documents to be available upon your arrival, or you will cite failing to maintain the appropriate documents.



Description of Does the carrier have multiple offices or terminals? diagram

Refer to the minimum sampling chart in each Part of the regulations to obtain the minimum sample required.

1.2.3.4 SI Completes and Sends Document Request Letter

1.2.3.4.1 Introduction

After the SI has reviewed the initial documents provided by the carrier, they are ready to progress to the next step of the Risk Assessment. The SI will use the assignment type (Offsite, Onsite Focused, Onsite Comprehensive) and BASICs Requiring Investigation to determine the number and type of documents to request from the carrier. If an Onsite Investigation is required, the SI should decide which and how many documents to request electronically during the Risk Assessment, leaving the other documents to be reviewed onsite. ACE will identify BASICs Requiring Investigation and allow SIs to select specific documents, drivers, and timeframes for the carrier to provide.

1.2.3.4.2 SI Reviews Documentation from Document Request Letter

The SI will receive an email notification once the carrier has uploaded and certified the documents requested in the Document Request Letter. The SI will review the documents the carrier has uploaded, and use ACE to either accept the document or require a document revision. If the SI requires a revision, ACE will prompt the SI to add a note to the carrier. The SI should explain to the carrier what the documents were missing. The notes to the carrier are displayed in the SMS, but will not be automatically emailed to the carrier. The SI is responsible for contacting the carrier to request that the carrier revise the document and re-upload and certify. If the SI approves the documents that the carrier uploaded, the SI should then decide whether to proceed with the investigation type and scope as assigned, or change the type or scope of the assignment based on Pre-Investigation and Risk Assessment findings. If the SI needs to request additional documents from the carrier, they should use the Follow-on Letter template, which can be generated and emailed to the carrier using ACE.

1.2.3.4.3 Process for Validating or Changing Intervention Type

The SI should use the documentation the carrier provided to make an informed decision to proceed with the investigation as assigned, or recommend a change to the assignment type. The SI should speak with the Manager prior to making a change to the assignment in ACE. If the Manager approves the SI's recommendation to change the assignment type, the SI should convert the assignment type in ACE and proceed with the investigation in the ACE Intervention Management (AIM) system.

If the investigation continues as an Onsite, the SI should explain the purpose of their visit to the appropriate motor carrier official who has knowledge of the entire operation (e.g., President, Vice President, General Manager), suggest staff that should be present for the investigation, and schedule a date and time.

If the investigation continues Offsite, the SI should proceed with documenting the investigation in AIM.

1.2.3.4.4 Reasons for Changing Intervention Type

An assigned intervention can be modified under the following very general circumstances:

1. When there is reason to believe that the carrier is not subject to the FMCSRs or a segment thereof.
2. When there is new and pertinent information about the carrier's safety performance or intervention history that was not available at the time of assignment.

The following general factors should be considered during this process:

- On occasion, there may be a time lag between the assignment of the investigation and initial contact with the carrier. In this case, the investigation should be performed based on the number of BASICs Requiring Review that were present at the time of the initial contact. If the number or type of BASICs Requiring Review changes in this time period, the SI should discuss with the Manager whether there is an impact on the investigation type based on these changes.
- If a motor carrier is assigned an Onsite Focused Investigation based on the "Other" category in the Intervention Threshold table (Section 1.1.2), and it is subsequently discovered that the motor carrier should be subject to the lower intervention thresholds (Passenger or HM percentiles)—thus possibly changing the assignment type to an Onsite Comprehensive Investigation based on the lower thresholds—then discuss with the Manager whether to change the investigation assignment.
- If an Investigation has been assigned as an Offsite and the SI has historical knowledge that the carrier has been uncooperative and evasive and that pre-notification of the investigation might have an adverse effect, then the SI should switch to an Onsite Investigation.
- If, during an Offsite Investigation, the carrier is uncooperative, or fails to submit documentation in a complete and timely manner or by an established due date, the Division Office should modify the intervention to an Onsite Investigation. If the carrier continues to deny access, the Division Office should initiate the Denial of Access procedures and serve the motor carrier with a Demand to Inspect and Copy Records and/or Demand to Inspect and Examine Equipment, Lands, Buildings, or Other Property. For-hire motor carriers will be placed Out-of-Service and additional enforcement penalties may be issued. For more information on the policies and procedures, see the Penalties for Denial of Access Policy (MC-ECE-2015-002). FMCSA will not serve NOC under 49 CFR part 386 when charging Riojas affected violations. See the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," MC-ECE-2020-0001[insert hyperlink to policy].
- If the assigned Intervention is a Direct NOC or NOV (not requiring an investigation), then SIs may request a modification to the intervention type if, for example, they do not have sufficient evidence for an NOC, or if the violations to be cited on an NOV are not both immediately correctable and readily verifiable.

If the SI cannot reach the carrier, the SI should mark the intervention as "closed but not completed" in ACE, and select a reason why, such as out-of-business or inactive. If possible, the SI should make three (3) attempts to reach the carrier. The SI should "drive by" the carrier's place of business, if possible, to ensure that the carrier is not avoiding contact. The three attempts to contact the carrier should be reasonably spread out and vary in method to ensure that the SI and the Agency have maximized the opportunity to contact the carrier in question.

1.2.3.4.5 Other Items for Discussion with Carrier or SI Action

- If the carrier does not cooperate with the Offsite Investigation by failing to provide the requested records, the Division Office should modify the intervention to an Onsite Investigation. If the carrier continues to deny access, the Division Office should then initiate the Denial of Access process. The Division Office should serve the motor carrier with a written Demand to Inspect and Copy Records and/or Demand to Inspect and Examine Equipment, Lands, Buildings, or Other Property. For-hire motor carriers will be placed Out-of-Service and additional enforcement penalties may be issued. For more information on the policy and procedures, see the Penalties for Denial of Access Policy (MC-ECE-2015-002). FMCSA will not serve NOC under 49 CFR part 386 when charging Riojas affected violations. See the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," MC-ECE-2020-0001[insert hyperlink to policy].
- **The carrier states that inaccurate data are appearing on their record -** In these cases, the SI should explain to the carrier how to use the DataQs system. Since contact with the carrier has already been made, the SI should proceed with the investigation as assigned.

1.2.3.5 SI Conducts CAIR

As part of every Investigation, the SI will always check for the following elements of "CAIR":

- **"C" – Commercial Driver's License Information System (CDLIS)** –
  - CDLIS should be run only once the carrier has provided an updated driver list.
  - Follow eFOTM guidance for checking the minimum number of drivers using CDLIS. To expedite the review process, you may want to request other data before arriving at the carrier's place of business; for example, obtaining driver lists allows you to perform CDLIS checks beforehand.
  - Validate endorsements as part of CDLIS checks.
  - MX/CN DRIVERS: cdlis.dot.gov displays a MX/CN driver's status only and only convictions and/or withdrawals occurring while operating in the U.S. (stored in the Federal Convictions and Withdrawals Database, or FCWD); no conviction or withdrawal history from Canada or Mexico is provided.
- **"A" – Authority** – Verify that the motor carrier has the appropriate type of authority using FMCSA's Licensing and Insurance (L&I) database.
  - Check this data prior to the start of an investigation by visiting the FMCSA L&I website: http://li-public.fmcsa.dot.gov, or https://portal.fmcsa.dot.gov. NOTE: When conducting an investigation on a for-hire motor carrier, you MUST review either of these sites to determine the motor carrier's L&I status.
  - It is important for SIs to incorporate the following when performing an investigation of a carrier that transports HM regardless of whether or not the carrier has been identified for an HM Compliance BASIC investigation:
    - Operating Authority Registration
    - Pipeline and Hazardous Materials Safety Administration (PHMSA) HM Registration in accordance with § 107.601
    - Proper registration of Manufacturing, Testing, or Repair Facility for carriers performing this function
    - FMCSA HM Safety Permit
    - PHMSA HM Special Permit
- **"I" – Insurance** – Verify that the motor carrier has the appropriate level of insurance using the L&I database (e.g., MCS-90).
- **"R" – Red Flag Violations** – Investigate all drivers with Red Flag Violations.

1.2.3.5.1 Exemptions

An exemption provides temporary relief from one or more FMCSRs to a person subject to the regulations or to a person who intends to engage in an activity that would be subject to the regulations. Safety Investigators should inquire with the motor carrier to confirm if the motor carrier is operating under an exemption and verify the motor carrier's response by checking the Exemption Webpage. The Part C of the investigation report should include a note reporting the claimed and verified exemption.

1.2.3.6 Prepare for Drivers with Red Flag Violations Investigation

A key aspect of the investigation process is the driver's role in carrier safety. Certain roadside violations have been designated as Red Flag Violations (see table below) due to their nature and severity. Review the motor carrier's SMS record for the presence of drivers with Red Flag Violations as a part of every motor carrier investigation (regardless of the motor carrier's BASIC status) that has occurred in the previous 12 months. Once identified, these drivers must be examined and addressed in conjunction with the motor carrier's investigation. You must validate if the violations have been corrected and determine if enforcement action would be appropriate against the driver(s) and/or the carrier for those violations.

Note: States may issue a citation associated with a violation noted in a roadside inspection. Per *State MCSAP Comprehensive Policy Section 11.4*, if a carrier/driver provides court documentation that the citation was subsequently adjudicated and "dismissed", or resulted in a finding of "not guilty", then while the violation is retained on the inspection report, the violation will not be designated as a red flag violation by FMCSA systems, nor used in SMS or PSP. In the absence of adjudicated citation result information for a violation or if the court documentation submitted indicates the citation result was "convicted of a different charge" or "convicted", then the violation is indicated as a red flag violation.

BASIC	FMCSR Part	Violation Description
Driver Fitness	383.21	Operating a commercial motor vehicle (CMV) with more than one driver's license
Driver Fitness	383.23(a)(2)	Operating a CMV without a valid commercial driver's license (CDL)
Driver Fitness	383.51(a)-SIN1	Driving a CMV while CDL is suspended for a safety-related or unknown reason and in state of driver's license issuance
Driver Fitness	383.51(a)-SOUT1	Driving a CMV while CDL is suspended for safety-related or unknown reason and outside the state of driver's license issuance
Driver Fitness	383.91(a)	Operating a CMV with improper CDL group
Driver Fitness	391.11	Unqualified driver
Driver Fitness	391.11(b)(5)	Driver lacking valid license for type of vehicle being operated
Driver Fitness	391.11(b)(7)	Driver disqualified from operating CMV
Driver Fitness	391.15(a)-SIN[1]	Driving a CMV while disqualified. Suspended for safety-related or unknown reason and in the state of driver's license issuance

Driver Fitness	391.15(a)-SOUT[1]	Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance
Controlled Substances/Alcohol	392.4(a)	Driver possesses, uses, or is under the influence of controlled substance(s)
Controlled Substances/Alcohol	392.5(a)	Driver possesses, uses, or is under influence of alcohol less than 4 hours prior to duty
HOS Compliance	395.13(d)	Driving after being declared out-of-service (OOS) (Violating Part 395 OOS Order)
Vehicle Maintenance	396.9(c)(2)	Operating an OOS vehicle before making repairs

ACE provides an indicator and link in the SMS BASIC summary screen when a motor carrier has drivers with Red Flag Violations. You can use this link to access the SMS when investigating the assigned motor carrier. You will access the Driver Tab of the motor carrier's SMS results to obtain a list of drivers who have had activity for the motor carrier and at least one occurrence of a Red Flag Violation. The Red Flag Violation may have occurred while operating for a different motor carrier; however, all drivers with Red Flag Violations must be investigated in conjunction with the motor carrier being investigated.

: For MX/CN drivers, cdlis.dot.gov displays a MX/CN driver's status only and only convictions and/or withdrawals occurring while operating in the U.S. (stored in the FCWD); no conviction or withdrawal history from Canada or Mexico is provided.

Note: ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.

During an investigation of a motor carrier the Investigator must examine all Red Flag Violations that are designated on that motor carrier's record. The violations that result in a Red Flag Violation have changed. Only safety-related "operating while suspended" violations, 391.15a-SIN, 391.15a-SOUT, 383.51a-SIN and 383.51a-SOUT, result in a Red Flag Violation. Non-safety related "operating while suspended" violations still appear on the motor carrier's record and are used in SMS, but they will not be considered Red Flag Violations.

1.2.3.7 Prepare for a Controlled Substances/Alcohol Supplemental Review

There is limited on-road performance data on Controlled Substances/Alcohol-related violations; therefore, in some instances a Controlled Substances/Alcohol Supplemental Review is performed as part of an Onsite Focused Investigation or Offsite Investigation.

You will be assigned a Controlled Substances/Alcohol Supplemental Review when **ANY** one of the following three criteria is met:

- Motor carrier has not been subject to an investigation or SA that reviewed Part 382/40 in the last five years;
- Motor carrier had an Acute and/or Critical violation of Part 382 during the most recent investigation; and/or
- Motor carrier provided adverse responses to Controlled Substances/Alcohol-related questions during a New Entrant SA.

Note: If any of these criteria are met, a flag is displayed in the SMS BASIC summary screen in the ACE, SMS, and AIM to indicate that the carrier is a candidate for the Controlled Substances/Alcohol Supplemental Review.

Prior to conducting the review, you should:

- Estimate average driver positions.
- Verify that the current driver pool reflects current driver positions.
- Identify crashes that require post-accident testing.
- Compare pre-employment documents to driver list hire dates.

For Controlled Substances/Alcohol Supplemental Review investigative procedures, see Part 382 – Investigative Procedures.

1.2.3.8 Prepare for a Hazardous Materials (HM) Supplemental Review

FMCSA incorporated the HM Supplemental Investigation into its investigative process to allow the Agency to continue its focus on examining motor carriers transporting HM.

If the full HM BASIC is investigated, then a motor carrier is not subject to an HM Supplemental Investigation. For all other motor carriers that transport HM, an HM Supplemental Investigation is required if the motor carrier has not had an investigation that examined HM compliance within the last 24 months AND the motor carrier is subject to:

1. Shipping paper requirements, HM training requirements, security plan requirements, and/or cargo tank testing and inspection requirements; or

2. HM incident reporting requirements and has had an HM incident in the previous 12 months.

Note: The Investigator may be notified to conduct an HM Supplemental Investigation as part of his or her assignment or the Investigator may determine that an HM Supplemental Investigation should be conducted during the pre-investigative process.

The HM Supplemental Investigation and HM Compliance BASIC Investigation are very similar; however, there are some key differences. In particular, during an HM Supplemental Investigation, the sampling requirements are different and the Investigator will not be examining the following areas:

- Marking, labeling, and placarding requirements
- Cylinder, IBC and Cargo Tank requirements (beyond cargo tank testing and inspection records noted below)
- State and local routing requirements
- HM Driving and Parking regulations

For HM Supplemental Investigation investigative procedures, see *HM Supplemental Investigation* .

Mexico domiciled carriers with commercial-zone (OP-2) authority may transport HM in placardable quantities. Mexico domiciled carriers with long-haul authority (OP-1MX) are prohibited from transporting HM in placardable quantities.

1.2.3.9 Prepare for a Hours of Service Investigation

If the Hours of Service BASIC requires investigation and the motor carrier uses an Electronic Logging Device (ELD), the SI should request a data transfer of the required number of ELD file(s) for review using

eRODS during the Risk Assessment to the extent the drivers to be sampled can be identified prior to the onsite portion of the review.

Prior to arriving at the carrier's principle place of business you must consider the following:

1. Verify that an ELD is required
2. Verify that the device in use meets the requirements of the ELD rule;
3. Confirm that ELD data can be retrieved electronically;
4. Provide the carrier with a list of driver's ELD data using the sample size criteria illustrated in Appendix N and the selection criteria illustrated in section *1.3.14.5.8.1 "Selecting Drivers' Records Once the Sample Size has been Determined"*
5. Retrieve the ELD data; and
6. Review the ELD data for compliance with 49 CFR 395

Note: A "warning" notification in eRODS indicates that the transferred ELD record may be missing information required under the ELD technical specifications; however, the record still should be opened and reviewed using eRODS to verify a driver's hours-of-service data.

If the ELD data cannot be retrieved prior to arriving at the carrier's principle place of business, do not provide the carrier with a list of driver's ELD data to review until you arrive at the principle place of business.

1.2.3.10 Before Arrival at Carrier's Office

Think safe, be safe:

- Complete Google GIS location searches prior to going to the location or do a drive-by prior to the date you begin your investigation.
- If at any time you are uncomfortable, leave the premises. Contact the DA and ask for State Partner law enforcement assistance.
- Ensure that you communicate your schedule with the Division Office.
- Identify escape routes: park car facing out, when inside a facility know all exits, etc.

1.2.3.11 Ensure You Have the Most Recent Software

You should ensure, prior to the initiation of an Investigation, that you have the latest versions of FMCSA software on your laptop computer. The latest versions are available by logging into http://infosys.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov). If there is an updated version of the software available, you should download the version and update your computer with the most recent version of the software. You can "Check for AIM Updates" and download and install them any time you are logged into the online version of AIM.

1.3 Stage 3-Investigation

1.3.1 Introduction:

Once you complete the Risk Assessment, you will continue your investigation either Offsite or Onsite.

The investigative process focuses on discovering if violations are occurring, and if so, what Safety Management Processes are breaking down, why they are breaking down, and how they can be fixed. The key tools and processes used during a carrier investigation are as follows:

- The SI reviews and evaluates the documentation requested as part of the Pre-Investigation Stage to identify violations and confirm the investigation type.

- The Safety Management Cycle (SMC) is used to assist in identifying safety management issues. The SMC consists of six Safety Management Processes (SMPs). The SMPs are areas in which a carrier may have the ability to influence safety performance by modifying existing practices. Within each SMP, Safety Improvement Practices (SIPs) relevant to each BASIC have been identified. The SIPs are specific actions a carrier can take to help improve safety. The SMC and the SMPs are described in more detail below.
- In a process known as the collaborative questioning cycle, the SI asks probing questions to aid the carrier in self-identifying Process Breakdowns and Remedies. By working closely with the carrier, the SI provides the carrier with a support system that helps the carrier become more compliant. Subsequently, the Process Breakdowns and Remedies are customized and entered in the investigative system.
- The CBI takes place when a carrier is identified as at or above the intervention threshold in the Crash BASIC. The main goal of the CBI is to discover why crashes are happening and to assist the carrier in reducing the likelihood of those events occurring in the future. The Investigation will include a review of available documentation as well as using the SMC and the collaborative questioning cycle to identify potential Process Breakdowns that could have influenced safety performance. CBI recommendations may include customized SIPs and Crash Countermeasures.
- As a result of an increased focus on the driver's role in carrier safety, certain driver violations are designated as Red Flag Violations due to their nature and severity. Drivers with Red Flag Violations are investigated as part of carrier interventions.
- A Controlled Substances/Alcohol Supplemental Review should be performed, if required.
- An HM Supplemental Review should be performed if required.
- Violations documented during the investigation process are entered in the investigative system, and the system calculates a Safety Fitness Rating, if appropriate, according to the following rules:
    - Ratings are issued only for Onsite Investigations.
    - An Onsite Comprehensive Investigation can result in a Safety Fitness Rating of Satisfactory, Conditional, or Unsatisfactory.
    - An Onsite Focused Investigation can only result in an adverse Safety Fitness Rating of Conditional or Unsatisfactory.
    - Note: Offsite Investigations are non-rated; however, if during the course of an investigation the safety rating status bar in AIM says "Onsite Required," this indicates that the proposed rating would have been Unsatisfactory if the investigation was rated and, therefore, the investigation must be converted to an Onsite Investigation.
- Since the end goal is to improve the safety behavior of the carrier and staff, selecting the appropriate Follow-on Intervention is important. The SI may choose a Follow-on Intervention Type of Notice of Claim (NOC) or Notice of Violation (NOV)
- Based on the carrier data and violations entered into the ACE investigative system, the Carrier Investigative Report is generated. This is used in the Investigation Feedback and Closeout described in Stage 4.

1.3.2 Completing Pre-investigation/Part A - Investigation process

Steps to Take Upon Arrival at the Motor Carrier's Office

Areas that Should Be Covered during the Opening Interview

Operating Characteristics

Driver Issues

Tour of the Facility

Completing Pre-investigation/Part A of the Investigation after Interviewing the Motor Carrier

1.3.2.1 Steps to Take Upon Arrival at the Motor Carrier's Office (Onsite Only)

1. Identify yourself and your employer.
2. Display your credentials. Do not permit your credentials to be copied or to leave your possession.
3. Ask to speak to a motor carrier/shipper official who has knowledge of the entire operation (e.g., President, Vice President, General Manager, etc.). If he/she is not available, ask for the individual in charge of safety.
4. Explain the purpose of the visit to the official. Explain that various company records will be reviewed and that you will need to talk to the individuals responsible for compliance with the safety, CDL, controlled substances and alcohol, HM, financial responsibility, and commercial regulations.
5. If you were not able to meet with a corporate official, explain that you will need to meet with this person during your closeout interview.
6. If a phone interview/questionnaire was not conducted with the motor carrier prior to your arrival, or if no appointment was made, obtain the information required to complete Part A of the investigation report.
7. Explain to the motor carrier how long the review is expected to take and at what time certain records and carrier employees are needed. This allows you and the motor carrier to most efficiently complete the review process.

At no time should an Investigator make any address changes in the investigative system to update a motor carrier's PPOB. It is the responsibility of the motor carrier to make the changes to its MCS-150 form, OP-1 series form, and/or MCSA-1 form via mail, fax, or on-line. Updating an investigation with a PPOB that differs from the motor carrier's MCMIS profile may result in an error during the upload process. The motor carrier's identity in the investigation report must, therefore, reflect the motor carrier's MCMIS profile.

1.3.2.2 Areas that Should Be Covered during the Opening Interview

The opening interview should be conducted in a manner consistent with the investigation type; for example, if conducting an Onsite Investigation, the opening interview should cover all of the areas discussed below. However, if conducting an Onsite Focused Investigation, the opening interview may only cover those areas of the investigation.

Note: With all investigations, as part of the Risk Assessment the SI should fill in as much data as possible in ACE before the visit, and verify this information during the investigation. This data gathering is not finalized until the investigation is complete. In particular, ACE will determine what performance data are required later in the investigative process—based on the outcome of the investigation.

1.3.2.3 Operating Characteristics

Determine destinations of regular trips, identify customers that provide the carrier with the most business, and the carrier's busiest and slowest times of the year. Also, inquire how drivers are compensated, the level of driver turnover, the extent the carrier automates its operation. Also check record keeping systems, vehicle maintenance procedures, controlled substances and alcohol testing program, hours of service, etc. Your goal is to ensure there are adequate safety controls in place to comply with the applicable FMCSR, FMCCR, and HMR.

Paperwork and Flow. Become familiar with the motor carrier's paperwork system related to its operations, payroll systems, filing systems, etc. If the documentation of violations becomes necessary, this knowledge improves the ability to gather and copy records about driver trips quickly and efficiently. Determine the supporting documents that the motor carrier obtains and/or generates in the normal course of business operations and the locations of these records. Become familiar with any business records that disclose the location and activity of drivers at specific times or during certain time periods. These records enable an Investigator to verify the accuracy of driver RODS. Ask the official to demonstrate the paperwork flow of their operation; if supporting documents are just arriving, view how the documents are distributed. Understanding the process, what information is available, and who handles certain paperwork enables an Investigator to determine which documents may be useful during the review process.

1.3.2.4 Driver Issues

Ask the appropriate motor carrier official about the company's procedures for hiring drivers, driver qualifications, and training. If the SI is using the ACE Intervention Management (AIM) system, driver lists can be provided by uploading the driver list the carrier provided, using the ACE driver list, or by entering the driver list manually. The list should include hire and termination dates. After the motor carrier provides you with the information, the SI should verify the accuracy of the documents they requested, including the motor carrier profile, payroll records, dispatch records, bills of lading, and/or shipping documents during your investigation.

1.3.2.5 Tour of the Facility

During every Onsite Investigation, insist that the motor carrier official provide a tour of their facility. Take note of posted materials related to the carrier's knowledge and compliance with the regulations, and how the general day-to-day operations work. During the tour, look for the presence of HM, especially in the areas where products and goods are fabricated, cleaned, stored, or shipped. Some motor carriers and shippers may not know that they are shipping and/or transporting HM. Often HM is discovered during the tour of the overage, shortage, and damaged (OS&D) area of the carrier's operation.

Make note of and identify individuals you may need to speak with during the course of the investigation. For larger carriers, speak with dispatchers once again, looking for body language, driver notices, etc., posted on the walls/dispatch windows. Visit the charter department to identify individuals to interview. Pose open-ended questions about how the charter department assesses if a charter can be completed within a driver's HOS.

Tour the carrier's maintenance facility. Observe the overall condition of the shop. Is the shop adequately equipped (lift/pit)?

Observe the used tire corral for the condition of tires pulled off equipment.

Ask leading questions of maintenance personnel (not just head the mechanic) to determine if there were any bus fires or crashes, and the natures of the tire maintenance program and the carrier's PM program.

Ask about training/qualifications for brake inspectors. Who performs annual inspections?

- If you are unable to meet with a corporate official, explain that the corporate official should be there for close.
- Obtain information needed to complete the Investigative Report.
- Explain when certain records or employees are needed.

1.3.2.6 Completing the Pre-Investigation/Part A of the Investigation after Interviewing the Motor Carrier

If the carrier completed the questionnaire as a part of the Risk Assessment prior to your arrival, you should use it to complete the Pre-Investigation part of the Investigative Report (Part A). If a phone interview of the motor carrier was not conducted prior to your arrival, conduct an interview with the appropriate official to complete that part the investigative report.

Complete Part A as follows:

Legal Name of Motor Carrier/Shipper

Verify and enter the correct and complete legal name of the motor carrier. If this is not done, further action against the motor carrier may be hindered. In the case of a corporation, obtain the exact company name by asking a corporate officer, by examining the Articles of Incorporation, and/or by requesting a document that has the corporate seal affixed. Use the full names of corporate officers, partners, or the sole proprietor (Note additional corporate officers or members not already listed in Part A or Part C of the investigation report).

If the legal name is different from what is recorded in the database, make the change in MCMIS before you upload the investigation. Otherwise, the upload may generate an error message and reject the review.

Doing Business As (DBA)

In the case of individuals or corporations who are doing business under a name other than the legal name, enter the DBA name in the appropriate field; for example, if John Jones is DBA JJ Trucking, enter "JJ Trucking." DBAs are also known as operating names, assumed business names (ABN), common names, or trade names. Do not repeat the legal name in the DBA field.

Employer Identification Number (EIN)/Social Security Number (SSN)

If a carrier is operating as a sole proprietor, obtain the SSN or the EIN. If the carrier operates as a partnership or corporation, obtain the EIN. In some circumstances, a parent company and its subsidiaries will share the same EIN. This is permissible under IRS rules and is just a reflection of the fact that the parent corporation files a single tax return that includes the subsidiaries. It is important that this information is correct. The EIN is also known as the Federal Tax ID Number.

Gross Revenue

You will need to enter all revenue generated by the legal entity being reviewed (ensure that you include all non-transportation revenue as well). If the motor carrier refuses to release this figure, or the figure is for less than 12 months, document this information in the Investigation Report/Part C . When a carrier refuses to provide the gross revenue figure and if enforcement is anticipated, Safety Investigators / Auditors should consult the UFA user manual. Remember to convert foreign currency into U.S. dollars.

NOTE: During pre-authorization safety audits (PASAs) for motor carriers that have not begun operations, enter gross revenue as zero.

Mileage (Previous 12 Months)

Enter the total CMV mileage for all power units under the motor carrier's control for the previous 12 months on Part A. Include: (i) mileage occurring in the United States; (ii) mileage occurring as part of a trip to or from the United States; and (iii) mileage within Canada and Mexico, even if the transportation does not involve movements into or out of the United States (provided that the owner or operator also conducts operations within the United States). Remember to convert kilometers to miles (Kilometer total divided by 1.609344 equals miles).Fuel tax records may be a source to verify mileage [e.g., International Fuel Tax Agreement (IFTA)] and should be reviewed, when available. Request copies of the quarterly tax reports that the carrier files with its base jurisdiction; these reports contain actual mileage reported in the previous quarter for the filing date.

For motor carriers domiciled in Canada, mileage information can be obtained from the quarterly tax reports that the Canadian carrier files with its provincial base jurisdiction. As Mexico is not a member of IFTA at this time, other supporting documents recording mileage may be available. Mexico domiciled long-haul motor carriers may be filing IFTA tax reports with one of the four Southern border states, and also could validate mileage.

The following formula shows how the Annual Mileage Estimate is determined:

Annual Mileage Estimate = (12 X Miles Operated) / Months Operated
For this example: **Annual Mileage Estimate = (12 X 800,000) = 1,200,000 / 8**

Hazardous Materials

Choose the types of HM carried and shipped. Note also whether the HM is carried or shipped in bulk or non-bulk packaging, as defined in 49 CFR 171.8. Don't just take the company's word on what type of HM is carried or shipped. Review shipping papers, invoices, insurance paperwork, SDSs, and OS&D reports, etc; walk around the premises looking for stored HM; ask questions about how the company repairs, packages, cleans, etc, which may involve HM, and how the HM is obtained. Remember that HM may also be in passenger carrier's vehicles and HHG transportation.

Equipment

Enter the total number of CMVs it has used or intends to be used in the United States (including CMVs used exclusively in the commercial zone) at the time of the CR, SA or PASA, with the exception of trip-leased vehicles. For trip-leased vehicles, enter an average number of trip-leased vehicles per month the motor carrier operates or intends to operate in the United States. In most scenarios, the SI should have obtained the equipment list from the carrier during the Risk Assessment process. If the SI is using the ACE Intervention Management (AIM) system, they will be able to provide the equipment list by uploading equipment list the carrier submitted, using the ACE equipment list, or by entering the equipment list manually.

NOTE: For motor carriers operating non-CMVs, the number of vehicles weighing 10,000 pounds or less GVWR should be recorded in the Investigation Report/Part C.

Types of Passenger-Carrier Vehicles

The following are passenger-carrying equipment definitions for completion of Part A:

- **Motorcoach** - A vehicle, designed for long distance transportation of passengers, characterized by an elevated passenger deck over a baggage compartment. Motorcoach is synonymous with the term "over-the-road bus" which is used in the Americans with Disabilities Act (ADA) regulations in 49 CFR Part 37 Subpart H.
- **School Bus** - A vehicle designed and/or equipped mainly to carry primary and secondary students to and from school, usually built on a medium or large truck chassis.
- **Mini-bus** - A motor vehicle designed or used to transport 16 or more passengers (including the driver) and is typically built on a small truck chassis.
- **Van** - A small motor vehicle designed or used to transport 15 or less passengers (including the driver).
- **Limousine** - A passenger vehicle built on a standard or lengthened automobile chassis.

Additionally, for investigations conducted in PRISM states, obtain a list of all power units operated under the motor carrier's control (leased and owned). Include the name and address of the vehicle registrant and owner, the vehicle identification number, state license number and the state of license issuance. The list may be used to provide notice of potential State vehicle registration

sanctions to vehicle registrants and owners. In instances in which an entity, other than the motor carrier, owns and/or registers the vehicles, sanction notices may be sent to them also.

Drivers

If the SI did not obtain the driver list from the carrier during the Risk Assessment process, the SI should ask the motor carrier to provide the number of CMV drivers it used or who operated under its US DOT number during the 365-day period prior to the start of the CR, SA or PASA. The total number of drivers who are subject to the FMCSRs include company drivers, owner-operators, leased drivers, multiple-employer drivers, and drivers used exclusively in the commercial zone. Although a driver may fit into more than one category, identify the driver in only one category and count the driver only once. The SI should enter the Total Drivers in Part A Driver section. The information recorded should note:

• CRs and SAs should reflect the current number of drivers subject to the FMCSRs.

• PASAs should reflect the drivers the motor carrier has used or intends to use in the United States (whether long-haul or in the commercial zone).

NOTE: For motor carriers operating non-CMVs, the number of drivers operating vehicles weighing 10,000 pounds or less GVWR should be recorded in the Investigation Report/Part C.

Computation of the Motor Carrier's Interstate/Intrastate Recordable Accident Rate

In most scenarios, the SI should have obtained the accident register from the carrier during the Risk Assessment process. If the SI is using the ACE Intervention Management (AIM) system, the crash lists can be provided by uploading the crash list the carrier provided, using the ACE crash list, or by entering the crash list manually. The SI is responsible for ensuring the total number of recordable accidents (as defined in 49 CFR Part 390) that occur (i) in the United States; (ii) as part of an interstate trip to or from the United States; and (iii) within Canada and Mexico in the past 12 months prior to the start of the CR, SA or PASA, even if the transportation did not involve movements into or out of the United States (provided that the owner or operator also conducts operations within the United States).

1.3.3 Overview of the Safety Management Cycle

The Safety Management Cycle (SMC) is an important tool for the Investigator to use while questioning carrier officials and staff to help **diagnose a breakdown in Safety Management Practices (SMPs)** that has led to discovered violations. The collaborative questioning process is described in detail in Section 1.3.5 and is important for the SI to understand the model and associated processes. Process Breakdown is the term used to describe when an SMP is not working as it should; it represents each part of the Safety Management Cycle, 1 thru 6. The **Collaborative Questioning Cycle has the added goal of discovering why the carrier violates the regulations and how they can stop, from both the carrier and the Agency's perspective**. A key to this process is the concept of "guided self-discovery" to assist the carrier in identifying remedies. The Safety Investigator plays a key role in facilitating this discussion and should

focus on the carrier responses to assist in using the information the carrier provides to write the Process Breakdown and Remedy that will efficiently and effectively eliminate or reduce the documented violation(s).

The main goal of the investigation is to find out ***what*** regulations the carrier is violating (discovery), but more importantly, ***why*** those violations are occurring (Process Breakdown selection), and recommend how they can fix the breakdowns (remedy customization). One common flaw when analyzing failures or problems is the perception that there is only one cause of an event when in fact there may be several contributing issues or Process Breakdowns that influence the occurrence of a violation. Through the ongoing continuous improvement work, it has been discovered that listening to the carrier's "action words" they use to describe why they are having compliance issues is one of the best methods to determine the most appropriate Process Breakdown. Not only will this help select and write the Process Breakdown, but the carrier's answer(s) to how they will fix the problem will assist the Safety Investigator write a proper remedy for the documented violations and Process Breakdown.

Collaboratively identifying Process Breakdowns will help both the carrier and the SI to develop more relevant and targeted remedies resulting in the carrier taking more ownership for bringing the operation into compliance and increasing the likelihood of continued compliance.

1.3.4 Overview of the Safety Management Processes (SMPs)

SMPs are six areas in which a carrier has the ability to influence safety. All six SMPs need to be operating properly in order for a carrier to have a fully functioning Safety Management System. The six SMPs are:

1. Policies and Procedures
2. Roles and Responsibilities
3. Qualification and Hiring
4. Training and Communication
5. Monitoring and Tracking
6. Meaningful Action

It is suggested that the SI address the six processes in the order in which they are presented as each process facilitates the activities of the next process. In order to determine the processes with which the carrier needs assistance, it is important to understand the goal of each process, what it is and what it is not, the signs of a breakdown and the degree of that breakdown, and how the SMPs work together.

1. **Policies and Procedures**
   The goal of setting a policy is to establish the rules and guidelines for how the carrier and its employees will behave in a given situation. For example, if there is no established policy, the carrier's employees may make up their own rules of how to behave and may respond to issues in different ways. Ideally a policy is thoroughly documented, but it does not have to be in order to be effective. Sometimes a brief write up of a policy is all that is needed. It is possible for a carrier to have a policy that is not written down anywhere, but everyone in the company knows what it is through verbal communication. This can be effective, but is not ideal since it opens up greater risk for misinterpretation and inconsistency. Detailed explanations of how to accomplish policies are known as procedures. Like the policies, procedures can be anything from a detailed document to informal communication. Policies and Procedures refer to the definition of the Policy and Procedures and NOT to the implementation of the policy and procedures. SMPs two through six below focus on the implementation of the Policies and Procedures. To determine if a policy or procedure is the issue in particular circumstances, the SI should ask, "if the Policies and Procedures were implemented as established, would they resolve the safety issues of the carrier and have the best chance at reducing or eliminating the discovered violations?"
2. **Roles and Responsibilities**

The goal of Roles and Responsibilities is to clearly define what each employee will do to successfully implement the defined policies and procedures. Like Policies and Procedures it is optimal to have the roles and responsibilities thoroughly documented, but it is acceptable to have a brief write up or verbal communication. "Roles and Responsibilities" are lacking if they do not accurately and completely define who will do what to complete all the procedures that allow the policy to be carried out successfully. This SMP does not address whether the employee is actually fulfilling his/her defined roles and responsibilities; rather, it just addresses whether the roles and responsibilities exist and are well defined. If employees are not fulfilling their roles and responsibilities, the SI should ask why that is and probe further into the other areas of the cycle.

3. **Qualification and Hiring**
   Once the Roles and Responsibilities are defined, then the carrier can explore who will carry these out. The Qualification and Hiring process is about successfully finding and qualifying people for the various roles within the carrier's organization whether it is an external or internal candidate. A successful Qualification and Hiring process should be able to identify and attract the proper candidates to fulfill the Roles and Responsibilities of the various positions. Signs that this process is breaking down are: the existing staff's skillsets do not align with the needs of the job(s) or the carrier is having trouble filling an open position. A carrier can hire someone who is not fully qualified for a position so long as they have a training program ready to bring the employee up to speed with the skills and knowledge they need to carry out the responsibilities of the position successfully.
4. **Training and Communication**
   Once an employee is placed in the proper position, the carrier needs to communicate to that employee all the policies, procedures, roles, and responsibilities so that the employee understands the expectations. Employees must communicate with each other clearly, effectively, and in a timely manner such that all the procedures can be successfully carried out. The carrier is also responsible for training and retraining employees when it is discovered, through the monitoring and tracking process, that they do not have the adequate skills and knowledge. Training and Communication are an ongoing process. Employees who are unaware of their Roles and Responsibilities, the carrier's policies and procedures, and/or employees who do not have the proper skills and knowledge to complete their jobs reflect inadequacies in this area.
5. **Monitoring and Tracking**
   Once employees receive the proper Training and Communication, they are ready to attempt to fulfill their Roles and Responsibilities. The carrier must monitor and track the employees' performance to ensure that they are in compliance with the policies and procedures and that they are fulfilling their Roles and Responsibilities. Monitoring can be a formal or informal process. Sometimes monitoring should be tracked (e.g., documented) and sometimes that is not necessary. Performance evaluations are an excellent example of Monitoring and Tracking. The frequency of the Monitoring and Tracking depends on the situation. To the extent possible, all aspects of the organization should be monitored and tracked to ensure that they are functioning as intended. The goal of Monitoring and Tracking is to ensure that the carrier is aware of what is happening in their organization. The SI can identify inadequacies if the carrier is either not executing monitoring and tracking or not executing it well. Carriers who monitor and track their employee performance become aware of, and can address problems through taking Meaningful Action.
6. **Meaningful Action**
   Meaningful Action provides positive reinforcement for, or is aimed at improving or correcting, employee behavior. Positive Meaningful Action can involve setting up incentives, such as bonuses and other rewards that motivate employees to execute their Roles and Responsibilities properly and reinforce the actions and behaviors that the carrier wants to encourage. Corrective Meaningful Action refers to the carrier's reaction when the monitoring activity reveals that an employee is not executing his/her roles and responsibilities. In these situations, the carrier must perform the appropriate action whether it is simple feedback, offering refresher training, or

giving a verbal warning, written warning, suspension, or dismissal. The SI can identify when a carrier does not take adequate corrective Meaningful Action when the carrier either does not have any reaction to an employee who is not performing or has an inappropriate reaction.

1.3.5 SI Conducts Collaborative Questioning Cycle with Carrier to Identify Process Breakdowns and Remedies

The goals of the Investigation are to identify and confirm violations of FMCSRs, discover the breakdowns of the SMC and why they are occurring, and identify remedies that will repair the Safety Management Processes and lead to a path of safety compliance.

For additional information on the SMC, go to General Guidelines for Using the Safety Management Cycle (SMC) to Help Diagnose a Breakdown in Safety during an Investigation. For AIM, see Part B - Recommendation/Requirements on how to select and customize the SMP Breakdowns and Remedies.

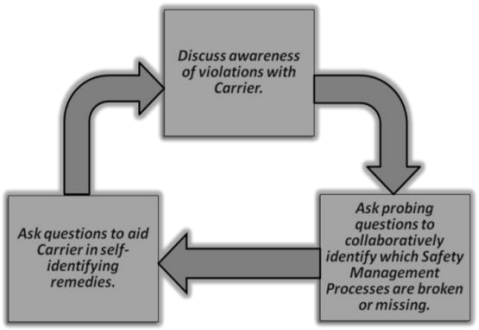
In addition to the traditional enforcement role, the SI helps the carrier to become more compliant and to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, the investigative process should be more of a collaborative process. The SI should frame the questions in such a way that the exchange moves towards finding the Process Breakdowns. The SI should keep the goal of the questioning in mind and steer the carrier away from discussions that may stray from the purpose of the collaborative questioning. It is important for the carrier to play a role in self-diagnosis and remedy development or his or her own Process Breakdowns. A carrier's participation in this self-assessment process increases the likelihood that the carrier will change the behavior.

It is important to understand where there are Process Breakdowns in the SMC and to ask the carrier why they believe the breakdowns are occurring. This additional level of understanding the reason or reasons is taken into account in selecting appropriate remedies for the carrier. Helping the carrier to self-diagnose is a key factor in getting "buy-in" to implement remedies and making a positive, lasting change in their safety management practices and safety culture. The Investigative Questioning Cycle, depicted below, is a process of asking questions to identify Process Breakdowns and enable the carrier to discover the breakdowns and those remedies that will minimize or prevent recurrence.

Process Breakdown identification and remedy development must be used for any violations meeting the following criteria:

- Violations associated with Roadside-Identified BASICs and/or BASICs associated with complaints;
- Acute and/or Critical Violations
- Violations for which enforcement action (NOV or NOC) will be pursued
- Violations that adversely impact the carrier's safety rating.

INVESTIGATIVE QUESTIONING CYCLE



To ensure that the carrier will be receptive to the recommended remedies, it is important that the SI engage the carrier in co-developing remedies. In many cases, the carrier understands why they are in non-compliance and may have a good idea and possibly already be planning proper remedies. The SI can use this as an opportunity to educate the carrier on the full SMC and the corresponding Safety Improvement Practices. The SI will have access to a detailed list of Investigative Probing Questions for each BASIC (See Appendix Q or visit https://csa.fmcsa.dot.gov/yourrole/fmcsa and go to the Resources page and type "Probing Questions" in the keyword search box. You will need to be logged on as a FMCSA or State enforcement user to access this information) and these can be used as needed to start the discussion with the carrier and to develop an appropriate investigative line of questioning as well as spark additional questions.

Tips on Finding Process Breakdowns

How to choose: The SI should determine which SMPs are breaking down or missing that contributed to the carrier's safety violations. The carrier should be focused on those areas that will reduce violations that will directly impact the BASICs under investigation. It is important to understand the specifics of each carrier's Safety Management Processes and the associated Process Breakdowns to determine the precise remedy that will help them reduce or eliminate the violations and become a safer carrier. The SI should keep asking himself or herself "if the carrier implemented X will it improve its safety in the area under investigation and to what extent?" The SI should try to pick the SMPs and SIPs that will have the biggest positive impact on the carrier's safety. When multiple Process Breakdowns are identified, the SI should try to determine which one will have the greatest impact in the shortest time.

As a best practice, the SI should consider the following to find the appropriate SMPs and SIPs:

- The SI should consider the entire cycle; by doing this, the SI is able to eliminate the need to review SMPs not related to either the violations or BASIC under investigation.
- Since Policies and Procedures are the basis for the SMC, the SI should consider this first and then work through the remaining SMPs.
- During the Investigative Questioning Cycle, the SI should listen for the "action" word(s) the carrier uses in their description of why they think their violations discovered are occurring. This will assist the SI in gaining the desired "buy-in" from the carrier, select the most applicable Process Breakdown, and ultimately assist in documenting the remedy by using the information provided by the motor carrier. The SI should not write the Process Breakdown(s) Remedy autonomously. The SI should write the Process Breakdown and Remedy with the carrier's information included.
- When trying to choose a specific SMP to focus on, the SI should consider the extent to which the process is broken. For example, a carrier might have a verbal policy, but no roles and responsibilities defined. In this case it might be better for the carrier to address the process with the most prominent breakdown (e.g., in this case it is Roles and Responsibilities).
- The SI should not assume that just because a carrier provides evidence that they are doing something in a given SMP that they are doing it well. The SI should ask deeper questions to try and determine if their implementation of a SMP produces the desired results. The SI should ask questions such as "Can you provide more details?" or ask "who, what, when, where, why, how, and/or show me..."
- Different carriers need different levels of implementation in each SMP. For example, large carriers will probably have detailed written policies and procedures, whereas a medium carrier may only need a shorter version of the policy, and the owner-operator might be able to satisfy the requirement with verbal policies and procedures.
- The SI should not ask the carrier to implement too many changes at once. Asking a carrier to go from no policies and procedures to a fully written, detailed procedural manual might be too intimidating. The SI should suggest that a good first step would be to determine what the policy and procedures are and create a brief first draft.

- When choosing Safety Improvement Practices, the SI should evaluate which will best help the carrier address their safety compliance issues.
- Sometimes it can be difficult to precisely identify which SMP a particular issue or breakdown is linked to because there seems to be overlap. The following scenarios provide examples of this:
  - If a carrier is not *monitoring and tracking* their training process, then the breakdown is in the "Monitoring and Tracking" SMP because that is the main activity that is missing, not the training process. Generally, the SMP that is chosen is the *action* (i.e., it is the verb).
  - If a carrier is not requiring an employee to take refresher training after repeatedly not following policies and procedures, the Process Breakdown is in "Meaningful Action" because the main issue (action) is that the carrier did not *ensure* that he or she took the refresher training following the discovery of lack of adherence to policy.
  - If the carrier has an *ineffective refresher training* program then the Process Breakdown would be in "Training and Communication" and the remedy would be to improve the refresher training program.
  - It is more important that the remedy reflect the recommended action the carrier should take to target their safety problem than to become overly concerned with the selection of the SMP.
- During closeout, the SI should walk the carrier through the SMC and explain how it works so that the carrier is empowered to assess its own safety issues in the future. It becomes a problem-solving tool for the carrier when the Investigator is not there.

1.3.6 SI Reviews Carrier Documentation to Identify Violations

Once the documentation requested from the carrier has been received, it should be evaluated. The goal of this evaluation is identifying violations.

Identifying Violations

Discovering Violations in the Unsafe Driving BASIC and Cargo-Related Violations within the Vehicle Maintenance BASIC

Discovering Acute and/or Critical Violations Outside of BASICs Requiring Investigation

1.3.6.1 Identifying Violations

The SI should identify violations using the sampling criteria appropriate to the type of investigation, as detailed in Appendix N: Record Sampling.

In an Offsite or Focused Onsite Investigation, the SI should be concerned primarily with identifying violations in CFR Parts associated with the BASICs Requiring Investigation. In a Comprehensive Onsite Investigation, the SI should review all CFR Parts to identify all violations. In all cases where violations are discovered, the SI should:

- Document the violation in AIM.
- Evaluate the carrier's Safety Management Processes (by applying the Safety Management Cycle to identify Process Breakdowns and document Remedies as discussed in Section 1.3.5) for any violations meeting the following criteria:
  - Violations associated with the Roadside-Identified BASICs and/or BASICs associated with complaints;
  - Violations for which enforcement action (NOV or NOC) will be pursued; and
  - Violations that adversely impact the carrier's Safety Rating.
- Determine the appropriate follow-on action in accordance with the guidance in Section 1.3.11.

There may be instances when field personnel find that there is missing or erroneous information in the field system being used. In those instances, the Violation Update Utility (VUU) form must be completed with the appropriate information and submitted to the appropriate Service Center.

1.3.6.2 Investigating Unresolved Acute and/or Critical Violations

In addition to identifying violations associated with the Roadside-Identified BASICs (or the BASICs associated with complaints), the SI must also investigate unresolved Acute and/or Critical Violations previously cited during prior Investigations.

- If the Acute or Critical Violation is associated with the Hours of Service (HOS) BASIC, the SI will investigate the full HOS BASIC (all parts).
- If the Acute or Critical Violation is not associated with the HOS BASIC, the SI will only investigate the specific violation cited on the most recent investigation.
- If the Acute or Critical Violation is discovered to be ongoing, the SI should cite the violation and proceed with enforcement.

1.3.6.3 Discovering Violations in the Unsafe Driving BASIC and Cargo-Related Violations within the Vehicle Maintenance BASIC

The Unsafe Driving BASIC and cargo-related violations within the Vehicle Maintenance BASIC do not lend themselves easily to the discovery of new violations during an Investigation since these are generally observed on-road. In the rare cases that newly discovered violations are found, the SI should record them in the investigative system as he or she would record any other violation.

For guidance on citing Unsafe Driving BASIC related violations please see Guidelines for Recording Unsafe Driving Violations in the Investigative Software I.

For guidance on citing cargo-related violations within the Vehicle Maintenance BASIC, please see Guidelines for Recording Cargo-Related Violations within the Vehicle Maintenance BASIC in the Investigative Software.

1.3.6.4 Discovering Acute and/or Critical Violations Outside of BASICs Requiring an Investigation

If the SI discovers occurrences of Acute and/or Critical Violations outside of the investigation scope, it is necessary to expand the number checked in accordance with policies on minimum record sampling (Appendix N: Record Sampling). Expanding the number checked does not represent an expansion into full BASIC record sampling. Record sampling should be limited to only the specific Acute and/or Critical Violation discovered.

For example, a motor carrier has 20 vehicles subject to the FMCSRs and the SI is conducting an Onsite Focused Investigation on HOS Compliance, but the SI subsequently discovers two occurrences of 396.11(a) violations (a Vehicle Maintenance-related Acute and/or Critical Violation) the SI should not ignore these violations, but instead document them in AIM the investigative system. Based on record sampling (Appendix N: Record Sampling), the SI needs to sample seven vehicles for 30 days for a total of 210 Daily Vehicle Inspection Reports (DVIRs). Expanding the number checked does not represent expansion in scope to a full Vehicle Maintenance BASIC investigation. The SI should only sample DVIRs in this example.

1.3.7 SI Determines Enforcement for Red Flag Violations

A key aspect of the investigation process is the focus on the driver's role in carrier safety. Data has shown that unsafe driver behavior is a major contributor to the CMV crash problem. The carrier's responsibility for hiring, training, and supervising safe drivers is also a factor. As a result, the focus is not only on enforcing regulations related to driver behavior but also on carrier enforcement and education regarding their responsibilities for driver compliance. The SMC is used to identify Process Breakdowns and Remedies designed to assist the carrier in their compliance efforts.

The SI addresses driver violations as part of the carrier Investigation. During Pre-Investigation, the SI has reviewed previous violations committed roadside by the drivers for the carrier, including those cited as driver with Red Flag Violations worthy of further examination. During a carrier investigation, the SI verifies those previous violations and evaluates newly discovered violations for the drivers cited and determines appropriate enforcement against the drivers and/or the carrier for those violations.

Note: The SI should have obtained good contact information for drivers under investigation in the Pre-Investigation and Investigation Stages.

Red Flag Violation

Guidelines for Enforcement of Red Flag Violations

1.3.7.1 Red Flag Violations

While Investigators can enforce violations of the FMCSRs on any driver with proper evidence, drivers with Red Flag Violations are currently limited to the following specific list of violations that have been deemed to be primarily the responsibility of drivers:

BASIC	FMCSR Part	Violation Description
Driver Fitness	383.21	Operating a commercial motor vehicle (CMV) with more than one driver's license
Driver Fitness	383.23(a)(2)	Operating a CMV without a valid commercial driver's license (CDL)
Driver Fitness	383.51(a)-SIN[2]	Driving a CMV while CDL is suspended for a safety-related or unknown reason and in state of driver's license issuance
Driver Fitness	383.51(a)-SOUT[2]	Driving a CMV while CDL is suspended for safety-related or unknown reason and outside the state of driver's license issuance
Driver Fitness	383.91(a)	Operating a CMV with improper CDL group
Driver Fitness	391.11	Unqualified driver
Driver Fitness	391.11(b)(5)	Driver lacking valid license for type of vehicle being operated
Driver Fitness	391.11(b)(7)	Driver disqualified from operating CMV
Driver Fitness	391.15(a)-SIN[2]	Driving a CMV while disqualified. Suspended for safety-related or unknown reason and in the state of driver's license issuance
Driver Fitness	391.15(a)-SOUT[2]	Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance
Controlled Substances/Alcohol	392.4(a)	Driver possesses, uses, or is under the influence of controlled substance(s)
Controlled Substances/Alcohol	392.5(a)	Driver possesses, uses, or is under influence of alcohol less than 4 hours prior to duty
HOS Compliance	395.13(d)	Driving after being declared out-of-service (OOS) (Violating Part 395 OOS Order)

Note: ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.
During an investigation of a motor carrier the investigator must examine all Red Flag violations that are designated on that motor carrier's record. The violations that result in a Red Flag Violation have changed. Only safety-related "operating while suspended" violations, 391.15a-SIN, 391.15a-SOUT, 383.51a-SIN and 383.51a-SOUT, result in a Red Flag Violation. Non-safety related "operating while suspended" violations still appear on the motor carrier's record and are used in SMS, but they will not be considered Red

Vehicle Maintenance	396.9(c)(2)	Operating an OOS vehicle before making repairs

The Red Flag Violation designation is not intended to limit the authority of the Investigator to make driver enforcement decisions, but rather to provide a short list of key system-identified driver violations that should be focused on to verify that they have been corrected, that the correction was made in a timely manner, and that the corrections were sustained. As part of the assigned carrier Investigation, the SI should investigate all drivers with identified Red Flag Violations.

The decision to initiate enforcement action may take into consideration, but not be limited to, factors such as whether the state has already initiated enforcement action (e.g., citation), the violation was corrected in a timely manner, or the violation continued, or was repeated. For example, if a driver has been cited for operating without a valid CDL (Part 383.23(a)(2)), and if this violation was not corrected and the driver continued to operate, the SI should initiate enforcement action.

The decision to pursue driver enforcement may impact the scope of the assessment of the carrier's Safety Management Processes. When driver violations are discovered and are recommended for enforcement against the driver, the SI should determine if the carrier has the SMPs in place related to that violation. If the SMPs are not in place, then the SI should include the Process Breakdowns and Remedies in the Investigative Report in AIM. If the carrier has SMPs in place that are sufficient to avert these violations, then further Process Breakdown identification is not necessary. This step is performed as part of conducting the collaborative questioning cycle (described in Section 1.3.5) with the carrier.

Determining enforcement against the carrier for violations committed by the employed driver is a separate process from enforcement against the driver. The carrier's awareness of the violations and its responsibilities for controlling them should be considered in enforcement decisions. The decision to pursue carrier enforcement for a driver with Red Flag Violations may take into consideration, but not be limited to, knowledge and willfulness of the carrier with respect to the driver violations and did the carrier know or should have known of the violation. As with any carrier violations meriting enforcement, these violations are subject to an assessment of Process Breakdowns and Remedies for the associated BASIC.

ACE provides an indicator and link in the SMS BASICs Safety Measurement Summary area when a motor carrier has drivers with Red Flag Violations. You can use this link to access SMS to review the Driver Information and Red Flag Violations. The SI should examine all Red Flag Violations.

Any enforcement action for a violation discovered in an investigation should follow the general guidelines for selecting a follow-on intervention discussed in *Section 1.3.15*.

1.3.7.2 Guidelines for Enforcement of Red Flag Violations

- Driver vs. Carrier Enforcement
  - The Manager should be consulted before pursuing enforcement against the driver if either a citation had been issued roadside or the driver is not currently employed by the carrier.
  - Enforcement against the carrier:
    - Is considered in cases where there is proof that the violation was repeated when the carrier had knowledge (or should have had knowledge) of the violation and could have prevented its reoccurrence.
    - Should be pursued in cases where the carrier knowingly directed the driver to commit or repeat the violation.
- Driver Fitness Red Flag Violations:

  - For Red Flag Violations which were originally cited for operating while disqualified [383.51(a)SIN[3], 383.51(a)-SOUT[3], 391.11(b)(7), 391.15(a)-SIN[3], and 391.15(a)-SOUT[3]], enforcement normally depends on whether the disqualification was for a safety-related reason.
  - NOVs are an option only for two violations [383.23(a)(2) and 391.11(b)(5)], as long as they are immediately correctible and readily verifiable.
  - If there was no original enforcement on the Red Flag Violation at the roadside, the SI will normally issue an NOC (or NOV in the case of the two violations listed above). If there already was a citation, then the SI should consult with the Manager before initiating enforcement against the driver.

- Controlled Substances and Alcohol Red Flag Violations
  - Normally, discovery of the two designated Red Flag Violations [392.4(a) and 392.5(a) will result in an immediate driver disqualification. If the SI finds evidence that the driver operated while disqualified, he should cite one of the Driver Fitness Red Flag Violations listed above for operating while disqualified and pursue enforcement against the driver.
  - If there was no disqualification, the SI should check to see if there was a subsequent conviction for the violation. If the driver was convicted, then the SI or Manager should refer the matter to the Service Center to pursue driver disqualification, and should not initiate an NOC.
  - If there was no disqualification, no conviction, and no original citation, then the SI should verify the violation in the course of the investigation, and initiate a driver and/or carrier NOC. If there was an original citation, then the SI should consult with the Manager before initiating enforcement.
- Vehicle Maintenance and HOS Compliance Red Flag Violations
  - The two designated Red Flag Violations [395.13(d) and 396.9(c)(2)] are cited when the driver has been found operating while the driver or vehicle was placed out-of-service (OOS). Whether it was discovered at the roadside or in the investigation, the violation should be verified with supporting documents before pursuing enforcement.
  - Operating while OOS often implicates either the driver or the carrier, or both.
  - Once the violation is verified, if there was no original enforcement on the Red Flag Violation at the roadside, the SI will normally issue an NOC.

1.3.8 SI Conducts Controlled Substances/Alcohol Supplemental Review

For guidance on how to conduct Controlled Substances/Alcohol Supplemental Review please see *Conducting a Controlled Substances/Alcohol Supplemental Review*.

1.3.9 SI Conducts Hazardous Materials Supplemental Review

For guidance on how to conduct a Hazardous Materials Supplemental Review, please see the Hazardous Materials Manual.

1.3.10 SI Documents Violations and Obtains a Safety Fitness Rating

A Safety Fitness Rating may be issued as a result of the investigation using the current Safety Fitness Rating Methodology, found in 49 CFR Part 385.5 and 385, Appendix B. AIM calculates the proposed

Safety Fitness Rating during the investigation. The SI may check the safety rating by hovering over the lower left-hand side, which states 'Safety Rating: Hover to View'

The type of rating and process differs depending on the type of Investigation.

- **Offsite Investigations** cannot result in a Safety Fitness Rating and are recorded in the AIM as a **non-ratable review**. If the investigative system indicates 'onsite required' at any point during an Offsite Investigation, the SI must convert the investigation onsite.
- An **Onsite Focused Investigation** can only result in an adverse rating of Conditional or Unsatisfactory. A Safety Fitness Rating of Satisfactory cannot be issued because not all factors, described in 49 CFR Part 385 Appendix B, have been examined.
  Note: For Investigations conducted using CAPRI. If the SI does not find sufficient violations to issue a Conditional or Unsatisfactory rating, the SI should change the investigation to a non-ratable review in CAPRI. Please click on *Additional Steps Needed for Recording Onsite Focused Investigations* for more information
- An **Onsite Comprehensive Investigation** examines all factors in 49 CFR Part 385 Appendix B and therefore can result in a Satisfactory, Conditional, or Unsatisfactory rating.

This investigation type and resulting Safety Fitness Rating are summarized in the following table.

Investigation Type	Resulting Safety Fitness Rating
Offsite	None
Onsite Focused	Conditional, Unsatisfactory
Onsite Comprehensive	All ratings

FMCSA is further solidifying longstanding safety-based policy that establishes that an investigation should not be initiated, nor the scope of an investigation expanded, for the purpose of providing a motor carrier the requested opportunity to obtain a Satisfactory Safety Fitness Rating. Unrated motor carriers that request FMCSA investigative resources for the purpose of obtaining a Satisfactory rating should be advised that external demands cannot influence FMCSA resources and that FMCSA concentrates investigative and enforcement resources on motor carriers with known safety performance and compliance problems to best ensure the motoring public's safety. Motor carriers with existing adverse Safety Fitness Ratings from prior compliance reviews that request FMCSA investigative resources to perform a Comprehensive Investigation or to expand the scope of a Focused Investigation for Safety Rating upgrade purposes should be advised to follow the corrective action upgrade process in 49 CFR Section 385.17. A 385.17 request cannot ultimately result in a Satisfactory rating if FMCSA has not previously performed an investigation that includes the review of all required CFR Parts.

Onsite Focused Investigations raise unique policy and procedural issues associated with corrective action upgrade requests filed with FMCSA per 49 CFR 385.17 because they do not include a review of all CFR Parts necessary to issue a Satisfactory rating.

These issues are mainly associated with Unrated and Conditional motor carriers receiving an Onsite Focused Investigation, who subsequently file a corrective action upgrade request per 385.17. Put simply, the issues arise because the motor carrier wishes to upgrade to a Satisfactory rating but the recent Onsite Focused Investigation did not examine all safety standards and factors specified in 49 CFR 385.5 and 385.7:

If an Onsite Focused Investigation results in a Proposed Conditional or Unsatisfactory rating of a motor carrier with an existing safety rating from a prior compliance review, the SI shall advise the motor carrier that any subsequent corrective action upgrade request filed per 385.17 must address all violations from both

the current Onsite Focused investigation and the previous investigation as well as the vehicle OOS rate and/or crash rate from each investigation if either affected the safety rating.

A carrier may not receive a Satisfactory Safety Fitness Rating if FMCSA has not at some point in time examined all safety standards and factors specified in 49 CFR 385.5 and 385.7.

Given the unique policy and procedural issues, Divisions should contact and work closely with Service Centers in handling 385.17 requests from carriers that involved a Focused Investigation.

The table below further delineates FMCSA policy related to safety ratings and corrective action upgrade requests following Onsite Focused Investigations. The dates in the table represent the following:
Date 1 = Original safety rating date
Date 2 = Most recent Focused Investigation date
Date 3 = 385.17 upgrade request decision date
Date 2+ = Date 2 + (45 or 60 days) 17

Safety Ratings and Corrective Action Upgrade Request

Original Safety Rating	Recent Investigation	Focused Investigation Rating	Upgrade Request	Decision	Action	Public Display	
Date 1	*Date 2*		*Date 3*			*Rating*	*Date*
SAT	Onsite Focused Investigation	COND	385.17	Grant	Upgrade	SAT	Date 3
			385.17	Deny	Denial	COND	Date 2+
		UNSAT	385.17	Grant	Upgrade	COND	Date 3
			385.17	Deny	Denial	UNSAT	Date 2+
		NON-RATED Review	**No basis for filing**				
COND	Onsite Focused Investigation	COND	385.17	Grant	Upgrade	SAT	Date 3
			385.17	Deny	Denial	COND	Date 2+
		UNSAT	385.17	Grant	Upgrade	COND	Date 3
			385.17	Deny	Denial	UNSAT	Date 2+
		NON-RATED Review	**Follow regular 385.17 for requesting upgrade to original rating**				
UNRATED	Onsite Focused Investigation	COND	385.17	Grant	Vacate, reason: 385.17	UNRATED	
			385.17	Deny	Denial	COND	Date 2+
		UNSAT	385.17	Grant	Upgrade	COND	Date 3
			385.17	Deny	Denial	UNSAT	Date 2+
		NON-RATED Review	**No basis for filing**				
UNSAT	Issued prior to 2001, Intervention Selection is Onsite Comprehensive Investigation						
	Issued post 2001, then flagged as OOS with activity and Intervention Selection is Direct NOC						

[17] If the rating upgrade request is denied, the rating date that will appear for public display is the date when the Focused Investigation rating was given (Date 2) plus 45 or 60 days depending on the type of motor carrier.

1.3.11 SI Selects and Customizes Process Breakdowns and Remedies

Once the SMP Process Breakdowns are identified (as described in *Section 1.3.5*), the SI follows the process outlined below to select and customize the appropriate Process Breakdowns and Remedies that best fit the carrier in AIM. Process Breakdowns are defined as SMPs that have not been implemented by the carrier. Remedies are steps that the carrier should take to reduce the likelihood of future violations. They may be identified or derived from the SIPs associated with each Process Breakdown. Both Process

Breakdowns and Remedies should specify and incorporate defects in SMPs and corrections which may have been identified during the Investigation.

Process Breakdown Selection

Mandatory Recommendation

Process Breakdown Customization

Guidelines for the Investigation Report

Remedy Customization

1.3.11.1 Process Breakdown Selection

If SMPs are not in place, are broken, or do not encourage safety compliance, the SI should select the corresponding Process Breakdown(s) in AIM. The SI can select more than one Process Breakdown, but it is important to focus on the Process Breakdowns that will have the greatest immediate impact on the issue at hand. However, if it is discovered that the carrier has none of the SMPs in place and has made no attempt to put them in place, Policies and Procedures should be selected as the Process Breakdown, since that is the starting point on the SMC. However, establishing the Policies and Procedures is only the first step; the carrier also needs to start using the SMC in such a way that will encourage the quickest and most efficient change in compliance that will reduce or eliminate discovered violations.

1.3.11.2 Mandatory Recommendation

Mandatory Recommendations will be generated by AIM based on the type of investigation and the outcome. These will include the two General Recommended Remedies shown in the box below, along with those appropriate for the type of investigation and the resulting outcome. SIs are not able to edit Mandatory Recommendations.

Excerpt from MANDATORY RECOMMENDATIONS

- **Understand Why Compliance Saves Time and Money:** Compliance with FMCSRs will not only save lives, but also saves your business time and money. Tracking how much your business spends on non-compliance activities can help you understand the many benefits of compliance to your business and why safety is good business.
- **Document and Follow Through on Action Plans:** Document and follow through on action plans to ensure the actions you are taking are creating improvement in safety management and compliance.

To learn more about the Mandatory Recommendations in AIM, click: AIM Userguide

1.3.11.3 Process Breakdown Customization

The AIM remedies grid will populate the list of Remedies based on the BASICs and Process Breakdowns selected from the dropdown lists pre-populated with Recommended Remedies. Once the Process Breakdowns are selected, the SI can view the full description and should customize the Process Breakdown description and Remedies. They will then be able to include these Process Breakdowns and Recommended Remedies in the Final Investigation Report. The SI can customize the Process Breakdown description with details that are based on discussions with the carrier.

1.3.11.4 Guidelines for the Investigation Report

The system will provide a template for the Investigation Report and the SI should follow these guidelines:

- The language in the report should be directed to the carrier and replace the word "Carrier" with the carrier's name.
- The customized description of Safety Management Process Breakdowns should be written in the present tense. The facts should be reported objectively, and accusatory or inflammatory statements avoided. The report should place emphasis on how to address issues "from this point forward." **The description should clearly document WHY the process is broken, specifically answering the following questions:**
    - Describe the carrier's current process related to the breakdown.
    - Where is the process breaking down?
    - Why is this process breaking down?
    - Explain the result of the Process Breakdown and link back to the discovered violation.
- The description of the Safety Management Process Breakdown should be concise.

The following is an example of a Process Breakdown and Recommended Remedies Customization Template that has been partially completed for a HOS Compliance BASIC where the Process Breakdown is in the area of Qualification and Hiring. This template is available in the investigative system and the SI should use it for customizing Process Breakdowns and Remedies.

HOS COMPLIANCE BASIC PROCESS BREAKDOWN: Qualification and Hiring Process

Description of Safety Management Process Breakdowns

[SI: INSERT description of, and reason for, breakdown in Safety Management Process.]

BASIC-SPECIFIC RECOMMENDATIONS *[SI: Review the following pre-populated remedies and customize as appropriate.]****Implement the following Safety Improvement Process related to Qualification and Hiring:***

- Ensure Moving Violation Records (MVR) for all prospective drivers are reviewed as part of the hiring process.
- Check with previous employers regarding Hours of Service violations.
- Apply adequate resources to properly implement these processes. Consider reallocating responsibilities, additional staffing, contracting, or investing in technology to aid in this responsibility.

Seek Out Resources:

- You are encouraged to review your company's record at the following website: http://ai.fmcsa.dot.gov/sms. You will need to use your PIN Number that has been provided by FMCSA.
- Contact industry associations to get resources and ideas from other carriers in the industry.

Note: All text should be customized by the SI. Instruction to the SI is in *[underlined italicized bracketed text]*.

To learn more about the Mandatory Recommendations in AIM, click: AIM Userguide

1.3.11.5 Remedy Customization

For each Process Breakdown, the remedies listed should be reviewed and customized to be relevant to the carrier. The Process Breakdown and Recommended Remedy Customization Template/Sample provide instruction on what to customize. Some general guidance for the SI follows:

- Ask: Is this an individual problem (e.g., one driver) or is it a systematic, management problem (e.g., multiple drivers with the same issue)?

- Customize the SIPs accordingly. SIPs are geared towards systematic problems. Customize and target the SIPs that are pre-populated in the template accordingly. In general, be specific if there are certain topics, tools, or staff you would like the carrier to focus on.
- The Recommended Remedies should be to the point, bulleted, and structured in a way that the carrier will find easy to follow.
- Remedies should be action-oriented.
- The Remedies appearing in the investigative system should be reviewed and, if needed, changed to reflect the order of importance for the carrier to address.

1.3.12 SI Records Contact and Investigation Notes

The SI should continue to keep detailed notes as the Investigation progresses. It is important to record details of each contact with the carrier (phone calls, visits, emails, etc.)

1.3.13 SI Retains or Disposes of Documents According to Document Retention Requirements

The following outlines policies on the scope, method, and duration of documentation retention.

- **For Onsite Investigations** - Scope of documents that should be retained includes those documents:
  - Outlined per existing EDMS guidance;
  - Related to Follow-on interventions(NOVs, NOCs); and
  - Submitted by the carrier using SMS, email, fax or mail (documents cannot be returned to the carrier).
  - SI notes in ACE/AIM will be recorded automatically.
- **For Offsite Investigations -** Scope of documents that should be retained includes those documents:
  - Outlined per existing eFOTM and EDMS guidance;
  - Related to Follow-on interventions (NOVs, NOCs); and
  - Submitted by the carrier using SMS, email, fax or mail (documents cannot be returned to the carrier).
  - SI notes in ACE/AIM will be recorded automatically.
- Federal and State Methods and Duration for Document Retention
  - All documents related to Follow-on Interventions should be uploaded into EDMS.
  - Documents collected during Offsite Investigations, including documents submitted by the carrier via fax or mail, not related to Follow-on interventions will be maintained as hard copy or scanned and uploaded into EDMS.
  - In accordance with EDMS procedures, hardcopies of documents may be shredded after they have been electronically scanned and uploaded.

1.3.14 Discovering Violations by BASIC

1.3.14.1 Controlled Substances/Alcohol BASIC

1.3.14.1.1 Introduction to Controlled Substances/Alcohol BASIC

The scope of the investigation depends on the type of investigation you are assigned.

If you are assigned an Onsite Comprehensive Investigation, all BASICs and related FMCSR Parts are investigated. See all BASIC sections for specific guidance on how to investigate the BASIC Requiring Investigation.

If you are assigned an Onsite Focused Investigation or Offsite Investigation, the Parts by BASIC table for the Controlled Substances/Alcohol BASIC below provides guidance for selecting the appropriate CFR Part (Full or Sub-part) that should be examined. Following the table, guidance is provided for each of the CFR Part related to the Controlled Substances/Alcohol BASIC.

- full review of part

⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

Safety		
40 – Drug & Alcohol Testing	●	**Required:** Controlled Substances and Alcohol BASIC
380 – Special Training		
382 – Drug & Alcohol Testing	●	**Required:** Controlled Substances and Alcohol BASIC
383 – Commercial Driver's License	⊗ Part of CAIR	**Required** as part of the CAIR process. Perform CDLIS checks in accordance with policy memo.
390 – FMCSR General	⊗ .15	390.15 – accident register – **Required** to determine which crashes required post-accident controlled substance and alcohol testing. Additionally, **Required if** Crash BASIC Investigation is performed.
391 – Driver Qualifications	⊗ .23(d-m), .41-.45	391.23 (d-m) – Controlled Substance and Alcohol Program driver background checks and carrier responsibilities – **Required** 391.41, .43, .45 – Physical qualification for drivers, specific to controlled substances and alcohol issues. **Required if** driver tested positive.
392 – Driving of Motor Vehicles	⊗ .9a(a)	392.9a(a) Authority – **Required** as part of the CAIR process
393 – Vehicle Parts and Accessories		
395 – Hours-of-Service		
396 – Vehicle Maintenance		
Hazardous Materials		
107 – HM Program Procedures (Registration)		
171 – HM General		
172 – HM Table/Communication		
173 – Shipper Requirements		
177 – Carriage by Highway		
178 – Package Specifications		

180 – Package Quality and Maintenance		
397 – HM Driving and Parking		
Other		
325 – Noise Emission		
387 – Financial Responsibility	⊗ As applicable	**Required** as part of CAIR process as applicable to the commodity transported or motor carrier operation type.
398 – Transporting Migrant Workers		
399 – Employee Health and Safety		

1.3.14.1.2 Part 382 – Control Substances/Alcohol Use and Testing

1.3.14.1.2.1 Part 382 – Investigative Procedure

In your review of compliance with 49 CFR Part 382, you should use the following guidelines to assist in your investigation of motor carriers both of property (including placardable HM) and passengers.

Pre-Employment Testing

Post-Accident Testing

Random Testing

Reasonable Suspicion

Drivers with Positive Tests

Drug and Alcohol Policies

Clarification of Safety-Sensitive Function

Private Motor Carriers of Passengers (PMCP)

Conducting a Controlled Substances/Alcohol Supplemental Review

Controlled Substances and/or Alcohol Agent Reviews

Procedures to Follow During Investigation of Part 382

If you are assigned an Onsite Comprehensive Investigation, your investigation of 49 CFR Part 382 should consist of:

- Identify key personnel in the motor carrier's controlled substance and alcohol program,(e.g. the name of the collector, the DER, the consortium, the MRO.)
- Ask the motor carrier to describe their controlled substance and alcohol testing program, for example what is the notification process for informing drivers of their random selection.
- Review background checks and previous employment responses.
- Identify positive tested and refusal drivers who have no evidence of completing the return-to-duty process.

- Ask for a list of drivers who operate vehicles that require operator to possess a CDL, with their dates of hire.
- Request a list of all drivers' selected for random controlled substances and alcohol testing.
- Review payroll, inspections, accident, etc. to be sure all drivers are included.
- Request a list of all controlled substances/alcohol tests performed, with results, for the past 12 months.
- Ensure controlled substances/alcohol tests were performed in accordance with Part 40.
- Verify the motor carrier is registered in the Clearinghouse. If not registered, verify if the motor carrier was required to perfom any action in the Clearinghouse, report a violation, or conduct a query.
- For drivers hired on or after January 6, 2020, verify the required pre-employemnt queries were performed as required.
- Verify the required annual query was completed at least once a year after January 6, 2020, on each driver.
- Review the drug and alcohol violation reports conducted by the motor carrier and their service agents.
- Check that controlled substances and alcohol random testing rates were met for the previous calendar year or employer designated 12 month drug and alcohol testing year.
- If the carrier uses a 3rd party to select drivers for random testing, obtain a list of the carrier's drivers in the pool from the consortium.
- Ensure the carrier is performing the required Controlled Substance Test (CST) background checks on all newly hired CDL drivers.
- Ensure the carrier has the summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year available for the Management Information System (MIS).

If you are assigned an Onsite Focused or Offsite Investigation, your investigation should include an examination of the applicable parts and subparts for each BASIC that you are investigating. The table below identifies each BASIC by Part 382, and includes guidance on whether the investigation should include a review of the full part or subpart. The table also includes additional guidance on when each is required, or should be considered, based on investigative findings.

● full review of part
⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

BASIC	**Part 382**	**Description**
Driver Fitness		
Controlled Substances/Alcohol	●	**Required:** Controlled Substances/Alcohol BASIC
Vehicle Maintenance		
HOS Compliance		

HM Compliance		
Unsafe Driving		

Note: *The Crash Indicator BASIC is not listed in the table, since the scope of these investigations varies depending on the BASICs Requiring Investigation. See the Crash Indicator BASIC section for guidance.*

Following this review, you should:

- Cite violations;
- Identify Process Breakdowns and Remedies; and
- Document counts for enforcement, as appropriate.

Request Driver List

In most scenarios, the SI will have obtained the driver list from the carrier as a part of the Risk Assessment process. If the SI did not obtain the driver list, they should request a list of drivers employed in the last 365 days. The list should have full legal name, date of birth, and driver's license number for each driver listed, along with date of hire and date of termination (if applicable). The list will need to be verified for accuracy and completeness by reviewing the company profile, payroll records, dispatch records, bills of lading, and/or other transportation or shipping documents.

Review lists carefully; you may find drivers the motor carrier failed to mention during the opening interview. This is particularly true of drivers who are no longer with the carrier; however, the carrier may still be required to maintain their records.

When Requesting a List of Controlled Substances and Alcohol Tests, Ask for the Following

Request a list of all positive controlled substance and alcohol tests performed during the past five (5) years and a list of negative test performed during the previous year. This list may be requested from the motor carrier, the motor carrier's consortium, and or the MRO. The list should include the drivers' names, the type of controlled substance and/or alcohol test, and the test result. You may also request the drivers' social security number to verify against other controlled substance and alcohol testing records (after January 6, 2020 a CDL number and state of issuance is required as indentification in the chain of custody form)

A Carrier Has Made No Attempt to Implement a Program Required by Part 382

First-time investigation - You should cite the motor carrier for Section 382.115(a) - Failing to implement an alcohol and/or controlled substances testing program.

Subsequent investigations - You should cite the motor carrier for each individual violation of Part 40 and 382 they have violated.

A Driver is Improperly Sent for an Alcohol and/or Controlled Substances Test (e.g., Random, Post-Accident, Pre-Employment) and Tests Positive

Under 49 CFR section 40.209(b)(10), the test would be considered valid, as long as the test itself was a valid DOT test. The test would be treated as a positive test and the SI should pursue the standard compliance and enforcement procedures for positive tests.

Part 382 – The Drug and Alcohol Clearinghouse

A review of the Clearinghouse requirements is required during every investigation and safety audit.

- Verify registration required only when a motor carrier is required to conduct the required queries and/or to report a drug and alcohol violation.
- Verify queries had been conducted as required
    - Pre-employment queries must be conducted before placing a driver to perform safety-sensitive functions.
    - Annual queries must be conducted at least once a year for each driver after January 6. 2020.

Registration

Staring January 6, 2020, every motor carrier employer of CDL drivers is required to comply with the Clearinghouse requirements. Registration is only required to perform a query or to report a drug and alcohol violation. You cannot cite failure to register if the motor carrier is not required to perform any of the required actions. However, you can encourage the motor carrier to register. To verify registration, FMCSA enforcement personnel can access the Clearinghouse website logging as enforcement users, or when functionality enabled access the ACE or the New Entrant Website System, or even ask the motor carrier for proof of registration by verifying their access to the account online. MCSAP personnel can also request this information from their respective division office.

Queries

Two types of queries are required:

- Pre-employment queries must be conducted before placing any driver to perform safety-sensitive functions. To review a sample of pre-employment queries, the investigator must use the CFR Parts: 382 Pre-employment tables included in this manual. When a query is submitted to the Clearinghouse, the driver must approve the release of the information electronically
- Annual queries are required at least once a year (after January 6, 2020) on each driver employed by the motor carrier. To review a sample of the annual queries, the investigator must use the CFR Parts- Part 391-DQ Files Table.

During the first three years after the implementation of the Clearinghouse, the employer is still required to conduct the required inquired to previous employers outlined on §382.413 and §391.23.

Reporting

Employers and service agents are required to report to the Clearinghouse. Detailed information in what entities are required to report, refer to the table "Reporting Entities and Circumstances in §382.705". Make sure the reports are accurate, submitted withing the reporting timeframe, and when required, accompanied by the required supporting documentation. To verify the submission, investigators must use the "minimum Number of CDLIS Checks" table and access Query Central

and CDLIS, which will show the prohibition as ***"Drug and Alcohol Clearinghouse - Driver is prohibited from operating under 382.501(a)".*** Verification can always be conducted by accessing the Clearinghouse as an enforcement role. If non-compliance found by a service agent or an employer failed to report a violation, please contact the Compliance Division at Clearighouse@dot.gov.

Part 382 - Pre-Employment Testing

Sampling Requirements for Pre-Employment Testing

Review pre-employment controlled substance testing and inquiries from previous employers for alcohol and controlled substance testing information for those drivers selected. Verify that the motor carrier did not use the drivers to perform safety-sensitive functions prior to the motor carrier receiving a controlled substances test result from the Medical Review Officer (MRO) or Consortium Third Party Administrator (C/TPA) indicating a verified negative result for that driver. The selection of drivers to review, and the minimum number of pre-employment controlled substance tests to be reviewed for compliance, is set forth in the sampling table found in the link below:

Sampling Requirements

****Or the time period since the previous investigation, whichever is less.***

CFR Part: 382 - Drug & Alcohol Pre-employment

Determining Which Drivers to Sample

Select drivers with the highest Controlled Substances/Alcohol BASIC percentiles according to the DSMS, which can be accessed using the SMS Online. On the page for the motor carrier being investigated, click on the Driver Tab to obtain a list of drivers who have operated for that motor carrier and the driver's related DSMS performance percentiles in each BASIC. Sample from those drivers with the highest percentile rankings within the Controlled Substances/Alcohol BASIC down to the 50th percentile. The driver sample should include currently employed drivers. There are circumstances where you may need to select drivers recently terminated by the motor carrier. This practice is acceptable if properly articulated in the Investigation Report/Part C.

You have some flexibility and discretion in this selection process and should use your judgment. For example, if two drivers have BASIC percentiles that are very close to each other, but one has been involved in one or more crashes, then you could decide to include the driver who has been involved in crashes regardless of which driver has the higher BASIC score. These deviations should be explained in the Investigation Report/Part C.

Record the name(s) of the driver(s) reviewed for each sample size in the Investigation Report/Part C of the investigation report; or include a notation in the Investigation Report/Part C of the investigation report that the same information was scanned into the Electronic Document Management System (EDMS) in a separate document.

Steps to Take if the Minimum Number of Documents in the Review of the Carrier's Pre-Employment and Random Drug Testing Program Cannot Be Reviewed

There will be instances where you will not be able to review the minimum number of required documents. If this happens, you must explain in the Investigation Report /Part C why you did not meet your sample.

You must also explain in the Investigation report/Part C if you exceed the required sampling beyond the number set forth in the chart above.

Procedures to Follow When Pre-Employment Testing Problems are Encountered

If a driver has not received a pre-employment test for controlled substances, ensure that the carrier has not exercised the pre-employment controlled substances testing exception found in Section 382.301(b). The motor carrier should be cited for using a driver before the motor carrier has received a negative pre-employment CST result for each driver that was not tested or did not meet the pre-employment controlled substances testing exception.

In addition, the motor carrier should be instructed to conduct a pre-employment test on all drivers hired during the previous 365 days who were not pre-employment tested for controlled substances, unless they were otherwise tested for controlled substances during the previous 365 days. You should inform the carrier not to allow CDL drivers who have not been properly tested as a pre-employment condition to operate a CDL vehicle for the carrier until they submit to these missed tests and have obtained a negative result. Also, inform the carrier to forward the results of these missed tests to you at your office at the conclusion of the investigation.

A driver who was not pre-employment tested for controlled substances, but was later tested for controlled substances under the random testing requirements would not be required to make-up the missed pre-employment test, but the violation would still be cited.

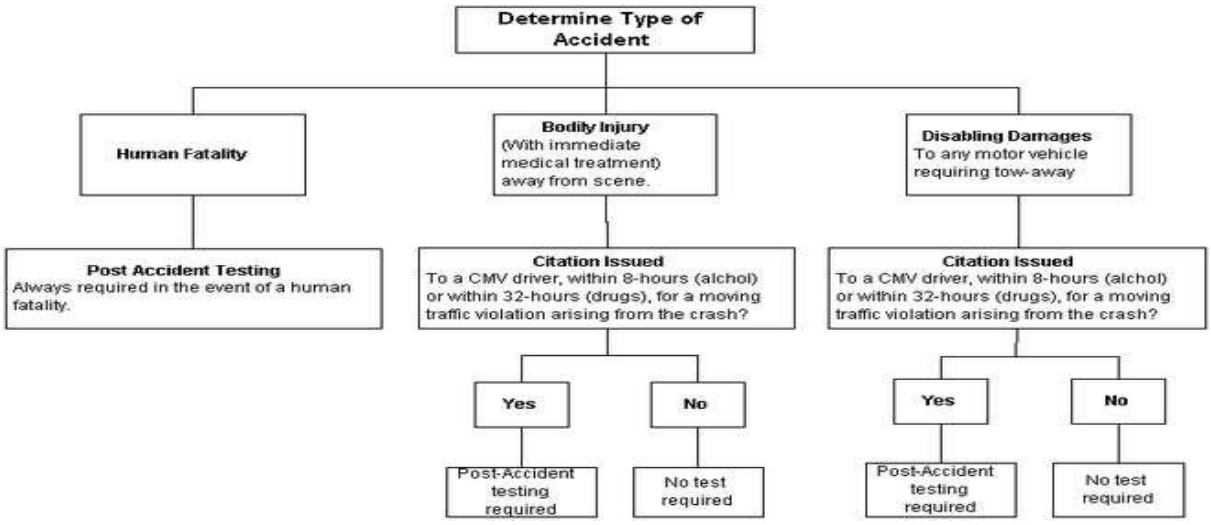
Part 382 - Post-Accident Testing

Procedures for Reviewing Post-Accident Test Results

Verify that all drivers required to submit to post-accident controlled substances and alcohol tests are tested, as required by Section 382.303(c). This applies to all recordable accidents within the last 365 days. Validate carrier's reason if tests were not conducted within the required time limits.

Circumstances Under Which Post-Accident Testing is Required

The following flowchart and sampling table are a quick reference for determining when post-accident testing is required:



Description of Determine Type of Accident flowchart

CFR PART 382 Post–Accident Testing

Part 382 - Random Testing

Sampling Requirements for Random Testing

The number of required random tests in a calendar year is based upon the average number of drivers subject to be tested by the employer and the applicable minimum annual percentage rate for random testing. If there are large fluctuations in the number of drivers subject to be tested by the employer throughout the year, without any clear indication of the average number of driver positions, the necessary number of random tests is calculated as follows:

Formulas

Examples - Annual Test Rates

Controlled Substances	**Alcohol**
Quarter 1 = 10 Drivers Quarter 2 = 30 Drivers Quarter 3 = 300 Drivers Quarter 4 = 10 Drivers 350 Drivers	Quarter 1 = 10 Drivers Quarter 2 = 30 Drivers Quarter 3 = 300 Drivers Quarter 4 = 10 Drivers 350 Drivers
T = 0.25 X D/P T = 0.25 X 350/4 T = 0.25 X 87.5 T = 21.88.73 (Round up) T = 22	T = 0.1 X D/P T = 0.1 X 350/4 T = 0.1 X 87.5 T = 8.75 (Round up) T = 9
How many drivers have to be tested in order to meet the 25 percent CST rate for the year? The answer is 22, which must be reasonably spread throughout the year.	How many drivers have to be tested in order to meet the 10 percent Alcohol rate for the year? The answer is 9, which must be reasonably spread throughout the year.

CFR PART 382 Random Testing

Calculating the Number of Tests that Need to be Completed for a Testing Period

NOTE: To verify current random testing rates please check this link:
https://www.transportation.gov/odapc/random-testing-rates

The formula above can also be used to determine the number of tests to be conducted per testing period. The following table illustrates how the number of tests can be established per testing period:

Examples – Test Period Rate (Controlled Substances)			
Carrier with four testing periods per year using drivers subject to be tested by employer or employer's C/TPA			
Testing Period	Number of Drivers	Formula	Drivers to be tested during period.
1	10	T = .25 X 10/4	0.625
2	30	T = .25 X 30/4	1.875
3	300	T = .25 X 300/4	18.75
4	10	T = .25 X 10/4	0.625
Annual Total			
Carrier with six testing periods per year using drivers subject to be tested by employer or employer's C/TPA			
1	10	T = .25 X 10/6	0.417
2	30	T = .25 X 30/6	1.25
3	300	T = .25 X 300/6	12.5
4	10	T = .25 X 10/6	0.417
5	20	T = .25 X 20/6	0.833
6	10	T = .25 X 10/6	0.417
Annual Total			

*The annual rate required of this carrier is 32 Random Tests. Using this formula the carrier would actually have one more than needed and therefore may drop one of the tests. It would be inappropriate to drop a test in periods 1, 4, or 6 as the carrier would not meet the requirement to spread the tests evenly.

Description of Examples-Test Period Rate (Controlled Substances) table

Procedures to Use when Random Testing Problems Are Encountered

Citing the motor carrier for failing to test at the appropriate random testing rates must only cover the previous full calendar year. In most cases, this will require that records older than 365 days be reviewed. Additionally, when a consortium fails to test for the required 25 percent for controlled substances, or 10 percent for alcohol, for the total number of average driver positions during a calendar year, you should check to confirm that the carrier is in compliance. The motor carrier must either have tested at the appropriate percentages or enforcement action could result. Advise the appropriate Division Office that the consortium is in noncompliance. The Investigator should contact the consortium and inform them about their non-compliance and document it in the Investigative Report/Part C. Ensure that random tests are reasonably spread throughout the year, as shown in example one, and the carrier is utilizing a scientifically valid random selection method.

If the carrier uses a third party to select drivers for random testing, obtain a list of the carrier's drivers in the pool from the consortium.

Part 382 - Reasonable Suspicion

Procedures to Use if Reasonable Suspicion Tests were Conducted

Review all reasonable suspicion tests that have been conducted and ensure all supervisors have received the proper training. Review all required documentation, that a trained supervisor is required to maintain, in connection with a reasonable suspicion test performed. Ensure that proper documentation articulating the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

Part 382 - Drivers with Positive Tests

Procedures to Use if Positive Test Results Are Found

- Determine the identity of drivers who tested positive for alcohol or controlled substances in the previous 5 years, or since the last investigation.
- Review the motor carrier's Semi-Annual Laboratory Statistical Summaries and their Annual Calendar Summary of urinalysis testing to verify that the identities of all drivers, who tested positive for controlled substances in the previous 5 years, or since the last investigation, are accounted for.
- Contact the MRO to verify test result notification dates for carrier and/or driver.
- Ensure that no drivers who had an alcohol concentration of 0.04 or greater or who tested positive for a controlled substance were used by the motor carrier after notification of the test results.
- Ensure drivers who have tested positive, refused to test, or adulterated a test and are retained by the motor carrier, have successfully completed the return to duty process (prescribed in Part 40 Subpart O) and have tested negative for a directly observed return to duty test, prior to performing a safety-sensitive function.
- Ensure any drivers, identified by a substance abuse professional (SAP) as needing assistance, undergo the required follow-up testing and any aftercare rehabilitation prescribed. Has the employer taken any disciplinary action?
- Verify terminated or positive drivers, using the Driver Information Resource (DIR) database, for trips driving for other motor carriers after a positive test, and if found, forward positive test results to appropriate division for possible Subpart O Investigation.

Procedures for Investigating CMV Drivers Who Test Positive for Controlled Substances and Fail to Comply with the Return-To-Duty Requirements of 49 CFR Part 40, Subpart O Before Performing a DOT Safety-Sensitive Function

This memorandum rescinds the July 13, 2010, policy memorandum titled, "Revised Controlled Substances Subpart O Enforcement Policy." It provides policy and procedures to identify and document violations by commercial drivers who engage in conduct prohibited under 49 CFR part 382, Subparts B and E, and fail to comply with the Return-to-Duty (RTD) requirements outlined in 49 CFR part 40, prior to performing U.S. Department of Transportation (DOT) safety-sensitive functions. It also provides guidelines for enforcement and the issuance of Letters of Disqualification (LOD) to commercial drivers.

BACKGROUND

A driver who violates Subpart B of part 382 must meet the requirements of the RTD process prior to performing safety-sensitive functions. These violations include:

- Testing positive for controlled substances on a DOT test;
- Confirmed alcohol concentration of .04 or more on a DOT test;
- Refusal to test;
- The use of alcohol while performing safety-sensitive functions;
- Performing safety-sensitive functions within four (4) hours after using alcohol;
- Use of alcohol during the eight (8) hours following a crash, or until he/she undergoes a post-accident alcohol test, whichever occurs first; or
- Reporting for duty, or remaining on duty requiring the performance of safety-sensitive functions, when the driver used controlled substances.

Completing the RTD process requires an evaluation and prescribed treatment by a Substance Abuse Professional (SAP) and, therefore, takes time to complete. This policy revises previous procedures and provides a more complete set of enforcement tools and disqualification proceedings.

In some cases, a driver incurs these violations while working for one employer and then, when he/she moves to work for another employer, fails to disclose their previous employer and/or violations of the DOT testing requirements. In other cases, drivers move to another employer after having a positive pre-employment test without completing the RTD process, and then wait long enough to seek employment and be tested and obtain a negative result. This policy provides direction and investigative procedures to deal with these situations.

POLICY

The procedures outlined in the policy should be followed when investigators identify a driver who has violated the drug and alcohol regulations outlined in 49 CFR parts 40 and 382, has not completed the RTD process, and continues to perform safety sensitive functions. This policy provides procedures for enforcement and disqualification proceedings of drivers who have violated the requirements of 49 CFR part 382 Subpart B. Drivers who test positive for controlled substances on a DOT test are also not physically qualified under § 391.41(b) (12). Only Commercial Driver Licence (CDL) drivers who tested positive on a DOT controlled substances test and have not completed the RTD process should be subject to the disqualification process. If enforcement is deemed necessary, evidence of a trip after the positive test is required. In addition, enforcement should be initiated against motor carriers that use drivers to perform safety sensitive functions prior to completing the RTD process, when the evidence supports that the motor carrier knew or should have known of such violations.

PROCEDURES

Enforcement personnel should follow the procedures outlined below and coordinate investigations involving drivers of alleged drug and alcohol violations with their Service Center Enforcement Team and the Drug and Alcohol Technical Advisory Group members assigned to their geographic area.

I. Initial Investigative Activity

During an investigation of a motor carrier or a service agent, Investigators should identify drivers who incurred violations of the requirements of Subpart B of part 382 during the preceding 1 year and obtain the following documentation for each violation:

- Driver's legal name, CDL number and state of issuance, company assigned employee number, and/ or any other identifying information.
- The driver's employer(s) or prospective employer at the time of the prohibition and the driver’s current employer(s), if available.
- Evidence that the driver engaged in the violations (e.g., chain of custody and control form and the Medical Review Officer (MRO) verification of a positive result, and copies of the Alcohol Testing Form). Other evidence may include statements relating to a driver's refusal to test, traffic citations involving the violations, documentation for employer direct observations of prohibited conduct (which does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under 382.307).
- Copies of any background checks conducted on the driver(s) and if the previous employers provided proper responses.
- Evidence of the driver operating a commercial motor vehicle (CMV) after the prohibition without completing the RTD process.

Some drivers may be working for a different employer and information obtained during these investigations may reveal where the driver may be currently employed. Another way to locate the driver is to check available Federal Motor Carrier Safety Administration (FMCSA) databases, including the Analysis & Information Driver Information Resource, the Motor Carrier Management Information System, and Query Central to determine if the driver has resumed driving CMVs. If so, the Investigator should note the associated motor carrier(s) at the time of the most recent incident.

II. Investigating the Current Employer

An investigation must be conducted in conjunction with the Division Office where the motor carrier(s) suspected of using a driver in violation has its principal place of business. The Investigator must be aware of any changes of employment that could affect the place of the investigation. If during the pre-investigation phase it is found that the motor carrier is on a priority list of assignments or critical and acute violations outside of parts 382 and 40 are discovered, the Investigator should discuss expanding the investigation with their Division Administrator. Otherwise, the investigation may be focused on the driver only.

If the motor carrier is not on a priority list of assignments for the Division Office, the Investigator should consult with his/her Federal Programs Manager to determine the appropriate investigative approach. Then, the Investigator should contact the motor carrier and indicate that FMCSA is investigating a specific group of drivers to determine if any drivers are in violation of the Federal Motor Carrier Safety Regulations to avoid identifying the specific driver to prevent any type of retaliation from the employer against the driver.

III. Contacting the Driver

To determine if a driver completed the RTD process, the driver should be interviewed. The interview must ensure the driver's privacy. Interviews may include telephone contacts or in-person conversations with the driver. Prior to the start of this interview, the driver's identity should be verified, i.e. ask for a valid form of identification. If the interview is conducted over the phone, ask the driver to answer specific questions that validate the identity of the driver. The driver should be informed of the evidence which substantiates the driver engaged in a violation of the regulations. The driver should be asked to confirm whether he/she completed the RTD process by providing evidence of the RTD test. If the driver confirms that he/she has not completed the RTD process, the Investigator should:

- Document the evidence provided;
- Instruct the driver to inform the current employer(s) about the his/her non-compliance; and
- If the driver fails to notify the employer, consistent with the Departmental policy issued November 13, 2006 (Attachment A), you should inform the motor carrier that the driver is prohibited from performing safety sensitive functions based on a violation of parts 40 and 382.

If the Investigator is unable to contact the driver to verify if the RTD was completed, inform the current employer(s) of the evidence concerning the potential part 382 violation and the need to determine whether the driver has completed the RTD process before allowing the driver to perform a safety sensitive function.

If it is discovered that the driver operated a CMV without first completing the RTD process, the Investigator must document the violation(s) in Part B of the Investigative Report and enforcement against the driver should be considered. The employer should be informed in writing that continued use of the driver for safety-sensitive functions will subject the employer to enforcement action. See Attachment B for additional information.

If a driver cannot be contacted or refuses to meet with the Investigator, the Division Administrator may issue a Notice of Violation (NOV) to the driver and /or a LOD, if appropriate (see driver disqualification process). The NOV notifies the driver of the alleged violations and requires the driver to address the deficiencies to the Agency's satisfaction. The NOV also notifies the driver that he/she is prohibited from performing safety-sensitive functions until the completion of the RTD requirements. The issuance of the NOV does not preclude the Agency from issuing a Notice of Claim (NOC). If the driver fails to respond to the NOV and does not submit evidence documenting his/her compliance with 49 CFR parts 40 and 382, the Division Administrator should consider initiating enforcement action against the driver. The enforcement proceedings and the disqualification process are two separate processes and they do not have to be issued simultaneously.

IV. Driver Disqualification Process

Disqualification process under §391.41(b) (12) may only be used for drivers who received a verified positive for controlled substances on a DOT test and have not completed the RTD process. The fact that the driver has not completed the RTD process is enough evidence to support the issuance of a LOD (Attachment C).

Step 1

The evidence must include the positive result from a DOT controlled substances test, which has been verified by the MRO, and any other evidence supporting the fact that the driver failed to complete the RTD process (e.g., statements, documentation that the driver could not be contacted).

Step 2

Documenting basis for the driver's disqualification:

Basis for Disqualification	Description	When to Use
§391.41(b) (12)	(i) Does not use any drug or substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic or other habit-forming drug or; (ii) Does not use any non-Schedule I drug or substance that is identified in the other Schedules in 21 part 1308 except when the use is prescribed by a licensed medical practitioner, as defined in §382.107.	When driver had a verified positive DOT test result for controlled substances.

The LOD must be sent via certified mail with return receipt requested of the driver. This information must be sent to the CDL holder's address in the Commercial Driver's License Information System (CDLIS) (see Attachment C).

Step 3

After the appeal process has expired, the appropriate Division Office or Service Center must prepare the Employer Notification Letter (ENL) to the company(ies) that employed the driver. The letter states that the driver has been disqualified from operating a CMV in interstate and/or intrastate commerce by FMCSA (see Attachment D). If the driver's license is issued by a different State, the Division Office should coordinate with the Division Office in the driver's state of licensure to determine who will issuing the LOD.

Step 4

If prepared by a Division Office, the Division Administrator must forward a copy of the LOD, with all evidence attached, and the ENL, to the Service Center via e-mail. This electronic package contains personally identifiable information and must be password protected. A separate email, containing the password, must be sent to the Service Center.

Step 5

If the appeal period expires without a submission by the driver, the Service Center should coordinate with the Division Office to confirm the State Driver License Agency (SDLA) is willing to disqualify the driver

based on the LOD. Pursuant to the requirements of 49 CFR § 386.11, the Service Center must prepare the SDLA Notification Form. The form explains that the CDL driver has been disqualified to operate a CMV. The form requests that the SDLA withdraw the CDL holder's privileges. The SDLA form should be sent electronically to the appropriate Division Office. The Division Office should send the form to the SDLA with a request for delivery receipt or other method of verification (see Attachment F).

Step 6
The Service Center must verify that the SDLA withdrew the CDL driver's privileges and has placed the withdrawal on the driver's CDLIS driver record. The verification should be done within 10 business days of the notification to the SDLA. In the event that the appropriate action was not taken by the SDLA, the Enforcement Program Manager must contact the appropriate Division Office to work with the SDLA to resolve the problem.

VII. Reinstatement of Driving Privileges

Step 1
The appropriate Division Office or Service Center must evaluate the documentation submitted by the driver and determine whether the CDL holder is no longer disqualified under §391.41(b)(12) by reviewing the documentation to support the completion of the RTD process. This would require the appropriate enforcement FMCSA personnel to review the documentation provided by the SAP and the required negative RTD test(s).

Step 2
After the required conditions are met to reinstate the driver's privileges, the appropriate Division Office or Service Center must prepare the driver's documentation package providing proof that the driver is no longer disqualified. This package should be shared electronically with the Service Center.

Step 3
The Service Center will prepare the Rescission Letter (Attachment G) and submit it electronically to the Division Office who will then submit it electronically to the SDLA. The letter requests that the SDLA reinstate the driver's privileges. It is the responsibility of the SDLA to notify the driver of the reinstatement.

Step 4
The appropriate Division Office or Service Center should provide a copy of the rescission letter (Attachment G) to the driver and the driver's current employer(s).

Step 5
The Service Center must check CDLIS to confirm the driver's privileges have been reinstated and should follow up with the SDLA if driving privileges have not been reinstated.

VIII. Driver Disputes the Disqualification
If a driver disputes the disqualification by FMCSA, he or she must request a review by the Assistant Administrator within 60 days from the date of the disqualification letter. A hearing will be granted only if the Assistant Administrator determines that there are factual or material issues in dispute.

Documentation related to the investigation must be uploaded when completed into the Electronic Document Management System Drug and Alcohol Folder.

Related Guidance

Note: These files were attachments to archived policy memo *Controlled Substances Subpart O Enforcement Initiative*.
Attachment A 2006 Departmental Policy
Attachment B Violation Description Table
Attachment C Disqualification Letter
Attachment D Employer Notification Letter
Attachment E SDLA Form – Eastern Service Center
Attachment E SDLA Form – Mid-Western Service Center
Attachment E SDLA Form – Southern Service Center
Attachment E SDLA Form – Western Service Center
Attachment F Instructions on how to complete the SDLA Notification Form
Attachment G Rescission Letter

Attachment H: Setup for Conducting Controlled Substances

Attachment I: Release of Information Form - 49 CFR Part 40 Drug and Alcohol Testing.pdf

Attachment J: Procedures for Reviewing Driver Compliance Investigation Reports and Enforcement Cases

Attachment K: Controlled Substances Subpart O Enforcement Initiative Q&As

Part 382 - Drug and Alcohol Policies

Ensure employer's controlled substances and alcohol testing policies contain all information required by 49 CFR Section 382.601(b)1-11, and a certificate of policy signed by the driver is maintained for each cited driver.

Part 382 - Clarification of Safety-Sensitive Function

The first sentence of 49 CFR Section 382.107's definition of "safety-sensitive function" specifically references "drivers" and describes various on duty-not driving activities generally performed by CMV drivers.

The purpose of this definition is to confirm that CMV drivers are also subject to drug and alcohol testing when performing non-driving activities while employed by a motor carrier. This is especially important for alcohol testing and for observed violations ("actual knowledge") contained in Part 382, Subpart B.

This definition pertains only to qualified CDL drivers who operate CMVs. Employees who tested positive, or refused to test, are prohibited from operating CMVs on public roadways until they complete the 49 CFR Part 40, Subpart O return-to-duty process. Drivers who are prohibited, but continue to drive, subject themselves and their employer(s) to Federal prosecution.

Many employers terminate drivers who test positive, or refuse to test. Some will continue to employ the former driver in another capacity while the employee completes the return-to-duty process. The former driver may be employed as a warehouseman, a loader, a driver's helper, a mechanic, or any other position, so long as he/she does not operate a CMV on public roadways. The reason is that FMCSA regulates only operators of CMVs for purposes of drug and alcohol testing. We do not have authority over employees of other professions, but we do advise employers that the personnel records must document the change in employment.

Two published interpretations already clarify this point: Section 382.501 – Question #1 provides an example of an unqualified driver working as a warehouseman handling HM, and Section 382.605 – Question #20 clearly states a positive tested driver may be retained in a non-driving capacity, but is prohibited from driving CMVs on public roads until compliance with 49 CFR Part 40, Subpart O is achieved. See 62 Fed. Reg. 16370, 16389-90 (Apr. 4, 1997).

Part 382 - Private Motor Carriers of Passengers

Private Motor Carriers of Passengers (Business and Nonbusiness) Subject to Testing and Recordkeeping Requirements of Part 382

Private Motor Carriers of Passengers (business and nonbusiness) are required to meet the testing and record keeping requirements of this part. Due to the nature of their business, passenger carriers tend to utilize part-time, intermittent, and casual drivers on a more frequent basis than other types of motor carrier operations. You should pay particular attention to ensure that all drivers required are participating in a controlled substances and alcohol testing program.

Part 382 – Conducting a Controlled Substances/Alcohol Supplemental Review

The Controlled Substances/Alcohol Supplemental Review includes a verification of the following:

- Sample any three pre-employment controlled substances tests (382.301) within the previous 365 days of the start date of the investigation. When conducting an investigation requiring a review of both a CBI and a Controlled Substances Supplemental Review, the sample size for checking pre-employments tests would be the greater of the two sample size. An explanation must be provided in the Investigation Report/Part C describe the drivers reviewed based on the CBI and which drivers were reviewed based on the Controlled Substances Supplemental Review

- Examine post-accident controlled substances and alcohol tests (382.303) within the previous 365 days, in accordance with the following table:

Controlled Substances/Alcohol Supplemental Review Post-Accident Testing Review Requirements

Crashes Requiring Post-Accident Testing	Number of Post-Accident Tests to Review
1	1
2	2
≥3	3

- Examine the annual summary for the prior calendar year, to determine whether the motor carrier is currently enrolled in lab testing, to verify:
  - Random Testing (382.305 (b)(1) and 382.305(b)(2))
- Determine whether the motor carrier used a positive-tested driver:
  - Use of positive-tested drivers (382.215)

If violations are found during this initial review, you should consult with a Manager to discuss whether or not the scope of the review should be expanded to a full investigation of the Controlled Substances and Alcohol BASIC.

When conducting a Controlled Substances/Alcohol Supplemental Review, the "Controlled Substances/Alcohol" section of AIM in 'Select BASICS' will be identified as 'Supplemental Only' or 'Supplemental.' Additionally, in the Investigation Report/Part C Remarks, you should indicate:

- Whether or not a Supplemental Review was performed; and,
- Whether or not the Supplemental Review resulted in the full investigation of the Controlled Substances/Alcohol BASIC and, if so, what triggered this expanded scope.

Part 382 - Controlled Substances and/or Alcohol Service Agent Reviews

Service agent reviews should be conducted by Agency personnel who have been appropriately trained and as the result of complaints filed with the Agency. It is important to coordinate with the Drug and Alcohol Manager (DAMP) and the Drug and Alcohol Technical Advisory Group (TAG), before conducting any of these reviews.

The reviews may be conducted during any business hours when the service agent facility is open for regular business to the general public. Appointments for service agent reviews are not required, nor are they recommended. The Investigator should be prepared with the current forms, whether electronic or paper, necessary to document the review.

The Investigator can use the written or electronic checklist report during the review process, or the form may be completed at the end of the investigation. Once completed, the report is reviewed and a copy should be given to the ranking staff member. In the event Acute and/or Critical Violations are discovered, the ranking staff member is advised that corrections are needed. The discovery of Acute and/or Critical Violations should also lead to the preparation of a Notice of Corrective Action (NOCA); see Initiating a Public Interest Exclusion (PIE) Proceeding.

Completed and approved documentation of each investigation should be submitted to the DAPM.

Service Agent Reviews: Collection Sites

For collection site reviews the Investigator should request a list of the facility's collectors and their training credentials should be reviewed. Make a tour of the facility with a company official to ensure the collection facilities conform to the regulations. Special attention should be given to the preparation and security of the location where the specimens are collected. Have at least one collector show you the materials they will use for a collection and explain the process. The Investigator should also have the collector do a mock specimen collection. This can be done with more than one collector, if necessary, to confirm the facilities training and processes are being followed.

Initiating a Public Interest Exclusion (PIE) Proceeding

At the request of the DA or designee to the FMCSA DAPM, a TAG member may be assigned to assist in or conduct the investigation. Service agent reviews frequently result from complaints filed with the Agency.

The Division Office should conduct an investigation and document Acute and/or Critical service agent violations. Following Agency procedures for handling safety complaints, close complaints with service agent review, if investigation is undertaken.

If during the investigation violations are discovered identifying Acute and/or Critical noncompliance by a service agent, the following procedures for a PIE, in accordance with Part 40 Subpart R, shall apply:

- The Investigator should document Acute and/or Critical service agent Part 40 violations.
- Based upon Service Center policy, the Division Office or Service Center should issue a Notice of Corrective Action (NOCA) to the service agent.
    - If the service agent takes adequate corrective action within 60 days, PIE procedures will cease.
    - If the service agent does not take adequate corrective action within 60 days, the Service Center recommends initiation of PIE procedures and forwards all documentation and a narrative description of the investigation and the violations discovered to the DAPM in the FMCSA Office of Enforcement and Compliance.
- Once the DAPM receives and reviews the NOCA package, s/he may begin Notice of Proposed Exclusion (NOPE) proceedings.

- The DAPM shall send a copy of the NOPE and PIE recommendation to the Office of Drug and Alcohol Policy and Compliance (ODAPC) in the Office of the Secretary and originating Service Center.
- The ODAPC Director (or his designee) will determine if the problems are corrected and the PIE is issued. ODAPC also determines parties included and the PIE's duration.
- Divisions may be asked to assist in the investigation of a service agent's compliance with the PIE issued by ODAPC. The PIE prohibits the service agent from participating in U.S. DOT drug and alcohol testing in accordance with the terms and duration of the PIE.

1.3.14.1.2.2 Part 382 – Investigative System Procedures

Once you have completed your investigation of compliance with 49 CFR Part 382, you should use the following guidelines to assist in the completion of the Violations Tab/Part B–

Recording Violations of Part 382 Acute and Critical Regulations

Ensuring the Appropriate Cite is being Used

Recording Violations of Part 382 Acute and Critical Regulations

Part 382 - Acute and Critical Regulations

Citation	Type	Description
382.115(a)	**Acute**	Failing to implement an alcohol and/or controlled substances testing program (domestic motor carrier). **Note: There must be no evidence of actually testing drivers for drugs or alcohol within the previous 12 months.** **Number Checked: One program.**
382.115(b)	**Acute**	Failing to implement an alcohol and/or controlled substance testing program (foreign motor carrier).
382.201	**Acute**	Using a driver known to have an alcohol concentration of 0.04 or greater. **Number Checked: The number of drivers who were found to have an alcohol concentration of 0.04 or greater.**
382.211	**Acute**	Using a driver who has refused to submit to an alcohol or controlled substances test required under Part 382. **Number checked: The number of drivers who refused to submit to an alcohol or controlled substances test required under Part 382.**
382.213(c)	**Acute**	Using a driver who the employer has "actual knowledge" of using an illegal controlled substance while on duty. **Number checked: The number of drivers known to have used a controlled substance.**
382.215	**Acute**	Using a driver known to have tested positive for a controlled substance. **Number checked: The number of drivers who tested positive.**

382.301(a)	**Critical**	Using a driver before the motor carrier has received a negative pre-employment CST result. **Number checked: The number of drivers used in the last 365 days, or since the last review, if more recent, required to be pre-employment tested.**
382.303(a)	**Critical**	Failing to conduct post-accident alcohol testing for each surviving driver. **Number checked: Number of drivers required to be post-accident tested.**
382.303(b)	**Critical**	Failing to conduct post-accident controlled substances testing for each surviving driver. **Number checked: Number of drivers required to be post-accident tested.**
382.305	**Acute**	Failing to implement a random controlled substances and/or an alcohol-testing program. **Number checked: One random testing program.**
382.305(b)(1)	**Critical**	Failing to conduct random alcohol testing at an annual rate of not less than 10 percent of the average number of driver positions. **Number checked: The number of tests required to meet applicable rate.**
382.305(b)(2)	**Critical**	Failing to conduct random controlled substances testing at an annual rate of not less than 50 percent rate of the average number of driver positions. **Number checked: The number of tests required to meet applicable rate.**
382.309	**Critical**	Using a driver without a return-to-duty test.
382.503	**Critical**	Allowing a driver to perform safety-sensitive function, after engaging in conduct prohibited by Subpart B, without completing the return-to-duty process required by 49 CFR Part 40 Subpart O. **Number checked: Number of drivers who were required to complete the return-to-duty process.**
382.505(a)	**Acute**	Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater, but less than 0.04. **Number checked: Number of drivers who tested positive for alcohol with a concentration of 0.02 or greater but less than 0.04.**

Ensuring the Appropriate Cite is being Used

a. When it is Discovered that the Carrier has Used a Driver Who Tested Positive

Because of the impact these violations may have on a motor carrier's safety rating, it is important to ensure the most appropriate cite is listed in Part B of your review. The Drug and Alcohol TAG recommends the following:

- **382.201 (Acute)** - Limited to situations where the carrier knows the driver currently has an alcohol concentration of 0.04 or greater and uses the driver anyway.
- **382.211 (Acute)** - Must be cited for a carrier that uses a driver who has refused to submit to a required test.
- **382.213(c)(Acute)** - To be used for situations involving actual knowledge, as defined by 382.107.
- **382.215 (Acute)** - To be used for situations involving a driver with a positive, adulterated, or substituted test.
- **382.503 (Critical)** - To be used in place of 49 CFR Section 382.211, 382.213(b), or 382.215 when the carrier has made some effort to follow the referral process, but used the driver before all the steps were completed.

b. When Part 40 violations are discovered, the Drug and Alcohol TAG recommends the Part 40 violation be cited as a secondary violation to the primary violation of 382.105.

Proper Ways to Cite Random Testing Violations

- **382.305 (Acute)** – To be used in situations where the carrier did not conduct any functions of a random testing program within the previous calendar year.

  ***The use of this violation includes situations when a carrier previously implemented a random testing program, in part or in whole, but abandoned all aspects of the random testing program for the entire previous calendar year.**

- **382.305(b)(1) (Critical)** – To be used when a carrier implements any aspect of a random testing program, but does not conduct the required number of random alcohol tests, according to the applicable rate and the average number of driving positions.
- **382.305(b)(2) (Critical)** – To be used when a carrier implements any aspect of a random testing program, but does not conduct the required number of random controlled substances tests, according to the applicable rate and the average number of driving positions.

Guidance in Identifying the Numbers Checked

If the motor carrier fails to provide you with the required records you requested because they either did not perform a required test or maintain the record, then you should not request additional records to meet the minimum sample size for checking controlled substances and/or alcohol testing compliance. Cite the motor carrier in the Violations Tab/Part B of the Investigation Report for not maintaining the missing document(s) required and indicate the original sample size for checking controlled substances and/or alcohol testing records as the number checked. Any violation(s) discovered based on the number of documents provided will be cited in the Violations Tab/Part B of the Investigation Report based on the actual number of records reviewed/checked.

1.3.14.1.2.3 Part 382 – Process Breakdowns/Remedies-SMC

Once you have discovered the violations relating to Part 382, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance. The SMC is used to discover what breakdowns are occurring in the motor carrier's processes, why they are occurring, and identify remedies that will lead to a path of safety compliance. For additional information on the SMC, go to the General Guidelines for Using the Safety

Management Cycle (SMC) to Help Diagnose a Breakdown in Safety during an Investigation. For AIMi, see Violations Tab/Part B - Recommendation/Requirements on how to select and customize the SMP Breakdowns and Remedies.

1.3.14.1.2.4 Part 382 – Enforcement Procedures

Once you have entered the violations discovered in AIM and have decided to initiate an enforcement action for the Part 382 violations, you should use the following guidelines when submitting an enforcement report for Part 382 violations.

Part 382 – Enforcement Violations

- What Part 382 violations warrant enforcement action?
    - All acute and critical violations and any violations resulting in an accident

Part 382 – Documentation

Evidence that is Required to Prosecute a Violation of Part 382

Important Issues to Remember when Documenting Violations of Part 382

Facts that Should be Present in Order to Prove Knowledge and Willfulness

Information that Should be Documented in an Exhibit to Prove Violations of Part 382

How to Cite Drug and Alcohol Violations

Evidence that is Required to Prosecute a Violation of Part 382

- Evidence that the driver was subject to Part 383 - CDL requirements (e.g., GVWR >26,000 lbs., placarded HM, or a vehicle designed more than 15 passengers), such as vehicle registration.
- Evidence that the driver was an employee of (or controlled by) the motor carrier.
- Evidence that the CMV was operated (used) by the employer.
- Evidence that the vehicle was operated in commerce on a certain date.
- Evidence that a specific violation of Part 382 occurred.

Important Issues to Remember when Documenting Violations of Part 382

- Ensure that driver is subject to Part 383 (CDL Standards).
- The SI must verify, when citing Part 382.301 violations, that the carrier did not use the pre-employment exemption and that the driver was not rehired within the past 30 days.
- Random Testing: Determine the average number of driving positions during the last calendar year. Verify that all drivers in the carrier's selection pool have performed or were in readiness to perform a "safety-sensitive function" during the last calendar year.
- Violations of § 382.305(b)(1) and/or § 382.305(b)(2) (alcohol and controlled substances random testing rates, respectively) are cited on Part B of the investigation report and documented as counts only for the prior calendar year.
- Confirm that the controlled substances or alcohol test was a DOT test, conducted in accordance with Parts 382 and 40. If a test was conducted, but it was not a DOT test, then the violation cite may need to be changed.

Facts that Should Be Present in Order to Prove Knowledge and Willfulness

- For pre-employment tests, did the carrier use the drivers BEFORE receiving notification, whether by fax, telephone or letter of the results?
- Is there verification that the MRO communicated the positive controlled substances test results to the driver, or made a reasonable attempt?
- In addition, when there is evidence that the motor carrier still employs or uses a driver who previously tested positive, then you should confirm that driver submitted himself/herself to a SAP evaluation. After the evaluation, did the driver complete the return-to-duty test process required by Part 40 Subpart O?

Information that Should Be Documented in an Exhibit to Prove Violations of Part 382

- **Does FMCSA have jurisdiction?**
    - Gross Vehicle Weight Rating (GVWR) markings on vehicle, vehicle registration, State fuel and tax reports, weight tickets, photograph of vehicle interior for seating capacity and/or shipping papers indicating a placardable load of HM, along with a corroborating Safety Data Sheet (SDS) should be used to establish FMCSA's jurisdiction over the motor carrier's operation.
- **Was the driver assigned (or controlled by) the employer?**
    - Employment application, lease agreement, payroll records, tax and worker's compensation deductions, driver RODS with preprinted company name, and/or statement from a motor carrier (e.g., Safety Director), may be used to prove that the driver was assigned or controlled by the employer.
- **Was the CMV operated in intrastate or interstate commerce?**
    - Obtain a RODS/time record and a corresponding shipping document to show that the CMV was used in commerce.
- **Did the employer fail to perform (or cause to be performed) a required act, to maintain a record, etc?**
    - Statement(s) of driver and/or responsible employer official are necessary, especially when the violation involves the employer's/driver's failure to act or failure to maintain records. See Illustration E-2.

How to Cite Drug and Alcohol Violations

You should use citations from Part 382, whenever possible, to document motor carrier and driver violations, as they pertain to drug and alcohol violations. When Part 40 violations are discovered, the Drug and Alcohol TAG recommends the Part 40 violation be cited as a secondary violation to the primary violation of 382.105.

Part 382 - Enforcement Action Against Drivers

Factors that should be Considered when Contemplating Enforcement Action for Driver Violations

Violations that Warrant Consideration of Enforcement Action Against a Driver

Factors that should be Considered when Contemplating Enforcement Action for Driver Violations

- How long has the driver been driving a CMV?
- Does the carrier have a disciplinary plan in place that's holds the driver accountable for his actions?
- If so, what actions does the carrier take to ensure the driver will comply with the FMCSR?

- It is recommended that different trip dates and documents are used when preparing enforcement actions against the driver and motor carrier.

Violations that Warrant Consideration of Enforcement Action Against a Driver

- **382.201** - Operating a commercial motor vehicle when having an alcohol concentration of 0.04 or greater.
- **382.211** - Operating a commercial motor vehicle after refusing to submit to an alcohol or controlled substances test.
- **382.213(b)** - Operating a commercial motor vehicle after having used a controlled substance.
    - **Note:** Any trip discovered between the time the driver submits the testing specimen, and time the results are reported, can be used for driver enforcement, even if the driver is not used after the carrier is notified of the positive result.
- **382.215** - Operating a commercial motor vehicle after testing positive for a controlled substance.

1.3.14.1.3 Part 383 - Commercial Driver's License (CDL) Standards

1.3.14.1.3.1 Part 383 – Investigative Procedures

In your review of compliance with Part 383, you should use the following guidelines to assist in your investigation of motor carriers of property (including placardable HM) and passengers.

Procedures to Follow During an Investigation of a 49 CFR Part 383

If you are assigned an Onsite Comprehensive Investigation, your investigation of 49 CFR Part 383 should consist of:

- Requesting a driver list,
- Selecting CLP and CDL drivers for CDLIS checks according to 49 CFR Part 383 sampling criteria, and
- Performing CLP and CDL checks.
- Ensuring drivers have appropriate endorsements when applicable.

Ensuring you have an accurate driver roster

Do not accept a carrier-provided driver roster as your only source. You may find names not listed on the roster by examining other records such as dispatch records, payroll, fuel cards, insurance documents, consortium information, and any other documentation that might include driver information. By reviewing the carrier's profile, past roadside inspections, the current screening tool, and other FMCSA internal systems you may be able to identify additional drivers not included in the provided roster that have been used by the carrier. Additional information may be discovered by asking open ended questions of existing and terminated drivers. Do not forget to include part-time drivers who may be discovered as multiple-employer drivers.

If you are assigned an Onsite Focused Investigation, or an Offsite Investigation your investigation should include an examination of the applicable parts and subparts for each BASIC that you are investigating.

- The table below identifies each BASIC by Part 383 and includes guidance on whether the investigation should include a review of the full part or subpart.
- The table also includes additional guidance on when each is required or should be considered based on investigative findings.

● full review of part

⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

BASIC	Part 383	Description
Driver Fitness	●	**Required** as part of the Driver Fitness BASIC and part of the CAIR process. Perform CDLIS checks in accordance with CDLIS policy memo.
Controlled Substances/Alcohol	⊗ Part of CAIR	**Required** as part of the CAIR process. Perform CDLIS checks in accordance with policy memo.
Vehicle Maintenance	⊗ Part of CAIR	**Required** as part of the CAIR process. Perform CDLIS checks in accordance with policy memo.
HOS Compliance	⊗ Part of CAIR	**Required** as part of the CAIR process. Perform CDLIS checks in accordance with policy memo.
HM Compliance	⊗ Part of CAIR	**Required** as part of the CAIR process. Perform CDLIS checks in accordance with policy memo.
Unsafe Driving	⊗ Part of CAIR	**Required** as part of the CAIR process. Perform CDLIS checks in accordance with policy memo.

Note: *The Crash Indicator BASIC is not listed in the table, since the scope of these investigations varies depending on the BASICs Requiring Investigation. See the Crash Indicator BASIC section for guidance.*

Despite Federal requirements that drivers surrender their previous license when obtaining a CDL in a new state of domicile, this does not always happen.

- The official State of Record (SOR) for a CDL holder is considered to be the true source of information on that driver; this is true even if the driver presents a CDL from another State (which is a violation of 383.21).
- To ensure that you are reviewing the most accurate driver history record, you should use the CDLIS functionality to establish which State is actually the official SOR.

With QC, you can use the AKA function to ensure that the license information presented by the driver is from the current SOR. QC will return the State and driver's license number of possible matches. Choose the driver that matches the information you have. Once that is established, you can conduct a History check directly to that State. With http://cdlis.dot.gov, you should always use the "Current" application.

🇲🇽🇨🇦: Access to a driver's conviction and/or withdrawal history record for a MX/CN driver from the driver's licensing jurisdiction does not currently exist from cdlis.dot.gov. The "status" query includes only convictions and/or withdrawals for events occurring during operations in the U.S (as part of the FMCSA's Federal Conviction and Withdrawal Database, or FCWD), plus the MX/CN driver's status from the driver's licensing jurisdiction as an online, real-time response at the time the query occurs.

Following this review, you should:

- Cite violations;
- Identify Process Breakdowns and Remedies; and,
- Document counts for enforcement, as appropriate.***Part 383 – Red Flag Violations***

A key aspect of the investigation process is the driver's role in carrier safety. Data has shown that unsafe driver behavior is a major contributor to the CMV crash problem. The carrier's responsibility for hiring, training, and supervising safe drivers is also a factor.

- As a result, the focus of the investigation process is not only on enforcing regulations related to driver behavior but also on carrier enforcement and education regarding their responsibilities for driver compliance.

The drivers with Red Flag Violations investigation process ensures that certain roadside violations, designated as Red Flag Violations due to their nature and severity, and the drivers receiving these violations are examined and addressed in conjunction with motor carrier investigations.

- As part of the CAIR process, a review of the motor carrier's SMS record for the presence of drivers with Red Flag Violations is part of every motor carrier-based investigation.
- Prior to any investigation, review drivers with Red Flag Violations (regardless of the motor carrier's BASIC status) that have occurred in the previous 12 months and should request documents to confirm that these drivers with Red Flag Violations have been corrected.
- A complete list of the Red Flag Violations can be found in Appendix G.

Part 383 Red Flag Violations include:

BASIC	FMCSR Part	Violation Description
Driver Fitness	383.21	Operating a CMV with more than one driver's license
Driver Fitness	383.23(a)(2)	Operating a CMV without a valid commercial driver's license (CDL) (includes improper or lack of endorsements)
Driver Fitness	383.51(a)-SIN	Driving a CMV while CDL is suspended for a safety-related or unknown reason and in state of driver's license issuance
Driver Fitness	383.51(a)-SOUT	Driving a CMV while CDL is suspended for safety-related or unknown reason and outside the state of driver's license issuance
Driver Fitness	383.91(a)	Operating a CMV with the improper CDL group

Once the Red Flag Driver(s) and violations are identified, you must validate if the violation has been corrected by requesting relevant documentation and interviewing the motor carrier and/or driver. For each Red Flag Violation, the investigative responsibility is broken down into three areas:

1. Has the Red Flag Violation been corrected or is it continuing?
2. If corrected, was the correction timely (i.e., did the driver operate between the time of the violation and when it was corrected)?
3. Knowledge and Willfulness
    a. Did the motor carrier know or should the motor carrier have known of this Red Flag Violation?
    b. Did the driver fail to inform the employing motor carrier of the Red Flag Violation?

49 CFR Part 383 - CDL Status

Ensuring you have an accurate driver roster Do not accept a carrier-provided driver roster as your only source. You may find names not listed on the roster by examining other records such as dispatch records, payroll, fuel cards, insurance documents, consortium information, and any other documentation that might include driver information. By reviewing the carrier's profile, past roadside inspections, the results of the current screening tool, and other FMCSA internal systems you may be able to identify additional drivers not included in the provided roster that have been used by the carrier. Additional information may be discovered by asking open ended questions of existing and terminated drivers. Do not forget to include part-time drivers who may be discovered as multiple-employer drivers.

Check the License Status and Driving Records of Drivers

You must verify a driver's CDL history/status through CDLIS or other acceptable methods [e.g., National Law Enforcement Telecommunications System (NLETS), National Crime Information Center (NCIC), or State licensing system].

The preferred method of using CDLIS for checking CDL licenses is an AKA search using the driver's name and date of birth.

- Verify that drivers have the proper class license and endorsements and then check for any disqualifying offenses.
- At a minimum, these verifications should be done on all drivers who are selected during your sampling of 49 CFR Part 391, Qualification of Drivers. If additional drivers are checked in CDLIS, provide an explanation of the reason(s) you expanded the original sample size in the Investigation Report/Part C.

Sampling Requirements for the Minimum Number of Driver Licenses/Driving Records to be Reviewed During an Investigation

CFR PART 383Commercial Driver's License Information System (CDLIS) Checks

Criteria/Time Frame: All drivers employed who are subject to Commercial Driver's License (CDL) requirements.

Onsite		**Offsite**		**Crash BASIC Only**	
# of Drivers Subject to CDL Requirements	**# of CDLIS Records to Check**	**# of Drivers Subject to CDL Requirements**	**# of CDLIS Records to Check**	**# of Drivers Subject to CDL Requirements**	**# of CDLIS Records to Check***
1–20	All	Same as Onsite.		1–20	All
21–150	20			21–150	20
151–280	32			151–280	32
281–400	50			281–400	50
401–500	68			401–500	68
501–1200	80			501–1200	80

1201–3200	125		1201 and above	125
3201–10,000	200		*Additional Guidance: prioritize drivers involved in crashes.	
10,001–35,000	315			
35,001 and above–150,000+	500			

Additional Guidance: If additional drivers are checked in CDLIS, provide an explanation of the reason(s) you expanded the original sample size in the Investigation Report/Part C. A list of driver name(s) for each driver checked in CDLIS must be provided in the Investigation Report/Part C; or include a notation in the Investigation Report/Part C that the same information was scanned into the Electronic Document Management System (EDMS) in a separate document.

There are multiple methods for enforcement personnel to run a CDLIS check, as outlined in the chart below, all of which are appropriate. Although the output screens may look somewhat different, the results of your search from CDLIS are the same, regardless of the application used.

Methods for Enforcement Personnel to Run a CDLIS Check

NAME	DESCRIPTION
CDLIS Web (http://cdlis.dot.gov)	Can run one driver at a time
QC	Can run one driver and one co-driver at a time

Discovery of a Revoked or Suspended CDL

You need to verify the status of the CDL with the licensing agency in the SOR.

49 CFR Part 383 - Mexican Licencia Federal de Conductor (LFC)

Requirement to Check the Status of Mexican LFC

Every Mexico-domiciled driver operating a CMV, as defined in 49 CFR Part 383, in the United States, must have a valid LFC issued by the Secretaria de Comunicaciones y Transportes (SCT) and recorded in the SCT's eLicencias (driver license database), with the proper vehicle class, and without any restriction for operating in the United States. Mexican LFC records are available via a CDLIS query (for status only, at this time).

If a Mexican LFC is not in the system:

- Cite the motor carrier and inform it that the driver must contact the local SCT office to ensure the license is in the system.
- Obtain documentation for a possible enforcement action.
- Conduct a follow-up CDLIS check within three working days, and if the license is still not in the system, initiate an enforcement action.

Contacting the Local SCT Office to Verify the Mexican LFC

Calling the local SCT office is not permitted for verification of a Mexican LFC because all information is available via CDLIS. SCT should be contacted only when attempting to obtain any crash or inspection data it may have on a motor carrier undergoing an investigation.

Sample of Mexican LFC - V2

🍁 *49 CFR Part 383 - Canadian Commercial Driver's Licenses (CDL); Requirement to Check the Status of Canadian CDL*

Every Canada-domiciled driver operating a CMV, as defined in 49 CFR Part 383, in the United States, must have a valid CDL issued by a Canadian Provincial or Territorial licensing agency. The Canadian CDL holder must possess the license appropriate for the proper vehicle class being operated and without any restriction for operating in the United States. Canadian CDL records are available via CDLIS.

NOTE: See also requirements for Canadian Class 5, Ontario Class G, Ontario Class D (prior to age 80), and New Brunswick Class 3 (prior to age 65) licenses and related medical certification issues in Safety Audit Manual Stage 3 - Audit at Part 391 - Qualification of Drivers to ensure validity of driver's ability to drive a CMV in the U.S.

🍁 *Citing a Violation of a Canada-domiciled Motor Carrier that Utilizes a Canadian Driver Who Possesses a Canadian Non-CDL and Operates in the U.S. Without Medical Certification*

For a Canadian Class 5 license, Ontario Class G, Ontario Class D (prior to age 80), or a New Brunswick Class 3 (prior to age 65) or a Alberta Class 3 (prior to age 65) is required to have a medical certificate to operate a CMV in the United States

A Canada-domiciled motor carrier using a driver operating a CMV in the United States and not medically certified should be cited for a violation of 49 CFR 391.45(a)(1) - Using a driver not medically examined and certified (Critical).

A Canada-domiciled motor carrier using a driver operating a CMV in the United States whose driver's qualification file does not reflect proof of medical certification should be cited for a violation of 49 CFR 391.51(b)(7) - Failing to maintain medical examiner's certificate in driver's qualification file (Critical).

Provincial Classified Licenses	Record Violation	Application of the CVSA OOS criteria for previous history of medical certificate violations
All Class 5, Ontario G	Yes	Yes
Ontario D, New Brunswick 3	Yes	Effective 04/01/2017

🍁 ***RESTRICTIONS*** – Canadian Provinces and Territories have added a Code "W" restriction on the licenses of a Canadian driver who has a medical condition that prohibits the driver from operating in the United States.

If a Canadian driver is found operating in the United States with a "W" restriction on his/her license, the driver should be cited for a violation of 49 CFR Part 383.51(a) and placed out-of-service for operating in violation of the restriction.

49 CFR Part 383 - CDL Problems

A Driver's CDL is Suspended, Invalid, Canceled, or Disqualified for a Safety-related Reason

Carrier Had Knowledge (Known)

If you establish the motor carrier **had knowledge** of the suspension, cancellation, disqualification, or invalidation, you should verify the reason **(Safety-related Offenses Only)**. Ensure that the motor carrier has performed the required driver license checks per the FMCSR and then follow this sequence:

- Cite the motor carrier for a violation in the investigative system under the specific cite; and
- Initiate an enforcement action against the driver and/or the motor carrier.

Carrier Did Not Have Knowledge

The following sequence should be followed if you have established that the motor carrier DID NOT HAVE KNOWLEDGE of the CDL suspension, cancellation, disqualification, or invalidation. It must be shown that the motor carrier did not know of the suspension.

- Inform the carrier about the driver's licensing problem and advise them that continued use of the driver will constitute a violation.
- Do not cite the motor carrier in the investigative system. .
- Initiate an enforcement action against the driver, not the motor carrier.
- Document in the Investigation Report/Part C why there is no enforcement action taken against the motor carrier.

Applicability of 49 CFR Parts 382, 383, and the FMCSR When an Individual Moves his/her Personal Household Goods (HHG) from Maryland to Ohio Using a CMV Greater Than 26,000 Pounds (lbs.)

Scenario	Applicability
A person moves his/her own HHG, rents a CMV greater than 26,000 lbs. and operates the vehicle from Maryland to Ohio.	Not subject to Drug and Alcohol testing, CDL requirements or any other provisions of the FMCSR (49 CFR Parts 382, 383, and the FMCSR).
A person, who is moving, hires a driver from a motor carrier to move his HHG from Maryland to Ohio in a CMV greater than 26,000 lbs.	Driver and motor carrier are subject to 49 CFR Parts 382 and 383.
A person, who is moving, rents a vehicle greater than 26,000 lbs. and hires a driver from a motor carrier to drive the vehicle from Maryland to Ohio.	Person making the move and the driver are subject to 49 CFR Parts 382, 383, and the FMCSR.
A person, who is moving, hires a driver from a motor carrier and that driver rents a vehicle greater than 26,000 lbs. and drives the vehicle from Maryland to Ohio.	Person making the move and the driver are subject to 49 CFR Parts 382, 383, and the FMCSR.
A person, who is moving, hires a driver from a motor carrier and the motor carrier providing the driver rents a vehicle greater than 26,000 lbs. and the driver drives the vehicle from Maryland to Ohio.	Person making the move and the driver are subject to 49 CFR Parts 382, 383, and the FMCSR.

1.3.14.1.3.2 Part 383 – Investigative Software Procedures

Once you have completed your investigation of compliance with 49 CFR Part 383, you should use the following guidelines to assist in the completion of the Violations Tab/Part B

Recording Violations of 49 CFR Part 383 Acute/Critical Regulations

Part 383 - Acute and Critical Regulations

Citation	Type	Description
383.23(a)	**Critical**	Operating a commercial motor vehicle without a commercial driver's license.
383.3	**Acute**	Knowingly using a driver who does not possess a valid CDL.
383.37(a)	**Acute**	Allowing, requiring, permitting, or authorizing an employee who is disqualified to operate a commercial motor vehicle or whose commercial driver's license is suspended, revoked, or canceled by a State or who is disqualified to operate a commercial motor vehicle or who does not have the proper endorsements.

		Note: Enforcement recommended only when suspended, revoked, canceled, disqualified for a safety-related reason. Safety-related reasons include, but are not limited to, a disqualifying offense, serious traffic violation, multiple-moving violations, etc.
383.37(c)	**Acute**	Allowing, requiring, permitting or authorizing an employee with more than one commercial driver's license to operate a commercial motor vehicle.
383.51(a)	**Acute**	Allowing, requiring, permitting or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle.

1.3.14.1.3.3 Part 383 – Process Breakdowns/Remedies-SMC

Once you have discovered the violations relating to Part 383, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes.

- To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance.
- The SMC is used to discover what breakdowns in the motor carrier's processes are occurring, why they are occurring, and identify remedies that will lead to a path of safety compliance.
- For additional information on the SMC, go to General Guidelines for Using the Safety Management Cycle (SMC) to Help Diagnose a Breakdown in Safety during an Investigation. For investigative system procedures see Part B - Recommendation/Requirements on how to select and customize the SMP Breakdowns and Remedies.

1.3.14.1.3.4 Part 383 – Enforcement Procedures

Once you have entered the violations discovered into the Violations Tab/Part B and have decided to initiate an enforcement action for the 49 CFR Part 383 violations, you should use the following guidelines when submitting an enforcement report for 49 CFR Part 383 violations.

Evidence Required to Prosecute a Violation of Part 383

- Evidence that the driver was subject to Part 383, CDL requirements (e.g., GVWR >26,000 lbs.)
- Evidence that the driver was an employee of (or controlled by) the motor carrier.
- Evidence that the vehicle was operated (used) by the employer.
- Evidence that the CMV was operated in intrastate or interstate commerce.
- Evidence on a certain date.
- Evidence that a specific violation of Part 383 occurred.
- Proof of HM transported in placardable quantities or in tank vehicles (for endorsement violations)
- Knowledge by the carrier if the enforcement case is against the company.

Part 383 - Guidelines for Enforcement of Red Flag Violations

The decision to initiate enforcement action may take into consideration, but not be limited to, factors such as: whether the State has already initiated enforcement action (i.e., citation); if the violation was corrected in a timely manner; or, if the violation continued or was repeated.

- For example, if a driver has been cited for operating without a valid CDL (Part 383.23(a)(2)), and if this violation was not corrected and the driver continued to operate, you should initiate enforcement action.

Determining enforcement against the carrier for violations committed by the employed driver is a separate process from enforcement against the driver.

- The carrier's awareness of the violations and its responsibilities for controlling them should be considered in enforcement decisions.
- The decision to pursue carrier enforcement for a driver with a Red Flag Violation may take into consideration, but not be limited to, knowledge of and willfulness of the carrier with respect to the driver violation(s).
- As with any carrier violations meriting enforcement, these violations are subject to an assessment of Process Breakdowns and Remedies for the associated BASIC.

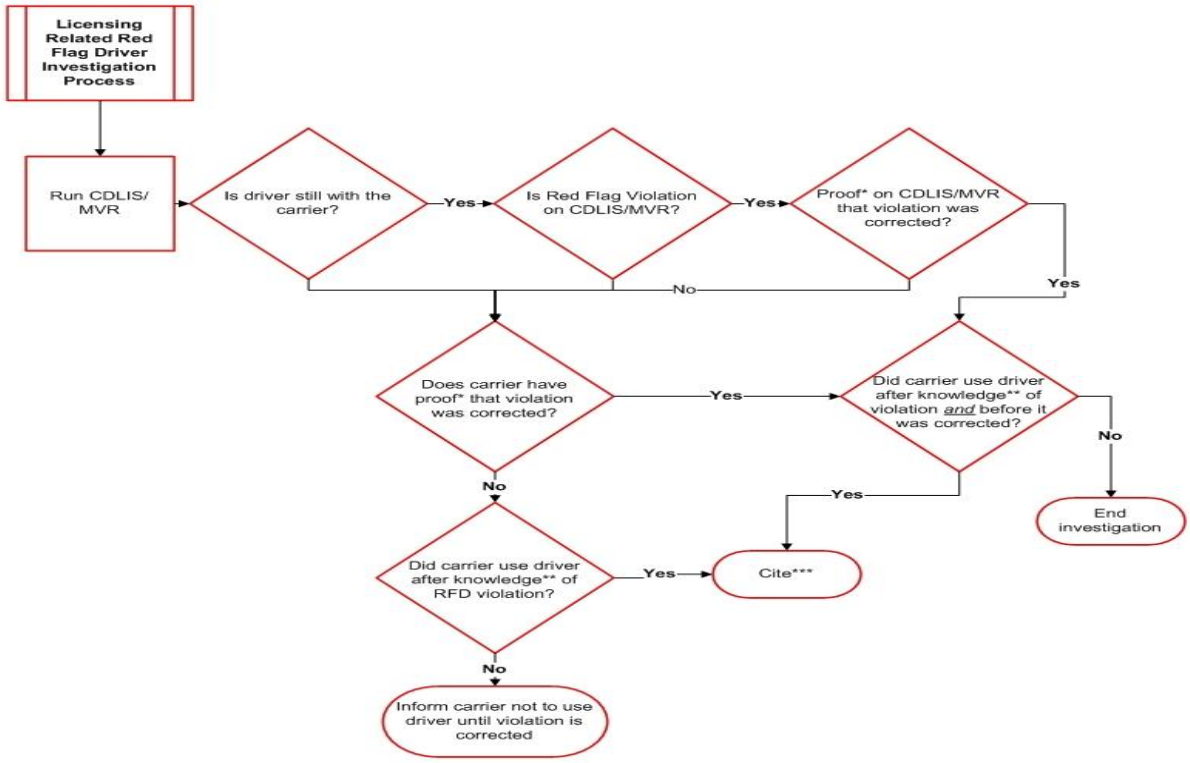
Driver vs. Carrier Enforcement

- Your Manager should be consulted before pursuing enforcement against the driver, if either a citation had been issued roadside, or the driver is not currently employed by the carrier.
- Enforcement against the carrier:
    - Considered in cases where there is proof that the violation was repeated when the carrier had knowledge (or should have had knowledge) of the violation and could have prevented its recurrence.
    - Should be pursued in cases where the carrier knowingly directed the driver to commit or repeat the violation.

Part 383 - Red Flag Violations

- For Red Flag Violations which were originally cited for operating while disqualified [383.51(a)-SIN[4], 383.51(a)-SOUT[5]], enforcement normally depends on whether the disqualification was for a safety-related reason.
- A NOV is an option for 383.23(a)(2), as long as it is immediately correctable and verifiable.
- If there was no original enforcement on the Red Flag Violation at the roadside, you will normally issue a NOC (or NOV in the case of the two violations listed above). If there already was a citation, then you should consult with the Manager before initiating enforcement against the driver.

A special process has been developed to guide drivers with Red Flag Violations investigations with a licensing violation. The figure below graphically depicts this process.



*Proof: State and/or court document(s) showing correction of Red Flag Driver Violation

**Knowledge: CDLIS/MVR on carriers records and/or copy of inspection report after the inspection resulting in Red Flag Driver Violation

***Cite: If the driver drove during this process before the violation was corrected Divisions should take appropriate enforcement action

Description of Licensing Related Red Flag Driver Investigation Process

Part 383 - Documentation

Information that Should be Documented in an Exhibit to Prove Violations of Part 383

- **Does FMCSA have jurisdiction?**
    - GVWR markings on vehicle, vehicle registration, State fuel and tax reports, weight tickets, photograph of vehicle interior for seating capacity and/or shipping papers indicating a placardable load of HM, along with a corroborating SDS should be used to establish FMCSA's jurisdiction over the motor carrier's operation.
- **Was the driver assigned (or controlled) by the employer?**
    - Employment application, lease agreement, payroll records, tax and worker's compensation deductions, record of duty status with preprinted company name, and/or statement from a motor carrier (e.g., Safety Director) may be used to prove that the driver was assigned or controlled by the employer.
- **Was the CMV operated in intrastate or interstate commerce?**
    - Obtain a RODS or time records and a corresponding shipping document to show that the CMV was used in commerce.

- **Did the employer fail to perform (or cause to be performed) a required act, to maintain a record, etc?**
    - Statement(s) of driver and/or responsible employer official are strongly recommended, especially when the violation involves the employer's/driver's failure to act or failure to maintain records.

Some Examples of Documents that May Be Used to Prove Violations of Part 383

- Statement from carrier official, driver, or person responsible for compliance with Part 383. See Illustration E-2.
- Driver's RODS and corresponding shipping papers/bill of lading.
- Vehicle registration showing GVWR or other documentary evidence proving that the vehicle meets the definition of a CMV in Part 383.
- State vehicle inspection report.
- Motor vehicle record from the State that issued the CPL/CDL showing suspension/cancellation/disqualification or being invalid. A CDLIS printout is acceptable.

  Note: A CDLIS printout is acceptable for the MX/CN driver. Note that the CDLIS printout will only display a status for the driver as of the date of the status query, and not a history for the compliance review period.
- Photograph or copy of current CDL or other photographs that support the violation.

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support your violation. You may utilize other documents to prove your violation.

Part 383 - Enforcement Action Against Drivers

The following violations warrant considering enforcement action against a driver:

- 383.21 - No person who operates a commercial motor vehicle shall at any time have more than one driver's license.*
- 383.23(a) (2) - Operating a commercial motor vehicle without a valid commercial driver's license.*
- 383.33 - Failing to inform the employer within 1 business day that his/her commercial driver's license was suspended, revoked, or canceled by a State or jurisdiction.
- 383.51(a)-SIN[5] - Driving a CMV while CLP or CDL is suspended for a safety-related or unknown reason.

Note: ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.

During an investigation of a motor carrier the investigator must examine all Red Flag violations that are designated on that motor carrier's record. The violations that result in a Red Flag Violation have changed. Only safety-related "operating while suspended" violations, 391.15a-SIN, 391.15a-SOUT, 383.51a-SIN and 383.51a-SOUT, result in a Red Flag Violation. Non-safety related "operating while suspended" violations still appear on the motor carrier's record and are used in SMS, but they will not be considered Red Flag Violations.

Note: During an investigation of a motor carrier the investigator must examine all Red Flag violations that are designated on that motor carrier's record. The violations that result in a Red Flag Violation have changed. Only safety-related "operating while

- 383.51(a)-SOUT[6] - Driving a CMV while CLP or CDL is suspended for safety-related or unknown reason and outside the state of driver's license issuance.*
- 383.91 (a) - Operating a CMV with improper CDL group.*

(*) denotes Red Flag Violation

1.3.14.1.4 Part 387- Insurance Requirements

1.3.14.1.4.1 Part 387 – Investigative Procedures

In your review of compliance with Part 387, you should use the following guidelines to assist in your investigation of motor carriers of property (including placardable HM) and passengers.

Procedures to Follow During an Investigation of 49 CFR 387

Whether you are assigned an Onsite Comprehensive Investigation or an Onsite Focused Investigation, your investigation of 49 CFR Part 387 should:

- Verify the motor carrier is subject to 49 CFR 387;
- Review documentation to determine the amounts and types of HM transported, if any; and
- Review documentation proving the motor carrier meets its financial responsibility requirements.

BASIC	PART 387	DESCRIPTION
Driver Fitness	Partial review of part, as applicable	Required, as part of CAIR process as applicable to the commodity transported or motor carrier operation type
Controlled Substances/Alcohol		
Vehicle Maintenance		
HOS Compliance		
HM Compliance		
Unsafe Driving		

Note: *The Crash Indicator BASIC is not listed in the table, since the scope of these investigations varies depending on the BASICs Requiring Investigation. See the Crash Indicator BASIC section for guidance.*

Following this review, you should:

- Cite violations
- Identify process breakdowns and remedies
- Document counts for enforcement, as appropriate
- If your investigation involves a Federal Transit Administration (FTA) grantee providing interstate, for-hire, transit service operations funded by a grant under 49 U.S.C. 5307, 5310, or 5311, or a carrier operating under a contract to provide transportation service funded in whole or in part by such grant funds, see the section entitled *Procedures for Conducting a Roadside Inspection, Compliance Review or SA of a For-Hire Passenger Carrier that is a FTA Grantee*.

Verifying the Motor Carrier's Compliance with 49 CFR 387

suspended" violations, 391.15a-SIN, 391.15a-SOUT, 383.51a-SIN and 383.51a-SOUT, result in a Red Flag Violation. Non-safety related "operating while suspended" violations still appear on the motor carrier's record and are used in SMS, but they will not be considered Red Flag Violations.

First, if you have not already done so during your pre-investigation activities, you should check the L&I website: http://li-public.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov) for the motor carrier's insurance and authority status (if applicable).

Second, verify the types and amounts of HM transported, regardless of the exemptions from the HMR that may exist. Carriers transporting HM that are exempt from the HMR such as motor vehicles, materials of trade and batteries are still subject to insurance requirements for those HM.

Third, you should review the motor carrier's insurance policy or self-insurance authorization. Be sure to check within the insurance policy for a valid MCS-90/90B Endorsement, MCS-82/82B, or self-insurance authorization, which should reflect a complete signed document with the appropriate levels of financial responsibility in effect. To expedite this process, you should request the motor carrier obtain a copy of its MCS-90 prior to your review so that it is available when you arrive at the motor carrier.

Fourth, if you cannot locate the MCS-90/90B Endorsement within the motor carrier's insurance policy, request the motor carrier contact its insurance company to send a facsimile of the MCS-90/90B Endorsement.

Insurance Requirements for Motor Carriers of Passengers

If your investigation involves an FTA grantee, see the section entitled *Procedures for Conducting a Roadside Inspection, Compliance Review or SA of a For-Hire Passenger Carrier that is a FTA Grantee*.

- Insurance Requirements for Motor Carriers of Passengers
- If your investigation involves an FTA grantee, see the section entitled Procedures for Conducting a Roadside Inspection, Compliance Review or SA of a For-Hire Passenger Carrier that is a FTA Grantee.
- There are differences in the minimum levels of insurance and passenger carriers are required to maintain a MCS-90B Endorsement.

– Mexico-Domiciled/Canadian Motor Carriers

Insurance Requirements for Mexico-Domiciled/Canadian Motor Carriers

The levels of financial responsibility are the same for all motor carriers operating in the U.S. However, there are some additional requirements for Canada and Mexico-domiciled motor carriers operating in the U.S.

- Mexico-domiciled private motor carriers are required to meet the minimum levels of financial responsibility regardless of the commodity transported or the size of the vehicle. The levels of financial responsibility for Mexico-domiciled private motor carriers can be found in 49 CFR 387.301.
- Mexico-domiciled private motor carriers that operate fleets with vehicles less than 10,000 pounds are subject to the minimum levels of financial responsibility in 49 CFR 387.303.
- Canada and Mexico-domiciled motor carriers must carry in each vehicle operating in the U.S. proof of the required financial responsibility (Forms MCS-90 or MCS-82) used by the motor carrier as required by 49 CFR 387.7(f).
- Mexico-domiciled motor carriers must carry in each vehicle operating in the U.S. an insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the insurance coverage as required by 49 CFR 387.303(b)(4)(iii).
- A Mexico-domiciled motor carrier that operates solely within the commercial zone may take advantage of the exception in 49 CFR 387.7(b)(3). This exception allows Mexico-domiciled motor

carriers operating solely along the border commercial zones to meet their financial responsibility requirements through purchase of trip insurance, as opposed to purchase of continuous insurance coverage.

Financial Responsibility Violations

Motor Carrier Does Not Have in Effect the Required Amount of Financial Responsibility for its Type of Operation

An Investigator must:

- Cite the motor carrier in the Violations Tab/Part B - Violations for a violation of 49 CFR 387.7(a) - Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage; or, the equivalent foreign motor carrier or motorcoach cite.
- Inform the motor carrier officials that they must cease operations until they have the appropriate level of insurance on file.
- Include, in the Violations Tab/Part B - Recommendations that notice to the motor carrier was given and have the motor carrier initial near the recommendation of the notice to cease operations.
- Gather the documentation needed to initiate an enforcement action for this violation.
- Follow up with the motor carrier after the review has ended to ensure it has obtained the required levels of liability insurance.

Motor Carrier Has in Effect the Required Amount of Financial Responsibility, but Cannot Produce the MCS-90/90B Endorsement

The Investigator should:

- Cite the motor carrier in the Violtions Tab/Part B for a violation of 49 CFR 387.7(d)(1) - Failing to maintain at principal place of business the required proof of financial responsibility or the equivalent foreign motor carrier or motorcoach cite.

For-Hire Motor Carrier of Passengers or Property Does Not Have in Effect the Required Amount of Financial Responsibility and Cannot Produce the MCS-90/90B Endorsement

If the investigation involves an FTA grantee, see the section entitled Procedures for Conducting a Roadside Inspection, Compliance Review or SA of a For-Hire Passenger Carrier that is a FTA Grantee:

- Cite the motor carrier in the Violations Tab/Part B - Violations for a violation of 49 CFR 387.7(a) - Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.
- Inform the motor carrier officials that they must cease operations until they have the appropriate level of insurance on file.

Conducting an Investigation on a Self-Insured Motor Carrier whose Proposed Safety Rating is Conditional or Unsatisfactory

The Investigator should:

- Verify that a for-hire motor carrier is listed as “Self-Insured,” by checking the L&I website: http://li-public.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov).
- Contact a member of the Self-Insurance Team, to verify if the motor carrier is meeting their reporting requirements, by submitting their claims and financial statements in a timely manner.
- Verify with the Self-Insurance Team, to ensure the motor carrier has a valid Letter of Credit (LOC), surety bond and/or trust funds on file, as required by their decision.

- Contact a member of the Self-Insurance Team, to verify if the motor carrier is meeting their reporting requirements, by submitting their claims and financial statements in a timely manner.
- Inform him/her the self-insurance authority will be invalid 45 calendar days after the issuance of a final safety rating of conditional or unsatisfactory.
- After closing the investigation with the motor carrier official, immediately notify the DA that you have completed an investigation on a "For-Hire Self-Insured Motor Carrier," and its proposed safety rating is conditional or unsatisfactory.
- The DA then contacts the FMCSA's Office of Registration and Safety Information and informs it of the situation.

Insurance Filing versus MCS-90/90B

- Verify a for-hire motor carrier is listed as "Self-Insured," by checking the L&I website: http://li-public.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov).
- Contact a member of the Self-Insurance Team, to verify if the motor carrier is meeting their reporting requirements, by submitting their claims and financial statements in a timely manner.
- Verify with the Self-Insurance Team, to ensure the motor carrier has a valid Letter of Credit (LOC), surety bond and/or trust funds on file, as required by their decision.
- Contact a member of the Self-Insurance Team, to verify if the motor carrier is meeting their reporting requirements, by submitting their claims and financial statements in a timely manner.
- Inform him/her the self-insurance authority will be invalid 45 calendar days after the issuance of a final safety rating of conditional or unsatisfactory.
- After closing the investigation with the motor carrier official, immediately notify the DA that you have completed an investigation on a "For-Hire Self-Insured Motor Carrier," and its proposed safety rating is conditional or unsatisfactory.
- The DA then contacts the FMCSA's Office of Registration and Safety Information and informs it of the situation.

Insurance Filing versus MCS-90/90B

An insurance filing is different from a MCS-90/90B. The motor carrier's insurance company makes an insurance filing on a Form BMC-91 or BMC-91X. The insurance filing is made and required to be on file with the FMCSA Commercial Enforcement Division.

- The Investigator should verify insurance filings during the preparation for the investigation or during the investigation on for-hire motor carriers of regulated commodities.

Mexico-domiciled motor carriers with long-haul authority are required to have proof of financial responsibility on file with FMCSA. Mexico-domiciled commercial-zone-registered motor carriers are not required to make a filing for continuous coverage at this time, but may satisfy insurance requirements by obtaining trip insurance for periods of 24 hours or longer.

Cargo Insurance

For-hire HHG motor carriers are required to have cargo insurance. Cargo insurance must be on file with FMCSA and can be verified through the L&I website: http://li-public.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov).

1.3.14.1.4.2 Part 387 – Investigative Software Procedures

Once an Investigator has completed an investigation of compliance with Part 387, use the following guidelines to assist in the completion of Part B - Violations Tab of the AIM software.

Recording Violations of Part 387 Acute and Critical Regulations

Part 387 – Acute and Critical Regulations

CITATION	TYPE	DESCRIPTION
387.7(a)	**Acute**	Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. **Number Checked: One**
387.7(d)	**Critical**	Failing to maintain at principal place of business required proof of financial responsibility. **Number Checked: Number of subject trips made without financial responsibility.**
387.31(a)	**Acute**	Operating a **passenger carrying vehicle** without having in effect the required minimum financial responsibility coverage. **Number Checked: One**
387.31(d)	**Critical**	Failing to maintain at principal place of business required proof of financial responsibility for **passenger carrying vehicles**. **Number Checked: Number of subject trips made without financial responsibility.**

1.3.14.1.4.3 Part 387 – Process Breakdowns and Remedies – Applying the SMC

Once the Investigator has cited the violations related to Part 387, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes.

Once you have entered the violations discovered into Violations Tab/Part B and have decided to initiate an enforcement action for the Part 387 violations, use the following guidelines when submitting an enforcement report for Part 387 violations.

1.3.14.1.4.4 Part 387 – Enforcement Procedures

Documents that Should Be Gathered to Initiate an Enforcement Action

Gather the documentation to initiate an enforcement action, which establishes the following:

- Evidence that the CMV is subject to Part 387.
- Evidence that the driver was an employee of (or controlled by) the motor carrier.
- Evidence that the vehicle was operated (used) by the employer,
- Evidence that the vehicle was operated in intrastate (certain HM) or interstate commerce on a certain date.
- Evidence that a specific violation of Part 387 occurred.
- Evidence that the vehicle was transporting HM, if applicable.

Some Examples of Documents that May Be Used to Prove Violations of Part 387

- Statement from motor carrier official, or person responsible for compliance with Part 387. See Illustration E-2.
- Driver's RODS and corresponding shipping paper/bill of lading/passenger manifest or HM shipping paper.
- Vehicle registration showing GVWR, Passenger Seating Capacity, Liquid Load Capacity, or Water Gallons, or documentary evidence proving the vehicle was subject to Part 387.
- FMCSA License & Insurance website printed document showing amount of liability and/or cargo insurance required.
- FMCSA License & Insurance website printed document showing status of operating authority.
- Oral statement from Investigator noting name/date/time of conversation with FMCSA License & Insurance team member verifying motor carrier's "real-time" status of authority and/or insurance.

This list is not meant to limit an Investigator to specific documents. There are many motor carrier documents that could be used to support a violation. An Investigator may utilize other documents to prove the violation.

Parts 365, 366, 387, & 392 – Licensing & Insurance (L&I) Registration Requirements – Mexico-domiciled Long-Haul Carriers

FMCSA's Jurisdiction with Regards to Mexico domiciled Long Haul Carrier Registration & Filing Requirements

Mexico domiciled motor carriers receive either standard operating authority or provisional operating authority under circumstances and limitations outlined in their authority documents. As normalized operations develop, additional policy related enforcement activities affecting Mexico domiciled long-haul carriers will be incorporated.

Authority and Insurance Filing Requirements

Mexico domiciled motor carriers that operate in international commerce (beyond the commercial zone, and with limitations of pickups in Mexico for delivery in the U.S., or vice-versa) are subject to:

- Obtaining operating authority
- Maintaining active operating authority at all times
- Filing and updating (as needed) the required insurance and process agent (Form BOC-3) to FMCSA's Commercial Enforcement Division

Mexico domiciled carriers with commercial-zone (OP-2) authority may transport HM in placardable quantities. Mexico domiciled carriers with long-haul authority (OP-1MX) are prohibited from transporting HM in placardable quantities.

Procedures to Follow During Investigation of Compliance with Parts 365, 366, 385, 387, § 390.21, and § 392.9a(a)

Review the L&I Database: http://li-public.fmcsa.dot.gov or https://portal.fmcsa.dot.gov. Review the authority history, insurance history, and revocation history. Note what type of operating authority was granted.

Certificates of operating authority issued to Mexico domiciled motor carriers for long-haul transportation prohibit:

1. Point-to-point transportation services, including express delivery services, within the U.S. for goods other than international cargo;
2. Transportation of hazardous materials, as defined in 49 CFR § 171.8, in placardable amounts in accordance with 49 CFR Part 172, in the U.S. beyond the U.S.-Mexico border commercial zones;
3. Transportation of passengers in the U.S.; and
4. Transportation of express packages and courier services.

If a Mexico domiciled motor carrier with long-haul operating authority is found to be operating beyond the municipalities and commercial zones along the southern border in violation of any of these prohibitions, it must be deemed to be operating beyond the scope of its operating authority, cited for a violation of 49 CFR § 392.9a(a)(2), and placed out of service. The appropriate enforcement action should be considered when a motor carrier is discovered to be operating in the U.S. beyond the scope of its operating authority.

For insurance issues related to Mexico domiciled motor carriers, see also:

- Leasing Requirements for Mexico Domiciled Motor Carriers

Process Agent (Part 366)

Mexico domiciled carriers are required to obtain process agent representation (BOC-3). Review L&I for the appropriate filing and representative state(s). Note that for Mexico domiciled motor carriers with commercial zone authority (OP-2), the BOC-3 might have only one state, although if crossing in one state to deliver into another state's commercial zone, both states should be represented on the BOC-3 form. For those Mexico domiciled motor carriers with long-haul authority (OP-1MX), their BOC-3 should have representatives in each U.S. state.

U.S.DOT Number Identification (§ 390.21(a))

U.S. DOT Number Identification:

When FMCSA grants operating authority to a Mexico domiciled motor carrier to operate within the U.S. southern border municipalities and commercial zones, the motor carrier is directed to include the suffix "Z" at the end of its assigned U.S.DOT number on all power units operating in the U.S. For those Mexico domiciled motor carriers operating beyond the U.S. southern border municipalities and commercial zones, the motor carrier is directed to include the suffix "X" at the end of its assigned U.S.DOT number on all power units, even if any one or more units operate solely within the commercial zones.

Citing a Violation of the Identification Requirement

Mexico domiciled motor carriers that are not in compliance with the marking requirement should be cited for a violation of 49 CFR § 390.21(a). The appropriate enforcement action should be considered when a power unit of a Mexico domiciled motor carrier is discovered to be operating in the U.S. without a U.S.DOT number with the appropriate suffix.

[Policy: Post Pilot Program Inspection Requirements for Mexico Domiciled Carriers with Long-Haul Operating Authority (MC-ESB-2015-0001), October 6, 2014.]

CVSA Inspection Decal Requirements

A Mexico domiciled motor carrier with authority to operate beyond the commercial zones is required to ensure that each power unit operated in the U.S. displays a current CVSA inspection decal during the provisional operating authority period and then an additional 36 consecutive months after receiving

standard operating authority (post-Pilot operations). This includes power units used solely within the commercial zones. Non-CMVs are not required to display CVSA decals to operate in the U.S..

Citing a Violation of the CVSA Decal Requirement

If a carrier is discovered to be operating in the U.S. beyond the port of entry (POE) without the required CVSA inspection decal, it should be cited as follows:

- During provisional operating authority: 49 CFR 385.103(c) Failure to display a current CVSA decal – Mexico domiciled carrier with Provisional Operating Authority
- During the first 36 months of standard/permanent operating authority: 49 CFR 365.511 Failure to display a current CVSA decal – Mexico domiciled carrier with permanent authority

The appropriate enforcement action should be considered when a power unit of a Mexico domiciled motor carrier with long-haul authority is discovered to be operating in the U.S. without a CVSA inspection decal during the period of provisional operating authority or during the first 36 months of standard operating authority.

[Policy: Post Pilot Program Inspection Requirements for Mexico Domiciled Carriers with Long-Haul Operating Authority (MC-ESB-2015-0001), October 6, 2014.]

1.3.14.1.5 Part 390: General Requirements

1.3.14.1.5.1 Part 390 - Investigative Procedures

In your review of compliance with 49 CFR 390, you should use the following guidelines to assist in your investigation of motor carriers of property (including placardable HM) and passengers.

49 CFR - Accidents

49 CFR - Markings

49 CFR - Biennial Update

49 CFR – Lease and Interchange of Passenger Vehicles

Procedures to Follow During an Investigation of 49 CFR 390

If you are assigned an Onsite Comprehensive Investigation, your investigation of 49 CFR 390 should begin by reviewing:

- Accident information
- Marking of vehicles
- Biennial update of the MCS-150
- Lease and Interchange of Passenger Vehicles if investigating a motor carrier of passengers

If you are assigned an Onsite Focused or Offsite Investigation, your investigation should include an examination of the applicable parts and subparts for each BASIC that you are investigating. The table below identifies each BASIC by Part 390 and includes guidance on whether the investigation should include a review of the full part or subpart. The table also includes additional guidance on when each is required, or should be considered, based on investigative findings.

● full review of part

⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

BASIC	Part 390	Description

Driver Fitness	⊗ .3, .15, .23, .25	390.3 – General Applicability - Ensures drivers are subject to regulations - **Required** 390.15 - Accident Register - **Required if** Crash BASIC Investigation is performed. 390.23/25 – Relief – **Required if** a carrier is claiming relief. Confirm emergency declaration or emergency condition.
Controlled Substances/Alcohol	⊗ .15	390.15 - Accident Register - **Required** to determine which crashes required post-accident controlled substance and alcohol testing. Additionally, **required if** Crash BASIC Investigation is performed.
Vehicle Maintenance	⊗ .3, .15, .21, .23, .25	390.3 – General Applicability - Ensures drivers are subject to regulations - **Required** 390.15 - Accident Register - **Required if** Crash BASIC Investigation is performed. 390.21 – Ensures vehicles are properly marked, check if vehicle inspections are conducted or if vehicle is observed during a Vehicle Maintenance investigation – **Consideration** when present on profile. 390.23/25 – relief – **Required if** a carrier is claiming relief. Confirm emergency declaration.
HOS Compliance	⊗ .3, .15, .23, .25	390.3 – General Applicability - Ensures drivers are subject to regulations - **Required** 390.15 - Accident Register - **Required if** Crash BASIC Investigation is performed. 390.23/25 – Relief – **Required if** a carrier is claiming relief. Confirm emergency declaration or emergency condition.
HM Compliance		
Unsafe Driving	⊗ .3, .15, .23, .25	390.3 – General Applicability - Ensures drivers are subject to regulations - **Required** 390.15 - Accident Register - **Required if** Crash BASIC Investigation is performed. 390.23/25 – Relief – **Required if** a carrier is claiming relief. Confirm emergency declaration.

Note: *The Crash Indicator BASIC is not listed in the table, since the scope of these investigations varies depending on the BASICs Requiring Investigation. See the Crash Indicator BASIC section for guidance.*

Following this review, you should:

- Cite violations;
- Identify Process Breakdowns and Remedies; and,
- Document counts for enforcement, as appropriate.

49 CFR - Accidents

An accident is an occurrence involving a CMV operating on a highway in interstate or intrastate commerce which results in:

- A fatality (any injury which results in the death of a person at the time of the motor vehicle accident or within 30 days of the accident).
- Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident.
- One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

The term accident does not include:

- An occurrence involving only boarding and alighting from a stationary motor vehicle.
- An occurrence involving only the loading or unloading of cargo.

Time Period Covered in Review of Accidents

Your review of the motor carrier's interstate and intrastate recordable accidents should cover the 365-day period before the investigation.

Procedures to Follow to Obtain Information on Accidents

Review the accidents listed on the motor carrier's profile and request any information the motor carrier may have on the accidents. Additional documents from the motor carrier's insurance company (e.g., the loss run you requested upon making the appointment for the investigation) may also be helpful in discovering and obtaining information about the motor carrier's accidents.

Note: You will need to ask the motor carrier whether it requires its drivers to prepare an internal (motor carrier) document if they are involved in an accident. Oftentimes carriers do and if we do not ask for it, we will not get it. Many motor carriers have an Accident/Loss File. Let them define for you how they maintain accident information.

Procedures to Follow Once Interstate and Intrastate Recordable Accidents Are Identified

In general, drivers who pose the highest potential safety risk should be selected first as part of the sample. Selecting drivers should be based on drivers with the highest DSMS percentiles within each BASIC under investigation. After the drivers with the highest DSMS percentiles are selected, the sample should include drivers or vehicles involved in crashes, and then random selection within the applicable criteria/timeframe for the particular Part.

Interstate and Intrastate Recordable Accident Data to Record

Record the date of the interstate or intrastate accident, accident location, driver name, vehicle information, and whether the accident involved a fatality, an injured person taken immediately away from the scene, or a vehicle towed due to disabling damage. These accidents are required to be recorded on the motor carrier's accident register.

Additionally, this data will be needed by the DA in the event the motor carrier claims the accident was not preventable. In the event the motor carrier indicates it will challenge the inclusion of an accident in its accident rate computation, the SI should inform the motor carrier to gather all relevant evidence on the issue of preventability and submit that evidence to the DA within five days of completion of the investigation. The review of non-preventable accidents should be handled as outlined in the Manager Manual.

Note: Noting whether a driver received a citation for a moving traffic violation is helpful information when you review 49 CFR 382, Post Accident Testing, if the driver was subject to 49 CFR 382.

Information Required on a Motor Carrier's Accident Register

You should determine whether the motor carrier's annual accident register includes all required interstate and intrastate recordable accident data required by 49 CFR 390.15(b)(1)(i-vi) and 390.15(b)(2).

Computation of the Motor Carrier's Interstate/Intrastate Recordable Accident Rate

The motor carrier's accident rate should only be recorded when you perform one of the following:

- Onsite Comprehensive Investigation;
- Onsite Focused and Offsite Investigations when the Crash Indicator BASIC is at or above the threshold;

AIM computes the motor carrier's recordable accident rate (Factor 6) for you. However, if manual calculation is necessary, multiply the motor carrier's number of recordable interstate and intrastate accidents in the previous 12 months by 1,000,000. Then divide that result by the motor carrier's fleet mileage during the previous 12 months. For example, a motor carrier had two recordable interstate and intrastate accidents and a fleet mileage of 3,000,000 during the previous 12 months. The motor carrier's recordable accident rate is (2 X 1,000,000) / 3,000,000 which equals 0.67.

Calculation of Canadian or Mexican Accidents

All recordable accidents that occur in the United States or as part of an interstate trip to or from the United States are counted in the interstate and intrastate recordable accident rate.

Additionally, the SI can call the local SCT office to obtain inspection or crash data on a Mexican motor carrier undergoing an investigation.

Discovery of Interstate and Intrastate Recordable Accidents Not on the Motor Carrier's Profile

These accidents should be included when determining the motor carrier's accident rate for the investigation. You should obtain a copy of the accident information and submit the information to the DA or designee. The information will then be forwarded to the appropriate Division Office for handling.

Discovery of Accidents on the Motor Carrier's Profile that Do Not Belong to the Motor Carrier

These accidents should not be included in the accident rate computation. Advise the motor carrier of the error(s) and explain that they must contact DataQs to resolve the issue.

The DataQs website is located at: http://dataqs.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov).

49 CFR 390 - Markings

To ensure the motor carrier has properly marked all of its vehicles, the SI must, if possible or available, visually inspect the vehicles for proper markings. The number of vehicles discovered improperly marked must be cited in Part B of the investigation report based on the number of vehicles checked.

49 CFR 390 - Biennial Update

To verify that the motor carrier has submitted its biennial MCS-150 update, you should ask the motor carrier if it has made the required update filing and verify an affirmative response. Additionally, you should check the MCS150 date shown in Federal Motor Carrier System the Motor Carrier Management Information System (MCMIS), Safety and Fitness Electronic Records (SAFER) system, and Query Central. Additionally, you need to verify that the carrier has not been cited during roadside inspections and previous

compliance reviews for not having an updated MCS-150. Remember: If a motor carrier registers its vehicles in a PRISM state, it may be exempt from this requirement. Please see 49 CFR 390.19(g) for more information.

PRISM States Eliminating Validating the MCS-150

The PRISM requirement to validate the MCS-150 Form before registering a vehicle is hereby eliminated. All other PRISM requirements will remain the same. The IRP and Department of Motor Vehicles (DMV) offices in PRISM States are no longer required to validate, at the time of registration, that the MCS-150 information has been updated within the past year.

49 CFR 390 – Lease and Interchange of Passenger-carrying Commercial Motor Vehicles

Multiple occurrences of motor carriers of passengers, entering into questionable arrangements, led the National Transportation Safety Board and FMCSA to recognize the need for oversight of the lease and interchange of commercial motor vehicles transporting passengers.

Authorized passenger carriers routinely contract trips to other authorized carriers when they are unable to provide the transportation themselves. However, during investigations, it was discovered that some authorized carriers were contracting to carriers that did not have operating authority. For example, a post-crash investigation revealed a motor carrier, who lost their operating authority because of the inability to obtain insurance, represented its vehicles under the authority of another carrier but operated independently. Another carrier, shut down by FMCSA for safety reasons, continued to operate independently by representing its vehicles under the authority of an authorized carrier.

Some authorized passenger carriers will contract to private passenger carriers when they cannot perform the transportation themselves. A private carrier is unable to provide for-hire transportation legally and claims to be running under the hiring carrier's authority. In turn, the authorized carrier, that contracted the trip out to the private carrier, claims no responsibility for the transportation because they paid the private carrier for the service. If an accident occurs, the identity of the responsible carrier is unclear. FMCSA's oversight of private motor carriers of passengers (PMCP) is limited with no required insurance and for a PMCP non-business, limited recordkeeping requirements. After an accident, the passengers are left with losses and legal problems.

The Lease and Interchange of Vehicles; Motor Carriers of Passengers final rule was published to ensure that unsafe passenger carriers cannot evade FMCSA oversight and enforcement by entering into these agreements, operating under the authority of another carrier, that exercises no actual control over those operations. This rule was intended to enable the FMCSA and our Federal and State partners to identify motor carriers transporting passengers in interstate commerce and correctly assign responsibility to these entities for regulatory violations during inspections, compliance investigations, and crash investigations.

The leasing and interchange regulations ***do not apply to***:

- Agreements or arrangements between motor carriers that both have active FMCSA passenger operating authority registration.
- Financial institutions, equipment dealers and manufacturers, rental agencies and maintenance facilities leases or operating agreements for allowing their customers to use a passenger-carrying vehicle.

See ***Implementation of Lease and Interchange of Vehicles; Motor Carriers of Passengers Final Rule (MC-ECP – 2021 – 0001)*** for further information.

Procedures to Follow During an Investigation

When interviewing the motor carrier and its employees about operational practices, the investigator should assess the carrier's practice for finding replacement vehicles when handling on-the-road equipment break downs, inoperable equipment due to a crash, and/or overbooking trips. Review charter orders, itineraries, maintenance records, fuel reports and the motor carrier's profile to identify equipment used by the carrier on trips that may not be included on the equipment list provided for the investigation. Request insurance equipment lists because they may indicate vehicles added and removed from the liability policy. These records may contain information leading to an occurrence when a lease may have been required.

If the use of a passenger CMV not belonging to the carrier is discovered, use interview techniques to determine the nature of the use of the vehicle and to identify the entity responsible for the operation of the equipment. Some motor carriers may "borrow" equipment, with or without drivers. Determine to what extent this practice occurs. Verify whether the motor carrier only hires the services of other for-hire motor carriers and ensure the hired motor carriers had active passenger operating authority registration at the time of the trip.

Applying the Leasing Rule to an Emergency Situation

In the event of an emergency, where a motor carrier must obtain a replacement vehicle, the writing of the lease required for this transaction may be postponed for up to 48 hours after taking possession of the vehicle. An emergency may be a vehicle breakdown, a disabled vehicle after a crash, a driver illness, etc. Although the parties involved may postpone the writing of the lease, a driver must have in his/her possession, and produce upon demand of an enforcement official, a document signed and dated by the lessee's driver or available company official stating:

''[Carrier A, USDOT number, telephone number] has leased this vehicle to [Carrier B, USDOT number, telephone number] pursuant to 49 CFR 390.403(a)(2).''

The statement may be written or produced electronically. Not having this statement on the vehicle is a violation because the motor carrier responsible for safety will not be clear during an inspection. Also, the driver's possession of this statement relieves the motor carrier from the marking requirements in §390.21. For these reasons, a violation of not preparing the statement and having it in the driver's possession is only relevant during a driver/vehicle inspection.

During on-site investigations, verifying this statement was prepared may not be possible and it is not a violation if the carrier does not have the statement for review. However, a lease for this transaction, which is required to be prepared after the 48-hour timeframe is up, must be retained for up to one year after the agreement has been terminated. The investigator should verify that leases were created and retained for these situations.

Sampling Chart for Leasing Agreements

When reviewing passenger carrier lease agreements, you should use the following table to sample an appropriate number of leases or other agreements to ensure they meet the requirements of §390.403.

Sampling Chart for Leases and/or Other Agreements

Number of Leases or Agreements Required to be Prepared in the Previous 12 Months	Minimum Number of Leases or Agreements to Review
1-10	All
11-300	10
301 or more	15

When a Written Lease Agreement is Provided

- Determine if the required information is within the document. Ensure the lease contains all items listed in §390.403(b)(1-4);
- Look for trips outside the duration of the lease agreement. If the owner of the equipment (lessor) is a motor carrier with an inactive operating authority registration, or operating authority lapses occurred, review documents such as trip itineraries, charter orders, invoices, etc. to determine if any of the trips were made outside the dates of the lease agreement, under the operating authority of the owner, when its operating authority was inactive. If the equipment owner operated a vehicle for-hire in interstate commerce without required operating authority registration, i.e. while not leased to a motor carrier or when their own operating authority was inactive, it should be noted in the investigation and potential enforcement action discussed with the Division Administrator (DA).
- Review the qualifications of the driver if the driver is leased with the vehicle.

Procedures to Follow if the Motor Carrier Does Not Comply with the Lease and Interchange Requirements

Before citing violations for an improperly prepared lease or no lease, verify whether the owner of the vehicle being operated had active passenger carrier operating authority registration in L&I at the time of the trip.

- During investigations of an authorized passenger for-hire motor carrier where the owner of the vehicle had active passenger operating authority, a lease is not be required.
- During investigations of an unauthorized carrier or Private Motor Carrier of Passengers (PMCP-Business or Non-Business) where the owner of the vehicle is an authorized motor carrier of passengers, a lease may not be required. However, although a lease may not brequired, an expense bill (charter order) per §373.103(b) should be requested.

If an investigation reveals a motor carrier uses equipment to transport passengers that belongs to other passenger carriers and one or more of these carriers fails to have active operating authority registration, a lease must be prepared. If the carrier is not familiar with the requirements and does not prepare written lease agreements, the carrier should be cited with a violation of §390.403(a), Failing to prepare a written lease or interchange agreement.

A citation and enforcement case may be levied against both the motor carrier performing the transportation (lessee) and the owner of the equipment (lessor) depending on the circumstances surrounding the violation. The safety investigator should contact representative(s) to discuss elements of the violation to determine if enforcement on all parties involved is warranted. For example, following a crash, it was discovered the owner of the passenger-carrying vehicle was a motor carrier who had its operating authority registration revoked for non-compliance with the FMCSRs. The other party involved is a motor carrier with an active

operating authority registration who knowingly allowed the vehicle owner to represent themselves as the authorized motor carrier without a properly executed lease agreement. In this situation, an enforcement action against both parties involved would be warranted by the Division Administrator or his/her representative.

If the motor carrier prepares, but does not retain, the lease records for the one-year retention period, the violation should be cited under §390.403(c), Failing to preserve a copy of the lease or interchange agreement for 1 year after the expiration date. In addition, a copy of the lease is required to be carried on the vehicle for the duration of the agreement. If the motor carrier fails to have the lease agreement on board the passenger vehicle, cite the carrier using the primary - §390.403(c) and secondary - §390.21(e)(2)(iv) violation - Failing to carry a copy of the lease or interchange agreement on board a leased or interchanged passenger-carrying commercial motor vehicle.

If a written lease agreement does not meet the requirements of §390.403(b), the missing items in violation should be cited separately using the appropriate section in §390.403(b) (1-4). Each section in (b)(1) to (b)(4) lists specific content that must be contained in the lease and one or more items may have been omitted. Use the appropriate section number related to the missing content and include the specific item missing in the example field for the violation cited.

The lease or interchange agreement is required to contain a statement indicating that the owner (lessor) has relinquished all responsibility for the operation of the vehicle to the lessee. If the lessor violates the terms of the lease/interchange or the lessee fails to adhere to the provisions outlined in the lease/interchange, cite §390.403(a)(1)(i) – Failing to perform or adhere to the provisions of a lease, or §390.403(a)(1)(ii) – Failing to perform or adhere to the provisions of an interchange agreement, as appropriate. See ***Implementation of Lease and Interchange of Vehicles; Motor Carriers of Passengers Final Rule (MC-ECP – 2021 – 0001)*** Attachment A for all lease and interchange violations including information on documenting the violations.

1.3.14.1.5.2 Part 390 Investigative System Procedures

Once you have completed your investigation of compliance with Part 390, you should use the following guidelines to assist in the completion of Violations Tab/Part B

Record Violations of Part 390 Acute and Critical Regulations

Part 390 - Acute and Critical Regulations

Citation	Type	Description
390.15(b)(2)	**Critical**	Failing to maintain copies of all accident reports required by the State or other governmental entities or insurers. **Number Checked: Number of interstate recordable accidents, where the State or other governmental entities or insurer requires a copy of the accident report to be maintained.**
390.35*	**Acute**	Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records. **False Records:** In this scenario, the number checked is the number of records checked in which false records were discovered. (Example: If you check 5 maintenance records, and you discover that a mechanic has falsified 3 maintenance reports, it would be written as 3 violations discovered of 5 records checked)

		False Statements: In this scenario, the number checked is the number of statements found to be false [Example: If you discover that a motor carrier representative or driver has submitted a falsified document (*other than medical examiner's certificate and records of duty status*), this is generally written as 1 violation discovered of 1 false statement checked.]

***Note: The Investigative System provides multiple 390.35 violation options with specific secondary cites to specify the type of document that has been falsified. You should select the 390.35 cite with the associated secondary cite that identifies the document that has been falsified. This will ensure the appropriate BASIC is affected by the violation documented on the investigation.**

1.3.14.1.5.3 Part 390 - Process Breakdowns and Remedies – Applying the SMC

Once you have discovered the violations relating to Part 390, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance. The SMC is used to discover what breakdowns are occurring in the motor carrier's processes, why they are occurring, and identify remedies that will lead to a path of safety compliance. For additional information on the SMC, go to *General Guidelines for Using the Safety Management Cycle (SMC) to Help Diagnose a Breakdown in Safety during an Investigation*. For procedures on AIMsee *Violations Tab/Part B (Recommendation/Requirements)* on how to select and customize the Safety Management Process (SMP) Breakdowns and Remedies.

1.3.14.1.5.4 Part 390 - Enforcement Procedures

Once you have entered the violations discovered into the Violations Tab/Part B and have decided to initiate an enforcement action for the Part 390 violations, you should use the following guidelines when submitting the enforcement report.

Part 390 - Documentation

Documents that Should Be Gathered to Initiate an Enforcement Action

- Evidence that the vehicle used falls within FMCSR jurisdiction for Part 390.
- Evidence that the driver is an employee of (or controlled by) the motor carrier.
- Evidence that the CMV was operated by the motor carrier.
- Evidence that the CMV was operated in interstate commerce on a specific date.
- Evidence that a violation of Part 390 occurred.

Some Examples of Documents that May Be Used to Prove Violations of Part 390

- Statement from motor carrier official, driver or other person responsible for compliance with Part 390. See Illustration E-2.
- Driver's RODS, and corresponding shipping paper/bill of lading.
- Vehicle registration showing GVWR, or other documentary evidence, proving that the vehicle was subject to Part 390.
- Copies of documents required by Part 390 that are falsified.
- Photographs of CMV or other photographs that support violation. See Illustration E-1.

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support a violation. You may utilize other documents to prove a violation.

Part 390 - Enforcement Action Against Drivers

Considering an Enforcement Action Against a Driver

You should consider enforcement action against a driver for violating:

- 390.17 - Operating a CMV while using additional equipment and accessories that decrease the safety of operations.
- 390.35 - Making or causing to make a fraudulent or intentional false statement on an application, certificate, report, or record, and from falsifying, reproducing, or altering any original supporting document. 1.3.14.1.6 Part 391 - Driver Qualifications

1.3.14.1.6 Part 391 – Driver Qualifications

1.3.14.1.6.1 Part 391 - Investigative Procedures

In your review of compliance with Part 391, you should use the following guidelines to assist in your investigation of motor carriers both of property (including placardable hazardous material) and passengers.

Part 391 – Red Flag Violations

Part 391 - Driver Lists

Part 391 - Determine DQ File Sample

Part 391 - Select DQ Files

Part 391 - Review DQ Files

Part 391 - DQ Problems

Procedures to Follow During an Investigation of 49 CFR 391

If you are assigned an Onsite Comprehensive Investigation, your investigation of Part 391 should consist of:

- Ensuring you have an accurate a driver roster
- Sampling DQ files
- Selecting files
- Reviewing files.

If you are assigned an Onsite Focused Investigation or Offsite Investigation, your investigation should include an examination of the applicable parts and subparts for each BASIC that you are investigating. The table below identifies each BASIC by Part 391 and includes guidance on whether the investigation should include a review of the full Part or Subpart. The table also includes additional guidance on when each is required or should be considered based on investigative findings.

● full review of part
⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

BASIC	Part 391	Description
Driver Fitness	●	**Required:** Driver Fitness BASIC
Controlled Substances/Alcohol	⊗ .23(d-m), .41-.45	391.23 (d-m) - Controlled substance and alcohol program driver background checks and carrier responsibilities -**Required**

		391.41, .43, .45 – Physical Qualification for Drivers - Specific to controlled substances and alcohol issues - **Required if** driver tested positive.
Vehicle Maintenance	⊗ .13	391.13 – Responsibilities of drivers – Consideration when the profile shows evidence of cargo issues related to knowledge and application of the cargo securement rules (393.100-.136). Use "1 of 1" violation citation logic.
HOS Compliance	⊗ .21, .41, .43	391.21 – Application for Employment – **Consideration** in those cases where multiple employers may be contributing to the HOS Compliance BASIC. 391.41 – Physical Qualifications of Drivers – **Consideration** in those cases where physical qualifications may be impacting the HOS Compliance BASIC. 391.43 – Medical Exam - **Consideration** in those cases where physical qualifications may be impacting HOS Compliance BASIC. The Investigator is not required to sample in these areas of consideration; the purpose is to have some other investigative options and documents to examine to better identify process breakdowns. Sampling, in accordance with the Driver Fitness BASIC, is not required, since it is not the BASIC under investigation. If the SI does choose to sample in these partial areas, the sample should be consistent with the BASIC under investigation, in this case, the HOS Compliance BASIC. **Example:** A review of 391.21 would be conducted, if the SI had reason to believe the driver had driven for another motor carrier, by discovering a recent inspection in DSMS or other related evidence. In this case, the SI might want to examine the Employment Application for that particular driver.
HM Compliance		
Unsafe Driving	⊗	A review of the driver qualification regulations should be a **consideration**, if there is evidence on the profile that might show a link between driver qualification issues and unsafe driving behaviors. Examination and sampling of the driver qualification file is not required, unless the Investigator has reason to believe that there is a relationship between the two. **Example:** A medical examiner's certificate and long form (if available) may be useful to check when drivers have committed multiple lane change, reckless driving, improper turning, or following too close violations, cited on Carrier SMS, to see if there is a medical issue related to the unsafe driving violations.

Note: *The Crash Indicator BASIC is not listed in the table, since the scope of these investigations varies depending on the BASICs Requiring Investigation. See the Crash Indicator BASIC section for guidance.*

Following this review, you should:

- Cite violations;

- Identify Process Breakdowns and Remedies; and,
- Document counts for enforcement, as appropriate.

Part 391 – Red Flag Violations

A key aspect of the investigation process is the driver's role in carrier safety. Data has shown that unsafe driver behavior is a major contributor to the CMV crash problem. The carrier's responsibility for hiring, training, and supervising safe drivers is also a factor. As a result, the focus of the investigation process is not only on enforcing regulations related to driver behavior, but also on carrier enforcement and education regarding their responsibilities for driver compliance. The drivers with Red Flag Violations investigation process ensures that certain roadside violations, designated as Red Flag Violations due to their nature and severity, and the drivers receiving these violations, are examined and addressed in conjunction with motor carrier investigations.

As part of the CAIR process, a review of the motor carrier's SMS record for the presence of drivers with Red Flag Violations is part of every motor carrier-based investigation. Prior to any investigation, you should review drivers with Red Flag Violations (regardless of the motor carrier's BASIC status) that have occurred in the previous 12 months, and should request documents to confirm these drivers with Red Flag Violations have been corrected. A complete list of the Red Flag Violations can be found in Appendix G. Part 391 Red Flag Violations include:

BASIC	FMCSR Part	Violation Description
Driver Fitness	391.11	Unqualified driver.
Driver Fitness	391.11(b)(5)	Driver lacking valid license for type vehicle being operated.
Driver Fitness	391.11(b)(7)	Driver disqualified from operating CMV.
Driver Fitness	391.15(a)-SIN[6]	Driving a CMV while disqualified. Suspended for safety-related or unknown reason and in the state of driver's license issuance
Driver Fitness	391.15(a)-SOUT[7]	Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance.

Once the Red Flag Driver(s) and violations are identified, you must validate if the violation has been corrected through requesting relevant documentation and interviewing the motor carrier and/or driver. For each Red Flag Violation, the investigative responsibility is broken down into three areas:

1. Has the Red Flag Violation been corrected or is it continuing?
2. If corrected, was the correction timely? (Did the driver operate between the time of the violation and when it was corrected)?

Note: ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.

During an investigation of a motor carrier the investigator must examine all Red Flag violations that are designated on that motor carrier's record. The violations that result in a Red Flag Violation have changed. Only safety-related "operating while suspended" violations, 391.15a-SIN, 391.15a-SOUT, 383.51a-SIN and 383.51a-SOUT, result in a Red Flag Violation. Non-safety related "operating while suspended" violations still appear on the motor carrier's record and are used in SMS, but they will not be considered Red Flag Violations.

3. Knowledge and Willfulness
    a. Did the motor carrier know or should the motor carrier have known of this Red Flag Violation?
    b. Did the driver fail to inform the employing motor carrier of the Red Flag Violation?

Part 391 - Driver Lists

A Request for a Driver List Should Include the Following

If a driver list was not obtained during the Risk Assessment process or during the opening interview, you should request a list of drivers employed in the last 12 months, and the date they were hired and/or terminated (if applicable). The list will need to be verified. You should verify the accuracy and completeness of the list by reviewing the company profile, payroll records, dispatch records, bills of lading, and/or other transportation or shipping documents.

Ensuring you have an accurate driver roster

Do not accept a carrier-provided driver roster as your only source. You may find names not listed on the roster by examining other records such as dispatch records, payroll, fuel cards, insurance documents, consortium information, and any other documentation that might include driver information. By reviewing the carrier's profile, past roadside inspections, the results of the current screening tool, and other FMCSA internal systems, you may be able to identify additional drivers not included in the provided roster that has been used by the carrier. Additional information may be discovered by asking open-ended questions of existing and terminated drivers. Do not forget to include part-time drivers who may be discovered as multiple-employer drivers.

Part 391 - Determine DQ File Sample

Sampling Requirements for the Minimum Number of DQ Files to be Reviewed

You must follow the sampling requirements for the minimum number of DQ files as set forth below based on their current number of driver positions:

CFR Parts - Part 391 - DQ Files

Part 391 - Select DQ Files

Selecting the Driver's Files Once the Sample Size has been Determined

Select drivers with the highest percentiles for the driver-related BASICs being investigated according to DSMS, which can be accessed using SMS Online. On the page for the motor carrier being investigated, click on the Driver Tab to obtain a list of drivers who have operated for that motor carrier and each driver's related DSMS performance percentiles in each BASIC. Sample from those drivers with the highest percentile rankings within the BASIC being investigated down to the 50th percentile. The driver sample should include currently employed drivers. There are also circumstances where you need to select drivers recently terminated by the motor carrier. This practice is acceptable if properly articulated in the the Investigation Report/Part C. If this does not produce enough drivers to reach the required sample size for the BASIC, then as additional criteria the SI should select drivers who have been involved in crashes, and then select drivers with high violation rates.

You have some flexibility and discretion in this selection process and should use your best judgment, for example, if two drivers have Driver Fitness BASIC percentiles that are very close to each other, but one has been involved in one or more crashes, then you could decide to include the driver who has been involved in crashes, regardless of which driver has the higher BASIC percentile rank. These deviations should be explained in the Investigation Report/Part C.

A list of driver name(s) for each Driver Qualification file sampled must be provided in the investigation report; or include a notation in the Investigation Report/Part C that the same information was scanned into the Electronic Document Management System (EDMS) in a separate document.

Note: Drivers with Red Flag Violations may not have poor DSMS percentiles; therefore, a driver with Red Flag Violations may not necessarily be selected for sampling related to the BASIC under investigation. Regardless of whether the driver is selected for sampling during a motor carrier investigation, drivers with Red Flag Violations should be examined and the Red Flag Violations addressed. Drivers are held accountable for safe practices across all motor carriers throughout their employment.

Steps to Take if the Minimum Number of DQ Files Cannot Be Reviewed

There will be instances where you will not be able to review the minimum number of required documents. If the motor carrier failed to provide you with the requested Driver Qualification files you requested because they either did not maintain or prepare the file, then you should not request additional files to meet the minimum sample size for checking Driver Qualification files. If additional Driver Qualification files are requested and reviewed or the sample size is not met, an explanation must be provided in the Investigation Report/ Part C.

Part 391 - Review DQ Files

Complete a comprehensive investigation of the driver qualification process

The process should include interviews with management, employees, drivers, and agents. The carrier's hiring process should be investigated as it may lead the discovery of violations. Examples of some questions to ask include:

- Does it conduct background investigations?
- What qualifications does it require?
- Does it require a minimum number of years with experience driving a CMV?
- Does it have an in-house driver training program?

DQ File Documents that Should Be Reviewed

The motor carrier is required to prepare and maintain DQ files in accordance with Section 391.51(b)(1-8). Below you will find guidance when reviewing each DQ file document:

- **Employment Application** -You should ensure the employment application contains all the elements required by Section 391.21(b), all fields are completed or noted as non-applicable, and the application is signed by the driver/applicant.
    - **Note:** Applications for drivers of vehicles requiring CDLs (Part 383) must show previous 10 years' employment history.
- **Previous Employment History Inquiry** - You should ensure the motor carrier has contacted the driver's/applicant's previous employers, by means of either written document or noting employment verification by telephone, within 30 days of date of hire. The motor carrier must make a good faith effort to contact the driver's/applicant's previous employers regarding employment history, and document its good faith effort.
- **Copy of Driver's License History Inquiry** - You should ensure the motor carrier has contacted each state agency where the driver/applicant holds an operator's license, AND obtained a copy of the driver's license history for the previous 3 years within 30 days of date of hire.
- **Road Test/Certificate or Equivalent (Copy of Valid CDL)** - You should ensure the motor carrier has performed a road test for each driver/applicant on a company vehicle, documented the results of

the road test, and issued a road test certificate. The motor carrier may accept a copy of a valid CDL in lieu of the road test/certificate requirement.

CDL/CLP Holder's Self-certification – You should ensure that each driver's self-certification is appropriate given the motor carrier's operation.

- If the driver's designated driving category is not appropriate given the operation, then the motor carrier should be cited under **49 CFR 383.37(a)**; Allowing, requiring, permitting, or authorizing a driver to operate a CMV who the employer knew or should reasonably have known does not have a current CLP or CDL, does not have a CLP or CDL with the proper class or endorsements, or operates a CMV in violation of any restriction on the CLP or CDL.
- If the driver's designated driving category is *intrastate* excepted or non-excepted and the driver has a CDL with an intrastate-only "K" restriction, and the motor carrier is using the driver in *interstate* operations, then the motor carrier should be cited under **49 CFR 383.37(a)** [Allowing, requiring, permitting, or authorizing a driver to operate a CMV who the employer knew or should reasonably have known does not have a current CLP or CDL, does not have a CLP or CDL with the proper class or endorsements, or operates a CMV in violation of any restriction on the CLP or CDL].
- If the driver's designated category is interstate excepted and the driver *does not* have a valid medical examiner's certificate, and the motor carrier is using the driver in non-excepted interstate operations, then the motor carrier should be cited for using a driver not medically examined and certified under **49 CFR 391.45(a)** [Using a driver not medically examined and certified] or **49 CFR 391.45(b)** [Using a driver not medically examined and certified each 24 months], as appropriate.
- If the driver's designated category is interstate excepted but the driver *has* a valid medical examiner's certificate, and the motor carrier is using the driver in non-excepted interstate operations, then the motor carrier should be cited under **49 CFR 391.23(m)(2)(i)(A)** [Failing to use a motor vehicle record obtained from the current licensing State to verify the type of operations the driver self-certified he or she will perform in accordance with 383.71(b)].
- If the motor carrier is in violation of either **49 CFR 383.37(a), 391.45(a)** or **391.45(b)** and the motor carrier is using the driver in non-excepted interstate operations, then the motor carrier should be cited under both the previously mentioned violations and **49 CFR 391.23(m)(2)(i)(A)**.

- **Driver Physical Qualification** –- You should ensure the motor carrier has an acceptable document in each DQ file (i.e., MVR, SDLA-issued documentation, or valid copy of MEC/MER for non CDL drivers) verifying that a driver is physically qualified.

  - If none of the documents mentioned above are in the driver's DQ file, then the motor carrier should be cited under **49 CFR 391.51(b)(7);** Failing to maintain medical examiner's certificate in driver's qualification file.
- Confirm that the motor carrier is in compliance with the investigation requirements in 49 CFR 391.23(m)(1) for non-CDL drivers, 391.23(m)(2) for CDL holders, and 49 CFR 391.23(m)(3) for CLP holders.

- If there is no documentation of the ME's National Registry number on a driver's MVR or SDLA-issued document and the motor carrier did not make a note the number in the driver's DQ file or document they verified the ME is listed on the National Registry, the motor carrier should be cited under **49 CFR 391.51(b)(9)**: Failing to place a note related to the verification of the ME's listing on the National Registry required by 49 CFR 391.23(m) in DQ file(s).
- Confirm that the motor carrier is in compliance with section 49 CFR 391.51(b)(8).
  - If a driver obtained the MEC based on a medical variance (i.e., SPE certificate or medical exemption) or medical 90-day waiver from FMCSA, verify that the motor carrier included a copy of the SPE certificate, medical variance or medical 90-day waiver documentation in the DQ file. If there is no documentation, the investigator or auditor should cite the motor carrier under **49 CFR 391.51(b)(8)**: Failing to document medical variance in the DQ file required by 49 CFR 391.51(b)(8).
- Validate the authenticity of information on the MEC, MVR or State-issued document by following the recommended validation rates and procedures found in Table 1 titled, "Recommendation Validation."
- Document authentication attempts by following procedures found below in table titled, "Documentation Authentication Attempts."

Validating the Authenticity of Information on the MER, MEC, CDLIS, MVR or SDLA-Issued Document

While conducting investigations during normal business for hours, the following steps should be taken to validate the authenticity of information on the MER, MEC, CDLIS, MVR or SDLA-issued document.

1. Verify that the ME who conducted the driver's medical examination is on the National Registry by performing an advance search on the National Registry website located at: https://www.fmcsa.dot.gov/national-registry-certified-medical-examiners-search

   - If the exam was not conducted by an ME listed on the National Registry on the date he or she issued the MEC, then the carrier should be cited for a violation of **49 CFR 391.45(a)**; Using a driver not medically examined and certified.

2. Contact the ME's office at the telephone number indicated on the certificate. It may be necessary to obtain the ME's contact information by accessing the ME's National Registry number on FMCSA's National Registry site.

   Explain to the ME or their support staff the purpose of the inquiry, and specifically indicate the inquiry is solely intended to verbally confirm that the document presented by the driver matches the records maintained by the ME, not to independently evaluate the driver's medical qualification to operate a CMV.

   - If the ME is resistant to providing the information, explain the requirements in 49 CFR 391.43(i), which states, "Each original (paper or electronic) completed MER and a copy or electronic version of each MEC must be retained on file at the office of the ME for at least 3 years from the date of examination. The ME must make all records and information in these files available to an authorized representative of FMCSA or an

authorized Federal, State or local enforcement agency representative, within 48 hours after the request is made."

- Verbally provide the driver's name, driver's date of birth (DOB), the date of issuance and any restrictions indicated on the MEC; request verbal confirmation of the information provided.

- If the information on the MER, MEC, CDLIS, MVR or State-issued document does not match the information provided by the ME's office, this is cause to question the validity of the MEC. You should reference the Violation Table found in Section 2.5.6 of the eFOTM, to determine the appropriate enforcement action.

The following table illustrates the recommended validation rate per activity type:

Recommended Validation

Type of Activity	Recommended Validation Rate
New Entrant Safety Audits	One
Investigations	Small carriers (20 or less drivers) - not less than 25% of medical certificates required to be sampled Medium carriers (21 to 100 drivers) – not less than 15% of medical certificates required to be sampled Large carriers (101 or more drivers) – not less than 10% of medical certificates required to be sampled EXAMPLE: A large carrier with 2000 drivers: Part 391 sampling table indicates 125 DQ files reviewed. 10% of 125 = 12.5 So 13 driver MEC's require a validation check.

Safety auditors and investigators must follow the instructions illustrated in the table titled, Documenting Authentication Attempts, when documenting their attempts to authenticate a driver's MEC. The table illustrates the required method of documentation given the type of activity.

Documenting Authentication Attempts

Type of Activity	Method of Documentation
Investigations	Record information in Part C and include the following: • Driver's Name • Driver's DOB • Driver's License Number • ME's National Registry number and issuing state • Date of Issuance of the MEC • Results of the ME inquiry (the above ASPEN codes are appropriate for reflecting the results in the Safety Investigator Narrative)

- **Annual Review of Driver Record Inquiry (AKA Annual Driver's License Check)** - If the driver has been employed a year or more, you should ensure the motor carrier has requested and obtained a copy of the annual driver's license check from the state agency where the driver holds a license.
- **Annual List/Certification of Violations of Motor Vehicle Laws** - If the driver has been employed a year or more, you should ensure the motor carrier has requested and obtained the annual list/certification of violations of all motor vehicle laws (except parking) from each driver.
- **Annual Review of Driver's Qualification** - If the driver has been employed a year or more, you should ensure the motor carrier has performed the annual review of the driver, and has a document reflecting the annual review was performed.
    - **Note:** As you perform your investigation, you may wish to advise the motor carrier to perform the Annual Review for each driver, after obtaining and reviewing the Annual Driver's License Check and the Annual List/Certification of Violations of Motor Vehicle Laws. By performing the Annual Review in this manner, the motor carrier will ensure the Annual List/Certification of Violations of Motor Vehicle Laws, submitted by the driver, reflects the same data as the Annual Driver's License Check obtained from the state of license.

Proper Citations: You must determine whether the document was never prepared, or that the document was prepared and not maintained, before you can choose the correct citation.

Part 391 - DQ Problems

Steps to Take if Substantial Noncompliance is Discovered

You may expand your sampling and select additional DQ files to establish the degree and extent of noncompliance. This will also allow you to determine whether enforcement action is appropriate for the noncompliance you discovered in this Part. **If you do expand your sampling for Part 391, you must explain why in the Investigation Report/Part C. .**

Steps to Take if it is Discovered that a Driver was Placed OOS During a Roadside Inspection for a DQ Violation

Verify that the motor carrier has corrected any driver OOS violations from a roadside inspection in the previous 12 months [e.g., 391.11(b)(1), 391.11(b)(5), 391.15(a)-SIN[7], 391.15(a)-SOUT[8], and 391.49(i)], and verify whether the driver complied with the OOS order.

1.3.14.1.6.2 Part 391 - Investigative System Procedures

Once you have completed your investigation of compliance with Part 391, you should use the following guidelines to assist in the completion of the Violations Tab/Part B. .

Citing a Violation where the Carrier Fails to have a DQ File on a Specific Driver

[7] ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.

During an investigation of a motor carrier the investigator must examine all Red Flag violations that are designated on that motor carrier's record. The violations that result in a Red Flag Violation have changed. Only safety-related "operating while suspended" violations, 391.15a-SIN, 391.15a-SOUT, 383.51a-SIN and 383.51a-SOUT, result in a Red Flag Violation. Non-safety related "operating while suspended" violations still appear on the motor carrier's record and are used in SMS, but they will not be considered Red Flag Violations.

Section 391.51 requires a motor carrier to maintain a DQ file for each driver it employs, and Section 391.51(b) (1-8) specifies all documents that must be included within the DQ file. **For that reason, it is recommended you cite DQ file violations under the individual document cites listed within Section 391.51(b) (1-8).**

If the motor carrier failed to provide you with the requested Driver Qualification files you requested because they either did not maintain or prepare the file, cite the motor carrier in Part B of the investigation report for not maintaining &/or preparing the missing files required and indicate the original sample size for checking Driver Qualification files as the numbers checked. The number of individual records checked is based on the number of individual documents provided. Any violation(s) discovered while reviewing the individual documents, will be cited in the Violations Tab/Part B of the investigation report based on the number of individual records required.

Recording Violations of Part 391 Acute and Critical Regulations

You should record the number checked as follows:

Part 391 - Acute and Critical Violations

Citation	Type	Description
391.11(b)(4)	**Acute**	Using a physically unqualified driver. **Number checked: Number of interstate drivers sampled and required to be physically qualified.**
391.15(a)	**Acute**	Using a disqualified driver. **Number checked: Number of interstate drivers sampled and required to be qualified.**
391.45(a)	**Critical**	Using a driver not medically examined and certified. **Number checked: Number of interstate drivers sampled and required to be medically certified.**
391.45(b)(1)	**Critical**	Using a driver not medically examined and certified during the preceding 24 months. **Number checked: Number of interstate drivers sampled and required to be medically certified.**
391.51(a)	**Critical**	Failing to maintain a driver qualification file on each driver employed. **Number checked: Number of interstate drivers sampled and required to have a driver qualification file.**
391.51(b)(2)	**Critical**	Failing to maintain inquiries into driver's driving record in driver's qualification file. **Number checked: Number of interstate drivers sampled and required to maintain a driver's driving record in their driver qualification file per 391.23(a) (1).**
391.51(b)(7)	**Critical**	Failing to maintain medical examiner's certificate in driver's qualification file.

		Number checked: Number of interstate drivers sampled and required to maintain a medical examiner's certificates in their driver qualification file per 391.41(a).

1.3.14.1.6.3 Part 391 - Process Breakdowns and Remedies – Applying the SMC

Once you have discovered the violations relating to Part 391, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance. The SMC is used to discover what breakdowns in the motor carrier's processes are occurring, why they are occurring, and identify remedies that will lead to a path of safety compliance. For additional information on the SMC, go to the General Guidelines for Using the Safety Management Cycle (SMC) to Help Diagnose a Breakdown in Safety during an Investigation section. For the investigative system, see Violations Tab/Part B (Recommendation/Requirements) on how to select and customize the SMP Breakdowns and Remedies.

For more information specific to AIM, click this link to the AIM Manual: AIM Userguide

1.3.14.1.6.4 Part 391 - Enforcement Procedures

Once you have entered the violations discovered into the Violations Tab/Part B and have decided to initiate an enforcement action for the Part 391 violations, you should use the following guidelines when submitting an enforcement report for Part 391 violations.

Part 391 - Guidelines for Enforcement of Red Flag Violations

The decision to initiate enforcement action may take into consideration, but not be limited to, factors such as: whether the State has already initiated enforcement action (i.e., citation); if the violation was corrected in a timely manner; or if the violation continued, or was repeated.

Determining enforcement against the carrier for violations committed by the employed driver is a separate process from enforcement against the driver. The carrier's awareness of the violations and its responsibilities for controlling them should be considered in enforcement decisions. The decision to pursue carrier enforcement for a driver with Red Flag Violations may take into consideration, but not be limited to, awareness, and knowledge and willfulness of the carrier with respect to the driver violations. As with any carrier violations meriting enforcement, these violations are subject to an assessment of Process Breakdowns and Remedies for the associated BASIC.

Driver vs. Carrier Enforcement

The Manager should be consulted before pursuing enforcement against the driver, if either a citation had been issued roadside, or the driver is not currently employed by the carrier.

Enforcement against the carrier:

- Considered in cases where there is proof that the violation was repeated when the carrier had knowledge (or should have had knowledge) of the violation and could have prevented its recurrence.
- Should be pursued in cases where the carrier knowingly directed the driver to commit or repeat the violation.

Part 391 - Red Flag Violations

For Red Flag Violations which were originally cited for operating while disqualified [391.11(b)(7), and 391.15(a)-SIN[8], 391.15(a)-SOUT[9]], enforcement normally depends on whether the disqualification was for a safety-related reason.

- NOV is an option for 391.11(b)(5), as long as they are immediately correctible and readily verifiable.
- If there was no original enforcement on the Red Flag Violation at the roadside, you will normally issue an NOC (or NOV in the case of the two violations listed above). If there already was a citation, then you should consult with the Manager before initiating enforcement against the driver.

Documents that Should Be Gathered to Initiate an Enforcement Action

You should gather documentation to initiate an enforcement action, which establishes the following:

- The vehicle used falls within FMCSR jurisdiction for Part 391.
- The driver is an employee of (or controlled by) the motor carrier.
- The CMV was operated by the motor carrier in interstate commerce on a specific date.
- A violation of Part 391 occurred.

Some Important Issues to Remember when Documenting Violations of Part 391

- When considering enforcement for a violation that charges the motor carrier with using a driver not physically examined, it is best to obtain a statement from the driver affirming that fact.
- Best practice requires that you obtain statement(s) from motor carrier officials affirming that the required documents were not in the DQ file or that these documents do not exist. Such statements rebut subsequent motor carrier arguments that it had such documents, but that you did not ask the motor carrier to produce them during the investigation. See *Illustration E*-2.
- Be sure that the language used to describe the violation in the investigation, in the case report and in the NOC, is the same; for example, a violation cited in the investigation for "failing to maintain" the driver's state driving record abstract should not be described in the case report as "failing to make an inquiry" from the state licensing agency.

Precautions that Should Be Taken when Preparing a Statement for Carriers Who Do Not Have the Appropriate Records

The preparation of written statements requires time, accuracy and specific requests for production of records. Listed below are a few precautions that should always be considered when preparing such statements.

- In the event the motor carrier officials or their agents will not sign a statement, it should be prepared, and read to a responsible carrier official. His/her oral acknowledgment of the accuracy of

[8] ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.

During an investigation of a motor carrier the investigator must examine all Red Flag violations that are designated on that motor carrier's record. The violations that result in a Red Flag Violation have changed. Only safety-related "operating while suspended" violations, 391.15a-SIN, 391.15a-SOUT, 383.51a-SIN and 383.51a-SOUT, result in a Red Flag Violation. Non-safety related "operating while suspended" violations still appear on the motor carrier's record and are used in SMS, but they will not be considered Red Flag Violations.

the statements contained therein should be obtained. The original of the statement, whether signed or not, is included as part of the evidence in the case.

- In addition to the foregoing precaution, you should, to the extent possible, interview the drivers whose medical certificates are not in the carrier's files to determine whether they have been examined and, if so, when, where, and by whom. You should obtain the driver's signed statement, if possible. Again, if the driver refuses to sign the prepared statement, you should get that driver's oral acknowledgment of the accuracy of the statement. This statement should then be included as part of the evidence in the case.
- In selecting Part 391 violations to document, it is good practice to submit several violations with reference to each driver. These separate violations should be at intervals of a week or more. This helps to rebut a defense argument that the violations were accidental or isolated. Additionally, you should take notes showing the number or approximate number of days the driver had driven for the motor carrier while in violation of Part 391.
- Occasionally, you may be unable, by any means, to determine which driver moved a particular shipment. When the motor carrier has none of the required Part 391 documents and certificates, and you cannot identify the driver on a specific movement through the use of motor carrier, shipper or State records, you can still document the violation for enforcement by listing the names of all drivers employed by the carrier on the date of the shipment. Incidentally, this listing of all drivers on a specific date can also be used in connection with counts for failing to maintain drivers' records of duty status (395.8(k)(1)) or for failing to maintain daily vehicle inspection reports (396.11(c)(2)).
- Problems often encountered during civil enforcement proceedings involve the carrier's belated submission of records. In such instances, the carrier will claim that it had the records all along, and that it simply could not locate the records. Carriers have also been known to backdate records, therefore, it is imperative that you conduct your investigation in accordance with the above guidelines and obtain a written statement, as shown in Illustration E-1.

Some Examples of Documents that May Be Used to Prove Violations of Part 391

- Examples of documents to support your discovered violations are listed below.
- Statement from motor carrier official, driver or other person responsible for compliance with Part 391.
- DQ Worksheet, verified by motor carrier official or other person responsible for compliance with Part 391.
- Driver's RODS and corresponding shipping paper/bill of lading.
- Vehicle registration showing GVWR or other documentary evidence proving that the vehicle was subject to Part 391.
- If copies of documents/certificates required by Part 391 were unavailable or do not exist, obtain a statement from the motor carrier attesting to missing documents or if applicable utilize DQ Worksheet and have motor carrier verify lack of documents.
- Certified documents from State agencies.
- Photographs that support the violation.

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support the violation. You may utilize other documents to prove the violation.

Part 391 - Enforcement Action Against Drivers

Considering an Enforcement Action Against a Driver

You should consider enforcement action against a driver for violating:

- 391.11 - Unqualified driver*
- 391.11(b) (5) - Driving without a currently valid motor vehicle operator's license or permit.*
- 391.11 (b) (7) - Driver disqualified from operating CMV*
- 391.15(a))-SIN[9] - Driving a CMV while disqualified. Suspended for safety-related or unknown reason and in the state of driver's license issuance*
- 391.15(a)-SOUT[10] - Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance*
- 391.45 - Fraudulently or intentionally making a false entry on a required medical examiner's certificate

(*) denotes Red Flag Violation.

1.3.14.1.7 Part 392 – Driving of Motor Vehicles

1.3.14.1.7.1 Part 392 – Investigative Procedure

When determining compliance with Part 392, you should use the following guidelines to assist in your investigation of motor carriers of property (including placardable HM) and passengers.

Procedures to Follow during an Investigation of Part 392

Part 392 – Red Flag Violations

Reviewing Compliance with Part 392

Verifying if a Motor Carrier is Operating within the Scope of its Authority as it Relates to its Operations as a Common or Contract Motor Carrier

Difference Between Operating Without Operating Authority and Operating Beyond the Scope of Operating Authority

1.3.14.7.7.1.1 Procedures to Follow during an Investigation of Part 392

If you are assigned an Onsite Comprehensive Investigation, your investigation should consist of:

- The existence of extended runs
- Load securement procedures
- Safe driving procedures
- Driver use of alcohol and drugs
- The presence of radar detectors

[9] ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.

During an investigation of a motor carrier the investigator must examine all Red Flag violations that are designated on that motor carrier's record. The violations that result in a Red Flag Violation have changed. Only safety-related "operating while suspended" violations, 391.15a-SIN, 391.15a-SOUT, 383.51a-SIN and 383.51a-SOUT, result in a Red Flag Violation. Non-safety related "operating while suspended" violations still appear on the motor carrier's record and are used in SMS, but they will not be considered Red Flag Violations.

- Operating authority requirements
- Transporting unauthorized passengers
- Prohibition against texting
- Hand-held mobile telephone usage
- Stopping at railroad crossings with certain Hazardous Materials

If you are assigned an Onsite Focused Investigation or Offsite Investigation, your investigation should include an examination of the applicable parts and subparts for each BASIC that you are investigating.

- The table below identifies each BASIC by Part 392 and includes guidance on whether the investigation should include a review of the full part or subpart.
- The table also includes additional guidance on when each is required, or should be considered, based on investigative findings.

● full review of part
⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

BASIC	Part 392	Description
Driver Fitness	⊗ .3, .9(a)(a)	392.3 – Ill and Fatigued Driver – **Consideration** when ill and fatigued driving is evident on the profile. Investigator should examine if violations may be related to a medical issue. 392.9a (a) Authority – **Required** as part of the CAIR process.
Controlled Substances/Alcohol	⊗ .9(a)(a)	392.9a (a) Authority – **Required** as part of the CAIR process.
Vehicle Maintenance	⊗ .2, .9, .62, .9(a)(a)	392.2 – Applicable operating rules – **Consideration** when the profile shows evidence of 392.2 Cargo-Related violations. Use "1 of 1" violation citation logic. 392.9 – Inspection of cargo – **Consideration** when the profile shows evidence of 392.2 Cargo-Related violations. Use "1 of 1" violation citation logic. 392.62 – Safe operation or buses – **Consideration** when evidence of violation exists on the profile. 392.9a (a) Authority – **Required** as part of the CAIR process.
HOS Compliance	⊗ .3, .6, .9(a)(a)	392.3 – Ill and Fatigued Driver – **Consideration** when ill and fatigued driving is evident on the profile. Investigator should examine if violations may be related to a medical issue. 392.6 – Schedules to conform with speed limits, useful check when drivers are recording HOS activities that could not be completed in conformance with speed limits, within the HOS examination – **Required**. 392.9a (a) Authority – **Required** as part of the CAIR process.
HM Compliance	⊗ .2	392.2 – Applicable Operating Rules – **Required if** state or local routing laws are applicable to the motor carrier under investigation. Use "1 of 1" violation citation logic.

Unsafe Driving	●	A review of the profile is **required** for evidence of unsafe driving practices. Review CDLIS checks and other related background information to address unsafe driving practices. Use "1 of 1" violation citation logic. 392.9a (a) Authority – **Required** as part of the CAIR process.

Note: *The Crash Indicator BASIC is not listed in the table, since the scope of these investigations varies depending on the BASICs Requiring Investigation. See the Crash Indicator BASIC section for guidance.*

Following this review, you should:

- Cite violations;
- Identify Process Breakdowns and Remedies; and,
- Document counts for enforcement, as appropriate.

1.3.14.7.7.1.2 Part 392 Red Flag Violations

A key aspect of the investigation process is the driver's role in carrier safety. Data has shown that unsafe driver behavior is a major contributor to the CMV crash problem. The carrier's responsibility for hiring, training, and supervising safe drivers is also a factor.

- As a result, the focus of the investigation process is not only on enforcing regulations related to driver behavior but also on carrier enforcement and education regarding their responsibilities for driver compliance.

The drivers with Red Flag Violations investigation process ensures that certain roadside violations, designated as Red Flag Violations due to their nature and severity, and the drivers receiving these violations, are examined and addressed in conjunction with motor carrier investigations.

As part of the CAIR process, a review of the motor carrier's SMS record for the presence of drivers with Red Flag Violations is part of every motor carrier-based investigation.

- Prior to any investigation, you should review drivers with Red Flag Violations (regardless of the motor carrier's BASIC status) that have occurred in the previous 12 months and should request documents to confirm that these drivers with Red Flag Violations have been corrected.
- A complete list of the Red Flag Violations can be found in Appendix G. Part 392 Red Flag Violations include:

BASIC	FMCSR	Violation Description
Controlled Substances/Alcohol	392.4(a)	Driver possesses, uses, or is under the influence of controlled substance(s).
Controlled Substances/Alcohol	392.5(a)	Driver possesses, uses, or is under influence of alcohol less than 4 hours prior to duty.

Once the Red Flag Driver(s) and violations are identified, you must validate if the violation has been corrected, through requesting relevant documentation and interviewing the motor carrier and/or driver.

For each Red Flag Violation, the investigative responsibility is broken down into three areas:

1. Has the Red Flag Violation been corrected, or is it continuing?
2. If corrected, was the correction timely? (Did the driver operate between the time of the violation and when it was corrected)?
3. Knowledge and Willfulness

a. Did the motor carrier know, or should the motor carrier have known, of this Red Flag Violation?

b. Did the driver fail to inform the employing motor carrier of the Red Flag Violation?

1.3.14.7.7.1.3 Reviewing Compliance with Part 392

You will probably find yourself limited during your investigation of compliance with Part 392.

Most of the violations of this Part are generally found at the roadside. Review of compliance with Part 392 covers the 365-day period prior to the date of the investigation or since the last investigation, if the period is less than 365 days.

- Violations of Part 392 found on the company profile or on roadside inspection reports must be cited as described in "**Guidelines for Recording Unsafe Driving Violations in the Investigative System Procedures**" in the following sections.

Finding new Part 392 violations

Part 392.6 states that no motor carrier shall schedule a run between points in such period of time as would necessitate the CMV being operated at speeds greater than those prescribed by the jurisdiction in or through which the CMV is being operated. The following is a list of documents that should be reviewed to confirm that the motor carrier is not in violation of 392.6:

- Itinerary, schedules, dispatch records
- Drivers' RODS
- Maintenance Records
- Advertised Schedules
- Permits
- E-Z Pass records
- GPS/ELD type systems that track speeding violations.

The following are tasks that should be performed during unsafe driving investigations:

Driver Interviews

Dispatcher Interviews.

There are times when a 392 violation cited roadside can lead to other areas in which the motor carrier is not in compliance. Violations relating to erratic driving (failure to comply with traffic control, improper lane changes) could be a direct result of a motor carrier's hiring procedures or lack of vetting at the time of hiring. Speeding violations can be an indication of HOS violations.

1.3.14.7.7.1.4 Verifying if a Motor Carrier is Operating within the Scope of its Authority as it Relates to its Operations as a Common or Contract Motor Carrier

Section 4303 of the Unified Carrier Registration Act prohibits FMCSA from registering carriers as a common or contract carrier, and further prohibits FMCSA from making a distinction on whether the carrier would have been classified as a common or contract carrier; the Agency is not enforcing the distinction between common and contract carrier status. Therefore, until the IT Operations Division can update the L&I System to reflect this change, and as long as the L&I System shows the carrier as having either common or contract authority, the motor carrier is in compliance.

1.3.14.7.7.1.5 Difference between Operating Without Operating Authority and Operating Beyond the Scope of Operating Authority

There are three distinct types of operating authority for U.S. domiciled motor carriers of property, passengers, and HHG.

Operating without the proper type of operating authority is considered "operating without operating authority." A motor carrier, therefore, is considered to be operating without operating authority [49 CFR section 392.9a (a)(1)] when the motor carrier does not possess the required type of active operating authority; for example, a company with active property operating authority would be operating without authority if the company transported either passengers or HHG for compensation in interstate commerce.

A Mexico-domiciled motor carrier granted operating authority under 49 CFR 368 that provides transportation beyond the United States-Mexico municipal commercial zones is operating outside the scope of its operating authority [49 CFR 392.9a(a)(2)]. A Mexico-domiciled motor carrier granted operating authority under 49 CFR 365 that provides point-to-point transportation in the United States is also operating outside the scope of its operating authority.

1.3.14.1.7.2 Part 392 – Investigative Systems Procedures

Once you have completed your investigation of compliance with Part 392, use the following guidelines to assist in the completion of Violations Tab/Part B.

Recording Violations of Part 392 Acute, Critical and 392.2 Non-Critical Regulations

Record the number checked as follows:

Part 392 – Acute, Critical and 392.2 Non-Critical Regulations

Citation	Type	Description
392.2	**Critical**	Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. **Number checked: Number of Level I, II, and III inspections* in the past 365 days.** **Number discovered: Number of inspections* with 392.2 unsafe driving violations resulting in a conviction in the past 365 days.** *Numbers checked/Numbers discovered should be separated and entered into AIM by category as interstate or intrastate
392.2	**Non-Critical Entry**	Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. **Number checked: Number of Level I, II, and III inspections* in the past 365.** **Number discovered: Number of inspections* with 392.2 unsafe driving violations without conviction in the past 365 days.** *Numbers checked/Numbers discovered should be separated and entered into AIM by category as interstate or intrastate
392.4(b)	**Acute**	Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle. **Note:** Enforcement action is required when the motor carrier had knowledge of the violation.

		Number checked: Number of drivers who were found to be under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle.
392.5(b)(1)	**Acute**	Requiring or permitting a driver to violate 392.5(a), which provides that no driver shall use alcohol or be under the influence of alcohol, within 4 hours before going on duty or operating, or having physical control of, a commercial motor vehicle; or have any measured alcohol concentration or detected presence of alcohol, while on duty, or in physical control of a commercial motor vehicle. **Note:** Enforcement action is required when the motor carrier had knowledge of the violation **Number checked: Number of drivers found to have been under the influence of or in possession of, an intoxicating beverage.**
392.5(b)(2)	**Acute**	Requiring or permitting a driver to be on duty or operate a commercial motor vehicle if, by the driver's general appearance or conduct or by other substantiating evidence, the driver appears to have used alcohol within the preceding 4 hours. **Number checked: Number of drivers who showed evidence of having consumed an intoxicating beverage within 4 hours of operating a motor vehicle.**
392.6	Critical	Scheduling a run that would necessitate the vehicle being operated at speeds in excess of those prescribed. **Number checked: Number of runs checked for compliance with posted speeds.**
392.9(a)(1)	Critical	Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured. **Number checked: Number of vehicles checked for cargo being properly distributed and adequately secured.**

Recording 49 CFR 392.9a (a) Operating Authority Violations

You should record the number checked as follows:

Citation	Description
392.9a(a)(1)	Operating without the required operating authority. **Number checked: Number of interstate trips checked for compliance with the law, ordinance, or regulation violated.**
392.9a(a)(1)	Operating without the required operating authority under 49 U.S.C. 14901(d)(3) [Household Goods]. **Number checked: Number of interstate trips checked for compliance with the law, ordinance, or regulation violated.**
392.9a(a)(1)	Operating without the required operating authority under 49 U.S.C. 14901(d)(3) [Broker].

	Number checked: Number of interstate trips checked for compliance with the law, ordinance, or regulation violated.
392.9a(a)(2)	Operating beyond the scope of the operating authority granted. **Number checked: Number of interstate trips checked for compliance with the law, ordinance, or regulation violated.**
392.9a(a)(2)	Operating beyond the scope of the operating authority granted under 49 U.S.C. 14901(d) (3) [Household Goods]. **Number checked: Number of interstate trips checked for compliance with the law, ordinance, or regulation violated.**

Guidelines for Hand-held Mobile Devices and Texting

Related to the final rule published September 27, 2010, titled "Limiting the Use of Wireless Communication Devices," FMCSA and States that adopted the new regulation, may cite a CMV driver or carrier during a crash investigation or when a CMV operator is observed texting while driving on public roads in interstate commerce. The Investigator should choose the appropriate violation citation:

- 392.80(a) – Operating a CMV while texting
- 392.80(b) – Using a driver operating a CMV while texting
- 392.82 – Using a hand-held mobile device while driving a commercial motor vehicle.

Guidelines for Recording Unsafe Driving Violations in the Investigative System Procedures

The recording of Unsafe Driving BASIC violations are divided into two categories: 392.2 violations and other than 392.2 violations as described below.

For Unsafe Driving violations other than 392.2
Select the carrier-specific entry that matches the violation citation for the specific violation discovered. For example, 392.16 is used for "Failing to use seat belt while operating a commercial motor vehicle (CMV)." If this violation is discovered, it should be entered as its own violation entry, not included in a 392.2 entry. Ensure that the violation language used is directed towards the motor carrier, not towards a driver.

- The number discovered in this entry will equal the total number of violations of the specific regulation (in this example, number of 392.16 seat belt violations) in the past 365 days reviewed.

- The number checked will equal the total number of Level I, II, and III inspections in the past 365 days reviewed. The number discovered/number checked entries must be separated into interstate and intrastate to reflect the investigation findings.

If enforcement is pursued for these violations, only violations for which evidence of conviction has been documented may be charged in an NOC or included in UFA for extent.

In some cases, violations are better recorded as 1 discovered and 1 checked. Examples include but are not limited to the following citations:

- 390.3(e) – Knowledge of, and compliance with, the regulations.
- 391.11(b) (3) – "…by reason of experience, training, or both, safely operates."
- 392.1 – "…shall be instructed in and comply with the rules in this part…"

- The table below lists the regulations that fall under the category of 392.2 Violations:Unsafe Driving violations to include under 392.2 are defined by policy as the following citions:
  - 392.2C - Failure to obey traffic control device
  - 392.2DH - Headlamps - Failing to dim when required
  - 392.2FC - Following too close
  - 392.2-INAT - Inattentive Driving
  - 392.2LC - Improper lane change
  - 392.2LV - Lane Restriction violation
  - 392.2-ML - Failure to Maintain Lane
  - 392.2P - Improper passing
  - 392.2PK - Unlawfully parking and/or leaving vehicle in the roadway
  - 392.2R - Reckless driving
  - 392.2RR - Railroad Grade Crossing violation
  - 392.2S – Speeding
  - 392.2-SLLS2 - State/Local Laws - Speeding 6-10 mph over the speed limit
  - 392.2-SLLS3 - State/Local Laws - Speeding 11-14 mph over the speed limit
  - 392.2-SLLS4 - State/Local Laws - Speeding 15 or more mph over the speed limit
  - 392.2-SLLSWZ - State/Local Laws – Speeding work/construction zone
  - 392.2-SLLT - State/Local Laws - Operating a CMV while texting
  - 392.2T - Improper turns
  - 392.2Y - Failure to yield right of way
  - 392.2 - Operating a commercial motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated - Unsafe Driving

Recording 392.2 Unsafe Driving Behavior in Investigative Software

Violations that fall under 392.2 as found in the chart above and which resulted in convictions should be documented in AIM software under the critical 392.2 entry as follows:

- The number discovered and number checked entries must be separated into interstate and intrastate categories to reflect the investigation findings.
- The number discovered for each category will equal the number of inspections of each category with unsafe driving violations resulting in a conviction in the past 365 days reviewed.
- The number checked for each category will equal the total number of Level I, II, and III inspections in the past 365 days reviewed for each category.

Violations that fall under 392.2 as found in the chart above and which did not result in convictions should be documented in AIM software under the non-critical 392.2 entry as follows:

- The number discovered and number checked entries must be separated into interstate and intrastate categories to reflect the investigation findings.
- The numbers discovered in each category of this entry will equal the total number of unsafe driving violations without conviction in the past 365 days reviewed for that category.
- The number checked for each category will equal the total number of Level I, II, and III inspections in the past 365 days reviewed for each category.

For examples of Recording Unsafe Driving Behavior in AIM Software, see Attachment B to the policy titled, "Revised Guidance for Documenting and Enforcing Unsafe Driving Violations" (MC-ECE-2021-005)

1.3.14.1.7.3 Part 392 – Process Breakdowns/Remedies-SMC

- Once you have discovered the violations relating to Part 392, you should help the carrier become more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance. The SMC is used to discover what breakdowns in the motor carrier's processes are occurring, why they are occurring, and identify remedies that will lead to a path of safety compliance. For additional information on the SMC, go to General Guidelines for Using the Safety Management Cycle (SMC) to Help Diagnose a Breakdown in Safety during an Investigation. For the investigation software procedures, see Part B - Recommendation/Requirements on how to select and customize the SMP Breakdowns and Remedies.

1.3.14.1.7.4 Part 392 - Enforcement Procedures

Once you have entered the violations discovered into the Violations Tab/Part B of the investigative software and have decided to initiate an enforcement action for the Part 392 violations, use the following guidelines when submitting an enforcement report for Part 392 violations.

Part 392 - Guidelines for Enforcement of Red Flag Violations

Part 392 - Documentation

Part 392 - Enforcement Action Against Drivers

1.3.14.1.7.4.1 Part 392 - Guidelines for Enforcement of Red Flag Violations

The decision to initiate enforcement action may take into consideration, but not be limited to, factors such as: whether the State has already initiated enforcement action (i.e., citation); if the violation was corrected in a timely manner; or if the violation continued or repeated.

Determining enforcement against the carrier, for violations committed by the employed driver, is a separate process from enforcement against the driver.

- The carrier's awareness of the violations and its responsibilities for controlling them should be considered in enforcement decisions.
- The decision to pursue carrier enforcement for a driver with Red Flag Violations may take into consideration, but not be limited to, awareness, and knowledge and willfulness of the carrier (with respect to the driver violations).
- As with any carrier violations meriting enforcement, these violations are subject to an assessment of Process Breakdowns and Remedies for the associated BASIC.

Driver vs. Carrier Enforcement

The Manager should be consulted before pursuing enforcement against the driver, if either a citation had been issued roadside, or the driver is not currently employed by the carrier.

Enforcement against the carrier:

- Considered in cases where there is proof that the violation was repeated when the carrier had knowledge (or should have had knowledge) of the violation and could have prevented its recurrence.

- Should be pursued in cases where the carrier knowingly directed the driver to commit or repeat the violation.

Part 392 - Red Flag Violations

- Normally, discovery of the two designated Red Flag Violations [392.4(a) and 392.5(a)] will result in an immediate driver disqualification. If you find evidence that the driver operated while disqualified, cite 383.51(a) for operating while disqualified and pursue enforcement against the driver.
- If there was no disqualification, check to see if there was a subsequent conviction for the violation. If the driver was convicted, then you or the Manager should refer the matter to the Service Center (SC) to pursue driver disqualification, and should not initiate an NOC.
- If there was no disqualification, no conviction, and no original citation, then verify the violation in the course of the investigation, and initiate a driver and/or carrier NOC. If there was an original citation, then consult with the Manager before initiating enforcement.

1.3.14.1.7.4.2 Part 392 – Documentation

Documents that Should Be Gathered in Order to Initiate an Enforcement Action

The evidence used for all unsafe driving enforcement must demonstrate the following:

- Unsafe driving violations occurred; and
- The violation occurred while the driver was operating a CMV in interstate commerce; and
- The driver was operating for the motor carrier at the time of the violation; and
- For all enforcement tools except an NOV, the driver was issued a citation and the citation resulted in a conviction.

Investigators may not use Electronic Logging Device (ELD) records to identify unsafe driving violations, as described in Section 1.3.14.5.8.1 – Investigative Procedures, "ELD Data Usage," of the eFOTM and must ensure that any evidence does not fall under the category of ELD records. ELD records may be used to support other required elements of the NOC such as interstate commerce or applicability. When considering the use of electronic records obtained independently of the ELD records, Division Offices should consult an ELD team subject matter expert and legal counsel for further guidance.

Investigators may not use Electronic Logging Device (ELD) records to identify unsafe driving violations, as described in Section 1.3.14.5.8.1 – Investigative Procedures, "ELD Data Usage," of the eFOTM and must ensure that any evidence does not fall under the category of ELD records. ELD records may be used to support other required elements of the NOC such as interstate commerce or applicability. When considering the use of electronic records obtained independently of the ELD records, Division Offices should consult an ELD team subject matter expert and legal counsel for further guidance.

Additional sources of evidence that may prove helpful in documenting a violation, but that are not required for all violations, include but are not limited to, the following:

- Police Accident Reports with attachments
    - Supplemental CMV Accident Report

  - Hazardous Materials Incident and Spill Report
  - Post-Crash Investigation Report
- Court records associated with the convictions/adjudications process
- Motor carrier statements
- Mileage reports
- Fleet management reports

Electronic Logging Device

Investigators may not use Electronic Logging Device (ELD) records to identify unsafe driving violations, as described in Section 1.3.14.5.8.1 – Investigative Procedures, "ELD Data Usage," of the eFOTM and must ensure that any evidence does not fall under the category of ELD records. ELD records may be used to support other required elements of the NOC such as interstate commerce or applicability. When considering the use of electronic records obtained independently of the ELD records, Division Offices should consult an ELD team subject matter expert and legal counsel for further guidance.

Some Examples of Documents that May Be Used to Prove Violations of Part 392

Examples of documents to support your discovered violations are listed below:

- Statement from motor carrier official, driver, or other person responsible for compliance with Part 392. See Illustration E-*2*.
- Driver's RODS and corresponding shipping paper/bill of lading.
- Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to Part 392.
- Documentary evidence proving the violation (e.g., conviction reports, etc.).
  - Except for in the case of an an NOV, documentation of a conviction is required when using data from inspections.
  - If violations without convictions are included in an NOV they may not be used later to convert the NOV to an NOC.
- Photographs that support the violation. For example, a photograph of a vehicle's cargo that wasn't properly distributed and adequately secured.

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support the violation. You may utilize other documents to prove the violation.

1.3.14.1.7.4.3 Part 392 - Enforcement Action Against Drivers

Considering an Enforcement Action Against a Driver

You should consider enforcement action against a driver for the following violations:

- 392.2 - Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which being operated.
- 392.4(a) - Driver uses, or is in possession of, drugs.*
- 392.4(b) - Operating a motor vehicle while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle.
- 392.5(a) - Possession/use/under the influence of alcohol 4 hours prior to duty. *
- 392.5(b) (1) - Operating a motor vehicle while under the influence of, or in possession of, an intoxicating beverage.

- 392.5(b) - Operating a motor vehicle while showing evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle.

(*) denotes Red Flag Violation

Special Topic: Distracted Driving – Ban on Texting and Hand-held Mobile Telephone Use

The regulations prohibiting texting and hand-held mobile telephone use should be cited against a driver and/or motor carrier, when warranted, during an inspection or investigation, including, but not limited to, crash investigations and onsite investigations. Situations where the violation may be cited include, but are not limited to, the following:

- CMV drivers and/or motor carriers may be cited at roadside, if enforcement personnel directly observe the CMV driver texting or using a hand-held mobile phone while driving a CMV, while operating in interstate commerce or transporting placardable quantities of HM in intrastate commerce. The violation will apply to drivers observed using hand-held mobile phones when driving in any area that meets the 49 CFR Section 390.5 definition of a "highway." This includes a rest stop, weigh station or other road, street, or way open to public travel.
- During a crash investigation, enforcement personnel may cite the violation, if the driver acknowledges texting or using a hand-held mobile phone when the crash occurred, or if there is credible and sufficient evidence that the driver was using a hand-held mobile telephone. Such evidence could include eyewitness testimony, or evidence that a text or call was placed at the time of the crash.
- During an investigation at a motor carrier's PPOB or terminal, the violation may be cited, if sufficient and credible evidence of texting or hand-held mobile phone use while driving is discovered. (Such evidence may be found in crash reports, driver files, letters of reprimand, citations, etc.) The violation should be cited on Part B of the compliance review/investigation report, and a notice of claim may be issued against the driver and/or motor carrier, as appropriate.
- Motor carriers may be held accountable for driver violations of the texting or hand-held mobile telephone prohibition, if there is evidence that the employer allows, or requires, the driver to use a hand-held mobile phone while driving, or routinely places calls to its drivers' hand-held devices while the drivers are driving a CMV.

When citing a driver or motor carrier for a violation either of these rules, use the appropriate violation citation.

- 392.80(a) - Operating a CMV while texting.
- 392.82(a) (1) - Operating a CMV while using a hand-held mobile telephone.
- 49 CFR Section 392.80(b) - Allowing or requiring a driver to operate a CMV while texting. (Carriers)
- 49 CFR Section 392.82(a) (2) - Allowing or requiring a driver to operate a CMV while using a hand-held mobile telephone. (Carriers)

Frequently Asked Questions Ban on Texting and Hand-held Mobile Phones

Primary and Secondary Violations

If a State currently has no authority, or only secondary enforcement authority, in this area of distracted driving, the Division Office should strongly encourage the State to seek primary enforcement authority through its legislative or regulatory process.

1.3.14.2 Crash Indicator BASIC

Introduction to Crash Indicator BASIC

Investigative Procedures

Carrier Accident Register

License & Insurance

Additional Sources-Internet Search

Document Evidence

Enforcement Procedures

Introduction to Crash Indicator BASIC

The Crash Indicator BASIC, regardless of a carrier's role in the crashes, is one of the strongest predictors of future crashes and is based on the number and severity of a motor carrier's recordable crashes recorded in the Motor Carrier Management Information System (MCMIS) in the previous 24 months. The Crash BASIC Investigation (CBI) is the investigative procedures to be used during an Onsite Comprehensive, Onsite Focused or Offsite Investigation of any motor carrier with SMS percentile at or above the threshold for the Crash Indicator BASIC.

The main goal of the CBI is to explore why crashes are occurring and to help the motor carrier correct the unsafe behaviors that may have caused or contributed to the crashes. In order to meet this goal, the CBI considers the motor carrier's safety compliance at and near the time of the crashes and if applicable criteria are met utilizes the Crash Analysis Tool (CAT) to look for trends in the motor carrier's crash history. Safety Investigators (SIs) will provide this information to the motor carriers to assist them in modifying behaviors and improving safety compliance. The ultimate goal is to reduce the likelihood of similar crashes in the future.

The SI will determine the sampling requirements based on whether the investigation includes the Crash BASIC only or the Crash BASIC plus additional BASICs requiring investigation. If the investigation is due to the Crash BASIC only, the sample size will generally be derived from the number of vehicles and drivers involved in crashes (not the total number of drivers employed and vehicles operated). There is also an emphasis on selecting drivers and vehicles involved in crashes as a priority when selecting the sample. If the investigation includes the Crash BASIC and additional BASICs, sampling selected will be based on Driver Safety Measurement System results. The CBI may be conducted during an Onsite Comprehensive, Onsite Focused, or Offsite investigation.

Crash BASIC Indicator Intervention Thresholds		
Passenger Carriers	**Hazardous Material Carriers**	**All Other Carriers**
50%	60%	65%

Carriers that meet or exceed the Intervention Threshold in the Crash Indicator BASIC are subject to an assessment of compliance, and, if the criteria identified below are met, the SI will examine the carrier's recent reportable crashes using the Crash Analysis Tool (CAT). The CAT is used during a Crash BASIC Investigation to review and analyze carrier crash data, when all of the following criteria are met:

- The carrier has three crashes or more in the 2-year period;
- Factor 6 is Unsatisfactory; and

- No violations were discovered that indicate there may be underlying patterns that contributed to the crash.

(*The CAT may be used during any CBI at the SIs discretion.)

When the Crash Analysis Tool is required a customized CBI Carrier Summary Report, including Crash BASIC Countermeasures must be prepared during the investigation and provided to the motor carrier (along with the standard Carrier Investigation Report from AIM) during investigation closeout. The CBI Carrier Summary Report should be uploaded into the Electronic Data Management System (EDMS) at the conclusion of the investigation.

There are three places where crashes may influence the actions taken during a CBI investigation.

1. Determination of Crash Rate for Factor 6 calculations: Conducted as currently outlined in the Section *1.3.2.6 (Completing the Pre-Investigation/Part A of the Investigation after Interviewing the Motor Carrier)*.
2. Sampling for a CBI: Use all recordable crashes to determine size of sample, no change as to when a recordable crash may or may not be excluded as outlined in the eFOTM.
3. Analysis of crashes using CAT (when required) - Generally use all recordable crashes to analyze crash characteristics. The SI may use discretion to remove crashes from the analysis to focus on crash trends and countermeasures for behaviors leading to crashes. Removal of crashes from CAT may be due to many reasons based on SI expertise. For example, an SI may choose to analyze a series of crashes occurring during certain hours or along a certain route. Thereby the SI may choose to remove crashes occurring outside those hours or routes in order to focus on patterns and trends within the cluster of crashes.

Investigative Procedures

The Crash BASIC Investigation (CBI) is an in-depth investigation of a carrier's recent recordable crashes. The CBI's goal is to answer "why crashes are occurring" by examining the drivers and vehicles involved in crashes not only for compliance, but also for trends in crash circumstances. As with all investigations, the end product of the CBI is the identification of process breakdowns and remedies that can be used by the carrier to improve safety and reduce the number and severity of future crashes.

A CBI is assigned for any motor carrier with a percentile at or above the intervention threshold in the Crash Indicator BASIC. The CBI can be part of an Offsite, Focused, Comprehensive investigation. The diagram on the right provides a high level outline of the specific steps the SIs should follow during a CBI. The investigation will take a two-pronged approach and examine both regulatory compliance and crash circumstances. A summary of the two sections is included immediately below, followed by more detailed guidance for each section.

Assessment of Compliance during CBI Process

If the investigation includes the Crash BASIC Investigation the following steps must be taken:

- **Accident Factor Calculation** – no change in policy for which recordable crashes should be used.
- **CDLIS Checks** - No change in CD LIS Sampling. Follow existing CDLIS Policy on sample size, but prioritize drivers involved in crashes.
- **Sampling** – The SI will determine the sampling requirements based on whether the investigation includes the Crash BASIC only or whether the investigation includes the Crash BASIC plus additional BASICs requiring investigation. See the Table below:
    - If the investigation is due to the Crash BASIC only, the sample size will generally be derived from the number of vehicles and drivers involved in crashes (not the total number of drivers employed and vehicles operated). There is also an emphasis on selecting drivers and vehicles involved in crashes as a priority when selecting the sample.

- If the investigation includes the Crash BASIC and additional BASICs, sampling selected will be based on Driver Safety Measurement System (DSMS) sampling for the additional BASICs requiring investigation. (Refer to Appendix N for Sampling Requirements)

- **Vehicle OOS Rate Calculation** - only completed when expansion to onsite sampling for Vehicle Maintenance BASIC occurs based on CBI sampling findings or as currently outlined in the section 1.3.14.8.7.1 (Part 393 & Part 396 - Parts & Accessories, and Inspection, Repair & Maintenance).

Examination of Crash Circumstances using the CAT

SIs will review Police Accident Reports (PARs) and other available documents and conduct carrier interviews to gain insight into the motor carrier's crashes. SIs will utilize the Crash Analysis Tool (CAT) to determine trends in crash data and contributing factors. Lastly, the CAT prompts and assists SIs with the creation of a customized CBI Carrier Summary Report to provide to motor carriers as part of the closeout.

Note: The CBI is NOT a Significant Crash or Post-Crash Investigation; the guidance relating to the memorandum on significant crashes can be found in the Manager Manual, Section 6.3.9 (General Guidelines for Administration of Crash/HM Incident Reporting). The CBI is NOT Accident Reconstruction, but it may use data from an Accident Reconstruction to support the analysis of a carrier's crash data. The CBI is also NOT a crash prevent ability determination.

Assessment of Compliance – Overview

The table below provides an overview of the CBI process as it relates to the assessment of a motor carrier's compliance at the time around a crash event. No modifications are being made as to how carriers are prioritized for an investigation or the type of investigation to which they are subject. However, the CBI introduces a new sampling approach that relates to the sample size, sample selection, and the impact on sampling if new Acute and/or Critical Violations are discovered. The table below explains the sampling approach to be used during the CBI portion of an investigation and the impact of discovering new Acute and/or Critical Violations. These two topics will be explained in more detail below.

BASICs Requiring Investigation	Investigation Type	Investigation Sampling
CBI only	Offsite	CBI Sampling
	Onsite Focused	
Crash BASIC plus additional BASICs requiring investigation	Offsite	Offsite Sampling- Only for the additional BASICs requiring investigation
	Onsite Focused	Onsite Sampling- Only for the additional BASICs requiring investigation
	Onsite Comprehensive	Onsite Sampling- All BASICs

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*Note: Managers may assign Onsite Focused and Offsite Investigations on carriers with up to 6 BASICs at or above the threshold.

Assessment of Compliance - Completing Accident Factor (Crash Rate)

The Factor 6 crash rate should be recorded during a CBI. There are no changes as to which crashes should be included in the crash rate, or when a recordable crash may or may not be excluded as outlined in the eFOTM. The SI should use all recordable crash data from the previous 365 days.

To obtain an accurate picture of the carrier's crash involvement, the SI should use information from multiple sources, such as MCMIS, the carrier's Accident Register and insurance company information (such as loss reports). Note: In some cases, the carrier's Accident Register will have more up-to-date information than MCMIS.

Assessment of Compliance – CDLIS

During CBI process, COLIS sampling should follow existing eFOTM policy (l.3.14.3.4 - Part 383-Investigative Procedures). However, drivers involved in crashes should be prioritized.

CFR PART 383 Commercial Driver's License Information System (CDLIS) Checks **Criteria/Time Frame:** All drivers employed who are subject to Commercial Driver's License (CDL) requirements.		
Crash BASIC Only		
# of drivers subject to CDL requirements	**Sample Size: # of CDLIS Records to Check**	**Sample Selection**
1-20	All drivers employed by carrier	Follow existing CDLIS Policy on sample size, but prioritize drivers involved in crashes.
21-150	20	
151-280	32	
281-400	50	
401-500	68	
501-1200	80	
1201 and above	125	

*Additional Guidance: prioritize drivers involved in crashes.

Additional Guidance: If additional drivers are checked in CDLIS, provide an explanation of the reason(s) you expanded the original sample size in Investigation Report/Part C of . A list of driver name(s) for each driver checked in CDLIS must be provided in the Investigation Report/Part C ; or include a notation in the Investigation ReportPart C that the same information was scanned into the Electronic Document Management System (EDMS) in a separate document.

Assessment of Compliance - CBI Sampling

The SI must determine the sample size for drivers and vehicles involved in recordable crashes during the previous 12 months in accordance with the sampling tables below.

There are important differences between the CBI sampling tables below and those used during other interventions. During CBI, the sample size is generally derived from the number of vehicles and drivers involved in crashes (not the total number of drivers employed and vehicles operated as done during other investigations). There is also an emphasis on selecting drivers and vehicles involved in crashes as a priority when selecting the sample.

As with any other type of investigation, all violations discovered should be recorded as part of the Carrier Investigation Report in the AIM.

CBI Sampling Tables by CFR Part

CFR PART 382 Drug & Alcohol Pre-Employment **Considerations**: Review the carrier records to determine that the driver was hired within the past 365 days. Select drivers with the highest BASIC scores first, and then select the ones that were involved in accidents.	
Crash BASIC Only	
# of drivers to review	**Sample Size: #** **# of Pre-employment Tests to Review**
All drivers involved in **RECORDABLE** crashes that were **hired in the last 365 days**	All pre-employment tests of drivers involved in RECORDABLE crashes that were hired in the last 365 days.

Additional Guidance: When conducting an investigation requiring a review of both a CBI and a Controlled Substances Supplemental Review, the sample size for checking pre-employments tests would be the greater of the two sample size. An explanation must be provided in the Investigation Report/Part C to describe the drivers reviewed based on the CBI and which drivers were reviewed based on the Controlled Substances Supplemental Review.

CFR Part 382 – Post-Accident Testing	
Crash BASIC Only	
# of Post-Accident D&A Tests to Review	**Sample Size: #**
All drivers involved in recordable crashes that require post-accident testing regardless of # of drivers employed.	All drivers

CFR PART 391 Driver Qualification (DQ) Files

Considerations: Select DQ files for drivers with the highest scores within the BASIC requiring investigation and drivers who

were involved in recordable crashes.

Crash BASIC Only		
# of drivers involved in recordable crashes	**Sample Size: # of DQ Files to Review (for drivers involved in crashes)**	**Sample Selection**
1-5	All	Select from drivers involved in crashes.
6-25	5	
26-50	8	
51-90	13	
91-150	20	
151-280	32	
281-400	50	
401-500	68	
501-1,200	80	
1,201and above	125	

Additional Guidance: If the motor carrier failed to provide you with the requested Driver Qualification files because they either did not maintain or prepare the file, do not request additional files to meet the minimum sample size for checking Driver Qualification files. Cite the motor carrier in Part B of the investigation report for not maintaining &/or preparing the missing file(s) required and indicate the original sample size for checking Driver Qualification files as the numbers checked. Any violation(s) discovered while reviewing the individual documents, will be cited in Part B based on the number of individual records provided and checked.

CFR PARTS–PART 393 & 396 DVIRs for Property Carriers

Criteria/Time Frames: The review of DVIR should cover the number of DVIRs that have defects noted during the previous three months. One month of DVIRs should be reviewed for each vehicle selected, regardless of the number of RODS that have been reviewed for compliance with Part 395 within the previous six months.

The vehicles selected should only include those vehicles in which the crash occurred within the previous 90 days.

Crash BASIC Only		
# of Vehicles Involved in Recordable Crashes	**Sample Size: # of Vehicles to Select**	DVIRs to Request

2-5	All	Carrier is required to provide all DVIRs with defects noted on the X vehicles selected during a 30-day period occurring in the previous 3 months **X = # of Vehicle to Select**
6-15	5	
16-50	7	
51-150	11	
150-500	17	
501-Over	27	

CFR PARTS 393 & 396 DVIRs for Passenger Carriers

Criteria/Time Frames: The review of DVIRs should cover the previous 90 days. One month of DVIRs should be reviewed for each vehicle selected, regardless of the number of RODS that have been reviewed for compliance with Part 395 within the previous six months.

Crash BASIC Only

# of Vehicles Involved in Crashes	Sample Size: # of Vehicles to Select	DVIRs to Request
2-5	All	# of Vehicles x 15
6-15	5	5x15 = 75
16-50	7	7x15 = 105
51-150	11	11x15 = 165
150-500	17	17x15 = 255
501-Over	27	27x15 = 405

Additional Guidance: You should only request additional DVIRs from a motor carrier if, in the original sample, the requested DVIR for a vehicle was not required to be completed (for example, no defects discovered during a 30-day sampled period or defects were noted and repaired prior to the end of the driver's shift). If the requested DVIR were not required to be completed during the sampled period and the sample size cannot be met, you must request additional DVIRs for the same vehicle during a different sample period.

CFR Parts 393 & 396 – Maintenance Files

Crash BASIC Only

# of Vehicles involved in Recordable Crashes	Sample Size: # of Maintenance Files to Review	Sample Selection
1-5	All	Select from vehicles involved in crashes.
6-25	5	
26-50	8	
51-90	13	
91-150	20	

151-280	32	
281-400	50	
401-500	68	
501-1,200	80	
1,201 and Above	125	

Additional Guidance: If carrier took vehicle(s) off the road, or the vehicle is no longer in service, ensure records are reviewed and maintained in accordance with 396.3(c) Record retention. If the motor carrier failed to provide the requested Vehicle Maintenance files you requested because they either did not maintain or prepare the file, then you should not request additional files to meet the minimum sample size for checking Vehicle Maintenance files. Any violation(s) discovered while reviewing the individual documents, will be cited in the Violations Tab/Part B of the investigation report based on the number of individual records required and checked.

CFR Part 395 – Hours-of-Service			
Crash BASIC Only			
# of Drivers Involved in Recordable Crashes	**Sample Size: # of Drivers Selected**	**Minimum # of RODS to Review**	**Sample Selection**
1-5	All	# drivers x 9	Select from drivers involved in crashes.
6-15	5	5 x 9 = 45	
16-50	7	7 x 9 = 63	
51-150	11	11 x 9 = 99	
151-500	17	17 x 9 = 153	
501-Over	27	27 x 9 = 243	

- *Additional Guidance: Additional Guidance: For each driver involved in a recordable crash for previous 6 months, conduct HOS review for day of crash and previous 8 days from date of crash (9 days total).*

CFR Part 172 – Shipping Papers

Not Applicable

Assessment of Compliance - Expansion of Sampling

If any violation of an Acute regulation OR a l0% or greater violation rate and a pattern (more than one occurrence) of a Critical regulation is discovered, then the sample size must be expanded to the onsite sample size currently found in the eFOTM for all sample requirements within that BASIC.

Expansion of Sampling- Completing Vehicle OOS Rate

The Vehicle OOS rate should only be completed if the investigation expands into onsite sampling in the Vehicle Maintenance BASIC or during an Onsite Comprehensive Investigation. Expansion occurs when Acute and/or Critical Violations are found during the assessment of regulatory compliance in the Vehicle Maintenance based on CBI sampling outlined in the tables below (e.g. DVIRs, maintenance files).

Assessment of Compliance - Part 382 Specific Guidance

In the case of Part 382, if no program is found to exist at the carrier (382.115) this violation should be cited and the SI will continue with the assessment of compliance without expanding sampling to onsite sample size.

If any of the following conditions are found to exist, then the investigation should be expanded to include full onsite sampling of the Controlled Substances/ Alcohol BASIC.

- Any or all post-accident tests were not completed as required (382.303a).
- A "positive" (e.g. pre-employment or post-accident test) is found among the drivers that have had crashes (382.2 15).
- Pre-employment testing was not conducted on any drivers involved in crashes that were hired in previous 365 days (382.301).

Assessment of Compliance - Identify Process Breakdowns and Remedies

As with other investigations, the SI should identify process breakdowns and remedies. For the Crash BASIC Indicator the remedies are the Crash Countermeasures that are produced while using the CAT and described in section 2.3 below. If violations are discovered during CBI sampling related to another BASIC, process breakdowns and remedies related to that BASIC should be provided.

Examination of Crash Circumstances using CAT – Overview

The examination of the circumstances surrounding a motor carrier's crashes begins with the examination of any available data including PARs and other crash related documentation interviewing the motor carrier, and collecting other data and information, such as insurance reports, relevant to the crashes. Using the CAT, the SI looks for trends in crash circumstances and then finally identifies appropriate countermeasures. Each of these steps is described in more detail in the sections below.

Examination of Crash Circumstances using CAT - Data and Information Collection

The SI will use the CAT to analyze the motor carrier's MCMIS crash data. The MCMIS data can be supplemented from any number of sources. For example, the SI will need to request any information the carrier may have on those crashes-including relevant PARs. Additional documents from the carrier's insurance company, such as the "Accident/Loss" File or a Loss/Run report, may also be helpful in discovering and obtaining additional information about the carrier's crashes. Finally, the SI should ask the carrier whether it requires its drivers to prepare and submit an internal (carrier-specific) document if they are involved in a recordable crash. It is not necessary to complete every data field in CAT, if it is not deemed useful for the analysis.

Examination of Crash Circumstances using CAT - Crash Trends

The CAT is an integrated component of the CBI process and designed to assist Sis in various stages of their investigation. The SI will use the CAT to examine and analyze non-regulatory circumstances that might have contributed to the crash occurring. Examples of these circumstances include driver experience, driver's familiarity with the route, and/or vehicle type. Beyond examining crash trends, the tool assists SIs with the identification of potential drivers and vehicles to sample, during the CBI, by sorting and filtering available carrier crash data by crash characteristic and time period.

When analyzing crash trends, the SI may tailor the use of the tool to the given situation. For example, SIs can add supplemental carrier crash data to analyze by entering specific data on individual crashes. They may also add crashes into the analysis that are not in MCMIS or remove crashes from the analysis that are not pertinent to the analysis being performed. (Note: If the SI discovers recordable crashes that are over 90 days old, SIs may consider submitting a DataQs to the States to research and add into MCMIS.) The tool provides SIs with the capability of reviewing and analyzing carrier crash data for 6, 12, 24, and 60 month time periods at the discretion of the SI. These varying time periods can be used to see if an issue was isolated to a particular time period. Additionally, these time periods can be used to limit the data being examined to a shorter time period for a carrier with a lot of crashes or to a longer time period for a carrier with few crashes.

Examination of Crash Circumstances using CAT - Crash Countermeasures

Based on the trends discovered and collected crash data, the CAT will recommend specific Crash Countermeasures that may be appropriate to the carrier's crash issues. A list of these countermeasures is presented in the table on the next page and an example is provided at the end of this document. The SI should review the recommended countermeasures and then include additional countermeasures or remove those deemed not appropriate, as needed. The SI should provide the CBI Carrier Summary Report including Crash BASIC Countermeasures to the carrier along with the Carrier Investigation Report from CAPRI during the closeout. The CBI Carrier Summary Report should also be uploaded into the Electronic Document Management System (EDMS) at the conclusion of the investigation.

Carrier Accident Register

- Do not rely solely on the information in the carrier accident register
- Review all carrier accident files
    - Recordable and non-recordable
- Review police reports
- Conduct driver interviews
- Question the carrier and maintenance personnel about bus fires
- Investigate “road incidents”
- Walk the yard.

A comprehensive investigation dictates that you do not rely solely on the information in the carrier accident register or crashes listed on the carrier profile. Demand access to all carrier accident files, including those that the carrier did not include on the accident register. Review police reports and any other documentation to verify that the incident does or does not belong on the accident register. Conduct driver interviews in person or by telephone (if appropriate).

When conducting your investigation of accidents, consider whether the carrier has had a fire or explosion meeting the accident criteria as explained in §390.5. A fire or explosion in a CMV operating on a highway in interstate or intrastate commerce would be considered an “accident” if it resulted in a fatality; bodily injuries that require the victim to be transported immediately to a medical facility away from the scene; or disabling damage that requires the CMV to be towed. A collision is not a pre-requisite to an “accident” under §390.5.

Question the carrier and maintenance personnel as to any bus fires that may have occurred within the previous 365 days. Investigate any "road incidents." Walk the yard and look for damaged or burned-out vehicles, including burned tires in the tire corral. Ask maintenance personnel what occurred.

- "Loss Run" Statement
- Request document from carrier
- Interview the insurance agent
- Review Loss Run carefully
- Watch for high dollar payouts
- Examine property damage claims

Obtaining a "Loss Run" statement from the motorcoach carrier's insurance company can often prove beneficial in discovering crashes. In many cases, insurance companies are compliant in providing the documents. However, if you are unable to obtain one, then request one from the carrier.

Review it carefully. Typically, high dollar payouts are often an indicator of a significant event. If the event is not on the carrier's accident register, then question the carrier and/or insurance company to determine if the event was recordable. Look for property damage claims that may be indicative of a bus fire or other event worthy of further investigation.

License & Insurance

If you have not already done so, during your pre-investigation activities, you should check the L&I website for the motor carrier's insurance and authority status (if applicable):http://li-public.fmcsa.dot.gov

Next, you should review the motor carrier's insurance policy or self-insurance authorization. Be sure to check within the insurance policy for a valid MCS-90/90B Endorsement, MCS-82/82B, or self-insurance authorization, which should reflect a complete signed document with the appropriate levels of financial responsibility. To expedite this process, and so that it is available when you arrive at the motor carrier, you should request that the motor carrier obtain a copy of its MCS-90 prior to your review.

If you cannot locate the MCS-90/90B Endorsement within the motor carrier's insurance policy, request that the motor carrier contact its insurance company in order to send a facsimile of the MCS-90/90B Endorsement.

Additional Sources - Internet Search

Another source that can provide information about potential crashes is the Internet. Google News is an abundant source of news articles from around the globe. To access this site:

- Go to www.google.com
- Click on "News" on the dashboard
- Type the name of the motorcoach carrier. Enter this slowly, as suggestions will appear below the search bar. Sometimes you might find an item that closely resembles the carrier name. Take a few moments to explore the different suggestions. You never know what you will find.
- Either click a suggestion below or finish typing the name and hit enter or search review articles. While good information can be found on the first page of your search, it sometimes can pay to search on the second and third pages, or beyond.

Additional documents for an internet search:

- Court records:
    - Look for court records during your Google search
    - Verify whether the jurisdiction dockets are available online.

- Police records:
    - Are they available online?

Yelp is another good source for information on customer experience.

Don't limit yourself. Use all information at hand. A simple search can reveal media accounts of crashes and incidents (even bus fires) that may have gone unreported. Also note that any litigation may also appear, depending on the jurisdiction and their posting online.

Maintenance Records

- Review invoices
- Review towing charges
- Review high dollar items
- Review books
- Ask questions.

Be sure to review all maintenance and repair invoices for possible signs of crashes. Typically, if you find towing charges on a bill, then it could mean that the bus had either an extensive breakdown or a crash. Other signs are high dollar amounts for repair, body, and engine work, etc.

When reviewing the books, identify large unexplained expenses. Be sure to match them up with the appropriate invoices. Ask the carrier for further clarification if no invoice can be found.

Match the carrier's active list of equipment with equipment actually being used—units that are sitting represent assets to the carrier that are not producing income. Find out why. If a unit is down for mechanical reasons, it could be from some type of incident that had gone unreported.

Document Evidence

Document your investigative process if you discovered additional crashes that were not on the carrier profile or accident register.

Follow the mandatory recommendation requirements for accident preventability when applicable.

Consult with the Division.

Enforcement Procedures

The Crash BASIC Investigation results consist of the Crash BASIC Analysis report and the standard Compliance Investigation report completed by the Safety Investigator or State counterpart. Since the Crash BASIC provides the prioritization to conduct the CBI, the results of the CBI do not have an enforcement action connected to them. Regulatory violations discovered during the CBI are cited and documented the same way as previously mentioned in the e-FOTM and enforcement decision making and documentation remains consistent.

1.3.14.2.1 Crash Preventability Determination Procedures

Before an Investigation or Audit Reviewing Crashes

1. When preparing for an investigation or audit **that includes a review of the carrier's crashes,** the investigator or auditor should review the motor carrier's profile and review the list of final determinations made by the CPDP and available on the motor carrier's SMS profile.
2. The investigator or auditor should ask the motor carrier for the RDR numbers for any crashes submitted to the CPDP that have not yet received a determination. This list should be emailed to FMCSACrashes.Preventability@dot.gov with "Expedited Review" in the subject line. The CPDP team will provide a status of the review of the crash(es) to the investigator or auditor, and will expedite

review of the crash(es). In addition, a note will be added to the RDR in DataQs so the CPDP reviewer contacts the investigator or auditor before making a determination.

During the Investigation or Audit Reviewing Crashes

1. The functionality to capture preventability reviews and determination results already exists in the AIM system if the investigation scope includes the Crash Indicator BASIC or the investigation is comprehensive. When the investigator reviews the carrier's list of crashes in the Crash Section of AIM, the associated "Preventability Checked" and "Preventability Outcome" data fields should be completed to indicate the crash was reviewed and if the finding was not preventable, undecided or preventable. Only not preventable crashes are removed from the Factor 6 evaluation. See Appendix R for AIM procedures.
2. For audits, preventability reviews should be documented in Part C of the report.
3. If the Division Administrator's preventability determination differs from the CPDP final determination or if there are crashes that have not yet been reviewed by the CPDP, the Division Administrator will consult with the Office of Enforcement by sending an email to FMCSACrashes.Preventability@dot.gov. The Office of Enforcement will contact the Division Administrator within 2 business days. The CPDP will expedite the review of any RDRs not yet reviewed for the motor carrier. This coordination is to ensure there are no differences in preventability determinations.
4. If the Division Administrator determines the crash was not preventable before the investigation is closed out, the investigator will make the necessary changes to the crash rate in AIM.

After an Investigation or Audit Reviewing Crashes

1. If a motor carrier has an "unsatisfactory" recordable crash rating from an investigation or the safety audit is failed and a crash is a contributing factor, the investigator or auditor must inform the motor carrier, before the investigation or audit is closed, that it may provide evidence to the Division Administrator for a crash preventability review and possible removal of the crash from the rating, if the motor carrier believes any of the crashes were not preventable.
2. After the crash documentation is received, the Division Administrator must analyze the facts surrounding the crash, and make a determination of whether the crash was preventable, undecided, or not preventable.
3. Each crash must only have one determination so consultation and consensus is required. To ensure consistency, Division Administrators will consult with the CPDP to start a preventability review of a crash that was submitted to the CPDP. If the CPDP receives an RDR on a crash that received a final preventability determination of undecided or preventable from a closed investigation, the CPDP will close the RDR and advise the motor carrier they must make the request for review of the previous preventability determination through the 49 CFR 385.15 process.
4. If the Division Administrator determines a crash was not preventable, the safety investigator must explain the facts surrounding the change in the crash rate in the comments section of "SI Narrative" or Part C on the investigation or the audit.
5. A revised investigation or audit report must be submitted to the motor carrier, along with the determination letter. Sample determination letters are provided in Appendix R. The Division Office will upload the determination letter and relevant correspondence into the Electronic Document Management Systems.
6. For crashes that meet the 16 eligible crash types that are found to be not preventable during or after the investigation or audit, the motor carrier should be encouraged to submit RDRs to the CPDP to have the crash removed from the Crash Indicator BASIC. The motor carrier should be encouraged to provide documentation of the Division Administrator's determination on the crash as a supporting document.
7. Once the investigation or audit is closed, if a motor carrier wants crashes reviewed for preventability for the purpose of changing the rating, the motor carrier will be required to pursue an administrative review as set forth in 49 CFR section 385.15.

Red Flagged Carriers

1. Based on the contacts from the Division Offices, the CPDP will maintain a list of carriers with investigations including crash determinations.
2. If RDRs are submitted after an investigation is closed out, the CPDP will review the program's red flagged carrier's list and will close RDRs for crashes that received preventable or undecided determinations and advise the carrier they must request the changes through the 49 CFR 385.15 process.
3. The CPDP team may contact the Division Office for additional information on these crashes.

Click here to see these job aids and attachments related to Crash Preventability Determination policy and procedures:

- Sample Determination Letter
- Crash Preventability Determination Program Eligibility Guidelines
- Preventability Guidelines
- Adding Crashes to AIM
- Overview Flow Chart
- Procedures by Investigation Phase
- Procedures by Role

1.3.14.3 Driver Fitness BASIC

1.3.14.3.1 Introduction to Driver Fitness

The scope of the investigation depends on the type of investigation you are assigned.

If you are assigned an Onsite Comprehensive Investigation, all BASICs and related FMCSR Parts are investigated. See all BASIC sections for specific guidance on how to investigate the BASIC requiring investigation.

If you are assigned an Onsite Focused Investigation or an Offsite Investigation, the Parts by BASIC table for the Driver Fitness BASIC below provides guidance for selecting the appropriate CFR Part (Full or Sub-part) that should be examined. Following the table, guidance is provided for each of the CFR Part related to the Driver Fitness BASIC.

● full review of part

⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

Safety		
40 - Drug & Alcohol Testing		
380 - Special Training		LCV and Entry Level Driver Training Requirements - **Required if** motor carrier has drivers subject to Part 380 training requirements.
382 - Drug & Alcohol Testing		
383 – CDL	●	**Required:** Driver Fitness BASIC and part of the CAIR process. Perform CDLIS checks in accordance with CDLIS policy memo.
390 - FMCSR General	⊗	390.3 - General Applicability - ensures drivers are subject to regulations - **Required**

	.3, .15, .23, .25	390.15 - accident register - **Required if** Crash BASIC Investigation is performed. 390.23/25 - relief - **Required if** a carrier is claiming relief. Confirm emergency declaration.
391 - Driver Qualifications	●	**Required:** Driver Fitness BASIC
392 - Driving of Motor Vehicles	⊗ .3,.9a(a)	392.3 - Ill and Fatigued Driver - **Consideration** when ill and fatigued driving is evident on the profile. Investigator should examine if violations may be related to a medical issue. 392.9a(a) Authority - **Required** as part of the CAIR process
393 - Vehicle Parts and Accessories		
395 – HOS		
396 - Vehicle Maintenance		
Hazardous Materials		
107 - HM Program Procedures (Registration)		
171 - HM General		
172 - HM Table/ Communication	⊗ .704	172.704 - Training Records - Required if HM carrier
173 - Shipper Requirements		
177 - Carriage by Highway	⊗ .816	177.816 - Training Requirements - **Required if** HM carrier
178 - Package Specifications		
180 - Package Quality and Maintenance		
397 - HM Driving and Parking		
Other		
325 - Noise Emission		
387 - Financial Responsibility	⊗ As applicable	**Required** as part of CAIR process as applicable to the commodity transported or motor carrier operation type.

398 - Transporting Migrant Workers	⊗ .3	398.3 - Qualification of drivers and operators. **Required if** motor carrier transports migrant workers.
399 - Employee Health and Safety		

1.3.14.3.2 Part 172 - HM Communication, Emergency Response Information & Training

For guidance on how to conduct the hazardous materials portion of your investigation, see the Hazardous Materials Manual.

1.3.14.3.3 Part 380 - Special Training Requirements

1.3.14.3.3.1 Part 380 – Investigative Procedures

In your review of compliance with 49 CFR Part 380, you should use the following guidelines to assist in your investigation of motor carriers, both of property (including placardable hazardous material) and/or passengers.

Procedures to Follow During the Investigation of Compliance with Part 380

If you are assigned an Onsite Comprehensive Investigation, your investigation of 49 CFR Part 380 should consist of reviewing sampled DQ files for special training requirement certification.

If you are assigned an Onsite Focused Investigation or an Offsite Investigation, your investigation should include an examination of the applicable parts and subparts for each BASIC that you are investigating. The table below identifies each BASIC by Part 380, and includes guidance on whether the investigation should include a review of the full part or subpart. The table also includes additional guidance on when each is required, or should be considered, based on investigative findings.

- ● full review of part

⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

BASIC	Part 380	Description
Driver Fitness	●	Longer Combined Vehicle (LCV) and Entry Level Driver Training Requirements – **Required if** the motor carrier has drivers subject to Part 380 training requirements.
Controlled Substances/Alcohol		
Vehicle Maintenance		
HOS Compliance	⊗ .503(b), .505, .513	380.503(b),– Entry Level Driver Training Requirements – **Required if** the motor carrier has drivers subject to training requirements. 380.505 – Proof of Training – **Required if** motor carrier has drivers subject to entry-level driver training. 380.513 – Training Certificate – **Required if** motor carrier has drivers subject to entry-level driver training.
HM Compliance		

Unsafe Driving	●	LCV and Entry Level Driver Training Requirements – **Required if** the motor carrier has drivers subject to training requirements.

Note: *The Crash Indicator BASIC is not listed in the table, since the scope of these investigations varies depending on the BASICs Requiring Investigation. See the Crash Indicator BASIC section for guidance.*

Following this review, you should:

- Cite violations;
- Identify Process Breakdowns and Remedies; and,
- Document counts for enforcement, as appropriate.

Part 380 – Review Special Training Requirement Certification

Special Training Requirements to Review

The motor carrier is required to prepare and maintain DQ files in accordance with Section 391.51(b). In addition to the documents required by this section, motor carriers must ensure that copies of the required training certificates are maintained in the DQ file for each LCV driver and entry-level driver, as appropriate.

- **Longer Combination Vehicle (LCV) Driver Certification:** You should ensure the LCV Driver Training Certification (required by Section 380.401), or the LCV Driver-Training Certificate of Grandfathering (required by Section 380.111), is maintained by the motor carrier in the DQ file, all fields are completed, and the certification is signed and dated by the certifying training or motor carrier official, respectively.
- **Entry-Level Driver-Training Certification:** You should ensure the Entry-Level Driver-Training Certificate or diploma (required by Section 380.513) is maintained by the motor carrier in the DQ file, all fields are completed, and the certification is signed and dated by the appropriate official.

Note: The Entry-Level Driver-Training Certificate may also be maintained in the driver's personnel file.

If there are LCV drivers in your sample, you must ensure the driver-instructor provides evidence of certifications required by Section 380.301 or 380.303.

Part 380 – Special Training Requirement Problems

Actions to Take if an LCV or Entry-Level Driver Does Not Have the Required Certification Maintained in its DQ File

You must first ensure an LCV or entry-level driver certification is required. LCV Driver-Training Certification is required for all operators of LCVs in interstate commerce. Entry-Level Driver-Training Certification is required for all entry-level drivers who drive in interstate commerce and are subject to the CDL requirements of Part 383.

If the motor carrier has failed to maintain the LCV Driver-Training or Entry-Level Driving-Training Certification, it must be cited.

1.3.14.3.3.2 Part 380 – Investigative System Procedures

Once you have completed your investigation of compliance with Part 380, you should use the following guidelines to assist in the completion of Violation Tab/Part B.

Citing a Violation if the Carrier Fails to Have its Employees Trained for Special Requirements

You should cite Section 380.113(a)(1) if a motor carrier allows, requires, permits, or authorizes an individual to operate an LCV unless he or she is certified to do so.

You should cite Section 380.509(a) if a motor carrier fails to ensure each entry-level driver who operates a CMV requiring a CDL in interstate commerce has received training.

1.3.14.3.3.3 Part 380 – Process Breakdowns and Remedies - Applying the SMC Cycle

Once you have discovered the violations relating to Part 380, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance. The SMC is used to discover what breakdowns are occurring in the motor carrier's processes, why they are occurring, and identify remedies that will lead to a path of safety compliance. For additional information on the SMC, go to *General Guidelines for Using the Safety Management Cycle (SMC) to Help Diagnose a Breakdown in Safety during an Investigation*. For investigative system procedures, see *Violations Tab/Part B – (Recommendation/Requirements)* on how to select and customize the Safety Management Process (SMP) Breakdowns and Remedies.

1.3.14.3.3.4 Part 380 – Enforcement Procedures

Once you have entered the violations discovered into the Violations Tab/Part B of investigation software and have decided to initiate an enforcement action for the Part 380 violations, you should use the following guidelines when submitting an enforcement report for Part 380 violations.

Documentation

Enforcement Action against Carriers

Enforcement Action against Drivers

Part 380 - Documentation

Documents that Should Be Gathered to Initiate an Enforcement Action

- You should gather documentation to initiate an enforcement action, which establishes the following:
- The vehicle used falls within FMCSR jurisdiction for Part 380.
- The driver is an employee of (or controlled by) the motor carrier.
- The CMV was operated by the motor carrier in interstate commerce on a specific date.
- A violation of Part 380 occurred.

Precautions that Should be Taken When Preparing a Statement for Carriers Who Do Not Have the Appropriate Records

The preparation of written statements requires time, accuracy and specific requests for production of records. Listed below are a few precautions that should always be considered when preparing such statements.

- In the event the motor carrier officials or their agents will not sign a statement, it should be prepared, and read to a responsible carrier official. His/her oral acknowledgment of the accuracy of the statements contained therein should be obtained. The original of the statement, whether signed or not, will be included as part of the evidence in the case.
- In addition to the foregoing precaution, you should, to the extent possible, interview the drivers whose LCV driver-training certificates are not in the carrier's files to determine whether they have been trained and, if so, when, where and by whom. You should obtain the driver's signed statement, if possible. Again, if the driver refuses to sign the prepared statement, you should get that driver's oral acknowledgment of the accuracy of the statement. This statement should then be included as part of the evidence in the case.

- In selecting Part 380 violations to document, it is good practice to submit several violations with reference to each driver. These separate violations should be at intervals of a week or more. This helps to rebut a defense argument that the violations were accidental or isolated. Additionally, you should take notes showing the number or approximate number of days the driver had driven for the motor carrier while in violation of Part 380.
- Occasionally, you may be unable, by any means, to determine which driver moved a particular shipment. When the motor carrier has none of the required Part 380 documents and certificates, and you cannot identify the driver on a specific movement through the use of motor carrier, shipper or State records, you can still document the violation for enforcement by listing the names of all drivers employed by the carrier on the date of the shipment. Incidentally, this listing of all drivers on a specific date can also be used in connection with counts for failing to maintain drivers' records of duty status (395.8(k)(1)) or for failing to maintain daily vehicle inspection reports (396.11(c)(2)).
- Problems often encountered during civil enforcement proceedings involve the carrier's belated submission of records. In such instances, the carrier will claim that it had the records all along, and that it simply could not locate the records. Carriers have also been known to backdate records. Therefore, it is imperative that you conduct your investigation in accordance with the above guidelines and obtain a written statement, as shown in *Illustration E-1: Photographic Declaration*.

Some Examples of Documents that May Be Used to Prove Violations of Part 380

Examples of documents to support your discovered violations are listed below.

- Statement from motor carrier official, driver or other person responsible for compliance with Part 380.
- DQ Worksheet, verified by motor carrier official or other person responsible for compliance with Part 391.
- Driver's RODS and corresponding shipping paper/bill of lading.
- Vehicle registration showing gross vehicle weight rating (GVWR) or other documentary evidence proving that the vehicle was subject to Part 380.
- If copies of documents/certificates required by Part 380 were unavailable, or do not exist, obtain a statement from the motor carrier attesting to missing documents, or utilize CAPRI DQ Worksheet and have motor carrier verify lack of documents.

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support the violation. You may utilize other documents to prove the violation.

Part 380 – Enforcement Action Against Carriers

Some Important Issues to Remember When Documenting Violations of Part 380

You may not initiate enforcement for violations of the entry-level driver training requirements.

Best practice requires that you obtain statement(s) from motor carrier officials, affirming that the required documents were not in the DQ file, or that these documents do not exist. Such statements rebut subsequent motor carrier arguments that it had such documents, but that you did not ask the motor carrier to produce them during the investigation. See *Illustration E-2: Written Statement with Perjury Clause*.

Be sure that the language used to describe the violation in the investigation, in the case report and in the NOC, is the same; for example, a violation cited in the investigation for "failing to maintain" the driver's state driving record abstract should not be described in the case report as "failing to make an inquiry" from the state licensing agency.

Part 380 - Enforcement Action Against Drivers

Enforcement Action that Should Be Considered Against a Driver

You should consider enforcement action against a driver for the following violation:

- 380.401(b) – Failing to provide a copy of the Longer Combined Vehicle Driver-Training Certificate to your employer to be filed in your Driver Qualification file.

1.3.14.3.4 Part 383-Commercial Driver's License (CDL) Standards

1.3.14.3.4.1 Part 383 – Investigative Procedures

As part of the Driver Fitness BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 383-Investigative Procedures*

1.3.14.3.4.2 Part 383 – Investigative System Procedures

As part of the Driver Fitness BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 383 - Investigative System Procedures*

1.3.14.3.4.3 Part 383 – Process Breakdowns/Remedies – SMC

As part of the Driver Fitness BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 383 - Process Breakdowns/Remedies - SMC*

1.3.14.3.4.4 Part 383 – Enforcement Procedures

As part of the Driver Fitness BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 383 - Enforcement Procedures*

1.3.14.3.5 Part 387 - Insurance Requirements

1.3.14.3.5.1 Part387 – Investigative Procedures

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387-Investigative Procedures.*

1.3.14.3.5.2 Part 387 – Investigative System Procedures

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387- Investigative System Procedures.*

1.3.14.3.5.3 Part 387 – Process Breakdowns/Remedies-SMC

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387 - Process Breakdowns and Remedies - Applying the SMC Cycle.*

1.3.14.3.5.4 Part 387 – Enforcement Procedures

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387 - Enforcement Procedures.*

1.3.14.3.6 Part 390 - General Requirements

1.3.14.3.6.1 Part 390 – Investigative Procedure

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 390: Investigative Procedures.

1.3.14.3.6.2 Part 390 – Investigative System Procedures

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 390: Investigative System Procedures.

1.3.14.3.6.3 Part 390 – Process Breakdowns/Remedies-SMC

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 390 – Process Breakdowns and Remedies – Applying the SMC Cycle

1.3.14.3.6.4 Part 390 – Enforcement Procedures

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 390 – Enforcement Procedures.

1.3.14.3.7 Part 391-Qualification of Drivers

1.3.14.3.7.1 Part391-Investigative Procedures

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 391-Investigative Procedures.

1.3.14.3.7.2 Part 391- Investigative System Procedures

Once you have completed your investigation of compliance with Part 391, you should use the following guidelines to assist in the completion of Violations Tab/Part B of the investigative system software.

Citing a Violation where the Carrier Fails to have a DQ File on a Specific Driver

Section 391.51 requires a motor carrier to maintain a DQ file for each driver it employs, and Section 391.51(b) (1-8) specifies all documents that must be included within the DQ file. **For that reason, it is recommended you cite DQ file violations under the individual document cites listed within Section 391.51(b) (1-8).**

Citing a Violation of a False Medical Certificate

All false medical violations cited during an investigation should be cited as a violation of Section 390.35 with a secondary cite of Section 391.45. As in this case, the violation should be - "Fraudulently or intentionally making a false entry on a required medical examiner's certificate."

Citing a Violation of a Mexico-Domiciled Motor Carrier Operating a CMV with a GVWR Between 10,001lbs. and 26,000lbs. without a Mexican Licencia Federal

Mexico-domiciled drivers operating in violation of 49 CFR 391 should be cited for a violation of 49 CFR 391.11(b)(5).

Citing a Violation of a Canada-domiciled Motor Carrier that Utilizes a Canadian Driver Who Possesses a Canadian Non-CDL and Operates in the U.S. Without Medical Certification

For a Canadian Class 5 license, Ontario Class G, Ontario Class D (prior to age 80), or a New Brunswick Class 3 (prior to age 65) or a Alberta Class 3 (prior to age 65) is required to have a medical certificate to operate a CMV in the United States

- A Canada-domiciled motor carrier using a driver operating a CMV in the United States and not medically certified should be cited for a violation of 49 CFR 391.45(a)(1) – Using a driver not medically examined and certified (Critical).
- A Canada-domiciled motor carrier using a driver operating a CMV in the United States whose driver's qualification file does not reflect proof of medical certification should be cited for a violation of 49 CFR 391.51(b)(7) – Failing to maintain medical examiner's certificate in driver's qualification file (Critical).

Recording Violations of Part 391 Acute and Critical Regulations

You should record the number checked as follows:

Part 391 - Acute and Critical Violations

Citation	Type	Description
391.11(b)(4)	**Acute**	Using a physically unqualified driver. **Number checked: Number of interstate drivers sampled and required to be physically qualified.**
391.15(a)	**Acute**	Using a disqualified driver. **Number checked: Number of interstate drivers sampled and required to be qualified.**
391.45(a)	**Critical**	Using a driver not medically examined and certified. **Number checked: Number of interstate drivers sampled and required to be medically certified.**
391.45(b)(1)	**Critical**	Using a driver not medically examined and certified during the preceding 24 months. **Number checked: Number of interstate drivers sampled and required to be medically certified.**
391.51(a)	**Critical**	Failing to maintain a driver qualification file on each driver employed. **Number checked: Number of interstate drivers sampled and required to have a driver qualification file.**
391.51(b)(2)	**Critical**	Failing to maintain inquiries into driver's driving record in driver's qualification file. **Number checked: Number of interstate drivers sampled and required to maintain a driver's driving record in their driver qualification file per 391.23(a) (1).**
391.51(b)(7)	**Critical**	Failing to maintain medical examiner's certificate in driver's qualification file. **Number checked: Number of interstate drivers sampled and required to maintain a medical examiner's certificates in their driver qualification file per 391.41(a).**

1.3.14.3.7.3 Part 391-Process Breakdowns/Remedies-SMC

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 391 -Process Breakdowns/Remedies - SMC.*

1.3.14.3.7.4 Part 391-Enforcement Procedures

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 391 -Enforcement Procedures.*

1.3.14.3.8 Part 392 - Driving of Motor Vehicles

1.3.14.3.8.1 Part 392-Investigative Procedures

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 392: Investigative Procedures.

1.3.14.3.8.2 Part 392-Investigative System Procedures

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 392: Investigative System Procedures.

1.3.14.3.8.3 Part 392-Process Breakdowns/Remedies-SMC

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 392 - Process Breakdowns and Remedies - Applying the SMC Cycle.*

1.3.14.3.8.4 Part 392-Enforcement Procedures

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 392 – Enforcement Procedures.

1.3.14.3.9 Part 177-HM Carriage by Public Highway

For guidance on how to conduct the hazardous materials portion of your investigation, see the Hazardous Materials Manual.

1.3.14.4 Hazardous Material(HM) Compliance BASIC

For guidance on how to conduct the hazardous materials portion of your investigation, see the Hazardous Materials Manual.

1.3.14.5 Hours of Service (HOS) BASIC

1.3.14.5.1 Introduction to Hours of Service (HOS)

The scope of the investigation depends on the type of investigation you are assigned.

If you are assigned an Onsite Comprehensive Investigation, all BASICs and related FMCSR Parts are investigated. See all BASIC sections for specific guidance on how to investigate the BASIC requiring investigation.

If you are assigned an Onsite Focused Investigation or an Offsite Investigation, the Parts by BASIC table for the Hours of Service Compliance BASIC below provides guidance for selecting the appropriate CFR

Part (Full or Sub-part) that should be examined. Following the table, guidance is provided for each of the CFR Part related to the Hours of Service Compliance BASIC.

● full review of part
⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

Safety		
40 - Drug & Alcohol Testing		
380 - Special Training	⊗ .503(b), .505, .513	380.503(b) – Entry Level Driver Training Requirements - **Required if** motor carrier has drivers subject to training requirements. 380.505 - Proof of Training - **Required if** motor carrier has drivers subject to entry-level driver training. 380.513 - Training Certificate - **Required if** motor carrier has drivers subject to entry-level driver training.
382 - Drug & Alcohol Testing		
383 - CDL	⊗ Part of CAIR	**Required** as part of the CAIR process. Perform CDLIS checks in accordance with policy memo.
390 - FMCSR General	⊗ .3, .15, .23, .25	390.3 - General Applicability – ensures drivers are subject to regulations – **Required** 390.15 - Accident Register - **Required if** Crash BASIC Investigation is performed. 390.23/25 - Relief - **Required if** a carrier is claiming relief. Confirm emergency declaration or emergency condition.
391 - Driver Qualifications	⊗ .21, .41, .43	391.21 - Application for Employment - **Consideration** in those cases where multiple employers may be contributing to the HOS Compliance BASIC 391.41 - Physical Qualifications of Drivers - **Consideration** in those cases where physical qualifications may be impacting the HOS Compliance BASIC 391.43 - Medical Exam – **Consideration** in those cases where physical qualifications may be impacting the HOS Compliance BASIC The investigator is not required to sample in these areas of consideration. The purpose is to have some other investigative options and documents to examine to better identify process breakdowns. Sampling in accordance with the Driver Fitness BASIC is not required since it is not the BASIC under investigation. If the Safety Investigator (SI) does choose to sample in these partial areas, the sample should be consistent with the BASIC under investigation, in this case, the HOS Compliance BASIC. **Example:** A review of 391.21 would be conducted if the SI had reason to believe the driver had driven for another motor carrier by

		discovering a recent inspection in the SMS or other related evidence. In this case, the SI might want to examine the Employment Application for that particular driver.
392 - Driving of Motor Vehicles	⊗ .3, .6, .9a(a)	392.3 – Ill and Fatigued Driver - **Consideration** when ill and fatigue driving is evident on the profile. Investigator should examine if violations may be related to a medical issue. 392.6 - Schedules to conform with speed limits, useful check when drivers are recording hours of service activities that could not be completed in conformance with speed limits, within the hours of service examination – **Required** 392.9a (a) Authority - **Required** as part of the CAIR process.
393 - Vehicle Parts and Accessories		
395 - Hours of Service	●	**Required:** HOS Compliance BASIC
396 - Vehicle Maintenance		
Hazardous Materials		
107 - HM Program Procedures (Registration)		
171 - HM General		
172 - HM Table/ Communication		
173 - Shipper Requirements		
177 - Carriage by Highway		
178 - Package Specifications		
180 - Package Quality and Maintenance		
397 - HM Driving and Parking		
Other		

325 - Noise Emission		
387 - Financial Responsibility	⊗ As applicable	**Required** as part of CAIR process as applicable to the commodity transported or motor carrier operation type.
398 - Transporting Migrant Workers	⊗ .6	398.6 - Hours of Service of Drivers - **Required if** motor carrier transports migrant workers.
399 - Employee Health and Safety		

1.3.14.5.2 Part 380 - Special Training Requirements

1.3.14.5.2.1 Part 380 - Investigative Procedures

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 380. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 380: Investigate Procedures..

1.3.14.5.2.2 Part 380 – Investigative System Procedures

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 380. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 380: Investigative System Procedures.

1.3.14.5.2.3 Part 380 - Process Breakdowns and Remedies - Applying the SMC

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 380. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 380: Process Breakdowns and Remedies – Applying the SMC.

1.3.14.5.2.4 Part 380 - Enforcement Procedures

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 380. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 380: Enforcement Procedures.

1.3.14.5.3 Part 383 - Commercial Driver's License (CDL) Standards

1.3.14.5.3.1 Part 383 - Investigative Procedures

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 383: Investigative Procedures.

1.3.14.5.3.2 Part 383 – Investigative System Procedures

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 383: Investigative System Procedures.

1.3.14.5.3.3 Part 383 - Process Breakdowns and Remedies – Applying the SMC

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 383: Process Breakdowns and Remedies-Applying the SMC.

1.3.14.5.3.4 Part 383 - Enforcement Procedures

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 383: Enforcement Procedures.

1.3.14.5.4 Part 387 - Insurance Requirements

As part of the HOS Compliance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 387: Investigative Procedures.

1.3.14.5.5 Part 390 - General Requirements

1.3.14.5.5.1 Part 390 - Investigative Procedures

As part of the HOS Compliance BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 390 - Procedures

1.3.14.5.5.2 Part 390 – Investigation System Procedures

As part of the HOS Compliance BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 390 –Investigation System Procedures

1.3.14.5.5.3 Part 390 - Process Breakdowns and Remedies – Applying the SMC

As part of the HOS Compliance BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 390 - Process Breakdowns and Remedies - Applying the SMC

1.3.14.5.5.4 Part 390 - Enforcement Procedures

As part of the HOS Compliance BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 390 - Enforcement Procedures

1.3.14.5.6 Part 391 - Qualification of Drivers

1.3.14.5.6.1 Part 391 - Investigative Procedures

As part of the HOS BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 391: Investigative Procedures.

1.3.14.5.6.2 Part 391 – Investigative System Procedures

As part of the HOS BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 391: Investigative System Procedures.

1.3.14.5.6.3 Part 391 - Process Breakdowns and Remedies – Applying the SMC

As part of the HOS BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 391 - Process Breakdowns/Remedies-SMC.

1.3.14.5.6.4 Part 391 - Enforcement Procedures

As part of the HOS BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 391 - Enforcement Procedures.

1.3.14.5.7 Part 392 - Driving of Motor Vehicles

1.3.14.5.7.1 Part 392 – Investigative Procedure

As part of the HOS BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 392: Investigative Procedures.

1.3.14.5.7.2 Part 392 – Investigative System Procedures

As part of the HOS BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 392: Investigative System .

1.3.14.5.7.3 Part 392 – Process Breakdowns/Remedies-SMC

As part of the HOS BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 392: Process Breakdowns/Remedies-SMC.

1.3.14.5.7.4 Part 392 - Enforcement Procedures

As part of the HOS BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 392: Enforcement Procedures.

1.3.14.5.8 Part 395-Hours of Service (HOS) of Drivers

1.3.14.5.8.1 Part 395-Investigative Procedures

In your review of compliance with Part 395, you should use the following guidelines to assist in your investigation of motor carriers both of property (including placardable hazardous material) and passengers Procedures to Follow During Investigation of Part 395

Part 395 - Red Flag Violations

Part 395 - General

Part 395 - Beginning the Hours of Service investigation

Part 395 - Passenger Carriers

Part 395 - Interstate Operations versus Intrastate Operations

Part 395 - Seasonal Operations

Part 395 - Requesting Driver Lists

Part 395 - Selecting Drivers Time Records/RODS to be Reviewed

Part 395 - Missing RODS

Part 395 - Hour-of-Service (HOS) Maximum Driving Time

Part 395 - False RODS

Part 395- Phase I: Electronic Logging Devices and Hours of Service Supporting Documents Final Rule: Awareness and Transition

Part 395- Phase II of the Implementation of Electronic Logging Devices Rule

Automatic On-Board Recording Device (AOBRD)

FAQs associated with the supplemental policy

Questions Related to the use of EMC/T Systems

Part 395 - OOS Issues Under the New HOS Rules

Procedures to Follow During Investigation of Part 395

If you are assigned an Onsite Comprehensive Investigation or an Onsite Focused Investigation that includes the HOS Compliance BASIC, your investigation of Part 395 should begin with:

- Determining the type of motor carrier operation.
- Requesting a driver list.
- Determining the minimum number of drivers time records/RODS to be sampled.
- Selecting drivers time records/RODS to be reviewed.
- Reviewing drivers time records/RODS.

● full review of part
⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

BASIC	Part 395	Description
Driver Fitness		
Controlled Substances/Alcohol		
Vehicle Maintenance		
HOS Compliance	●	**Required:** HOS Compliance BASIC
HM Compliance		
Unsafe Driving		

Note: *The Crash Indicator BASIC is not listed in the table, since the scope of these investigations varies, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.*

Following this review, you should:

- Cite violations;
- Identify Process Breakdowns and Remedies; and,
- Document counts for enforcement, as appropriate.

Part 395 - Red Flag Violations

A key aspect of the investigation process is the driver's role in carrier safety. Data that unsafe driver behavior is a major contributor to the CMV crash problem. The carrier's responsibility for hiring, training, and supervising safe drivers is also a factor. As a result, the focus of the investigation process is not only on enforcing regulations related to driver behavior, but also on carrier enforcement and education regarding their responsibilities for driver compliance. The drivers with Red Flag Violations investigation process ensures that certain roadside violations, designated as Red Flag Violations due to their nature and severity,

and the drivers receiving these violations, are examined and addressed in conjunction with motor carrier investigations.

As part of the CAIR process, a review of the motor carrier's SMS record (for the presence of drivers with Red Flag Violations) is part of every motor-carrier-based investigation. Prior to any investigation, you should review drivers with Red Flag Violations (regardless of the motor carrier's BASIC status) that have occurred in the previous 12 months, and should request documents to confirm these drivers with Red Flag Violations have been corrected. A complete list of the Red Flag Violations can be found in Appendix G. Part 395 Red Flag Violations include:

BASIC	FMCSR Part	Violation Description
HOS Compliance	395.13(d)	Driving after being declared OOS (in violation of Part 395 OOS Order)

Note: *The Crash Indicator BASIC is not listed in the table, since the scope of these investigations may vary, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.*

Once the drivers with Red Flag Violations are identified, you must validate if the violation has been corrected through requesting relevant documentation and interviewing the motor carrier and/or driver. For each Red Flag Violation, the investigative responsibility is broken down into three areas:

1. Has the Red Flag Violation been corrected or is it continuing?
2. If corrected, was the correction timely? (Did the driver operate between the time of the violation and when it was corrected?)
3. Knowledge and Willfulness
    a. Did the motor carrier know or should the motor carrier have known of this Red Flag Violation?
    b. Did the driver fail to inform the employing motor carrier of the Red Flag Violation?

Part 395 - General

Section 32101(d) of MAP-21 creates a statutory exemption from the HOS regulations for CMV drivers engaged in the transportation of agricultural commodities and farm supplies. During the planting and harvesting periods established by each State, HOS regulations will not apply to:

- Drivers transporting agricultural commodities from the source of the agricultural commodities to a location within a 150 air-mile radius from the source;
- Drivers transporting farm supplies for agricultural purposes from a wholesale or retail distribution point of the farm supplies to a farm, or other location, where the farm supplies are intended to be used within a 150 air-mile radius from the distribution point; or,
- Drivers transporting farm supplies for agricultural purposes from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point.

Certain Motor Carrier Operations Allowed Exemptions within Part 395

The exemptions are defined in Section 395.1. The HOS exemptions, outlined in SAFETEA-LU, follow and exemptions related to railroad signal carriers/drivers and carriers/drivers engaged in oilfield operations are also noted below.

1. SAFETEA-LU Section 4130 - Operators of Vehicles Transporting Agricultural Commodities and Farm Supplies

SAFETEA-LU Section 4130 expanded the existing HOS exemption for agricultural commodities and farm supplies in 49 CFR 395.1(k) by adding a year round exemption for transporters of livestock feed and specific definitions of "agricultural commodity" and "farm supplies for agricultural purposes."

Note: Prior to 1996, FMCSA exempted these drivers only from maximum driving and on duty time, which is also the language used in SAFETEA-LU. However, FMCSA subsequently extended the exemption to include all provisions of 49 CFR Part 395 and will continue to do so.

The current agricultural exemption in 49 CFR 395.1(k) reads as follows:

> (k) Agricultural operations- The provisions of this part shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation:
>
> 1) Is limited to an area within a 100 air-mile radius from the source of the commodities or the distribution point for the farm supplies, and
>
> 2) Is conducted during the planting and harvesting seasons within such State, as determined by the State.

SAFETEA-LU Section 4130 expanded and clarified the agricultural exemption by defining "agricultural commodity" and "farm supplies for agricultural purposes."

- ***Agricultural commodity*** - Any agricultural commodity, non-processed food, feed, fiber, or livestock (including livestock as defined in Section 602 of the Emergency Livestock Feed Assistance Act of 1988 (7 U.S.C. 1471) and insects).
    - Livestock is defined in the Emergency Livestock Feed Assistance Act as cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, fish used for food, and other animals designated by the Secretary.
- ***Farm supplies for agricultural purposes*** - Products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting seasons, within each State, as determined by the State, and **livestock feed at any time of the year** (emphasis added).

Prior to SAFETEA-LU, FMCSA did not extend the agricultural exemption to transporters of livestock and livestock feed. The following guidance summarizes FMCSA's application of the exemption prior to SAFETEA-LU:

- **395.1 Question 30:** Does the exception in § 395.1(k) for "drivers transporting agricultural commodities or farm supplies for agricultural purposes" cover the transportation of poultry or poultry feed?
    - **Guidance:** No. The exception was created by Sec. 345(a) (1) of the National Highway System Designation Act of 1995 [Public Law 104-50, 109 Stat. 568, at 613], which provides in part that the HOS regulations "shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purpose." The terms "agricultural commodities or farm supplies for agricultural purposes" were not defined, but the context clarifies their meaning. Because the statute made the exception available only "during the planting and harvesting seasons" in each State, Congress obviously intended to restrict it to agriculture in the traditional (and etymological) sense, e.g., the cultivation of fields. "Agricultural commodities" therefore means products grown on and harvested from the land, and "farm supplies for agricultural purposes" means products directly related to the growing or harvesting of agricultural commodities.
    - Drivers transporting livestock or slaughtered animals, or the grain, corn, hay, etc., to feed animals, may not use the "agricultural operations" exception.

SAFETEA-LU Section 4130 supersedes the earlier FMCSA interpretation of agricultural commodity. SAFETEA-LU extends the HOS exemption to include transporters of livestock and livestock feed.

Therefore, **field staff are directed to disregard the above interpretation (CFR § 395.1 Question 30) and extend the agricultural exemption to carriers of livestock and livestock feed**.

Staff should further note that the SAFETEA-LU definition of "farm supplies for agricultural purposes" **allows transporters of livestock feed to take advantage of the HOS exemption year round. FMCSA staff, therefore, should not limit the exemption for livestock feed transporters to the "harvest season," as defined by the State.**

2. ***SAFETEA-LU Section 4131 - Operators of Ground Water Drilling Rigs***

FMCSA rules allow operators of ground water well drilling rigs to restart their 60- or 70-hour clock by taking 24 consecutive hours off duty. SAFETEA-LU reaffirms this provision.

FMCSA defines ground water well drilling rig in 49 CFR 395.2:

- ***Ground water well drilling rig*** - Any vehicle, machine, tractor, trailer, semi-trailer, or specialized mobile equipment propelled or drawn by mechanical power and used on highways to transport water well field operating equipment, including water well drilling and pump service rigs equipped to access ground water.

The exemption for ground water well drilling operators reads as follows (49 CFR 395.1(l)):

- ***Ground water well drilling operations*** - In the instance of a driver of a CMV who is used primarily in the transportation and operations of a ground water well drilling rig, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

FMCSA staff should continue to allow a 24-hour restart when reviewing ground water well drilling operators. SAFETEA-LU does not offer any additional regulatory exemptions for these drivers.

3. ***SAFETEA-LU Section 4132 - Operators of Utility Service Vehicles***

Note: This guidance supersedes the Chief Safety Officer's memorandum entitled "Hours of Service Enforcement Guidance under Section 131 of the 2004 Omnibus Appropriations," issued on February 17, 2004, and any similar guidance, to the extent such guidance conflicts with the exemption provisions of SAFETEA-LU which prohibited Field staff from enforcing HOS regulations against utilities and the movie industry.

Prior to the implementation of SAFETEA-LU, FMCSA allowed operators of utility service vehicles to restart their 60- or 70-hour clock after 24 hours or more off duty [49 CFR 395.1(n)]. SAFETEA-LU exempts operators of utility service vehicles from all provisions of 49 CFR Part 395. FMCSA may not attempt to enforce HOS rules against drivers of utility vehicles.

SAFETEA-LU Section 4132 does not alter the 49 CFR 395.2 definition of utility service vehicle:

Utility service vehicle means any CMV:

1) Used in the furtherance of repairing, maintaining, or operating any utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service;

2) While engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider); and

3) Except for any occasional emergency use, operated primarily within the service area of a utility's subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility.

SAFETEA-LU Section 4132 also prohibits a State or political subdivision from enacting or enforcing any HOS laws or regulations similar to the Federal HOS regulations contained at 49 CFR Part 395. Therefore, after analysis of this SAFETEA-LU provision, FMCSA has determined that States or political subdivisions are prohibited from requirements with regard to interstate operations of utility service vehicles. SAFETEA-LU does not affect State or Local regulation of the intrastate operation of utility service vehicles. State and local governments may enforce HOS rules against drivers of utility vehicles in intrastate commerce.

4. ***SAFETEA-LU Section 4133 - Operators Providing Transportation to Movie Projection Sites***

Note: This guidance supersedes the Chief Safety Officer's memorandum entitled, "Hours of Service Enforcement Guidance under Section 131 of the 2004 Omnibus Appropriations" issued on February 17, 2004, and any similar guidance, to the extent such guidance conflicts with the exemption provisions of SAFETEA-LU which prohibited Field staff from enforcing HOS regulations regarding certain operations of CMVs providing transportation of property or passengers to or from motion picture production sites.

Transportation

- of property or passengers involved in making a movie;
- to or from a movie production site (including a television movie); and,
- within a 100 air-mile radius of a driver's work reporting location

is subject to the HOS rules in effect prior to those published April 27, 2003 (i.e., is exempt from the new HOS rules). Unlike the 100 air-mile radius exemption under 49 CFR 395.1(e), SAFETEA-LU does not require that these drivers start from or return to their work reporting location.

FMCSA staff should review these operations for violations of the 10, 15, and 60/70-hour rules for the days drivers operate within the 100 air-miles. While operating under these circumstances, drivers may not take advantage of the 34-hour restart or any other provisions of the new HOS rules.

FMCSA staff should review HOS for violations of the 11, 14, and 60/70-hour rules on days when drivers operate outside the 100 air-mile radius. Drivers may, during this period, utilize the 34-hour restart provision.

Staff should use the old HOS rules ONLY on days the driver operates within 100 air-miles of the work reporting location. For example, eight-hour rest periods apply only BETWEEN consecutive days the driver operates under the old rules. Ten-hour rest periods apply both BEFORE AND AFTER days the driver operates under the current HOS rules.

Example:

A driver regularly operates outside 100 air-miles. He takes 34 hours off duty (taking advantage of the restart under the new HOS rules) then operates within 100 air-miles. He drives five hours, has four hours on duty not driving, three hours off duty then drives another five hours returning to his work reporting location. He takes eight hours off duty and repeats the schedule. At this point, the driver is in compliance with the HOS rules. He then takes eight hours off duty and operates beyond 100 air-miles the next day. The driver is in violation of the 14-hour rule as soon as he starts driving and the 11-hour rule after driving more than one hour because he was not off duty for ten consecutive hours prior to operating under the new HOS rules.

In addition, a driver who transports equipment and passengers to or from motion picture production sites may be required to operate under the current HOS rules on some days and under the old HOS rules on other days, depending on whether the driver stays within a 100 air-mile radius.

5. ***SAFETEA-LU Section 4146 - Exemption During Harvest Periods***

SAFETEA-LU creates a very specific exemption for transporters of grapes during harvest season in the State of New York. Specifically, Section 4146 has been interpreted by FMCSA to exempt these drivers from 49 CFR Part 395 for those operations entirely:

- Within State of New York;
- West of Interstate 81;
- Within 150 air-miles where the grapes were picked or distributed; and,
- Within the harvest season as defined by the State of New York.

Unlike the other exemptions described in this memorandum, this exemption expires at the end of Fiscal Year 2009.

Section 108 of the Railroad Safety Enhancement Act of 2008 exempts certain carriers and/or drivers defined as railroad signal employees; workers who install and maintain the signaling devices used by dispatchers to communicate with train crews and also operate CMVs. The Act states that signal employees, including contractors, are not subject to any HOS rules, duty hours, service rules, or rest period rules promulgated by any Federal authority, including the FMCSA, other than the Federal Railroad Administration. Investigators must ensure that carriers and/or drivers who qualify for this exemption and operate a property-carrying CMV beyond the maximum driving time are not cited for violations of 49 CFR Section 395.3, or who operate a passenger-carrier CMV beyond the maximum driving time, are not cited for violations of 49 CFR Section 395.5.

Section 395.1(d)(2) extends an exemption to the on-duty provisons for the HOS rules for drivers of commercial motor vehicles that are specially constructed to service oil wells. The following guidance summarizes FMCSA's application of the exemption:

- **395.1 Question 8:** What kinds of oilfield equipment may drivers operate while taking advantage of the special rule of Section 395.1(d)(2)?
    - **Guidance:** The ''waiting time'' provision in Section 395.1(d)(2) is available only to operators of those commercial motor vehicles (CMVs) that are (1) specially constructed for use at oil and gas well sites, and (2) for which the operators require extensive training in the operation of the complex equipment, in addition to driving the vehicle. In many instances, the operators spend little time driving these CMVs because ''leased drivers'' from driveaway services are brought in to move the heavy equipment from one site to another. These operators typically may have long waiting periods at well sites, with few or no functions to perform until their services are needed at an unpredictable point in the drilling process. Because they are not free to leave the site and may be responsible for the equipment, they would normally be considered ''on duty'' under the definition of that term in § 395.2. Recognizing that these operators, their employers, and the well-site managers do not have the ability to readily schedule or control these driver's periods of inactivity, Section 395.1(d)(2) provides that the ''waiting time'' shall not be considered on-duty (i.e., it is off-duty time). During this ''waiting time,'' the operators may not perform any work-related activity. To do so would place them on duty. Examples of equipment that may qualify the operator/driver for the ''waiting time exception'' in Section 395.1(d)(2) are vehicles commonly known in oilfield operations as heavy-coil vehicles, missile trailers, nitrogen pumps, wire-line trucks, sand storage trailers, cement pumps, ''frac'' pumps, blenders, hydration pumps, and separators. This list should only be considered examples and not all-inclusive. Individual equipment must be evaluated against the criteria stated above: (1) Specially constructed for use at oil and gas well sites, and (2) for which the operators require extensive training in the operation of the complex equipment, in addition to driving the vehicle infrequently. Operators of CMVs that are used to transport supplies, equipment, and materials such as sand and water to and from the well sites do not qualify for the ''waiting time

exception'' even if there have been some modifications to the vehicle to transport, load, or unload the materials, and the driver required some minimal additional training in the operation of the vehicle, such as running pumps or controlling the unloading and loading processes.

As of March 2018 FMCSA has granted the following relief to this limitation: A vehicle of any type, regardless of use may be considered specialized oilfield equipment if it fits the criteria in paragraph 1 of Regulatory Guidance Question 8, which indicates that the vehicle is: (1) specially constructed for use at oil and gas well sites, and (2) for which the operators require extensive training in the operation of the complex equipment, in addition to driving the vehicle. Based on this decision, frack sand truck operators can assess their equipment and driver training and determine whether they meet the criteria for specialized oilfield equipment in the regulatory guidance Question 8 to § 395.1, and if they do they are elegible for the relief for the HOS rules.

Electronic Logging Device (ELD) exemptions

1. 8 days in a 30-Day Period:
   - Drivers who are required to use Records of Duty Status (RODS) infrequently or intermittently, even if they ar not operating under the short-haul exception in 49 CFR 395.1(e), may continue to use paper RODS, provided they are not required to make RODS more than 8 days in any continuous revolving 30-day period. Drivers are not required to provide any documentation supporting the 8 days in a 30-day period exception during inspections.
2. Driveaway-Towaway Operation:
   - An operation is considered a drive-away-tow-away if the vehicle being driven is part of the shipment being delivered, or if the vehicle being transported is a motor home, or a recreational vehicle trailer. If the vehicle movement qualifies as a drive-away-tow-away operation, the driver may record his/her RODS using paper logs.
3. Vehicles Manufactured before Model Year 2000:
   - If the vehicle manufactured model year is of the year 2000 or newer, then the vehicle is subject to the ELD rule. However, there may be cases when the vehicle registration reflects a model year of 2000 or newer, but the engine installed in the vehicle is older than model year 2000. This is often the case when a vehicle is equipped with a glider kit. A glider kit is a term that refers to a kit used to restore or reconstruct a wrecked or dismantled vehicle. All glider kits include a frame , front axle, and body (cab). If the engine is older than model year 2000, the vehicle will be exempt from the ELD rule.

Part 395 – Beginning the Hours of Service investigation.

Operations and Driver Interviews. In order to ensure a carrier is in compliance with the HOS regulations, knowing the carrier's business model and operational process are crucial. Learning how the carrier operates is the key to discovering unsafe practices. Even the most efficient motor carriers can have breakdowns in the planning, dispatching and driver management areas. Interviews with key personnel in each area will reveal operational practices that may turn an investigation into sampling that particular area or specific runs. To begin an HOS investigation, request operations demonstrate how they book, plan, dispatch and monitor movements of freight and drivers/equipment. Follow up with the information exchange to accounts receivable and payroll for completed trips. Ensure the carrier explains each step from the time they book the load, assign a driver to the load, when the driver backs up to the shipper's dock until the trip is completed and the driver leaves the receiver's location. Include the transfer of information (electronic data) and documents (electronic or paper) from the driver to the carrier and vice versa. Interview drivers and ask them specific operational questions using the same format.

"See CSA probing questions "Fleet Management Systems (FMS). Technology is widespread in the motor carrier industry of today. To be profitable, carriers must monitor fuel consumption and equipment utilization and practice dispatch optimization. Fleet management systems enhance the overall Circle of Service within the transportation cycle. The ultimate goal is customer satisfaction at efficient costs. These systems are designed to:

1. **Optimize planning and routing**. Deadhead miles do not generate revenue. Out of route mileage increases fuel charges.
2. **Increase accuracy and speed of communication.** Operations can send load information, addresses, specific directions, etc., to drivers with the click of a keyboard or the tap of a smart phone screen.
3. **Improve driver and equipment utilization.** Knowing where the freight is at any time allows customers to maximize production without incurring storage and inventory costs. By monitoring vehicle diagnostics and maintenance schedules, carriers can prevent breakdowns which may cause late pickups or deliveries.
4. **Free flow of information**. Customers may have login capabilities for tracking their freight and/or the customer and carrier system may interface for easy access to load information, proof of delivery, billing, etc.

Fleet management systems come in basic web services up to complete management software packages. This information system, while tracking the carriers operations and profitability, can also assist the Investigator in ensuring compliance. The information retained in these systems can be very detailed. As described in the operations and driver interview section, include the demonstration of the fleet management system pertaining to each element of the carrier's operation procedures, including billing and payroll.

Requesting Fleet Management Reports/Information. FMS can be purchased and tailored to the carrier's operations or may be specifically written to meet their needs. Always ask the carrier to demonstrate their system. It may be the same FMS utilized by another carrier but have different "add ons" or supplemental software and be completely different due to the customization after purchase. Depending on the FMS utilized by the carrier, most systems provide a load history or movement summary which can be accessed either by tractor or driver number. By putting in a date range, the carrier can query all loads, including dead head associated with the loads, assigned/dispatched to a particular driver and or unit. This is valuable information for investigation purposes, as it will list all of the driver's movements in order. Although the driver payroll may interface with the dispatch system, carrier policy or other unforeseen elements may prevent trips from showing up in the payroll during the pay period it was actually completed. In addition, a dispatch history may have more information than the payroll system, which can add to an investigation. Most systems will include the Load identity (Order number), the description of either loaded or empty movement, identity of the power unit, driver number or name, trailer number, origin and destination, trip distance or pay miles, start date and time and end date and time. A general term of Driver History Report should prompt the carrier to the information the Investigator needs and this information should be requested for each driver in the sample. Verify information contained in the report including the accuracy of the start and end times. If the carrier utilizes asset tracking systems (EMC/T), the date and time stamp usually comes from supplemental software that interfaces the tracking system with the FMS. If the carrier does not utilize tracking systems, the time stamp may be input by a driver manager relying on the driver to report his/her pick up or delivery time. For this reason, the date and time on these reports must be verified. A tracking system time stamp is much more reliable than a dispatcher/driver time stamp.

In addition to the driver's history, a load screen and check call screen also contain useful information. All information pertaining to the movement of the load is stored under the Order number for that load. If the carrier system uses "Macros," location tracking, communications and order changes goes into the load movement screen and/or check call screen. Macros are canned messages a driver sends from the mobile unit in the truck describing the load status. When a driver enters the macro "Arrive at Shipper" all information for that particular load will be captured by the system and placed under the load number until

the driver enters the macro "Depart Consignee". The system settings may also trigger alerts if the driver leaves the Consignee/Shipper and fails to put in the macro. The dispatcher who assigns and/or histories the load will be identified. As movements may be reported by driver and unit, they may also be reported by dispatcher. Mobile messaging and asset tracking may be retained by the FMS if the carrier purchased the supplemental software to do so.

1. **Verify that an ELD is required** - Most motor carriers are subject to the ELD requirements; however, there are some exceptions to the ELD rule.

   ***see Phase II of the implementation of the Electronic Logging Devices Rule policy, Attachment D.

2. **Verify that the device in use meets the requirements of the ELD rule**- The ELD rule requires all ELD vendors to self-certify and register every device and software version with FMCSA. The list of self-certified and registered ELDs is updated by FMCSA in real time and is the preferred list that is used to verify that an ELD has been self-certified and registered with FMCSA (https://csa.fmcsa.dot.gov/ELD/List). In addition, the Erods software will verify that the inspected ELD is registrered with FMCSA and on the FMCSA ELD registration listby direct connection to the online list or periodic download of the ELD registration list to the Erods software. If the ELD is not listed as sef-certified and registered ELD , the safety official should check the revoke ELD list.

   *** see Phase II of the implementation of the Electronic Logging Devices Rule policy, Attachment A.

3. **Review data from the device for compliance with 49 CFR Part 395**- An ELD must be able electronically transfer data by telematics transfer via wireless Web service and email method or through a local transfer that must electronically transfer data to an authorized safety official's laptop on demand via a Universal Serial Bus (USB) 2.0 device and Bluetooth® method. If the data transfer cannot be performed, then the safety official should use the ELD's display screen or printout from the ELD to verify the driver's compliance with the HOS.

   Note: A "warning" notification in eRODS indicates that the transferred ELD record may be missing information required under the ELD technical specifications; however, the record still should be opened and reviewed using eRODS to verify a driver's hours-of-service data.

When the use of paper logs are permitted:

Motor carriers and drivers subject to the ELD rule may use paper logs if the ELD malfunctions or the driver is operating a short term leased vehicle.

Part 395 - Passenger Carriers

Procedures to Follow if Investigating a Motor Carrier of Passengers

Private Motor Carriers of Passengers (nonbusiness) are not subject to the record-keeping requirements within Part 395. All other motor carriers of passenger [e.g., For-Hire and Private Motor Carrier of Passengers (Business)] are subject to the same record-keeping requirements as motor carriers of property.

Specific Issues to be Aware of when investigating a Motor Carrier of Passengers

- **Extra Board, Shape and Spare Drivers** - An ***extra board***, ***shape***, or ***spare*** driver is a driver who does not have assigned work, but remains at the terminal in order to handle an operational contingency such as driver absence or vehicle breakdown. In most cases, they should record their hours as on duty, not driving until they are dispatched on the road.
- **Relief drivers** - On long distance trips requiring straight-through driving, motorcoach operators may send a relief driver ahead to take over driving responsibilities for the next part of the trip. The

means by which this driver gets to the layover location can vary. Below are two scenarios and the correct recording of HOS for each:

Passenger vehicle trips can typically span several days and miles. These trips can also involve several drivers. When reviewing RODS for motor carriers of passengers, the Investigator may see the notation "DHOC." This notation stands for "deadhead on cushion." This is a common industry practice whereby a driver at the direction of the passenger motor carrier rides aboard the vehicle as a passenger in order to get to a designated location. If the driver is afforded 8 hours off duty upon arrival, all time spent "cushioning" or traveling is considered off duty.

- Scenario #1: Driver is driven, or uses public transportation (e.g., commercial aircraft or train) to get to or return from the layover location. In this instance, if the driver has at least 8 consecutive hours off-duty after reaching the layover destination or terminal before assuming any on-duty status, the time spent traveling at the direction of the motor carrier may be logged as off-duty. If there is less than 8 consecutive hours off-duty, the time traveling at the direction of the motor carrier must be recorded as on-duty, not driving.
- Scenario #2: Driver drives himself/herself in an automobile (non-CMV) to the layover location or back to the terminal. Time spent driving a non-CMV at the direction of the motor carrier must be logged as on-duty, not driving, even if the driver is afforded 8 consecutive hours off-duty.

- **Team drivers** - In order to log sleeper berth status, the motorcoach must be equipped with a sleeper berth meeting the criteria in Section 393.76. There are no exceptions for motorcoach sleeper berths. Investigators should be aware that there are motorcoach in operation that meet the sleeper berth requirements. If the motorcoach is not properly equipped with a sleeper berth that meets the criteria, and there is a team assigned to it, all time spent riding in the motorcoach (in the reclining position or not) must be recorded by the driver as on-duty, not driving and may not be recorded as sleeper berth duty status. The only exception would be a driver who is riding on the motorcoach to the destination and is afforded 8 consecutive hours off-duty after reaching the destination. In such case, the time spent riding on the motorcoach may be recorded as off-duty.
  - **Part Time drivers** - Passenger carriers make frequent use of part-time and intermittent/casual drivers. Many drivers operate passenger vehicles in only a part-time capacity. Most of these drivers are involved in other full-time employment. When conducting a CR, the Investigator should ensure that these drivers submit either the prior seven days of RODS or a prior seven-day duty statement before dispatch. Verify the drivers are reporting these hours accurately. In each instance, all compensated time working for a motor carrier or non- motor carrier entity must be reflected as on-duty time.

    Part time drivers should be included in the sampling. Review a part-time driver's application and qualification documents to detect indications of other employers. Interview drivers to determine other employers. Run drivers in Driver Information Resource as roadside inspections with other employers may have occurred revealing additional employers. Many motorcoach operations use retired drivers part-time and these drivers may not have other full time employment but may drive for several motorcoach companies to supplement their retirement. Other part-time drivers that are not of a retirement age need other means of employment to support their families. Therefore it is especially important to interview drivers who need additional income to verify all hours are being reported. Request part-time drivers provide time sheets/payroll/records of duty status from their other employers and factor in hours worked elsewhere when calculating hours of service.
  - For mixed fleet operations, ensure drivers that are commingled between different operations under the same corporate control are accurately reflecting their time. Charter motorcoach

carriers may also do local work in addition to the charter operations. These local movements may be airport shuttles for the local university sports team, school field trips, or local attraction site seeing tours. These trips may pay by the hour and be recorded on a time card and must be included as part of a driver's HOS.

- Time spent collecting tickets, loading and unloading luggage must be reflected in the driver's RODS as "On-duty, not driving." As an additional example, part-time drivers that also drive a school bus under school bus operations as defined in 390.5 must indicate that time as "driving," not "on-duty, not driving."
- Depending on the length of the trip, a charter/tour driver may receive a very substantial tip from the group at the completion of the trip. Often, groups will pressure drivers to deviate from the stated itinerary, and drivers know all too well a refusal could affect their tip. Keep this in mind when comparing trip itineraries to RODS. Ask the carrier to articulate the company policy the driver must follow in these instances. Recommend that the carrier include a statement on the charter order/itinerary that the driver is not permitted to deviate from the itinerary without prior company approval. This helps the driver deflect the pressure from the group or tour leader
- Calculate distances when analyzing trips.
- ***LIMITED EXCEPTION FOR FIXED ROUTE CARRIERS***
- Dispatch and Driver Interviews

Interviews may be conducted with anyone relevant to the investigation. Interviews may be conducted with safety personnel, operations, current drivers, terminated drivers or others relevant to the information needed to complete the investigation. Open the discussion on HOS by questioning the nature of the operation. Ask about long distance trips and how the carrier builds the itinerary to ensure compliance with HOS regulations. Have the carrier demonstrate any software/fleet management systems utilized. Many vendors offer passenger carriers systems to manage the bidding, booking, dispatching and billing of trips. Ask if the carrier has positioned relay drivers for any long distance trips and how those drivers account for that time on their RODS. Overnight trips should be highly scrutinized for additional drivers and/or staged drivers along routes. Ask the carrier official how the company assures that drivers are available to replace drivers that are out of hours, verifies methods of transportation (e.g., personal conveyance, commercial vehicle, or airplane), and makes sure that the drivers meet the HOS requirement before they can drive.

Driver Interviews: Go beyond the roadside inspection questions. Ask them:

- Who dispatches drivers?
- Who hires drivers?
- Who pays drivers?
- Where do drivers go to get their pay?
- Are drivers paid by cash or by check?
- What information/documentation do drivers receive to know where to go and what time to be there?
- Who do drivers call in an emergency or after a breakdown?

"See CSA list of probing questions"

Supporting Documents that are Unique to the Passenger Industry

Charter orders and itineraries are the passenger carriers' shipping papers. Although many are different in appearance, they usually contain the same information, such as the carrier's name, driver's name, date, vehicle number, group being transported, origin and destination points, routes taken, and cost.

- Itineraries are similar to charter orders, but they list a detailed time report of the passenger carriers trip. Itineraries will show arrival and destination times and dates. They are usually used during an extended charter trip.
- Most passenger carriers maintain charter orders and itineraries as a normal part of their business. Both of these documents as well as other supporting documentation should be used to determine the accuracy of the drivers RODS.
- In many instances, drivers will enter start and finish time on their trip envelopes, which can be used to verify their RODS. Major destination locations may maintain information regarding arrival and departure times for group tours. In-depth investigations may involve contacting the group that booked the charter for further verification.. When you contact a customer for an interview, state that you are doing so only as a matter of standard procedure.
- Additional common supporting documents unique to passenger carriers include, but are not limited to:
    - Parking and tour permits issued by destinations.
    - On-road lavatory service documents.
    - Driver hotel receipts.
    - Entertainer operations use Day Sheets which include the address of the venue, coach parking instructions, hotel information, load-in time, sound check time, show time and departure time for the next venue. Your investigation should include these documents.
- Investigate posted schedules/tours on websites (departure, arrival, etc.).

Part 395 - Interstate Operations versus Intrastate Operations

Policy Concerning Drivers who Operate Both in Intrastate and Interstate Commerce

Drivers who operate in interstate commerce must be in compliance with 49 CFR Part 395 before, during and after interstate trips. The records-of-duty-status requirements in Part 395 apply to all drivers seven days prior to an interstate trip and all of Part 395 applies for the 7- or 8-day period following an interstate trip.

The important points to remember are:

- Any driver who begins a trip in interstate commerce must continue to meet the requirements of 395.3(a) and (b) through the end of the next 7 to 8 consecutive days, depending on which rule the motor carrier operates under.
- The driver must continue to comply with the requirements of Part 395, even if he/she operates exclusively in intrastate commerce for the remainder of the 60/70-hour period (i.e., 7-8 day schedule) at the end of the interstate trip. However, even if the driver operated in intrastate commerce before and/or after the 7-8 day period, you must document the days that the carrier used a driver to operate in intrastate commerce.
- A driver who begins a trip in interstate commerce, in a CMV, must have in his/her possession a copy of RODS for the previous 7 consecutive days, as required by 395.8(k)(2), unless they meet 395.1(e), even if the driver operated only in intrastate commerce during that 7-day period.

- **Note: During the 7-day period prior to the interstate trip the driver may follow the state regulations applicable to intrastate commerce with regard to the states CMV driving and on-duty requirements.**
- FMCSA Investigators should cite drivers for violations of the 10/11- or 14/15-hour rules or the 60- or 70-hour rules that are committed while on the interstate trip or during the 7 or 8 days after completing the interstate trip (depending on which rule the motor carrier operates under). The driver remains subject to Part 395 for 7 or 8 days after a trip in interstate commerce even if he/she drives only in intrastate commerce for that period.
- FMCSA Investigators should be aware that, for cargo carriers, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours (34-hour restart).
- **Passenger carriers may not use the 34-hour restart.**

Mexico domiciled motor carriers and drivers are required to comply with the FMCSRs only while operating in the U.S. FMCSA has no authority over a motor carrier when operating in Mexico. Mexico domiciled motor carriers may use the 100 air-mile exemption found in 49 CFR 395.1(e). However, once a carrier operates in the U.S., the carrier is subject to all of the applicable FMCSRs/HMRs and is, for example, required to produce the previous 7 days of RODs. [Policy Memorandum "Hours-of-Service Enforcement for Mexico-Domiciled Carriers," dated April 3, 2002.]

Recording Violations of a Carrier who Operates in Both Interstate and Intrastate Commerce

Interstate and intrastate violations will be cited separately under current policy. For the following example, assume you checked 150 RODS of which 100 were in interstate commerce and 50 in intrastate commerce, and that the violation rate was 50 percent. Your result is 50 days in violation/100 days checked for interstate commerce and 25 days in violation/50 days for intrastate commerce. These will then be entered into CAPRI, the first with its respective Federal violation, and the second with the appropriate State citation.

Part 395 - Seasonal Operations

Selecting Records when the Carrier's Operation is Seasonal

When performing an investigation on a motor carrier with seasonal operations, select RODS and/or time records from the previous six months when the carriers operation was most active.

Part 395 - Requesting Driver Lists

The Request for a Driver List Should Include the Following

If a driver list was not requested before the investigation, or during the opening interview, you should request a list of drivers employed in the last 12 months, and the date they were hired and/or terminated. The list will need to be verified. You should verify the accuracy and completeness of the list by comparing the driver list to the list of drivers prepared during the pre-investigation process, reviewing the company profile, payroll record, dispatch records, bills of lading, and or other transportation or shipping documents.

Timeframe for Review of Drivers Time Records/RODS

Your review of compliance with Part 395 covers the previous six months, or the time period since the previous investigation, if the previous investigation was performed less than six months ago.

When Review of Drivers Time Records/RODS Goes Beyond the Previous Six Months

If you are called upon to conduct an investigation as a result of an accident, or as a result of a non-frivolous complaint, then the review of drivers' time records/RODS goes beyond the previous six months.

Although we normally review only the prior six months of RODS from the date of your review, remember that the carrier is required to maintain these documents for six-months from date of receipt.

Sampling Requirements for the Minimum Number of Drivers Time Records/RODS to be Reviewed

The number of records of RODS and/or time records (if the motor carrier uses 100 air-mile radius drivers) to be reviewed is the number of drivers who are subject to the FMCSR. You should follow the sampling requirements for the minimum number of interstate and intrastate commerce in its state of domicile drivers time records/RODS to be reviewed as set forth below:

CFR Parts - Part 395 - Hours-of-Service

Part 395 - Selecting Drivers Time Records/RODS to be Reviewed

Selecting Drivers' Records Once the Sample Size has been Determined

Select drivers with the highest percentiles for the BASICs being investigated according to DSMS, which can be accessed using SMS Online, or ACE and AIM investigative software when appropriate. On the page for the motor carrier being investigated, click on the Driver Information Button to obtain a list of drivers who have operated for that motor carrier and the drivers' related DSMS performance percentiles in each BASIC. Sample from those drivers with the highest percentile rankings within the BASIC being investigated, down to the 50th percentile. The driver sample should include currently employed drivers. There are circumstances where you need to select drivers recently terminated by the motor carrier; this practice is acceptable, if properly articulated in the Investigation Report/Part C. If this does not produce enough drivers to reach the required sample size for the BASIC, then as additional criteria, the SI should select drivers who have been involved in crashes, and then a selection of drivers with high violation rates.

You have some flexibility and discretion in this selection process and should use your best judgment; for example, if two drivers have HOS Compliance BASIC percentiles that are very close to each other, but one has been involved in one or more crashes, then you could decide to include the driver who has been involved in crashes, regardless of which driver has the higher BASIC percentile rank. Other methods may include drivers with poor CDLIS driving records, recently hired drivers or highest-paid drivers. These deviations should be explained in the Investigation Report/Part C.

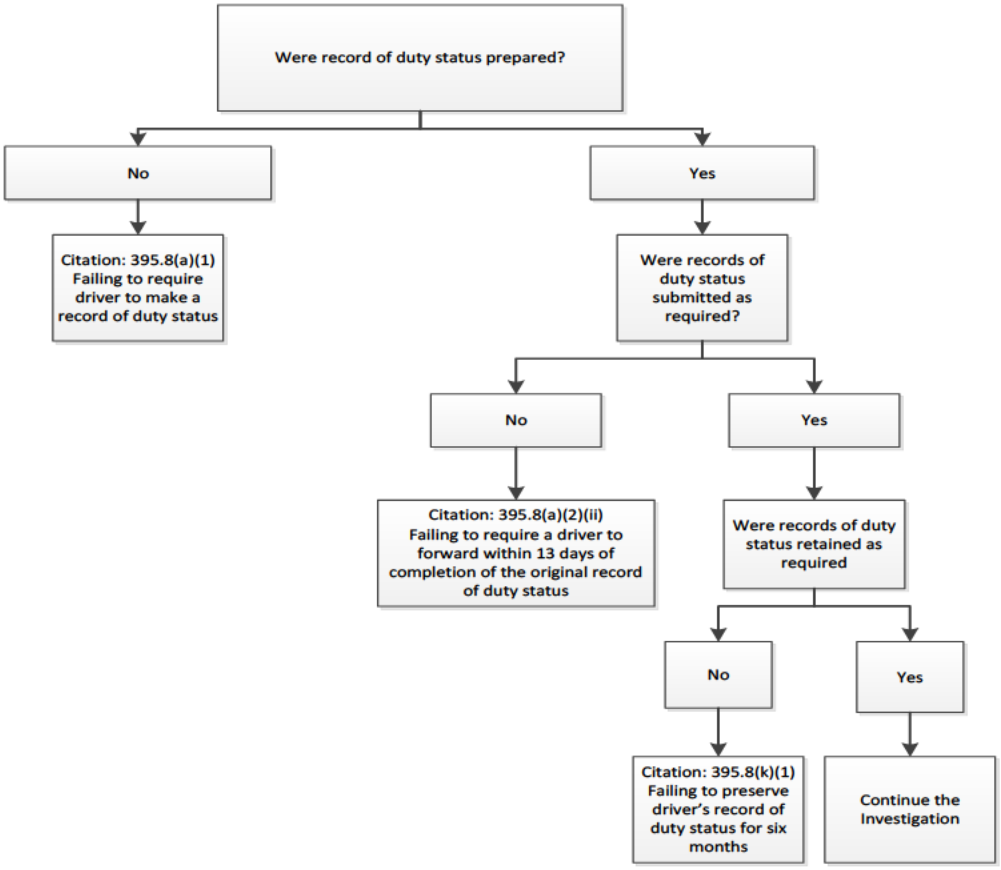
Note: Drivers with Red Flag Violations may not have poor DSMS percentile ranks. Therefore, a driver with Red Flag Violations may not necessarily be selected for sampling related to the BASIC under investigation. Regardless of whether the driver is selected for sampling during a motor carrier investigation, drivers with Red Flag Violations should be examined and the Red Flag Violations should be addressed. Drivers are held accountable for safe practices across their employment.

Meeting the Minimum Sample Size for Part 395

If required RODS originally requested are missing, do not request additional RODS. Instead, cite the motor carrier for the appropriate missing RODS violation (i.e. not preparing, maintaining or obtaining) based on the sampling size. You should only request additional RODS from a motor carrier if, in the original sample period, RODS requested for a driver were not required to be completed (for example, driver has been employed less than 30 days or an intermittent driver). If the requested RODS were not required to be completed during the sampled period and the sample cannot be met by requesting additional RODS for the same driver(s) that RODS were required, you must request additional RODS from each of the other sampled drivers as evenly as possible in order to meet the sample size.

Part 395 - Missing RODS

When the carrier does not provide RODS required, what procedure should I follow to ensure that the correct citation is entered on the investigation?



Description of "Were records-of-duty status prepared?" Flowchart

Keep this in Mind When Citing a Carrier for Failure to Require a Driver to Prepare a RODS

When citing failure to prepare RODS, the number of RODS checked for preparation is the number of days for which the driver remained an employee of the motor carrier and a RODS, or time record, was required.

When You Are Unable to Determine the Driver for a Particular Shipment

Occasionally, you may be unable, by any means, to determine the driver who moved a particular shipment. When the motor carrier failed to maintain records of duty status (395.8(k)(1)), and you cannot identify the driver on a specific movement through the use of motor carrier, shipper or State records, you can still document the violation for enforcement by listing the names of all drivers employed by the carrier on the date of the shipment.

When a Carrier Fails to Have Complete Time Records for 100 Air-Mile Radius Drivers

Every single condition of the 100 air-mile radius exemption in Section 395.1(e) must be fulfilled in order for a driver to be exempt from preparing a RODS. A failure to fulfill any condition of the exemption results in the application of the requirement to prepare a RODS.

Intermittent/Casual Driver's Statement of Previous 7- days

The statement required for intermittent/casual drivers in 49 CFR 395.8(j)(2) is not considered a RODS and should not be included as numbers checked for HOS violations.

Part 395 - Hour-of-Service (HOS) Maximum Driving Time

Determining the Number of RODS to Check for 30 minute rest, 10/11 and 14/15-hour Violations

The number checked is the number of RODS reviewed based on the sample chart. (See record selection table.)

Definition of Off-Duty

On-duty time does not include any time resting in a parked vehicle or up to 2 hours riding in the passenger seat of a property-carrying CMV moving on the highway immediately before or after a period of at least 8 consecutive hours in the sleeper berth. All other sections of the definition of on-duty time remain unchanged.

Compliance with and Enforcement of the On-Duty Time Provision

The time spent resting in a parked vehicle or up to 2 hours riding in a passenger seat of a property-carrying CMV moving on the highway, immediately before or after a period of at least 8 consecutive hours in the sleeper berth is considered off-duty time. The 2 hours riding in the passenger seat plus the 8 consecutive hours in the sleeper berth is equivalent to the required 10 consecutive hours off duty time. The sleeper berth provision allows drivers to split their 10-hour off-duty period in different ways (e.g., 7/3, 8/2, 7.5/2.5), provided one off-duty period (whether in or out of the sleeper berth) is at least 2 hours long, and the other involves at least 7 consecutive hours spent in the sleeper berth. The periods must add up to 10 hours, and when used together, neither time period counts against the maximum 14-hour driving window.

The key elements to consider relating to the new on-duty time provision are as follows:

1. The “at least 2 hours” riding in a passenger seat of a property-carrying CMV in conjunction with at least 7 hours in the sleeper berth is considered off-duty time if both periods when used together add up to 10 hours. If the full 2 hours are utilized, when added to the 8 hours in the sleeper berth, it will constitute the full 10-hour off-duty requirement.

   An 8-hour sleeper-berth period by itself is not excluded from the 14-hour driving window. If fewer than 2 hours are used riding in a passenger seat of a property-carrying CMV and the full 10-hour off duty requirement is not met, the time spent riding in the passenger seat and the time spent in the sleeper-berth will be included in the calculation of the 14-hour period.

   - **Example:** If a driver spends 8 hours in the sleeper berth and 1 hour riding in the passenger seat, the 1 hour riding in the passenger seat and the 8 hours spent in the sleeper-berth would be included in the 14-hour period because he or she has not met the 10-hour break requirement.

2. If a driver rides more than 2 hours in the passenger seat of a property-carrying CMV, any time in excess of those 2 hours is considered on-duty not driving time, and should be included when determining compliance with the 14-hour on-duty period requirements, unless the time spent in excess of 2 hours in the passenger seat of a property- carrying CMV is combined with at least 7 hours spent in the sleeper-berth

3. The 2-hour time period riding in a passenger seat may be split into any combination of time before and after the 8-hour sleeper berth break.

   - **Example:** If a driver rides in the passenger seat for 1 hour before and 1 hour after the 8-hour sleeper berth break, or 30 minutes before and 1 ½ hours after, the entire 2-hour period is considered off-duty time.

4. A driver is permitted to accumulate the required 8 or 10 hours off duty while resting in a parked vehicle.

Inspectors and Investigators should continue to use existing citations for violations of 49 CFR part 395. For example, when it can be proven that this provision has been used to extend the 14-hour rule period, the carrier or driver should be cited for a violation of 49 CFR 395.3(a)(2) – Requiring or permitting a property-carrying CMV driver to drive after the end of the 14th hour after coming on duty.

Calculating the 14-hour Rule Following Two Qualifying Sleeper Berth Periods Totaling 10 Hours

The 14-hours rule is calculated by counting the time from the end of the prior qualifying sleeper berth period to the beginning of a subsequent qualifying sleeper berth period. Stated another way, the 14-hour rule is calculated by counting the time on each side of the first qualifying sleeper berth period. When using the sleeper berth provision, the order of the qualifying breals does not matter – the break of "at least 2 hours" can fall before or after the sleeper berth period of "at least" :7 hours.

Driver Combining Sleeper Berth and Off-Duty Time

If a driver, or a member of a driving team, has at least two qualifying sleeper berth periods totaling at least 10 hours immediately prior to taking 10 or more consecutive hours off-duty, the driver may combine the last sleeper berth period with the 10 consecutive hours off-duty period.

The driver may combine any combination of off duty time at least two hours riding in the passenger seat with at least 7 hours sleeper berth time to obtain the 10 or more consecutive hours off duty.

The time spent resting in a parked vehicle or at least 2 hours riding in a passenger seat of a property-carrying CMV moving on the highway, immediately before or after a period of at least 8 consecutive hours in the sleeper berth is considered off-duty time. The 2 hours riding in the passenger seat plus the 8 consecutive hours in the sleeper berth is equivalent to the required 10 consecutive hours off duty time. The key elements to consider relating to the on-duty time provision are as follows:

1. The at least 2 hours" riding in a passenger seat of a property-carrying CMV in conjunction with at 7 hours hours in the sleeper berth is off-duty time. If the full 2 hours are utilized, when added to the 8 hours in the sleeper, it will constitute the full 10-hour off-duty requirement. If fewer than 2 hours are used riding in a passenger seat of a property-carrying CMV and the full 10-hour off duty requirement is not met, the time spent riding in the passenger seat and the time spent in the sleeper-berth will be included in the calculation of the 14-hour period.

1.5 **Example**: If a driver spends 8 hours in the sleeper berth and 1 hour riding in the passenger seat, the 1 hour riding in the passenger seat and the 8 hours spent in the sleeper-berth will be included in the 14-hour period, because he or she has not met the 10-hour break requirement, unless the time spent in excess of the 2 hours in the passenger seat of a property- carrying CMV is combined with at least 7 hours spent in the sleeper-berth.

2. If a driver rides more than 2 hours in the passenger seat of a property-carrying CMV, any time in excess of those 2 hours is considered on-duty not driving time, and should be included when determining compliance with the 14-hour on-duty period requirements.

3. The 2-hour time period riding in a passenger seat may be split into any combination of time before and after the 8-hour sleeper berth break. For example, if a driver rides in the passenger seat for 1 hour before and 1 hour after the 8-hour sleeper berth break, or 30 minutes before and 1 1/2 hours after, the entire 2-hour period is considered off-duty time.

4. A driver is permitted to accumulate the required 8 or 10 hours off duty while resting in a parked vehicle.

Driving During the Change from Standard Time to Daylight Savings Time or Vice Versus

During the change from Standard Time to Daylight Savings Time or vice versus, the driver records his/her time "as is" and enters an explanation in the Remarks section of RODS. It doesn't matter exactly how the driver logs his/her time (as Standard Time or Daylight Savings Time) as long as it is clear how many hours are actually involved on each line of the RODS grid. He/she **DOES NOT** get to drive or work an hour more (or less).

Recording Violations that Span Consecutive Days

The number checked refers to the total number of RODS checked for the sample.

The number of violations discovered generally refers to the total number of RODS showing a violation. For example, a driver who drives continuously from 6:00 p.m. on Day 1 to 6:00 a.m. on Day 2 would be cited for one 11-hour violation occurring on Day 2. [Note: In rare circumstances, two 11-hour violations may occur on a single RODS where the first violation occurs early in the RODS period and the driver then promptly takes at least 10 hours off duty and then drives another 11 hours during the same RODS. In the event such a record is discovered, contact your DA.]

Violations of *separate* HOS regulations within a single 24-hour RODS period should each be counted. For example, a driver might be cited for an 11-hour, a 14-hour, and a 60-hour violation all within the same 24-hour RODS period if the driver drove 15 hours toward the end of a 7-day period. Driving into the next 24-hour RODS period when the driver is already over hours for multiple purposes will trigger additional violations during the subsequent RODS period for each separate regulation.

Typically, no more than one violation of any *individual* HOS regulation (e.g., 11-hour rule) should be cited within one 24-hour RODS period.

The following examples illustrate the operation of this guidance with respect to enforcing the 11-hour rule. Assume all drivers begin driving with zero hours, i.e., immediately after 10 consecutive hours off duty, and in all examples the motor carrier maintains RODS from Midnight to Midnight:

- **Example 1:** A driver who drives continuously from 6:00 p.m. on Day 1 to 6:00 a.m. on Day 2 would be cited for 1 violation occurring on Day 2.
- **Example 2:** A driver who drives continuously from Noon on Day 1 until 1:00 a.m. on Day 2 would be cited for 2 violations. The first violation occurs at 11:01 p.m. on Day 1. The second occurs at 12:01 a.m. on Day 2 when the driver enters a new RODS period.
- **Example 3:** Three drivers driving equal amounts of time may accrue a different number of violations. If Driver A begins driving at 9:00 a.m. and continues to drive for 13 hours, Driver A would be cited with 1 violation. If Driver B begins driving at Noon and continues to drive for 13 hours, until 1:00 a.m. on Day 2, then Driver B would be cited for 2 violations, one on each RODS. If Driver C begins driving at 4:00 p.m. and continues driving for 13 hours, Driver C would only be cited with 1 violation, on Day 2.

Counting Off-Duty Days as a Day Checked

You should include those RODS that show the driver was off-duty for the entire 24-hour period. Multiple days designated as off-duty, on a single ROD, are also counted as multiple RODS checked for excessive driving.

34-Hour Restart

A driver of a property carrying vehicle may restart the 60/70 hour period with an off-duty period of 34 or more consecutive hours off duty. The driver can use the 34-hour restart at any time. He/she does not have to be compliant with the 60/70-hour rule to use the restart provision. This is because the 34-hour restart wipes clean all past time regardless of whether such time constituted a violation or not. While the time is wiped clean, the violation is not undone. The driver and the motor carrier would still be subject to appropriate

enforcement. RODS with a value of zero (0) hours because it is either missing or false, cannot be considered when calculating the 34-hour restart.

Minimum Number of RODS to Check for the 60-hour/7-day and 70-hour/8-day Rule

When reviewing RODS for 60/70-hour violations, always review each day within the selected period for compliance. If a motor carrier is missing consecutive days at either the beginning or at the end of a 30-day sample period, you should exclude the number of days of missing RODS in order to determine the number of the 7/8-day periods checked. The HOS worksheet in CAPRI should not be used when there are missing consecutive days at either the beginning or at the end of a 30-day sample period.

For example, if while calculating the 70-hour/8-day rule, the first 3 days of the 30-day sample size are missing, you must exclude the first 3 days from the calculation of the 1st set of the 8-day period. You would begin calculating the first 8-day period as of the 4th day sampled. Excluding the first 3 days will give you a default sample size of 20 8-day periods checked. Any violations discovered is based on the actual number of the 8-day periods checked.

If you discover any missing or false RODS within the middle of a 30-day sampled period, then a value of zero (0) hours will be assigned for the day(s) of a missing or false RODS (if the actual time worked is unknown). You may not exclude the day of a missing or false RODS from the calculation of the 7/8-day period when the day falls in the middle of the sampled period. A false RODS cannot be subtracted from any 7/8-day period, even if it falls in the beginning or the end of sample period.

If the minimum number of hours the driver worked is determined during a day of a missing or false RODS, then those hours can be used when calculating the 60/70-hr rule. If the hours worked is unknown on a day of a false RODS, a value of zero (0) hours must be used when performing the 60/70-hr calculations. Additionally, the day of a missing or false RODS with an assigned value of zero (0) hours, will not be considered when calculating a 34-hour restart. Not excluding the RODS within the middle of a 30-day sampled period when calculating the 60/70-hr rule, will meet the 60/70-hr sample size for numbers checked.

Part 395 - False RODS

Detecting False RODS.

When motor carriers have systems in place to monitor drivers records of duty status for driving violations and drivers want to conceal hours of service violations, they will falsify their RODS. Although carriers may have computer systems or outside sources checking for driving limitation violations, many times they fail to have systems in place to verify RODS for accuracy. Basically, there are two reasons drivers falsify their records of duty status. One, the driver does not bother completing the task of filling out his/her RODS until they absolutely have to. By that time, they either do not remember what they did or do not take care to complete it correctly. Two, the driver cannot show what they actually did because they have run out of hours. Drivers who have "RODS not current" violations on the carrier profile will have falsification problems. To ensure a thorough review of paper RODS, the SI should check for each of the four types of RODS falsification.

1. ***Dropped Trips/Stops***: During the Operations Interview, discuss not only the type of freight and geographical areas covered but how the carrier gets its freight. Generally, a well-established carrier will have outbound shippers and it will service these accounts at all costs. If a carrier has dedicated accounts that load out of its area, most of the time it will use brokers to get the equipment back within the vicinity to provide outbound service once again to their shipper. In many instances, these outbound accounts may have backhauls. When this scheduling occurs, the industry will refer to it as "turn-around freight". This is prime opportunity for a driver to leave off complete turns when the outbound frequency requires a driver to complete too many turns in an eight-day period. Also, this type of operation is an incentive for the driver to return before taking the required 10-hour break because he/she wants to get back to spend more time at home.

2. ***Omit multiple stops***: Always review the Bill of Lading and payroll for additional stop information, especially when hauling refrigerated commodities and grocery/department store loads. Many drivers will show only one stop to prevent showing 14-hour violations on their RODS.
3. ***Banking Hours:*** Banking hours is a common expression among drivers referring to the practice of backing up their actual departure time or extending the actual arrival time at their destination. This allows them to "save or bank hours" to show a 10-hour/8-hour break during the trip or before beginning the next dispatch when in fact the driver did not take the required break.
4. ***Short Miles:*** Short miles or "Short miling" is also a term driver's use referring to showing long distances in much less driving time than it actually takes to make the trip. Most of the time, the "shortened" drive time will fall between two specific locations that may not be very obvious. For example, a driver may show driving from Memphis, TN to Texarkana, TX in 5 hours then driving 4 hours between Texarkana, TX and Lubbock, TX for a total of 9 hours driving for the day. When the distances are run in routing software, the driving time between Memphis and Texarkana is consistent but it actually takes over 8 hours to drive from Texarkana, TX to Lubbock, TX, making the total drive time for the day over 13 hours. The best enforcement counts are the ones where the actual distance traveled, when divided by the drive time shown by the driver, results in a mph average that is extreme for the maximum posted limits in all states traveled during that period. The mileage the driver is paid for the trip can help substantiate the use of routing software. If the mile per hour exceeds the posted speed limits in all states traveled but is not excessive, often an interview with the driver is needed. Ask the driver if he omitted drive time from his record of duty status or did he actually speed to cover the distance in the time frame recorded on the RODS. Either way, the driver will usually admit the effort to circumvent regulations.
5. ***Ghost Drivers:*** This is the practice of showing a co-driver who does not exist. Always verify the co-driver's payroll and RODS.

Reviewing Supporting Documents

Identifying all of the required supporting documents that should be maintained during the RODS sampled period, will determine the number of supporting documents required to be checked. You must request <u>all</u> supporting documents from the motor carrier for the sampled period to maximize the number of supporting documents available to be used to verify RODS. This would include all documents generated during the normal course of business during the sampled period. Documents that are not date and time stamped may be used to verify RODS.

A motor carrier must retain to 8 supporting documents per driver duty day. A driver must submit supporting documents to the motor carrier within 13 days of receipt. Supporting documents required in the normal course of business are important to verify a driver's RODS, and they consist of the following five categories:

- Bills of lading, itineraries, schedules, or equivalent documents that indicate the origin and destination of each trip;
- Dispatch records, trip records, or equivalent documents;
- Expense receipts;
- Electronic mobile communication records, reflecting communications transmitted through a fleet management system; and
- Payroll records, settlement sheets, or equivalent documents that indicate payment to a driver.

If the carrier generates more than 8 supporting documents in a day then the carrier must maintain the first and last generated supporting document per day.

If a driver keeps paper RODS under 49 CFR 395.8(a)(1)(iii), toll receipts must be maintained as well. For drivers using paper RODS, the toll receipts do not count in applying the 8-document cap.

Supporting documents should contain the following elements:

- Driver name or carrier-assigned identification number, either on the document or on another document enabling the carrier to link the document to the driver, or the vehicle unit number if that number can be linked to the driver;
- Date;
- Location (including name of nearest city, town, or village); and
- Time.

However, if there are fewer than 8 documents for a driver duty day, documents lacking time qualify as supporting documents as well.

Global Positioning Systems (GPS) records that reference location pings, count as one supporting document; regardless of the number of location pings referenced in a 24 hour period. For example if a motor carrier provides GPS records for seven days and each day reflects five location pings then the GPS records count as seven supporting documents.

Cite the motor carrier for failing to maintain the required number of supporting document discovered missing in the Violation Tab/Part B . Multiple documents missing for the same day should be counted as separate violation counts for each document missing. The number checked for this violation should be recorded as the number of supporting documents required, and number of violations should be recorded as the number of required documents missing. You must explain how the numbers checked for supporting documents was determined in the the Investigation Report/Part C . In addition, provide a description of the supporting documents used during the investigation & identify who provided the supporting documents.

Types of Supporting Documents Used to Verify the Accuracy of RODS

Supporting documents are those documents generated by a motor carrier in its normal course of business or received by the driver during his/her trip that could be used to verify the accuracy of that driver's RODS. These documents may include information such as mileage, time, or date. Examples of supporting documents that might be used are: tachograph charts, payroll records, dispatch records, delivery receipts, toll receipts, bills of lading, maintenance records, fuel receipts, weight receipts, trip reports, accident reports, time clock records, security guard reports, State vehicle inspection reports, port of entry receipts, State speeding/moving citations, private patrol company reports, trucking association safety council patrol reports, worker's compensation first report of injury, [redacted], EZ Pass billing statements.

Using Routing Software to Support a False RODS

Routing Software cannot be used as stand-alone evidence. It would not stand up as evidence in court because of the hearsay rules. Consequently, the CSO and the Administrative Law Judge (ALJ) would not accept it as evidence.

However, it can be used in conjunction with other evidence to bolster your case. It could, also, be used in the obvious situation where the violation on its face is so clear that FMCSA would ask the trier of fact to take judicial notice of the fact that the RODS is false. For example, a driver logged a trip from New York to Florida as 400 miles and six hours. In this situation, FMCSA would use a map or routing software printouts to show the trier of fact that the miles and time logged are so incorrect that the decision-maker must take judicial notice of the fact that the RODS is false.

Time Records Counted as RODS Checked for Falsification

Time records that are checked for inaccuracy are not counted as RODS. An inaccurate time record is considered to be a failure to prepare a RODS not a false RODS.

Counting the Number of RODS Checked for Falsification

The number of RODS checked for falsification is the number of RODS checked against supporting documentation. Any day for which a document or documents exist, that verifies the accuracy or inaccuracy of a RODS, should be counted as a day checked for falsification. This includes those days verified as being off duty. You may have to check additional records to reach your sample size. If you are unable to reach your sample size, you will need to document your reason in the Investigation Report/Part C.

Example: If you check 3 months, or 90 days of RODS, but only have supporting documents to compare for accuracy against sixty-eight days, you would have to check an additional twenty-two RODS that you could verify for accuracy with supporting documents to reach your sample size. If you discover seven false RODS, the proper cite would be seven found and ninety records checked.

You must count RODS within your sample size that reflect an off-duty day as a day checked for falsification if there is no supporting document that shows the driver was actually working on that day. In addition, on days when supporting documents may not be required because the RODS show on-duty/driving or on-duty/not driving, and the RODS and supporting documents for the prior and subsequent days appear accurate, you would count the on-duty/driving or on-duty/not driving RODS as a day checked for falsification.

It is important to remember, that in this case, the number discovered and number checked refer to days. If while checking a single RODS, multiple instances of falsification are found, the number discovered/number checked would still be 1 of 1. Additionally, if multiple documents show the same instance of falsification, for a given RODS, the number discovered/number checked is still 1 of 1.

What to Document After Determining a RODS is False

Each false RODS cited on an investigation report should be recorded in your handwritten or laptop notes. The name of the driver, date, and the supporting document(s) used to detect falsification should be noted for each citation of false RODS.

Differences in False RODS Violations

- A **critical** false RODS is false by one hour or more, or fifty miles or more.
- A **non-critical** false RODS is false by less than one hour or fifty miles.

False RODS Used to Calculate a Violation of a Critical Violation

Only critical false RODS violations are counted by CAPRI in calculating the motor carrier's safety rating. However, you should still enter both critical false and non-critical false RODS violations in AIM.

Using Global Positioning System (GPS) Records to Check for RODS Falsification

If the company uses GPS and other advanced information technologies, the Investigator has the authority to request these records and use them during the normal course of an investigation. The Agency considers GPS records as supporting documents, as they record the time, date and location of the vehicle and driver.

If a motor carrier maintains GPS records, and an Investigator requests those records, but the motor carrier refuses to allow the Investigator access, such action of the motor carrier should be considered denial of access. The Investigator must then follow the Agency’s Denial of Access procedures.

Part 395- Phase II of the Implementation of Electronic Logging Devices Rule Supporting Documents Requirements for Motor Carriers with and without a qualifying ELD

On December 16, 2015, the Federal Motor Carriers Safety Administration (FMCSA) published the ELD rule which established :

- Requirements for the mandatory use of ELDSs by certain drivers required to prepare Rods.

- Minimum performance and design standards for ELDs that include required certification and registration with the Federal Motor Carrier Safety Administration (FMCSA).
- Requirements for HOS supporting documents.
- Measures to address concerns about harassment resulting from the mandatory use of ELDs.

The ELD rule limits the number of supporting documents that a motor carrier must retain to 8 documents per driver duty day. A driver must submit supporting documents to the motor carrier within 13 days of receipt. Supporting documents required in the normal course of business are important to verify a driver's RODS, and they consist of the following categories:

- Bills of lading, itineraries, schedules, or equivalent documents that indicate the origin and destination of each trip;
- Dispatch records, trip records, or equivalent documents;
- Expense receipts;
- Electronic mobile communication records, reflecting communications transmitted through a fleet management system; and
- Payroll records, settlement sheets, or equivalent documents that indicate payment to a driver.

If a driver keeps paper RODS under 49 CFR 395.8(a)(1)(iii), toll receipts must be maintained as well. For drivers using paper RODS, the toll receipts do not count in applying the 8-document cap.

Supporting documents must be retained for a minimum of 6 months, and they should contain the following elements:

- Driver name or carrier-assigned identification number, either on the document or on another document enabling the carrerto link the document to the driver, or the vehicle unit number if that number can be linked to the driver;
- Date;
- Location (including name of nearest city, town, or village; and
- Time.

However, if there are fewer than 8 documents for a driver duty day, documents lacking the time element qualify as supporting documents as well.

Note: Under 49 CFR § 395.11(d)(2), each electronic mobile communication record applicable to an individual driver's 24-hour period shall be counted as a single document.

***See Phase II of the Implementation of Electronic Logging Devices Rule for complete policy

FAQs associated with the supplemental policy

Requesting EMC/T System Information. Prior to requesting information from the carrier's asset tracking system, the Investigator should request a demonstration of the technology concentrating on how operations personnel use the tracking system information. This should include the use of landmark customizations, ping on demand, etc. Verify accuracy of the system location calculations including time and date stamp. A statement or oral interview may be necessary if the system does not support or contain a location validity code.

For a complete list of questions to help the Investigator become familiar with the motor carrier's asset tracking system see ***Questions Related to the use of EMC/T Systems

Request System Documentation*:* The vendor/carrier contract generally shows what model and how many devices the carrier purchased. Billing statements will verify how many devices are in service for the time period selected by listing service charges. It may not contain specific information but it will give a general

idea of how many devices the carrier is paying for when they may tell a different story. Always review the vendor's website. Many times valuable information including accuracy statements of the location calculations and reporting capabilities will be discovered.

Request Location History Reports. A location history report or a bread crumb trail is a chronological listing of locations including time, date and other information depending on the system. When requesting location history reports, it is important to know the system's parameter settings. System parameters may be set to record location every hour or as often as every minute. Depending on how sensitive the system is, it could record location multiple times in a minute. Some reports can be 50-500 pages for a 30-day period for one vehicle/driver depending on the frequency of the location calculations. Each system may offer different reports depending on the carrier operation so request one report for one driver and verify it contains the information needed to expedite the investigation. For ease of use, specify the report should be run with the nearest town as a reference point and not the nearest large city. Review the report with the carrier or vendor to verify the origin and meaning of the content. Once it is determined the report contains the correct information, the remaining location history may be requested for the balance of the drivers sampled. It is recommended to have the carrier electronically supply the report content since printing may be far too excessive. The best practice is to have the carrier email the reports and save the report along with the email to a specified folder.

Start/Stop Report – If the system calculates location every one to five minutes, a location history report may be too large and cumbersome to use for the investigation. Many tracking systems offer a Start/Stop Report. This report is actually shorter and easier to follow than a breadcrumb trail. Verify content including the flow of information with the motor carrier or vendor. Once a discrepancy is discovered during a specified time frame, the bread crumb trail for that time period may be requested to focus on the movement in question.

Verifying Accuracy using Asset Tracking Information. Paper RODS - It is not necessary to compare every location on a driver's record of duty status to the locations on the tracking report. In fact, trying to match every duty status change to the tracking report is difficult and time consuming. To expedite the process, first - review the RODS for hours of service limitation violations. (10/11, 14/15, 60/70, etc.). [redacted] Be sure to verify the time zone in which the driver prepares the RODS as well as the time zone of the system report. [redacted] Remember, using tracking information will show all movement. Discuss the carrier's policy on personal conveyance. Short distances during a driver's off duty periods may require more investigation to prove the driver is laden and in route or under dispatch.

Alternative Methods of Recording Driver's HOS

Starting **February 16, 2016 until December 18, 2017** motor carriers and drivers may use the following devices to record driver's HOS:

- Automatic On-Board Recording Device (AOBRD)
- Devices Installed with Logging Software and Applications
- Electronic Logging Device (ELD)

Automatic On-Board Recording Device (AOBRD)

AOBRD

What is an AOBRD?

As defined in 49 CFR 395.2, an automatic on-board recording device (AOBRD) is an electric, electronic, electromechanical, or mechanical device capable of recording a driver's duty status information accurately and automatically as required by 49 CFR 395.15. The device must be integrally synchronized with specific operations of the CMV in which it is installed. At a minimum, the device must record all of the following:

- Engine use;
- Speed;
- Miles driven; and,
- Date and time of day

The AOBRD device itself can be in the form of, but not limited to, a laptop, cell phone, and a tablet, so long as the device meets the definition of 49 CFR 395.2

AOBRD Procedures to Follow During Investigation of Part 395

If you are assigned an Onsite Comprehensive Investigation or an Onsite Focused Investigation that includes the HOS Compliance BASIC and the motor carrier operates with an AOBRD, your investigation of Part 395 should begin with a demonstration of the carriers system. Review the system's capabilities including driver system rights, drivers' editing capabilities, as well as the carrier's system for monitoring driver's hours and ensuring accuracy of the electronic RODS. Pay particular attention to the system settings and parameters. Vendors offer carriers many options to customize systems to their operations and many of these options give the drivers an opportunity to manipulate their hours of service or disqualify the device from being a compliant AOBRD. Below is a hyperlink to questions that will aid an Investigator in becoming familiar with the motor carriers AOBRD system

What are some questions I can ask the motor carrier regarding their AOBRD system?

Request System Documentation

The following is a list of documents and other information that should be reviewed when becoming familiar with the motor carrier's system:

- Equipment Contract & Invoices- The contracts will illustrate the type and number of devices purchased by the motor carrier. Invoices will support the information displayed on the contract such as the monthly service fees.
- Manufacturer's Certification of Compliance as required by 395.15(i)1.
- Driver On-Board Information Card as required by 395.15(g)(1) - The information card should provide steps for obtaining the drivers hours during a roadside inspection.
- Software Manual- this manual may provide information about the set-up parameters for the system addressing data storage, when driving time starts being recorded (miles driven and/or time in drive gears), availability of communication options (e.g., texting, email, voice), vehicle position check intervals (number of pings per hour or set time interval), reporting capabilities, and other system features. It will also provide installation recommendations. Device installation is important as it will give the Investigator an indication how easy the system may be tampered with by drivers.
- Vendor's website-may provide additional information regarding the systems capabilities.

Requesting System Reports Although not all systems provide the following reports, the reporting capabilities of the carrier's system should be reviewed during the system demonstration.

Login Lists. Request the system's login list(s) for all drivers used in the past six months (active, inactive, and training) and carrier officials authorized to manage HOS compliance. Verify the list(s)

against the driver list, payroll records, and random drug testing lists. Comparing this list may reveal the practice of **Ghost drivers** (see example 1 for a description). These lists may also reveal another tampering practice called **Switching Driver Logins (**see example 2 for a description).

Example 1: A company has 10 drivers but has 12 driver logins. The over-hours drivers use the two other logins so they can keep driving.

Example 2: Driver A wants to continue working however he/she is out of hours. Driver B is on extended leave for vacation or medical reasons. Driver A uses Driver B's driver login to use Driver B's available hours to continue to drive.

Vehicle list (containing the assigned device with identifying information). Until a carrier assigns the device to a vehicle in the support system, the device may be identified with a serial number or IP address. An Investigator may have to require the carrier to identify which device is in what vehicle in this situation. Information associated with unidentified driver, sensor failures, etc., are reported by vehicle/device. Compare the vehicle list with the vehicle maintenance list to verify what vehicles have a compliant device installed.

Unidentified driver. Request reports showing when a vehicle is being operated without a driver logged-in. The name for this report varies by vendor, the following is a list of names the motor carrier may use: Unassigned Miles, Miles without Hours, Unauthorized Driving and Unknown Driver. This practice occurs when a driver doesn't properly log onto the system and operates the vehicle. Since the system is integrally connected to the vehicle's Electronic Control Module (ECM), the vehicle operation information will still be recorded in the system. The computer does not know who the driver is unless the driver is properly logged-in. Therefore, a separate report is generally accessible from the management system. The problem is the reports are sometimes hard to find, especially if the carrier officials have not been using all of the available reporting features.

Note: This tampering is mostly the driver manipulating the system to avoid HOS violations and the carrier fails to monitor the system to ensure unidentified driving time is assigned to the correct driver's RODS. However, a carrier may have the option to assign the unidentified driver miles as a result of maintenance related move, yard move, or other category. Reports may be run to verify that a carrier does not hide driving time from the driver's RODS or unidentified driving reports.

Reports for Off-Duty Driving time. *Not all systems have this report. This report may give an indication of drivers who abuse the personal conveyance option.

Edits Reports. Most systems are designed to allow carrier officials and/or drivers to edit the RODS for the purpose of adding unassigned driving time or missed duty status changes. However, this feature has been abused by companies who edit the RODS in order to cover HOS violations, thus allowing its drivers to continue driving in violation. The carrier may also assign the unassigned driving time to a fictitious driver. Review the edits report to verify edits are being made for justified reasons, or to identify the falsification concealing HOS violations. This tampering is most often a sign of management manipulating the system.

If a driver has edit rights, the most common falsification occurs when the driver edits on duty not driving time to off duty or sleeper berth time. By doing this, the driver can obtain more driving hours before hitting the 60/70 hour limitation.

Sensor Failure Reports:

There are several possible sensor failures that can occur. The GPS may not work due to a vehicle's location (e.g., parked besides a tall building or inside a building/tunnel). This would cause the display/report to not show the proper location. The system could report a discrepancy in ECM odometer readings which are used to calculate daily mileage. It is also possible that other engine problems may cause a malfunction code. Multiple sensor failures are indicative of system problems. These could be the result of tampering by the driver or lack of oversight by the carrier to repair the

AOBRD. For example, no JBUS notification or numerous jumps in odometer readings might indicate someone has intentionally unplugged the device from the vehicle diagnostic port (ECM). Continuous sensor failures that occur over several days might mean that the system is malfunctioning and are the result of the carrier's lack of servicing the AOBRD and/or the connectors on the vehicle diagnostic port (ECM). In this case, the carrier should be repairing the devices in a timely manner.

Reviewing AOBRD RODS Once the driver selection has been determined, the following is a list of documents that should be requested for each driver.

- Hours of Service Violation Summary
- Records of Duty Status
- Supporting documents

Review HOS violation summaries for each driver selected and compare the system violations identified to the violations discovered by the Investigator. This cross-check ensures the AOBRD system is calculating and capturing the HOS violations correctly. A compliant AOBRD system is not required to print graph grid logs, but most systems do provide a graph RODS.

Detecting False AOBRD RODS.

Once the RODS have been reviewed for 10/11, 14/15 and 60/70 hour limitation violations, the RODS should be reviewed for accuracy using the following methods.

1. Verify each off duty/rest period: Make sure the location the driver comes on duty or driving is the same location as the off duty/rest period. If these locations are different and the driver does not have a team driver, the record of duty status may be false. Check for unassigned miles during this time and compare with Vehicle Tracking report to verify movement during this time.. For guidance on using EMC/T technology see *Requesting EMC/T System Information.*
2. Focus on abuse of system parameters which may allow the driver to drive undetected. For example, [redacted] has a skip option which is a parameter that allows the driver to reject their duty status change to the driving status. The carrier can set the drive default parameter from .01 mile to 100 miles before the driver status will automatically change the driver status to driving, if the motor carrier inactivates the skip option. For example, if the motor carrier sets the driver default to 10 miles and activates the skip option, the driver will be alerted at 10 miles with a message giving the driver the option to change their duty status to driving or skip. If the driver selects skip the device will remain in the last selected duty status for another 10 miles until the driver selects the drive duty status. Editing is also abused and not captured in some systems, specifically [redacted]. In this instance the carrier has the option of granting the driver edit rights.
3. Detect patterns of device disconnection—location jumps on the AOBRD will match location jumps on the GPS report if the driver is disconnecting the power source to the device. If the driver disconnects the device from the ECM, the device will not receive the data to activate the drive status and the GPS will show this movement where the RODS will not. [redacted] has implemented an odometer jump report to help detect this type of driver tampering. The Investigator should interview the carrier and the driver to determine tampering with the system.

Logging Software Programs

Logging software programs assist a CMV driver in manually inputting and storing RODS information electronically on laptop computers, tablets, and smartphones. Logging software programs are not integrally synchronized with the CMV engine. The electronically-generated display and output must meet the requirements in 49 CFR § 395.8, and be treated as an alternative to paper logs.

Electronic Logging Device (ELD)

An ELD is a device or technology that automatically records a driver's driving time, facilitates the accurate recording of the driver's HOS, and meets the technical specifications of the ELD rule. An ELD must be integrally synchronized with the engine of the commercial motor vehicle (CMV). Certified ELDs, meeting the technical specifications in the ELD rule, will be listed at www.fmcsa.dot.gov/elds.

Reviewing ELD RODS

When checking HOS compliance for drivers and motor carrriers using ELDs, an investigator and auditor should:

1. Request and verify a vehicle list that identifies specific vehicles with certified ELDs installed in them.
2. Validate the registration number(s) of certified ELDs on FMCSA's ELD registration website, www.fmcsa.dot.gov/elds.
3. Review the ELD's information provided as the driver's official RODS showing the 24 hours duty status grid with each change of duty status, and check it with the ELD detailed data for 10/11, 14/15 and 60/70 hour limitations, along with 30-minute break violations in 49 CFR 395.3 and 395.5. (See ELD printout/display example in Attachment A.)
4. Check for any unassigned driving miles indicated by an unidentified driver indication in the ELD header information and ask the driver and motor carrier for an explanation, if it is not provided in notes.
5. Review and verify edits with their annotations on the ELD header information and ELD detailed data to check that they are being made for justified reasons.
6. Check for system malfunctions or data diagnostics noted in the ELD detailed data to determine impact on HOS, but be aware that not all data diagnostics or malfunctions pertain to HOS.

Note: If a malfunction impacts HOS, then the driver must create paper logs of RODS for the current 24-hour period and previous 7 days – unless the driver already has the records or retrieves them from the ELD.

The ELD technical specifications require the ELD to record each instance when an ELD malfunctions. If an ELD malfunction occurs, the malfunction information should be visible on the ELD display screen or in the transferred ELD data. If the ELD malfunction information is not visible on the ELD display screen or in the transferred ELD data, or the motor carrier has not been granted a malfunction extension from FMCSA, the driver is not permitted to use or continue to use paper logs to record their hours-of-service data.

Investigators should obtain all requested reports in electronic form during investigations when possible.

Detecting False ELD RODS

When checking for false RODS by drivers using ELDs under the requirements of 49 CFR § 395.8, the investigator and auditor should:

1. Review the list of login and logout activity and RODS detailed log data showing unassigned driving or unidentified driver information. This will help to determine if the driver has used another driver's login information to get additional available hours. Verify if drivers have manipulated the system by not logging in properly to avoid HOS violations.
2. Review the duty status changes to verify that the location where a driver comes on duty or began driving is the same location where the driver was off duty or in the sleeper berth. If these locations are different and the driver does not have a team driver, the RODS may be false.
3. Verify the accuracy of all breaks to ensure that all non-driving periods begin and end in the same location. Compare beginning and ending odometer values to identify movement during a non-driving duty status.

4. Check for off-duty/personal conveyance driving activity and ensure that it adheres to the guidance in 49 CFR § 395.8. Beginning and ending odometer values may identify excessive distance.
5. Review event annotations, comments, and driver's location description reports to verify edits with his or her annotations and check that the annotations are being made for justified reasons, or to identify the falsification concealing HOS violations. Check the original ELD records, since drivers may edit, enter missing information, and annotate the ELD records.

   Note: A falsification may occur when the driver edits on duty not driving time to off duty or sleeper berth time. By doing this, the driver can obtain more driving hours before reaching the 60/70 hour limitation.
6. Review the ELD support system settings to ensure that no other system features allow a motor carrier to customize thresholds to any other value that would be in violation of the ELD technical standard listed in section 4. *Functional Requirements*. Examples of unacceptable settings would be increases in Vehicle Motion Status, Automatic Drive Duty Status override and Mute Volume Override during the sleeper berth status. In the event questionable settings are discovered, the investigator should document the findings and forward the information to his or her Division Administrator for referral to the Director, Office of Carrier Driver, and Vehicle Safety Standards for further analysis.
7. Review ELD malfunctions and data diagnostic events to identify possible tampering or the carriers failure to acknowledge the malfunctions and repair the ELD as required. If it is discovered that the driver has tampered with the system to evade HOS compliance or conceal hours, cite 49 CFR Part 395.8(e)(2) violation. Ongoing malfunctions due to poor JBus or Electronic Control Module (ECM) connectivity, system lock up, etc., that are not repaired or restored as required may have an effect on drivers' RODS. In such instances HOS violations may be present and the carrier should be cited with the appropriate 49 CFR §§ 395.3, 395.5, and/or 395.8 violation. Carriers lack of response to ongoing malfunctions will inhibit their ability to effectively monitor HOS compliance and may lead to future ELD violations. Investigators should note ongoing malfunctions and the carrier's absence of timely repairs in the 49 CFR Part 395 Process Breakdown to make the carrier aware of the ramifications of such practices.
8. Compare any other available supporting documents and reports to the RODS to verify that they are accurate, especially when a driver may indicate that he/she is off duty when actually on duty but not driving. (See Attachment C: "Retention of Supporting Documents and the Use of EMC/T in Assessing Motor Carriers' and CMV Drivers' Compliance with the HOS" Policy (MC-ECE-0001-10).)

Fleet Management Systems (FMS)

FMS are systems designed to handle a varied range of multiple functions for the management of a company's vehicle fleet, such as vehicle maintenance, vehicle telematics (communications, routing, tracking, remote diagnostics, etc.), dispatch management, records management, driver performance management, speed management, fuel management, and safety and security management. An FMS may include AOBRD or ELD functionality that would be used to comply with the ELD rule.

Personal Conveyance and Off-Duty Driving:

Some system vendors have created a non-recognized duty status titled "Off- Duty Driving" (this duty status is not found in the safety regulations). One vendor, [redacted] has a specific report to identify the drivers that have used "Off- Duty Driving." This duty status was created in order to record driving time while allegedly using the vehicle as a personal conveyance. The Investigator needs to determine when the personal conveyance actually applies during these identified periods.

ELD Data Usage

The Moving Ahead for Progress in the 21st Century Act (P.L. 112-141) limits the way FMCSA may use ELD data. Specifically, the statute provides that FMCSA must "institute appropriate measures to ensure any information collected by electronic logging devices is used by enforcement personnel only for the purpose of determining compliance with hours of service requirements" (49 U.S.C. 31137(e)(3)). The ELD rule distinguishes between an "ELD record," which is the RODS, recorded on an ELD, that reflects the data elements that an ELD must capture, and other data that an FMS may record, but the ELD rule does not require. Through this policy, FMCSA limits the use of ELD records, as defined in 49 CFR § 395.2, for enforcement of the HOS requirements in 49 CFR Part 395. ELD records may also be used for certain additional evidentiary purposes consistent with the Agency's longstanding enforcement capabilities, including, but not limited to proving a driver was operating in interstate commerce; identifying the driver; and establishing harassment violations, which must involve the use of ELD records (see Attachment D). Enforcement personnel may not retain ELD records unless the data is necessary for one of these purposes.

FMCSA may continue using data collected directly from the vehicle's ECM and other technology on the CMV, including FMS data (other than ELD records) collected for all other FMS functions and reports generated during the ordinary course of business. FMCSA has the authority to request these FMS records and use them during the course of an investigation to identify or prove other violations of the regulations (e.g., 49 CFR 392.2).

Part 395 - OOS Issues Under the New HOS Rules

OOS Time Required When a Driver Has Violated the 11- or 14-hour Rules in a Sleeper Berth Operation

In order to regain compliance with Part 395, sleeper berth drivers who have violated the 11- or 14-hour rule must be placed OOS for the minimum amount of time necessary to bring the driver into compliance with Section 395.3. This OOS period will be determined using the number of hours in the drivers prior qualifying sleeper berth period. (Example: If a driver had five qualifying hours in the sleeper berth and uses the sleeper berth while OOS, the OOS period would be for a five-hour period).

OOS Period When a Driver Has Exceeded 60/70 Hours in 7/8 Days

In order to regain compliance with Part 395, a driver who has exceeded 60/70 hours in 7/8 days must be placed OOS for the minimum amount of time necessary to bring the driver into compliance. Stated another way, the driver must be placed OOS until the beginning of the next 24-hour period when the driver would begin the day under the 60/70-hour limit.

1.3.14.5.8.2 Part 395-Investigative System Procedures

Once you have completed your investigation of compliance with Part 395, you should use the following guidelines to assist in the completion of Violations Tab/Part B.

Part 395 - Falsification and HOS Violations on the Same Day

Should a Carrier and/or Driver be Cited for Falsification and Exceeding One of the HOS Rules on the Same Day?

Yes, since RODS are checked for all HOS compliance, including falsification, if there are multiple HOS violations on a single RODS, the most appropriate violations must be cited (i.e. 10/15, 11/14, false, form & manner, etc.) If you discover a RODS contains false entries to conceal HOS, you would include it with the cite 395.8(e)(1) - False records of duty status.

Part 395 - Critical Regulations and Enforcement

The Following is Required for All Violations Cited Under the Same Section, if it is Determined that an Enforcement Case will be Generated for a Certain Violation

For violations that will be considered for civil penalty purposes as part of an enforcement action, **you should be able to provide information about each of these violations that are counted in a "number found" field** of the investigation report. You can record most of the information required on the number of violations found on the CAPRI worksheets. You should be able to identify the date, driver's name, and specific document(s) (e.g., fuel receipt, trip envelope, scale ticket, etc.) used to detect each of these violations.

Recording Violations of Part 395 Critical Regulations (Except Alaska)

You should record the violations as follows:

Violations of Part 395 Critical Regulations

Citation	Type	Description
395.1(o)	Critical	Requiring or permitting a short-haul property-carrying commercial motor vehicle driver to drive after having been on duty 16 consecutive hours. **Number checked: Total number of RODS checked, including off-duty days.**
395.3(a)(1)	Critical	Requiring or permitting a property-carrying commercial motor vehicle without taking an off-duty period of at least 10 consecutive hours prior to driving. **Number checked: Total number of RODS checked, including off-duty days.**
395.3(a)(2)	Critical	Requiring or permitting a property-carrying commercial motor vehicle driver to drive after the end of the 14th hour after coming on duty. **Number checked: Total number of RODS checked, including off-duty days.**
395.3(a)(3)(i)	Critical	Requiring or permitting a property-carrying commercial motor vehicle driver to drive without taking an off-duty period of at least 10 consecutive hours prior to driving. **Number checked: Total number of RODS checked, including off-duty days.**
395.3(a)(3)(ii)	Critical	Requiring or permitting a property-carrying commercial motor vehicle driver to drive since more than 8 hours have passed since the end of the driver's last off-duty, sleeper-berth , or on-duty, not driving period of at least 30 minutes. **Number checked: Total number of RODS checked, including off-duty days.**

395.3(b)(1)	Critical	Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on-duty more than 60 hours in 7 consecutive days. **Number checked: Total number of <u>seven-day periods</u> checked, not the total number of RODS checked.**
395.3(b)(2)	Critical	Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on-duty more than 70 hours in 8 consecutive days. **Number checked: Total number of <u>eight-day periods</u> checked, not the total number of RODS checked.**
395.5(a)(1)	Critical	Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours. **Number checked: Total number of RODS checked, <u>including off-duty days</u>.**
395.5(a)(2)	Critical	Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours. **Number checked: Total number of RODS checked, <u>including off-duty days</u>.**
395.5(b)(1)	Critical	Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on-duty more than 60 hours in 7 consecutive days. **Number checked: Total number of <u>seven-day periods</u> checked, not the total number of RODS checked.**
395.5(b)(2)	Critical	Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days. **Number checked: Total nNumber of <u>eight-day periods</u> checked, not the total number of RODS checked.**
395.8(a)(1)	Critical	Failing to require a driver to prepare a RODS using appropriate method. **Number checked: Total number of days an ELD or AOBRD was required.**

395.8(e)(1)	Critical	Making, or permitting a driver to make a false report regarding duty status. (This citation is for violations in which the supporting document(s) indicate the RODS are false by one hour or more, or 50 or more miles). **Note:** Enforcement action is recommended only when a 10 percent or greater frequency of falsification to conceal excess hours has been discovered. **Number checked: Number of RODS checked.**
395.8(e)(2)	Acute	Disabling, deactivating, disengaging, jamming, or otherwise blocking or degrading a signal transmission or reception; tampering with an automatic on-board recording device or ELD; or permitting or requiring another person to engage in such activity. **Number checked: Number of drivers checked.**
395.8(a)(2)(ii)	Critical	Failing to require a driver to forward, within 13 days of completion, the original of the RODS. **Number checked: Number checked is the number of days in which a RODS should have been on file. The RODS must be at least 14 days old at the time of review.**
395.8(k)(1)	Critical	Failing to preserve driver's rods for 6 months. **Number checked: Number checked is the number of days checked in which a record of duty status should have been on file.**
395.8(k)(1)	Critical	Failing to preserve driver's RODS supporting documents for 6 months. **Number checked: Total number of supporting documents that the carrier was required to maintain.**

395.11(b)	Critical	Failing to require a driver to submit supporting documents. **Number checked:**
395.11(c)	Critical	Failing to retain types of supporting documents as required by §395.11(c).

		Number checked: Total number of supporting documents that the carrier was required to maintain.
395.11(e)	Critical	Failing to retain supporting documents in a manner that permits the effective matching of the documents to the driver's record of duty status. **Number checked: Total number of supporting documents.**
395.11(f)	Critical	Altering, defacing, destroying, mutilating, or obscuring a supporting document. **Number checked: Total number of supporting documents.**
395.30(f)	Acute	Failing to retain ELD information. **Number checked: Number of ELD records required to be maintained by an ELD.**

Part 395 - Critical Regulations Alaska

Alaska Driving Violations Only

Citation	Type	Description
395.1(h)(1)(i)	Critical	Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 15 hours (driving in Alaska). **Number checked: Number of RODS checked, <u>includes off-duty days</u>.**
395.1(h)(1)(ii)	Critical	Requiring or permitting a driver to drive after having been on-duty 20 hours (driving in Alaska). **Number checked: Number of RODS checked, <u>includes off-duty days</u>.**
395.1(h)(1)(iii)	Critical	Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on-duty 20 hours (driving in Alaska). **Number checked: Number of RODS checked, <u>includes off-duty days.</u>**
395.1(h)(1)(iii)	Critical	Requiring or permitting a driver to drive after having been on-duty more than 70 hours in 7 consecutive days (driving in Alaska).

		Number checked: Number of <u>seven-day periods</u> checked, not the number of RODS.
395.1(h)(1)(iv)	Critical	Requiring or permitting a driver to drive after having been on-duty more than 80 hours in 8 consecutive days (driving in Alaska). **Number checked: Number of <u>eight-day periods</u> checked, not the total number of RODS checked.**
395.1(h)(1)(iv)	Critical	Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on-duty more than 80 hours in 8 consecutive days (driving in Alaska). **Number checked: Number of <u>eight-day periods</u> checked, not the total number of RODS checked.**
395.1(h)(2)(i)	Critical	Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 15 hours (driving in Alaska). **Number checked: Number of RODS checked, <u>includes off-duty days.</u>**
395.1(h)(2)(ii)	Critical	Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on-duty 20 hours (driving in Alaska). **Number checked: Number of RODS checked, <u>includes off-duty days.</u>**
395.1(h)(2)(iii)	Critical	Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on-duty more than 70 hours in 7 consecutive days (driving in Alaska). **Number checked: Number of <u>seven-day periods</u> checked, not the number of RODS.**
395.1(h)(2)(iv)	Critical	Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on-duty more than 80 hours in 8 consecutive days (driving in Alaska). **Number checked: Number of <u>eight-day periods</u> checked, not the total number of RODS checked.**

1.3.14.5.8.3 Part 395-Process Breakdowns/Remedies-SMC

Once you have discovered the violations relating to Part 395, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process, to improve safety compliance. The SMC is used to discover what breakdowns in the motor carrier's processes are occurring, why they are occurring, and identify remedies that will lead to a path of safety compliance. For additional information on the SMC, go to the General Guidelines for Using the Safety Management Cycle (SMC) to Help Diagnose a Breakdown in Safety during an Investigation. For investigative systems, see the Violation Tab/Part B (Recommendation/Requirements) on how to select and customize the SMP Breakdowns and Remedies.

1.3.14.5.8.4 Part 395-Enforcement Procedures

Once you have entered the violations discovered into the Violation Tab/Part B and have decided to initiate an enforcement action for the Part 395 violations, you should use the following guidelines when submitting an enforcement report for Part 395 violations.

Part 395 - Guidelines for Enforcement of Red Flag Violations

The decision to initiate enforcement action may take into consideration, but not be limited to, factors such as: whether the State has already initiated enforcement action (e.g., citation); if the violation was corrected in a timely manner; or if the violation continued or repeated.

Determining enforcement against the carrier, for violations committed by the employed driver, is a separate process from enforcement against the driver. The carrier's awareness of the violations and its responsibilities for controlling them should be considered in enforcement decisions. The decision to pursue carrier enforcement for a driver with Red Flag Violations may take into consideration, but not be limited to, awareness and knowledge and willfulness of the carrier (with respect to the driver violations). As with any carrier violations meriting enforcement, these violations are subject to an assessment of Process Breakdowns and Remedies for the associated BASIC.

Driver vs. Carrier Enforcement

The Manager should be consulted before pursuing enforcement against the driver, if either a citation had been issued roadside, or the driver is not currently employed by the carrier.

Enforcement against the carrier:

- Considered in cases where there is proof that the violation was repeated when the carrier had knowledge (or should have had knowledge) of the violation and could have prevented its recurrence.
- Should be pursued in cases where the carrier knowingly directed the driver to commit or repeat the violation.

Part 395 - Red Flag Violations

- The Red Flag Violation 395.13(d) is cited when the driver has been found operating while placed OOS. Whether it was discovered at the roadside or in the investigation, the violation should be verified with supporting documents before pursuing enforcement.
- Operating while OOS often implicates either the driver or the carrier, or both driver and carrier.
- Once the violation is verified, if there was no original enforcement on the Red Flag Violation at the roadside, you will normally issue an NOC.

Part 395 - Basic Enforcement Concepts for Part 395

Some Basic Enforcement Concepts to Keep in Mind when Preparing an Enforcement Case that Includes Part 395 Violations

- It is inappropriate to submit a count where a driver exceeded one of the HOS rules and falsified the RODS for the same day.
- Driver interviews or other documents are necessary to prove the violation exists when falsification and exceeding the HOS limits occur on the same day,
- One of the most serious violations is one in which the carrier dispatched the driver with accumulated hours already at, or very close to, the maximum hours permitted.
- Statements from dispatchers and/or drivers should be obtained. This is important when you are trying to demonstrate that the motor carrier dispatched the driver when it knew that the driver was very close to, or already in excess of, the total hours of service permitted.
- Any day on which a violation occurs may be documented for enforcement purposes. However, avoid documenting violations on consecutive calendar days when the hours driving in violation begin on one day and continue into the next. In cases where violations continue over a period of consecutive days, and you are planning enforcement, it is preferable that only the most flagrant violations are documented.

Types and Sources of Evidence to Prove Falsification

Types and sources of evidence, to prove log falsifications, are too numerous to list; however, some examples are:

- Shipping documents that contain time and date entries for loading and/or unloading time.
- Run sheets, trip reports, trip envelopes which contain instructions for pickups, documents pertaining to drop-offs, key stops, return load pickups, gravity or pump unloading, bulk or container unloading, cleaning of trailers, etc.
- Trip expense reports or vouchers, coupled with petty cash receipts for such expenses as toll receipts, repair purchases, loading or unloading help (lumpers), oversize or overweight special permits, port of entry inspection slips, etc.
- Vehicle breakdown reports.
- Terminal or checkpoint "in and out" records.
- Dispatch sheets, daily or weekly truck reports, terminal reports.
- Run availability sheets and "sign-in sheets."
- Time cards, tachographs or service recorder discs.
- Accident records and reports including workmen's compensation and cargo liability reports.
- Federal or state roadside inspection reports.
- Payroll and related records that show duty times and/or pay for work performed other than driving. Checking payroll books and records may determine very little. An interview with the payroll clerk is typically more helpful in deciphering the codes used to describe the work performed, or location of the driver’s work site.
- Telephone invoices that show the time, date, location of the caller and caller identification number. Motor carriers who use 1-800 numbers to keep in communication with their drivers, or who distribute telephone credit cards, should have these records.

- Insurance company observation reports.
- Contract road patrol reports.
- Daily fuel statements, paid by "credit card" or electronic funds transfer by a third-party vendor. Unlike the fuel receipts received by the driver, these daily fuel statements may also identify the driver, time of purchase, number of gallons purchased, unit price, truck number, location of fuel station, and odometer reading.

Some Important Points to Remember Regarding Incomplete RODS

The simplest of all Part 395 violations concerns the failure to show all required entries on the driver's RODS. Violations that are part of a continuing and flagrant disregard of the regulations (as opposed to inadvertent omissions) should be documented for enforcement when they demonstrate an apparent intent cover up other more serious violations. The following types of recurring omissions should raise additional questions:

- Frequently omitted daily mileage often occurs as part of the driver's concealment of a trip, a portion of a trip, or the mileage driven to deliver a "hot" load.
- Failing to show the name of the place the driver reported for duty is often a part of the driver's plan to conceal a portion of his/her time on-duty and/or driving.
- Failing to show the driver's location at each change of duty status is often a part of a plan to conceal work performed. For example, some drivers will show many stops in route, fail to indicate the place where they actually stopped, and then show "off duty" at this last unidentified stop. In many cases, this last-unidentified stop is where some type of work was performed, such as loading or unloading cargo.
- Failing to show the name of the place where the driver went off duty for the rest of the day is often a part of a plan to conceal actual driving time, distance traveled, or work performed other than driving.
- Failing to show the driver's locations at each change of duty status prevents you from comparing the RODS for accuracy against time- stamped supporting documents.

Part 395 - Documentation

Documents that Should Be Gathered to Initiate an Enforcement Action

You should gather the documentation to initiate an enforcement action, which establishes the following:

- The driver was subject to Part 395.
- The driver was an employee of (or controlled by) the motor carrier.
- The CMV was operated in interstate commerce at the time of the violation on a specific date.
- A specific violation of Part 395 occurred.

Some Examples of Documents that May Be Used to Prove Violations of Part 395

Examples of documents to support your discovered violations are listed below.

- Statement from motor carrier official, driver, or other person responsible for compliance with Part 395. You should take statements from the drivers, particularly when the documented violation involves falsified RODS or the failure to require drivers to prepare RODS. See *Illustration E-2*.
- Driver's time records/RODS and corresponding shipping papers/bill of lading.

- Vehicle registration showing GVWR or other documentary evidence proving that the vehicle was subject to Part 395.
- Copies of documents that support the violation.
- Photographs that support the violation.

This list is not meant to limit you to specific documents; there are many motor carrier documents that could be used to support a violation. You may utilize other documents to prove your violation (e.g., shipper/customer). You may also use documents, or State Ports of Entry records, that the carrier could have used to verify the accuracy of the drivers' logs, regardless of whether they were actually contained in the carrier's files.

Documents Available to Check Driver HOS

If the motor carrier keeps few or no records, documentary evidence may still be obtained from other sources. These same carriers likely perform transportation for shippers who generally keep good records. A few examples are:

- The broker of an auction house usually requires the driver to sign a "tally sheet". In many instances, this record will show the time and date of pickup, truck owner, tag number, etc.
- Lumber mills, sawmills, and planing mills usually require the driver to sign a "load ticket" or other document. These usually tie the driver to the vehicle and the carrier.
- Produce brokers often retain a "Truckers Agreement" which contains identifying information about the trip.
- Breweries keep extensive records of shipments tendered to distributors (private carriers) as well as common or contract carriers. These records include "in tickets" or "key slips," as well as documents relating to outbound shipments. Many states require breweries and distilleries to make monthly or quarterly reports on alcoholic beverages shipped into the State.
- Livestock dealers, stockyards, brokers, etc., usually keep "Tally Sheets" or the "Uniform Livestock Bill of Lading." These include transportation information and times of delivery and pickup.
- Shippers of commodities requiring temperature control usually keep time records showing pickup of their products.
- State Port of Entry records often identify the equipment by license plate number, show the driver's name, date and time he/she checked in at the port of entry and the commodity transported, its origin and destination, etc. State Patrol, Public Utilities Commission or other State inspection reports often contain similar information.
- Agricultural inspection or quarantine inspection reports usually show the driver's name, date, time, commodity, origin, destination, and vehicle license number.
- Permits for overweight, over length or over height loads contain information about the driver, motor carrier, vehicle, cargo, trip date, time of application, and origin and destination for the shipment.

Part 395 - Selecting Violations

Criteria that Should Be Used to Select Violations for an Enforcement Action

The general rule is to view both the severity and extent of the violation when deciding whether enforcement action is justified; for example, several 15-minute violations of the HOS rules may not warrant enforcement action, where a very few examples of violations that are over 1 hour may warrant enforcement. Additionally, issues that arise frequently, regarding specific HOS sections, are as follows:

10/11 and 14/15-hour rules

- It is generally better to select counts that involve two hours or more of excess driving. These violations emphasize the severity of the motor carrier's/driver's violation. However, there are exceptions. Counts should be submitted when a driver, or several drivers, consistently drives 10.5/11.5 hours or more after 8/10 consecutive hours off duty. This pattern of behavior shows a disregard for the regulations.
- If it can be demonstrated that a driver falsified his/her RODS to cover up a 10/11 or 14/15-hour violation, then evidence that proves the HOS violation should be submitted for enforcement action, even though the log is false; for instance, the driver actually drove 13.45 hours, rather than the recorded 11 hours, after 10 consecutive hours off duty.
- If an egregious violation 10/11-hour rule (49 CFR 395.3(a)(1) and 395.5(a)(1)) is discovered that shows a clear disregard for safety and compliance by the motor carrier and/or driver

60/70-hour rules

- Remember that drivers only violate the 60/70-hour rule when they drive in interstate commerce beyond this period, or they drove in interstate commerce within the last 7 or 8 days. You should show that the driver was driving in interstate commerce during all, or a portion of, the time in excess of 60, or 70, total duty hours, or show that they drove in interstate commerce within the last 7 or 8 days.
- For 60 or 70-hour violations, always document the driver's activities for the full 7 or 8 consecutive day period. The exhibits should consist of copies of the driver's RODS for the entire period.
- To determine whether to use the 60 hours in 7 days, or 70 hours in 8 days calculation period, adhere to the following:
    - If the carrier does not operate vehicles on every day of the week, report violations under the "60 in 7" rule.
    - If the carrier operates any vehicle every day of the week and has elected to record under the "70 in 8" rule, then determine the HOS violations on that basis.
    - If the carrier operates any vehicles every day of the week and has elected to record under the "60 in 7" rule, then determine the HOS violations on that basis. However, in cases where the motor carrier has the option to select either the 60 hours in 7 days or 70 hours in 8 days, select periods in which the driver has a violation in both rules.
    - In any case where there is a question about which rule should be used, it is good practice to obtain a statement from the motor carrier that clearly states the duty period used by the motor carrier.
- Any day on which a violation occurs may be documented for enforcement purposes. However, avoid documenting violations on consecutive calendar days when the hours driving in violation begin on one day and continue into the next. In cases where violations continue over a period of consecutive days and the SI is planning enforcement, it is preferable that only the most flagrant violations be documented.

Nominal Hours of Service Violations

- A nominal HOS violation is a violation that is less than 15 minutes. Nominal HOS violations are specific to §§§ 395.1, 395.3, and 395.5. These violations have been added to CAPRI, and are designated as "nominal" in the software. Should an investigator discover that a driver has exceeded the HOS limits by less than 15 minutes the investigator should

cite the nominal violation. These nominal violations will not affect the calculation of a motor carrier's safety rating; however, enforcement action may be taken if deemed necessary.

Failing to require drivers to prepare RODS

- In cases where the carrier does not require drivers to prepare daily RODS, documentary evidence is simple and usually easy to obtain. A typical exhibit would consist of a shipping document or dispatch record or payroll record, etc., to show that the driver drove for the carrier on a certain date, and a statement, verbal or written, that the driver was not required to prepare RODS and that the driver, in fact, did not prepare a RODS.
- Do not document instances of failing to require drivers to prepare RODS for days off-duty, days that the driver performed intrastate work only, etc. You should cite the violation on the CR, but should not document such violations on their enforcement report, unless those instances are included on the 7-8-day period of an interstate trip.
- Do not document simply isolated instances. Select violations for documentation/counts that clearly show a pattern of disregard for the requirement that RODS be prepared.
- Occasionally, you may be unable to determine the driver who moved a particular shipment. When the carrier does not require any of its drivers to prepare RODS, and the driver of a specific movement cannot be identified through the use of carrier, shipper or State records, you can still prepare a count by listing the names of all drivers employed by the carrier on the date of the shipment.

Falsification of RODS

- Falsification of drivers' RODS may be chargeable to the carrier and/or the driver under Section 395.8 of the safety regulations. When the carrier is charged, it is important that the evidence used to demonstrate falsification of a RODS be obtained from the carrier's own records or files. By doing so, we can better demonstrate that the carrier knew or should have known that the driver was falsifying RODS.
- Interview drivers to determine why they falsified their RODS and whether they have any possible defenses. Statements should be taken from the drivers. When the intention is to construct a count which alleges the RODS was falsified to conceal excess hours (e.g., the falsification is for less than 1 hour, but was falsified to hide what would otherwise have been a 10/11-hour violation), you should first demonstrate that the driver exceeded the HOS rules. Obviously, this can be established through a statement from the driver in which he/she admits to exceeding the HOS limitations and to falsifying the RODS to hide the fact. The better alternative (and much more difficult) is for you to reconstruct the trip segment in which the HOS violation occurred by using, at a minimum, two reliable and time/date stamped trip documents for the reference points. You should submit this documentation for enforcement and should submit the false RODS, and the RODS for the day before and after, as part of the evidence. [**Note:** In some instances it may be acceptable to use one time-specific document, such as electronic data (e.g., [redacted]), Electronic Data Guidance.]
- Falsification of RODS typically follows one or more of the following patterns:
    - Showing "off-duty" for a whole calendar day when, in fact, the driver works and drives on that day. Evidence to prove this type of falsification is straightforward. The evidence need only consist of the driver's RODS showing him as "off duty," together with documents taken from the carrier's own records clearly showing that the driver was driving in interstate commerce, and that the carrier knew or should have known of this falsification. One good source to detect this pattern of falsification is to check dispatch records for trips by those

drivers whose accumulated hours the day before reached 60 (or 70) total duty hours. Often, the driver's reason for falsifying his RODS by showing "off-duty" is clear--he had no hours remaining for the immediate trip. Drivers who commit this type of falsification sometimes admit their violations and will provide written statements admitting that they made the false entry to conceal their total time on-duty.

- Showing "off-duty" for an 8/10-hour period following 10/11 hours of driving time, when, in fact, the driver did not go "off duty" but continued to drive. This violation is frequently used to conceal a driving violation that occurred during a turnaround trip. This type of falsification is widespread and is one that should be prosecuted more frequently.
- **Experience shows that the following fact patterns should alert you: a driver's RODS which consistently show 10 or 11-hour driving periods, followed by exactly 8 or 10 hours "off-duty"; RODS which consistently add up to 58 (60-hour rule) or 68 (70 hour rule) total duty hours on the driver's 6th or 7th day of the period; RODS which show accumulated duty hours just short of 60 or 70 total duty hours and with little or no time shown as "on-duty, not driving" loading/unloading time on their RODS.**
- Concealing a portion of a day's work: This practice appears more often among drivers of tank truck carriers, automobile transporters, lumber haulers, building materials haulers, new furniture haulers, steel haulers, HHG carriers, drivers of temperature-controlled commodities, and drivers who perform the pickup and/or delivery in addition to the over-the-road trip. This pattern of falsification can be detected using the following:
  - Dispatch and/or payroll records which may show additional interstate trips or local trips than those accounted for on the driver RODS; and,
  - Dispatch records, shipping documents and/or payroll records which may show additional payments to drivers for unloading, stop-offs or "off route" deliveries.

- When investigating a motor carrier that operates with AOBRDs, investigators should cite §395.8(e)(2); Disabling, deactivating, disengaging, jamming, or otherwise blocking or degrading a signal transmission or reception; tampering with an automatic onboard recording device or ELD; or permitting or requiring another person to engage in such activity, if there is evidence that a motor carrier, a driver, or another employee disabled, deactivated, disengaged, jammed, tampered or otherwise blocked or degraded a signal transmission or reception, as a means to conceal HOS.

Part 395 - Enforcement Action Against a Driver

Considering an Enforcement Action Against a Driver

Enforcement action should be considered against drivers on the following violations when they have 10 percent or more violations recorded on the number of RODS reports checked for at least 30-day period.

- 395.3(a) (1) - Driving more than 11 hours following 10 consecutive hours off duty (property-carrying vehicles).
- 395.3(a) (2) - Driving for any period after having been on-duty 14 hours following 10 consecutive hours off duty (property-carrying vehicles).
- 395.3(b) (1) - Driving after having been on-duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week (property-carrying vehicles).

- 395.3(b) (2) - Driving after having been on-duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week (property-carrying vehicles).
- 395.5(a) (1) - Driving more than 10 hours following 8 consecutive hours off duty (passenger-carrying vehicles).
- 395.5(a) (2) - Driving for any period after having been on-duty 15 hours following 8 consecutive hours off duty (passenger-carrying vehicles).
- 395.5(b) (1) - Driving after having been on-duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week (passenger-carrying vehicles).
- 395.5(b) (2) - Driving after having been on-duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week (passenger-carrying vehicles).
- 395.8(a) (1) - Every driver who operates a commercial motor vehicle shall record his/her duty status, in duplicate, for each 24-hour period.
- 395.8(e) - Making of false reports in connection with such duty activities on the driver's record of duty status report.
- 395.8(i) - The driver shall submit or forward by mail the original driver's record of duty status to the regular employing motor carrier within 13 days following the completion of the form.
- 395.13(d) - No driver who has been declared out-of-service shall operate a commercial motor vehicle until that driver may lawfully do so under the rules of this Part.*

(*) denotes Red Flag Violation

1.3.14.6 Insurance/Other BASIC

1.3.14.6.1 Part 387 – Investigative Procedures

As part of the Insurance/Other BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387 - Investigative Procedures*

1.3.14.6.2 Part 387 – Investigative System Procedures

As part of the Insurance/Other BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387 - Investigative System Procedures*

1.3.14.6.3 Part 387 – Process Breakdowns and Remedies – Applying the SMC

As part of the Insurance/Other BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387 - Process Breakdowns and Remedies - Applying the SMC*

1.3.14.6.4 Part 387 – Enforcement Procedures

As part of the Insurance/Other BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387 -Enforcement Procedures*

1.3.14.7 Unsafe Driving BASIC

1.3.14.7.1 Introduction to Unsafe Driving

The scope of the investigation depends on the type of investigation you are assigned.

If you are assigned an Onsite Comprehensive Investigation, all BASICs and related FMCSR Parts are investigated. See all BASIC sections for specific guidance on how to investigate the BASIC requiring investigation.

If you are assigned an Onsite Focused Investigation or an Offsite Investigation, the Parts by BASIC table for the Unsafe Driving BASIC below provides guidance for selecting the appropriate CFR Part (Full or Sub-part) that should be examined. Following the table, guidance is provided for each of the CFR Part related to the Unsafe Driving BASIC.

● review of full part
⊗ review of specific regulations within a part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

Unsafe Driving

Safety		
40 - Drug & Alcohol Testing		
380 - Special Training	●	Longer Combined Vehicle (LCV) and Entry Level Driver Training Requirements – **Required if** motor carrier has drivers subject to training requirements.
382 - Drug & Alcohol Testing		
383 - CDL	⊗ Part of CAIR	**Required** as part of the CAIR process. Perform Commercial Driver's License Information System (CDLIS) checks in accordance with policy memo.
390 - FMCSR General	⊗ .3, .15, .23, .25	390.3 - General Applicability, ensures drivers are subject to regulations – **Required** 390.15 - Accident Register – **Required if** Crash BASIC Investigation is performed. 390.23/25 - Relief - **Required if** a carrier is claiming relief. Confirm emergency declaration.
391 - Driver Qualifications	⊗	A review of driver qualification regulations should be a **consideration** if there is evidence on the profile that might show a link between driver qualification issues and unsafe driving behaviors. Examination and sampling of the driver qualification file is not required unless the Investigator has reason to believe that there is a relationship between the two. **Example:** A medical examiner's certificate and long form (if available) may be useful to check when drivers have committed multiple lane change, reckless driving, improper turning, or following too close violations cited on the SMS to see if there is a related medical issue related to the unsafe driving violations.

392 - Driving of Motor Vehicles	●	A review of the profile is **required** for evidence of unsafe driving practices. Review CDLIS checks and other related background information to address unsafe driving practices. Use "1 of 1" violation citation logic. 392.9a(a) Authority - **Required** as part of the CAIR process
393 - Vehicle Parts and Accessories		
395 - Hours of Service		
396 - Vehicle Maintenance		
Hazardous Materials		
107 - HM Program Procedures (Registration)		
171 - HM General		
172 - HM Table/ Communication		
173 - Shipper Requirements		
177 - Carriage by Highway	⊗ .810, .816, .823	177.810 - Vehicular Tunnels - **Required if** carrier transports quantities of HM that are prohibited from being transported through tunnels 177.823 - Movement of motor vehicles in emergency situations – **Required if HM carrier** 177.816 - Training requirements – **Required if HM carrier**
178 - Package Specifications		
180 - Package Quality and Maintenance		
397 - HM Driving and Parking	⊗ .2, .3, .5, .19, .67	A review of the 397.2, .3 and .7 are **required if** the carrier transports placardable HM: 397.2 - Compliance with the Federal Motor Carrier Safety Regulations 397.3 - State and Local Laws, Ordinances, and Regulations

		A review of 397.5 and 397.19 are required if the motor carrier transports 1.1, 1.2, or 1.3 Explosives: 397.5 - Attendance and surveillance of motor vehicles 397.19 - Instructions and Documents 397.67 - Motor carrier responsibility for routing - **Required if** route controlled HM operation
Other		
325 - Noise Emission		
387 - Financial Responsibility	⊗ As applicable	**Required** as part of CAIR process as applicable to the commodity transported or motor carrier operation type.
398 - Transporting Migrant Workers	⊗ .3, .4	398.3 – Qualification of Drivers and Operators – **Required if** motor carrier transports migrant workers. 398.4 - Driving of Motor Vehicles - **Required if** motor carrier transports migrant workers.
399 - Employee Health and Safety		

1.3.14.7.2 Part 380 - Special Training Requirements

1.3.14.7.2.1 Part 380 – Investigative Procedures

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 380. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 380 - Investigative Procedures*

1.3.14.7.2.2 Part 380 – Investigative System Procedures

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 380. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 380 - Investigative System Procedures*

1.3.14.7.2.3 Part 380 – Process Breakdowns and Remedies - Applying the SMC Cycle

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 380. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 380 -Process Breakdowns and Remedies - Applying the SMC Cycle*

1.3.14.7.2.4 Part 380 – Enforcement Procedures

Once you have entered the violations discovered into the Violation Tab/Part B and have decided to initiate an enforcement action for the Part 380 violations, you should use the following guidelines when submitting an enforcement report for Part 380 violations.

Documentation

Enforcement Action against Carriers

Enforcement Action against Drivers

Part 380 - Documentation

Documents that Should Be Gathered to Initiate an Enforcement Action

- You should gather documentation to initiate an enforcement action, which establishes the following:
- The vehicle used falls within FMCSR jurisdiction for Part 380.
- The driver is an employee of (or controlled by) the motor carrier.
- The CMV was operated by the motor carrier in interstate commerce on a specific date.
- A violation of Part 380 occurred.

Precautions that Should Be Taken When Preparing a Statement for Carriers Who Do Not Have the Appropriate Records

The preparation of written statements requires time, accuracy and specific requests for production of records. Listed below are a few precautions that should always be considered when preparing such statements.

- In the event the motor carrier officials or their agents will not sign a statement, it should be prepared, and read to a responsible carrier official. His/her oral acknowledgment of the accuracy of the statements contained therein should be obtained. The original of the statement, whether signed or not, will be included as part of the evidence in the case.
- In addition to the foregoing precaution, you should, to the extent possible, interview the drivers whose LCV driver-training certificates are not in the carrier's files to determine whether they have been trained and, if so, when, where and by whom. You should obtain the driver's signed statement, if possible. Again, if the driver refuses to sign the prepared statement, you should get that driver's oral acknowledgment of the accuracy of the statement. This statement should then be included as part of the evidence in the case.
- In selecting Part 380 violations to document, it is good practice to submit several violations with reference to each driver. These separate violations should be at intervals of a week or more. This helps to rebut a defense argument that the violations were accidental or isolated. Additionally, you should take notes showing the number or approximate number of days the driver had driven for the motor carrier while in violation of Part 380.
- Occasionally, you may be unable, by any means, to determine which driver moved a particular shipment. When the motor carrier has none of the required Part 380 documents and certificates, and you cannot identify the driver on a specific movement through the use of motor carrier, shipper or State records, you can still document the violation for enforcement by listing the names of all drivers employed by the carrier on the date of the shipment. Incidentally, this listing of all drivers on a specific date can also be used in connection with counts for failing to maintain drivers' records of duty status (395.8(k)(1)) or for failing to maintain daily vehicle inspection reports (396.11(c)(2)).
- Problems often encountered during civil enforcement proceedings involve the carrier's belated submission of records. In such instances, the carrier will claim that it had the records all along, and that it simply could not locate the records. Carriers have also been known to backdate records. Therefore, it is imperative that you conduct your investigation in accordance with the above guidelines and obtain a written statement, as shown in *Illustration E-1: Photographic Declaration*.

Some Examples of Documents that May Be Used to Prove Violations of Part 380

Examples of documents to support your discovered violations are listed below.

- Statement from motor carrier official, driver or other person responsible for compliance with Part 380.

- DQ Worksheet, verified by motor carrier official or other person responsible for compliance with Part 391.
- Driver's RODS and corresponding shipping paper/bill of lading.
- Vehicle registration showing gross vehicle weight rating (GVWR) or other documentary evidence proving that the vehicle was subject to Part 380.
- If copies of documents/certificates required by Part 380 were unavailable, or do not exist, obtain a statement from the motor carrier attesting to missing documents, or utilize CAPRI DQ Worksheet and have motor carrier verify lack of documents.

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support the violation. You may utilize other documents to prove the violation.

Part 380 – Enforcement Action Against Carriers

Some Important Issues to Remember When Documenting Violations of Part 380

You may not initiate enforcement for violations of the entry-level driver training requirements.

Best practice requires that you obtain statement(s) from motor carrier officials, affirming that the required documents were not in the DQ file, or that these documents do not exist. Such statements rebut subsequent motor carrier arguments that it had such documents, but that you did not ask the motor carrier to produce them during the investigation. See *Illustration E-2: Written Statement with Perjury Clause*.

Be sure that the language used to describe the violation in the investigation, in the case report and in the NOC, is the same; for example, a violation cited in the investigation for "failing to maintain" the driver's state driving record abstract should not be described in the case report as "failing to make an inquiry" from the state licensing agency.

Part 380 - Enforcement Action Against Drivers

Enforcement Action that Should Be Considered Against a Driver

You should consider enforcement action against a driver for the following violation:

- 380.401(b) – Failing to provide a copy of the Longer Combined Vehicle Driver-Training Certificate to your employer to be filed in your Driver Qualification file.
- 380.401(b) – Failing to provide a copy of the Longer Combined Vehicle Driver-Training Certificate to your employer to be filed in your Driver Qualification file.

1.3.14.7.3 Part 383 - Commercial Driver's License(CDL) Standards

1.3.14.7.3.1 Part 383 - Investigative Procedures

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 383 - Investigative Procedures*

1.3.14.7.3.2 Part 383 – Investigative System Procedures

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 383 - Investigative System Procedures*

1.3.14.7.3.3 Part 383 – Process Breakdowns and Remedies – Applying the SMC

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 383 - Process Breakdowns and Remedies - Applying the SMC*

1.3.14.7.3.4 Part 383 – Enforcement Procedures

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 383 - Enforcement Procedures*

1.3.14.7.4 Part 387 - Insurance Requirements

1.3.14.7.4.1 Part 387 - Investigative Procedures

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387 - Investigative Procedures*

1.3.14.7.4.2 Part 387 – Investigati System Procedures

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387 - Investigative System Procedures*

1.3.14.7.4.3 Part 387 - Process Breakdowns and Remedies – Applying the SMC

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387 - Process Breakdowns and Remedies - Applying the SMC*

1.3.14.7.4.4 Part 387 - Enforcement Procedures

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387 - Enforcement Procedures*

1.3.14.7.5 Part 390 - General Requirements

1.3.14.7.5.1 Part 390 - Investigative Procedures

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 390 - Investigative Procedures*

1.3.14.7.5.2 Part 390 – Investigative System Procedures

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 390 - Investigative System Procedures*

1.3.14.7.5.3 Part 390 - Process Breakdowns and Remedies – Applying the SMC

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 390 - Process Breakdowns and Remedies - Applying the SMC*

1.3.14.7.5.4 Part 390 - Enforcement Procedures

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 390 - Enforcement Procedures*

1.3.14.7.6 Part 391 - Qualification of Drivers

1.3.14.7.6.1 Part 391 - Investigative Procedures

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 391 - Investigative Procedures*

1.3.14.7.6.2 Part 391 – Investigative System Procedures

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 391 - Investigative System Procedures*

1.3.14.7.6.3 Part 391 - Process Breakdowns and Remedies – Applying the SMC

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 391 - Process Breakdowns and Remedies - Applying the SMC*

1.3.14.7.6.4 Part 391 - Enforcement Procedures

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 391- Enforcement Procedures*

1.3.14.7.7 Part 392-Driving of Motor Vehicles

1.3.14.7.7.1 Part 392-Investigative Procedures

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 392: Investigative Procedures.

1.3.14.7.7.2 Part 392-Investigative System Procedures

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 392: Investigative System Procedures.

1.3.14.7.7.3 Part 392-Process Breakdowns/Remedies-SMC

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 392 - Process Breakdowns/Remedies-SMC.

1.3.14.7.7.4 Part 392-Enforcement Procedures

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the Part 392 - Enforcement Procedures.

1.3.14.7.8 Part 397-HM Driving and Parking

There are a number of checklists and guidance documents to assist you with HM investigations in Appendix F.

1.3.14.4.8.1 Part 397-Investigative Procedures

If you are assigned an Onsite Comprehensive Investigation, your investigation of Part 397 should consist of:

- Checking for compliance with routing regulations, if applicable (397.67 for marked or placarded non-RAM; 397.101 for placarded RAM).
- Checking for compliance with smoking, (397.13, certain divisions/classes), tire checks (397.17, all marked or placarded HM), and operations near fire (397.11, all marked or placarded HM).
- For Division 1.1, 1.2, or 1.3 Explosives only:
    - Checking for compliance with attendance (397.5) and parking (397.7(a)).
    - Checking for instructions and documents required to be carried (397.19).

Part 397 does not apply to HM Shippers.

SIs who are assigned reviews of a motor carrier that transports explosives should contact their HMS or HMPM for guidance and assistance. Generally, these carriers should be assigned to HMSs.

If you are assigned an Onsite Focused Investigation or an Offsite Investigation, your investigation should include an examination of the applicable parts and subparts for each BASIC that you are investigating.

- The table below identifies each BASIC by Part 397 and includes guidance on whether the investigation should include a review of the full part or subpart.
- The table also includes additional guidance on when each is required or should be considered based on investigative findings.

● full review of part

⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

BASIC	Part 397	Description
Driver Fitness		
Controlled Substances/Alcohol		
Vehicle Maintenance		
HOS Compliance		
HM Compliance	●	Driving and Parking rules – As applicable to the hazardous material investigation.
Unsafe Driving	⊗ .2, .3, .5, .19, .67	A review of the 397.2, and .3 are **required if the carrier transports HM that requires markings or placards:** 397.2 – Compliance with the Federal Motor Carrier Safety Regulations 397.3 – State and Local laws, ordinances and regulations A review of 397.5, 397.7, and 397.19 are required if the motor carrier transports 1.1 1.2, or 1.3 Explosives 397.5 – Attendance and surveillance of motor vehicles

		397.7 -- Parking 397.19 – Instructions and Documents 397.67 – Motor carrier responsibility for routing – **Required if motor carrier operates marked or placarded non-RAM HM** **397.100 – Motor carrier responsibility for routing – Required if motor carrier operates placarded RAM** **397.101(e)(1) – HRCQ RAM drivers must comply with 172.704 every two years** **397.101(e)(2) – HRCQ RAM drivers must have a training certificate on their person when operating a CMV with HRCQ RAM**

Note: *The Crash Indicator BASIC is not listed in the table, since the scope of these investigations varies, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.*

Conditions Under Which You Should Enforce Part 397 Regulations

Check the Following for Compliance with Routing Regulations

For the routing requirements, go to FMCSA's website and download the most current routing restrictions. Compare the route restrictions for the routes the motor carrier utilizes for the HM they transport on those routes. Determine if any violations have occurred.

- Note instances where a vehicle was operated on a restricted route, or in a heavily populated area, in violation of §397.67(b) or §397.101.

Check the Following for Compliance with other Part 397 Regulations

Violations for the regulations related to fires, fueling, tire checks, parking (397.7(b)), and smoking are difficult, if not impossible, to enforce during an investigation without being present to witness the violation. Investigators should review the CSA data to identify specific drivers that have inspections with these violations and discuss company policies and training procedures with company officials.

Check the Following for Compliance with Part 397 HRCQ RAM Regulations

Section 397.101(e)(1) – HRCQ RAM drivers must comply with 172.704 every **two** years

Section 397.101(e)(2) – HRCQ RAM drivers must have a training certificate on their person when operating a CMV with HRCQ RAM

Verify compliance with all of Section 397.101 as applicable.

Check the Following for Compliance with Part 397 Explosive Regulations

Sections 397.5, Attendance; 397.7(a), Parking; and, 397.19, Instructions and Documents, are applicable only to transportation of Division 1.1, 1.2 and 1.3 explosives.

- Section 397.5: Ask the company officials how they comply with this section, what safe havens they use, and how they verify it is a valid safe haven.
- Section 397.7: This section is difficult to enforce unless witnessed. Ask the company officials how they comply with this requirement.
- Section 397.19:
    - Ask how they comply with the written route plan requirement. There is no requirement to retain written route plans, but many companies have established routes and will have copies of what is provided to the driver.
    - Part 397 receipts are only required to be retained for 1 year from date of driver signature.

For additional guidance on investigations of explosives motor carriers, contact your HMS or HMPM.

1.3.14.4.8.2 Part 397-Investigative System Procedures

Acute, Critical, and Severe Regulations for Part 397

The violations listed below should be considered for enforcement action, when discovered. Acute and Critical Violations impact a motor carrier's safety rating while Severe Level I and II Violations do not. Note: Violations types are listed, as applicable, to the Part. Discovery of violations in at least 10% of the records checked and a pattern (more than one occurrence) would result in a Critical Violation and Severe Level II violation. If enforcement action is not taken, it must be documented in the Investigation Report/Part C to explain why enforcement was not initiated.

Acute, Critical, and Severe Violations for Part 397

Citation	Type	Description
397.5(a)	**Acute**	Failing to ensure a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material is attended at all times by its driver or a qualified representative. **Number checked is the number of instances checked for compliance with § 397.5(a).**
397.7(a)(1)	**Critical**	Parking a motor vehicle containing Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway. **Number checked is the number of instances checked for compliance with § 397.7(a) (1).**
397.7(b)	**Critical**	Parking a motor vehicle containing hazardous material(s) other than Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street. **Number checked is the number of instances checked for compliance with § 397.7(b).**
397.13(a)	Critical	Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 25 feet of a motor vehicle containing Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2. **Number checked is the number of instances checked for compliance with § 397.13(a).**
397.19(a)	Critical	Failing to furnish a driver of motor vehicle transporting Division 1.1, 1.2, or 1.3 (explosive) materials with a copy of the rules of Part 397 and/or emergency response instructions.

		Number checked is the number of instances checked for compliance with § 397.19(a).
397.67(d)	Critical	Requiring or permitting the operation of a motor vehicle containing explosives in Division 1.1, 1.2, or 1.3 that is not accompanied by a written route plan. **Number checked is the number of instances checked for compliance with § 397.67(d).**

1.3.14.4.8.3 Part 397-Process Breakdowns/Remedies-SMC

Once you have discovered the violations relating to Part 397, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance.

The SMC is used to discover what breakdowns in the motor carrier's processes are occurring, why they are occurring, and identify remedies that will lead to a path of safety compliance.

For additional information on the SMC, go to the General Guidelines for Using the Safety Management Cycle (SMC) to Help Diagnose a Breakdown in Safety during an Investigation section. For the investigative system procedures, see the Violation Tab/Part B - Recommendation/Requirements on how to select and customize the SMP Breakdowns and Remedies.

Conduct a facility walk around. Look for placarded vehicles being loaded or unloaded. Ask driver for route plans, ERG paperwork, etc. When reviewing shipping papers ask for written route plans. Most often the route plan is written on the shipping paper however it is not required to be.

1.3.14.4.8.4 Part 397-Enforcement Procedures

Evidence Required to Successfully Prosecute a Violation of Part 397

To successfully prosecute a violation of Part 397, establish the following facts:

- That the material in question is a hazardous material, requiring the motor vehicle to be marked or placarded, in accordance with title 49 CFR § 177.823
- That the hazardous material was transported in commerce
- That a violation of Part 397 occurred
- That knowledge or willfulness was established.

Look for the Following When Compiling Case on Part 397

Ensure that the material in question is a hazardous material in a quantity requiring marking or placarding.

- In some cases, a shipping paper may be sufficient for this purpose. In other cases, including those where no shipping paper is available and in cases where no shipping paper was ever prepared, it may be necessary to obtain a SDS.
- You must also be able to prove the quantity. A SDS alone will not do that.
- Ensure that the documents reference one another. For instance:
    - If the shipping order number indicates a trailer number or driver's signature, do the log and/or the trip manifest support this information?

- Where a pro number has been stamped on the shipping order and a freight bill has been cut, does the pro number appear on the trip manifest; does the manifest have the trailer number; and, is the driver name the same, etc.?
- The tracking number used on the pro/bill of lading is often found on the package or pallet and can be used to positively tie a package to a shipping paper.
- Check RODS to validate whether drivers were following written route plans, if applicable.

Documents Needed for a Part 397 Enforcement Case

1. **Establish that the material in question is in fact a hazardous material that is in a quantity sufficient to require marking or placarding.** This may be accomplished by obtaining a copy of the shipping paper and SDS.
2. **Establish that the hazardous material was transported in commerce.** Shipping papers, bills of lading, records of duty status and other such document may be used to establish this fact. In addition, photographs of the shipment indicated that it has been offered for, or is in commerce may also be useful.
3. **Establish that a violation of Part 397 occurred.** Documenting a violation of Part 397 generally requires a statement and/or photographs documenting the violation. Often the violations are found through a roadside inspection or personal observation; therefore, an inspection or observation report may also be used to support the violation. Parking violations must prove that the driver was not conducting activities which are an operational necessity.

Preparing the Exhibit Abstract

The exhibit abstract for each count must contain sufficient evidence to support the government's allegation that a violation was committed. This means the exhibit should contain the elements described in Documents needed for a Part 397 Enforcement Case.

- Care should be taken in the preparation of the abstract.
- Attention to detail is essential.
- Refer to Appendix F for an example of an exhibit abstract for a violation of Part 397.

Preparing the Statement of Charges

The statement of charges is important because it is the first official notification to the subject of the enforcement case and their legal counsel that they are being assessed civil penalties for specific violations of the HMR.

The statement of charges must include all of the elements of the violation. Furthermore, this statement should include only the alleged facts, supported by documented evidence, that the subject committed a violation of the HMR.

The statement of charges is found in the "Remarks" section of the Exhibit of Abstract. The statement of charges for a Part 397 violation should read as follows:

On or about «DATE», «CARRIER NAME» transported a marked or placarded amount of «PROPER SHIPPING DESCRIPTION», a hazardous material, in commerce from «ORIGIN» to «DESTINATION» while «DESCRIBE THE VIOLATION».

1.3.14.7.9 Part 177 – HM Carriage by Public Highway

1.3.14.7.9.1 Part 177 – Investigative Procedures

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 177. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 177 - Investigative Procedures*

1.3.14.7.9.2 Part 177 – Investigative System Procedures

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 177. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 177 - Investigative System Procedures*

1.3.14.9.9.3 Part 177 - Process Breakdowns and Remedies - Applying the SMC

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 177. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 177 - Process Breakdowns/Remedies-SMC*

1.3.14.9.9.4 Part 177 – Enforcement Procedures

As part of the Unsafe Driving BASIC Investigation, your investigation should include an examination of the applicable subparts of Part 177. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 177 - Enforcement Procedures*

1.3.14.8 Vehicle Maintenance BASIC

1.3.14.8.1 Introduction to Vehicle Maintenance

The scope of the investigation depends on the type of investigation you are assigned.

If you are assigned an Onsite Comprehensive Investigation, all BASICs and related FMCSR Parts are investigated. See all BASIC sections for specific guidance on how to investigate the BASIC requiring investigation.

If you are assigned an Onsite Focused Investigation, the Parts by BASIC table for the Vehicle Maintenance BASIC below provides guidance for selecting the appropriate CFR Part (Full or Sub-part) that should be examined. Following the table, guidance is provided for each of the CFR Part related to the Vehicle Maintenance BASIC. All carriers whose Vehicle Maintenance BASIC requires investigation must be investigated onsite.

● full review of part
⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

Safety		
40 – Drug & Alcohol Testing		
380 – Special Training		
382 – Drug & Alcohol Testing		
383 – CDL	⊗ Part of CAIR	**Required** as part of the CAIR process. Perform CDLIS checks in accordance with policy memo.

390 – FMCSR General	⊗ .3, .15, .21, .23, .25	390.3 - General Applicability - ensures drivers are subject to regulations - **Required** 390.15 - accident register - **Required if** or Crash BASIC Investigation is performed. 390.21 - Ensure vehicles are properly marked. Check if vehicle inspections are conducted or if vehicle is observed during Vehicle Maintenance investigation. - **Consideration** when present on profile 390.23/25 - relief - **Required if** a carrier is claiming relief. Confirm emergency declaration.
391 – Driver Qualifications	⊗ .13	391.13 - Responsibilities of drivers - Consideration when the profile shows evidence of cargo issues related to knowledge and application of the cargo securement rules (393.100-.136). Use "1 of 1" violation citation logic.
392 – Driving of Motor Vehicles	⊗ .2, .9, .62,.9a(a)	392.2 - applicable operating rules - **Consideration** when the profile shows evidence of 392.2 Cargo-Related violations. Use "1 of 1" violation citation logic. 392.9 - inspection of cargo - **Consideration** when the profile shows evidence of 392.2 Cargo-Related violations. Use "1 of 1" violation citation logic. 392.62 - Safe operation or buses - **Consideration** when evidence of violation exists on the profile. 392.9a(a) Authority - **Required** as part of the CAIR process
393 – Vehicle Parts and Accessories	●	**Required:** Vehicle Maintenance BASIC - 393 violations noted on the carrier profile may be used as evidence when considering the "1 of 1" violation citation logic for 396.3(a)(1) or 392.2. 393.100-.136 **Consideration** when the profile shows evidence of cargo-related issues. Use "1 of 1" violation citation logic.
395 – HOS		
396 – Vehicle Maintenance	●	**Required:** Vehicle Maintenance BASIC 396.3(a) Inspection, repair, and maintenance - **Consideration** when profile shows evidence that may be related to the maintenance of load securement devices. Use "1 of 1" violation citation logic.
Hazardous Materials		
107 – HM Program Procedures (Registration)		
171 – HM General		

172 – HM Table/ Communication		
173 – Shipper Requirements		
177 – Carriage by Highway		
178 – Package Specifications		
180 – Package Quality and Maintenance		
397 – HM Driving and Parking		
Other		
325 – Noise Emission		
387 – Financial Responsibility	⊗ As applicable	**Required** as part of CAIR process as applicable to the commodity transported or motor carrier operation type.
398 – Transporting Migrant Workers	⊗ .4	398.4 - driving of motor vehicles - **Required if** motor carrier transports migrant workers.
399 – Employee Health and Safety		

1.3.14.8.2 Part 383 - Commercial Driver's License (CDL) Standards

1.3.14.8.2.1 Part 383 – Investigative Procedures

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 383 - Investigative Procedures*

1.3.14.8.2.2 Part 383 – Investigative System Procedures

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 383 - Investigative System Procedures*

1.3.14.8.2.3 Part 383 – Process Breakdowns and Remedies – Applying the SMC

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Parts 383 - Process Breakdowns and Remedies - SMC*

1.3.14.8.2.4 Part 383 – Enforcement Procedures

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 383 - Enforcement Procedures*

1.3.14.8.3 Part 387 - Financial Responsibility

1.3.14.8.3.1 Part 387 – Investigative Procedures

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387 - Investigative Procedures*

1.3.14.8.3.2 Part 387 – Investigative System Procedures

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387 – Investigative System Procedures*

1.3.14.8.3.3 Part 387 – Process Breakdowns and Remedies – Applying the SMC

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Parts 387 - Process Breakdowns and Remedies - SMC*

1.3.14.8.3.4 Part 387 – Enforcement Procedures

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387 - Enforcement Procedures*

1.3.14.8.4 Part 390 - General Requirements

1.3.14.8.4.1 Part 390 – Investigative Procedures

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 390 - Investigative Procedures*

1.3.14.8.3.2 Part 390 – Investigative System Procedures

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 390 - Investigative System Procedures*

1.3.14.8.3.3 Part 390 – Process Breakdowns and Remedies – Applying the SMC

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Parts 390 - Process Breakdowns and Remedies - SMC*

1.3.14.8.3.4 Part 390 – Enforcement Procedures

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 390 - Enforcement Procedures*

1.3.14.8.5 Part 391 - Driver Qualifications

1.3.14.8.5.1 Part 391 – Investigative Procedures

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 391 - Investigative Procedures*

1.3.14.8.5.2 Part 391 – Investigative System Procedures

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 391 - Investigative System Procedures*

1.3.14.8.5.3 Part 391 – Process Breakdowns and Remedies – Applying the SMC

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Parts 391 - Process Breakdowns and Remedies - SMC*

1.3.14.8.5.4 Part 391 – Enforcement Procedures

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 391 - Enforcement Procedures*

1.3.14.8.6 Part 392 - Driving of Motor Vehicles

1.3.14.8.6.1 Part 392 – Investigative Procedures

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 392 - Investigative Procedures*

1.3.14.8.6.2 Part 392 – Investigative System Procedures

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 392 – Investigative System, Procedures*

1.3.14.8.6.3 Part 392 – Process Breakdowns and Remedies – Applying the SMC

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Parts 392 - Process Breakdowns and Remedies - SMC*

1.3.14.8.6.4 Part 392 – Enforcement Procedures

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 392 - Enforcement Procedures*

1.3.14.8.7 Part 393 and Part 396 – Parts & Accessories, and Inspection, Repair & Maintenance

1.3.14.8.7.1 Part 393 & 396 – Investigative Procedures

In your review of compliance with Parts 393 and 396, you should use the following guidelines to assist in your investigation of motor carriers both of property (including placardable hazardous material) and passengers. However, the procedures for motor carriers of passengers (business and nonbusiness) vary slightly in Part 396.

Parts 393 & 396 - Vehicle Inspections

Procedures to Follow during an Investigation of Part 396

If you are assigned an Onsite Comprehensive Investigation, your investigation of Part 396 should consist of:

- Determining if Level V inspections should be conducted during your investigation
- Selecting vehicles for inspection
- Inspecting vehicles
- Calculating the OOS rate
- Determining the number of maintenance files to review
- Determining the number of DVIR to review.

If you are assigned an Onsite Focused Investigation, your investigation should include an examination of the applicable parts and subparts for each BASIC that you are investigating. The table below identifies each BASIC by Part 396 and includes guidance on whether the investigation should include a review of the full part or subpart. The table also includes additional guidance on when each is required or should be considered based on investigative findings.

● full review of part
⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

BASIC	Part 396	Description
Driver Fitness		
Controlled Substances/Alcohol		
Vehicle Maintenance	●	**Required:** Vehicle Maintenance BASIC – 393 violations noted on the carrier profile may be used as evidence when considering the "1 of 1" violation citation logic for 396.3(a)(1) or 392.2. 393.100-.136 **Consideration** when the profile shows evidence of cargo-related issues. Use "1 of 1" violation citation logic. **Required:** Vehicle Maintenance BASIC 396.3(a) Inspection, repair, and maintenance – **Consideration** when profile shows evidence that may be related to the maintenance of load securement devices. Use "1 of 1" violation citation logic.
HOS Compliance		
HM Compliance		
Unsafe Driving		

Note: *The Crash Indicator BASIC is not listed in the table, since the scope of these investigations varies depending on the BASICs Requiring Investigation. See the Crash Indicator BASIC section for guidance.*

Following this review, you should, if necessary:

- Cite violations;
- Identify Process Breakdowns and Remedies; and,

- Document counts for enforcement, as appropriate.

Part 396 – Red Flag Violations

A key aspect of the investigation process is the driver's role in carrier safety. Data has shown that unsafe driver behavior is a major contributor to the CMV crash problem. The carrier's responsibility for hiring, training, and supervising safe drivers is also a factor. As a result, the focus of the investigation process is not only on enforcing regulations related to driver behavior, but also on carrier enforcement and education regarding their responsibilities for driver compliance. The driver Red Flag Violations investigation process ensures that certain roadside violations, designated as Red Flag Violations due to their nature and severity, and the drivers receiving these violations are examined and addressed in conjunction with motor carrier investigations.

As part of the CAIR process, a review of the motor carrier's SMS record for the presence of drivers with Red Flag Violations is part of every motor carrier-based investigation. Prior to any investigation, you should review drivers with Red Flag Violations (regardless of the motor carrier's BASIC status) that have occurred in the previous 12 months and should request documents to confirm these driver's Red Flag Violations have been corrected. A complete list of the Red Flag Violations can be found in Appendix G. Part 396 Red Flag Violations include:

BASIC	FMCSR Part	Violation Description
Vehicle Maintenance	396.9(c)(2)	Operating an OOS vehicle before making repairs

Once the Red Flag Driver(s) and violations are identified, you must validate if the violation has been corrected through requesting relevant documentation and interviewing the motor carrier and/or driver. For each Red Flag Violation, the investigative responsibility is broken down into three areas:

1. Has the Red Flag Violation been corrected or is it continuing?
2. If corrected, was the correction timely? (Did the driver operate between the time of the violation and when it was corrected?)
3. Knowledge and Willfulness
    a. Did the motor carrier know or should the motor carrier have known of this Red Flag Violation?
    b. Did the driver fail to inform the employing motor carrier of the Red Flag Violation?

Determining if Vehicle Inspections Need to be Conducted during the Investigation

If the motor carrier does not have the minimum sample for vehicle inspections on its company profile, you are required to conduct Level V inspections during your investigation when commercial motor vehicles are available. The calculation of the carrier's OOS rate is only needed during an Onsite Comprehensive Investigation or an Onsite Focused Investigation that include the Vehicle Maintenance BASIC (Vehicle Maintenance). For additional information when inspections are required see:

Vehicle Inspection Required for Vehicle Maintenance BASIC Assessment Requirements for (Motorcoach Operators, Passenger Carriers and Property Carriers)

Parts 393 & 396 - Calculating the OOS Rate

The motor carrier's Vehicle OOS rate should only be recorded when you perform one of the following:

- Onsite Comprehensive Investigation
- Onsite Focused Investigation on the Vehicle Maintenance BASIC.

The motor carrier's OOS rate is determined by the number of vehicles placed OOS in relation to the number of vehicles inspected. If the motor carrier had an investigation within the previous 12 months, you will only use inspection data that occurred after the investigation. Only safety-related maintenance/vehicle OOS violations of Parts 393 and 396 are to be considered when determining the OOS rate.

The calculation of the OOS rate should be based on vehicles that were transporting passengers or property in commerce (interstate and intrastate). Review the motor carrier's most recent Level 1, 2, or 5 inspections. The number of vehicles from the vehicle inspection table should determine the number of inspections used to calculate the OOS rate; an example would be where the motor carrier has 6-25 vehicles, the number of vehicles used to determine the OOS rate would be 5. Review the company profile and check the 5 most recent Level 1, 2, or 5 inspections for the past 12 months or since the last investigation. There must be at least 3 vehicle inspections to calculate the OOS rate. However, you should use as many Level 1, 2, or 5 inspections as possible, up to the number of vehicle inspections indicated by the sampling table. If there were less than 3 inspections, conduct additional Level 5 inspections to reach the minimum sampling requirements. If you cannot meet this minimum requirement, you will be unable to calculate the OOS rate and you should explain why in the Investigation Report/Part C

Question: Can violations of cargo securement cited under Part 393 be used in calculating a carrier's out-of-service (OOS) rate during an investigation?

Answer: Yes. However, SI's *cannot* use any Part 392 cargo securement violations to calculate the carrier's OOS rate.

Circumstances Where Level 2 Inspection Cannot Be Used to Calculate the OOS Rate

The motor carrier OOS rate is determined by the number of vehicles placed OOS in relation to the number of vehicles inspected for the previous 12 months. Use the ***Minimum Sample for Vehicle Inspections for Calculating OOS Rate*** chart to determine the sample size for determining the OOS rate for carriers under this policy. Chart and any inspections conducted during the investigation. Only vehicle OOS violations of Parts 393 and 396 are to be considered when determining the vehicle OOS rate. If needed to meet the minimum sample size during the investigation, use the most recent Level I and/or Level 5 inspections obtained from the motor carrier's profile covering the previous 12 months.

Level 2 inspections shall not be included for motor carriers subject to the following criteria:

1. The carrier operates motorcoaches;
2. The carrier is a non-motorcoach operating passenger carrier with a Vehicle Maintenance BASIC percentile, at the time of the investigation, above the intervention threshold of 65; or,
3. The carrier is a property carrier with indicators from the Enhanced Investigative Techniques (EIT) process.

There are some cases where the OOS rate cannot be calculated because the minimum number of inspections cannot be reached using inspections conducted during the investigation and Level I and/or Level 5 inspections from the profile. For example, only two inspections can be conducted during an investigation for a passenger carrier when the passenger carrier only has two vehicles. If this carrier does not have eligible inspections on the motor carrier's profile, an OOS rate cannot be calculated because there are fewer than three inspections. The SI must conduct the passenger carrier vehicle inspections even though an OOS rate cannot be calculated in this scenario.

Enforcement

If the calculated OOS rate from the investigation report exceeds 34 percent (i.e. Factor 4 of the safety fitness rating methodology is impacted), a NOC for violation of 49 CFR 396.3(a) "Failing to ensure that all

vehicles under a motor carrier's control are systematically inspected, repaired, and maintained", should be initiated. If a NOC is not initiated, the reason must be explained in Part C of the investigation report.

CFR Parts - Part 393 & 396 - Vehicle Inspections (for calculating OOS rates)

Actions to Take When the Minimum Number of Vehicle Inspections Cannot Be Conducted

There will be instances where you will not be able to inspect the minimum number of required vehicle inspections. If this happens, you must explain in Investigative Report/ Part C , why you did not meet your minimum sample. You must also explain, in Investigative Report/Part C, if you exceed the required sampling beyond the number set forth in the chart above.

Vehicles to Select for Inspection for OOS Rate for the Factor 4 Rating

You should select vehicles that were operated in interstate commerce and intrastate commerce in its state of domicile within the previous 7 days, are ready for dispatch, just returning to the company, and others available for inspection.

1. Select vehicles involved in accidents.
2. Select vehicles that have been placed OOS (profile) or cited for equipment violations during roadside inspections within the previous 12 months. You will need to verify if the OOS violations and other equipment violations were repaired

Steps to Take if Roadside Inspections Are Discovered During the Investigation (on the Company's Profile) that Do Not Belong to the Motor Carrier

You must not include these inspections in the OOS rate calculation. Provide the Company Profiles state points-of-contact list to the carrier and have them contact the state in question directly.

Advise the motor carrier of the error(s) and explain that they must contact DataQs to resolve the issue. The DataQs website is found at: http://dataqs.fmcsa.dot.gov; (https://portal.fmcsa.dot.gov).

Procedures for Conducting Vehicle Inspections

Your vehicle inspections should be conducted using the North American Standard Inspection. However, before you conduct your vehicle inspections, request the assistance of a driver, mechanic, or other individual capable of operating the controls of the vehicle. When you conduct the vehicle inspections, inspect at least one of each type of vehicle operated (straight truck, truck tractor, etc.), and perform Level 5 inspections. If Level 5 inspections are not appropriate, you will need to provide an explanation in the Investigation Report /Part C of the investigation report. Please see the Inspection Manual for inspection procedures.

Policy for Ensuring that Brake Inspectors Are Qualified

In order to potentially reduce crashes involving brake violations and the use of unqualified brake inspectors, it is important that we tie brake violations to unqualified brake inspectors.

If there are brake violations in your sample of inspections on the profile, the qualifications of the brake inspector involved should be investigated. Furthermore, if there is a significant crash and there are indications that brake violations caused the crash, the qualifications of the brake inspector should also be investigated. If the investigations result in evidence that a carrier's brake violations are as a result of unqualified inspectors, appropriate enforcement action should be taken.

OOS Violations during the Vehicle Inspections

If you discover OOS violations during the vehicle inspections, you must inform the appropriate motor carrier official. You will need to advise the individual that the vehicle(s) cannot be legally operated until the necessary repairs are made. You must place the OOS Order (Form MCSA-64) on the OOS vehicle.

After Conducting the Vehicle Inspections

You will need to generate an ASPEN report for each inspection conducted during an investigation. The inspection report should be uploaded through SAFETYNET into MCMIS. If you find violations during the inspections and note them on the ASPEN report, you cannot include those violations on the Violation Tab/Part B .

Steps to Take if You Are Unable to Meet the Minimum Sample Sizes for Part 396

There will be instances where you will not be able to review the minimum number of required documents and/or vehicles. If this happens, you must explain, in the Investigation Report /Part C , why you did not meet your sample. You must also explain, in the Investigation Report/Part C, if you exceed the required sampling beyond the number set forth in the chart above.

Parts 393 & 396 –Vehicle Inspection Required for Vehicle Maintenance BASIC Assessment (Motorcoach Operators, Passenger Carriers and Property Carriers)

Investigations

Offsite investigations are no longer permitted for any motor carrier with a Vehicle Maintenance BASIC percentile at or above the intervention threshold. An onsite focused or onsite comprehensive investigation must be conducted in accordance with current policy.

Vehicle Inspections Required for Vehicle Maintenance BASIC Assessment

Vehicle inspections will be conducted during investigations under the circumstances outlined below. These inspections are required to be Level 1 or Level 5 inspections as defined by the Commercial Vehicle Safety Alliance, North American Standard Inspection program. Inspections must be conducted by Federal or State personnel who are properly certified in accordance with 49 CFR Part 385 and the existing certification policy. Required inspections must be conducted prior to the close out of the review.

Inspections are required during investigations when one of the following criteria is met:

1. The carrier operates motor coaches;
2. The carrier is a non-motor coach operating passenger carrier with a Vehicle Maintenance BASIC percentile, at the time of the investigation, above the intervention threshold of 65; or,
3. The carrier is a property carrier with indicators from the EIT process that vehicle inspections should be conducted. For example, if during the course of the investigation, the Investigator identifies systemic vehicle maintenance failures that cannot be fully identified through other means, or if continuing to monitor the carrier is not adequate to ensure the safe operation of the carrier's vehicles, inspections should be coordinated with the Investigator's supervisor and the DA or his/her designee.

When one of the above criteria is met, the table below should be used for the number of inspections required as the minimum sample for vehicle inspections."

Minimum sample for Vehicle Inspections

Number of Vehicles Subject to FMCSR	Vehicles Inspections to Conduct
1-3	ALL
4-5	3
6-25	5
>25	8

* Each power unit is considered a vehicle for determining the number to be sampled.

* Interstate operations and intrastate operations in its state of domicile only.

There will be instances where a sufficient number of vehicles to meet minimum sample requirements are not readily available for inspection at the motor carrier's principle place of business (PPOB), or in close proximity to the location in which the investigation is being conducted. If this is the case during a motor coach or passenger carrier investigation, the Investigator, in consultation with the DA and/or designee, should coordinate with other FMCSA Division Offices, State Motor Carrier Safety Assistance Program lead agencies, and Provincial partners to arrange for inspections in alternate locations before the closeout of the investigation.

In all instances, for passenger carriers and other motor carriers, when completing sufficient inspections to meet the sampling requirements is not feasible, you must fully explain the reasons must in the Investigation Report /Part C.

Selecting Vehicles for Inspection

Vehicles identified for inspection should be selected in the following order, to the extent practicable:

1. Operated in interstate commerce and/or intrastate commerce in the motor carrier's state of PPOB within the previous 7 days;
2. Are ready for dispatch or are just returning to the company;
3. Were involved in a crash within the previous 24 months;
4. Were placed OOS as indicated on the carrier's profile; and,
5. Were cited for equipment violations during roadside inspections within the previous 12 months. If these vehicles are sampled, repairs must be verified.

Actions to Take When the Minimum Number of Vehicle Inspections Cannot Be Inspected

There will be instances where you will not be able to conduct the minimum number of required vehicle inspections. If this happens, you must explain, in the Investigation Report /Part C , why you did not meet your minimum sample. You must also explain, in the Investigation Report /Part C, if you exceed the required sampling beyond the number set forth in the chart above.

Follow up Q&A for Investigating the Vehicle Maintenance BASIC policy

Parts 393 & 396 - Vehicle Maintenance

Systematic Inspection / Repair and Maintenance Program. The purpose of reviewing Parts 393 and 396 is to establish the effectiveness of the vehicle maintenance practices of the motor carrier or its agent and to determine the general condition of the motor carrier's vehicles. In order to establish this element of compliance, the Investigator must go beyond the carrier's maintenance documentation and evaluate the effectiveness of the carrier's maintenance program.

Have the carrier define its maintenance and inspection program and verify the carrier is in fact following a prescribed plan that is reasonable and consistent with the manufacturer's recommendations. Does the carrier have a documented schedule containing specific information to determine what is being accomplished? Does the carrier document a record of inspection, repair, and maintenance when conducting the preventive maintenance inspection process? Keep in mind, different operation types, and operations using different types of equipment, may require the Investigator to address different components and additional aspects of the maintenance program. Examples include;

- Operations utilizing owner-operators. Many carriers struggle with vehicle maintenance issues when dealing with owner-operators. Although the vehicle maintenance records may reside with the owner-operator, records should be requested during an investigation. The carrier is responsible for

ensuring the vehicles under their control meet all of the requirements of Parts 393 and 396 and are maintained in safe operating condition.

- Cargo securement, towed units and coupling devices. Drivers try to adjust axle loads to shift weight. They do so by applying rear brakes and applying forward and reverse pressure on coupling devises to pull a towed unit forward to adjust weight. This applies unusually harsh wear on coupling devices. Permitted loads can subject a vehicle to heavy wear and tear.

Shop and Driver interviews. Begin the maintenance program investigation by interviewing key personnel. Determine the location where inspection, repair, and maintenance take place determine who completes the following; general service, brake work, periodic inspections and large repairs. If some of these maintenance functions are performed off-site, then outside vendors performing maintenance for the motor carrier may also be included in the interviews. Include mechanics and inspectors doing routine preventative maintenance, Periodic Inspections, brake inspections, etc. Also include maintenance personnel such as safety managers, maintenance directors and shop foremen. Questions for maintenance personnel should include:

- [redacted]

See CSA Probing questions for the Vehicle Maintenance Basic

Maintenance facility or shop tour.

The purpose of visiting the carrier's maintenance facility is to determine if the shop personnel assigned to specific repair duties have the training and equipment to properly maintain and inspect the vehicles to ensure safe operation. If the carrier is using an outside source, you may have to conduct a visit to the facility. If the carrier is using a mobile maintenance service, take a closer look at the services offered, equipment utilized, and the capabilities, experience of the mechanics or service provider. Determine the relationship between the mobile service provider and the carrier. Determine if the maintenance facility or mobile service is properly equipped:

- Does the facility have ramps or pits? (Required for motorcoach operations)
- Does the facility have proper tools and equipment to maintain the vehicles?
- Does the facility maintain manufacturer's service manuals or have online access to manuals for representative vehicles?
- Observe the overall condition of the facility.
- Observe the condition of tires in the used tire corral; look for badly worn tires or signs of catastrophic failure.

If applicable, visit off-site facilities or arrange for another Investigator to complete a visit. Contact the mobile maintenance service to arrange for an interview and inspection of how the mobile unit is equipped.

Passenger Carrier.

In addition to the prescribed maintenance requirements and or processes discussed throughout the maintenance BASIC, passenger carrier inspection and repair facilities/mechanics require additional equipment and experience for bus and motorcoach operations. The facility performing maintenance on a motorcoach should have a specific manual for the year, make, and model of the coach. Additional questions related to a passenger carrier maintenance plan are;

- How did you get involved with motorcoaches?
- Do you have any specialized training in motorcoach or commercial vehicle maintenance?
- Does your program account for the type of service you provide (e.g., regular route vs. charter operation)?
- Request a demonstration of the 90-day emergency exit/window inspection process.
- Request an explanation of the tire maintenance program.
- Request a description of their tire pressure monitoring program.
- Request the mechanic demonstrate a PSI reading in the shop.
- Does the carrier use tire pressure monitoring systems (TPMS)?
- Are there buses equipped with onboard TPMS?
- If systems are in place, are they capable of alerting dispatch (smart tire technology)?

Steps to Determine if the Carrier has a Periodic Inspection Program

Each CMV that operates in interstate commerce must have a periodic inspection that has been conducted every 12 months and retained in the maintenance file. Record retention for a periodic inspection is 14 months; if within that time frame, review the previous document to look for gaps in inspection dates. To verify the inspection, ensure the facilities used by the carrier to conduct the inspections are adequate. This includes in-house facilities and outside vendors, including mobile mechanic services. Verify periodic inspections and brake inspections are being conducted by qualified inspectors. Conduct thorough interviews with inspectors to determine training and qualifications; request and verify inspector experience. In conducting motorcoach periodic inspections, in order to access and inspect the undercarriage, the inspector should have adequate pits, ramps or lifts. ***See Maintenance facility or shop tour.*** If it is determined that the facility is not adequate or that the inspector is not qualified, these issues could result in the invalidation of the periodic inspections.

Determine Inspector Qualifications- Interview individual(s) performing the inspection(s). The interview must include topics such as vehicle equipment requirements and violations in FMCSR Parts 393, 396, and Appendix G. Questions should include:

- How did you become an inspector?
- What previous experience do you have inspecting motorcoaches?
- What reference materials do you use when conducting an inspection?
- Are you familiar with Appendix G?
- Ask questions specific to Appendix G.
- Review maintenance records.
- What specialized training or certification do you have relating to inspecting motorcoaches?
- Have you provided your employer with documentation demonstrating your training as an inspector?

The following would serve as proof of a periodic inspection:

- A copy of the inspection and results conducted under Appendix G to Part 396.
- Evidence of an inspection conducted within the last 12 months through a state inspection program that has been deemed to satisfy the federal requirements.
- Violation-free roadside inspections performed after July 22, 2016, may no longer be used by a motor carrier to satisfy the annual inspection requirements of 49 CFR § 396.17.

Requesting a Current Vehicle List See Stage 2 - Pre Investigation Once the carrier has provided a current equipment list, verify that the list is accurate. The following are some methods which may be used to identify additional equipment:

- Check insurance paperwork
- Locate the supplemental vehicle summary contained in the insurance binder
- Verify current equipment list with the insurer
- Look for leased equipment
- Check accounts payable department
- Review lease agreements.

Reviewing the entire insurance policy can sometimes uncover vehicles that the carrier failed to report. The insurance policy should have an addendum that lists all the equipment on that policy. However, in some instances the carrier may not have reported all its equipment to its insurer.

Carrier's Vehicle History to Cover in Order to Review Compliance with Part 396 during an Investigation

You need to cover the 12-month period prior to the investigation or the period since the last investigation.

Determining which Maintenance Files to Review

You will need to select maintenance files for those vehicles that:

- Have been involved in an interstate recordable accident; Check insurance documentation and locate the supplemental vehicle summary contained in the insurance binder; Verify the current equipment list with the insurer;
- Have been placed OOS;

- Have been found to be in violation during roadside inspections; and,
- Any remaining files should be selected randomly.

Number of Maintenance Files to Select

You should follow the sampling requirements for the minimum number of maintenance files to review as set forth in the table below:

CFR Parts - Part 393 & 396 - Maintenance Files

Reviewing maintenance documentation. During the review of maintenance files, determine if the carrier is conducting the appropriate inspection, repair, and maintenance activities at the proper intervals. Other

[redacted]

Parts 393 & 396 - DVIR

Effective May 14, 2009, FMCSA recognized the daily vehicle trip inspection reports prepared by Canadian base-plated motor carriers in accordance with Canadian National Safety Code (NSC) Standard 13 (Daily Vehicle Trip Inspection) as compliant with the trip inspection requirements of 49 CFR Part 396. Accordingly, U.S. enforcement officials should NOT require Canadian motor carriers/drivers to complete a DVIR at the end of the day, and should not record a violation, so long as the Canadian motor carrier/driver complies with NSC Standard 13 which only requires an inspection report at least once every 24 hours. Canadian jurisdictions similarly accept post trip inspection reports prepared by U.S. based motor carriers in accordance with 49 CFR Part 396 as compliant with NSC Standard 13.

Effective December 18, 2014, FMCSA published in the Federal Register, a revision to Part 392-Driving of Commercial Motor Vehicles and Part 396-Inspection, Repair and Maintenance. This publication rescinds the requirement that commercial motor vehicle (CMV) drivers operating in interstate commerce submit, and motor carriers retain, DVIRs when the driver has neither found nor been made aware of any vehicle defects or deficiencies. This rule also harmonizes the pre- and post-trip inspection lists. In § 392.7, FMCSA adds ''wheels and rims'' and ''emergency equipment'' to the pre-trip list in paragraph (a) in order to harmonize it with the post-trip list in § 396.11(a)(1**).** This rescission was not applicable to the operators of passenger-carrying CMVs. However, on August 18, 2020, FMCSA published a Final Rule in a subsequent Federal Register effective September 17, 2020, rescinding the requirement that drivers of passenger-carrying CMVs prepare and motor carriers retain DVIRs when the driver has neither found nor been made aware of any vehicle defects or deficiencies.

See FR Vol.79, No. 243 / Thursday, December 18, 2014 / 75449

When determining compliance with the pre-trip and DVIR requirements, interviews with drivers should be conducted:

- Ask the driver if he/she has been trained to conduct pre-trip and post-trip inspections.
- Request the driver demonstrate the inspection process.
- Ask what type of safety defects are required to be reported.
- What defects discovered during a pre-trip are "action items".
- Ask the driver to explain how defects are reported to the carrier for repair.

DVIRs for Passenger Carrying CMVs. – As of September 17, 2020, the driver of a passenger-carrying CMV is no longer required to prepare and submit a DVIR if no defect or deficiency is discovered by or reported to the driver. Often, carriers will not use the DVIR form to actually report necessary repairs to the shop. If this practice is discovered, chances are the Investigator will discover defects reported to the shop on other forms such as work orders and "fix-it sheets". In addition, maintenance personnel may not verify defects reported on the other forms were made or not necessary for safe operation of the vehicle. Compare DVIRs to shop records to ensure a good system of reporting defects and repairing those defects is utilized by the carrier. Also, check to see if drivers are flagging time on their record of duty status for conducting inspections. Keep in mind that not all DVIRs are paper-based; some are electronic. Ask for the report and verify it fulfills the requirements.

Computing the Number of DVIRs to be Reviewed during an Investigation

The review of DVIRs should cover the number of DVIRs that have defects noted during the previous three months. One month of DVIRs for each vehicle selected should be reviewed, regardless of the number of RODS that are reviewed for compliance with Part 395 within the past six months. Passenger and property carrying CMVs only are required to fill out a DVIR when defects are noted or were made known to the driver. Property carrying CMVs are not required to fill out a DVIR if a defect is noted and repaired prior to the end of the driver's shift.

You should only request additional DVIRs from a motor carrier if, in the original sample, the requested DVIR for a vehicle was not required to be completed (for example, no defects discovered during a 30-day sampled period or defects were noted and repaired prior to the end of the driver's shift). If the requested DVIR were not required to be completed during the sampled period and the sample cannot be met by requesting additional DVIRS for the same vehicle(s) that a DVIR was required, you must request additional DVIRs for the vehicle during a different sample period.

Minimum Number of DVIR to be Reviewed (Carriers subject 49 CFR 396.11)

The minimum number of DVIR's to be checked should cover each day the vehicle was operated and a defect was noted. You should select the number of DVIRs containing a defect to be reviewed by following steps outlined below and from the following table (and for additional background information and guidance click here for the policy document):

1. Determine the number of vehicles to select (see table below)
2. Inspect the motor carrier profile/roadside inspections/maintenance files from the date of investigation through the previous 90 days. Note: One month of DVIRs should be reviewed for each vehicle selected, regardless of the number of RODS that have been reviewed for compliance with Part 395 within the previous six months.
3. For each vehicle selected note all days where:
    a. Level 1,2, or 5 inspections noted vehicle defects and/or

   b. Vehicles involved in crashes.

4. Request DVIRs from carrier for all days where vehicle defects should have been noted and/or day(s) where vehicles were involved in crashes.
5. Ensure the carrier has DVIRs for each vehicle for the specifically requested days:
   a. # checked is number of DVIRs that should have been maintained that had vehicle defects
   b. # discovered is number of DVIRs not prepared and maintained that should have noted the defects.

CFR PARTS-PART 393 & 396 DVIRs

Investigators are reminded to use their EIT training to determine when a defect should have resulted in a DVIR. For clarification on how to cite, please see the example below.

Example: A motor carrier has 25 vehicles subject to the Federal Motor Carrier Safety Regulations.

- Per the eFOTM table the sample size would be 7 vehicles.
- The carrier is required to produce all DVIRs with defects on the 7 vehicles during a 30-day period occurring in the past 3 months.
- After reviewing maintenance records, roadside inspections, or other information for those vehicle(s) for all of the interstate trips in that 30-day period, the Investigator should compare the number of days that there was a defect against the number of days a DVIR was prepared and retained. If there should have been 2 DVIRs and there are none provided, the violation would be cited as 2 of 2 checked for a violation of 49 CFR 396.11(a).
- If there were 2 DVIRs prepared, and it was discovered after reviewing maintenance records and conducting interviews that there was a third day that a DVIR was required, then the violation would be 1 violation of 3 checked for a violation of 49 CFR 396.11(a).

Recognizing that some carriers may still prepare and retain DVIRs for each trip as a matter of company policy, while these may not be required, they may be a source of important information for investigators.

Additional Guidance

Motor Carriers Operating More Than One CMV are Required to Have Drivers Complete a DVIR, in Writing, at the Completion of Each Day's Driving Activity when defects are made known to the driver

The report must identify the vehicle and list any defect or deficiency discovered by or reported to the driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown. If a driver operates more than one vehicle during the day, a report must be prepared for each vehicle operated in accordance with 396.11(a). If a defect is discovered and repaired before the end of a driver's shift, no DVIR needs to be completed.

Time to Consider Enforcement Action Against a Driver for Failing to Complete a DVIR

Enforcement action should be considered on each driver who fails to prepare in writing a DVIR at the completion of each day's work, on each vehicle in commerce where a defect or deficiency should have been reported and was not, provided 10 percent or more violations occur for at least a 30-day period checked.

Requiring DVIRs for a Motor Carrier that Operates Two Registered Commercial Motor Vehicles, Yet Only Has One Driver

The exception in 396.11(d) only applies to motor carriers that operate one registered CMV, regardless of the number of drivers employed.

Steps to Take When You Are Unable to Determine the Vehicle for a Particular Shipment or Movement

Occasionally, you may be unable, by any means, to determine the vehicle that moved a particular shipment. When the motor carrier failed to maintain daily vehicle inspection reports (396.11(c)(2)), and you cannot identify the vehicle on a specific movement through the use of motor carrier, shipper or State records, you can still document the violation for enforcement by identifying all vehicles used by the carrier on the date of the shipment.

1.3.14.8.7.2 Part 393 & 396 – Investigative Procedure

Once you have completed your investigation of compliance with Part 396, you should use the following guidelines to assist in the completion of the Violation Tab/Part B

Recording Violations of Part 396 Acute and Critical Regulations

Part 396 Acute and Critical Violations

Citation	Type	Description
396.3(b)	**Critical**	Failing to keep minimum records of inspection and vehicle maintenance. **Number Checked: Number of vehicle maintenance files reviewed.**
396.9(c)(2)	**Acute**	Requiring or permitting the operation of a motor vehicle declared "out-of-service" before repairs are made. **Note:** Prior to citing for a violation of 396.9(c)(2), you should confirm that no local, state or federal agency has taken action against the carrier for this violation. **Number checked: Number of days the vehicle operated after being declared OOS, without making repairs.**
396.11(a)	**Critical**	Failing to require driver to prepare driver vehicle inspection report. **Number checked: Number of vehicle inspection reports that were required to be made.** **Number discovered: Number of vehicle inspection reports that were not made.** ****This is not the same as vehicle inspection reports that were not maintained.**
396.17(a)	**Critical**	Using a commercial motor vehicle not periodically inspected. **Number checked: Number of vehicle maintenance files reviewed.** **Number discovered: Number of vehicles that were not periodically inspected.**
396.17(g)	**Acute**	Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards.

		Number checked: Number of vehicles that had parts and accessories that did not meet minimum periodic inspection standards not the total number of vehicles.

Guidelines for Recording Cargo-Related Violations within the Vehicle Maintenance BASIC

The cargo-related violations within the Vehicle Maintenance BASIC generally do not lend themselves to the discovery of new violations during an investigation since these are violations usually observed roadside. In some cases, you may discover new violations; but in most cases, you will examine available data and review the roadside violations that led to the deficiency. In those cases, in which the carrier meets or exceeds the SMS threshold and you do not identify new violations based on the sample, violations should be cited, as outlined in the table below, and recorded as "1" discovered and "1" checked, so as not to adversely affect the outcome of the motor carrier's safety fitness rating. The table below provides an example of regulations that might by suitable for citing in these situations. The violation is recorded to place the motor carrier on notice for its lack of compliance in these areas, based on its roadside inspection history.

Vehicle Maintenance BASIC
For each violation, determine whether it indicates: • Improper application of cargo securement rules; • Defective or improperly maintained cargo securement devices; • Or both of the above. Once this is established, follow the guidance below to determine the appropriate citation: • If the issue is an improper application of cargo securement rules due to a lack of knowledge of load securement rules found in 393.100 – 136, then cite 392.9(a)(1) Inspection of Cargo and Cargo Securement Devices and Systems. • If the issue is defective or improperly maintained cargo securement devices, then cite 396.3(a)(1) Inspection, Repair and Maintenance. • If the issue is the motor carrier has drivers that do not know how to determine if the cargo has been properly located, distributed, and secured, and/or the driver is not familiar with the methods and procedures for securing cargo evident from the violations cited, then cite 391.13 Responsibilities of drivers. • Note: The investigative system provides BASIC-specific violation options. The SI shall select the appropriate 392.2 option that is in alignment with the related BASIC. For example, the SI shall select 392.2 – Vehicle Maintenance when recording violations associated with the Vehicle Maintenance BASIC

***Note: This table is not all-inclusive. There may be other "1 of 1" violations that can be cited, based on investigative findings.**

These violations should be documented in the the Violation Tab/Part B Description Box as:

Date of Investigation (MM/DD/YYYY) the FMCSA and State or local commercial vehicle safety partners have identified violations across multiple inspections at the roadside over the previous 24 months that are reflected in the (insert appropriate BASIC) BASIC of the Carrier Safety Measurement System.

- **Note:** The investigative system provides a BASIC-specific 392.2 violation option for each BASIC. You must select the appropriate 392.2 option in alignment with the BASIC; for example, you must select the "392.2 Operating a vehicle in violation of local/State laws - Unsafe

Driving" when recording violations associated with the Unsafe Driving BASIC. If there are 392.2 violations related to multiple BASICs, you must record only one instance of 392.2 for the BASIC in which the most significant process breakdown was identified. You should then address the other 392.2 "1 of 1" eligible violations when documenting the process breakdown and associated recommendations. An example of selecting the most significant process breakdown is provided below.

- **Example:** A motor carrier is above the threshold in Unsafe Driving and Vehicle Maintenance BASICs. When reviewing the profile, you find that Unsafe Driving has far more violations, including speeding, lane changes and reckless driving. Additionally, six out of seven drivers at the company have Unsafe Driving violations. Upon further investigation, you determine that the carrier is not performing background or DMV checks of the drivers being hired. The vehicle maintenance - cargo securement violations are shipper-related and include four violations, due to sealed loads that the driver could not open and check. In this case, the most significant process breakdowns would be those related to Unsafe Driving. You should record 392.2 operating a vehicle in violation of local/State laws- Unsafe Driving – "1 of 1" – in the Violation Tab/Part B . However, both process breakdowns could be addressed in the recommendations.

1.3.14.8.7.3 Part 393 & 396 – Process Breakdowns/Remedies-SMC

Once you have discovered the violations relating to Part 393 and 396, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, you should apply the SMC to start the dialogue with the carrier and lead them through the self-discovery process to improve safety compliance. The SMC is used to discover what breakdowns in the motor carrier's processes are occurring, why they are occurring, and identify remedies that will lead to a path of safety compliance. For additional information on the SMC, go to General Guidelines for Using the Safety Management Cycle (SMC) to Help Diagnose a Breakdown in Safety during an Investigation. For investigative system procedures, see the Violation Tab/Part B (Recommendation/Requirements) on how to select and customize the SMP Breakdowns and Remedies.

1.3.14.8.7.4 Part 393 & 396 – Enforcement Procedures

Once you have entered the violations discovered into the Violation Tab/Part B and have decided to initiate an enforcement action for the Part 396 violations, you should use the following guidelines when submitting an enforcement report for Part 396 violations.

Part 393 & 396 - Guidelines for Enforcement of Red Flag Violations

The decision to initiate enforcement action may take into consideration, but not be limited to, factors such as: whether the State has already initiated enforcement action (e.g., citation); if the violation was corrected in a timely manner; or if the violation continued or repeated.

Determining enforcement against the carrier, for violations committed by the employed driver, is a separate process from enforcement against the driver. The carrier's awareness of the violations and its responsibilities for controlling them should be considered in enforcement decisions. The decision to pursue carrier enforcement for a driver with Red Flag Violations may take into consideration, but not be limited to, awareness, and knowledge and willfulness of the carrier (with respect to the driver violations). As with any carrier violations meriting enforcement, these violations are subject to an assessment of Process Breakdowns and Remedies for the associated BASIC.

Driver vs. Carrier Enforcement

- The Manager should be consulted before pursuing enforcement against the driver if either a citation had been issued roadside or the driver is not currently employed by the carrier.
- Enforcement against the carrier:

- Is considered in cases where there is proof that the violation was repeated when the carrier had knowledge (or should have had knowledge) of the violation and could have prevented its reoccurrence.
- Should be pursued in cases where the carrier knowingly directed the driver to commit or repeat the violation.

Part 396 - Red Flag Violations

- The Red Flag Violation 396.9(c)(2) is cited when the driver has been found operating while the vehicle was placed OOS. Whether it was discovered at the roadside or in the investigation, the violation should be verified with supporting documents before pursuing enforcement.
- Operating while OOS often implicates either or both the driver and the carrier. Once the Red Flag Violation is verified, if there was no original enforcement on the violation at the roadside, you will normally issue an NOC.

Parts 393 & 396 - Documentation

Documenting an Enforcement Case for Part 396

You should obtain the documentation to initiate an enforcement action. The documentation must establish that:

- The vehicle used falls within FMCSR jurisdiction for Part 396.
- The driver is an employee of (or controlled by) the motor carrier.
- The CMV was operated in interstate commerce by a motor carrier on a certain date.
- The violation of Part 396 occurred.

Specific Documents that Should Be Used to Document these Violations

Specific documentation may be needed to support some of the above referenced regulation violations.

- 396.9(c)(2) - Copy of the original out-of-service order.
- 396.11(c) - Copy of DVIR indicating the defects or deficiencies listed by the driver and a statement from carrier official that the defect was not corrected.
- 396.17(g) - Copy of the periodic inspection report with defects identified; statement of carrier official that defects were not repaired.

Documents that Can Be Used to Support the Violation

Examples of documents to support your discovered violations are listed below.

- Corresponding shipping papers
- RODS
- Daily vehicle inspection reports
- Vehicle registration.

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support your violation; therefore, you may use other documents to prove your violation.

A statement from a motor carrier official, driver, or other person responsible for compliance with Part 396. See Illustration E-*2*.

Parts 393 & 396 - Enforcement Action Against Drivers

Considering an Enforcement Action Against a Driver

The following violations warrant considering enforcement action against a driver:

- 396.9 - No driver shall operate any motor vehicle declared and marked "out-of-service" until all repairs required by the "Out-of-Service Notice" have been satisfactorily completed.
- 396.9(c)(2) - Operating an "out-of-service" vehicle. *
- 396.11(a) - Each driver shall report, and every driver shall prepare a report in writing at the completion of each day's work, on each vehicle operated in commerce (driver has 10 percent or greater violations for at least 30 days checked).

(*) denotes Red Flag Violation

1.3.15 SI Selects Preliminary Follow-on Intervention

Completing an Investigation requires the preliminary selection of a Follow-on Intervention or deliberately choosing to have "no Follow-On." Making this decision is more than just evaluating the identified violations. The SI must use past intervention and enforcement experiences, experience with the carrier under Investigation, what the results of the Investigation and evidence require, and the SI's best judgment. The end goal is to improve the carrier's and staff's safety behavior. The SI should consider all factors to select the intervention that has the highest probability of changing the carrier's culture and behavior. In addition to "no follow-on," there are two possible Follow-on Interventions: NOC, NOV, The general procedure for determining the appropriate Intervention or Interventions is summarized below.

The SI should consider Follow-on action in the following order:

- Determine if the discovered violations require or meet the criteria for an NOC
- If not:
  - Determine if discovered violations meet the criteria for an NOV

1.3.15.1 Notice of Claim (NOC)

An NOC is the official charging document used by the FMCSA to initiate a civil action for violation of Federal Laws and Regulations under the jurisdiction of this agency (the FMCSR, the FHMR, and violations of the United States Code). The NOC states the amount of penalty, provides a summary of the violations and a statement of charges, presents a notice to abate the violations, and includes information pertaining to hearings, negotiation, and failure on the part of the subject to reply to the notice.

An NOC is intended to correct carrier regulatory non-compliance, to deter future violations, and/or to issue civil penalties for non-compliance. Safety improvements are expected by non-compliant carriers as they respond to an NOC's financial penalties and certification of adverse action, and other attributes of the formal civil penalty proceedings. FMCSA will not serve NOC under 49 CFR part 386 when charging Riojas affected violations. See the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," MC-ECE-2020-0001[insert hyperlink to policy].

When is it used? NOC should be issued when any of the following are evident:

- Sufficiently persistent violations are discovered during any type of Investigation and warrant formal civil penalty action.
- The carrier has neither corrected the violations nor met the other terms of a prior NOV. Note: An NOV used for Riojas affected violations may not be converted to an NOC, even if submitted corrective action is inadequate or there is no response to the NOV. Divisions are therefore not required to collect evidence to meet the same standard of evidence as would be required for the enforcement of an NOC.

- Violations demonstrating a carrier's clear disregard for safety are present: These would be violations that impact public safety and are knowingly or willfully committed, including violations involving falsification.
- Violations of one or more of the Acute regulations are present, unless the SI can provide an adequate explanation in the Final Investigation Report for not taking enforcement action.
- A greater than or equal to 10% violation rate on one or more of the Critical regulations are present, unless the SI can provide an adequate explanation in the Investigation Report for not taking enforcement action.

What else do I need to know?

- The SI should refer to the current e-FOTM for process steps on NOC development and issuance.

1.3.15.2 Notice of Violation (NOV)

The NOV serves as an informal mechanism to address compliance deficiencies. If the alleged deficiency is not addressed to the satisfaction of the Agency, formal enforcement action may be taken in accordance with paragraph (c) of Part 386.11. An NOV is not a prerequisite to the issuance of an NOC.

An NOV details the required corrections for achieving compliance. The NOV should specify an alleged violation found in an inspection, a negative event, a non-frivolous complaint, or an Investigation, and establishes that continued non-compliance with NOV-identified violations may result in an NOC if the SI determines that this is warranted.

In cases where an NOV (Direct NOV) is issued to a carrier without an Investigation, (See Section 1.1.4 of Stage 1), then existing data (from roadside or previous investigations) should be used to assist in establishing FMCSA's burden of proof to generate the NOV. The specified corrective action should require proof that the carrier is currently in compliance. For example, if the carrier has a history of medical card violations it should be required to provide proof that drivers currently have medical cards. The NOV should state that driving/operating while in violation is not permissible.

An NOV should include the specific terms for carrier compliance. Failure to meet the terms of abatement in the NOV warrants escalation of these violations to an NOC.

When is it used? An NOV may be appropriate if:

- The criteria for an NOC are not met
- The violations are immediately correctable.
- Corrective action must be readily verifiable.
- The Driver Fitness is the only Roadside-Identified BASIC and the violations are easily correctable and readily verifiable. There are no uncorrected Acute and/or Critical Violations from previous investigations.
- The Insurance/Other indicator is the only reason the carrier received an investigation and there is no evidence of correction.

When is it not used? An NOV is NOT usually appropriate if:

- An NOC is warranted.
- The carrier has a history of not sustaining the correction of violations.
- The carrier has previously been cited for the same violations in the previous six years.
- The carrier was the subject of prior enforcement action for the same violation in the previous six years.

- The violation(s) involve falsifications.
- The carrier has a proposed or final Unsatisfactory Safety Rating.
- The carrier is rated less than satisfactory in Factor 6 (accident).

What else do I need to know?

- The SI should refer to the current e-FOTM for process steps on NOV development and issuance.
- In certain situations, NOVs may be issued without a formal Investigation, provided sufficient evidence can be obtained.

1.4 Stage 4-Investigation Feedback and Closeout

1.4.1 Introduction

During this Stage, the SI provides the carrier with feedback resulting from the Investigation. At the closeout, the SI conveys the results of the Investigation, reviews the carrier's Process Breakdowns, and discusses potential remedies with the carrier in order to effect a change to improve safety. The closeout is an opportunity to review specific violations in the context of the SMC in addition to reviewing the whole concept of the SMC and how it can help a carrier to understand interdependencies and how this understanding can help improve overall safety. It is important that the closeout be a two-way street and that you engage the carrier in discussing what he/she thinks the issues and potential solutions are in order to ensure carrier buy-in and commitment to lasting change. If the investigation was conducted Offsite, the SI should call the Carrier to close out the investigation, though in some cases if deemed necessary/ appropriate, the SI may close out in person. Closing out an Offsite Investigation in-person does not change the investigation type. The SI may not close out an Offsite Investigation without speaking to the carrier.

1.4.2 Overview of the Closeout

The following is a guide to items that should be covered during the closeout with the carrier:

- Ensure that the carrier received all closeout documents. The closeout package should include:
    - The appropriate SMC(s) corresponding to the carrier's BASICs under investigation that are roadside related (or associated with a complaint) or violations subject to the SMC process
    - If the Crash Analysis Tool was used, the Crash report and the pertinent crash countermeasures
- Review the findings and recommendations in the closeout with the carrier:
    - Acknowledge what the carrier is doing well and what SMPs they have in place. This should be part of the feedback process and helps to ensure that the carrier is primed to receive the recommendations for improvement.
    - Discuss the concept of the SMC and describe the violations discovered and corresponding process breakdowns found.
    - Walk the carrier through the SMC and use this as an opportunity to educate the carrier. This holistic view to safety will help to ensure that the carrier understands their process breakdowns in the context of the larger safety picture.
    - Detail the carrier's specific process breakdowns and the reason why the SMP is failing.
    - Discuss potential remedies. You should confirm that the carrier understands the potential remedies to the process breakdowns identified.
    - SIPs customized to the carrier: Discuss with the carrier how to go about implementing these practices and the carrier should be engaged in thinking through the implementation

effort in order to help the carrier view compliance as possible. The Mandatory Recommendations should be discussed with the carrier.

Upon completion of the closeout with the carrier, the SI finalizes the Investigation Report to include a narrative summary of findings and recommendations. Following authorization by the Manager, this report is automatically uploaded to MCMIS if the investigation was conducted using CAPRI. If completed using the AIM, the report will be automatically updated to MCMIS and EDMS, as soon as the manager approves the report using ACE.

1.4.3 Notification and Delivery of Investigation Report

Once the draft Investigation Report is prepared and ready for review with the carrier, the SI should contact the carrier official (the highest ranking motor carrier/shipper official in the session) and notify him or her that the report is ready. The delivery method should be pre-determined based on the initial contacts and the start of the investigation: whether the Investigation was Onsite or Offsite, and also based on prior agreement with the carrier. The Carrier Investigation Report can be provided to the carrier through the SMS system, fax, email, or mail. The SI should record the method used to deliver the report. The motor carrier/shipper official or designated representative's signature is not required. For Offsite Investigations only, the SI is required to obtain written proof of receipt by the carrier. This can be as simple as an email, letter, or fax from the carrier acknowledging receipt, or a receipt of delivery by certified mail to the PPOB, no signature required. This proof of receipt should be scanned into EDMS.

When a closeout session takes place with only the designated representative of the motor carrier/shipper, provide a copy of the Investigative Report to the designated representative and mail another copy to the highest ranking motor carrier/shipper official.

The SI should retain notes on any differences in names, titles, carrier/shipper name, date, and telephone number, if different from the information in MCMIS, as well as the names and mailing addresses, where appropriate, of the individuals to whom the Investigative Report was provided. This information is included in the Investigation Report/Part C, which is not provided to the motor carrier/shipper.

When performing an Offsite Investigation, some carriers may request the closeout be done onsite, especially when the carrier has had little or no previous contact with FMCSA or our State partner agencies. This is an acceptable practice but should only be done after consultation with a Manager. Even if the Investigation has been conducted offsite and the closeout is done onsite, the intervention is still considered offsite. The SI should record the reason for the onsite closeout.

If the motor carrier/shipper official, or designated representative, refuses to accept a copy of the Investigation Report, the SI must send a printed copy to the highest ranking motor carrier/shipper official using a mailing method that allows tracking and delivery confirmation. Note in the Investigation Report/Part C the refusal to accept the copy, when the SI mailed the copy, to whom the copy was mailed, and a tracking number for ensuring delivery and receipt.

If the carrier questions the Safety Fitness Rating, either issued from an Onsite Investigation or unchanged because it was an Offsite Investigation, then the SI should inform the carrier that they may initiate a change in their Safety Fitness Rating by requesting an administrative review (385.15) or by requesting a change based on corrective action (385.17).

1.4.4 SI Discusses Potential Follow-on Interventions with Carrier

During the closeout, the SI should discuss with the carrier the potential Follow-on Interventions.

If the intervention selected is the **NOC** or **NOV,** the SI should ensure all records and evidence are appropriate and accurate. The SI should discuss these Interventions with the highest-ranking carrier official (sole proprietor, partner, or corporate officer) and explain the selection and consequences to the official.

Completion of the Pre-Investigation/Part A of the Investigation after Interviewing the Motor Carrier

Recording the Reason for Initiation of the Investigation

Additional Steps Needed for Recording Onsite Focused Investigations

At the Completion of an Investigation, Do the Following, if Enforcement Action is Not Taken on Acute Violations

Completion of the Violation Tab/Part B at the Conclusion of the Investigation - Recommendations/Requirements

Violation Tab Part B (Recommendations/Requirements)

1.4.5 Completion of Part C After Closing Out the Investigation

Part C of the investigation report - the part of the investigation report that is not provided to the motor carrier/shipper - should provide as much information as possible about motor carrier issues not noted during the review that are important to the investigation. Investigation Report/CAPRI Part C Remarks Template Section 1.4.6. on how to complete the Investigation Report/Part C . In addition the SI, Auditor, or State MCSAP Investigator must record his/her name and title.

In the Investigation Report/Part C , you should select all parts of the regulations that were reviewed during the investigation: This includes parts and/or sections that were only partially reviewed in accordance with the Parts by BASIC tables. You should note (in the the Investigation Report/Part C Remarks) which parts were partially reviewed and which specific subparts were reviewed.

1.4.5.1 Recording the Reason for Initiation of the Investigation

FMCSA needs accurate data about the initiation of investigations to make informed policy decisions. SIs should select the correct reasons for initiation in the 'Reason for Investigation' Investigation Report/Part C. If there are multiple reasons for initiation of an investigation, record them in in the 'Reason for Investigation' area in AIM. See Section 1.4.6

- **Priority List** - If the investigation was initiated because of the motor carrier's BASICs score on the HM/Passenger list.
- **Complaint** - If the investigation was initiated because of a complaint identified on the division office complaint register.
- **Enforcement Follow-up** - If the investigation was conducted as a follow-up to an enforcement action.
- **Other** - If the investigation was conducted in response to an accident, a special project, or for other reasons.

1.4.5.2 Additional Steps Needed for Recording Onsite Focused Investigations – (If Using CAPRI)

Record an Onsite Focused Investigation using the steps outlined below:

- Select "Non-Ratable Review" as the review type in the CAPRI application.
- Select "CSA" as the Non-Ratable Review subtype.
- When completing the Onsite Focused Investigation, you must select "Focused CR" in Part C as the "Reason for Review." This must be done, even if the triggering event for the investigation was a complaint, etc. This will ensure that the review can be successfully uploaded into MCMIS, and that the investigation findings (e.g., Acute and/or Critical Violations) are properly processed and incorporated into both the SMS and prioritization.

Prior to closing out the review, you should consult the "Safety Rating: Hover to View" area in the lower left hand screen of AIM, review the Proposed Rating, and **convert the review type to a "Compliance Review," if the following conditions are met:**

- Passenger Carriers Operating without Authority - If the Proposed Rating is “Unsatisfactory”, the SI should convert the review type to “Compliance Review.” **Note: this only applies to Passenger Carriers who have never had operating authority.**
- All Other Carriers - If the Proposed Safety Rating is "Unsatisfactory" or "Conditional", the SI should convert the review type to “Compliance Review.”

If these conditions are not met, you must complete the review as a Non-Ratable review.

The tables below summarize how to record Onsite Focused Investigations in CAPRI (when applicable).

Recording an Onsite Focused Investigation in CAPRI for Passenger Carriers Operating Prior to Receiving Operating Authority

Investigation Type	Proposed Safety Rating	Review Type
Onsite Focused	Unsatisfactory	Convert to Ratable Review - Set review type to "Compliance Review."
	Conditional, Satisfactory	Complete as Non-Ratable Review

Recording an Onsite Focused Investigation in CAPRI for All Other Carriers

Investigation Type	Proposed Safety Rating	Review Type
Onsite Focused	Unsatisfactory, Conditional	Convert to Ratable Review - Set review type to "Compliance Review."
	Satisfactory	Complete as Non-Ratable Review

1.4.5.3 At the Completion of an Investigation, Do the Following, if Enforcement Action is Not Taken on Acute Violations

The reason should be explained in Part C of the investigation. Enforcement action not taken on acute violations must be explained in part C.

1.4.6 Investigative Report/Part C Remarks Template

Please select the following links for an examples of investigation reports. For additional information on completing your investigation in AIM, please reference the AIM User Guide (AIM Userguide)

Investigative Report (AIM)

CAPRI (Part C)

1.4.7 SI Completes Final Investigation Report and Uploads for Manager Review

The Final Investigation Report consists of completing all of Parts A, B, and C required elements and suggestions, along with recommendations for follow-on intervention, if any. Additionally, the investigative process requires that the SI complete a narrative summary of findings and recommendations in AIM. The narrative should present details of the Investigation that are not obvious or evident from the other parts of the Investigation Report and should expand on the full description of the carrier’s Process Breakdowns and Remedies. These details are not included in the report given to the carrier. The SI should thoroughly review the completed Final Investigation Report for accuracy and completeness.

At this point, the SI should make sure that all investigative notes and contact history with the carrier are up-to-date. Once all documentation has been finalized, the SI should upload the Final Investigation Report for review and authorization by the Manager.

1.4.7.1 Special Procedures for Mexico-Domiciled Long-Haul Carrier Investigations

Investigations involving Mexico-domiciled long-haul carriers require a different series of steps to complete the final investigation report when the investigated carrier has Provisional Operating Authority and the report results in a CONDITIONAL or UNSATISFACTORY safety rating. See Mexico Manual section Comprehensive Compliance Review Conducted for Mexico-Domiciled Long-Haul Carrier with Provisional Authority and Prior to Standard Authority. The section includes a decision/process flowchart that details the steps involved, and provides links to sample notices to use when communicating with the investigated carrier.

1.4.8 Manager Reviews Final Investigation Report

The Manager reviews the Final Investigation Report to ensure that it meets Agency quality standards, including:

- Was the intervention performed as assigned?
    - If not, was the reason for the switch documented?
    - Did the SI get the Manager's approval?
    - Was the switch justified?
- Were the BASICs investigated based on data at the time of initiation vs. assignment?
- Did the SI make appropriate decisions about Follow-on Interventions (NOC, NOV) for both carriers and drivers?
    - Were the related interventions appropriately recorded?
- Is the intervention status noted as closed-completed?
- Did the SI investigate all drivers with Red Flag Violations and document the Investigation results?
- Did the SI upload appropriate documents?
- Do the Process Breakdowns selected seem appropriate given the explanation in the investigative report?
- Does the description of the Process Breakdown justify why the process is broken?
- Are the Recommended Remedies customized to the carrier?
- Is the Investigation Report concise, free of opinion and limited to fact?
- Was the Investigation Report spellchecked?
- If violations were discovered in BASICs that were not Roadside Identified and enforcement was taken, were Process Breakdowns documented?
- Do violations in BASICs that were not Roadside Identified seem reasonable given the path of the Investigation?

If the answer to any of these questions is "no," then the Manager should discuss with the SI and have them correct the issue as appropriate.

1.4.9 Manager Authorizes Final Investigation Report

Once the Manager determines that the report is complete and that it meets the guidelines spelled out in Section 1.4.8, then the Final Investigation Report is authorized in the ACE.

1.4.9.1 Requirements for Uploading Investigations

It is important that all reviews be uploaded in an expeditious manner. If the proposed rating is UNSATISFACTORY, the review should be electronically uploaded to MCMIS within seven calendar days after the closeout session. All other reviews should be uploaded to MCMIS within 10 calendar days after the closeout session. **If the investigation is not uploaded within 30 days, it will not be rated.**

1.4.9.2 Process for Automatic Rendering of Investigations to EDMS (See Illustration SACN-2 and Illustration SACN-3)

The final investigation report completed in AIM will be uploaded to EDMS and MCMIS when the investigation is approved and authorized in ACE. This is an automatic process.

HOWEVER:

- Investigations conducted on Mexico domiciled long-haul carriers require coordination with MC-R in headquarters when those investigations result in either an UNSATISFACTORY or CONDITIONAL rating. MC-R must ensure the appropriate confirming rating letter is received by the carrier after the investigation report is uploaded to MCMIS; the North American Borders Division is copied on notices and coordinating communications.

1.4.10 The Violation Tab/Part B - Recommendations/Requirements

- Notifications Provided to the Motor Carrier at the Conclusion of the Investigation
- The Violation Tab/Part B - Recommendations
- Mandatory Recommendations
- For All Investigations
  - Understand Why Compliance Saves Time and Money
  - Document and Follow Through on Action Plans
  - Section 222 – Maximum Penalty Assessments (Three Strikes)
  - Part 391.23 – Pre-Employment Screening Requirements
  - Security Notification (America Needs You)
- For All Investigations Where the Carrier Has Been Involved in Two or More Recordable Crashes
  - Crash Data Preventability Review
- For All Investigations That Could Result in a NOC
- For All Investigations Resulting in Acute and/or Critical Violations
- For All Investigations Resulting in a Proposed Conditional or Unsatisfactory Rating
  - Less than Satisfactory Safety Rating
- For All Investigations Resulting in a Proposed Unsatisfactory Rating
  - Recommendations for Motor Carriers Who Are to Receive a Proposed Unsatisfactory Safety Rating

1.4.10.1 Notifications Provided to the Motor Carrier at the Conclusion of the Investigation

You must ensure that the motor carrier is aware of the proposed safety rating. If the proposed safety rating is conditional or unsatisfactory, you must discuss the potential rating with the highest ranking motor carrier

official (sole proprietor, partner, or corporate officer), if possible. If the closeout was not conducted with the highest ranking motor carrier official, or the corporate officer refused to accept the investigation report, you are required to ensure that a copy of the investigation report and closeout documentation are mailed to the highest ranking motor carrier official.

Onsite Focused Investigations Corrective Action Upgrade Implications

Onsite Focused Investigations raise unique policy and procedural issues associated with corrective action upgrade requests filed with the Federal Motor Carrier Safety Administration (FMCSA) per 49 CFR 385.17, because they do not include review of all six rating factors, as required by 49 CFR Part 385, to earn a Satisfactory safety rating.

These issues are mainly associated with Unrated and Conditional motor carriers receiving an Onsite Focused Investigation that subsequently file a corrective action upgrade request per 385.17. Put simply, the issues arise because the motor carrier wishes to upgrade to a Satisfactory safety rating, but the recent Onsite Focused Investigation did not examine all of the safety standards and factors, specified in 49 CFR 385.5 and 385.7, which are outlined below:

- If an Onsite Focused Investigation results in a proposed Conditional or Unsatisfactory safety rating of a motor carrier with an existing safety rating from a prior investigation, then you shall advise the motor carrier that any subsequent corrective action upgrade request, filed per 385.17, must address all violations from both the current Onsite Focused Investigation and the previous investigation, as well as the vehicle OOS rate and/or crash rate from each investigation, if either affected the safety rating.
- A carrier may not receive a Satisfactory safety rating if FMCSA has not, at some point in time, examined all rating factors specified in 49 CFR 385.5 and 385.7.

An investigation should not be initiated, nor should the scope of an ongoing investigation be expanded, for the purpose of providing a motor carrier the requested opportunity to earn a Satisfactory safety rating. Unrated motor carriers that request FMCSA investigative resources, for the purpose of obtaining a Satisfactory safety rating, should be advised that the Agency's resources cannot be influenced by external demands and that FMCSA concentrates investigative and enforcement resources on motor carriers with known safety performance and compliance problems to best ensure safety to the motoring public. Motor carriers with existing adverse safety ratings from prior investigations that request FMCSA investigative resources to perform an Onsite Comprehensive Investigation or to expand the scope of an Onsite Focused Investigation for safety rating upgrade purposes should be advised to follow the corrective action upgrade process in 49 CFR section 385.17. A 385.17 request cannot ultimately result in a Satisfactory safety rating, if FMCSA has not previously performed an investigation that includes the review of all required CFR Parts.

Given the unique policy and procedural issues, Division offices should contact and work closely with Service Centers in handling 385.17 requests from carriers resulting from Onsite Focused Investigations.

1.4.10.2 The Violation Tab/Part BRecommendations

Once the process breakdowns are identified, you should select and customize the appropriate Process Breakdowns and Remedies that best fit the carrier in AIM. includes a grid for the user to add recommendations as well as the ability to add custom recommendations to the report to be relevant to the motor carrier. Process breakdowns are defined as Safety Management Processes (SMPs) that have not been implemented by the carrier. Remedies are steps that the carrier should take to reduce the likelihood of future violations. Remedies may be identified or derived from the Safety Improvement Processes (SIPs) associated with each process breakdown. The remedies listed in AIM should be reviewed and customized to be relevant to the carrier. Both Process Breakdowns and Remedies should specify and incorporate defects in SMPs and corrections which may have been identified during the investigation. For guidance on how to identify Process Breakdowns and Remedies, see the General Guidelines for Using the Safety Management

Cycle (SMC) to Help Diagnose a Process Breakdown during an Investigation. Some general guidance on customizing appropriate Process Breakdowns and Remedies can be found below:

Customizing Process Breakdowns

During the course of your investigation, ask the carrier if this is an individual problem (e.g., one driver) or if it is a systematic, management problem (e.g., multiple drivers with the same issue).

You may select more than one process breakdown; but, it is important to focus on the process breakdown that will have the most impact towards correcting or eliminating the violation connected to the process breakdown.

- If it is discovered that the carrier has none of the SMPs in place and has made no attempt to put them in place, Policies and Procedures should be selected since that is the starting point on SMC. However, establishing the Policies and Procedures is only the first step; the carrier also needs to start using the SMC in such a way that will encourage the quickest and most efficient change in compliance that will reduce or eliminate discovered violations.

The language in the report should be directed to the carrier.

The customized description of SMP Breakdowns should be written in the present tense. The facts should be reported and accusatory or inflammatory statements avoided. The report should place emphasis on how to address things from this point forward. The description should clearly document why the process is broken, specifically answering the following questions:

- Describe the carrier's current process related to the breakdown.
- Where is the process breaking down?
- Why is this process breaking down?
- Explain the result of the process breakdown and link it back to the discovered violation.
    - The description of the SMP Breakdown should be concise.
    - When customizing process breakdowns, you should ask yourself the following questions outlined below. The answers to these questions will help you customize remedies appropriate to the carrier.
        1) "Why doesn't the company have these SIPs in place?" Answering this question will help you develop appropriate SIPs and a description should be included in CAPRI. Potential answers include:
            - "I don't know how."
            - "I don't have anyone to do that."
            - "I don't have the time."
            - "That will cost me too much money."
            - "I'm not required to do that."
            - "I don't care."
        2) "What improvements could be made that might encourage safety compliance?" You should engage the carrier in a discussion encouraging the carrier to brainstorm and help develop remedies to address the process breakdowns.

For more information specific to AIM, click this link to the AIM Manual: AIM Userguide

Customizing Remedies (SIPs)

Customize the SIPs accordingly. SIPs are geared towards systematic problems. Customize and target the SIPs that are pre-populated in AIM/CAPRI template. In general, be specific if there are certain topics, tools, or staff you would like the carrier to focus on.

The Recommended Remedies should be structured in a way that the carrier will find easy to follow.

Remedies should use the imperative form of the verb and be action-oriented.

The remedies appearing in AIM should be reviewed and, if needed, changed to reflect the order of importance in which the carrier should address them.

1.4.10.3 Mandatory Recommendations

The specific recommendations/requirements must be tailored to the motor carrier and the violations discovered during the investigation. The standard recommendations in the investigative software can be used as a starting point with more detailed and specific recommendations added by you. Mandatory recommendations found in CAPRI must be included depending on the type, scope, and/or outcome of the investigation are also populated. These recommendations are found in the "Mandatory Rcmds" drop-down menu under the recommendations tab in CAPRI as illustrated in the figure below. You should delete the recommendations that are not applicable to the investigation that you are working on.

Note: Mandatory recommendations are automatically populated in AIM based on violations selected by the SI, and cannot be edited.

1.4.10.4 For All Investigations

Field staff should continue to insert the following language into the Violation Tab/Part B - Recommendations of all investigation reports.

1.4.10.4.1 Understand Why Compliance Saves Time and Money

Compliance with FMCSR will not only save lives, but will also save your business time and money. Tracking how much your business spends on noncompliance activities can help you understand the many benefits of compliance to your business and why safety is good business.

1.4.10.4.2 Document and Follow Through on Action Plans

Document and follow through on action plans to ensure the actions you are taking are creating improvement in safety management and compliance.

1.4.10.4.3 Section 222 – Maximum Penalty Assessments (Three Strikes)

NOTICE: *A pattern of and/or repeated violations of the same or related acute or critical regulations will cause the maximum penalties allowed by law to be assessed under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during any eligible investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six-year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period.*

1.4.10.4.4 Part 391.23 – Pre-Employment Screening Requirements

NOTICE: *49 CFR Part 391.23 requires prospective employers to, at a minimum, investigate a driver's employment information, crash record, and alcohol and controlled substances history from all employers the driver worked for within the previous three years.*

The Pre-Employment Screening Program (PSP) is a screening tool that assists motor carriers in investigating crash history and roadside safety performance of prospective drivers. The PSP allows motor

carriers to purchase five years of crash data and three years of roadside inspection data from the Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Management Information System (MCMIS). Records are available 24 hours a day via web request. Motor carriers should visit the following website for more information: http://www.psp.fmcsa.dot.gov/Pages/default.aspx.

1.4.10.4.5 Security Notification (America Needs You)

All motor carriers and truck drivers are needed to fight against terrorism and hijacking. You could be a target. Protect yourself, your trucks, your cargo, and your facilities. Discuss with your employees and drivers the "Security Measures for Truck Drivers and Companies" which were provided and reviewed with motor carrier officials. Motor carriers should visit the following website for more information:

http://www.fmcsa.dot.gov/documents/Hijacking-Brochure.pdf

1.4.10.5 For All Investigations Where the Carrier Has Been Involved in Two or More Recordable Crashes

1.4.10.5.1 Crash Data Preventability Review

The DA will continue to consider preventability when a motor carrier contests a proposed safety fitness rating. For guidance on Determining Preventability for crashes review section 6.2.1.9. The motor carrier may claim that the recordable accident rate is not a fair means of evaluating its accident factor (Factor 6) on the investigation report due to not preventable crashes on the part of the motor carrier or its driver. If so, the motor carrier must submit the compelling evidence within seven calendar days if the proposed rating is Unsatisfactory and10 calendar days if the proposed rating is Conditional to:

Division Administrator

Federal Motor Carrier Safety Administration

Mailing Address

City, State Zip Code

Compelling evidence must be limited to official police accident reports and official insurance accident investigation reports.

1.4.10.6 For All Investigations That Could Result in a NOC

PLEASE NOTE: The violations discovered during this investigation may affect the civil penalty proposed in any subsequent NOC. In addition, your history of prior violations of the FMCSR, or the Federal Hazardous Material Regulations may also affect the civil penalty proposed in any subsequent NOC. Receipt of this report acknowledges your understanding that the violations discovered by the FMCSA during this review may be used to calculate any civil penalty proposed as a result of this review.

Attached to this report is a Table of Violations, which identifies all the documented violations which were discovered during the course of this review.

1.4.10.7 For All Investigations Resulting in Acute and/or Critical Violations

Acute and/or Critical Violations were recorded on this investigation report. These violations will impact your safety record. Furthermore, these violations may result in a follow-up investigation at a later date, unless adequate evidence of corrective action is forwarded to our office:

Division Administrator

Federal Motor Carrier Safety Administration

Mailing Address

City, State Zip Code

1.4.10.8 For All Investigations Resulting in a Proposed Conditional or Unsatisfactory Rating

1.4.10.8.1 Less than Satisfactory Safety Rating

The specific recommendations/requirements must be tailored to the motor carrier being reviewed. The standard recommendations used in the CAPRI software can be used as a starting point with more detailed and specific recommendations added by you. The following recommendations/requirements must be included in the Violation Tab/Part B of the compliance review:

385.15

If you believe the proposed rating is in error and there are factual and procedural issues in dispute, Part 385.15 (copy provided) outlines procedures for petitioning the Federal Motor Carrier Safety Administration for an administrative review of these findings. Your petition must be addressed to:

Chief Safety Officer

Federal Motor Carrier Safety Administration

1200 New Jersey Avenue SE

Washington, DC 20590

385.17

In addition, a request for a change to a safety rating based on corrective actions may be made at any time. Part 385.17 (copy provided) outlines the procedures for such a request. The request must be made in writing, must describe the corrective action taken and must include other documentation that may be relied upon as a basis for the requested change. Address your written request to:

Field Administrator

Federal Motor Carrier Safety Administration

Mailing Address

City, State Zip Code

Ensure that a CC copy of the letter is mailed to:

Division Administrator

FMCSA, “Specific” Division

Mailing Address

City, State Zip Code

1.4.10.9 For All Investigations Resulting in a Proposed Unsatisfactory Rating

1.4.10.9.1 Recommendations for Motor Carriers Who Are to Receive a Proposed Unsatisfactory Safety Rating

For Proposed Unsatisfactory Rating for Passenger & Placardable HM Carriers

This review will result in a Proposed Safety Rating. The findings indicate you are currently operating at an unsatisfactory level of safety compliance. A written notice of proposed unsatisfactory rating will be sent to you by FMCSA via U.S. Mail. If you fail to obtain an improved rating within 45 days of the date that notice is sent, the unsatisfactory rating will become final and you must cease all interstate and intrastate transportation operations.

Information on your compliance status, roadside inspections, regulatory changes, accident counter measures and the hazardous material incident prevention manual are available on the Internet at the FMCSA's website at http://www.fmcsa.dot.gov and http://www.safer.fmcsa.dot.gov.

For Proposed Unsatisfactory Rating for All Other Motor Carriers

This review will result in a Proposed Safety Rating. The findings indicate you are currently operating at an unsatisfactory level of safety compliance. A written notice of proposed unsatisfactory rating will be sent to you by FMCSA via U.S. Mail. If you fail to obtain an improved rating within 60 days of the date that notice is sent, the unsatisfactory rating will become final and you must cease interstate operations.

Information on your compliance status, roadside inspections, regulatory changes, accident counter measures and the hazardous material incident prevention manual are available on the Internet at the Federal Motor Carrier Safety Administration's website at http://www.fmcsa.dot.gov and http://www.safer.fmcsa.dot.gov.

1.5 Stage 5 – Post Investigation Intervention (Enforcement Manual)

Post-Discovery Tools

Enforcement Manual
(Stage 5-Post Investigation Intervention)

For

The eFOTM Redevelopment

Federal Motor Carrier Safety Administration (FMCSA)
U.S. Department of Transportation

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2 Enforcement Manual

2.1 Introduction

Once you have completed your investigation or inspection, and have entered the discovered violations into the investigative system /ASPEN software, you should make the determination whether an enforcement action is warranted for the subject's noncompliance. The decision to initiate a civil forfeiture proceeding is one of the most serious elements used by our Agency to encourage compliance by the subject. The decision should be well founded and justified by evidence obtained during the investigation. In this process, nothing can substitute for the sound judgment of your experience in analyzing the facts and determining the appropriate action to implement. Adherence to this general guidance will ensure high quality decision making and uniformity in the Agency's enforcement program.

Mandatory enforcement violations have been removed from our procedures. However, this in no way eliminates enforcement from the equation. It does allow greater discretion to focus enforcement where performance data reflects that violations could contribute to a crash. Therefore, you should focus your enforcement in all Parts where Acute, Critical, Severe Level I and II violations are found. In fact, it is incumbent on you to use your best judgment in order to target enforcement actions to areas that have the greatest impact on safety.

2.2 Enforcement Process

2.2.1 Initiating an Enforcement Action

2.2.1.1 Individuals who can initiate an Enforcement Action

Safety Investigators can initiate an enforcement action based on investigations, compliance reviews (CRs), and roadside inspections. Certified Safety Auditors or Certified Roadside Inspectors may only initiate an enforcement action as a result of a roadside inspection.

There may be instances when field personnel find that there is missing or erroneous information in the field system being used. In those instances, the Violation Update Utility (VUU) form must be completed with the appropriate information and submitted to the appropriate Service Center.

2.2.1.2 When to Initiate an Enforcement Action

During CRs, roadside inspections, and investigations, if violations of the Federal Motor Carrier Safety Regulations (FMCSR) and/or Hazardous Materials Regulations (HMR) are discovered, some initial determinations are necessary before deciding whether enforcement action should be initiated. You should consider what enforcement action will best encourage and maintain compliance and reduce accidents. An enforcement action is meant to correct noncompliance, deter future violations, and/or penalize violators.

Enforcement action (civil forfeiture) is more effective in improving the regulatory compliance of motor carriers that are in substantial noncompliance than those that are in marginal compliance. Enforcement is also more effective on motor carriers with higher than average crash rates.

2.2.1.3 When Enforcement Action Is Not Necessary

Enforcement action may not be necessary in certain instances. For example, an enforcement case may not be warranted if a motor carrier has minimal violations, has improved its compliance, and has decreased its accident rate.

2.2.1.4 Who Can Be Subject to Enforcement Action

Enforcement actions can be initiated against motor carriers, HM shippers, cargo tank facilities drivers, and/or company officials who are responsible for ensuring compliance with the regulations.

2.2.1.5 Initiation of an Enforcement Action on a First Time Investigation

A first time investigation is not a factor in deciding whether or not to initiate an enforcement action.

2.2.1.6 Basis for a Decision Not to Take Enforcement Action for Acute and/or Critical Violations

If you decide not to take enforcement action in these circumstances, you must provide an explanation in the Investigation Report/Part C, whether or not mitigating circumstances are present.

Serious Violations include:

- Violations of **Acute** regulations are those where noncompliance is so severe that they require immediate corrective action by a carrier regardless of its overall safety posture. Discovery of a single Acute Violation may result in BASIC requiring an investigation.
- Violations of **Critical** regulations are those which relate directly to the carrier's management and/or operational controls and are indicative of breakdowns in a carrier's management controls. Discovery of violations in at least 10% of the records checked and a pattern (more than one occurrence) may result in BASIC requiring an investigation.

2.2.1.7 Important Points to Consider If I Don't Know If an Enforcement Case Is Warranted

- Enforcement action may be pursued for violations of Critical, even though the violation frequency is less than 10 percent. A penalty is appropriate when a motor carrier has a repeated, deliberate disregard for compliance with the FMCSR.
- Enforcement action may not be necessary, if the motor carrier's compliance level has improved since its previous investigation or CR, and the motor carrier will likely make further progress.
- In short, the decision to take enforcement action is based upon your evaluation of the facts when you uncover marginal levels of violations of Critical regulations. It is a matter for exercise of your discretion.
- If you are still unsure, ask your Division Administrator (DA) or designee.

2.2.1.8 Initiating an Enforcement Action against a Driver

You should consider enforcement action on each driver that fails to comply with the FMCSR, regardless of whether enforcement action was initiated against the motor carrier. For each section (e.g., 382, 383, etc.) of the eFOTM (*Compliance Manual*), there are recommended violations (such as Red Flag Violations) you should consider when you opt to take enforcement against a driver. Enforcement action should be taken against drivers who knowingly and consistently ignore the regulations. In general, an enforcement action should not be initiated for a violation that has already been addressed through a State enforcement action, such as a civil citation or a ticket. If you are unsure, ask your DA or designee to determine if enforcement should be initiated.

2.2.1.9 Factors to Consider When Contemplating Enforcement Action for Driver Violations

- How long has the driver been driving a CMV?
- Does the motor carrier have a disciplinary plan in place which holds the driver accountable for his/her actions?
- If so, what actions does the motor carrier take to ensure the driver will comply with the FMCSR?
- Consider taking action against a driver who is responsible for a significant portion of a motor carrier's violations.
- What percentage of the motor carrier's violations do the driver's violations represent?
- Did the driver fail to inform the employing motor carrier of the Red Flag Violation?
- If corrected, was the correction timely? Did the driver operate between the time of the violation and when it was corrected?
- Has the Red Flag Violation been corrected, or is it continuing?

2.2.1.10 Failure to Stop for an Inspection

If a driver of a CMV knowingly fails to stop for an inspection when directed to do so by an authorized employee, contact a MCSAP partner who has the authority to pursue the driver/vehicle in question and

detain the driver for questioning and possible inspection. FMCSA authorized employees do not have the authority to pursue and detain drivers and vehicles.

FMCSA does not have the authority to cite or bring enforcement against Title 18, United States Code violations because they are criminal violations. However, suspected violations of 18 U.S.C. must be referred to the Office of the Inspector General (OIG) for possible criminal enforcement action.

If an authorized employee of FMCSA believes that a referral for criminal prosecution is warranted, he/she must first consult with his/her supervisor. The decision to refer a case to the OIG will be left to the discretion of the DA. The DA must ensure his/her actions are coordinated with the appropriate Service Center (SC) and MC-CCE Field Attorney. If the DA, after consultation with the SC and MC-CCE Field Attorney, determines that criminal prosecution should be pursued against a driver, the matter must be referred to the OIG. The OIG is the Department of Transportation's law enforcement component and it is mandatory to coordinate any criminal prosecutions with it.

2.2.1.11 Enforcement of Exemptions

An exemption does not require specific documentation to demonstrate that a driver was operating under the exemption. However, an Investigator, Auditor, or Inspector should attempt to demonstrate that the driver does or does not meet the conditions of the exemption. Examples of evidence to support the proper use of the exemption are available through motor carrier/shipper documents, motor carrier interviews, driver interviews, documents found in the vehicle, contacting State and local officials, contacting associations of those affected by the exemption, or interviewing persons affected by the exemption. When it is determined that the driver did not meet all the conditions of the exemption, the driver must comply with all applicable FMCSR and should be cited for violation(s).

Before undertaking enforcement action where an exemption applies, you should consult with your supervisor and/or legal and enforcement staff at one of the Service Centers. If after consultation, a determination is made that the exemption does not apply, and enforcement action will be pursued for violations discovered during an investigation or roadside inspection, the Investigator or Inspector should follow standard operating policies and enforcement procedures detailed in this document. Evidence establishing that the driver was not within the scope of the exemption must be included in the case documentation for any enforcement action taken.

2.2.1.12 Uniform Fine Assessment (UFA)

The purpose of the UFA software is to assist FMCSA in calculating uniform proposed civil penalties for violations of the FMCSRs, Hazardous Materials Regulations (HMRs), minimum financial responsibility regulations, and all other statutes and regulations enforced by FMCSA. The software is designed to ensure that statutory, regulatory, and administrative policies are considered in determining each penalty assessment, to promote uniformity in assessments throughout FMCSA, and to create transparent and easily understood assessments. FMCSA has used UFA to calculate penalties since the mid-1990's. Under a long line of administrative decisions, starting with Alfred Chew & Martha Chew, dba Alfred & Martha Chew Trucking, FHWA-1996-5323 (Final Order, Feb. 7 1996), FMCSA and its predecessor agency have held that UFA is presumed to properly consider the statutory penalty factors under 49 U.S.C. §521 (b)(2)(D) and 49 U.S.C. 5123(c).

Refer to the UFA Policy (signed PDF; Word version), User's Manual and Calculations Guide regarding use of the software and questions about the selections to be made in the system.

2.2.1.13 Evidence Included as a Lettered Exhibit to the Case Report to Support the History Selection in UFA

1. A copy of the Assistant Administrator's/Administrative Law Judge's final order,
2. A settlement agreement containing an express admission of liability,
3. Evidence of full payment and the NOC containing admissions language, or
4. The Final Agency order issued pursuant to 49 CFR 386.14(e), as applicable, must be included as a lettered exhibit.

2.2.1.14 Use of a Prior State Enforcement Case as History

Use prior state enforcement case as history if the enforcement case was performed using Federal procedures, and processed through the Federal System, and the case was closed in accordance with the answer to *Determining History When Completing UFA or UPAWs*.

2.2.1.15 Ensuring There Are Admissions Clauses in Previous Enforcement Actions

Most information can be obtained by researching the Enforcement Management Information System (EMIS). The Safety Investigator (SI) will be responsible for researching motor carrier history prior to conducting the investigation or CR. The SI should contact his/her Division Program Specialist (DPS) or DA for assistance as needed.

SC personnel will be available to assist the Division Program Specialists and DAs.

2.2.1.16 Selecting Counts for the Enforcement Case

After considering the nine factors, decide which violations are most likely to increase the chance of an accident occurring. Use the following list as a guide to selecting counts:

1. Look at accident reports and, if preventable, determine if the cause is related to the violations noted on your review. These should be considered your primary counts.
2. Look at roadside out-of-service (OOS) violations and high Behavior Analysis and Safety Improvement Category (BASIC) percentiles in accordance with *Table: BASIC Thresholds (Percentiles)*. Is the motor carrier exhibiting behavior that increases the likelihood that an accident will occur?
3. Look at those areas of noncompliance found during your investigation where the severity and extent of the violations will increase the likelihood of accidents, e.g., hours of service (HOS) violations, positive drug tests, disqualified and medically unqualified drivers, and vehicles not periodically inspected.
4. Next, staying within the recommended fine amounts, consider taking several counts (e.g., one count in each part) at less than the maximum amounts to cover more parts of the regulations.
5. Lastly, review your UFA fine amount to determine the number of counts needed.

2.2.1.17 Taking Several Counts in Each Part Where Noncompliance of Critical or Acute Regulations Is Discovered

Spreading the counts among several parts of the regulations shows the motor carrier these areas are important. The enforcement case should reflect the motor carrier's safety posture by penalizing the motor carrier for each of the Acute and Critical violations recorded in the investigation or CR report, if possible. This will also be important if repetitive violations are found in subsequent investigation or CRs, so that the provisions of Section 222 (Three Strikes) of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) will then be applicable and deserved.

2.2.2 Understanding Your Evidence

2.2.2.1 Understanding Your Evidence

2.2.2.1.1 Definition of Evidence

Evidence is what is offered to prove the existence or non-existence of a fact, ultimately to determine the truth of the matter at issue. The law of evidence concerns the rules of admissibility and weight accorded evidence in a judicial and administrative setting. There are two types of evidence:

Direct Evidence – Facts that prove the issue in question, without the need for reference to any other fact or evidence.

> **Example** – A record of duty status (RODS) shows a driver driving for more than 11 hours without ten consecutive hours off duty. This is direct evidence of a violation of the 11-hour rule. However, this is not sufficient evidence to sustain a penalty. Although this is direct evidence of violating the eleven-hour rule, you must still show the carrier and driver are subject to the regulations; that the

document is authentic; and that the carrier required or permitted the violation. Similarly, if one were to examine a confession in a criminal case, it may be direct evidence of the crime, but you would need to show it was not coerced and corroborate the facts of the confession. Direct evidence does not mean further proof is unnecessary to sustain a judicial decision. It simply means that further inferences are unnecessary to establish the fact shown in the evidence.

Circumstantial Evidence – A fact or facts which, standing alone, do not prove or disprove the issue, but when considered with other established facts, gives rise to an inference which establishes the truth of a particular matter or that excludes all other hypotheses, except for the conclusion ultimately reached.

Example – A carrier's VP provides a written statement that he personally reviews all driver RODS and compares them with payroll records, toll receipts, bills of lading, and weigh station receipts on a weekly basis. Investigation shows numerous false RODS. There is no evidence of disciplinary measures against drivers, a prior audit was signed by the VP, all documents were in the carrier files and available to the VP, and the VP is responsible for safety compliance. A case of circumstantial evidence has been established for requiring or permitting preparation of false RODS.

It is important to keep in mind that circumstantial evidence is no less admissible and carries no less weight in a judicial or administrative setting. In fact, the overwhelming majority of criminal and civil cases are based on circumstantial evidence. However, you should think of circumstantial evidence as links in a chain, which are used to establish a particular fact or violation. If one of the links is missing, you may be unable to sustain the penalty. Since many of your cases will be built on circumstantial evidence, it is your job to insure that the links are securely fastened.

2.2.2.1.2 The Different Forms of Direct Evidence

Real Evidence	Tangible object used to prove a fact in issue that speaks for itself. A bag of cocaine seized from the driver of a commercial motor vehicle (CMV) while he was on duty would be an example of real evidence.
Testimonial Evidence	Oral evidence produced at trial or during an administrative hearing.
Documentary Evidence	Evidence in the form of writing.
Demonstrative Evidence	Evidence in the form of photographs, charts, videos or similar type of evidence demonstrating a particular set of facts.

2.2.2.1.3 Definition of Admissibility of Evidence Mean

A judge or Administrative Law Judge will decide at trial whether your evidence is admissible and, therefore, whether he/she will consider it in reaching a determination of the facts in dispute. The rules of evidence govern questions of admissibility. Generally, at administrative hearings, the rules of evidence may be relaxed. However, the rules of evidence also bear on the reliability of evidence (i.e., whether it is worthy of belief) and therefore, ALJs have the discretion to apply the Federal Rules of Evidence (FRE) to proceedings and often do.

2.2.2.1.4 Rules that must be followed to Ensure the Evidence Submitted is Admissible

In your role as an investigator, you must ensure the following rules for admissibility, as it relates to authentication, hearsay, and proof are met:

Authentication

Hearsay and Proof

2.2.2.2 Authentication

Generally documentary and demonstrative evidence must be authenticated; meaning that the document must be what it purports to be.

Documentary Evidence – For instance, if introducing a statement by a VP of Jones Trucking taken during an investigation, you should obtain contact information for the VP so that he/she can be called to testify at trial. Even a signed statement is not admissible as evidence unless the person who signed it is present to authenticate it. With a business record, such as the daily RODS, an authorized custodian of the records must be present at the trial to testify that the record is authentic.

Demonstrative Evidence – This evidence is generally authenticated by showing the evidence accurately depicts what it is attempting to illustrate. For instance, the proponent of a photograph must testify he is familiar with the scene shown in the photo, indicate when the photo was taken, and state the photo accurately depicts the scene at that time and place.

Important Photo/Digital Image Notes – FMCSA personnel must use great care when using digital camera visual images in enforcement cases and accident/hazardous material incident investigations to assure the integrity of the visual images. FMCSA personnel should ensure date and/or time settings on digital or traditional cameras are accurate and account for daylight savings time and/or time zone changes. FMCSA strictly prohibits personnel from altering or manipulating visual images taken with digital cameras. However, depending on the type of digital camera, it may be necessary to rename the digital file in order to prevent future overwriting of the file. In the event that renaming the file becomes necessary, that fact should be included in the signed affidavit.

Accidental alterations of the visual images may occur when the disc with the stored visual images is placed too close to a powerful magnetic source. The effects of accidental alteration to the visual images are likely to be catastrophic in nature. FMCSA recommends that investigators/inspectors read the digital and traditional camera's instruction manual carefully and follow all guidelines and warnings.

FMCSA personnel using digital images from digital cameras or standard photographs from traditional cameras as evidence must authenticate the visual images or photographs. The photographer must sign an affidavit or declaration stating that the visual images or photographs are an accurate representation of the scenes depicted in the visual images or photographs at the time the photographs were taken by FMCSA personnel (see *Illustration E-1*).

2.2.2.3 Hearsay and Proof

The fact a document or item is authenticated does not guarantee its admission at trial, since it often must overcome the objection of hearsay. Hearsay is defined as an out of court statement offered in court to prove the truth of the matter asserted. The statement could be verbal or written. There are numerous exceptions to the prohibitions against hearsay; some of the ones that are pertinent to your work as an investigator are the business records and admissions exceptions.

Business Records – Are admissible as an exception to the hearsay rule. Generally, to qualify as a business record it must be shown that the business ordinarily kept the record in the course of its business, the report was prepared in conjunction with the events or facts, and the report was prepared by a person with a business relationship with the company. Most of the records encountered during an investigation would qualify as business records; this would include records maintained in official files of the agency, such as previous audits, inspections, or reviews. Please note that the testimony relating to business records need not come from the maker of the records; it may come from someone familiar with the records and their maintenance. See FRE 803(6).

Official Records – Are also allowed as exceptions to the hearsay rule. These types of records are described as records, reports, statements, data compilations of public agencies, officers setting forth the activities of the office, or matters observed pursuant to duty imposed by law. Thus, most agency reports would qualify as official reports. See FRE 803(8).

Admissions – By a party are also an exception to the hearsay rule. This would be one of the most common exceptions that would be applicable to your work as an investigator. Admissions are generally statements a party makes that are against the party's pecuniary or proprietary interest. An admission can be something less than a complete acknowledgment of guilt. It can be a statement or act which, when considered with other evidence, would infer guilt or civil liability. For example, with respect to false RODS case, you have taken a statement of the VP of Jones Trucking in which he states that he is in charge of safety compliance, he examined the records and supporting documents, and he failed to detect the violations and was aware of his responsibility, and failed to inform drivers of their responsibilities. The statement can be admitted at trial as an admission and introduced by the investigator. It should be noted that corporations are bound by the acts of their employees and agents acting within the scope of their duties. This statement is admissible because the VP is the person responsible for safety and the overall management of the company and supports the violation of requiring or permitting drivers to make false entries on RODS. When considering whether an act or statement can be construed as an admission, it may be necessary to view the case in its entirety and place the statement in that context. See FRE 804(b) (3).

Past Recollection Recorded – Permits admission of a previous memo or other type of document that recalls a previous event the witness is unable to recall at the present time. See FRE 803(5).

Example: The SI has prepared a memo in connection with the carrier's elaborate scheme to submit false RODS. It is now several years later at the hearing and the SI is unable to recall the precise details of the scheme. The memo may be introduced as evidence of that scheme. Note: It is possible the memo could be introduced as an official records exception to the hearsay rule.

2.2.2.3.1 Definition of Burden of Proof

In civil cases, including administrative hearings, a party must prove its case by "a preponderance of the evidence." That is, a party must demonstrate to the trier of fact that it is more likely than not that its position is the correct or true one. Additionally, the regulations state that the administration has the burden of proof. **Therefore, the case begins with a presumption in the absence of sufficient reliable evidence that the carrier or driver did not commit the violations**

2.2.3 Conducting Interviews and Obtaining Witness Statements

2.2.3.1 Reasons for Performing Interviews and/or Obtaining Witness Statements

Interviews and witness statements can be useful tools in gathering facts that cannot be otherwise documented. Moreover, they may be essential in explaining real evidence that is not otherwise obvious and in strengthening the links of the chain of circumstantial evidence. Often the witness interview is the final element in building and solidifying the case. For example, consider the following uses:

- To definitely show facts about which the witness has knowledge;
- To implicate the subject by his/her admissions or confessions;
- To refresh the memory of the witness;
- To deter a witness who may change his story at trial;
- To make admissions or confessions irreversible;
- To determine the anticipated defense of the subject; and
- To preserve and collect evidence and possibly lead to more evidence.

Generally, a statement or interview must be signed under penalty of perjury by the person making the statement (e.g., carrier officials, drivers, other witnesses) and by the agency investigator (see Illustration *E-2* and *E3*). If such a statement is not signed under penalty of perjury, and the carrier objects to its introduction at a hearing, the issue of validity of the document will be determined by an ALJ and the agency may have failed to meet its burden of proof. See: Dan F. Carey (dba DFC Transport), Final Order (May 28, 1997).

Although the SI may have identified a person from whom he believes a written statement is needed, an intelligent decision cannot be made without first conducting an interview to determine the facts the witness has knowledge of, and the willingness of the witness to, give a statement. It is important for the SI to conduct the interview with the goal of obtaining as much relevant information as possible; and it is imperative to begin the interview with an open mind. Preconceived ideas as to guilt or innocence, or other facets of the case, may preclude you from seeking out information that is contrary to your already-established train of thought. An open mind will allow you to assimilate information more readily, and explore alternative theories. There is nothing wrong with having a theory of the case based on your review of the documentary evidence and preliminary information; just do not overlook other options during the interview. Be inquisitive, ask follow-up questions, probe for inconsistencies, be complete, seek answers as to: Who, What, When, Where, How, and Why. Many of the techniques discussed in the *General Guidelines for Using the Safety Management Cycle (SMC) to Help Diagnose a Process Breakdown during an Investigation* can be applied when performing these interviews

2.2.4 Three Principal Techniques for Questioning a Witness

The three principal techniques are: free narrative, direct examination, and cross-examination. They are defined as follows:

Free Narrative – An orderly presentation of the story by a witness, with little or no prompting from the interviewer. It usually is started by asking the witness to tell you about a certain event or situation. Never generalize about the subject matter be specific.

- **Example:** "Tell me about the accident on June 14, 1999, involving the truck you were driving and another car." (During this phase of the interview take careful notes, but allow the story to be told with little interruption.)

Direct Examination – Systematic questioning designed to bring out the connected story of the event or incident. Its purpose is to elicit new information or fill in new details omitted during the narrative.

- Begin with questions not likely to cause hostility.
- Ask questions that will develop facts, in the order of their occurrence, or in some systematic manner.
- Ask only one question at a time and keep them short, requiring only one answer.
- Don't rush the witness.
- Help the witness remember, but don't suggest answers.
- Repeat or rephrase the question if it will help the witness.

It is often useful to start direct examination after the free narrative, to fill in the gaps and complete the story. These techniques often follow in sequence.

- **Example:** "You stated earlier that you thought you heard a grinding noise as you were braking. Did you notice any defects prior to the trip?"

Cross Examination – This is exploratory questioning designed to test the reliability of the story and the witness, and probe for inconsistencies. It is also useful in seeking specific admissions and seeking support for your theory of the case. Cross Examination is often the last sequence in the interview, designed to close all the loops and strengthen all the links in the chain of circumstantial evidence.

- **Example:** "You stated that you never required or permitted drivers to falsify their logs, yet I notice that no one was checking logs for accuracy nor were any drivers disciplined for submitting false logs. Can you explain this?" (Ask a follow-up question after the witness responds).

Helpful Tips – It is always recommended that you conduct the interview in a non-threatening manner and establish a rapport with the witness. Introduce yourself, make the witness feel comfortable, and ask questions in a calm and methodical manner. Breaking down barriers between you and the witness often leads to a more open and informative interview.

Practice active listening during the interview. After the response to a question occasionally paraphrase a response and ask: "Is that what you are stating?" Often during an interview the interviewer is not listening during a response, but rather is thinking of the next question. This is a serious mistake and will often preclude you from asking important follow-up questions.

Whether you have the witness write out the statement and sign it, or you write it out and have the witness sign it, or submit a written form of the interview, is all a matter of preference. It is strongly recommended that you use a Division/SC approved form that contains information on perjury. Also, it is recommended that you fill out the form to ensure that all needed information is included. There is no right or wrong way, but, if possible, the witness should always sign the form. Remember the statement and answers given during an interview are admissions, if they support the violation, and the witness is an employee or agent (owner operator) of the carrier. Moreover, the investigator conducting the interview can testify at trial to those questions and answers. Further, the statement and interview responses can be used to impeach the witness, should he change his story at trial.

2.2.4.1 Indicators that May Be Used to determine if a Witness is Being Truthful

Much has been written and studied about body language and cues relating to deceit or truthfulness. This area is not a science but an art, and caution should always be exercised when applying any of the principles in this area. Further, a detailed outline of this subject is beyond the scope of the manual. However, some points to keep in mind are:

- Deceptive subjects tend to be evasive in their answers, lack directness, and their answers may be somewhat unresponsive.
- They may be slower in their responses, as they are making up the story as they go along.
- Deceptive subjects tend to qualify their answers, e.g. "As far as I can recall."
- Deceptive subjects will often make less eye contact or they may appear glassy eyed and tired.
- They may shift in their chair more and retreat from the interviewer. Sometimes they appear rigid.
- They may be sweating profusely, which is a reaction of the body to the deception.
- There is some authority that right-handed people will gaze to the left when devising deception due to the location of neural functions.

Again, it is important to remember this is not an exact science and body language and verbal communication cues are difficult to interpret. Check the agency catalog and with local vendors for courses that will allow you to gain a more thorough understanding of this subject.

2.2.4.2 Precautions that should be Taken When Preparing a Statement for Carriers that Fail to Have Appropriate Records

The preparation of written statements requires time, accuracy and specific requests for production of records.

Listed below are a few precautions that should always be considered when preparing such statements.

- In the event the motor carrier officials or agents will not sign a statement, it should be prepared, read to a responsible carrier official, and his/her oral acknowledgment of the accuracy of the statements contained therein should be obtained. The original of the statement, whether signed or not, will be included in and made a part of the evidence in the case.
- In addition to the foregoing precaution, you should, to the extent possible, interview the drivers whose medical examiner's certificates are not in the carrier's files to determine whether they have

been examined, and, if so, when, where and by whom. You should obtain the driver's statements, if possible. Again, if the driver refuses to sign the prepared statement, you should get that driver's oral acknowledgment of the accuracy of the statement. This letter should then be included as part of the evidence in the case.

- In selecting Part 391 violations to document, it is good practice to submit several violations with reference to each driver. These separate violations should be at intervals of a week or more. This helps to preclude a defense argument that the violations were accidental or isolated. Additionally, you should take notes showing the number or approximate number of days the driver had driven for the motor carrier while in violation of Part 391.
- Occasionally, you may be unable, by any means, to determine the driver who moved a particular shipment. When the motor carrier has none of the required Part 391 documents and certificates, and you cannot identify the driver on a specific movement through the use of motor carrier, shipper or State records, you can still document the violation for enforcement by listing the names of all drivers employed by the carrier on the date of the shipment. Incidentally, this listing of all drivers on a specific date can also be used in connection with counts for failing to maintain drivers' RODS or for failing to maintain daily vehicle inspection reports.
- Problems often encountered during civil enforcement proceedings involve the carrier's belated submission of records. In such instances, the carrier will claim that it had the records, and that it simply could not locate the records. Carriers have also been known to backdate records. Therefore, it is imperative that you conduct your investigation in accordance with the above guidelines and obtain a written statement, as shown in *Illustration E-2*.

2.2.5 Gathering Your Documents for the Enforcement Action

As you will see, the eFOTM has been formatted in a manner that will allow you to be aware of the documents you should gather while you are conducting your investigation in each part of the FMCSR. You may refer to the *Violation Table* for specific elements, documents, and statement content on certain violations. The Table assumes the availability of statements. The Investigator should be prepared to develop all necessary facts if statements are not obtained.

Basic Information that should be documented for Most Cases

Some Examples of Documents that Will Help You Establish that a Vehicle Is/Was Subject to Our Regulations

Types of Documents that You Should Look for To Prove that a Driver Is/Was an Employee

Documents that You Should Look for To Prove a Vehicle/Driver Operated in Commerce

Documentation in Support of Extent of Violation

Add Mandatory Recommendations to the Violation Tab/Part B Recommendations of the Investigation

Appropriate Time for the SI to Complete the Table of Violations Which Identifies all Documented Violations Discovered

Appropriate Time for the SI to Complete the Table of Violations Which Identifies all Documented Violations Discovered

Basic Information that should be documented for Most Cases

You will be responsible for obtaining documents that identify the following:

- The vehicle is subject to a specific Part of the FMCSR;
- The driver was an employee of (or controlled by) the motor carrier;
- The vehicle was operated (used) by the motor carrier;
- The vehicle was operated in intrastate or interstate commerce on a certain date; and
- A specific violation occurred.

Some Examples of Documents that Will Help You Establish whether a Vehicle Is/Was Subject to Our Regulations

Examples of documents, which may show vehicles are subject to a specific Part, could be in the form of the following:

- GVWR markings on the vehicle;
- Vehicle Registration or VIN number;
- State Fuel and Tax Reports (AKA IFTA reports);
- Weight Tickets;
- Photographs of vehicle interior for seating capacity;
- Hazardous Material Shipping Papers; and
- Statement from the motor carrier official verifying the weight of the vehicle.

Type of Documents that You Should Look for To Prove that a Driver Is/Was an Employee

Examples of documents, which may show a driver is/was an employee of (or controlled by) the motor carrier, could be in the form of the following:

- Employment application;
- Lease Agreement;
- Payroll Records; and
- A statement from the motor carrier official verifying that the driver is/was their employee (with their date of hire/fire).

Documents that You Should Look for To Prove a Vehicle/Driver Operated in Commerce

Examples of documents, which may show the motor carrier operating a vehicle in intrastate or interstate commerce on a certain date, can be in the form of the following:

- RODS;
- Time Cards;
- Trip Reports;
- Leasing Company's Vehicle Mileage Reports;
- Shipping Papers;
- Bills of Lading; and
- Statement from the motor carrier official verifying their vehicle was used in intrastate, interstate, or foreign commerce on a particular day.

There are too many motor carrier documents available to help prove a violation to list here. Therefore, use your resourcefulness and investigative skills to ensure you gather all the documentation you need, prior to leaving the motor carrier.

Documentation in Support of Extent of Violation

Extent is Low

If extent is low – less than 10 percent of Records Checked -- the investigator must document all violations that will be included in the NOC. For example, if the investigator discovered 7 false RODS of 100 records checked, extent is low. If UFA indicates the investigator should include 5 counts in the NOC as claimed violations, the investigator need not document the 2 remaining false RODS, for extent or any other purpose. The documentation should be included as a lettered exhibit in the enforcement case.

Extent is High

If extent is high--10 percent or more of Records Checked--the investigator must document 10 percent of the number of records checked. The investigator should also document one or two additional counts, as a cushion in case some counts are rejected on evidentiary grounds. If UFA indicates a number greater than 10 percent should be charged, then that number of violations should be documented.

Example: If the investigator discovered 20 false RODS of 100 records checked, extent is high. If UFA indicates the investigator should include 7 counts in the NOC as claimed violations, then 11 or 12 discovered false RODS must be documented. If UFA indicates 15 violations should be charged, then 15 violations should be documented. The documentation must be included as a lettered exhibit in the enforcement case.

Below are examples showing the number of violations to document, when extent is high.

Violation Cited	Numbered of Records Checked	Number of Violations Discovered	Number of Violations in NOC, per UFA	Number to Document
395.8(e)(1)	100	20	7	11 or 12
395.8(e)(1)	100	30	15	15
395.8(e)(1)	200	40	18	21 or 22
395.8(e)(1)	200	150	30	30

When additional violations are required to be documented for extent purposes, but are not charged and documented in the NOC, the investigator should document these violations for extent purposes in Table of Violations and attach the table to the NOC.

Add Mandatory Recommendations to the Violations Tab/Part B Recommendations of the Investigation

You must add the following recommendations:

Please note: The violations discovered during this investigation may affect the civil penalty proposed in any subsequent NOC. In addition, your history of prior violations of the FMCSR, or HMR may also affect the civil penalty proposed in any subsequent NOC. Receipt of this report, acknowledges your understanding that the violations discovered by FMCSA during this review may be used to calculate any civil penalty proposed as a result of this review. Your signature is not an admission of the violations identified.

[For cases in which enforcement will be taken]

Attached to this report is the Table of Violations, which identifies all documented violations discovered during the course of this review.

Appropriate Time for the SI To Complete the Table of Violations Which Identifies all Documented Violations Discovered

The SI will need to complete the Table of Violations prior to the investigation closeout and attach the table to the investigation report.

How the SI Informs the Motor Carrier of Specific Violations Found During the Investigation

The SI will inform the motor carrier of any violations discovered during the conduct of the investigation and during the closeout of the investigation.

Preparation of an Enforcement Report

You Need to Remember the Following About Your Computer Software Before Writing the Enforcement Report

You will generally use the FMCSA software UFA and CaseRite to prepare your enforcement report. For best results with data transfer from AIM/CAPRI to UFA and CaseRite, you must complete all parts of CAPRI (e.g., Pre-investigation/A, Violation Tab/B and Investigation Report/C) to ensure all data is transferred to the appropriate software application. You should ensure, prior to the initiation of the enforcement action, that you have the latest versions of FMCSA software on your laptop computer. You may check to ensure the latest versions available by logging into https://portal.fmcsa.dot.gov. Click on "Software/Documents" for the latest version of UFA, and CaseRite. **Update all software before starting the investigation or CR; once the review has been completed, do not update CAPRI, UFA, or CaseRite until you contact your system administrator and ensure no data will be lost. After**

checking with the system administrator, and backing up your files, update your software and restore the files to your computer.

It is recommended you access the UFA software, prior to leaving the motor carrier, to ensure required documents gathered correspond with the recommended penalty. This enforcement is necessary to ensure you effectively address the motor carrier's lack of safety management controls.

Violation Table

Violation Table

2.2.6 Enforcement of SAFETEA-LU Section 4114

- During **INTERSTATE** violations, the FMCSA SI has the authority to document **INTERSTATE** violations in order to calculate the motor carrier's safety rating. The recorded documentation cannot be used for other purposes, such as prior enforcement actions.
- The documentation process for Starving Students will not be impacted during **INTERSTATE** violation reviews. The SI will follow current policy and eFOTM guidance in order to properly document **INTERSTATE** violation.Q3: When enforcement is initiated as a result of an investigation or CR, the Investigation System transfers information regarding the mileage and the results of crash Factor 6 status to Uniform Fine Assessment (UFA). If any of this data is **INTRASTATE** data (i.e., mileage, accidents), can it be used to calculate the penalty?
- When the Investigation System transfers **INTERSTATE** data (i.e., mileage and accidents) to Uniform Fine Assessment (UFA) it can be used during investigations or CR since these elements are not violations. The data are factors that can be used to calculate the safety fitness rating. These factors can also be used to calculate the penalty assessment.
- To the extent of **INTERSTATE** and **INTRASTATE** violations combined = 10%, the decision to initiate enforcement is based on 10%. When **INTERSTATE** and **INTERSTATE** violations are recorded in Violation Tab/Part B, the enforcement decision is based on the extent of **INTRASTATE** and **INTERSTATE** violations combined. For Example:
  INTERSTATE violations = 5 discovered of 100 checked (5%)
  INTERSTATE violations = 10 discovered of 50 checked (20%)
- When enforcement is initiated based on the example in A4, only the extent factor of **INTERSTATE** violations is used when calculating the penalty assessment. In example A4, the extent is five discovered of 100 checked (5%).

2.2.7 Special Enforcement Provisions for Mexico-Domiciled Motor Carriers

REMINDER: Review the *Mexico Manual* for enforcement actions specific to Mexico-domiciled motor carriers.

2.3 Enforcement by BASIC

2.3.1 Controlled Substances/Alcohol BASIC

2.3.1.1 Part 382 Control Substances/Alcohol Use Testing

Once you have entered the violations discovered into Violation Tab/Part B and have decided to initiate an enforcement action for the Part 382 violations, you should use the following guidelines when submitting an enforcement report for Part 382 violations.

Part 382 – Enforcement Violations

- What Part 382 violations warrant enforcement action?
  - All acute and critical violations and any violations resulting in an accident

Part 382 - Documentation

Evidence that is Required to Prosecute a Violation of Part 382

- Evidence that the driver was subject to Part 383 - CDL requirements (e.g., GVWR >26,000 lbs., placarded HM, or a vehicle designed more than 15 passengers), such as vehicle registration.
- Evidence that the driver was an employee of (or controlled by) the motor carrier.
- Evidence that the CMV was operated (used) by the employer.
- Evidence that the vehicle was operated in commerce on a certain date.
- Evidence that a specific violation of Part 382 occurred.

Important Issues to Remember when Documenting Violations of Part 382

- Ensure that driver is subject to Part 383 (CDL Standards).
- The SI must verify, when citing Part 382.301 violations, that the carrier did not use the pre-employment exemption and that the driver was not rehired within the past 30 days.
- Random Testing: Determine the average number of driving positions during the last calendar year. Verify that all drivers in the carrier's selection pool have performed or were in readiness to perform a "safety-sensitive function" during the last calendar year.
- Violations of § 382.305(b)(1) and/or § 382.305(b)(2) (alcohol and controlled substances random testing rates, respectively) are cited on Violation Tab/Part B of the investigation report and documented as counts only for the prior calendar year.
- Confirm that the controlled substances or alcohol test was a DOT test, conducted in accordance with Parts 382 and 40. If a test was conducted, but it was not a DOT test, then the violation cite may need to be changed.

Facts that Should be Present in Order to Prove Knowledge and Willfulness

- For pre-employment tests, did the carrier use the drivers BEFORE receiving notification, whether by fax, telephone or letter of the results?
- Is there verification that the MRO communicated the positive controlled substances test results to the driver, or made a reasonable attempt?
- In addition, when there is evidence that the motor carrier still employs or uses a driver who previously tested positive, then you should confirm that driver submitted himself/herself to a SAP evaluation. After the evaluation, did the driver complete the return-to-duty test process required by Part 40 Subpart O? See *Controlled Substance and Alcohol Subpart O Enforcement and Disqualifications Policy.*

Information that Should be Documented in an Exhibit to Prove Violations of Part 382

- **Does FMCSA have jurisdiction?**
  - Gross Vehicle Weight Rating (GVWR) markings on vehicle, vehicle registration, State fuel and tax reports, weight tickets, photograph of vehicle interior for seating capacity and/or shipping papers indicating a placardable load of HM, along with a corroborating Safety Data Sheet (SDS) should be used to establish FMCSA's jurisdiction over the motor carrier's operation.
- **Was the driver assigned (or controlled by) the employer?**
  - Employment application, lease agreement, payroll records, tax and worker's compensation deductions, driver RODS with preprinted company name, and/or statement from a motor carrier (e.g., Safety Director), may be used to prove that the driver was assigned or controlled by the employer.
- **Was the CMV operated in intrastate or interstate commerce?**
  - Obtain a RODS/time record and a corresponding shipping document to show that the CMV was used in commerce.
- **Did the employer fail to perform (or cause to be performed) a required act, to maintain a record, etc?**

- Statement(s) of driver and/or responsible employer official are necessary, especially when the violation involves the employer's/driver's failure to act or failure to maintain records. See *Illustration E-2*.

How to Cite Drug and Alcohol Violations

You should use citations from Part 382, whenever possible, to document motor carrier and driver violations, as they pertain to drug and alcohol violations. When Part 40 violations are discovered, the Drug and Alcohol TAG recommends the Part 40 violation be cited as a secondary violation to the primary violation of 382.105.

Clearinghouse

Until UFA and Caserite are updated, enforcement should not be taken against employers for violations of Part 382, Subpart G. If employer found to be in violation of §§ 382.413(a), 382.701(a), or 391.23 (e). The investigator can cite the vilations and consider enforcement on these cites. For a complete list of cites see "Part 382 - Subpart G—Requirements and Procedures for Implementation of the Commercial Driver's License Drug and Alcohol Clearinghouse" Appendix A from the Drug and Alcohol Clearinghouse Audits and Investigations Guidance (MC-ECS-202-001) issued on January 13, 2020.

Part 382 - Enforcement Action Against Drivers

Factors that should be Considered when Contemplating Enforcement Action for Driver Violations

- How long has the driver been driving a CMV?
- Does the carrier have a disciplinary plan in place that's holds the driver accountable for his actions?
- If so, what actions does the carrier take to ensure the driver will comply with the FMCSR?
- It is recommended that different trip dates and documents are used when preparing enforcement actions against the driver and motor carrier.

Violations that Warrant Consideration of Enforcement Action Against a Driver

- **382.201** - Operating a commercial motor vehicle when having an alcohol concentration of 0.04 or greater.
- **382.211** - Operating a commercial motor vehicle after refusing to submit to an alcohol or controlled substances test.
- **382.213(b)** - Operating a commercial motor vehicle after having used a controlled substance.
  - **Note:** Any trip discovered between the time the driver submits the testing specimen, and time the results are reported, can be used for driver enforcement, even if the driver is not used after the carrier is notified of the positive result.
- **382.215** - Operating a commercial motor vehicle after testing positive for a controlled substance.

2.3.1.2 Part 383 Commercial Driver's License (CDL) Standards

Once you have entered the violations discovered into 49 CFR the Violation Tab/Part B of the Investigation System and have decided to initiate an enforcement action for the 49 CFR Part 383 violations, you should use the following guidelines when submitting an enforcement report for 49 CFR Part 383 violations.

Evidence Required to Prosecute a Violation of Part 383

- Evidence that the driver was subject to Part 383, CDL requirements (e.g., GVWR >26,000 lbs.)

- Evidence that the driver was an employee of (or controlled by) the motor carrier.
- Evidence that the vehicle was operated (used) by the employer.
- Evidence that the CMV was operated in intrastate or interstate commerce.
- Evidence on a certain date.
- Evidence that a specific violation of Part 383 occurred.
- Proof of HM transported in placardable quantities or in tank vehicles (for endorsement violations)
- Knowledge by the carrier if the enforcement case is against the company

Part 383 - Guidelines for Enforcement of Red Flag Violations

The decision to initiate enforcement action may take into consideration, but not be limited to, factors such as: whether the State has already initiated enforcement action (i.e., citation); if the violation was corrected in a timely manner; or if the violation continued or was repeated.

- For example, if a driver has been cited for operating without a valid CDL (Part 383.23(a)(2)), and if this violation was not corrected and the driver continued to operate, you should initiate enforcement action.

Determining enforcement against the carrier for violations committed by the employed driver is a separate process from enforcement against the driver.

- The carrier's awareness of the violations and its responsibilities for controlling them should be considered in enforcement decisions.
- The decision to pursue carrier enforcement for a driver with a Red Flag Violation may take into consideration, but not be limited to, knowledge of and willfulness of the carrier with respect to the driver violation(s).
- As with any carrier violations meriting enforcement, these violations are subject to an assessment of Process Breakdowns and Remedies for the associated BASIC.

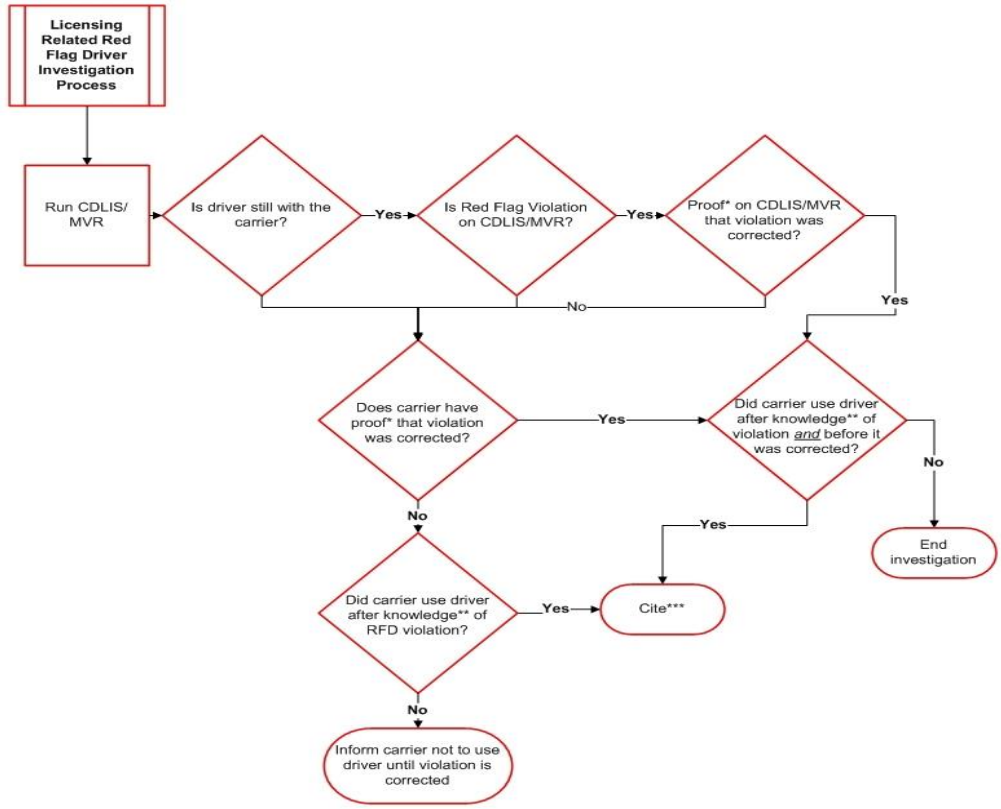
Driver vs. Carrier Enforcement

- Your manager should be consulted before pursuing enforcement against the driver, if either a citation had been issued roadside, or the driver is not currently employed by the carrier.
- Enforcement against the carrier:
    - Considered in cases where there is proof that the violation was repeated when the carrier had knowledge (or should have had knowledge) of the violation and could have prevented its recurrence.
    - Should be pursued in cases where the carrier knowingly directed the driver to commit or repeat the violation.

Part 383 - Red Flag Violations

- For Red Flag Violations which were originally cited for operating while disqualified [383.51(a)-SIN,[5] 383.51(a)-SOUT[5]], enforcement normally depends on whether the disqualification was for a safety-related reason.
- A NOV is an option for 383.23(a)(2), as long as it is immediately correctable and verifiable.
- If there was no original enforcement on the Red Flag Violation at the roadside, you will normally issue a NOC (or NOV in the case of the two violations listed above). If there already was a citation, then you should consult with the manager before initiating enforcement against the driver.

A special process has been developed to guide drivers with Red Flag Violations investigations with a licensing violation. The figure below graphically depicts this process.



*Proof: State and/or court document(s) showing correction of Red Flag Driver Violation

**Knowledge: CDLIS/MVR on carrier's records and/or copy of inspection report after the inspection resulting in Red Flag Driver Violation

***Cite: If the driver drove during this process before the violation was corrected Divisions should take appropriate enforcement action

Description of *Licensing Related Red Flag Driver Investigation Process*

Part 383 - Documentation

Information that Should be Documented in an Exhibit to Prove Violations of Part 383

- **Does FMCSA have jurisdiction?**
  - GVWR markings on vehicle, vehicle registration, State fuel and tax reports, weight tickets, photograph of vehicle interior for seating capacity and/or shipping papers indicating a placardable load of HM, along with a corroborating SDS should be used to establish FMCSA's jurisdiction over the motor carrier's operation.
- **Was the driver assigned (or controlled) by the employer?**
  - Employment application, lease agreement, payroll records, tax and worker's compensation deductions, record of duty status with preprinted company name, and/or statement from a motor carrier (e.g., Safety Director) may be used to prove that the driver was assigned or controlled by the employer.
- **Was the CMV operated in intrastate or interstate commerce?**
  - Obtain a RODS or time records and a corresponding shipping document to show that the CMV was used in commerce.
- **Did the employer fail to perform (or cause to be performed) a required act, to maintain a record, etc?**

- Statement(s) of driver and/or responsible employer official are strongly recommended, especially when the violation involves the employer's/driver's failure to act or failure to maintain records.

Some Examples of Documents that May Be Used to Prove Violations of Part 383

- Statement from carrier official, driver, or person responsible for compliance with Part 383. See Illustration E-2.
- Driver's RODS and corresponding shipping papers/bill of lading.
- Vehicle registration showing GVWR or other documentary evidence proving that the vehicle meets the definition of a CMV in Part 383.
- State vehicle inspection report.
- Motor vehicle record from the State that issued the CPL/CDL showing suspension/cancellation/disqualification or being invalid. A CDLIS printout is acceptable.
- **Note:** A CDLIS printout is acceptable for the MX/CN driver. Note that the CDLIS printout will only display a status for the driver as of the date of the status query, and not a history for the compliance review period.
- Photograph or copy of current CDL or other photographs that support the violation.

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support your violation. You may utilize other documents to prove your violation.

Part 383 - Enforcement Action Against Drivers

The following violations warrant considering enforcement action against a driver:

- 383.21 - No person who operates a commercial motor vehicle shall at any time have more than one driver's license.*
- 383.23(a) (2)- Operating a commercial motor vehicle without a valid commercial driver's license.*
- 383.33 - Failing to inform the employer within 1 business day that his/her commercial driver's license was suspended, revoked, or canceled by a State or jurisdiction.
- 383.51(a)-SIN ,[6] - Driving a CMV while CLP or CDL is suspended for a safety-related or unknown reason. and in state of driver's license issuance.*.
- 383.51(a)-SOUT,[6] - Driving a CMV while CLP or CDL is suspended for safety-related or unknown reason and outside the state of driver's license issuance.*
- 383.71(b)(1) - Operating a CMV requiring CDL beyond the scope of the self-certification.
- 383.91 (a) - Operating a CMV with improper CDL group.*

(*) denotes Red Flag Violation

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ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.
During an investigation of a motor carrier the investigator must examine all Red Flag violations that are designated on that motor carrier's record. The violations that result in a Red Flag Violation have changed. Only safety-related "operating while suspended" violations, 391.15a-SIN, 391.15a-SOUT, 383.51a-SIN and 383.51a-SOUT, result in a Red Flag Violation. Non-safety related "operating while suspended" violations still appear on the motor carrier's record and are used in SMS, but they will not be considered Red Flag Violations.

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ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The

FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.
During an investigation of a motor carrier the investigator must examine all Red Flag violations that are designated on that motor carrier's record. The violations that result in a Red Flag Violation have changed. Only safety-related "operating while suspended" violations, 391.15a-SIN, 391.15a-SOUT, 383.51a-SIN and 383.51a-SOUT, result in a Red Flag Violation. Non-safety related "operating while suspended" violations still appear on the motor carrier's record and are used in SMS, but they will not be considered Red Flag Violations.

2.3.1.3 Part 387 Insurance Requirements

Documents that Should be Gathered to Initiate an Enforcement Action

Gather the documentation to initiate an enforcement action, which establishes the following:

- Evidence that the CMV is subject to Part 387.
- Evidence that the driver was an employee of (or controlled by) the motor carrier.
- Evidence that the vehicle was operated (used) by the employer,
- Evidence that the vehicle was operated in intrastate (certain HM) or interstate commerce on a certain date.
- Evidence that a specific violation of Part 387 occurred.
- Evidence that the vehicle was transporting HM, if applicable.

Some Examples of Documents that May Be Used to Prove Violations of Part 387

- Statement from motor carrier official, or person responsible for compliance with Part 387. See Illustration E-2.
- Driver's RODS and corresponding shipping paper/bill of lading/passenger manifest or HM shipping paper.
- Vehicle registration showing GVWR, Passenger Seating Capacity, Liquid Load Capacity, or Water Gallons, or documentary evidence proving the vehicle was subject to Part 387.
- FMCSA License & Insurance website printed document showing amount of liability and/or cargo insurance required.
- FMCSA License & Insurance website printed document showing status of operating authority.
- Oral statement from Investigator noting name/date/time of conversation with FMCSA License & Insurance team member verifying motor carrier's "real-time" status of authority and/or insurance.

This list is not meant to limit you to specific documents. There are many motor carrier documents that could be used to support a violation. You may utilize other documents to prove the violation.

2.3.1.4 Part 390 General Requirements

Once you have entered the violations discovered into Violation Tab/Part B of the Investigation System and have decided to initiate an enforcement action for the Part 390 violations, you should use the following guidelines when submitting the enforcement report.

Part 390 - Documentation

Documents that Should be Gathered to Initiate an Enforcement Action

- Evidence that the vehicle used falls within FMCSR jurisdiction for Part 390.
- Evidence that the driver is an employee of (or controlled by) the motor carrier.
- Evidence that the CMV was operated by the motor carrier.
- Evidence that the CMV was operated in interstate commerce on a specific date.
- Evidence that a violation of Part 390 occurred.

Some Examples of Documents that May be Used to Prove Violations of Part 390

- Statement from motor carrier official, driver or other person responsible for compliance with Part 390. See Illustration E-2.
- Driver's RODS, and corresponding shipping paper/bill of lading.
- Vehicle registration showing GVWR, or other documentary evidence, proving that the vehicle was subject to Part 390.
- Copies of documents required by Part 390 that are falsified.
- Photographs of CMV or other photographs that support violation. See Illustration E-1.

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support a violation. You may utilize other documents to prove a violation.

Considering an Enforcement Action for Lease and Interchange Violations Against a Motor Carrier of Passengers.

The Lease and Interchange of Vehicles, Motor Carriers of Passengers final rule specifically indicates both parties involved in the agreement may be subject to civil penalties for violations of Subpart G of Part 390. The Division Administrator should be consulted to weigh the evidence behind the non-compliance and discuss the potential enforcement action against both parties to the arrangement.

To ensure enforcement is warrented for lease and interchange violations, verify the arrangement between both parties involved was subject to the regulations. See ***Procedures to Follow if the Motor Carrier Does Not Comply with the Lease and Interchange Requirements*** in the Compliance Manual and ***Implementation of Lease and Interchange of Vehicles; Motor Carriers of Passengers Final Rule (MC-ECP – 2021 – 0001).***

Part 390 - Enforcement Action Against Drivers

Considering an Enforcement Action Against a Driver

You should consider enforcement action against a driver for violating:

- 390.17 - Operating a CMV while using additional equipment and accessories that decrease the safety of operations.
- 390.35 - Making or causing to make a fraudulent or intentional false statement on an application, certificate, report, or record, and from falsifying, reproducing, or altering any original supporting document.

2.3.1.5 Part 391 Driver Qualifications

Once you have entered the violations discovered into Violation Tab/Part B of the Investigation System and have decided to initiate an enforcement action for the Part 391 violations, you should use the following guidelines when submitting an enforcement report for Part 391 violations.

Part 391 - Guidelines for Enforcement of Red Flag Violations

The decision to initiate enforcement action may take into consideration, but not be limited to, factors such as: whether the State has already initiated enforcement action (i.e., citation); if the violation was corrected in a timely manner; or if the violation continued, or was repeated.

Determining enforcement against the carrier for violations committed by the employed driver is a separate process from enforcement against the driver. The carrier's awareness of the violations and its responsibilities for controlling them should be considered in enforcement decisions. The decision to pursue carrier enforcement for a driver with Red Flag Violations may take into consideration, but not be limited to, awareness, and knowledge and willfulness of the carrier with respect to the driver violations. As with any carrier violations meriting enforcement, these violations are subject to an assessment of Process Breakdowns and Remedies for the associated BASIC.

Driver vs. Carrier Enforcement

The manager should be consulted before pursuing enforcement against the driver, if either a citation had been issued roadside, or the driver is not currently employed by the carrier.

Enforcement against the carrier:

- Considered in cases where there is proof that the violation was repeated when the carrier had knowledge (or should have had knowledge) of the violation and could have prevented its recurrence.
- Should be pursued in cases where the carrier knowingly directed the driver to commit or repeat the violation.

Part 391 - Red Flag Violations

- For Red Flag Violations which were originally cited for operating while disqualified [391.11(b)(7), and 391.15(a)-SIN[9] , 391.15(a)-SOUT [9]-], enforcement normally depends on whether the disqualification was for a safety-related reason.
- NOV is an option for 391.11(b)(5), as long as they are immediately correctible and readily verifiable.
- If there was no original enforcement on the Red Flag Violation at the roadside, you will normally issue an NOC (or NOV in the case of the two violations listed above). If there already was a citation, then you should consult with the manager before initiating enforcement against the driver.

Part 391 - Documentation

Documents that Should be Gathered to Initiate an Enforcement Action

You should gather documentation to initiate an enforcement action, which establishes the following:

- The vehicle used falls within FMCSR jurisdiction for Part 391.
- The driver is an employee of (or controlled by) the motor carrier.
- The CMV was operated by the motor carrier in interstate commerce on a specific date.
- A violation of Part 391 occurred.

Some Important Issues to Remember when Documenting Violations of Part 391

- When considering enforcement for a violation that charges the motor carrier with using a driver not physically examined, it is best to obtain a statement from the driver affirming that fact.
- Best practice requires that you obtain statement(s) from motor carrier officials affirming that the required documents were not in the DQ file or that these documents do not exist. Such statements rebut subsequent motor carrier arguments that it had such documents, but that you did not ask the motor carrier to produce them during the investigation. See Illustration E-2.
- Be sure that the language used to describe the violation in the investigation, in the case report and in the NOC, is the same; for example, a violation cited in the investigation for "failing to maintain" the driver's state driving record abstract should not be described in the case report as "failing to make an inquiry" from the state licensing agency.

Precautions that Should be Taken when Preparing a Statement for Carriers Who Do Not Have the Appropriate Records

The preparation of written statements requires time, accuracy and specific requests for production of records. Listed below are a few precautions that should always be considered when preparing such statements.

- In the event the motor carrier officials or their agents will not sign a statement, it should be prepared, and read to a responsible carrier official. His/her oral acknowledgment of the accuracy of the statements contained therein should be obtained. The original of the statement, whether signed or not, will be included as part of the evidence in the case.
- In addition to the foregoing precaution, you should, to the extent possible, interview the drivers whose medical certificates are not in the carrier's files to determine whether they have been examined and, if so, when, where, and by whom. You should obtain the driver's signed

statement, if possible. Again, if the driver refuses to sign the prepared statement, you should get that driver's oral acknowledgment of the accuracy of the statement. This statement should then be included as part of the evidence in the case.

- In selecting Part 391 violations to document, it is good practice to submit several violations with reference to each driver. These separate violations should be at intervals of a week or more. This helps to rebut a defense argument that the violations were accidental or isolated. Additionally, you should take notes showing the number or approximate number of days the driver had driven for the motor carrier while in violation of Part 391.
- Occasionally, you may be unable, by any means, to determine which driver moved a particular shipment. When the motor carrier has none of the required Part 391 documents and certificates, and you cannot identify the driver on a specific movement through the use of motor carrier, shipper or State records, you can still document the violation for enforcement by listing the names of all drivers employed by the carrier on the date of the shipment. Incidentally, this listing of all drivers on a specific date can also be used in connection with counts for failing to maintain drivers' records of duty status (395.8(k)(1)) or for failing to maintain daily vehicle inspection reports (396.11(c)(2)).
- Problems often encountered during civil enforcement proceedings involve the carrier's belated submission of records. In such instances, the carrier will claim that it had the records all along, and that it simply could not locate the records. Carriers have also been known to backdate records, therefore, it is imperative that you conduct your investigation in accordance with the above guidelines and obtain a written statement, as shown in Illustration E-1.

Some Examples of Documents that May be Used to Prove Violations of Part 391

Examples of documents to support your discovered violations are listed below.

- Statement from motor carrier official, driver or other person responsible for compliance with Part 391.
- DQ Worksheet, verified by motor carrier official or other person responsible for compliance with Part 391.
- Driver's RODS and corresponding shipping paper/bill of lading.
- Vehicle registration showing GVWR or other documentary evidence proving that the vehicle was subject to Part 391.
- If copies of documents/certificates required by Part 391 were unavailable or do not exist, obtain a statement from the motor carrier attesting to missing documents or utilize CAPRI DQ Worksheet and have motor carrier verify lack of documents.
- Certified documents from State agencies.
- Photographs that support the violation.

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support the violation. You may utilize other documents to prove the violation.

Part 391 - Enforcement Action Against Drivers

Considering an Enforcement Action Against a Driver

You should consider enforcement action against a driver for violating:

- 391.11 - Unqualified driver*
- 391.11(b)(5) - Driving without a currently valid motor vehicle operator's license or permit.*
- 391.11 (b)(7) - Driver disqualified from operating CMV*
- 391.15(a))-SIN [10]- Driving a CMV while disqualified. Suspended for safety-related or unknown reason and in the state of driver's license issuance*
- 391.15(a)-SOUT[10] - Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance*
- 391.45 - Fraudulently or intentionally making a false entry on a required medical examiner's certificate.

(*) denotes Red Flag Violation

[9] ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.

During an investigation of a motor carrier the investigator must examine all Red Flag violations that are designated on that motor carrier's record. The violations that result in a Red Flag Violation have changed. Only safety-related "operating while suspended" violations, 391.15a-SIN, 391.15a-SOUT, 383.51a-SIN and 383.51a-SOUT, result in a Red Flag Violation. Non-safety related "operating while suspended" violations still appear on the motor carrier's record and are used in SMS, but they will not be considered Red Flag Violations.

[10] ASPEN was modified in response to stakeholder feedback that indicated many disqualified driver violations were based on a driver's license being suspended for a non-safety related reason such as failing to pay a parking ticket and that these suspensions were often undetectable by motor carriers when doing required background or annual checks of a driver's driving record. These violations, once uploaded to the MCMIS, had impacted the Driver Fitness BASIC and the Red Flag Violation process. The FMCSA modified ASPEN to break out "operating while suspended" to indicate whether the suspension was safety or non-safety based and whether or not the carrier had the capacity to know about the suspension.

During an investigation of a motor carrier the investigator must examine all Red Flag violations that are designated on that motor carrier's record. The violations that result in a Red Flag Violation have changed. Only safety-related "operating while suspended" violations, 391.15a-SIN, 391.15a-SOUT, 383.51a-SIN and 383.51a-SOUT, result in a Red Flag Violation. Non-safety related "operating while suspended" violations still appear on the motor carrier's record and are used in SMS, but they will not be considered Red Flag Violations.

2.3.1.6 Part 392 Driver Motor Vehicles

Part 392 - Enforcement Action Against Drivers

Considering an Enforcement Action Against a Driver

You should consider enforcement action against a driver for the following violations:

- 392.2 - Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which being operated.
- 392.4(a) - Driver uses, or is in possession of, drugs.*
- 392.4(b) - Operating a motor vehicle while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle.
- 392.5(a) - Possession/use/under the influence of alcohol 4 hours prior to duty. *
- 392.5(b)(1) - Operating a motor vehicle while under the influence of, or in possession of, an intoxicating beverage.
- 392.5(b) - Operating a motor vehicle while showing evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle.

(*) denotes Red Flag Violation

Special Topic: Distracted Driving – Ban on Texting and Hand-held Mobile Telephone Use

The regulations prohibiting texting and hand-held mobile telephone use should be cited against a driver and/or motor carrier, when warranted, during an inspection or investigation, including, but not limited to, crash investigations and onsite investigations. Situations where the violation may be cited include, but are not limited to, the following:

- CMV drivers and/or motor carriers may be cited at roadside, if enforcement personnel directly observe the CMV driver texting or using a hand-held mobile phone while driving a CMV, while operating in interstate commerce or transporting placardable quantities of HM in intrastate commerce. The violation will apply to drivers observed using hand-held mobile phones when

driving in any area that meets the 49 CFR Section 390.5 definition of a "highway." This includes a rest stop, weigh station or other road, street, or way open to public travel.

- During a crash investigation, enforcement personnel may cite the violation, if the driver acknowledges texting or using a hand-held mobile phone when the crash occurred, or if there is credible and sufficient evidence that the driver was using a hand-held mobile telephone. Such evidence could include eyewitness testimony, or evidence that a text or call was placed at the time of the crash.
- During an investigation at a motor carrier's PPOB or terminal, the violation may be cited, if sufficient and credible evidence of texting or hand-held mobile phone use while driving is discovered. (Such evidence may be found in crash reports, driver files, letters of reprimand, citations, etc.) The violation should be cited on Part B of the compliance review/investigation report, and a notice of claim may be issued against the driver and/or motor carrier, as appropriate.
- Motor carriers may be held accountable for driver violations of the texting or hand-held mobile telephone prohibition, if there is evidence that the employer allows, or requires, the driver to use a hand-held mobile phone while driving, or routinely places calls to its drivers' hand-held devices while the drivers are driving a CMV.

When citing a driver or motor carrier for a violation either of these rules, use the appropriate violation citation.

- 392.80(a) - Operating a CMV while texting.
- 392.82(a)(1) - Operating a CMV while using a hand-held mobile telephone.
- 49 CFR Section 392.80(b) - Allowing or requiring a driver to operate a CMV while texting. (Carriers)
- 49 CFR Section 392.82(a)(2) - Allowing or requiring a driver to operate a CMV while using a hand-held mobile telephone. (Carriers)

Frequently Asked Questions Ban on Texting and Hand-held Mobile Phones

Primary and Secondary Violations

If a State currently has no authority, or only secondary enforcement authority, in this area of distracted driving, the Division Office should strongly encourage the State to seek primary enforcement authority through its legislative or regulatory process.

Part 392 - Enforcement on Motor Carriers Exhibiting Unsafe Driving

Considering an Enforcement Action Against a Motor Carrier for Unsafe Driving

Divisions have the option to address unsafe driving behavior of motor carriers by choosing to conduct an on-site investigation, off-site investigation or do a review of underlying violations and motor carrier history in FMCSA's systems. In any of these interventions, violations of unsafe driving may be discovered by review of SMS as well as through review of carrier records and other FMCSA investigative systems. Enforcement by FMCSA staff may be considered only when the unsafe driving behavior occurs in interstate commerce of any type or intrastate commerce transporting hazardous materials. When determining the appropriate enforcement action to pursue, consider the following options.

Notice of Violation

Reasons an Notice of Violation (NOV) may be pursued include but are not limited to the following:

The motor carrier:

- has not had a previous intervention related to Unsafe Driving.
- has multiple types of unsafe driving violations with or without convictions.
-

Division Offices must track responses to these NOVs. All cases in which there are violations without convictions should be "closed without enforcement" in the Enforcement Management Information System (EMIS).

Both violations found in the inspections from the motor carrier's SMS profile as well as violations newly discovered in the process of the investigation may be included in an NOV. Newly discovered violations will usually be too recent to have a corresponding conviction. Violations without convictions may be included in an NOV. If violations without convictions are included in an NOV they may not be used later to convert the NOV to an NOC.

Notices of Claim

To issue an NOC as an enforcement action based on unsafe driving behavior, there must have been an on-site or off-site investigation (comprehensive or focused) of the carrier's operations. In addition to the evidence necessary to establish jurisdiction and the regulatory violation, all unsafe driving violations included in an NOC must be supported by evidence of a conviction. Evidence that the motor carrier was aware that a conviction of an unsafe driving violation occurred is not required when documenting and taking enforcement using an NOC. Enforcement by NOC is left to the Division Office's discretion and there is no minimum number of violations needed to pursue an NOC for unsafe driving violations. Enforcement should not be pursued using a 1 discovered and 1 checked using high extent. Instead the actual number discovered and checked should be used as entered into AIM and as outlined in the compliance manual, section **1.3.14.1.7.2 - Part 392 Investigative Systems Procedures**."

Some reasons an NOC may be pursued include, but are not limited to, the following:
The motor carrier:

- fails to respond to an NOV that was issued as the result of an investigation and which included SMS violations with convictions. Please note that NOV violations without convictions may not be used in a subsequent NOC.
- has one or more unsafe driving violations with convictions since the last intervention.
- does not have adequate safety management controls in place to prevent or deter unsafe driving behaviors.
- has been subject to a previous intervention(s) based on its Unsafe Driving violations that did not result in enforcement action.
- has a safety posture / level of responsiveness such that this level of intervention is more likely than an NOV to prompt a meaningful response.

When using the above considerations as reasoning for taking enforcement via NOC, it is important that the investigator document in the investigation narrative and/or enforcement case notes what was found to support the reasoning behind the enforcement decision.

Evidence for Enforcement
The evidence used for all unsafe driving enforcement must demonstrate the following:

- Unsafe driving violations occurred; and
- The violation occurred while the driver was operating a CMV in interstate commerce; and
- The driver was operating for the motor carrier at the time of the violation; and
- For all enforcement tools except an NOV, the driver was issued a citation and the citation resulted in a conviction.

Investigators must maintain as part of the case file a copy of the SMS printout (and any other evidence of inspections used in the number checked) that shows the date range used for the 365-day period reviewed

when there is a high extent for UFA purposes. Copies of the inspections used must also be retained as evidence of interstate commerce.

All unsafe driving violations identified from SMS inspection reports must include proof of the conviction (e.g., CDLIS report) to be used in an NOC. All unsafe violations with or without conviction may be used in an NOV. Unsafe driving violations without convictions may not later be used to convert the NOV to an NOC.

Additional sources of evidence that may prove helpful in documenting a violation, but that are not required for all violations, include but are not limited to, the following:

- Police Accident Reports with attachments
    - Supplemental CMV Accident Report
    - Hazardous Materials Incident and Spill Report
    - Post-Crash Investigation Report
- Court records associated with the convictions/adjudications process
- Motor carrier statements
- Mileage reports
- Fleet management reports

Section 222

Under Section 222 of the Motor Carrier Safety Improvement Act of 1999 maximum civil penalties will be levied against carriers in the event of:

- Pattern of Violations
- Two Strikes
- Three Strikes

Interstate 392.2 violations documented at a critical 10% violation rate with more than one discovered violation may lead to use of Section 222 enforcement capabilities, as this policy is implemented. Enforcement personnel should verify the motor carrier's enforcement history to determine Section 222 eligibility before initiating a Section 222 penalty. For reference, personnel may review Section 2.4.4.15 of the Enforcement Manual of the eFOTM and the policy titled, "Supplemental Policy on Assessing Maximum Fines Under MCSIA Section 222", MC-ECE-003-09, March 12, 2009. Interstate 392.2 violations with convictions documented under previous guidance which only allowed for a violation entry as 1 discovered of 1 checked are not eligible for Section 222 penalties.

Recording Unsafe Driving Violation in CaseRite (Federal Enforcement Process)

The UFA system will auto-populate the number discovered and number checked as they were entered into AIM. Only violations with convictions (i.e. those documented in the AIM entry as described in number 1 of the procedures section above) should be used for the generation of an NOC.

The following charging language must be used when taking enforcement action based on unsafe driving behavior:

> On or about «DATE», «CARRIER NAME» used driver «DRIVER NAME» to operate a commercial motor vehicle in interstate commerce from «ORIGIN» to «DESTINATION » in a manner not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it was being operated. On this date, the driver was cited on an inspection for «SPECIFIC UNSAFE DRIVING VIOLATION». On X date the driver was convicted of «SPECIFIED UNSAFE DRIVING VIOLATION».

The specific unsafe driving violation(s) must be referenced in the charge language, for example, reckless driving or speeding 6-10 mph.

Patterns of Safety Violations
For carriers that demonstrate an egregious pattern of unsafe driving behaviors, enforcement personnel may also consider the alternative enforcement tool outlined in the policy titled, "Phase II: Patterns of Safety Violations by Motor Carrier Management", MC-ECE-2015-0006, October 20, 2015 (POSV). Guidance on the revocation of a motor carrier's operating authority based on a pattern of safety violations may also be found in Section 2.4.4.21 of the Enforcement Manual of the eFOTM. When considering use of the procedures found in the POSV policy, POSV procedures may be followed using violations with and without convictions. When submitting the POSV Revocations Proceeding Factors Worksheet to pursue a pattern found for 392.2 unsafe driving violations, there must also be additional evidence of a pattern discovered in other parts. (e.g. Part 395, Part 396, etc.).

2.3.2 Crash Indicator BASIC

Enforcement Procedures

The Crash BASIC Investigation may result in the Crash BASIC Analysis report, if the Crash Analysis Tool was utilized, as well as the standard Compliance Investigation report completed by the Safety Investigator or State counterpart. Since the Crash BASIC provides the prioritization to conduct the CBI, the results of the CBI do not have an enforcement action connected to them. Regulatory violations discovered during the CBI are cited and documented the same way as previously mentioned in the e-FOTM and enforcement decision making and documentation remains consistent.

In the event that the investigation reveals the motor carrier is in compliance with the requirements of applicable FMCSR's and HMR's but the crash analysis report demonstrates a carrier crash problem and identifies accompanying crash countermeasures, the investigator can use the report as guidance to improve the carrier's process.

2.3.3 Driver Fitness BASIC

2.3.3.1 Part 172 – HM Communication, Emergency Response Information Training

For guidance on the hazardous materials portion of the investigation, see the Hazardous Materials Manual.

2.3.3.2 Part 177 – HM Carriage by Public Highway

For guidance on the hazardous materials portion of the investigation, see the Hazardous Materials Manual.

2.3.3.3 Part 380 – Special Training Requirements

Once you have entered the violations discovered into the Violation Tab/Part B of the Investigation System and have decided to initiate an enforcement action for the Part 380 violations, you should use the following guidelines when submitting an enforcement report for Part 380 violations.

Part 380 - Documentation

Documents that Should be Gathered to Initiate an Enforcement Action

You should gather documentation to initiate an enforcement action, which establishes the following:

- The vehicle used falls within FMCSR jurisdiction for Part 380.
- The driver is an employee of (or controlled by) the motor carrier.
- The CMV was operated by the motor carrier in interstate commerce on a specific date.

A violation of Part 380 occurred. ***Precautions that Should be Taken When Preparing a Statement for Carriers Who Do Not Have the Appropriate Records***

The preparation of written statements requires time, accuracy and specific requests for production of records. Listed below are a few precautions that should always be considered when preparing such statements.

- In the event the motor carrier officials or their agents will not sign a statement, it should be prepared, and read to a responsible carrier official. His/her oral acknowledgment of the accuracy of the statements contained therein should be obtained. The original of the statement, whether signed or not, will be included as part of the evidence in the case.
- In addition to the foregoing precaution, you should, to the extent possible, interview the drivers whose LCV driver-training certificates are not in the carrier's files to determine whether they have been trained and, if so, when, where and by whom. You should obtain the driver's signed statement, if possible. Again, if the driver refuses to sign the prepared statement, you should get that driver's oral acknowledgment of the accuracy of the statement. This statement should then be included as part of the evidence in the case.
- In selecting Part 380 violations to document, it is good practice to submit several violations with reference to each driver. These separate violations should be at intervals of a week or more. This helps to rebut a defense argument that the violations were accidental or isolated. Additionally, you should take notes showing the number or approximate number of days the driver had driven for the motor carrier while in violation of Part 380.
- Occasionally, you may be unable, by any means, to determine which driver moved a particular shipment. When the motor carrier has none of the required Part 380 documents and certificates, and you cannot identify the driver on a specific movement through the use of motor carrier, shipper or State records, you can still document the violation for enforcement by listing the names of all drivers employed by the carrier on the date of the shipment. Incidentally, this listing of all drivers on a specific date can also be used in connection with counts for failing to maintain drivers' records of duty status (395.8(k)(1)) or for failing to maintain daily vehicle inspection reports (396.11(c)(2)).
- Problems often encountered during civil enforcement proceedings involve the carrier's belated submission of records. In such instances, the carrier will claim that it had the records all along, and that it simply could not locate the records. Carriers have also been known to backdate records. Therefore, it is imperative that you conduct your investigation in accordance with the above guidelines and obtain a written statement, as shown in Illustration E-1: Photographic Declaration.

Some Examples of Documents that May be Used to Prove Violations of Part 380

Examples of documents to support your discovered violations are listed below.

- Statement from motor carrier official, driver or other person responsible for compliance with Part 380.
- DQ Worksheet, verified by motor carrier official or other person responsible for compliance with Part 391.
- Driver's RODS and corresponding shipping paper/bill of lading.
- Vehicle registration showing gross vehicle weight rating (GVWR) or other documentary evidence proving that the vehicle was subject to Part 380.
- If copies of documents/certificates required by Part 380 were unavailable, or do not exist, obtain a statement from the motor carrier attesting to missing documents, or utilize CAPRI DQ Worksheet and have motor carrier verify lack of documents.

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support the violation. You may utilize other documents to prove the violation.

Part 380 - Enforcement Action Against Carriers

Some Important Issues to Remember When Documenting Violations of Part 380

You may not initiate enforcement for violations of the entry-level driver training requirements.

Best practice requires that you obtain statement(s) from motor carrier officials, affirming that the required documents were not in the DQ file, or that these documents do not exist. Such statements rebut subsequent motor carrier arguments that it had such documents, but that you did not ask the motor carrier to produce them during the investigation. See *Illustration E-2: Written Statement with Perjury Clause*.

Be sure that the language used to describe the violation in the investigation, in the case report and in the NOC, is the same; for example, a violation cited in the investigation for "failing to maintain" the driver's state driving record abstract should not be described in the case report as "failing to make an inquiry" from the state licensing agency.

Part 380 - Enforcement Action Against Drivers

Enforcement Action that Should be Considered Against a Driver

You should consider enforcement action against a driver for the following violation:

- 380.401(b) - Failing to provide a copy of the Longer Combined Vehicle Driver-Training Certificate to your employer to be filed in your Driver Qualification file.

2.3.3.4 Part 383 – Commercial Driver's License (CDL) Standards

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 383: Procedures.*

2.3.3.5 Part 387 – Financial Responsibility

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387 : Procedures.*

2.3.3.6 Part 390 – General Requirements

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 390: Procedures.*

2.3.3.7 Part 391 – Drivers Qualifications

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 391: Procedures.*

2.3.3.8 Part 392 – Driving of Motor Vehicles

As part of the Driver Fitness BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 392: Procedures.*

2.3.4 Hazardous Material (HM) Compliance

For guidance on the hazardous materials portion of the investigation, see the *Hazardous Materials Manual.*

2.3.5 Hours of Service (HOS) BASIC

2.3.5.1 Part 380-Special Training Requirements

As part of the Hours of Service BASIC investigation, your investigation should include an examination of the applicable subparts of Part 380. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 380: Procedures.*

2.3.5.2 Part 383-Commercial Driver's License (CDL) Standards

As part of the Hours of Service BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 383: Procedures.*

2.3.5.3 Part 387-Financial Responsibility

As part of the Hours of Service BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387: Procedures.*

2.3.5.4 Part 390-General Requirements

As part of the Hours of Service BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 390: Procedures.*

2.3.5.5 Part 391-Qualification of Drivers

As part of the Hours of Service BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 391: Procedures.*

2.3.5.6 Part 392 – Driving of Motor Vehicles

As part of the Hours of Service BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 392: Procedures.*

2.3.5.7 Part 395 – Hours of Service (HOS) of Drivers

Once you have entered the violations discovered into Violation Tab/Part B of the Investigation Systemand have decided to initiate an enforcement action for the Part 395 violations, you should use the following guidelines when submitting an enforcement report for Part 395 violations.

Part 395 - Guidelines for Enforcement of Red Flag Violations

The decision to initiate enforcement action may take into consideration, but not be limited to, factors such as: whether the State has already initiated enforcement action (i.e., citation); if the violation was corrected in a timely manner; or if the violation continued or repeated.

Determining enforcement against the carrier, for violations committed by the employed driver, is a separate process from enforcement against the driver. The carrier's awareness of the violations and its responsibilities for controlling them should be considered in enforcement decisions. The decision to pursue carrier enforcement for a driver with Red Flag Violations may take into consideration, but not be limited to, awareness, and knowledge and willfulness of the carrier (with respect to the driver violations). As with any carrier violations meriting enforcement, these violations are subject to an assessment of Process Breakdowns and Remedies for the associated BASIC.

Driver vs. Carrier Enforcement

The manager should be consulted before pursuing enforcement against the driver, if either a citation had been issued roadside, or the driver is not currently employed by the carrier.

Enforcement against the carrier:

- Considered in cases where there is proof that the violation was repeated when the carrier had knowledge (or should have had knowledge) of the violation and could have prevented its recurrence.
- Should be pursued in cases where the carrier knowingly directed the driver to commit or repeat the violation.

Part 395 - Red Flag Violations

- The Red Flag Violation 395.13(d) is cited when the driver has been found operating while placed OOS. Whether it was discovered at the roadside or in the investigation, the violation should be verified with supporting documents before pursuing enforcement.
- Operating while OOS often implicates either the driver or the carrier, or both driver and carrier.
- Once the violation is verified, if there was no original enforcement on the Red Flag Violation at the roadside, you will normally issue an NOC.

Part 395 - Basic Enforcement Concepts for Part 395

Some Basic Enforcement Concepts to Keep in Mind when Preparing an Enforcement Case that Includes Part 395 Violations

- It is inappropriate to submit a count where a driver exceeded one of the HOS rules and falsified the RODS for the same day.
- Driver interviews or other documents are necessary to prove the violation exists when falsification and exceeding the HOS limits occur on the same day,
- One of the most serious violations is one in which the carrier dispatched the driver with accumulated hours already at, or very close to, the maximum hours permitted.
- Statements from dispatchers and/or drivers should be obtained. This is important when you are trying to demonstrate that the motor carrier dispatched the driver when it knew that the driver was very close to, or already in excess of, the total hours of service permitted.
- Any day on which a violation occurs may be documented for enforcement purposes. However, avoid documenting violations on consecutive calendar days when the hours driving in violation begin on one day and continue into the next. In cases where violations continue over a period of consecutive days, and you are planning enforcement, it is preferable that only the most flagrant violations are documented.

Types and Sources of Evidence to Prove Falsification

Types and sources of evidence, to prove log falsifications, are too numerous to list; however, some examples are:

- Shipping documents that contain time and date entries for loading and/or unloading time.
- Run sheets, trip reports, trip envelopes which contain instructions for pickups, documents pertaining to drop-offs, key stops, return load pickups, gravity or pump unloading, bulk or container unloading, cleaning of trailers, etc.
- Trip expense reports or vouchers, coupled with petty cash receipts for such expenses as toll receipts, repair purchases, loading or unloading help (lumpers), oversize or overweight special permits, port of entry inspection slips, etc.
- Vehicle breakdown reports.
- Terminal or checkpoint "in and out" records.
- Dispatch sheets, daily or weekly truck reports, terminal reports.
- Run availability sheets and "sign-in sheets."
- Time cards, tachographs or service recorder discs.
- Accident records and reports including workmen's compensation and cargo liability reports.
- Federal or state roadside inspection reports.

- Payroll and related records that show duty times and/or pay for work performed other than driving. Checking payroll books and records may determine very little. An interview with the payroll clerk is typically more helpful in deciphering the codes used to describe the work performed, or location of the driver's work site.
- Telephone invoices that show the time, date, location of the caller and caller identification number. Motor carriers who use 1-800 numbers to keep in communication with their drivers, or who distribute telephone credit cards, should have these records.
- Insurance company observation reports.
- Contract road patrol reports.
- Daily fuel statements, paid by "credit card" or electronic funds transfer by a third party vendor. Unlike the fuel receipts received by the driver, these daily fuel statements may also identify the driver, time of purchase, number of gallons purchased, unit price, truck number, location of fuel station and odometer reading.

Some Important Points to Remember Regarding Incomplete RODS

The simplest of all Part 395 violations concerns the failure to show all required entries on the driver's RODS. Violations that are part of a continuing and flagrant disregard of the regulations (as opposed to inadvertent omissions) should be documented for enforcement when they demonstrate an apparent intent cover up other more serious violations. The following types of recurring omissions should raise additional questions:

- Frequently omitted daily mileage often occurs as part of the driver's concealment of a trip, a portion of a trip, or the mileage driven to deliver a "hot" load.
- Failing to show the name of the place the driver reported for duty is often a part of the driver's plan to conceal a portion of his/her time on-duty and/or driving.
- Failing to show the driver's location at each change of duty status is often a part of a plan to conceal work performed. For example, some drivers will show many stops in route, fail to indicate the place where they actually stopped, and then show "off duty" at this last unidentified stop. In many cases, this last-unidentified stop is where some type of work was performed, such as loading or unloading cargo.
- Failing to show the name of the place where the driver went off duty for the rest of the day is often a part of a plan to conceal actual driving time, distance traveled, or work performed other than driving.
- Failing to show the driver's locations at each change of duty status prevents you from comparing the RODS for accuracy against time- stamped supporting documents.

Part 395 - Documentation

Documents that Should be Gathered to Initiate an Enforcement Action

You should gather the documentation to initiate an enforcement action, which establishes the following:

- The driver was subject to Part 395.
- The driver was an employee of (or controlled by) the motor carrier.
- The CMV was operated in interstate commerce at the time of the violation on a specific date.
- A specific violation of Part 395 occurred

Some Examples of Documents that May be Used to Prove Violations of Part 395

Examples of documents to support your discovered violations are listed below.

- Statement from motor carrier official, driver, or other person responsible for compliance with Part 395. You should take statements from the drivers, particularly when the documented violation involves falsified RODS or the failure to require drivers to prepare RODS. See Illustration E-2.
- Driver's time records/RODS and corresponding shipping papers/bill of lading.
- Vehicle registration showing GVWR or other documentary evidence proving that the vehicle was subject to Part 395.
- Copies of documents that support the violation.
- Photographs that support the violation.

This list is not meant to limit you to specific documents; there are many motor carrier documents that could be used to support a violation. You may utilize other documents to prove your violation (i.e., shipper/customer). You may also use documents, or State Ports of Entry records, that the carrier could have used to verify the accuracy of the drivers' logs, regardless of whether they were actually contained in the carrier's files.

Documents Available to Check Driver HOS

If the motor carrier keeps few or no records, documentary evidence may still be obtained from other sources. These same carriers likely perform transportation for shippers who generally keep good records. A few examples are:

- The broker of an auction house usually requires the driver to sign a "tally sheet". In many instances, this record will show the time and date of pickup, truck owner, tag number, etc.
- Lumber mills, sawmills, and planning mills usually require the driver to sign a "load ticket" or other document. These usually tie the driver to the vehicle and the carrier.
- Produce brokers often retain a "Truckers Agreement" which contains identifying information about the trip.
- Breweries keep extensive records of shipments tendered to distributors (private carriers), as well as common or contract carriers. These records include "in tickets" or "key slips," as well as documents relating to outbound shipments. Many states require breweries and distilleries to make monthly or quarterly reports on alcoholic beverages shipped into the State.
- Livestock dealers, stockyards, brokers, etc. usually keep "Tally Sheets" or the "Uniform Livestock Bill of Lading." These include transportation information and times of delivery and pickup.
- Shippers of commodities requiring temperature control usually keep time records showing pickup of their products.
- State Port of Entry records often identify the equipment by license plate number, show the driver's name, date and time he/she checked in at the port of entry and the commodity transported, its origin and destination, etc. State Patrol, Public Utilities Commission or other State inspection reports often contain similar information.
- Agricultural inspection or quarantine inspection reports usually show the driver's name, date, time, commodity, origin, destination and vehicle license number.
- Permits for overweight, over length or over height loads contain information about the driver, motor carrier, vehicle, cargo, trip date, time of application, and origin and destination for the shipment.

Part 395 - Selecting Violations

Criteria that Should be Used to Select Violations for an Enforcement Action

The general rule is to view both the severity and extent of the violation when deciding whether enforcement action is justified; for example, several 15-minute violations of the HOS rules may not warrant enforcement action, where a very few examples of violations that are over 1 hour may warrant enforcement. Additionally, issues that arise frequently, regarding specific HOS sections, are as follows:

10/11 and 14/15-hour rules

It is generally better to select counts that involve two hours or more of excess driving. These violations emphasize the severity of the motor carrier's/driver's violation. However, there are exceptions. Counts should be submitted when a driver, or several drivers, consistently drives 10.5/11.5 hours or more after 8/10 consecutive hours off duty. This pattern of behavior shows a disregard for the regulations.

- If it can be demonstrated that a driver falsified his/her RODS to cover up a 10/11 or 14/15-hour violation, then evidence that proves the HOS violation should be submitted for enforcement action, even though the log is false; for instance, the driver actually drove 13.45 hours, rather than the recorded 11 hours, after 10 consecutive hours off duty.

- If an egregious violation 10/11 hour rule (49 CFR 395.3(a)(1) and 395.5(a)(1)) is discovered, which shows a clear disregard for safety and compliance by the motor carrier and/or driver

60/70-hour rules

- Remember that drivers only violate the 60/70-hour rule when they drive in interstate commerce beyond this period, or they drove in interstate commerce within the last 7 or 8 days. You should show that the driver was driving in interstate commerce during all, or a portion of, the time in excess of 60, or 70, total duty hours, or show that they drove in interstate commerce within the last 7 or 8 days.
- For 60 or 70-hour violations, always document the driver's activities for the full 7 or 8 consecutive day period. The exhibits should consist of copies of the driver's RODS for the entire period.
- To determine whether to use the 60 hours in 7 days, or 70 hours in 8 days calculation period, adhere to the following:
    - If the carrier does not operate vehicles on every day of the week, report violations under the "60 in 7" rule.
    - If the carrier operates any vehicle every day of the week and has elected to record under the "70 in 8" rule, and then determine the HOS violations on that basis.
    - If the carrier operates any vehicles every day of the week and has elected to record under the "60 in 7" rule, and then determine the HOS violations on that basis. However, in cases where the motor carrier has the option to select either the 60 hours in 7 days or 70 hours in 8 days, select periods in which the driver has a violation in both rules.
    - In any case where there is a question about which rule should be used, it is good practice to obtain a statement from the motor carrier that clearly states the duty period used by the motor carrier.
- Any day on which a violation occurs may be documented for enforcement purposes. However, avoid documenting violations on consecutive calendar days when the hours driving in violation begin on one day and continue into the next. In cases where violations continue over a period of consecutive days and the SI is planning enforcement, it is preferable that only the most flagrant violations be documented.

Failing to require drivers to prepare RODS

- In cases where the carrier does not require drivers to prepare daily RODS, documentary evidence is simple and usually easy to obtain. A typical exhibit would consist of a shipping document or dispatch record or payroll record, etc., to show that the driver drove for the carrier on a certain date, and a statement, verbal or written, that the driver was not required to prepare RODS and that the driver, in fact, did not prepare a RODS.
- Do not document instances of failing to require drivers to prepare RODS for days off-duty, days that the driver performed intrastate work only, etc. You should cite the violation on the CR, but should not document such violations on their enforcement report, unless those instances are included on the 7-8 day period of an interstate trip.
- Do not document simply isolated instances. Select violations for documentation/counts that clearly show a pattern of disregard for the requirement that RODS be prepared.
- Occasionally, you may be unable to determine the driver who moved a particular shipment. When the carrier does not require any of its drivers to prepare RODS, and the driver of a specific movement cannot be identified through the use of carrier, shipper or State records, you can still prepare a count by listing the names of all drivers employed by the carrier on the date of the shipment.

Note: If a motor carrier or driver is required to use an ELD to record hours-of-service data but instead uses an alternative method, such as paper logs, then the motor carrier or driver should be cited for violating 395.8(a)(1) and should also be cited for any hours of service violations discovered in the RODS created using the inappropriate method.

Falsification of RODS

- Falsification of drivers' RODS may be chargeable to the carrier and/or the driver under Section 395.8 of the safety regulations. When the carrier is charged, it is important that the evidence used to demonstrate falsification of a RODS be obtained from the carrier's own records or files. By doing so, we can better demonstrate that the carrier knew or should have known that the driver was falsifying RODS.
- Interview drivers to determine why they falsified their RODS and whether they have any possible defenses. Statements should be taken from the drivers. When the intention is to construct a count which alleges the RODS was falsified to conceal excess hours (i.e., the falsification is for less than 1 hour, but was falsified to hide what would otherwise have been a 10/11 hour violation), you should first demonstrate that the driver exceeded the HOS rules. Obviously, this can be established through a statement from the driver in which he/she admits to exceeding the HOS limitations and to falsifying the RODS to hide the fact. The better alternative (and much more difficult) is for you to reconstruct the trip segment in which the HOS violation occurred by using, at a minimum, two reliable and time/date stamped trip documents for the reference points. You should submit this documentation for enforcement and should submit the false RODS, and the RODS for the day before and after, as part of the evidence. [Note: In some instances it may be acceptable to use one time-specific document, such as electronic data (e.g., [redacted]), Electronic Data Guidance.]
- Falsification of RODS typically follows one or more of the following patterns:
    - Showing "off-duty" for a whole calendar day when, in fact, the driver works and drives on that day. Evidence to prove this type of falsification is straightforward. The evidence need only consist of the driver's RODS showing him as "off duty," together with documents taken from the carrier's own records clearly showing that the driver was driving in interstate commerce, and that the carrier knew or should have known of this falsification. One good source to detect this pattern of falsification is to check dispatch records for trips by those drivers whose accumulated hours the day before reached 60 (or 70) total duty hours. Often, the driver's reason for falsifying his RODS by showing "off-duty" is clear--he had no hours remaining for the immediate trip. Drivers who commit this type of falsification sometimes admit their violations and will provide written statements admitting that they made the false entry to conceal their total time on-duty.
    - Showing “off-duty” for an 8/10-hour period following 10/11 hours of driving time, when, in fact, the driver did not go "off duty" but continued to drive. This violation is frequently used to conceal a driving violation that occurred during a turnaround trip. This type of falsification is widespread and is one that should be prosecuted more frequently.
    - **Experience shows that the following fact patterns should alert you: a driver’s RODS which consistently show 10 or 11-hour driving periods, followed by exactly 8 or 10 hours "off-duty"; RODS which consistently add up to 58 (60 hour rule) or 68 (70 hour rule) total duty hours on the driver’s 6th or 7th day of the period; RODS which show accumulated duty hours just short of 60 or 70 total duty hours and with little or no time shown as “on-duty, not driving” loading/unloading time on their RODS.**
    - Concealing a portion of a day's work: This practice appears more often among drivers of tank truck carriers, automobile transporters, lumber haulers, building materials haulers,

new furniture haulers, steel haulers, HHG carriers, drivers of temperature-controlled commodities, and drivers who perform the pickup and/or delivery in addition to the over-the-road trip. This pattern of falsification can be detected using the following:

- Dispatch and/or payroll records which may show additional interstate trips or local trips than those accounted for on the driver RODS; and
- Dispatch records, shipping documents and/or payroll records which may show additional payments to drivers for unloading, stop-offs or "off route" deliveries.

Part 395 - Enforcement Action Against a Driver

Considering an Enforcement Action Against a Driver

Enforcement action should be considered against drivers on the following violations when they have 10 percent or more violations recorded on the number of RODS reports checked for at least 30-day period.

- 395.3(a)(1) - Driving more than 11 hours following 10 consecutive hours off duty (property-carrying vehicles).
- 395.3(a)(2) - Driving for any period after having been on-duty 14 hours following 10 consecutive hours off duty (property-carrying vehicles).
- 395.3(b)(1) - Driving after having been on-duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week (property-carrying vehicles).
- 395.3(b)(2) - Driving after having been on-duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week (property-carrying vehicles).
- 395.5(a)(1) - Driving more than 10 hours following 8 consecutive hours off duty (passenger-carrying vehicles).
- 395.5(a)(2) - Driving for any period after having been on-duty 15 hours following 8 consecutive hours off duty (passenger-carrying vehicles).
- 395.5(b)(1) - Driving after having been on-duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week (passenger-carrying vehicles).
- 395.5(b)(2) - Driving after having been on-duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week (passenger-carrying vehicles).
- 395.8(a)(1) - Every driver who operates a commercial motor vehicle shall record his/her duty status, in duplicate, for each 24-hour period.
- 395.8(e)(1) - Making of false reports in connection with such duty activities on the driver's record of duty status report.
- 395.8(i) - The driver shall submit or forward by mail the original driver's record of duty status to the regular employing motor carrier within 13 days following the completion of the form.
- 395.13(d) - No driver who has been declared out-of-service shall operate a commercial motor vehicle until that driver may lawfully do so under the rules of this Part.*

(*) denotes Red Flag Violation

2.3.6 Insurance/Other

2.3.6.1 Part 387 – Financial Responsibility

As part of the Insurance/Other BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387 : Procedures.*

2.3.6.2 Part 376 - Lease and Interchange of Vehicles

As of November 22, 2016, Mexico-domiciled carriers are allowed to lease their equipment to U.S. carriers for transportation of property beyond the U.S.-Mexico border municipalities and commercial zones.

When an authorized U.S. motor carrier leases equipment from a Mexico-domiciled motor carrier to transport property in the U.S., both parties are required to comply with Part 376. Part 376 generally requires that the carrier acquiring and operating the equipment (the lessee, or U.S.-domiciled motor carrier, in these cases) assumes control and responsibility for the operation of the equipment for the duration of the lease and/or while the equipment is in the U.S. carrier's possession. Documentation of the relationship between the U.S. motor carrier and the Mexico-domiciled motor carrier's equipment must be carried on the vehicle

2.3.7 Unsafe Driving

2.3.7.1 Part 177 – Enforcement Procedures

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 177. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 177: Procedures.*

2.3.7.2 Part 380 – Special Training Requirements

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 380. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 380: Procedures.*

2.3.7.3 Part 383 – Commercial Driver's License (CDL) Standards

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 383: Procedures.*

2.3.7.4 Part 387 – Financial Responsibility

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387: Procedures.*

2.3.7.5 Part 390 – General Requirements

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 390: Procedures.*

2.3.7.6 Part 391 – Qualification of Drivers

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 391: Procedures.*

2.3.7.7 Part 392 - Driving of Motor Vehicles

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 392: Procedures.*

2.3.7.8 Part 397-HM Driving and Parking

As part of the Unsafe Driving BASIC investigation, your investigation should include an examination of the applicable subparts of Part 397. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 397: Procedures.*

2.3.8 Vehicle Maintenance

2.3.8.1 Part 383 – Commercial Driver's License (CDL) Standards

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 383. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 383: Procedures.*

2.3.8.2 Part 387 – Financial Responsibility

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 387. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 387: Procedures.*

2.3.8.3 Part 390 – General Requirements

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 390. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 390: Procedures.*

2.3.8.4 Part 391 – Driver Qualification

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 391. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 391: Procedures.*

2.3.8.5 Part 392 - Driving of Motor Vehicles

As part of the Vehicle Maintenance BASIC investigation, your investigation should include an examination of the applicable subparts of Part 392. For more information on guidance for selecting the appropriate subparts to examine, please refer to the *Part 392: Procedures.*

2.3.8.6 Part 393 and Part 396 – Parts & Accessories, and Inspection, Repair & Maintenance

Once you have entered the violations discovered into Part B of CAPRI and have decided to initiate an enforcement action for the Part 396 violations, you should use the following guidelines when submitting an enforcement report for Part 396 violations.

Part 393 & 396 - Guidelines for Enforcement of Red Flag Violations

The decision to initiate enforcement action may take into consideration, but not be limited to, factors such as: whether the State has already initiated enforcement action (i.e., citation); if the violation was corrected in a timely manner; or if the violation continued or repeated.

Determining enforcement against the carrier, for violations committed by the employed driver, is a separate process from enforcement against the driver. The carrier's awareness of the violations and its responsibilities for controlling them should be considered in enforcement decisions. The decision to pursue carrier enforcement for a driver with Red Flag Violations may take into consideration, but not be limited to, awareness, and knowledge and willfulness of the carrier (with respect to the driver violations). As with any carrier violations meriting enforcement, these violations are subject to an assessment of Process Breakdowns and Remedies for the associated BASIC.

Driver vs. Carrier Enforcement

- The manager should be consulted before pursuing enforcement against the driver if either a citation had been issued roadside or the driver is not currently employed by the carrier.

- Enforcement against the carrier:
    - Is considered in cases where there is proof that the violation was repeated when the carrier had knowledge (or should have had knowledge) of the violation and could have prevented its reoccurrence.
    - Should be pursued in cases where the carrier knowingly directed the driver to commit or repeat the violation.

Part 396 - Red Flag Violations

- The Red Flag Violation 396.9(c)(2) is cited when the driver has been found operating while the vehicle was placed OOS. Whether it was discovered at the roadside or in the investigation, the violation should be verified with supporting documents before pursuing enforcement.
- Operating while OOS often implicates either or both the driver and the carrier. Once the Red Flag Violation is verified, if there was no original enforcement on the violation at the roadside, you will normally issue an NOC.

Parts 393 & 396 – Documentation

Documenting an Enforcement Case for Part 396

You should obtain the documentation to initiate an enforcement action. The documentation must establish that:

- The vehicle used falls within FMCSR jurisdiction for Part 396.
- The driver is an employee of (or controlled by) the motor carrier.
- The CMV was operated in interstate commerce by a motor carrier on a certain date.
- The violation of Part 396 occurred.

Specific Documents that Should be Used to Document these Violations

Specific documentation may be needed to support some of the above referenced critical and acute regulation violations.

- 396.9(c)(2) - Copy of the original out-of-service order.
- 396.11(c) - Copy of DVIR indicating the defects or deficiencies listed by the driver and a statement from carrier official that the defect was not corrected.
- 396.17(g) - Copy of the periodic inspection report with defects identified; statement of carrier official that defects were not repaired.

Documents that Can be Used to Support the Violation

Examples of documents to support your discovered violations are listed below.

- Corresponding shipping papers
- RODS
- Daily vehicle inspection reports
- Vehicle registration

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support your violation; therefore, you may use other documents to prove your violation. A statement from a motor carrier official, driver, or other person responsible for compliance with Part 396. See Illustration E-2.

Parts 393 & 396 - Enforcement Action Against Drivers

Considering an Enforcement Action Against a Driver

The following violations warrant considering enforcement action against a driver:

- 396.9 - No driver shall operate any motor vehicle declared and marked “out-of-service” until all repairs required by the “Out-of-Service Notice” have been satisfactorily completed.
- 396.9(c)(2) - Operating an "out-of-service" vehicle.*
- 396.11(a) - Each driver shall report, and every driver shall prepare a report in writing at the completion of each day’s work, on each vehicle operated in commerce when a defect

or deficiency should have been reported and was not (driver has 10 percent or greater violations for at least 30 days checked).

(*) denotes Red Flag Violation

2.4 Follow-on Interventions and Enforcement Tools

2.4.1 Introduction to FMCSA's Intervention and Enforcement Toolbox

The Intervention and Enforcement Toolbox is a compilation of "Tools" that may be utilized to provide FMCSA employees, contractors, and State Motor Carrier Safety Assistance Program (MCSAP) partners with a central location for information on the various enforcement tools used to enforce the Federal Motor Carrier Safety Regulations (FMCSR), and Hazardous Materials Regulations (HMR).

- 2.4.2 Pre-Discovery Enforcement Tools - Includes tools that would be used to locate commercial motor vehicle (CMV) drivers or motor carriers to determine their compliance with the regulations.
- 2.4.3 Investigational Tools – Includes tools that will be used to discover potential noncompliance of Federal regulations.
- 2.4.4 Post-Discovery Tools - Includes tools that would be used to initiate enforcement actions against motor carriers and/or individuals for noncompliance.

2.4.2 Pre-Discovery Enforcement Tools

Pre-Discovery Tools include tools that are used to locate CMV drivers or motor carriers to determine their compliance with the FMCSRs and HMRs.

Access to State Department of Labor Database - Access to State Department of Labor databases aid in tracking drivers from motor carrier to motor carrier by utilizing either their social security number (SSN) or employee identification number (EIN). Many States have individual websites, however, telephone contact may be necessary if data is not web accessible.

Activity Center for Enforcement (ACE) – ACE (https://csa.fmcsa.dot.gov/Tools/) is an online system used by enforcement personnel to manage intervention activities and carrier data. The current version is available to enforcement users with a Portal username name and password. Access to different modules and capabilities are based on the user's role. ACE can be customized based on user preferences. For more information, please refer to Appendix P.

Motor Carrier Management Information System (MCMIS) - MCMIS (http://mcmis.fmcsa.dot.gov) or (https://portal.fmcsa.dot.gov) is an information system that captures data from field offices through the Safety Network (SAFETYNET), CAPRI, AIM and other sources. It is a source for FMCSA inspection, crash, investigation, CR, safety audit (SA), and registration data which makes up the motor carrier profile.

Crash Analysis Tool (CAT)- The Crash Analysis Tool is a desktop application, available through AIM, which will be used by SIs during the course of a Crash Basic Investigation (CBI) to identify trends among crashes, if all of the following three criteria are met:

- The carrier has three crashes or more in the 2-year period;
- Factor 6 is Unsatisfactory; and
- No violations were discovered that indicate there may be underlying patterns that contributed to the crash.

When use of CAT is required, the CBI Carrier Summary Report must be provided to the motor carrier at closeout, along with the Carrier Investigative Report from AIM. For more information, please refer to Appendix P.

Commercial Driver's License Information System (CDLIS) - The CDLIS (http://cdlis.dot.gov) access software is used to retrieve driver licensing status and conviction history reports. CDLIS is available via the internet on the FMCSA network or Virtual Personal Network (VPN), in addition to dial-up. It accepts driver query data from ASPEN, AIM or CAPRI, and can also be accessed through Query Central (QC).

Licensing & Insurance (L&I) - The L&I system is a client-server and web-based real-time application (http://li-public.fmcsa.dot.gov) or (https://portal.fmcsa.dot.gov) with both public and private access. It is used to enter and display licensing and insurance information regarding authorized for-hire motor carriers, freight forwarders, and property brokers. It is the authoritative source for FMCSA licensing and insurance data. L&I is part of the registration process.

Query Central (QC) - QC is a web-based application (http://qc.fmcsa.dot.gov) or (https://portal.fmcsa.dot.gov) that retrieves safety compliance and enforcement data on CMV drivers, vehicles, and motor carriers from multiple sources using a single input. The response data is analyzed and summarized before being presented in the user's browser. Response data can also be downloaded to pre-populate ASPEN. Data sources include MCMIS, Safety and Fitness Electronic Records (SAFER), L&I, Performance & Registration Information System Management (PRISM), CDLIS, Secretaria de Comunicaciones y Transportes (Mexican Government) (SCT), and Licencia Federal Information System (Mexican) (LIFIS). (Both SCT and LIFIS contain Mexican motor carrier and driver information). This software application is generally used at the roadside for checking Inspection Selection System (ISS) scores, previous inspection history on vehicles and drivers, and for validating a driver's license.

Enforcement Management Information System (EMIS) - EMIS is a web-based application (https://portal.fmcsa.dot.gov) used to monitor, track, and store information related to FMCSA enforcement actions. EMIS manages and tracks all data associated with notifying the motor carrier, monitoring the motor carrier's response, determining whether further compliance action is required, and generating reports for various Headquarters, Service Center (SC), and Division staff. It is the authoritative source for FMCSA enforcement data. Inputs include data from CaseRite and data entry.

Electronic Document Management System (EDMS) - EDMS (http://edms.fmcsa.dot.gov) or (https://portal.fmcsa.dot.gov) allows for the storage and retrieval of documents, including enforcement case and SA documents, in a paperless environment. EDMS is the central repository for FMCSA documents. Inputs include both scanned and electronically generated documents from EMIS, AIM and CAPRI.

National Consumer Complaint Database (NCCDB) - NCCDB (http://nccdb.fmcsa.dot.gov/Homepage.asp) is a database where complaints are lodged against motor carriers. The complaints will be entered into FMCSA's National Commercial Complaint Database and used for analytical and statistical purposes, until the Agency decides to take enforcement against a carrier. It has HHG, hazardous materials (HM), and safety-related complaints.

Driver Information Resource (DIR) - The DIR is a web-based tool that allows a user to search, by driver, for driver's crash and inspection history, regardless of a driver's employment history. FMCSA and State enforcement staff continue to use this tool to access driver-specific data. The Agency expects to make this information available to the motor carrier industry as part of the pre-employment verification process.

What is the FMCSA Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) - The Clearinghouse is a secure online database that will give employers, FMCSA, State Driver Licensing Agencies, and State law enforcement personnel real-time information about CDL driver drug and alcohol program violations. The Clearinghouse contains information about drivers with commercial driver's licenses (CDL drivers) who are covered by FMCSA's drug and alcohol program. This also includes drivers with commercial learner's permits (CLPs). FMCSA personnel can access the Clearighouse to verify compliance with drug and alcohol regulations (https://clearinghouse.fmcsa.dot.gov/Account/PortalLogin)

Americans with Disabilities Act (ADA) Related Records and Reports - FMSCA shares oversight responsibility with the U.S. Department of Justice (DOJ) for monitoring and ensuring ADA regulatory compliance by over-the-road bus companies. An "over-the-road bus (OTRB)" is a bus characterized by an elevated passenger deck over a baggage compartment. A motor coach is the most common example of an OTRB. Pursuant to the Over-the-Road Bus Transportation Accessibility Act of 2007, FMCSA is authorized to deny or revoke interstate operating authority of OTRB companies found to be willfully violating the ADA regulations. DOJ has exclusive civil penalty authority for violations of the ADA regulations for OTRB companies. In March 2009, FMCSA began conducting ADA Reviews to investigate the ADA regulatory compliance of OTRB companies. These ADA Review reports can be found in the OTRB company's/motor carrier's EDMS folder.

Insurance Company Database - Insurance companies generally retain information on whether a company has valid insurance, the number of vehicles covered, and the dates of the current and active policy. Some insurance companies allow inquiries for this type of information.

Global Positioning System (GPS) Data - When used properly, GPS data can aid a motor carrier in keeping track of its drivers' locations, in order to efficiently coordinate loads and traffic lanes. GPS is also an innovative way for enforcement officials to monitor drivers HOS. Highway safety could potentially be advanced through the use of GPS technology.

Hazardous Materials (HM) Intelligence Portal - (http://hip.phmsa.dot.gov) The HM Intelligence Portal is an USDOT data integration program managed by the Pipeline and Hazardous Materials Safety Administration (PHMSA). The system consists of an information data warehouse of consolidated HM information from multiple Department of Transportation (DOT) modal agencies, which is accessed through a web-based, decision-support portal. By providing a single, DOT-wide repository of compliance and risk management data, relating to the transportation of HM across all modes of transport, DOT agencies are able to improve oversight of the HM industry.

Secretary of State's Office - By searching the State's database for the articles of incorporation and a corporation's Doing Business As (DBA) name, may assist in locating corporations and their officers. The website will give basic information; some states are more liberal in the information they provide on their websites.

County Records - County records are similar to searching the Secretary of State's database, as the county records are one level deeper, and can also be used to search articles of incorporation and DBA information. Again, the website may provide limited information, so a visit to the county's records building may be required to obtain detailed information.

Subpoenas - Applications for the issuance of subpoenas must be submitted to the Assistant Administrator (AA), or in cases that result in hearings, to the ALJ. The application must show the general relevance and reasonable scope of the evidence sought. Any person served with a subpoena may, within seven days after service, file a motion to quash or modify. The motion must be filed with the official who approved the subpoena. The filing of a motion shall stay the effect of the subpoena until a decision is reached. The AA and Chief Safety Officer (CSO), AA for Field Operations, FAs, DA of the FMCSA are delegated

authority to subpoena witnesses and records under 49 U.S.C. 502(d) and 49 U.S.C. 13301(c) in connection with inspections and investigations. Paragraph (a) of this section shall not apply to the Administrator or employees of the FMCSA, or to the production of documents in their custody. Application for the attendance of such persons, or the production of such documents at a hearing, shall be made to the AA or ALJ, if one is appointed, and shall set forth the need for such evidence and its relevancy.

Online Information Search Tools

- **Whitepages.com, ZabaSearch & Intelius** - These are free online tools that can be used for business searches, reverse phone number and address look-ups. They can be useful in comparing the information motor carriers have submitted on their applications to cross-checking addresses, phone numbers, and names.
- **DOT Job History -** This is an online tool, with a focus on transportation jobs that can be used to gain access to commercial drivers' background checks and employment histories.

FMCSA Creating Opportunities, Methods, and Processes to Secure Safety (COMPASS) - The COMPASS program is an FMCSA-wide initiative that is leveraging new technology to transform the way that FMCSA does business. The ultimate goal is to implement an IT solution that improves the Agency's ability to save lives and improves the safety of commercial motor vehicles; key objectives include: creating a single source for crucial safety data via single sign-on access, improving data quality to enable better, more informed decision making and providing actionable information, as well as data.

- By optimizing FMCSA's business processes and improving the Agency's IT functionality, COMPASS will help FMCSA and State enforcement personnel and industry make America's roads safer. COMPASS is now leveraging service-oriented architecture and leading technologies to develop a solution that can adapt easily to a changing environment. The FMCSA Portal provides single sign-on access to MCMIS, EMIS, L&I, DataQs, QC, Analysis and Information Online (A&I), SAFER,, InfoSys, Safety Measurement System (SMS), and the NCCDB via a single password and user ID. Over time, the FMCSA Portal (https://portal.fmcsa.dot.gov) will provide access to all FMCSA safety systems. Prioritization lists for Agency work are also provided via the FMCSA Portal.

2.4.3 Investigational Tools

Investigational tools will be used to discover potential noncompliance of Federal regulations.

Activity Center for Enforcement (ACE) – ACE (https://csa.fmcsa.dot.gov/Tools/) is an online system used by enforcement personnel to manage intervention activities and carrier data. The current version is available to enforcement users with a Portal username name and password. Access to different modules and capabilities are based on the user's role. ACE can be customized based on user preferences. For more information, please see Appendix P.

Safety Measurement System (SMS) (http://ai.fmcsa.dot.gov/sms) The detailed SMS Methodology can be downloaded using the following link: http://csa.fmcsa.dot.gov/Documents/SMSMethodology.pdf

- SMS monitors and quantifies the on-road safety performance of individual carriers and drivers on a monthly basis, using roadside performance and crash data available in FMCSA's MCMIS collected during the previous 24 months to:
    - Identify entities for interventions;
    - Determine the specific safety problems exhibited by an entity; and
    - Monitor whether safety problems are improving or getting worse.
- The Agency uses the SMS to measure the safety of motor carriers and CMV drivers. As such, SMS uses carrier and driver data from roadside inspections, State-reported crashes, and the

Federal motor carrier census to quantify performance in the following Behavior Analysis and Safety Improvement Categories (BASICs):

- Unsafe Driving
- Hours of Service (HOS) Compliance
- Driver Fitness
- Controlled Substances and Alcohol
- Vehicle Maintenance
- Hazardous Materials (HM) Compliance
- Crash Indicator

- Along with the seven BASICs, there is an Insurance/Other Indicator. This indicator was created to hold motor carriers accountable for compliance with registration and insurance requirements. The Insurance/Other Indicator will display if the motor carrier has been cited for Acute and/or Critical Violations related to registration and/or insurance requirements from a previous investigation. The Insurance/Other Indicator is not based on on-road safety performance data.

Crash Analysis Tool (CAT)- The Crash Analysis Tool is a desktop application, available through AIM, which will be used by SIs during the course of a Crash Basic Investigation (CBI) to identify trends among crashes, if all of the following three criteria are met:

- The carrier has three crashes or more in the 2-year period;
- Factor 6 is Unsatisfactory; and
- No violations were discovered that indicate there may be underlying patterns that contributed to the crash.

When use of CAT is required, the CBI Carrier Summary Report must be provided to the motor carrier at closeout, along with the Carrier Investigative Report from AIM. For more information, please refer to Appendix P.

- **Driver Safety Measurement System (DSMS)** - The DSMS is a major component of the SMS. Law enforcement officials use the DSMS results to examine the safety performance of individual CMV drivers when conducting Compliance, Safety, Accountability (CSA) investigations. The DSMS assesses an individual driver's performance by BASIC and Crash Indicator, calculated from information collected during on-road safety inspections and State-reported CMV crash records. Currently, the DSMS results are being used strictly as an investigative tool for law enforcement and are not available to carriers, drivers, or the public.

Warning Letters

1. SMS identifies eligible motor carriers for warning letters. Warning letters are generated when a motor carrier's safety performance meets or exceeds the SMS Roadside-Identified Intervention Threshold based on roadside performance data in one or more of the BASICs. However, because of their poor overall performance, warning letters are not generated for motor carriers that are designated as high-risk or for motor carriers that have three or more BASICs at or above the Intervention Threshold. Those motor carriers are prioritized for an Onsite Comprehensive Investigation or Onsite Focused Investigation.
2. Warning letters advise motor carriers of their identified roadside safety performance problems and the consequences of continued poor performance. The warning letters provide a website address that allows the motor carrier to view its safety performance data. The warning letters do not require motor carriers to submit evidence of corrective action to the FMCSA. However, if a

motor carrier still has BASICs meeting or exceeding the Intervention Threshold 12 months after receiving a warning letter, it will be prioritized for investigation.

3. FMCSA and State enforcement personnel can access an electronic version of all distributed warning letters through the FMCSA Portal.

Compliance Review (CR)

When is it conducted? - A CR is an onsite examination of a motor carrier's operation to determine whether a motor carrier meets the safety fitness standard established in 49 CFR Section 385.5. This examination may include a review of the drivers' hours of service (HOS), maintenance and inspection files, driver qualification (DQ) files, commercial driver's license requirements, financial responsibility, accidents, HM, and other safety and transportation records. A CR may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, as a result of a fatal crash, or to investigate complaints or other evidence of safety violations. The CR may result in the initiation of an enforcement action. The information gathered during the CR is entered into AIM or CAPRI, which is used non-CSA investigations like specialized cargo tank facility reviews (CTFRs). CAPRI includes worksheets for collecting (1) HOS data, (2) DQ data, and (3) drug and alcohol compliance data. It also creates the preliminary carrier safety fitness rating and various reports for motor carriers. It electronically transfers data to SAFETYNET and/or MCMIS.

1. As part of the CSA program, CRs may be either comprehensive,focused, or Offsite in nature. For the purposes of this document, the term investigation is used if the guidance provided is not specific to the type of investigation (i.e., comprehensive,focused or Offsite). The terms Onsite Comprehensive,Onsite Focused and Offsite Investigations are used when the guidance is specific to the type of investigation. A brief description on how to conduct Onsite Comprehensive Investigations and Onsite Focused Investigations can be found below. Additional guidance is provided in the eFOTM.
2. Investigations will include the violation discovery process as documented in the eFOTM. Additionally, the process includes an examination of the elements of "CAIR" and an assessment of a motor carrier's Safety Management Processes (SMPs) using the Safety Management Cycle (SMC). A brief description of the CAIR elements and the SMC is provided below.
3. "**CAIR**"- As part of every investigation, you must check for the following elements of "CAIR":
    - **"C" - Commercial Driver's License Information System** (CDLIS) - Following eFOTM guidance for checking the minimum number of drivers using CDLIS. Validate endorsements as part of CDLIS checks.
    - **"A" - Authority** - Verifying that the motor carrier has the appropriate type of operating authority using the FMCSA's Licensing and Insurance (L&I) database. It is important for SIs to incorporate the following when performing an investigation of a carrier that transports HM, regardless of whether or not the carrier has been identified for an HM Compliance BASIC investigation:
        - Operating Authority Registration;
        - Pipeline and Hazardous Materials Safety Administration (PHMSA) HM Registration in accordance with §107.601;
        - Proper registration of Manufacturing, Testing, or Repair Facility for carriers performing this function;
        - FMCSA HM Safety Permit; and
        - PHMSA HM Special Permit.
    - **"I" - Insurance** - Verifying that the motor carrier has the appropriate level of insurance using the L&I (e.g., MCS-90).

- **"R" - Red Flag Violations** − Investigating all drivers with Red Flag Violations as described in the eFOTM.

Safety Management Cycle (SMC) - The SMC is a model that provides a holistic systems view of the management processes and safety improvement practices a carrier should have, in place in order to ensure compliance with FMCSA regulations. The SMC is an important tool for you to use while questioning carrier officials and staff, to help diagnose the breakdown in the Safety Management Process (SMPs) that led to the discovered violations. All six SMPs need to be operating properly, in order to have a fully functioning safety management system. The SMC focuses on what SMPs are breaking down, why they are breaking down, and how they can be fixed.

Offsite Investigation

How is it conducted? - The Offsite Investigation enables FMCSA and its State partners to evaluate safety problems without sending enforcement officials to a carrier's place of business. It involves requests for documentation from the carrier and third parties, followed by an in-depth review of available information to determine the nature and extent of identified safety problems. It follows the same core investigative processes used during an Onsite Investigation; however, the minimum sampling size for an Offsite Investigation may be different than an Onsite Investigation.

Outcome of an Offsite Investigation - An Offsite Investigation cannot result in a Safety Fitness Rating and will be recorded in AIM as a non-ratable review. Violations of Acute regulations found during an Offsite Investigation result in an Acute Violation and impact SMS BASIC prioritization status for a carrier. An Offsite Investigation may result in a violation of an Acute regulation and impact the carrier's SMS BASIC prioritization status. If the offsite sampling is the same as the onsite sampling requirement, an Offsite Investigation may result in a pattern of violating a Critical regulation and impact SMS BASIC prioritization. However, patterns of violations of Critical regulations resulting from an Offsite Investigation are not displayed publically in SMS.

Onsite Focused Investigation:

- **How is it conducted? -** The Onsite Focused Investigation enables FMCSA and its State Partners to focus on the demonstrated safety problem. It involves reviewing records, interviewing personnel, analyzing practices, identifying violations, and only taking appropriate follow-up action on those BASICs related to the demonstrated safety problem from the SMS. The Onsite Focused Investigation only differs from an Onsite Comprehensive Investigation in the scope of its investigation. The same core processes (sample size, application of FMCSR, CAIR, SMC, etc.) are used. However, instead of looking at the entire motor carrier operation, the SI examines only those regulatory areas associated with the carrier's BASICs requiring investigation. In addition, some Onsite Focused Investigations may include a Controlled Substances/Alcohol Supplemental Review and/or a Hazardous Materials (HM) Supplemental Review. Carriers requiring a Controlled Substances/Alcohol Supplemental Review will be flagged in ACE. Investigators may be notified of carriers requiring an HM Supplemental Review as part of their assignment.

Outcome of an Onsite Focused Investigation - An Onsite Focused Investigation can only result in an adverse rating of Conditional or Unsatisfactory. A Safety Fitness Rating of Satisfactory cannot be issued because all factors, as described in 49 CFR Part 385, have not been examined. Acute and/or Critical Violations resulting from investigations impact the carrier's overall BASIC status for 12 months

Onsite Comprehensive Investigation

- **How is it conducted?** - The Onsite Comprehensive Investigation is conducted according to the guidelines set forth in the eFOTM. A Safety Investigator (SI) reviews the motor carrier's operation to determine whether or not the motor carrier is in compliance with the regulations of this Agency (FMCSR, FMCCR, and HMR). Generally, an Onsite Comprehensive Investigation has two purposes: (1) to assign the motor carrier a current safety rating under 49 CFR Part 385, and (2) to determine the motor carrier's overall compliance with Federal regulations administered by this Agency. An Onsite Comprehensive Investigation may lead to the initiation of a civil forfeiture proceeding under 49 CFR Part 386.
- **Outcome of an Onsite Comprehensive Investigation** - A motor carrier's safety rating is determined by the number of Acute and Critical Violations discovered during the investigation, in conjunction with the motor carrier's accident history and out-of-service (OOS) rate. Acute Violations exist where noncompliance is so severe as to require immediate corrective action by a motor carrier, regardless of the overall safety posture of the motor carrier. Critical Violations exist where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in the motor carrier's management controls. There must be a pattern of Critical Violations to affect a motor carrier's safety rating. The number of violations required to meet a pattern must be equal to at least 10% of the records examined. Notwithstanding the 10% requirement for violations, to affect a motor carrier's safety rating, this Agency could initiate an enforcement proceeding under 49 CFR Part 386 for any and all violations discovered during an Onsite Comprehensive Investigation. An Onsite Comprehensive Investigation can result in a Safety Fitness Rating of Satisfactory, Conditional, or Unsatisfactory. Acute and/or Critical Violations resulting from investigations impact the carrier's overall BASIC status for 12 months.
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Safety Fitness Ratings

- Satisfactory means that a motor carrier has in place functioning adequate safety management controls to meet the safety fitness standard prescribed in 49 CFR section 385.5. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.
- Conditional means that a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in 49 CFR 385.5(a)(1)-(a)(11).
- Unsatisfactory means that a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in 49 CFR 385.5(a)(1)-(a)(11).
- Unrated means that a safety rating has not been assigned to the motor carrier by the FMCSA.

Roadside Inspections - Authorized FMCSA employees and State MCSAP personnel perform inspections of CMVs and drivers on the highway, and in certain instances, at the motor carrier's terminals. Motor vehicles likely to cause an accident or breakdown will be placed out-of-service (OOS). Vehicles declared OOS must not be operated, and the "OOS" sticker shall not be removed, until all required repairs have been satisfactorily completed.

- Most States and provinces use the North American Standard OOS Criteria, which was developed by the Commercial Vehicle Safety Alliance (CVSA). It identifies critical vehicle inspection items or driver OOS. No motor carrier shall require or permit any person to operate nor shall any person operate any motor vehicle declared and marked OOS until all repairs required by the OOS notice have been satisfactorily completed. During the Roadside Inspection the information gathered is entered in ASPEN, an application that collects all the commercial driver/vehicle roadside inspection details. It utilizes several other applications that pull data from remote sources- ISS, Previous Inspection Query (PIQ), CDLIS, and QC. It also includes communication features to electronically transfer inspection details to SAFER and/or SAFETYNET.

Safety Audit (SA) - An examination of a motor carrier's operations to provide educational and technical assistance on safety and operational requirements of the applicable FMCSR, FMCCR and HMR and to gather critical safety data needed to make an assessment of the motor carrier's safety performance and basic safety management controls. An SA does not result in safety ratings.

Performance Registration Information System Management (PRISM) - The PRISM program includes two major processes: 1) Commercial Vehicle Registration Process; and 2) Motor Carrier Safety Improvement Process. These two processes work in parallel to identify motor carriers and hold them responsible for the safety of their operation. PRISM ties vehicle registration to the safety of the company responsible for the vehicle(s). The performance of unsafe motor carriers is improved through a comprehensive system of identification, education, awareness, safety monitoring, and treatment.

2.4.4 Post-Discovery Tools

2.4.4.1 Introduction to Post-Discovery Tools

Post-Discovery Tools will be utilized after the discovery of noncompliance and can be used to take enforcement actions against a motor carrier or driver.
The respondent may not be held accountable for failing to respond to charges which are insufficiently described and/or fail to establish jurisdiction and the who, how, where and what of a violation.

2.4.4.2 Denial of Access
2.4.4.3 CaseRite
2.4.4.4 Service List
2.4.4.5 Statement of Charge
2.4.4.6 Electronic Document Management System (EDMS)
2.4.4.7 Notice of Violation (NOV) Section
2.4.4.8 Notice of Claim (NOC) Section
2.4.4.9 Settlement Agreement
2.4.4.10 Driver Disqualification
2.4.4.11 Imminent Hazard Out-of-Service (OOS) Order
2.4.4.12 Failure to Pay OOS Order
2.4.4.13 Record Consolidation Order (RCO)
2.4.4.14 Subpoenas
2.4.4.15 Supplement Policy on Assessing Maximum Penalties under Section 222
2.4.4.16 Pattern
2.4.4.17 Two-Strikes
2.4.4.18 Settlement of Maximum Penalty Cases
2.4.4.19 Unsatisfactory=Unfit OOS Order
2.4.4.20 Willful Non-compliance (13905) Revocation of Operating Authority
2.4.4.21 Patterns of Safety Violations (PoSV) by Motor Carrier Management
2.4.4.22 Improper Designation of a Principal Place of Business

2.4.4.2 Denial of Access

Denial of Access refers to circumstances where a motor carrier, upon display of credentials, denies access to FMCSA authorized personnel.

Authority for taking enforcement action against a regulated entity for Denial of Access comes from Section 4103 of SAFETEA-LU and MAP-21, Section 32502. Together these two sections amended 49 United States Code (U.S.C.) 521 to place violators who deny access out-of-service. The primary goal of these authorities is to provide FMCSA additional tools to compel parties subject to the FMCSR to promptly produce relevant records and to promptly allow for the inspection and examination of equipment, lands, buildings, or other property upon demand during investigations, reviews and inspections conducted under FMCSA's investigation authorities. Out of service (OOS) orders are to be used when a carrier fails to provide documents after FMCSA follows the proper procedures as outlined in the Denial of Access Policy. They are not, however, appropriate when a motor carrier, or other subject of an investigation, fails to maintain records required by Federal regulations. To apply these enforcement tools, it must first be determined that the records are available and were purposefully not provided by the motor carrier.

The policy and procedures for handling a denial of access should be followed as are found in the policy titled "*08.25.2016 Enforcement Procedures for Denial of Access to Records, Equipment, Lands, Buildings, and Other Property*" FMCSA will not serve NOC under 49 CFR part 386 when charging Riojas affected violations. If a Division determines that an enforcement action on Riojas affected violation(s) is the best means to induce compliance, an Enforcement Analysis must be conducted following the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," *MC-ECE-2020-0001* to determine what type of enforcement should be pursued. FMCSA will propose and settle civil penalties for Riojas affected violations using the procedures in that policy.

2.4.4.2.1 Demand Letters

Demand letters are used as an official written demand for access to records of a regulated entity denying access to FMCSA. Subponeas are not to be used for the purpose of a demand. There are very rare situations where the use of a Subponea might be appropriate. (See *Subpoenas*) Once attempts to gain access have been denied, a demand letter formalizes the request for the purpose of imposing civil penalties and the out-of-service penalties if access continues to be denied. Division Administrators are responsible for the issuing of demands for access. The demand must sufficiently identify the records, equipment, lands, buildings, or other property to which access is requested in terms that are clear and understandable to the motor carrier. The demand will only identify those records, equipment, lands, buildings, and other property that are reasonably necessary to conduct the investigation. If during the investigation additional documents are required and access to those additional records is denied by the motor carrier, the DA may serve additional demands as needed. The Investigator should consult with his or her DA and/or designee to determine the due date and time for the carrier to comply with the demand. The deadline for compliance must be reasonable based on the facts of the case, including the scope of the demand. In most cases, because a request for access to the records has previously been denied, the expectation is that access to records should be granted as soon as practicable and reasonable, generally 48 hours. Demands generally should not require compliance on weekends or Federal holidays. Circumstances that may warrant a shorter time to respond or compliance on weekends or holidays, include a fatal crash investigation or potential imminent hazard, or other investigation involving an urgent safety threat to the traveling public. For-Hire Motor Carriers may be subject to being placed OOS for failure to comply with a demand. Separate demand letter samples are provided for use with For-Hire and Private Motor Carriers. The template used with for-hire motor carriers informs the for-hire motor carrier of the deadline and method by which it may request an administrative review if the carrier believes it is not required to comply with the demand or believes it has complied. Demand letters may be served in person or by mail depending on the circumstances of the individual case. Sample Demand letters are provided in the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," *MC-ECE-2020-0001* See *Attachment F-1 – Demand Letter Template-Personal Service For-Hire* and *Attachment F-2 – Demand Letter Template-Mail Service For-Hire*. Demands must must be reviewed by MC-CCE or a designee, prior to service.

2.4.4.2.2 Out-of-Service Penalty for Denial of Access

Only for-hire motor carriers may be placed Out-of-Service for a denial of access. If a for-hire motor carrier fails to grant access by the date and time specified in the Demand letter served to them and the carrier has not filed for an administrative review, or after an administrative review it is determined that the motor carrier must comply with the requirements of the demand and they do not comply by the designated date and time given in that decision, the representative may then be served with an Out-of-Service Order that is generated by the Regional Field Administrator or Field Administrator), See Attachment F-4 – Out of Service Order found in the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," *MC-ECE-2020-0001*. All Out-of-Service Orders for denial of access will be drafted by Service Center Attorneys for issuance by the RFA, FA or MC-EC, and reviewed by MC-CCE, or designee. Under the heading, "Closing Actions", found on page 7 of the policy directed the use of a "workaround" in the MCMIS system due to the lack of a proper code to designiate a carrier as out-of-service for denial of access. The MCMIS system has been updated and now includes the proper code, "Denial of Access" to be used in all instances of denial of access instead of the "workaround."

2.4.4.2.3 Civil Penalties for Denial of Access

FMCSA will not serve NOC under 49 CFR part 386 when charging Riojas affected violations. If a Division determines that an enforcement action on Riojas affected violation(s) is the best means to induce compliance, an Enforcement Analysis must be conducted following the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," *MC-ECE-2020-0001* to determine what type of enforcement should be pursued. FMCSA will propose and settle civil penalties for Riojas affected violations using the procedures in that policy.

2.4.4.2.4 Request for Administrative Review of a Demand

For-hire motor carriers who may be put out-of-service for failing to comply with the requirements of the demand may request an administrative review as outlined in their demand letter. The Regional Field Administrator (RFA) or Field Adiminstrator (FA) is the decision-maker on all requests for administrative review. Upon receipt of a request for administrative review, the RFA/FA will consult with MC-CCE regarding appropriate disposition. The RFA/FA must consider defenses put forth by the carrier. The RFA/FA will issue a written decision which will determine whether the motor carrier must comply with the demand. See *Attachment F-3 – RFA-FA Response Template* found in the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," *MC-ECE-2020-0001*.

Persons engaged in an enforcement role or who advise those engaged in enforcement roles and persons who act as the final decision maker or advise the final decisionmaker may not act in both capacities. Therefore any person involved with issuing an Order to Show Cause to suspend or revoke a certificate of registration or operating authority registration, or to inactivate a USDOT number under the policies listed above, may not be involved with reviewing the carrier's request for administrative review and issuing the response or orders issued after a request for administrative review. Any person involved with issuing a demand letter under the Denial of Access Policy will not be involved with reviewing the carrier's request for administrative review and issuing a response or order after a request for administrative review.

2.4.4.2.5 Suspension for Noncompliance with a Demand and Revocation for Operation after Issuance of OOS Order

The RFA/FA has the discretion to suspend a motor carrier's operating authority registration after having been placed Out of Service (OOS) based on the carrier's continued noncompliance with the demand letter, generally after 10 business days of continued noncompliance. A suspension of operating authority registration does not require evidence that a motor carrier placed OOS for denying access continues to operate. Concurrence from MC-EC is not required but continue to require concurrence from MC-CCE.

See *Attachment F-5 – Order Suspending Operating Authority* found in the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," *MC-ECE-2020-0001*. All Suspension Orders for denial of access will be drafted by Service Center Attorneys for issuance by the RFA, FA or MC-EC, and reviewed by MC-CCE, or designee.It is important to also notify the Chief, Registration, Licensing and Insurance Division, Office of Registration and Safety Information, Lead, Registration and Licensing Team, Registration, Licensing and Insurance Division, Office of Registration and Safety Information, Lead, Insurance Team, Registration, Licensing and Insurance Division, Office of Registration and Safety Information, and Acting Chief, Customer Service and Vetting Division, Office of Registration and Safety Information to request that the carrier's registration be suspended. The suspension request should also be submitted by email to mc-ecc.comments@dot.gov. On the date of suspension, the RFA/FA should verify that the suspension status is properly displayed on the Agency's Licensing and Insurance Web site and the Query Central database. If the suspension does not appear in our information technology systems on the next business day after the suspension is effective, the RFA/FA should follow up with the the Chief, Customer Service and Vetting Division, Office of Registration and Safety Information, and should advise the Enforcement Division Chief.

Motor carriers who are placed out-of-service for denial of access and are subsequently discovered to be operating after being placed OOS may will be considered as candidates to have their operating authority revoked. The RFA/FA may initiate a show cause proceeding to revoke a motor carrier's operating authority registration based on evidence that the carrier operated in violation of the OOS order. The Order to Show Cause will provide the motor carrier with 30 days to respond. RFAs, FAs, or MC-EC will provide to the Service Center attorney drafting an Order to Show Cause the supporting evidence. A copy of the supporting evidence will be uploaded into EDMS. The Service Center attorney or paralegal will review for redactions all evidence that was not retrieved directly from the motor carrier. Required redactions include complainant information, personally identifiable information and security sensitive information in documents that did not originate from the motor carrier. A redacted copy of all evidence that was not retrieved directly from the respondent will be served on the respondent along with the Order to Show Cause. A copy of the served Order to Show Cause, including copies of the evidence provided to the motor carrier, will be uploaded into EDMS. Concurrence from MC-EC and MC-CCE will be required until further notice. All Revocation Orders for denial of access will be drafted by Service Center Attorneys for issuance by the RFA, FA or MC-EC, and reviewed by MC-CCE, or designee.

2.4.4.3 Case Rite

2.4.4.3 Introduction

CaseRite is a software package designed to automate and improve the quality of the enforcement case preparation process. It is part of FMCSA's suite of investigative software and shares data with AIM*, CAPRI, ASPEN, and Uniform Fine Assessment (UFA).The Notice of Claim (NOC) is generated from CaseRite and exported to EMIS, a web-based application (https://portal.fmcsa.dot.gov/) used to monitor, track, and store information related to FMCSA enforcement actions. It manages and tracks all data associated with notifying the carrier, monitoring the carrier's response, determining whether further compliance action is required, and generating reports for Headquarters, SC, and Division staff. It is the authoritative source for FMCSA enforcement data. Inputs include data from CaseRite and data entry.

* Note: AIM imports carrier and violation information into the CAPRI database which resides on the SI's laptop. The SI then uses CAPRI to populate UFA for calculating civil penalties and CaseRite for writing enforcement cases.

2.4.4.3.1 Before Initiating CaseRite

Prior to initiating CaseRite, you should complete all parts of AIM, CAPRI, ASPEN, and complete the UFA Penalty Assessment. If you make a change to the number checked, number discovered, or penalty amount after you have already transferred the CAPRI and UFA data into CaseRite, you should manually

manipulate the number fields to reflect the new information. If you initiate an enforcement action from anything other than CAPRI, ASPEN, you should complete the UPAW and enter the data manually into CaseRite.

2.4.4.3.2 Describing CaseRite

CaseRite is a Windows-based software program designed to improve the automation, accuracy, and ease of your enforcement case writing process. CaseRite expedites your data entry and also provides error and content checking. The ultimate benefit from the FMCSA's use of CaseRite is the increase in uniformity and consistency of enforcement actions.

2.4.4.3.3 How CaseRite Works

CaseRite assists in the entire enforcement case preparation by gathering data from CAPRI and UFA. It also produces the NOC, NOV, and all other related documents.

2.4.4.3.4 When To Use CaseRite

You can initiate an enforcement action from an investigation, CR, or from a roadside inspection on the following entities:

- Motor Carriers of Property
- Motor Carriers of Passengers
- Motor Carriers of HM
- Shippers of HM
- Cargo Tank Facilities
- Drivers/Employees
- Brokers
- Freight Forwarders
- Household Goods (HHG) Carriers
- Drug and Alcohol Consortia

2.4.4.3.5 How To Use CaseRite

Please refer to *Appendix D*.

2.4.4.3.F - Denial of Access – Foreign Motor Carriers

The policy and procedures for handling a denial of access by a foreign private and for-hire motor carrier should be followed in accordance with the policy titled *"Enforcement Procedures for Denial of Access to Records, Equipment, Lands, Buildings, and Other Property of Foreign Motor Carriers (MC-ESB-2019-0004) issued 28June2019".* This memorandum and guidance do note create an independent basis for any enforcement action. Authority for taking enforcement action against a regulated foreign entity for Denial of Access is based on the Agency's authority set forth in 49 U.S.C. §§ 504(c), 521(b)(2)(E), 5121(c), 13906, 14701, 14122(b), 31133(a), 31134(c) and 31144. The policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," *MC-ECE-2020-0001* also allows the RFA/FA to initiate a show cause proceeding to revoke a motor carrier's certificate of registration or operating authority registration based on evidence that the carrier operated in violation of the order suspending its certificate of registration or operating authority registration. The Order to Show Cause will provide the motor carrier with 30 days to respond.

Motor carriers that do not have multiple offices or terminals must, upon reasonable request and presentation of credentials by authorized FMCSA personnel, promptly provide access to records. Under

the Federal Motor Carrier Safety Regulations (FMCSRs), a motor carrier with multiple offices or terminals may maintain required records at various locations, specifically, the motor carrier's principal place of business (PPOB), a regional office, or a driver work-reporting location. Pursuant to 49 CFR 390.29, a motor carrier with multiple locations has up to 48 hours (Saturdays, Sundays, and Federal holidays excluded) to make requested records available for inspection at its PPOB. This direction is provided in the policy titled, Revised Principal Place of Business Requirements (MC-ECS-2017-0002) issued on July 19, 2017.

Applicable Regulations and Statutes

In accordance with 49 CFR § 390.5, operating authority means the registration required by 49 U.S.C. § 13902, 49 CFR parts 365, 368 and 49 CFR § 392.9a.

Suspension of Certificate of Registration or Operating Authority Registration under 49 CFR § 385.111(e)

In accordance with 49 CFR § 385.111(e), if a Mexico-domiciled motor carrier subject to the enhanced monitoring requirements of 49 CFR part 385, subpart B, fails to provide the necessary documents for a safety audit or investigation, upon reasonable request, FMCSA will provide the carrier with written notice, as soon as practicable, that its registration will be suspended 15 days from the service date of the notice unless it provides all necessary documents or information. The suspension will remain in effect until the necessary documents or information are produced, and (1) a safety audit determines that the carrier exercises basic safety management controls necessary for safety operations; or (2) the carrier is rated Satisfactory or Conditional after an investigation.

A Mexico-domiciled motor carrier holding either a provisional certificate of registration to operate in the border commercial zones or provisional operating authority registration for long-haul operations is subject to the enhanced monitoring requirements of 49 CFR part 385, subpart B.

Suspension of Certificate of Registration or Operating Authority Registration under 49 U.S.C. § 13905 for willful failure to comply

Pursuant to 49 U.S.C. § 13905(d), FMCSA may suspend, amend, or revoke any part of the registration of a motor carrier, foreign motor carrier, foreign motor private carrier, broker, or freight forwarder for willful failure to comply with any applicable regulation or order.

FMCSA may suspend the operating authority registration of foreign motor carriers holding any form of operating authority for failure to comply with an Order to Show Cause issued requiring compliance with a demand compelling the carrier to provide access to records, buildings, land, or equipment.

Examples of foreign carriers holding operating authority include: (a) for-hire foreign motor carriers; and (b) private and for-hire Mexico-domiciled property motor carriers.

Inactivation of USDOT Number

Under 49 U.S.C. § 31134(c), FMCSA may inactivate a USDOT number if it determines that the carrier has knowingly failed to comply with a requirement in 49 U.S.C. Chapter 311 subchapter III, the FMCSRs or the Hazardous Material Regulations.

FMCSA may inactivate the USDOT number of a private foreign motor carrier or other foreign motor carrier that does not hold any form of operating authority for failure to comply with a demand requiring production of records or property made under 49 U.S.C. § 31133(a).

Examples of foreign carriers operating under a USDOT number include: (a) private Canadian-domiciled carriers; (b) private Non-North American carriers; and (c) Mexico-domiciled passenger motor carriers operating solely within the border commercial zones.

Issuing Orders to Show Cause, Orders Suspending or Revoking Registration and Orders Inactivating USDOT Numbers

All Out-of-Service Orders for denial of access, Orders to Show Cause, Suspension Orders, Revocation Orders and Orders Inactivating USDOT numbers will be drafted by Service Center Attorneys for issuance by the RFA, FA or MC-EC, and reviewed by MC-CCE, or designee.

Providing Copies of Evidence with Orders to Show Cause

RFAs, FAs, or MC-EC will provide to the Service Center attorney drafting an Order to Show Cause the supporting evidence. A copy of the supporting evidence will be uploaded into EDMS. The Service Center attorney or paralegal will review for redactions all evidence that was not retrieved directly from the motor carrier. Required redactions include complainant information, personally identifiable information and security sensitive information in documents that did not originate from the motor carrier. A redacted copy of all evidence that was not retrieved directly from the respondent will be served on the respondent along with the Order to Show Cause. A copy of the served Order to Show Cause, including copies of the evidence provided to the motor carrier, will be uploaded into EDMS.

DEFINITION

For the purposes of the foreign motor carrier denial of access policy, a foreign motor carrier is any motor carrier not domiciled in the United States.

GUIDANCE

If a private or for-hire foreign motor carrier refuses to produce its records for inspection, FMCSA will use the denial of access authorities outlined in policy "*Enforcement Procedures for Denial of Access to Records, Equipment, Lands, Buildings, and Other Property of Foreign Motor Carriers (MC-ESB-2019-0004) issued 28June2019".*

FMCSA agents exercising their authority to inspect and copy records or inspect and examine equipment, lands, buildings, and other property should exercise reasonable discretion in their approach to requesting documents throughout the investigative process. A denial of access occurs when the motor carrier fails to allow access to those things that are reasonably necessary to conduct the investigation. Although other records, not required to be maintained by the FMCSRs, may be helpful to an investigation and may be requested, the ability to take enforcement for denial of access only applies to those items requested over which FMCSA has jurisdiction.

2.4.4.3.F.1 Demands

Division Administrators (DA) are responsible for the issuing of demands for access to records, facilities or equipment. Demands will generally be issued to a foreign motor carrier by letter. Demands to foreign carriers must be reviewed by a Service Center Attorney.

Compliance with the requirements of a demand is considered complete if the motor carrier provides access to all records, equipment, lands, buildings, and other property identified for review in the demand letter. If the motor carrier does not produce access to some or all records, the Safety Investigator should question the motor carrier about the records, their location and whether the motor carrier maintains those records. If the motor carrier states that any of the items identified in the demand have not been retained or do not exist, failure to provide those items does not constitute noncompliance with the demand. Instead, the failure to maintain required records should be documented and the carrier cited for the appropriate violation for failure to maintain the missing record(s).

In the absence of such a statement, if the motor carrier does not provide access to all items identified in the demand letter that are necessary for the completion of the investigation, it will be considered a failure to comply with the requirements of the demand and a denial of access.

Orders to Show Cause and Orders Suspending Certificates of Registration or Operating Authority Registration and Orders to Show Cause and Orders Inactivating USDOT Number may be issued for non-compliance with demands by the appropriate Regional Field Administrator (RFA) or Field Administrator (FA) and the Assistant Counsel for Enforcement and Litigation (MC-CCE), or their designees.

Subpoenas

Subpoenas will not be used to communicate the demand for access and record for a foreign motor carriers except in exceptional circumstances, which must be approved by the appropriate RFA or FA. Subpoenas must be reviewed by a Service Center Attorney and coordinated with MC-CCE and MC-EC.

Civil Penalties

The Agency may not seek civil penalties for *Riojas* affected violations. If a Division determines that an enforcement action on Riojas affected violation(s) is the best means to induce compliance, an Enforcement Analysis must be conducted following the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," *MC-ECE-2020-0001* to determine what type of enforcement should be pursued. FMCSA will propose and settle civil penalties for Riojas affected violations using the procedures in that policy.

Investigations at Locations other than the PPOB

In determining where the carrier will be asked to produce records, the Division will consult with the RFA/FA and Service Center Attorney taking into consideration the location of the foreign carrier's PPOB, its operations in the United States, and issues involved in travel to that location, including known security risks as well as available alternative locations such as an FMCSA Division Office or port-of-entry where the foreign motor carrier normally crosses into the United States. If a motor carrier contacts FMCSA after a demand requiring production of records, FMCSA agents and the motor carrier may arrange to conduct the investigation at a mutually agreeable location. If a foreign motor carrier fails to comply with a demand to produce records at location other than the carrier's PPOB, the Division will consult with the RFA/FA and Service Center Attorney.

New Entrant Carriers (U.S. and Canadian motor carriers)

Under 49 CFR 385.307(c), all records and documents required for a new entrant safety audit must be made available for inspection upon request by an individual certified by FMCSA to perform safety audits. New Entrant (U.S. and Canadian) motor carriers that deny authorized personnel prompt access to inspect and copy any record or inspect and examine equipment, lands, buildings, and other property necessary to complete the safety audit are considered to have refused to permit a safety audit under 49 CFR 385.337. In those instances, Safety Auditors should follow the procedures established for refusing to submit to a safety audit under § 385.337. (Refer to eFOTM Safety Audit Manual section 3.1.2 Special Procedures for SA's.)

Mexico-Domiciled Carriers

A Mexico-domiciled motor carrier subject to FMCSA's safety monitoring system under subpart B of 49 CFR part 385 that fails to provide the necessary documents for a safety audit or compliance investigation upon reasonable request will be subject to the suspension procedures outlined in 49 CFR section 385.111(e). Safety Auditors and Safety Investigators attempting to conduct a safety audit or investigation of a Mexico-domiciled carrier subject to subpart B of 49 CFR part 385 should contact the Western Service Center Mexico Specialist and Service Center Attorney. Additional guidance will be forthcoming to formalize the safety audit procedures for Mexico-Domiciled motor carriers that operate solely within the U.S.-Mexico border commercial zones and municipalities. In the interim, the following attachments should be used for Mexico-domiciled motor carrier subject to the safety monitoring system under subpart B of 49 CFR part 385.

- The sample letter in *attachment A1* notifies a Mexico-domiciled motor carrier subject to the safety monitoring system under subpart B of 49 CFR part 385 of repeated attempts by FMCSA to contact the motor carrier to schedule a required Safety Audit. The letter serves as FMCSA's 3rd and final request to the Mexico-domiciled motor carrier to schedule a Safety Audit and provides notice that failure to provide the documents necessary for FMCSA to complete a Safety Audit may result in the suspension of the carrier's provisional certificate of registration.

- The sample letter in *attachment A2* notifies a Mexico-domiciled motor carrier subject to the safety monitoring system under subpart B of 49 CFR part 385 that its failure to provide necessary documents for a safety audit or compliance investigation will result in the suspension of the motor carrier's provisional operating authority registration or certificate of registration 15 days from the date of the letter.

Enterprise Carriers

If an Enterprise carrier refuses or fails to make records necessary to complete a compliance investigation available, FMCSA will follow the Denial of Access guidance (MC-ECE-2016-007) issued August 25, 2016. If an investigation reveals that an Enterprise carrier is domiciled in Mexico rather than the United States, the "Revised Principal Place of Business Requirements policy" (MC-ECS-2017-0002) issued on July 19, 2017 should be followed.

PROCEDURES

Investigation Scheduling

The Safety Investigator should document the dates and means of contact attempts and indicate the carrier's response, failure to respond, or other actions in response to the scheduling efforts. If the Safety Investigator documents more than one attempt to contact and investigate a motor carrier, the Safety Investigator must use the following procedures outlined below to seek access to the records. (Refer also

to *Attachment B*: Foreign Motor Carrier Denial of Access Flowchart). See *Attachment C* for a chart showing the enforcement tools available for foreign motor carriers.

Written Demands

1. Contents: The written demand must identify the records to be produced, the date, time and location for production of the records, and potential consequences for failing to comply. Until further notice, all demands must be reviewed by MC-CCE or a designee, prior to service.

    a. Records to be Produced. The demand, request, notice must sufficiently identify the records, equipment, lands, buildings, or other property to which access is requested. The demand will only identify those records, equipment, lands, buildings, and other property that are reasonably necessary to conduct the investigation. If during the investigation additional documents are required and access to those additional records is denied by the foreign motor carrier, the DA may serve additional demands as needed.

    b. Consequences for Failure to Comply with Demand. Inform the motor carrier that if it fails to comply with the demand, its operating authority registration may be suspended and/or its USDOT number inactivated. The demand letter will also inform foreign motor carriers that they may be subject to civil penalties for failure to comply.

    c. Compliance Date. The Safety Investigator should consult with his or her DA and/or designee to determine the due date and time for the foreign motor carrier to comply with the demand. The deadline for compliance must be reasonable based on the facts of the case, including the scope of the demand. In many cases, because a request for access to the records has previously been denied, the expectation is that access to records should be granted as soon as practicable and reasonable, generally 48 hours. Demands generally should exclude compliance on Saturdays, Sundays, and Federal holidays. Circumstances that may warrant a shorter time to respond or compliance on weekends or holidays, include a fatal crash investigation, potential imminent hazard, or other investigation involving an urgent safety threat to the public.

    - The sample letter in *Attachment D1* notifies the following foreign motor carriers that failure to comply with the demand may result in the suspension of its certificate of registration or operating authority registration:
        - For-hire foreign motor carriers;
        - For-hire and Private Mexico-domiciled property motor carriers (including commercial zone and long-haul carriers); and
        - Foreign motor carriers operating under OP-2 Certificates of Registration (commercial zone, exempt commodities and specific points beyond the border zones).

    - The sample letter in *Attachment D2* notifies the following foreign motor carriers having a USDOT number, but not holding any form of operating authority, that failure to comply with the demand may result in inactivation of its USDOT number:
        - Private Canadian-domiciled motor carriers;
        - Private Non-North American motor carriers; and
        - Mexico-domiciled passenger motor carriers operating solely with the U.S.-Mexico border commercial zones.

2. Service: Demands may be served during an investigation where the motor carrier refuses to produce some or all required records. A representative from the Division Office will serve the

motor carrier with a written Demand to Inspect and Copy Records and/or Demand to Inspect and Examine Equipment, Lands, Buildings, or Other Property, signed by the DA.

If a Safety Investigator is unable to contact a motor carrier or arrange a date for an investigation, the Safety Investigator should document all contact attempts and the results of those attempts, and advise his or her DA. The DA, in consultation with the Service Center Director or their designees and Service Center Attorney, will consider service of the demand by certified mail or express delivery service (i.e., FedEx, United Parcel Service, U.S. Postal Service, etc.), requiring receipt of delivery for expediency of delivery and verification of service.

The inability to produce the records in the required timeframes without unreasonable expense or effort is a defense to a demand. If the motor carrier contacts the Safety Investigator or DA claiming that it is unable to produce the demanded records, or unable to produce them in the required timeframe, without unreasonable expense or effort, the DA will contact the RFA/FA and Service Center Attorney. The foreign motor carrier should clearly explain why compliance would impose unreasonable expense or effort. Although the demanded records are required to be maintained, and requests for access may have already been denied, the RFA/FA may extend the timeframe to comply with the demand or make other adjustments to the demand as appropriate.

The RFA/FA should consider any other defenses the foreign motor carrier raises.

Requests for Extensions of Time

Because the demand is not the first request for access to the records, and previous requests have not resulted in access to the records, the expectation is that the deadline for compliance should not impose unreasonable expense or effort on the foreign motor carrier. However, the RFA/FA should consider reasonable requests for extensions of time to comply with the demand.

A denial of a request for an extension of time will be issued in writing by the RFA/FA and will include a finding that the foreign motor carrier did not establish that the deadline imposed unreasonable expense or effort on the foreign motor carrier.

2.4.4.3.F.2 Order to Show Cause

If a foreign motor carrier does not comply with a demand, and has not been granted an extension of time to comply with the demand, the RFA/FA may proceed to issue an Order to Show Cause using the procedures below.

Except for Mexico-domiciled motor carrier subject to the safety monitoring system under subpart B of 49 CFR part 385, to initiate an action to suspend a foreign motor carrier's certificate of registration or, operating authority registration, or inactivate a foreign carrier's USDOT number, the RFA or FA may issue an Order to Show Cause (OSC) to the motor carrier. The OSC is prepared by a Service Center Attorney for the RFA/FA's signature, and must be coordinated with MC-CCE. The OSC sets forth FMCSA's legal authority, explains the facts establishing the carrier's failure to comply with the Demand, and notifies the carrier that it must show good cause why it should not have its certificate of registration/operating authority registration suspended or its USDOT number inactivated. The OSC also notifies the carrier how it can achieve compliance, explains how to submit a written response with supporting documentation and states

that failure to respond and/or demonstrate compliance by providing access to the demanded records within a specified time period will result in the suspension of the motor carrier's certificate of registration, operating authority registration or inactivation of its USDOT number. The OSC must include a timeframe for the motor carrier to respond. The period for response should consider the specific facts of the case including the carrier's PPOB and known service issues or delays. Circumstances that may warrant a shorter time to respond include a fatal crash investigation, potential imminent hazard, or other investigation involving an urgent safety threat to the public.

OSCs must be served to the motor carrier using a method that provides tracking and proof of delivery (i.e., FedEx, United Parcel Service, U.S. Postal Service, etc.). In most cases, the OSC should also be served to the motor carrier's process agent and/or registered agent.

- See *Attachment E1* for a sample OSC for initiating an action to suspend a foreign motor carrier's certificate of registration or operating authority registration.
- See *Attachment E2* for a sample OSC for initiating an action to inactivate the USDOT number of a foreign motor carrier.

Compliance with the Order to Show Cause

If the foreign motor carrier complies with the OSC and provides access to the demanded records, the RFA/FA should terminate the show cause proceeding.

- See *Attachment F1* for a sample Order Terminating Show Cause Proceeding for terminating an action to suspend the operating authority registration of a foreign carrier.
- See *Attachment F2* for a sample Order Terminating Show Cause Proceeding for terminating an action to inactivate the USDOT number of a foreign carrier.

Orders to Show Cause Response Process

The OSC provides the carrier with an opportunity to submit a written response to the OSC if it disputes the order. The RFA/FA is the decision-maker on responses to an OSC. Upon receipt of a response to an OSC, the RFA/FA will consult with MC-CCE regarding the appropriate disposition.

Defenses

The non-existence of the records at the time of FMCSA's demand is a defense for failing to comply with a demand. If the foreign motor carrier admits that a record required to be maintained does not exist or has not been maintained, it should be cited for failing to prepare and/or maintain the required record.

The inability to produce the records in the required timeframes without unreasonable expense or effort is a defense to a demand. If the motor carrier contacts the Safety Investigator or DA claiming that it is unable to produce the demanded records, or unable to produce them in the required timeframe, without unreasonable expense or effort, the DA will contact the RFA/FA and Service Center Attorney. The foreign motor carrier should clearly explain why compliance would impose unreasonable expense or effort. Although the demanded records are required to be maintained, and requests for access may have already been denied, the RFA/FA may extend the timeframe to comply with the demand or make other adjustments to the demand as appropriate.

The RFA/FA should consider any other defenses the foreign motor carrier raises.

Requests for Extensions of Time

The RFA/FA should consider reasonable requests for extensions of time to comply with the Demand and/or respond to the OSC.

A denial of a request for an extension of time will be issued in writing by the RFA/FA and will include a finding that the foreign motor carrier did not establish that the deadline imposed unreasonable expense or effort on the foreign motor carrier and that the motor carrier did not show good cause why it could not comply with the Demand or OSC.

Review of Response to Order to Show Cause

The RFA/FA will issue a written decision in response to a motor carrier's response to the OSC based on the documents and evidence submitted by the foreign motor carrier and response from the DA, if any. The RFA/FA may, in consultation with MC-CCE:

a. Determine that additional information is required to decide the issues presented. The RFA/FA may order the foreign motor carrier and/or the DA to submit additional information or may schedule a telephone conference with the foreign motor carrier and the DA. The RFA/FA may also issue an order continuing the OSC with further instructions on evidence and documentation to be submitted. Any evidence submitted by the motor carrier and DA will be submitted in writing and will become part of the administrative record. If the RFA/FA conducts a telephone conference, the RFA/FA will ensure that written notes are taken during the conference to document what was said and such notes will become part of the administrative record.
b. Determine that the foreign motor carrier has shown good cause why it did not comply with the demand. These defenses include that the records do not exist, or that the terms of the demand are not reasonable. The RFA/FA may issue an order amending or rescinding the demand, or an order terminating the show cause proceeding.

Response to OSC – Determination that the foreign motor carrier's response does not establish good cause for failing to comply with the demand.

The RFA/FA may, upon such determination, issue an order suspending the carrier's certificate of registration or operating authority registration or inactivating its USDOT number. The order will describe the evidence submitted by the foreign motor carrier and the DA, if any, and state the factual and legal basis for the decision. The order, along with any written submissions and notes of a conference, if any, will become part of the administrative record.

2.4.4.3.F.3 Orders Suspending Certificate of Registration, Operating Authority Registration and Order Inactivating USDOT number

If the foreign motor carrier fails to respond to the OSC requiring production of records, and/or fails to comply with the Order and provide FMCSA access to the demanded records, the RFA or FA may issue an Order suspending the foreign motor carrier's certificate of registration, operating authority registration or an Order inactivating the foreign carrier's USDOT number. The Order is prepared by a Service Center Attorney for the RFA/FA's signature, and must be coordinated with MC-CCE.

Orders suspending certificates of registration, operating authority registration or orders inactivating USDOT numbers must be served to the motor carrier using a method that provides tracking and proof of

delivery (i.e., FedEx, United Parcel Service, U.S. Postal Service, etc.). In most cases, the Orders should also be served to the motor carrier's process agent and/or registered agent.

- See *Attachment G1* for a sample Order Suspending Certificate of Registration or Operating Authority Registration.
- See *Attachment G2* for a sample Order Inactivating USDOT Number.

Ensuring notice to FMCSA Registration Office and verifying status in FMCSA systems

When an Order Suspending Operating Authority or Order Inactivating USDOT number has been served and is effective, the Service Center should notify the Chief, Registration, Licensing and Insurance Division, Office of Registration and Safety Information, Deputy Chief, Registration and Licensing and Insurance Division, Office of Registration and Safety Information, Lead, Registration and Licensing Team, Registration, Licensing and Insurance Division, Office of Registration and Safety Information, Lead, Insurance Team, Registration, Licensing and Insurance Division, Office of Registration and Safety Information to request that the carrier's operating authority registration be suspended. All requests should also be submitted by email to mc-ecc.comments@dot.gov.

On the effective date of operating authority suspension, the Service Center should verify that the suspension is properly displayed in the Agency's Licensing & Insurance (L&I) system and Query Central database. If the suspension does not appear in the L&I system on the next business day after it is effective, the Service Center should follow up with the Chief, Registration, Licensing, and Insurance Division, Office of Registration and Safety Information, and should advise the Enforcement Division Chief.

On the date the inactivation of the carrier's USDOT Number is effective, the Service Center should verify that the inactivation status is properly displayed on the Agency's Motor Carrier Management Information System (MCMIS) Web site and the Query Central database. If the inactivation does not appear in our information technology systems on the next business day after the inactivation is effective, the Service Center should follow up with the Chief, Registration, Licensing and Insurance Division, Office of Registration and Safety Information, and should advise the Enforcement Division Chief.

2.4.4.3.F.4 Closing Actions

Initiation of Enforcement Action (For-Hire and Private Foreign Motor Carriers)

If a foreign motor carrier does not comply with a demand, Safety Investigators should contact the RFA/FA and Service Center Attorney to discuss initiation of a civil penalty case.

Documentation for a civil penalty case for Denial of Access

The documentation must at minimum, include:

- Evidence of jurisdiction – documentation that the foreign motor carrier is or was subject to 49 U.S.C. Chapter 51 and/or Part B of subtitle VI.
- Copies of the demand letter and Certificate of Service or other documentation that the demand letter was received, such as a delivery confirmation receipt (i.e., FedEx, United Parcel Service, U.S. Postal Service, etc.).

- Written statement of the Safety Investigator detailing what was demanded, what was produced, and any statements of the foreign motor carrier's official regarding the demand, whether the records exist, where the records are located, reason(s) for denial of access, etc.

2.4.4.3.F.5 Rescission of the Order Suspending Operating Authority Registration or Order Inactivating USDOT number

A foreign motor carrier that fails to comply with the Order to comply with the demand whose certificate of registration or operating authority registration or USDOT registration has been suspended or its USDOT number has been inactivated will not be able to reinstate its registration until it has complied with the demand and allowed sufficient access for FMCSA to complete its investigation. The Orders Suspending Certificate of Registration, Operating Authority Registration or Inactivating USDOT number inform the foreign motor carrier that if it believes it has complied with the demand and the Order Suspending Certificates of Registration, Operating Authority Registration or Inactivating USDOT number has not been rescinded, or the foreign motor carrier can otherwise establish good cause why the Order should be rescinded, the foreign motor carrier may request rescission of the Order. The RFA/FA will respond to any requests for rescissions for Orders Suspending Certificate of Registration, Operating Authority Registration or Inactivating USDOT number in writing, after consultation with MC-CCE. If the Order is rescinded, the Service Center must notify the Chief, Registration, Licensing and Insurance Division, Office of Registration and Safety Information, Deputy Chief, Registration and Licensing and Insurance Division, Office of Registration and Safety Information, Lead, Registration and Licensing Team, Registration, Licensing and Insurance Division, Office of Registration and Safety Information, Lead, Insurance Team, Registration, Licensing and Insurance Division, Office of Registration and Safety Information to request rescission of the order suspending the carrier's certificate of registration, operating authority registration or order inactivating the carrier's USDOT number. All requests should also be submitted by email to mc-ecc.comments@dot.gov.

- See *Attachment H1* for sample Order Rescinding Order Suspending Certificate of Registration or Operating Authority Registration.
- See *Attachment H2* for sample Order Rescinding Order Inactivating USDOT number.

FMCSA personnel should advise foreign motor carriers who have been issued an Order rescinding the Order suspending their registration or Order inactivating their USDOT number that they must contact the FMCSA Customer Service and Vetting Division, Office of Registration and Safety Information to determine what is required to reinstate their certificate of registration, operating authority registration or USDOT registration and reactivate their USDOT number.

2.4.4.4 Service List

The Service List certifies that the Notice of Claim was provided to the respondent, their legal representative, the DA, the Motor Carrier Docket Clerk, the SC, and any other appropriate party.
The service list must contain the following statement:
This is to certify that on the_____day of_____20__, the undersigned sent as indicated the designated number of copies of the Notice of Claim to each of the parties listed below.
Additionally, it must contain the enforcement case number, the same addressee as shown on the NOC, the respondent's legal representative and his/her address (if applicable), the Division Administrator's name and address, and the Motor Carrier Docket Clerk, and his/her address in the SC.

The original is served on the respondent, and one copy is served on the rest of the parties. The name of the individual who has served (mailed) the NOC must be typed or printed at the end of the service list and that person **must sign** the service list.

Steps that Should be Taken to Complete an Enforcement Action

After you complete the documentation process of your enforcement action, you should submit the completed document with evidence to the DA, Federal Program Specialist (FPS), DPS, or Field Office Supervisor, as appropriate for review.

Investigators preparing an enforcement report should give its completion the highest priority before scheduling new work activity and the DA should ensure that investigators do so. Inspectors and Investigators should review the report for clarity and factual accuracy, prior to submitting the enforcement report to the reviewing official. You should submit an electronic export of the enforcement action either on a floppy diskette, or as an email attachment to the reviewing official.

2.4.4.5 Statement of Charge

Definition of Statement of Charges

The Statement of Charges is a clear, concise and complete description of the alleged violations. It may be one of the most critical components of the NOC without which the respondent cannot be expected to respond to the charges.

The respondent may not be held accountable for failing to respond to charges which are insufficiently described and/or fail to establish jurisdiction and the who, how, where and what of a violation.

2.4.4.6 Electronic Document Management System (EDMS)

http://edms.fmcsa.dot.gov/ or https://portal.fmcsa.dot.gov allows for the storage and retrieval of documents, including investigation, CR, enforcement case, and SA documents in a paperless environment. EDMS is the central repository for FMCSA documents. EDMS does include distributed client software to support the scanning process. Inputs include both scanned and electronically-generated documents.

2.4.4.7 Notice of Violation (NOV) Section

2.4.4.7.1 Definition of Notice of Violation (NOV)

The primary purpose of the NOV (*Draft – Notice of Violation*) is to gain compliance using an informal mechanism rather than initiation of civil penalty proceedings. The compliance deficiencies may be revealed by any type of investigation, including but not limited to investigations or complaints.

The NOV is designed to provide any "person" (as defined in 49 C.F.R. § 386.2) subject to the Rules of Practice with notice of compliance deficiencies discovered during an investigation and an opportunity to correct unsafe behaviors. It notifies the person of the alleged violations resulting in the poor compliance status and requires the person to address these deficiencies to FMCSA's satisfaction. In general, NOVs are used in cases where the violations are immediately correctable and readily verifiable. If the alleged violations are not corrected to FMCSA's satisfaction, additional enforcement action may also be initiated. However, an NOV is not a prerequisite to the issuance of an NOC. An NOV counts as a significant contact in a "Pattern of Safety Violations" case under Section 222 on maximum civil penalty policies; however, NOVs do not count towards 2-strike or 3-strike cases for the purposes of assessing maximum penalties.

As set forth in section 386.11 of 49 CFR, the NOV includes the following information:

1. The specific alleged violation(s);
2. Any specific actions the Agency determines are appropriate to remedy the identified problems;
3. The means by which the notified persons can inform the Agency that it has received the NOV and either has addressed the alleged violation(s) or does not agree with the Agency's assertions in the NOV; and

4. Any other information deemed relevant.

2.4.4.7.2 Definition of a Direct NOV

A Direct NOV is an assignment type made through the Portal to an investigator. In these cases, the issuance of an NOV occurs without prior contact with the motor carrier. The notice allows the motor carrier to provide information to FMCSA that it has addressed the violations, or that it does not agree with the assertions, made by FMCSA in the NOV. A Direct NOV assignment is only made to address specific compliance issues for motor carriers with performance issues in the Driver Fitness BASIC or the Insurance/Other Indicator. The Direct NOV is not resource-intensive, in that it utilizes existing roadside data to identify and target a motor carrier's potential breakdown of safety management controls. The Direct NOV is intended to compel a motor carrier to correct violations impacting safety performance and provide FMCSA with evidence of this corrective action.

Direct NOVs are not intended to replace existing enforcement procedures, and should not be used if a Notice of Claim (NOC) or an investigation would be more appropriate, or is required. In addition, the issuance of a Direct NOV does not preclude FMCSA from issuing an NOC, including issuing an NOC for the violations cited in the NOV. The determination of whether to issue an NOC, as the result of the motor carrier's insufficient corrective action or non-responsiveness, rests with the DA and within the parameters of the Agency's evidentiary policies. If sufficient evidence does not exist to support an NOC, then the Division should consider assigning an Onsite Focused Investigation.

2.4.4.7.3 Those Who Are Subject to NOV

The NOV may be issued against any individual, partnership, association, corporation, business, trust, or any other organized group of individuals subject to FMCSA's jurisdiction.

2.4.4.7.4 Those Who Have the Authority to Initiate and Sign NOVs

The Field Administrators and Division Administrators have authority to initiate and sign NOVs.

2.4.4.7.5 Time When the NOV Can Be Initiated

The NOV should be used only in instances when the violation can be corrected immediately [e.g., failing to have a properly executed (unsigned) MCS-90, etc.] Corrective action must be readily verifiable by the issuing Division Administrator (DA) or designee, or Field Administrator (FA) or designee.
The NOV may also be used as an enforcement tool for violations discovered during an investigation, including:

- Violations of critical regulations which do not warrant enforcement actions (failing to maintain copy of driver's medical card);
- Inappropriate activity where a carrier's status is intrastate, but there is evidence of interstate operations;
- Vehicle defects and/or driver violations; or
- Principal Place of Business violations discovered during a Safety Audit or an investigation.

An NOV may be initiated:

1. Following an investigation;
2. As a response to a complaint (instead of conducting an investigation);
3. If a Division or SC has information from any other source indicating that violations of the FMCSR, HMR, and/or FMCCR have occurred (e.g., crash investigation); or
4. A Direct NOV assignment may be made and initiated if a motor carrier is only Roadside-Identified in the Driver Fitness BASIC (i.e., the motor carrier has no other Roadside-Identified BASICs and no Acute and/or Critical Violations in the Driver Fitness BASIC), or if the Insurance/Other Indicator is the only reason why a motor carrier has been prioritized for an intervention. An NOV would only be appropriate if there were no evidence that the violation had been corrected. If the Acute and/or Critical Violation was not related to any authority and the

Licensing and Information (L&I) database shows the carrier currently has authority, a Direct NOV would not be appropriate.

2.4.4.7.6 Time When the NOV Should Not Be Initiated

The NOV should not be used, if one or more of the following conditions exist:

- The violation involves falsification of documents or records;
- The violation caused or contributed to a crash;
- The violation cannot be corrected within 30 days;
- One or more of the violations discovered resulted in a NOC;
- The violations resulted in a proposed unsatisfactory safety rating;
- The violation is an acute violation listed in 49 CFR Part 385, Appendix to Part 385 and discovered during a Section 222-eligible investigation; or
- The violations were discovered during a new entrant safety audit. The new entrant safety audit has specific corrective action requirements in its process specific to a new entrant motor carrier.

The guidance above in this section is inapplicable to an NOV used for *Riojas* affected violations. An NOV may be considered for *Riojas* affected violations regardless of history, safety rating, and other factors. For additional details on an NOV for *Riojas* affected violations see the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," *MC-ECE-2020-0001*.

2.4.4.7.7 Criteria for Issuing the NOV as the Result of an Investigation

The NOV should be used only in instances when the violation can be corrected immediately (e.g., failing to have a properly executed (unsigned) MCS-90, etc). Corrective action must be readily verifiable by the issuing Division Administrator (DA) or designee or Field Administrator (FA) or designee.
The NOV may also be used as an enforcement tool for violations discovered during an investigation, including:

- Violations of critical regulations which do not warrant enforcement actions (failing to maintain copy of drivers medical card);
- Inappropriate activity where a carrier's status is intrastate, but there is evidence of interstate operations;
- Vehicle defects and/or driver violations; or
- Principal Place of Business violations discovered during a Safety Audit or an investigation.

If the NOV is initiated following an investigation, the SI must obtain evidence supporting all discovered safety violations identified in the NOV and necessary to support a NOC and any proposed penalty, if and when an NOC is issued.

An NOV used for *Riojas* affected violations may not be converted to an NOC, even if submitted corrective action is inadequate or there is no response to the NOV. Divisions are therefore not required to collect evidence to meet the same standard of evidence as would be required for the enforcement of an NOC. See the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," *MC-ECE-2020-0001*.

2.4.4.7.8 Criteria for Issuing a NOV based on a Complaint

The NOV should be used as an enforcement tool in response to a complaint alleging violations, if the complaint is limited in scope (e.g., allegation that a particular driver has not been medically examined). If there are widespread violations alleged in the complaint, or if corrective actions are not readily verifiable, the complaint should be investigated using the appropriate intervention.

2.4.4.7.9 Criteria for Issuing the NOV as a Result of Other Investigations

The NOV may also be used as an enforcement tool for violations discovered during other types of investigations. For example, the Division receives a crash report arising out of a CMV crash. The report indicates that the crash was not the CMV's operator's fault. However, it does indicate that the CMV involved in the crash had several OOS defects. The NOV could be used to address the vehicle defects and to request copies of the OOS roadside inspections demonstrating the defects have been corrected.

2.4.4.7.10 Documentation

Once the decision has been made to issue a NOV, the investigator should document all discovered violations identified in the NOV. The NOV is intended to place the recipient on notice of an identified violation, and there is no formal appeal process. Therefore, the standard of evidence is not as high as with an NOC. However, it would be prudent to gather the documentation at the level necessary to support a NOC during the investigation in case the motor carrier does not respond or does not provide an adequate response to the NOV. An NOV used for *Riojas* affected violations may not be converted to an NOC, even if submitted corrective action is inadequate or there is no response to the NOV. Divisions are therefore not required to collect evidence to meet the same standard of evidence as would be required for the enforcement of an NOC. See the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," *MC-ECE-2020-0001*.

2.4.4.7.11 Criteria for Issuing the NOV as a Result of a Direct NOV Assignment

When a Direct NOV assignment is initiated, you should review motor carrier data for drivers with Red Flag Violations. If the motor carrier has any drivers with Red Flag Violations, these violations should be included in the NOV. The inclusion of Red Flag Violations does not require an investigation to be assigned. Additionally, there may be other immediately correctable violations outside of the Driver Fitness BASIC identified in the motor carrier data that may be considered for inclusion in the Direct NOV (e.g., failing to update the MCS-150).

2.4.4.7.12 How the NOV Should be Tracked and Processed

NOVs are created using CaseRite, much in the same way as the NOCs. CaseRite allows for conversion of NOVs into NOCs. Similar to NOCs, NOVs are uploaded and stored in the Enforcement Management Information System (EMIS).

When an investigation is conducted and recorded in the investigative system, the investigator should choose "NOV" for the planned action. The case number should be noted in the Investigative Report/Part C

The NOV will be generated using the NOV option in the CaseRite software and modified to fit the circumstances of the particular investigation. The issuing DA or designee or FA or designee is responsible for initiating, issuing, and tracking the NOV in CaseRite and in the Enforcement Management Information System (EMIS). (See *Attachment 1* of policy memo *08-28-12 Issuing a Notice of Violation* for instructions on the use of CaseRite.)

The NOV should be issued to the respondent no later than 10 days after the completion of the investigation. Respondents should be given not more than 30 days from the service date of the NOV to reply and submit appropriate evidence of corrective action. (See *Attachment 2* for an example.)

The official, who signed the NOV, is responsible for reviewing the respondent's submission in response to a NOV. Consistent with the primary purpose of the NOV, the appropriate office shall determine the adequacy of the corrective action submitted. Upon review of the corrective action submitted, the DA or FA responsible for the NOV should acknowledge receipt of the respondent's submission and provide a written response to the submission. Refer to *Attachment 3* for a standard acceptable submission letter.

In instances where the NOV has been issued for violations discovered during an investigation and the respondent has either not responded or the corrective action submitted is deemed to be inadequate by the reviewer, the NOV should be converted to a NOC and issued in accordance with the eFOTM. Refer to *Attachment 1* for instructions for converting a NOV to a NOC. In all other instances, if the corrective action submitted is deemed to be inadequate, or there is insufficient evidence to issue a NOC, the reviewer must determine appropriate follow-up action to ensure compliance. For example, if the

corrective action submitted in response to a complaint is not adequate, the reviewer should determine whether an on- or off-site investigation should be conducted.

2.4.4.7.13 How the Motor Carrier Response to the Direct NOV Should be Handled

The Direct NOV includes the specific terms FMCSA has determined are appropriate for motor carrier compliance. Consult with the DA to determine if the motor carrier's response adequately addresses the identified compliance deficiencies.

- If the motor carrier's response is adequate, a written response should be provided to the motor carrier to close out the action, and it should be included in the motor carrier file. The NOV is then closed in the EMIS.
- If the motor carrier response is inadequate or fails to meet the terms of abatement in the NOV, then this would warrant escalation. If sufficient evidence does not exist for an NOC, then an Onsite Focused Investigation should be assigned (or Onsite Comprehensive Investigation in the case of passenger carriers with no safety rating or those not investigated within 12 months).
    - If the NOV is converted to an NOC, then the manager should update the assignment in the Portal, and the conversion from NOV to NOC should take place in CaseRite.
    - If the NOV is converted to an Onsite Focused or Onsite Comprehensive Investigation, then the manager should update the assignment and upload the investigation performed to the Portal. If an NOC is warranted, the conversion from NOV to NOC should take place in CaseRite.

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[1] Section 222-eligible investigations include on-site rated and unrated compliance reviews, terminal reviews and shipper reviews.

2.4.4.8 Notice of Claim (NOC) Section

2.4.4.8.1 Definition of Notice of Claim (NOC)

A NOC is the official charging document used by FMCSA to initiate a civil action for violation of Federal Laws and Regulations under the jurisdiction of this agency (the FMCSR, the Federal Hazardous Materials Regulations, and violations of the United States Code). The NOC states the amount of penalty, provides a summary of the violations, and a statement of charges, presents a notice to abate the violations, and includes information pertaining to hearings, negotiation, and failure on the part of the subject to reply to the notice. In addition, a Table of Violations and the UFA Worksheet are to be attached to the NOC upon issuance. The NOC Table of Violations must list all documented instances that were included in the determination of extent for acute violations, critical violations, and/or any other violation included on the NOC. The UFA Worksheet provides the respondent with details regarding the civil penalty calculation.

Those Who Are Subject to NOC

The NOC may be issued against any individual, partnership, association, corporation, business, trust, or any other organized group of individuals subject to FMCSA's jurisdiction. Because FMCSA lacks statutory authority to assess civil penalties through an administrative process, the procedures in Part 386 do not apply to Riojas affected violations, FMCSA may therefore not initiate a civil penalty proceeding by issuing a NOC to enforce Riojas affected violations. See the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," *MC-ECE-2020-0001*

Those Who Have the Authority to Initiate and Sign NOCs

The Field Administrators and Division Administrators has authority to initiate and sign NOCs. Safety Investigators may initiate an NOC and submit it to their Division Administrator for review and signature.

Time When the NOC Can Be Initiated

Although NOCs can be initiated at the discrepancy of the SI, the following is a list of instances when a NOC must be initiated:

- The violation involves falsification of documents or records;
- The violation caused or contributed to a crash;

- The violation cannot be corrected within 30 days; ,
- The violations resulted in a proposed unsatisfactory safety rating;
- The violation is an acute violation listed in 49 CFR Part 385, Appendix to Part 385 and discovered during a Section 222-eligible investigation;

2.4.4.8.2 Definition of Direct Notice of Claim (Direct NOC)

If there is sufficient evidence, a Manager can assign an SI to prepare an NOC directly without further Investigation. Carriers which are candidates for Direct NOCs are identified in the system because the records show evidence of reported activity-either inspections or crashes-while under an Operations Out-of-Service (OOS) Order. These records should be verified before assigning an SI to issue a Direct a NOC. If there is not adequate evidence for issuing an NOC for a particular carrier, then the carrier should be examined as a candidate for Investigation

2.4.4.8.3 Generating the NOC

CaseRite automatically generates the NOC based on additional information gathered from the investigation, and the UFA program, if used.

2.4.4.8.4 The NOC Provides the Following Information to the Respondent

It is imperative to ensure legal sufficiency and clear conveyance of the enforcement action to the respondent; therefore it is essential that the NOC do the following:

- Address the appropriate respondent (addressee),
- Lay the foundation for the claim [violations discovered during an investigation or roadside inspection at a specified location on a certain date(s)],
- Provide a statement of the provisions of the law alleged to have been violated,
- Specify the amount being claimed for each violation and the maximum amount authorized to be claimed under the statute,
- State steps necessary to abate the violations (optional),
- Provide legal authority for FMCSA to issue the NOC,
- Direct the respondent on how to respond to the NOC,
- State the charges with a clear, concise and complete description,
- Include a service list, and
- Transmit a copy of Part 386.

The CaseRite software program will generally be used to produce a nationally uniform NOC. Any change in the language of the NOC, except for necessary modifications in cases against drivers, other carrier employees, shippers or cargo tank facilities, must have the concurrence of the SCET. The SCET must consult with a SC legal counsel on any wording change or modification.

2.4.4.8L Letter of Probable Violation (LOPV) Section

A Letter of Probable Violation is an a document used as the final option for a case involving *Riojas* affected violations. It is only used when all other enforcement options have been exhausted. See the template found as Attachment G to the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," *MC-ECE-2020-0001*. Divisions will serve an LOPV only after review and concurrence by the Service Center Enforcement Team and Service Center attorney. Additionally, until further notice, all LOPVs must also be reviewed by the Assistant Chief Counsel for Enforcement and Litigation (MC-CCE) and the Director, Office of Enforcement (MC-EC), or their designees.

2.4.4.9 Settlement Agreement

When negotiations produce an agreement as to the amount or terms of payment of a civil penalty or the terms and conditions of an order, a settlement agreement shall be prepared and signed by the respondent and the FA or his/her designee.

2.4.4.10 Driver Disqualification

The disqualification criteria in 49 CFR Part 383 applies to drivers who carry a commercial driver's license (CDL). A CDL is required when operating CMVs in intrastate, interstate, or foreign commerce. Here, the term CMV includes all vehicles with a gross vehicle weight rating (GVWR) of 26,001 pounds or more, all vehicles designed to transport more than 15 passengers, and all vehicles of any size used in the transportation of hazardous materials which require placarding.

- Only the state of issuance of the CDL or the FMCSA has the authority to take an official "disqualification" action against a driver. However, a conviction for a disqualifying offense automatically disqualifies a driver from driving for the period specified in the regulations. Thus, so long as a motor carrier knows, or should have known, of a driver's conviction for a disqualifying offense, it is prohibited from using the driver during the disqualification period. See also 49 CFR 391.15, which describes disqualification requirements for drivers subject to Part 391 (including both CDL and non-CDL drivers).

2.4.4.11 Imminent Hazard Out-of-Service (OOS) Order

Whenever it is determined that an imminent hazard exists as a result of the transportation by motor vehicle of a particular hazardous material, the Chief Counsel or Deputy Chief Counsel of the FMCSA may bring or request the United States Attorney General to bring an action in the appropriate United States District Court for an order suspending or restricting the transportation by motor vehicle of the hazardous material or for such other order as is necessary to eliminate or ameliorate the imminent hazard, as provided by 49 U.S.C. 5122. In this paragraph, imminent hazard means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before a notice of investigation proceeding other administrative hearing or formal proceeding, to abate the risk of harm can be completed.

2.4.4.11.1 Auditor and Investigator's Responsibility in Determining an Imminent Hazard and Presenting that Information to DA and FA

Safety auditors and investigators should adhere to the guidance found in *Illustration E-5: Roles and Responsibilities in the Imminent Hazard Out-of-Service (IHOOS) Order Process*

2.4.4.11.2 Auditor and Investigator's Responsibility in Determining an Imminent Hazard and Presenting that Information to DA and FA

If, while conducting a SA, an investigation, or a CR, the safety auditor or investigator finds that an IHOOS Order may be warranted, the investigation, CR, or SA process should be temporarily suspended (*Illustration E-4: Imminent Hazard Guidelines*). The SI or auditor should contact the DA to relate the critical details, discuss the merits of the findings, and express an opinion regarding the need for such an Order. If the DA agrees with the investigator or auditor, then a discussion of the appropriateness of issuing an IHOOS Order is required. This discussion must include the DA, the investigator or auditor, the FA and Enforcement Program Manager for the appropriate SC and the assigned SC Attorney and cover the alleged Imminent Hazard and the associated evidence. The parties should agree on the course of action to be taken and assignments regarding activities should be made. Once a decision to proceed with an IHOOS Order is made, the investigator or auditor should resume the investigation, CR, or SA, gathering all necessary documents.

2.4.4.11.3 Provide the Following to SCET Before a IHOOS Order is Issued

- Copies of all evidence, supporting documents, etc., upon which the proposed IHOOS Order is based must be provided to the SC attorneys in a timely manner prior to issuance of the IHOOS Order. IHOOS Orders will not be issued without prior coordination with the SC attorneys.

This material should include, but is not limited to:

- A copy of the carrier's current proposed SA, investigation, or CR, including all supporting documents obtained in the course of the SA, investigation, or CR to support the serious violations and conditions creating an Imminent Hazard.

- If used, clear, sharp photographs, with details of who took the photos, the date, time and place.
- With respect to all witnesses who provide a statement, a copy of the signed statement, signed under penalty of perjury, including the correct spelling of the witness's name, his/her work and home addresses and telephone numbers, and a statement that "the information provided herein was given voluntarily, and no threats or promises were made."
- If the MCMIS roadside inspection data, Safety Measurement System (SMS) information, or any other data in a DOT system of records is to be relied upon as evidence for an IHOOS Order (e.g., high driver/vehicle OOS rates and/or accident rates), this information must be verified by appropriate agency personnel before it is used. Actual "hard copies" of some roadside inspections may be necessary depending on their intended use to support the OOS action. These inspections usually deal with history or patterns of noncompliance, not real time (present). The reports to be relied upon should clearly show that "interstate" and not "intrastate" violations are involved, unless the intrastate violations are jurisdictional, i.e., parts 382 and 383.

2.4.4.11.4 The Safety Auditor or Investigator Must Be Prepared for the Following Once an IHOOS Order is Issued

The safety auditor or investigator, DA, SC Attorney, and such other persons as the attorney may identify, including support staff, should be available continuously on short notice (with appropriate telephone numbers, pager numbers, etc. provided to the attorney) for a ten (10) day period following the service of the IHOOS Order.

2.4.4.11.5 Actions to Take if the Carrier Operates in Violation of the IHOOS Order Issued

The safety auditor or investigator should document violations of the OOS Order and the DA should issue a NOC for those violations.

> See 01.05.2015 Enforcing Out-of-Service Orders and Operating Authority Violations policy for consolidated direction on the enforcement of out-of-service (OOS) order and operating authority violations to Federal Motor Carrier Safety Administration (FMCSA) personnel who conduct roadside inspections, safety audits, and/or investigations. FMCSA will not serve NOC under 49 CFR part 386 when charging Riojas affected violations. If a Division determines that an enforcement action on Riojas affected violation(s) is the best means to induce compliance, an Enforcement Analysis must be conducted following the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," *MC-ECE-2020-0001* to determine what type of enforcement should be pursued. FMCSA will propose and settle civil penalties for Riojas affected violations using the procedures in that policy.

2.4.4.12 Failure to pay OOS Order

A company or driver that fails to pay a FMCSA civil penalty (or negotiated installment payment) within 90 days of the date specified for payment will be barred from operating in interstate commerce and have its FMCSA registration suspended (if applicable) on the 91st day and may not resume operating until the original civil penalty amount is paid in full. See 49 C.F.R. §§ 386.83, 386.84.

Before issuing any notices or orders related to non-payment, the SCET must ensure that payment has not been received by checking pay.gov online and any other available sources.

All notices and orders relating to the failure to make a payment when due will be signed by the FA or designee.

> See *01.05.2015 Enforcing Out-of-Service Orders and Operating Authority Violations* policy for consolidated direction on the enforcement of out-of-service (OOS) order and operating authority violations to Federal Motor Carrier Safety Administration (FMCSA) personnel who conduct roadside inspections, safety audits, and/or investigations. FMCSA will not serve NOC under 49 CFR part 386 when charging Riojas affected violations. If a Division determines that an enforcement action on Riojas affected violation(s) is the best means to induce compliance, an Enforcement Analysis must be conducted following the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing

Policies," *MC-ECE-2020-0001* to determine what type of enforcement should be pursued. FMCSA will propose and settle civil penalties for Riojas affected violations using the procedures in that policy.

2.4.4.13 Record Consolidation Order (RCO)

A record consolidation order consolidates the records maintained by the agency concerning the current motor carrier, intermodal equipment provider, broker, and freight forwarder and its affiliated motor carrier, intermodal equipment provider, broker, or freight forwarder or its previous incarnation, for all purposes, upon a determination that the motor carrier, intermodal equipment provider, broker, and freight forwarder or officer, employee, agent, or authorized representative of the same, operated or attempted to operate a motor carrier, intermodal equipment provider, broker, or freight forwarder under a new identity or as an affiliated entity to:

1. Avoid complying with an FMCSA order;
2. Avoid complying with a statutory or regulatory requirement;
3. Avoid paying a civil penalty;
4. Avoid responding to an enforcement action; or
5. Avoid being linked with a negative compliance history.

Time When the RCO Can Be Initiated

Reincarnated motor carriers may be identified during routine Agency reviews including vetting, use of the FMCSA's current screening tool, compliance reviews, safety audits, crash and hazardous materials incident investigations, roadside inspections, other complaints investigations, and interventions.
When an investigation discloses an apparent continuity of operations between the motor carrier assigned for investigation and another motor carrier, the first step is to determine the FMCSA operational status of the suspected predecessor motor carrier. *Appendix K* is an investigative reference tool listing key analysis factors that the investigator should consider when reincarnation/affiliation is suspected. If the predecessor motor carrier is subject to an OOS Order, or has a negative safety history, investigators should follow the August 29, 2012 policy: *Procedures for Investigating Potential Reincarnated/Chameleon and Affiliated Motor Carriers*, and work closely with the Division Administrator (DA), Service Center Enforcement Team (SCET), and Field Attorneys to gather and organize the evidence in order to bring a case against a suspected reincarnating carrier. If a Division determines that an enforcement action on Riojas affected violation(s) is the best means to induce compliance, an Enforcement Analysis must be conducted following the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," *MC-ECE-2020-0001* to determine what type of enforcement should be pursued. FMCSA will propose and settle civil penalties for Riojas affected violations using the procedures in that policy.

How to Initiate a RCO

- Coordination: Experience has shown that coordination between two or more DAs may be needed, as attempts to reincarnate sometimes include incorporating in another State, to avoid detection. The investigator should begin collecting preliminary information and documents to establish the status of both the predecessor entity and the new entity. Coordination with field counsel is also recommended. Counsel can be a valuable resource in ensuring that the investigator is able to obtain sufficient information and documentation to support action under part 386.
- Evidence Collection: Reincarnation investigations require investigator analysis and documentation that differs slightly from the usual documentation needed to support typical violations discovered during routine investigations. *Appendix K: Reincarnated/Affiliated Carrier Analysis Factors and Checklist* provides a guide to the types of evidence that should be sought in a reincarnation/affiliation investigation. The checklist is intended to enable the investigator to take notes and comment on the availability of evidence, and otherwise describe the investigation as needed. For example, Attachment K refers to tax documents to be collected as part of the investigation. These types of tax documents may not be available for the three year period

mentioned, or may not be available at all. If that is the case, investigators should describe the available evidence and document any information that is still needed. In some instances, subpoenas to third parties may be necessary to obtain documents that the motor carrier is not required to maintain, but may be available from the motor carrier's business contacts, such as an accountant, insurance agent, representative, or bank. Accordingly, when the carrier is unable to produce these important documents, the investigator should obtain the names and necessary identifying information for company accountants, insurers, banks, and other third parties.

- Summary: Investigators should prepare a brief summary of the evidence collected that led the investigator to first suspect reincarnation, identifying the suspected reason the motor carrier reincarnated (e.g., OOS Order of the previous entity) and providing a timeline, or chronology, of events and motor carrier actions. This summary should be provided via a separate Word document to the DA or in the manner (such as an email) directed by the DA.
- Submission of evidence: To the extent practicable, follow established procedures and time frames for Agency enforcement actions regarding submission of evidence to the DA. This information should be provided as soon as it is complete. The Division office should be working with the SCET and field counsel to ensure that necessary and sufficient evidence has been obtained.
- Closeout: Compliance review/investigation should not be closed out until all evidence supporting the reincarnation has been collected and reviewed by the SCET and a decision to conclude the investigation has been made by the Service Center Director or Service Center Enforcement Program Coordinator, in consultation with the Field counsel. A compliance review that involves a chameleon/affiliate investigation should not result in a safety rating prior to a determination on the evidence supporting enforcement action under § 386.73.

2.4.4.14 Subpoenas

Applications for the issuance of subpoenas must be submitted to the Assistant Administrator (AA), or in cases that result in hearings, to the administrative law judge (ALJ). The application must show the general relevance and reasonable scope of the evidence sought. Any person served with a subpoena may, within seven days after service, file a motion to quash or modify. The motion must be filed with the official who approved the subpoena. The filing of a motion shall stay the effect of the subpoena until a decision is reached. The AA and Chief Safety Officer (CSO), AA for Field Operations, FAs, DA of the FMCSA are delegated authority to subpoena witnesses and records under 49 U.S.C. 502(d) and 49 U.S.C. 13301(c) in connection with inspections and investigations. Paragraph (a) of this section shall not apply to the Administrator or employees of the FMCSA, or to the production of documents in their custody. Application for the attendance of such persons, or the production of such documents at a hearing, shall be made to the AA or ALJ, if one is appointed, and shall set forth the need for such evidence and its relevancy.

Time When FMCSA Issues SubpoenasSubpoenas will not be used to communicate the demand for access and records for motor carriers except in exceptional circumstances, which must be approved by the Regional Field Administrator or Field Administrator. Subpoenas must be reviewed by a service center attorney and be done in coordination with the Office of Enforcement and Compliance and the Office of Chief Counsel, Enforcement & Litigation. Subponeas are only used in rare cases such as when a non-regulated entity refuses to provide access to records determined to be relevant and necessary to an investigation or other such rare circumstances. permit requested inspections pursuant to FMCSA's authority. The DA signs the administrative subpoena. The Division is responsible for service of the subpoena.

Prior to issuing the subpoena the DA must consult with SC attorneys for exact language. Copies of the proposed subpoena must be provided to the SC attorneys.

Notes regarding all efforts made to obtain documentation or inspection without subpoena should be maintained in the carrier file. These notes will be necessary if the entity refuses to comply with the subpoena.

The DA, or designee, shall consult with the SC attorneys to determine the appropriate enforcement action.
When seeking enforcement of a subpoena, it is important to document all contact(s) with the carrier.

2.4.4.15 Supplemental Policy on Assessing Maximum Penalties Under Section 222

The supplemental policy on assessing maximum penalties under Section 222 does not replace the current policy. It is intended to expand FMCSA's implementation of Section 222 of the MCSIA. As a result, cases closed after the issuance of the original September 8, 2000, policy memorandum will continue to count as strikes under the existing three-strikes policy. Cases and Section 222-eligible investigations being used to support imposition of maximum fines under the supplemental policy must be initiated on or after April 1, 2009.
FMCSA is defining a "pattern of violations" as the discovery of two or more critical or acute violations in each of three or more different regulatory Parts (i.e., a minimum of six acute and/or critical violations). Thus, a "pattern of violations" does not require previous enforcement and can be found even during a first-time Section 222-eligible investigation. FMCSA is also establishing a "two-strikes" policy. Two-strikes differs somewhat from the existing three-strikes policy. Maximum fines will be applied in cases where an acute violation is discovered during a Section 222-eligible investigation within six years of one previously closed case containing a violation of a critical or acute regulation in the same Part. If a pattern of violations, two-strikes, or three-strikes situation is discovered, it must be documented, and maximum fines must be assessed unless the FMCSA determines and documents that "extraordinary circumstances" exist.
In addition, as of April 1, 2009, every acute violation discovered during a Section 222-eligible investigation must be charged in a NOC, either for a proposed penalty or in a new section of the NOC that FMCSA anticipates developing to document "supplementary" violations. This change will capture every such acute violation as a strike.
The policy and procedures for handling a denial of access should be followed as are found in *DOA POLICY*.

2.4.4.16 Pattern

A pattern of violations of critical or acute regulations is documented through the discovery, during a Section 222-eligible investigation, of two or more critical or acute violations in three or more regulatory Parts where the motor carrier has had previous significant contact with FMCSA, a State partner, or other FMCSA-designated representative on behalf of FMCSA.
Until the Compliance Analysis and Performance Review Information (CAPRI) system has been reprogrammed to identify such a "pattern," investigators should use the *Section 222 Maximum Fines Worksheet* to help determine whether any Section 222-eligible investigation establishes a pattern of critical or acute violations.
A motor carrier will be subject to maximum fines when a "pattern" of critical or acute violations is discovered after having had previous contact with FMCSA, a State partner, or other FMCSA-designated representative on behalf of FMCSA. This contact may have been a previous New Entrant Safety Audit, Pre-Authorization Safety Audit, Expedited Action Letter, investigation, CR, NOV, NOC, Warning Letter, or other significant documented contact reasonably likely to have alerted the motor carrier to FMCSA's regulatory and enforcement jurisdiction. This contact may have occurred prior to the effective date of this policy.
If a "pattern of violations," as defined above, is discovered during a Section 222-eligible investigation, the investigator must document one count of each critical and/or acute violation that contributed to the pattern (i.e., the case will contain at least six separate violations). Each violation will be assessed for the maximum statutory penalty. If appropriate, additional violations that did not contribute to the pattern may be included, using the UFA software to calculate an appropriate penalty amount. For those violations that contributed to the pattern, it is not necessary to document the extent of the violation. The "extent" of the violation, as well as the other statutory factors FMCSA must normally take into account when assessing a

fine, does not apply when assessment of the statutory maximum penalty is required by Section 222. However, the investigator must document at least the 10 percent violation rate of the critical regulations to establish the pattern.

> **Example:** If violations of 49 CFR 395.8(e)(1) - false logs - contributed to the existence of a pattern, the investigator would need to include one count for the purpose of proposed penalty assessment, and document at least 10 percent of the false logs checked to demonstrate that the violation occurred at a critical rate. For acute violations, the investigator would document a single count.

2.4.4.17 Two-Strikes

Differing from a three-strikes case, FMCSA is defining a two-strikes case as one based on a Section 222-eligible investigation in which an acute violation has been discovered within six years of the closure of one previous case containing a violation of a critical or acute regulation in the same Part (the previous case must also have resulted from a Section 222-eligible investigation). The important difference is that a motor carrier will be subject to a maximum fine on a second case only if the violation discovered in the second Section 222-eligible investigation is acute. This is consistent with the emphasis FMCSA has placed on these violations.

The same standards applied by FMCSA under the original three-strikes policy will apply to cases being used as a previous strike under this supplemental two-strikes policy. The previous case must have been based on a Section 222-eligible investigation (completed on or after the effective date of this supplemental policy), the case must have been closed within six years prior to the completion of the Section 222-eligible investigation in which the second strike is discovered (but initiated no earlier than the effective date of this policy memo), it must contain one or more violations of critical or acute regulations in the same Part(s), and those violations must have been admitted or adjudicated in accordance with FMCSA's definition of "history."

If a second strike is discovered, the investigator must document at least one count in every Part that meets the second strike definition. Each such violation will be assessed at the statutory maximum penalty.

2.4.4.18 Settlement of Maximum Penalty Cases

Under the existing FMCSA three-strikes policy, proposed penalties subject to Section 222 could not be settled for less than the maximum penalty assessed. Under the supplemental policy, all penalties, including patterns, two-strikes, and three-strikes cases containing violations subject to Section 222, may be settled with a suspension of a portion of the assessed penalty, under appropriate circumstances, such as a significant investment in advanced technology.

Click here for the frequently asked questions associated with the supplemental policy.
Click here for the frequently asked questions associated with the Webinar presented on the supplemental policy.

2.4.4.19 Unsatisfactory=Unfit OOS Order

Unsat=Unfit refers to a motor carrier rated Unsatisfactory based on its Safety Fitness Determination. Proposed unsatisfactory safety ratings will indicate that, if the unsatisfactory rating becomes final, the motor carrier will be subject to the provisions of 49 CFR Section 385.13, which prohibits motor carriers rated unsatisfactory from operating in interstate and intrastate commerce.

Procedures for Issuing OOS Orders on Motor Carriers Rated Unsatisfactory

The Unsat=Unfit OOS Order is entitled *Order to Cease All Interstate Transportation*. A SCET should serve this order within two weeks of the effective date of the OOS Order. The SCET may serve this order by personal delivery using governmental or commercial entities, U.S. mail, commercial mail delivery, or facsimile, upon prior written consent of the parties. Written consent for facsimile service must specify the facsimile number where service will be accepted. When the SCET makes service by facsimile, it also

must serve a copy by any other method permitted by this section. Facsimile service occurs when transmission is complete.

On the same day, or next business day if the order is effective on a weekend or holiday, the Unsat=Unfit OOS Order is effective, the appropriate SCET must inactivate the motor carrier in MCMIS with a "UNF" designation.

Procedures for Monitoring Compliance with OOS Orders on Motor Carriers Rated Unsatisfactory

A Division should conduct onsite verification to determine compliance with the OOS Order within 10 days of the effective date of the order. The Division may summarize the verification findings in an inter-office memorandum format provided the motor carrier has ceased transportation. If onsite verification is not feasible, the Division will document and place in the motor carrier file any method used to verify the motor carrier is not operating in commerce. The Division must implement procedures to monitor motor carrier activity to maintain oversight of motor carriers that may violate the OOS Order.

Monitoring of Unsatisfactory Rated Motor Carriers - The Division office may obtain a list of motor carriers that are identified as operating after an Unsat OOS Order was effective. This list is available to the Divisions and SCETs through MCMIS, the Portal, and also GOTHAM. All Agency Division Offices and SC should make use of these reports to facilitate their monitoring efforts.

If the Division determines that the motor carrier has violated an OOS Order, the Division should initiate enforcement action. The Division should consult with the SCET to consider seeking a U.S. District Court ordered injunction for repetitive violators of an OOS Order.

Information on motor carriers, including their most current safety rating, is available from the FMCSA on the Internet at *www.safersys.org* or by telephone at (800) 832-5660.

See *01.05.2015 Enforcing Out-of-Service Orders and Operating Authority* ***Violations*** policy for consolidated direction on the enforcement of out-of-service (OOS) order and operating authority violations to Federal Motor Carrier Safety Administration (FMCSA) personnel who conduct roadside inspections, safety audits, and/or investigations. FMCSA will not serve NOC under 49 CFR part 386 when charging Riojas affected violations. If a Division determines that an enforcement action on Riojas affected violation(s) is the best means to induce compliance, an Enforcement Analysis must be conducted following the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," *MC-ECE-2020-0001* to determine what type of enforcement should be pursued. FMCSA will propose and settle civil penalties for Riojas affected violations using the procedures in that policy.

2.4.4.20 Willful Noncompliance (13905) Revocation of Operating Authority

Revocation of operating authority registration forces a regulated entity to cease the elements of their operations that require registration. **It is important to note the section 13905 revocation process is separate and distinct from the Agency's imminent hazard authority.**

Those Who Are Subject to 13905

The revocation (13905) policy applies to any entity required to maintain operating authority registration that demonstrates an unwillingness or inability to comply with applicable statutes and regulations and operates in a manner that shows a blatant and sustained disregard for, or an inability to meet regulatory requirements. All Orders to Show Cause and Revocation Orders for violations affected by *Riojas* will be drafted by Service Center Attorneys for issuance by the RFA, FA or MC-EC, and reviewed by MC-CCE, or designee. See the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies" *MC-ECE-2020-0001*

Those Who Have the Authority to Initiate the 13905

The Office of Field Operations (MC-F) must coordinate all revocation actions with MC-EC and the Assistant Chief Counsel for Enforcement and Litigation. RFAs, FAs, and MC-EC may begin the process to suspend the operating authority registration of a regulated entity in addition to the current revocation procedures. RFAs, FAs, and MC-E may suspend or revoke the operating authority registration of a household goods motor carrier, foreign motor carrier operating outside the scope of its operating authority registration, broker, or freight forwarder under the Willful Noncompliance Policy to induce compliance as to Riojas affected violations.

The RFA, FA, and MC-E will coordinate with the appropriate Service Center attorney who will prepare legally sufficient orders for signature and issuance by the RFA, FA or MC-E using the the templates found in the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," *MC-ECE-2020-0001*. See *Attachments E-1, E-2*, and *E-3*

Things to Consider before Initiating a Revocation

1. The nature and extent of existing or past violations;
2. The degree to which existing or past violations will affect, or have affected, the safety of operations, taking into account any crashes, deaths, or injuries associated with the violations;
3. Whether existing or past regulatory or statutory violations are the result a willful failure to comply with applicable requirements;
4. The existence and nature of pending and closed enforcement actions;
5. Whether adequate safety management controls exist to ensure acceptable compliance with applicable requirements; and
6. The existence of corrective action, if any.

How to issue the 13905

- Revocation follows a 30-day notice (Order to Show Cause) that provides an opportunity to respond.
- This remedy should be considered only when there is evidence of continued willful noncompliance that has not been deterred through use of other enforcement measures.
- The Agency will exercise its authority to revoke operating authority registration in cases where there is conduct that demonstrates willful disregard for applicable requirements.
- Inadvertent, isolated, or sporadic violations of applicable requirements generally should not result in revocation.

When evaluating a possible revocation order, it is critical to look into the compliance and enforcement history from the motor carrier within the past 6 years. See attachment: *New Application Letter*
Documentation must include the basis for the order and legally sufficient evidence of the ongoing violations. RFAs, FAs, or MC-EC will provide to the Service Center attorney drafting an Order to Show Cause the supporting evidence. A copy of the supporting evidence will be uploaded into EDMS. The Service Center attorney or paralegal will review for redactions all evidence that was not retrieved directly from the motor carrier. Required redactions include complainant information, personally identifiable information and security sensitive information in documents that did not originate from the motor carrier. A redacted copy of all evidence that was not retrieved directly from the respondent will be served on the respondent along with the Order to Show Cause. A copy of the served Order to Show Cause, including copies of the evidence provided to the motor carrier, will be uploaded into EDMS.

A Revocation Order must include notification to the regulated entity that it must re-apply for operating authority registration and demonstrate during the application process that they are fit, willing, and able to comply with appropriate regulations and statutes. A Revocation Order must be served using a delivery method that can be tracked and confirmed.
Hyperlink Related Policy Revocation of Operating Authority for Failure to Comply with Safety Fitness Requirements.

2.4.4.21 Patterns of Safety Violations (PoSV) by Motor Carrier Management

Patterns of Safety Violations (PoSV) by Motor Carrier Management

The PoSV final rule enables the FMCSA to suspend or revoke the operating authority of for-hire motor carriers that:

- Have shown an egregious disregard for safety;
- Permit persons who have shown an egregious disregard for safety to exercise controlling influence over their operations; or
- Operate multiple entities under common control to conceal noncompliance with the safety regulations.

In addition, the PoSV final rule allows the Agency to issue civil penalties against for-hire motor carriers for engaging in such conduct.

The FMCSA will pursue PoSV proceedings and/or civil penalties under three different scenarios. The scenarios and types of actions follow.

1. Reincarnated/affiliated carriers: Suspension or revocation proceedings initiated against a suspected reincarnated/affiliated carrier. For purposes of this policy, "chameleon," "reincarnated," and "affiliated" are being used interchangeably. If a Division determines that an enforcement action on Riojas affected violation(s) is the best means to induce compliance, an Enforcement Analysis must be conducted following the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," MC-ECE-2020-0001 to determine what type of enforcement should be pursued. FMCSA will propose and settle civil penalties for Riojas affected violations using the procedures in that policy.
2. Motor carriers: Suspension or revocation proceedings and civil penalties initiated against a motor carrier for engaging in a pattern or practice of avoiding regulatory compliance or masking or otherwise concealing regulatory noncompliance.
3. Motor carrier officers: Suspension or revocation proceedings initiated against a motor carrier for permitting any Officer to exercise controlling influence over the motor carrier's operations when that Officer engages in or has engaged in a pattern or practice of avoiding regulatory compliance or masking or otherwise concealing regulatory noncompliance. *(Guidance is currently being developed for the implementation of this process)*

2.4.4.22 Improper Designation of aPrincipal Place of Business

Principal Place of Business (PPOB) is defined in 49 CFR 390.5T, as "the single location designated by the motor carrier, normally its headquarters, for purposes of identification under this subchapter." The current regulatory guidance for the definition of a PPOB in § 390.5T is presented in a question-and-answer format in the Federal Register Notice (74 FR 37653). This guidance provides the motor carrier industry and Federal, State and local law enforcement officials with uniform information for use in determining which locations should be designated by a motor carrier as its principal place of business.

PPOB means the carrier's designated PPOB on its MCS-150 series form, OP-1 series form, and/or on its initial registration after submission through the Unified Registration System (URS) via the Form MCSA-1.

U.S. and Canadian owned and domiciled carriers

Generally, safety audits and investigations should be performed at the PPOB. The safety audit or investigation may be performed at a mutually agreed upon location other than a motor carrier's PPOB,

provided the Safety Auditor/Investigator is able to access all relevant documents, equipment, and personnel at the alternate location. If a motor carrier's designated PPOB is not a location where the carrier conducts operations related to its motor carrier business, and, as a result, the Agency cannot complete an investigation, the Division Office should issue a Notice of Claim or initiate a proceeding to suspend operating authority, or both, using the procedures provided below. A proceeding to suspend operating authority requires evidence that the carrier's designation of a false or misleading PPOB was willful. Division Offices will not take enforcement if the investigation was completed and the only evidence that the PPOB is false or misleading is that the PPOB does not comply with the regulatory guidance.

All actions taken to locate the carrier and attempt to schedule or complete the investigation should be documented and uploaded to EDMS. Safety Auditors and Investigators will not make any address changes in the Agency's systems to update a motor carrier's PPOB. The motor carrier is responsible for making the changes to its registration form via mail, fax, or online.

Other Foreign Carriers and Enterprise Carriers

If a foreign carrier or a U.S.-domiciled carrier owned or controlled by Persons of Mexico ("Enterprise carrier") has provided false or misleading information in the designation of its PPOB, the Safety Auditor/Investigator will contact their supervisor and gather documentation to support an enforcement action in coordination with the Regional Field Administrator or Field Administrator or designee and the Borders Attorney in the Western Service Center. If a foreign carrier claims a U.S. PPOB or an Enterprise carrier provides false and misleading information in its designation of PPOB and does not, in fact, have a PPOB in the United States, the Investigator, in coordination with their supervisor and the Regional Field Administrator or Field Administrator or designee and the Borders Attorney in the Western Service Center, should gather documentation to support a proceeding for suspension of operating authority.

The Division Administrator or designee will consult with the North American Borders Division, the Regional Field Administrator or Field Administrator or designee, and the Borders Attorney in the Western Service Center prior to issuing a Notice of Claim or initiating a suspension proceeding against a foreign or Enterprise carrier.

Principal Place of Business Enforcement Procedures for U.S or Canadian Owned and Domiciled Motor Carriers:

Citing PPOB Violations

The following are the correct cites:

Form MCS-150 filed before January 14, 2017

** *The DA must consult the Service Center Attorney before issuing a Notice of Claim where the violation is based on a form filed more than 4 years before the date the Notice of Claim is served.*	
49 CFR 390.19(g)	Failing to file, or furnishing misleading information, or making false statement on Form MCS-150
Form MCS-150 filed on or after January 14, 2017	
49 CFR 390.19T(g)	Failing to file, or furnishing misleading information, or making false statements on Form MCS-150
Form MCSA-1	
49 CFR 385.306/49 CFR 390.200T	Furnishing false or misleading information on Form MCSA-1 (*Carriers in new entrant program only*)
49 CFR 390.19T(g)/49 CFR 390.200T	Furnishing false or misleading information on Form MCSA-1 or failing to file an update on Form MCS-150 (*Carriers not in new entrant program with no MCS-150 update on file*)

Enforcement Documentation

When initiating an enforcement action, the Division Administrator (DA) will ensure the Investigator gathers, at minimum, the following evidence documenting the violation:

- Proof of interstate commerce or proof of operations in intrastate commerce transporting hazardous materials requiring placarding; and
- Evidence that the investigation could not be completed due to false or misleading information about the location of the PPOB. This proof may consist of:
    - Copy of the most recently filed registration form showing the designated PPOB location address (required). (Note: This can be obtained from MCMIS in the "View MCS-150/150B History." If the most recently filed registration form is an OP-1 series form, a copy of the MCSA-1 should be requested from the Office of Registration and Safety Information.); and
    - Interview with or statement from the company official or designated property owner or leaseholder tenant establishing that the designated PPOB is not a location where the carrier maintains any legal presence or the carrier's operations are so minimal at the location that no investigation is possible; or
    - Photographs or other documentation showing the location designated is not a place where the carrier maintains any legal presence or because the carrier's operations at the location are so minimal that no investigation is possible.

Service

Generally, a Notice of Claim, Order to Show Cause, and Suspension Order under this policy should be served by trackable mail with no signature required to (1) the motor carrier's mailing address, (2) the motor carrier's BOC-3 agent (valid only if the motor carrier has active operating authority and has not cancelled the BOC-3 agent filing), and (3) the resident or registered agent for the carrier as evidence on state records. If those methods of service are not effective, service may also be effected by serving any officer of a corporation. Subsequent documents in the proceeding, such as the Notice of Default and Final Agency Order and Order to Cease, should generally be served in the same manner.

The Service Center attorney should be consulted when a motor carrier cannot be located/contacted and efforts to serve enforcement documents on the carrier are unsuccessful.

Suspension of Operating Authority

The DA must consult the Regional Field Administrator (RFA) or Field Administrator (FA) prior to initiating a proceeding to suspend a carrier's operating authority. All Orders to Show Cause (OSC), Suspension Orders, and Rescission Orders will be drafted by Service Center Attorneys for issuance by the RFA or FA and reviewed by the Assistant Chief Counsel for Enforcement and Litigation (MC-CCE) or a designee.

Preparing the OSC

DAs will provide the supporting evidence to the Service Center attorney drafting the OSC. A copy of the supporting evidence will be uploaded into EDMS. The Service Center attorney or paralegal will review for redactions all evidence that was not retrieved directly from the motor carrier. A redacted copy of all evidence that was not retrieved directly from the respondent will be served on the respondent along with the OSC. A copy of the served OSC, including copies of the evidence provided to the motor carrier, will be uploaded into EDMS.

The deadline for compliance with the OSC will be reasonable based on the circumstances. In most cases, this will be 30 days.

Opportunity to Respond

If the carrier submits a response to the OSC, the Service Center will work with a Service Center attorney to review the carrier's submission and respond as appropriate. Any person involved in preparing, drafting, or issuing an OSC may not participate in the evaluation of a carrier's response or issuance of any subsequent orders. For example, if the FA issued the OSC, the RFA will issue the subsequent orders.

Compliance with OSC

If the carrier complies with the OSC, the Service Center should work with the Service Center attorney to terminate the suspension proceedings. All correspondence between the Service Center and the motor carrier will be saved to EDMS.

Non-Compliance with OSC

To ensure that the Agency's Licensing and Insurance (L&I) System and the Query Central (QC) database are accurately updated to reflect the suspension, the Service Center must email the Registration, Licensing, and Insurance (MC-RSI) Division, within the Office of Registration, a request to suspend the motor carrier's operating authority registration. The request must be submitted on the effective suspension date and include the following information:

- Motor carrier's U.S. Department of Transportation (USDOT) number;
- Motor carrier's Motor Carrier (MC) number;
- Company name;
- Reason for the suspension with "PPOB Suspension" in the subject line; and
- The effective date of the suspension

The request must be sent to the following recipients:

- Insurance Team Leader, MC-RSI Division;
- Registration Team Leader, MC-RSI Division;
- MC-RSI Deputy Division Chief;
- MC-RSI Division Chief;
- MC-RSI mailbox at mc-ecc.comments@dot.gov

The Service Center should verify that the suspension status is properly displayed on the Agency's L&I System and the QC database. If the suspension does not appear in the Agency's information technology systems on the next business day after the suspension is effective, the Service Center should follow up with the MC-RSI Division Chief or the MC-RSI Deputy Division Chief and should advise the Enforcement Division Chief.

The suspension of the motor carrier's operating authority remains in effect until the carrier complies with the requirements in the suspension order, an order rescinding the suspension is issued, the carrier requests reinstatement and pays the associated fee, and operating authority registration is reinstated as reflected in FMCSA's Licensing and Insurance system.

Rescission of Suspension Order

If the motor carrier requests a rescission of the suspension order, the Service Center will verify the motor carrier has complied with the requirements within the order. The Service Center should also verify whether there are any other suspension, revocation, or out-of-service order(s) in effect.

Upon verification, the Service Center should contact the MC-RSI, on the date that the suspension is to be rescinded, to inform MC-RSI that the suspension under the PPOB policy is rescinded and the motor carrier should be allowed to reinstate its operating authority.

If the Service Center determines that there are other suspension, revocation, or out-of-services order(s) still in effect, the Service Center should request that MC-RSI enter a note that specifies only the PPOB suspension is rescinded and that reinstatement is not permitted.

The Service Center must email a request to enter a note that the PPOB suspension is rescinded.

The request must include the following information:

- Motor carrier's US DOT Number;
- Motor carrier's MC Number;
- Company name;
- "This carrier is now allowed to apply for reinstatement" in the subject line; and
- The date that the suspension is rescinded

The request must be sent to the following recipients:

- Insurance Team Leader, MC-RSI Division;
- Registration Team Leader, MC-RSI Division;
- MC-RSI Deputy Division Chief;
- MC-RSI Division Chief; and
- MC-RSI mailbox at mc-ecc.comments@dot.gov

2.5 Illustrations

2.5.1 Illustration E-1: Photographic Declaration

Download PDF Form: Photographic Declaration
The PHOTOGRAPHIC DECLARATION has been created as a PDF that can be filled out on the computer.

PHOTOGRAPHIC DECLARATION	
Date:	Location:
Carrier/Shipper:	USDOT#:
Vehicle Identification or Container/Packaging Specification #:	
My name is _____. I am currently employed as a [title] in the Federal Motor Carrier Safety Administration's [location] office. On [date], in the course and scope of my employment, I investigated a [type of investigation] involving [name of carrier]. I took the photograph(s) attached to this declaration. The attached document identifies each photograph and contains a complete description of what the photograph depicts, the date and time each photograph was taken, and the file name for each photograph (if digital). I am familiar with the scene and the photograph(s) accurately depict(s) the scene at the time and place the photograph(s) was/were taken.	
Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.	
Executed on:	**Investigator's Name:**

2.5.2 Illustration E-2: Written Statement with Perjury Clause

Download PDF Form: Written Statement with Perjury Clause
Written Statement with Perjury Clause in Spanish

SIGNED STATEMENT OF _____

I, _____(name), _____(title), voluntarily give the following statement to _____ (investigator name), who has identified himself/herself as a Special Agent for the U.S. Department of Transportation, Federal Motor Carrier Safety Administration. No threats or promises have been made to me in exchange for this statement.

Narrative:

I have read the foregoing statement consisting of __page(s). It is true, accurate and complete to the best of my knowledge. I reviewed any changes and they bear my initials. **I sign this statement under penalty of perjury and in the presence of** [SI's name]**.**

Witness'/Interviewee's signature	Date

I certify that I prepared and took the above statement and that it is a complete and accurate summary of my interview with the witness.

Safety Investigator's signature	Date

Declaración firmada de _____

Yo, _____ doy voluntariamente la declaración siguiente a _____, quien se ha identificado como Agente Especial de la Administración Federal de Seguridad de Autotransportistas (FMCSA) del Departamento de Transporte (DOT) de los Estados Unidos de América. No he recibido ninguna amenaza ni promesa a cambio de esta declaración.

Narrativa:
He leído la declaración precedente que consiste en página(s). Es verdadera, exacta y completa a mi mejor conocimiento. Revisé cualquier cambio y lleva mis iniciales. **Firmo esta declaración bajo pena de perjurio y en presencia de**_____.

Firma del entrevistado / testigo	Fecha
Certifico que elaboré y tomé la declaración antedicha y que es un resumen completo y exacto de mi entrevista con el testigo.	
Firma del Investigador de Seguridad	Fecha

2.5.3 Illustration E-3: Oral Interview Form

Download PDF Form: Oral Interview Form

The Oral Interview Form has been created as a PDF that can be filled out on the computer.

Oral Interview Form	**Type of Contact** q **Telephone** q **Personal**	**Date**
Place of Interview		
Interviewee's Name	**Interview's Address**	
Name and Title of Person Interviewed		

Narrative
I, _____ [SI's Name] declare, under penalty of perjury, that the information contained in this statement is a true and accurate summary of all relevant matters discussed with the witness on _____ [Date.]

Safety Investigator's	**Date**

2.5.4 Illustration E-4: Imminent Hazard Guidelines

Imminent Hazard General Guidelines

A motor carrier with a proposed unsatisfactory rating should be evaluated against the criteria below. However, a motor carrier with a conditional, or even a satisfactory rating, could be subject to an imminent hazard. A motor carrier poses an imminent hazard to the motoring public, when it meets the following criteria:

1. An evaluation of the BASICs with the highest correlation of future crash risk in SMS (Unsafe Driving, HOS Compliance, Vehicle Maintenance, and the Crash Indicator) identifies at least one of the following:
   a. A motor carrier of property with a percentile of 85 or higher in 3 or more of the 4 crash-correlated BASICs.

   b. A motor carrier of passengers or a motor carrier subject to the Hazardous Materials threshold with a percentile of 75 or higher in two or more of the four crash-correlated BASICs.
   c. Notwithstanding the above, any single crash-correlated BASIC or combination of crash-correlated BASICS significantly exceeding the percentiles described above may meet this initial criterion when found in conjunction with the criteria listed in items 2-7 below.
2. The findings of an investigation that reveal at least 3 unsatisfactory rating factors, including Factors 2 and 3, and also
   a. Factor 2 (Parts 382, 383, 391) is unsatisfactory based on drivers **still operating** after testing positive for controlled substances or alcohol use, or drivers **still operating** on suspended licenses when the licenses have been suspended or revoked for safety-related reasons; or
   b. Factor 3 (Parts 392 and 395) is unsatisfactory based on a high violation rate and excess hours by drivers currently employed by the motor carrier.
3. Recent dispatch of vehicle(s) known by the carrier to be unsafe combined with evidence of an ineffective or nonexistent vehicle maintenance program.
4. Recent crash (es) caused by driver fatigue or lack of maintenance, combined with evidence of ongoing failure or refusal by the motor carrier to monitor vehicle repairs and maintenance and/or driver hours.
5. Ongoing pattern and practice of requiring or permitting drivers to falsify records of duty status or exceed maximum HOS limitations, combined with evidence showing a blatant disregard for safety and lack of knowledge of Federal Motor Carrier Safety Regulations.
6. Evasion of an OOS order, combined with evidence of ongoing failure or refusal to comply with driver and vehicle safety regulations. In these situations, the Agency may concurrently pursue injunctive relief, and/or an OOS or record consolidation order under 49 CFR § 386.73.
7. Evidence reveals a regulatory violation that is not described above, where the motor carrier's actions are so egregious (shocking the conscience) that the Agency would be negligent in its responsibility to protect the public, if it failed to take immediate steps to reduce the risk.

Additionally, if one or more of these circumstances exists and, in the course of an investigation, related ongoing violations are discovered, an imminent hazard situation may exist. When FMCSA declares a motor carrier with operating authority registration an imminent hazard, in addition to the Order, FMCSA will simultaneously serve a Revocation Order notifying the motor carrier that its operating authority registration is revoked.

A Revocation Order must include notification to the regulated entity that it must reapply for operating authority registration and demonstrate during the application process that the entity is fit, willing, and able to comply with appropriate regulations and statutes. A Revocation Order must be served using a delivery method that can be tracked and confirmed.

2.5.5 Illustration E-5: Roles and Responsibilities in the Imminent Hazard Out-of-Service (IHOOS) Order Process

Post-IHOOS Issuance Responsibilities and Considerations

Division Office

- Send summary/background information to Service Center. Include:
  - Vehicle identification number (VIN) listing, driver listing, and photos of vehicles, if available.
  - Information on carrier principals, phone numbers, addresses, etc.
  - Any information on attempts to evade the IHOOS Order.
- Ensure investigation, IHOOS Order, IHOOS Order documentation of service, and above summary/background information are placed into EDMS.
- Confirm the OOS status; the revocation of operating authority and the suspension of safety registration have been updated on appropriate FMCSA websites. (Shared Responsibility with the Service Center, see below)

- Obtain from OOS carrier a written record of the whereabouts and disposition of all vehicles and drivers. Update periodically during the duration of the OOS status.
- Monitor motor carrier's activities to verify adherence to OOS conditions. If activity is discovered, refer to the section below titled Discovery of Continued Operation after being served an IHOOS.
- Conduct checks of known pickup or delivery locations for evidence of continuing activity in violation of OOS order.
- Send periodic status updates to Headquarters and Service Center personnel.

Service Center

- Distribute summary/background to the following offices in Headquarters: Director, Office of Enforcement and Compliance Assistant Chief Counsel for Enforcement and Litigation Associate Administrator (AA) for Field Operations
- Enter OOS status is entered into MCMIS and inactivate the USDOT number (Service Center Enforcement Team).
- Enter IHOOS Order into EMIS
- Confirm the OOS status; the revocation of operating authority and the suspension of safety registration have been updated on appropriate FMCSA websites. (Shared Responsibility with the Division Office)
- Provide notification to the Office of Communications (MC-CM), see Handling of External Communications section below.
- Revoke operating authority, if appropriate, in the Licensing and Insurance System Send notification to the Associate Administrator, Office of Research and Information Technology (MC-R) and to the Director of the Office of Registration and Safety Information (MC-RS) informing them about the actions taken (revoking operating authority, inactivating USDOT number) and if needed, to request a manual update of SaferSys, Query Central, and other status websites. SaferSys and other systems update information from MCMIS nightly; however, an immediate update is required.
- Forward a briefing packet with the summary and background information to the other Regional Field Administrators and Field Administrators. Provide directions to Division Offices to contact State and local law enforcement partners, the IRP/PRISM registration office, and other relevant State agencies.

MC-CCE

Notify Office of General Counsel, Office of Litigation (C-30).

Handling of External Communications

Office of Communications

The FA should notify the Office of Communications (MC-CM) and provide all the information needed for press releases. MC-CM will issue a press release to national and local media outlets. The press release will be distributed to state consumer protection distribution list for regions served by the carrier.

Division Offices

Notify local consumer groups, State and local consumer's affairs offices, State licensing and registration agencies, local media, and local industry association contacts: utilize press release generated by the Office of Communications.

Follow-up Actions

Division Office

Obtain from OOS carrier a written record of the whereabouts and disposition of all vehicles and drivers. Update periodically during the duration of the OOS status. Monitor motor carrier's activities to verify adherence to OOS conditions. Conduct checks of known pickup or delivery locations for evidence of continuing activity in violation of OOS order. Send periodic status updates to HQ and SC personnel.

Where circumstances suggest that the carrier may attempt to evade the IHOOS order by operating as or through another entity, provide detailed carrier, vehicle, driver, and corporate structure and personnel information to HQ Vetting Team. Alert persons overseeing and conducting new entrant safety audits to be on the aware of any potential reincarnated or affiliated carrier operations and/or attempts to reincarnate

2.5.6 Violation Table

Note: The Violation Table does not include all Acute and/or Critical Violations.

49 CFR/VIOLATION	ELEMENTS OF THE VIOLATION	DOCUMENTS TO SUPPORT	CONTENT OF STATEMENT
382.115(a) Failing to implement an alcohol and/or controlled substance testing program (Acute)	CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date That the motor carrier knew or should have known of responsibility and violation That the driver drove a vehicle requiring a CDL That the motor carrier did not have an alcohol and/or controlled substance program	Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 382 and operated in commerce Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
382.201 Using a driver who has an alcohol concentration of 0.04 or greater (Acute)	CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date That the motor carrier (including any of its agents, officers, and representatives) knew or should have known of responsibility and violation That the driver drove a vehicle requiring a CDL	Statement from motor carrier official Statement from person verifying alcohol concentration Result of alcohol test Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Safety-sensitive function involving a

	That the driver had an alcohol concentration of 0.04 or greater Investigator must include information that illustrates the date and time (if significant) that motor carrier knew that driver had an alcohol concentration of 0.04 or greater		CMV subject to 49 CFR 382 and operated in commerce Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
382.211 Using a driver who has refused to submit to an alcohol or controlled substances test required under 49 CFR 382 (Acute)	CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date That the motor carrier (including any of its agents, officers, and representatives) knew or should have known of responsibility and violation That the driver performed a safety-sensitive function requiring a CDL That the driver refused to submit to an alcohol or controlled substances test required under 49 CFR 382	Statement from motor carrier official Statement or documentation submitted to motor carrier from person verifying driver refused to submit to alcohol and/or controlled substance testing Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Safety-sensitive function involving a CMV subject to 49 CFR 382 and operated in commerce Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
382.213(b) Using a driver who has used a controlled substance (Acute)	CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date That the motor carrier (including any of its agents, officers, and representatives) knew or	Statement from motor carrier official Statement or documentation submitted to motor carrier from person verifying driver had used a controlled substance Driver's RODS and corresponding shipping paper	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known

	should have known of responsibility and violation That the driver performed a safety-sensitive function requiring a CDL That the driver had used a controlled substance	Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382	Vehicle/driver under the control of the motor carrier Safety-sensitive function involving a CMV subject to 49 CFR 382 and operated in commerce Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
382.215 Using a driver who has tested positive for a controlled substance (Acute)	CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date That the motor carrier (including any of its agents, officers, and representatives) knew or should have known of responsibility and violation That the driver performed a safety-sensitive function requiring a CDL That the driver had tested positive for use of a controlled substance Investigator must include information that illustrates the date and time (if significant) that motor carrier knew that driver had tested positive for a controlled substance Investigator should attempt to secure photocopy of MRO Report which outlines contact with driver and motor carrier	Statement from motor carrier official Statement or documentation submitted to motor carrier from person verifying driver had tested positive for a controlled substance Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Safety-sensitive function involving a CMV subject to 49 CFR 382 and operated in commerce Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
382.301(a) Using a driver before the motor carrier has received	CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier	Statement from motor carrier official	Violation occurred

negative pre-employment CST results (Critical)	in commerce on a specific date That the motor carrier knew or should have known of responsibility and violation That the driver drove a vehicle requiring a CDL That the driver had not submitted to a pre-employment CST**or** the motor carrier used the driver in commerce prior to receiving the results of the test If Investigator is citing a violation based on the fact the motor carrier used the driver prior to receiving the results of the test, the Investigator must include information that illustrates the date and time (if significant) that motor carrier actually received negative CST result	Statement or documentation submitted to motor carrier from person verifying that driver had not received a pre-employment CST or that it had not received results prior to use of driver in commerce Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382	Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Safety-sensitive function involving a CMV subject to 49 CFR 382 and operated in <u>commerce</u> Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
382.303(a) Failing to conduct post-accident testing on driver for alcohol and/or controlled substances (Critical)	CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date That the motor carrier knew or should have known of responsibility and violation That the driver drove a vehicle requiring a CDL The driver had not submitted to post-accident testing for alcohol and/or controlled substances That the driver was involved in an accident resulting in the loss of human life **<u>or</u>** the driver received a citation under State or local law for a **<u>moving violation arising from the accident</u>** if the accident involved (1) bodily injury to any person	Statement from motor carrier official Statement or documentation submitted to motor carrier from person verifying driver had not submitted to a post-accident alcohol and/or CST Photocopy of the accident report from police agency, driver, and insurance company showing disabling damage, injury requiring immediate transport, or fatality Photocopy of citation issued to the driver for a moving violation arising from the accident Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Date (and time, if possible) motor carrier knew of accident requiring the driver to be tested Safety-sensitive function involving a CMV subject to 49 CFR 382 and operated in <u>commerce</u>

	who, as a result of the injury, immediately received medical treatment away from the scene of the accident **or** (2) one or more of the motor vehicles incurred disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other vehicle	Statement from driver that he/she was involved in the accident, received a citation for a moving violation arising from the accident (if not a fatal accident), when motor carrier was notified of accident and citation (if applicable), and time (number of hours subsequent to the accident he/she received the citation and was not tested for alcohol and/or controlled substances)	Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
382.305 Failing to implement a random controlled substances and/or an alcohol testing program (Acute)	CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date That the motor carrier knew or should have known of responsibility and violation That the driver drove a vehicle requiring a CDL That the motor carrier did not have a random controlled substance and/or alcohol testing program Investigator must prove average number of driver positions for the period cited in the case report - Investigator must secure documentary evidence from motor carrier official	Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382	Violation occurred – Motor carrier did not have a random controlled substance and/or alcohol testing program Average number of driver positions for the period used as a violation Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 382 and operated in <u>commerce</u> Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)

382.305(b)(1) Failing to conduct random alcohol testing at an annual rate of not less than 10 percent of the average number of driver positions (Critical)	CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date That the motor carrier knew or should have known of responsibility and violation That the driver drove a vehicle requiring a CDL That the motor carrier did not have a random alcohol testing program which tested at an annual rate of not less than 10 percent of the average number of driver positions Investigator must prove average number of driver positions for the period cited in the case report - Investigator must secure documentary evidence from motor carrier official	Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382 If motor carrier is using a consortium, statement should be obtained showing the number of random alcohol tests conducted	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Motor carrier had a random alcohol testing program and rate at which random alcohol tests were conducted, include number of tests to be conducted and number of tests actually completed Name of organization and/or individual responsible for determining drivers to be subject to random alcohol test Average number of driver positions for the period used as a violation and how determined Involving a CMV subject to 49 CFR 382 and operated in commerce Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)

382.305(b)(2) Failing to conduct random controlled substances testing at an annual rate of not less than 25 percent of the average number of driver positions (Critical)	CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date That the motor carrier knew or should have known of responsibility and violation That the driver drove a vehicle requiring a CDL That the motor carrier did not have a random controlled substances testing program which tested at an annual rate of not less than 25 percent of the average number of driver positions Investigator must prove average number of driver positions for the period cited in the case report - Investigator must secure documentary evidence from motor carrier official	Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382 If motor carrier is using a consortium, statement should be obtained showing the number of random controlled substances tests conducted	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Motor carrier had a random controlled substances testing program and rate at which random controlled substance tests were conducted, include number of tests to be conducted and number of tests actually completed Name of organization and/or individual responsible for determining drivers to be subject to random controlled substances test Average number of driver positions for the period used as a violation and how determined Involving a CMV subject to 49 CFR 382 and operated in <u>commerce</u> Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day

			documented as a violation)
382.503 Driver performing safety-sensitive function after engaging in conduct prohibited by Subpart B without being evaluated by Substance Abuse Professional (SAP) as required by 49 CFR 382.605 (Critical)	CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date That the motor carrier knew or should have known of responsibility and violation That the driver drove a vehicle requiring a CDL after being involved in conduct prohibited by 49 CFR 382, Subpart B– 1. The driver had refused to submit to a required alcohol and/or controlled substances test 2. The driver reported for duty or remained on duty requiring performance of a safety-sensitive function when the driver had used a controlled substance except pursuant to the instructions of a licensed medical practitioner 3. The driver had tested positive for controlled substances use in a test performed under 49 CFR 382 4. Reporting for or remaining on duty requiring performance of safety-sensitive function while having an alcohol concentration of 0.04 or greater 5. Performing a sensitive function within 4 hours after using alcohol 6. Using alcohol within 8 hours following an accident requiring an alcohol test or until the driver undergoes a post-accident alcohol test,	Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382 Investigator must obtain documentary evidence that driver engaged in prohibited controlled substances use and/or alcohol use Investigator must obtain statement from driver that he/she had not been evaluated as required by 49 CFR 382.605	Violation occurred – Motor carrier had evidence of previous prohibited alcohol and/or controlled substances conduct - Exact previous prohibited conduct must be stated [i.e., previous reasonable suspicion CST (date) disclosed positive for cocaine and results were received by motor carrier on (date)] That the motor carrier did not advise driver of resources available to driver in evaluating and resolving problems associated with misuse of alcohol and use of controlled substances That the motor carrier has no record of driver being evaluated Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR

	whichever occurs first, without having been evaluated by a SAP		382 and operated in commerce Statement should outline date of commerce (after prohibited conduct), driver's full name, and the to and from of the trip (1 for each day documented as a violation)
382.505(a) Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04 (Acute)	CMV/driver subject to 49 CFR 382 and operated (used) by the motor carrier in commerce on a specific date That the motor carrier knew or should have known of responsibility and violation Motor carrier knew driver was found with alcohol concentration of 0.02 or greater but less than 0.04 That the driver drove a vehicle requiring a CDL within 24 hours of the alcohol test in which driver was found with alcohol concentration of 0.02 or greater but less than 0.04	Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 382 Investigator must obtain documentary evidence that driver operated a vehicle requiring a CDL within 24 hours of the alcohol test in which driver was found with alcohol concentration of 0.02 or greater but less than 0.04 Documentary evidence of any alcohol test results should be included in case report	Violation occurred – Motor carrier had evidence of driver having an alcohol concentration of 0.02 or greater but less than 0.04 because of a DOT-mandated alcohol test Driving in CMV requiring CDL occurred within 24 hours of the time of the alcohol test Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 382 and operated in commerce Statement should outline date of commerce (after prohibited conduct), driver's full name,

			and the to and from of the trip (1 for each day documented as a violation)
383.23(a) Operating a CMV without a valid CDL (Critical)	CMV/driver subject to 49 CFR 383 and operated (used) by the motor carrier in commerce on a specific date That the motor carrier knew or should have known of responsibility and violation Driver operated a CMV without a valid CDL	Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 383 Certified Motor Vehicle Record from the State that issued the license Photocopy of current driver's license Statement from driver	Violation occurred Motor carrier admits that it or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 382 and operated in commerce Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
383.37(a) Knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV when the employee's CDL has been suspended, revoked, or canceled by a State (Acute)	CMV/driver subject to 49 CFR 383 and operated (used) by the motor carrier in commerce on a specific date That the motor carrier knew or should have known of responsibility and violation Motor carrier allowed, required, permitted, or authorized an employee with a CDL which is suspended, revoked, or canceled by a State or who is disqualified to operate a CMV Investigator should ensure that violation exists and there has been a conviction as defined in 49 CFR 383.5	Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 383 Certified Motor Vehicle Record from the State that issued the license which shows that license is suspended, revoked, or canceled by a State If person is disqualified, disqualification letter Photocopy of current driver's license Statement from driver	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 382 and operated in commerce in vehicle over 26,000 lbs. or designed to transport 16 or more passengers including

	- Investigator is to ascertain conviction date and ensure that documentation shows the violation occurred after the conviction date		the driver or was transporting placardable quantities of HM (list the HM by proper shipping name, hazard class or division, identification number, packing group, and quantity and include copy of Material Safety Data Sheet) Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
383.37(b) Knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV when the employee has more than one CDL (Acute)	CMV/driver subject to 49 CFR 383 and operated (used) by the motor carrier in commerce on a specific date That the motor carrier knew or should have known of responsibility and violation Motor carrier allowed, required, permitted, or authorized an employee with more than one CDL to operate a CMV	Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 383 Certified Motor Vehicle Records from each State that issued a CDL Photocopy of both driver's licenses Statement from driver	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 382 and operated in commerce Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
383.51(a) Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a CMV (Acute)	CMV/driver subject to 49 CFR 383 and operated (used) by the motor carrier in commerce on a specific date	Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves

	That the motor carrier knew or should have known of responsibility and violation Motor carrier allowed, required, permitted, or authorized a driver to drive who is disqualified to drive a CMV Investigator should ensure that violation exists and there has been a conviction as defined in 49 CFR 383.5 - Investigator is to ascertain conviction date and ensure that documentation shows the violation occurred after the conviction date	evidence proving that the vehicle is subject to 49 CFR 383 Certified Motor Vehicle Record showing disqualification Photocopy of current driver's license Statement from driver	that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 382 and operated in commerce Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
387.7(a) Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage (Acute)	Type of carriage by motor carrier subjecting it to 49 CFR 387 jurisdiction (See the Table at 49 CFR 387.9) That (nonhazardous) property, HM, hazardous substances, or hazardous waste was transported by the motor carrier on a specific date Note: See the specific identification requirements (i.e., hazard class, quantity) in the Table at 49 CFR 387.9 that must be proven when HM, hazardous substances, or hazardous waste is transported That the motor carrier did not have the required minimum levels of financial responsibility coverage at the time of this trip as indicated by its limits of public liability and the effective date of its insurance policy/surety bond coverage Investigator must ascertain whether the motor carrier has an umbrella insurance policy or surety bond that, by itself or in addition to its	Driver's RODS and corresponding shipping paper If HM, hazardous substances, or hazardous waste was transported, then a Material Safety Data Sheet or other corroborating evidence showing that the cargo transported meets the definition of a HM, hazardous waste, or hazardous substance Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 387 Copy of the motor carrier's endorsement(s), surety bond, or authorization to self-insure showing its public liability coverage and the policy's/surety bond's effective date at the time of the documented trip (include copy of umbrella policy, if any, in effect at the time of this trip) Statement from the motor carrier official responsible for maintaining public liability coverage that the motor carrier did not have the minimum required levels of	Violation occurred Statement from motor carrier official or other person (i.e., insurance broker) admitting that he/she failed to maintain reports Vehicle/driver under the control of the motor carrier Motor carrier transported (nonhazardous) property, HM, hazardous substances, or hazardous waste in a motor vehicle in interstate or intrastate commerce such as to be subject to 49 CFR 387 on this trip date Note: The Investigator should indicate the amount of financial responsibility in effect and the minimum levels of financial responsibility

	primary coverage for public liability, would meet the minimum levels of financial responsibility required There is no grace period during which the motor carrier is permitted to obtain the required minimum levels of financial responsibility - When the Investigator has discovered such a violation, it should be entered in Part B of the compliance review report and considered for enforcement action to cover any lapse in continuous coverage	financial responsibility at the time of the documented trip Note: See the less than 10,000 lbs. GVWR any motor vehicle requirement if the motor carrier transported any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of Division 2.3, Hazard Zone A or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material (49 CFR 173.403)	required given the type of carriage and commodity transported on this trip date Statement should outline date of commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
387.7(d) Failing to maintain at principal place of business required proof of financial responsibility (Critical)	Type of carriage by motor carrier subjecting it to 49 CFR 387 jurisdiction (See the Table at 49 CFR 387.9) That (nonhazardous) property, HM, hazardous substances, or hazardous waste was transported by the motor carrier on a specific date That the motor carrier, upon request by the Investigator on a specific date, could not produce at its principal place of business a copy of its required proof of financial responsibility Note: See the specific identification requirements (i.e., hazard class, quantity) in the Table at 49 CFR 387.9 that must be proven when HM, hazardous substances, or hazardous waste is transported Note: In the isolated instances in which a self-insured motor carrier is involved, such authorization is contingent	Driver's RODS and corresponding shipping paper If HM, hazardous substances, or hazardous waste was transported, then a Material Safety Data Sheet, hazardous waste manifest, or other corroborating evidence showing that the cargo transported meets the definition of a HM, hazardous waste, or hazardous substance Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 387 Statement of motor carrier official in charge of its public liability coverage stating that the motor carrier did not maintain proof of its required financial responsibility at its principal place of business at the time of the Investigator's request and visit Investigator should document all of his/her attempts to obtain proof of financial responsibility from the motor carrier and should also	Violation occurred Vehicle/driver under the control of the motor carrier on this trip date Motor carrier transported (nonhazardous) property, HM, hazardous substances, or hazardous waste in a motor vehicle in interstate or intrastate commerce such as to be subject to 49 CFR 387 on this trip date Motor carrier could not produce proof of its required financial responsibility in the form of a MCS-90, MCS-82, or authorization to be self-insured at its principal place of business Statement should outline date of commerce, driver's

	on that motor carrier maintaining a Satisfactory safety rating Investigator should review the less than 10,000 lbs. GVWR any motor vehicle requirement if the motor carrier transported any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of Division 2.3, Hazard Zone A or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material (49 CFR 173.403)	identify the motor carrier's principal place of business in the above statement Investigator should issue a written request to the motor carrier, in the Recommendations section of the compliance review report citing a 10-calendar-day due date from the date of his/her request, to send a copy of proof of its financial responsibility to the Division Office - If the requested document is not received by the deadline date, then the Investigator should consider this violation for possible enforcement	full name, and the to and from of the trip (1 for each day documented as a violation)
387.31(a) Operating a motor vehicle transporting passengers without having in effect the required minimum levels of financial responsibility (Acute)	A for-hire motor carrier of passengers CMV/driver subject to 49 CFR 387 and operated (used) by the motor carrier in interstate commerce on a specific date for compensation That a specific violation of 49 CFR 387 occurred That carried passengers in a motor vehicle with vehicle seating capacity as indicated in the Schedule of Limits under 49 CFR 387.33 Note: See the exceptions to 49 CFR 387 jurisdiction in 49 CFR 387.27(b) when vehicle has a seating capacity of 15 passengers or less Without having in effect the required minimum levels of financial responsibility at the time of this trip as indicated by the amount of its public liability coverage and effective date of its insurance policy/surety bond coverage	Copy of operating authority, motor carrier statement, telephone or newspaper advertisements, or other evidence showing that the motor carrier is a for-hire motor carrier of passengers Driver's RODS and corresponding shipping paper/passenger manifest showing interstate transportation of passengers on a specific date for compensation Vehicle registration, photographs, or vehicle specification sheet indicating its seating capacity Note: The above documentary evidence must be able to identify the company vehicle number, VIN, or license plate number so that it can be tied to the driver's RODS and passenger manifest for the documented trip Copy of the motor carrier's endorsement(s) for policies of insurance or surety bond showing the amount of its public liability coverage and the policy's/surety bond's	Violation occurred Motor vehicle/driver under the control of the motor carrier Motor carrier is a for-hire motor carrier of passengers Motor carrier transported passengers in a vehicle with a seating capacity of (15 passengers or less) (16 passengers or more) in interstate commerce on a specific date(s) for compensation Note: The Investigator should indicate the amount of financial responsibility in effect and the minimum levels of financial responsibility required given the vehicle seating capacity operated by this for-hire motor

	Note: The Investigator must ascertain whether the motor carrier has an umbrella insurance policy or surety bond that, by itself or in addition to its primary coverage for public liability, would meet the minimum levels of financial responsibility required Note: There is no grace period during which the motor carrier is permitted to obtain the required minimum levels of financial responsibility - When the Investigator has discovered such a violation, it should be entered in Part B of the compliance review report and considered for enforcement action	effective date at the time of the documented trip (include copy of umbrella policy, if any, in effect at the time of this trip) Statement from the motor carrier official (owner, controller) responsible for maintaining public liability coverage that the motor carrier did not have the minimum required levels of financial responsibility at the time of the documented trip	carrier of passengers on this trip date Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
387.31(d) Failing to maintain at principal place of business required proof of financial responsibility for passenger vehicles (Critical)	For-hire motor carrier of passengers CMV/driver subject to 49 CFR 387 and operated (used) by the motor carrier in interstate commerce on a specific date for compensation That a specific violation of 49 CFR 387 occurred That carried passengers in a motor vehicle with vehicle seating capacity as indicated in the Schedule of Limits under 49 CFR 387.33 That the motor carrier, upon request by the Investigator on a specific date, could not produce at its principal place of business a copy of its required proof of financial responsibility whether in the form of Endorsement(s) for Motor Carrier Policies of Insurance for Public	Copy of operating authority, motor carrier statement, telephone or newspaper advertisements, or other evidence showing that the motor carrier is a for-hire motor carrier of passengers Driver's RODS and corresponding shipping paper/passenger manifest showing interstate transportation of passengers on a specific date for compensation Vehicle registration, photographs, or vehicle specification sheet indicating its seating capacity Note: The above documentary evidence must be able to identify the company vehicle number, VIN, or license plate number so that it can be tied to the driver's RODS and passenger manifest for the documented trip	Violation occurred Vehicle/driver under the control of the motor carrier on this trip date Motor carrier is a for-hire motor carrier of passengers Motor carrier transported passengers in a vehicle with a seating capacity of (15 passengers or less) (16 passengers or more) in interstate commerce on a specific date(s) for compensation Motor carrier could not produce proof of its required financial responsibility in the form of a MCS-90B or MCS-82B at its principal place of business

	Liability Under Section 18 of the Bus Regulatory Reform Act of 1980 (Form MCS-90B) issued by the insurer or Motor Carrier Public Liability Surety Bond Under Section 18 of the Bus Regulatory Reform Act of 1980 (Form MCS-82B) issued by a surety Note: See the exceptions to 49 CFR 387 jurisdiction in 49 CFR 387.27(b) when vehicle has a seating capacity of 15 passengers or less Investigator should issue a written request to the motor carrier, in the Recommendations section of the compliance review report citing a 10-calendar-day due date from the date of his/her request, to send a copy of proof of its financial responsibility - If the requested document is not received by the deadline date, then the Investigator should consider this violation for possible enforcement	Statement of the motor carrier official in charge of its public liability coverage stating that the motor carrier did not maintain proof of its required minimum levels of financial responsibility at its principal place of business at the time of the Investigator's request and visit Note: The Investigator should document all of his/her attempts to obtain proof of financial responsibility from the motor carrier and should also identify the motor carrier's principal place of business in the above statement	Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
390.15(b)(2) Failing to maintain copies of all accident reports required by State or other governmental entities or insurers (Critical)	CMV/driver subject to 49 CFR 390 and operated (used) by the motor carrier in interstate commerce on a specific date That a specific violation of 49 CFR 390 occurred That a recordable accident occurred and that an accident report was filled out and not maintained by the motor carrier	Statement from motor carrier official or other person Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 390 Obtain copies of reports that are alleged to be missing	Violation occurred Statement from motor carrier official or other person (i.e., insurance broker) admitting that he/she failed to maintain reports Vehicle/driver was involved in a recordable accident Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated in interstate commerce

			Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
390.35 Making or causing to make fraudulent or intentionally false statements or reproducing records for fraudulent purposes (Acute)	CMV/driver subject to 49 CFR 390 and operated (used) by the motor carrier in interstate commerce on a specific date That the motor carrier knew or should have known of violation That the documented trip had occurred after the falsification occurred That a document was falsified, that a fraudulent document was reproduced, or that false statements were made	Statement from person involved in falsification Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 390 Obtain copies of reports that were falsified and if possible copies of original document before falsified If medical examination is falsified, statement from medical examiner should be obtained	Violation occurred Person admits a violation of 49 CFR 390.35 occurred or through other documentary evidence, the Investigator is able to prove the falsification and who committed the act Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated in interstate commerce Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
391.11(b)(4) Using a physically unqualified driver (Acute)	CMV/driver subject to 49 CFR 391 and operated (used) by the motor carrier in interstate commerce on a specific date That the motor carrier knew or should have known of violation That the driver was physically unqualified based on documentary evidence (i.e., medical	Statement from person that determined that driver is physically unqualified attesting to such fact Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 391	Violation occurred Motor carrier admits that it knew or through statement or other evidence, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR

	examination, medical report, etc.) That the documented trip is after the driver was determined to be physically unqualified	Obtain copies of reports that show that the driver is physically unqualified	391 and operated in interstate commerce If possible, statement from driver should be obtained to substantiate that he/she is physically unqualified Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
391.15(a) Using a disqualified driver (Acute)	CMV/driver subject to 49 CFR 391 and operated (used) by the motor carrier in interstate commerce on a specific date That the driver was actually disqualified based on certified documentary evidence (i.e., Certified Motor Vehicle Record from the issuing State, etc.) That the documented trip is after the driver was disqualified and after the motor carrier knew or should have known of the disqualification	Certified Motor Vehicle Record from issuing State showing disqualification or other certified record proving the disqualification Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 391 Statement from driver	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 391 and operated in interstate commerce Statement from driver involved should be obtained to prove who, what, when, where, and how Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)

391.45(a) Using a driver not medically examined and certified (Critical)	CMV/driver subject to 49 CFR 391 and operated (used) by the motor carrier in interstate commerce on a specific date Investigator should make sure that the driver was not medically examined and certified	Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 391 Statement from driver	Violation occurred Motor carrier admits that it knew or through statement or other evidence, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 391 and operated in interstate commerce If possible, statement from driver involved should be obtained admitting that he/she did not have a medical exam as required Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
391.45(b)(1) Using a driver not medically examined and certified each 24 months (Critical)	CMV/driver subject to 49 CFR 391 and operated (used) by the motor carrier in interstate commerce on a specific date Investigator should make sure driver was not medically examined and certified each 24 months	Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 391 Statement from driver	Violation occurred Motor carrier admits that it knew or through statement or other evidence, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 391 and operated in interstate commerce Statement from driver involved

			should be obtained admitting that he/she did not have a medical exam within the last 24 months Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
391.51(a) Failing to maintain driver qualification file on each driver employed (Critical)	CMV/driver subject to 49 CFR 391 and operated (used) by the motor carrier in interstate commerce on a specific date That the motor carrier did not maintain a driver qualification file on a particular driver for whom the Investigator has documented a trip	Statement from motor carrier official or Driver Qualification Worksheet Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 391	Rather than a statement, the Investigator could use the driver qualification worksheet that is in CAPRI Violation occurred Motor carrier admits that it knew or through statement or other evidence, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 391 and operated in <u>interstate commerce</u> Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
391.51(b)(7) Failing to maintain medical examiner's certificate in driver qualification file (Critical)	CMV/driver subject to 49 CFR 391 and operated (used) by the motor carrier in interstate commerce on a specific date	Statement from motor carrier official or Driver Qualification Worksheet Driver's RODS and corresponding shipping paper	Rather than a statement, the Investigator could use the Driver Qualification

	That the motor carrier did not maintain the medical examiner's certificate in driver qualification file	Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 391	Worksheet that is in CAPRI Violation occurred Motor carrier admits that it knew or through statement or other evidence, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 391 and operated in interstate commerce Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
391.51(b)(2) Failing to maintain inquiries into driver's driving record in driver qualification file(Critical)	CMV/driver subject to 49 CFR 391 and operated (used) by the motor carrier in interstate commerce on a specific date That the motor carrier did not maintain inquiries into driver's driving record in driver qualification file	Statement from motor carrier official or Driver Qualification Worksheet Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 391	Rather than a statement, the Investigator could use the Driver Qualification Worksheet that is in CAPRI Violation occurred Motor carrier admits that it knew or through statement or other evidence, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 391 and operated in interstate commerce

			Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
391.51(b)(7) Failing to maintain medical examiner's certificate in driver qualification file (Critical)	CMV/driver subject to 49 CFR 391 and operated (used) by the motor carrier in interstate commerce on a specific date That the motor carrier did not maintain medical examiner's certificate in driver qualification file Multiple-employer driver	Statement from motor carrier official or Driver Qualification Worksheet Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 391	Rather than a statement, the Investigator could use the Driver Qualification Worksheet that is in CAPRI Violation occurred Motor carrier admits that it knew or through statement or other evidence, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 391 and operated in interstate commerce Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
392.2 Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated (Critical)	CMV/driver subject to 49 CFR 392 and operated (used) by the motor carrier in interstate commerce on a specific date That the motor carrier operated a motor vehicle not in accordance with the laws, ordinances, and regulations of the	Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 392	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier

	jurisdiction in which it is being operated Investigator should keep in mind that these violations are generally best left to local enforcement agencies for enforcement	Documentary evidence should be obtained proving the violation(i.e., conviction report, etc.) Statement from driver	Involving a CMV subject to 49 CFR 390 and operated in interstate commerce Statement from driver involved should be obtained admitting that he/she operated the motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it was being operated Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
392.4(b) Requiring or permitting a driver to drive if the driver possesses, is under the influence of, or uses a narcotic drug, amphetamine, or any other substance which renders the driver incapable of safely operating a motor vehicle (Acute)	CMV/driver subject to 49 CFR 392 and operated (used) by the motor carrier in interstate commerce on a specific date That the motor carrier required or permitted a driver to drive while under the influence of or in possession of a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle Investigator should keep in mind that these violations are generally best left to local enforcement agencies for enforcement	Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 392 Documentary evidence should be obtained proving the violation(i.e., conviction report) Statement from driver	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated in interstate commerce Statement from driver involved should be obtained admitting that he/she operated the motor vehicle while under the influence of or in possession of a narcotic drug, amphetamine, or

			any other substance capable of rendering the driver incapable of safely operating a motor vehicle Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
392.5(b)(1) Requiring or permitting a driver to drive a motor vehicle who has used alcohol or has been under the influence of alcohol within 4 hours before driving (Acute)	CMV/driver subject to 49 CFR 392 and operated (used) by the motor carrier in interstate commerce on a specific date That the motor carrier required or permitted a driver to drive while under the influence of or in possession of an intoxicating beverage Investigator should keep in mind that these violations are generally best left to local enforcement agencies for enforcement	Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 392 Documentary evidence should be obtained proving the violation(i.e., conviction report) Statement from driver	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated in <u>interstate commerce</u> Statement from driver involved should be obtained admitting that he/she operated the motor vehicle while under the influence of or in possession of an intoxicating beverage Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
392.5(b)(2) Requiring or permitting a driver who by his/her general	CMV/driver subject to 49 CFR 392 and operated (used) by the motor carrier	Statement from motor carrier official	Violation occurred Motor carrier admits that it knew or

appearance or conduct or by other substantiating evidence appears to have used alcohol within the preceding 4 hours (Acute)	in interstate commerce on a specific date That the motor carrier required or permitted a driver to drive who has consumed an intoxicating beverage within 4 hours Investigator should keep in mind that these violations are generally best left to local enforcement agencies for enforcement	Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 392 Documentary evidence should be obtained proving the violation Statement from driver involved should be obtained admitting that he/she operated the motor vehicle and consumed an intoxicating beverage within 4 hours	through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated in interstate commerce Statement from driver involved should be obtained admitting that he/she operated the motor vehicle and consumed an intoxicating beverage within 4 hours Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
392.6 Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed (Critical)	CMV/driver subject to 49 CFR 392 and operated (used) by the motor carrier in interstate commerce on a specific date That the motor carrier scheduled a run which would necessitate the vehicle being operated at speeds in excess of those prescribed Investigator should keep in mind that these violations are generally best left to local enforcement agencies for enforcement	Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 392 Documentary evidence should be obtained proving the violation Statement from person(s) involved in scheduling the runs	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated in interstate commerce Separate statement from person(s) involved in scheduling the runs should be obtained

			outlining the scheduling of the runs in question and that they could not be completed within the speed limits prescribed Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
392.9(a)(1) Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured (Critical)	CMV/driver subject to 49 CFR 392 and operated (used) by the motor carrier in interstate commerce on a specific date That the motor carrier required or permitted a driver to drive without the vehicle's cargo being properly distributed and adequately secured Investigator should keep in mind that these violations are generally best left to local enforcement agencies for enforcement	Statement from motor carrier official Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 392 Documentary evidence should be obtained proving the violation Photographs should be obtained showing that the vehicle's cargo was not properly distributed and adequately secured Statement from driver Statement from shipper should be obtained if it loaded the vehicle	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated in interstate commerce Statement from driver Statement from shipper should be obtained if it loaded the vehicle Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
392.9a(a)(1) – Operating a CMV without the required operating authority	CMV/driver subject to 49 CFR 392 and operated (used) by the motor carrier in interstate commerce on a specific date	Statement from motor carrier official A declaration provided by the inspecting officer describing what was discovered	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves

	That the motor carrier required or permitted a driver to drive without the proper operating authority	Any transportation document which supports commerce and commodity being transported (i.e., bill of lading, delivery receipts) Driver's RODS and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 392 Roadside inspection report A detailed report from FMCSA's L&I System Documentary evidence should be obtained proving the violation Photographs should be obtained showing that the vehicle's cargo was not properly distributed and adequately secured Statement from driver Statement from shipper should be obtained if it loaded the vehicle	that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated in interstate commerce Statement from driver Statement from inspecting officer Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
395.1(i)(1)(i) Requiring or permitting a driver to drive more than 15 hours (Driving in Alaska) (Critical)	CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date That the driver drove more than 15 hours Driving in Alaska only	Driver's RODS (day before, day of violation, and day after) and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395 Hours of Service Severity Sheet must be submitted with case report	Statement does not have to be obtained for this violation but th e violations list should be printed and motor carrier official should sign it Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated

			in interstate commerce
395.1(i)(1)(ii) Requiring or permitting a driver to drive after having been on duty 20 hours (Driving in Alaska) (Critical)	CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date That the driver drove after having been on duty 20 hours Driving in Alaska only	Driver's RODS (day before, day of violation, and day after) and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395 Hours of Service Severity Sheet must be submitted with case report	Statement does not have to be obtained for this violation but the violations list should be printed and motor carrier official should sign it Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated in interstate commerce
395.1(i)(h)(iii) Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska) (Critical)	CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date That the driver drove after having been on duty more than 70 hours in 7 consecutive days Driving in Alaska only	Driver's RODS (complete 7-day period) and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395 Hours of Service Severity Sheet must be submitted with case report	Statement does not have to be obtained for this violation but the violations list should be printed and motor carrier official should sign it Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated in interstate commerce
395.1(i)(1)(iv) Requiring or permitting driver to drive after having been	CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier	Driver's RODS (complete 8-day period) and corresponding shipping paper	Statement does not have to be obtained for this violation but

on duty more than 80 hours in 8 consecutive days (Driving in Alaska) (Critical)	in interstate commerce on a specific date That the driver drove after having been on duty more than 80 hours in 8 consecutive days Driving in Alaska only	Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395 Hours of Service Severity Sheet must be submitted with case report	the violations list should be printed and motor carrier official should sign it Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated in interstate commerce
395.3(a)(1) Requiring or permitting driver to drive more than 10 hours (Critical)	CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date That the driver drove more than 10 hours	Driver's RODS (day before, day of violation, and day after) and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395 Hours of Service Severity Sheet must be submitted with case report	Statement does not have to be obtained for this violation but the violations list should be printed and motor carrier official should sign it Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated in interstate commerce
395.3(a)(2) Requiring or permitting driver to drive after the end of the 14th hour after coming on duty (Critical)	CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date That the driver drove after having been on duty 15 hours	Driver's RODS (day before, day of violation, and day after) and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the	Statement does not have to be obtained for this violation but the violations list should be printed and motor carrier official should sign it

		vehicle is subject to 49 CFR 395 Hours of Service Severity Sheet must be submitted with case report	Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated in interstate commerce
395.3(b) Requiring or permitting a property-carrying CMV driver to drive after 60 hours on duty in 7 consecutive days (Critical)	CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date That the driver drove after having been on duty more than 60 hours in 7 consecutive days	Driver's RODS (complete 7-day period) and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395 Hours of Service Severity Sheet must be submitted with case report	Statement does not have to be obtained for this violation but the violations list should be printed and motor carrier official should sign it Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated in interstate commerce
395.3(b) Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 70 hours in 8 consecutive days (Critical)	CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date That the driver drove after having been on duty more than 70 hours in 8 consecutive days	Driver's RODS (complete 8-day period) and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395 Hours of Service Severity Sheet must be submitted with case report	Statement does not have to be obtained for this violation but the violations list should be printed and motor carrier official should sign it Violation occurred Motor carrier admits that it knew or through statement, Investigator proves

			that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated in interstate commerce
395.8(e)(1) False reports of RODS (Critical)	CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date That the driver falsified a RODS Two documents should be used to prove falsification One verifiable document/statement verifying document or two independent unverified documents Documents used must be obtained from motor carrier's own records or files Extensive notes must be taken	Driver's RODS (day before, day of violation, and day after) and corresponding shipping paper Document(s) used to prove falsification If one verified document is being used, be sure to include the statement from the originating source proving the accuracy of the document Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395	If one verified document is being used, be sure to include the statement from the originating source proving the accuracy of the document Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated in interstate commerce
395.8(k)(1) Failing to preserve driver's RODS for 6 months (Critical)	CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date That the motor carrier failed to preserve driver's RODS	Statement from motor carrier official or Hours of Service Worksheet Shipping paper for the trip in question Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395	Hours of Service Worksheet from the investigative system showing the missing RODS signed by a motor carrier official Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR

			390 and operated in interstate commerce
395.8(k)(1) Failing to preserve driver's RODS supporting documents for 6 months (Critical)	CMV/driver subject to 49 CFR 395 and operated (used) by the motor carrier in interstate commerce on a specific date That the motor carrier failed to preserve driver's RODS supporting documents for 6 months Substantial investigation must be conducted to prove this violation - Investigator must prove that supporting document was generated, that driver received it, and that the motor carrier failed to preserve it	Statement from motor carrier official RODS (day before, day of violation, and day after) and corresponding shipping paper Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 395 Statement from driver	Statement from motor carrier official admitting that it failed to preserve driver's RODS supporting documents for 6 months Statement from driver should be obtained to prove that he/she turned in supporting documents or that motor carrier told the driver to not turn in supporting documents to evade the regulations Violation occurred Motor carrier admits that it knew or through statement, Investigator proves that it should have known Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 390 and operated in interstate commerce
396.3(b) Failing to keep minimum records of inspection and vehicle maintenance (Critical)	CMV subject to 49 CFR 396 and controlled by the motor carrier for 30 consecutive days or more Note: Exception for private motor carrier of passengers (nonbusiness) That the motor carrier operated this CMV in interstate commerce on a specific date That while operating or controlling this CMV on that specific date, the motor	Driver's RODS and corresponding shipping paper clearly identifying the CMV being operated by company number, license plate number, or other designation Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 396 Note: If the CMV is a leased vehicle, a copy of the lease agreement showing that the	Violation occurred CMV subject to 49 CFR 396 was controlled by the motor carrier for 30 consecutive days or more Motor carrier operated the CMV in interstate commerce on a specific date Motor carrier confirmed that it did

	carrier failed to maintain (or failed to have its officers, drivers, agents, representatives, or employees directly concerned with the inspection or maintenance of such CMV to maintain) minimum records of inspection and maintenance on that CMV	motor carrier is controlling the CMV for 30 consecutive days or more Statement from the motor carrier official admitting that he/she has neither kept nor required any of its employees, drivers, agents, representatives concerned with the inspection and maintenance of this CMV to keep inspection and maintenance records as described in 49 CFR 396.3(b)(1)-(4) Note: The above statement should also rule out the possibility that such records or portions of the missing records are kept at some other location than the motor carrier's principal place of business, since the motor carrier could have one of its maintenance shop vendors keep such records on the CMV Note: Cite this section if the motor carrier has no records of inspection and maintenance on the CMV - If the motor carrier has, by contrast, just kept a folder on the CMV merely identifying that CMV by company number, make, serial number, year, etc., then cite this recordkeeping violation under 49 CFR 396.3(b)(2) and/or 396.3(b)(3)	not keep (or cause to be maintained) the minimum records of inspection and maintenance as required on this CMV
396.9(c)(2) Requiring or permitting the operation of a motor vehicle declared out-of-service before repairs were made (Acute)	CMV, subject to 49 CFR 396, declared out-of-service by an authorized Special Agent of FMCSA Note: This out-of-service declaration includes inspections performed by State personnel trained and certified to conduct CVSA inspections	Driver's RODS and corresponding shipping paper clearly identifying the CMV being operated by company number, license plate number, or other designation Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 396	Violation occurred CMV subject to 49 CFR 396 was controlled by the motor carrier and declared out-of-service by an authorized Special Agent of FMCSA Motor carrier operated the CMV

	That the motor carrier or its representatives knew of the out-of-service condition prior to operating the CMV in transportation That the motor carrier operated this CMV in interstate commerce on a specific date after such CMV was declared out-of-service and before repairs were made That the motor carrier required or permitted the operation of this out-of-service CMV before repairs were made Note: The above elements establish the following facts: (1) the hazardous condition of the vehicle if allowed to be used in transportation before repairs are made, (2) notice to the driver of the CMV being placed out-of-service, and (3) the motor carrier's deliberate operation of the vehicle after it was placed out-of-service	Copy of the Driver-Equipment Compliance Check (MCS-63) obtained from the motor carrier's files indicating that its CMV was declared out-of-service based on equipment violations Note: Photographs of the out-of-service equipment defect(s) and the out-of-service sticker on the CMV (especially when the Investigator conducted the vehicle inspection during the course of the compliance review) are strongly recommended - Such photographs support the out-of-service declaration and notice to the motor carrier that the CMV is out-of-service based on equipment defects discovered during the inspection Statement from the responsible motor carrier official admitting that he/she had prior, actual knowledge that the CMV was declared out-of-service and therefore needed repairs before it could be placed back into transportation	in interstate commerce on a specific date after the CMV was declared out-of-service and before repairs were made Motor carrier or its representatives had prior, actual knowledge that the CMV was declared out-of-service before requiring or permitting that CMV to be operated in transportation Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
396.11(a) Failing to require driver to prepare DVIR (Critical)	CMV/driver subject to 49 CFR 396 and used by the motor carrier in interstate commerce on a specific date That the driver did not prepare a report in writing at the completion of his/her workday on each vehicle operated	Driver's RODS and corresponding shipping paper clearly identifying, whether by company number, license plate number, or other designation, the CMV being operated in interstate commerce Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 396 Copy of the DVIR, if available, indicating that the driver did not make any entries on that form	Violation occurred Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 396 and operated in interstate commerce Motor carrier admits that it did not require its driver(s) to prepare DVIRs and that the driver did not prepare a DVIR for the CMV he/she operated on

		Note: If the above DVIR is not the back page of the driver's RODS (and lacking any identifying information such as trip date and vehicle number), then the driver statement should cross-reference the driver's RODS to the blank DVIR (i.e., This blank DVIR, labeled Exhibit 13 by Safety Investigator Simmons, is the back page of my RODS dated 06/12/99) Statement from the motor carrier official that the company does not require the driver(s) to prepare DVIRs Note: The above statement should also indicate that the driver did not prepare a DVIR for the CMV on the documented trip date Note: A driver statement admitting that he/she did not prepare a DVIR on the documented trip date and on other trip dates further supports the allegation that the motor carrier did not require its drivers to prepare DVIRs	the documented trip date Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
396.11(a) (3) Failing to correct out-of-service defects listed by driver on a DVIR (Acute)	CMV/driver subject to 49 CFR 396 and used by the motor carrier in interstate commerce on a specific date That the driver prepared a DVIR on the CMV listing equipment defect(s) covered in Appendix G or in the CVSA Out-of-Service Criteria Note: The motor carrier must make repairs of defective or missing parts and accessories, listed in Appendix G to the FMCSR, before allowing the vehicle to be driven That the motor carrier failed to make repairs to	Driver's RODS and corresponding shipping paper clearly identifying, whether by company number, license plate number, or other designation, the CMV being operated in interstate commerce Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 396 Copy of the DVIR indicating the out-of-service defect(s) listed by the driver prior to the documented trip date Note: Photographs of the defect, if available, should be included as part of the	Violation occurred Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 396 and operated in interstate commerce Driver listed out-of-service defect(s) on his/her DVIR(s) Motor carrier admits that it did not correct the out-of-service defect(s) listed by the driver on his/her DVIR(s) prior to the documented trip date

	correct the out-of-service defects listed by the driver in his/her DVIR prior to the documented trip date	documented violation - Such photographs serve as corroborating evidence of the out-of-service defect Statement from motor carrier official that the company did not correct the out-of-service defect(s) listed by the driver on his/her DVIR, dated ---, prior to the documented trip date	Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
396.17(a) Using a CMV not periodically inspected (Critical)	CMV/driver subject to 49 CFR 396 and operated (used) by the motor carrier in interstate commerce on a specific date That the motor carrier controlling the CMV did not periodically inspect, in accordance with the criteria in Appendix G of the FMCSR, this CMV within the preceding 12-month period of the documented trip date Note: The Investigator should examine the motor carrier's maintenance files and Carrier Profile to see if the CMV received a "no equipment defect" roadside inspection performed by a State government agency or equivalent jurisdiction or FMCSA which meets the minimum standards contained in Appendix G	Driver's RODS and corresponding shipping paper clearly identifying, whether by company number, license plate number, or other designation, the CMV being operated in interstate commerce Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 396 Statement from motor carrier official admitting that the company has not conducted a periodic inspection, in accordance with the minimum criteria in Appendix G of the FMCSR, within the preceding 12-month period of the documented trip date Note: The above statement should also rule out the possibility that the motor carrier received a "no defect" roadside inspection conducted by an authorized State or Federal agency and in accordance with the Appendix G inspection criteria within the preceding 12-month period of the documented trip date In addition, the above statement should also rule out the possibility that a periodic inspection was conducted on this CMV by an agent of the motor carrier and that the	Violation occurred Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 396 and operated in interstate commerce Motor carrier admits that it did not periodically inspect, in accordance with Appendix G criteria, this CMV within the preceding 12-month period of the documented trip date Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)

		required report is maintained by that agent	
396.17(g) Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards (Acute)	CMV/driver subject to 49 CFR 396 and operated (used) by the motor carrier in interstate commerce on a specific date That the motor carrier controlling the CMV did not periodically inspect, in accordance with the criteria in Appendix G of the FMCSR, this CMV within the preceding 12-month period of the documented trip date Note: The Investigator should examine the motor carrier's maintenance files and Carrier Profile to see if the CMV received a "no equipment defect" roadside inspection performed by a State government agency or equivalent jurisdiction or the FMCSA which meets the minimum standards contained in Appendix G	Driver's RODS and corresponding shipping paper clearly identifying, whether by company number, license plate number, or other designation, the CMV being operated in interstate commerce Vehicle registration showing GVWR or other documentary evidence proving that the vehicle is subject to 49 CFR 396 Statement from the motor carrier official admitting that the company has not conducted a periodic inspection, in accordance with the minimum criteria in Appendix G of the FMCSR, within the preceding 12-month period of the documented trip date Note: The above statement should also rule out the possibility that the motor carrier received a "no defect" roadside inspection conducted by an authorized State or Federal agency and in accordance with the Appendix G inspection criteria within the preceding 12-month period of the documented trip date In addition, the above statement should also rule out the possibility that a periodic inspection was conducted on this CMV by an agent of the motor carrier and that the required report is maintained by that agent	Violation occurred Vehicle/driver under the control of the motor carrier Involving a CMV subject to 49 CFR 396 and operated in interstate commerce Motor carrier admits that it did not periodically inspect, in accordance with Appendix G criteria, this CMV within the preceding 12-month period of the documented trip date Statement should outline date of interstate commerce, driver's full name, and the to and from of the trip (1 for each day documented as a violation)
397.5(a) Failing to ensure a motor vehicle containing a Division 1.1, 1.2, or 1.3 (explosive) is attended at all times by	In commerce Division 1.1, 1.2, or 1.3 explosives Vehicle not attended	RODS or timecard Shipping paper/bill of lading or other document to prove commerce Material Safety Data Sheet may also be necessary	If a statement is used to prove this violation, it should cover the following-

its driver or a qualified representative (Acute)		Photographs illustrating the violation	1. Division 1.1, 1.2, or 1.3 explosives were transported in commerce 2. Location of driver/representative at the time of violation
397.7(a)(1) Parking a motor vehicle containing a Division 1.1, 1.2, or 1.3 (explosive) within 5 feet of traveled portion of highway (Critical)	In commerce Division 1.1, 1.2, or 1.3 explosives Parked on or within 5 feet of traveled portion of a public street or highway	RODS or timecard Shipping paper/bill of lading or other document to prove commerce Material Safety Data Sheet may also be necessary Photographs illustrating the violation	A statement may not be necessary to prove this violation; however, if used, it should cover the fact that the motor vehicle was parked within 5 feet of traveled portion of highway
397.7(b) Parking a motor vehicle containing HM other than Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (Critical)	In commerce Placardable quantity of HM Parked on or within 5 feet of the traveled portion of public street or highway	RODS or timecard Shipping paper/bill of lading or other document to prove commerce Material Safety Data Sheet may also be necessary Photographs illustrating the violation	A statement may not be necessary to prove this violation; however, if used, it should cover the fact that the motor vehicle was parked within 5 feet of traveled portion of highway or street
397.13(a) Permitting a person to smoke or carry a lighted cigarette, cigar, or pipe within 25 feet of a motor vehicle containing explosives, oxidizing materials, or flammable materials (Critical)	In commerce Class 1, 3, or 5 or Division 2.1, 4.1, or 4.2 Smoking within 25 feet	RODS or timecard Shipping paper/bill of lading or other document to prove commerce Material Safety Data Sheet may also be necessary Photographs illustrating the violation	A statement may not be necessary to prove this violation; however, if used, it should cover the fact that a person was permitted to smoke or carry a lighted cigarette, cigar, or pipe within 25 feet of a motor vehicle containing explosives, oxidizing materials, or flammable materials
397.19(a) Failing to furnish driver of motor vehicle transporting Division 1.1, 1.2, or 1.3 (explosives) with a copy of the rules of 49 CFR 397 and/or emergency	In commerce Placardable quantity of HM (Division 1.1, 1.2, or 1.3) 49 CFR 397 and/or emergency response instructions not provided	RODS or timecard Shipping paper/bill of lading or other document to prove commerce Material Safety Data Sheet may also be necessary	A statement should cover that a copy of 49 CFR 397 and/or emergency response instructions was not provided

response instructions (Critical)			
397.67(d) Requiring or permitting the operation of a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material that is not accompanied by a written route plan (Critical)	In commerce Placardable quantity of HM (Division 1.1, 1.2, or 1.3) Route plan not prepared	RODS or timecard Shipping paper/bill of lading or other document to prove commerce Material Safety Data Sheet may also be necessary Photographs illustrating the violation	A statement should cover Division 1.1, 1.2, or 1.3 transported
171.15 Motor carrier failing to give immediate telephone notice of an incident involving HM (Critical)	Commerce (interstate or intrastate) HM Incident occurred and not reported	Shipping paper/bill of lading or other document to prove commerce Shipping paper (Material Safety Data Sheet may also be necessary) Report or other evidence proving that one of the situations identified in 49 CFR 171.15(a)(1)-(a)(5) occurred Record from PHMSA indicating that no immediate notification was received	A statement is generally not necessary to prove this violation; however, if used, it should cover the fact that an incident involving HM occurred that meets the requirements for immediate reporting and that the incident was not reported
171.16 Motor carrier failing to make a written report of an incident involving HM (Critical)	Commerce (interstate or intrastate) HM subject to requirements of 49 CFR 171.16 Incident occurred and not reported	Shipping paper/bill of lading or other document to prove commerce Shipping paper (Material Safety Data Sheet may also be necessary) Report or other evidence proving that an incident occurred Record from PHMSA indicating that no immediate notification was received	A statement is generally not necessary to prove this violation; however, if used, it should cover the fact that an incident involving HM occurred and that the incident was not reported
177.800(c) Failing to instruct a category of employees in hazardous materials regulations (Critical)	Individual is a HM employee and performed the functions of a HM employee Employee not trained in accordance with 49 CFR 172.704	Statement or other documentary evidence proving the individual is a HM employee and performed these functions (i.e., signature on a shipper's certification, test report, etc.) Identify the training that was not provided Include copies of any training program that does exist	For statement to prove training violations, it is advisable to obtain a statement from the employee in question and if possible, also from the individual- 1. Describe the functions of the employee 2. Describe any training that did occur

			3. Verify elements of the training that has not been conducted
177.817(a) Transporting a shipment of HM not accompanied by a properly prepared shipping paper (Critical)	Commerce (interstate or intrastate) transportation HM Improper shipping description per 49 CFR 172.200, 172.201, 172.202, 172.202(a), 172.203	Shipping paper/bill of lading/RODS or other documentary evidence proving commerce and transportation Shipping paper (Material Safety Data Sheet may also be necessary)	A statement is not necessary to prove this violation
177.817(e) Failing to maintain proper accessibility of shipping papers (Critical)	Commerce (interstate or intrastate) transportation HM Shipping paper inaccessible	Shipping paper/bill of lading/RODS or other documentary evidence proving commerce and transportation Shipping paper (Material Safety Data Sheet may also be necessary) MCS-63 or statement	If a statement is used for this violation, it must include a description verifying where the shipping papers were maintained in the vehicle
177.823(a) Moving a transport vehicle containing HM that is not properly marked or placarded (Critical)	Commerce (interstate or intrastate) transportation HM Vehicle not properly placarded	Shipping paper/bill of lading/RODS or other documentary evidence proving commerce and transportation Shipping paper (Material Safety Data Sheet may also be necessary) Photographs of the vehicle & placards	A statement is not necessary to prove this violation
177.841(e) Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals (Acute)	Commerce (interstate or intrastate) transportation HM with a poison label and foodstuff on the vehicle	Shipping paper/bill of lading/RODS or other documentary evidence proving commerce and transportation Shipping paper (Material Safety Data Sheet may also be necessary) and vehicle bill of lading Photographs of the locations of the different HM loaded in the vehicle illustrating the violation when available	A statement is not necessary to prove this violation
180.407(a) Transporting a shipment of HM in cargo tank that has not been inspected or retested in accordance with 49 CFR 180.407 (Critical)	Commerce (interstate or intrastate) transportation Specification cargo tank HM requiring a specification cargo tank Tank filled and transported after inspection due date	Shipping paper/bill of lading/RODS or other documentary evidence proving commerce and transportation	A statement is not necessary to prove this violation

		Certificate of compliance/photograph of specification plate Shipping paper (Material Safety Data Sheet may also be necessary) Last test/inspection report Photographs of tank markings may be included	
180.415 Failing to mark a cargo tank which passed an inspection or test required by 49 CFR 180.407 (Critical)	A specification cargo tank Tank was tested and not marked	Certificate of compliance/photograph of specification plate Copy of last test and inspection report Photographs of the tank documenting the markings on the tank - Be sure to include any test and inspection markings and the specification plate	A statement is not necessary to prove this violation
180.417(a)(1) Failing to retain cargo tank manufacturer's data report certificate and related papers as required (Critical)	A specification cargo tank Records not maintained	Photograph of specification plate, copy of test/inspection report, title, registration, or other document which supports the fact the tank is a specification tank Statement or cargo tank worksheet documenting missing papers	If a statement is used, it should at a minimum- 1. Identify the tank by Unit #, Serial #, and USDOT # 2. Identify the documents missing for each tank
180.417(a)(2) Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required (Critical)	A specification cargo tank Records not maintained	Photograph of specification plate, copy of test/inspection report, title, registration, or other document which supports the fact the tank is a specification tank Statement or cargo tank worksheet documenting missing papers	If a statement is used, it should at a minimum- 1. Identify the tank by Unit #, Serial #, and USDOT # 2. Identify the documents missing for each tank

● full review of part

⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

Onsite Investigation – Focused

	Driver Fitness	Controlled Substances/Alcohol	Vehicle Maintenance	HOS Compliance	HM Compliance	Unsafe Driving
Safety						
40 – Drug & Alcohol Testing		●				

380 – Special Training	●			⊗ .503(b), .505, .513		●
382 – Drug & Alcohol Testing		●				
383 – Commercial Driver's License (CDL)	●	⊗ Part of CAIR	⊗ Part of CAIR	⊗ Part of CAIR	⊗ Part of CAIR	⊗ Part of CAIR
390 – FMCSR General	⊗ .3, .15, .23, .25	⊗ .15	⊗ .3, .15, .21, .23, .25	⊗ .3, .15, .23, .25		⊗ .3, .15, .23, .25
391 – Driver Qualifications	●	⊗ .23(d-m), .41-.45	⊗ .13	⊗ .21, .41, .43		⊗
392 – Driving of Motor Vehicles	⊗ .3, .9a(a)	⊗ .9a(a)	⊗ .2, .9, .62, .9a(a)	⊗ .3. .6, .9a(a)	⊗ .2	●
393 – Vehicle Parts and Accessories			●			
395 – Hours of Service (HOS)				●		
396 – Vehicle Maintenance			●			

Safety Audit Manual

For

eFOTM Redevelopment

Federal Motor Carrier Safety Administration (FMCSA)

U.S. Department of Transportation

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3.0 Safety Audit Manual

3.1 Stage 1: Introduction

3.1.1 The Safety Audit

Definition of a Safety Audit (SA)

The SA is an examination of a new entrant's operation. A SA also provides educational and technical assistance on safety and the operational requirements of the FMCSR and applicable HMR. The audit gathers critical safety data, needed to make an assessment of the motor carrier's safety performance and basic safety management controls. SAs do not result in safety ratings [Title 49, Part 385.101].

The New Entrant (NE) Safety Assurance Program Applies to the Following

The New Entrant Safety Assurance Program under 49 CFR Part 385, Subpart D applies to all new United States and Canada-domiciled motor carriers seeking to conduct interstate operations within the United States. Mexico-domiciled NEs are subject to 49 CFR Part 385, Subpart B. Non-North American-domiciled new entrants are subject to 49 CFR Part 385, subparts H and I.

Motor Carriers Subject to the SA Requirement

Effective January 1, 2003: All NE motor carriers (private and for-hire) seeking to operate in interstate commerce must undergo a SA. The SA is an educational opportunity for the NE. Civil penalties may not be levied against a motor carrier, but a motor carrier's registration may be revoked as a result of failing a SA.

Effective February 17, 2009: Any motor carrier granted a United States Department of Transportation (USDOT) number on or after February 17, 2009, will be subject to the NE Safety Assurance Program, Subpart D, as modified in the Final Rule. Any motor carrier still within the 18-month monitoring period, that was granted its USDOT number prior to February 17, 2009, will be subject to the New Entrant Safety Assurance Process, as it existed prior to the effective date of the new Final Rule. The Final Rule, effective February 17, 2009, is not retroactive. A SA conducted on a NE motor carrier that received its USDOT number prior to February 17, 2009 will be conducted under the previous rule, and the NE motor carrier is not subject to the automatic failure violations. Version 6.7 of CAPRI must be used by the auditor to complete the SA for these motor carriers. For NE motor carriers that fall under the previous rule, refer to the Conducting a Safety Audit on a Motor Carrier That Received Its USDOT # Before February 17, 2009 section of the eFOTM, found in the eFOTM archives.

Effective October 1, 2013: The Moving Ahead for Progress in the 21st Century (MAP-21) reauthorization legislation reduces the length of time to conduct a new entrant safety audit. Beginning October 1, 2013, new entrant motor coach carriers with a new entrant entry date of October 1, 2013, or later, will be required to have a safety audit conducted within 120 days from the date of their new entrant entry date. All other motor carriers will be required to have a safety audit conducted within 12 months from their new entrant entry date.

New Entrants with Safety Measurement System Alerts

Pre-Safety Audit
If one or more of a new entrant motor carrier's SMS BASIC percentiles exceed the current intervention thresholds or the new entrant has triggered an EA prior to a safety audit, an onsite safety audit must be conducted. *See* New Entrant Safety Audit Process Document, section 2.2 (Determine Offsite Eligibility). The onsite safety audit should now be conducted within 120 days of the new entrant carrier exceeding the intervention threshold or triggering an EA.

Post-Safety Audit

If a new entrant motor carrier's SMS percentile in the Crash Indicator or Unsafe Driving BASIC exceeds the intervention threshold after a safety audit is completed, but while the carrier is still in the monitoring period, the motor carrier will appear on a list in the Activity Center for Enforcement (ACE). This new list will be titled "Priority New Entrant Carriers." An onsite investigation must be conducted within 120 days of the new entrant appearing on this priority list.

The type of onsite investigation (i.e., focused or comprehensive) will be determined by the Division Office based on current onsite policy and procedures.
Please note:

- A safety audit does not count as an investigation. For example, if an investigation is required two weeks after the safety audit is completed, the investigation will include the data for 365 days prior to the investigation.
- If the new entrant graduates prior to the investigation being completed, an investigation will still be required.

New Entrant Warning Letters

The system will determine which carriers should receive warning letters. These letters will also be generated and mailed by the system based on the criteria described in the table below. The objective of the New Entrant warning letters is to alert a motor carrier that one or more of its BASICs has risen to an unacceptable level. The letters are designed to acquaint these motor carries with the CSA program to prevent further instances of non-compliance and address associated problem areas sooner.

The letters will be issued when a NE's safety performance begins to worsen and indicate the need for corrective action. These warni ng letters a lso replace the Expedited Action (EA) letters sent previously under 49 CFR 385.308 that required NEs to submit written responses.

For additional background information refer to the Implementation of New Warning Letters Policy (*MC-ECS-2016-0006*).

Two types of NE warning letters will be generated by the MCMIS, BASIC warning letters and EA warning letters. For each type, there is a pre-safety audit and post-safety audit version. The two letters are similar except the pre-safety audit warning letter includes additional text designed to help the motor carrier prepare for its upcoming safety audit. No action is required by the carrier or the Field Staff relating to these letters, which replace the previous EA letters that required corrective act ion to be submitted. That is no longer a requirement per policy *MC-ECS-2015-0002*.

The following table describes the criteria to trigger a NE warning letter - BASIC and/or EA.

	BASIC Warning Letters	**Expedited Action Warning Letters**
Safety-Based Criteria	Based on Monthly SMS results: • BASICs over intervention threshold • Does not meet High-Risk criteria (two of the following BASICs over 90 percentile: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance	Generated if one of the seven EAs listed in 49 CFR 385.308 is discovered during an inspection
Warning Letter Text	Customized based on BASICs over intervention threshold. Crash Indicator only and Hazardous	Customized based on the EA violations cited

	Materials (HM) Compliance only have their separate customized letters	
Wait Time	Must be in the NE program for 3 months before initial letter is generated	There is no wait time. As soon as the carrier is placed into the new entrant program, they will be subject to the EA warning letter.
Pre-Safety Audit Letter	Only one letter is generated in the pre-safety audit period	Only one letter is generated in the pre-safety audit period. For example, prior to the safety audit, a carrier is cited for a violation of 49 CFR 385.308(a)(6), operating without the required levels of financial responsibility. The new entrant will not receive any further EA warning letters, regardless of any other violations the carrier may incur, until after the safety audit is conducted. This letter does not impact the new entrant requirement of an expedited safety audit. If a new entrant triggers an EA violation prior to receiving a safety audit, the new entrant will continue to be prioritized for an expedited safety audit, which must be conducted onsite within 120 days after the carrier met the criteria for an expedited safety audit.
Post-Safety Audit Letter	Generated every time a new BASIC (not identified in prior warning letters or over the threshold at the time of the safety audit/investigation) is over the intervention threshold	The post-safety audit EA warning letter will only be generated once for each new EA discovered. Therefore, for example, if the carrier has multiple violations of 49 CFR section 385.308(a)(1), using a driver not possessing a valid commercial driver's license to operate a commercial motor vehicle are discovered, the carrier will only receive an EA warning letter for the first instance.

There is no requirement for a NE motor carrier to respond to any warning letter, including NE EA warning letters.

To view the New Entrant Warning Letter templates refer to the Implementation of New Warning Letters Policy (MC-ECS-2016-0006) attachements.

Note that a similar set of warning letter templates have been adopted for Mexico-domiciled and non-North-American carriers. Examples may be found in Implementation of Warning Letters for Mexico- and Non-North-American-domiciled Motor Carriers (MC-ESB-2016-0005) attachments. See also Mexico manual at Expedited Actions for Mexico-domiciled Long-Haul Carriers for related procedures for Mexico-domiciled long-haul carriers specifically.

See the Mexico-Domiciled Motor Carrier Manual at Prioritization of Pre-Authorization Safety Audits and Safety Audits of Mexico-domiciled Motor Carriers for procedures outlining the priority characteristics to be used by FMCSA Audit Supervisors to assign PASAs, OP-2 Safety Audits and New Entrant Safety Audits to FMCSA safety auditors.

When to Conduct a SA

SAs are conducted on NEs within 12 months after beginning operations. NEs which transport passengers are required to have a SA conducted within 9 months after the NE passenger carrier receives required operating authority (see FAQ #8 in Attachment to policy memo effective 11/20/2009). For new entrant motor coach carriers with a NE entry date of October 1, 2013, or later, FMCSA will conduct a safety audit within 120 days from the date of their new entrant entry date.

Note: Hazardous materials (HM) safety permit motor carriers and HM motor carriers requiring a HM special permit generally do not receive a SA. An Onsite Comprehensive Investigation is conducted within the first 6 months of operation.

Moving Ahead for Progress in the 21st Century (MAP-21)

(Implementation of Agricultural Exemptions in the NE Safety Assurance Program policy, dated 4/8/2013)

Section 32101(d)

This section of MAP-21 provides a statutory exemption from the hours of service (HOS) regulations for commercial motor vehicles (CMV) drivers engaged in the transportation of agricultural commodities and farm supplies for agricultural purposes. Transportation qualifying for this exemption must be conducted during "planting and harvesting seasons," as defined by the State.

If a NE motor carrier engages in the transportation of agricultural commodities and farm supplies, it will be exempt from all of Part 395. Therefore, the related questions on the NE SA do not apply. However, transportation qualifying for this exemption must be conducted during "planting and harvesting seasons," as defined by the State. If the NE motor carrier's operations meet the requirements for this exemption, all Part 395 questions should be marked "Not Applicable (N/A)."

Responses to the remaining safety audit questions should be documented per standard procedures.

Section 32934

This section provides a wide exception from the regulations for the operation of *covered farm vehicles* (CFVs), including the individuals operating these vehicles. Because of these exceptions New Entrant Safety Audits will not be conducted on carriers solely operating covered farm vehicles.

This exemption is not available to a covered farm vehicle transporting quantities of hazardous materials (HM) requiring placards. States that made the exemptions available to CFVs transporting quantities of HM requiring placards would have regulations that are incompatible with 49 CFR Part 350 and may not qualify for full Motor Carrier Safety Assistance Program (MCSAP) funding.

To qualify for these exemptions, the NE motor carrier must meet the definition of a covered farm vehicle as described in Section 32934 of MAP-21. If qualified, motor carriers using only CFVs in their operations will not be subject to a SA. However, these carriers will remain in the NE program for monitoring for the complete 18-month time period.

At any point during the SA process, if a NE motor carrier claims eligibility for the CFV exception, the auditor shall provide the carrier with the self-certification documentation included as Attachment 1. The self-certification document must be signed by the owner of the company or his designee and must include the title of the person that is signing the document.

If a NE motor carrier's operation changes to include non-covered farm vehicles, or it is determined the carrier does not qualify for the exemption for any reason, the exemption must be removed in the Portal and a SA conducted.

A CFV motor carrier is exempted from the SA, but not from the NE program. The motor carrier must still complete the 18-month monitoring period prior to receiving permanent registration.

If a SA was previously completed and uploaded as a motor carrier operating only covered farm vehicles, using the procedures described in the policy *ECS-2013-0003; Implementation of the Agricultural Exemptions in the New Entrant Safety Assurance Program dated April 8, 2013*, and it is subsequently determined that the NE motor carrier is not or no longer a CFV motor carrier, the Division Administrator shall determine the level of investigation/intervention necessary to assure compliance.

Portal Procedures for Exempting a NE Motor Carrier from the SA

The following guidelines for making changes in the Portal should be used. In addition, detailed directions regarding this process are provided in the Covered Farm Vehicle Exemption Instructions PowerPoint.

Exempting a New Entrant Motor Carrier

- Log into the Portal;
- From the Home screen, navigate to the "Resolution Management" drop down;
- Choose the "Manage Safety Audit Exempted Companies" option;
- Enter the DOT # into the search screen and click 'Submit';
- Once the company information appears, there will be a green check mark in the "Edit" column;
- Click the green check mark;
- The SA Exemption Request box will appear which requires comments to be entered;
- Comments must include at a minimum: "Signed and Dated Covered Farm Vehicle confirmation sheet was sent to [Enter Division Office] on [Enter Date]." Additional comments may be included, if necessary;
- After entering comments, click the "Submit" button; and
- Click "OK" when the confirmation box appears.
- The system will reflect that the carrier has been exempted from the SA.

If it is determined that a NE motor carrier claiming the exemption does not meet the requirements, a SA must be conducted, and all violations of the regulations that are discovered, must be cited. An explanation detailing why the exemption does not apply must be included in Part C of the safety audit.

If at any time, a NE motor carrier's operation changes to include non-covered farm vehicles, the exemption must be removed in Portal.

- Go to the "Manage Safety Audit Exempted Companies" screen;
- Enter the DOT number; and
- Click the red "X" in the Edit field.
- The removal of the exemption also requires comments. In the comments field, you must enter the reason for removing the exemption.

Once the exemption has been removed, the NE will be placed back on the SA assignment list and the SA must be conducted as soon as practicable.

The SA Process

The SA will be conducted by an individual certified as a Safety Auditor or Safety Investigator (SI) under FMCSA regulations, and will consist of an interview session with a motor carrier official, and a two to four hour review of the NE's safety management systems, and a sample of required records and operational practices. The areas for review include the following:

- Driver qualifications
- Driver records-of-duty status (RODS)
- Vehicle maintenance including repair and maintenance
- Accident register
- Controlled substances and alcohol use and testing requirements
- Commercial Driver's License (CDL) standards
- Financial responsibility
- Transporting and marking HM
- Economic regulations, including Household Goods (HHG)
- Operating authority
- Reincarnated/chameleon motor carrier vetting
- When applicable:
    - Passenger
    - HM
    - HHG

SA Question Guidance

For guidance on how to answer the SA questions, the Auditor should refer to guidance provided for each individual SA question in the Sentri SA program.

During the SA, When Violations are Discovered and Corrective Action Has Been Taken by the Motor Carrier, the Safety Auditor Should Not Cite Those Violations

If violations are discovered at the time of the SA, but sufficient evidence demonstrates that the NE motor carrier has taken subsequent corrective action that places the carrier into regulatory compliance, the safety auditor should not cite the violation (see policy dated 4/8/2011).

Handling the NE Motor Carrier's Operating Authority When a Motor Carrier Fails the SA

The motor carriers' operating authority is independent of its USDOT number and therefore the failed SA will not affect a motor carriers' operating authority status.

The SA Format

The SA has three parts: Parts A, B, and C.

- Part A - Multipurpose and provides the background/introductory information for the audit.
- Part B - Consists of questions (economic/safety/HM/HHG/passenger (ADA) and reincarnated/chameleon motor carrier detection). The questions are structured to provide the auditor with a systematic review of the motor carrier's operations. The answers serve as indicators for the effectiveness of a motor carrier's compliance with applicable FMCSR and/or HMR. Recommendations - Provide the motor carrier with suggestions and requirements to gain future compliance.
- Part C - Provides specific information about the SA such as the name and title of the individuals who were interviewed and comments from the auditor.

The pass/fail criteria for SA can be found in Appendix A to Part 385.

Generally, the SA should only cover the questions on the SA. However, you should be prepared to explain the documents outlined in the Educational and Technical Assistance packet to ensure that the motor carrier is aware of safety expectations.

Where to Conduct a SA

NE audits may be conducted either at the motor carrier's PPOB or in a group setting. Division Administrators (DAs) should determine which method is most efficient and cost effective to the Government. It is essential that all audits are standardized and conducted in a uniform manner from State to State.

Note: Only Federal staff will conduct audits on Canadian motor carriers and Mexico-domiciled motor carriers.

The Minimum Amount of Time a Motor Carrier is Required to be in Operation Before SA Can Be Performed

Audits will be scheduled only after a motor carrier has sufficient evidence of interstate activity. Generally, this is 3 months after beginning their operations. This information may be obtained by asking the NE motor carrier directly when scheduling the SA and by checking the NE profile.

Procedures to Follow if an Investigation was Already Completed on the Motor Carrier

If an Onsite Comprehensive Investigation is conducted at any time on a motor carrier who hasn't had a SA, a SA will not be performed. The Onsite Comprehensive Investigation will satisfy the requirement that each NE undergoes a SA within the first 12 months of operation before receiving permanent authority. A non-rated review does not satisfy the requirement that each NE undergo a SA.

3.1.2 Special Procedures For SAs

Carrier Fails to Keep an Appointment After Several Attempts Have Been Made

If a carrier fails to keep an appointment, and several attempts have been made to conduct the audit, the situation should be considered a refusal to permit a SA to be performed on a NE's operations. It is required that documentation be maintained for attempts, if refusal becomes an issue. *Illustration SA-2* may be used to document attempts to schedule an audit. The procedures outlined in 385.337 should be followed.

Determining if the Carrier Refused to Submit to a NE Audit

The SA is a required component of the NE motor carrier registration process and is a non-enforcement event. Therefore, it is expected that the number of carriers refusing to participate will be minimal. However, the determination a carrier has refused to submit to a NE audit is made by the Division Administrators (Das) on a case-by-case basis, or by the carrier not contacting the appropriate Division/MCSAP office. DAs should exercise judgment and discretion in making this determination. This determination should be based on the carrier's negative actions (either verbal or written) toward participating in the audit. A determination that a carrier has "refused to submit" to a SA may be made based on one or more of the following:

- A carrier's obvious refusal to allow an audit to be scheduled upon reasonable request and notification of the SA requirements. The carrier's refusal may be made orally or in writing, but the Division Office should ensure some form of documentation is maintained to support the refusal and subsequent action by FMCSA.
- A carrier's failure to participate in a scheduled appointment, at either a group audit or carrier specified location, without a reasonable explanation and/or extenuating circumstances (a "no-show").
- A carrier's failure to respond to an auditor's attempts to schedule the audit. The auditor must make at least 3 reasonable attempts to schedule the audit with a carrier, to no avail, before the carrier's actions may be deemed a refusal. The attempts should be clearly documented to validate

every effort made to schedule the audit and ensure the carrier has had ample opportunity to comply with the request before proceeding to revoke the new entrant's registration under Section 385.337(b). The mere lack of a response to one FMCSA request to schedule the audit should not trigger a revocation proceeding. This is particularly important because the rules do not provide for administrative review if a carrier refuses to submit to an audit.

If a NE motor carrier's registration was revoked because FMCSA found that the NE motor carrier had failed to submit to a SA, the motor carrier must comply with Section 385.329(c)(1-3).

NE Motor Carrier Provided False or Misleading Information During the SA

- The auditor should notify the Division for appropriate handling.

During a SA, the Auditor Suspects the Carrier is Reincarnated/Affiliated

Questions within the SA are designed to elicit information that may identify a motor carrier that is a reincarnation, or affiliate, of a previous entity. Examples of these SA questions are:

- Has the carrier, or corporate officers for the carrier, ever been affiliated or had any relationship with any former or current carrier regulated by the FMCSA?
- Is the company using documentation from another carrier, other than the one being audited, to demonstrate compliance with the regulations?
- Is the company using the same phone number, email address, vehicles, location, or any other assets of any former or current FMCSA regulated entity?
- Did any of the documents reviewed, or information, provided by the carrier during the audit lead the investigator to believe the motor carrier is the continued operations of another motor carrier?

Affirmative answers to any one, or all, of these questions, is information that should cause the safety auditor/investigator to suspect reincarnation/affiliation. In that event, the safety auditor/investigator should consult with the FMCSA Division Administrator (DA) or his/her designee, and the DA, after consultation with the SCET, may choose to stop the Safety Audit and initiate a non-ratable review. Scheduling a non-ratable review prevents the possibility that a suspected reincarnated carrier could potentially pass a New Entrant Safety Audit.

Since there may be legitimate reasons that a motor carrier may establish a new identity , to manage the consultation with the DA (or his/her designee), the safety auditor/investigator should consult *Appendix K – Reincarnated/Affiliated Carrier Analysis Factors and Checklist* (*Attachment A* of the August 29, 2012 policy *Procedures for Investigating Potential Reincarnated/Chameleon and Affiliated Motor Carriers*). Specific attention should be placed on the "Prior History" section discussing a negative safety history that the company may be trying to avoid.

Auditor Determines that a NE Motor Carrier is Failing to Comply with the HHG Regulations

- No further action is warranted by the SA; however, a report will be generated by the Commercial Enforcement Division to determine if further action is necessary.

NE Motor Carrier Reclassifies its Status Multiple Times

- The SC NE Coordinator will provide notice for appropriate action to the respective DA of any carrier within their Division that has had more than 3 reclassifications. Such actions may include scheduling the carrier for an Onsite Comprehensive Investigation.

Situations Under Which a NE Will Receive an Investigation Rather than a SA

An Onsite Comprehensive Investigation should be conducted in place of a SA if, during the 18-month monitoring process, one of the following conditions occurs:

- A NE motor carrier is involved in a significant crash;
- A NE motor carrier is the subject of a non-frivolous complaint;
- A NE motor carrier is involved in an HM incident;

- The NE meets the Mandatory definition; or
- A NE motor carrier is transporting materials that require a HM Permit.

Note: If a NE motor carrier receives an Onsite Comprehensive Investigation before a SA, a SA will **not** be conducted.

3.2 Stage 2: Pre-Audit

3.2.1 Procedures that Should be Followed to Prepare for a Safety Audit

You should follow these steps to prepare for your audit:

Making An Appointment

It is FMCSA policy that you should make an appointment for all investigations. Why? In the majority of cases, the initial contact will ensure the necessary personnel and records will be available upon your arrival at their place of business.

When you make an appointment, you should identify yourself and explain the purpose of your visit to the appropriate motor carrier official. Once the appointment is made, you should send a confirmation letter and questionnaire to the carrier to ensure that the carrier receives this information in a timely fashion; it is preferred that the letter and questionnaire be faxed to the carrier. The confirmation letter is used to inform the carrier of the place, time, and date of the SA. When the carrier completes the questionnaire, it will assist you in the completion of Part A and will prepare you for your investigation. Refer to *Illustration SA-1* for a sample of a confirmation letter and questionnaire.

Also, during this contact, you should explain the most common reasons for failing a NE SA and ask the motor carrier to provide legible, non-original documentation via fax, email, or any other appropriate means, addressing the following areas (if applicable), at least 7 days in advance of the date of the scheduled review:

- Documentation of an alcohol and/or controlled substance testing program, in accordance with 49 CFR 382.115(a) and (b), including a copy of the employer's policies, procedures, and educational materials implementing alcohol and controlled substances program, as described in 49 CFR 382.601.
- Documentation of a random testing program, in accordance with 49 CFR 382.305, including random testing policies and procedures, name and address of consortium, and testing summary from consortium or lab. If no consortium is used, the company's summary of drivers tested and random test rates should be provided.
- Evidence that the carrier is preparing and maintaining records of duty status (RODS), as required by 49 CFR 395.8(a). The documentation requested should include the RODS for one driver for 30 days, or, if appropriate, time records specified in 49 CFR 395.1(e).
- Evidence of periodic (annual) inspections, in accordance with 49 CFR 396.17. The documentation requested should be one annual inspection for one vehicle, and, if applicable, a copy of an inspector document of qualification, in accordance with 49 CFR 396.19. [Note special periodic inspection documentation requirements for all Mexico-domiciled motor carriers, found at *Compliance with Periodic (Annual) Inspection Requirements* in Mexico Manual.]
- Evidence of the required minimum levels of financial responsibility, in accordance with 49 CFR 387.7(a), specifically, a properly executed form MCS-90.
- Evidence that the drivers maintain a valid commercial driver's license (CDL), in accordance with 49 CFR 383.23(a). The documentation requested should be a copy of one driver's CDL.

If the carrier is unable to produce sufficient documentation to ensure compliance or non-applicability in these areas, the Division/State should notify the motor carrier via phone or in writing, and encourage the

motor carrier to prepare for the SA prior to the scheduled review, but the scheduled review should not be delayed.

General Investigation Contact Procedure

For the first 90-days a new entrant is in the program, neither the FMCSA Division or our State partners should contact a new entrant motor carrier. The initial 90 days is to allow the motor carrier enough time to have sufficient records to allow the agency to evaluate the new entrant's basic safety management controls. During the first 90-days, the new entrant is directed to contact the new entrant call center where the call center verifies the information that is provided in MCMIS.

Investigators/auditors have a difficult time locating motor carriers from the information currently in MCMIS (e.g., telephone number, physical address, and/or mailing address). Per the "New Entrant Issuance and 30-Day No Contact Letters" policy dated 8/28/2012, for the purposes of the new entrant program, FMCSA and State partners are permitted to only use the information provided in MCMIS when attempting to contact a new entrant motor carrier. We should ensure that we exhaust all contact methods provided in MCMIS before starting the no-contact process. All contact methods should include phone number(s), fax numbers and email contact information. FMCSA representatives should also check the "enter contact date" field found in MCMIS which may include addition contact information that was provided during the validation process.

The agency is no longer requiring article of incorporation verification, internet searches or additional measures in an effort to locate new entrant motor carriers.

You must notify the appropriate Canadian government/provincial representative(s) of the intention to investigate a Canadian motor carrier and/or shipper.

Confirm Designation ofPrincipal Place of Business (PPOB)

Principal Place of Business (PPOB) is defined in 49 CFR 390.5T, as "the single location designated by the motor carrier, normally its headquarters, for purposes of identification under this subchapter." The current regulatory guidance for the definition of a PPOB in § 390.5T is presented in a question-and-answer format in the *Federal Register Notice (74 FR 37653).* This guidance provides the motor carrier industry and Federal, State and local law enforcement officials with uniform information for use in determining which locations should be designated by a motor carrier as its principal place of business.

PPOB means the carrier's designated PPOB on its MCS-150 series form, OP-1 series form, and/or on its initial registration after submission through the Unified Registration System (URS) via the Form MCSA-1.

U.S. and Canadian owned and domiciled carriers

Generally, safety audits should be performed at the PPOB. The safety audit may be performed at a mutually agreed upon location other than a motor carrier's PPOB, provided the Safety Auditor is able to access all relevant documents, equipment, and personnel at the alternate location. If a motor carrier's designated PPOB is not a location where the carrier conducts operations related to its motor carrier business, and, as a result, the Agency cannot complete an investigation, the Division Office should issue a Notice of Claim or initiate a proceeding to suspend operating authority, or both, using the procedures provided below. A proceeding to suspend operating authority requires evidence that the carrier's designation of a false or misleading PPOB was willful. Division Offices will not take enforcement if the investigation was completed and the only evidence that the PPOB is false or misleading is that the PPOB does not comply with the regulatory guidance.

All actions taken to locate the carrier and attempt to schedule or complete the investigation should be documented and uploaded to EDMS. Safety Auditors will not make any address changes in the Agency's systems to update a motor carrier's PPOB. The motor carrier is responsible for making the changes to its registration form via mail, fax, or online.

Other Foreign Carriers and Enterprise Carriers

If a foreign carrier or a U.S.-domiciled carrier owned or controlled by Persons of Mexico ("Enterprise carrier") has provided false or misleading information in the designation of its PPOB, the Safety Auditor will contact their supervisor and gather documentation to support an enforcement action in coordination with the Regional Field Administrator or Field Administrator or designee and the Borders Attorney in the Western Service Center. If a foreign carrier claims a U.S. PPOB or an Enterprise carrier provides false and misleading information in its designation of PPOB and does not, in fact, have a PPOB in the United States, the Investigator, in coordination with their supervisor and the Regional Field Administrator or Field Administrator or designee and the Borders Attorney in the Western Service Center, should gather documentation to support a proceeding for suspension of operating authority.

The Division Administrator or designee will consult with the North American Borders Division, the Regional Field Administrator or Field Administrator or designee, and the Borders Attorney in the Western Service Center prior to issuing a Notice of Claim or initiating a suspension proceeding against a foreign or Enterprise carrier.

See *Enforcement Manual for Principal Place of Business Enforcement Procedures for U.S or Canadian Owned and Domiciled Motor Carriers*

Reviewing The Carrier's File

You should review the field office file, if available, to become familiar with the company's previous safety and regulatory problems. In addition, the applicability of the safety, financial, drug and alcohol, commercial, and hazardous materials (HM) regulations should be determined.

Review the Carrier in the Current Screening Tool

The FMCSA developed the current screening tool for use in vetting applicants for passenger carrier and household goods operating authority. Modifications to the current screening tool allow FMCSA to screen existing motor carriers for links to other motor carriers that may indicate reincarnation or affiliate activity. The current screening tool is available to all enforcement users in the FMCSA Portal. Prior to scheduling the New Entrant Safety Audit, auditors/investigators should review the carrier for indications of reincarnation/affiliation using the current screening tool. In the event the current screening tool returns data indicating suspicion of reincarnation/affiliation for the purpose of avoiding an FMCSA OOS order or revocation of operating authority registration resulting from: (1) a final unsatisfactory safety rating; (2) an order to cease operations for failure to pay a civil penalty; (3) an imminent hazard OOS order; or (4) any of the New Entrant Safety Audit OOS conditions (e.g. failed safety audit, failure to submit to a safety audit, failure to provide approved corrective action plan as a result of expedited actions, Auditors/Investigators should consult with the DA (or his/her designee), and the DA, after consultation with the SCET, may choose to stop the scheduling of the Safety Audit and initiate a non-ratable review. Scheduling a non-ratable review prevents the possibility that a suspected reincarnated/affiliated carrier could potentially pass a New Entrant Safety Audit. Refer to the August 29, 2012 policy: *Procedures for Investigating Potential Reincarnated/Chameleon and Affiliated Motor Carriers*.

Obtaining The Company Profile

You should obtain and review the motor carrier's company profile. To ensure that data on the profile is timely and complete, obtain the profile as close as possible to the initiation of the SA. However, the profile should not be requested more than seven days before the audit.

The company profile may reveal potential noncompliance in certain areas. For example, a company profile may reveal a motor carrier has an out-of-service (OOS) rate that is higher than the national average. In this situation, you should plan your audit so that adequate coverage of the potential vehicle maintenance problems is accomplished.

When you discover potential problems on the company profile, identify and record the drivers and/or vehicles that had the most violations. Include these in your sampling. Also, if the carrier doesn't have at least three Level I, II, and/or V vehicle inspections, inform the carrier that vehicles must be made available during your audit for inspection.

Exemption

An **exemption** provides temporary relief from one or more FMCSRs to a person subject to the regulations or to a person who intends to engage in an activity that would be subject to the regulations. Safety Auditor should inquire with the motor carrier to confirm if they are operating under an exemption and verify the motor carrier's response by checking the Exemption Webpage. The Part C of the safety audit should include a note reporting verified exemptions the motor carrier is operating under.

Request Company Files Maintained At Carrier's Location(s)

A motor carrier with a single place of business may designate only its actual place of business as the PPOB, and must make the required records available for inspection at that single place of business, or other location specified by FMCSAwithin 48 hours. Notwithstanding this restriction, the motor carrier and an authorized representative of FMCSA may agree that the SA, or other investigation of a motor carrier, may be conducted at a mutually acceptable location other than the motor carrier's PPOB, if all necessary documents are made available.

A motor carrier with multiple business locations may maintain some records at business locations of the motor carrier other than, or in addition to, its PPOB. However, after a request is made by an FMCSA authorized representative, a motor carrier with multiple business locations must make the required records available for inspection at the PPOB, or other location specified by FMCSA, within 48 hours upon your request. Saturday, Sunday, and Federal holidays are excluded from the computation of the 48-hour period. When requesting records 48 hours before your scheduled appointment, be sure the motor carrier understands this is an official request, when the 48-hour period begins and ends, and you are expecting the documents to be available upon your arrival, or you will cite failing to maintain the appropriate documents.

Requesting the Carrier's Electronic Logging Device Data

While most carriers are subject to the ELD rule, some may be exempt from the rule. Prior to arriving at the carrier's principle place of business perform the following:

- Verify if a motor carrier's operation is subject;
- Verify if the operated vehicle(s) are subject;
- Verify that the device in use meets the requirements of the ELD rule;
- Request ELD data using the sample size criteria;
- Retrieve and review the received ELD Data

Any violations identified by eRODS must be confirmed at the carrier's principle place of business by interviewing the carrier, driver, or reviewing supporting documents.

Reviewing Other Motor Carrier Data

You should review the motor carriers SMS percentiles at http://ai.fmcsa.dot.gov/sms. By identifying data that contributed to high SMS percentile rankings, you will be able to concentrate on those areas, such as false RODS, for which the carrier has demonstrated problems. Note drivers and vehicles that experience repeated violations and include them in your sampling during the audit.

You should also review other sources, such as http://www.fmcsa.dot.gov, http://ai.fmcsa.dot.gov/sms, and http://li-public.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov), to determine a motor carrier's safety and licensing posture. To expedite the audit process, you may want to request other data before arriving at the carrier's place of business, for example, obtaining drivers lists allows you to perform CDLIS checks beforehand.

Ensuring That You Have The Most Recent Software

Prior to the initiation of an audit you should ensure that you have the latest versions of FMCSA software. You may check to ensure the latest versions available by logging into http://infosys.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov).

3.2.2 Steps to Take Upon Arrival at the Motor Carrier's Office

1. Identify yourself and your employer.
2. Display your credentials.
3. Ask to speak to a motor carrier/shipper official who has knowledge of the entire operation (e.g., President, Vice President, General Manager, etc.) If he/she is not available, you should ask for the individual in charge of safety.
4. Explain the purpose of the visit to the official. Explain that various company records will be reviewed and that you will need to talk to the individuals responsible for compliance with the safety, HM, financial responsibility, and commercial regulations.
5. If you were not able to meet with a corporate official, explain that you will need to meet with this person for your closeout.
6. If a questionnaire was not sent to the motor carrier prior to your arrival, or if no appointment was made, obtain the information needed to complete Part A of the SA.

Explain to the carrier how long the audit is expected to take, and at what time certain records and carrier employees will be needed. This allows you and the carrier to most efficiently complete the review process.

3.2.3 Areas to Cover During the Opening Interview with the Motor Carrier

Operating Characteristics

You should become familiar with the nature of the motor carriers operation by asking questions about the destinations of regular trips, the identity of customers that provide them the most business, and the carriers busiest and slowest times of the year. Also, inquire as to the manner in which drivers are compensated, the level of driver turnover, the extent to which the carrier uses electronics in its operation and record keeping, vehicle maintenance procedures, controlled substances and alcohol testing program, etc.

Paperwork and Flow

You should become familiar with the motor carriers paperwork system related to its operations, payroll systems, filing systems, etc. If the documentation of violations becomes necessary, this knowledge will enable you to gather and copy records about drivers trips quickly and efficiently. You should determine the supporting documents the motor carrier obtains and/or generates and where these records are maintained. Become familiar with any business records that disclose the location and activity of drivers at

specific times or during certain time periods. These records will enable you to verify the accuracy of drivers' RODS.

Ask the official to demonstrate the paperwork flow of its operation, if supporting documents are just arriving view how the documents are distributed. Understanding the process, what information is available, and who handles certain paperwork will enable you to determine which documents may be useful during the review process.

Electronic Signatures and Documents

For guidance concerning electronic signatures and documents, click here.

Driver Issues

Ask the appropriate motor carrier official about the company's procedures for driver hiring, qualification, and training. This would be the appropriate time to request a list of drivers employed in the last 365 days, and their dates of hire and termination. Once the carrier provides you with the information, verify the accuracy of the list by reviewing the motor company profile, payroll records, dispatch records, bills of lading, and/or shipping documents during your audit.

Tour the Facility

Ask the carrier to tour their facility. Be observant of posted materials, related to the carrier's knowledge and compliance with the regulations, and how the general day-to-day operations work. During the tour look for the presence of HM, especially in the areas where products and goods are fabricated, cleaned, stored, or shipped. Some motor carriers and shippers may not know they are shipping and/or transporting HM.

3.2.4 Pre-audit Procedures

Questions to Ask Before Visiting the Carrier to Determine Whether a Safety Audit (SA) Should be Conducted

- Why did you apply for a USDOT number?
- How long have you been operating with this new USDOT number?
- How many drivers do you currently have?
- How many power units do you have and what are the GVWRs?
- What is the commodity that you transport?
- When was your first interstate trip?
- What is the origin and destination of the commodity you transport?
- If not currently transporting interstate, do you plan to in the future?
- What types of HM are you transporting and in what quantities?
- Is your operation subject to the Electronic Logging Device Rule?

If the Carrier You are About to Audit Does Not Have Trucks and Does Not Plan To Go Interstate

Do not conduct the SA but instead fax the carrier the Request to Inactivate USDOT Number and/or Request for Revocation of Registration forms.

If the Carrier You are About to Audit Does Not Have Trucks or Drivers, But is in the Process of Obtaining All State and Federal Registrations, and Plans To Go Interstate in the Future

Do not conduct the SA. Instruct the motor carrier how to go online and change its operation from "INTERSTATE" to "INTRASTATE." Inform the carrier to change their status to "INTERSTATE" when it begins interstate commerce.

If the Carrier Has Only Done Intrastate Trips But is Planning To Do Interstate in the Future (Verify Freight is Not a Continuation of an Interstate Trip)

Do not conduct the SA. Instruct the motor carrier how to go online and change its operation from "INTERSTATE" to "INTRASTATE." Inform the carrier to change their status to "INTERSTATE" when it begins interstate commerce.

If the Carrier Has a USDOT Number Because the Company that it is Leased to Requires One; However, the Carrier is Not for-Hire and is Not Planning to Use its Authority on Interstate Business in the Future

Do not conduct the SA but fax the carrier the Request to Inactivate USDOT Number and/or Request for Revocation of Registration forms.

If a U.S. Carrier has a USDOT Number But All the Vehicles operated under its authority are 10,000 lbs. or Less and is Not Transporting HM

Do not conduct the SA. Existing entities that have already received a U.S. Department of Transportation (USDOT) number through the registration system and are **not** operating CMVs should be directed to confirm their status by printing a paper copy of the MCS-150 form Motor Carrier Identification Report and updating it to reflect zero (0) CMVs. Motor carriers must submit this change via a paper copy of their MCS-150 until FMCSA makes the necessary updates to the online registration system that will allow these changes electronically. This completed form should be submitted to the FMCSA call center by either of the following methods:

- By scanning and uploading it through https://ask.fmcsa.dot.gov/app/ask

This is the best option and will provide a tracking number for the submission; or

- By fax to 202-366-3477.

Once the completed MCS-150 form is submitted to the call center and uploaded to the Electronic Document Management System, a notification will be sent to the appropriate NEPM.

For any entity that operates a mixed fleet of CMVs and non-CMVs, the NEPM should remove the motor carrier from the NE Program only if there is no indication the motor carrier is operating CMVs under its own USDOT number/authority while conducting regulated activity in interstate commerce.

If a motor carrier does not submit an updated MCS-150 paper copy to reflect zero CMVs, then the NEPM should not remove the motor carrier from the NE Program, and the normal process for conducting a NE Safety Audit should continue. The FMCSA or State personnel must not update the motor carrier's Motor Carrier Management Information System record without a signed MCS-150 form from the authorized motor carrier official.

If the motor carrier does not submit an updated MCS-150

If the motor carrier does not submit an updated MCS-150, the safety auditor should move forward as if we are going to complete the safety audit. If they fail to submit to the safety audit, the auditor should follow the no-show procedures.

If a Motor Carrier is Transporting HM Requiring a Hazardous Material Safety Permit

Do not conduct the SA. A full Onsite Comprehensive Investigation is required. Request further guidance from your DA or supervisor.

If the Motor Carrier is subject to the ELD rule

Verify the device in use is a compliant device. If the device is a compliant device request and review drivers' ELD data prior to arriving at the motor carrier's principle place of business. While most motor carriers are subject to the ELD rule, some may meet one of the ELD limited exemptions. Motor carriers subject to the ELD rule must use an ELD or an Automatic On-board Recording Device (AOBRD) to record drivers hours of service.

3.3 Stage 3: Audit

3.3.1 Completing Part A of the Audit

If a questionnaire was used to conduct a phone interview with the motor carrier prior to your arrival, your Part A is probably already complete. If a phone interview was not conducted prior to your arrival, you will need to obtain the information. Complete Part A of the report by interviewing appropriate personnel of the motor carrier and/or shipper. Complete Part A as follows:

Legal Name of Motor Carrier/Shipper

It is imperative that you verify and enter the correct and complete legal name of the motor carrier. If this is not done, further action against the motor carrier may be hindered. In the case of a corporation, obtain the exact company name by asking a corporate officer, examining the Articles of Incorporation, and/or requesting a document with the corporate seal. The full names of corporate officers, partners, or the sole proprietor should be obtained.

If the legal name is different than that recorded in our database, make the change in MCMIS before you upload the CR. Otherwise the upload may generate an error message and reject the review.

Doing Business As (DBA)

In the case of individuals or corporations who are doing business under a name, other than the legal name, enter the DBA name in the appropriate field. For example, if John Jones is DBA JJ Trucking, enter JJ Trucking. DBAs are also known as operating names, assumed business names (ABN), common names, or trade names.

Employer Identification Number (EIN)/Social Security Number (SSN)

In the case of a carrier operating as a sole proprietor, you will need to obtain the SSN, or in some cases, the EIN. If the carrier operates as a partnership or corporation, you will need to obtain the EIN. In some circumstances, a parent company and its subsidiaries will share the same EIN. This is permissible under IRS rules, and is just a reflection of the fact that the parent corporation files a single tax return that includes the subsidiaries. It is important that this information is correct. The EIN is also known as the Federal Tax ID Number.

Motor Carrier Classification

It is important that you verify and enter the correct classification for the motor carrier.

- If the motor carrier does not have operating authority, you should select "other" and type "unauthorized" in the box.
- In cases where the motor carrier does have a MC# but is not authorized to operate, you should select both "Authorized for Hire" and "Other." You then should enter the MC# in the MC# box and enter "unauthorized" in the "Other Classification" box.
- In both cases, the carrier should be advised to cease any further interstate commerce requiring registration.
- Verification is conducted in the Licensing and Insurance (L&I) Registration Database.

Gross Revenue

You will need to enter all revenue generated by the legal entity being reviewed (ensure that you include all non-transportation revenue as well). If the motor carrier refuses to release this figure, you will enter zero in the safety audit and notate the refusal in Part C. If the figure provided is less than 12 months, document this amount in the audit and notate this information in Part C.

Mileage (Previous 12 Months)

Hyperlink to Milage section of Compliance Manual

Fuel tax records may be a source to verify mileage [e.g., International Fuel Tax Agreement (IFTA)], should be viewed where available.

The following formula shows how the **Annual Mileage Estimate** is determined:

Annual Mileage Estimate = (12 X Miles Operated) **Months Operated**
For this example: **Annual Mileage Estimate = (12X800,000) = 1,200,000** **8**

Equipment

Hyperlink to Equipment section of Compliance Manual

The following are passenger-carrying equipment definitions for completion of Part A:

- **Motorcoach** - A vehicle, designed for long distance transportation of passengers, characterized by an elevated passenger deck over a baggage compartment. Motorcoach is synonymous with the term "over-the-road bus" (OTRB) which is used in the ADA regulations in 49 CFR Part 37 Subpart H. There is a SA section that addresses ADA regulatory compliance by a for-hire passenger carrier that operates one or more motorcoaches/OTRBs.
- **School Bus** - A vehicle designed and/or equipped mainly to carry primary and secondary students to and from school, usually built on a medium or large truck chassis.
- **Mini-bus** - A motor vehicle designed or used to transport 16 or more passengers (including the driver) and is typically built on a small truck chassis.
- **Van** - A small motor vehicle designed or used to transport 15 or less passengers (including the driver).
- **Limousine** - A passenger vehicle built on a standard or lengthened automobile chassis.

Additionally, for audits conducted in Performance and Registration Information Systems Management (PRISM) states, obtain a list of all power units operated under the motor carrier's control (leased and owned). The list shall include the name and address of the vehicle registrant and owner, the vehicle identification number, state license number and the state of license issuance. The list may be used to provide notice of potential State vehicle registration sanctions to vehicle registrants and owners. In instances in which an entity other than the motor carrier owns and/or registers the vehicles, sanction notices may be sent to them also.

Drivers

Hyperlink to Driver section of Compliance Manual

3.3.2 Motor Carriers of Passenger

Important Issues to Remember when Investigating Carriers of Passengers

Private motor carriers of passengers (PMCP) became subject to the FMCSR on January 1, 1995. They are separated into two groups, business or nonbusiness, and are exempt from certain requirements of the FMCSR. Motor carriers operating vehicles designed or used to transport 9 to 15 passengers (including the driver) for compensation became initially regulated by FMCSA on February 12, 2001. More information on each of these types of operations follows:

For-Hire Carriers of Passengers

The Most Important Factor to Consider in Determining whether a Passenger Carrier is For-Hire

- Is the motor carrier compensated, either directly or indirectly, for the interstate transportation service provided?

Conducting SAs on a For-Hire Passenger Carrier that has Applied for Operating Authority

The SA should be conducted within 120 days of the motorcoach passenger carrier receiving operating authority and within 9 months of a non-motorcoach passenger carrier receiving operating authority, but not later than 12 months, as required by statute. Division Offices must monitor the operating authority status of NE for-hire passenger carriers to ensure that SAs are conducted after operating authority is granted.

When conducting a New Entrant Safety Audit on an interstate passenger carrier, if evidence indicates that the carrier engaged in for-hire, interstate transportation of passengers prior to being issued the required operating authority registration, the New Entrant safety audit will be terminated. The Division Administrator (DA) or his/her representative will be notified. Prior to making the CR assignment in the Activity Center for Enforcement, the DA or his/her designee will indicate "Open-pending Follow-up" and select "CR to be completed" in the New Entrant Web System (NEWS). Notations will be made in ACE to record the reason for assignment as "CR to be completed", the conversion from a new entrant safety audit and proposed investigation date. Within 15 calendar days, the DA or his/her designee should, to the extent practicable, schedule an on-site comprehensive ratable investigation. Investigators will determine if the carrier conducted transportation operations that required operating authority registration before authority was granted. If there is evidence establishing the violation, the investigator will collect appropriate evidence and cite the violation in the investigation report. Appropriate enforcement action should be considered. In accordance with 49 CFR § 385.335, if a compliance review resulting in a rating is completed on a new entrant, the new entrant will not need to undergo a safety audit. However, the new entrant will continue to be subject to the safety monitoring period.

NE passenger carriers (except nonbusiness PMCP) will remain in the NE program for 18 months after beginning interstate operations and will be subject to the same procedures that apply to all NE motor carriers. There is an earlier deadline for a SA on a NE passenger carrier to ensure that safety management controls are in place.

Business PMCP

Definition of a Business PMCP

A Business PMCP provides private transportation of passengers in the furtherance of a commercial purpose and do not receive compensation for the transportation service. An example would be a company that uses a bus to transport its employees. Commercial businesses that provide passenger transportation to the general public are not Business PMCP. SAs should be conducted on Business PMCP operating

motorcoaches within 120 days and operating other passenger vehicle within 9 months after beginning interstate operations. Business PMCP remain in the NE program for 18 months after beginning interstate operations and are subject to the same procedures that apply to all NE motor carriers.

Parts of the FMCSR that Apply to a Business PMCP

Part	Regulatory Topic	Applicable
380	Special Training Requirements	Partial (Subject to Part 380 Subpart E, Entry-Level Driver Training Requirements)
382	Controlled Substances and Alcohol Use and Testing	Yes
383	Commercial Driver's License	Yes
387	Financial Responsibility (Insurance/Surety)	No
390	General Applicability and Definitions	Yes
391	Qualification of Drivers	Yes
392	Driving of Commercial Motor Vehicles	Yes
393	Parts and Accessories	Yes
395	Hours of Service of Drivers	Yes
396	Inspection, Repair, and Maintenance	Yes

Nonbusiness PMCP

Definition of a Nonbusiness PMCP

Nonbusiness PMCP provide private transportation of passengers that is not in the furtherance of a commercial purpose. Examples of Nonbusiness PMCP may include churches, civic organizations, scout groups, and other charitable organizations that operate buses for the transportation of their respective groups and do not receive compensation for the transportation service. **Nonbusiness PMCP are not subject to SAs.**

Small Passenger-Carrying Vehicles

Definition of a Small Passenger-Carrying Vehicle

FMCSA has safety regulatory oversight of for-hire operators of small passenger-carrying vehicles that engage in interstate commerce. The extent of the requirements depends on the nature of the operation. The regulations basically separate such operations into two groups:

- Motor carriers that are directly compensated for the operation of vehicles designed or used to transport 9 to 15 passengers (including the driver) in interstate commerce, and
- Motor carriers that are not directly compensated for the interstate operation of such vehicles.

Definition of Direct Compensation

Direct compensation is payment made to the motor carrier by the passengers, or an individual acting on behalf of the passengers for the transportation services provided. Direct compensation also means payment for the highway transportation services is not included in a total package charge or other assessment for highway transportation services.

For example, direct compensation occurs when a business is solely engaged in passenger transportation, does not provide any other type of service, and receives payment for the provided transportation from its customers.

An example of a motor carrier operating 9 to 15 passenger-carrying CMVs for indirect compensation is a business, such as a hotel, outdoor recreation company, or scenic tour company that provides non-

transportation services (housing, food, equipment rental, customer instruction, entertainment, etc.), in addition to passenger transportation services for a total package charge.

Requirements Applicable to Operators of Small Passenger-Carrying Vehicles that are Directly Compensated

Motor carriers that are directly compensated for the operation of small passenger-carrying vehicles are subject to all of the safety standards in Part 385 and Parts 390 through 396 of the FMCSR. These carriers are required to register with FMCSA and mark their vehicles with a USDOT identification number. These carriers are also subject to safety ratings, accident register record keeping, medical examination requirements for drivers, DQ files, hours of service (HOS) limitations, RODS, and record keeping for inspection, repair, and maintenance.

For-hire motor carriers must also obtain operating authority pursuant to 49 CFR Part 365 to transport passengers in interstate commerce. Pursuant to 49 CFR Section 392.9a, for-hire interstate passenger transportation is prohibited until operating authority has been granted. Certain for-hire passenger carriers are exempt from the operating authority requirements (see 49 CFR Part 372 for more information).

Requirements Applicable to Operators of Small Passenger-Carrying Vehicles that are Not Directly Compensated

Motor carriers that are indirectly compensated for the operation of small passenger-carrying vehicles are required to register with FMCSA, mark their vehicles with a USDOT identification number, and maintain an accident register. These motor carriers are subject to operating authority requirements with certain exemptions in the same manner as directly compensated motor carriers that operate small passenger-carrying vehicles. These motor carriers are usually not subject to SAs. If the small passenger-carrying vehicle has a gross vehicle weight rating (GVWR) or actual weight of 10,001 or more pounds and is not operated by a Non-business PMCP, a SA is conducted on the motor carrier of passengers.

Appropriate Handling of a Passenger Carrier that has Operating Authority/Licensing Noncompliance

When it is discovered that a NE passenger carrier has operated for-hire illegally before receiving required passenger operating authority, the New Entrant safety audit will be terminated. The Division Administrator (DA) or his/her representative will be notified. Prior to making the CR assignment in the Activity Center for Enforcement, the DA or his/her designee will indicate "Open-pending Follow-up" and select "CR to be completed" in the New Entrant Web System (NEWS). Notations will be made in ACE to record the reason for assignment as "CR to be completed", the conversion from a new entrant safety audit and proposed investigation date. Within 15 calendar days, the DA or his/her designee should, to the extent practicable, schedule an on-site comprehensive ratable investigation. Investigators will determine if the carrier conducted transportation operations that required operating authority registration before authority was granted. If there is evidence establishing the violation, the investigator will collect appropriate evidence and cite the violation in the investigation report. Appropriate enforcement action should be considered.

Insurance Requirements

Insurance Requirements for For-Hire Passenger Carriers, Business PMCP, Nonbusiness PMCP, and Operators of Small Passenger-Carrying Vehicles

Regulations covering minimum levels of financial responsibility (insurance) are found in Part 387, Subpart B. The chart below summarizes the applicability of the minimum levels of financial responsibility regulations to passenger carriers.

Vehicle	For-hire Passenger Carrier	Business PMCP	Nonbusiness PMCP

Vehicle with a seating capacity of 16 or more	$5,000,000 insurance coverage required (see Note 1 below)	Not Subject	Not Subject
Vehicle with a seating capacity of 15 or less	$1,500,000 insurance coverage required (see Note 1 below)	Not Subject	Not Subject

Note 1: Passenger carriers that are Federal Transit Administration grantees (Transit Benefit Operators) under 49 U.S.C. 5307, 5310, or 5311, are required to maintain liability insurance, at least at the highest level required by any of the States in which the transit service area is located, instead of the required levels listed above for-hire passenger carriers.

[Statutory Exemption 49 USC 31138(e)(4)]

Exemptions

Minimum financial responsibility regulations do not apply to:

- A motor vehicle transporting only school children and teachers to and from school;
- A motor vehicle providing taxicab service, having a seating capacity of less than 7 passengers, and not operating on a regular route or between specified points;
- A motor vehicle carrying less than 16 individuals in a single daily round trip to commute to and from work; and
- A motor vehicle operated by a motor carrier under contract providing transportation of pre-primary, primary, and secondary students for extracurricular trips organized, sponsored, and paid by a school district.

School Bus Transportation

Parts of the FMCSR (390-399) Applicable to Operators Who Provide School Bus Transportation

Type	Home-to-School or School-to-Home	Extracurricular School Activities
Public School Transporting Students	Not Subject	Not Subject
Private School Transporting Pre-primary, Primary, and Secondary Students	Not Subject	Subject as Business PMCP
Private School Transporting Post-secondary Students	Subject as Business PMCP	Subject as Business PMCP
For-hire Contractors Transporting Pre-primary, Primary, and Secondary Students	Not Subject	Subject as For-Hire Carrier
For-hire Contractors Transporting Post-secondary Students	Subject as For-Hire Carrier	Subject as For-Hire Carrier

Insurance Requirements for School Bus Contractors that are For-hire Operators of School Buses Engaged in Interstate Transportation

Type of Passenger Carriage	Home-to-School or School-to-Home	Extracurricular School Trips	Extracurricular School Trips

		Organized, Sponsored and Paid for by the School	Organized, Sponsored and Paid for by an Independent Group (e.g., booster clubs, etc.)
Transportation of Pre-primary, Primary, and Secondary Students and Accompanying Teachers	Not Subject	Not Subject	Bus seating capacity of 16 or more: $5,000,000 insurance coverage required. Bus seating capacity of 15 or less: $1,500,000 insurance coverage required
Transportation of Post-secondary Students	Bus seating capacity of 16 or more: $5,000,000 insurance coverage required. Bus seating capacity of 15 or less: $1,500,000 insurance coverage required.	Bus seating capacity of 16 or more: $5,000,000 insurance coverage required. Bus seating capacity of 15 or less: $1,500,000 insurance coverage required.	Bus seating capacity of 16 or more: $5,000,000 insurance coverage required. Bus seating capacity of 15 or less: $1,500,000 insurance coverage required.

3.3.3 Part 37 Subpart H – Americans with Disabilities Act (ADA) Questions

Understanding the Americans with Disabilities Act (ADA) Related SA Questions

Please Note: ADA compliance questions are only applicable to **for-hire passenger carriers that operate one or more over-the-road buses (OTRB)** which is also known as a motorcoach.

BACKGROUND: New applicants for interstate operating authority who want to provide passenger transportation services must certify they are "fit, willing, and able" to comply with pertinent statutory and regulatory requirements including the ADA requirements of 49 CFR Part 37, Subpart H.

SAs should be conducted within 120 days of a new motorcoach passenger carrier's issuance of operating authority.

Auditors should not pose the ADA compliance questions to:

- Private Motor Carriers of Passengers that do not provide for-hire passenger transportation;
- Motor carriers of passengers that do not operate an OTRB; and
- Canadian for-hire motor carriers of passengers (unless passengers board an OTRB within the United States).

3.3.4 Safety Audit Procedures for Hazardous Materials Carriers

3.3.4.1 HM General

For guidance on the application of the Hazardous Materials Regulations, see the Hazardous Materials Manual.

- To assist you in conducting investigations on HM Carriers, Checklists (Appendix F) have been provided to facilitate the identification of violations of the HM regulations.
- If in the course of a SA, it is determined that the carrier is required to have a security plan in accordance with 49 CFR Part 172 Subpart I, a Security Assessment must be completed. See 3.3.4.4 Safety and Security Plans and also 8.1.3.5 Security Assessments of HM Companies. If the carrier transports HM requiring a HMSP per 49 CFR Part 385 Subpart E, the SA must be expanded to an Onsite Comprehensive review.
- If the carrier has been involved in a reportable HM incident as outlined in § 171.15, the SA must be expanded to an Onsite Comprehensive Investigation.
- If substantial violations are discovered with one or more of the Carriers' Shippers, the information should be forwarded to the FMCSA Division Office in the State where the Shipper is located for further investigation.

3.3.4.2 Part 107 – HM Registration

Procedures for Determining a Motor Carrier Compliance with the PHMSA Registration Requirements

- Determine whether the motor carrier has registered with the PHMSA in accordance with § 107.608.
- If a motor carrier cannot produce evidence of registration, but claims to be registered, a 10 working day period should be provided to the company to produce evidence of registration, or evidence of registration could be verified at https://hazmatonline.phmsa.dot.gov/Services/companylookup.aspx.

Dealing with an HM Carrier that Should be Registered, But is Not

- If the Motor Carrier is not currently registered with PHMSA, inform a high-level company official that they must register immediately for each registration year in which they engaged in activities covered by the HM Registration program.
- If the carrier submits complete and accurate proof of registration within 10 working days after closeout of the investigation, no action needs to be taken.
- If the carrier fails to register within the 10 working days, the information should be forwarded to the Division Office of the FMCSA in the State where that carrier is located for further investigation

3.3.4.3 Part 171 – HM Incident Reporting

Determining if the Motor Carrier is in Violation of One of the Incident Reporting Requirements

- Examine the accident reports, records, and files related to recordable and non-recordable accidents, which occurred during the previous 12 months, for the occurrence of HM incidents.
- Examine the motor carrier's OS&D records and cargo claim files, from the previous 12 months, for the occurrence of HM incidents.
- Examine the OSHA injury reports and workman's compensation claim records for injuries occurring from cargo handling (HM spills).
- Record all instances of an unintentional release of HM.
- If possible, tour the motor carrier's loading docks to identify damaged HM packages that would indicate spills.
- Determine compliance with the HM incident reporting requirements.
- If an incident meets the requirements for telephone notification (see §171.15), contact the National Response Center (NRC) at 800-424-8802 (toll free) or 202-267-2675 (toll call).
    - Note that while an incident may meet the criteria for telephone reporting, if that information was not available during the time of the incident (e.g., a person was

hospitalized 2 days later after continuing to have respiratory problems) there is no violation.

- Check NRC and PHMSA databases to verify that an HM incident was reported, by viewing HMIS incident reporting data at https://hazmatonline.phmsa.dot.gov/IncidentReportsSearch
- Determine whether incident reports are being filed and maintained for two years, as required by § 171.16.
- Review the incident reports for accuracy. If there are major discrepancies between the report and the facts of the incident (e.g., a truck was destroyed and 9,000 gallons of gasoline spilled, but the incident was reported as having $0 in property damage) have the carrier file an updated report.

Carrier Failed to Report An Incident As Required

After concluding the SA, forward all the information to the Division Office of the FMCSA in the State where that carrier is located for further investigation.

3.3.4.4 Part 172 – HM Shipping Papers Emergency Response, Marking, Labeling, Placarding, HM Training and Security Plans

Shipping Papers and Emergency Response Information: Part 172 Subparts C and G

Checking a Motor Carrier Facility for Shipping Paper Compliance

- Tour the company's facility and review the safety data sheets to become familiar with all of the shipped and/or transported HM.
- Look for the presence of any vehicles designed to transport HM and the placards, if any, affixed to the vehicles.
- For investigations of motor carriers, review the carriers profile and roadside inspection reports to discover previously unknown types of transported HM.
- If only pre-printed forms are used for shipping papers, determine whether there is an appropriate form for each proper shipping name of HM shipped and/or transported.
- If permanent shipping papers are used for multiple shipments, verify that the information required in §177.817(f) is recorded for each shipment using the permanent shipping paper.
- Verify that the shipper and/or motor carrier has a sufficient system to ensure that these forms are used as complete and accurate shipping papers.
- Examine shipping papers given to local and over-the-road drivers as they arrive at the dock. Verify the accessibility of the shipping paper and emergency response information. This is a good opportunity to determine whether drivers and dock personnel are familiar with the HMR, validate HM training effectiveness and check shipping paper accessibility requirements.
- See *Shipping Paper Checklist*.

Length of Time that a Motor Carrier Must Retain Shipping Papers

- For hazardous waste, the shipping paper copy (the hazardous waste manifest) must be retained for three (3) years after the material is accepted by the initial carrier.
- HM motor carriers must retain HM shipping papers for one year after acceptance by the carrier. Private carriers are also shippers and must retain HM shipping papers for 2 years after shipment. This requirement is found in § 177.817(f) and § 172.201(e).
- Safety investigators (SIs) of FMCSA will generally cite the violation for failure to retain these shipping papers whenever the violation is discovered.
- Keep in mind that shipping papers may be retained electronically.

Number of Shipping Paper Documents that Should be Examined for Compliance

- Sample shipping papers from the previous 12 months for: completeness, content, and accuracy.
- One shipping paper, at a minimum, should be examined for each proper shipping name or class/division of HM offered or transported.

- If substantial noncompliance is discovered from the minimum number of reviewed shipping papers, additional shipping papers should be examined to better determine the extent of noncompliance.
- Make comments and provide explanations in Part C of the investigation report as appropriate.
- When performing an investigation on a for-hire motor carrier of HM, document violations by HM shippers which provided improperly prepared shipping papers. Discuss the appropriate handling of these violations with the DA.
- See *Shipping Paper Checklist*.

Waybills and Manifests May Not be the Same as Shipping Paper

Keep in mind that manifests and bills reviewed in the motor carriers office may not be the document used as the shipping paper during transportation.

The EPA Uniform Hazardous Waste Manifest is a Shipping Paper

- The EPA and DOT agreed to allow the Uniform Hazardous Waste Manifest (UHWM) to serve as a shipping paper. The UHWM must contain the information required by the HMR.
- If hazardous waste is being offered for transportation, review the company's compliance with the hazardous waste manifest requirements in § 172.205.

Location of the Emergency Response Information on a Shipping Paper

- Verify that emergency response information is available during transportation, as required by § 172.600.
    - This requirement may be met a number of different ways, including attaching an SDS or referencing the Emergency Response Guidebook.
- Check the shipping papers for the emergency response telephone number, in accordance with § 172.604.
- An individual, who is knowledgeable and can provide appropriate information in the case of an emergency, must answer the number to be in compliance with this requirement.
- Pagers and answering machines are not acceptable.
- If the offeror uses a third party provider for this function, the name of the third party, or the contract number, must be on the shipping paper.

The Safety Specialists should verify that the offeror has a valid contract with the provider and that the phone number provided is valid. See*Shipping Paper Checklist*

Marking, Labeling, Placarding - Part 172 Subparts D, E, and F

Checking for Compliance with the Marking, Labeling, and Placarding Requirements of the HMR

Check the dock to determine the compliance of shipments ready to enter transportation. Activities should include:

- Inspect HM packages, if available. At a minimum, attempt to examine one package for each proper shipping name or class/division of HM offered or transported. Special attention should be given to materials listed in Table 1 of § 172.504.
- Inspect HM shipments on the dock. Inspect shipping papers (if available), packaging, marking, and labeling.
- Determine whether placards, labels, and markings are properly provided and/or affixed to those vehicles and packages that require them.
- Determine who is performing loading functions:
    - Ensure the HM is properly loaded, blocked, and braced on vehicles.
    - Ensure the proper separation and segregation of HM is followed.
    - Observe shipments of poisons to determine whether they are loaded with foodstuffs [be careful of the exception in § 177.841(e)].

- Inspect vehicles on the "ready line" for placarding and shipping paper violations, and if there are shipments ready for transportation:
    - Check for proper specification packaging and marking;
    - Determine whether the package is specified for the HM; and
    - Determine if proper closure procedures were followed, as applicable.

HM Training Part 172 Subpart H

Employees at a Motor Carrier Facility that Need to have HM Training

- Employees who "affect the transportation of Hazardous Materials" are by definition a Hazmat employee.
- Employees responsible for compliance with any HM regulation, i.e., the safety director, rate and billing clerks, dockworkers, city pickup and over-the-road drivers, drivers, dispatchers, and any other persons engaged in activities covered by the HMR would be considered a Hazmat Employee.
- See *HM Training Checklist*

Determining if Motor Carrier Employees Who Perform HM are Properly Trained.

1. **Interview employees engaged in HM activities with a focus on the following:**
    - Determine the employee's knowledge of the HM regulations related to their job function.
    - Review internal procedures for handling and preparing HM packages for transportation that may differ from published company policy and the HMR.
    - Determine whether the employee received appropriate training.
2. **Make note of all interviewed employees who are not familiar with the HMR applicable to their responsibilities**. This lack of knowledge is an indication of an ineffective training program for hazmat employees, and a violation of § 177.800(c) for motor carriers, and § 177.816 for drivers.
3. **Determine whether hazmat employees are trained and the related documentation is maintained**. Pay particular attention to the requirement to provide function specific training § 172.704(a)(2). Training must cover all functions related to the HMR, including loading, unloading, reviewing shipping papers, etc.
4. **Review the description of the training materials used to meet the training requirements**. Review the actual training materials to verify whether all subject areas, required by § 172.704(a), are covered by the training.
5. **Review security awareness training for all hazmat employees**. See *Security Assessments of HM Companies* for more details on violations of the HM training requirements related to security.
6. **Review in-depth security training for all hazmat employees with functions covered or affected by the Security Plan**. See *Security Assessments of HM Companies* for more details on violations of the HM training requirements related to security.

Safety and Security Plans, Part 172 Subpart I

If in the course of an SA, it is determined that the carrier is required to have a Security Plan in accordance with 49 CFR Part 172 Subpart I, an on-site Security Assessment must be completed. The Safety Audit will be recorded in SENTRI and special study code "HMSA" must be listed in SENTRI's special study code 1 block. Explain in the Part C that a Security Assessment was performed during the Safety Audit and describe any security plan violations discovered. See *Security Assessments of HM Companies*.

3.3.4.5 Part 173 – Packaging

Packaging and Loading Requirements that Apply to Motor Carriers

- Packaging and loading requirements apply equally to shippers and motor carriers.

- Motor carriers are prohibited from accepting packaging that does not meet all requirements of the regulations.
- In addition, if the motor carrier is performing a loading function, then the same regulations apply, as though a shipper was performing the loading function.

Checking a Motor Carrier's Compliance with Part 173 Regulations

- When checking for compliance of the packages, determine the type of packaging being used. The type of packaging must be authorized under the HMR to transport the HM being shipped or transported.
- The package must not leak and must be designed in accordance with the HMR *(§173.24*).

Regulations in Part 173 that Discuss the Integrity of Packages and their Performance Standards

There are numerous regulations that discuss package integrity ; however, here are a few specific regulations you should check for compliance, as applicable to the type of HM operations of the carrier:

- § 173.24 - General Requirements and for packaging and packages
- § 173.24b - Additional general requirements for bulk packaging
- § 173.32 - Requirements for the use of portable tanks
- § 173.33 - Hazardous materials in cargo tank motor vehicles
- § 173.35 - Hazardous materials in intermediate bulk containers (IBCs)
- § 173.301 - General requirements for shipment of compressed gases and other hazardous materials in cylinders and UN pressure receptacles and spherical pressure
- § 173.315 - Compressed Gases in Cargo Tanks and Portable Tanks

3.3.4.6 Part 177 – Loading and Segregation of HM

- Determine if additional driver training required by §177.816 is completed;
- Determine the accessibility and completeness of shipping papers;
- Determine loading functions are conducted properly; and
- Check for proper separation and segregation of HM loads per § 177.848.

Additional Driver Training Requirements (§177.816)

- Training in pre-trip inspections, use of vehicle controls, operation of the vehicle, maneuvering, railroad crossings, loading and unloading, compatibility of mixed loads, load securement and package handling.
- Special training for cargo tank drivers.
- Frequency of training requirements may not meet CDL update requirements. Training is required every 3 years; CDLs usually renewed at 5 year intervals.

Shipping Paper Requirements

- Verify accessibility requirements have been met; and
- See Part 172 of this manual to determine the shipping papers are complete and accurate.

Look for the Following When Motor Carriers Perform Loading Functions

- If the carrier is performing the loading, determine whether HM is properly loaded, blocked, and braced on vehicles.
- Observing shipments of poisons to determine whether they are loaded with foodstuffs, however, be careful of the exception in § 177.841(e).

Ensuring Motor Carrier Properly Separated and Segregated its HM Shipments

- During the examination of shipping papers, determine whether proper segregation of HM is followed in accordance with §177.848. Be cautious - the subsidiary hazard may be more restrictive than the primary hazard.
- Check trips where more than one type of HM was transported in the same vehicle.

- Check roadside inspection reports and accident reports for violations of separation and segregation.

3.3.4.7 Part 180 – Cargo Tanks Qualification and Maintenance

Motor Carrier Conducts Inspections, Tests, Repairs, or Modifications of Cargo Tanks

Determine whether the motor carrier has registered with USDOT as required by Part 107 Subpart F. if performing functions as a cargo tank facility.

Review test and inspection documents required by 49 CFR 180.417(b) and/or (c) for one of each type of tanks used by the carrier. Ensure all data required is entered on the documents and all tests/inspections are completed in the time periods required.

HM Carrier Uses the Services of an Independent Cargo Tank Facility and Violations are Discovered

Forward all the information to the Division Office of the FMCSA in the State where that cargo tank facility is located for further investigation.

3.3.4.8 Part 397 – HM Driving and Parking

- Violations of the driving and parking rules of Part 397 usually occur away from the motor carrier's place of business. Review motor carrier records (accident reports, moving violations, and roadside inspection reports) for possible Part 397 violations.
- The review of these rules during an investigation may involve actual observations at the motor carrier's terminal and loading or delivery facilities in the vicinity of the carrier's place of business.
- Review written route plans for Division 1.1, 1.2, and 1.3 (explosive) materials and highway route controlled quantities of Class 7 (radioactive) material, if applicable. (Note: there is no requirement for motor carriers to retain past route plans, but many carriers often do.)
- Review receipts for a copy of Parts 397 for drivers transporting Division 1.1, 1.2 and 1.3 explosive materials (only required to be maintained for 1 year after date of signature).

Note Instances where a vehicle was operated on a restricted route, or in a heavily populated area, in violation of § 397.67(b).

3.3.5 Part 382 – Controlled Substances/Alcohol Use and Testing

During your review of compliance with Part 382, you should use the following guidelines to assist in your audit of motor carriers of both property (including placardable HM) and passengers.

If the Motor Carrier is Not Required to Conduct Controlled Substance and Alcohol Testing Required by Part 382

Mark "not applicable (N/A)" for all questions in this section.

Procedures to Follow if a Carrier has Failed to Implement a Program Required by Part 382

You should answer "NO" to the question "Has the carrier implemented an alcohol and/or controlled substances testing program?" Responses to the remaining Part 382 questions shall be marked non-applicable. To cite this violation, the motor carrier must have made no attempt to comply with this part. Any attempt may include, but is not limited to, items such as a Drug and Alcohol Policy, supervisory training or a post-accident test.

Procedures to Follow During Audit of Part 382

Your audit of Part 382 should consist of:

- Ask for a list of drivers, required to have a CDL, with their dates of hire.
- Request a list of all drivers selected for random controlled substances and alcohol testing.
- Request a list of all tests performed, with results, for the past 12 months.

- Ensure controlled substances/alcohol tests were performed in accordance with Part 40.
- Check that controlled substances and alcohol random testing rates were met for previous calendar year.

Request for a Driver List Should Include the Following

If a driver list was not requested before the SA or during the opening interview, you should request a list of drivers employed in the past 12 months and the date they were hired and/or terminated. You should verify the accuracy and completeness of the list by reviewing the company profile, payroll records, dispatch records, bills of lading, and/or other transportation or shipping documents.

Review the lists carefully, as sometimes you may find drivers the motor carrier failed to mention during the opening interview. This is particularly true of drivers who are no longer with the carrier, however, the carrier may still be required to maintain their records.

Ask for the Following When Requesting a List of Controlled Substances and Alcohol Tests

You should request a list of all controlled substance and alcohol tests performed during the past 12 months. The list should include the drivers' names, the type of controlled substance and/or alcohol test, and the test result. You may also request drivers' social security numbers to verify against other controlled substance and alcohol testing records.

Part 382 – The Drug and Alcohol Clearinghouse

A review of the Clearinghouse requirements is required during every investigation and safety audit.

- Verify registration. Only when the motor carrier is required to conduct the required queries and/or to report a drug and alcohol violation.
- Verify queries had been conducted as required
    - Pre-employment queries must be conducted before placing a driver to perform safety-sensitive functions.
    - Annual queries must be conducted at least once a year for each driver after January 6. 2020.

Registration

Starting January 6, 2020, every motor carrier employer of CDL drivers is required to comply with the Clearinghouse requirements. Registration is only required to perform a query or to report a drug and alcohol violation. However, you can encourage the motor carrier to register. To verify registration, FMCSA enforcement personnel can access the Clearinghouse website logging as enforcement users, when functionality enabled access the ACE or the New Entrant Website System, or even ask the motor carrier for proof of registration by verifying their access to the account online. MCSAP personnel can also request this information from their respective division office.

Queries

Two types of queries are required:

- Pre-employment queries must be conducted before allowing any driver to perform safety-sensitive functions. To review a sample of pre-employment queries, the investigator must use the “CFR Parts: 382 Pre-employment tables” . When a query is submitted to the Clearinghouse, the driver must approve the release of the information electronically
- Annual queries are required at least once a year (after January 6, 2020) on each driver employed by the motor carrier. To review a sample of the annual queries, the investigator must use the “CFR Parts- Part 391-DQ Files Table”.

Safety Audit procedures to Follow When 382.701(a) Pre-Employment Query Problems are Encountered.

Scenario 1:

If a carrier did not conduct a DACH pre-employment query on a driver who has been hired during the previous 365 days, should the auditor inform the carrier to complete a query? Yes.

If so, should the auditor instruct the carrier to complete a Pre-Employment query? Yes, and then document why it was after the hire date.

Scenario 2:

Carrier did not conduct a DACH pre-employment query on a driver who has been hired during the previous 365 days. Two months after the driver being hired, the carrier conducted a limited query. Should the auditor inform the carrier to complete a query? No, because it really wouldn’t show anything different.

During the first three years after the Clearinghouse implementation, the employer still required to conduct the required inquiry to previous employers outlined on §382.413 and §391.23.

Reporting

Employers and service agents are required to report to the Clearinghouse. For detailed information in what entities are required to report, please refer to the table "Reporting Entities and Circumstances in §382.705". Ensure the reports are accurate, submitted within the reporting timeframe, and when required, accompanied by the required supporting documentation. To verify the submission, investigators must use the "minimum Number of CDLIS Checks" table and access Query Central and CDLIS, which will show the prohibition as ***"Drug and Alcohol Clearinghouse - Driver is prohibited from operating under 382.501(a)".*** Verification can always conduct by accessing the Clearinghouse as an enforcement role. If non-compliance found by a service agent or an employer failed to report a violation, i.e. driver test positive but driver is not prohibited per CDLIS or Query Central, please contact the Compliance Division at Clearighouse@dot.gov.

SA Part 382 - Pre-Employment Tests

Sampling Requirements for Pre-Employment Testing

Review pre-employment controlled substance testing and inquiries from previous employers for alcohol and controlled substance testing information for selected drivers. Verify that the motor carrier did not use the drivers prior to the motor carrier receiving notification of the test results. The selection of drivers to review, and the minimum number of pre-employment controlled substance tests to be reviewed for compliance, is set forth in the table below:

Sampling Requirements for Pre-Employment Testing

Number of Drivers Hired in the Previous 365 Days* Subject to Part 382	Minimum Number of Pre-Employment Controlled Substance Test (CST) Results to Review
1	1
2	2
3 or more	3

*If less than 365 days, review from date motor carrier received their US DOT number, whichever is greater.

Select the Drivers Once the Sample Size Has Been Determined

1. Review the motor carrier records to determine the drivers hired within the past 365 days; select the ones that were involved in either intrastate or interstate accidents first.
2. Select drivers that have been cited for driver violations during roadside inspections or drivers with moving violations. If the carrier hired three or fewer drivers, audit all the pre-employment tests.

Procedures to Follow When Pre-Employment Testing Problems are Encountered

If a driver was not pre-employment tested for controlled substances, ensure that the carrier has not exercised the pre-employment controlled substances testing exception. You should answer “No” to the question “Has the carrier ensured that drivers have undergone testing for controlled substances prior to performing a safety-sensitive function?”

In addition, the motor carrier should be instructed to conduct a pre-employment test on all drivers hired during the previous 365 days who were not pre-employment tested for controlled substances and who were not otherwise tested for controlled substances during the previous 365 days. For example, a driver who was not pre-employment tested for controlled substances, but was later tested for controlled substances under the random testing requirements, would not be required to make up the missed pre-employment test.

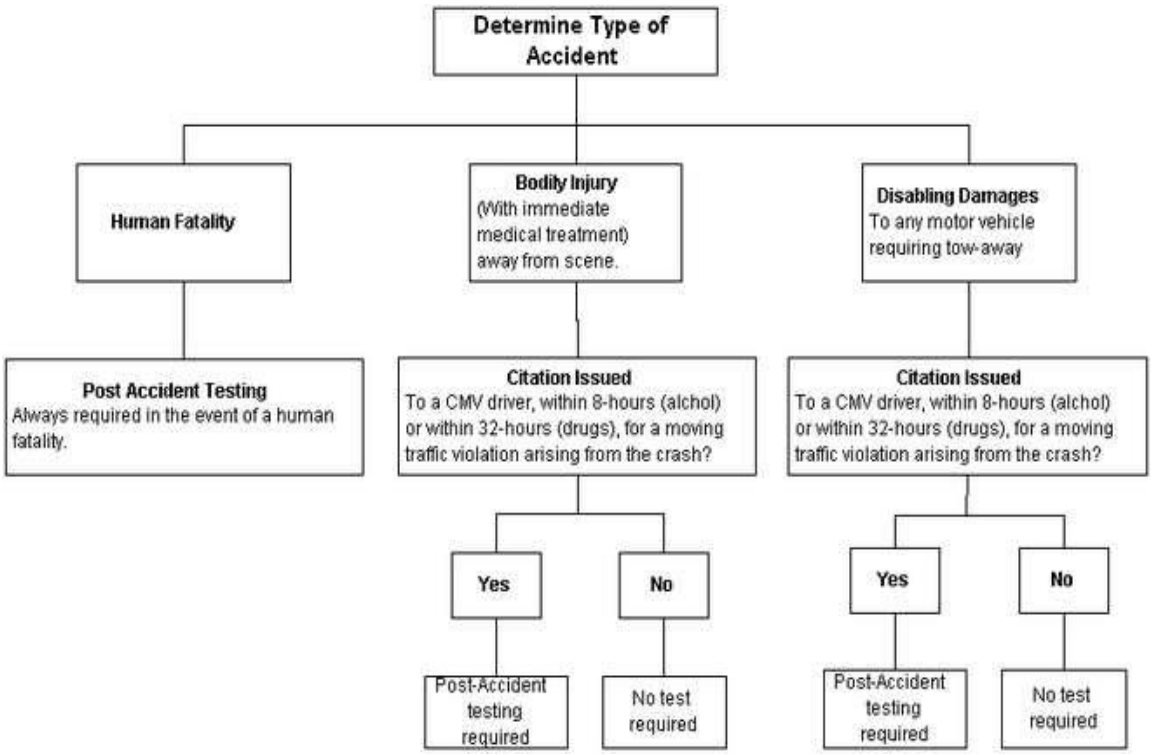
SA Part 382 - Post-Accident Testing

Procedures to Use When Reviewing Post-Accident Test Results

Verify that all drivers required to submit to post-accident controlled substances and alcohol tests are tested, as required by 382.303(c); this applies to all recordable accidents within the last 365 days. Validate carrier’s reason for failing to complete tests within the required time limits.

Post-Accident Testing is Required Under the Following Circumstances

The following flowchart is a quick reference for determining when post-accident testing is required:



Description of Determine Type of Accident flowchart

SA Part 382 - Random Testing

A Carrier is Considered to Have a Random Testing Program if the Carrier Has Conducted At Least One Random Test or is Participating in a Consortium

If the motor carrier has failed to implement a random controlled substance and alcohol-testing program, you must answer "No", to the question "Has the carrier implemented a random testing program?".

When a consortium fails to test for the required 50 percent for controlled substances, or 10 percent for alcohol, for the total number of average driver positions during a calendar year, you should check to confirm whether the carrier met the appropriate percentages. If the motor carrier has failed to meet the appropriate random testing rates for alcohol and controlled substances, you must answer "No" to the question "Has the carrier conducted random alcohol testing at an annual rate of not less than the applicable annual rate or prorated rate of the average number of driver positions?" and "Has the carrier conducted controlled substance testing at the applicable prorated rate of not less than the applicable annual rate of the average number of driver positions?" respectively.

Ensure random tests are reasonably spread throughout the year, as shown in Example 1, and the carrier is utilizing a scientifically valid random selection method.

Advise the appropriate Division Office that the consortium is in noncompliance.

Sampling Requirements for Random Testing

The number of required random tests in a calendar year is based upon the average number of driver's subject to be tested by the employer and the applicable minimum annual percentage rate for random testing. If there are large fluctuations in the number of drivers subject to be tested by the employer throughout the year, without any clear indication of the average number of driver positions, the necessary number of random tests is based upon a reasonable estimate of the number of drivers subject to be tested by the motor carrier. Use the following example to determine how many random drug and alcohol tests should be performed.

Formulas

Controlled Substances	Alcohol
T = .25 X D/P	T = .1 X D/P
T = Minimum random tests. D = Number of drivers subject to be tested by employer or employer's consortium third party administrator (C/TPA). P = Number of test periods per year.	

Examples-Annual Test Rates

Controlled Substances	Alcohol
Quarter 1 = 10 Drivers Quarter 2 = 30 Drivers Quarter 3 = 300 Drivers Quarter 4 = 10 Drivers 350 Drivers	Quarter 1 = 10 Drivers Quarter 2 = 30 Drivers Quarter 3 = 300 Drivers Quarter 4 = 10 Drivers 350 Drivers
T = .25 X D/P T = .25 X 350/4 T = .25 X 87.5 T = 21.88 (Round up) T = 22	T = .1 X D/P T = .1 X 350/4 T = .1 X 87.5 T = 8.75 (Round up) T = 9
How many drivers have to be tested in order to meet the 25 percent CST rate for the year? The answer is 44, which must be reasonably spread throughout the year.	How many drivers have to be tested in order to meet the 10 percent Alcohol rate for the year? The answer is 9, which must be reasonably spread throughout the year.

Calculating the Number of Tests that Need To Be Completed for a Testing Period

NOTE: To verify current random testing rates please check this link:
https://www.transportation.gov/odapc/random-testing-rates

The formula above can also be used to determine the number of tests to be conducted per testing period. The following table illustrates how the number of tests can be established per testing period.

Examples – Test Period Rate (Controlled Substances)			
Carrier with four testing periods per year using drivers subject to be tested by employer or employer's C/TPA			
Testing Period	Number of Drivers	Formula	Drivers to be tested during period.
1	10	T = .25 X 10/4	0.625
2	30	T = .25 X 30/4	1.875
3	300	T = .25 X 300/4	18.75
4	10	T = .25 X 10/4	0.625
Annual Total			
Carrier with six testing periods per year using drivers subject to be tested by employer or employer's C/TPA			
1	10	T = .25 X 10/6	0.417
2	30	T = .25 X 30/6	1.25
3	300	T = .25 X 300/6	12.5
4	10	T = .25 X 10/6	0.417
5	20	T = .25 X 20/6	0.833
6	10	T = .25 X 10/6	0.417
Annual Total			

*The annual rate required of this carrier is 32 Random Tests. Using this formula the carrier would actually have one more than needed and therefore may drop one of the tests. It would be inappropriate to drop a test in periods 1, 4, or 6 as the carrier would not meet the requirement to spread the tests evenly.

Description of Examples-Test Period Rate (Controlled Substances) table

SA Part 382 - Reasonable Suspicion

Procedures to Use if Reasonable Suspicion Tests were Conducted

Review all reasonable suspicion tests that have been conducted and ensure all supervisors have received the proper training.

SA Drivers with Positive Tests Results or Drivers Who Refused to be Tested

Steps to Follow if the Carrier has Used a Driver with Positive Controlled Substance and/or Alcohol Test Results

- Determine the identity of drivers who tested positive for alcohol or controlled substances in the previous12 months.
- Review the motor carrier's Semi-Annual Laboratory Statistical Summaries and their Annual Calendar Summary of urinalysis testing to verify that the identities of all drivers who tested positive for controlled substances in the previous 12 months are known
- Contact the medical review officer (MRO), if necessary, to verify test result notification dates for carrier and/or driver.
- Ensure no drivers who had an alcohol concentration of 0.04 or greater, or who tested positive for a controlled substance, were used by the motor carrier after notification of the test results.
- Ensure drivers who have tested positive, refused to test, or adulterated a test, and are retained by the motor carrier, have undergone a substance abuse professional (SAP) evaluation and a return-to-duty test
- Ensure any drivers identified by the SAP as needing to undergo the required follow-up testing and have done the prescribed rehabilitation.

Steps to Follow if it is Discovered that the Carrier Used a Driver with an Alcohol Concentration of .04 or Greater or Positive Controlled Substances Test

You should complete the SA and notify the Division for appropriate handling.

Steps to Follow if the Carrier has Used a Driver who has Refused to Submit to an Alcohol or CST

You should complete the SA and notify the Division for appropriate handling

3.3.6 Part 383 – Commercial Driver's License (CDL) Standards

During your review of compliance with Part 383, you should use the following guidelines to assist in your audit of motor carriers of both property (including placardable HM) and passengers.

Procedures to Follow During Audit of Part 383

Your audit of Part 383 should consist of:

- Requesting a driver list,
- Selecting the drivers for CDLIS checks, and
- Performing drivers' license checks.

SA Part 383 - Requesting Driver Lists

Request for a Driver List Should Include the Following

If a driver list was not requested before the SA or during the opening interview, you should request a list of drivers employed in the last 12 months and the date they were hired and/or terminated. You should verify the accuracy and completeness of the list by reviewing the company profile, payroll records, dispatch records, bills of lading, and/or other transportation or shipping documents. Determine if HM is transported, what quantity and type of vehicle HM is transported in, and which drivers transport the HM.

SA Part 383 - Determining Drivers' Commercial Driver's Licenses To Be Checked

Sampling Requirements for Minimum Number of Driver's Licenses/Driving Records to be Reviewed

CDLIS checks should be conducted on a sampling of all drivers subject to CDL requirements.

Minimum Number of CDLIS Checks

Number of Drivers Subject to CDL Requirements	CDLIS Checks
1 – 20	All
21 - 150	20
151 - 280	32

SA Part 383 - Selecting Driver Files For Driver's License/Driving Record Checks

Selecting the Drivers Once the Sample Size Has Been Determined

You should only review DQ files for drivers who operate in intrastate or interstate commerce. Then:

- Check the drivers' licenses/driving records checks for those drivers who were involved in either intrastate or interstate recordable accidents.
- Select drivers that have been cited with Part 383 violations during roadside inspections (e.g., CDL suspensions, revocations, cancellation, or disqualification issues).
- Select recently hired drivers or drivers who were cited for serious traffic (or moving) violations.
- Include at least one HM driver requiring endorsement(s) on their CDL (if applicable), if one is not included in the previous selections.

Checking the License Status and Driving Records of Drivers

You should verify driver's CDL history/status through CDLIS or other acceptable methods [e.g., National Law Enforcement Telecommunications System (NLETS), NCIC, or State Licensing System]. You should also verify that drivers have the proper class and endorsements, and then check for any disqualifying offenses.

49 CFR 383 - Mexican Licencia Federal

Requirement to Check the Status of a Mexican Licencia Federal

There is no requirement to check with the licensing agency in Mexico to verify the violation history of the Mexican Licencia Federal.

Every Mexico-domiciled driver operating a CMV, as defined in 49 CFR 383, in the United States must have a valid Mexican Licencia Federal, issued by the Secretaria de Comunicaciones y Transportes (SCT) and recorded in the Licencia Federal Information System (LIFIS), with the proper vehicle class and without any restriction for operating in the United States.

Do the Following if a Mexican Licencia Federal is not in CDLIS

You should document the violation in the SA.

Can I Call the Local SCT Office to Verify a Mexican Licencia Federal?

No, calling the local SCT office is no longer permitted for verification of a Licencia Federal.

SA Part 383 - CDL Problems

If it is Discovered that a Driver's CDL is Suspended, Revoked, Canceled, or Disqualified for Safety-Related Reasons

Carrier Had Knowledge and Safety-Related

If you establish the motor carrier **had knowledge**, or should have had knowledge, of the suspension, revocation, cancellation, disqualification, or invalidity, you should verify the reason. Was it for safety-related offenses or non-safety related offenses?

For safety-related offenses only, ensure that the motor carrier has performed the required driver's license checks per the FMCSR.

Carrier Did Not Have Knowledge or Not Safety-Related

The following sequence should be followed, if you have established the motor carrier **did not have knowledge** of the CDL suspension, revocation, cancellation, disqualification, or invalidity for safety-related offenses only:

- Advise the motor carrier of the driver's CDL status,
- Advise the motor carrier of their responsibility to relieve the driver of driving duties, and
- Document in Part C of the notification date/time and name of motor carrier official.

The following chart can assist in reading a Mexico Licencia Federal CATEGORIA TO CLASS CROSS REFERENCE LICENCIA FEDERAL.

DRIVER HOLDING A LICENCIA FEDERAL WITH A CATEGORIA	EQUIVALENT TO A DRIVER HOLDING A CDL CLASS ENDORSEMENT/RESTRICTIONS
A	B with P (passenger) endorsement and a restriction to bus, with a capacity of 14 or more persons including the driver.
B	A with a T (doubles/triples) endorsement, and a restriction to combination vehicle or one with more than three axles.
C	B with a N (tank) endorsement and a restriction to straight truck with less than 4 axles, i.e. may not drive a bus without a Categoria A
D	C with P (passenger) endorsement and is restricted to small bus/van/jitney which does not exceed 3,500 kg (7,716 lbs.) or have a capacity of more than 13 persons including the driver and is used for purposes of giving tours.
E	A with a T (doubles/triples) endorsement, an N (tank) endorsement, and an H (HM) endorsement. This is the only categoria that authorizes carrying HM. It may also be used for any size truck without materials.

3.3.7 Part 385 – Safety Fitness Procedures

SA Procedures Under 49 CFR 385.325 and 385.327

Scope

Procedures and guidelines in this topic apply to the procedures for corrective action under 49 CFR 385.325 and administrative review under 49 CFR 385.327.

The SA Result

A SA must be completed for each NE motor carrier within 18 months of FMCSA granting the NE motor carrier a USDOT number. A system generated notification of the final pass or fail determination of the SA will be made to the NE motor carrier no later than 45 days after completion of the SA. The methodology is as follows:

- 3 failed “Factors" are required for a SA to fail.
- A “Factor” is considered failed if it receives 3 or more points.
- An “Acute” question is worth 1.5 points.
- A “Critical” question is worth 1 point
- **16 automatic failure factors**

Violations That Will Result in Automatic Failure of the New Entrant Safety Audit

Violation	Guidelines for Determining Automatic Failure of the Safety Audit
1. 382.115(a)/382.115(b)—Failing to implement an alcohol and/or controlled substances testing program (domestic and foreign motor carriers, respectively).	Single occurrence
2. 382.201— Using a driver known to have an alcohol content of 0.04 or greater to perform a safety-sensitive function.	Single occurrence
3. 382.211—Using a driver who has refused to submit to an alcohol or controlled substances test required under 49 CFR 382.	Single occurrence
4. 382.215—Using a driver known to have tested positive for a controlled substance.	Single occurrence
5. 382.305—Failing to implement a random controlled substances and/or alcohol testing program.	Single occurrence
6. 383.3(a)/383.23(a)—Using a driver who does not possess a valid commercial driver's license.	Single occurrence
383.37(a)—Allowing, requiring, permitting, or authorizing a driver to operate a CMV who the employer knew or should reasonably have known does not have a current CLP or CDL, does not have a CLP or CDL with the proper class or endorsements, or operates a CMV in violation of any restriction on the CLP or CDL. 7.	Single occurrence
8. 383.51(b)—Allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle.	Single occurrence. This violation refers to a driver operating a commercial motor vehicle as defined under 49 CFR 383.5.

9. 387.7(a)—Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.	Single occurrence
10. 387.31(a)—Operating a passenger-carrying vehicle without having in effect the required minimum levels of financial responsibility.	Single occurrence
11. 391.15(a)—Using a disqualified driver.	Single occurrence
12. 391.11(b)(4)—Using a physically unqualified driver.	Single occurrence. This violation refers to a driver operating a commercial motor vehicle as defined under 49 CFR 390.5.
13. 395.8(a)—Failing to require a driver to make a record of duty status.	Requires a violation threshold (51 percent or more of examined records) to trigger automatic failure
14. 396.9(c)(2)—Requiring or permitting the operation of a commercial motor vehicle declared ‘‘out-of-service’’ before repairs are made.	Single occurrence
15. 396.11(c)—Failing to correct out-of-service defects listed by driver in a Driver Vehicle Inspection Report before the vehicle is operated again.	Single occurrence
16. 396.17(a)—Using a commercial motor vehicle not periodically inspected.	Requires a violation threshold (51 percent or more of examined records) to trigger automatic failure

Note: Do not cite motor carriers for expedited action violations discovered during roadside inspections where a letter has been generated and mailed to the motor carrier.

Automatic Failures

Sixteen regulations have been identified as essential elements of basic safety management controls necessary to operate in interstate commerce (Part 385.321). A NE motor carrier’s failure to comply with any one of the 16 specified regulations results in an automatic failure of the SA. If the safety auditor discovers one of the sixteen specific automatic failures, the auditor is required to complete all required sampling and questions for each SA even if one of the automatic failure violations is discovered early in the audit. It is important to ensure that the SA assesses the overall adequacy of the carrier’s safety management program and that a NE motor carrier failing the SA takes adequate corrective action for every violation causing or contributing to the failure of the audit.

In order to cite an automatic failure violation that uses the term “knowingly,” the safety auditor must determine if the motor carrier knew or in exercising reasonable diligence should have known about the violation. Such information may come from documentation in the carrier’s files, previous notices from FMCSA or a State agency, previous roadside inspections citing the violation, or failing to obtain information, such as driver qualification (DQ) documentation as required by the FMCSR. A “knowingly” automatic failure violation may also be supported by an admission of the NE motor carrier in the form of a written statement, based on personal knowledge, by a person with some ability to control motor carrier operations or a person responsible for obtaining such information.

If the NE motor carrier passes the SA, it retains its NE registration and remains subject to the NE safety monitoring system for the remainder of the safety monitoring period.

If the NE motor carrier fails the SA, its NE registration will be revoked and its operations placed OOS unless it:

1. Provides evidence of adequate corrective action to SCD for the FMCSA SC where the NE's principal place of business (PPOB) is located within the time period specified for the motor carrier's operation; and/or
2. Requests administrative review of the SA which results in a determination that that FMCSA committed an error in its determination that the motor carrier failed the SA.

When violations are discovered and corrective action has been taken by the motor carrier, should the Safety Auditor cite those violations during the safety audit?

No. If violations are discovered at the time of the safety audit, but sufficient evidence demonstrates that the new entrant motor carrier has taken subsequent corrective action that places the carrier into regulatory compliance, the Safety Auditor should not cite the violation.

Corrective Action Plan (CAP) Submittals for Failed SAs

NE motor carriers operating vehicles designed or used to transport 16 or more passengers or placardable quantities of HM must submit evidence of corrective action within 45 days of the service date of the notice of the failed SA. All other NE motor carriers must submit evidence of corrective action within 60 days of notice of the failed SA.

A corrective action plan submittal must be in writing and sent to the SC Director for the FMCSA SC where the NE's PPOB is located. As outlined in the *NE Program Corrective Action Plan Procedures for Failed Safety Audits and Follow-Up Procedures* policy, dated 10-26-2012, extensions will not be granted.

CAP Submission Guidance

1. If a New Entrant submits a CAP that is received within 15 days from the date of the Agency's written notice to the New Entrant that it failed the SA, the Service Center Director or its designee will:
   a) Ensure that the CAP is reviewed and a CAP decision rendered before the planned revocation date.
   b) If the CAP is found to be unacceptable, the CAP will be rejected, the carrier's New Entrant registration will be revoked; its operations placed OOS, and the carrier must wait 30 days to reapply.
   c) If the CAP is found to be acceptable, the CAP will be accepted and the New Entrant motor carrier will be allowed to continue operations and complete the New Entrant Program.
2. If the New Entrant submits a CAP that is received more than 15 days from the date of the written notice that it failed the SA but within the requisite regulatory timeframe, the Service Center Director or its designee will:
   a) Make all reasonable efforts to review the CAP before the proposed revocation date. Passenger carriers and hazardous materials carriers, as defined in Section 390.5, will be given priority.
   b) If FMCSA is unable to complete a review of the CAP within the requisite timeframe and the New Entrant motor carrier is placed OOS, but after the CAP is reviewed it is found to be acceptable, the revocation should be promptly rescinded and the carrier allowed to resume operating in interstate commerce without the need to wait 30 days to reapply. Evidence of the revocation and the OOS order shall remain as history in all applicable FMCSA Information Technology (IT) systems.
   c) If once the CAP is reviewed it is found to be unacceptable, the CAP will be rejected, the carrier's New Entrant registration should be revoked; its operations placed OOS, and the carrier must wait 30 days to reapply.
3. A carrier that submits a CAP after the proposed revocation date must have its New Entrant registration revoked; its operations placed OOS, and must wait 30 days to reapply.
4. The Service Center Director can delegate its signature authority to another FMCSA official, who is not involved in the administrative review process, outlined in 49 CFR § 385.327.

5. No extensions to the above timeframes will be granted.

If the new entrant motor carrier fails the safety audit, will corrective action be required for all violations, including violations of critical and acute regulations that did not cause the new entrant to fail the audit?

No. The new entrant motor carrier is required to submit evidence of corrective action for all violations that contributed to the failure of the safety audit. Areas of non-compliance that did not result in or contribute to the failure of the audit will be brought to the carrier's attention with notice that violation of any regulation may result in enforcement and civil penalties.

Extensions Under 49 CFR 385.323

As outlined in the *NE Program Corrective Action Plan Procedures for Failed Safety Audits and Follow-Up Procedures* policy, dated 10-26-2012, extensions will not be granted.

Administrative Adjudication

A NE motor carrier may request administrative review of a determination of a failed SA. A NE motor carrier may also request administrative review of a determination by the SC Director that its submitted corrective action after a failed SA is insufficient and its safety management controls remain inadequate. Any request by a NE motor carrier for administrative review must be made to the FA of the FMCSA SC for the geographic area of the new entrant's PPOB. The NE motor carrier's request for administrative review must explain the error the NE motor carrier believes FMCSA committed and include a list of all factual and procedural issues it wishes to raise.

If a NE motor carrier believes FMCSA has committed an error in its determination of a failed SA, the NE motor carrier may request that FMCSA conduct an administrative review of the determination that the NE motor carrier's safety management controls are inadequate. If the NE motor carrier does not submit corrective action in response to FMCSA's notice of the failed SA, the NE motor carrier must request administrative review of the determination of a failed SA within 90 days of the service date of the written notice of the failed SA. Submittal of a request for administrative review will not put on hold the registration revocation and OOS provisions of the regulations. The NE should submit its request for administrative review within 15 days of the notice of failed SA, if it wants to ensure that the FA will be able to review the request and issue a decision before the NE's registration is revoked and its operations placed OOS. If the NE motor carrier fails to submit the request within 15 days of the notice of failed SA, its NE registration may be revoked and its operations placed OOS before completion of the administrative review.

If a NE motor carrier submits corrective action after a failed SA and FMCSA determines that the corrective action is insufficient, the NE motor carrier may request administrative review of FMCSA's determination that its safety management controls remain inadequate. The NE motor carrier must submit its request for administrative review within 90 days of FMCSA's notice that the corrective action submitted is inadequate.

The FA will complete his/her review and notify the NE motor carrier in writing of the decision during the administrative review proceeding. The Field Administrator's written decision will be issued within 30 days after receiving the request from a motor carrier required to submit corrective action within 45 days of notice of a failed SA and within 45 days after receiving the request for administrative review from a motor carrier required to submit corrective action within 60 days of notice of failed SA.

The Decision of the FA becomes the Final Agency Action in the administrative review proceeding.

In the New Entrant Safety Assurance Program the FA is the decision maker for administrative review proceedings for failed SAs and denied corrective action plan submittals that result from failed SAs. In order to ensure the neutrality and independence of the administrative review process, the FA, and any counsel and staff designated to assist the FA in administrative review determinations, must be separated

from FMCSA personnel making determinations regarding SAs and corrective action plan submittals. The FA may not have any involvement in conducting and reviewing SAs, corrective action plan submittals, or determining the adequacy of corrective action submittals. FMCSA and State personnel, including SC Directors, DAs, NE Coordinators, and corrective action plan submittal reviewers responsible for conducting and reviewing SAs and corrective action plan submittals for failed SAs may not, in any administrative review proceeding or a factually related matter, discuss or communicate the facts or issues involved with the proceeding with the FA (and counsel and staff assigned to assist the FA in administrative review determinations) except during conferences or written submittals during the administrative review proceeding.

Because of the need to ensure the separation of functions between the Field Administrator's adjudicatory role and the oversight responsibilities of the SC Director for SAs and corrective action plan determinations, the FA may only delegate his/her decision making functions under the NE rule to another FA.

Ex Parte Communications

Ex parte communication between the FA and the DA and/or Enforcement Team regarding the administrative review, except to request the documentation supporting the decision, is ***absolutely prohibited.***

Expedited Action

A NE motor carrier that commits any of the expedited action violations, in accordance with 49 CFR 385.308, may be subject to an expedited SA, investigation, or may be required to submit a written response demonstrating corrective action.

As of April 20, 2015, FMCSA no longer issues EA notification letters or requires New Entrants to submit an acceptable corrective action plan if a violation of 49 CFR 385.308(a) occurs (MC-ECS-2015-0002).

If a NE motor carrier commits any expedited action violation(s) and has not yet had a SA or a rated Onsite Comprehensive Investigation, FMCSA will schedule a SA, as soon as practicable.

At the discretion of the DA, FMCSA may schedule an investigation of a NE motor carrier that commits any of the expedited action violations, at any time, if it is determined the violation warrants a thorough review of the NE motor carrier's operation. If the motor carrier has not received an SA, this investigation must be an Onsite Comprehensive Investigation.

If an expedited action results in an investigation, the investigation must be conducted by a Certified Federal or State Investigator.

Reapplication Procedures

A NE motor carrier may have its USDOT number revoked and its operations placed OOS due to any one of the following:

- Failing to Submit to a SA;
- Failed SA; and

A NE motor carrier whose USDOT number was revoked and its operations placed OOS may reapply no sooner than 30 days after the date of revocation.

1) If the NE motor carrier's USDOT number was revoked because the motor carrier failed to submit to a SA, the motor carrier must:

- Submit an updated MCS-150;
- Submit to a SA; and
- Begin the 18-month monitoring cycle again as of the date the re-filed application is approved.

2) If the NE motor carrier's USDOT number was revoked because the motor carrier failed its NE SA, the motor carrier must:

- Submit an updated MCS-150;
- Submit evidence that it has corrected the deficiencies that resulted in revocation of its registration and will otherwise ensure that it will have basic safety management controls in effect;
- Submit to a SA (applies to failing to submit to SA only); and
- Begin the 18-month monitoring cycle again as of the date the re-filed application is approved.

3) If the NE motor carrier's USDOT number was revoked because the motor carrier failed to timely submit evidence of corrective action in response to an expedited action notice, the motor carrier must:

- Submit an updated MCS-150; and
- Begin the 18-month monitoring cycle again as of the date the re-filed application is approved.

Safety Monitoring Period

In general, NE motor carriers are subject to an 18-month safety monitoring period. The 18-month monitoring period for the NE motor carrier begins when the motor carrier has completed all application and registration requirements. If a NE motor carrier changes status that removes the motor carrier from FMCSA's interstate jurisdiction and later re-enters the NE program, the motor carrier will restart its 18-month safety monitoring program from the date it completes all necessary re-registration requirements.

Permanent Registration

FMCSA will grant permanent registration only if a NE motor carrier successfully completes the monitoring period. Permanent registration may be granted no earlier than 18 months after the NE motor carrier is granted a USDOT number.

3.3.8 Part 387 – Insurance Requirements

During your review of compliance with Part 387, you should use the following guidelines to assist in your audit of motor carriers of both property (including HM) and passengers.

Procedures to Follow during Audit of Part 387

Your audit of Part 387 should consist of:

- Verifying the motor carrier was subject to Part 387, and
- Reviewing documentation to determine the amounts and types of HM transported, if any. Carriers transporting HM that are exempt from the hazardous materials regulations (HMR), such as motor vehicles, materials of trade and batteries are still subject to insurance requirements for those HM.
- Reviewing the documentation proving the motor carrier's financial responsibility requirements.

If your SA involves a Federal Transit Administration (FTA) grantee providing interstate, for-hire, or transit service operations funded by a grant under 49 U.S.C. 5307, 5310, or 5311, or a carrier operating under a contract to provide transportation service funded in whole or in part by such grant funds, see Chapter 7 of the Motor Carrier Safety Planner at the following link: https://csa.fmcsa.dot.gov/safetyplanner/MyFiles/SubSections.aspx?ch=24&sec=78&sub=195

The exemption is Statutory [see 49 USC 31138(e)(4)]. See also Financial Responsibility Requirements for Federal Transit Administration Grant Recipients that Operate Passenger-Carrying Motor Vehicles in Interstate Commerce (12/19/2011).

Verifying that the Carrier has Obtained and has the Required Minimum Level of Financial Responsibility

If your SA involves a FTA grantee, see Chapter 7 of the Motor Carrier Safety Planner at the following link: https://csa.fmcsa.dot.gov/safetyplanner/MyFiles/SubSections.aspx?ch=24&sec=78&sub=195 The

exemption is Statutory [see 49 USC 31138(e)(4)]. See also Financial Responsibility Requirements for Federal Transit Administration Grant Recipients that Operate Passenger-Carrying Motor Vehicles in Interstate Commerce (12/19/2011).

Request form MCS-90/90B from the carrier. Ensure that an authorized representative of the issuing insurance company has countersigned the form. If the motor carrier does not have the adequate levels of financial responsibility, inform **the motor carrier officials that they must cease operations until they have the appropriate level of insurance on file.** You should include in a recommendation in your audit for the carrier to obtain the proper level of insurance and have the motor carrier initial this recommendation. You should also follow-up with the carrier after the audit has ended, to ensure it has obtained the required levels of liability insurance.

If the Carrier Cannot Produce the MCS-90/90B, But Can Produce the MCS/82-82B

The MCS-82/82B are acceptable forms to prove required liability insurance coverage.

If the Carrier Has an Insurance Policy, But Cannot Produce Form MCS-90/90B or MCS-82/82B

You will need to search through the insurance policy documents for the form. The motor carrier must have proof of the minimum level of insurance at the company's PPOB.

If the motor carrier cannot produce the MCS-90/90B endorsement, the auditor should answer "No" to the question "Does the carrier have required proof of financial responsibility (property carrier)?"

3.3.9 Part 390 – General Requirements

During your review of compliance with Part 390, you should use the following guidelines to assist in your audit of motor carriers of both property (including placardable HM) and passengers.

SA Part 390 - Procedures to Follow During Audit of Part 390

Your review of Part 390 should consist of:

- Inquiring about the motor carrier's knowledge of the FMCSR.
- Discussing with the motor carrier the required marking of its vehicles.
- Discussing the procedures for handling and evaluating its accidents.
- Identifying and recording the drivers and vehicles that have been involved in interstate recordable accidents. These drivers/vehicles will be the focus of the audit.

SA Part 390 - Accidents

Hyperlink to Computation of the Motor Carrier's Interstate/Intrastate Recordable Accident Rate section of Compliance ManualIf the Motor Carrier Has Been Operating Less than 12 Months

You should use the date of the carrier's first interstate trip.

Procedures that Should be Followed to Obtain Information on Accidents

Review the accidents listed on the company's profile and request any information the motor carrier may have on the accidents. Additional documents from the motor carrier's insurance company (e.g., the loss run) may also be helpful with discovering and obtaining information about the carrier's accidents.

Note: You will need to ask the motor carrier if it requires its drivers to prepare an internal (motor carrier) document, if they are involved in an accident. Many times they do, and if we don't ask for it, we will not get it. Many companies have an "Accident/Loss" File; let them define for you how they maintain accident information.

Look for the Following Information When a Carrier is Required to Maintain an Accident Register

You should determine whether the motor carrier's annual accident register includes all required interstate and intrastate recordable accident data, as required by Part 390.15(b)(1)(i-vi).

The accident register only needs to include recordable accidents that occurred in the United States, or as part of an interstate or intrastate trip to or from the United States.

Investigator is Not Required to Compute the Motor Carrier's Interstate Recordable Accident Rate

The Safety Enforcement Tracking and Investigation (Sentri) software will compute the motor carrier's recordable accident rate (factor 6) for you. However, if manual calculation is necessary, multiply the motor carrier's number of recordable interstate and intrastate accidents in the previous 12 months by 1,000,000. Then divide that result by the motor carrier's interstate and intrastate fleet mileage during the previous 12 months. If a motor carrier had two recordable interstate accidents and an interstate fleet mileage of 3,000,000 during the previous 12 months, the motor carrier's recordable accident rate is (2 X 1,000,000) / 3,000,000 which equals 0.67.

If Interstate Recordable Accidents are Not on the Company Profile During the SA

It should be included when determining the carrier's accident rate for the SA. You should obtain a copy of the accident information and submit the information to the DA (or FPS/DPS). The DA will then forward the information to the appropriate Division Office for discussion with appropriate state agency (states have 90 days to upload recordable accident information).

If You Discover Any Accidents on the Motor Company's Profile that Do Not Belong to the Carrier

These accidents should not be included in the accident rate computation. Advise the motor carrier of the error(s) and explain that it must contact DataQs to resolve the issue.

The DataQs website is located at: http://dataqs.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov).

SA Part 390 - Markings

Ensuring the Motor Carrier has Properly Marked All of its Vehicles

If possible or available, visually inspect the vehicles for proper markings. At a minimum, discuss the FMCSA marking requirements.

Mexico-domiciled long-haul carriers must display a USDOT number with an "X" suffix, while commercial-zone carriers must display a USDOT number with a "Z" suffix.

49 CFR 390 - Biennial Update

To verify that the motor carrier has submitted its biennial MCS-150 update, you should ask the motor carrier if it has made the required update filing and verify an affirmative response. Additionally, you should check the MCS150 date shown in Federal Motor Carrier System, The Motor Carrier Management Information System (MCMIS), Safety and Fitness Electronic Records (SAFER) system, and Query Central. Additionally, you need to verify that the carrier has not been cited during roadside inspections and previous compliance reviews for not having an updated MCS150. Remember: If a motor carrier registers its vehicles in a PRISM state, it may be exempt from this requirement. Please see 49 CFR 390.19(g) for more information.

PRISM States Eliminating Validating the MCS-150

The PRISM requirement to validate the MCS-150 Form before registering a vehicle is hereby eliminated. All other PRISM requirements will remain the same. The IRP and Department of Motor Vehicles (DMV) offices in PRISM States are no longer required to validate, at the time of registration, that the MCS-150 information has been updated within the past year.

3.3.10 Part 391 – Qualification of Drivers

During your review of compliance with Part 391, you should use the following guidelines to assist in your audit of motor carriers of both property (including placardable HM) and passengers.

Procedures to Follow During Audit of Part 391

Your audit of Part 391 should consist of:

- Requesting a driver list of drivers employed in the last 12 months,
- Sample DQ files,
- Select files, and
- Review files.

Request for a Driver List Should Include the Following

If a driver list was not requested before the SA or during the opening interview, you should request a list of drivers employed in the last 365 days, and the date they were hired and/or terminated. You should verify the accuracy and completeness of the list by reviewing the company profile, payroll records, dispatch records, bills of lading, and/or other transportation or shipping documents.

SA Part 391 - Determining DQ File Sample

Sampling Requirements for the Minimum Number of DQ Files to be Reviewed

You should follow the sampling requirements for the minimum number of DQ files, as set forth below:

Sampling Requirements

Number of Drivers Subject to FMCSR in the past 365 days	DQ Files Reviewed
1	1
2	2
3 or more	3

SA Part 391 - Selecting DQ Files

Selecting the Drivers' Files Once the Sample Size has been Determined

You should only review DQ files for drivers who operate in interstate commerce. Then:

- Select DQ files for those drivers who were involved in interstate recordable accidents.
- Select drivers that have been cited with Part 391 violations during roadside inspections, (e.g., medical card violations, disqualification issues).
- Select recently hired drivers, or drivers who were cited for serious traffic (or moving) violations.

If the Minimum Number of DQ Files Cannot be Reviewed

There will be instances where you will not be able to review the minimum number of required documents. If this happens, you must explain in Part C of the SA why you did not meet your sample. You must also explain in Part C if you exceed the required sampling beyond the number set forth in the table above.

SA Part 391 - Reviewing DQ Files

DQ File Documents that Should be Reviewed

The motor carrier is required to prepare and maintain DQ files in accordance with Part 391.51(b)(1-8). Below you will find guidance when reviewing each DQ file document:

- **Employment Application:** You should ensure employment application fields are completed, or fields are noted as non-applicable, and signed by the driver/applicant.
    - **NOTE:** For drivers of CDL (Part 383) required vehicles, must show previous 10 years employment history.
- **Previous Employment History Inquiry:** You should ensure motor carrier has performed inquiries into driver's/applicant's previous employers, by means of either written document or

noting employment verification by telephone, within 30 days of date of hire. Motor carrier must make a good faith effort to contact driver's/applicant's previous employers regarding employment history and document their good faith effort.

- **Copy of Driver's License History Inquiry into State Agency:** You should ensure motor carrier has contacted each state agency where the driver/applicant holds an operators license and obtained a copy of the driver's license history within 30 days of date of hire.
- **Road Test/Certificate or Equivalent (Copy of Valid CDL):** You should ensure the motor carrier has performed a road test for their driver/applicant on the company vehicle the driver will be required to operate, and then document the results of the road test and subsequent issuance of road test certificate. The motor carrier may accept a copy of a valid CDL in lieu of the road test/certificate requirement.

- **Physical Qualification** – You should ensure that each driver is physically qualified by reviewing the acceptable documents as proof of physical qualification and by following the steps outlined in the procedures section of the policy *Update to the Medical Certificate Updated medical Certification policy and procedures (MC-SEE-2022-0001).*
    - **CDL and CLP Holders:** The following are the only types of documents that may be accepted when verifying that a CDL/CLP holder is physically qualified:

      1. Motor Vehicle Report (MVR)

      If CDLIS contains current medical certification status information for a CDL/CLP holder, then the copy of the driver's MVR maintained by the motor carrier must also include the driver's medical certification status.

      The MVR must contain a valid ME's National Registry number. The motor carrier is required by 49 CFR 391.23(m)(2)(i)(B) and (m)(3)(i)(B) to document verification that the driver was certified by an ME listed on the National Registry at the time the MEC was issued.

      2. SDLA-Issued Document

      In lieu of the MVR, FMCSA has exercised enforcement discretion to permit motor carriers to use other SDLA-issued documents, such as a letter or receipt from the SDLA, as an acceptable way to verify a CDL/CLP driver's medical certification status. In order for the SDLA issued document to be acceptable it must, at a minimum, include the following:
      - A clear indication that the SDLA accepted the driver's CDL medical certification information;
      - The driver's identifying information (e.g., name, date of birth, CDL number);
      - The driver's medical certification status information (i.e., "certified" or "not certified");
      - The issuance and expiration dates of the MEC;
      - The ME's National Registry Number. This could either be included in the SDLA-issued document or as a notation made by the carrier; and
      - The driver's medical variance and any restrictions.

SDLA issued documents will only be acceptable when the annual inquiry by the motor carrier under 49 CFR 391.25 is performed prior to the driver submitting an MEC to the SDLA. For example, if a motor carrier performs an annual review every September and the driver is not due to submit a new MEC to the SDLA until November, then a SDLA issued document maintained by the motor carrier would be acceptable.

3. MEC or Medical Examiner Report (MER)

If a CLP or CDL holder provided the motor carrier with a copy of the current MEC that was submitted to the State in accordance with 49 CFR 383.73(a)(2)(vii) or (b)(5), the motor carrier may use a copy of that MEC along with any medical variance documentation on which the certification was based, in the DQ file as proof of the driver's medical certification for *up to 15 days* from the date it was issued. After the 15 days, the motor carrier must maintain an MVR that reflects the driver's medical certification status or SDLA-issued document in the CDL driver's DQ file. If none of the documents mentioned above are in the driver's DQ File, then the motor carrier should be cited **49 CFR 391.51(b)(7);** Failing to maintain medical examiner's certificate in driver's qualification file.

In lieu of the MEC, FMCSA has exercised its enforcement discretion to permit the motor carrier to use a copy of a current MER along with any medical variance documentation on which the certification was based, in the DQ file as proof of the CLP or CDL holder's medical certification for up to 15 days from the date it was issued. After the 15 days, the motor carrier must maintain an MVR that reflects the CLP or CDL holder's medical certification status or SDLA-issued document in the CDL driver's DQ file.

- **Non-CDL/CLP Drivers:** For non-CDL/CLP drivers, a current MEC or MER, along with any medical variance on which the MEC is based, are the only documents that may be accepted when verifying that the driver is physically qualified. The motor carrier must maintain a copy of these records in DQ file as proof of the driver's medical cerification.

- **Medical Variances that allow the issuance of a medical certification**

  A "medical variance" is defined in 49 CFR 390.5T to mean that a driver has received one of the following from FMCSA that allows the driver to be issued a medical certificate:

  (1) An exemption letter permitting operation of a commercial motor vehicle pursuant to part 381, subpart C, of this chapter or § 391.64 of this chapter;

  (2) A Skill Performance Evaluation (SPE) certificate permitting operation of a commercial motor vehicle pursuant to § 391.49 of this chapter.

Though not included in the "medical variance" definition, FMCSA may also issue a 90-day waiver pursuant to 49 CFR part 381, subpart B. This typically occurs when FMCSA has previously granted a driver an exemption (e.g., vision, hearing, or seizure) that will expire before the Agency can process an exemption renewal application. The Administrator has delegated signature authority for the 90-day waiver to the Associate Administrator for Policy. The waiver is an interim measure that allows a driver to keep operating while the exemption application process is completed. Additionally, the 90-day waiver outlines the terms and conditions to operate, and provides issuance and expiration dates. Drivers are required to carry the waiver, as they would an exemption, while operating.

If a driver obtained a medical certification with the issuance of an SPE certificate, medical exemption, or medical 90-day waiver from FMCSA, that driver must maintain a copy of the SPE certificate, exemption letter, or waiver letter on their person at all times when on-duty in accordance with 49 CFR 391.41(a)(2)(iii). The motor carrier must include a copy of the SPE certificate, exemption letter, or waiver letter in the DQ file, in accordance with 49 CFR 391.51(b)(8).

Drivers with a stable insulin regimen and properly controlled ITDM, who meet the requirements of 49 CFR 391.46, may be qualified by an ME to receive an MEC for a period not to exceed 12 months and are no longer are required to obtain a medical variance.

- While reviewing the driver's physical qualification, you may have the prior medical examiner's certificate available in the DQ file, which will allow you to ensure the driver's medical qualifications did not lapse. This is also a good time to ensure that the medical certificate has not been altered or falsified. If you determine there was a lapse, ensure the driver did not drive in interstate commerce while he/she was not medically qualified.
    - **Note:** If the driver's medical examination report (AKA "The Long Form") is available in the DQ file, you should ensure the driver meets the medical qualification requirements, as defined in Section 391.41(b)(1-13). If you discover that a medical examiner qualified a driver, and that driver did not meet the medical qualification requirements defined in Section 391.41(b)(1-13), you should inform the motor carrier official that the driver does not meet the medical qualification requirements defined within Part 391, and use of the driver is in violation of the FMCSR. You should additionally notify the motor carrier official of the need to have the driver medically requalified. You will need to document, in Investigation Report/Part C of the Investigation Report, that you have notified the motor carrier official, in the event the motor carrier continues use of a medically unqualified driver.
        - In lieu of a medical certificate, the Mexican Licencia Federal and the Canadian CDL serve as proof that a driver is physically qualified.
            - However, for Canadian driver with a Class 5, a Ontario Class D (prior to age 80) or G, or New Brunswick Class 3 (prior to age 65), or Alberta Class 3 (prior to age 65) who operate in the United States, their license does not serve as evidence that the driver is physically qualified. Drivers with with these licenses must one of the following as proof of medical certification:

- A Canadian medical confirmation letter issued by their Province or Territory,
- Medical examiner's certificate issued by a medical examiner on the U.S. National Registry of Certified Medical Examiners, or
- An endorsement code on their license to indicate periodic medical examination. [NOTE: Drivers holding a Class 5 license from British Columbia with an endorsement code 18, 19, or 20, or a Class 5 from Prince Edward Island with an endorsement code M, are not required to carry additional evidence of medical qualification, as medical certification is required in those provinces to obtain said endorsements.]

Check the company profile records to verify if any driver(s) have been placed OOS for an invalid Mexican Licencia Federal or Canadian CDL (ask the carrier official why the license was invalidated).

○

Type of Activity	Recommended Validation Rate
New Entrant Safety Audits	One

(a)

Confirm during a safety audit whether a Canadian driver who possesses a Canadian non-CDL Class 5 license, Ontario Class G, Ontario Class D (prior to age 80), or New Brunswick Class 3 license (prior to age 65) and operates a CMV in the U.S. is medically qualified and that the motor carrier maintains proof of the medical certification in the driver's qualification file.

A Canadian Class 5, Ontario Class G, Ontario Class D (prior to age 80), or New Brunswick Class 3 license (prior to age 65) that allow a Canadian driver to operate a CMV may not require a CDL in Canada. As a result, a Canadian driver who possesses one of these licenses is not required to submit evidence of a medical examination as a condition of the Canadian provincial licensing process. To prove compliance with the U.S. medical requirements when operating in the U.S., a driver must carry proof of medical certification.

If a Canadian driver is operating a CMV in the United States and one of the Canadian licenses, the carrier should possess in the driver's qualification file one of the following items to verify that the driver is medically qualified to operate a CMV in the United States:

1. A Canadian medical confirmation letter issued by their Province or Territory (see sample); **OR**
2. A medical examiner's certificate issued by a medical examiner on the U.S. National Registry of Certified Medical Examiners;

[NOTE: An example of the Canadian medical confirmation letter (#1) may be found in Policy MC-ESB-2016-0004 in the Enforcement Memos section of Documents (year 2016) of the eFOTM.]

Enforcement personnel must document authentication attempts as follows:

Type of Activity	Method of Documentation

Safety Investigations, Compliance Reviews, and New Entrant Safety Audits	Record information in Part C and include the following: • Driver's Name • Driver's DOB • Driver's License Number • ME's license or certificate number and issuing state • Date of Issuance of the MEC • Results of the ME inquiry (the above Aspen codes are appropriate for reflecting the results in Part C)

If the information on the MEC does not match the information provided by the ME's office, this is cause to question the validity of the certificate. The inspector/investigator/auditor should reference the respective Part 391 – Qualification of Drivers sections in the eFOTM Investigator Manual, to include the appropriate violation codes (49 CFR Sections 390.35 or 391.41(a)(1)(i)), and to determine the appropriate enforcement action recommendation for violations found during an inspection, a compliance review, New Entrant Safety Audit or safety investigation.

- **Annual Review of Inquiry into State Agency (AKA Annual Driver's License Check):** If the driver has been employed a year or more, you should ensure that the motor carrier has requested and obtained a copy of the annual driver's license check from the state agency where the driver holds a license.
- **Annual List/Certification of Violations of Motor Vehicle Laws:** If the driver has been employed a year or more, you should ensure that the motor carrier has requested and obtained the annual list/certification of violations of all motor vehicle laws (except parking) from each driver.
- **Annual Review of Driver's Qualification:** If the driver has been employed a year or more, you should ensure that the motor carrier has performed the annual review with the driver, and has a document reflecting the annual review was performed.
    - **NOTE:** As you perform your SA, you may wish to inform the motor carrier to perform the Annual Review for each driver after obtaining and reviewing the Inquiry to the State Agency (AKA Annual Driver's License Check), and the Annual List/Certification of Violations of Motor Vehicle Laws. By performing the Annual Review in this manner, the motor carrier will ensure that the Annual List/Certification of Violations of Motor Vehicle Laws submitted by the driver reflects the same data as the Inquiry to the State Agency (AKA Annual Driver's License Check) obtained from the State of License.

3.3.11 Part 392 – Driving of Motor Vehicles

During your review of compliance with Part 392, you should use the following guidelines to assist in your audit of motor carriers of both property (including placardable HM) and passengers.

Procedures to Follow During Audit of Part 392

Your audit of Part 392 should consist of:

- Identifying the existence of extended runs (Are they completed within the regulations?);
- Discussing the commodities transported and how they are secured;
- How driver fatigue is addressed; and
- Discussing the company's policies concerning seat belts, radar detectors, and unauthorized passengers.

Auditing Compliance with Part 392

You will probably find yourself limited during your audit of Part 392. Most of the violations of the part are generally found at the roadside. Audit of compliance with Part 392 will cover the 12-month period prior to the date of SA or since the motor carrier received its US DOT number.

3.3.12 Part 393 & 396 – Parts & Accessories, and Inspection, Repair & Maintenance

During your review of compliance with Parts 393 and 396, you should use the following guidelines to assist in your audit of motor carriers of both property (including placardable HM) and passengers.

SA Parts 393 & 396 – Vehicle Inspections

Procedures to Follow During Audit of Parts 393 and 396

Your audit of Parts 393 and 396 should consist of:

- Determining if vehicle inspections should be conducted during your audit,
- Selecting vehicles for inspection,
- Inspecting vehicles,
- Calculating the OOS rate,
- Determining the number of maintenance files to review, and
- Determine the number of DVIR to review.

Determining if Vehicle Inspections Need To Be Conducted During the Audit

If the motor carrier does not have the minimum sample for vehicle inspections on its company profile, you are required to conduct Level V inspections during your investigation, when commercial motor vehicles are available.

Minimum Sample for Vehicle Inspections

You should follow the sampling requirements for the minimum number of vehicle inspections, as outlined below.

Minimum Sample for Vehicle Inspections

Number of Vehicles Subject to FMCSR*	Vehicles Inspections to Conduct
1	1
2	2
3 or more	3

***Each **power unit and trailer** is considered a vehicle for determining the number to be sampled.*

Vehicles to Select for Inspection

You should select vehicles that were operated in interstate commerce within the previous 7 days, are ready for dispatch, and are available for inspection:

- First, select vehicles involved in accidents.
- Then, select vehicles that have been placed OOS (profile) or cited for equipment violations during roadside inspections within the previous 12 months, or from the date the motor carrier received its US DOT number, whichever is less.
- You will need to verify if the OOS violations and other equipment violations were repaired.

Conducting the Vehicle Inspections

Your vehicle inspections should be conducted using the North American Vehicle/Driver Inspection Procedures. However, before you conduct your vehicle inspections, request the assistance of a driver, mechanic, or other individual capable of operating the controls of the vehicle. When you conduct the vehicle inspections, inspect at least one of each type of vehicle operated (straight truck, truck tractor, etc.) and perform Level V inspections. If Level V inspections are not appropriate, provide an explanation in Part C of the SA report.

If OOS Violations are Found During the Vehicle Inspections

If you discover OOS violations during the vehicle inspections, you should inform the appropriate motor carrier official. Advise the individual that the vehicle(s) can't be legally operated until the necessary repairs are made. You should place the OOS Order (Form MCSA-64) on the OOS vehicle.

After Conducting the Vehicle Inspections

Generate an ASPEN report for each inspection conducted during a SA. The inspection report should be uploaded through SAFETYNET into MCMIS. If you find violations during the SA and note them on the ASPEN report, you **cannot** include those violations on Part B of the SA.

If the Number of Vehicle Inspections Exceeds or Does Not Meet the Required Minimum to be Inspected

If you exceed or do not meet the required minimum to be inspected, indicate the reason(s) in Part C of the SA.

SA Parts 393 & 396 – Calculating the OOS Rate

Calculating the OOS Rate

The carriers OOS rate is determined by the number of vehicles placed OOS in relation to the number of vehicles inspected. The calculation of the OOS rate should be based on using the carriers most recent Level 1, 2, or 5 interstate inspections on the company profile, conducted within the previous 12 months (or since the carrier has received its US DOT number, whichever is less). You should enter the data to calculate the motor carrier's OOS rate. Data needed are the number of vehicles placed OOS, and the number of vehicles inspected.

Question: Can violations of cargo securement cited under Part 393 be used in calculating a carrier's out-of-service (OOS) rate during an investigation?

Answer: Yes. However, SI's *cannot* use any Part 392 cargo securement violations to calculate the carrier's OOS rate.

Determining if Vehicle Inspections Should be Conducted to Calculate the OOS Rate

"See the above Minimum Sample for Vehicle Inspections Chart" to determine vehicle inspection sample size".

If the company profile does not show at least three Level 1, 2, or 5 inspections, you are required to inspect vehicles (if available for inspection) to determine the carriers vehicle OOS rate. The OOS rate can **only** be calculated if you have data for at least 3 vehicle inspections. If the carrier does not have a minimum of three vehicle inspections, you should:

- Conduct enough inspections to reach at least three, or
- Review carrier records for more recent inspections that have been conducted but are not on the profile, or
- Use a combination of inspections from the profile, inspections discovered during the SA, and inspections conducted during the SA.

If You are Unable to Obtain At Least Three Level 1, 2, or 5 Interstate Inspections from the Company Profile and Roadside Inspections for Calculation the OOS Rate

If all efforts fail to achieve the desired number of Level 1, 2, or 5 inspections, you **should not** calculate the OOS rate. **If this situation occurs, explain why the OOS rate was not calculated in Part C of the SA.**

If the Motor Carrier Only has One Vehicle, and There is Only One Vehicle Inspection on the Company Profile, Do Not Inspect that Vehicle Two More Times to Reach the Minimum of Three

You could still inspect the vehicle (if available), however you **should not** calculate the OOS rate. **Explain why the OOS rate was not calculated in Part C of the SA.**

If You Discover Roadside Inspections during the SA on the Company Profile that Do Not Belong to the Motor Carrier

You must not include these inspections in the OOS rate calculation. Provide the Company Profiles State points-of-contact list to the carrier and have them contact the state in question directly.

Advise the motor carrier of the error(s) and explain that they must contact DataQs to resolve the issue. The DataQs web site address is http://dataqs.fmcsa.dot.gov.

SA Parts 393 & 396 – Vehicle Maintenance

NOTE: For special periodic inspection documentation requirements involving Mexico-domiciled motor carriers, see Section 7.6.2 in the Mexico Manual.

Length of Time to Go Back into a Carrier's Vehicle History to Review Compliance with 396 During a SA

Cover the 12-month period prior to the SA or the time period since the motor carrier received their US DOT number, whichever is less.

Proving the Carrier has a Periodic Inspection Program

Each vehicle that operates in interstate commerce must have a periodic inspection that has been conducted every 12 months, as part of its maintenance file. The following would serve as proof of a periodic inspection:

- A copy of the inspection and results conducted under Appendix G to 396;
- Evidence of an inspection conducted within the last 12 months, through a state inspection program that has been deemed to satisfy the federal requirements;
- Violation-free roadside inspections performed after July 22, 2016, may no longer be used by a motor carrier to satisfy the annual inspection requirements of 49 CFR § 396.17.
    - July 22, 2016, Final Rule , "Parts and Accessories Necessary for Safe Operation; Inspection, Repair, and Maintenance; General Amendments"

Determining Which Maintenance Files to Review

- You will need to select maintenance files for those vehicles that:
- Have been involved in an interstate recordable accident
- Have been placed OOS (see profile)
- Have recently been used in interstate commerce
- Any remaining files should be selected randomly. Verify whether defects cited on vehicles placed OOS within the previous 12 months have been corrected.

Number of Maintenance Files to Select

You should follow the sampling requirements for the minimum number of maintenance files to review as set forth in the table below:

Minimum Number of Maintenance Files to Review

Number of Vehicles Subject to FMCSR*	Number of files to review
1	1
2	2
3 or more	3

**Interstate operations only.*

SA Parts 393 & 396 - Driver Vehicle Inspection Reports (DVIR)

Effective May 14, 2009, FMCSA recognized the daily vehicle trip inspection reports prepared by Canadian base-plated motor carriers in accordance with Canadian National Safety Code (NSC)

Standard 13 (Daily Vehicle Trip Inspection) as compliant with the trip inspection requirements of 49 CFR Part 396. Accordingly, U.S. enforcement officials should NOT require Canadian motor carriers/drivers to complete a DVIR at the end of the day, and should not record a violation, so long as the Canadian motor carrier/driver complies with NSC Standard 13 which only requires an inspection report at least once every 24 hours. Canadian jurisdictions similarly accept post trip inspection reports prepared by U.S. based motor carriers in accordance with 49 CFR Part 396 as compliant with NSC Standard 13.

Determining the Number of DVIR to be Reviewed During a SA

During a safety audit, the number of DVIR records checked is based on the number of days a DVIR was required. When a DVIR was required but not prepared, the carrier should be cited for a violation of 49 CFR 396.11(a).

Note: Property carrying CMVs are not required to fill out a DVIR if a defect is noted and repaired prior to the end of the driver's shift.

Example:

- Determine the vehicle sample size from the chart below.
- The carrier is required to produce all DVIRs with defects on the vehicles during a 30-day period occurring the past 3 months.
- After reviewing maintenance records, roadside inspections, or other information for those vehicles for all of the interstate trips in that 30 day period, the investigator should compare the number of days that there was a defect against the number of days a DVIR was prepared and retained.
- If there should have been 2 DVIRs and there are none provided, the violation will be cited as 2 of 2 checked for a violation of 49 CFR 396.11(a).
- If there were 2 DVIRs prepared and it was discovered after reviewing maintenance records and conducting interviews that there was a third day that a DVIR was required, then the violation would be 1 violation of 3 checked for a violation of 49 CFR 396.11(a).

You should select the sample size of vehicles to be reviewed from the following table:

Minimum Number of DVIR

Number of Vehicles Subject to DVIR	The number of different Vehicle DVIR Selected
1	0
2	2
3 or more	3

DVIR are Required for a Motor Carrier that Operates Two Registered Commercial Motor Vehicles, Yet Only Has One Driver

The exception in 396.11(d) only applies to motor carriers that operate one registered CMV, regardless of the number of drivers employed.

3.3.13 Part 395 – Hours of Service (HOS) of Drivers

During your review of compliance with Part 395, you should use the following guidelines to assist in your audit of motor carriers of both property (including placardable HM) and passengers.

Procedures to Follow During Audit of Part 395

Your audit of Part 395 should consist of:

- Determining the type of motor carrier operation;

- Determining whether the motor carrier is subject to ELD requirements;
- If applicable, verify that the device in use meets the requirements of the ELD rule;
- Requesting a driver list;
- Determining the minimum number of driver's time records/RODS to be sampled;
- Selecting driver's time records, ELD data, paper RODS to be reviewed; and
- Reviewing driver's time records, ELD data, paperRODS.

SA Part 395 - General

Certain Motor Carrier Operations are Allowed Exemptions within Part 395

Ensure you are familiar with the various motor carrier operations defined within 395.1.

When a Carrier Fails to Have Complete Time Records for 100/150 Air-Mile Radius Drivers

Every single condition of the 100/150 air-mile radius exemption in § 395.1(e) must be fulfilled in order for a driver to be exempt from preparing a record of duty status (RODS). A failure to fulfill any condition of the exemption results in the application of the requirement to prepare a RODS.

SA Part 395 – Moving Ahead for Progress in the 21st Century Act (MAP-21)

Section 32101(d)

This section of MAP-21 provides a statutory exemption from the hours of service (HOS) regulations for CMV drivers engaged in the transportation of agricultural commodities and farm supplies for agricultural purposes. Transportation qualifying for this exemption must be conducted during "planting and harvesting seasons," as defined by the State. The definitions for "agricultural commodity" and "farm supplies for agricultural purposes," as set forth in 49 CFR 395.2, remain unchanged.

It should be noted that livestock feed transporters may employ the exemption at any time of the year, which means the transportation is not limited to planting and harvesting seasons.

If a New Entrant (NE) motor carrier engages in the transportation of agricultural commodities and farm supplies, it will be exempt from all of Part 395. Therefore, the related questions on the New Entrant Safety Audit (NESA) do not apply. However, transportation qualifying for this exemption must be conducted during "planting and harvesting seasons," as defined by the State. If the NE motor carrier's operations meet the requirements for this exemption, all Part 395 questions should be marked "Not Applicable (N/A)."

Responses to the remaining safety audit questions should be documented per standard procedures.

SA Part 395 - Passengers

Procedures to Follow When Investigating a Motor Carrier of Passengers

You should remember that Private Motor Carriers of Passengers (Nonbusiness) are not subject to the SA process. All other motor carriers of passengers [e.g., For-Hire and Private Motor Carrier of Passengers (Business)] are subject to the same requirements as motor carriers of property.

Specific Issues to be Aware of When Investigating a Motor Carrier of Passengers

Extra Board, Shape and Spare Drivers

An **extra board**, **shape**, or **spare** driver is a driver who does not have assigned work, but remains at the terminal in order to handle an operational contingency, such as driver absence or vehicle breakdown. In most cases, they should record their hours as "on-duty, not driving" until they are dispatched on the road.

Relief Drivers

On long distance trips requiring straight-through driving, motorcoach operators may send a relief driver ahead, to take over driving responsibilities for the next part of the trip. The means by which this driver gets to the layover location can vary. Below are two scenarios and the correct recording of HOS for each:

- **Scenario #1**
  Driver is driven, or uses public transportation (i.e. commercial aircraft or train) to get to or return from the layover location. In this instance, if the driver has at least 8 consecutive hours off-duty after reaching the layover destination or terminal before assuming any on-duty status, the time spent traveling at the direction of the motor carrier may be logged as off-duty. If there is less than 8 consecutive hours off-duty, the time traveling at the direction of the motor carrier must be recorded as on-duty, not driving.
- **Scenario #2**
  Driver drives himself/herself in an automobile (non-CMV) to the layover location or back to the terminal. Time spent driving a non-CMV at the direction of the motor carrier must be logged as on-duty, not driving.

Team Drivers

In order to log sleeper berth status, the motorcoach must be equipped with a sleeper berth meeting the criteria in Section 393.76. There are no exceptions for motorcoach sleeper berths. Investigators should be aware that there are motorcoaches in operation that meet the sleeper berth requirements. If the motorcoach is not properly equipped with a sleeper berth that meets the criteria, and there is a team assigned to it, all time spent riding in the motorcoach (in the reclining position or not) must be recorded by the driver as on-duty, not driving and may not be recorded as sleeper berth duty status. The only exception would be a driver who is riding on the motorcoach to the destination and is afforded 8 consecutive hours off-duty after reaching the destination. In such case, the time spent riding on the motorcoach may be recorded as off-duty.

Supporting Documents that are Unique to the Passenger Industry

- Charter orders and itineraries are the passenger carrier's shipping papers. Although many are different in appearance, they usually contain the same information such as the carrier's name, driver's name, date, vehicle number, group being transported, origin and destination points, routes taken, and cost.
- Itineraries are similar to charter orders, but they list a detailed time report of the passenger carrier's trip. Itineraries will show arrival and destination times and dates. They are usually used during an extended charter trip.
- Most passenger carriers maintain charter orders and itineraries as a normal part of their business. Both of these documents as well as other supporting documentation should be compared against the driver's RODS to determine accuracy.
- In many instances, drivers will enter start and finish time on their trip envelopes, which can be used to verify their RODS. Major destination locations may maintain information regarding arrival and departure times for group tours. In-depth investigations may involve contacting the group that booked the charter for further verification.

SA Part 395 - Interstate Operations vs. Intrastate Operations

Policy Concerning Drivers Who Operate Both in Intrastate and Interstate Commerce

The HOS requirements in Part 395 apply to all drivers 7 days prior to an interstate trip and for the 7- or 8-day period following an interstate trip. The important points to remember are:

- Any driver who begins a trip in interstate commerce must continue to meet the requirements of 395.3(a) and (b) through the end of the next 7 to 8 consecutive days, depending on which rule the motor carrier operates under.

- The driver must continue to comply with the requirements of Part 395, even if he/she operates exclusively in intrastate commerce for the remainder of the 60/70-hour period (i.e., 7-8 day schedule) at the end of the interstate trip. **New Rule Effective January 4, 2004: The driver must also continue to comply with the 11- and 14-hour rules as well as the 60 or 70-hour rules for the remainder of that day, and the following 7 days (if the 60-hour rule was applicable) or 8 days (if the 70-hour rule was applicable).**
- A driver who begins a trip in interstate commerce, in a CMV, must have in his/her possession a copy of RODS for the previous 7 consecutive days, as required by 395.8(k)(2), unless they meet 395.1(e), even if the driver operated only in intrastate commerce during that 7-day period.
- **Note: During the 7-day period prior to the interstate trip the driver may follow the state regulations applicable to intrastate commerce with regard to the state's CMV driving and on-duty requirements.**
- FMCSA investigators should cite drivers for violations of the 11- or 14-hour rules or the 60 or 70-hour rules that are committed while on the interstate trip, or during the 7 or 8 days after completing the interstate trip (depending on which rule the motor carrier operates under). The driver remains subject to Part 395 for 7 or 8 days after a trip in interstate commerce, even if he/she drives only in intrastate commerce for that period.
- FMCSA investigators should be aware that a driver of a cargo-carrying vehicle may restart the 60/70-hour period by taking 34 or more consecutive hours off-duty. The driver can use the 34-hour restart at any time. He/she does not have to be compliant with the 60/70-hour rule to use the restart provision. This is because the 34-hour restart wipes clean all past time, regardless of whether such time constituted a violation or not. While the time is wiped clean, the violation is not undone. The driver and the motor carrier would still be subject to appropriate enforcement.

SA Part 395 - Seasonal Operations

Selecting Records When the Carrier's Operation is Seasonal

When performing a SA on a motor carrier with seasonal operations, select RODS and/or time records from the previous six months, when the carrier's operation was most active.

SA Part 395 - Requesting Driver Lists

Your Request for a Driver List Should Include the Following

If a driver list was not requested before the SA, or during the opening interview, you should request a list of drivers employed in the last 12 months, and the date they were hired and/or terminated. The list will need to be verified. You should verify the accuracy and completeness of the list by reviewing the company profile, payroll record, dispatch records, bills of lading, and or other transportation or shipping documents.

Time Frame for Audit of Driver's Time Records/RODS

Your audit of compliance with Part 395 covers the previous six months (one month per driver reviewed), or the time period since the motor carrier received its USDOT number.

Although we normally review only the prior six months RODS, from the date of your review, remember that the carrier is required to maintain these documents for six months from **date of receipt**.

Base the Sampling Requirements for the Minimum Number of Driver's Time Records/RODS To Be Reviewed on the Following

You should base the number of RODS and/or time records (if the motor carrier uses 100 air-mile radius drivers) to be reviewed for HOS compliance upon the motor carrier's average number of employed drivers who are subject to the FMCSR. **You should follow the sampling requirements for the minimum number of interstate driver's time records/RODS to be reviewed as set forth below:**

Sampling Requirements

Number of Interstate Drivers Subject to FMCSR	Number of Different Drivers Selected	Time Period of Records of Duty Status	Minimum Number Reviewed For False Logs, Excess Hours, & Other Part 395 Regulations
1	1	1-2 months from prior 6 months.	**30 x # of drivers**
2	2	1-2 months from prior 6 months.	60
3 or more	3	1-2 months from prior 6 months.	90

SA Part 395 - Selecting Driver's Time Records/RODS to be Audited

Selecting the Driver's Records Once the Sample Size Has Been Determined

You should only review driver's time records/RODS for drivers who operate in interstate commerce and follow the steps below:

1. Select records for drivers who were involved in interstate recordable accidents.
2. Verify whether an ELD is required.
3. Verify the device in use meets the requirments of the ELD rule.
4. Select drivers who were placed OOS for HOS violations during recent roadside inspections, drivers with logbook violations, and drivers who were discovered to have poor driving records through CDLIS checks.
5. Select recently hired drivers, or drivers whom you conclude have a high likelihood of excessive driving
6. Review the data from the device for compliance with 49 CFR Part 395.
7. Randomly select any remaining RODS/time records; this can be accomplished by selecting records from various drivers, months, and terminals.

If you discover that certain areas of a motor carrier's operation have a significant degree of HOS violations, additional emphasis of the review on these areas is appropriate.

Guidance for verifying compliance with Electronic Logging Devices rule when conducting a safety audit

If the carrier is using ELDs as required, follow the guidance in the policy titled "Phase II of the Implementation of Electronic Logging Devices Rule" dated October 25, 2017, and verify compliance with the ELD and Hours-of-Service (HOS) rules.

1. If it is determined an ELD is required and the new entrant is ***not*** using a verified ELD device found on the FMCSA's registered ELD's list (www.fmcsa.dot.gov/devices) or is using an ELD device found on the revoked list, the safety auditor will answer "No" for the safety audit hours of service question, "Section 395.8(a) - Does the carrier require drivers to make a record of duty status as required?"

a) The number discovered is equal to the number of days in violation since December 18, 2017, where an ELD was required but was not used and the number checked is equal to the number of days an ELD was required. If the violation threshold equals 51% or more of the examined records, per Section 385.321(b)(13), an automatic failure will be triggered and the new entrant will fail the safety audit.

2. If the carrier presents paper logs in lieu of ELDs, the safety auditor must also verify these logs and answer the remainder HOS questions, as applicable. If the carrier does not present paper logs in lieu of ELDs, the remaining HOS questions will be answered as "Not Applicable (N/A)."

3. If the new entrant was not in compliance prior to the safety audit but can demonstrate compliance with the ELD requirement on the day of the safety audit, the auditor will answer the "Section 395.8(a)" question with a "Yes" and check the box 'The carrier was in violation prior to the safety audit'.

If a new entrant fails the safety audit based on not having the required ELD, the carrier may submit a corrective action plan showing that they are now using ELDs and by submitting records of duty status (RODs) via electronic transfer to FMCSA.

The following are procedures when a new entrant using a verified ELD device cannot submit their logs electronically;

1. If it is determined that an ELD is required and the new entrant is using a verified ELD device, but the new entrant is having trouble submitting their logs electronically, the safety auditor should instruct the carrier to try the following;

    a. Ensure the ELD's software is the current version

    b. Reference the ELD user's manual

    c. Call the ELD provider

2. If none of the above resolves the data transfer issue, the safety auditor should request hard copies of all RODS required.

    a. If the new entrant can provide all required RODs, the auditor will answer the safety audit hours of service question "Section 395.8(a) – Does the carrier require drivers to make a record of duty status using the required method?" as "Not Applicable (N/A)" and the remaining HOS questions as appropriate and construct a custom recommendation noting that the new entrant was in violation of "Section 395.22(j) – Failure to produce ELD records in an electronic format."

    b. If the new entrant cannot provide all required RODs, the auditor will answer the safety audit Hours of Service question "Section 395.8(a) – Does the carrier require drivers to make a record of duty status using the required method?" with a "No", which may cause the new entrant to fail the safety audit.

    c. In either case, the safety auditor will answer the remaining HOS questions as applicable.

3. In Part C, the safety auditor must note that ELD compliance was verified and that the new entrant was not able to transfer the logs electronically, citing the "Section 395.22(j) – Failure to produce ELD records in an electronic format" violation. The safety auditor must provide the ELD provider name and identifier number.

4. In addition, the safety auditor should email ELDTech@dot.gov with the following;

a. Date of issue
b. Brief description of issue
c. Motor carrier name/DOT #
d. ELD provider name
e. Device name
f. Software version
g. ELD model number
h. ELD Identifier
i. Date of installation
j. Carrier's plan of action regarding the alleged non-compliant/malfunctioning device

If You Are Unable to Meet the Minimum Sample Size for Part 395

There will be instances where you will not be able to review the minimum number of required documents. If this happens, you must explain in Part C of the SA why you did not meet your sample. You must also explain in Part C if you exceed the required sampling beyond the number set forth in the table above.

SA Part 395 - Missing RODS

When RODS are Not Provided by the Motor Carrier, Answering the SA Question: Operations - Question #2 - Does the motor carrier require drivers to make a record of duty status?

No, if the motor carrier is unable to produce all of the requested RODS.

If you answer "No" to this question, the audit will request the number of RODS missing and the number of RODS checked; if the percentage is 51% or greater, this question will result in an automatic failure. Continue and finish the SA.

For example, if the auditor requests 30 days of RODS and the motor carrier produces 20 days. The auditor would answer this question "No" and will fill in 10 days missing out of 30 days checked, which equals to 33% missing. This would not result in an automatic failure.

A second example is if the auditor requests 30 days of RODS and the motor carrier produces 10 days. The auditor would answer this question "No" and would fill in 20 days missing out of 30 days checked, which equals to 66% missing and would result in an automatic failure because the percentage missing is greater than 51%.

It is important that the Safety Auditor investigates each situation sufficiently, and makes the appropriate determination, to see if:

1. The carrier did not require the driver to make RODS (Question #2);
2. The driver failed to submit RODS (Question #3); or
3. The carrier failed to maintain RODS (Question #4).

SA Part 395 - HOS - Maximum Driving Time

Driver's RODS Indicates He/She Has Violated the 10/11 and 14/15-hour Rules

Answer "Yes," indicating you have discovered a violation of the 10/11 and 14/15-hour rule.

Minimum Number of RODS to Audit for the 60-hour/7-day and 70-hour/8-day Rules

When auditing the driver's RODS for the 60/70-hour period violations, always review each day within the selected period for compliance. This will require each SI to review the last 6 or 7 days of the previous month from the selected driver's RODS to verify compliance with the 60/70-hour rule.

Driving During the Change from Standard Time to Daylight Savings Time or Vice Versa

During the change from Standard Time to Daylight Savings Time or vice versa, the driver records his/her time "as is" and enters an explanation in the Remarks section of the RODS. It doesn't matter exactly how the driver logs his/her time (as Standard Time or Daylight Savings Time), as long as it is clear how many hours are actually involved on each line of the RODS grid. He/she **DOES NOT** get to drive or work an hour more (or less).

SA Part 395 - False RODS

Definition of a False RODS

A RODS is considered to be false if the times compared to the supporting documents deviate by 1 hour or more, or if the miles deviate by 50 miles or more.

Detecting False RODS

To detect falsification of RODS and/or time records, compare the entries on these records to verified information on other documents.

Various Types of Supporting Documents You May Use to Verify the Accuracy of RODS and What They Show

A motor carrier must retain up to 8 documents per driver duty day. A driver must submit supporting documents to the motor carrier within 13 days of receipt. Supporting documents required in the normal course of business are important to verify a driver's RODS, and they consist of the following five categories:

- Bills of lading, itineraries, schedules, or equivalent documents that indicate the origin and destination of each trip;
- Dispatch records, trip records, or equivalent documents;
- Expense receipts;
- Electronic mobile communication records, reflecting communications transmitted through a fleet management system; and
- Payroll records, settlement sheets, or equivalent documents that indicate payment to a driver.

If a driver keeps paper RODS under 49 CFR 395.8(a)(1)(iii), toll receipts must be maintained as well. For drivers using paper RODS, the toll receipts do not count in applying the 8-document cap.

Note: Under 49 CFR § 395.11(d)(2), each electronic mobile communication record applicable to an individual driver's 24-hour period shall be counted as a single document.

Supporting documents must be retained for a minimum of 6 months, and they should contain the following elements:

- Driver name or carrier-assigned identification number, either on the document or on another document enabling the carrier to link the document to the driver, or the vehicle unit number if that number can be linked to the driver;
- Date;
- Location (including name of nearest city, town, or village); and
- Time.

However, if there are fewer than 8 documents for a driver duty day, documents lacking time qualify as supporting documents as well.

If You Discover a Driver has Prepared and Submitted Falsified RODS

You should answer "Yes" indicating you have discovered a falsified RODS.

When Global Positioning System (GPS) Records May be Used to Check for RODS Falsification

The system used by the motor carrier to control its drivers' HOS should be determined through verbal or written statement by a motor carrier official. If the motor carrier has a global positioning system (GPS) technology capability, but uses a system of hard copy supporting documents that appears sufficient to determine compliance with the regulations, do not insist that GPS records be produced during a SA. In such circumstances, failure of the motor carrier to use or produce GPS, or other advanced technology records, would not be considered a regulatory violation. If it is determined that the motor carrier's system is ineffective or incapable of verifying HOS and the accuracy of RODS, you should ask the carrier to provide GPS records. (The ineffectiveness of the carrier's system may relate to such performance indicators as high accidents, high driver OOS rates, or the absence of supporting documents). If the carrier refuses to provide the records, you must obtain concurrence from your DA prior to demanding access to any GPS or other advanced technology records.

3.3. 14: Consumer Protection Standards Review (Household Goods)

As a result of MAP-21 all new entrant household goods carriers must undergo a comsumer protection standards review (CPSR) which is to be conducted within 18 months after receiving their operating authority and conducted onsite at their principal place of business.

The CPSR Policy (MC-ECC-2016-1) requires this audit be conducted within the first 12 months after the carrier receives its operating authority. The audit is to follow current audit guidance & policies and primarily consist of responses to eight household goods questions to determine the CPSR assessment.

3.4 Stage 4: Feedback and Closeout

During the Closeout of the Audit

After you have completed your investigation, you will need to conduct a closeout session with the owner, partner, or corporate official. If none of these individuals are available, discuss the audit with the most appropriate person.

During the closeout, you should inform the motor carrier official of the company's proposed results (pass/fail) for the SAs. Explain that the final decision will be issued from FMCSA Headquarters. You should be prepared to explain how the results were determined in the event the motor carrier asks.

If the motor carrier fails their safety audit, the Safety Auditor for the Division Office, State, or Contractor must provide the written guidance and CAP template to each New Entrant at the SA closeout. The CAP Submission guidance and the CAP template provide guidance and assistance to the New Entrant for completing and submitting an acceptable CAP to FMCSA.

- The CAP Submission Guidance identifies the requirements of 49 CFR § 385.319 and provides a summary of the information that FMCSA expects to be provided.

The CAP Template provides a guide for New Entrants to assist them in implementing and providing the minimum acceptable documentation for each violation that contributed to the SA failure.

If the motor carrier has had any accidents in the previous 12 months, make the motor carrier aware of the accident countermeasures and Hazardous Materials Incident Prevention countermeasures information that is available on the agency's web site. The purpose of these countermeasures is to assist motor carriers in analyzing their accidents and incidents, and developing strategies to eliminate future occurrences.

You should use the closeout as an opportunity to discuss any other compliance and enforcement issues that you feel are necessary with the motor carrier.

After the Closeout of the SA is Complete, Do the Following

When the closeout session has concluded, the highest ranking motor carrier official or designated representative in the session should receive a copy of the Investigative Report. The motor carrier/shipper

official or designated representative's signature is not required. The SI, Auditor or State MCSAP investigator must record his/her name and title on Part C of the investigative Report, the full name, title, name of carrier/shipper, date, and telephone number [if different from the information in the Motor Carrier Management Information System (MCMIS)] of the motor carrier official, or designated representative who received a copy of the Investigative Report. When a closeout session takes place with only a designated representative, a copy of the Investigative Report must be given to the designated representative and another copy must be mailed to the highest ranking motor carrier official. The mailing information must be recorded in Part C. Only copies of Parts A and B of the investigation report are given to the motor carrier. The motor carrier does not receive a copy of Part C.

If the motor carrier official refuses to accept a copy of the Investigative Report, the SI or Auditor must send a printed copy to the highest ranking motor carrier official via a mailing method that can be tracked and receipt confirmed. The refusal to accept a copy of the Investigative Report should be noted on Part C. In addition, when the copy was mailed, to whom and the tracking number must be recorded on Part C. Also, if the company phone number is different than the number in MCMIS, the new number should be recorded in Part C.

3.5 Stage 5: Conclusion of SA and Completion of Part C

Completing Part C After You've Closed Out the SA

Part C of the SA is important to the FMCSA. Provide as much information as possible about other motor carrier issues not noted during the review that are important to the investigation. Describe the sampling sizes used during the investigation and what documents were reviewed.

Issues that Should be Discussed in Part C (See Illustration SACN-1)

- Statements made by motor carrier officials relative to correcting the violations or safety system breakdowns discovered during the investigation,
- The motor carrier's/shipper's actions related to compliance,
- The motor carrier's/shipper's level of understanding of applicable regulations,
- The degree of assistance and cooperation given by motor carrier/shipper officials to you during the investigation,
- The educational materials provided to the motor carrier/shipper,
- Anything atypical about the motor carrier's/shipper's operation,
- The extent and nature of any divisions or business locations of the motor carrier/shipper,
- The financial condition of the motor carrier/shipper,
- The names of any relevant company officials that were interviewed, but were not listed on Part A of the SA,
- The number of drivers hired in the within the past 12 months (if not already addressed as a violation in Part B),
- For HM carriers/shippers the number of employees required to have HM training (if not already addressee as a violation in Part B),
- The breakdown of commercial motor vehicles which have a GVWR between 10,001 pounds and 26,000 pounds, and greater than 26,000 pounds,
- The names and locations of any relevant documents,
- For carriers with authority indicate whether L&I was checked if any issues were discovered, and
- For carrier with CDL drivers indicate whether CDLIS checks were performed and whether any issues were discovered.

Requirements for Uploading SAs

It is important that all audits be electronically uploaded to MCMIS within seven days.

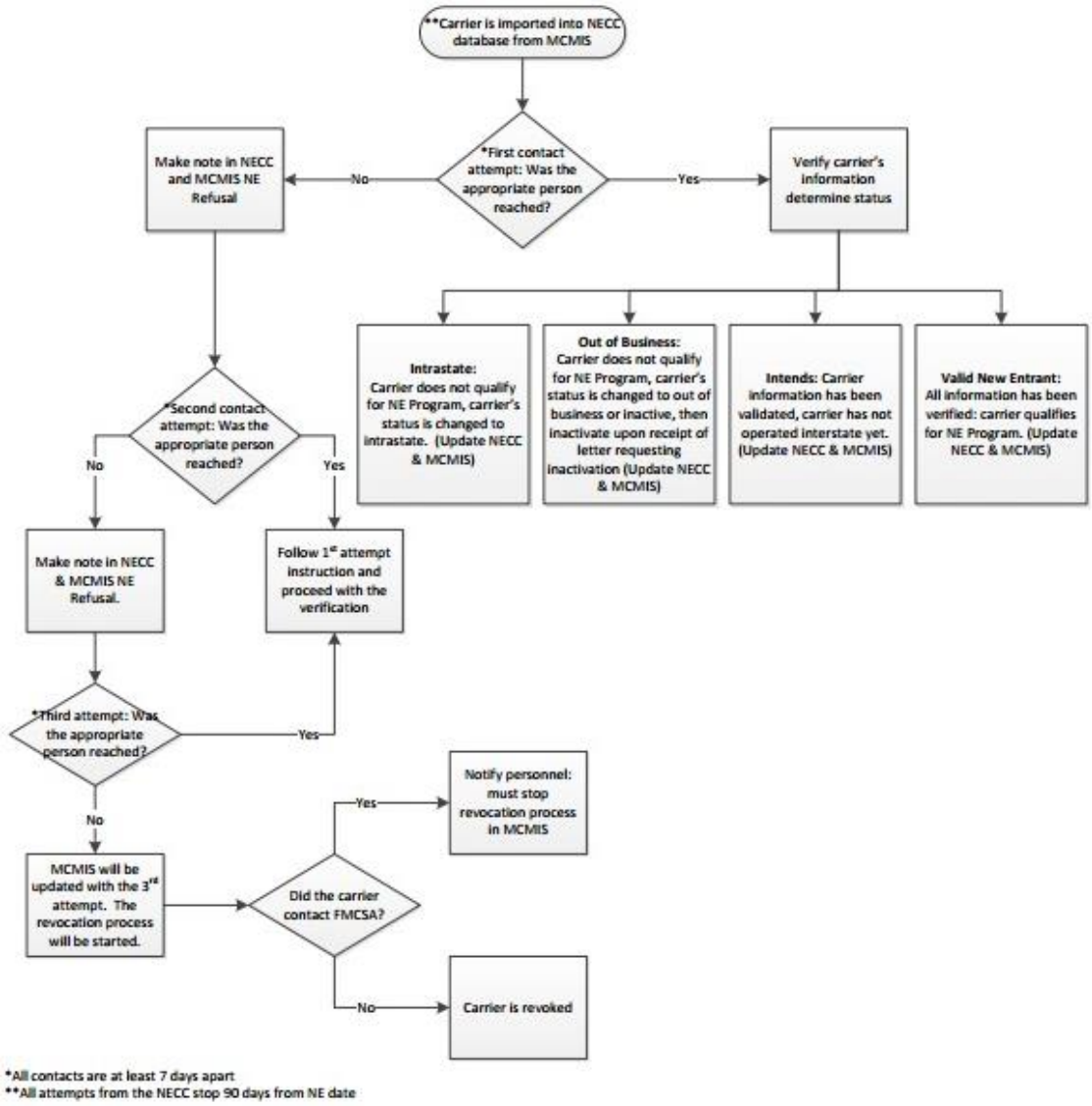
Illustration SACN-1: Part C - Comments

REQUIRED

1. What specific supporting documents were requested and when? (was the carrier given 48 hours to produce records not located at the PPOB?)
2. Include interstate trip which proves interstate commerce (Date of trip, Driver name, City and state location from and to).
3. Provide names and USDOT numbers of affiliated motor carriers when applicable.
4. What specific supporting documents were produced and when?
5. What is the name and title of the person from whom you requested the documents?
6. Where are the supporting documents located and how are they maintained (by driver, by trip, in trip envelopes filed by date, etc.),?
7. Explain why a CDLIS licensing check was not conducted or that other methods were used to verify licenses.
8. Should explain why vehicles were not inspected when three or more inspections were not on profile.
9. Should note inspections in the motor carriers possession but not on the profile that were used to calculate the OOS rate.
10. Should explain if gross revenue figure was refused and how the amount you entered was figured.
11. Operated as other company or relationship to other trucking company. For example: “was owned by XXX, went bankrupt, and brother-in-law bought this company that is operated by XXX”.
12. Problems discovered with drug and alcohol testing program or consortium.
13. Has the carrier registered with the Drug and Alcohol Clearinghouse?
14. Did the motor carrier conduct pre-employment queries (if required)?
15. Did the motor carrier conduct annual queries (if required)?
16. If extremely difficult to locate motor carrier explain how motor carrier was contacted.
17. List recordable accidents. Include date, name, tow/injury/fatal, preventable/non-preventable, and brief description of occurrence (lane change, rear end, etc.).
18. Note why motor company profile was NOT obtained.
19. Explain how mileage was determined. Note if mileage was extrapolated because company has been in business less than 12 months.
20. List all partners not listed on Part A, where applicable.
21. Note whether motor carrier was involved in emergency relief efforts or operating under an exemption or waiver.
22. Note statements made by officials relative to correcting the violations or safety system breakdowns discovered during the investigation.
23. List the educational materials provided to the carrier, and any materials the carrier had on hand.
24. Describe anything that is atypical about the subject’s operation.
25. Provide the extent and nature of any divisions or business locations of the subject (also see guidance on “Terminals”).
26. Describe the financial condition of the subject and list major assets such as buildings, land, airplanes, other companies, etc.
27. Note the names and titles of any relevant company official or employee who were interviewed, but were not listed on Part A of the Safety Audit.
28. List the number of commercial motor vehicles which have a GVWR between 10,001 pounds and 26,000 pounds, and greater than 26,000 pounds.
29. List the names and locations of any relevant documents.
30. Document L&I, CDLIS, etc. checks when appropriate.

3.6.1 Illustrations

3.6.1.1 New Entrant Call Center (NECC) Process



Description of flowchart

3.6.1.2 Illustration SA-1: Confirmation Letter and Questionnaire

Download Word document: Safety Audit Confirmation Letter and Questionnaire

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
Address
City, State, Zip Code
Telephone

IN REPLY REFER TO:

[Date] USDOT Number: [Insert DOT#]

Carrier Official
Name of Motor Carrier
Address of Motor Carrier
City, State, Zip Code

Dear Motor Carrier:

The Federal Motor Carrier Safety Administration is responsible for ensuring the safe operation of commercial motor vehicles on our Nation's highways.

In an effort to fulfill our responsibility to the motoring public, an audit of your operations will be conducted. The audit will include: driver's hours of service and licensing, vehicle maintenance and inspection, driver qualifications, accidents, and other safety and transportation records. Please bring/have available the documents as outlined in the enclosed.

Per our conversation on [Date], the audit is scheduled as follows:

[Place]
[Date]
[Time]

If you have any questions regarding this notice, or if you need further information, please contact:

Federal Motor Carrier Safety Administration
Address
City, State, Zip Code

Telephone Number [your extension]

Sincerely,

Your Name
Safety Investigator
Enclosure

Carrier Information for Safety Audits
As applicable, have the following available at time of Safety Audit.

Insurance and Economic Documentation: Have available a current copy of Form MCS-90 or MCS-90B (Insurance Endorsement). Also have available a copy of Form BOC-3 (Designation of Process Agents)

Controlled Substances and Alcohol Testing Administration Records: Have available for review all administrative records related to controlled substances and alcohol testing. If you are enrolled with a consortium, obtain from the consortium and have available the consortium's current list of drivers for you company. Have available for review a copy or your company's Controlled Substances and Alcohol Testing Policy. Have available the quarterly/semi-annual summaries (from the laboratory) of Controlled Substances and Alcohol Tests for year 2002 (if applicable). Have available for review a copy of the annual calendar year summary for year 2002 (if applicable).

Accident Records: Have available for review all records related to accidents for the past 365 days, including an accident register. Also, have available a copy of your damage/loss run from your insurance company and/or any State accident reports maintained. Include all accidents resulting in fatality, injury, and/or tow – regardless of whether or not your driver or leased driver was found to have been "at fault". **The accident register and copy of accident reports will only be reviewed for accidents occurring in the United States.**

Driver Qualification: Have available for review, driver qualification files for all drivers used within the past 12 months. If your company operates with drivers assigned to various locations or functions, be prepared to identify each driver's status (i.e., terminal location, commercial zone vs. long haul, van vs. flat bed operations, leased vs. company, etc.).

Hours of Service: Provide a driver specific listing showing assigned units and account numbers for phone and/or fuel charges for all drivers, including leased operators, used within the past six months.

Have available all records of duty status for previous six months for all drivers, including leased operators. Also have available all supporting documents (i.e. trip envelopes, driver expense receipts, telephone records, fuel reports, dispatch logs, payroll records, bills of lading, etc.) for previous six months for all drivers.

Equipment/Maintenance: For previous 12 months, provide a list showing all equipment owned/leased/trip leased and operated in intrastate and interstate commerce. Designate type of equipment (i.e., straight trucks, tractors, trailers, HM cargo tank trucks, HM cargo tank trailers, buses). If applicable, indicate terminal locations and/or date removed from service.

Have available all maintenance files and records for each unit, including leased units. Files and records include evidence of annual inspections, repair receipts, maintenance schedules, qualification of persons performing annual inspections and/or brake repair and adjustments. Also have available copies of drivers' daily vehicle inspection reports for the past three months.

Hazardous Materials Records (if applicable): Have available a current copy of the DOT/PHMSA registration, HM training materials and records of such training. Also have available a copy of the most recent shipping document for each class of materials transported.

3.6.1.3 Illustration SA-2: Contact Report

Download PDF Form: Contact Record

The Contact Record has been created as a PDF that can be filled out on the computer.

CONTACT RECORD

Legal name:

DBA: _____

USDOT #:

Date: Time:

Person spoke with (or no answer): _____

Summary of conversation:

Date: _____ Time: _____

Person spoke with (or no answer): _____

Summary of conversation:

Date: _____ Time: _____

Person spoke with (or no answer):

Summary of conversation:

Date: _____ Time: _____

Person spoke with (or no answer):

Summary of conversation:

Recommend failure to permit SA letter: Yes No Sent on:

Revocation letter: Yes _____ No: _____ Letter sent on: _____

COMMERCIAL ENFORCEMENT & HHG MANUAL

For

eFOTM Redevelopment

Federal Motor Carrier Safety Administration (FMCSA)
U.S. Department of Transportation

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4.0 Commercial Enforcement & Household Goods (HHGs)

4.1 Introduction

4.1.1 FMCSA's Role

FMCSA's Policy for Administering Commercial Enforcement and Enforcing the HHG Regulations and Applicable Federal Statutes

It is FMCSA's policy to administer a comprehensive and effective compliance and enforcement of the Federal Commercial Regulations and applicable Federal statutes. FMCSA uses education, outreach, and enforcement strategies to achieve its objectives. FMCSA will administer a comprehensive compliance and enforcement program that concentrates on the most problematic HHG motor carriers and brokers. Additionally, there are other transportation operations that FMCSA regulates, and it also requires comprehensive compliance and enforcement strategies.

4.1.2 FMCSA's Jurisdiction Over Interstate Transportation of HHG

The HHG regulations are included in 49 CFR 375 of the FMCSR and specifically apply to HHG motor carriers. There are additional Federal regulations and statutes that apply to HHG motor carriers and other HHG transportation operations that FMCSA regulates as outlined below.

Other regulations that apply to HHG motor carrier operations include:

- 49 CFR 365 - Rules Governing Applications for Operating Authority.
- 49 CFR 366 - Designation of Process Agent.
- 49 CFR 370 - Principles and Practices for the Investigation and Voluntary Disposition of Loss and Damage Claims.
- 49 CFR 372 - Exemptions, Commercial Zones, and Terminal Areas.
- 49 CFR 387 - Minimum Levels of Financial Responsibility for Motor Carriers.
- 49 CFR 392.9a (a) - Operating Authority.

Federal statutes that are pertinent to the Interstate transportation of HHG include:

- 49 U.S.C. 13102 – Definitions.
- 49 U.S.C. 13702 – Tariffs.
- 49 U.S.C. 13902 – Registration Requirements for HHG motor carriers.
- 49 U.S.C. 13903 – Registration Requirements for Freight Forwarders.
- 49 U.S.C. 13904 – Registration Requirements for Brokers.
- 49 U.S.C. 13905 – Suspension and Revocations of Registrations.
- 49 U.S.C. 13907 – HHG agents.
- 49 U.S.C. 14706 – Carmack Amendment, Liability of Carriers.
- 49 U.S.C. 14708 – Dispute Resolution and Arbitration.
- 49 U.S.C. 14710 – Enforcement of Federal statutes and regulations by state agencies.
- 49 U.S.C. 14711 – Enforcement of Federal statutes and regulations by state attorneys general.
- 49 U.S.C. Chapter 149 – Penalties.
- 49 U.S.C. 14915 – HHG Shipments held hostage.

4.1.3 FMCSA's Jurisdiction Over Brokers Operating in Interstate Commerce

FMCSA regulates transportation brokers operating in Interstate Commerce. Brokers subject to FMCSA jurisdiction come in two groups: Property or Freight Brokers; and HHG Brokers. Other regulations and statutes that apply to broker operations include:

- 49 CFR 365 - Rules Governing Applications for Operating Authority.
- 49 CFR 366 - Designation of Process Agent.

- 49 CFR 371 - Brokers of Property and HHG.
- 49 CFR 372 - Exemptions, Commercial Zones, and Terminal Areas.
- 49 CFR 387.307 - Minimum Levels of Financial Responsibility.
- 49 U.S.C. 13901 and 14901(d)(3) - Unauthorized brokering.
- 49 U.S.C. 14916 – Unlawful Brokerage Activities

4.1.4 FMCSA's Jurisdiction Over Freight Forwarders Operating in Interstate Commerce

FMCSA regulates freight forwarders operating in Interstate Commerce. Freight forwarders subject to FMCSA jurisdiction are divided into two groups: freight forwarders that deal in freight or property that are regulated commodities; and freight forwarders that deal in HHG. Other regulations and statutes that apply to freight forwarder operations include:

- 49 CFR 365 – Rules Governing Applications for Operating Authority
- 49 CFR 366 – Designation of Process Agent
- 49 CFR 372 – Exemptions, Commercial Zones, and Terminal Areas
- 49 CFR 387, Subpart D – Surety Bonds and Policies of Insurance for Freight Forwarders
- 49 U.S.C. 13102
- 49 U.S.C. 13531
- 49 U.S.C. 13901
- 49 U.S.C. 13903
- 49 U.S.C. 14901
- 49 U.S.C. 14907

4.2 Stage 1 – Complaint Analysis and Noncompliant HHG Motor Carrier, Broker, and Freight Forwarder Targeting

4.2.1 Overview

FMCSA receives approximately 3,000 complaints annually against HHG motor carriers and brokers, approximately 20% of these complaints, or 600 complaints, are alleging deceptive business practices, and egregious acts of noncompliance with the Federal regulations and statutes. The Commercial Enforcement and Investigations Division conducts analysis of the complaint data stored in the National Consumer Complaint Database (NCCDB) and determines where the most noncompliant HHG motor carriers and brokers are and directs resources to address the noncompliance accordingly. A primary tool leveraged in the analysis is the Top 100 List which is found in the NCCDB reports section. The Top 100 List is compilation of the 100 most noncompliant HHG motor carriers in the nation based on complaint data and SMS scores in the Hours of Service and Driver Basics. The Top 100 List refreshes every thirty days to accommodate carriers and brokers that are investigated, changes in SMS scores, and new complaint data coming in. Investigations will be driven by the analysis of the Top 100 Lists.

Additionally there will be high profile complaints that have either congressional or media interest that require immediate attention. Complaints submitted by law enforcement and regulatory agencies, Federal, State, and Local will also receive priority for investigation. FMCSA is partnered with the Federal Maritime Commission to address complaints regarding international shipments of HHG and occasionally FMC investigators will request assistance with an investigation if determined as FMCSA jurisdiction. Joint investigations will be handled by the team of Commercial Enforcement Specialists strategically located around the nation.

4.2.2 Some Reasons to Conduct HHG Investigations

An investigation may be conducted for several reasons to include but not be limited to:

- A motor carrier or broker appears on the National Consumer Complaint Database (NCCDB) with a high volume of complaints;

- A motor carrier appears on the "Top 100 HHG carrier List" (accessible via the NCCDB);
- A broker appears on the "Top 100 Broker List" (accessible via the NCCDB);
- The motor carrier appears on the SMS prioritization list, the safety investigation should be expanded to include commercial compliance;
- As the result of a significant crash, a safety review should be expanded to include commercial compliance; or
- In response to a complaint of an egregious violation such as an HHG shipment held hostage.

Filing and Responding to Complaints in the NCCDB

Any complaints making allegations of violations of the FMCCRs or Federal Commercial Statutes must be filed in the NCCDB regardless of the source, especially complaints of HHG held hostage or deceptive business practices. Complaints that come from other agencies, consumer protection organizations, or referrals from other parts of the Agency must be filed in the NCCDB to ensure they are properly tracked and, upon resource availability, investigated. When a complaint is received that has not been properly filed in the NCCDB ensure that complainant files his or her complaint in the NCCDB.

In the event a complaint filed in the NCCDB is investigated, upon completion of the investigation that complaint must either be updated with a "Follow Up" comment or closed.

4.2.3 Criminal Activity

When conducting HHG Compliance Reviews (CRs), you may discover instances that indicate motor carrier officials and/or employees may be deliberately conspiring to defraud consumers of money and deprive them of their HHG. Flagrant disregard for Federal statutes and regulations may also be discovered. FMCSA has worked successfully with USDOT, OIG and Federal Bureau of Investigation (FBI) to investigate motor carrier safety and commercial issues that may involve criminal activities. These relationships and joint investigations have produced significant HHG enforcement actions resulting in high fines and jail terms for corporate officers and employees.

Discovery of HHG Motor Carrier or HHG Broker Officials Engaging in Criminal Activity During the CR or Investigation

When conducting a HHG CR, if you find credible evidence that leads you to suspect criminal activities, you should notify the FMCSA DA/SD, the Commercial Enforcement and Investigations Division in HQ, or other agency officials, so that the appropriate criminal law enforcement agencies can be made aware of the alleged criminal activity.

Key Indicators Suggesting Criminal Activity

Potential criminal violations are indicated by substantiated evidence of serious and intentional patterns of defrauding consumers by:

1. Using a fraudulent bill of lading to include the making, altering, copying, publishing, or negotiating of the fraudulent bill of lading. This could be as simple as altering basic information contained in the agreed upon bill of lading, such as the actual services to be performed, dates, or other vital information without the consent of the shipper;
2. Deliberately misleading prospective shippers by providing low-ball estimates to encourage shippers to use its services, then substantially increasing the transportation and related charges and demanding significantly more than the quoted price. These schemes can also include threatening to withhold the customer's HHG unless he/she pays an additional, exorbitant sum (i.e., hostage freight);
3. Failing to use its published rate schedules or tariffs. This generally results in the shipper being charged a much higher rate than that contained in the HHG motor carrier's published rate or tariff;
4. Knowingly assigning a fraudulent weight to a shipment (weight bumping);
5. Devising false or fraudulent schemes with the intent of defrauding shippers of money or property; this could include assessing charges for transportation services not actually performed or

routinely stealing selected high value items from HHG shipments, such as jewelry, electronic equipment, paintings, etc.;
6. Interfering with commerce through theft, extortion, or threats of violence;
7. Making false statements and/or knowingly making or using false documents; and/or
8. Violating Federal criminal law by engaging in conspiracy, mail and wire fraud, or money laundering; this can occur when HHG motor carriers, HHG brokers, motor carrier officials and/or employees devise schemes to deliberately defraud consumers when using mail and wire services, including email.

The Rogue Mover Problem (s)

4.2.4 Responsibilities of the Investigator, Auditor, or Inspector

Investigators, Auditors, and Inspectors are responsible for being familiar with the HHG regulations and the other applicable commercial regulations to determine compliance with the regulations and detecting deceptive business practices when conducting audits, inspections, and investigations of HHG motor carriers and/or HHG brokers. You may also be asked to assist the Commercial Enforcement Specialists with in-depth investigations.

4.2.5 Definitions

You may encounter the following terms when you conduct CRs or enforcement actions on HHG motor carriers or brokers as defined in 49 CFR 375.103 and U.S.C. 13102:

110 Percent Rule – When the actual transportation charges exceed the non-binding estimated charges provided by the HHG motor carrier, 49 CFR 375.217(e) and 375.405(b)(8) requires motor carriers to allow shippers to take possession of their goods upon payment of 110 percent of the original non-binding estimate at destination. The motor carrier must bill the shipper for the payment of the balance of any remaining charges 30 days after delivery.

Advertisement – Any communication to the public in connection with an offer or sale of any interstate HHG transportation service. This includes written or electronic database listings of the motor carrier's name, address, and telephone number in an online database. This excludes listings of the motor carrier's name, address, and telephone number in a telephone directory or similar publication except for Yellow Pages advertising which is included in the definition.

Agents – A HHG motor carrier is allowed to use agents as part of its operations. HHG agents do not perform the services of HHG brokers or freight forwarders. An HHG agent differs from a HHG broker in that the HHG agent, as part of a contractual agreement, is allowed to act on behalf of the principal motor carrier; for example, in most instances, agents are local moving companies that are authorized to act on behalf of a larger national company. HHG agents are defined in 49 CFR 375.205 as one of the following two types of agents:

- **Prime Agents** – All agents who are permitted or required under the terms of any agreement or arrangement with a principal motor carrier to provide any transportation service on behalf of the principal motor carrier, including the selling of or arranging for any transportation service, loading and unloading of HHG, and who perform such services on other than an emergency or temporary basis
- **Emergency or Temporary Agents** – Provide origin or destination services on the motor carrier's behalf, excluding the selling of, or arranging for, a transportation service. The agent performs such services only on an emergency or temporary basis.

Arbitration Program – As a condition for registration, 49 CFR 375.211 requires HHG motor carriers to offer arbitration as a means of settling damage or loss to HHG transported. 49 CFR 375.211(a)(2), 375.213(b)(3) and U.S.C. 13902(a)(2)(A) require the motor carrier to produce and distribute a summary of its program.

Bill of Lading – The receipt, or bill of lading, is the contract for services between the HHG motor carrier and shipper that must comply with the provisions of 49 CFR 375.505. A copy of the receipt or bill of lading and its attachments must be given to the shipper before the vehicle leaves the origin. The bill of lading must be signed at least 3 days before the HHG shipment is loaded. The bill of lading must be signed prior to loading in the event of a 1 or 2 day move.

Broker – 49 CFR 371 defines a broker as a person who, for compensation, arranges or offers to arrange the transportation of property by an authorized motor carrier. Motor carriers or persons who are employees or bona fide agents of motor carriers are not brokers within the meaning of this section, when they arrange or offer to arrange, the transportation of shipments which they are authorized to transport, and which they have accepted and legally bound themselves to transport.

49 CFR 375.409 requires that HHG motor carriers have written agreements in effect with all HHG brokers that provide shipper estimates on behalf of the motor carrier.

Cashier's Check – A check that has all four of the following characteristics:

- Drawn on a bank, as defined in 12 CFR 229.2;
- Signed by an officer or employee of the bank on behalf of the bank as drawer;
- A direct obligation of the bank; and
- Provided to a customer of the bank or acquired from the bank for remittance purposes

Certified Scale – Any scale inspected and certified by an authorized scale inspection and licensing authority and designed for weighing motor vehicles, including trailers or semi-trailers not attached to a tractor, or designed as a platform or warehouse-type scale

Commercial Shipper – Any person who is named as the consignor or consignee in a bill of lading contract who is not the owner of the goods being transported but assumes the responsibility for payment of the transportation and other tariff charges for the account of the beneficial owner of the goods. The beneficial owner of the goods is normally an employee of the consignor and/or consignee. A freight forwarder tendering a shipment to a motor carrier in furtherance of freight forwarder operations is also a commercial shipper. The Federal Government is a government bill of lading shipper, not a commercial shipper.

Commercial Zones – 49 CFR 372 provides for certain exemptions of for-hire interstate transportation, including HHG. Subpart B of 49 CFR 372 - Commercial Zones provides exemptions for-hire interstate transportation that is transported within specific geographical areas.

Estimates – Subpart D of 49 CFR 375.401(b) and U.S.C. 14104(b)(1)(C)(i) allows HHG motor carriers to provide one of two types of estimates to prospective shippers:

- **Binding** – The mover guarantees the price for all agreed upon transportation and transportation-related services prior to the move ("Guarantee," "Not to Exceed," and "Flat Rate" estimates are not binding estimates).
- **Non-binding** – The mover provides a reasonably accurate estimated price based on weight or volume and any accessorial services required (as prescribed in the motor carrier's tariff).

All estimates provided to shippers must be in writing and must comply with 49 CFR 375.401, 403, 405, and U.S.C. 14104(b).

Freight Forwarder – A person or organization presenting itself to the general public (other than as a pipeline, rail, motor, or water carrier) as providing transportation of property for compensation and in the ordinary course of its business, assembles and consolidates or provides for assembling and consolidating shipments and performs or provides for break-bulk and distribution operations of the shipments; assumes responsibility for the transportation from the place of receipt to the place of destination; and uses for any part of the transportation a motor carrier subject to jurisdiction under this subtitle. The term does not include a person using transportation of an air carrier subject to Part A of Subtitle VII.

Government Bill of Lading Shipper – Any person whose property is transported under the terms and conditions of a government bill of lading issued by any department or agency of the Federal Government to the motor carrier responsible for the transportation of the shipment

Hostage Freight or Hostage Load – This is term that describes one of the most egregious violations in the HHG industry. It involves motor carriers that withhold delivery of an individual shipper's HHG until they are paid a demanded price. At a minimum, holding HHG hostage means the knowing and willful refusal to deliver a shipment of HHG, unless the shipper pays more than 100 percent of a binding estimate or in the case of a non-binding estimate, more than 110 percent of the estimated charges for shipment. This practice has led to exorbitant and unjustified payments and the complete loss of a family's possessions. It is a very serious violation with very serious criminal penalties as outlined in 49 U.S.C. 14915(c).

HHG Motor Carrier – A motor carrier that in the ordinary course of its business of providing transportation of HHG offers some or all of the following additional services:

1. Binding and nonbinding estimates
2. Inventorying
3. Protective packing and unpacking of personal items at personal residences
4. Loading and unloading at residences
    - **Inclusions** – The term includes any person that is considered to be a HHG motor carrier under regulations, determinations, and decisions of FMCSA that are in effect on the date of the HHG Mover Oversight Enforcement and Reform Act of 2005.
    - **Limit Service Exclusions** – The term does not include a motor carrier when the motor carrier provides transportation of HHG in containers or trailers that are entirely loaded and unloaded by an individual other than an employee or agent of the motor carrier.

Individual Shipper – Includes any person who is identified as the shipper or consignee on the HHG bill of lading contract. The individual shipper owns the goods being transported and pays the transportation charges. The term does not include moves involving business equipment or employee moves paid by

businesses or the government. The FMCSA consumer protection regulations for HHG were promulgated to protect individual shippers from abuse by the moving industry.

Insurance Filing – In addition to having the minimum amounts of bodily injury property damage (BI&PD) and cargo insurance in effect, HHG motor carriers, like all for-hire motor carriers, are also required to file evidence of BI&PD and cargo insurance with FMCSA as a condition for registration, as required by 49 CFR 387, Subpart C.

Interlining – Industry term for acting as a prime agent. Carriers that "interline" often do the line haul or delivery for the originating carrier.

Loss and Damage Claims – When their HHG are lost or damaged during transportation, shippers are allowed to file a claim with the HHG motor carrier to recover the costs for the lost or damaged items. HHG motor carriers are required to follow specific guidelines when handling and investigating loss and damage claims as provided by 49 CFR 370.

Low-ball Estimates – An illegal practice of intentionally luring shippers into using the services of a HHG motor carrier by intentionally providing a low estimate of the cost to transport their HHG; once the actual charges are assessed and submitted to the shipper, they are usually substantially higher than the original estimate quoted.

- **Note:** This term is currently not found in the FMCSR.

Motor carrier – The term "motor carrier" means a person providing motor vehicle transportation for compensation.

Motor vehicle – The term "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Secretary, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service.

Operating Authority – Motor carriers that transport HHG for-hire in interstate commerce are required to register with FMCSA and obtain the appropriate certificate or permit as required by 49 CFR 392.9a and U.S.C. 13902(a).

–

Process Agent – 49 CFR 366 requires every HHG motor carrier and broker to make a designation naming a person that will accept service of process on its behalf in each State in which it is authorized to operate and for each State traversed during such operations. The motor carrier must file a Designation of Process Agent form, BOC-3, with FMCSA as a condition for obtaining registration.

Physical Survey- Means a survey which is conducted on-site or virtually. If the survey is performed virtually, the household goods motor carrier must be able to view the household goods through live or pre-recorded video that allows it to clearly identify the household goods to be transported.

Reasonable Dispatch – When the HHG motor carrier transports on the dates or during the period agreed upon the /Bill of Lading; if a shipment is deliberately withheld from delivery after an individual shipper offers to pay the binding estimate or 110 percent of a non-binding estimate, then the goods that have not been transported with reasonable dispatch. The term reasonable dispatch excludes transportation provided under tariff provisions requiring guaranteed service dates.

Tariffs – A published schedule of the rates and charges assessed by the HHG motor carrier for transporting and handling HHG in interstate commerce; the tariff is the HHG motor carrier's legal basis for the charges it assesses for transporting and handling HHG shipments and is required by 49 CFR 375.215 and 49 U.S.C. 13702.

"Your Rights and Responsibilities When You Move" – This pamphlet provides a detailed explanation of the HHG motor carrier's responsibilities, the documents shippers will be asked to sign, and explains the shipper's rights if his/her HHG are lost or damaged. HHG motor carriers are required to provide prospective individual shippers with a copy of "Your Rights and Responsibilities When You Move" (FMCSA–ESA–03–006 or its successor publication) as required by 49 CFR 375.213(a)(2)

Weight Ticket – When a shipment's transportation charges are based upon the actual weight; every HHG motor carrier transporting HHG on a non-binding estimate must determine the weight of each shipment transported, prior to the assessment of any charges. The weight ticket is the document used to record the weight of the HHG being transported and is required by 49 CFR 375.507(a).

> **Note:** HHG motor carriers are allowed to transport HHG shipments whose charges are based upon volume (cubic feet), as long as these charges are provided for in their tariffs and the HHG carrier provides a written explanation of the volume to weight conversions.

4.2.6 General CR Procedures

Commercial Reviews Required for HHG and Commercial Investigations

To report HHG and other Commercial Investigations, the Commercial Non-ratable Compliance Review (NRCR) using CAPRI software is required. There are two options when conducting a NRCR: 1)Comprehensive NRCR; or 2) Focused NRCR.

The **Comprehensive** NRCR is the full examination of the operations of HHG motor carriers and brokers for compliance with the Federal statutes and FMCCR. The Comprehensive NRCR should be conducted when there is an indication that there are significant breakdowns in the motor carrier's or broker's management controls. The subject of a Comprehensive NRCR will be examined for compliance of the following Federal statutes and regulations:

Federal Regulations Subject to a Comprehensive NRCR	Federal Statutes Subject to a Comprehensive NRCR
Part 366	US Code, Title 49, Chapter 137
Part 376	US Code, Title 49, Chapter 139
Part 370	US Code, Title 49, Chapter 147
Part 371 (Brokers only)	US Code, Title 49, Chapter 149
Part 372	
Part 373	
Part 375	
Part 376	
Part 379	
Part 386	
Part 387	
Part 390	
49 CFR § 392.9a	

Additionally, the Comprehensive NRCR should be conducted when a HHG motor carrier appears on the Top 100 List or is suspected of being reincarnated.

The **Focused** NRCR will be utilized for a specific noncompliance issue discovered either through a consumer complaint, public report, employee report, or receipt of other similar information. This type of review is used to investigate specific allegations of statutory or FMCCR noncompliance. A Focused NRCR can be used to investigate a report of unauthorized operation in violation of 49 CFR § 392.9a by a state partner, or a consumer complaint of a HHG shipment held hostage in violation of 49 U.S.C. § 14915.

The Focused NRCR allows the investigation of a specific noncompliance issue, increasing response to consumer complaints, and more effective mitigation when noncompliance is discovered.

Division Administrators (DA) and Commercial Enforcement Specialists may expand a focused commercial NRCR to a comprehensive NRCR as appropriate. State enforcement partners initiating a focused NRCR should coordinate with the DA prior to expanding the review.

Regardless of the type of review performed, any discovered noncompliance should be handled with the appropriate enforcement action.

4.3 Stage 2 – Pre-investigation

4.3.1 Pre-investigation – HHG

Special Procedures to Prepare for a Commercial Non-Ratable Comprehensive or Focused CR on a HHG motor carrier

When conducting an investigation and/or commercial CR on a HHG motor carrier, whether comprehensive or focused, you should follow the steps for preparation that are explained in *General Guidelines for Initiating an Investigation*. In addition=you should:

- Review L&I Database Information;
- Determine if the motor carrier is authorized by FMCSA to conduct for-hire interstate transportation as provided by 49 CFR 392.9a (a);
- Determine if the motor carrier has the appropriate BI&PD and cargo insurance in effect and on file with the Commercial Enforcement Division as provided by 49 CFR 387.301;
- Determine if the motor carrier has a Designation of Process Agent, in effect and on file, with the Office of Registration and Safety Information, as provided by 49 CFR 366; and
- If the investigation is in response to a complaint, *interview the complainant* and attempt to obtain a written statement, and copies of any available pertinent documents.

Note: The L&I database: http://li-public.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov) provides information about the status of a HHG motor carrier's operating authority, filings of minimum levels of financial responsibility, and filings of Designation of Process Agents. When trying to determine ownership and control issues, the Licensing Team can be contacted to get copies of the HHG motor carrier's application for operating authority and its license and/or permit (copies of application form OP-1 are not available prior to 1996). The application lists the names of the motor carrier officials that were responsible at the time the application was submitted and can be used to identify the individuals that own and control the operations of the HHG entity. These documents can also be used as evidence if an enforcement action is initiated.

- Review Consumer-related complaints filed against the HHG motor carrier. Complaints filed against HHG motor carriers are entered in the FMCSA National Consumer Complaint Database (NCCDB) (http://nccdb.fmcsa.dot.gov). You should review the complaints filed against the HHG motor carrier in the NCCDB. Generally, you should only review complaints received during the previous 12 months for moves made interstate, beyond the motor carrier's commercial zone. These complaints can be used to identify for-hire interstate shipments.
- Interview the complainants that filed complaints in the NCCDB pertinent to the HHG CR. If possible, obtain written statements from those complainants. In the absence of written statements, use of the oral interview forms (*Illustration E-6*), especially for telephone interviews, will suffice.
- Determine if there were any third party witnesses, employees of storage facility, a neighbor, relative, landlord or realty agent that was involved in the movement of the HHG shipment and interview them obtaining a written statement or oral interview.
- Check with state and local police agencies for complaints filed against the HHG motor carrier reported to them and obtain any incident, investigation, or arrest reports. Also obtain copies of any summonses or other documentation of enforcement action by those agencies.

- Check with the state attorney general and/or other consumer protection organizations for complaints filed against the HHG motor carrier and obtain copies of the written complaints, written interviews of witnesses, evidentiary documents, and intake or investigation reports.
- Review Corporation records on file with the Secretary of State or other state corporate licensing authority to verify the status of the HHG motor carrier reported to FMCSA is the same reported to the state of domicile.
- Make an inquiry of the Vetting Team, Office of Registration and Safety Information and find out if there were any discrepancies detected when the HHG motor carrier applied for operating authority.
- Obtain and Review the Motor Carrier Profile.
    - The motor carrier profile may reveal potential indications of unauthorized operations or periods of operation when minimum levels of financial responsibility were not in effect and on file. If, after reviewing the profile, you determine the motor carrier has operated without the appropriate operating authority in effect, or the appropriate minimum level of financial responsibility filing, you should identify and obtain the necessary trip documents for those periods and include them in your sampling of the HHG motor carrier's operations.
- Thoroughly examine the HHG motor carrier's website, examining each webpage to ensure it is compliant with applicable regulations.

4.3.2 Pre-Investigation – Brokers

Special Procedures to Prepare for a Commercial Non-Ratable Comprehensive or Focused CR on a Broker

Brokers are unique, they do not operate trucks or employ drivers but recognized by many segments of the Trucking Industry as necessary to successfully and efficiently move all forms freight including HHG. Brokers only "arrange" transportation matching shippers to carriers. Brokers function through "transactions" and rely on the Internet and Social Media to market and manage their businesses. Preparation to investigate a broker will entail developing an overview of how the broker does business and with whom.

Complaints from either shippers or motor carriers usually draw attention to a broker and a thorough review of those complaints develops the overview of that broker. Additionally you should also:

- Interview the complainants and obtain written statements and copies of any documentation they have available;
- Check with the state attorney general and/or other consumer protection organizations for complaints filed against the HHG motor carrier and obtain copies of the written complaints, written interviews of witnesses, evidentiary documents, and intake or investigation reports.
- Research the status of the broker's company with the state licensing authority for corporations and other businesses;
- While researching the broker's company with the state licensing authority determine who the principals are.
- Review the L&I Database information.

- Determine if the broker's surety bond or trust fund is valid and has the required amount of funds, $75,000; and

- Thoroughly review the broker's website, examining all the webpages to ensure the broker is in compliance with all applicable regulations.

4.4 Stage 3 – Investigation

4.4.1 Introduction

Investigation – HHG

HHG Issues to Discuss During the Opening Interview

When you make contact with the carrier official and initiate the interview, be sure to consider and discuss the following:

- You will need to interview individuals responsible for compliance with the commercial regulations, including but not limited to: staff in sales, dispatch, and operations (drivers and laborers);
- Explanation of the HHG motor carrier's system for preparing, issuing, and internally filing documents of interstate shipments it transported; and
- Explanation of the HHG motor carrier's procedures for estimating and rating all charges for interstate HHG shipments.

What to Look for When Touring and Working at the HHG Motor Carrier's Facility

During the tour of the facility, and while working at the motor carrier's facilities, you should be aware of any materials that may:

- Relate to the HHG motor carrier's knowledge and compliance with FMCSA's commercial regulations;
- Identify other business names used by the entity;
- Identify the names of other HHG motor carriers or HHG brokers used by the respondent; and
- Any internal instructions to employees that may identify fraudulent practices that may be taking place.

While working at the HHG motor carrier's facilities, try to determine:

- The geographic territory serviced by the entity;
- The types of customers served by the entity;
- The average number of shipments transported per month;
- The entity's peak business season;
- Names, locations, and telephone numbers of HHG agents used by the HHG motor carrier; and
- The number of contracts it has with other HHG motor carriers and HHG brokers.

While working at the HHG motor carrier's facilities the following documents must be examined:

- The tariff, to ensure the HHG motor carrier is charging consumers and providing services exactly as stated in that document;
- All written agreements with brokers, obtain copies;
- All written agreements with agents, obtain copies; and
- Rental agreements from trucks rented to transport HHG shipments, obtain copies.

Conducting the CR

When reviewing compliance with 49 CFR 365, 366, 370, 372, 375, 387, 392.9a(a), and 49 U.S.C. 13702, 13707, 13902, 14104, 14708, 14901, and 14915 requirements, you should use the following guidelines to assist in your investigation of HHG motor carriers.

Acute and Critical Regulations

There are no acute or critical regulations in the commercial regulations, because these regulations are not used to determine a motor carrier's safety rating. As guidance, you should consider the protection of the shipper and his/her HHG and cite those violations that may result in harming shippers economically. Generally, HHG regulations violations will be of two types:

- **Severe Level I Violations** - These are violations within the FMCCR and Statutes that demand immediate corrective actions by the HHG motor carrier. Enforcement action is strongly recommended when a violation is discovered during the review that is identified as severe in the following table. In all cases, when enforcement action is not initiated, you should provide an explanation in Part C of the CR report.
- **Severe Level II Violations** - These violations of the FMCCR indicate a breakdown in the management controls of the HHG motor carrier operations. When a violation is discovered that is a Severe Level II Violation that has, or will result in harm to the shipper, enforcement action is recommended. Otherwise, enforcement action for a Severe Level II Violation is taken upon the discovery of an unacceptable level of compliance. Noncompliance with Severe Level II Violations is generally considered unacceptable when it has been discovered that there was significant harm to the consumer/shipper. In all cases, when enforcement action is not initiated and it is proven that there was significant harm to the consumer/shipper, you should provide an explanation in Part C of the CR report.

Initiating CAPRI

When conducting commercial CRs, select "Non-Ratable" as review type in CAPRI. Then select "Commercial" as the reason for the non-ratable review. If a commercial CR is being conducted in conjunction with an investigation, you would follow the normal procedures for entering Ratable data appropriately. Also, in Part C, enter "HHG" under Special Studies.

If the commercial review is being reported as a Focused Review, you must include, in your Part C narrative, that it is a Focused Review, and the reason that the investigation is focused. Consider using the Part C template for complaints when the focus of the NRCR is to substantiate a complaint.

4.4.2 Investigation Procedures to Determine Compliance with Specific Regulations and Statutes

4.4.2.1 Part 365, 366, 387 & 392 - Licensing & Insurance (L&I) Registration Requirements

4.4.2.1.1 Investigative Procedures

FMCSA's Jurisdiction with Regards to HHG Motor Carriers Registration & Filing Requirements

FMCSA requires that all motor carriers who transport HHG, as a for-hire motor carrier in interstate commerce beyond the commercial zone, are registered and have submitted the proper filings.

Authority and Insurance Filing Requirements

HHG motor carriers who operate for-hire in interstate commerce (beyond their commercial zone) transporting HHG is subject to:

- Obtaining operating authority
- Maintaining active operating authority at all times
- Filing the required insurance and process agent (Form BOC-3) to FMCSA's Commercial Enforcement Division

Procedures to Follow During Investigation of Compliance with Parts 365, 366, Part 387 & Part 392.9a(a)

Review the L&I Database: http://li-public.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov). Review the authority history, insurance history, and revocation history. Note what type of operating authority is granted. A HHG motor carrier cannot transport HHG if it has been granted property motor carrier authority only.

If you discover the authority was revoked, suspended, dismissed or rejected within the past year, you may only cite the carrier if you discover trips. As you examine records of trips, determine if any trips were made while the carrier did not have active operating authority. Also, determine if the commodity transported matches the authority granted. If a motor carrier with property carrier authority made trips transporting HHG, then those trips were beyond the scope of that carrier's authority.

When reviewing if the carrier is in compliance with the Designation of Agent for Service of Process (Form BOC-3), ensure that there is one on file in the L&I Database: http://li-public.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov). Verify, during the CR, that the motor carrier has a Process Agent in place for each State in which it operates and/or traverses, and a copy is maintained at its PPOB. Carriers can obtain a copy of Form BOC-3 from their Process Agent.

HHG or Other Motor Carrier Has Operated For-Hire in Interstate Commerce and Does Not Have an Active Certificate or Docket Number Assigned by FMCSA

You should cite the HHG motor carrier for:

- **Section 392.9a(a)(1)/14901(d)(3)** – Operating a motor vehicle requiring operating authority without valid operating authority. (Severe Level I violation)

You should cite any other motor carrier requiring operating authority for:

- **Section 392.9a(a)(1)** – Operating a motor vehicle requiring operating authority without valid operating authority. (Severe Level I violation)

HHG Motor Carrier Has Operated For-Hire in Interstate Commerce and Operated Beyond the Scope of the Operating Authority Granted by FMCSA

You should cite the HHG motor carrier for:

- **Section 392.9a(a)(2)/14901(d)(3)** – Operating a motor vehicle requiring operating authority beyond the scope of the operating authority granted. (Severe Level I violation)

HHG or Other Motor Carrier Does Not Have the Required Administrative Filings in Effect

You should cite the HHG motor carrier for:

- Section 387.7(a) - Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. (Note: Use only when citing a carrier that operates vehicles with a GVWR greater than 10,000 lbs.) (Severe Level I violation)
- Section 387.301(a) - Failing to file evidence of public liability insurance with the Federal Motor Carrier Safety Administration. (Severe Level II violation)
- Section 387.301(b) - HHG motor carrier failing to file evidence of cargo insurance with the Federal Motor Carrier Safety Administration. (Severe Level II violation)
- Section 387.303(b) - Failing to maintain adequate public liability insurance as required by the Federal Motor Carrier Safety Administration. (Severe Level I violation). (Note: Use only when citing a carrier that operates vehicles with a GVWR less than 10,000 lbs.)
- Section 387.303(c) - HHG motor carrier failing to maintain adequate cargo insurance as required by the Federal Motor Carrier Safety Administration. (Severe Level I violation)

Broker Does Not Have the Required Financial Responsibility

You should cite the broker for:

- Section 387.307(a) –) Broker failing to have the required surety bond or trust fund in effect for $75,000. (Severe Level I violation)
- Section 14916(a)(2) – Any broker failing to have the required surety bond or trust fund in effect for $75,000

Note: All brokers are required to have a surety bond or trust fund in effect for $75,000 after October 1, 2013.

HHG Motor Carrier Does Not Comply with the Designation of Process Agent (Form BOC-3) Requirements as Outlined in Part 366

You should cite the HHG motor carrier for:

- **Section 365.109(a)(6)** - Failing to have on file Designation of Agent for Service of Process (Form BOC-3) with the Federal Motor Carrier Safety Administration. [First-time Compliance Review - one instance; subsequent Compliance Reviews - each instance in which it transported for-hire interstate shipments in violation of Section 365.109(a)(6)].
- **Section 366.4(a)** – Failing to have a Designation of Agent for Service of Process. [First-time Compliance Review - one instance; subsequent Compliance Reviews - each instance in which it transported for-hire interstate shipments in violation of Section 366.4(a)].

Note: Obtain a copy of the carrier's Designation of Agent for Service of Process (Form BOC-3) if there isn't one on file.

4.4.2.1.2 CAPRI Procedures

Completing Part A

If you discover that a HHG motor carrier has never applied for operating authority (MC #) (not found in L & I), under Part A:

- Go to – **Identification tab**
- Select – **Other** in carrier classification field

If you discover that a HHG motor carrier has applied for operating authority (MC #), but their MC # is inactive (in L & I database – authority history) due to a dismissal (has never been granted authority), under Part A:

- Go to – Identification tab
- Select – Other in carrier classification field
- Enter the MC # assigned to the carrier in the MC/MX # field.
- Select – Other
- Enter Dismissal in the other classification field.

If you discover that a HHG motor carrier has been granted operating authority (MC #), but their MC # is inactive (in L&I database – authority history) due to an involuntary revocation or OOS, under Part A:

- Go to - Identification tab
- Select – Other in carrier classification field
- Enter the MC # assigned to the carrier in the MC/MX # field.
- Select – Other
- Enter Revoked in the other classification field.

Recording Violations of Part 365, 366, 387 & 392.9a (a) Regulations and Chapter 139 and 149 Statutes

You should record the number checked as follows:

Note: Drivers Checked/Vehicles Checked must be 0 of 0.

Violations of Parts 365, 366, 387 & 392.9a(a)

CITATION	TYPE	DESCRIPTION
365.109(a)(6)/13304(a)	**General**	Failing to have on file Designation of Agent for Service of Process (Form BOC-3) with the Federal Motor Carrier Safety Administration. **Number discovered: First-time Compliance Review - one of one; subsequent Compliance Reviews - one each instance in which it transported for-hire interstate shipments in violation of Section 365.109(a)(6).**

366.4(a)/13304(a)	**General**	Failing to have a Designation of Agent for Service of Process. **Number discovered: First-time Compliance Review - one of one; subsequent Compliance Reviews - one each instance in which it transported for-hire interstate shipments in violation of Section 366.4.**
387.7(a)	**Severe Level I**	Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. **Number discovered: One each occurrence.** **Note:** Use only when citing a carrier that operates vehicles with a GVWR greater than 10,000 lbs.
387.301(a)	**Severe Level I**	Failing to file evidence of public liability insurance with the Federal Motor Carrier Safety Administration. **Number discovered: One filing. (One of one.)**
387.301(b)	**Severe Level I**	Household goods motor carrier failing to file evidence of cargo insurance with the Federal Motor Carrier Safety Administration. **Number discovered: One of one.**
387.303(b)	**Severe Level I**	Failing to maintain adequate public liability insurance as required by the Federal Motor Carrier Safety Administration. **Number discovered: One each occurrence.** **Note:** Use only when citing a carrier that operates vehicles with a GVWR less than 10,000 lbs.
387.303(c)	**Severe Level I**	Household goods motor carrier failing to maintain adequate cargo insurance as required by the Federal Motor Carrier Safety Administration. **Number discovered: One each occurrence.**
387.307(a)	**Severe Level I (**	Broker failing to have a surety bond or trust fund in effect for $75,000 (applies to both Property and household goods brokers). **Number discovered: One of one.**
	Severe Level I	Property broker failing to have a surety bond or trust fund in effect for $10,000. **Number discovered: One of one.**
	Severe Level I (after January 1, 2012)	Household goods broker failing to have a surety bond or trust fund in effect for $25,000. **Number discovered: One of one.**
14916(a)(2)	**Severe Level I (after October 1, 2013)**	Unlawful Brokerage Activities – any broker failing to have a surety bond or trust fund in effect for $75,000
392.9a(a)(1)/14901(d)(3)	**Severe Level I**	Household goods motor carrier operating without active authority. **Number discovered: One for each trip when household goods carrier was discovered without active authority.**
392.9a(a)(1)	**Severe Level I**	Motor carrier operating without active operating authority. **Number discovered: One for each trip when a motor carrier was discovered without active authority.**

392.9a(a)(2)/14901(d)(3)	**Severe Level I**	Motor carrier operating beyond the scope of its authority. **Number discovered: One for each trip when the motor carrier was transporting a commodity beyond the scope of the authority granted.** **Note:** Applies to a motor carrier with property carrier authority transporting household goods.
14916(a)(1)	**Severe Level I**	Unlawful Brokerage Activities – any broker operating without active authority.

4.4.2.2 Commercial Enforcement - Part 370 – Principles & Practices for the Investigation & Voluntary Disposition of Loss & Damage Claims

4.4.2.2.1 Investigative Procedures

FMCSA's Jurisdiction in Regards to HHG Loss and Damage Claims Filed with HHG Motor Carriers
FMCSA's authority over loss and damage claims is limited to processing & handling of claims. FMCSA does not determine or decide loss and damage claims amounts.

Requirements for Handling Loss and Damage Claims
49 C.F.R. Part 370 provides specific requirements and time limits for handling and investigating claims for loss of damage, injury, or delay to freight (such as motor vehicles) by property motor carriers and household goods by HHG motor carriers. Additionally, Part 370 requires loss and damage claims must be in writing and filed with the carrier in accordance with the terms and provisions described in its bill of lading, or other contract of carriage, and in the case of HHG motor carriers all of its tariff provisions. Also, the claim requesting payment must be for a specified or determinable amount of money, as provided by Section 370.3(b)(3). 49 U.S.C. Section 14706(e) states, in part, that the minimum amount of time that carriers must allow for the filing of loss and damage claims is 9 months after the delivery of the household goods.

Procedures to Follow During Investigation of Compliance with Part 370
Your investigation of compliance with Part 370 should proceed as follows:

- Reviewing complaints contained in FMCSA's NCCDB which may indicate that consumers' loss and damage claims are not being handled or handled as required by Part 370**;
- Requesting the carrier's loss and damage claim files for ALL moves conducted during the past 12 months; (NOTE: Select the interstate moves conducted beyond the motor carrier's commercial zone); and
- Reviewing the appropriate number of loss and damage claim records. See the sampling table in this Section; and Identify and cite violations and consider whether enforcement is appropriate.

****DO NOT DISCLOSE THE IDENTITY OF COMPLAINANT(S), AS STATED IN PART 386.12(c)**

Records to Review for the Applicable Time Period
When reviewing HHG carrier records, you should use the following table to sample and review an appropriate number of losses and damage claims records:

Number of loss and damage claims received by the carrier, subject to 370, in the previous 365 Days

Number of Loss & Damage Claims Received	Number of Loss & Damage Claims to Review
1-10	All
10-300	10
300 or more	15

Check the Following When Examining the Carrier's Loss and Damage Claims
You should determine if:

- Each claim received is acknowledged in writing, or electronically, within 30 days of receipt, unless the carrier pays or denies it, in writing or electronically, within 30 days of receipt, as provided by Section 370.5(a),
- The carrier creates a separate file and assigns a successive claim file number for each claim received and notes that number on all documents filed in support of the claim and all records and correspondence with respect to the claim, including the acknowledgment of receipt as provided by Section 370.5(b),
- All claims received are noted with the date of receipt and the date acknowledged, as provided by Section 370.5(b),
- All claims are paid, declined, or a settlement offer made in writing, or electronically, to the claimant within 120 days of receipt by the carrier. If the claim could not be processed and disposed of within 120 days, the carrier shall at that time, and at the expiration of each succeeding 60-day period while the claim remains pending, advise the claimant in writing or electronically of the status of the claim and the reason for the delay in making final disposition as provided by Section 370.9(a).

Procedures to Follow if the HHG Carrier Does Not Comply with the Loss & Damage Requirements, as Outlined in Part 370

You should cite the motor carrier for:

- Section 370.5(a) - Failing to acknowledge receipt of a written or electronic process loss and damage claims within 30 days of receipt. (General violation).
- Section 370.5(b) - Failing to create a separate file and assign a successive claim file number for each claim received and note that number on all documents filed in support of the claim. (General violation).
- Section 370.7(a) - Failing to promptly and thoroughly investigate each claim. (NOTE: Use when no action is taken on any Loss & Damage claim received.) (Serious Level II violation).
- Section 370.9(a) - Failing to promptly and thoroughly investigate each claim within 120 days or within extension period. (Serious Level II violation).
- Section 379.13 – Failing to retain loss and damage claim records up to one year after settlement. (Serious Level II violation).

4.4.2.2.2 CAPRI Procedures

Once you have completed your investigation of Parts 370, you should ask yourself, "Can I prove each discovered violation in Part 370?" If you can answer "Yes" to this question, the following guidelines have been established to assist in completing Part-B Violations Tab of the CAPRI Software:

Recording the Violations of Part 370 Regulations

You should record the number checked as follows:

Note: Drivers Checked/Vehicles Checked must be 0 of 0.

Violations of Part 370 Regulations

CITATION	TYPE	DESCRIPTION
370.5(a)	**General**	Failing to acknowledge receipt of a written or electronic loss and damage claim within 30 days of receipt. **Number discovered: One for each claim received and not acknowledged within 30 days.**
370.5(b)	**General**	Failing to create a separate file and assign a successive claim file number for each claim received and/or notes that number on all documents filed in support of the claim.

		Number discovered: One for each claim received and not assigned a successive claim file # or claim # not noted on all documents.
370.7(a)	**Severe Level II**	Failing to promptly and thoroughly investigate each claim. **Number discovered: One for each claim received and no action was taken to promptly and thoroughly investigate.**
370.9(a)	**Severe Level II**	Failing to promptly and thoroughly investigate each claim within 120 days or within extension period. **Number discovered: One for each claim not promptly and thoroughly investigated.**
379.13	**Severe Level II**	Failing to retain loss and damage claim records for one year after settlement. **Number discovered: One for each claim record not retained for one year after settlement.**

4.4.2.3 Part 371 – Transportation in Interstate Commerce – Commercial Enforcement: Brokers

4.4.2.3.1 Investigative Procedures

FMCSA's Jurisdiction in Regards to the Arrangement of For-hire Transportation of HHG by Brokers

In 1999, Congress authorized FMCSA to regulate HHG brokers engaged in interstate operations in the Motor Carrier Safety Improvement Act of 1999 (MCSIA). The Broker regulations are included in 49 CFR Part 371 of the FMCSR and the statutes are found in the ICC Termination Act. FMCSA is authorized to investigate interstate for-hire HHG brokers to ensure compliance and take enforcement when necessary.

Requirements for Complying with 49 CFR Part 371

FMCSA requires that all brokers that arrange the transport of freight and HHG for authorized for-hire motor carriers in interstate commerce beyond the commercial zone are registered and have submitted the proper filings. Property and HHG brokers that arrange transportation by for-hire motor carriers in interstate commerce (beyond their commercial zone) are subject to complying with Part 371.

Investigation – Brokers

Sections of Part 371 to Review for Compliance by all Brokers

Section 371.3 - Records kept by brokers.

Section 371.7 - Misrepresentation by brokers.

Section 371.10 - Duties and obligations of brokers.

Section 371.13 - Accounting.

Sections 13901, 13904, 14916 - Registration of brokers.

Sections of Part 371 to Review for Compliance by HHG Brokers

Section 371.105 - Using HHG motor carriers with valid USDOT numbers and valid operating authority.

Section 371.107 - Required information to be displayed by HHG brokers on all advertisements and Internet websites.

Section 371.109 - Notification to individual shippers motor carriers used by HHG brokers.

Section 371. 111 - Providing individual shippers with required Federal consumer protection information.

Section 371.111(e) - Failing to display prominently either a link to the Department of Transportation (DOT) publication titled ‘‘Ready to Move?—Tips for a Successful Interstate Move’’ (DOT publication FMCSA–ESA– 03–005, or its successor publication) on the FMCSA website or a true and accurate copy of that document on your website.

Section 371.113 - HHG brokers providing written estimates to individual shippers.

Section 371.115 - Agreements between HHG brokers and HHG motor carriers on behalf they provide written estimates.

Section 371.117 - Policies concerning cancellation, deposits, and refunds to be provided to individual shippers.

Brokers are also required to be registered with the FMCSA, and are currently issued only "MC numbers" but will be issued USDOT numbers as part of the Unified Registration System (URS) rulemaking.

Procedures to follow to determine if any Broker is in Compliance with Section 371.3

Brokers are required to keep a record of each transaction. These records should contain master lists of consignors and the address and registration number (USDOT number and/or MC number) of the HHG motor carrier.

The records must show:

- The name and address of consignor (shipper)
- The name, address, and registration number(s) of the originating HHG carrier
- Bill of lading or invoice number
- Amount of compensation received by the broker for the brokerage service performed and the name of the payer
- Description of any non-brokerage service performed in connection with each shipment or other activity, the amount of compensation received for the service, and the name of the payer
- Amount of any freight charges collected by the broker and the date of payment to the carrier

Also, the broker ***must*** keep those records for a period of **three years.**

Procedures to follow to if a Broker is in Violation of Section 371.3

You should cite the broker for the violation of:

Section 371.3(a) – Failure to keep records as required. (Severe Level II violation)

Procedures to follow to determine if a Broker is in Compliance with Section 371.7

A broker shall not perform, or offer to perform, any brokerage service (in advertising), in any name other than in which its registration (USDOT and/or MC number) is issued. A broker shall not directly, or indirectly, represent its operations to be that of a carrier. Any advertising must show the broker status of the operation.

Be sure to review all of the broker's advertising, especially its website examining all webpages from that website, to ensure that it is in compliance.

Procedures to follow when a Broker is in Violation of Section 371.7

You should cite the broker for the violation of:

Section 371.7(a) - Broker performing or offering to perform any brokerage service in any name other than that in which its registration is issued. (Severe Level II violation).

Section 371.7(b) - Broker representing its operations to be that of a carrier.(Severe Level II violation).

Section 371.7(b) - Broker failing to show its broker status in its advertising. (Severe Level II violation).

Procedures to follow in determining that a Broker is in Compliance of Section 371.13

Brokers that are engaged in any other business (such as also operating as a motor carrier) shall maintain accounts so that the revenues and expenses relating to the brokerage portion of its business are segregated from its other activities. Brokers that also operate as motor carriers, and have expenses in common, shall

allocate those expenses on an equitable basis; however, the broker must be prepared to explain the basis for the allocation.

Examination of broker's financial records including but not limited to Accounts Payable, Accounts Receivable, and Payroll can provide evidence that revenue and expenses are properly or improperly segregated from another business.

Enhanced Investigative Technique – Interview employees that do customer service working with shippers and determine if they are arranging transportation for the brokerage, and dispatching drivers for the motor carrier during their workday. Determine if those employees are paid by one entity or both the brokerage and the motor carrier for their services.

Enhanced Investigative Technique – Request the annual financial statement from the company principal, often s/he will need to obtain it from the company's accountant. Review the financial statement to determine if the finances of the brokerage and motor carrier are comingled causing a violation of 371.13.

Procedures to follow when a Broker is in Violation of Section 371.13

You should cite the broker for the violation of:

Section 371.13 – Failing to segregate revenues and expenses of the brokerage. (Severe Level II violation).

Procedures to follow when a Broker is Not Registered with FMCSA and is an Unauthorized Operation

You should cite the broker for the violation of:

Section 14916(a)(1) – Unlawful brokerage activities, unauthorized broker operation (operating without authority). (Severe Level I violation).

Procedures to follow when a HHG Broker is Not Registered with FMCSA and is an Unauthorized Operation

You should cite the broker for the violation of:

Section 13901(primary)/**14901(d)(3)**(secondary) – Unauthorized broker operation (operating without authority). (Severe Level I violation).

Section 14916(a)(1) – Unlawful Brokerage Activities – Unauthorized broker operation (operating without authority). (Severe Level I violation).

Note: Enforcement for unauthorized HHG brokering results in a mandatory $25,000 penalty. Citing Unlawful Brokerage Activities is a discretionary option, because enforcement of this section results in a mandatory $10,000 penalty. When deciding which section to cite, consider the extent of noncompliance of the errant broker.

Procedures to follow to determine is a Broker is in compliance of Other Registration Requirements

Sections 13904 – All brokers, as a condition of registration, must have an officer that has at least three years of relevant experience or provide satisfactory evidence that its officer(s) have knowledge of rules, regulations, and industry practices.

The officers of a brokerage must be clearly identified, and then a background investigation conducted on those officers to verify that there is at least three years of relevant experience in their employment history. Request copies of resumes or curriculum vitas from the officers of the brokerage under investigation and verify the references and work history stated on those documents. Certificates of training or academic degrees can be considered documentation of knowledge of rules, regulations, and industry practices.

Procedures to follow when a Broker is in Violation of Sections 13904

You should cite the broker for violation of:

Section 13904(c)(1) – Broker failing to employ an officer with at least three years of relevant experience (General violation).

Section 13904(c)(2) – Broker failing to employ an officer with knowledge of rules, regulations, and industry practices (General violation).

Section 13905(c)

All brokers must renew their USDOT number registration every five years.

Procedures to follow when a Broker is in Violation of Section 13905(c)
You should cite the broker for violation of:

Section 13905(c) – Failing to renew USDOT registration after five years. (Severe Level II violation).

Subpart B of Part 371 only applies to HHG Brokers.

Procedures to Follow to Determine that an HHG Broker is in Compliance of Section 371.105
An HHG broker can only arrange transportation for HHG motor carriers that have a valid USDOT number and valid HHG motor carrier authority.

Procedures to follow when a HHG Broker is in Violation of Section 371.105
You should cite the HHG broker for the violation of:

Section 371.105 – Failing to arrange transportation for a HHG motor carrier that has a valid USDOT number and valid HHG motor carrier authority. (Severe Level II violation).

Procedures to Follow to Determine that a HHG Broker is in Compliance of Section 371.107
A HHG broker must prominently display in all its advertisements, and on the home page of its Internet website, the following information:

- The physical location of the HHG brokerage;
- The MC Docket number issued to the HHG brokerage by FMCSA;
- The HHG brokerage is a broker that arranges transportation of HHG by an authorized HHG motor carrier;
- Estimates from the HHG broker are based on rates in HHG motor carrier's tariff; and
- That the HHG motor carrier is required to make its tariff available for public inspection upon a reasonable request.

The HHG broker is in violation of the regulation if any of those elements are missing from any of its advertisements, especially on the home page of its Internet website. If the required information is displayed on pages other than the home page of the Internet website, the HHG broker is not in compliance.

Procedures to follow when a HHG Broker is in Violation of Section 371.107
You should cite the HHG broker for the violation of:

Section 371.107 – HHG broker failing to prominently display the required information on all advertisements including the homepage of its Internet website. (Severe Level II violation).

Procedures to Follow to Determine that a HHG Broker is in Compliance of Section 371.109
HHG brokers are required to provide to all potential individual shippers a list of all authorized HHG motor carriers, including their USDOT and MC Docket numbers, and a statement saying the HHG broker is not a motor carrier authorized by the Federal Government but are only arranging transportation and additional services, if applicable, by an authorized HHG motor carrier. The list of carriers and the statement can be the closing on all emails from the HHG broker to potential shippers. To determine

compliance, it is recommended that you request from the HHG broker copies of emails it submitted to potential individual shippers, to ensure the required information was transmitted.

Procedures to follow when a HHG Broker is in Violation of Section 371.109

You should cite the HHG broker for the violation of:

Section 371.109 – HHG broker failing to provide required information to potential individual shippers. (Severe Level II violation).

Procedures to Follow to Determine that a HHG Broker is in Compliance of Section 371.111

HHG brokers must provide to potential individual shippers Federal Consumer Protection Information, consisting of two publications:

- "Ready to Move – Tips for a Successful Interstate Move"; and
- "Your Rights and Responsibilities When You Move"

HHG brokers have the option of providing hard copies of the publications to disseminate to potential individual shippers, or installing a hyperlink on their Internet website to the FMCSA website containing the publications. You should anticipate finding the hyperlink when you examine the HHG broker's Internet website for compliance of other regulations. Check the hyperlink to ensure it works.

Procedures to follow when a HHG Broker is in Violation of Section 371.111

You should cite the HHG broker for the violation of:

Section 371.111 – HHG broker failing to provide potential individual shippers with required Federal consumer protection information (General violation).

Section 371.111(e) - Failing to display prominently either a link to the Department of Transportation (DOT) publication titled ''Ready to Move?—Tips for a Successful Interstate Move'' (DOT publication FMCSA–ESA– 03–005, or its successor publication) on the FMCSA website or a true and accurate copy of that document on your website. (General Violation)

Procedures to Follow to Determine that a HHG Broker is in Compliance of Section 371.113

An HHG broker can provide estimates of transportation and accessorial charges to individual shippers on behalf of an authorized HHG motor carrier. The estimates must be in writing and based on a physical survey that can be conducted by either the HHG broker or HHG motor carrierThe physical survey can be waived, but the waiver must be in writing and signed by the individual shipper. The estimates must be based on the tariffs of the carriers the broker arranged to move those HHG shipments. When determining compliance, it is recommended that you examine copies of written estimates prepared by the HHG broker and determine if physical surveys were done, the exemption from the physical surveys was valid, or if the waivers were done properly.

Enhanced Investigation Technique – create a sample of brokered transactions, review the cost estimates, determine which HHG motor carriers moved the shipments, contact those HHG motor carriers and review their tariffs to determine if the estimates submitted to the shippers were on file in those tariffs.

Procedures to follow when a HHG Broker is in Violation of Section 371.113

You should cite the HHG broker for the violation of:

Section 371.113 – HHG broker failing to provide an estimate as required. (Severe I violation).

Section 371.113(b) - HHB broker failing to provide an estimate based on the carrier's tariff. (Severe Level I violation)

Procedures to Follow to Determine that a HHG Broker is in Compliance of Section 371.115

Before an HHG broker can provide written estimates on behalf of an HHG motor carrier, it must have a written agreement as required by the regulation, 375.409. To determine compliance, you must examine the written agreements between the HHG broker and the HHG motor carriers it does business with. Make sure that the agreement is valid.

Procedures to follow when a HHG Broker is in Violation of Section 371.115

You should cite the HHG broker for the violation of:

Section 371.115 – HHG broker providing estimates on behalf of a HHG motor carrier without a written agreement. (Severe Level II violation).

Procedures to follow to determine that an HHG Broker is in Compliance of Section 371.117

A HHG broker must prominently display on its Internet website, and in the agreements with individual shippers, its policies concerning cancellation of shipments, deposits on shipments, and refund of deposits on shipments. The HHG broker must have records of all cancellations of shipments and refunds of deposits on shipments. The records of refunds must document that the individual shipper cashed or deposited the refund.

Procedures to follow when a HHG Broker is in Violation of Section 371.117

You should cite the HHG broker for the violation of:

Section 371.117(a) – Failure to display cancellation, deposit, and refund policies on its Internet website or agreements with individual shippers. (Severe Level II violation).

Section 371.117(b) – Failure to maintain records of canceled shipments and refunds to individual shippers. (Severe Level II violation).

4.4.2.3.2 CAPRI Procedures

Once you have completed your investigation of Part 371, you should ask yourself, "Can I prove each discovered violation in Part 371?" If you can answer "Yes" to this question, the following guidelines have been established to assist in completing Part-B Violations Tab of the CAPRI Software:

Recording Violations of Part 371 Regulations and Federal Statutes

You should record the number checked as follows:

Note: Drivers Checked/Vehicles Checked must be 0 of 0.

Violations of Part 371 Regulations and Federal Statutes

CITATION	TYPE	DESCRIPTION
371.3	**Severe Level II**	Failure to keep records as required. **Number discovered: One for each record discovered not in compliance or missing.**
371.7(a)	**Severe Level II**	Broker performing or offering to perform any brokerage service in any name other than that in which its registration is issued. **Number discovered: One for each brokered transaction when the broker was performing or offering to perform any brokerage service in any name other than that in is registered.**
371.7(b)	**Severe Level II**	Broker representing its operations to be that of a carrier. **Number discovered: One for each brokered transaction when the broker misrepresented itself as a carrier.**
371.7(b)	**Severe Level II**	Broker failing to show its broker status in its advertising.

		Number discovered: One for each advertisement discovered where the broker does not show its broker status.
371.13	**Severe Level II**	Failing to segregate revenues and expenses of the brokerage. **Number discovered: One for each financial account discovered with co-mingled revenues.**
14916(a)(1)/13901	**Severe Level I**	Unlawful Brokerage Activities (operating without authority). **Number discovered: One for the required registration.**
13904(c)(1)	**General**	Broker failing to employ officer with at least three years of relevant experience. **Number discovered: One for each officer without three years of experience.**
13904(c)(2)	**General**	Broker failing to employ officer with knowledge of rules, regulations, and industry practices. **Number discovered: One for each officer without evidence of knowledge of rules, regulations, and industry practices.**
14916(a)(2)/13906	**Severe Level I**	Providing interstate brokerage activities on regulated commodities without the required amount of financial security. **Number discovered: One for inadequate financial security**
14916(a)/387.307(b)	**Severe Level 1**	
13901/14901(d)(3)	**Severe Level I**	Unauthorized HHG broker operation (operating without authority). **Number discovered: One for the required registration.**
371.105	**Severe Level II**	Failure to use HHG motor carriers with valid USDOT numbers and valid operating authority. **Number discovered: One for each HHG motor carrier discovered without a valid USDOT number or operating authority.**
371.107	**Severe Level II**	Failure to display required information on all advertisements and Internet websites. **Number discovered: One for each advertisement or Internet website that does not display required information.**
371.109	**Severe Level II**	HHG broker failing to notify individual shippers of motor carriers it used. **Number discovered: One for each brokered transaction where an individual shipper was not notified of the HHG motor carriers the HHG broker used.**
371.111	**General**	Failure to provide required Federal consumer protection information. Number discovered: One for each brokered transaction where an individual shipper did not receive the required Federal consumer protection information.
371.111(e)	**General**	**Failing to display prominently either a link to the Department of Transportation (DOT) publication titled ‘‘Ready to Move?—Tips for a Successful Interstate Move’’ (DOT publication FMCSA–ESA– 03–005, or its successor publication) on the FMCSA website or a true and accurate**

		copy of that document on your website.Number discovered: One for each brokered transaction where an individual shipper did not receive the required Federal consumer protection information.
371.113	**Severe Level I**	Failure to provide a written estimate as required. **Number discovered: One for each brokered transaction where the written estimate was not provided as required.**
371.113(b)	**Severe Level I**	Failure to provide a written estimate based on the carrier's tariff. **Number discovered: One for each brokered transaction where the written estimate was not based on the carrier's tariff as required.**
371.115	**Severe Level I**	Providing an estimate to an individual shipper on behalf of a HHG motor carrier without a written agreement with that motor carrier. **Number discovered: One for each brokered transaction where the broker did not have a written agreement with a HHG motor carrier.**
371.117(a)	**Severe Level II**	Failure to display cancellation, deposit, and refund policies on its Internet website or agreements with individual shippers. **Number discovered: One for each Internet website or written agreement with an individual shipper discovered not displaying cancellation, deposit, and refund policies.**
371.117(b)	**Severe Level II**	Failure to maintain records of canceled shipments and refunds to individual shippers. **Number discovered: One for each missing record of a canceled shipment and refund to individual shipper.**

Additional Instructions

Until the CAPRI software has been upgraded to fully accommodate broker investigations follow these instructions.

In Part A, Identification Section, enter the assigned USDOT number. In the Carrier/Shipper Operation Type Section enter "Interstate Non-HM Carrier", and under "Classification" enter "Authorized for Hire" and "Other". Enter the assigned MC Docket number and under other classification, enter "BROKER". In the Cargo/HM Section, input the selected cargo categories that the broker arranged transportation for, and in the Driver/Vehicle Section enter one truck and one driver. Check off "No Inspections" and "No Accidents" in the Performance Section. Completions of the Address and Miscellaneous sections are done the same way as they are in other investigations.

Recommendations will be customized. In the General Section of Part C, enter "BROKER" in the first special study code and "HHG" in the second special study code only if the broker reviewed is an HHG broker. In the Remarks Section of Part C, enter above the Part C Template, "This investigation report was conducted on a broker, and due to limitations of the current version of the software "Interstate Non-HM Carrier", one truck and one driver were reported in order to process. The subject of this review, an (authorized or unauthorized) broker is not a motor carrier, does not operate trucks or employ drivers. Corrections were made to the hard copy Part A section of the investigation report to reflect that."

After entering the data into the CAPRI software, do not upload the investigation report. Print a hard copy put a single line through Interstate Non-HM Carrier and writes in "Interstate Broker", where the truck and driver information was reported. Initial each correction. Scan the copy with the corrections into a PDF.

Submit the PDF to the Division Office. Ensure that the copy of the report given to the broker has the same corrections as the initialed copy submitted to the Division Office.

When the PDF of a completed broker investigation report is submitted to the Division Office it will be reviewed to ensure accuracy of the data reported. After completion of the review, the investigation report is submitted into the Electronic Document Management System (EDMS) instead of uploading to the Motor Carrier Management Information System (MCMIS). The EDMS has special folder for broker investigations. If the completed investigation is included in enforcement case, current procedures concerning the processing of enforcement cases apply.

4.4.2.4 Part 375 – Transportation in Interstate Commerce – Consumer Protection Regulations

4.4.2.4.1 Investigative Procedures

FMCSA's Jurisdiction in Regards to For-hire Transportation of HHG by Motor Carriers

In 1999, Congress authorized FMCSA to regulate HHG carriers engaged in interstate operations in the Motor Carrier Safety Improvement Act (MCSIA) of 1999. The HHG Consumer regulations are included in 49 CFR Part 375 of the FMCSR and the statutes are found in the ICC Termination Act. FMCSA is authorized to investigate interstate for-hire household motor carriers to ensure compliance and take enforcement when necessary.

Requirements for Complying with 49 CFR Part 375

FMCSA requires that all motor carriers, who transport HHG as a for-hire motor carrier in interstate commerce beyond the commercial zone, are registered and have submitted the proper filings. HHG motor carriers, who operate for-hire in interstate commerce (beyond their commercial zone) transporting HHG, are subject to complying with Part 375 (i.e., providing and maintaining a tariff, estimates, bills of lading, weight receipt, etc.)

Reviewing Agent Agreements

Regarding Agents and Requirements to Having an Agent

A HHG motor carrier is allowed to utilize the services of a Prime Agent and/or Emergency or Temporary Agent. These agents are permitted to perform services on behalf of the HHG motor carrier. The HHG motor carrier must obtain and maintain a written agreement with its Prime Agents. The agreement should be retained for at least 24 months following the date of termination of each agreement.

Note: The HHG motor carrier's responsibility for acts or omissions by its agents is stated in 49 U.S.C. 13907.

Procedures to Follow to Determine the HHG Motor Carrier's Compliance with Part 375.205

During the opening interview, you should have discussed the use of prime and/or emergency/temporary agents. Request a copy of the written agreement between the carrier and its prime agent(s) used within the past 2 years.

Procedures to Follow if a HHG Motor Carrier Uses Prime or Emergency/Temporary Agents and it Does Not Comply with the Requirements as Outlined in Part 375.205

You should cite the HHG motor carrier for:

- **Section 375.205(b) -** Failing to have a written and signed agency agreement in effect with your Prime Agent(s). (General violation)
- **Section 375.205(c) -** Failing to retain a copy of the written agreement between you and your Prime Agent for at least 24 months following the date of termination of each agreement. (General violation)

Reviewing Liability of Carriers Under Receipts and Bills of Lading

Definition of Liability of Carriers Under Receipts and Bills of Lading

A carrier or group of carriers may petition to modify, eliminate, or establish rates for the transportation of HHG under which the liability of the carrier for that property is limited to a value established by written declaration of the shipper or by a written agreement. Unless the carrier receives a written waiver, a motor carrier's maximum liability for HHG that are lost, damaged, destroyed, or otherwise not delivered to the final destination, is an amount equal to the replacement value of such goods. The released rates shall not apply to the transportation of HHG by a carrier, unless the liability of the carrier for the full value of such HHG is waived, in writing, by the shipper.

Procedures to Determine if the HHG Motor Carrier is in Compliance with Part 375.201

During the opening interview, you should discuss the HHG motor carrier's policy and insurance requirements, as it relates to their liability for loss and damage to goods accepted from an individual shipper.

Procedures to Follow if a HHG Motor Carrier Fails to Comply with the Requirements Contained in Part 375.201

You should cite the HHG motor carrier for:

- **Section 375.201(a)/U.S.C. 14706(a) -** Failing to provide loss of damage during the performance of any transportation of household goods and related services identified on the bill of lading. (Severe Level I violation).
- **Section 375.201(b)/14706(f)(2) -** Failing to provide liability for household goods that are damaged, destroyed, or otherwise not delivered to the final destination in an amount equal to the replacement value of the household goods. (Severe Level I violation).
- **Section 375.201(c)/14706(f)(3) -** Failing to maintain a copy of the written waiver from the shipper for the liability of the full value of the household goods. (Severe Level II violation).
- **Section 375.201(d) -** Failing to issue a copy of the insurance policy or other appropriate evidence of insurance. (Severe Level II violation).
- **Section 375.201(e) -** Failing to disclose in a clear and concise manner, the limits of liability to the individual shipper. (Severe Level II violation).

Reviewing HHG Advertisements

Definition of an Advertisement and its Requirements

An advertisement is any means of communication to the general public in connection with an offer or sale of any interstate HHG transportation services. This includes written or electronic database listings of the HHG motor carrier's name, address and telephone number on Internet websites. This excludes listings of

the motor carrier's name, address and telephone number in a telephone directory or similar publication. Listings in telephone directories (i.e., Yellow Pages, Donnelly Directories, Yellow Book, etc.) are not considered advertisements, if they only identify the motor carrier's name, address and telephone number.

Section 375.207(b) requires all HHG motor carriers, and their agents, to include, in every advertisement:

- The name or trade name of the HHG motor carrier under whose operating authority the advertised service will originate; and
- The USDOT number assigned by the FMCSA. Section 375.207(c) requires all HHG motor carriers to display the assigned USDOT number in a specific manner:
    - The USDOT number must be displayed as U.S. DOT No. (assigned number).

Procedures to Determine if the HHG Motor Carrier is in Compliance with 375.207

Note: Investigator should research the motor carrier's Internet website and advertisements in telephone directories prior to arriving at the motor carrier's PPOB. Obtain a copy of any hard copy advertisements. Obtain a printout of any electronic advertisements (i.e. motor carrier's pages for its Internet website). Obtain any advertisements made by a Broker on behalf of the carrier. Obtain any advertisements made by an Agent for the motor carrier. Review the advertisement(s) for compliance.

If you discover that a HHG carrier is using deceptive advertising on its website, the most common method of advertising, you must capture *each page* of the website, as evidence. When you capture the web page using a "screenshot" (making a copy of the web page as it appears on the screen of your computer), you must document the date captured, and the URL address, on the screenshot or series of screenshots.

Procedures to Follow if the HHG Motor Carrier's Advertisements Do Not Comply with the Requirements as Outlined in Part 375.207

You should cite the HHG motor carrier for violation of:

- **Section 375.207(a) -** Providing false, misleading or deceptive information in advertisements. (Severe Level I violation).
- **Section 375.207(b)(1-2) (naming the appropriate section) -** Failing to include and not require agents to include in all advertisements for all services required information. (General violation).
- **Section 375.207(c) -** Failing to display the USDOT number in the prescribed manner. (General violation).

Reviewing Tariffs

Federal Statutes that Apply to Tariffs

The USDOT Surface Transportation Board (STB) has general jurisdiction of tariff requirements. FMCSA has the jurisdiction to enforce the requirements for tariffs in 49 U.S.C. 13702. Section 1310.2(a) requires that tariffs be arranged in a way that allows for the determination of the exact rate(s) and service terms applicable to shipments transported by the HHG motor carrier. Section 13702 requires a tariff for the interstate transportation of HHG, that an HHG motor carrier cannot charge a rate not specified in a tariff, and that a HHG motor carrier must make its tariff available for inspection upon a reasonable request.

Note: If during your investigation, you discover that the motor carrier's tariff is not in full compliance of Section 1310.2(a), you should consult with your supervisor, who should determine if further review of the motor carrier's tariff by the STB is necessary.

Reasons Why Not Having a Tariff is a Significant Violation

The tariff is the HHG motor carrier's legal basis for the charges it assesses for transporting and handling HHG shipments. If the HHG motor carrier does not have a tariff in effect, it has no legal basis for collecting its transportation-related charges. 49 U.S.C. Section 14903(a) provides for a civil penalty of not more than $100,000.00 per violation, and possible criminal action, for failing to have a tariff and/or not assessing charges, as provided in the HHG motor carrier's tariff.

Note: Request and review a copy of the motor carrier's tariff. If the motor carrier informs you that they have an electronic tariff (contained in software), then they must provide a hard copy that can be examined. The motor carrier must have a copy of its tariff available for inspection by FMCSA or any shipper upon a reasonable request. In the absence of a hard copy of the tariff, the Investigator can request that the motor carrier download pertinent data from the software to determine if the motor carrier is charging accordingly. If the motor carrier cannot provide a hard copy of its tariff for inspection, but does have its tariff contained in software, it is in violation of 49 U.S.C. 13702(C)(1).

Areas to Review When Confirming Tariff Compliance

FMCSA's primary concern in regards to the HHG tariff compliance is to determine if:

- All charges for transportation and other services are included in the HHG motor carrier's tariff. Other service charges could include provisions for: accepting credit cards, selling additional insurance coverage for loss and damage to the shippers' HHG, and accessorial items and services, such as packing and unpacking materials. (Carriers also must identify whether or not they would provide binding estimates in accordance with 375.403.)
- The tariff can be based upon weight, mileage, hourly rate or volume (e.g., cubic feet), provided it's identified in the carrier's tariff. If the tariff is based on cubic feet, there should be a conversion table for determining the volume of the various HHG items to weight conversions.
    - **Note:** You should compare the rates and charges identified on the Orders for Service and bills of lading, in order to verify if the rates and charges comply with the tariff.

Procedure to Follow if the HHG Motor Carrier Has No Tariff

You should cite the HHG motor carrier for violation of:

- **49 U.S.C. Section 13702(a)(2) -** Charging a rate without a tariff. (Severe Level I violation).

Procedure to Follow if the HHG Motor Carrier Does Not Have a Tariff Available for Inspection

You should cite the HHG motor carrier for violation of:

- **49 U.S.C. Section 13702(c)(1) -** Failure to make tariff available for inspection. (Severe Level I violation).

Procedure to Follow if the HHG Motor Carrier Fails to Charge its Applicable Tariff Rate

You should cite the HHG motor carrier for violation of:

- **§ 13702(a)(2) -** Failing to charge applicable tariff rate. (Severe Level I violation).
    - All rates and charges for the transportation and related services must be in accordance with published tariff provisions in effect, including the method of payment.

Note: If you discover tariff violations, you must make a copy of the tariff to present as evidence in any subsequent enforcement action.

Procedures to Follow if it is Discovered that the HHG Motor Carrier's Tariff is Not in Compliance (Form & Manner)

You should cite the HHG motor carrier for violation of:

- **Section 13702(a)(2) -** Charging a rate without a tariff. (Severe Level l violation).
- **Section 13702(b)(2)(A-E)** Failing to provide the minimum required contents in the tariff as prescribed. (Severe Level II violation).
- **Section 13702(c)(1) -** Failing to make tariff available for inspection. (Severe Level II violation).
- **Section 375.221(a) -** Failing to identify a reference in the tariff for the acceptance of charge or credit cards for payment. (Use when charge or credit cards are not referenced in the tariff as an acceptable method of payment and it was discovered that charge and/or credit cards were accepted). (Severe Level II violation).
- **Section 375.221(d) -** Failing to identify in the tariff the charge or credit card plans you participate in. (Use when charge or credit cards are identified as an acceptable method of payment, but the plan is not described and it was discovered that charge and/or credit cards were accepted). (Severe Level II violation).
- **Section 375.303(c)(1) -** Failing to furnish proof of insurance coverage. (Severe Level II violation).
- **Section 375.303(c)(6) -** Failing to provide a provision in the tariff for selling, offering to sell, or procuring liability insurance coverage. (Severe Level II violation).

Reviewing the Arbitration Program

Definition of Arbitration and Why a HHG Motor Carrier Must Participate in a Dispute Settlement Program

As a condition for registration (operating authority), HHG motor carriers are required by Section 375.211(a) and U.S.C. 14708(a) to offer arbitration as a means of settling claims for damage or loss to the HHG transported and disputes about additional motor carrier charges collected at delivery.

Prior to transporting a HHG shipment, the HHG motor carrier must provide shippers with information advising of the availability of neutral arbitration, including:

- A concise, easy to read, accurate summary of the arbitration procedures
- Any applicable costs
- A disclosure of the legal effects, if they elect to use arbitration

The arbitration that is offered cannot provide any special advantage to the HHG motor carrier when shippers that reside at a place distant from the carrier's PPOB file claims.

The HHG motor carrier must promptly provide shippers with the necessary arbitration forms and information upon request.

The arbitrator must be independent of the parties in the dispute and capable of resolving disputes fairly and expeditiously.

Shippers cannot be required to pay more than 50 percent of the charges for initiating an arbitration proceeding.

The motor carrier cannot require a shipper to agree to use arbitration prior to the time that a dispute arises.

The arbitrator must provide a decision in a dispute within 60 days.

The arbitration is binding for claims of $10,000 or less, if the individual shipper requests the arbitration.

If the claim is more than $10,000, the decision of the arbitrator is binding, if the motor carrier agrees to use arbitration.

Procedures to Follow if a HHG Motor Carrier Does Not Comply with the Arbitration Program

You should cite the motor carrier for violation of:

- **Section 375.211(a)/14708(a) -** Failing to participate in an arbitration program. (Severe Level I violation).
- **Section 375.211(a)(1-11) (naming the appropriate section) -** Using an arbitration program that does not meet the requirements of Section 375.211. (Severe Level II violation).
- **Section 375.211(b) -** Failing to produce and distribute a concise, easy to read, accurate summary of your arbitration program. (Severe Level II violation).
-
- **Section 375.**213(b)(3) - Failing to furnish shippers with a concise, easy-to-read, accurate summary of arbitration program.

Reviewing Publications that Must be Provided to an Individual Shipper

Note: The distribution of these publications is important, so individual shippers can make informed decisions.

"Ready to Move" Pamphlet Requirement

All motor carriers are required to provide the individual shipper with a copy of the “Ready to Move” pamphlet when providing a written estimate, as required in Section 375.213(a).

Procedures to Follow if a HHG Motor Carrier Does Not Comply with the Requirement to Distribute "Ready to Move" Pamphlet

You should cite the motor carrier for violation of:

- **Section 375.213(a)** - Failing to furnish shippers with USDOT publication “Ready to Move?” and US DOT publication “Your Rights and Responsibilities When You Move”. (Severe Level I violation).

"Your Rights and Responsibilities When You Move" Booklet

All motor carriers are required to publish the booklet "Your Rights and Responsibilities When You Move" as it appears in Appendix A of Part 375, as required by Section 375.213 (a)(2).when providing a written estimate Section 375.213(a)(2)requires all HHG motor carriers to provide prospective shippers with a copy of the booklet "Your Rights and Responsibilities When You Move."

Procedures to Follow if a HHG Motor Carrier Does Not Comply with the Requirements to Produce and Distribute "Your Rights & Responsibilities When You Move" Booklet

You should cite the motor carrier for violation of:

- **Section 375.213(c) -** Failing to produce the booklet "Your Rights and Responsibilities When You Move." (Severe Level I violation).
- **Section 375.213(c)(1-3) (naming the appropriate section) -** Failing to produce the booklet "Your Rights and Responsibilities When You Move" that meets the requirements of Section 375.213 (c)(1-3). (General violation).
- **Section 375.213(a)(2) / 14104(a)(2) -** Failing to provide shippers with the booklet "Your Rights and Responsibilities When You Move." (Severe Level II violation).

Reviewing Complaints & Inquiry-Handling Program

Definition of Complaint & Inquiry-Handling Program and its Requirements

Section 375.209 requires that HHG motor carriers establish and maintain procedures for responding to complaints and inquiries from individual shippers. A clear and concise written description of the procedures must be distributed to each shipper. The procedures must include all three of the following items:

- A communications system allowing individual shippers to communicate with the PPOB by telephone
- A telephone number
- A written or electronic record system for recording all inquiries and complaints received from an individual shipper by any means of communication

Procedures to Follow if a HHG Motor Carrier Does Not Comply with the Complaint & Inquiry-Handling Program

You should cite the motor carrier for violation of:

- **Section 375.209(a) -** Failing to establish a complaint & inquiry-handling program. (General violation).
- **Section 375.209(b)(1-3) ((naming the appropriate section) -** Producing a summary of your complaint & inquiry-handling program that does not meet the requirements of Section 375.209(b)(1-3) . (General violation).
- **Section 375.209(c) -** Failing to produce a concise easy to read, accurate summary of your complaint & inquiry-handling program. (General violation).
- **Section 375.213(b)(4) -**. Failing to furnish shippers with a concise, easy-to-read, accurate summary of customer complaint and inquiry handling procedures. (General violation).

- **Section 375.213(b)()(4)(i) -** Failure to provide the main telephone number the shipper may use to communicate with you. (General violation).
- **Section 375.213(b)()(4)(ii) -** Failure to provide a clear and concise statement as to who must pay for telephone calls. (General violation).

Reviewing Shipping Documents

Types of Transportation Documents to Request and Review to Determine Compliance with Part 375

You should request trip records that include:

- Estimates
- Inventories
- Bills of lading
- Weight tickets (if charges are based on weight)
- Freight invoice payment records, including copies of checks and credit card slips contained in the individual trip records. Bills of lading can also be checked to determine if they contain notations of cash payments received.

Sampling

Determining Sample Size for Reviewing and Documenting Carrier Operations

In general, you will look at shipping documents for jurisdictional movements that took place during the past 12 months. There may be extenuating circumstances during the investigation of complaints that might require reviewing documents for jurisdictional movements taken place beyond the past 12 months; when that occurs, document the reason why in Part C of the CR.

When reviewing HHG motor carrier records, you should use the following table to sample and review an appropriate number of for-hire interstate shipments transported beyond the commercial zone:

Number of Shipments Transported by HHG Motor Carrier in Previous 365 Days Subject to Part 375

Number of Shipments Completed	Number of Shipment Documents to Review
1-10	All
10-300	10
300 or more	15

Considerations: Select shipping files from NCCDB complaints in the past 365 days categorized as Hostage, Estimates/Final Charges and Loss and Damage. If the sample size is not met by shipping files obtained from the NCCDB complaints; utilize the carrier's claim list. If additional shipping files are

checked, provide an explanation of the reason(s) you expanded the original sample size in the Investigative Report/Part C.

Note: A complete shipping file should have the estimate (binding or non-binding), inventory, bill of lading, and in some cases, weight tickets.

Reviewing Moving Estimates ($)

Definition of Estimate and its Requirements

Estimates describe the shipment and all services to be provided. It describes the approximate charges the shipper would be expected to pay. HHG motor carriers are required to estimate the total charges for each shipment transported. HHG motor carriers are also required to provide a copy of the written estimate of the total charges to each shipper. Estimates must be retained for each move performed for at least one year from the date the estimate was prepared, and kept as an attachment to be made an integral part of the bill of lading contract.

Requirement of HHG Motor Carriers to Conduct a Physical Survey Before Providing a Written Estimate to Individual Shippers

Section 375.401(a) and 14104(b)(1)(A) require the HHG motor carrier to conduct a physical survey before providing a written estimate based on the physical survey unless:

- .
- The individual shipper elects to waive, in writing, the physical survey.

Procedures to Follow to Determine that HHG Carrier Does Not Comply with the Physical Survey Requirements

- **Section 375.401(a)/14104(b)(1)(A) -** Failing to conduct a physical survey of the HHG and provide the prospective shipper with a written estimate based on the physical survey, of the charges for the transportation and all related services unless waived by shipper before loading. (Severe Level II violation).
- **Section 375.401(a)(1) -** Failing to produce a written copy of a physical survey waiver. (General violation).
- **Section 375.401(a)(2) -** Failing to produce a signed written copy of a physical survey waiver. (Severe Level II violation).
- **Section 375.401(a)(3)/14104(b)(1)(B) -** Failing to retain a copy of the waiver agreement as an addendum to the bill of lading. (Severe Level II violation).

Types of Estimates HHG Motor Carriers are Allowed to Offer Shippers

Section 375.401(b)/14104(b) allow HHG carriers to provide one of two types of estimates to prospective shippers:

- **Binding -** The mover guarantees the price for all agreed upon transportation and transportation related services prior to the move; ("Guarantee," "Not to Exceed," "Flat Rate" estimates are not binding estimates) or
- **Non-binding -** The mover provides a reasonably accurate estimated price based on weight or volume, and any accessorial services required (as prescribed in the motor carrier's tariff).

Note: Section 375.403 and 14104(b)(1)(C)(ii) describe the requirements for providing binding estimates. Section 375.405 and 14104(b)(1)(C)(iii) describe the requirements for providing non-binding estimates.

Determining if a HHG Motor Carrier's Estimates Comply with the Requirements of Section 375.401, 375.403 & 375.405 and 14104(b)

You should review the written estimates associated with each shipment reviewed during the compliance review.

Note: Carefully review documents labeled as "New Estimate" or "On-Site New Estimate," to determine if these documents are valid. Sections 375.403 and 375.405 require that these documents must show what caused the increase in cost, accurately and in detail. If these documents fail to show what caused the increase in cost, they are invalid and should not be considered the true estimate.

Procedures to Follow if a HHG Motor Carrier Does Not Comply with the Binding Estimate Requirements

You should cite the HHG motor carrier for violation of:

- Section 375.401(b) - Failing to provide a written est. of the charges and indicate type of estimate.
- **Section 375.401(b)(1)/14104(b)(1)(A) -** Failing to prepare a written binding estimate for each move performed. (Severe Level II violation).
- **Section 375.401(c) -** Failing to specify on the binding and/or non-binding estimate, the form of payment you and your agent will honor at delivery. (Severe Level II violation).
- **Section 375.401(h)-** Failing to ensure a company representative and shipper sign the estimate of charges. (NOTE: Estimates provided via the Internet must be signed.) (Severe Level II violation).
- **Section 375.401(i) -** Failing to amend the estimate by mutual agreement with you and the shipper prior to loading the shipment. (Severe Level II violation).
- **Section 375.403(a) (1-11) (noting the appropriate sections) -** Failing to prepare a binding estimate in the form and manner prescribed.
    - **Note:** DO NOT USE THIS CITE FOR 375.403(a)(6); 375.403(a)(7) OR 375.403(a)(10). (General violation).
- **Section 375.403(a)(6) -** Failing to reaffirm the original binding estimate, prepare a new binding estimate, or agree in writing with the shipper that the original estimate was non-binding, prior to loading the HHG. (Severe Level I violation).
- **Section 375.403(a)(7) -** Collecting more than the original amount of the binding estimate. (Severe Level I violation).
- **Section 375.403(c) -** Failing to retain a copy of the binding estimate for each move performed for one year from the date the estimate was prepared, as an integral part of the bill of lading. (Severe Level II violation).

Procedures to Follow if a HHG Motor Carrier Does Not Comply with the Non-Binding Estimate Requirements

You should cite the HHG motor carrier for violation of:

- **Section 375.401(b)(2) -** Failing to prepare a written non-binding estimate for each move performed. (Severe Level II violation).
- **Section 375.401(c) -** Failing to specify on the binding and/or non-binding estimate, the form of payment you and your agent will honor at delivery. (Severe Level II violation).
- **Section 375.405(b)(1) -** Failing to provide an individual shipper with a written explanation of the formula used to calculate the conversion of a volume-based estimate to weight. (General violation).
- **Section 375.401(d) -** Failing to provide shipper with a reasonably accurate non-binding estimate of the approximate costs the shipper should expect to pay.
- **Section 375.401(h) -** Failing to ensure a company representative and shipper sign the estimate of charges.
- **Section 375.405(d) -** Failing to retain a copy of the non-binding estimate for each move performed for one year from the date the estimate was prepared, as an integral part of the bill of lading. (Severe Level II violation).
- **Section 375.405(b)(1-10) (noting the appropriate sections) -** Failing to prepare the non-binding estimate in the form and manner prescribed.
    - **Note:** DO NOT USE THIS CITE FOR 375.405(b)(7) OR 375.405(b)(8). (General violation).
- **Section 375.405(b)(7) -** Failing to reaffirm or prepare a new written non-binding estimate prior to loading when the shipper tenders additional household goods or services. (Severe Level I violation).
- **Section 375.405(b)(8) -** Collecting more than 110 percent of the original non-binding estimate at destination. (Severe Level I violation).
- **Section 375.405(c) -**. Failing to enter the estimated charges upon the bill of lading. (General violation).

HHG Inventory Sheet

Definition of HHG Inventory Sheet and its Requirements

An inventory sheet is a detailed listing of all of the shipper's HHG that will be, or have been, transported by the HHG motor carrier. The inventory shows the condition of the HHG at time of pick-up and delivery. Section 375.503(a) requires that all HHG motor carriers prepare a written, itemized inventory for each shipment of HHG it transports. Inventories must be signed at origin and retained for one year from the date it was prepared as an integral part of the bill of lading.

Procedures to Follow if a HHG Motor Carrier Does Not Comply with the Requirements of an Inventory as Outlined in Part 375.503

You should cite the HHG motor carrier for violation of:

- **Section 375.503(a) -** Failing to prepare a written inventory for each shipment of HHG transported. (Severe Level II violation).
- **Section 375.503(a) -** Failing to prepare an inventory in the form and manner prescribed. (General violation).
- **Section 375.503(b) -** Failing to prepare the inventory before or at the time of loading in the vehicle for transportation in a manner that provides the shipper the opportunity to observe and verify the accuracy of the inventory if he or she so requests. (General violation).

- **Section 375.503(c) -** Failing to ensure a company representative and shipper sign an inventory. (General violation).
- **Section 375.503(e) -** Failing to retain a copy of an inventory for each move performed for one year from the date the inventory was prepared, as an integral part of the bill of lading. (Severe Level II violation).

Procedures to Follow if a HHG Motor Carrier Does Not Prepare an Inventory with the Required Information

You should identify the specific information that is missing and reference the specific part contained in Section 375.503(a) - Failing to prepare an inventory in the form and manner prescribed. (Record keeping violation).

Procedures to Follow if a HHG Motor Carrier Does Not Retain Copies of Written Inventories as Required

You should cite the HHG motor carrier for Section 375.503(e) - Failing to retain written copies of inventories as required. (Record keeping violations).

Review of Bills of Lading and Receipts

Definition of a Bill of Lading and its Requirements

Section 375.505(a) requires every HHG motor carrier to prepare a bill of lading for each HHG shipment it transports. The bill of lading is the contract for services between the HHG motor carrier and shipper. A copy of the bill of lading must be given to the shipper before loading the shipment. The bill of lading must include minimum information as provided by Section 375.505(b). The bill of lading must accompany the shipment at all times. A copy of the bill of lading must be retained for one year from the date it's created for each move performed. In addition, the valuation statement must be entered on the bill of lading.

Note: Refer to the Tariff, and Bill of Lading sections.

Procedures to Follow to Determine that a HHG Motor Carrier Does Not Comply with the Requirements of a Bill of Lading as Outlined in Part 375.505

You should cite the HHG motor carrier for:

- **Section 375.505(a) / 373.101 -** Failing to prepare a bill of lading for each move performed. (Severe Level II violation).
- **Section 375.505(b)(1-17)() (note the appropriate sections) -** Failing to prepare a bill of lading in the form and manner prescribed. (Severe Level II violation).
- **Section 375.505(c) -** Failing to ensure the bill of lading accompany the shipment at all times (to be cited mainly during roadside inspection).
- **Section 375.505(d) -** Failing to retain a copy of a bill of lading for each move performed for one year from the date it's created. (Severe Level II violation).
- **Section 375.505(e) -** Failing to inform the shipper that you reasonably expect a special or accessorial charge is necessary. (General violation).
- ***Reviewing Weighing of the Shipment***

Weighing the Shipment and its Requirements

Every HHG motor carrier transporting HHG on a non-binding estimate shall determine the weight of each shipment transported, prior to the assessment of any charges, dependent on the shipment weight as provided by Section 375.507(a). Section 375.509 provides the methods for weighing a HHG shipment and the minimum information required to be included on the weight ticket. Generally, the weight shall be obtained on a scale meeting the definition of a certified scale as provided in Section 375.103. Carrier must not refuse to allow shippers to view the original weigh or re-weigh of their shipment. If a shipper elects not to observe a weighing, it's presumed they have waived that right. If a shipper elects not to observe the re-weighing of their shipment, the shipper must waive that right in writing. The motor carrier must obtain a separate weight ticket for each weighing, unless both weighing are performed on the same scale. The original weight tickets must be retained for each shipment weighed as part of the file.

Procedures to Follow if a HHG Motor Carrier Does Not Comply with the Weighing the Shipment Requirements as Outlined in Part 375.507

You should cite the HHG motor carrier for violation of:

- **Section 375.507(a) -** Failing to weigh a shipment for each move transported on a non-binding estimate. (Severe Level I violation).
- **Section 375.507(b) -** Failing to weigh shipments on a certified scale. (Severe Level I violation).
- **Section 375.513 -** Refusing to allow shippers to view the re-weigh of their shipment. (Severe Level I violation).
- **Section 375.515(b) -** Failing to obtain a written waiver from shippers who waive their right to observe the re-weighing of their shipment. (Severe Level II violation).
- **Section 375.517-** Failing to base the Invoice charges on the re-weigh weight. (General violation).
- **Section 375.519(a)(1-6) (note the appropriate section) -** Failing to prepare a weight ticket in the form and manner prescribed. (Severe Level I violation).
- **Section 375.519(a) -** Failing to obtain a separate weight ticket for each weighing, if not in accordance with Part 375.519(b). (Severe Level I violation).
- **Section 375.519(c) -** Failing to retain the original copy of the weight tickets for each shipment weighed as part of the file. (Severe Level I violation).
- **Section 375.519(d)/390.35 -** Making or causing to make fraudulent or intentionally false weight tickets and/or reproducing fraudulent weight tickets. Part 390.35 should be entered as secondary. (Severe Level I violation). Note: If this violation is discovered, consult with your supervisor about contacting the OIG.

Enhanced Investigative Technique - While examining certified weight tickets determine if the vehicle had a gross weight over 26001 pounds then determine if the driver had the appropriate class of license in compliance of Part 383.

Determining that a HHG Carrier has Failed or is Failing to Relinquish a HHG Shipment (Holding a Load Hostage)

In order to determine if a HHG motor carrier has failed or is failing to relinquish a HHG shipment, as defined by **49 U.S.C.14915(c)**, you have to prove the following elements:

- The HHG are being transported in Interstate Commerce;
- The HHG were transported based on an (binding or non-binding) estimate submitted by the HHG motor carrier or HHG broker on behalf of the HHG motor carrier;

- The HHG motor carrier did fail to deliver the HHG shipment on the delivery date or period of time stated on the Bill of Lading;
- The HHG motor carrier knowingly and willfully violated the contract (Bill of Lading) with the shipper; and
- The shipper of the HHG ***tendered*** payment to the HHG motor carrier, based on 100 percent of the binding estimate or 110 percent non-binding estimate.

Note: Determining if payment was "tendered" is extremely important in an investigation of a HHG shipment held hostage. To "tender" is defined by "Black's Law Dictionary" as a valid and sufficient offer of performance, specifically, an unconditional offer of money or performance to satisfy a debt or obligation. The shipper would have to pay or have the ability to pay and attempted to pay, in order to tender payment. Evidence of tendering a payment would be documentation of the shipper submitting payment for 100 percent of a binding estimate or 110 percent of a non-binding estimate, an attempt to submit payment. Examples of documentation of tendering payment would be photocopies of cashier checks, money orders, or credit card slips. Examples of an attempt to submit payment would be emails from the shipper to the motor carrier stating that he or she has the amount of money to make payment and is willing to submit it, or a written statement from the shipper that he or she had the money and attempted to pay 100 percent of a binding estimate or 110 percent of a non-binding estimate. Ideally, the combination of documentation of the payment, emails, and a written statement from the shipper would be strong evidence of tendering payment.

Failing to Relinquish HHG Shipments (Hostage Loads)

Procedures to Follow if a HHG Motor Carrier has Failed or is Failing to Relinquish a HHG Shipment (Holding a Load Hostage)

Providing that you have all the elements, you should cite the HHG motor carrier for the violation of:

- **Section 14915(c) -** Failing to relinquish possession of a household goods shipment for which the shipper has tendered payment. (Severe Level I violation)

Note: HHG violations are *Riojas* affected violations. FMCSA will not serve NOC under 49 CFR part 386 when charging Riojas affected violations. If a Division determines that an enforcement action on Riojas affected violation(s) is the best means to induce compliance, an Enforcement Analysis must be conducted following the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," MC-ECE-2020-0001 to determine what type of enforcement should be pursued. FMCSA will propose and settle civil penalties for Riojas affected violations using the procedures in that policy.

IMPORTANT: Each day a HHG motor carrier fails to relinquish possession of a HHG shipment constitutes a separate violation of Section 14915(c). If the facts surrounding a particular violation suggest the carrier should be penalized for more than one violation, contact your DA for further guidance.

If you do not have all the elements to go forward with an enforcement action for a violation of 14915(c), there are other options:

- **Section 375.403(a)(10) -** Failing to relinquish possession of a household goods shipment if the shipper offers to pay the original binding estimated price. (Severe Level I violation).
- **Section 375.407(b) -** Failing to relinquish possession of a household goods shipment if the shipper offers to pay up to 110 percent of non-binding estimated price. (Severe Level I violation).

A key element proving failing to relinquish possession is that the shipper offers to pay 100 percent of the binding estimated price or 110 percent of the non-binding estimated price. "To offer" is defined in "Black's Law Dictionary" as the act or an instance of presenting something for acceptance. Evidence of an offer can be copies of emails between the shipper and the motor carrier stating that, depending on the estimate, 100 percent or 110 percent of the estimate will be paid and/or a written statement from the shipper that an offer to pay the estimated price was made to the motor carrier.

The other elements that must be present to prove failing to relinquish possession as stated in Part 375 are the following:

- The HHG is being transported in Interstate Commerce;
- The HHG is being transported based on a binding or non-binding estimate; and
- The HHG motor carrier did fail to deliver on the agreed date or period of time for delivery.

Some Important Evidence to Obtain in Order to Prove that a HHG Carrier is Failing to Relinquish a HHG Shipment

You should interview the shipper, and if possible, obtain a written statement stating that the shipper did in fact pay 100 percent (binding) or 110 percent (non-binding) of the estimate or attempted to pay and the HHG carrier refused. If a written statement is not possible, then document the interview with an **Oral Interview Form** (see *Illustration E-3*).

You should also obtain copies of the estimate, and bill of lading for that shipment. Be sure to compare the copies of those documents coming from the shipper and the HHG carrier. Copies of email communication between the shipper and the HHG carrier may prove valuable to corroborate that the carrier knowingly and willfully failed to relinquish the shipment.

Note: A written statement not done in your presence should be notarized.

4.4.2.4.2 CAPRI Procedures

Once you have completed your investigation of Section 375, you should ask yourself, "Can I prove each discovered violation in Section 375?" If you can answer "Yes" to this question, the following guidelines have been established to assist in completing Part B Violations Tab of the CAPRI software:

Recording Violations of Part 375 Regulations and Federal Statutes

You should record the number checked as follows:

Note: Drivers Checked/Vehicles Checked must be 0 of 0.

Violations of Part 375 Regulations and Federal Statutes

CITATION	TYPE	DESCRIPTION
375.201(a)/14706(a)	**General**	Failing to provide loss of damage during the performance of any transportation of household goods and

		related services identified on the bill of lading. **Number discovered: One violation for each shipment.**
375.201(b)/14706(a)	**General**	Failing to provide liability for household goods that are damaged, destroyed, or otherwise not delivered to the final destination in an amount equal to the replacement value of the household goods. **Number discovered: One violation for each shipment.**
375.201(c)/13902(a)(2)(C)	**General**	Failing to maintain a copy of the written waiver from the shipper for the liability of the full value of the household goods. **Number discovered: One violation for each shipment.**
375.201(d)/13902(a)(2)(C)	**General**	Failing to issue a copy of the insurance policy or other appropriate evidence of insurance. **Number discovered: One violation for each shipment.**
375.205(b)	**General**	Failing to have a written and signed agency agreement in effect with your Prime Agent(s). **Number discovered: One for each agency agreement required.**
375.205(c)	**General**	Failing to retain a copy of the written agreement between you and your Prime Agent for at least 24 months following the date of termination of each agreement. **Number discovered: One for each agency agreement not retained on file at the carrier's principal place of business.**
375.207(a)/390.35	**Severe Level I**	Providing false, misleading, or deceptive information in advertisements. **Number checked: One violation for each advertisement in violation.**
375.207(b)((1-2)	**General**	Failing to include and not require agents to include in all advertisements for all services required information. **Number discovered: One for each advertisement that does not include the prescribed information.**

375.207(c)	**General**	Failing to display the USDOT number in the prescribed manner. **Number discovered: One for each USDOT number that is not displayed on vehicle.**
375.209(a)/13902(a)(2)(C)	**General**	Failing to have a complaint & inquiry-handling program. **Number discovered: One program. (One of one.)**
375.209(b)(1-3)()/13902(a)(2)(C)	**General**	Producing a summary of your complaint & inquiry-handling program that does not meet the requirements of Section 375.209(b)(1-3)(). **Number discovered: One program summary. (One of one.) Describe the required contents not provided.**
375.209(c)/13902(a)(2)(C)	**General**	Failing to produce a concise easy to read, accurate summary of your complaint & inquiry-handling program. **Number discovered: One program summary not produced. (One of one.)**
375.213(a)/14104(b)(2)	**Severe Level II**	Failing to furnish shippers with USDOT publication "Ready to Move?" and US DOT publication "Your Rights and Responsibilities When You Move".**Number discovered: One booklet. (One of one.)**
375.213(b)(1)	**General**	Failing to furnish shippers with a concise, easy-to-read, accurate estimate of charges.
375.213(b)(2)	**General**	Failing to furnish shippers with a notice of the tariff availability.
375.213(b)(3)	**Severe Level II**	Failing to furnish shippers with a concise, easy-to-read, accurate summary of arbitration program.
375.213(e)	**General**	Failing to display prominently either a link to the DOT publication titled "Ready to Move? - Tips for a Successful Interstate Move" on the FMCSA website or a true and accurate copy of that document on your website.
375.213(f)(1)	**General**	If the shipper elects hyperlink internet access to the consumer protection information in 49 CFR 375.213 (a)(1)

		and/or (2), carrier must obtain a signed, dated receipt showing the individual shipper has received either or both publications that include verification of the shipper's agreement to access the Federal consumer protection information on the internet.
375.213(f)(2)	**General**	If the shipper elects hyperlink internet access to the consumer protection information in 49 CFR 375.213 (a)(1) and/or (2), carrier must maintain the signed receipt for one year from the date the individual shipper signs the receipt showing the individual shipper agrees to access the Federal consumer protection information on the internet.
375.213(b)(4)()/13902(a)(2)(C)	**General**	Failing to furnish shippers with a concise summary of complaint procedures.**Number discovered: One for each program summary not provided to shippers.**
375.213(b)(4)(i)/ 13902(a)(2)(C)	**General**	Failure to provide the main telephone number the shipper may use to communicate with you. **Number discovered: One for each occurrence the number is not provided to the shipper.**
375.213(b)(4)((ii)/ 13902(a)(2)(C)	**General**	Failure to provide a clear and concise statement as to who must pay for telephone calls. **Number discovered: One for each occurrence the number is not provided to the shipper.**
13702(a)(2)/ 13902(a)(2)(C)	**Severe Level I**	Charging a rate without a tariff. **Number discovered:** One for each shipment transported without a tariff.
375.215/13902(a)(2)(C	**Severe Level I**	Failing to charge applicable tariff rate. **Number discovered: One for each shipment using a rate not contained in tariff.**
13702(b)(2)(A-E)/13902(a)(2)(C)	**Severe Level II**	Failing to provide the required minimum contents in your tariff, as prescribed. **Number discovered: One tariff. (One of one.) Describe the required contents not provided.**
375.221(a)/13902(a)(2)(C)	**General**	Refusing to accept a particular form of credit for payment if this form of

		payment was identified as an acceptable form of payment in tariff. **Number discovered: One tariff reference. (One of one.)** **Note:** Use when particular form of credit or charge cards are referenced in tariff but not accepted.
375.221(d)/13902(a)(2)(C)	**General**	Failing to identify in the tariff the charge or credit card plans you participate in **Number discovered: One tariff reference. (One of one.)** **Note:** Use when charge or credit cards are identified as an acceptable method of payment- but the plan is not described and it was discovered that charge and/or credit cards were accepted.
375.303(c)/13902(a)(2)(C)	**Severe Level II**	Failing to furnish proof of insurance coverage to the individual shipper. **Number discovered: One for each instance in which the HHG carrier sold excess loss and damage insurance and failed to provide the shipper with a policy or other evidence.**
375.303(c)(6)/139029(a)(2)(C)	**General**	Failing to provide a provision in the tariff for selling, offering to sell, or procuring liability insurance coverage **Number discovered: One tariff reference. (One of one.)**
375.211(a)/14708(a)	**Severe Level I**	Failing to participate in an arbitration program. **Number discovered: One program. (One of one.)**
375.211(a)(1-11)/14708(b)	**Severe Level II**	Using an arbitration program that does not meet the requirements of Section 375.211. **Number discovered: One program. (One of one.) Describe the requirements not in compliance.**
375.211(b)/13902(a)(2)(C)	**Severe Level II**	Failing to produce a concise, easy to read, accurate summary of your arbitration program **Number discovered: One program summary. (One of one.)**
375.213(a)		Failing to furnish shippers with the required USDOT publications.

		Number discovered: One for each shipment discovered where the carrier did not give the shipper the required booklet.
375.213(c)/13902(a)(2)(C)	**Severe Level II**	Failing to produce the booklet "Your Rights and Responsibilities When You Move." **Number discovered: One booklet. (One of one.)**
375.213(c)(1-3)/13902(a)(2)(C)	**Severe Level II**	Failing to produce the booklet "Your Rights and Responsibilities When You Move" that meets the requirements of Section 375.213(c)()(1-3) **Number discovered: One booklet. (One of one.) Describe the required contents not provided.**
375.213(b)(1)/14104(b)(2)	**Severe Level II**	Failing to furnish shippers with a concise estimate of charges.**Number discovered: One for each shipment discovered where the carrier did not give the shipper the required booklet.**
375.217(b)	**General**	Failing to specify the same form of payment provided in the estimate when preparing the bill of lading.
375.401(a)/14104(b)(1)(A)	**Severe Level II**	Failing to conduct a physical survey of the HHG and provide the prospective shipper with a written estimate based on the physical survey, of the charges for the transportation and all related services unless waived by shipper before loading.**Number discovered: One for each shipment discovered where the carrier did not conduct a physical survey.**
375.401(b))/14104(b)(1)(A)	**Severe Level II**	Failing to provide a written estimate of the total charges and indicate the type of estimate before executing the bill of lading.**Number discovered: One for each shipment discovered where the carrier did not prepare a written binding estimate.**
375.401(c)/13902(a)(2)(C)	**Severe Level II**	Failing to specify on the binding and/or non-binding estimate, the form of payment you and your agent will honor at delivery.

		Number discovered: One for each estimate not specifying the form of payment honored.
375.401(d)/14104(b)(1)(C)(iii)	**Severe Level II**	Failing to provide shipper with a reasonably accurate non-binding estimate of the approximate costs the shipper should expect to pay.**Number discovered: One for each grossly inaccurate non-binding estimate.**
375.401(f)	**General**	Failing to determine charges for accessorial services before preparing bill of lading for binding or non-binding estimates.
375.401()(i)/13902(a)(2)(C)	**Severe Level II**	Failing to amend the estimate by mutual agreement with you and the shipper loading the shipment. **Number discovered: One for each shipment discovered where the carrier did not amend the mutual agreement.**
375.405(b)(1)/13902(a)(2)(C)	**General**	Failing to provide an individual shipper with a written explanation of the formula used to calculate the conversion of a volume based estimate to weight. **Number discovered: One for each shipment estimated based on volume and then converted to weight.**
375.401()(h)/13902(a)(2)(C)	**Severe Level II**	Failing to ensure a company representative and shipper sign the estimate of charges. **Number discovered: One for each binding estimate not signed by the company representative and/or shipper.** **Note:** Estimates provided via the Internet must be signed.
375.403(a)(1-11)/13902(a)(2)(C)	**General**	Failing to prepare a binding estimate in the form and manner prescribed. **Number discovered: One for each shipment found where the written binding estimate does not contain the prescribed information.** **Note:** DO NOT USE THIS CITE FOR 375.403(a)(5); 375.403(a)(6) or 375.403(a)(9).
375.403(a)(6)/13902(a)(2)(C)	**Severe Level I**	Upon tender of additional household goods (HHG) by the shipper not

		identified in the binding estimate, failing to reaffirm the original binding estimate, prepare a new binding estimate, or agree in writing with the shipper that the original estimate was non-binding, prior to loading the HHG. . **Number discovered: One for each shipment found.** To be used when a carrier fails to prepare a new binding estimate before loading when an individual shipper tenders additional HHG and/or requires services not listed on the original estimate.The motor carrier provides three options for the shipper: 1) refirm the binding estimate; 2) prepare a new binding estimate; or 3) agree that the original binding estimate will now be a non-binding estimate where the shipment will be weighted to determine the final charges. Note: all estimates must be in writing.
375.403(a)(7)/14104(b)(1)(C)(ii)	**Severe Level I**	Collecting more than the original amount of the binding estimate. **Number discovered: One for each shipment found where the carrier collected more than the original binding estimate amount.**
375.403(a)(9)	**Severe Level I**	Failing to prepare a new binding estimate after original bill of lading issued and have it signed by shipper when shipper requests new additional services.
375.403(c)/13902(a)(2)(C)	**Severe Level II**	Failing to retain a copy of the binding estimate for each move performed for one year from the date the estimate was prepared, as an integral part of the bill of lading. **Number discovered: One for each shipment binding estimate was not retained.**
375.401(b)(2)/14104(b)(1)(A)	**Severe Level II**	Failing to prepare a written non-binding estimate for each move performed. **Number discovered: One for each non-binding estimate not prepared.**
375.401()(h)/13902(a)(2)(C)	**General**	Failing to ensure a company representative and shipper sign the estimate of charges.

		Number discovered: One for each non-binding estimate not signed.
375.405(b)(1-10)/13902(a)(2)(C)	**General**	Failing to prepare the non-binding estimate in the form and manner prescribed **Number discovered: One for each shipment found where the written non-binding estimate does not contain the prescribed information.** **Note:** DO NOT USE THIS CITE FOR 375.405(b)(7) or 375.405(b)(8).
375.405(b)(7)/13902(a)(2)(C)	**Severe Level I**	Failing to reaffirm or prepare a new written non-binding estimate prior to loading when the shipper tenders additional household goods or services.**Number discovered: One for each shipment found where the written non-binding estimate was not reaffirmed or negotiated**
375.405(b)(8)/13902(a)(2)(C)	**Severe Level I**	Collecting more than 110 percent of the original non-binding estimate at destination. **Number discovered: One for each shipment found where carrier required payment in excess of 110 percent of original estimate before delivery of HHG.** **Note:** DO NOT USE FOR HOSTAGE LOADS.
375.405(c)/13902(a)(2)(C)	**General**	Failing to enter the estimated charges upon the bill of lading.**Number discovered: One for each estimated amount not entered on the Orders for Service and bill of lading.**
375.405(d)/13902(a)(2)(C)	**Severe Level II**	Failing to retain a copy of the non-binding estimate for each move performed for one year from the date the estimate was prepared, as an integral part of the bill of lading. **Number discovered: One for each non-binding estimate not retained for one year.**
		.
375.503(a)/13902(a)(2)(C)	**Severe Level II**	Failing to prepare a written inventory for each shipment of HHG transported.

		Number discovered: One for each shipment reviewed that does not include a written inventory.
375.503(a)/13902(a)(2)(C)	**General**	Failing to prepare an inventory in the form and manner prescribed. **Number discovered: One for each inventory reviewed that does not include the required information.**
375.503(b)/13902(a)(2)(C)	**General**	Failing to prepare the inventory before or at the time of loading in the vehicle for transportation in a manner that provides the shipper the opportunity to observe and verify the accuracy of the inventory, if he or she so requested. **Number discovered: One for each inventory reviewed that failed to allow the shipper the opportunity to observe/verify the accuracy of the inventory**
375.503(c)/13902(a)(2)(C)	**General**	Failing to ensure a company representative and shipper sign an inventory. **Number discovered: One for each inventory not signed.**
375.503(e)/13902(a)(2)(C)	**Severe Level II**	Failing to retain a copy of an inventory for each move performed for one year from the date the inventory was prepared, as an integral part of the bill of lading. **Number discovered: One for each inventory not retained.**
375.505(a)/13902(a)(2)(C)	**Severe Level II**	Failing to prepare a bill of lading for each move performed. **Number discovered: One for each shipment in which the carrier did not provide the shipper with a bill of lading.**
375.505(b))(1-17)/13902(a)(2)(C)	**Severe Level II**	Failing to prepare a bill of lading in the form and manner prescribed. **Number discovered: One for each shipment in which the bill of lading does not include the required information.**
375.505(c)	**General**	Failing to ensure the bill of lading accompany the shipment at all times. **Number discovered: One for bill of lading not accompanying each shipment.**

		Note: To be cited mainly during roadside inspections.
375.505(d)/13902(a)(2)(C)	**General**	Failing to retain a copy of a bill of lading for each move performed for one year from the date it's created. **Number discovered: One for each receipt or bill of lading not retained.**
375.505(e) /13902(a)(2)(c)	**General**	Failing to inform the shipper that you reasonably expect a special or accessorial charge is necessary. **Number discovered: One for each violation discovered.**
375.505(f)	**General**	Failing to sign, require the shipper to sign, and provide a copy of, the bill of lading at both the origin and destination.
375.505(g)(2)	**General**	Requiring shipper to sign an incomplete document without all relevant shipping information except the actual weight and any other information necessary to determine the final charges for all services performed.
375.505(g)(3)	**General**	Requiring a shipper to sign a blank document.
375.505(b)(12)/13902(a)(2)(C)	**General**	Failing to place the valuation statement on the bill of lading. **Number discovered: One for each bill of lading; the valuation statement is not entered if not entered in the Orders for Service.** **Note:** Entering the improper valuation statement on the bill of lading is considered not placing a statement at all.
375.507(a)/14104(b)(1)(C)(iii)	**Severe Level I**	Failing to weigh a shipment for each move transported on a non-binding estimate. **Number discovered: One for each shipment required to be weighed.**
375.513/13902(a)(2)(C)	**Severe Level I**	Refusing to allow shippers to view the re-weigh of their shipment. **Number discovered: One for each shipment a shipper was not allowed to view the re-weigh.**
375.515(b)/13902(a)(2)(C)	**Severe Level II**	Failing to obtain a written waiver from shippers who waive their right to

		observe the re-weighing of their shipment. **Number discovered: One for each shipment a waiver for observing a re-weigh was not obtained from a shipper.**
375.517/13902(a)(2)(C)	**Severe Level II**	Failing to reweigh shipment, weighed at origin, upon demand of individual shipper. **Number discovered: One for each violations discovered.**
375.519(a)(1-6)/13902(a)(2)(C)	**Severe Level I**	Failing to prepare a weight ticket in the form and manner prescribed. **Number discovered: One for each weight ticket not prepared in the form and manner prescribed.**
375.519(a)/13902(a)(2)(C)	**Severe Level II**	Failing to obtain a separate weight ticket for each weighing, if not in accordance with Part 375.519(b). **Number discovered: One for each separate weight ticket not obtained when required.**
375.519(c)/13902(a)(2)(C)	**Severe Level I**	Failing to retain the original copy of the weight tickets for each shipment weighed as part of the file. **Number discovered: One for each original weight ticket not retained.**
375.519(d)/390.35	**Severe Level I**	Making, or causing to make fraudulent or intentionally false weight tickets and/or reproducing fraudulent weight tickets. **Number discovered: One for each weight ticket falsified.** **Note:** If this violation is discovered, consult with your supervisor about contacting OIG.
375.603/13902(a)(2)(C)	**General**	Failing to tender shipment on the agreed upon date or within the period specified on the bill of lading.**Number discovered: One violation for each shipment found where the carrier did not** deliver the shipment within the period specified on the bill of lading.
375.605(a)	**General**	Failing to notify shipper of delay in pickup or delivery of shipment..**Number discovered: One for each delayed shipment found and in which the shipper or other representative were not advised of**

		the time that a delayed shipment can be picked up or delivered.
375.701(a)	**General**	Providing documents containing language purporting to release the carrier or its agents from liability. **Number discovered: One for each document, bill of lading, inventory sheet, the carrier has required the shipper to sign and found in violation.**
375.705(a)	**Severe**	Collecting all charges prior to delivery of the entire shipment, when shipment is transported on more than one vehicle. **Number checked: One for each instance in which the shipper was required to pay for non-delivered portions of household goods in advance.**
375.709(a)	**Severe**	Collecting or requiring an individual shipper to pay any freight charges when a household goods shipment is totally lost or destroyed in transit.**Number checked: One for each shipment totally lost and destroyed while in transit and the carrier collected its transportation charges.**

Violations of Part 375 Regulations and Federal Statutes: Citations for HHG Shipments Held Hostage

CITATION	TYPE	DESCRIPTION
14915	**Severe Level I**	Knowing and willful failure to properly deliver to or unload at the destination of a shipment of household goods for which a shipper has tendered appropriate payment. **Number discovered:** One for each shipment not relinquished (Hostage Load)
375.403(a)(10)/ 14915	**Severe Level I**	Failing to relinquish possession of a household goods shipment after the shipper offers to pay or pays at least 100 percent of a binding estimate (Hostage Load).**Number discovered: One for each shipment not relinquished. Note:** ALTERNATIVE OPTION FOR USE WHEN HOSTAGE LOADS ARE DISCOVERED.
375.407(a)/13902(a)(2)(C)	**Severe Level I**	Failing to relinquish possession of a household goods shipment if the shipper pays at least 110 percent of the approximate costs of a non-binding estimate. **Number discovered: One for each shipment found where carrier did not relinquish the household goods after shipper paid 110 percent of non-binding estimate.**

		Note: ALTERNATIVE OPTION FOR USE WHEN HOSTAGE LOADS ARE DISCOVERED.
375.407(b)/ 14915	**Severe Level I**	Failing to relinquish possession of a household goods shipment after the shipper offers to pay or pays at least 110 percent of a non-binding estimate (Hostage Load).**Number discovered: One for each shipment found where carrier did not relinquish the household goods after shipper offered to pay 110 percent of non-binding estimate.** **Note:** ALTERNATIVE OPTION FOR USE WHEN HOSTAGE LOADS ARE DISCOVERED.

4.4.2.5 Part 376 – Transportation in Interstate Commerce – Commercial Enforcement Leasing

FMCSA's Responsibility to Enforce the Leasing Regulations

The Transportation Industry, including HHG, is heavily dependent on independent contractors, owner-operators, and the use of leased and rented equipment to move property. The Leasing Regulations, Part 376, apply to motor carriers that are registered with FMCSA, primarily for-hire motor carriers operating in Interstate Commerce. FMCSA regulates leasing of equipment that performs regulated transportation, and leasing of equipment to private motor carriers. The leasing process is maintained by legally binding contracts, or written lease agreements that require examination to ensure that motor carriers involved in leasing are in compliance. The Leasing Regulations clarifies responsibilities of motor carriers for the leased equipment they operate.

Definitions of Common Leasing Terms

Authorized carrier – A person or persons authorized by FMCSA to engage in transportation of property as a motor carrier (or HHG motor carrier) under the provisions of Section 13901 or 13902.

Equipment – A motor vehicle, straight truck, tractor, semitrailer, full trailer, and any combination these and any other type of equipment used by the authorized carrier in the transportation of property for hire.

Owner – A person (1) who title to equipment has been issued, or (2) who, without title, has the right to exclusive use of equipment registered and licensed in any State in the name of that person.

Lease – A contract or arrangement in which the owner grants the use of equipment, with or without driver, for a specified period to an authorized carrier for use in the regulated transportation of property, in exchange for compensation.

Lessor – The party in a lease granting the use of equipment, with or without driver, to another.

Lessee – The party in a lease acquiring the use of equipment, with or without driver, from another.

Sublease – A written contract in which the lessee grants the use of leased equipment, with or without driver, to another.

Addendum – A supplement to an existing lease which is not effective until signed by the lessor and the lessee.

Private motor carrier or Private carrier – A person, other than a motor carrier, that transport property it owns or leases in interstate commerce to be sold or rented to further a commercial enterprise.

Shipper – A person who sends or receives property which is transported in interstate commerce.

Escrow Fund – Money deposited by the lessor with either a third party or the lessee to guarantee performance, repay advances, or cover repair expenses, handle claims, handle licensing and State permit costs, and for any other purposes mutually agreed upon by the lessor and lessee.

Detention – The holding by a consignor or consignee of a trailer, with or without power unit and driver, beyond the free time allocated for the shipment, under circumstances not attributable to the performance of the carrier.

4.4.2.5 Investigative Procedures

Sections of Part 376 to Review

Section 376.11 – General Leasing Requirements
Section 376.12 – Written Lease Requirements

Primary Requirements for Compliance with Part 376

There are general leasing requirements that all motor carriers authorized to transport property in interstate commerce that operate leased equipment must follow, and there are requirements how the leases are written.

Section 376.11 - General Leasing Requirements

The general leasing requirements are stated in Section 376.11:

- There must be a written lease granting use of the equipment by the authorized carrier;
- There must be receipts provided by the authorized carrier for the equipment identifying the equipment to be leased, date and time the equipment is transferred;
- The authorized carrier taking possession of the equipment must identify the equipment, as required by Part 390;
- The authorized carrier must keep records documenting the trips made by the leased equipment while in its service; and
- The authorized carrier must keep copies of the leasing records with the equipment.

Section 376.12 - Written Lease Requirements

Written Leases, as stated in Section 376.12, are required to have the following provisions:

- The lease is between the authorized carrier and the owner of the equipment;
- The lease will specify the time and date when the lease begins and ends;
- The lease will state that the authorized carrier has exclusive control of the leased equipment and is responsible for it ;
- The lease can have an option allowing the authorized carrier to sublease the equipment;
- When an authorized HHG carrier leases equipment exclusive control of and responsibility for the leased equipment only during the time the leased equipment is operated;
- The amount paid by the authorized carrier to lease the equipment is clearly stated;
- The lease will specify who is responsible for removal of identification devices at the termination of the lease, if a receipt is required how the receipt for the equipment will be returned to the authorized carrier at the termination of the lease, and who is responsible for miscellaneous expenses;
- Payment to the owner of the leased equipment within 15 days after submission of delivery documents to the authorized carrier, and that submission of hours of service records (logbooks) and documents the authorized carrier needs to secure payment from the shipper, can occur before payment to the owner (refers to leases of owner-operators);
- Copies of invoice, or other form of freight documentation, will be given to the owner of the leased equipment when the lessor's revenue is based on a percentage of the gross revenue of the shipment (also refers to leases of owner-operators);
- Items that will be initially paid by the authorized carrier but deducted from the payment to the owner of the leased equipment;

- That the owner of the leased equipment is not required to purchase or rent any products, equipment, or services from the authorized carrier;
- That the authorized carrier is responsible for insuring the leased equipment;
- If escrow funds are required, the amount of the escrow fund to be paid to the authorized carrier or third party, and what specific items the escrow fund will be applied; and
- That there are an original and two copies of the lease signed by both parties, and a copy of the lease, or a statement as set forth in 376.11, is kept on board the leased equipment.

Enhanced Investigative Technique – Leasing records often contain time sensitive information, mileage in and out, and the driver authorized to use that vehicle. Cross reference this information with Hours of Service records to determine compliance with Part 395.

Exemptions to the Leasing Regulations

General exemptions to the Leasing Regulations are contained in Section 376.21. The exemption that appears often is the regulations do not apply to leased equipment used in transportation exclusively in a Commercial Zone (see Part 372). Section 376.22 address exemptions for leasing between authorized motor carriers, and between authorized motor carriers and private motor carriers. Another exemption that appears often is authorized and private carriers under common ownership may lease equipment from each other without complying with the requirements for identification of equipment and creation and maintenance of receipts (see Section 376.22(d). Section 376.26 address the exemption to the regulation for leases between authorized carriers and their agents.

Procedures to Follow in Order to Determine if a Motor Carrier is in Compliance with Section 376.11(a)

If a motor carrier states that they are leasing equipment, there should be a written lease agreement.

Procedures to Follow When a Motor Carrier is in Violation of Section 376.11(a)

You should cite the motor carrier for the violation of:

- **Section 376.11(a)** – Failure to use a written lease agreement to lease equipment. (General violation).

Procedures to Follow to determine if a Motor Carrier is in Compliance with Section 376.11(b)

If a motor carrier is leasing equipment, there should be a copy of a receipt for each piece of equipment leased. The receipts should identify the equipment leased, date and time the equipment was transferred to the motor carrier. The owner or lessor of the equipment should have the original receipt and should confirm it a receipt was issued.

Procedures to Follow when a Motor Carrier is in Violation of Section 376.11(b)

You should cite the motor carrier for the violation of:

- **Section 376.11(b)** – Failure to issue a receipt for leased equipment. (General violation).

Procedures to Follow to determine when a Motor Carrier is in Compliance with Section 376.11(c)

A motor carrier that leases equipment must properly identify the equipment as required by Part 390. The motor carrier must carry a copy of the lease or a statement certifying that the equipment is being operated by it on board the equipment.

Procedures to Follow when a Motor Carrier is in Violation of Section 376.11(c)

You should cite the motor carrier for the following violations:

- Section 376.11(c)/390.21(b) – Failure to properly mark a commercial motor vehicle leased more than 30 days. (General violation).

- Section 376.11(c)/390.21(e)(iii) – Failure to have in a rental agreement the required information about a commercial motor vehicle rented for less than thirty days. (Severe Level II violation).
- Section 376.11(c)/390.21(e)(iv) – Failure to carry on a commercial motor vehicle rented for less than thirty days the rental agreement with the required information. (Severe Level II violation).
- Section 376.11(d)(1) – Failure to prepare and/or keep documents of each trip when leased equipment was used. (General violation).
- Section 376.11(d)(1) – Failure to prepare and/or keep required documents of each trip on board leased equipment. (General violation).

Procedures to Follow to determine if a Motor Carrier is in Compliance with Section 376.12(a–k)

The written lease agreement is required to have specific items as stated in Section 376.12(a–k). Lease agreements have to be closely examined to ensure the documents are in compliance.

Procedures to Follow to determine if a Motor Carrier is in Violation of Section 376.12(a-k)

Depending on the item that is deficient on the lease agreement you should cite the motor carrier for the violation of:

- **Section 376.12(a-k)** – Failure to include required provisions in written lease agreement. (General violation).

Procedures to Follow to determine if a Motor Carrier is in Compliance with Section 376.12(l)

The motor carrier leasing equipment is required to keep the original copy of the lease and a copy on board the leased equipment during the period of the lease. In lieu of a copy of the lease the motor carrier can place a statement as provided for in Section 376.11(c)(2) in the leased equipment.

Procedures to Follow when a Motor Carrier is in Violation of Section 376.12(l)

You should cite the motor carrier for the violation of:

- **Section 376.12(l)** – Failure of authorized carrier to keep the original lease. (General violation).
- **Section 376.12(l)** – Failure to keep a copy of the lease or leasing statement on board leased equipment. (General violation).

Guidance to Follow when Verifying Compliance and Documenting Violations of Part 376

Consider the following when documenting for enforcement as result of an investigation involving contracts, subcontracts or lease arrangements.

- Compliance with 49 CFR Part 376 leasing regulations. 49 CFR § 376.11 provides that, other than through an interchange of equipment or the exemptions in 49 CFR §§ 376.21 – 376.26, an authorized carrier may perform authorized transportation in equipment it does not own only under the conditions set forth therein. Collect evidence to permit consideration of whether the motor carrier's arrangements with others meet the Part 376 leasing requirements.
- Statements and/or supporting evidence from the other parties involved, including the shippers. Consider interviewing and obtaining statements from shipper officials and contract carrier drivers. Who did the shipper believe was going to transport the load? What was the basis for that belief? What did the principal carrier tell the shipper regarding who would be responsible for the transportation? If a shipper had a problem with a driver or a particular trip, who would it contact? Obtaining evidence from multiple sources can be helpful in showing which carrier is responsible for providing the transportation services.
- Consider expanding review of principal carrier to include interviewing and/or conducting reviews of at least some contract carriers. What does the contract carrier understand of its relationship with the principal carrier? Do the contract carriers have appropriate authority, permits and licenses, including FMCSA operating authority, State licensing/permits, and apportioned plates and fuel licenses (IFTA/IRP). Are contract carriers managing the safety compliance for drivers

and vehicles. Document any lack of safety management control over contract drivers and vehicles by contract carriers.

- Look to and document overall safety performance. Consider what the safety performance of the principal carrier would be if it included the performance of its contract drivers and vehicles.
- Collect evidence to show payments made to the principal carrier and contract carriers. Consider expanding your investigation to other contract carriers and shippers, in order to conduct an effective collection of evidence.
- Collect copies of contracts between the principal carrier and shippers. Collect copies of contracts or agreements between the principal carrier and the contract carriers.
- When the property transported is a hazardous material, consider whether the principal carrier's business practices meet the requirements of the HMR. Who is responsible for providing HM training to contract drivers? Who actually provided the training and maintains the documentation of training? If the principal carrier has agreed with the shipper to transport HM in commerce, does it have a security plan that addresses the vehicles being used by the contract carriers? Does the security plan address the drivers being used by the contract carriers? While reviewing a security plan, driver interviews and training documentation can provide useful information to show which carrier is responsible for providing the transportation services.
- To show that the principal carrier is responsible for the contract carrier drivers' compliance with the FMSCR and HMR, we must establish that the contract carrier and drivers are subject to the principal carrier's control.

    1. Who had the power to hire, train, and terminate drivers? Collect evidence, such as employment agreements, training documentation, termination letters, and related correspondence between the principal and contract carriers to corroborate any statements made. If the principal trains the contract carrier drivers, does the contract carrier also train those drivers? Collect evidence on training from both the principal carrier and the contract carriers.
    2. Who assigns loads to drivers? Who had the ability to control the route? Who controls drivers' activities during transit? Interview drivers, shippers, contract carriers.
    3. Are contract carrier drivers or vehicles assigned exclusively to servicing the contract with the principal, or do these vehicles/drivers also perform contracts for other shippers? Could the contract carrier substitute or reassign a driver without the principal's authorization? What percentages of the contract carrier's driver and/or vehicle time are used by the principal carrier? If the driver/vehicle is also being used for transportations other than those for the principal carrier, how is the use of the driver/vehicle allocated and who decides?
    4. Document how contract carriers are paid. Document how drivers of contract carriers are paid.
    5. Document what carrier name appears on shipping documents and driver RODS.
    6. Who is responsible for Part 382 compliance? Ensure that evidence collected and statements from the principal carrier and others identify whether they are referring to Part 382 tests or other drug and alcohol testing.

This list of resources is not inclusive; many other documents and evidence may become available during each different investigation.

Recording Violations of Part 376 Regulations

You should record the number checked as follows:

Violations of Part 376 Regulations

CITATION	TYPE	DESCRIPTION

376.11(a)	**General**	Failure to use a written lease agreement to lease equipment.. **Number discovered: One for each piece of leased equipment without a written lease agreement.**
376.11(b)	**General**	Failure to issue a receipt for leased equipment. **Number discovered: One for each piece of leased equipment without a receipt.**
376.11(c)/390.21(b)	**General**	Failure to properly mark commercial motor vehicle leased more than 30 days. **Number discovered: One for each commercial motor vehicle leased not properly marked.**
376.11(c)/390.21(e)(iii)	**Severe Level II**	Failure to have in a rental agreement the required information about a commercial motor vehicle rented for less than thirty days. **Number discovered: One for each rental agreement without the required information.**
376.11(c)/390.21(e)(iv)	**Severe Level II**	Failure to carry on a commercial motor vehicle rented for less than thirty days the rental agreement with the required information. **Number discovered: One for each rented commercial motor vehicle without the rental agreement or the rental agreement without the required information on board.**
376.11(d)(1)	**General**	Failure to prepare and/or keep documents of each trip when leased equipment was used. **Number discovered: One for each required record missing or not properly prepared.**
376.11(d)(1)	**General**	Failure to prepare and/or keep required documents of each trip on board leased equipment. **Number discovered: One for each required record missing or not properly prepared on board leased equipment.**
376.12(a-k)	**General**	Failure to include required provisions in written lease agreement. **Number discovered: One for each lease agreement found not in compliance.**
376.12(l)	**General**	Failure of authorized carrier to keep the original lease. **Number discovered: One for each original lease agreement the motor carrier is required to have.**
376.12(l)	**General**	Failure to keep a copy of the lease or leasing statement on board leased equipment**Number discovered: One for each copy of the lease or leasing statement the motor carrier is required to have on board the equipment.**

4.4.2.6 Enforcement of Violations of Holding Household Goods Hostage

Failing to relinquish a household goods shipment (Hostage Loads)

A "Hostage Load" is defined as a failure to give up possession of HHG when the motor carrier knowingly and willfully, in violation of a contract (the bill of lading and all its integral parts), fails to deliver to or unload at the destination a shipment despite having provided an estimate for the move and the shipper tendering payment.

Hostage load violations occur when a HHG motor carrier or broker, attempting to coerce more money from an individual shipper than was originally agreed, refuses to relinquish the shipper's household goods until he or she concedes to the demand of the carrier.

Holding HHG hostage, in violation of 49 U.S.C. § 14915, is one of the most egregious violations of the Federal commercial statutes.

Hostage loads violations are often committed by an organized criminal enterprise whose activities amount to theft, extortion, and/or fraud. Involvement by the USDOT Office of Inspector General may be necessary when these violations occur.

Policy Concerning Hostage Loads

FMCSA will prioritize investigations and enforcement on HHG motor carriers and brokers that are alleged to be holding the HHG shipment hostage. Assigned staff will follow procedures provided to ensure that the documentation to support enforcement actions is sufficient.

How do I determine that a HHG carrier has failed or is failing to relinquish a household goods shipment (holding a load hostage)?

In order to determine if a HHG carrier has failed or is failing to relinquish a household goods shipment as defined by **49 U.S.C. 14915(c)** you have to prove the following elements:

- The HHG are being transported in Interstate Commerce;
- The HHG were transported based on an (binding or non-binding) estimate submitted by the HHG carrier or HHG broker on behalf of the HHG carrier;
- The HHG carrier did fail to deliver the household goods shipment on the delivery date or period of time stated on the Bill of Lading;
- The HHG carrier knowingly and willfully violated the contract (/Bill of Lading) with the shipper; and
- The shipper of the HHG ***tendered*** payment to the HHG carrier based on 100% of the binding estimate or 110% non-binding estimate.

Note: Determining if payment was "tendered" is extremely important in an investigation of a HHG shipment held hostage. To "tender" is defined by "Black's Law Dictionary" as a valid and sufficient offer of performance, specifically, an unconditional offer of money or performance to satisfy a debt or obligation. The shipper would have to pay, or have the ability to pay and attempted to pay in order to tender payment. Evidence of tendering a payment would be documentation of the shipper submitting payment for 100% of a binding estimate or 110% of a non-binding estimate, an attempt to submit payment. Examples of documentation of tendering payment would be photocopies of cashier checks, money orders, or credit card slips. Examples of an attempt to submit payment would be e-mails from the shipper to the carrier stating that he or she has the amount of money to make payment and is willing to submit it, or a written statement from the shipper that he or she had the money and attempted to pay 100% of a binding estimate or 110% of a non-binding estimate. Ideally the combination of documentation of the

payment, e-mails, and a written statement from the shipper would be strong evidence of tendering payment.

What procedures should I follow if I determine that a HHG carrier has failed or is failing to relinquish a household goods shipment (holding a load hostage)?

Providing that you have all the elements, you should cite the HHG motor carrier for the violation of:

> **Section 14915 -** Knowing and willful failure to properly deliver to or unload at the destination of a shipment of household goods for which a shipper has tendered appropriate payment. (Severe Level I violation)

Note: HHG violations are *Riojas* affected violations. FMCSA will not serve NOC under 49 CFR part 386 when charging Riojas affected violations. If a Division determines that an enforcement action on Riojas affected violation(s) is the best means to induce compliance, an Enforcement Analysis must be conducted following the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," MC-ECE-2020-0001 to determine what type of enforcement should be pursued. FMCSA will propose and settle civil penalties for Riojas affected violations using the procedures in that policy.

IMPORTANT: Each day a HHG motor carrier fails to relinquish possession of a HHG shipment constitute a separate violation of Section 14915(c). If the facts surrounding a particular violation suggest the carrier should be penalized for more than one violation contact your Division Administrator for further guidance, seek the assistance of the nearest Commercial Enforcement Specialist and the Service Center Attorney.

As an alternative to civil penalty enforcement, the Regional Field Administrator (RFA), Field Administrator (FA), or the Director or designee of the Office of Enforcement and Compliance (MCS-EC) will coordinate with the appropriate Service Center attorney who will prepare legally sufficient orders for signature and issuance by the RFA, FA or MCS-EC using the templates in Attachments D-1, D-2, and D-3 to the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," MC-ECE-2020-0001 suspend operating authority registration under the Hostage Load Policy.

What is some important evidence to obtain in order to prove that a HHG carrier is holding hostage a household goods shipment?

You should interview the shipper and if possible obtain a written statement stating that the shipper did in fact paid 100% (binding) or 110% (non-binding) of the estimate or attempted to pay and the HHG carrier refused (See Illustration HHG-4). If a written statement is not possible then document the interview with an **Oral Interview Form** (See Illustration E-9).

Try to interview and obtain a statement from the driver or any other employee that had custody of the HHG shipment and refused to deliver it. Attempt to ascertain what caused the dramatic increase in price, can the reason for the increase be proven, where was the shipment diverted to, who authorized the refusal of the delivery of the shipment, and who is named as in control of the shipment were it has been taken.

Evidence to prove the elements of a violation of 49 U.S.C. § 14915(c) includes but not limited to:

- Copies of signed estimates;
- Copies of receipts for payment of or checks made out to the motor carrier or broker, or documentation of offers of payment by the shipper, for 100% of the binding or 110% of the nonbinding estimate or the prorated amount of a partial delivery in the manner specified in the contract;
- Copies of bills of lading;
- Copies of contracts bill of lading;
- Photographs of HHG held in storage or on vehicles;
- Documentation of any change or amendment of an estimate, including documentation of any change or amendment of an estimate made after the shipper's HHG were loaded;
- Statement and documentation the shipper did not agree to amend the original signed estimate before the motor carrier loaded the HHG, if applicable;
- Any pertinent statements or documentation from the shipper;
- Any pertinent statements from the driver or laborers that handled the shipment;
- Any police incident or investigation reports that were generated in response to the hostage load complaint being reported to the local police; and
- Documentation uploaded to hostage load complaints filed in the National Consumer Complaint Database (NCCDB)

Note: It is recommended that a written statement not done in your presence should be notarized.

4.4.2.6.1 CAPRI Procedures

Once you have completed your investigation of 49 U.S.C. § 14915, you should ask yourself, "Can I prove each discovered violation in Section 375?" If you can answer "Yes" to this question, the following guidelines have been established to assist in completing Part B Violations Tab of the CAPRI software:

Recording Violations of the Federal Statute concerning Hostage Loads

You should record the number checked as follows:

Note: Drivers Checked/Vehicles Checked must be 0 of 0.

Violations of the Federal Statutes: Citations for HHG Shipments Held Hostage

CITATION	TYPE	DESCRIPTION
14915	**Severe Level I**	Knowing and willful failure to properly deliver to or unload at the destination of a shipment of household goods for which a shipper has tendered appropriate payment. .

		Number discovered: One for each shipment discovered held hostage.

Order to Return Household Goods

Pursuant to 49 U.S.C. § 14915(a)(1), the Agency may order the return of HHG shipments held hostage by a motor carrier. An Order to Return can be issued when the Field Administrator after consultation with the Office of the Assistant Chief Counsel for Enforcement and Litigation determine that sufficient evidence exist that an HHG shipment is being held hostage. All the elements of a hostage load violation must be present and well supported with evidence to necessitate an order.

When Should an Order to Return be considered?

Providing that there is sufficient evidence that all elements of a hostage load violation has been discovered, if any of the following conditions are discovered an Order to Return should be considered:

- There are items in the shipment that are crucial to the health of the shipper or shipper's family such as medical equipment, supplies, or medications;
- There are items in the shipment that could create a substantial risk to the Public if lost such as firearms and/or ammunition; or
- The loss or destruction of the shipment appears imminent and action is needed immediately.

What procedures should I follow to initiate an Order to Return?

If during your investigation it becomes apparent that an Order to Return is necessary immediately notify your DA to begin the process. Seek the assistance of the nearest Commercial Enforcement Specialist. Prepare all the evidence collected proving the elements of the hostage load violation along with a summary of why the order is necessary for review by the FA and Service Center Attorney so they can determine if an order is warranted and there is sufficient evidence to support it and submit via your DA.

If an order will be initiated you will receive further instructions from your DA. If the need for an order is urgent discretion to precede the submission of the investigation and enforcement case reports can be applied with the approval of your DA. If an Order to Return is initiated and ultimately executed prior to the submission of reports it must be documented in both the investigation (Part C) and enforcement case reports. A copy of the Order to Return and supporting documents would be letter exhibits in the enforcement case report.

If the Order to Return is initiated after the submission of the investigation report but prior to the submission of the enforcement case report it should be documented in the enforcement case report as corroboration to support the Notice of Claim (NOC). A copy of the Order to Return and supporting documents would be letter exhibits.

The DA and the Service Center can apply discretion how the Order to Return is documented and there could be further instructions to follow.

4.4.2.6.1 CAPRI Procedures

Once you have completed your investigation of 49 U.S.C. § 14915, you should ask yourself, "Can I prove each discovered violation in Section 375?" If you can answer "Yes" to this question, the following guidelines have been established to assist in completing Part B Violations Tab of the CAPRI software:

Recording Violations of the Federal Statute concerning Hostage Loads

You should record the number checked as follows:

Note: Drivers Checked/Vehicles Checked must be 0 of 0.

Violations of the Federal Statutes: Citations for HHG Shipments Held Hostage

CITATION	TYPE	DESCRIPTION
14915	**Severe Level I**	Knowing and willful failure to properly deliver to or unload at the destination of a shipment of household goods for which a shipper has tendered appropriate payment.**Number discovered: One for each shipment discovered held hostage.**

Order to Return Household Goods

Pursuant to 49 U.S.C. § 14915(a)(1), the Agency may order the return of HHG shipments held hostage by a motor carrier. An Order to Return can be issued when the Field Administrator after consultation with the Office of the Assistant Chief Counsel for Enforcement and Litigation determine that sufficient evidence exist that an HHG shipment is being held hostage. All the elements of a hostage load violation must be present and well supported with evidence to necessitate an order.

When Should an Order to Return be considered?

Providing that there is sufficient evidence that all elements of a hostage load violation has been discovered, if any of the following conditions are discovered an Order to Return should be considered:

- There are items in the shipment that are crucial to the health of the shipper or shipper's family such as medical equipment, supplies, or medications;
- There are items in the shipment that could create a substantial risk to the Public if lost such as firearms and/or ammunition; or
- The loss or destruction of the shipment appears imminent and action is needed immediately.

What procedures should I follow to initiate an Order to Return?

If during your investigation it becomes apparent that an Order to Return is necessary immediately notify your DA to begin the process. Seek the assistance of the nearest Commercial Enforcement Specialist. Prepare all the evidence collected proving the elements of the hostage load violation along with a summary of why the order is necessary for review by the FA and Service Center Attorney so they can determine if an order is warranted and there is sufficient evidence to support it and submit via your DA.

If an order will be initiated you will receive further instructions from your DA. If the need for an order is urgent discretion to precede the submission of the investigation and enforcement case reports can be applied with the approval of your DA. If an Order to Return is initiated and ultimately executed prior to the submission of reports it must be documented in both the investigation (Part C) and enforcement case reports. A copy of the Order to Return and supporting documents would be letter exhibits in the enforcement case report.

If the Order to Return is initiated after the submission of the investigation report but prior to the submission of the enforcement case report it should be documented in the enforcement case report as

corroboration to support the Notice of Claim (NOC). A copy of the Order to Return and supporting documents would be letter exhibits.

The DA and the Service Center can apply discretion regarding how the Order to Return is documented and there could be further instructions to follow.

4.5 Stage 4 Investigation Feedback and Closeout

4.5.1 HHG Recommendations

Recommendations that should be made for HHG CR Findings

If at the conclusion of a compliance review, it appears that a HHG carrier is not in compliance with the HHG commercial regulations, you should also prepare and review recommendations for compliance on the Part B - Recommendations section of the CR. The recommendations should be tailored to the HHG motor carrier's specific compliance problems. The standard recommendations used in the CAPRI software can be used as a starting point with more detailed and specific recommendations added. The recommendations should identify at least the minimum areas needing improvement and state that it is only intended as a tool to assist the motor carrier in improving its commercial compliance. You should request an opportunity to discuss the potential problems with the highest-ranking official of the motor carrier (sole proprietor, partner or corporate officer). Ask the official to sign and date the compliance review, to receive a copy. You should keep signed copies of all documents.

4.6 Stage 5 Post Investigation Invention – Enforcement Actions

4.6.1 HHG Parts 366, 370 & 375 – Enforcement Procedures

After you have entered violations discovered in the FMCCR (i.e., parts 366, 370 and 375) or statutes of the Interstate Commerce Commission Termination Act of 1995 (ICCTA), into Part B of CAPRI and you have decided to initiate some form of enforcement action be sure that you have the appropriate documentation to prove each violation. The following guidelines have been established to assist investigators when initiating enforcement procedures against motor carriers who have demonstrated noncompliance with the FMCCR and/or the Federal statutes. HHG Violations found in the FMCCR are *Riojas* affected violations. FMCSA will not serve NOC under 49 CFR part 386 when charging Riojas affected violations. If a Division determines that an enforcement action on Riojas affected violation(s) is the best means to induce compliance, an Enforcement Analysis must be conducted following the policy titled “Policy for Handling Riojas Affected Violations and Impacts to Existing Policies,” MC-ECE-2020-0001 to determine what type of enforcement should be pursued. FMCSA will propose and settle civil penalties for Riojas affected violations using the procedures in that policy.

Documents

General Guidelines for Documenting Violations Discovered During any HHG Related CR

- Transportation was performed under the control and operating authority of the motor carrier (Section 392.9a);
- The shipment was picked up at origin by a motor carrier and delivered to the shipper at destination on a certain date, and
- A specific violation of the FMCCR or the Federal statutes occurred.

Evidence is the documentation offered to prove the existence or non-existence of a fact, ultimately to determine the truth of the matter at issue. The law of evidence concerns the rules of admissibility and weight accorded evidence in a judicial and administrative setting.

An Exhibit Must Contain the Following to Prove a HHG Violation

1. **Establish FMCSA's jurisdiction.**

   Demonstrate the carrier offered to or actually transported HHG for compensation in interstate transportation. This may be accomplished by collecting (but not limited to) the following:

   a. A copy of the HHG carrier's tariff giving all the details of its HHG operation
   b. A copy of the carrier's certificate of authority or motor carrier authority letter issued by FMCSA
   c. Advertisements that show the carrier offers to transport HHG in interstate commerce; and
   d. Documents that demonstrate the carrier was compensated for transporting HHG shipments in interstate commerce.
2. **Establish the carrier provided the transportation or controlled it.**
   a. Copies of bills of lading and other transportation related documents assist in proving the carrier provided HHG transportation and/or controlled the shipment.
   b. Copies of trip leases or long term leases can be used to assist in demonstrating the carrier was the controlling carrier for HHG shipments transported by other carriers.
   c. Signed statements provided by carrier officials and/or employees admitting the carrier was responsible for transportation should be obtained when possible.
   d. Signed statements
3. **Carrier transported the shipment.**

   Specific shipments should be documented to show the carrier transported interstate shipments for-hire. This can be accomplished by using bills of lading and/or other HHG supporting documents. Copies of payment records and written statements by carrier officials and/or employees should be obtained, whenever possible.

4. **Carrier violated a specific Part of the commercial regulations.**
   a. Consumer complaints can help to identify potential noncompliance areas that should be examined during HHG reviews. Commercial regulation complaints are maintained in FMCSA's NCCDB.
   b. Once an area of noncompliance has been identified during the HHG investigation, you should obtain appropriate and more than sufficient documentation, including shipping documents and written statements signed by carrier officials and/or employees of the HHG carrier, and/or shipper's statements.

Some Examples of Documents that Can be Used to Prove Violations of the FMCCRs and the Federal Statutes

Examples of documents to support your discovered violations are listed below:

- Statements from motor carrier officials and/or employees.
- Documentation from a FMCSA office demonstrating that the required filing information was not on file;
- Tariffs;
- Advertisements; and
- Copies of carrier brochures;

    - "Your Rights and Responsibilities When You Move;"
    - Arbitration Programs; and
    - Complaint and inquiry handling procedures;
- Loss and damage claim file, to include;
    - Loss and damage claim letters filed by the claimant;
    - Acknowledgement letters; and
    - Disposition letters;
- Shipping documents, including;
    - Written Estimates, Binding or Non-Binding
    - Bills of lading;
    - Inventory sheets; and
    - Weight tickets;
- Complaint information contained in the NCCDB;
- Other supportive evidence, such as emails and other written correspondence; and
- Signed statements from shippers.
- Signed statements from employees or former employees

This list is not meant to limit you to specific documents. There are many motor carrier documents that could be used to support a violation, therefore you may utilize other documents to prove the violation.

Alternative Enforcement Tools

Since FMCSA will not serve NOC under 49 CFR part 386 when charging Riojas affected violations, it is important to consider other alternative enforcement tools to bring about compliance with the FMCCRs. Such tools include the use of an NOV and suspensions and/or revocations of operating authority under policies such as the "Enforcement for Violations for Holding Household Goods Hostage," (MC-ECC-2014-0001) ("Hostage Load Policy") and willful Noncompliance, found as Attachment B-1 to the policy dated October 20, 2015 "Phase II Patterns of Safety Violation by Motor Carrier Management," (MC-ECE-2015-0006) ("Willful Noncompliance Policy"), and in some cases the use of a Letter of Probable Violation (LOPV) as found in the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," MC-ECE-2020-0001.

For Hostage Loads, the Regional Field Administrator (RFA), Field Administrator (FA), or the Director or designee of the Office of Enforcement and Compliance (MCS-EC) will coordinate with the appropriate Service Center attorney who will prepare legally sufficient orders for signature and issuance by the RFA, FA or MCS-EC using the templates in Attachments D-1, D-2, and D-3 attached to the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," MC-ECE-2020-0001 to suspend operating authority registration under the Hostage Load Policy

In addition to the revocation of operating authority found in the willful noncompliance policy, RFAs, FAs, and MCS-EC also have the option to suspend the operating authority registration of a regulated entity. RFAs, FAs, and MC-E may suspend or revoke the operating authority registration of a household goods motor carrier operating outside the scope of its operating authority registration, broker, or freight forwarder under the Willful Noncompliance Policy to induce compliance as to Riojas affected violations. See the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," MC-ECE-2020-0001.

4.7 Illustrations

4.7.1 Illustration HHG-1: Exhibit Abstract

EXHIBIT NUMBER 1
SUBJECT: ABC Moving & Storage Inc.
CASE NUMBER: SS-XXXX-000-US0000
SECTION NUMBER: 49 C.F.R. Section 375.211(a)
DESCRIPTION: Failing to participate in an arbitration program for the handling of loss and damage claims.
REMARKS: (This section should contain the elements of proof.)
On or about June 15, 20XX, ABC Moving & Storage, Inc., picked up for transport household goods on behalf of shipper Susan Harpsichord from New Haven, CT to Phoenix, AZ, while failing to participate in an arbitration program. Ms. Harpsichord filed a loss and damage claim with ABC Moving & Storage, Inc. on August 31, 20XX. The carrier refused the shipper's written request to use an arbitration program on October 1, 20XX. The carrier's written response stated ABC Moving & Storage, Inc. did not participate in an arbitration program.

DOCUMENTS

1. Copies of ABC Moving & Storage, Inc.'s signed documents show ABC Moving & Storage, Inc. transported Susan Harpsichord's household goods for-hire from New Haven, CT to Phoenix, AZ on June 15, 20XX; documents include:
   a. Written Estimate, dated May 1, 20XX;
   b.
   b. Bill of Lading, dated June 15, 20XX; and
   c. Inventory Sheet, dated June 15 and July 1, 20XX.
2. Copy of ABC Moving & Storage, Inc.'s invoice, dated July 1, 20XX, which shows Susan Harpsichord, shipper, paid $3,500 for the transportation and accessorial charges at the time of delivery of her household goods in Phoenix, Arizona.
3. Copy of Susan Harpsichord's written loss and damage claim, dated August 31, 20XX. This claim shows Ms. Harpsichord claimed $1,000 for loss and damages that occurred to her household goods. This loss and damage claim shows ABC Moving & Storage, claim number is XXXXXX.
4. Copy of ABC Moving & Storage, Inc. correspondence, dated September 14, 20XX, making a settlement offer of $200 to Ms. Harpsichord in response to her filed loss and damage claim.
5. Copy of Ms. Harpsichord's written request, dated September 21, 20XX, to use ABC Moving & Storage, Inc.'s arbitration program.
6. Copy of ABC Moving & Storage, Inc.'s letter, dated October 1, 20XX, advising Ms. Harpsichord that it does not have an arbitration program in place.
7. Signed statement by Mr. Halil Savala, owner of ABC Moving & Storage, Inc., admitting that the carrier does not have an arbitration program in place. Mr. Savala states that ABC Moving & Storage, Inc.'s arbitration agreement with In-Depth Arbitration Associates of New York, NY, expired on April 1, 1999 and that a replacement program was not initiated.
8. Signed statements by Ms. Harpsichord confirming ABC Moving & Storage, Inc. did in fact transport her household goods from New Haven, CT to Phoenix, AZ. Ms. Harpsichord verifies that she did request arbitration in an effort to recover additional loss and damages charges, and that ABC Moving & Storage, Inc. admitted it had no arbitration program in place.
9. See Exhibit A, a copy of ABC Moving & Storage, Inc. published tariff. The document does not contain any provisions for an arbitration program.

4.7.2 Illustration HHG-2: Part C Template for Focused NRCRs

PART C Template for the Commercial NRCR

PURPOSE: The purpose of this template is two-fold – it documents the investigation and aids in penalty assessment, if applicable. This template is intended to increase the uniformity of the investigative process. Each section should be completed, as applicable. The content and context of each section should be completed with details from the investigation.

HOW TO USE: Provide details of the investigation that are not obvious or evident from reading Parts A and B of the report. All remarks should be based in fact or actual statements made by carrier staff. All information contained in this report must be accurate and legally defensible. Items noted as [REQUIRED] are required to be in Part C. Those noted as [SUGGESTED] are suggested items for Part C.

REMARKS:

REASON FOR INVESTIGATION:

[REQUIRED] Note if there is more than one reason for initiating this review (i.e., High-Risk List, Complaint, etc.)

SCOPE OF INVESTIGATION:

[REQUIRED] If a Focused Review was conducted, document any reasons why items outside of the originally assigned scope were reviewed.

CARRIER OPERATION DESCRIPTION: [Include information in this section describing the Carrier operation, such as, commerce, goods, operating area, etc.]

[REQUIRED] Describe the financial condition of the subject, focusing on any information that impacts the carrier's safety operation. The objective is to gather information to support making safety assessments, determining ability to pay and reincarnated carrier.

- Include:
    - Gross Revenue - If carrier refuses to provide explain how the amount was determined, list major assets such as buildings, land, airplanes, other companies, etc.
    - Document the officers of the company.
    - List all partners not listed on Part A, where applicable.

[REQUIRED] Note the names and titles of any relevant company official or employee who were interviewed, but were not listed on Part A of the Investigative Report.

[REQUIRED] Provide names of household goods agents of motor carriers when applicable.

[REQUIRED] When applicable, list the complaints on file in the NCCDB by complaint ID number, type of complaint (hostage shipment, charge dispute, loss and damage, etc.), complainant's last name, and status after concluding NRCR (closed or follow-up filed in NCCDB).

[SUGGESTED] Note written statements or oral interview documents obtained and from whom.

[SUGGESTED] Provide enough detail to fully understand the nature of the business and how it is structured. Include a description of the business profit model: how do they make money, what is acceptable profit, how do they make up for losses, etc.

[SUGGESTED] Describe the company location and the PPOB, maintenance facilities, etc. Provide the extent and nature of any divisions or business locations of the subject.

[SUGGESTED] Describe anything that is atypical about the subject's operation.

[SUGGESTED] Include general overview of carrier's business operation and identify the personnel responsible for accessing the rates and charges for shipments.

PRE-INVESTIGATION:

[REQUIRED] Provide a listing of the specific supporting documents that were requested and when, including the carrier's tariff. Include whether or not the carrier was given 48 hours to produce records not located at the principal place of business.

[REQUIRED] List documents that were not provided as requested and actions taken to obtain them.

[REQUIRED] If applicable, note why the carrier's company profile was NOT obtained..

[SUGGESTED] Document any issues that posed barriers to the pre-investigation process, such as locating or reaching the carrier, availability and accuracy of information, etc. If it is extremely difficult to locate motor carrier, explain how motor carrier was contacted.

[SUGGESTED] Provide date(s) on which investigation was conducted and reasons for delays, extensions, etc.

[SUGGESTED] Note any specific details in conversations or observations that influenced the investigation process.

INVESTIGATION:

[REQUIRED] Describe what specific supporting documents were produced, when and by whom. Include the name and title of the person providing documents.

[REQUIRED] Describe where the supporting documents are located and how are they maintained (by driver, by trip, in trip envelopes filed by date, etc.)

[REQUIRED] Explain why sampling was expanded beyond minimum amount or could not be reached in accordance with the eFOTM.

[SUGGESTED] Note statements made by officials relative to correcting the violations discovered during the investigation.

[SUGGESTED] Note any other information that explains and/or complements the cited violations in Part B, and would increase the accuracy of the evaluation process, and would aid the follow-up investigator.

FOLLOW-UP ACTION:

[REQUIRED] Note the reason for NOT taking enforcement action for acute violations.

[SUGGESTED] Note the reason for NOT initiating enforcement action in response to any discovered pattern of critical violations.

DOCUMENTS PROVIDED TO CARRIER:

[REQUIRED] List materials provided TO the carrier and any materials the carrier had on hand.

4.7.3 Illustration HHG-3: Sample Complainant Statement

STATEMENT OF [Complainant Name]

I, [Complainant Name], voluntarily make the following written voluntary statement, under penalty of perjury to [Safety Investigator Name], who has identified himself to me as a special agent for the Federal Motor Carriers Safety Administration, U.S. Department of Transportation. No threats or promises of any kind have been made to me, nor have I been coerced in any way.

Question: During your interstate move with (HHG Motor Carrier), were you given the booklets "Your Rights & Responsibilities when You Move," "Ready to Move," and a summary of the carrier's Complaint & Inquiry handling program?

Answer:

Question: What was the amount of your original estimate?

Answer: $

Question: Was your estimate Binding or Non-binding?

Answer:

Question: On moving day, did the carrier prepare a new estimate with increased charges before your shipment was packed and loaded onto their truck(s)?

Answer:

Question: Did the mover give you the opportunity to view the weighing of your shipment?

Answer:

Question: Did the mover provide copies of the weight tickets to support the additional charges?

Answer:

Question: Did the carrier give you the opportunity to pay the estimate plus 10 percent of your charges in order to receive your goods?

Answer:

Question: Have you received delivery of your shipment yet?

Answer:

Question: When did the carrier advise you of the higher charges pertaining to your move?

Answer:

Question: Did (HHG Motor Carrier) sell you insurance and if so, did you receive a policy or certificate?

Answer:

Question: How much is the carrier requiring you to pay in order to receive your goods?

Answer:

Additional comments:
I have read the foregoing statement consisting of (state number of pages, 2 of 2, 3 of 3, etc.) It is true, accurate, and complete to the best of my knowledge. I reviewed any changes and they bear my initials. I make this statement under the penalty of perjury.

Signature Date

I certify that I prepared and took the above statement and that it is a complete and accurate summary of my interview with the witness.
Witnessed by (Safety Investigator) **US (Your number)** Date:

4.7.4 Illustration HHG-4: Statement for Commercial Non-ratable Investigations

STATEMENT

I , voluntarily give the following statement to , who has identified to me as a Special Agent for the United States Department of Transportation, Federal Motor Carrier Safety Administration. No threats or promises have been made to me in exchange for this statement.

I understand this statement may be shared with and used as evidence by any Federal, State, or local authority working with the Federal Motor Carrier Safety Administration in connection with the enforcement of Federal laws and regulations.

(Insert the text forming the body of the statement.)

I have read the foregoing statement consisting of page(s). It is true accurate and complete to the best of my knowledge. I reviewed any changes and they bear my initials.

I sign this statement under penalty of perjury in the presence of _____

Witness/Complainant signature Date

I certify that prepared the above statement and that is an accurate summary of this interview of the witness/interviewee.

Special Agent's signature Date

_____ _____

Inspection manual

For

eFOTM Redevelopment

Federal Motor Carrier Safety Administration (FMCSA)
U.S. Department of Transportation

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5.0 Inspection Manual

5.1 Stage 1-Roadside Inspection Guidelines

5.1.1 Inspection Manual General

5.1.1.1 Definition of a Roadside Inspections

Definition of a Roadside Inspection

A roadside inspection is an examination of a motor carrier's CMV(s) and/or its driver(s). It is performed at a fixed or roadside facility and consists of an examination of a driver's hours of service (HOS), commercial driver's license requirements, operating authority, financial responsibility, vehicle maintenance, hazardous materials (HM), and other transportation records. A roadside inspection is intended to assess the compliance of a company's motor vehicles and/or its drivers with FMCSA safety, economic, and HM regulations. The inspection should be conducted in such a manner that assures violations are not missed, overlooked, or unrecorded.

Objectives of a Roadside Inspection

There are several objectives for conducting a successful driver and vehicle examination. They include, but are not limited to, the following:

- Removing potentially unsafe drivers and imminently hazardous vehicles from our Nation's highways.
- Ensuring compliance with the provisions of the FMCSR, Federal Motor Vehicle Safety Standards (FMVSS), and HMR, by requiring repairs of vehicle defects and appropriate remedial action for vehicle and/or driver violations.
- Documenting violations that can be used in subsequent enforcement actions.
- Obtaining information regarding carriers, drivers, vehicles, and cargo relative to safety and compliance with the FMCSR, FMVSS, and HMR, and overall program direction and evaluation.

Personnel Authorized to Perform Roadside Inspections

- Every special agent of FMCSA (as defined in Appendix B to this subchapter) is authorized to enter upon and perform inspections of motor carrier's vehicles in operation, including Certified Safety Investigators (SIs), Safety Auditors, and Roadside inspectors

A Roadside Inspection Can Be Initiated Against the Following

Roadside inspections can be initiated on any CMV (e.g., passenger carriers, HM carriers, carriers of property) operating in interstate, international, or intrastate commerce. Generally, motor carriers with a high Inspection Selection System (ISS) value are selected first.

Inspectors have the discretion whether to conduct an inspection on a motor vehicle that has a current CVSA decal. Reasons for re-inspection include, but are not limited to, discovery of OOS violations, visible or audible mechanical defects, transportation of HM, load securement violations, special operations, etc.

When conducting pre-authorization safety audits at a "long haul" carrier's principal place of business (PPOB), outside of the United States, vehicle inspections must be conducted on all vehicles without current CVSA decals.

You Can Initiate a Roadside Inspection of Bus Operations by For-Hire, Private, or School Bus Carriers

For-hire, private, and school bus carriers are subject to the FMCSR. However, they are subject to specific regulations depending on their operations.

SAFETEA-LU Section 4114 Intrastate Operations of an Interstate Carrier Provides FMCSA with the Authority to Conduct a North American Standard Inspection of an INTERSTATE Motor Carrier whose Driver/Vehicle is Involved in INTRASTATE Commerce at the Time of Inspection

However, the agency cannot take enforcement for violations discovered, and this practice is not encouraged. Vehicle and/or driver may be placed out-of-service (OOS) if warranted.

5.1.1.2 Authority to stop and Inspect Commercial Motor Vehicles (CMVs) and their Drivers

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Section 4143 authorizes every special accredited agent of FMCSA (as defined in Appendix B to this subchapter) to enter upon and perform inspections of motor carrier's vehicles in operation, for examination and inspection of the driver(s) and the CMV, which subject to the Federal Motor Carrier Safety Regulations (FMCSR), FMCCRs, and Hazardous Materials Regulations (HMR). Suspected violations of 18 U.S.C. 39 must be referred to the Office of the Inspector General (OIG) for possible criminal enforcement action. FMCSA will not establish new inspection locations. Inspections will continue to be conducted at existing inspection sites.

Scope of Authority You Have as a Special Agent to Conduct HM Inspections

The inspection of HM Carriers is very critical to the FMCSA safety program. Special Agents have the authority under 49 CFR Part 109 to place HM vehicles OOS. FMCSA utilizes the current edition of the Commercial Vehicle Safety Alliance's North American OOS Criteria (NAS-OOSC) to apply 49 CFR Section 109.17 during roadside inspections.

The NAS-OOSC was developed jointly by state regulators and industry representatives through an open committee process established by CVSA. The FMCSA is represented during these meetings and contributes to the NAS-OOSC development. Once approved, the NAS-OOSC is updated and a new edition is published with an effective of date of April 1 of each year. Because the conditions that cause an OOS in the NAS-OOSC are considered to be imminent hazards, the most current NAS-OOSC will be used to determine those conditions where a FMCSA Special Agent may place a CMV or its driver out of service and exercise enhanced authority under § 109.17.

5.1.1.3 Locations Where Inspections Can Be Conducted

Currently, FMCSA policy allows employees to conduct inspections of drivers and CMVs at pre-determined inspection sites with our Motor Carrier Safety Assistance Program (MCSAP) partners. For the safety and security of all those involved, this policy will not change. The process of inspecting CMVs throughout the country shall be conducted with the presence of our MCSAP partners whenever possible.

5.1.1.4 Identification by Authorized Employees When Stopping a CMV for Inspection

To ensure drivers of CMVs are fully aware that the persons stopping their vehicle for inspection are authorized FMCSA employees, such employees must be wearing proper attire that clearly identifies the Agency. This should include Agency identification on hats, shirts, coveralls, and jackets. In addition, employees shall identify themselves to the driver by displaying their credentials.

5.1.1.5 A Driver of a CMV Refuses to Stop for Inspection When Directed or Leaves the Inspection Site Without Authorization

If a driver of a CMV knowingly fails to stop for an inspection when directed to do so by an authorized employee, contact a MCSAP partner who has the authority to pursue the driver/vehicle in question and detain the driver for questioning and possible inspection. FMCSA authorized employees do not have the authority to pursue and detain drivers and vehicles.

Citing a Driver Who Has Refused to Stop for Inspection or Leaves the Inspection Site Without Authorization

FMCSA does not have the authority to cite Title 18, United States Code violations because they are criminal violations.

Bringing Enforcement Against a Driver Who Has Refused to Stop for Inspection or Leaves the Inspection Site Without Authorization

Suspected violations of 18 U.S.C. 39 must be referred to the OIG for possible criminal enforcement action.

If an authorized FMCSA employee believes that a referral for criminal prosecution is warranted, he/she must first consult with his/her supervisor. The decision to refer a case to the OIG will be left to the discretion of the Division Administrator (DA). The DA must ensure his/her actions are coordinated with the appropriate Service Center (SC) and MC-CCE Field Attorney. If the DA, after consultation with the SC and MC-CCE Field Attorney, determines that criminal prosecution should be pursued against a driver, the matter must be referred to the OIG.

The OIG is the Department of Transportation's law enforcement component and it is mandatory to coordinate any criminal prosecutions with it.

5.2 Stage 2-Pre-inspection

Procedures that Should be Taken to Prepare for Roadside Inspections

Prior to conducting a roadside inspection, you should do the following:

- Inform your first line supervisor that you will be conducting roadside inspections.
- Contact your State MCSAP personnel to confirm that inspection pits are available and schedule a day and time that you will be using their facilities.
- Ensure that you have the latest versions of FMCSA software [ASPEN, ISS, and Previous Inspection Query (PIQ)] on your laptop computer. You may check to ensure that you have the latest version available by logging into http://infosys.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov). You will need to have the ability to print the completed report for both your records and for the driver.
- Be properly attired (e.g., full inform). Proper attire should include: coveralls or work pants/shirt, hard hats, safety shoes, gloves, and safety goggles.
- Be properly equipped. Tools needed to conduct your inspection are as follows: ruler, tire gauge, load seal, soapstone, pen and paper, etc. Other safety equipment, such as chock blocks and creepers, should be on hand and available.

Pre-inspection planning is different for various types of inspections. There are three types of passenger-carrying vehicle inspections. Carrier Terminal Facility, Destination or En-route - Extensive pre-inspection planning must be completed for each type of inspection process. The preplanning varies slightly depending on the type of inspection, but key elements are always performed.

1. **Terminal Inspections:** Advanced notice is necessary for terminal inspections since this type of inspection has a direct impact on the carrier's operations. While selecting vehicles at a terminal facility, consideration must be given to whether a vehicle is in service or if it is awaiting service. Since the vehicles are usually parked together, carrier management will need to point out the vehicles that are appropriate to be inspected.
2. **Point of Destination (POD) Inspections:** This type of passenger vehicle inspection is performed at an attraction or destination such as a casino, amusement park, state fair, athletic event, etc. The pre-inspection planning for a Point of Destination inspection is typically performed by an inspection team leader or supervisor. POD inspections require advance permission and coordination with the facility management for inspection site approval. Coordination for off-loading passengers prior to inspection is necessary. These inspections are the most desirable since there is no question about the vehicle's dispatch ready status. A destination inspection requires a two- or three-person inspection team.
3. **En-route Inspections:** This type of passenger vehicle inspection is performed during a trip, while the vehicle is en-route. While destination inspections are preferred, at times en route inspections are necessary. The inspection must be conducted at a safe location off the highway. Passengers may remain on board under certain types of inspections.

- For all types of passenger carrying inspections, there are four steps to pre-inspection planning.

1. Determine which level of inspection to perform

Level	Title	Explanation
1	North American Standard Driver/Vehicle Inspection	All driver documentation and complete vehicle inspection
2	Walkaround Driver/Vehicle Inspection	Same as Level 1, but do not check under the vehicle
3	Driver Only Inspection	Driver documentation only
4	Special Inspection	Any aspect of the safety inspection, usually done for data gathering
5	Vehicle Only Inspection	Complete vehicle inspection without a driver present conducted at any location
6	Enhanced Radioactive Inspection	For specific radioactive shipments that are route controlled
7	Jurisdictional Mandated Inspection	Inspection does not meet any other level. Not limited to school buses, etc. No CVSA issued

2. Determine the destination inspection site.

   Site should accommodate:
   - Safety considerations
   - Reasonable distance from passenger vehicle arrival/parking area
   - Major equipment (ramps) readily available
   - Parking area for OOS vehicles

3. Schedule adequate personnel.
   - Team Leader
     Inspects driver compartment and interior,
   - Front Inspector
     Inspects front and left side
   - Rear Inspector
     Inspects rear and right side

4. Secure authorization from private property owners/operators.

   Ensures that the destination management or carrier facility will be prepared for your visit and you'll be allowed to conduct your inspections without dispute or delay.

5.3 Stage 3-Inspection

5.3.1 Selecting a Vehicle for Inspection

Whenever possible, select vehicles for inspection using available technology (e.g., ISS, which is embedded in ASPEN, and PIQ). Presented below are two figures related to ISS. The first figure presents the foundational data for the ISS. The second figure presents an example ISS screenshot and shows the BASICs tab, which displays an overall BASIC assessment, on-road performance percentiles from the SMS, and an indicator of previous investigation violations.

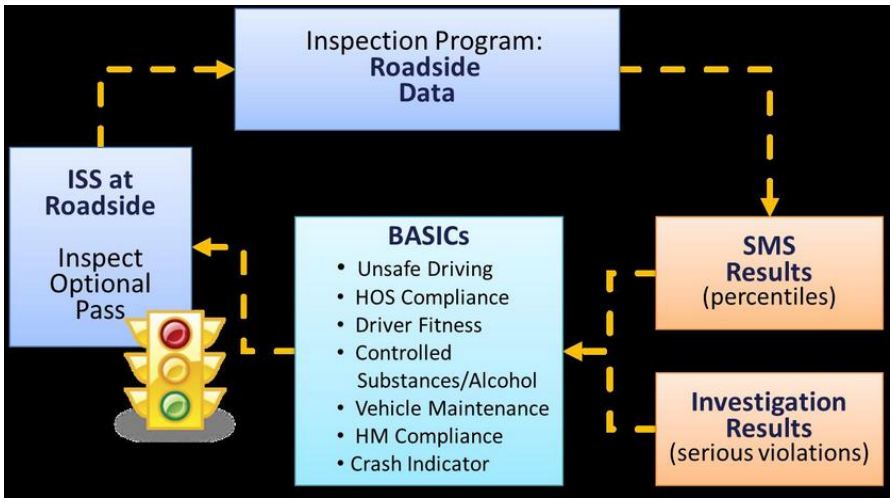


Figure: Foundational Data for ISS

Description of flowchart

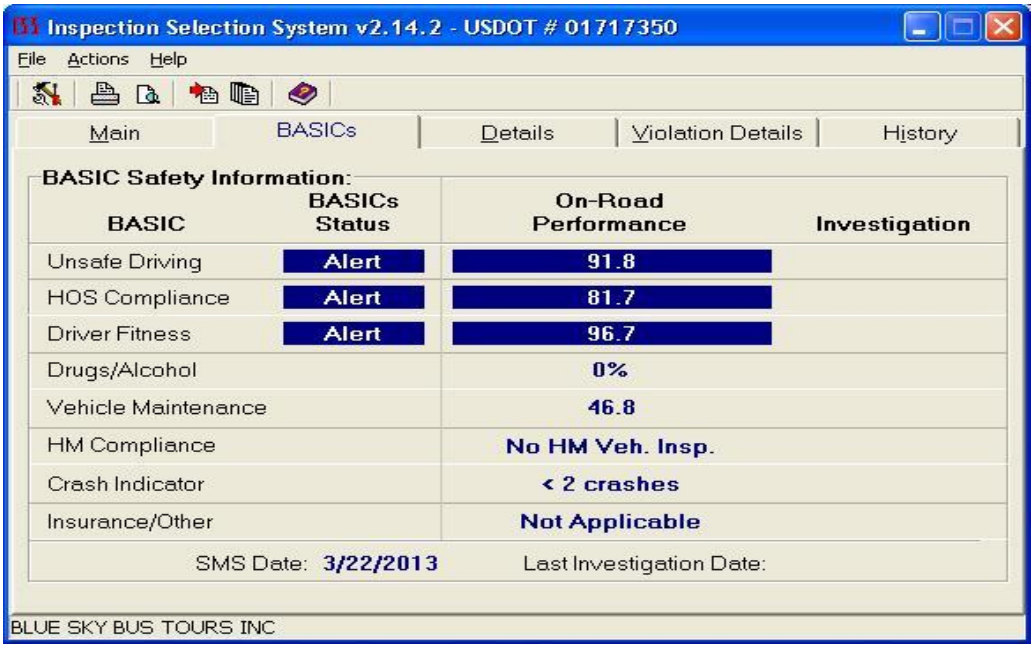


Figure: ISS Example Screenshot

General Procedures for Conducting Inspections on Intermodal Equipment (IME)

Intermodal equipment providers (IEPs) are subject to certain provisions of the regulations. There are unique situations that you will encounter when conducting an inspection on IME. In order to ensure the inspection is conducted according to policy, personnel conducting inspections should use the *Guide to Conducting Roadside Inspections on IEPs.*

5.3.1.1 Exemptions

An **exemption** provides temporary relief from one or more FMCSRs to a person subject to the regulations or to a person who intends to engage in an activity that would be subject to the regulations. Safety Inspectors should inquire with the driver to confirm if they are operating under an exemption and verify the driver's response by checking the Exemption Webpage. The Part C of the inspection report should include a note reporting claimed and verified exemptions.

5.3.2 Small Passenger-Carrying CMVs Used in Interstate Commerce

For CMVs designed or used to transport 9 to 15 passengers (including the driver) in interstate commerce, Inspectors must initially determine whether such passenger – carrying CMVs are being operated for direct compensation or not in order to apply the appropriate regulations for the inspection. Direct compensation means payment made to the motor carrier by the passengers or a person acting on behalf of the passengers for the transportation services provided and not included in a total package charge or other assessment for highway transportation services. Inspectors must be familiar with the exception to general regulatory applicability in 49 CFR 390.3(f)(6). An Inspector may be well aware of how a specific motor carrier receives payment and the scope of its services. If so, the Inspector could readily determine the applicable regulations. If not, the Inspector will need to interview the driver and/or the passengers and examine available documents to determine the type of compensation and the applicable regulations.

Applicability and Exceptions for Passenger-Carrying CMVs Used in Interstate Commerce

Gather the preliminary information (e.g., company name, USDOT number) and determine if the type of operation for which the passenger-carrying CMV is being used meets any of the exceptions found in §390.3(f). Determine whether the vehicle and its driver are subject to the regulations and, if so, to what extent. The following are passenger carrier operation types that vary in the degree of applicability:

- School Bus Operation
- For-Hire Motor Carrier of Passengers
- Private Motor Carrier of Passengers
    - Business
    - Nonbusiness
- Direct or Indirect Compensation Regarding 9-15 Passenger Vehicles

For-Hire Motor Carrier of Passengers: There is one primary factor with determining whether a motor carrier of passengers is for-hire. Such factor is whether the motor carrier is compensated, either directly or indirectly, for the interstate transportation service provided.

If the motor carrier of passengers receives no direct or indirect compensation for the provided interstate transportation, the carrier is classified as either a business or nonbusiness private motor carrier of passengers.

Business Private Motor Carrier of Passengers (PMCP): Business PMCP provide private, interstate transportation of passengers in the furtherance of a commercial purpose, but is not available to the public at large. An example is a company that operates a commercial motor vehicle to transport its employees. Business PMCP are subject to the entire body of FMCSR except some of Part 391 in rare cases and Part 387.

Nonbusiness Private Motor Carrier of Passengers (PMCP): Nonbusiness PMCP provide private, interstate transportation of passengers that is not in the furtherance of a commercial purpose, and is not available to the public at large. An example could be a church or scout group. However, a church or charitable organization that offers charter bus operations for compensation, is operating as a for-hire passenger carrier.

- A Nonbusiness PMCP must have qualified drivers, comply with the hours of service requirements, maintain its vehicles, but they are not required to maintain driver qualification files, records of duty status, or most vehicular maintenance records.
- A Nonbusiness PMCP driver is subject to the physical qualification standards in Part 391, but is not required to be medically examined or certified.
- Nonbusiness PMCP drivers must be tested for controlled substances and alcohol in accordance with Part 382.
- Although Nonbusiness PMCP drivers are not subject to some recordkeeping requirements, they must have a proper driver's license.

State conducted enroute inspections of passenger-carrying commercial motor vehicles have certain restrictions. For a complete clarification of those restrictions, see State Conducted Inspections of Passenger-Carrying Commercial Motor Vehicles.

If your roadside inspection involves a FTA grantee providing interstate, for-hire, transit service operations funded by a grant under 49 U.S.C. 5307, 5310, or 5311, or a carrier operating under a contract to provide transportation service funded in whole or in part by such grant funds, see the section entitled Procedures for Conducting a Roadside Inspection, Investigation or SA of a For-Hire Passenger Carrier that is a FTA Grantee.

5.3.3 ELECTRONIC LOGGING DEVICE (ELD) Procedures

When determining compliance with the ELD rule during inspections, inspectors must:

1. Verify that an ELD is required
2. Verify that the he device in use meets the requirements of the ELD rule; and
3. Review data from the device for compliance with 49 CFR Part 395

The eRODS software will assists with verifying that a device is compliant and identify potential hours of service violations. All hours of service violations identified by eRODS must be manually verified by interviewing the driver and/or comparing any supporting documents in the driver's possession to the hours of service violation identified by eRODS.

See the policy titled Phase II of the Implementation of Electronic Logging Devices Rule MC-ECE-2018-0001

5.3.4 ASPEN Procedures

Once You Have Inspected the Vehicle and Began Interviewing the Driver, Use the ASPEN Software to Document the Information

You should begin completing ASPEN, the software used by FMCSA to capture information obtained during a roadside inspection. The inspection report is divided into seven parts: Start, Location, Carrier, Driver, Vehicle, Violations, and Finish.

1. The Start Page provides basic information pertaining to the inspection report number, the inspection start date and time (including time zone), and the inspection level (1, 2, 3, 4, or 5). You would also indicate here if HM would be a part of this inspection, and the type of cargo tank inspected (if any).
2. The Location Page provides the current inspection location (e.g., location description, highway, milepost, state, county, county code and location code for fixed facility, roadside location, and your favorite inspection locations).
3. The Carrier Page provides accurate information on name of the motor carrier performing the transportation. You must ensure proper identification of the motor carrier.
    - The Carrier Page provides accurate information on name of the motor carrier performing the transportation. You must ensure proper identification of the motor carrier.
    - If ISS or Query Central (QC) was used to help identify the motor carrier, the carrier's information will automatically be filled in. If ISS was not used, but it is installed on the computer, the inspector may enter the USDOT # or the MX/MC # and the fields will automatically populate. This will assist in the accurate identification of carriers.
    - Also required is Cargo Information (e.g., Origin, Destination, Bill of Lading number, Cargo description and shipper Name). You will also be able to indicate specific Hazardous Materials Information (e.g., Placardable amount, Class of HM, Reportable Quantity, or HM Waste).
4. The Driver Page provides specific information about the driver (e.g., name, date of birth, license number and state of license, and if necessary, co-driver information). You would enter driver/co-driver violations here.

5. The Vehicle Page provides the identification of the power unit and trailer [e.g., Vehicle Type, Make, Year, License Plate number, State of License, Company Number, Vehicle Identification Number, and Gross Vehicle Weight Rating (GVWR)]. You will enter the number of axles here, and the type of brake chamber and their pushrod measurement (if applicable).
6. The Violation Page describes all the violations discovered during an inspection. It also contains the "driver out-of-service until" text that provides notification to the driver when he/she may drive again. The violations will determine if:
    - The driver will be placed OOS;
    - The vehicle will be placed OOS; and
    - Enforcement action is needed.
7. The Finish Page provides specific information about the conclusion of the inspection (e.g., Inspection end date/time, whether CVSA decals were applied, who prepared the report and the inspector's notes). The inspector's notes provide information about the inspection including comments from the inspector. The comments may include a driver's statement regarding their employer's knowledge of violations, warnings given to drivers regarding violations, inoperable system checks (CDLIS), and contacts made to a company regarding OOS violations.

Application of CVSA Decals and Recording Decal Information

1. To qualify for a CVSA decal, a commercial vehicle must not have any critical vehicle inspection item violations.
2. CVSA decals, when affixed, shall remain valid for a period not to exceed three consecutive months.

Application of CVSA Decals for Mexico-Domiciled Carriers

See Mexico Manual's Special Roadside Inspection Requirements for Mexico-Domiciled Long-Haul Carriers for CVSA decal display and enforcement requirements.

Roadside CVSA Decal Issuance Scenarios

1. If an inspector breaks any seal during a roadside inspection, a replacement seal should be furnished.
2. If the vehicle did not previously have a seal or if the prior seal was broken, a replacement seal should not be applied to the vehicle.
3. When a replacement seal is affixed to a motor vehicle, a notation must be made on the driver-vehicle examination report and the signature of a witness obtained.
4. Cargo Seal removal and replacement information are required to be recorded in the ASPEN inspection report.
5. Under no circumstance should a U.S. Postal Service or U.S. Department of Defense (DOD) seal or lock be broken for the purpose of inspecting cargo on the vehicle.

Roadside CVSA Decal Issuance Scenarios

SCENARIO	ACTION
Current decal is found.	Record current decal information.
An expired decal is found.	Record expired decal number, conduct inspection, issue a decal if applicable, and record new information.
No decal is found.	Record no decal, inspect, issue new decal if applicable and record new information.

Usage of Cargo Seals During a Roadside Inspection

SCENARIO	ACTION
A cargo seal is broken or removed.	Inspect and replace cargo seal and record the cargo seal information.

No seal is found or seal is broken prior to start of inspection.	Inspect and do not secure with a new seal.

5.3.5 Parts 100-185 HMR Inspection Procedures

For guidance on the hazardous materials portion of your inspection, see the Hazardous Materials Manual.

5.3.6 Interviewing the Driver

Opening Interview with the Driver

- Identify yourself and your employer, display your credentials, and initiate an interview with the driver(s). Explain why the driver/motor carrier was selected for the inspection and the purpose of the inspection. In addition, inform the driver(s) that various company records will be reviewed. A motor carrier and its drivers must have all the required records maintained on the vehicle available for inspection upon request by the Inspector.
- The interview should include, but not be limited to, inquiries into the proper legal name of the motor carrier, the shipment's origin and destination, and type of cargo. The information that is gathered during the roadside inspection should then be transferred to ASPEN. You may use the Inspection Collection Form to document the information you received during the interview and inspection.
- During the interview, it is important to collect any pertinent documentation to identify the proper motor carrier and to verify its compliance with the Federal regulations. The vehicle registration is a good source of information for identifying the proper motor carrier.

Instruct the driver(s) to turn off the vehicle and place the keys on the floorboard. Even though you informed the driver to turn off the ignition, verify the driver has complied with your instructions. This is a safety precaution. Inform the driver(s) to stay in the cab and not to start the engine or apply the brakes until told to do so. This will allow you to conduct a safe roadside inspection.

Determining the Driver's English Language Proficiency

If your initial contact with the driver indicates that they may not understand your instructions, you should conduct an ELP assessment in order to evaluate their compliance with 49 CFR § 391.11(b)(2). This assessment should consist of a (1) driver interview; and (2) highway traffic sign recognition assessment.

Step 1. *Driver Interview – Determining a Driver's Ability to Respond Sufficiently to Official Inquiries*

Evaluate the driver's ability to respond sufficiently to official inquiries and directions in English, as required by 49 CFR § 391.11(b)(2). Complete this evaluation by interviewing the driver using the guidelines included in "Strategies for Communication with Non-Native Speakers of English and Examples of Driver Interview Questions." You should conduct this portion of the driver interview in English, and, at a minimum, you should include inquiries relating to:

1. The origin and destination of the trip.
2. The amount of time spent on duty, including driving time and the record of duty status (or logbook).
3. The information contained in the driver's license.

4. Information contained in shipping papers (including hazardous materials shipping papers, if applicable) for the load being transported.
5. Vehicle equipment subject to inspection.

Because the driver interview is a means of establishing the driver's ability to respond to official inquiries by speaking English sufficiently, you should inform the driver that they should respond in English. Tools to facilitate communication such as interpreters, I-Speak cards, cue cards, smart phone applications, and On-Call Telephone Interpretation Service should not be used during the driver interview, as those tools may mask a driver's inability to communicate in English.

If you determine the driver is unable to respond to official inquiries in English sufficiently, cite the driver for a violation of 49 CFR § 391.11(b)(2).

There is no need to progress to Step 2 if you determine that the driver is unable to respond sufficiently to official inquiries as outlined in Step 1 of the ELP Assessment.

Step 2. Highway Traffic Sign Recognition Assessment – Determining a Driver's Ability to Understand Sufficiently United States Highway Traffic Signs Including Changeable Signs in the English Language

You should evaluate the driver's ability to understand sufficiently United States highway traffic signs by conducting a Highway Traffic Sign Assessment to include highway traffic signs that conform to the Federal Highway Administration's *Manual on Uniform Traffic Control Devices for Streets and Highways* (MUTCD) and electronic-display changeable (a.k.a. "dynamic") message signs the driver may encounter while operating a commercial motor vehicle:

1. Explain to the driver that one of the qualifications to drive a CMV that the inspector is evaluating is that the driver is able to understand the meaning of U.S. highway signs.
2. Select four signs from "Highway Traffic Signs Examples."
3. Ask the driver to explain the meaning of the four selected highway signs.
4. Explain to the driver that to be considered qualified in understanding highway traffic signs in English pursuant to the regulation, you are evaluating whether the driver is able to explain satisfactorily the meaning of at least three of the four selected signs.[3]

If you determine the driver is unable to read the English language sufficiently to understand the meaning of at least three of the four highway traffic signs, cite the driver for a violation of 49 CFR § 391.11(b)(2).

[3] The driver's explanation may be in any language, provided the inspector is able to understand the driver's explanation.

Documentation for a Violation of 49 CFR § 391.11(b)(2)

If you cite the driver for a violation of 49 CFR § 391.11(b)(2), you must document all evidence to support the identified violation including the driver's responses or lack thereof. You must also take follow-on action including: 1) placing the driver immediately out-of-service once a violation of 49 CFR § 391.11(b)(2) is incorporated into the North American Standard Out-of-Service Criteria; and 2) when warranted, initiating an action to disqualify the driver from operating commercial motor vehicles in interstate commerce.

When performing inspections of drivers operating commercial motor vehicles in the border commercial zones along the U.S.-Mexico border, FMCSA enforcement personnel should cite drivers for violations of 49 CFR § 391.11(b)(2), but should not take follow-on actions of placing the driver out-of-service or initiating an action to disqualify the driver.

Should the driver be placed out-of-service, you should advise the driver that it is unlawful to operate a commercial motor vehicle while out-of-service and that the driver should not operate commercial motor vehicles in interstate commerce until the condition is remedied.

If you determine that the driver is in compliance with the regulation's requirements to have the ability to respond to official inquiries and to understand highway traffic signs and signals, you may elect to conduct the remainder of the inspection using the communication methods and techniques best suited to facilitate the safe and effective completion of the inspection.

Drivers who are hearing impaired but have obtained an exemption from the hearing standard in 49 CFR § 391.41(b)(11), shall not be deemed unqualified and placed out-of-service under 49 CFR § 391.11(b)(2) if they are unable to communicate orally in English.[5]

[4] English Language Proficiency does not apply to inspections in Puerto Rico, Guam, the Northern Mariana Islands, or American Samoa.

[5] See *Driver Qualifications; Regulatory Guidance Concerning the Applicability of Language Requirement to Drivers Who Do Not Meet the Hearing Standard*, 79 Fed. Reg. 190 (Oct. 1, 2014).

Documents the Driver Must Provide

- Current CDL
- Current medical certificate, if it is not already tied to the CDL via CDLIS (see guidance in Update to the Medical Certificate Updated medical Certification policy and procedures (MC-SEE-2021-0003))
    - Verify any existing Skills Performance Evaluation (SPE) certificate, medical exemption, and/or medical 90-day waiver. Drivers must continue to carry any SPE certificate, medical exemption, and/or medical 90-day waiver letter on their persons while on duty, pursuant to 49 CFR 391.41(a)(2)(iii).
- RODS (if applicable)
- Receipts (toll, fuel, hotel, weight, etc.)
- Certificate of registration for the power unit and trailer, if applicable
- Lease Agreement, if applicable

- Proof of financial responsibility, if applicable
- Bills of lading, shipping documents, etc.

Note: If the motor carrier is transporting HM on the vehicle, request:

- Shipping papers, bill of lading, and/or a cargo manifest
- Current HM registration or registration number from PHMSA
- Current HM Safety Permit or permit number, if applicable
- Copy of Special Permit (for DOT-E or DOT-SP packaging), if applicable

A Canadian Class 5 license issued by any Canadian province, an Ontario Class G license, an Ontario Class D license (prior to age 80), or a New Brunswick Class 3 license (prior to age 65) allow a Canadian driver to operate a CMV. A Canadian driver who possesses any one of these license classes is not required to submit evidence in Canada of a medical examination as a condition of the licensing process. To prove compliance with the U.S. medical requirements when operating in the U.S., a Canadian driver must carry proof of medical certification.

If a Canadian driver is operating a CMV in the United States and presents a Canadian Class 5 license, Ontario Class G, Ontario Class D (prior to age 80), or New Brunswick Class 3 license (prior to age 65), the driver should also possess one of the following to confirm that they are medically qualified to operate CMVs in the United States:

1. A Canadian medical confirmation letter issued by their Province or Territory (see sample); **OR**
2. A medical examiner's certificate issued by a medical examiner on the U.S. National Registry of Certified Medical Examiners; **OR**
3. An endorsement code on their license to indicate periodic medical examination.[1]

[NOTE: An example of the Canadian medical confirmation letter (#1) may be found in Policy MC-ESB-2016-0004 in the Documents area of the eFOTM. An enforcement advisory may also be found under General Documents in the Documents Area of the eFOTM.]

If the driver cannot provide evidence of medical qualification through one of the above options, Federal and State enforcement personnel should document the appropriate 391.41(a) violation on a roadside inspection report based on whether the motor carrier is transporting property or passengers.

Federal and State enforcement personnel should follow the guidance in the table below for each Provincial classified Canadian license to ensure consistent application with the Commercial Vehicle Safety Alliance (CVSA) North American Standard Out-of-Service Criteria (OOS):

Provincial Classified Licenses	Record Violation	Application of the CVSA OOS criteria for previous history of medical certificate violations
All Class 5, Ontario G	Yes, effective immediately	Yes, effective immediately
Ontario D, New Brunswick 3	Yes, effective immediately	Effective 04/01/2017

* Discretion on enforcement, beyond documenting the violation on the inspection report, remains with the applicable State or Local Agency. Prior to the effective dates noted above, enforcement officers are encouraged not to issue a traffic citation in conjunction with the recorded violation on the first offense and to not place the driver OOS. Enforcement officials are encouraged to advise these drivers of the

[1] Drivers holding a Class 5 license from British Columbia with the endorsement codes 18, 19 or 20 are not required to carry additional evidence of medical qualification, as medical certification is required to obtain these endorsements.

requirements to possess proof of medical certification, and to contact their licensing jurisdiction upon return to Canada.

Opening Interview for Drivers Operating Intermodal Equipment

During the roadside inspection, you will need to ask two additional questions when interviewing a driver operating a chassis. These two questions will help to establish whether the IEP is providing the driver sufficient space to conduct a pre-trip inspection, and whether the driver is conducting pre-trip inspections of the chassis being offered to him or her.

How the driver answers these questions will determine whether the motor carrier or the IEP will be responsible for the violations discovered during the inspection; and whether additional outreach efforts need to be pursued.

The additional questions that need to be asked during the opening interview of the driver are:

1. Did the IEP provide sufficient space for you to conduct a pre-trip inspection on the chassis you are currently operating?
2. Did you conduct a pre-trip inspection on the chassis you are currently operating?

If a driver answers "no" to question #1, FMCSA will analyze that information to determine whether additional outreach or enforcement efforts are needed for the industry. Inspectors are not required to do anything with the information gathered.

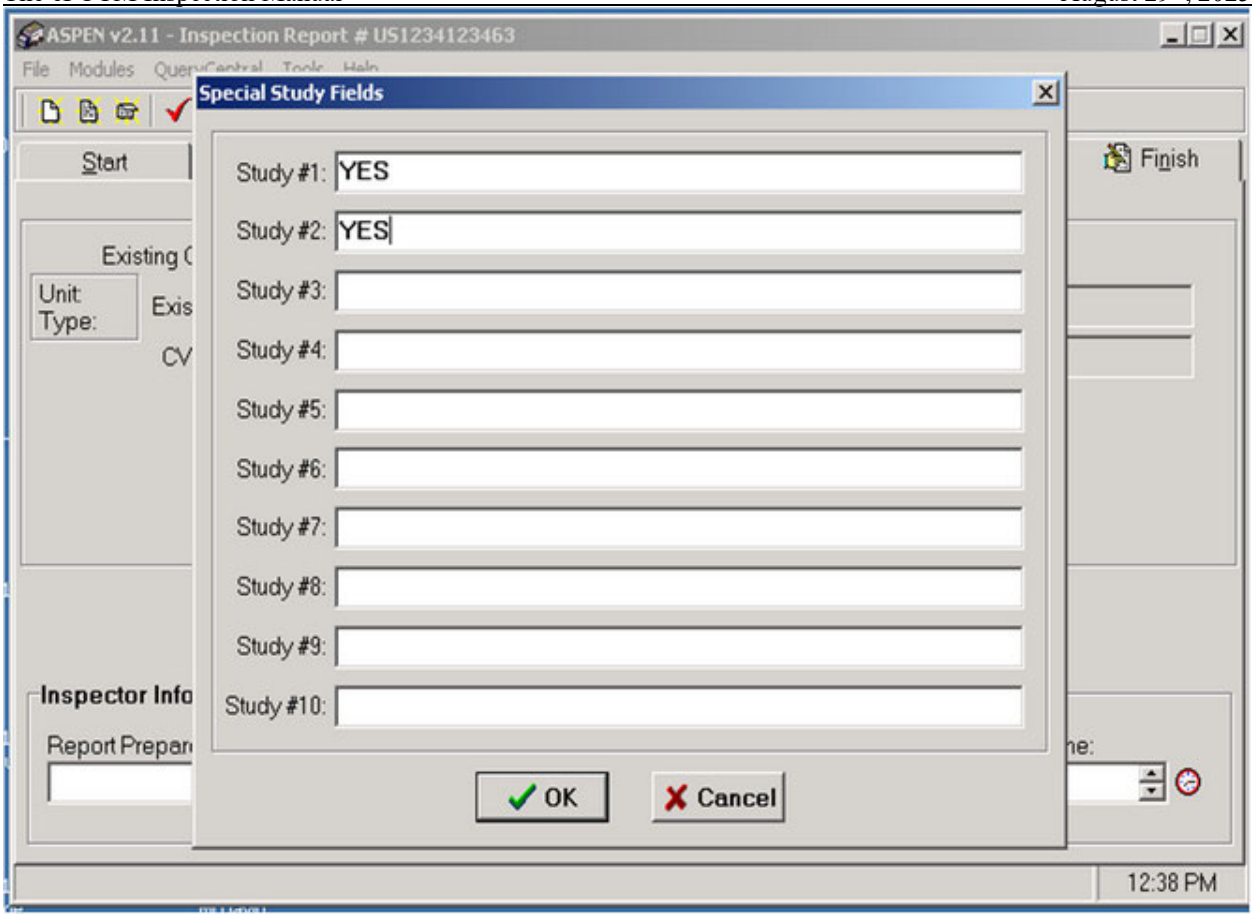
How the driver answered question #2 above, will determine which entity the violations will be attributed to during the inspection.

If during your interview, the driver answered "yes" to question #2, any violations found on the chassis, which could be visually inspected during the pre-trip inspection, as set forth in 49 CFR Section 392.7(b), will be attributed to the motor carrier. It is the driver's responsibility to ensure that the intermodal equipment he or she selects and then operates on our Nation's highways is in good working order. Violations found during the inspection which could not be visually inspected, such as brakes out of adjustment or tire tread less than 2/32" in an area of the tire not visible by the driver, will be attributed to the IEP.

On the other hand, if during your interview the driver answered "no" to question #2, any violation found on the chassis will be attributed to the IEP. Motor carriers; however, must be cited for a violation of 49 CFR Section 392.7(b) – Requiring or permitting a driver to drive without assuring that the safety parts and accessories on the intermodal equipment he or she is operating are in good working order (pre-trip inspection).

The inspector will need to capture the answers to these questions in the Special Study Fields section. To do so, you should:

1. Open your ASPEN software and begin your inspection.
2. Click on the "Finish" Tab.
3. Click on the "Special Study Fields" box.
4. When the "Special Study Fields" pop-up window appears, enter the answer of either "yes" or "no" in the "Special Study Field #1" section for question number one and the "Special Study Field #2" section for question number two. See example below.



5.3.7 Enforcement of Federal OOS During Roadside Inspections

Roadside Data Availability

Enforcement personnel in the field, whether at fixed facilities or on patrol, have several means available to obtain operating authority and OOS Order information during a CMV inspection.

This information may be accessed in several ways depending upon the communications capability at the roadside of each jurisdiction. In order to obtain information regarding Federal OOS Order, Inspectors are encouraged to utilize the following tools, in the order listed below, based upon the timeline of the OOS Order data provided by each:

- QC (real-time for OOS Order status); - MOST TIMELY DATA
- The international Justice and Public Safety Network, formerly known as the National Law Enforcement Telecommunication System, carrier Query (update Mondays through Thursday and Saturdays);
- Safer Website (update Mondays through Thursday and Saturdays); and
- Inspection Selection System (updated Monthly) – LEAST TIMELY DATA

The use of QC is the preferred method for obtaining after hours operating authority and OOS Order information. If an OOS Order is discovered but cannot be verified (i.e., SC is closed) at the time of inspection enforcement personnel should only decline to place a carrier OSS if absolutely necessary. If the carrier is not placed OOS, the enforcement official should make copies of pertinent paperwork (e.g., bills of lading, receipts, etc.), if possible, to demonstrate that the carrier was operating in interstate commerce at the time of the inspection. Evidence of violation of the OOS Order may include the FMCSA

document prohibiting interstate operations and a copy or facsimile of the inspection or crash report indicating interstate activity. Enforcement personnel should forward the information as soon as possible to the appropriate FMCSA Division Office for follow-up to determine the carrier's actual operating status at the time of the inspection. If the FMCSA Division Office determines that the carrier was operating while a valid OOS Order was in effect, then an enforcement case may be initiated by the Division Office.

OOS Order Status Verification

Verification of a United States Federal OOS Order against a motor carrier is a two-step process. First, the OOS Order must be discovered at the roadside through a query on the operating motor carrier's record. Second, once an OOS Order is identified, enforcement personnel must verify the status of the OOS Order using QC. **Exception: If QC cannot be used at the roadside, any OOS Order identified must be verified by contracting the appropriate FMCSA SC before placing the vehicle OOS.**

Description	Section
Failure to Pay Fine – Private Carrier	386.83(a)(1)
Failure to Pay Fine – For-Hire Carrier	386.83(a)(1)
UNSAT/UNFIT – Placarded HM	385.13(a)(1)
UNSAT/UNFIT – Passenger Carriers	385.13(a)(1)
UNSAT/UNFIT – Property Carriers	385.13(a)(1)
New Entrant - Failure to Respond to Expedited Action Notification	385.308(d)
New Entrant - Failure of Safety Audit	385.325(c)
New Entrant - Refusal of Audit/No Contact	385.337(b)
Imminent Hazard - Motor Carrier	386.72(b)(4)
Imminent Hazard - Intermodal Equipment Provider	386.72(b)(4)
MX Carrier - Inadequate Corrective Action	385.105(b)
MX Carrier - UNSAT/UNFIT	385.111(a)
MX Carrier - Suspended Operating Authority for UNSAT Rating or Failed Safety Audit	385.111(c)(1)
MX Carrier - Revoked Operating Authority	385.111(c)(2)

If a valid OOS Order is discovered and verified, enforcement personnel must place only the power unit OOS, and should indicate the appropriate FMCSA section that pertains to the OOS Order on the inspection report (and citation if issued). Enforcement personnel should follow their individual department policies and procedures per the laws of the State when placing a power unit OOS. The inspection report should include instructions to the carrier to contact FMCSA at the number in the OOS Order document they received previously.

Enforcing OOS and Operating Authority Violations Found During Roadside Inspections

If it is determined that a motor carrier is operating despite being OOS or without/beyond the scope of their authority, FMCSA personnel and MCSAP partners must:

a. Ensure that there is sufficient evidence available to document the violation:
    - The evidence must demonstrate that:
        - The motor carrier performed transportation in a "for hire" capacity;
        - The motor carrier performed non-exempt transportation (i.e., the commodity was not among those listed in 49 USC § 13506(a)(6) or 49 CFR § 372.115, and the transportation was not otherwise exempt under 49 USC Chapter 135;
        - The transportation was in interstate commerce.
    - Sources of such evidence can include:
        - The Driver Vehicle Examination Report; and/or

- Police Accident Report with Attachments (Supplemental Commercial Motor Vehicle Accident Report, Hazardous Materials Incident and Spill Report, and/or Post-Crash Investigation Report); and
- Motor carrier statements.

b. Cite the carrier for the appropriate OOS Order and/or operating authority violation on the inspection report, in addition to any other violations discovered.
c. Place the vehicle OOS for the violation(s).
d. Advise the driver to contact the employing motor carrier and alert the carrier of the OOS condition.
e. Inform the driver that the violation is a motor carrier violation and will not affect his or her license.
f. Initiate enforcement action against the motor carrier for the appropriate OOS or operating authority violation(s), in addition to any other violation where enforcement is warranted.
g. Coordinate with State to determine if it will be initiating an enforcement action that will be processed through the Federal system.

Click here for a flowchart on the roadside inspection procedures.
Click here for detailed procedures on how to verify operating authority of motor carriers.
Click here for a list of Frequently Asked Questions related to operating authority

5.3.8 Part 365 - Investigative Procedures by Part

5.38.1 Part 365 – Rules Governing Applications for Operating Authority (Mexico-Domiciled Carriers, Long-Haul Operations)

5.3.8.1.1 Part 365 – Investigative Procedures

In your review of compliance with Part 365, you should use the following guidelines to assist in your investigation of motor carriers of property and passengers.

Verifying Operating Authority

Procedure for Identifying Carriers Operating with Invalid Authority

Part 365 - Verifying Operating Authority

Verifying a Carrier's Operating Authority and Insurance Status

All Federal and MCSAP personnel shall verify the operating authority and insurance status of motor carriers subject to the operating authority requirements in 49 CFR 392.9a(a) during all roadside inspections, safety audits, and investigations.

You should ask the carrier for its operating authority paperwork. The paperwork will indicate where the carrier is authorized to operate and any other limitations on the authority to operate in the United States. Ensure the motor carrier has current operating authority and is operating within the scope of the authority.

Part 365 - Procedure for Identifying Carriers Operating with Invalid Authority

Described below is a set of procedures that should be used to identify vehicles operating with invalid authority, and to enforce Section 205 of the Motor Carrier Safety Improvement Act (MCSIA) requirements, as a regular part of the vehicle inspection process.

Step 1	**Determine Whether the Vehicle is Subject to Federal Operating Authority and Insurance Requirements**
This rule applies to all U.S. and Canadian for-hire, non-exempt carriers that are currently required to apply for Federal operating authority under 49 U.S.C. 13902. It also applies to private and for-hire Mexico-domiciled motor carriers operating within the U.S.	
Step 2	**Identify Vehicles Operated For-Hire by U.S. and Canadian Motor Carriers**

Since the rule applies only to for-hire, non-exempt U.S. and Canadian motor carriers--not private carriers--Inspectors need to be able to determine if the vehicle is private or for-hire by checking for shipping papers or a bill of lading.
Step 3 Check Operating Authority and Insurance Status
Once it has been determined that the vehicle is subject to Federal operating authority and insurance requirements under 49 U.S.C 13902, the Inspector should electronically verify the operating authority and insurance status of the company operating the vehicle using FMCSA's Licensing and Insurance (L&I) Registration Database. FMCSA provides authorized for-hire motor carrier, freight forwarder and property broker licensing and insurance real-time data through its L&I database. Information within the database can be accessed by telephone or through the Internet at: http://li-public.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov).
Checking Operating Authority and Insurance from Fixed Inspection Facilities
A carrier's operating authority and insurance status may be easily checked at a fixed inspection facility if the facility has Internet access. Officers at the facility may check L&I's website either directly or through FMCSA's QC capability. QC offers a "one-stop shopping" approach to quickly access and retrieve a variety of safety data from diverse sources throughout FMCSA and USDOT on one menu screen. QC has two distinct advantages over directly accessing the L&I database through the Internet. First, it allows the officer to quickly retrieve multiple pieces of data using the same screen format. Second, QC provides easy to understand and user-friendly information about the status of a carrier's operating authority.
Checking Operating Authority and Insurance from Mobile Units at the Roadside
Checking FMCSA's L&I database for a carrier's operating authority from a patrol car is more challenging since some mobile units do not have Internet access. In this case, officers who do not have access to the Internet would be required to rely on telephone and/or radio to access the L&I data via a State dispatcher or toll-free phone line.

5.3.8.1.2 Part 365 - ASPEN Procedures

Once you have completed your investigation of compliance with Part 365, you should use these guidelines to assist in the completion of the Violations Tab of ASPEN.

Recording Operating Authority Violation for a Mexico-Domiciled Carrier

Accessing Operating Authority at the Roadside

Recording Operating Authority Violation for a Mexico-Domiciled Carrier

A Mexico-domiciled long-haul motor carrier granted standard operating authority must have its vehicles inspected by CVSA-certified inspectors every three months and display a current inspection decal attesting to the successful completion of such an inspection for at least three consecutive years after receiving standard operating authority from FMCSA.

Recording Violations of Part 365 OOS/Possible OOS

Citation	Type	Description
365.511	N	Failure to display a current CVSA decal - Mexico-domiciled long-haul carrier with standard authority.
392.9a(a)1	Y	Operating without the required operating authority
392.9a(a)2	Y	Operating beyond the scope of operating authority granted

Accessing Operating Authority at the Roadside

Options for Researching the Motor Carrier's Operating Authority and Insurance at the Roadside

Option 1: Access the L&I public website: http://li-public.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov). ID and password required	Access the L&I public website or contact someone by phone or radio that has access to the Internet.
Option 2: Access the QC website: http://qc.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov). ID and password required.	Access the QC website or contact someone by phone or radio that has access to the Internet.
Option 3: Dial 202-366-9805	This is the L&I automated status line. It is accessible at all times. When you dial in, you will hear a recording. Simply follow the prompts.
Option 4: Dial 1-800-832-5660	This is the FMCSA (contractor) toll-free line that is staffed between the hours of 8:00 a.m.-8:00 p.m. Monday through Friday, Eastern Standard Time. The people that staff these phones can provide the motor carrier's current operating authority and insurance status.
Option 5: Dial 1-866-637-0635 Note: A MC/MX number is needed to use this system.	This is the L&I automated response system. It is accessible at all times. When you dial in, you will hear a recording. Simply follow the prompts. The system will respond with the motor carrier's current operating authority and insurance status.

5.3.8.1.3 Part 365 - Enforcement Procedures

Once you have entered the violations discovered in ASPEN and have decided to initiate enforcement action for Part 365 violations, use the following guidelines.

Part 365 - Documentation

At a minimum, obtain the following evidence during the roadside inspection to support Federal enforcement and immediately forward it to the FMCSA Division with jurisdiction over the carrier:

1. The Mexican motor carrier's Certificate of Registration
2. A copy of the motor carrier's Form MCS-90 and other insurance document issued by an authorized insurer specifying the effective date and the expiration date of the insurance coverage (49 CFR 387.303(b)(4)(iii))
3. Any transportation document which supports interstate commerce (i.e., bill of lading, pickup or delivery instructions, a delivery receipt, etc.)
4. The Roadside Inspection Report
5. A copy of the vehicle registration
6. The carrier's detail report from the L&I website at: http://li-public.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov)--there will not be any information if the carrier is not registered--and a declaration provided by the inspecting officer describing what was discovered at the roadside (i.e., the driver could not produce a copy of the Certificate of Registration).
7. A copy of the lease agreement, if applicable

Part 365 - Enforcement Procedures

Enforcement Action for Vehicles Operating With Invalid Operating Authority or Insufficient Insurance:

- If a U.S. or Canadian motor carrier is found to be operating in interstate commerce without valid operating authority, the appropriate citations should be entered in ASPEN and the vehicle will be placed OOS. The two new codes that inspectors can cite in ASPEN and SAFETYNET are 49

CFR 392.9a(a)(1) - Operating without registration and 49 CFR 392.9a(a)(2) - Operating beyond registration scope.

OOS status for a vehicle can only take place under the following conditions:

1. Arrange For An Authorized Carrier To Deliver The Cargo

   In order to correct the OOS violation, the carrier must offload any cargo and arrange for an authorized carrier to deliver the cargo to its final destination. The vehicle may leave once it is unloaded, as long as there are no OOS safety defects needing correction. If the vehicle is empty and not under dispatch to pick up a load, then the carrier is not considered to be providing interstate transportation requiring for-hire authority. If the vehicle is empty but under dispatch to pick up a load, the same procedure will be followed and the driver will be instructed to return to the terminal.

2. Tow the Vehicle Back To The Carrier's Terminal

   If Option 1 is not feasible, then the vehicle may be permitted to leave the OOS lot if the carrier arranges to have the vehicle and its load towed back to the carrier's terminal.

In addition to citing the carrier in ASPEN and placing the vehicle OOS, the following steps shall be taken at the roadside:

1. An OOS Order for the specific vehicle will be prepared and, if possible, faxed to the FMCSA Division and the motor carrier's PPOB along with the inspection report.
2. A copy of the OOS Order and inspection report will be given to the driver.
3. The driver should be instructed to notify the motor carrier of the OOS condition and the corrective measures that are needed. Refer to flowchart: *North American Standard Inspection Procedures for Operating Authority*.

5.3.8.2 Part 368 – Applications for Certificates of Registration by Foreign Motor Carriers and Foreign Privates Motor Carriers (Mexico-Domiciled, Commercial Zone Operations)

5.3.8.2.1 Part 368 - Investigative Procedures

Certificate of Registration

The Certificate of Registration is evidence that the motor carrier has authority to engage in transportation within the border commercial zones. The Inspector shall ensure compliance with the scope of authority and commodities being transported as provided by the Certificate of Registration. A copy of the Certificate of Registration shall be carried on Mexico-domiciled vehicles at all times.

Part 368 – Mexico-Domiciled Carriers

Mexico-Domiciled Carrier is Operating Without a Certificate of Registration

If a driver fails to produce a current Certificate of Registration, the Inspector shall not allow the vehicle to proceed until the issue in question is resolved. Instruct the driver to do one of the following:

- Remain at the inspection location until someone provides the Certificate of Registration via fax or hand delivery to the Inspector's office.
- Obtain the Certificate of Registration
- Make arrangements for an appropriately licensed motor carrier to pick up the freight for transportation to the destination.
- Return to Mexico if the vehicle is not loaded.

5.3.8.2.2 Part 368 ASPEN Procedures

Once you have completed the investigation of compliance with Part 391, you should use the following guideline in the completion of the violations tab in the ASPEN software.

Recording Violations of Part 368 OOS/Possible OOS Violations

Citation	Type	Description
368.7	Y	A holder of a Certificate of Registration must maintain a copy of the Certificate of Registration in any vehicle providing transportation service within the scope of the Certificate, and make it available upon request to any State or Federal authorized inspector (AI) or enforcement officer.

5.3.8.2.3 Part 368 - Enforcement Procedures

Once you have entered the violations discovered into the Violation tabs in ASPEN software and decided to initiate enforcement action for 368 violations, use the following guidelines.

Mexico-Domiciled Carrier Without a Certificate of Registration:

Does Not Have Authority or is Operating Beyond the Scope of its Authority

If a Mexico-domiciled motor carrier is found to be operating beyond the scope of its Certificate of Registration (authority) or without having registered with FMCSA, the appropriate citations in the ASPEN roadside inspection software will be used and the vehicle will be placed OOS. The motor carrier can only correct the OOS violation by not conducting interstate transportation in the United States (if it is not registered) or outside of the border commercial zone (if it has a Certificate of Registration).

In addition to citing the motor carrier with the ASPEN software and placing the vehicle OOS, the following steps shall be taken at the roadside:

1) An OOS Order for the specific vehicle will be prepared and, if possible, faxed to the motor carrier's PPOB along with the inspection report,
2) A copy of the OOS Order and inspection report will be given to the driver, and
3) The driver should be instructed to notify the motor carrier of the OOS condition and the corrective measures that are needed.

In order to correct the OOS violation, the motor carrier must off-load any cargo and be encouraged to arrange for an authorized motor carrier to deliver the cargo to its final destination. The vehicle may leave once it is unloaded, as long as there are no OOS safety defects that have to be corrected. If the vehicle is empty and not under dispatch to pick up a load, then the motor carrier is not considered to be providing interstate transportation requiring for-hire authority. If the vehicle is empty but under dispatch to pick up a load in the United States beyond the border commercial zone, the same procedure will be followed and the driver will be instructed to return to Mexico or the border commercial zone (if the carrier has a Certificate of Registration).

Section 219(d) of MCSIA prohibits a Mexico-domiciled motor carrier from leasing a CMV to a motor carrier for transportation in the United States. The intent of Section 219(d) is to ensure that Mexican motor carriers and their equipment are restricted to the Southern border commercial zones consistent with the moratorium on granting authority to Mexican motor carriers to operate beyond the border commercial zones codified at 49 U.S.C. 13902(c). The leasing prohibition ensures they cannot avoid the restriction by leasing their vehicles and drivers to a motor carrier authorized to operate in the United States.

Lease agreements for Mexico-domiciled motor carriers' equipment leased to United States motor carriers are only valid within the border commercial zone. Therefore, the operation of Mexico-domiciled motor carrier equipment beyond the border commercial zone is the same as operating without a lease. A Mexico-domiciled motor carrier operating without registration or beyond the scope of its registration should be placed OOS as required by 49 U.S.C. 13902(e) as well as 49 CFR 392.9a and FMCSA policy. Furthermore, monetary penalties in accordance with 49 U.S.C. 14901 may be imposed.

5.3.8.3 Part 383 – Commercial Driver's License (CDL) Standards

5.3.8.3.1 Part 383 - Investigative Procedures

In your review of Compliance with Part 383, you should use the following guidelines to assist in your investigation of both property and passenger carriers.

Part 383 - CDL

The Appropriate Type of CDL

Part 383 - CDL

Drivers that Should Have a CDL

Every driver of a CMV (as defined in Part 383) operating in the United States must have a valid CDL.

When the GCWR is not marked by the manufacturer on the power unit, or is not otherwise available, at the time of inspection, from a credible source (e.g. the manufacturer's specifications for the vehicle), the following guidance must be used to determine the applicability of the Federal Motor Safety and CDL regulations:

a) Add the GVWR marked by the manufacturer on the power unit and the actual weight, or Gross Vehicle Weight (GVW), of the towed trailer, or;

b) Add the actual weight, or GVW, of both units together, or;

c) When the unit cannot be weighed, add the GVWR of the power unit and the GVWR marked by the manufacturer on the towed unit.

If the vehicle's GCWR requires that the driver have a CDL to operate and he/she does not have one, document the appropriate CDL violation in ASPEN and place driver Out of Service.

If the vehicle cannot be weighed and your respective State MCSAP partner's regulations or policy do not allow the options listed above, the MCSAP lead agency should provide information regarding the carrier and the vehicles to the FMCSA Division Office for further investigation.

An Individual Moving His/Her Personal Household Goods (HHG) from Maryland to Ohio Using a CMV Greater Than 26,000 lbs. Subject to 49 CFR 382, 383, and the FMCSR

Based on the scenario below, the following apply:

Scenario	Applicability
A person, who moves his/her own HHG, rents a CMV greater than 26,000 lbs. and operates the vehicle from Maryland to Ohio.	Not subject to Drug and Alcohol testing, CDL requirements or any other provisions of the FMCSR.
A person, who is moving, hires a driver from a company to move his/her HHG from Maryland to Ohio in a CMV greater than 26,000 lbs.	Driver and his/her company subject to 49 CFR 382 and 383
A person, who is moving, rents a vehicle greater than 26,000 lbs. and hires a driver from a company to drive the vehicle from Maryland to Ohio.	Person making the move and the driver subject to 49 CFR 382, 383, and the FMCSR
A person, who is moving, hires a driver from a company and that driver rents a vehicle greater than 26,000 lbs. and drives the vehicle from Maryland to Ohio.	Person making the move and the driver subject to 49 CFR 382, 383, and the FMCSR
A person, who is moving, hires a driver from a company and the company providing the driver rents	Person making the move and the driver subject to 49 CFR 382, 383, and the FMCSR

a vehicle greater than 26,000 lbs. and the driver drives the vehicle from Maryland to Ohio.	

For Mexico-domiciled drivers, the Mexican Licencia Federal de Conductor (LFC) issued is the United States equivalent.

Every Mexico-domiciled driver operating a CMV, as defined in 49 CFR 383, in the United States must have a valid Mexican Licencia Federal issued by the Secretaría de Comunicaciones y Transportes (SCT) and recorded in the Licencia Federal Information System (LIFIS) with the proper vehicle class and without any restriction for operating in the United States.

Inspectors should ensure that all passenger-carrying drivers have the proper class of CDL, the required endorsements, and note any restrictions displayed on the CDL.

The Appropriate Type of CDL

Type of CDL that is Needed to Drive a Passenger Vehicle that Seats More than 16 Passengers, Including the Driver

The driver of a passenger CMV should have, at the least, a class C CDL with a P endorsement.

A Mexico-domiciled driver of a passenger CMV should have the categoria "A" that is the equivalent of a class C CDL with a P endorsement.

5.3.8.3.2 Part 383 - ASPEN Procedures

Once you have completed your investigation of compliance with Part 383, you should use the following guidelines to assist you in the completion of the Violation Tab of the ASPEN software.

Checking the License History/Status and Driving Record of Drivers at the Roadside

Verify the driver's CDL history/status through CDLIS, QC or other acceptable methods [e.g., National Law Enforcement Telecommunications System (NLETS), National Crime Information Center (NCIC), or State Licensing System]. You should ensure the driver operating the CMV has a valid commercial driver's license issued by one State or jurisdiction and all proper endorsements and restrictions applicable to the CDL are in compliance.

Despite Federal requirements that drivers surrender their previous license when obtaining a CDL in a new state of domicile, this does not always happen. The official State of Record (SOR) for a CDL holder is considered to be the true source of information on that driver. This is true even if the driver presents a CDL from another State (which is a violation of the FMCSR). To ensure that you are reviewing the most accurate driver history record, you should use the CDLIS functionality to establish which State is actually the official SOR.

With QC, you can use the AKA function to ensure that the license information presented by the driver is from the current SOR. QC will return the State and driver's license number of possible matches. Choose the driver that matches the information you have. Once that is established, you can conduct a History check directly to that State. With cdlis.dot.gov, you should always use the "Current" application.

When checking a Mexico-domiciled driver through CDLIS, the response returns status only, and not history. However, CDLIS also returns history from the Federal Convictions and Withdrawals Database (FCWD) that documents convictions and withdrawals for Mexico-domiciled drivers that occurred in the United States.

What to Look for During the CDL History/Status Check

During your CDL history/status check you should be looking for any discrepancies with:

- Endorsements that are on the CDL and not on the CDLIS driver history record
- Expiration dates

- Restrictions for both American and Mexico-domiciled drivers
- Types of violations the driver may have (American Drivers only)
- Class of CDL
- Drug and Alcohol Clearinghouse - Driver is prohibited from operating under 382.501(a)

Recording Violations of Part 383 OOS/Possible OOS Regulations

Citation	Type	Description
383.21(a)	N	No person who operates a commercial motor vehicle shall at any time have more than one driver's license.
383.23(a)(2)	Y	Except as provided in paragraph (b) of this section, no person may legally operate a CMV unless such person possesses a CDL which meets the standards contained in Subpart J of this part, issued by his/ her State or jurisdiction of domicile.
383.23(c)	Y	**Learner's permit.** State learners' permits, issued for limited time periods according to State requirements, shall be considered valid commercial drivers' licenses for purposes of behind-the-wheel training on public roads or highways
383.23 (c)(1)	Y	The learner's permit holder is at all times accompanied by the holder of a valid CDL.
383.23(c)(2)	Y	He/she either holds a valid automobile driver's license, or has passed such vision, sign/symbol, and knowledge tests as the State issuing the learner's permit ordinarily administers to applicants for automotive drivers' licenses
383.51(a)-NSIN	P	Driving a CMV while CDL is suspended for a non-safety-related reason and in the state of driver's license issuance.
383.51(a)-NSOUT	P	Driving a CMV while CDL is suspended for a non-safety-related reason and outside the state of driver's license issuance.
383.51(a)-SIN	P	Driving a CMV while CDL is suspended for a safety-related or unknown reason and in state of driver's license issuance.
383.51(a)-SOUT	P	Driving a CMV while CDL is suspended for safety-related or unknown reason and outside the state of driver's license issuance
383.91(a)	Y	**Vehicle group descriptions.** Each driver applicant must possess and be tested on his/her knowledge and skills, described in Subpart G of this part, for the commercial motor vehicle group(s) for which he/she desires a CDL.
383.93(b)(1)	Y	**Endorsement descriptions.** An operator must obtain State issued endorsements to his/her CDL to operate commercial motor vehicles which are:(b)(1) Double/triple trailers.
383.93(b)(2)	Y	Passenger vehicles
383.93(b)(3)	Y	Tank vehicles
383.93(b)(4)	Y	Used to transport hazardous materials as defined in §383.5
383.95(a)	Y	If an applicant either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, the State shall indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with air brakes.
383.95(b)	Y	Medical Variance Restrictions (not required until January 30, 2012). If the State is notified according to§383.73(j)(3) that the driver has been issued a medical variance, the State must indicate the existence of such a medical variance on the CDLIS driver record and the CDL document, if issued, using

		the restriction code ‘‘V’’ indicating there is information about a medical variance on the CDLIS driver record. If there is a ‘V’ restriction on the history record, there will also be issue and expiration dates for the SPE, the exemption, or both. NOTE: In accordance with the agreement between Canada and the United States (see footnote to §391.41), drivers with a medical variance restriction code on their commercial driver license are restricted from operating a CMV in the other country.
390.3	Y	Prohibited from performing safety sensitive functions per 382.501 (a) in the Drug and Alcohol Clearinghouse.

5.3.8.3.3 Part 383 - Enforcement Procedures

Once you have entered the violations discovered into the ASPEN software and have decided to initiate enforcement action for 383 violations, use the following guidelines.

Part 383 – Documentation

Information that Should be Documented in an Exhibit to Prove Violations of Part 383

- **Does FMCSA have jurisdiction?**
  - GVWR markings on vehicle, vehicle registration, State fuel and tax reports, weight tickets, photograph of vehicle interior for seating capacity and/or shipping papers indicating a placardable load of HM, along with a corroborating SDS should be used to establish FMCSA’s jurisdiction over the motor carrier’s operation.
- **Was the driver assigned (or controlled) by the employer?**
  - Employment application, lease agreement, payroll records, tax and worker’s compensation deductions, record of duty status with preprinted company name, and/or statement from a motor carrier (e.g., Safety Director) may be used to prove that the driver was assigned or controlled by the employer.
- **Was the CMV operated in intrastate or interstate commerce?**
  - Obtain a RODS or time records and a corresponding shipping document to show that the CMV was used in commerce.
- Did the employer fail to perform (or cause to be performed) a required act, to maintain a record, etc?
  - Statement(s) of driver and/or responsible employer official are strongly recommended, especially when the violation involves the employer’s/driver’s failure to act or failure to maintain records.

Some Examples of Documents that May Be Used to Prove Violations of Part 383

- Statement from carrier official, driver, or person responsible for compliance with Part 383. See Illustration E-2.
- Driver’s RODS and corresponding shipping papers/bill of lading.
- Vehicle registration showing GVWR or other documentary evidence proving that the vehicle meets the definition of a CMV in Part 383.
- State vehicle inspection report.
- Motor vehicle record from the State that issued the CDL showing suspension/cancellation/disqualification or being invalid. A CDLIS printout is acceptable.

Note: A CDLIS printout is acceptable for the Mexican LFC.

- Photograph or copy of current CDL or other photographs that support the violation.

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support your violation. You may utilize other documents to prove your violation.

Part 383 - Enforcement Action Against Drivers

The following violations warrant considering enforcement action against a driver:

- 383.21(a) - No person who operates a commercial motor vehicle shall at any time have more than one driver's license.*
- 383.23(a) - Operating a commercial motor vehicle without a valid commercial driver's license.*
- 383.33 - Failing to inform the employer within 1 business day that his/her commercial driver's license was suspended, revoked, or canceled by a State or jurisdiction.
- 383.51(a)-SIN - Driving a CMV while CDL is suspended for a safety-related or unknown reason and in state of driver's license issuance.*
- 383.51(a)-SOUT - Driving a CMV while CDL is suspended for safety-related or unknown reason and outside the state of driver's license issuance.*
- 383.91 (a) - Operating a CMV with improper CDL group.*

(*) denotes Red Flag Violation

Part 383 – Placing a Driver OOS

Placing a Driver OOS for Violations of 383

If the driver operates in the US:

- Without a CDL or **LFC** (not in possession or not having been issued one)
- Without a valid CDL or LFC
- **Without a proper class () indicated on the license**
- Operating in violation of a restriction on the license
- **Note:** If the status of the CDL returns as suspended, revoked, invalid, or if it cannot be verified, the driver should be placed OOS. The driver should advise the motor carrier it is their responsibility to relieve him/her from driving duties.

The driver must then be placed OOS in accordance with the North American Uniform OOS Criteria or standard departmental policy followed by enforcement officers.

49 CFR 383 - MX CDL Guidance

Requirement to Check the Status of a Mexican LFC

All CDL (or LFC) records should be checked via CDLIS. Every Mexico-domiciled driver operating a CMV, as defined in 49 CFR 383, in the United States, must have a valid Mexican Licencia Federal issued by the Secretaria de Comunicaciones y Transportes (SCT) and recorded in the Licencia Federal Information System (LIFIS) with the proper vehicle class, and without any restriction for operating in the United States.

Calling the Local Secretaria de Comunicaciones y Transportes (SCT) Office to Verify a Mexican LFC

Calling the local SCT office is not permitted for verification of a LFC because all information is available via CDLIS. SCT should be contacted only when attempting to obtain any crash or inspection data it may have on a motor carrier undergoing an investigation or CR.

The following chart can assist in reading a Mexican LFC.

MX DRIVER LICENSE New and Old

Driver Holding a LFC with a Categoria	Equivalent to a Driver Holding a CDL Class Endorsement/Restrictions
A	Any bus; roughly comparable to a US class B CDL with a P (passenger) endorsement.
B	Any truck (including straight, combination, doubles, triples, tank), but excluding hazardous materials; roughly comparable to a US class A CDL with a tank and doubles/triples endorsement.
C	Straight trucks (maximum of 3 axles, which includes any towed trailer axles), but excluding hazardous materials; roughly comparable to a US class B CDL with a tank endorsement.
D	No comparable US CDL definition; authorizes holder to operate automobiles and small buses that do not exceed 7716 lbs. (3500 kg) or have a capacity to carry no more than 13 passengers (including the driver who also serves as the tour guide) for purpose of tourism.
E	Any type of truck or combination, including hazardous materials; roughly comparable to a US class A CDL with a hazardous materials, tank, and doubles/triples endorsement.
F	No comparable US CDL definition; authorizes holder to operate taxis from any airport or seaport in Mexico (because airports and seaports are federal and require a federal license, similar to driving a commercial vehicle on a federal road).

5.3.8.4 Part 385 – Safety Fitness Procedures

5.3.8.4.1 Part 385 - Investigative Procedures

In your review of compliance with Part 385, you should use the following guidelines to assist in your investigation of motor carriers both of property and passengers.

Part 385 – General

When Should Operations Cease After a Motor Carrier is Issued an "Unsatisfactory" Rating

- Motor carriers transporting hazardous materials in quantities requiring placarding, and motor carriers transporting passengers in a CMV, are prohibited from operating a CMV beginning on the 46th day after the date of the FMCSA notice of proposed "unsatisfactory" rating 385.13(a)(1).
- All other motor carriers rated from reviews completed on or after November 20, 2000 are prohibited from operating a CMV beginning on the 61st day after the date of the FMCSA's notice of proposed "unsatisfactory" rating.
- If FMCSA determines the motor carrier is making a good-faith effort to improve its safety fitness, FMCSA may allow the motor carrier to operate for up to 60 additional days. 385.13(a)(2).

49 CFR 385 – CVSA Decals

Issuance of CVSA Decals

The North American Standard Levels I and V are the only inspections that may result in the issuance of a CVSA decal. To qualify for a CVSA decal, a commercial vehicle must not have any Critical vehicle inspection item violations.

Inspectors are required to record CVSA decal information in the ASPEN inspection report. ASPEN now allows Inspectors to record both existing decals and those issued as a result of the inspection but in two different fields. This gives FMCSA the ability to monitor the number of motor carriers inspected with current decals, expired decals, issued decals per inspection and per Inspector

A CMV is stopped for inspection and…

SCENARIO	ACTION
Current decal is found.	Record current decal information.
Expired decal is found.	Record expired decal number, conduct inspection, issue decal if applicable, and record new information.
No decal is found.	Record no decal, inspect, issue new decal if applicable, and record new information.

49 CFR 385 – Cargo Seals

Roadside Cargo Seals

If for any reason during a driver-vehicle examination the Inspector breaks any seal, a replacement seal should be furnished. The replacement seals should not be applied to vehicles that did not previously have a seal or to vehicles with prior broken seals. A notation must be made on the driver-vehicle examination report and the signature of a witness obtained. Inspectors are required to record cargo seal removal and replacement information in the ASPEN report.

A CMV is stopped for inspection and…

SCENARIO	ACTION
A cargo seal is broken or removed.	Inspect and replace cargo seal and record the cargo seal information.
No seal is found or broken.	Inspect and do not secure with a new seal.

Part 385 - Safety Monitoring System for Mexico-Domiciled Carriers

Every Mexico-Domiciled Truck Should Have a CVSA Decal

Each Mexico-domiciled carrier granted long-haul (provisional or, after 18 months, standard) authority under Part 365 of this subchapter must have on every CMV it operates in the United States a current decal attesting to a satisfactory inspection by a Commercial Vehicle Safety Alliance (CVSA) inspector. The carrier must continue displaying the CVSA decal for at least 36 months after obtaining standard authority.

See Mexico Manual's ***Special Roadside Inspection Requirements for Mexico-Domiciled Long-Haul Carriers*** for CVSA decal display and enforcement requirements.

Part 385 - New Entrant (NE) Safety Assurance Program

After a New Entrant Has Been Notified Under 385.319(c) to Take Corrective Action to Remedy its Safety Management Practices and Has Not Done So

The NE may not operate in interstate commerce on or after the effective date of the OOS order.

If a New Entrant Refuses to Permit a Safety Audit (SA) to be Performed on its Operation

The motor carrier's registration will be revoked and its interstate operations placed OOS effective on the 11th day from the service date of the notice issued.

Part 385 - Hazardous Materials Safety Permit (HMSP)

The Following Must Hold a Safety Permit

The motor carrier may not transport in interstate or intrastate commerce any of the following hazardous materials, in the quantity indicated for each, unless the motor carrier holds a current Hazardous Materials Safety Permit:

- A highway route-controlled quantity of a Class 7 (radioactive) material.
- More than 25 kg (55 pounds) net weight of a Division 1.1, 1.2, or 1.3 (explosive) material or articles or an amount of a Division 1.5 (explosive) material requiring placarding under part 172 of this title.
- More than one liter (1.08 quarts) per package of a "material poisonous by inhalation," that meets the criteria for “hazard zone A” as specified in §173.116(a) or §173.133(a) of this title;
- A "material poisonous by inhalation," as defined in §171.8 of this title, that meets the criteria for "hazard zone B," as specified in §173.116(a) or §173.133(a) of this title in a bulk packaging (capacity greater than 450 L [119 gallons]);
- A "material poisonous by inhalation," as defined in §171.8 of this title, that meets the criteria for "hazard zone C," or "hazard zone D," as specified in §173.116(a) of this title, in a packaging having a capacity equal to or greater than 13,248 L (3,500) gallons; or
- A shipment of methane (compressed or refrigerated liquid), natural gas, (compressed or refrigerated liquid)or any other compressed or refrigerated liquefied gas with a methane content of at least 85 percent, in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

Operational Requirements that Apply to the Transportation of a Hazardous Material for which a Permit is Required

1. A copy of the safety permit or another document showing the permit number provided that document clearly indicates the number is the FMCSA Safety Permit number.

The HMSP may be validated at www.safersys.org.

2. A written route plan for explosives (§397.67) or highway route controlled Class 7 (§397.101).

3. The telephone number, including area code or country code, of an employee or representative of the motor carrier who is familiar with the routing of the permitted material.

5.3.8.4.2 Part 385 - ASPEN Procedures

Once you have completed your investigation of compliance with Part 385, you should use the following guidelines to assist in the completion of the Violation Tab of the ASPEN software.

Recording Violations of Part 385 OOS/Possible OOS Regulations

Part 385 – OOS/Possible OOS Violations

Citation	Type	Description
385.13(a)(1)	P	Motor carriers transporting hazardous materials in quantities requiring placarding, and motor carriers transporting passengers in a CMV, are prohibited from operating a CMV beginning on the 46th day after the date of the FMCSA’s notice of proposed “unsatisfactory’’ rating.
385.13(a)(2)	P	All other motor carriers rated from reviews completed on or after November 20, 2000 are prohibited from operating a CMV beginning on the 61st day after the date of FMCSA's notice of proposed "unsatisfactory" rating. If FMCSA determines the motor carrier is making a good-faith effort to improve its safety fitness, FMCSA may allow the motor carrier to operate for up to 60 additional days.

385.103(c)	N	Each Mexico-domiciled carrier granted provisional operating authority under part 365 of this subchapter must have on every commercial motor vehicle it operates in the United States a current decal attesting to a satisfactory inspection by a Commercial Vehicle Safety Alliance (CVSA) inspector.
385.325(c)	Y	The new entrant may not operate in interstate commerce on or after the effective date of the out-of-service order.
385.337(b)	P	If the new entrant does not agree to undergo a safety audit, its registration will be revoked and its interstate operations placed out-of-service effective on the 11th day from the service date of the notice issued under paragraph (a) of this section.
385.403	N	The motor carrier may not transport in interstate or intrastate commerce specific hazardous materials, in the quantity indicated for each, unless the motor carrier holds a current Hazardous Material Safety Permit.
385.415(a)(1)	N	A copy of the Hazardous Material Safety Permit or another document showing the permit number provided that document clearly indicates the number is the FMCSA Hazardous Material Safety Permit number must be in the vehicle.
385.415(a)(2)	N	A written route plan for explosives (397.67) or HRCQ Class 7 (397.101)
385.415(a)(3)	N	A telephone number of an employee or representative of the motor carrier familiar with the routing of the HM.

5.3.8.4.3 Part 385 - Enforcement Procedures

Once you have entered the violations discovered into the ASPEN software and have decided to initiate enforcement action for Part 385 violations, use the following guidelines .

Part 385 - Documentation

Documents that Should be Gathered When Initiating Roadside Enforcement

- CVSA decal for Mexico domiciled carriers
- Carriers Safety rating (via www.safersys.org)
- HMSP or screen shot showing expired or lack of a current HMSP
- HM Registration or screen shot showing expired or lack of current Registration
- Shipping documents showing HM transported and amount

Look for the Following When Compiling a Case on Hazardous Material Safety Permits

1. Ensure that the material in question is an HMSP-required hazardous material transported in the amount required. In some cases, a shipping paper may be sufficient for this purpose. In other cases, including those where no shipping paper is available, or where no shipping paper was ever prepared, it may be necessary to obtain a SDS.
2. Where a SDS is used to document the presence of an HMSP-required hazardous material, care should be taken to verify both the accuracy of the SDS, as well as its applicability to the particular product in question. A SDS is often a generic document that provides general information, i.e., a **range** of flash points. In this case, it may be necessary to verify the actual flash point of the material by contacting the manufacturer. Ensure all elements are proven, i.e., 55 pounds for explosives, 3500 water gallons for Zone D, etc.
3. Ensure all elements are proven, i.e., amount (55 pounds for explosives, 3500 water gallons), meeting the requirements of the Hazard Zone, etc.
4. Ensure that the documents reference one another, for instance:
    - If the shipping order number indicates a trailer number or driver's signature, does the log and/or the trip manifest support this information?

- Where a pro number has been stamped on the shipping order and a freight bill has been cut, does the pro number appear on the trip manifest; does the manifest have the trailer number; and, is the driver name the same, etc?
- The tracking number used on the pro/bill of lading is often found on the package or pallet, and can be used to positively tie a package to a shipping paper.

5. When identifying the documents on the exhibit abstract, identify those areas of the document that support the violation.
6. The lack of a permit should be verified by a screenshot of MCMIS.

Knowledge and Willfulness Requirements that Should be Proven Under Part 385

- It should be proven the carrier was, or should have been aware of, the requirement to have and maintain a permit in good standing.
- This can be done by showing receipt of the initial permit notification letter, the biennial update, association membership notifications, or any other materials or communication regarding the permit program.

Documents Needed for an HMSP Enforcement Case

1. **Establish that the material in question is in fact an HMSP-required hazardous material transported in the amount required.** This may be accomplished by obtaining a copy of the shipping paper or SDS.
2. **Establish that the HMSP-required hazardous material was actually transported in intrastate, interstate, or foreign commerce.** Shipping papers, bills of lading and other such document may be used to establish this fact. In addition, photographs of the shipment that indicate that it was in commerce may also be useful. Amounts of the HM, or proof of meeting the definition of a Hazard Zone, are crucial in some instances.
3. **Establish that a violation of Part 385 occurred.** Documenting a violation of Part 385 generally requires at least the HM shipping paper, and may also require photographs of the package in commerce and/or statements that establish the facts of the case as outlined above. These photographs should clearly show any specification or other markings found on the package, and the amount of HM on the vehicle.

Preparing the Exhibit Abstract

- The exhibit abstract for each count must contain sufficient evidence to support the Government's allegation that a violation was committed. This means the exhibit should contain the elements described in *Documents Needed for an HMSP Enforcement Case*.
- Care should be taken in the preparation of the abstract.
- Attention to detail is essential.
- See *Appendix F* for examples of Exhibit Abstracts for Part 385.

Preparing the Statement of Charges

The statement of charges is important because it is the first official notification to the subject of the enforcement case and their legal counsel that they are being assessed civil penalties for specific violations of the HMR (the HMSP rule penalized under the hazardous material penalty provisions of the US Code). The statement of charges must include all of the elements of the violation. Furthermore, this statement should include only the alleged facts, supported by documented evidence, that the subject committed a violation of the HMR. The statement of charges is found in the Remarks section of the Exhibit of Abstract. The statement of charges for a Part 385 violation should read as follows:

On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a CMV transporting «AMOUNT OF» «PROPER SHIPPING DESCRIPTION», a hazardous material requiring a Hazardous Materials Safety Permit, from «ORIGIN» to «DESTINATION». During this transportation the company did not comply with the requirements of 49 CFR 385 Subpart E. «DESCRIBE VIOLATION».

Part 385 - Enforcement Actions Against Drivers

Taking Enforcement Against a Carrier Exercising Inadequate Corrective Action

Failure to respond to an agency demand for a written response demonstrating corrective action within 30 days will result in the suspension of the carrier's provisional operating authority or provisional Certificate of Registration until the required showing of corrective action is submitted to FMCSA. 385.105 (b)

Time When Suspension and Revocation of a Mexico-Domiciled Carrier Registration Should be Initiated

If a Mexico-domiciled carrier is assigned an "Unsatisfactory" safety rating following an investigation conducted under this subpart, or a SA conducted under this subpart determines that a carrier does not exercise the basic safety management controls necessary to ensure safe operations, FMCSA will provide the carrier written notice, as soon as practicable, that its registration will be suspended effective 15 days from the service date of the notice unless the carrier demonstrates, within 10 days of the service date of the notice, that the investigation or SA contains material error (385.111(a)).

Suspending the carrier's provisional or standard operating authority or provisional or permanent Certificate of Registration and requiring it to immediately cease all further operations in the United States 385.111 (c) (1); and notifying the carrier that its provisional or standard operating authority or provisional or permanent Certificate of Registration will be revoked unless it presents evidence of necessary corrective action within 30 days from the service date of the Order (385.111 (c) (2)).

Note: These cites can be used when citing a motor carrier for operating while an existing OOS order issued by FMCSA is in effect.

5.3.8.5 Part 386 – Rules of Practice for Motor Carriers, Broker, Freight Forwarder, and Hazardous Materials (HM) Proceedings

5.3.8.5.1 Part 386 - Investigative Procedures

In your review of compliance with Part 386, you should use the following guidelines to assist you in your investigation of motor carriers of both property and passengers.

Part 386 - Imminent Hazards

Kinds of Conditions that Could Exist Before Declaring a Motor Carrier To Be an Imminent Hazard

"Imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before a notice of investigation proceeding, or other administrative hearing or formal proceeding, to abate the risk of harm can be completed.

The Following Should Occur After a Motor Carrier is Deemed an Imminent Hazard

Upon the issuance of an order Imminent Hazard, the motor carrier employer or driver employee shall comply immediately with such order. Opportunity for review shall be provided in accordance with 5 U.S.C. 554, except that such review shall occur not later than 10 days after issuance of such order. An order to an employer to cease all or part of its operations shall not prevent vehicles in transit at the time the order is served from proceeding to their immediate destinations, unless any such vehicle or its driver is specifically ordered OOS forthwith. However, vehicles and drivers proceeding to their immediate destination shall be subject to compliance upon arrival.

5.3.8.5.2 Part 386 - ASPEN Procedures

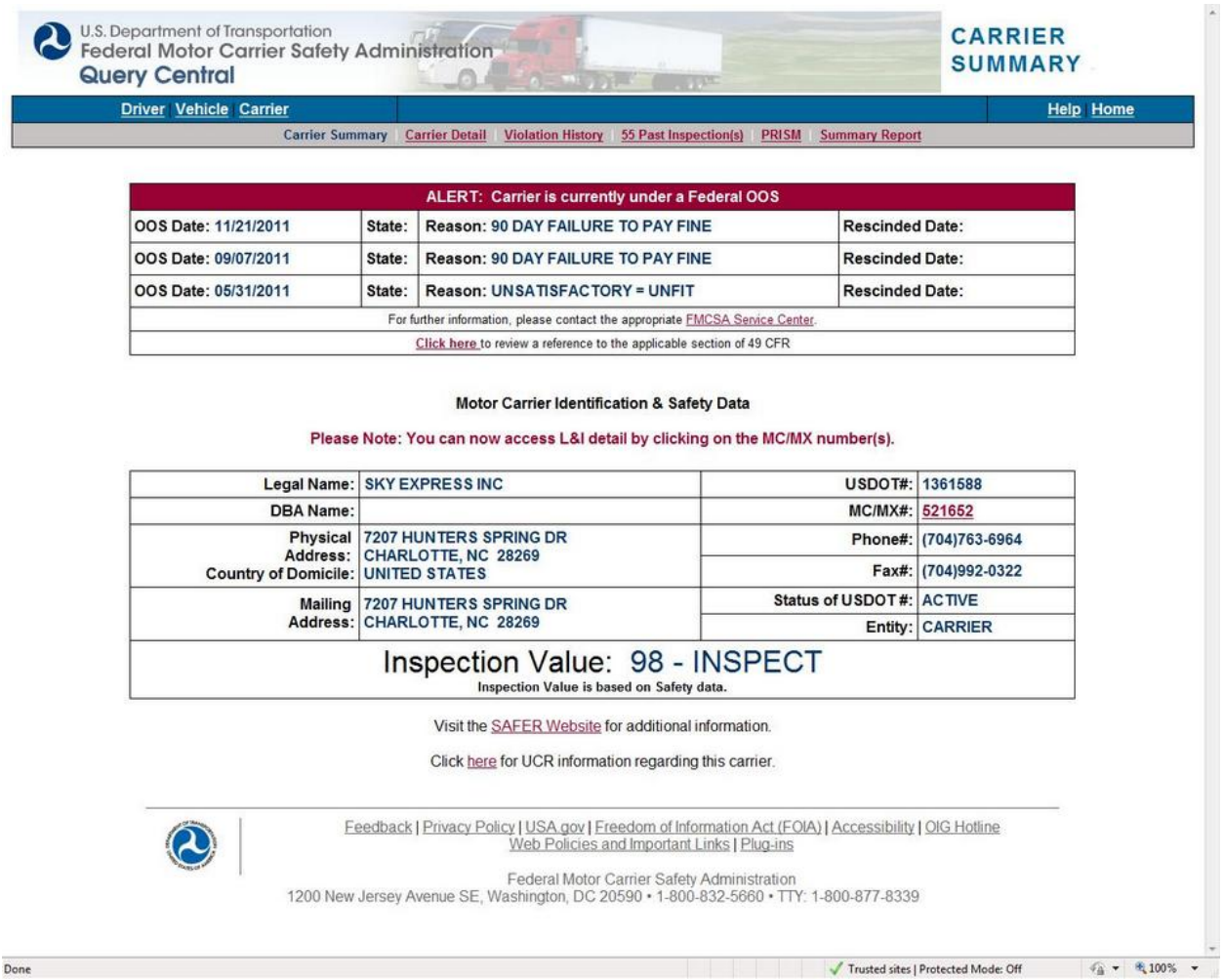
Once you have completed your investigation of compliance with Part 386, you should use the following guidelines to assist in the completion of the violations tab of the ASPEN software.

Violation Types that Should be Considered for a Carrier Operating a CMV While an Existing OOS Issued by FMCSA is in Effect

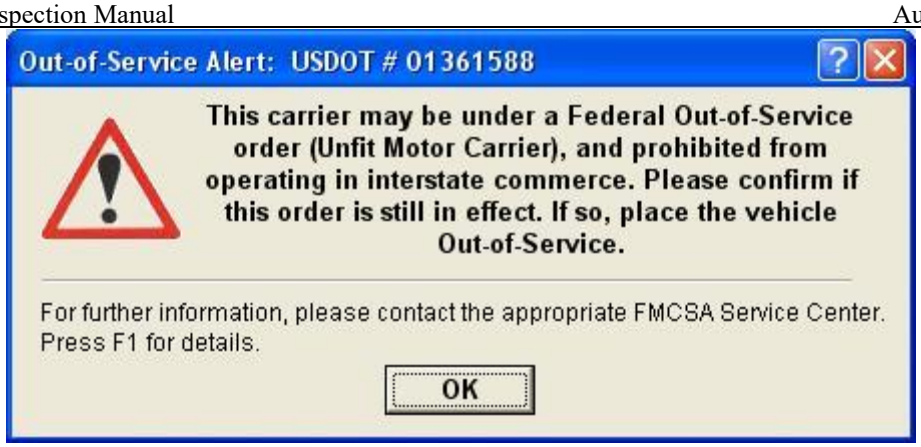
Part 386 – OOS/Possible OOS Violations

Citation	Type	Description
386.72(b)	P	Imminent Hazard
386.83(a)(1)	P	Failure to Pay Fine - Private Carrier.
386.84(a)(1)	P	Failure to Pay Fine - For-Hire Carrier.

Screenshot of an OOS Alert in QC



Screenshot of an OOS Alert in ISS



5.3.8.5.3 Part 386 - Enforcement Procedures

Once you have entered the violations discovered into the violations tab of the ASPEN software and have decided to initiate an enforcement action for the Part 386 violations, use the following guidelines.

Part 386 - Documentation

Documents that Should be Gathered When Initiating an Enforcement Action

- Registration and cab card
- USDOT Number

- Proof of MCS 150 Registration
- Bills of Lading/Shipping Documents
- RODS
- Supporting Documents (toll, fuel, hotel, etc.)

Part 386 - Enforcement Against Drivers and Company

For Failure to Pay Civil Penalties or Abide by Payment Plan (Operation in Interstate Commerce Prohibited)

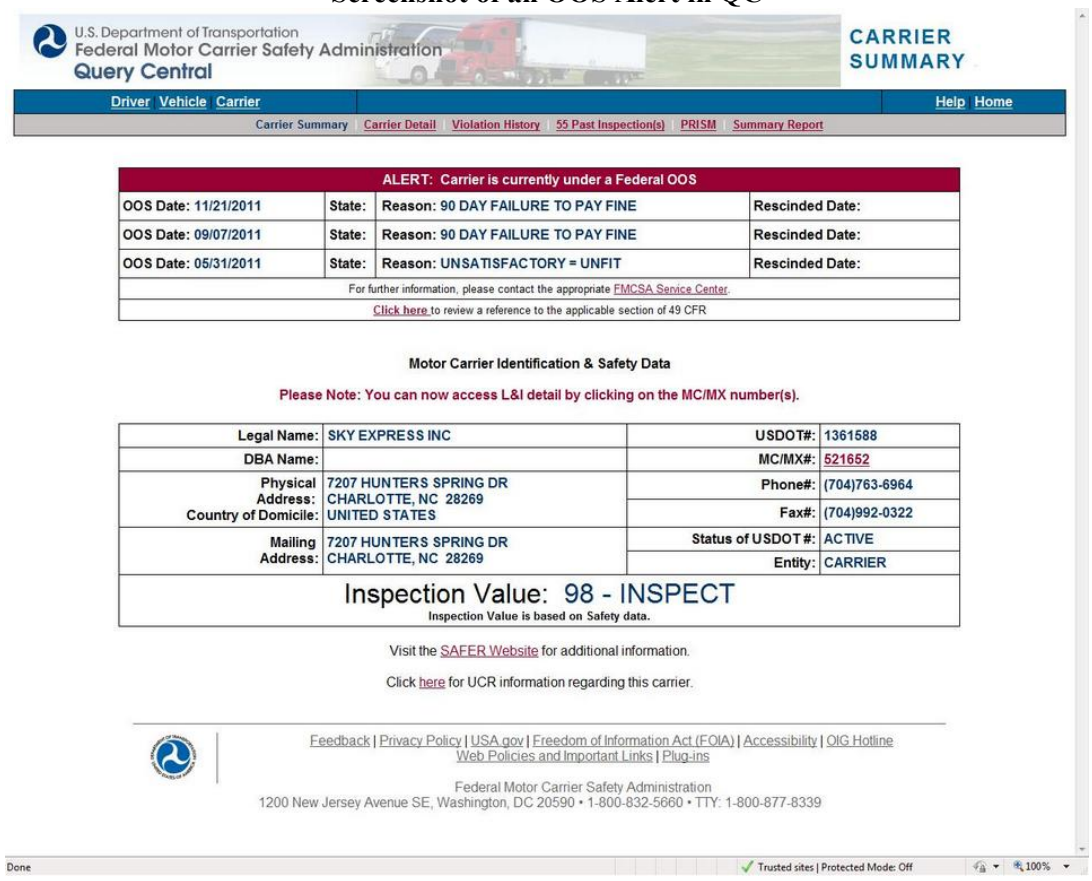
General rule: A CMV owner or operator that fails to pay a civil penalty in full within 90 days after the date specified for payment by the FMCSA's final agency order is prohibited from operating in interstate commerce starting on the next (i.e., the 91st) day. The prohibition continues until FMCSA has received full payment of the penalty (386.83(a)(1)).

For Failure to Pay Civil Penalties or Abide by Payment Plan (Suspension or Revocation of Registration)

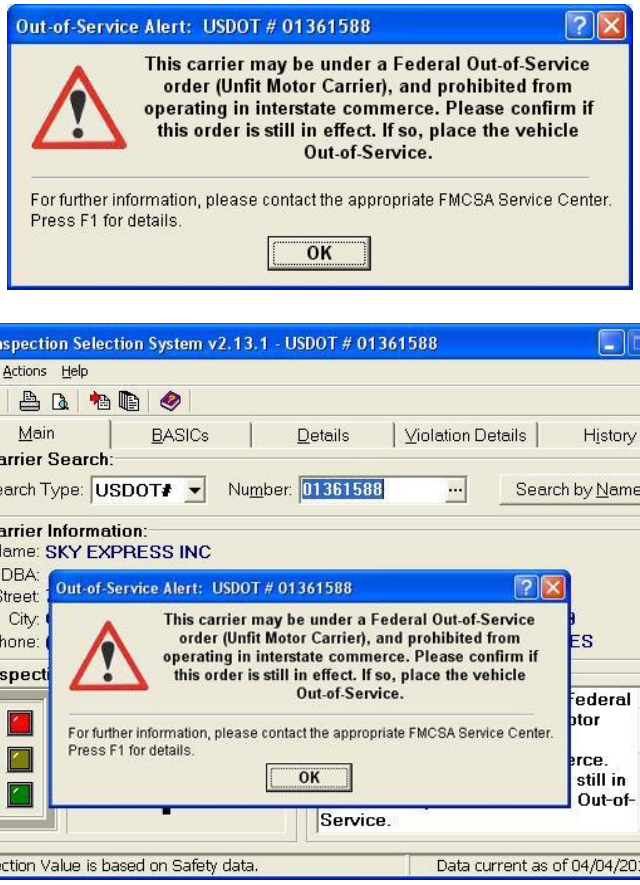
General rule: The registration of a broker, freight forwarder, or for-hire motor carrier that fails to pay a civil penalty in full within 90 days after the date specified for payment by the FMCSA's final agency order, will be suspended starting on the next (i.e., the 91st) day. The suspension continues until FMCSA has received full payment of the penalty (386.84(a)(1)).

Note: These cites can be used when citing a motor carrier for operating while an existing OOS order issued by FMCSA is in effect.

Screenshot of an OOS Alert in QC



Screenshot of an OOS Alert in ISS



5.3.8.6 Part 387 – Minimum Levels of Financial Responsibility for Motor Carriers

Checking Insurance of a Mexico-Domiciled CMV Operating in the United States Roadside

Every vehicle, subject to the Financial Responsibility requirements as specified in Part 387, operating within the United States by a motor carrier domiciled in a contiguous foreign country shall have on board a legible-signed copy, in English, of the proof of financial responsibility used by the carrier. Request the carrier's form MCS-90 (endorsement), form MCS-82 (surety bond), or self-insurance authorization.

Note: U.S. carriers do not need the MCS-90 or MCS-82 on board at the time of the inspection.

If the motor carrier has an insurance policy available, verify the insurance is currently in effect. If possible, the motor carrier's current status and history regarding operating authority and insurance filing can be checked by accessing the FMCSA L&I website at: http://li-public.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov).

Any motor vehicle, checked at a border crossing, not having the required minimum level of financial responsibility on file or not having other proof of the required financial responsibility, shall be denied entry into the U.S.

For Mexico-domiciled carriers only: Any motor vehicle, checked at any other location other than a border crossing, not having the required minimum level of financial responsibility on file or not having other proof of the required financial responsibility shall have enforcement brought against it.

Minimum Levels of Financial Responsibility Needed for a Passenger Carrier

The minimum levels of financial responsibility found in Part 387 are only applicable to for-hire carriers transporting passengers in interstate commerce. For-hire motor carriers of passengers operating vehicles with a seating capacity of 16 passengers or more (including the driver) are required to have $5 million of public liability coverage. For-hire motor carriers of passengers operating vehicles with a seating capacity of 15 passengers or less are required to have $1.5 million of public liability coverage.

Procedures for Conducting a Roadside Inspection, Investigation or SA of a For-Hire Passenger Carrier that is a Federal Transit Administration (FTA) Grantee

You need to understand the exemption of the Federal minimum financial responsibility requirements.

- The Interstate Commerce Commission Termination Act of 1995 (ICCTA) amended the minimum financial responsibility levels which FTA grantees must observe.
- FTA Grantees operating interstate for-hire passenger carrier services are subject to a required minimum level of financial responsibility, even though that amount differs from the "schedule of limits" provided under 49 CFR Section 387.33.
- The Bus Regulatory Reform Act of 1982 requires limits of financial responsibility according to vehicle seating capacity; not the number of passengers currently being transported, however,
- For FTA grantees providing interstate, for-hire, transit service operations funded by grants under 49 U.S.C. 5307 (urbanized public transit service in geographic areas with a population of 200 thousand or greater), 5310 (public transit service for the elderly and persons with disabilities), or 5311 (public transit service in non-urbanized areas), or carriers that contract to provide transportation service funded in whole or in part by such grant funds, the general Federal insurance requirement of $1.5M or $5M (based upon designed seating capacity), does not apply.
- All FTA grantees providing interstate, for-hire, transit service operations funded by grants under 49 U.S.C. 5307, 5310, or 5311, or carriers that contract to provide such transportation service funded in whole or in part by such grant funds are required to maintain the highest level of insurance required by any of the States in which they operate, as their required minimum level of financial responsibility.

Operations Covered by the Exemption of the Federal Minimum Financial Responsibility Requirements

All FTA grantees providing interstate, for-hire, transit service operations funded by grants under 49 U.S.C. 5307, 5310, or 5311, or carriers that contract to provide such transportation service funded in whole or in part by such grant funds.

These FTA Grantees Are Not Exempt From <u>All</u> FMCSA Requirements

- The ICCTA does not relieve FTA grantees with interstate transit services of their obligation to register with the Federal Motor Carrier Safety Administration (FMCSA) and obtain operating authority as required of all interstate for-hire carriers under 49 U.S.C. 13902.
- The ICCTA does not relieve FTA grantees of their obligation under 49 U.S.C. 13906 to file with FMSCA evidence of insurance under 49 CFR 387 as a condition of registration.
- The ICCTA does not relieve FTA grantees of any applicable requirements within the FMCSR in 49 CFR parts 390 to 396.

How This Impacts Federal and State Enforcement Officers

- When the exemption applies, Federal and State enforcement officials must be aware that the general Federal insurance requirement of $1.5 million or $5 million (based upon designed vehicular seating capacity), does not apply.

- Federal and State enforcement officials should use FMCSA's L&I database to determine compliance with the required minimum level of financial responsibility. Compare "BIPD Insurance Required" against "BIPD Insurance on File."
- "BIPD" under Insurance Type stands for Bodily Injury and Property Damage. If the amount of BIPD insurance on file is less than the amount of BIPD insurance required, the FTA grantee has not complied with its minimum required level of financial responsibility.
- If the FTA grantee is operating in a State that requires a higher amount of insurance than the value listed under "BIPD Insurance on File," contact the Commercial Enforcement Division in FMCSA Headquarters about this matter.

Registration Documents to Check for Commercial/Border Zone Operations during a Driver/Vehicle Inspection

Passenger carriers authorized to only operate within the border commercial zones must have their Certificate of Registration on board the vehicle and ready for inspection. The registration must show the carrier's authorized scope of operations.

Insurance Verification Procedures for Foreign Entities

Each State has its own laws and regulations for all types of insurance, including car, homeowners, and health. FMCSA regulations require that the insurer be licensed to do business in (1) each State in which the carrier is authorized to operate; (2) the State in which the carrier has its principal place of business or domicile; or (3) any State as an excess or surplus lines insurer in which business is written. For options 2 and 3, the insurer must have a process agent representative in each State in which the motor carrier operates. FMCSA regulations allow Canada-based insurers for Canadian motor carriers also as long as the Canadian insurer has process agent representatives in each State in which the Canadian motor carrier operates.

The State's insurance commissioner grants licenses to foreign entities. This license allows foreign insurance companies (i.e., The Lloyds of London) to conduct business in the U.S. Licenses can only be granted through the State office. After an insurance company has been granted permission to conduct business within the U.S., that insurance company must open an insurance filer account with FMCSA. The insurance filer account allows FMCSA to accept insurance filings from that company.

To open an insurance filer account, the insurance company must provide a written request to open a filer account with the Insurance Compliance Division of FMCSA. The request must be on insurance company letterhead and must include:

- The home office address of the insurance company
- The name of the contact person within the insurance company
- A telephone number
- A fax number for the contact person

After the information from the insurance company has been verified, the insurance company is assigned an FMCSA account number. This account number allows foreign insurance companies to file insurance with FMCSA. The L&I database will not accept insurance filings without the FMCSA filer number. Additionally, this number is used to bill insurance companies for filing fees.

If a question arises regarding the legitimacy of an insurance company representing a Mexico-domiciled motor carrier contact the Insurance Compliance Division for verification of an insurance filer account.

5.3.8.7 Part 390 – General Requirements

5.3.8.7.1 Part 390 - Investigative Procedures

In your review of compliance with Part 390, you should use the following guidelines to assist in your investigation of motor carriers both of property (including placardable hazardous material) and passengers.

Procedures to Follow During Your Investigation of Part 390

Your investigation of Part 390 should begin by reviewing:

- Marking of vehicles
- Biennial update of the MCS-150
- Lease and Interchange of Passenger Vehicles if inspecting a motor carrier of passengers

Part 390 - Vehicle Markings

Ensuring the Motor Carrier Has Properly Marked All Of Its Vehicles

Visually inspect the vehicles for proper markings.

Mexico-domiciled motor carriers have one of two suffixes at the end of the USDOT number: An "X" denoting long-haul operations, or a "Z" denoting commercial zone operations. A Mexico-domiciled motor carrier may not mix the markings within its fleet, although with long-haul authority the carrier is allowed to conduct commercial zone operations.

Part 390 - Biennial Update

Verifying the Company Has Submitted the Biennial Update of the MCS-150, As Required

You should ask the motor carrier if it has made the required update filing and verify an affirmative response. Utilizing only the date shown in Safety and Fitness Electronic Records (SAFER) is NOT sufficient evidence to cite a carrier for failing to submit the required biennial update. Remember if a motor carrier registers its vehicle in a Performance and Registration Information Systems Management (PRISM) state, it may be exempt from this requirement.

Part 390 – Lease and Interchange of Passenger-Carrying Commercial Motor Vehicles

When determining the motor carrier responsible for transportation, interview the driver and review supporting documentation provided, to verify if the vehicle being inspected is owned by the motor carrier or if it is being leased or interchanged. Documentation may include the state registration of the passenger vehicle to determine the owner and the driver's record of duty status to see the name of the operating motor carrier listed on the RODS. If passenger carriers are going to lease or interchange passenger carrying commercial vehicles, irrespective of duration, or the presence or absence of compensation to transport passengers, they must have a document (including specific information) to do so.

There are three exceptions to the requirement. This rule is not applicable to motor carriers, when all parties involved in the arrangement, have active passenger operating authority. It is only applicable when one or more of the carriers ***do not have active passenger operating authority*** issued by FMCSA. The intent of the rule is to ensure carriers that were placed out of service for safety reasons or loss of insurance for example, cannot evade enforcement by claiming operation under another authorized passenger motor carrier. Second, the rule is not applicable to financial agreements or contracts between a motor carrier and a bank, rental agency, dealer or manufacturer of passenger CMVs allowing the motor carrier to use the passenger-carrying CMV. The third is a temporary exemption – applicable for the first 48 hours of an emergency situation.

When an emergency event occurs (crash, disabled vehicle, etc.) that requires a motor carrier to immediately obtain a replacement vehicle, the two carriers may postpone the writing of the lease or written agreement for up to 48 hours. During the 48 hours, the driver must carry a document signed and dated by the lessee's driver or company official stating: "[Carrier A, USDOT number, telephone number] has leased this vehicle to [Carrier B, USDOT number, telephone number] pursuant to 49 CFR 390.403(a)(2)." The statement allows the carrier to take advantage of the CMV marking exception in 390.21. Also, the statement could be electronic and presented on the driver's smart phone, ELD/Fleet management device, tablet, etc. The document containing the statement must be produced upon demand.

For additional information on investigating compliance with the passenger lease and interchange rule and citing violations see ***49 CFR 390 – Lease and Interchange of Passenger-carrying Commercial Motor Vehicles*** in the Compliance Manual.

PRISM States Eliminating Validating the MCS-150

The PRISM requirement to validate the MCS-150 Form before registering a vehicle is hereby eliminated. All other PRISM requirements will remain the same. The IRP and Department of Motor Vehicles (DMV) offices in PRISM States are no longer required to validate, at the time of registration, that the MCS-150 information has been updated within the past year.

5.3.8.7.2 Part 390 - ASPEN Procedures

Once you have completed your investigation of compliance with Part 390, you should use the following guidelines to assist in the completion of Violations Tab of ASPEN.

Recording Violations of Part 390 OOS/Possible OOS Regulations

Citation	Type	Description
390.21	N	a) General. Every self-propelled commercial motor vehicle, as defined in §390.5, subject to subchapter B of this chapter must be marked as specified in paragraphs (b), (c), and (d) of this section.
390.35	P	Making or causing to make a fraudulent or intentional false statement on an application, certificate, report, or record, and from falsifying, reproducing, or altering any original supporting document.

5.3.8.7.3 Part 390 - Enforcement Procedures

Once you have entered the violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for Part 390 violations , use the following guidelines .

Part 390 - Documentation

Documents to Gather in Order to Initiate an Enforcement Action

- Evidence that the vehicle used falls within FMCSR jurisdiction for Part 390
- Evidence that driver is an employee (or controlled by the motor carrier)
- Evidence that the CMV was operated by the motor carrier
- Evidence that the CMV was operated in interstate commerce on a specific date
- Evidence that a violation of Part 390 occurred

Some Examples of Documents That May Be Used to Prove Violations of Part 390

- Statement from motor carrier official, driver, or other person responsible for compliance with Part 390

- Driver's RODS, and corresponding shipping/paper/bill of lading
- Vehicle registration showing GVWR, or other documentary evidenced, proving that the vehicle was subject to Part 390
- Copies of documents required by Part 390 that are falsified

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support a violation. You may utilize other documents to prove a violation.

Part 390 - Enforcement Action Against Drivers

You should consider enforcement action against a driver for violating:

- 390.35 - Making or causing to make a fraudulent or intentional false statement on an application, certificate, report, or record, and from falsifying, reproducing, or altering any original supporting document

Related to the final rule published September 27, 2010, titled "Limiting the Use of Wireless Communication Devices" and regarding States with delayed adoption of the FMCSR, until their new regulations are adopted, such States may cite a driver for the appropriate violation citation as follows:

- 390.17 – Operating a commercial motor vehicle while texting
- 390.17 – Operating a commercial motor vehicle while using additional equipment and accessories that decrease the safety of operations

FMCSA and States that adopted the new regulation should refer to *Part 392*.

Procedures to Determine What CMV Should be Inspected

First, you must ensure the motor vehicle being selected for inspection meets the definition of a commercial motor vehicle (49 CFR Section 390.5):

- GVWR 10,001 to 26,000 pounds non-CDL (in interstate commerce)
- GVWR 26,001 pounds (intra- or interstate commerce)
- Transporting passengers 16 or more including the driver (intra- or interstate commerce)
- Or transporting any placarded amount of Hazardous Materials

A Mexico-domiciled carrier with a GVWR of under 10,000 pounds and hauling placardable hazardous materials needs insurance and registration inspection only.

Other Part 390 Requirement to Check During an Inspection

The review of the motor carrier's vehicles should include a determination of whether the vehicles are properly marked.

Notes:

- When citing a carrier for not having required biennial of MCS-150, cite 392.9a(b).
- When citing a carrier for not having MC authority, cite 392.9a(a).
- When citing a rental truck for not having proper marking or paperwork under a rental agreement, cite 390.12(e).
- When citing a carrier for knowingly producing fraudulent documents, cite 390.35.
- When citing a carrier for not submitting accurate information, cite 390.19(e).
- When citing a new entrant carrier for not having the required USDOT number and/or operating authority, cite 385.301.

5.3.8.8 Part 391 – Qualification of Drivers

5.3.8.8.1 Part 391 - Investigative Procedures

In your review of compliance with Part 391, you should use the following guidelines to assist in your investigation.

Part 391 - Driver Qualification (DQ)

Verifying if a Driver is Qualified to Operate a CMV

The driver must:

- Be at least 21 years of age (remember the intrastate exemption)
- Be able to safely operate the type of CMV he or she drives
- Be physically qualified to drive a CMV and either have a valid medical examiner's certificate tied to their CDL/CLP via CDLIS or a valid medical examiner's certificate in their possession.
- Have a currently valid motor vehicle driver's license issued only by one State or jurisdiction
- Be able to read and speak the English language sufficiently

Verifying if a Driver has a Valid Medical Examiner's Certificates

When conducting a driver inspection on a Commercial Driver's License (CDL) or Commercial Learner's Permit (CLP) holder, the inspector should:

- Electronically verify that the driver is properly credentialed via Query Central (QC) or the Commercial Driver's License Information System (CDLIS) gateway at CDLIS.dot.gov.

  If CDL or CLP holders are found operating a commercial motor vehicle (CMV) requiring CDL beyond the scope of the self-certification, then the driver should be cited under **49 CFR 383.71(b)(1).**

- Verify that the driver is medically certified via QC or the CDLIS.dot.gov gateway.

  If no medical information is on file, ask the driver for the valid paper copy of the Medical Examiner's Certificate (MEC) or Medical Examination Report (MER) in his/her possession. For a CDL or CLP holder, the MEC or MER paper copy is only valid as proof of medical certification for *up to 15 days* from the date the form was signed by the Medical Examiner (ME).

  - If a CDL or CLP holder can produce a State Driver's Licensing Agency (SDLA) a receipt or other document , the driver should not be cited.
    However, in order for the SDLA issued document to be acceptable, it must, at a minimum, include the following:
    - A clear indication that the SDLA accepted the driver's CDL medical certification information;
    - The driver's identifying information (e.g., name, date of birth, CDL number);
    - The driver's medical certification status information (i.e., "certified" or "not certified");
    - The issuance and expiration dates of the MEC;

- The ME's National Registry number; and
- The driver's medical variance and any restrictions.

- If the inspector's check indicates that no medical information is on file and the CDL or CLP holder does not have a valid MEC, MER, or SDLA-issued document, as described above, in their possession, then the driver should be cited under 49 CFR 391.41(a)(1) and placed out of service in accordance with the Commercial Vehicle Safety Alliance (CVSA) out of service criteria.

- Verify any existing Skills Performance Evaluation (SPE) certificate, medical exemption, and/or medical 90-day waiver.
  Drivers must continue to carry any SPE certificate, medical exemption, and/or medical 90-day waiver letter on their persons while on duty, pursuant to 49 CFR 391.41(a)(2)(iii).

  If an SPE certificate, medical exemption, or medical 90-day waiver letter is required, verify that the driver is carrying the required documentation and that they are utilizing any required medical device (e.g., prosthetic device, etc.). Also, ensure the driver is not in violation of any limitations or restrictions listed on the documentation.

  For example, if the SPE certificate requires the use of an automatic transmission or a specific modification to the vehicle such as moving controls or pedals, confirm these exist on the vehicle or if the SPE certificate, waiver or exemption restricts the driver from operating a motor coach or bus with passengers in interstate commerce, then operating of those vehicles would result in a violation.

  - If no SPE certificate is in possession when on duty or if the driver has failed to comply with the requirements indicated on the SPE, then the driver should be cited for **49 CFR 391.49(j)** and placed out of service in accordance with the CVSA criteria.

  - If no medical exemption or 90-day medical waiver is in the driver's possession or if the driver has failed to comply with the requirements indicated in the medical exemption or waiver, then the driver should be cited for **49 CFR 391.41(a)** and placed out of service in accordance with the CVSA criteria.

  - If the driver is operating a motor coach or bus with passengers without complying with the medical exemption, then the driver should be cited for **49 CFR 391.41(a)** and placed out of service in accordance with the CVSA criteria.

- Verify authenticity of MEC information.
  If during the inspection you suspect the driver's MEC is fraudulent, you have discretion to validate the authenticity of information on the MEC or CDLIS using the guidance found below in the section titled, ": Validating the Authenticity of Information on the MER, MEC, CDLIS, MVR or State-Issued Document."

- If you find that the MEC is fraudulent, the driver should be cited for **49 CFR 390.35** and placed out of service in accordance with the CVSA out of service criteria.

When conducting inspection on a driver not requiring a CDL (non CDL driver), the inspector should:

- Verify that the non-CDL driver is medically certified.
  - If your check indicates the driver does not have a valid MEC or MER in their possession, then the driver should be cited under **49 CFR 391.41(a)(1)** and placed out of service in accordance with the CVSA criteria.
- Verify any existing SPE certificate, medical exemption, and/or medical 90-day waiver.

  Non CDL drivers are also required to carry any SPE certificate, medical exemption, or medical 90-day waiver letter on their person while on duty, pursuant to 49 CFR 391.41(a)(1)(ii). Inspectors should follow the procedures for citing and placing out of services if driver is required to have in their possession an SPE certificate, medical exemption, and/or medical 90-day waiver.

Verify authenticity of MEC information.
If during the inspection you suspect the driver's MEC is fraudulent, you have discretion to validate the authenticity of information on the MEC or CDLIS using the guidance found below in the section titled, "Validating the Authenticity of Information on the MER, MEC, CDLIS, MVR or State-Issued Document." If you find that the MEC is fraudulent, the driver should be cited and placed out of service. *See Attachment B of Update to the Medical Certificate Updated medical Certification policy and procedures (MC-SEE-2021-0003) for verification guidance.*
For additional guidance to ensure consistent, fair enforcement during reviews see *MC-ECE-2015-0001*

Because a Canadian Class 5 license issued by any Canadian province, an Ontario Class G license, an Ontario Class D license (prior to age 80), and a New Brunswick Class 3 license (prior to age 65) are non-commercial Canadian driver licenses that allow a Canadian driver to operate a CMV that would not require a CDL in Canada, verify medical qualification using criteria found in *Documents the Driver Must Provide* in Interviewing the Driver, above.

Part 391 - Driver Disqualification

Determining Whether or Not a Driver is Disqualified

Run a CDLIS check on the driver (Federal)

5.3.8.8.2 Part 391 - ASPEN Procedures

Once you've completed your investigation of compliance with Part 391, you should use the following guidelines to assist in the completion of the violations tab in the ASPEN software.

Recording Violations of Part 391 OOS/Possible OOS Regulations

Part 391 - OOS/Possible OOS Violations

Citation	Type	Description
391.11(a)	N	A person shall not drive a commercial motor vehicle unless he/she is qualified to drive a commercial motor vehicle. Except as provided in §391.63, a motor carrier shall not require or permit a person to drive a

		commercial motor vehicle unless that person is qualified to drive a commercial motor vehicle.
391.11(b)(1)	Y	Driver is at least 21 years old.
391.11(b)(4)	Y	Is physically qualified to drive a commercial motor vehicle in accordance with Subpart E - Physical Qualifications and Examinations of this part.
391.11(b)(5)	Y	Has a currently valid commercial motor vehicle operator's license issued only by one State or jurisdiction.
391.11(b)(7)	Y	Is not disqualified to drive a commercial motor vehicle under the rules in §391.15.
391.15(a)-SIN	P	Driving a CMV while disqualified. Suspended for safety-related or unknown reason and in the state of driver's license issuance.
391.15(a)-SOUT	P	Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance
391.15(a)-NSIN	P	Driving a CMV while disqualified. Suspended for non-safety-related reason and in the state of driver's license issuance.
391.15(a)-NSOUT	P	Driving a CMV while disqualified. Suspended for a non-safety-related reason and outside the state of driver's license issuance.

5.3.8.8.3 Part 391 - Enforcement Procedures

Once you have entered the violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for part 391 violations, use the following guidelines.

Part 391 - Documentation

Documents that Should be Gathered to Initiate an Enforcement Action

- The driver is an employee (or controlled by the motor carrier).
- The CMV was operated in interstate commerce on a specific date.
- A violation of Part 391 occurred.
- Vehicle registration showing GVWR, or other documentary evidenced, proving that the driver was subject to Part 391.
- A Medical Examination Certificate.
- A Skills Performance Evaluation (SPE).

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support a violation. You may utilize other documents to prove a violation.

Part 391 - Enforcement Against the Driver

Consider Enforcement Action Against a Driver for the Following Violations

- 391.11(b)(5) - Driving without a current valid motor vehicle operator's license or permit.
- 391.15(a)-SIN - Driving a CMV while disqualified. Suspended for safety-related or unknown reason and in the state of driver's license issuance.
- 391.15(a)-SOUT - Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance
- 391.15(a)-NSIN - Driving a CMV while disqualified. Suspended for non-safety-related reason and in the state of driver's license issuance.

- 391.15(a)-NSOUT - Driving a CMV while disqualified. Suspended for a non-safety-related reason and outside the state of driver's license issuance.
- 390.35/391.45 - Fraudulently or intentionally making a false entry on a required medical examiner's certificate.

If a Canadian Driver is Declared OOS for Part 391 Violations

The United States and Canada entered into a Reciprocity Agreement, effective March 30, 1999, recognizing that a Canadian CDL is proof of medical fitness to drive. Therefore, Canadian CMV drivers are no longer required to have in their possession a medical examiner's certificate if the driver has been issued, and possesses, a valid CDL issued by a Canadian Province or Territory. However, Canadian drivers who are insulin-using diabetics, who have epilepsy, or who are hearing impaired as defined in §391.41(b)(11) are not qualified to drive CMVs in the United States. Furthermore, Canadian drivers who do not meet the medical fitness provisions of the Canadian National Safety Code for Motor Carriers but who have been issued a waiver by one of the Canadian Provinces or Territories are not qualified to drive CMVs in the United States.

If a Driver is Declared OOS for Part 391 Violations

You should ensure he or she does not operate a CMV until the driver may lawfully do so under the rules.

Note: When an inspector has knowledge and/or evidence that a driver is/is not in possession of a valid medical certificate, and is not in possession of all required exemptions for the following conditions: vision, hearing, insulin-using diabetes, epilepsy, or any other condition which is likely to cause a loss of consciousness or any loss of ability to control a CMV 391.11(b)(4). Place Driver OOS.

Part 391 - Enforcement for Non-English Speaking Driver

If the driver indicates that he/she is unable to **understand and respond to official inquiries and directions in English**, the driver should be cited for a violation of Section 391.11(b)(2).

5.3.8.9 Part 392 – Driving of Motor Vehicle

5.3.8.9.1 Part 392 - Investigative Procedures

In your review of compliance with Part 392, you should use the following guidelines to assist in your investigation of motor carriers both of property (including placardable HM) and passengers.

What to Check and the Scope of Authority to Enforce Violations of 392

Items to be inspected should include the existence of load securement, driver use of alcohol and drugs, and the presence of radar detectors.

Ensure that the driver's alertness is not impaired, or likely to become impaired, through fatigue, illness, or any other cause, as to make him or her unsafe to operate the CMV.

Verify the safe operation of a passenger-carrying vehicle.

Make sure the driver uses his/her seatbelts.

Make sure the carrier is not in violation of 392.9a operating authority.

Ensure there are no unauthorized passengers

Ensure drivers are not using radar detectors, hand-held mobile devices or texting

Ensure HM laden vehicles stop at Railroad crossings as required.

Make sure that a Mexico-domiciled commercial motor carrier is not operating beyond their geographical limitations (392.9a).

When violations of 392 are found involving alcohol and drugs, be very careful and consult your DA.

Requirement to Obtain an Operating Authority from FMCSA

Any motor carrier required to register under 49 U.S.C. §13902 is required to obtain an operating authority from FMCSA. For the purpose of the electronic Field Operations Training Manual (eFOTM), the terms operating authority and motor carrier certificate of registration will be referred to as operating authority and are meant to represent the registration required under 49 U.S.C. §13902.

For U.S. and Canadian motor carriers, for-hire motor carriers who operate in interstate transportation of regulated property, HHG and passengers are required to obtain an operating authority. Mexico-domiciled motor carriers (both for-hire and private) who operate in interstate transportation of property, HHG, and passengers are required to obtain operating authority.

Type of Operating Authorities that a Motor Carrier Receives from FMCSA

U.S. and Canadian motor carriers can obtain common carrier or contract carrier authority for the transportation of property, HHG and/or passengers. Additionally, U.S.-based enterprises owned or controlled by persons from Mexico providing transportation service of international cargo consisting of property or HHG may obtain an ***enterprise*** operating authority from FMCSA. For the purpose of eFOTM, international cargo is defined as cargo which originates or is destined to a point outside of the United States.

Mexico-domiciled motor carriers that transport property and HHG between Mexico and points within the border commercial zones are required to obtain ***commercial zone (OP-2)*** operating authority from FMCSA.

Mexico-domiciled motor carriers that wish to transport general freight may apply to obtain ***long-haul (OP-1MX)*** operating authority. The transportation of hazardous materials, household goods, and/or passengers remain restricted from authority for long-haul operations until the Land Transportation provisions of NAFTA are fully implemented. Carriers may request commercial zone (OP-2) operating authority restricting operations to recognized municipalities and border zones along the Southern border until that time.

See also Mexico Manual's *Applicable Definitions* for additional details.

Difference Between Operating Without Operating Authority and Operating Beyond the Scope of its Operating Authority

A motor carrier is considered to be operating without an operating authority [§392.9a(a)(1)] when the carrier does not possess an active operating authority. A motor carrier is considered to be operating beyond the scope of its operating authority [§392.9a(a)(2)] when it has an active operating authority, but is transporting a commodity currently not listed in the L&I system or in/or through a state for which the carrier has no process agent on file.

A Mexico-domiciled motor carrier granted operating authority under 49 CFR 368 that provides transportation beyond the United States-Mexico municipal commercial zones is operating outside the scope of its operating authority [49 CFR 392.9a(a)(2)]. A Mexico-domiciled motor carrier granted operating authority under 49 CFR 365 that provides point-to-point transportation in the United States is also operating outside the scope of its operating authority.

Verifying Whether a Motor Carrier is Operating Within the Scope of its Authority as it Relates to its Operations as a Common or Contract Motor Carrier

Because Section 4103 of the Unified Carrier Registration Act prohibits FMCSA from registering carriers as a common or contract carrier; and further, prohibits FMCSA from making a distinction on whether the carrier would have been classified as a common or contract carrier, the agency is not enforcing the distinction between common and contract carrier status.

Therefore, until the Registration Office can update the L&I system to reflect this change, as long as the L&I system currently shows the carrier as having either common or contract authority they are in compliance.

5.3.8.9.2 Part 392 - ASPEN Procedures

Once you have completed your investigation of compliance with Part 392, you should use the following guidelines to assist in the completion of the Violation tab in the ASPEN software.

Recording Violations of Part 392 OOS/Possible OOS Regulations

Citation	Type	Description
392.9	P	Driver may not operate a CMV without proper load securement
392.4(a)	Y	Driver on duty and under the influence of, or using a narcotic drug / amphetamine, which renders the driver incapable of safe operation
392.5(a)	Y	Driver consuming an intoxicating beverage within 4 hours before operating a motor vehicle
392.16	N	Failing to use seat belt while operating CMV
392.2	N	Local laws (general)
392.9a(a)(1)	Y	Operating without required operating authority
392.9a(a)(2)	Y	Operating beyond the scope of operating authority granted
392.9a(a)(2)	Y	Operating beyond the scope of its operating authority granted – Providing prohibited point-to-point transportation services (cabotage)
392.10	N	Failing to stop for railroad crossings when transporting certain Hazardous Materials
392.60	N	Transporting an unauthorized person
392.71	N	Using a radar detector while operating a commercial motor vehicle
392.80(a)	N	Operating a CMV while texting
392.80(b)	N	Using a driver operating a CMV while texting
392.82	N	Using a hand-held mobile device while driving a commercial motor vehicle

5.3.8.9.3 Part 392 - Enforcement Procedures

Once you have entered the violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for Part 392 violations, use the following guidelines .

Part 392 - Documentation

Evidence that Should be Obtained to Prove a Motor Carrier has Violated Part 392

In order to prove a violation of Part 392.9a by a U.S. or Canadian motor carrier, FMCSA must show that transportation provide was:

- For-hire transportation
- Not a shipment of exempt commodities
- An interstate/international shipment

Shipping documents, such as bills of lading and freight bills, can be used to document the need for operating authority. Similar documentation can be used to prove a Mexico-domiciled motor carrier has operated in violation of Part 392.9a. In either case, the violation should be cited as §392.9a(a) - Operating without operating authority.

Part 392 - Enforcement Action Against Drivers

Circumstances Under Which Enforcement Action Can Be Considered Against a Driver

You should consider enforcement action against a driver for the following violations:

- 392.2 - Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which being operated
- 392.4(a) - Operating a motor vehicle while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle
- 392.5(a) - Possession/use/under the influence of alcohol 4 hours prior to duty
- 392.5(b)(1) - Operating a motor vehicle while under the influence of, or in possession of, an intoxicating beverage
- 392.5(b) - Operating a motor vehicle while showing evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle
- 392.9a – Operating a commercial motor vehicle without authority.
- 392.80(a) - Operating a CMV while texting
- 392.80(b) - Using a driver operating a CMV while texting
- 392.82 – Using a hand-held mobile device while driving a CMV

5.3.8.10 Part 393/396 – Parts, Accessories, Inspection, Repair & Maintenance

5.3.8.10.1 Part 393/396 - Investigative Procedures

In your review of compliance with Part 393, you should use the following guidelines to assist in your investigation of motor carriers both of property and passengers.

Conducting the Inspection of 393/396

The review of a vehicle's parts and accessories, and its inspection, repair, and maintenance should be consistent with the North American Uniform Driver-Vehicle Inspection Procedures.

The purpose of reviewing these parts is to:

- Ensure vehicles are equipped with the necessary parts and accessories,
- Establish the effectiveness of the vehicle maintenance of the motor carrier or its agents,
- Determine general condition of the motor carrier's vehicles,
- Verify periodic inspection of commercial motor vehicles (power unit and trailer), and
- Identify all imminent safety violations under 49 CFR Part 393.

Part 393 - Brake Adjustment Limit Violation

Definition of Brake Adjustment Limit Violation

Per April 1, 2006, in North America OOS Criteria under Section 1. Brake System states a brake found at the adjustment limit is not a violation. In addition, one brake at ¼ inch or more beyond the adjustment limit would be one defective brake and two brakes at less than ¼ inch would equal one defective brake.

Made effective April1, 2006, when the 2006 OOS Criteria became effective, brakes at the readjustment limits are to be considered a violation, BUT NOT CONSIDERED toward the 20 percent OOS rule. This was changed to reflect the change in 393.47(e) that was effective 9/14/05.

The Vehicle Committee determined that the best way to address the 80 percent of the rated stroke "provision of 393.47(e) was to make it a violation if the stroke measurement met the readjustment limit shown in the OOS criteria. The readjustment limits listed in the OOS criteria are generally not equal to 80 percent of the rated stroke but are so close as to have minimal effect.

- Examples: A Type 30 (regular) brake has a rated stroke of 2 ½". 80 percent of this is 2" (the readjustment limit). 393.47 (e) states the stroke must be less than 80 percent. A Type 30 brake stroke measured at 2" would be a violation of 393.47(e).
    - A Type 30 (long stroke) brake has a rated stroke of 3". 80 percent of this is 2.4 percent (2-3.2/8ths of an inch).
    - A Type 24 (regular) brake has a rated stroke of 2 – ¼". 80 percent of this is 1.8" (1-3.2/4ths of an inch).

As can be seen from the examples, it would be very difficult to measure 0.4 or 0.8 of an inch using a conventional ruler.

The Vehicle Committee determined not to include brakes meeting the readjustment limit back into the 20 percent OOS criteria.

Part 393 – Motorcoach Inspections

Inspect the Following Within the Passenger Compartment of a Motorcoach

Ensure the passenger carrier has the following:

- A standing line or bar and sign near the front, requiring passengers to stay behind the line when the bus is in operation,
- A fire extinguisher,
- Floors free of holes or openings,
- Seats securely fastened to the vehicle,
- No aisle seats unless they automatically fold out of the way leaving the aisle clear when not in use,
- All emergency window and door exits properly labeled,
- Operating red exit light over emergency doors,
- Emergency windows that are fully operative (the driver must demonstrate), and
- Baggage and freight stored and secured to allow unobstructed access to all exits and protect passengers from falling cargo.

Daily Vehicle Inspection Reports. Passenger carriers are required to prepare a DVIRat the completion of each day's work, on each vehicle in commerce when a defect or deficiency was discovered by or reported to the driver.The regulatory change allowing the omission of the "No Defect DVIR " is applicable to passenger carriers as of September 17, 2020.

Undercarriage and Inspection Ramps. Passenger vehicles have very low ground clearance, which makes it impossible to inspect the undercarriage safely without using the ramps, pit, or lifts. Therefore, it is necessary to raise the vehicle using the ramps, pit, or lifts. The most common way to access the undercarriage is to use ramps because they are portable. Safety is always the first consideration. All inspectors must stay clear of the ramps while the driver transports the motorcoach onto the ramps. Ensure wheel chocks have been placed on the front and rear of the drive axle.

It is critical that inspectors determine the number of ramps used during the inspection. For safety reasons, the inspectors must select the correct number of ramps according to the size of the vehicle.

Four ramps:

Raise the vehicle using four ramps, providing access to the entire undercarriage. This requires perfect alignment.

Two ramps:

First, use two ramps to raise the front, and then use the same two ramps to raise the rear of the vehicle for inspection. This method allows the driver to drive onto ramps easier. There is no need to realign ramps after the ramps are in place. Using two ramps instead of four involves more labor because the vehicle must be moved to access the entire undercarriage.

Due to safety reasons, it is not recommended to use two ramps to raise the front and rear on the left side or the front and rear on the right side. It is difficult to steer the vehicle onto the ramps in this alignment, and it makes the vehicle unstable.

Wheel placement on ramps: All wheels should be in contact with the ramps when being raised; this includes the tag axle. After the vehicle is in place on the ramps, place a wheel chock in front of and behind the drive axle. Remember that passenger vehicles have a very low ground clearance; be aware of this while placing the vehicle on ramps.

Use caution when inspecting a double decker bus with ramps; it has three height position levels. Make sure it is not in the lowest level position before placing the vehicle on the ramps.

Turning the engine off: Instruct the driver to turn off the engine, release all brakes, and remain at the controls.

Part 393/396 - Compliance with Vehicle Safety Standards

Verifying Compliance with Motor Vehicle Safety Standards

For vehicles that do not have certification labels, it has been determined that enforcement officials should defer to the VIN on a plate or plates in various locations on the vehicle. The VIN will assist the inspectors in determining what year the vehicle was manufactured to determine compliance with the FMVSS or Canadian Motor Vehicle Safety Standards (CMVSS).

FMCSA's FMVSS Certification Label Policy

Motor Carriers	Applicable Vehicle Safety Requirements	Certification Label Requirements	Exceptions for Displaying Labels
U.S.-Based Motor Carriers	All CMVs must comply with the FMCSR, including all FMVSSs that are cross-referenced in Part 393, concerning vehicle equipment and components.	Vehicles usually display FMVSS certification label.	VIN meets NHTSA rule for VINs is acceptable. Also, State - issued VIN is acceptable provided the vehicle is registered in a State.
Canada-Based Motor Carriers	All CMVs must comply with the FMCSR, including all FMVSSs that are cross referenced in Part 393,	Vehicles usually display either an FMVSS certification label OR a	VIN that meets NHTSA rule for VINs is acceptable. VIN that

	concerning vehicle equipment and components.	CMVSS certification label.	meets Transport Canada's rule for VINs is acceptable.
Mexico-Based Motor Carriers Operating Within the Commercial Zone. Mexico - Based Motor Carriers Operating Beyond the Commercial Zone	All CMVs must comply with the FMCSR, including all FMVSSs that are cross-referenced in Part 393, concerning vehicle equipment and components.	Vehicles may display either an FMVSS certification label OR a CMVSS certification label.	For vehicles of model year 1996 or later, a VIN that meets NHTSA rule for VINs is acceptable. VIN that meets Transport Canada's rule for VINs is acceptable. Any vehicles from earlier model years should not be considered to meet the FMVSS or CMVSS unless there is a certification label.

It is important that Special Agents from the Department of Transportation (DOT) conduct a thorough review of a passenger carrier to ensure its safe operation on the highways.

5.3.8.10.2 Part 393/396 - ASPEN Procedures

Passenger Vehicle types within ASPEN.

The following vehicle configurations should be used to designate the vehicle type in the ASPEN drop-down list. By using these designations, FMCSA is able to accurately monitor passenger carrier operations.

Use "motorcoach" when the vehicle:

- Is designed for long distance.
- Has an elevated passenger deck over the luggage compartment

Bus" and "motorcoach" should not be used interchangeably.

Use "bus" when the vehicle is designed or used to transport more than 15 passengers and it is not a motorcoach or school bus.

Use "school bus" when the vehicle is:

(Designed to transport school children. Typically painted yellow and black.)

Use "passenger van" when the vehicle:

(Is designed to transport 9-15 passengers, and not a stretch limousine.

(May be a "high cube" vehicle.

Use "limousine" when the vehicle is designed to transport 9-15 passengers.

Once you've completed your investigation of compliance with Part 393/396, you should use the following guideline in the completion of the violations tab in the ASPEN software.

Recording Violations of Part 393/396 OOS/Possible OOS Regulations

Citation	Type	Description

393.11	P	No or defective lighting devices or reflective material as required.

5.3.8.10.3 Part 393/396 - Enforcement Procedures

Once you have entered the violations discovered into the violations tab of the ASPEN software and have decided to initiate enforcement action for 393/396 violations, use the following guidelines.

Parts 393 & 396 - Documentation

Documents to Gather in Order to Initiate an Enforcement Action

You should obtain the documentation to initiate an enforcement action. The documentation must establish that:

- The vehicle used falls within FMCSR jurisdiction for Part 396.
- The driver is an employee of (or controlled by) the motor carrier.
- The CMV was operated in interstate commerce by a motor carrier on a certain date.
- The violation of Part 396 occurred.

Specific Documents that Should be Used to Document these Violations

Specific documentation may be needed to support some of the above referenced critical and acute regulation violations.

- 396.9(c)(2) - Copy of the original out-of-service order.
- 396.11(c) - Copy of DVIR indicating the defects or deficiencies listed by the driver and a statement from carrier official that the defect was not corrected.
- 396.17(g) - Copy of the periodic inspection report with defects identified; statement of carrier official that defects were not repaired.

Documents that Can be Used to Support the Violation

Examples of documents to support your discovered violations are listed below.

- Corresponding shipping papers
- RODS
- Daily vehicle inspection reports
- Vehicle registration

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support your violation; therefore, you may use other documents to prove your violation.

A statement from a motor carrier official, driver, or other person responsible for compliance with Part 396. See *Illustration E-2*.

Parts 393 & 396 - Enforcement Action Against Drivers

Considering an Enforcement Action Against a Driver

The following violations warrant considering enforcement action against a driver:

- 396.9 - No driver shall operate any motor vehicle declared and marked “out-of-service” until all repairs required by the “Out-of-Service Notice” have been satisfactorily completed.
- 396.9(c)(2) - Operating an "out-of-service" vehicle.*
- 396.11(a) - Each driver shall report, and every driver shall prepare a report in writing at the completion of each day’s work, on each vehicle operated in commerce when a defect or deficiency should have been reported and was not (driver has 10 percent or greater violations for at least 30 days checked).

(*) denotes Red Flag Violation

If I Find a CMV in "Out-of-Service" (OOS) Condition

If a CMV is discovered in a condition likely to cause an accident or breakdown, you should:

- Prohibit the operation of the CMV.
- Specify the defect(s) or violation(s) that must be corrected before the vehicle is placed in operations as described on form MCS-64.
- Place the vehicle(s) OOS using Form MCS-64 (OOS Order).

If I find a Mexican Carrier Out of Compliance with the Motor Vehicle Safety Standards

No adverse action will be taken against vehicles operated by Mexico-domiciled motor carriers with labels certifying compliance with the CMVSS in effect at the time of manufacture. With only a few differences, the Canadian motor vehicle safety standards are identical to the U.S. manufacturing performance standards (FMVSS), and FMCSA's operating regulations incorporate the FMVSS critical to continued safe operation.

However, whether a vehicle has a certification label, vehicles with violations of the FMCSR that are serious enough to meet the current OOS criteria are to be placed OOS. FMCSA will continue to impose civil penalties for violations of Part 393 of the FMCSR concerning parts and accessories necessary for safe operation, including regulations that cross-reference the FMVSS.

5.3.8.11 Part 395 – Hours-of-Service (HOS)

5.3.8.11.1 Part 395 - Investigative Procedures

In your review of compliance with Part 395, you should use the following guidelines to assist in your investigation of motor carriers of both property (including placardable HM) and passengers.

Checking a Driver's HOS at the Roadside

Review of compliance with Part 395, at the roadside, covers the previous 6/7 days. Ensure the driver has a RODS in possession and is current for the seven previous days. Drivers operating under an exemption as in Section 395.1(e) (100 air-mile radius driver) are not required to prepare a RODS.

- After you have requested the previous 6/7 days of RODS, verify the driver is not operating under an OOS Order.
- Review the driver's compliance with the 30 minute rest rule and 10/11/14/15-hour rule.
- Ensure that the driver is in compliance with the 60/70-hour rule. *In order for a driver to use the 70 hour rule, the carrier must have CMV's operating every day of the week.
- Check for the falsification of RODS.

DEFINITIONS

Electronic Logging Device (ELD)

An ELD is a device or technology that automatically records a driver's driving time, facilitates the accurate recording of the driver's HOS, and meets the technical specifications of the ELD rule. An ELD must be integrally synchronized with the engine of the commercial motor vehicle (CMV). Certified ELDs, meeting the technical specifications in the ELD rule, will be listed at https://3pdp.fmcsa.dot.gov/ELD/.

Automated On-Board Recording Device (AOBRD)

As defined in 49 CFR § 395.2, an AOBRD is an electric, electronic, electromechanical, or mechanical device capable of recording a driver's duty status information accurately and automatically as required by 49 CFR § 395.15. The device must be integrally synchronized with specific operations of the CMV in which it is installed and, at a minimum, the device must record engine use, road speed, miles driven, the date, and time of day.

Logging Software Programs

As described in the July 10, 2014, Federal Register notice titled, "Hours of Service for Commercial Motor Vehicle Drivers; Regulatory Guidance Concerning Records of Duty Status Generated by Logging Software Programs" (79 FR 39342), logging software programs assist a CMV driver in manually inputting and storing RODS information electronically on laptop computers, tablets, and smartphones. Logging software programs are not integrally synchronized with the CMV engine. The electronically-generated display and output must meet the requirements in 49 CFR § 395.8, and be treated as an alternative to paper logs.

Device	RODS Output during Phase I
ELDs	**Display or Printout required per driver's/motor carrier's choice.** Graph grid required. (See example in Attachment A in Phase I: Electronic Logging Devices and Hours-of-Service Supporting Documents Final Rule: Awareness and Transition Policy MC-ECE-2016-0002.) (Optional: Fax or email may be provided.)
AOBRDs	**Display required.** Allowed to have chart, electronic display, or printout. (Optional: Fax or email may be provided.)
Devices with Logging Software Programs	**Display and Printout required per inspector's request.** Graph grid required.

Checking a Driver's HOS on a Device installed with Logging Software and/or Applications Without Electronic Signature Capabilities at Roadside

Drivers using logging software programs and/or applications that do not have electronic signature capabilities and who do not have the previous 7 days RODS printed, signed, and in their possession at the time of inspection, are in violation of 49 CFR 395.8(k)(2) and should be cited. The driver must be given the opportunity to print the current and prior 7 days RODS at roadside before being placed OOS. If the driver is able to print the current and prior 7 days RODS at roadside the driver should be cited 49 CFR 395.8(k)(2) but not placed OOS.

Note: Mexico-domiciled motor carriers/drivers are not required to keep track of their HOS until the driver reaches the United States.

There is No Authority Under 395.13(d) to Cite/Penalize a Carrier/Driver Violating a State-Issued OOS Order

No jurisdiction, as the OOS Order was issued by a State for violating a State regulation.

Time When the Actual Violation of the HOS Rules Occurs

Violations of Part 395 occur **after** a driver has driven in excess of the maximum permitted hours. If a driver is placed OOS for a violation of Part 395, ensure the driver does not drive.

Should a Carrier and/or Driver be Cited for Falsification and Exceeding One of the HOS Rules on the Same Day?

Yes, since RODS are checked for all HOS compliance, including falsification, if there are multiple HOS violations on a single RODS, the most appropriate violations must be cited (i.e. 10/15, 11/14, false, form & manner, etc.) If you discover a RODS contains false entries to conceal HOS, you would include it with the cite 395.8(e)(1) - False records of duty status.

Regarding Checking the Co-Driver's RODS

If the co-driver's RODS are readily available in the cab, you should examine it. However, the co-driver is not to be disturbed in the sleeper berth. The co-driver shall be subject to the same examination of his/her RODS as the driver.

Routing Softwar Cannot be Used to Support a False Log

Routing Software cannot be used as standalone evidence. It would not stand up as evidence in court because of the hearsay rules. Consequently, both the CSO and an administrative law judge (ALJ) would not accept it as evidence.

The New HOS Rules

On June 1, 2020, FMCSA revised the hours of service (HOS) regulations to provide greater flexibility for drivers without adversely affecting safety. Motor carriers are required to comply with the new HOS regulations starting on September 29, 2020, not before.

Changes:

1. Short-haul Exception

Expands the short-haul exception to 150 air-miles and allows a 14-hour work shift to take place as part of the exception.

2. Adverse Driving Conditions Exception

Expands the driving window during adverse driving conditions by up to an additional 2 hours.

3. 30-Minute Break Requirement

Requires a 30-minute break after 8 hours of driving time (instead of on-duty time) and allows an on-duty/not driving period to qualify as the required break.

4. Sleeper Berth Provision

Modifies the sleeper berth exception to allow a driver to meet the 10-hour minimum off-duty requirement by spending at least 7, rather than at least 8 hours of that period in the berth and a minimum off-duty period of at least 2 hours spent inside or outside the berth, provided the two periods total at least 10 hours, and that neither qualify period counts against the 14-hour driving window.

* The new rule does not change sleeper berth provisions unique to the drivers of CMVs transporting passengers found in 395.1(g)(3)

- 30 minute rest before 8 continuous hours on duty and driving
- 11 hours of driving
- 14 hours of working
- 10 hours of rest after driving 11 hours or working 14 hours

Remember: Passenger-carrying motor carriers are not subject to the new HOS rule.

Passenger carriers also utilize the Travel Time provision, referred to as Dead Head on a Cushion.

Nominal HOS

A nominal HOS violation is a violation that is less than 15 minutes. These violations have been added to Aspen, and are designated as "nominal" in the software. These nominal violations have a lower severity weight than standard HOS violations in the Safety Measurement System (SMS). A driver should be cited for a nominal HOS violation only for previous day(s) HOS violations. Do not use the nominal HOS violation citation for a violation that occurs on the current day. For example, if a driver's RODS exceeds a HOS violation by 10 minutes on day 2 of the previous 7 days, the inspector should cite the driver for a nominal HOS of service violation. If a driver's RODS show a 10-minute HOS violation on the current day, the inspector should cite the drive for a standard HOS violation.

Driving During the Change from Standard Time to Daylight Savings Time or Vice Versus

During the change from Standard Time to Daylight Savings Time or vice versus, the driver records his/her time "as is" and enters an explanation in the Remarks section of the RODS. It doesn't matter exactly how the driver logs his/her time (as Standard Time or Daylight Savings Time) as long as it is clear

how many hours are actually involved on each line of the RODS grid. He/she **DOES NOT** get to drive or work an hour more (or less).

34-Hour Restart

A driver of a property carrying vehicle may restart the 60/70 hour period with an off-duty. The driver can use the 34-hour restart at any time. He/she does not have to be compliant with the 60/70-hour rule to use the restart provision. This is because the 34-hour restart wipes clean all past time regardless of whether such time constituted a violation or not. While the time is wiped clean, the violation is not undone. The driver and the motor carrier would still be subject to appropriate enforcement.

Definition of Off-Duty Time

On-duty time does not include any time resting in a parked vehicle or up to 2 hours riding in the passenger seat of a property-carrying commercial motor vehicle (CMV) moving on the highway immediately before or after a period of at least 8 consecutive hours in the sleeper berth. All other sections of the definition of on-duty time remain unchanged.

Compliance with the Enforcement of the On-Duty Time Provision

The time spent resting in a parked vehicle or up to 2 hours riding in a passenger seat of a property-carrying CMV moving on the highway, immediately before or after a period of at least 8 consecutive hours in the sleeper berth is considered off-duty time. The 2 hours riding in the passenger seat plus the 8 consecutive hours in the sleeper berth is equivalent to the required 10 consecutive hours off duty time. The sleeper berth provision allows drivers to split their 10-hour off-duty period in different ways (e.g., 7/3, 8/2, 7.5/2.5), provided one off-duty period (whether in or out of the sleeper berth) is at least 2 hours long, and the other involves at least 7 consecutive hours spent in the sleeper berth. The periods must add up to 10 hours, and when used together, neither time period counts against the maximum 14-hour driving window.

The key elements to consider relating to the new on-duty time provision are as follows:

1. The “at least 2 hours” riding in a passenger seat of a property-carrying CMV in conjunction with at least 7 hours in the sleeper berth is considered off-duty time if both periods when used together add up to 10 hours. If the full 2 hours are utilized, when added to the 8 hours in the sleeper berth, it will constitute the full 10-hour off-duty requirement.

An 8-hour sleeper-berth period by itself is not excluded from the 14-hour driving window. If fewer than 2 hours are used riding in a passenger seat of a property-carrying CMV and the full 10-hour off duty requirement is not met, the time spent riding in the passenger seat and the time spent in the sleeper-berth will be included in the calculation of the 14-hour period.

- **Example:** If a driver spends 8 hours in the sleeper berth and 1 hour riding in the passenger seat, the 1 hour riding in the passenger seat and the 8 hours spent in the sleeper-berth would be included in the 14-hour period because he or she has not met the 10-hour break requirement.

2. If a driver rides more than 2 hours in the passenger seat of a property-carrying CMV, any time in excess of those 2 hours is considered on-duty not driving time, and should be included when determining compliance with the 14-hour on-duty period requirements, unless the time spent in excess of 2 hours in the passenger seat of a property- carrying CMV is combined with at least 7 hours spent in the sleeper-berth
3. The 2-hour time period riding in a passenger seat may be split into any combination of time before and after the 8-hour sleeper berth break.

- **Example:** If a driver rides in the passenger seat for 1 hour before and 1 hour after the 8-hour sleeper berth break, or 30 minutes before and 1 ½ hours after, the entire 2-hour period is considered off-duty time.

4. A driver is permitted to accumulate the required 8 or 10 hours off duty while resting in a parked vehicle.

Inspectors and Investigators should continue to use existing citations for violations of 49 CFR part 395. For example, when it can be proven that this provision has been used to extend the 14-hour rule period, the carrier or driver should be cited for a violation of 49 CFR 395.3(a)(2) – Requiring or permitting a property-carrying CMV driver to drive after the end of the 14th hour after coming on duty.

Calculating the 14-hour Rule Following Two Qualifying Sleeper Berth Periods Totaling 10 Hours

The 14-hours rule is calculated by counting the time from the end of the prior qualifying sleeper berth period to the beginning of a subsequent qualifying sleeper berth period. Stated another way, the 14-hour rule is calculated by counting the time on each side of the first qualifying sleeper berth period. When using the sleeper berth provision, the order of the qualifying breals does not matter – the break of "at least 2 hours" can fall before or after the sleeper berth period of "at least" 7 hours.

Detecting False RODS

To detect falsification of RODS and/or time records, compare the entries on these records to verified information on other documents. It may be helpful, but is not necessary in all cases, to interview drivers when determining whether or not falsification exists.

Use of Electronic Logging Devices (ELDs), Automatic On-board Recording Devices (AOBRD), Devices Installed with Logging Software and Application

Electronic Logging Device (ELD)

Checking a driver's HOS on an ELD:

1. Review the ELD's display or printout provided by the driver showing the 24 hours duty status grid with each change of duty status, and check it with the ELD detailed data for 10/11, 14/15 and 60/70 hour limitations, along with 30 minute break violations in 49 CFR 395.3 and 395.5. (See ELD printout/display example in Attachment A.)
2. Check for any unassigned driving miles indicated by an unidentified driver indication in the ELD header information and ask the driver for an explanation, if it is not provided in annotations.
3. Review and verify edits with their annotations on the ELD header information and ELD detailed data to check that they are being made for justified reasons, such as correcting inaccurate information regarding the driver's HOS.
4. Check for system malfunctions or data diagnostics noted in the ELD detailed data to determine the impact on the driver's RODS, but be aware that not all data diagnostics or malfunctions pertain to RODS.

   Note: If a malfunction impacts the driver's RODS, then the driver must create paper RODS for the current 24-hour period and previous 7 days – unless the driver already has the records or retrieves them from the ELD.

Detecting False RODS with an ELD:

1. Request ELD lists of the login and logout activity on the ELD for the driver being inspected. This will help to determine if the driver is using or has used another driver's login information to get additional available hours.
2. Check for unassigned driving miles to determine whether or not the driver was driving without logging into the ELD.

3. Review the duty status changes to verify that the location where a driver comes on duty or began driving is the same location where the driver was off duty or in the sleeper berth. If these locations are different and the driver does not have a team driver, the RODS may be false.
4. Verify the accuracy of all breaks to ensure that all non-driving periods begin and end in the same location. Compare beginning and ending odometer values to identify movement during a non-driving duty status.
5. Check for off-duty/personal conveyance driving activity and ensure that it adheres to the guidance in 49 CFR § 395.8. Compare beginning and ending odometer values as they may identify excessive distance.
6. Review and verify edits with their annotations to check that they are being made for justified reasons, especially when a driver may indicate that he or she is off duty but may be on duty but not driving.
7. Compare any other available supporting documents and reports to the RODS to verify the accuracy of the recorded HOS, especially when a driver may indicate that he or she is off duty but is actually on duty but not driving.

ELD Data Usage

The Moving Ahead for Progress in the 21st Century Act (P.L. 112-141) limits the way FMCSA may use ELD data. Specifically, the statute provides that FMCSA must "institute appropriate measures to ensure any information collected by electronic logging devices is used by enforcement personnel only for the purpose of determining compliance with hours of service requirements" (49 U.S.C. 31137(e)(3)). The ELD rule distinguishes between an "ELD record," which is the RODS, recorded on an ELD, that reflects the data elements that an ELD must capture, and other data that an FMS may record, but the ELD rule does not require. Through this policy, FMCSA limits the use of ELD records, as defined in 49 CFR § 395.2, for enforcement of the HOS requirements in 49 CFR Part 395. ELD records may also be used for certain additional evidentiary purposes consistent with the Agency's longstanding enforcement capabilities, including, but not limited to proving a driver was operating in interstate commerce; identifying the driver; and establishing harassment violations, which must involve the use of ELD records (see Attachment D). Enforcement personnel may not retain ELD records unless the data is necessary for one of these purposes.

FMCSA may continue using data collected directly from the vehicle's ECM and other technology on the CMV, including FMS data (other than ELD records) collected for all other FMS functions and reports generated during the ordinary course of business. FMCSA has the authority to request these FMS records and use them during the course of an investigation to identify or prove other violations of the regulations (e.g., 49 CFR 392.2).

Automatic On-Board Recording Device (AOBRD)

Checking a Driver's HOS on an AOBRD

A driver who uses an AOBRD to record his or her HOS is <u>not</u> required to print a hardcopy of the RODS during a roadside inspection. The inspector should use the display screen of the AOBRD to verify the driver's compliance with the HOS regulations.

If the CMV is equipped with an AOBRD and the driver opts to record his or her HOS on paper RODS, the driver must declare which method he or she is using to officially record his or her HOS before the inspector can verify the driver's HOS.

Detecting False RODS with an AOBRD

If the vehicle is equipped with an AOBRD and the driver provides paper RODS at the time of the inspection, the inspector may use any data generated from the AOBRD and compare the data to the driver's paper RODS, such as the time of changes in duty location and duty status.

If the driver has not logged into the AOBRD, then the device may not be recording information specific to that driver and may not be used as a supporting document. However, the vehicle may be equipped with a fleet management system (FMS) and include other applications, such as dispatching, mobile communications, and Global Positioning System (GPS) features. Under these circumstances, the inspector may use any data that is generated through these features as supporting documentation. In the event the FMS includes the AOBRD, the information contained within the FMS may be used to verify non driving periods on the AOBRD.

Checking a Driver's HOS on a Device Installed with Programs and Applications with Electronic Signature Capabilities

Drivers who use logging software programs and/or applications with electronic signature capabilities, as defined in the MC-ECE-2014-0002 policy, *"Acceptance of Electronic Signatures and Documents"*, are not required to have RODS for the previous 7 days printed at the time of the inspection. If the driver has RODS for the previous 7 days printed at the time of the inspection, the inspector may use the printed RODS to verify the driver's HOS. Otherwise, inspectors may use the driver's logging software program and/or application's display screen to verify the driver's compliance with the HOS regulations.

Inspectors may request that the driver provide a printed copy or copies of the RODS; however, the driver must be given the opportunity and reasonable time to print the current and prior 7 days at the time of inspection and provide them to the inspector. The inspector must note in the inspection notes why hardcopies were requested. If the driver cannot print the current day's RODS, the driver is in violation of 49 CFR 395.8(f)(1). If the driver cannot print the previous 7 days RODS, the driver is in violation of 49 CFR 395.8(k)(2). If the driver cannot print the current day and the previous 7 day RODS the driver is in violation of 395.8(a). Under each of these scenarios, the driver should be cited and placed out of service, in accordance with CVSA OOS criteria.

Checking a Driver's HOS on a Device Installed with Programs and Applications without Electronic Signature Capabilities

Drivers using logging software programs and/or applications that do not have electronic signature capabilities and who do not have the previous 7 days RODS printed, signed, and in their possession at the time of inspection, are in violation of 49 CFR 395.8(k)(2) and should be cited. The driver must be given the opportunity to print and sign the current and prior 7 days RODS at roadside before being placed OOS. If the driver is able to print the current and prior 7 days RODS at roadside the driver should be cited for 49 CFR 395.8(k)(2) but not placed OOS. The purpose of citing the driver and not placing him or her OOS is to observe patterns of non-compliance during roadside.
Printing Summary:

Sufficient Supply of Blank Records of Duty Status Graph-Grids

Section 395.15(g)(2) of 49 CFR requires drivers to maintain a sufficient supply of blank RODS graph-grids on board the operated CMV. A sufficient supply of blank RODS should be determined by identifying the number of hours the driver will need to drive in order to reach his or her final destination from the inspection location. If the driver does not have a sufficient supply of blank RODS graph-grids, the driver is in violation of 49 CFR 395.15(g)(2) and should be cited.

Use of Advanced Information Technology (IT)

The Agency is now exercising its full statutory authority under 49 U.S.C. 504(c) to inspect and copy records of a motor carrier. As a result, the Division Administrator's concurrence prior to requesting access to any Global Positioning System (GPS) or other advanced technology record, for purposes of assessing the motor carrier's compliance, is no longer needed.

If a company uses GPS, FMCSA has the authority to request the records and use them during the normal course of an investigation. FMCSA considers GPS records as supporting documents, as they record time, date, and location of vehicles and drivers.

This does not, however, change our established policy for citing Critical and Non-Critical false logs, as reiterated below:

Device Type	Required to have printout during roadside inspection:	Guidance found in:
Automatic On-Board Recording Device	No.	Notice of Regulatory Guidance: Automatic On-Board Recording Devices (FR 79 26869)
Logging software and application device with electronic signature capabilities	Yes, at the request of an enforcement official. If the driver is unable or refuses to provide the requested printout, the driver should be cited 395.8(a) or 395.8(k)(2). Driver must be given the opportunity to print current and prior seven days RODs at roadside.	Hours of Service for Commercial Motor Vehicle Drivers; Regulatory Guidance Concerning Records of Duty Status Generated by Logging Software Programs (79 FR 39342)
Logging software and application device without electronic signature capabilities	Yes. Driver must be given the opportunity to print current day RODS at roadside.	Hours of Service for Commercial Motor Vehicle Drivers; Regulatory Guidance Concerning Records of Duty Status Generated by Logging Software Programs (79 FR 39342)

- A Critical false RODS is false by one hour or more or 50 miles or more.
- A Non-Critical false RODS is false by less than one hour or 50 miles.

Federal and State enforcement staff should cite Non-Critical RODS when they are significant. If egregious violations exist at the Non-Critical false RODS threshold, and a habitual violator or a pattern is discovered, enforcement should be considered.

5.3.8.11.2 Part 395 - ASPEN Procedures

Recording Violations of Part 395 OOS/Possible OOS Regulations

Citation	Type	Description
395.1(h)(1)	P	Violation of 15, 20, 70/80 Hours of Service rules for Alaska drivers of Property
395.1(h)(2)	P	Violation of 15, 20, 70/80 Hours of Service rules for Alaska drivers of Passengers

395.1(h)(3)	N	Adverse driving conditions violations - Alaska Drivers
395.1(o)	P	16 hour rule violation (Property)
395.13(d)	N	Driving after being declared out-of-service
395.15(b)	N	Onboard recording device information requirements not met
395.15(c)	N	Onboard recording device improper form and manner
395.15(f)	N	Onboard recording device fails to reconstruct info
395.15(g)	N	On-board recording device info not available
395.15(i)(5)	N	Onboard recording device does not display required information
395.3(a)(1)	P	11 hour rule violation (Property)
395.3(a)(2)	P	14 hour rule violation (Property)
395.3(a)(3)(ii)	N	Requiring or permitting a property-carrying commercial motor vehicle driver to drive since more than 8 hours have passed since the end of the driver's last off-duty, sleeper-berth, or on-duty, not driving period of at least 30 minutes.
395.3(b)	P	60/70 hour rule violation (Property)
395.3(c)	P	34 hour restart violation (Property)
395.5(a)(1)	P	10 hour rule violation (Passenger)
395.5(a)(2)	P	15 hour rule violation (Passenger)
395.5(b)	P	60/70 hour rule violation (Passenger)
395.8	N	Record of duty status violation (general/form and manner)
395.8(a)	Y	No drivers' record of duty status
395.8(e)(1)	Y	False report of drivers' record of duty status
395.8(f)(1)	N	Drivers record of duty status not current
395.8(k)(2)	Y	Driver failing to retain previous 7 days records of duty status

For recording violations of Part 395 OOS/possible OOS regulations for AOBRDs and devices installed with logging software and application see “Frequently Asked Questions” associated with policy titled “Updated Procedures on the Requirements for Automatic On-Board Recording Devices, Logging Software Programs and Applications during Roadside Inspections.”

5.3.8.11.3 Part 395 - Enforcement Procedures

Once you have entered the violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for Part 395 violations, use the following guidelines .

Part 395 - Documentation

Detecting False RODS

To detect falsification of RODS, compare the entries on the records to verified information on other documents. Documents that include mileage, time, date, and location information can be used to verify RODS entries. Some examples of documents that might be used are: bills of lading, shipping papers, toll receipts, fuel receipts, lodging receipts, weight slips, CAT scale receipts, manifests, U.S. Customs documents, etc. Discovery of these violations will be cited under 395.

A Carrier and/or Driver Should Not be Cited for Falsification and Exceeding One of the HOS Rules on the Same Day

When you discover that a RODS contains a HOS violation and false entries on the same day, you would cite 395.8(e) - False records of duty status. If you discover a RODS contains false entries to conceal HOS, you would include it with the cite 395.8(e) - False records of duty status.

Part 395 - Enforcement Procedures Against the Driver

Driver Violations Cited During Roadside Inspections Cannot Also be Cited in the Investigation

As cited for the purposes of a rating- no, because it already affects the rating as outlined. It would be double punishment for the same violation; for the purpose of a civil penalty- yes, unless a fine was already assessed at the roadside.

Part 395 - Enforcement Action Against a Driver

Time When Enforcement Action Should be Considered Against a Driver

Enforcement action should be considered against drivers on the following violations when they have 10 percent or more violations recorded on the number of RODS reports checked for at least 30-day period.

- 395.3(a)(1) - Driving more than 11 hours following 10 consecutive hours off duty (property-carrying vehicles).
- 395.3(a)(2) - Driving for any period after having been on duty 14 hours following 10 consecutive hours off duty (property-carrying vehicles).
- 395.3(b)(1) - Driving after having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week (property-carrying vehicles).
- 395.3(b)(2) - Driving after having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week (property-carrying vehicles).
- 395.5(a)(1) - Driving more than 10 hours following 8 consecutive hours off duty (passenger-carrying vehicles).
- 395.5(a)(2) - Driving for any period after having been on duty 15 hours following 8 consecutive hours off duty (passenger-carrying vehicles).
- 395.5(b)(1) - Driving after having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week (passenger-carrying vehicles).
- 395.5(b)(2) - Driving after having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week (passenger-carrying vehicles).
- 395.8(a)(1) - Every driver who operates a commercial motor vehicle shall record his/her duty status, in duplicate, for each 24-hour period.
- 395.8(e) - Making of false reports in connection with such duty activities on the driver's record of duty status report.
- 395.8(i) - The driver shall submit or forward by mail the original driver's record of duty status to the regular employing motor carrier within 13 days following the completion of the form.
- 395.13(d) - No driver who has been declared out-of-service shall operate a commercial motor vehicle until that driver may lawfully do so under the rules of this Part.

5.3.8.12 Part 397 – Transportation of Hazardous Materials; Driving and Parking Rules

Verifying Compliance with HM Driving and Parking Rules

Part 397 is applicable to any transportation of hazardous material that requires the motor vehicle to be marked or placarded.

Sections Applicable to All HM Subject to Part 397

- 397.7(b), Parking

- 397.11, Fires
- 397.15, Fueling
- 397.17, Tires

No Smoking within 25 feet

397.13 is applicable to Class 1, Division 2.1, Class 3, Division 4.1, Division 4.2, Class 5, or an empty cargo tank still requiring marking or placarding that was transporting Division 2.1 or Class 3.

Sections Applicable to Division 1.1, 1.2, and 1.3 Explosives

In addition to the sections listed above, the transportation of Division 1.1, 1.2, or 1.3 materials are subject to:

- 397.5, Attendance and Surveillance
- 397.7(a), Parking
- 397.19, Instructions and Documents
    - Written Route Plan
    - Copy of Part 397
    - Emergency instructions, including contact name and phone number
- Remember to check for a HMSP
- Check EX#s on PHMSA's web site

Verifying HM Routing

- Check FMCSA's website for current routing restrictions by state
- Verify CMV is not being operated on a restricted route, 397.67
- Verify CMV is not being operated on a restricted route for RAM requiring placards,397.101(b)

Shipments of HRCQ Radioactive Materials

Highway Route Controlled Quantities (HRCQ) of Class 7 are subject to Section 397.101(d):

- Written Route Plan
- Emergency telephone numbers for each State to be entered
- Driver must have training certificate on person, valid for 2 years

Enforcement Procedures for Part 397

Once you have entered all Part 397 violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for Part 397 violations, use the following guidelines.

Check the current OOSC for out-of-service violations.

Take enforcement action when appropriate.

Evidence Required to Successfully Prosecute a Violation of Part 397

To successfully prosecute a violation of Part 397, establish the following facts:

- That the material in question is a hazardous material, requiring the motor vehicle to be marked or placarded, in accordance with title 49 CFR § 177.823
- That the hazardous material was transported in commerce
- That a violation of Part 397 occurred
- That knowledge or willfulness was established

Look for the Following When Compiling Case on Part 397

Ensure that the material in question is a hazardous material in a quantity requiring marking or placarding.

- In some cases a shipping paper may be sufficient for this purpose. In other cases, including those where no shipping paper is available and in cases where no shipping paper was ever prepared, it may be necessary to obtain a SDS.
- You must also be able to prove the quantity. A SDS alone will not do that.
- Ensure that the documents reference one another. For instance:
    - If the shipping order number indicates a trailer number or driver's signature, do the log and/or the trip manifest support this information?
    - Where a pro number has been stamped on the shipping order and a freight bill has been cut, does the pro number appear on the trip manifest; does the manifest have the trailer number; and, is the driver name the same, etc?
    - The tracking number used on the pro/bill of lading is often found on the package or pallet, and can be used to positively tie a package to a shipping paper.
    - Check RODS to validate whether drivers were following written route plans, if applicable.

Documents Needed for a Part 397 Enforcement Case

1. **Establish that the material in question is in fact a hazardous material that is in a quantity sufficient to require marking or placarding.** This may be accomplished by obtaining a copy of the shipping paper or SDS.
2. **Establish that the hazardous material was transported in commerce.** Shipping papers, bills of lading, records of duty status and other such document may be used to establish this fact. In addition, photographs of the shipment indicated that it has been offered for, or is in commerce may also be useful.
3. **Establish that a violation of Part 397 occurred.** Documenting a violation of Part 397 generally requires a statement and/or photographs documenting the violation. Often the violations are found through a roadside inspection or personal observation; therefore, an inspection or observation report may also be used to support the violation. Parking violations must prove that the driver was not conducting activities which are an operational necessity.

Preparing the Exhibit Abstract

The exhibit abstract for each count must contain sufficient evidence to support the government's allegation that a violation was committed. This means the exhibit should contain the elements described in *Documents needed for a Part 397 Enforcement Case*.

- Care should be taken in the preparation of the abstract.
- Attention to detail is essential.
- Refer to *Appendix F* for an example of an exhibit abstract for a violation of Part 397.

Preparing the Statement of Charges

The statement of charges is important because it is the first official notification to the subject of the enforcement case and their legal counsel that they are being assessed civil penalties for specific violations of the HMR.

The statement of charges must include all of the elements of the violation. Furthermore, this statement should include only the alleged facts, supported by documented evidence, that the subject committed a violation of the HMR.

The statement of charges is found in the "Remarks" section of the Exhibit of Abstract. The statement of charges for a Part 397 violation should read as follows:

On or about «DATE», «CARRIER NAME» transported a marked or placarded amount of «PROPER SHIPPING DESCRIPTION», a hazardous material, in commerce from «ORIGIN» to «DESTINATION» while «DESCRIBE THE VIOLATION».

5.4 Stage 4-Inspection Feedback and Closeout ASPEN Procedure

5.4.1 Conclusion of the Roadside Inspection

Roadside inspections should be completed using ASPEN. The inspection report is divided into seven sections (as defined earlier) and each must be completed to properly identify the motor carrier, driver, vehicle, and violations discovered.

Citing Violations

During the roadside inspection, when it is determined that the driver claiming the exemption does not meet all the conditions of the exemption, the Inspector must cite all violations of the FMCSR for sections where violations occurred. For example, when the vehicle has insufficient brake linings, the Inspector should cite a violation of 49 CFR 393.47(d). Violations will be cited using the selections that already exist in ASPEN.

Enforcement

Consult legal staff at one of the Service Centers before undertaking enforcement action where an exemption under this provision may apply. If, in consultation with legal staff, a determination is made that the exemption does not apply and enforcement action will be pursued for violations discovered during a roadside inspection, the Inspector should follow standard operating procedures detailed in the eFOTM. Evidence establishing that the driver was not within the scope of the exemption must be included in the case documentation for any enforcement action taken.

Implementation of Emergency Conditions

A driver of a CMV used primarily in the transportation of propane winter heating fuel **or** of a CMV used to respond to a pipeline emergency is exempt from the regulations in 49 CFR 390-396, 397 Subpart A, and 399, if compliance with the regulations would prevent the driver from responding to an emergency condition requiring an immediate response.

5.4.2 Closeout and Completion of Inspection Process

Procedures that Should be Followed When Closing Out the Inspection with the Driver

- During the closeout session, the inspector should review the inspection with the driver.
- Inform the driver of the vehicle and driver violations discovered. If the driver or the vehicle is to be placed OOS, instruct him/her of their responsibilities.
- If enforcement action is planned, the inspector should call the motor carrier directly to inform it that an enforcement action may result from the inspection.
- When the closeout has concluded, the inspector should request the driver to sign the report. The driver must sign the report on each page that is given to him/her. Only the actual copy of the inspection is to be given to the driver/carrier. The driver/carrier does not receive the "inspection notes" portion of the report.
- Obtain the signature of the driver or company representative whose name appears on the report. If the individual refuses to sign the report, advise him/her that the signature only constitutes a receipt of the report. If he/she still refuses, enter "REFUSED TO SIGN" on the signature line and, if possible, have another FMCSA employee sign by their name with the notation: "witnessed by."
    - In every case, the driver must be given a copy of the report. Note the refusal in the inspection notes and provide a copy of the report to the driver. A copy of the "REFUSED TO SIGN" report should be mailed to the carrier care of the process agent. Process agent

information is available online at: http://li-public.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov)

Procedures for Uploading Federal Inspections to MCMIS

- From within ASPEN-by selecting Tools, Manager Configuration, Communications, Destination-the SAFER State Mailbox field is configured for his/her local SAFETYNET mailbox.
- From within the ASPEN software Manager Configuration utility, under Printed Report, the ASPEN Report Header is changed to reflect the Division office mailing address.
- The local SAFETYNET administrator ensures prompt inspection uploads and confirmations.
- For more information, log on to the Portal and view The Roadside Inspection Technical Guidance Manual.
    - **Note:** You must have a UAS user name and password to view this information.

Certification of Federal Inspections

Each Division will ensure that: (1) the ASPEN Communications Destination is configured for its local SAFETYNET mailbox; (2) the ASPEN report header is changed to reflect the Division mailing address; (3) the local SAFETYNET administrator ensures prompt inspection uploads and confirmations; and (4) receipt dates of certified inspections returned to the Division in accordance with 49 CFR 395.13(c)(2) and 396.9(d)(3) are entered in the local SAFETYNET

In short, the steps to process inspections are as follows:

- The Inspector completes the inspection and immediately uploads it via SAFER to the Division SAFETYNET mailbox. If necessary, he/she should notify the Division SAFETYNET administrator to expect the inspections.
- The Division SAFETYNET administrator downloads the file to the SAFETYNET inbox, where it is "tagged" and processed. The activity log is viewed to verify that all inspections were imported without error. Any records with errors should be corrected in ASPEN and re-uploaded.
- The Division SAFETYNET administrator reviews the data for quality, optionally processes Carrier Search, and then uploads the inspections to MCMIS.
- Within the next business day, the Division SAFETYNET administrator will download a "confirmation file" to SAFETYNET where it will process automatically. The administrator can view the overall status of the inspections plus warning or error messages where applicable. Inspections with errors should be relayed to the responsible Inspector for editing in ASPEN and re-uploaded. The corrected record will update the existing record with the changes and will be re-uploaded within the next inspection upload.
- When the motor carrier returns its signed copy to the Division with the signature certifying repair, these inspections are marked in SAFETYNET with the receipt date and subsequently re-uploaded.

5.5 Stage 5-Post Inspection Intervention

5.5.1 Introduction

Once you have completed your inspection, and have entered the discovered violations into the investigative system /ASPEN software, you should make the determination whether an enforcement action is warranted for the subject's noncompliance. The decision to initiate a civil forfeiture proceeding is one of the most serious elements used by our Agency to encourage compliance by the subject. The decision should be well founded and justified by evidence obtained during the investigation. In this process, nothing can substitute for the sound judgment of your experience in analyzing the facts and determining the appropriate action to implement. Adherence to this general guidance will ensure high quality decision making and uniformity in the Agency's enforcement program.

Mandatory enforcement violations have been removed from our procedures. However, this in no way eliminates enforcement from the equation. It does, however, allow you greater discretion to focus enforcement where performance data reflects that violations could contribute to a crash. Therefore, you should focus your enforcement in all Parts where Acute and Critical, Severe Level I and II,) violations are found. In fact, it is incumbent on you to use your best judgment in order to target enforcement actions to areas that have the greatest impact on safety.

5.5.2 Part 365 – Rules Governing Applications for Operating Authority (Mexico-Domiciled Carriers, Long-Haul Operations)

Part 365 - Enforcement Procedures

Once you have entered the violations discovered in ASPEN and have decided to initiate enforcement action for Part 365 violations, use the following guidelines.

Part 365 - Documentation

At a minimum, obtain the following evidence during the roadside inspection to support Federal enforcement and immediately forward it to the FMCSA Division with jurisdiction over the carrier:

1. The Mexican motor carrier's Certificate of Registration
2. A copy of the motor carrier's Form MCS-90 and other insurance document issued by an authorized insurer specifying the effective date and the expiration date of the insurance coverage (49 CFR 387.303(b)(4)(iii))
3. Any transportation document which supports interstate commerce (i.e., bill of lading, pickup or delivery instructions, a delivery receipt, etc.)
4. The Roadside Inspection Report
5. A copy of the vehicle registration
6. The carrier's detail report from the L&I website at: http://li-public.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov)--there will not be any information if the carrier is not registered--and a declaration provided by the inspecting officer describing what was discovered at the roadside (i.e., the driver could not produce a copy of the Certificate of Registration).
7. A copy of the lease agreement, if applicable

Part 365 - Enforcement Procedures

Enforcement Action for Vehicles Operating With Invalid Operating Authority or Insufficient Insurance:

- If a U.S. or Canadian motor carrier is found to be operating in interstate commerce without valid operating authority, the appropriate citations should be entered in ASPEN and the vehicle will be placed OOS. The two new codes that inspectors can cite in ASPEN and SAFETYNET are 49 CFR 392.9a(a)(1) - Operating without registration and 49 CFR 392.9a(a)(2) - Operating beyond registration scope.

OOS status for a vehicle can only take place under the following conditions:

1. Arrange For An Authorized Carrier To Deliver The Cargo
   In order to correct the OOS violation, the carrier must offload any cargo and arrange for an authorized carrier to deliver the cargo to its final destination. The vehicle may leave once it is unloaded, as long as there are no OOS safety defects needing correction. If the vehicle is empty and not under dispatch to pick up a load, then the carrier is not considered to be providing interstate transportation requiring for-hire authority. If the vehicle is empty but under dispatch to pick up a load, the same procedure will be followed and the driver will be instructed to return to the terminal.

2. Tow the Vehicle Back To The Carrier's Terminal

If Option 1 is not feasible, then the vehicle may be permitted to leave the OOS lot if the carrier arranges to have the vehicle and its load towed back to the carrier's terminal.

In addition to citing the carrier in ASPEN and placing the vehicle OOS, the following steps shall be taken at the roadside:

1. An OOS Order for the specific vehicle will be prepared and, if possible, faxed to the FMCSA Division and the motor carrier's PPOB along with the inspection report.
2. A copy of the OOS Order and inspection report will be given to the driver.
3. The driver should be instructed to notify the motor carrier of the OOS condition and the corrective measures that are needed. Refer to flowchart *North American Standard Inspection Procedures for Operating Authority*.

5.5.3 Part 368 – Applications for Certificates of Registration by Foreign Motor Carriers and Foreign Privates Motor Carriers (Mexico-Domiciled, Commercial Zone Operations)

Part 368 - Enforcement Procedures

Once you have entered the violations discovered into the Violation tabs in ASPEN software and decided to initiate enforcement action for 368 violations, use the following guidelines.

Mexico-Domiciled Carrier Operating Without a Certificate of Registration Does Not Have Authority or is Operating Beyond the Scope of its Authority

If a Mexico-domiciled motor carrier is found to be operating beyond the scope of its Certificate of Registration (authority) or without having registered with FMCSA, the appropriate citations in the ASPEN roadside inspection software will be used and the vehicle will be placed OOS. The motor carrier can only correct the OOS violation by not conducting interstate transportation in the United States (if it is not registered) or outside of the border commercial zone (if it has a Certificate of Registration).

In addition to citing the motor carrier with the ASPEN software and placing the vehicle OOS, the following steps shall be taken at the roadside:

1. An OOS Order for the specific vehicle will be prepared and, if possible, faxed to the motor carrier's PPOB along with the inspection report,
2. A copy of the OOS Order and inspection report will be given to the driver, and
3. The driver should be instructed to notify the motor carrier of the OOS condition and the corrective measures that are needed.

In order to correct the OOS violation, the motor carrier must off-load any cargo and be encouraged to arrange for an authorized motor carrier to deliver the cargo to its final destination. The vehicle may leave once it is unloaded, as long as there are no OOS safety defects that have to be corrected. If the vehicle is empty and not under dispatch to pick up a load, then the motor carrier is not considered to be providing interstate transportation requiring for-hire authority. If the vehicle is empty but under dispatch to pick up a load in the United States beyond the border commercial zone, the same procedure will be followed and the driver will be instructed to return to Mexico or the border commercial zone (if the carrier has a Certificate of Registration).

Section 219(d) of MCSIA prohibits a Mexico-domiciled motor carrier from leasing a CMV to a motor carrier for transportation in the United States. The intent of Section 219(d) is to ensure that Mexican motor carriers and their equipment are restricted to the Southern border commercial zones consistent with the moratorium on granting authority to Mexican motor carriers to operate beyond the border commercial zones codified at 49 U.S.C. 13902(c). The leasing prohibition ensures they cannot avoid the restriction by leasing their vehicles and drivers to a motor carrier authorized to operate in the United States.

Lease agreements for Mexico-domiciled motor carriers' equipment leased to United States motor carriers are only valid within the border commercial zone. Therefore, the operation of Mexico-domiciled motor carrier equipment beyond the border commercial zone is the same as operating without a lease. A

Mexico-domiciled motor carrier operating without registration or beyond the scope of its registration should be placed OOS as required by 49 U.S.C. 13902(e) as well as 49 CFR 392.9a and FMCSA policy. Furthermore, monetary penalties in accordance with 49 U.S.C. 14901 may be imposed.

5.5.4 Part 383 – Commercial Driver's License (CDL) Standards

Part 383 - Enforcement Procedures

Once you have entered the violations discovered into the ASPEN software and have decided to initiate enforcement action for 383 violations, use the following guidelines.

Part 383 – Documentation

Information that Should be Documented in an Exhibit to Prove Violations of Part 383

- **Does FMCSA have jurisdiction?**
  - GVWR markings on vehicle, vehicle registration, State fuel and tax reports, weight tickets, photograph of vehicle interior for seating capacity and/or shipping papers indicating a placardable load of HM, along with a corroborating SDS should be used to establish FMCSA's jurisdiction over the motor carrier's operation.
- **Was the driver assigned (or controlled) by the employer?**
  - Employment application, lease agreement, payroll records, tax and worker's compensation deductions, record of duty status with preprinted company name, and/or statement from a motor carrier (e.g., Safety Director) may be used to prove that the driver was assigned or controlled by the employer.
- **Was the CMV operated in intrastate or interstate commerce?**
  - Obtain a RODS or time records and a corresponding shipping document to show that the CMV was used in commerce.
- Did the employer fail to perform (or cause to be performed) a required act, to maintain a record, etc?
  - Statement(s) of driver and/or responsible employer official are strongly recommended, especially when the violation involves the employer's/driver's failure to act or failure to maintain records.

Some Examples of Documents that May Be Used to Prove Violations of Part 383

- Statement from carrier official, driver, or person responsible for compliance with Part 383. See Illustration E-2.
- Driver's RODS and corresponding shipping papers/bill of lading.
- Vehicle registration showing GVWR or other documentary evidence proving that the vehicle meets the definition of a CMV in Part 383.
- State vehicle inspection report.
- Motor vehicle record from the State that issued the CDL showing suspension/cancellation/disqualification or being invalid. A CDLIS printout is acceptable.

Note: A CDLIS printout is acceptable for the Mexican LFC.

- Photograph or copy of current CDL or other photographs that support the violation.

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support your violation. You may utilize other documents to prove your violation.

Part 383 - Enforcement Action Against Drivers

The following violations warrant considering enforcement action against a driver:

- 383.21(a) - No person who operates a commercial motor vehicle shall at any time have more than one driver's license.*
- 383.23(a) - Operating a commercial motor vehicle without a valid commercial driver's license.*
- 383.33 - Failing to inform the employer within 1 business day that his/her commercial driver's license was suspended, revoked, or canceled by a State or jurisdiction.
- 383.51(a)-SIN - Driving a CMV while CDL is suspended for a safety-related or unknown reason and in state of driver's license issuance.*
- 383.51(a)-SOUT - Driving a CMV while CDL is suspended for safety-related or unknown reason and outside the state of driver's license issuance.*
- 383.71(b)(1) - Operating a CMV requiring CDL beyond the scope of the self-certification.
- 383.91 (a) - Operating a CMV with improper CDL group.*

(*) denotes Red Flag Violation

Part 383 – Placing a Driver OOS

Placing a Driver OOS for Violations of 383

If the driver operates in the US:

- Without a CDL or **LFC** (not in possession or not having been issued one)
- Without a valid CDL or LFC
- **Without a proper class () indicated on the license**
- Operating in violation of a restriction on the license
- **Note:** If the status of the CDL returns as suspended, revoked, invalid, or if it cannot be verified, the driver should be placed OOS. The driver should advise the motor carrier it is their responsibility to relieve him/her from driving duties.

The driver must then be placed OOS in accordance with the North American Uniform OOS Criteria or standard departmental policy followed by enforcement officers.

49 CFR 383 - MX CDL Guidance

Requirement to Check the Status of a Mexican LFC

All CDL (or LFC) records should be checked via CDLIS. Every Mexico-domiciled driver operating a CMV, as defined in 49 CFR 383, in the United States, must have a valid Mexican Licencia Federal issued by the Secretaria de Comunicaciones y Transportes (SCT) and recorded in the Licencia Federal Information System (LIFIS) with the proper vehicle class, and without any restriction for operating in the United States.

Calling the Local Secretaria de Comunicaciones y Transportes (SCT) Office to Verify a Mexican LFC

Calling the local SCT office is not permitted for verification of a LFC because all information is available via CDLIS. SCT should be contacted only when attempting to obtain any crash or inspection data it may have on a motor carrier undergoing an investigation or CR.

The following chart can assist in reading a Mexican LFC.

MX DRIVER LICENSE New and Old

Driver Holding a LFC with a Categoria	Equivalent to a Driver Holding a CDL Class Endorsement/Restrictions
A	Any bus; roughly comparable to a US class B CDL with a P (passenger) endorsement.

Driver Holding a LFC with a Categoria	Equivalent to a Driver Holding a CDL Class Endorsement/Restrictions
B	Any truck (including straight, combination, doubles, triples, tank), but excluding hazardous materials; roughly comparable to a US class A CDL with a tank and doubles/triples endorsement.
C	Straight trucks (maximum of 3 axles, which includes any towed trailer axles), but excluding hazardous materials; roughly comparable to a US class B CDL with a tank endorsement.
D	No comparable US CDL definition; authorizes holder to operate automobiles and small buses that do not exceed 7716 lbs. (3500 kg) or have a capacity to carry no more than 13 passengers (including the driver who also serves as the tour guide) for purpose of tourism.
E	Any type of truck or combination, including hazardous materials; roughly comparable to a US class A CDL with a hazardous materials, tank, and doubles/triples endorsement.
F	No comparable US CDL definition; authorizes holder to operate taxis from any airport or seaport in Mexico (because airports and seaports are federal and require a federal license, similar to driving a commercial vehicle on a federal road).

5.5.5 Part 385 – Safety Fitness Procedures

Once you have entered the violations discovered into the ASPEN software and have decided to initiate enforcement action for Part 385 violations, use the following guidelines .

Part 385 - Documentation

Documents that Should be Gathered When Initiating Roadside Enforcement

- CVSA decal for Mexico domiciled carriers
- Carriers Safety rating (via www.safersys.org)
- HMSP or screen shot showing expired or lack of a current HMSP
- HM Registration or screen shot showing expired or lack of current Registration
- Shipping documents showing HM transported and amount

Look for the Following When Compiling a Case on Hazardous Material Safety Permits

1. Ensure that the material in question is an HMSP-required hazardous material transported in the amount required. In some cases, a shipping paper may be sufficient for this purpose. In other cases, including those where no shipping paper is available, or where no shipping paper was ever prepared, it may be necessary to obtain a SDS.
2. Where a SDS is used to document the presence of an HMSP-required hazardous material, care should be taken to verify both the accuracy of the SDS, as well as its applicability to the particular product in question. A SDS is often a generic document that provides general information, i.e., a **range** of flash points. In this case, it may be necessary to verify the actual flash point of the material by contacting the manufacturer. Ensure all elements are proven, i.e., 55 pounds for explosives, 3500 water gallons for Zone D, etc.
3. Ensure all elements are proven, i.e., amount (55 pounds for explosives, 3500 water gallons), meeting the requirements of the Hazard Zone, etc.

4. Ensure that the documents reference one another, for instance:
    - If the shipping order number indicates a trailer number or driver's signature, does the log and/or the trip manifest support this information?
    - Where a pro number has been stamped on the shipping order and a freight bill has been cut, does the pro number appear on the trip manifest; does the manifest have the trailer number; and, is the driver name the same, etc?
    - The tracking number used on the pro/bill of lading is often found on the package or pallet, and can be used to positively tie a package to a shipping paper.
5. When identifying the documents on the exhibit abstract, identify those areas of the document that support the violation.
6. The lack of a permit should be verified by a screenshot of MCMIS.

Knowledge and Willfulness Requirements that Should be Proven Under Part 385

- It should be proven the carrier was, or should have been aware of, the requirement to have and maintain a permit in good standing.
- This can be done by showing receipt of the initial permit notification letter, the biennial update, association membership notifications, or any other materials or communication regarding the permit program.

Documents Needed for an HMSP Enforcement Case

1. **Establish that the material in question is in fact an HMSP-required hazardous material transported in the amount required.** This may be accomplished by obtaining a copy of the shipping paper and SDS.
2. **Establish that the HMSP-required hazardous material was actually transported in intrastate, interstate, or foreign commerce.** Shipping papers, bills of lading and other such document may be used to establish this fact. In addition, photographs of the shipment that indicate that it was in commerce may also be useful. Amounts of the HM, or proof of meeting the definition of a Hazard Zone, is crucial in some instances.
3. **Establish that a violation of Part 385 occurred.** Documenting a violation of Part 385 generally requires at least the HM shipping paper, and may also require photographs of the package in commerce and/or statements that establish the facts of the case as outlined above. These photographs should clearly show any specification or other markings found on the package, and the amount of HM on the vehicle.

Preparing the Exhibit Abstract

- The exhibit abstract for each count must contain sufficient evidence to support the Government's allegation that a violation was committed. This means the exhibit should contain the elements described in *Documents Needed for an HMSP Enforcement Case*.
- Care should be taken in the preparation of the abstract.
- Attention to detail is essential.
- See *Appendix F* for examples of Exhibit Abstracts for Part 385.

Preparing the Statement of Charges

The statement of charges is important because it is the first official notification to the subject of the enforcement case and their legal counsel that they are being assessed civil penalties for specific violations of the HMR (the HMSP rule penalized under the hazardous material penalty provisions of the US Code). The statement of charges must include all of the elements of the violation. Furthermore, this statement should include only the alleged facts, supported by documented evidence, that the subject committed a violation of the HMR. The statement of charges is found in the Remarks section of the Exhibit of Abstract. The statement of charges for a Part 385 violation should read as follows:

On or about «DATE», «CARRIER» used driver «DRIVER'S NAME» to drive a CMV transporting «AMOUNT OF» «PROPER SHIPPING DESCRIPTION», a hazardous material requiring a Hazardous

Materials Safety Permit, from «ORIGIN» to «DESTINATION». During this transportation the company did not comply with the requirements of 49 CFR 385 Subpart E. «DESCRIBE VIOLATION».

Part 385 - Enforcement Actions Against Drivers

Taking Enforcement Against a Carrier Exercising Inadequate Corrective Action

Failure to respond to an agency demand for a written response demonstrating corrective action within 30 days will result in the suspension of the carrier's provisional operating authority or provisional Certificate of Registration until the required showing of corrective action is submitted to FMCSA. 385.105 (b)

Time When Suspension and Revocation of a Mexico-Domiciled Carrier Registration Should be Initiated

If a Mexico-domiciled carrier is assigned an "Unsatisfactory" safety rating following an investigation conducted under this subpart, or a "Conditional" under this subpart determines that a carrier does not exercise the basic safety management controls necessary to ensure safe operations, FMCSA will provide the carrier written notice, as soon as practicable, that its registration will be suspended effective 15 days from the service date of the notice unless the carrier demonstrates, within 10 days of the service date of the notice, that the investigation or SA contains material error (385.111(a)).

Suspending the carrier's provisional or standard operating authority or provisional or permanent Certificate of Registration and requiring it to immediately cease all further operations in the United States 385.111 (c) (1); and notifying the carrier that its provisional or standard operating authority or provisional or permanent Certificate of Registration will be revoked unless it presents evidence of necessary corrective action within 30 days from the service date of the Order (385.111 (c) (2)).

Note: These cites can be used when citing a motor carrier for operating while an existing OOS order issued by FMCSA is in effect.

5.5.6 Part 386 – Rules of Practice for Motor Carriers, Broker, Freight Forwarder, and Hazardous Materials (HM) Proceedings

Part 386 - Enforcement Procedures

Once you have entered the violations discovered into the violations tab of the ASPEN software and have decided to initiate an enforcement action for the Part 386 violations, use the following guidelines.

Part 386 - Documentation

Documents that Should be Gathered When Initiating an Enforcement Action

- Registration and cab card
- USDOT Number
- Proof of MCS 150 Registration
- Bills of Lading/Shipping Documents
- RODS
- Supporting Documents (toll, fuel, hotel, etc.)

Part 386 - Enforcement Against Drivers and Company

For Failure to Pay Civil Penalties or Abide by Payment Plan (Operation in Interstate Commerce Prohibited)

General rule: A CMV owner or operator that fails to pay a civil penalty in full within 90 days after the date specified for payment by the FMCSA's final agency order is prohibited from operating in interstate

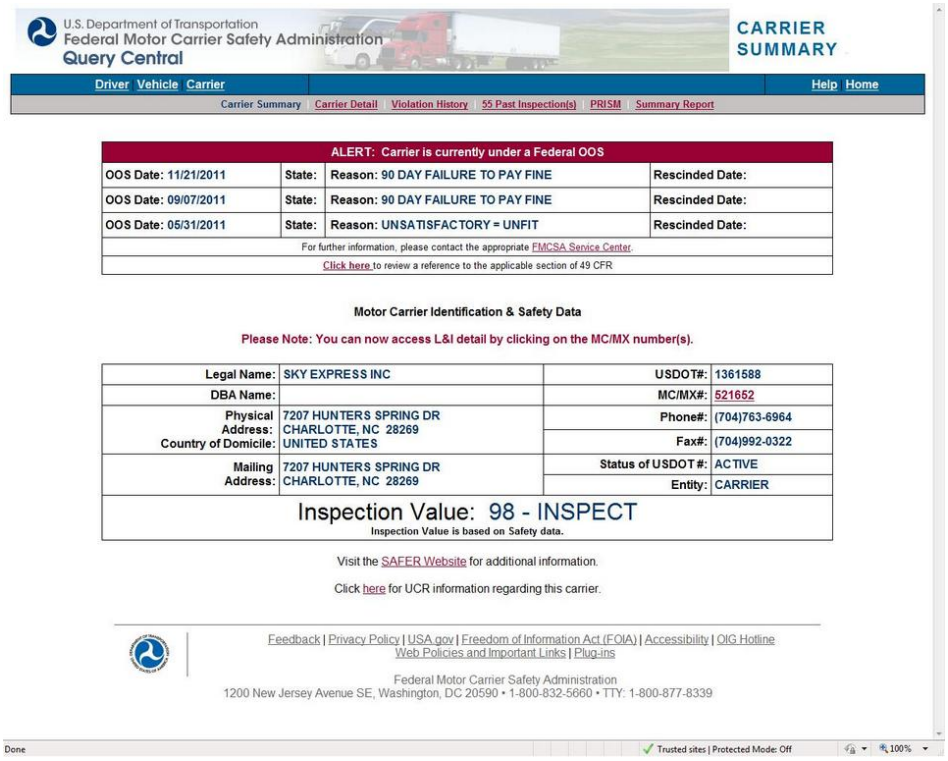
commerce starting on the next (i.e., the 91st) day. The prohibition continues until FMCSA has received full payment of the penalty (386.83(a)(1)).

For Failure to Pay Civil Penalties or Abide by Payment Plan (Suspension or Revocation of Registration)

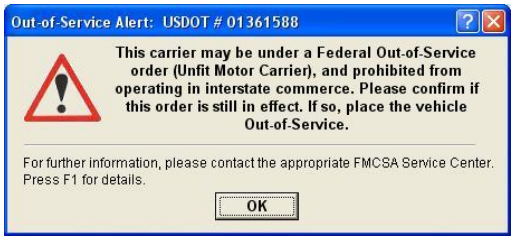
General rule: The registration of a broker, freight forwarder, or for-hire motor carrier that fails to pay a civil penalty in full within 90 days after the date specified for payment by the FMCSA's final agency order, will be suspended starting on the next (i.e., the 91st) day. The suspension continues until FMCSA has received full payment of the penalty (386.84(a)(1)).

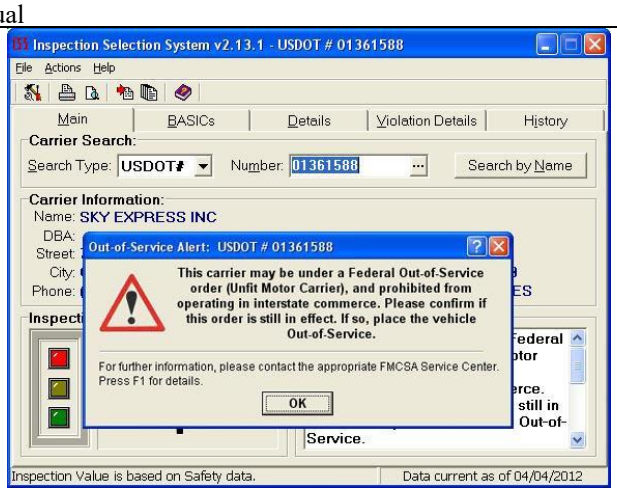
Note: These cites can be used when citing a motor carrier for operating while an existing OOS order issued by FMCSA is in effect.

Screenshot of an OOS Alert in QC



Screenshot of an OOS Alert in ISS





5.5.7 Part 387 – Minimum Levels of Financial Responsibility for Motor Carriers

Part 387 - Enforcement Procedures

Once you have entered all Part 387 violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for Part 387 violations, use the following guidelines.

Part 387 - Documentation

Documents that Should be Gathered to Initiate an Enforcement Action

Gather the documentation to initiate an enforcement action, which establishes the following:

- Evidence that the CMV is subject to Part 387.
- Evidence that the driver was an employee of (or controlled by) the motor carrier.
- Evidence that the vehicle was operated (used) by the employer,
- Evidence that the vehicle was operated in intrastate (certain HM) or interstate commerce on a certain date.
- Evidence that a specific violation of Part 387 occurred.
- Evidence that the vehicle was transporting HM, if applicable

Remember that a CMV is defined differently regarding compliance with Part 387. The regulation states, “The rules in this part do not apply to a motor vehicle that has a gross vehicle weight rating (GVWR) of less than 10,000 pounds.” Therefore, a vehicle with a GVWR of 10,000 pounds may be subject to Part 387, but not the general safety rules where a CMV is defined as 10,001 pounds or more.

Some Examples of Documents that May Be Used to Prove Violations of Part 387

- Statement from motor carrier official, or person responsible for compliance with Part 387. See *Illustration E-2*.
- Driver’s RODS and corresponding shipping paper/bill of lading/passenger manifest or HM shipping paper.
- Vehicle registration showing GVWR, Passenger Seating Capacity, Liquid Load Capacity, or Water Gallons, or documentary evidence proving the vehicle was subject to Part 387.
- FMCSA License & Insurance website printed document showing amount of liability and/or cargo insurance required.
- FMCSA License & Insurance website printed document showing status of operating authority.
- Oral statement from Investigator noting name/date/time of conversation with FMCSA License & Insurance team member verifying motor carrier’s “real-time” status of authority and/or insurance.

This list is not meant to limit you to specific documents. There are many motor carrier documents that could be used to support a violation. You may utilize other documents to prove the violation.

5.5.8 Part 390 – General Requirements

Once you have entered the violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for Part 390 violations , use the following guidelines .

Part 390 - Documentation

Documents to Gather in Order to Initiate an Enforcement Action

- Evidence that the vehicle used falls within FMCSR jurisdiction for Part 390
- Evidence that driver is an employee (or controlled by the motor carrier)
- Evidence that the CMV was operated by the motor carrier
- Evidence that the CMV was operated in interstate commerce on a specific date
- Evidence that a violation of Part 390 occurred

Some Examples of Documents That May Be Used to Prove Violations of Part 390

- Statement from motor carrier official, driver, or other person responsible for compliance with Part 390
- Driver's RODS, and corresponding shipping/paper/bill of lading
- Vehicle registration showing GVWR, or other documentary evidenced, proving that the vehicle was subject to Part 390
- Copies of documents required by Part 390 that are falsified

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support a violation. You may utilize other documents to prove a violation.

Part 390 - Enforcement Action Against Drivers

You should consider enforcement action against a driver for violating:

- 390.35 - Making or causing to make a fraudulent or intentional false statement on an application, certificate, report, or record, and from falsifying, reproducing, or altering any original supporting document

Related to the final rule published September 27, 2010, titled "Limiting the Use of Wireless Communication Devices" and regarding States with delayed adoption of the FMCSR, until their new regulations are adopted, such States may cite a driver for the appropriate violation citation as follows:

- 390.17 – Operating a commercial motor vehicle while texting
- 390.17 – Operating a commercial motor vehicle while using additional equipment and accessories that decrease the safety of operations

FMCSA and States that adopted the new regulation should refer to *Part 392*.

Procedures to Determine What CMV Should be Inspected

First, you must ensure the motor vehicle being selected for inspection meets the definition of a commercial motor vehicle (49 CFR Section 390.5):

- GVWR 10,001 to 26,000 pounds non-CDL (in interstate commerce)
- GVWR 26,001 pounds (intra- or interstate commerce)

- Transporting passengers 16 or more including the driver (intra- or interstate commerce)
- Or transporting any placarded amount of Hazardous Materials

A Mexico-domiciled carrier with a GVWR of under 10,000 pounds and hauling placardable hazardous materials needs insurance and registration inspection only.

Other Part 390 Requirement to Check During an Inspection

The review of the motor carrier's vehicles should include a determination of whether the vehicles are properly marked.

Notes:

- When citing a carrier for not having required biennial of MCS-150, cite 392.9a(b).
- When citing a carrier for not having MC authority, cite 392.9a(a).
- When citing a rental truck for not having proper marking or paperwork under a rental agreement, cite 390.12(e).
- When citing a carrier for knowingly producing fraudulent documents, cite 390.35.
- When citing a carrier for not submitting accurate information, cite 390.19(e).
- When citing a new entrant carrier for not having the required USDOT number and/or operating authority, cite 385.301.

5.5.9 Part 391 – Qualification of Drivers

Part 391 - Enforcement Procedures

Once you have entered the violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for part 391 violations, use the following guidelines.

Part 391 - Documentation

Documents that Should be Gathered to Initiate an Enforcement Action

- The driver is an employee (or controlled by the motor carrier).
- The CMV was operated in interstate commerce on a specific date.
- A violation of Part 391 occurred.
- Vehicle registration showing GVWR, or other documentary evidenced, proving that the driver was subject to Part 391.
- A Medical Examination Certificate.
- A Skills Performance Evaluation (SPE).

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support a violation. You may utilize other documents to prove a violation.

Part 391 - Enforcement Against the Driver

Consider Enforcement Action Against a Driver for the Following Violations

- 391.11(b)(5) - Driving without a current valid motor vehicle operator's license or permit.
- 391.15(a)-SIN - Driving a CMV while disqualified. Suspended for safety-related or unknown reason and in the state of driver's license issuance.
- 391.15(a)-SOUT - Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance

- 391.15(a)-NSIN - Driving a CMV while disqualified. Suspended for non-safety-related reason and in the state of driver's license issuance.
- 391.15(a)-NSOUT - Driving a CMV while disqualified. Suspended for a non-safety-related reason and outside the state of driver's license issuance.
- 391.41(a)(1) – Driving a CMV without having proof a valid medical.
- 390.35/391.45 - Fraudulently or intentionally making a false entry on a required medical examiner's certificate.

Verify any existing Skills Performance Evaluation (SPE) certificate, medical exemption, and/or medical 90-day waiver. Drivers must continue to carry any SPE certificate, medical exemption, and/or medical 90-day waiver letter on their persons while on duty, pursuant to 49 CFR 391.41(a)(2)(iii).

If an SPE certificate, medical exemption, or medical 90-day waiver letter is required, verify that the driver is carrying the required documentation and that they are utilizing any required medical device (e.g., prosthetic device, etc.). Also, ensure the driver is not in violation of any limitations or restrictions listed on the documentation.

For example, if the SPE certificate requires the use of an automatic transmission or a specific modification to the vehicle such as moving controls or pedals, confirm these exist on the vehicle or if the SPE certificate, waiver or exemption restricts the driver from operating a motor coach or bus with passengers in interstate commerce, then operating of those vehicles would result in a violation.

- If no SPE certificate is in possession when on duty or if the driver has failed to comply with the requirements indicated on the SPE, then the driver should be cited for **49 CFR 391.49(j)** and placed out of service in accordance with the CVSA criteria.

- If no medical exemption or 90-day medical waiver is in the driver's possession or if the driver has failed to comply with the requirements indicated in the medical exemption or waiver, then the driver should be cited for **49 CFR 391.41(a)** and placed out of service in accordance with the CVSA criteria.

- If the driver is operating a motor coach or bus with passengers without complying with the medical exemption, then the driver should be cited for **49 CFR 391.41(a)** and placed out of service in accordance with the CVSA criteria.

If a Canadian Driver is Declared OOS for Part 391 Violations

The United States and Canada entered into a Reciprocity Agreement, effective March 30, 1999, recognizing that a Canadian CDL is proof of medical fitness to drive. Therefore, Canadian CMV drivers are no longer required to have in their possession a medical examiner's certificate if the driver has been issued, and possesses, a valid CDL issued by a Canadian Province or Territory. However, Canadian drivers who are insulin-using diabetics, who have epilepsy, or who are hearing impaired as defined in §391.41(b)(11) are not qualified to drive CMVs in the United States. Furthermore, Canadian drivers who do not meet the medical fitness provisions of the Canadian National Safety Code for Motor Carriers but

who have been issued a waiver by one of the Canadian Provinces or Territories are not qualified to drive CMVs in the United States.

If a Driver is Declared OOS for Part 391 Violations

You should ensure he or she does not operate a CMV until the driver may lawfully do so under the rules.

Note: When an inspector has knowledge and/or evidence that a driver is/is not in possession of a valid medical certificate, and is not in possession of all required exemptions for the following conditions: vision, hearing, insulin-using diabetes, epilepsy, or any other condition which is likely to cause a loss of consciousness or any loss of ability to control a CMV 391.11(b)(4). Place Driver OOS.

Part 391 - Enforcement for Non-English Speaking Driver

If the driver indicates he/she is unable to **understand and respond to official inquiries and directions in English**, the driver should be cited for a violation of Section 391.11(b)(2).

5.5.10 Part 392 – Driving of Motor Vehicle

Part 392 - Enforcement Procedures

Once you have entered the violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for Part 392 violations, use the following guidelines .

Part 392 - Documentation

Evidence that Should be Obtained to Prove a Motor Carrier has Violated Part 392

In order to prove a violation of Part 392.9a by a U.S. or Canadian motor carrier, FMCSA must show that transportation provide was:

- For-hire transportation
- Not a shipment of exempt commodities
- An interstate/international shipment

Shipping documents, such as bills of lading and freight bills, can be used to document the need for operating authority. Similar documentation can be used to prove a Mexico-domiciled motor carrier has operated in violation of Part 392.9a. In either case, the violation should be cited as §392.9a(a) - Operating without operating authority.

Part 392 - Enforcement Action Against Drivers

Circumstances Under Which Enforcement Action Can Be Considered Against a Driver

You should consider enforcement action against a driver for the following violations:

- 392.2 - Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which being operated
- 392.4(a) - Operating a motor vehicle while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle
- 392.5(a) - Possession/use/under the influence of alcohol 4 hours prior to duty
- 392.5(b)(1) - Operating a motor vehicle while under the influence of, or in possession of, an intoxicating beverage
- 392.5(b) - Operating a motor vehicle while showing evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle
- 392.9a – Operating a commercial motor vehicle without authority.

- 392.80(a) - Operating a CMV while texting
- 392.80(b) - Using a driver operating a CMV while texting
- 392.82 – Using a hand-held mobile device while driving a CMV

5.5.11 Part 393/396 – Parts, Accessories, Inspection, Repair & Maintenance

Part 392 - Enforcement Procedures

Once you have entered the violations discovered into the violations tab of the ASPEN software and have decided to initiate enforcement action for 393/396 violations, use the following guidelines.

Parts 393 & 396 - Documentation

Documents to Gather in Order to Initiate an Enforcement Action

You should obtain the documentation to initiate an enforcement action. The documentation must establish that:

- The vehicle used falls within FMCSR jurisdiction for Part 396.
- The driver is an employee of (or controlled by) the motor carrier.
- The CMV was operated in interstate commerce by a motor carrier on a certain date.
- The violation of Part 396 occurred.

Specific Documents that Should be Used to Document these Violations

Specific documentation may be needed to support some of the above referenced critical and acute regulation violations.

- 396.9(c)(2) - Copy of the original out-of-service order.
- 396.11(c) - Copy of DVIR indicating the defects or deficiencies listed by the driver and a statement from carrier official that the defect was not corrected.
- 396.17(g) - Copy of the periodic inspection report with defects identified; statement of carrier official that defects were not repaired.

Documents that Can be Used to Support the Violation

Examples of documents to support your discovered violations are listed below.

- Corresponding shipping papers
- RODS
- Daily vehicle inspection reports
- Vehicle registration

This list is not meant to limit you to specific documents, as there are many motor carrier documents that could be used to support your violation; therefore, you may use other documents to prove your violation.

A statement from a motor carrier official, driver, or other person responsible for compliance with Part 396. See *Illustration E-2*.

Parts 393 & 396 - Enforcement Action Against Drivers

Considering an Enforcement Action Against a Driver

The following violations warrant considering enforcement action against a driver:

- 396.9 - No driver shall operate any motor vehicle declared and marked “out-of-service” until all repairs required by the “Out-of-Service Notice” have been satisfactorily completed.
- 396.9(c)(2) - Operating an "out-of-service" vehicle.*
- 396.11(a) - Each driver shall report, and every driver shall prepare a report in writing at the completion of each day’s work where a defect or deficiency should have been reported and was

not, on each vehicle operated in commerce (driver has 10 percent or greater violations for at least 30 days checked).

(*) denotes Red Flag Violation

If I Find a CMV in "Out-of-Service" (OOS) Condition

If a CMV is discovered in a condition likely to cause an accident or breakdown, you should:

- Prohibit the operation of the CMV.
- Specify the defect(s) or violation(s) that must be corrected before the vehicle is placed in operations as described on form MCS-64.
- Place the vehicle(s) OOS using Form MCS-64 (OOS Order).

If I find a Mexican Carrier Out of Compliance with the Motor Vehicle Safety Standards

No adverse action will be taken against vehicles operated by Mexico-domiciled motor carriers with labels certifying compliance with the CMVSS in effect at the time of manufacture. With only a few differences, the Canadian motor vehicle safety standards are identical to the U.S. manufacturing performance standards (FMVSS), and FMCSA's operating regulations incorporate the FMVSS critical to continued safe operation.

However, whether a vehicle has a certification label, vehicles with violations of the FMCSR that are serious enough to meet the current OOS criteria are to be placed OOS. FMCSA will continue to impose civil penalties for violations of Part 393 of the FMCSR concerning parts and accessories necessary for safe operation, including regulations that cross-reference the FMVSS.

5.5.12 Part 395 – Hours-of-Service (HOS)

Once you have entered the violations discovered into the Violation tabs in the ASPEN software and have decided to initiate enforcement action for Part 395 violations, use the following guidelines .

Part 395 - Documentation

Detecting False RODS

To detect falsification of RODS, compare the entries on the records to verified information on other documents. Documents that include mileage, time, date, and location information can be used to verify RODS entries. Some examples of documents that might be used are: bills of lading, shipping papers, toll receipts, fuel receipts, lodging receipts, weight slips, CAT scale receipts, manifests, U.S. Customs documents, etc. Discovery of these violations will be cited under 395.

Should a Carrier and/or Driver be Cited for Falsification and Exceeding One of the HOS Rules on the Same Day?

Yes, since RODS are checked for all HOS compliance, including falsification, if there are multiple HOS violations on a single RODS, the most appropriate violations must be cited (i.e. 10/15, 11/14, false, form & manner, etc.) If you discover a RODS contains false entries to conceal HOS, you would include it with the cite 395.8(e)(1) - False records of duty status.

Part 395 - Enforcement Procedures Against the Driver

Driver Violations Cited During Roadside Inspections Cannot Also be Cited in the Investigation

As cited for the purposes of a rating- no, because it already affects the rating as outlined. It would be double punishment for the same violation; for the purpose of a civil penalty- yes, unless a fine was already assessed at the roadside.

Part 395 - Enforcement Action Against a Driver

Time When Enforcement Action Should be Considered Against a Driver

Enforcement action should be considered against drivers on the following violations when they have 10 percent or more violations recorded on the number of RODS reports checked for at least 30-day period.

- 395.3(a)(1) - Driving more than 11 hours following 10 consecutive hours off duty (property-carrying vehicles).
- 395.3(a)(2) - Driving for any period after having been on duty 14 hours following 10 consecutive hours off duty (property-carrying vehicles).
- 395.3(b)(1) - Driving after having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week (property-carrying vehicles).
- 395.3(b)(2) - Driving after having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week (property-carrying vehicles).
- 395.5(a)(1) - Driving more than 10 hours following 8 consecutive hours off duty (passenger-carrying vehicles).
- 395.5(a)(2) - Driving for any period after having been on duty 15 hours following 8 consecutive hours off duty (passenger-carrying vehicles).
- 395.5(b)(1) - Driving after having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week (passenger-carrying vehicles).
- 395.5(b)(2) - Driving after having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week (passenger-carrying vehicles).
- 395.8(a)(1) - Every driver who operates a commercial motor vehicle shall record his/her duty status, in duplicate, for each 24-hour period.
- 395.8(e) - Making of false reports in connection with such duty activities on the driver's record of duty status report.
- 395.8(i) - The driver shall submit or forward by mail the original driver's record of duty status to the regular employing motor carrier within 13 days following the completion of the form.
- 395.13(d) - No driver who has been declared out-of-service shall operate a commercial motor vehicle until that driver may lawfully do so under the rules of this Part.

5.5.13 Part 397 – Transportation of hazardous materials; driving and parking rules

For guidance on the hazardous materials portion of your inspection, see the Hazardous Materials Manual.

5.5.14 Enforcement of Federal OOS during Roadside Inspection

Roadside Data Availability

Enforcement personnel in the field, whether at fixed facilities or on patrol, have several means available to obtain operating authority and OOS Order information during a CMV inspection.

This information may be accessed in several ways depending upon the communications capability at the roadside of each jurisdiction. In order to obtain information regarding Federal OOS Order, inspectors are encouraged to utilize the following tools, in the order listed below, based upon the timeline of the OOS Order data provided by each:

- QC (real-time for OOS Order status); - **MOST TIMELY DATA**

- The international Justice and Public Safety Network, formerly known as the National Law Enforcement Telecommunication System, carrier Query (update Mondays through Thursday and Saturdays);
- Safer Website (update Mondays through Thursday and Saturdays); and
- Inspection Selection System (updated Monthly). **- LEAST TIMELY DATA**

OOS Order Status Verification

Verification of a United States Federal OOS Order against a motor carrier is a two-step process. First, the OOS Order must be discovered at the roadside through a query on the operating motor carrier's record. Second, once an OOS Order is identified, enforcement personnel must verify the status of the OOS Order using QC. **Exception: If QC cannot be used at the roadside, any OOS Order identified must be verified by contracting the appropriate FMCSA SC before placing the vehicle OOS.** The Commercial Vehicle Safety Alliance (CVSA) has added a specific item covering Federal OOS Order issued under the ten sections of the Federal regulations listed below. This change appears in the April 1, 2009, edition of the North American Standard OOS. **Note:** Incorrect information (i.e., reference to 386.84(a)(1) cite for Failure to Pay Fine OOS Order-For-Hire Carrier) in the second row of the table (which has been removed below) will still appear in the most recent version of the CVSA OOS Criteria but should be disregarded by enforcement personnel.

Description	Section
Failure to Pay Fine	386.83(a)(1)
UNSAT/UNFIT – Placarded HM & Passenger Carriers	385.13(a)(1)
UNSAT/UNFIT – Property Carriers	385.13(a)(2)
New Entrant – Failure of Safety Audit	385.325(c)
New Entrant – Refusal of Audit/No Contact	385.337(b)
Imminent Hazard	386.72(b)(2)
MX carrier (inadequate corrective action)	385.105(b)
MX carrier UNSAT/UNFIT	385.111(a)
MX carriers (suspended operating authority for UNSAT rating of failed Safety Audit)	385.111(c)(1)
MX carriers (revoked operating authority)	385.111(c)(2)

The CVSA's change will provide enforcement personnel with the ability to place vehicles OOS that are discovered to be operation under the authority of a motor carrier that was issued an OOS Order until specific requirements in the Federal order are satisfied.

If a valid OOS Order is discovered and verified, enforcement personnel must place only the power unit OOS, and should indicate the appropriate FMCSA section that pertains to the OOS Order on the inspection report (and citation if issued). Enforcement personnel should follow their individual department policies and procedures per the laws of the State when placing a power unit OOS. The inspection report should include instructions to the carrier to contact FMCSA at the number in the OOS Order document they received previously.

The use of QC is the preferred method for obtaining after hours operating authority and OOS Order information. If an OOS Order is discovered but cannot be verified (i.e., SC is closed) at the time of inspection enforcement personnel should only decline to place a carrier OSS if absolutely necessary. If the carrier is not placed OOS, the enforcement official should make copies of pertinent paperwork (e.g.,

bills of lading, receipts, etc.), if possible, to demonstrate that the carrier was operating in interstate commerce at the time of the inspection. Evidence of violation of the OOS Order may include the FMCSA document prohibiting interstate operations and a copy or facsimile of the inspection or crash report indicating interstate activity. Enforcement personnel should forward the information as soon as possible to the appropriate FMCSA Division Office for follow-up to determine the carrier's actual operating status at the time of the inspection. If the FMCSA Division Office determines that the carrier was operating while a valid OOS Order was in effect, then an enforcement case may be initiated by the Division Office.

5.6 Illustration

5.6.1 Illustration 53 : Border Inspector Alert

U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Border Inspector Alert

It has come to our attention that there is at least one cargo tank manufacturer in Mexico that has manufactured cargo tanks to USDOT specifications that are no longer authorized for new manufacture. A cargo tank that does not have a valid appropriate MC or DOT specification is not authorized to operate in the United States.

What is a valid MC or DOT specification marking?

The most common MC and DOT specification cargo tank markings are MC 306, MC 307, MC 312, MC 300, MC 331, DOT 406, DOT 407, and DOT 412. However, a MC 306, MC 307, and MC 312 tank may not be used if it has an original test date on the specification plate after August 31, 1995. Other valid cargo tank specifications and valid manufacture dates are listed in the table shown in 49 CFR 180.405 (c)(i) & (ii).

May a SCT cargo tank be used to transport HM in the U.S.?

The answer is NO. Cargo tanks manufactured to the Mexican regulations display markings that appear similar to U.S. cargo tanks. The Mexican specifications usually will show a marking like SCT 307 for an example. If you discover a tank with the SCT markings, and no other marking indicating that it is a MC or DOT tank, it is not authorized to operate in the U.S. transporting HM requiring a DOT specification cargo tank.

How do I determine if the cargo tank is authorized for the material it is transporting?

Column (8C) of the hazardous materials table [§ 172.101] lists the section in Part 173 where authorized bulk packages can be found. That section, usually §§ 173.240-173.244, will list the authorized specification cargo tanks. Please note that for materials with bulk packages authorized in §§ 173.240 or 173.241, non-DOT specification cargo tanks, include Mexican SCT specification tanks, are authorized.

Action

When cargo tanks are discovered in the U.S. transporting HM in tanks that are not authorized for the type HM being transported, the vehicle should be placed OOS for violation of 396.7 – Unsafe Operations Forbidden. If the cargo tank is marked MC 306, MC 307, or MC 312 with an original test date after August 31, 1995, please forward a copy of the inspection and the information from the vehicle inspection place (a photograph if possible) through the appropriate channels to the Hazardous Materials Division (MC-ECH).

Federal Program Manual

For

eFOTM Redevelopment

Federal Motor Carrier Safety Administration (FMCSA)
U.S. Department of Transportation

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6.2 Federal Programs Manual

6.2.1 Compliance Manual

6.2.1.1 Division and Service Center Compliance Procedures

Division Administrator (DA) or Designee Responsibilities in the Conduct of Investigations or CRs

The DA or designee is responsible for the conducting and coordination of compliance activities in support of the FMCSA mission. Duties include:

- Managing and coordinating resources in the conduct of compliance activities;
- Identifying and prioritizing compliance activities to meet the goals and objectives of the Division safety plans;
- Assigning Onsite Investigations to High-Risk carriers that should be conducted and completed within 90 days from the release of the prioritization lists. Deviations from the 90-day target date should be documented;
- Maintaining a list of all High-Risk motor carriers on which investigations were not conducted along with a brief explanation as to why the review was not done; and
- Ensuring FMCSA and State Motor Carrier Safety Assistance Program (MCSAP) personnel follow the most current policies and procedures.

Carrier Prioritization and Carrier Assignment

The DA or designee is responsible for making SI-specific carrier assignments. ACE provides the DA or designee with access to the necessary information to make carrier assignments. ACE classifies eligible motor carriers into Risk-Based Carrier Prioritization Lists (High-Risk, Moderate-Risk, Risk, and Monitor) (See Risk-Based Prioritization table). Within each category, motor carriers are ordered based on their measurement of risk. This sort order is further displayed on secondary level lists, within the Moderate-Risk, Risk, and Monitor Lists (See Secondary-Level Prioritization table). After the carriers identified as High-Risk are assigned, Division Offices have discretion in deciding which carriers to investigate beyond those identified as High-Risk. Division Offices are to use the tools provided in the assignment grid described in the Manager Utilize Tools to Support the Assignment Process section, and to consider the availability of resources and other Agency initiatives, in making and managing assignments.

Carriers on the Warning Letter lists will not be prioritized for intervention (i.e., investigation or Direct NOV) by the system, which means they will not appear on the DA or Designee's monthly list of carriers to investigate, but they may still be candidates for intervention. This is because not all the reasons for intervention are incorporated in the prioritization algorithm. Interventions may be selected based on national program goals and related initiatives that may require the States to review and assign from the Warning Letter lists.

Safety Measurement System (SMS) Assesses Carrier Performance

For each BASIC, the SMS captures and displays the safety status of individual motor carriers on a monthly basis. BASICs subject to an intervention are indicated as having a status of Roadside-Identified and/or Acute and Critical Violations documented during previous investigations. SMS also identifies motor carriers that are eligible to receive warning letters based on SMS results. Each type of status is defined below. Note: SMS also measures and assesses the performance of intrastate motor carriers with U.S. DOT numbers and sufficient data. Intrastate motor carriers are prioritized using the same Risk-Based criteria as described in the *Risk-Based Carrier Prioritization Categories* section. In addition, intrastate HM carriers are included in the intrastate list unless they require a HM Safety Permit (intrastate HM Safety Permit carriers are included in the interstate list). These intrastate lists are available within the FMCSA Portal.

Roadside-Identified BASICs − A carrier is subject to intervention based on SMS results. SMS evaluates the safety of individual motor carriers by considering on-road performance. This can be from roadside inspections as well as State-reported crashes that have occurred within the previous 24 months. Regardless of the source of data, a BASIC that is Roadside-Identified means that the BASIC measurement is at or above the threshold for intervention. (See table below.)

Table: BASIC Thresholds (Percentiles)

BASIC	Passenger Carriers	HM Carriers	All Other Motor Carriers
Unsafe Driving Hours-of-Service (HOS) Compliance Crash Indicator	50	60	65
Driver Fitness Controlled Substances/Alcohol Vehicle Maintenance	65	75	80
Hazardous Materials (HM) Compliance	80	80	80

HM thresholds apply to motor carriers when the following conditions are met:

- At least two HM placardable inspections within the past 24 months, with one inspection occurring within the past 12 months; and
- HM placardable inspections are at least 5% of the motor carrier's total inspections; or
- The carrier has an HM Safety Permit issued by FMCSA.

Passenger carrier thresholds will apply to motor carriers when one of the following criteria is met:

- The motor carrier has active common or active contract passenger authority. The motor carrier must also meet both of the following criteria:
    - Owns, term-leases, or trip-leases a 9−15 passenger vehicle or 16+ passenger vehicle; and
    - Passenger vehicles represent 2% or more of the carrier's total vehicles.

- The operation classification in the Motor Carrier Management Information System (MCMIS) is authorized for-hire or exempt for-hire. The motor carrier must also meet one of the following criteria:
    - Owns, term-leases, or trip-leases a 9−15 passenger vehicle or 16+ passenger vehicle; and passenger vehicles represent 2% or more of the carrier's total vehicles; or
    - If the carrier has no vehicle data at all in MCMIS and "passengers" is a cargo classification.
- The operation classification in MCMIS is private motor carrier of passengers. The motor carrier must also meet both of the following criteria:
    - Owns, term-leases, or trip-leases a 16+ passenger vehicle; and
    - Passenger vehicles represent 2% or more of the carrier's total vehicles.

Acute and/or Critical Violations In addition to on-road performance, Acute and Critical Violations documented in the most recent investigation factor into prioritization and investigation scope for six years. If the Acute or Critical Violation is associated with the Hours of Service (HOS) Compliance BASIC, the SI will investigate the full HOS Compliance BASIC (all parts). If the Acute or Critical Violation is not associated with the HOS Compliance BASIC, the SI will only investigate the specific violation(s) cited in the most recent investigation. ACE and AIM will identify the BASIC requiring investigation due to a prior Acute or Critical Violation, and will identify the specific violation requiring investigation.

Acute and Critical Violations are defined as:

- Acute - Those violations where noncompliance is so severe that they require immediate corrective action by a motor carrier regardless of its overall safety posture (a one-time occurrence, e.g., failing to implement an alcohol and/or controlled substance testing program); or
- Critical - Those violations that relate directly to the motor carrier's management and/or operational controls and are indicative of breakdowns in a motor carrier's management controls (e.g., a pattern of violations such as false reports of records of duty status).

  *Note: If the prior investigation was conducted Offsite, Critical Violations factor into prioritization and investigation scope only when the offsite sampling was equivalent to onsite sampling. Violations of Critical regulations resulting from an Offsite Investigation will not be displayed publically in the SMS.

Warning Letters

The SMS will determine which carriers should receive Warning Letters. These letters will be system-generated and mailed within one month of the carrier being designated. No action is required on the part of the Manager. SMS identifies eligible motor carriers for warning letters. The table below highlights whether motor carriers included as part of various compliance and enforcement programs will receive automated warning letters based on SMS results. Carriers eligible to receive Warning Letters as part of various compliance and enforcement programs are identified in the following table:

Carrier Type/Program*	Receive Automated Warning Letters
New Entrant (NE)**	Yes
BASIC Warning Letter	Yes
Expedited Action Warning Letter	Yes
High Risk	No
Passenger	Yes
HM Permit	Yes
Household Goods	Yes

*Warning letters are not sent to intrastate carriers unless they are HM Safety Permit carriers.

**Note: Criteria for New Entrant warning letters are specified in the Safety Audit Manual section 3.1.1

Warning letters are designed to make motor carriers aware of their company's safety performance data, and to encourage corrective action, so that FMCSA and State investigative resources can be more effectively directed to higher risk motor carriers. Warning letters are based on roadside performance results collected during the previous 24 months.

Warning letters advise motor carriers of their identified roadside safety performance problems and the consequences of continued poor performance. They further provide a website link that allows the motor carrier to view its safety performance data. They do not require motor carriers to submit evidence of corrective action to FMCSA. However, if a motor carrier still has BASICs meeting or exceeding the Intervention Threshold, 6 months after receiving a warning letter, they may be prioritized for investigation based on risk criteria (As see explained in the *System Prioritizes Carriers Based on Risk* section below).

Warning letters will be generated when a motor carrier's safety performance meets or exceeds the SMS Roadside-Identified Intervention Threshold, based on roadside performance data in one or more BASICs. However, because of their poor overall performance, warning letters are not generated for motor carriers that are designated as HighRisk or for motor carriers that have three or more BASICs at or above the Intervention Threshold. Those motor carriers are immediately prioritized for an Onsite Comprehensive,Onsite Focused, of Offsite Investigations based on the business rules.

FMCSA and State enforcement personnel are able to access an electronic version of all distributed warning letters in MCMIS or ACE. A sample warning letter can be found in Appendix I.

System Prioritizes Carriers Based on Risk

Based on BASIC percentiles, intervention history, and the status of Acute and Critical Violations, the FMCSA Portal prioritizes carriers for intervention into the following risk-based prioritization lists:

- High-Risk,
- Moderate-Risk,
- Risk,
- Warning Letter, and
- Monitor

Risk-Based Carrier Prioritization Categories

ACE prioritizes each carrier for intervention into the Risk-Based categories (as shown the Primary Lists table below). The carriers are order based on their measurement of risk (See Primary Lists below) to help the Manager determine appropriate assignments. This sort order is further displayed on secondary level lists (See Secondary Level Lists below e.g., the estimated risk of carriers designated Moderate-Risk 1 are greater than those on Moderate-Risk 2). Carriers identified as High-Risk will be automatically designated for immediate action should be assigned for an Onsite Investigation and prioritized first for investigation. After the carriers identified as High-Risk are assigned, Division Offices have discretion in deciding which carriers to investigate beyond those identified as High-Risk. Use ACEassignment grid to review carriers' safety performance to assess their priority for intervention, utilize the tools provided in the assignment grid (Manager Utilize Tools to Support the Assignment Process), and consider the availability of resources and other Agency initiatives, in making and managing assignments.

Criteria for Risk-Based Prioritization within Primary Lists

Primary List	SMS BASIC Performance	Time Since Last Intervention	Carrier Types Excluded
High-Risk	Two (2) or more of the following BASICs at or above the 90th percentile for 2 consecutive months (passenger carriers: 1 month): Unsafe Driving, Crash Indicator, Hours-of-Service (HOS) Compliance, Vehicle Maintenance	Passenger carriers: no onsite comprehensive investigation in last 12 months. All other carriers: no onsite intervention in last 18 months.	None excluded
Moderate-Risk	Two (2) or more of the following BASICs at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance	1. No intervention in last 12 months *AND* 2. No warning letter in last 6 months	Exclude the following: 1. High-Risk 2. Warning Letter 3. New Entrant Carriers
Risk	One (1) or more BASICs at or above intervention threshold or with unresolved Acute or Critical Violation(s)	1. No intervention in last 12 months *AND* 2. No warning letter in last 6 months	Exclude Moderate-Risk
Warning Letter	One (1) or more BASICs at or above threshold	1. No intervention or warning letter in last 18 months *AND* 2. If there was a previous intervention, then no BASICs or unresolved Acute or Critical Violations in prior 12 months	Exclude High-Risk *Note*: criteria for New Entrant warning letters are specified in a forthcoming separate policy
Monitor	1 or more BASICs at or above threshold or with unresolved Acute or Critical Violation(s)	1. Has had an intervention in last 12 months, or received a warning letter in last 6 months *OR* 2. New entrant motor carrier that has had a Safety Audit or Investigation	Exclude the following carrier designations/types: 1. High-Risk 2. Warning Letter 3. New Entrant Motor Carriers that have not yet had a Safety Audit or Investigation

SMS Performance Criteria for Secondary-Level Prioritization within Moderate Risk, Risk, and Monitor Lists

Primary List	Secondary List	SMS BASIC Performance
Moderate-Risk	**Moderate-Risk 1**	Three (3) or more of the following BASICs at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	Moderate-Risk 2	Two (2) or more of the following BASICs at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
Risk	**Risk 1**	One (1) of the following BASICs at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	Risk 2	One (1) or more of the following BASICs at or above intervention threshold: Driver Fitness, Controlled Substances/Alcohol, Hazardous Materials (HM) Compliance
	Risk 3	Zero (0) BASICs at or above intervention threshold and 1 or more BASICs with unresolved Acute or Critical violations
Monitor	**Monitor 1**	Two (2) or more of the following BASICs at or above intervention threshold or with unresolved Acute or Critical violations: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	Monitor 2	One (1) of the following BASICs at or above intervention threshold or with unresolved Acute or Critical violations: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	Monitor 3	One (1) or more of the following BASICs at or above intervention threshold or with unresolved Acute or Critical violations: Driver Fitness, Controlled Substances/Alcohol, HM Compliance

The table below highlights whether the SMS evaluates motor carriers included as part of various compliance and enforcement programs and whether they are subject to being integrated into the Risk-Based Prioritization.

FMCSA Programs and Prioritization Lists

Carrier Type/Program	Evaluated by SMS	Subject to Risk-Based Prioritization Lists Rules
New Entrant (NE)	Yes	If High-Risk from SMS
Canada Domiciled	Yes	Yes
Mexico Domiciled	Yes	Yes
Non-North American (NNA)	Yes	Yes
Passenger	Yes	Yes
HM Permit	Yes	Yes
Household Goods (HHG)	Yes	Yes
Conditional Rated Carrier*	NA	NA

*The Conditional Carrier Program was officially discontinued in April 2010.

Overall BASICs requiring investigation may be based on SMS results and/or Acute and Critical Violations discovered during the most recent investigations. SMS incorporates the discovery of Acute and Critical Violations in the following way:

- Use in carrier prioritization: When a carrier's most recent investigation discovered Acute and/or Critical Violations, the BASIC requires an investigation and the carrier is prioritized for an intervention. The carrier remains prioritized for a period of six years from the most recent investigation and factors into the calculation of the Risk-Based Carrier Prioritization Lists. Investigations performed on carriers with Acute and/or Critical Violations should be specific to the violations cited in the most recent investigation, unless the previous Acute and/or Critical violation was cited in the Hours of Service (HOS) BASIC. If the Acute or Critical violation is associated with the HOS BASIC, the full HOS BASIC (all parts) should be investigated.
- Display and use in BASIC assessment:
    - If the investigation associated with the discovery of the Acute and/or Critical Violation is less than 12 months old, the investigation and overall BASIC columns in SMS are indicated; this remains for 12 months unless a new investigation is performed and uploaded.
    - An Offsite Investigation may result in a violation of an Acute regulation and impact the carrier's SMS BASIC prioritization status. If the offsite sampling size is the same as the onsite sampling requirement, an Offsite Investigation may also result in a pattern of violating a Critical regulation and impact SMS BASIC prioritization. However, patterns of violations of Critical regulations resulting from an Offsite Investigation will not be displayed publicly in SMS. If the investigation associated with the discovery of the Acute and/or Critical Violation is greater than 12 months old, the investigation and overall BASIC columns in SMS are not indicated and they are viewable to enforcement users only.

Acute and Critical Violations no longer impact prioritization when an investigation of the motor carrier is performed and there are no new Acute and Critical Violations discovered in the associated BASIC. At that point in time, the Acute and Critical Violation will cease to impact prioritization. Additionally, the Acute and/or Critical violation cited on the most recent investigation will not impact prioritization after a period of six years. However, if new Acute and/or Critical Violations are discovered, the investigation and overall BASIC columns are indicated, and a new, 12-month timeframe begins.

In addition, the Risk-Based Carrier Prioritization Lists ACE will include motor carriers that support National Program Goals, such as passenger carriers and HHG motor carriers that are not based on the SMS BASICs requiring an investigation.

High-Risk Carriers

FMCSA uses the SMS to identify high-risk motor carriers consistent with Section 4138 of the Safe, Accountable, Flexible, Efficient, Transportation, Equity Act: A Legacy for Users (SAFETEA-LU). Motor carriers identified as High-Risk will be subject to immediate action and should be assigned for an Onsite Investigation, which should be completed within 90 days from the release of the prioritization list. Division Offices should work across state borders, as needed, to address these High-Risk carriers. Under certain circumstances motor carriers can be

removed from the High-Risk list. For guidance for removing carriers from the High-Risk list see Manual Removal of Motor Carriers from the High-Risk Prioritization List section below.

The following table defines "High-Risk" for passenger and non-passenger carriers.

Criteria	High-Risk – Passenger Carrier	High-Risk – Non-Passenger Carrier
SMS BASIC Performance • Two or more of the following BASICs at or above the 90th percentile: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance.	Occurs in any one month	Occurs in two consecutive months
Time Since Last Onsite Investigation	12 months since last onsite comprehensive investigation	18 months since last onsite focused or comprehensive investigation
Target Date	90 Days	90 Days

Division Administrators will ensure that investigations are conducted on interstate motor carriers and interstate and intrastate Hazardous Materials Safety Permit (HMSP) carriers designated High-Risk as defined above table and should adhere to the prescribed timeframes.

Timeframes for Conducting Investigations on High-Risk Carriers

A carrier identified as High-Risk should be assigned for an Onsite Investigation which should be conducted and completed within 90 days from the release of the prioritization list. Deviations from this policy should be documented. The assignment should remain in effect regardless of improvement in performance in succeeding months.

Moderate-Risk and Risk Carriers

After the carriers identified as High-Risk are assigned, Division Offices are to use the tools provided in the assignment grid described in the *Manager Utilize Tools to Support Assignment Process* section and to consider the availability of resources and other Agency initiatives, in making and managing assignments. Division Offices have discretion in deciding which carriers to investigate beyond those identified as High-Risk. Carriers are placed in the Moderate-Risk or Risk categories based on the criteria below:

Primary List	SMS BASIC Performance	Time Since Last Intervention	Carrier Types Excluded
Moderate-Risk	Two (2) or more of the following BASICs at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance	1. No intervention in last 12 months *AND* 2. No warning letter in last 6 months	Exclude the following: 1. High-Risk 2. Warning Letter 3. New Entrant Carriers
Risk	One (1) or more BASICs at or above intervention threshold or with unresolved Acute or Critical Violation(s)	1. No intervention in last 12 months *AND* 2. No warning letter in last 6 months	Exclude Moderate-Risk

Monitor

The Division Offices should check the Monitor list for carriers whose measured safety risk has increased post intervention, which can be tracked using the reset tool. Division Offices are to use the tools provided in the assignment grid described in the *Manager Utilize Tools to Support Assignment Process* section and to consider the availability of resources and other Agency initiatives, in making and managing assignments. Carriers are placed in the Monitor category based on the criteria below:

Primary List	SMS BASIC Performance	Time Since Last Intervention	Carrier Types Excluded
Monitor	One (1) or more BASICs at or above threshold or with unresolved Acute or Critical Violation(s)	1. Has had an intervention in last 12 months, or received a warning letter in last 6 months *OR* 2. New Entrant motor carrier that has had a Safety Audit or Investigation	Exclude the following carrier designations/types: 1. High-Risk 2. Warning Letter 3. New Entrant Motor Carriers that have not yet had a Safety Audit or Investigation

Manager Utilize Tools to Support the Assignment Process

To support managing assignments a series of automated data analysis tools have been developed. Division Offices will be able to use these tools to prioritize interventions for carriers on the Moderate-Risk, Risk, and Monitor lists, after ensuring that those on the High-Risk list are completed within the designated timeframes. See table below for the Secondary Level list for prioritization within Moderate-Risk, Risk and Monitor Lists.

These tools include:

- A trending tool showing upward/downward trends in the BASIC percentiles,
- A reset tool which shows a measure of safety performance since the last intervention, and
- A driver information tool with the number and percent of drivers with red-flag violations.

Example

The value of using these tools can be illustrated by the following example. Consider two carriers:

Carrier A in Moderate-Risk has three BASICs above the intervention thresholds (Unsafe Driving 69%, Crash Indicator 72%, and Hours-of-Service (HOS) Compliance 67%). The Trending Tool indicates that performance in each of these BASICs is improving over a period of time due to good inspection performance.

Carrier B has two BASICs above the intervention thresholds (Unsafe Driving 89% and the Crash Indicator 85%) but its performance is degrading.

In this case, the Division Administrator should initiate an investigation of Carrier B before Carrier A because the trends indicate that Carrier B is higher risk due to continued poor performance.

SMS Performance Criteria for Secondary-Level Prioritization within Moderate Risk, Risk, and Monitor Lists

Primary List	Secondary List	SMS BASIC Performance
Moderate-Risk	**Moderate-Risk 1**	3 or more of the following BASICs at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	Moderate-Risk 2	2 or more of the following BASICs at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
Risk	**Risk 1**	1 of the following BASICs at or above intervention threshold: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	Risk 2	1 or more of the following BASICs at or above intervention threshold: Driver Fitness, Controlled Substances/Alcohol, Hazardous Materials (HM) Compliance
	Risk 3	0 BASICs at or above intervention threshold and 1 or more BASICs with unresolved Acute or Critical violations
Monitor	**Monitor 1**	2 or more of the following BASICs at or above intervention threshold or with unresolved Acute or Critical violations: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	Monitor 2	1 of the following BASICs at or above intervention threshold or with unresolved Acute or Critical violations: Unsafe Driving, Crash Indicator, HOS Compliance, Vehicle Maintenance
	Monitor 3	1 or more of the following BASICs at or above intervention threshold or with unresolved Acute or Critical violations: Driver Fitness, Controlled Substances/Alcohol, HM Compliance

Manual Removal of Motor Carriers from the High-Risk Prioritization List

A carrier identified as High-Risk will remain High-Risk until an investigation is conducted. The procedures outlined below provide guidance for removing carriers from the High-Risk list under certain circumstances.

The policy below does not address carriers that are out-of-business because when a carrier is placed into inactive status, the carrier is removed from the High Risk List. If the carrier does resume operations, then the carrier would re-appear on the list and not benefit from its inactive status.

Criteria for removal

A carrier identified on the High-Risk carrier prioritization list may be removed from this list if it was incorrectly designated as High-Risk for any of the following reasons:

1. The entity was incorrectly identified as an interstate motor carrier or as a Hazardous Material Safety Permit (HMSP) motor carrier and has made the correction by updating its registration (e.g., the motor carrier did not conduct interstate operations in the past 365 days or did not require an HMSP; a broker was incorrectly listed as an interstate motor carrier; etc.).
2. The carrier was mistakenly classified as a passenger carrier and did not meet the High-Risk criteria for a non-passenger carrier, and made the correction by updating its registration.
3. A DataQs Request for Data Review (RDR) was approved that:
    a. Invalidates inspection and/or crash data (e.g., inspections incorrectly assigned to a leasing company or the wrong carrier), and
    b. If this data had been corrected earlier, it is likely that the Behavior Analysis and Safety Improvement Category (BASIC) would have resulted in percentiles less than 90, in the estimation of the assigning manager.
4. An update to the carrier's registration has been made:
    a. To correct inaccurate safety performance data (e.g., the number of power units or vehicle miles travelled); and
    b. If this data had been accurate, it is likely that the carrier's Unsafe Driving or Crash Indicator BASIC percentile would have resulted in percentiles less than 90, in the estimation of the assigning manager.

If the Division Office identifies a carrier that should not be High-Risk for some other reason, not specifically addressed, the Division Office may initiate a request for removal with supporting evidence per the procedures below.

Procedures for Removing Carrier from the High-Risk Carrier Prioritization List

Removal from the High-Risk carrier prioritization list requires that the Division Office submit a request and obtain approval by an authorized representative designated by the Office of Field Operations (MC-F). The Office of Enforcement (MC-E) will review and validate the approval and facilitate the manual removal of the motor carrier from the High Risk carrier prioritization list.

The steps for each organization are described below. The approval/denial and notification process will be facilitated through use of an automated form, routing, and email notification. The timeframe for completing this process is expected to be no longer than 5 business days for each request. Specific instructions and an explanation of roles will be provided prior to the implementation of this policy.

1. Division Office determines that the carrier should be removed from the High-Risk prioritization list and submits a request for removal.
    a. If prior to assignment, during pre-investigation, Risk Assessment, or during or after an investigation has been initiated, the Safety Investigator questions the accuracy of a carrier's High-Risk designation, the Safety Investigator should present evidence to the assigning manager that the carrier should not be considered High-Risk.
    b. The assigning manager verifies the evidence and other carrier details against the High-Risk criteria, determines if the carrier should be recommended for removal, assembles the relevant documentation, and obtains the Division Administrator's approval to submit a the recommendation to remove the carrier from the High-Risk prioritization list.

c. After the Division Administrator's approval, the Division Office fills out the automated form available from the Activity Center for Enforcement (ACE) assignment page to request removal of a carrier from the High-Risk prioritization list, citing reasons that are listed in the form and providing additional details and documentation supporting the decision to remove a carrier.

2. MC-F authorized representative approves or denies request, routes approved request to MC-E, and notifies requestor through the ACE system.
   a. The removal request form is automatically routed to the official at MC-F authorized to approve the request prior to sending it to MC-E through the system. The MC-F representative may also deny the request based on insufficient justification or documentation. An email is automatically sent to notify MC-F representative that a request has been submitted.
   b. The MC-F representative reviews the request, checks off approval or denial on the request form, and provides the rationale for the decision.
   c. An email is automatically sent to the submitter providing notification of (a) approval or (b) denial. If approved, then the form is automatically routed to the MC-E representative for approval. If denied, then the carrier remains on the High-Risk prioritization list and requires investigation.
3. MC-E representative reviews request and approves or denies, manually removes the carrier from the High-Risk prioritization list, and notifies MC-F representative and the requestor.
   a. The MC-E representative reviews the request, checks off approval or denial on the request form, and provides the rationale for the decision.
   b. An email is automatically sent to requestor and MC-F representative providing notification of approval or denial. If approved, then the MC-E representative removes the carrier from the High-Risk prioritization list and an email is automatically sent to requestor and MC-F representative to notify them of this removal. The carrier is then subject to re-appearing on the High-Risk prioritization list as described below. If MC-E denies the request, then an email is automatically sent to requestor and MC-F representative to inform them that the carrier remains on the High-Risk prioritization list.

Impact of removal of carrier on future prioritization

A carrier that is removed from the High-Risk prioritization list one month will have no risk-based prioritization status for that month. However, it is subject to re-appearing on the High-Risk or any of the other risk-based prioritization lists in succeeding months if it meets the criteria for the respective list.

For example if the carrier is a property carrier, then it would not be eligible to return to the High-Risk prioritization list until the third month at the earliest, since inclusion on that list requires two consecutive months above the High-Risk safety performance thresholds.

FAQs: Relating to Carrier Prioritization

Q1: Which carriers take priority: those on Program Office lists or new risk-based prioritization lists?

A1: Carriers designated as High-Risk are the Agency's #1 investigative priority. Divisions are expected to work across State borders within their Service Center regions to address these carriers as quickly as possible.

After High-Risk, Divisions should determine which carriers to address next based on carrier safety performance data and available resources. This may include addressing carriers on risk-based or Program Office lists. There are four new online data analysis tools to assist the field in making prioritization decisions.

Q2: How do you identify NE motor carriers requiring investigation?

A2: New Entrant carriers that have been designated as High-Risk and have not received a safety audit require an Onsite Comprehensive Investigation

Note: When assigning an investigation to a carrier in the New Entrant monitoring program, ensure that there are no pending Safety-Audit-related actions. If there is a pending Safety-Audit-related action, forgo assigning the carrier for an investigation until the completion of the pending Safety-Audit-related action; for example, review letter history for the carrier in the Motor Carrier Management Information System (MCMIS) to ensure that there are no pending Expedited Actions.

Intrastate Motor Carriers

The SMS measures and assesses the performance of intrastate motor carriers with U.S. DOT numbers and sufficient data. Intrastate motor carriers are prioritized using the same Risk-Based criteria as described in *Risk-Based Carrier Prioritization Categories* section. In addition, intrastate HM carriers are included in the intrastate list unless they require a HM Safety Permit. (Intrastate HM Safety Permit carriers are included in the interstate list.) These intrastate lists are available within ACE.

Determine Intervention Type for Carriers

The process of assigning carriers to SIs for an Intervention is done in conjunction with determining the appropriate Intervention Type. There are four choices listed for assignment type, each of which is described below:

Onsite Focused Investigation – It takes place at the carrier's place of business. It enables FMCSA and its State Partners to focus on the demonstrated safety problem. It involves reviewing records, interviewing personnel, analyzing practices, and identifying corrective actions.

Onsite Comprehensive Investigation – It also takes place at the carrier's place of business. It is employed when the carrier exhibits broad and complex safety problems, or in response to national program goals. During an Onsite Comprehensive Investigation, all BASICs and related FMCSR Parts are investigated.

Offsite Investigation- The Offsite Investigation enables FMCSA and its State partners to evaluate safety problems without sending enforcement officials to a carrier's place of business. It involves requests for documentation from the carrier and third parties, followed by an in-depth review of available information to determine the nature and extent of identified safety problems. It follows the same core investigative processes used during an Onsite Investigation; however, the minimum sampling size for an Offsite Investigation may be different than an Onsite Investigation. Offsite Investigations are non-rated reviews.

Direct NOV – This is an enforcement mechanism to address compliance deficiencies. If the alleged deficiency is not addressed to the Agency's satisfaction, formal enforcement action may be taken if sufficient evidence is available to support violation(s) or in instances where it does not exist the appropriate onsite investigation can be assigned . A Direct NOV is not a prerequisite to the issuance of an NOC.

When to Assign an Investigation

An investigation may be assigned for any one of the following reasons:

- Measured on-road safety performance issues in relevant Behavior Analysis and Safety Improvement Categories (BASICs);
- Acute and/or Critical Violations cited during the most recent investigation within six (6) years; and
- Existing mandates, policies, and national program goals.

The DA or Designee should review the monthly list of carriers starting with High-Risk, followed by Moderate-Risk, Risk, and Monitor. A carrier identified as High-Risk should be assigned first for an Onsite Investigation which should be conducted and completed within 90 days from the release of the prioritization list. Division Offices are to use the tools provided in the assignment grid described in the *Manager Utilize Tools to Support Assignment Process* section and to consider the availability of resources and other Agency initiatives, in making and managing assignments (i.e., Moderate-Risk, Risk, and Monitor). Division Offices have discretion in deciding which carriers to investigate beyond those identified as High-Risk.

Determine the Investigation Type

Prior to assigning and performing an Onsite Comprehensive, Onsite Focused Investigation or Offsite Investigation, it is necessary to first determine the scope of an investigation. The scope of an investigation is defined by the **number of, and specific, BASICs that require an investigation**. BASICs requiring an investigation are based on Roadside-Identified BASICs, BASICs associated with Acute and/or Critical Violations, and BASICs associated with a complaint.

Next, the DA or Designee should decide on the correct investigation type (Onsite Comprehensive,Onsite Focused or Offsite Investigation). The DA or Designee should select the Investigation through the application of investigation selection rules and based on guidance provided in the eFOTM Compliance Manual. These sections include the following:

- Section 1.1.4 Manager Determines Intervention Type for Carriers on the Risk-Based Prioritization Lists;
- Section 1.1.5 Manager Determines Intervention Type for Carriers on the Monitor or Warning Letter Lists; and
- Section 1.1.6 Manager Determines Intervention Type for Carriers not on the Program Office Lists.

For guidance on when to assign a Direct NOV, see *when to assign a Direct NOV*. For guidance on when to assign an investigation for potential reincarnated/Chameleon and Affiliated Motor Carriers, see *Procedures for Investigating Potential Reincarnated/Chameleon and Affiliated Motor Carriers*.

Addressing Complaints and Associated BASICs

When investigating motor carriers based on a confirmed, non-frivolous complaint, the scope of the investigation must include the BASIC(s) associated with the complaint. For example, a complaint alleging an Hours of Service (HOS) violation should include an investigation of the HOS Compliance BASIC. If the motor carrier receiving the complaint also has Roadside-Identified BASICs or Acute and/or Critical Violations, those should be counted as BASICs requiring an investigation.

Note: If the motor carrier had recently received an investigation of the Roadside-Identified BASICs within the last 12 months and the Division receives a subsequent complaint, the Division does not have to "reinvestigate" the Roadside-Identified BASICs, unless inspection history, since the last investigation, indicates an issue. The investigation scope should focus on BASICs associated with the complaint and any Acute and/or Critical Violations from the most recent investigation.

For additional guidance on handling complaints, see *Complaints*.

Risk Assessment ProcessSIs must start all CSA Investigations (Offsite, Onsite Focused, Onsite Comprehensive Investigations) with a Risk Assessment in ACE during the Pre-Iinvestigation stage. The Risk Assessment process allows the SI to collect and review carrier documents electronically, using ACE, to assist the SI in confirming the assignment type and scope of the safety problem early in the process. The Risk Assessment process allows the SI to use the information available on FMCSA systems, as well as carrier documents to validate or override the assignment type. The Risk Assessment is not required in situations where doing so would significantly hinder the investigation (Significant Crash requiring immediate onsite presence). For additional information on the Risk Assessment Process consult (1.2.3 Risk Assessment Process).

When is an Onsite Comprehensive Investigation Required?

An Onsite Comprehensive Investigation is **required** when any of the following conditions are met:

- The following carriers require an Onsite Comprehensive Investigation, per current policy
  - Onsite Comprehensive Investigations are required when all applicable BASICs are to be investigated. An Onsite Comprehensive Investigation is required if all six (6) BASICs are investigated for a non-HM motor carrier or if all seven (7) BASICs are investigated for an HM motor carrier. See below for when an Onsite Comprehensive is required, per policy.*
  - New Entrant carriers that have been designated as High-Risk and have not received a Safety Audit
    Note: When assigning an investigation to a carrier in the New Entrant monitoring program, ensure that there are no pending Safety-Audit-related actions. If there is a pending Safety-Audit-related action, forgo assigning an investigation for the carrier until the completion of the pending Safety-Audit-related action. For example, review letter history for the carrier in the Motor Carrier Management Information System (MCMIS) to ensure that there are no pending Expedited Actions.
  - Passenger carriers with BASICs Requiring Investigation that have not received a Comprehensive Onsite Investigation within the past 12 months.
    - Note: Due to impacts on applications for operating authority, if evidence is discovered that a passenger carrier is operating prior to receiving operating authority, then the following applies and the passenger carrier vetting team should be notified of the activity in order to reject their application for authority:
      - If a Comprehensive Onsite Investigation results in a Conditional or Satisfactory rating, then the review should be uploaded as a non-ratable review type.

- If a Comprehensive Onsite Investigation results in an unsatisfactory rating, then the review should be uploaded as a ratable review.

- Carriers requiring an HM Safety Permit that do not already hold a Satisfactory Safety Fitness Rating. [10]
- Carriers requiring an HM Safety Permit with Satisfactory Safety Fitness Rating more than 10 years old. [10]
- Carriers with an Unsatisfactory Safety Fitness Rating issued prior to 2001.10 (Those carriers with an Unsatisfactory Safety Fitness Intervention Reason category [OOS with Activity] as NOC candidates due to activity while under an OOS Order.)
- Motorcoach operators are required to receive a Comprehensive Investigation, resulting in a Safety Rating, based on the following provisions:
  - For carriers that began operations after October 1, 2012: Within 2 years of registration.
  - Carriers that began operations on or prior to October 1, 2012: No later than October 1, 2015.
  - The Safety Fitness of every carrier will be reassessed once every three years after the initial assessment is completed. (See Implementation of the MAP-21 Timeframes policy, dated October 2, 2013.)

The Manager should consult eFOTM, Compliance Manual Section 1.1.4.3 Guidance for Selecting Investigation Types for Carriers on the Risk-Based Lists Manager Determines Intervention Type for Carriers on the Risk-Based Prioritization Lists for additional guidance on selecting the appropriate investigation type for an SI assignment.

Investigating the Crash Indicator BASIC

The Crash Indicator BASIC, regardless of a carrier's role in the crashes, is one of the strongest predictors of future crashes and is based on the number and severity of a motor carrier's recordable crashes recorded in the Motor Carrier Management Information System (MCMIS) in the previous 24 months. The Crash BASIC Investigation (CBI) is the investigative procedures to be used during a Comprehensive, Onsite Focused or Offsite Investigation of any motor carrier with SMS percentile at or above the threshold for the Crash Indicator BASIC.

The main goal of the CBI is to explore why crashes are occurring and to help the motor carrier correct the unsafe behaviors that may have caused or contributed to the crashes. In order to meet this goal, the CBI considers the motor carrier's safety compliance at and near the time of the crashes and if applicable criteria are met utilizes the Crash Analysis Tool (CAT) to look for trends in the motor carrier's crash history. Safety Investigators (SIs) will provide this information to the motor carriers to assist them in modifying behaviors and improving safety compliance. The ultimate goal is to reduce the likelihood of similar crashes in the future.

The investigation will determine the sampling requirements based on whether the investigation includes the Crash BASIC only or whether the investigation includes the Crash BASIC plus additional BASICs requiring investigation. If the investigation is due to the Crash BASIC only, the sample size will generally be derived from the number of vehicles and drivers involved in crashes (not the total number of drivers employed and vehicles operated). If the investigation is due to the Crash BASIC only, the sample size will generally be derived from the number of vehicles and drivers involved in crashes (not the total number of drivers employed and vehicles operated). There is also an emphasis on selecting drivers and vehicles involved in crashes as a priority when selecting the sample. If the investigation includes the Crash BASIC and additional BASICs, sampling selected will be based on Driver Safety Measurement System results. The CBI may be conducted during an Onsite Comprehensive, Onsite Focused, or Offsite investigation.

Crash BASIC Indicator Intervention Thresholds		
Passenger Carriers	**Hazardous Material Carriers**	**All Other Carriers**
50%	60%	65%

Carriers that meet or exceed the Intervention Threshold in the Crash Indicator BASIC are subject to an assessment of compliance, and, if the criteria identified below are met, the SI will examine the carrier's recent reportable crashes using the Crash Analysis Tool (CAT). The CAT is used during a Crash BASIC Investigation to review and analyze carrier crash data, when all of the following criteria are met:

•The carrier has three crashes or more in the 2-year period;

•Factor 6 is Unsatisfactory; and

•No violations were discovered that indicate there may be underlying patterns that contributed to the crash.

(*The CAT may be used during any CBI at the SIs discretion.)

When the Crash Analysis Tool is required, a customized CBI Carrier Summary Report, including Crash BASIC Countermeasures which must be prepared during the investigation and provided to the motor carrier along with the standard Carrier Investigation Report from the investigative system the Investigator is using and given out during investigation closeout. The CBI Carrier Summary Report should be uploaded into the Electronic Data Management System (EDMS) at the conclusion of the investigation.

There are three places where crashes may influence the actions taken during a CBI investigation.

1. Determination of Crash Rate for Factor 6 calculations: Conducted as currently outlined in the Section 1.3.4.6 (Completing Pre-investigation/Part A of the Investigation after Interviewing the Motor Carrier).
2. Sampling for a CBI: Use all recordable crashes to determine size of sample, no change as to when a recordable crash may or may not be excluded as outlined in the eFOTM.

3. Analysis of crashes using CAT - Generally use all recordable in the past year crashes to analyze crash characteristics. The SI may use discretion to remove crashes from the analysis to focus on crash trends and countermeasures for behaviors leading to crashes. Removal of crashes from CAT may be due to many reasons based on SI expertise. For example, an SI may choose to analyze a series of crashes occurring during certain hours or along a certain route. Thereby the SI may choose to remove crashes occurring outside those hours or routes in order to focus on patterns and trends within the cluster of crashes.

The table below provides an overview of the CBI process as it relates to the assessment of a motor carrier's compliance at the time around a crash event. For more information how to investigate the Crash Indicator BASIC see the Compliance Manual (section 1.3.14.2).

BASICs Requiring Investigation	**Investigation Type**	**Investigation Sampling**
CBI only	Offsite	CBI Sampling
	Onsite Focused	
Crash BASIC plus additional BASICs requiring investigation	Offsite	Offsite Sampling- Only for the additional BASICs requiring investigation
	Onsite Focused	Onsite Sampling- Only for the additional BASICs requiring investigation
	Onsite Comprehensive	Onsite Sampling- All BASICs

FAQs: Relating to Investigation Scope

Discovering Acute and/or Critical Violations Outside of BASICs Requiring an Investigation

Q1: What should the SI do if he or she finds Acute and/or Critical Violations outside of the investigation scope?

A1: If the SI discovers occurrences of Acute and/or Critical Violations outside of the investigation scope, it is necessary to expand the number checked in accordance with policies on minimum record sampling. Expanding the number checked does not represent an expansion into full BASIC record sampling. Record sampling should be limited to only the specific Acute and/or Critical Violation discovered.

Example: A motor carrier has 20 vehicles subject to the FMCSR and you are conducting an Onsite Focused Investigation on the HOS Compliance BASIC, but you subsequently discover two occurrences of 396.11(a) violations, a Vehicle Maintenance-related Acute and/or Critical Violation. The SI should not ignore these violations, but instead document them in the Investigative System. Based on record sampling, you need to sample seven vehicles for 30 days for a total of 210 Driver Vehicle Inspection Reports (DVIRs). Expanding the number checked does not represent expansion in scope to a full Vehicle Maintenance BASIC investigation. The SI should only sample DVIRs in this example.

When to Assign a Direct NOV

The system recommends a carrier for an NOV directly, without requiring an investigation, for carriers that match either of the following conditions:

- The carrier is Roadside-Identified in the Driver Fitness BASIC only. However, an NOV should only be issued for Driver Fitness violations that are immediately correctible and readily verifiable, such as driving without valid medical certificates or proper CDLs. If the carrier has any drivers with Red Flag Violations, these violations should be included in the Direct NOV, and do not require further investigation. Issuing an NOV does not preclude FMCSA from issuing an NOC. An NOC may be issued for the violations cited in the NOV. FMCSA may consider whether adequate evidence of corrective action was submitted in response to the NOV, in deciding whether to issue an NOC.

The carrier has been prioritized for an intervention because of previous Acute and/or Critical Violation(s) in the Insurance/Other category only. The Direct NOV would only be appropriate if there was no evidence that the violation had been corrected. Example: If the Acute and/or Critical Violation was related to no authority, and the L&I database shows the carrier currently has authority, then a Direct NOV would be inappropriate.

Make Assignments

The DA or Designee generate a list of carriers and the specific types of intervention selected for these carriers. The process of assigning carriers to SIs for an intervention is often done in conjunction with determining the appropriate Intervention Type. These steps are presented sequentially in the effort, for ease of guidance. When making an assignment, the DA or Designee should:

- Consider the SI's existing workload as well as location and travel requirements.
- Make assignments through Activity Center for Enforcement (ACE) based on the investigation selection rules (described in *Determine Intervention Type for Carriers*). Within ACE the DA or Designee will use the select the "Make Assignment" link. This will direct to the Carrier Prioritization page filtered to those specifications. The DA or Designee can use the drop-down filters to complete the search for your desired carrier(s). Then the Assigner is able to Select a carrier from the assignments grid by clicking the checkbox in the left-most column. The Assigner may hover over the "Assignments" button to display a drop-down menu of possible actions. Select the action you wish to complete: Make Follow-On Assignment, Edit Review Assignment, Change Review Assignment Status, Delete Review Assignment, Add Note to Review Assignment,Manually Remove from High-Risk, or Generate Safety Profile.
- Annotate the assignment with additional information that the DA or Designee wishes to communicate to the SI

Assign a Controlled Substances/Alcohol Supplemental Review

In some instances, a Controlled Substances/Alcohol Supplemental Review will be performed as part of an Onsite Focused or Offsite Investigation. The DA or Designee will assign a Controlled Substances/Alcohol Supplemental Review when ANY one of the following three criteria is met:

- Motor carrier has not been subject to an investigation or SA that reviewed Part 382/40 in the last five years;
- Motor carrier had an Acute and/or Critical Violation of Part 382 during the most recent investigation; and
- Motor carrier provided adverse responses to Controlled Substances/Alcohol-related questions during a NE SA.

Note: If any of these criteria are met, a flag will be displayed in the SMS BASIC summary screen in the ACE/Portal and the SMS Website to indicate that the carrier is a candidate for the Controlled Substances/Alcohol Supplemental Review.

Assign Hazardous Materials (HM) Supplemental Review

In some instances, an HM Supplemental Review will be performed as a part of an Onsite Focused or Offsite Investigation. The DA or Designee will assign an HM Supplemental Review if the motor carrier meets the following criteria:

- The HM Compliance BASIC will not be investigated as part of an Onsite Comprehensive Investigation or an Onsite Focused Investigation;
- The motor carrier transports HM; and
- The motor carrier has not had an investigation that examined HM compliance (as determined by reviewing Investigation Report/Part C of the investigation) within the last 24 months.
- The HM Supplemental Review and HM Compliance BASIC investigation are very similar; however, there are some key differences. In particular, during an HM Supplemental Review, the sampling requirements are different and the investigator will not be examining the following areas:
- Marking, labeling, and placarding requirements
- Cylinder, IBC, and Cargo Tank requirements (beyond cargo tank testing and inspection records noted below)
- State and local routing requirements
- HM Driving and Parking regulations

Assign a Direct NOV

Direct NOVs may be assigned through ACE in the same way that an Onsite Comprehensive or Onsite Focused Investigation is assigned. To make the assignment, DAs or Designees will select “Direct NOV” from the Intervention Type dropdown selection, enter the SI code, reason for assignment, and any comments, and either accept the defaulted due date or enter a new one.

Procedures for Investigating Potential Reincarnated/Chameleon and Affiliated Motor Carriers

This section applies to the investigation of a motor carrier that is suspected of reincarnation to avoid a FMCSA Out of Service (OOS) Order or revocation of operating authority registration resulting from: a final unsatisfactory safety rating, an order to cease operations for failure to pay a civil penalty, an imminent hazard OOS order, or any of the New Entrant Program OOS conditions (failed Safety Audit, failure to submit to a Safety Audit, failure to provide approved Corrective Action Plan (CAP) as a result of expedited actions.) If FMCSA suspects that a motor carrier reincarnated to avoid a negative safety performance history, and the motor carrier has not been subjected to an OOS order or revocation of its operating authority, Safety Auditors/Investigators must consult with the Division Administrator (DA), and the DA must in turn consult with the Service Center Enforcement Team (SCET) regarding whether to initiate an investigation that may lead to linking the carrier records. The type of negative performance history a motor carrier may attempt to avoid includes, but is not limited to, Conditional safety ratings, OOS rates resulting in denial of a hazardous material safety permit, or enhanced civil penalties, violations that would subject the carrier to a Safety Audit (SA) or compliance review/investigation, or Safety Measurement System (SMS) data. Prioritization of resources should focus on motor carriers that are suspected of reincarnation to avoid a FMCSA OOS Order.

Reincarnated motor carriers can be detected in a variety of ways including FMCSA’s vetting program, the current screening tool, compliance reviews, safety audits, crash and Hazardous Materials incident investigations, roadside inspections, and other complaints, interventions, reviews, and fitness determinations.

Questions within the Safety Audit are designed to elicit information that may identify a motor carrier that is a reincarnation or affiliate of a previous entity.

Affirmative answers to any one or all of these questions are information that should cause the safety auditor/investigator to suspect reincarnation/affiliation. In that event, the safety auditor/investigator should consult with the DA (or his/her designee), and the DA, after consultation with the SCET, may choose to stop the SA and initiate a non-ratable review. Scheduling a non-ratable review prevents the possibility that a suspected reincarnated carrier could potentially pass a New Entrant Safety Audit.

As soon as practicable, the DA should notify the SCET and appropriate Field Attorney upon discovery of information that requires a chameleon/affiliate investigation. The DA may choose to have the investigator contact the SCET directly. The SCET and Field Attorney can provide advice and guidance on the applicable law and evidence to collect.

The DA should forward to the SCET and appropriate Field Attorney the investigator’s summary, key analysis factors, document checklist and associated evidence. When Field Counsel in coordination with the DA and the SCET agree that further action is warranted, the next step is for counsel to prepare an out-of-service order, as appropriate, and consolidation of record order under § 386.73.

This section does not supersede existing policies related to charging FMCSR violations but rather supplements the tools available to FMCSA. For example, issuing an OOSO/record consolidation order does not necessarily preclude issuing a NOC charging safety or hazardous materials violations that may have been discovered during the course of the investigation/compliance review.

Reasons for Changing the Intervention Type

An assigned intervention can be modified under the following very general circumstances:

1. When there is reason to believe that the carrier is not subject to the FMCSRs or a segment thereof.
2. When there is new and pertinent information about the carrier’s safety performance or intervention history that was not available at the time of assignment.

The following general factors should be considered during this process:

- On occasion, there may be a time lag between the assignment of the investigation and initial contact with the carrier. In this case, the investigation should be performed based on the number of BASICs Requiring Review that were present at the time of the initial contact. If the number or type of BASICs Requiring Review changes in this time period, the SI should discuss with the Manager whether there is an impact on the investigation type based on these changes.
- If a motor carrier is assigned an Onsite Focused Investigation based on the "Other" category in the Intervention Threshold table (Section 1.1.2), and it is subsequently discovered that the motor carrier should be subject to the lower intervention thresholds (Passenger or HM percentiles)—thus possibly changing the assignment type to an Onsite Comprehensive Investigation based on the lower thresholds—then discuss with the Manager whether to change the investigation assignment.
- If an Investigation has been assigned as an Offsite and the SI has historical knowledge that the carrier has been uncooperative and evasive and that pre-notification of the investigation might have an adverse effect, then the SI should switch to an Onsite Investigation.
- If, during an Offsite Investigation, the carrier is uncooperative, or fails to submit documentation in a complete and timely manner or by an established due date, the Division Office should modify the intervention to an Onsite Investigation. If the carrier continues to deny access, the Division Office should initiate the Denial of Access procedures and serve the motor carrier with a Demand to Inspect and Copy Records and/or Demand to Inspect and Examine Equipment, Lands, Buildings, or Other Property. Motor carriers who deny access will be subject to civil penalties. For-hire motor carriers will be placed Out-of-Service and additional enforcement penalties may be issued. For more information on the policies and procedures, see the Penalties for Denial of Access Policy (MC-ECE-2015-002).
- If the assigned Intervention is a Direct NOC or NOV (not requiring an investigation), then SIs may request a modification to the intervention type if, for example, they do not have sufficient evidence for an NOC, or if the violations to be cited on an NOV are not both immediately correctable and readily verifiable.

Handling the Motor Carrier Response to the Direct NOV

The Direct NOV includes the specific terms FMCSA has determined are appropriate for motor carrier compliance. The DA or Designee determines if the motor carrier's response adequately addresses the identified compliance deficiencies.

- If the motor carrier's response is adequate, a written response should be provided to the motor carrier to close out the action and then included in the motor carrier file. The NOV is then closed in EMIS.
- If the motor carrier response is inadequate or fails to meet the terms of abatement in the NOV, then this would warrant escalation. If sufficient evidence does not exist for an NOC, then an Onsite Focused Investigation should be assigned (or Onsite Comprehensive Investigation in the case of Passenger Carriers with no safety rating or not investigated within 12 months).
    - If the NOV is converted to an NOC, then the assignment should be updated in ACEand conversion from NOV to NOC should take place in CASERITE.
    - If the NOV is converted to an Onsite Focused or Onsite Comprehensive Investigation, then the assignment should be updated in ACE and the investigation performed and uploaded. If an NOC is warranted, the conversion from NOV to NOC should take place in CASERITE.

The Motor Carrier Should Be Told the Following if Questioning the Necessity of an Investigation or CR Based Upon Improved BASIC Percentiles

Motor carriers should be informed that the BASIC percentiles are simply one of many factors considered in selecting motor carriers for an investigation or CR.

Tools Available to Assist the DA or Designee in Prioritizing Motor Carriers for Investigations or CRs

An investigation or CR can be conducted on any motor carrier or operation for which FMCSA has jurisdiction. A DA or designee must determine which motor carriers present the highest risk to the public based on the respective safety data, the Division's safety plan, and the Agency's mission and goals.

For more information on the tools available to Enforcement users on ACE, please select the link:
https://csa.fmcsa.dot.gov/downloadFile.axd?file=/ACE-User-Guide.pdf

FMCSA's Compliance Program Priorities

Note: These are not in priority order.

- 49 CFR 385.17 - Change to safety rating based upon corrective actions
- 49 CFR 386.12 - Complaint
- High-Risk Carriers
- HM Permit Prioritization List
- Unsatisfactory Rated HM/Passenger Carriers
- HM Prioritization List
- Passenger Carrier Prioritization List
- Significant Crash/Incident
- GOTHAM HHG Performance Goal

How the Division Should Handle a 49 CFR Part 385.17 Request for Upgrade Based on Corrective Actions

Data analyses have continuously demonstrated that CRs conducted within 12 months of a prior review disclose a comparatively low rate of critical and acute violations. 49 CFR Part 385.17 enables the DA or designee to better use his/her limited resources by effectively directing his/her focus on high risk motor carriers. Therefore, the FAs are strongly encouraged to use their discretion to administratively upgrade the motor carrier's safety fitness rating based upon evidence of corrective action submitted by the motor carrier under 49 CFR Part 385.17. Additional guidance on *Safety Rating Implications for Onsite Focused Investigations* can be found below.
For more information, see *Safety Ratings Petitions fewer than 49 CFR Part 385.15 and 49 CFR Part 385.17*.

Responsibility for Ensuring that All Serious Non-Frivolous Complaints is Properly Investigated

The Assistant Administrator (AA) is primarily responsible for ensuring that all non-frivolous complaints are investigated in accordance with the requirements in 49 CFR Part 386.12. For additional information on ensuring that all non-frivolous complaints are properly investigated, see *Addressing Complaints and the Associated BASICs*.

Role that State MCSAP Partners are expected to Play in the HM Safety Permits (HMSP) Program

The DA or designee has been asked to encourage his/her State MCSAP partners to adopt the new HMSP regulations into State law. The DA or designee is encouraged to allow any effort in regard to the HMSP program to be accepted as part of their Commercial Vehicle Safety Plans (CVSP).

Role of the Division Office in the HM Safety Permit (HMSP) Program

FMCSA Division staff should become knowledgeable about the HMSP program and assist the Hazardous Material Division, Washington, DC with its implementation. Compliance with the HMSP program requires a cooperative and coordinated effort from the Enforcement and Compliance Division.
If FMCSA determines that a motor carrier holds an HMSP or Temporary HMSP (T-HMSP) and has not used the HMSP during the previous 365 days or the T-HMSP during the previous 240 days from the date of discovery, the Agency will remove the HMSP or T-HMSP from the motor carrier's registration in the Motor Carrier Management Information System (MCMIS), in accordance with the Removal of Hazardous Materials Safety Permit policy (MC-SEH-2024-001).

Where the DA or Designee can obtain a List of HMSP Pending Applications, Temporary Permits, Permanent Permits, and Denied Applications

The DA or designee can obtain a list of pending applications, temporary permits, permanent permits, and denied applications from MCMIS: http://mcmis.fmcsa.dot.gov or (http://portal.fmcsa.dot.gov), by selecting Subsystem, Monitoring, Statistics, View HM Safety Permit Statistics.

Conducting Investigations on Motor Carriers Currently in MCMIS with an Unsatisfactory Safety Rating

- An Onsite Comprehensive Investigation is required on ALL motor carriers with an unsatisfactory safety rating issued prior to 2001 (and has not been issued an OOS Order). This is a mission critical activity and the completion of these reviews will be monitored closely.
- Motor carriers issued an unsatisfactory safety rating after 2001 should be handled in accordance with policy regarding OOS Carriers with Activity.

DA or Designee Can Obtain a List of Unsatisfactory Rated Motor Carriers for His/her Respective Division

The DA or designee can obtain a list of unsatisfactory rated motor carriers for his/her respective Division from ACE (https://csa.fmcsa.dot.gov/Tools) or the Portal (https://portal.fmcsa.dot.gov).The Conditional rated motor carrier list from GOTHAM also includes unsatisfactory rated motor carriers.

DA or Designee Can Obtain a List of HM Motor Carriers for His/her Respective Division

The DA or designee can obtain a list of HM motor carriers for his/her respective Division from ACE (https://csa.fmcsa.dot.gov/Tools) orthe Portal (https://portal.fmcsa.dot.gov). HM Carrier list is also available in GOTHAM, under "Carrier Registration."

DA or Designee Can Obtain List for Follow-up and Monitoring of Motor Carriers with Rejected Operating Authority

Each DA or designee can obtain this report from FMCSA's Portal at https://portal.fmcsa.dot.gov by selecting "Inappropriate Activity" under the Carrier Registration section of GOTHAM. This report identifies motor carriers that have interstate activity, or have been in a crash, after their application for operating authority has been rejected.

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[1] The calculation of a carrier's Safety Fitness Rating is currently based on violations of the Acute and Critical regulations cited in the investigation.

[2] Insurance/Other Indicator do impact the prioritization of a motor carrier, but it **should not** be counted when determining the number of BASICs requiring an investigation when deciding whether an Onsite Focused or Onsite Comprehensive Investigation is appropriate. Also, if the Insurance/Other Indicator are the only reason why a motor carrier has been prioritized for an intervention, then an NOV should be considered. An NOV would only be appropriate if there were no evidence that the violation had been corrected. Example: If the Acute and/or Critical Violation was related to no authority and the L&I database shows the carrier currently has authority, then a Direct NOV would not be appropriate.

6.2.1.2 Procedures for Uploading

Procedures for Uploading the Investigation or CR to MCMIS

The DA or his/her designee will ensure that the SI uploads each investigation or CR, within the timelines, as follows. If the proposed rating is Unsatisfactory, the SI should upload the investigation or CR to MCMIS within **seven** calendar days after the closeout session. All other reviews should be uploaded to MCMIS within 10 calendar days after the closeout of the investigation or CR. **If the investigation or CR is not uploaded within 30 days, it will not be rated** per 49 CFR Part 385.11(a).

Once the **SI** uploads the completed investigation or CR to MCMIS, the DA or designee will review the completed investigation or CR report to ensure that the report is consistent with Agency policies and procedures as written in the Investigator Manual of the effort. If the hard copy of the investigation or CR report is unavailable, personnel can access an electronic version through MCMIS at: http://mcmis.fmcsa.dot.gov or https://portal.fmcsa.dot.gov) by selecting Subsystem, Monitoring, Upload/Authorize, View Uploaded SAs/Reviews (or from within the Authorize SA/Review selection). The report can also be accessed in ACE (https://csa.fmcsa.dot.gov/Tools/) by entering the DOT number in 'Search Carrier Information', selecting 'Interventions' and selecting the appropriate PDF under 'Investigations'.

From within MCMIS, the DA or designee will use the Monitoring subsystem, Upload/Authorize header, Authorize SA/Review selection to view all currently uploaded investigation or CR reports (Select Type "Review"). The Reviews Needing Authorization page will display all non-edit rejected investigation or CR reports completed on motor carriers domiciled within the Division or territory. If the investigation was conducted in AIM, than the SI should upload the final report into ACE directly from AIM. The manager will access ACE to review the investigation report and either approve or send back to AIM for the SI to revise.

The DA or Designee reviews the Final Investigation Report to ensure that it meets Agency quality standards, including:

- Was the intervention performed as assigned? If not, was the reason for the switch documented? Did the SI get the DA's or Designee's approval? Was the switch justified?
- Were the BASICs investigated based on data at the time of initiation vs. assignment?
- Did the SI make appropriate decisions about follow-on interventions (NOC, NOV) for both carriers and drivers? Were the related interventions appropriately recorded?
- Did the SI investigate all drivers with Red Flag Violations and document the investigation results?
- If required, did the SI conduct a Controlled Substances and Alcohol Supplemental review and document the investigation results?
- Did the SI upload appropriate documents?
- Do the Process Breakdowns selected seem appropriate given the explanation in the investigative report?
- Does the description of the Process Breakdown justify why the process is broken?
- Are the Recommended Remedies customized to the carrier?
- Is the Investigation Report concise, free of opinion and limited to fact?
- Was the Investigation Report spellchecked?
- If violations were discovered in BASICs that were not Roadside-Identified and enforcement was taken, were Process Breakdowns documented?
- Do violations in BASICs that were not Roadside-Identified seem reasonable given the path of the investigation?

If the answer to any of these questions is "no," then the DA or Designee should discuss them with the SI and have him or her correct the issue as appropriate.

When the DA or Designee assigns an Onsite Focused Investigation, the following table provides an overview of all applicable parts and subparts that the SI should have examined depending on which BASIC is being investigated.

Note: The Crash Indicator BASIC is not listed in the table since the scope of these investigations varies depending on the BASICs Requiring Investigation. .

- ● Full review of part
- ⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

Onsite Focused Investigation or an Offsite Investigation

	Driver Fitness	**Controlled Substances/Alcohol**	**Vehicle Maintenance**	**HOS Compliance**	**HM Compliance**	**Unsafe Driving**
Safety						
40 – Drug & Alcohol Testing		●				
380 – Special Training	●			⊗ .503(b), .505, .513		●
382 – Drug & Alcohol Testing		●				
383 – Commercial Driver's License (CDL)	●	⊗ Part of CAIR	⊗ Part of CAIR	⊗ Part of CAIR	⊗ Part of CAIR	⊗ Part of CAIR
390 – FMCSR General	⊗ .3, .15, .23, .25	⊗ .15	⊗ .3, .15, .21, .23, .25	⊗ .3, .15, .23, .25		⊗ .3, .15, .23, .25
391 – Driver Qualifications	●	⊗ .23(d-m), .41-.45	⊗ .13	⊗ .21, .41, .43		⊗ As appropriate
392 – Driving of Motor Vehicles	⊗ .3, .9a(a)	⊗ .9a(a)	⊗ .2, .9, .62, .9a(a)	⊗ .3. .6, .9a(a)	⊗ .2	●
393 – Vehicle Parts and Accessories			●			
395 – Hours of Service (HOS)				●		
396 – Vehicle Maintenance			●			

- ● Full review of part
- ⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

Onsite Focused Investigation or an Offsite Investigation

	Driver Fitness	**Controlled** Substances/**Alcohol**	**Vehicle** Maintenance	HOS **Compliance**	**HM Compliance**	**Unsafe Driving**
Hazardous Materials						

107 – HM Program Procedures (Registration)					⊗ .101 - .405 .501 - .504 .601 - .620	
171 – HM General					⊗ .1, .2, .15, .16	
172 – HM Table/ Communication	⊗ .704				⊗ .200 – .205 .300 –.338 .400 –.450 .500 –.560 .600 –.606 .700 –.704 .800 –.822	
173 – Shipper Requirements					●	
177 – Carriage by Highway	⊗ .816				●	⊗ .810, .816, .823
178 – Package Specifications					●	
180 – Package Quality and Maintenance					⊗ As applicable	
385 – Safety Fitness Procedures					.401-.423	
397 – HM Driving and Parking					⊗ As applicable	⊗ .2, .3, .5, .19, .67

- ● Full review of part
- ⊗ partial review of part (relevant subpart is indicated by the number below the symbol, e.g., .21, .23, etc.)

Onsite Focused Investigation or an Offsite Investigation

	Driver Fitness	**Controlled Substances/Alcohol**	**Vehicle Maintenance**	**HOS Compliance**	**HM Compliance**	**Unsafe Driving**
Other						
325 – Noise Emission						
387 – Financial Responsibility	⊗ As applicable	⊗ As applicable	⊗ As applicable	⊗ As applicable	⊗ As applicable	⊗ As applicable
398 – Transporting Migrant Workers	⊗ .3		⊗ .4	⊗ .6		⊗ .3, .4
399 – Employee Health and Safety						

The DA or designee will select the appropriate designation under:

- Approve: When the investigation or CR report has been completed, in accordance with established policy, or
- Disapprove: When the investigation or CR report contains errors and/or inconsistencies with established policy. When an investigation or CR is not approved, the DA or designee must inform the SI of the errors and/or inconsistencies, and ensure the SI makes the corrections and re-uploads the corrected report to MCMIS.

Once an action has been selected, the DA or designee will select Update to complete the upload to MCMIS process.

Procedures for Uploading Federal Inspections to MCMIS

Division's Responsibilities with Regard to Uploading Federally-Conducted Commercial Vehicle and Driver Inspections to MCMIS

Prior to February 13, 2006, Computing Technologies processed Federally-conducted inspections. After that date, the responsibility to ensure Federally-conducted commercial vehicle and driver inspections are uploaded to MCMIS was delegated to each DA or designee and SC Director. Each DA or designee and SC Director is accountable for the accuracy, timeliness, and quality of the inspections performed by his/her staff.

Each Division will ensure that:

- From within ASPEN--by selecting Tools, Manager Configuration, Communications, Destination--the SAFER State Mailbox field is configured for his/her local SAFETYNET mailbox;
- From within the ASPEN software Manager Configuration utility, under Printed Report, the ASPEN Report Header is changed to reflect the Division office mailing address; and
- The local SAFETYNET administrator ensures prompt inspection uploads and confirmations.

Steps a Division Must Take to Process Federally-Conducted Commercial Motor Vehicle (CMV) and Driver Inspections

The steps to process inspections are as follows:

- The inspector completes the inspection and immediately uploads the inspection via SAFER to the Division SAFETYNET Mailbox. If necessary, the inspector should notify the Division SAFETYNET administrator that the inspections have been uploaded.
- The Division SAFETYNET administrator downloads the inspection file to the SAFETYNET inbox. The downloaded file is then "tagged" and processed by the SAFETYNET administrator. An activity log will be generated which must be reviewed to verify that all the inspections were processed (imported) without error. Any records with errors should be reported to the inspector who completed the inspection so that the errors can be corrected in ASPEN and re-uploaded.
- The Division SAFETYNET administrator should review the inspection data for quality and optionally process the Carrier Search. Once Division review is complete, the inspections must be uploaded to MCMIS through SAFETYNET communications function.
- The next business day after upload, the Division SAFETYNET administrator will download a "confirmation file" to SAFETYNET where it will be processed automatically. The administrator can view the overall status of the inspections in addition to any warning or error messages where applicable. Any records with errors should be reported to the inspector who completed the inspection so that the errors can be corrected in ASPEN and re-uploaded into SAFETYNET. The corrected record will update the existing record and be re-uploaded with the next inspection upload.

Divisions Can Contact the Following Concerning Technical and/or Policy-Related Issues Regarding the Upload and Certification Process

Technical support questions regarding the inspection upload and certification process should be directed to the Technical Support Hotline at (617) 494-3003.

6.2.1.3 Terminal, Branch, or Division Reviews

Procedures for Conducting a Terminal, Branch, or Division Review

Use the following procedures when conducting a Terminal, Branch, or Division Review:

- A SI should not conduct an investigation at a location other than the motor carrier's or shipper's principal place of business (PPOB) without approval of the DA or designee whose State or territory contains that PPOB and the DA or designee whose State or territory contains the location where the investigation will be conducted.
- For investigations completed at locations other than the motor carrier's or shipper's PPOB, the SI should complete the address tab and identification tab of Pre-investigation/Part A of the laptop Investigative software, as if the investigation were conducted at the motor carrier's or shipper's PPOB. The SI must base all other entered information on the specific terminal operation (e.g., number of drivers, equipment, etc.) The SI must base records selection on the number of drivers and vehicles operating out of that terminal. Investigations that are performed on a portion (terminal, branch, etc.) of a motor carrier's or shipper's operation should be uploaded to MCMIS.

When performing a Terminal Review, before citing the motor carrier or shipper for any record keeping violations, the SI must ensure that records are not maintained elsewhere.

If the Terminal Review is Not Conducted at the Motor Carrier's or Shipper's PPOB

When a terminal review is conducted at a location, other than the motor carrier's or shipper's PPOB, the DA or designee must so notify the Division whose jurisdiction includes the motor carrier's or shipper's PPOB. Upon completion of the terminal review, the report will be uploaded to the Electronic Document Management System (EDMS) and notification will be provided to the appropriate Division.

6.2.1.4 Shipper Terminal Reviews

For guidance on hazardous materials investigations, see the Hazardous Materials Manual.

6.2.1.5 Special Topic: Motor Carriers of Passengers

Appropriate Handling of a Passenger Carrier that has Operating Authority/Licensing Noncompliance

When it is discovered that a NE passenger carrier has operated before receiving required passenger operating authority, a non-ratable CR or non-ratable on-site investigation should be conducted instead of a SA, and appropriate enforcement action taken. This policy applies only to a passenger carrier that has never previously had operating authority.

6.2.1.6 Government Shipments of Hazardous Materials

For guidance on hazardous materials investigations, see the Hazardous Materials Manual.

6.2.1.7 Complaints

6.2.1.7.0 Complaints - Introduction

Definition of a Complaint

A complaint is a written allegation of a violation of a regulation or law from any person, individual, organization, or government entity.

Complaint Handling Procedures

The DA or designee is responsible for ensuring timely investigation of non-frivolous written complaints alleging any substantial violation of the FMCSR or HMR that occurred within the previous 90 calendar days, in accordance with the procedures set forth in 49 U.S.C. 31143 and 49 CFR Part 386.12. In addition to those complaints received from drivers and motor carriers, this includes complaints received from members of Congress, the U.S. Department of Transportation (DOT) Office of the Inspector General, the Occupational Safety and Health Administration (OSHA), other government agencies, and the general public.

Definition of a Congressional Request

A Congressional request is a jurisdictional complaint or a written request to perform an investigation on a particular motor carrier that originated from a member of Congress. It includes a jurisdictional complaint that originated from an individual or organization and was forwarded by a Congressional member to FMCSA.

Definition of a Jurisdictional Complaint

A jurisdictional complaint is a written allegation of a violation of a regulation or law administered by FMCSA.

Definition of a Non-Jurisdictional Complaint

A non-jurisdictional complaint is a written allegation of a violation of a regulation or law administered by another Federal, State, or local government agency.

Definition of an Anonymous Complaint

An anonymous complaint is a written allegation of a violation of a regulation or law administered by FMCSA which fails to contain the identity and signature of the complainant.

If a Written Complaint Lacks the Name, Signature, Address, and Telephone Number of the Complainant

A complaint that does not contain the complainant's identity is an anonymous complaint.

You may investigate anonymous complaints alleging substantial violations that are timely, non-frivolous, and jurisdictional. You should make reasonable attempts to obtain the identity and signature of the complainant as required by 49 CFR 386.12. Under such circumstances, remind the complainant of the protections provided under the law and our policy not to disclose his/her identity. See *Drivers are protected under the Whistleblowers Act* below.

Information received from an anonymous complainant does not meet the regulatory requirements of 49 CFR 386.12 (since it may not contain a signature, name, address, telephone number, etc.). If all required information cannot be obtained, the DA or designee should review available information (SMS BASIC percentiles, accidents, safety rating) and determine if assignment for investigation is appropriate. An anonymous complaint should not be assigned as "Reason for Review – Complaint". An assignment for investigation may be made under other FMCSA program priorities: SMS, etc.

Definition of a Non-Frivolous Complaint

A non-frivolous complaint is a written allegation of a violation of a regulation or law administered by FMCSA and contains sufficient detailed descriptive information of events (e.g., names of involved individuals, specific circumstances, etc.) to create a reasonable suspicion that such violation occurred or is occurring. Consider any allegation of a non-frivolous complaint as reliable, pending further investigation.

Definition of a Timely Complaint

A timely complaint is a written allegation of a violation of a regulation or law which is occurring or has occurred within 90 calendar days before the date when FMCSA received the complaint. In the case of a complaint that was forwarded by a member of Congress, FMCSA uses the date of receipt by the Congressional member to determine timeliness.

Definition of Coercion

Coercion is a threat by a motor carrier, shipper, receiver, or transportation intermediary or their respective agents, officers, or representatives, to withhold business, employment or work opportunities from, or to take or permit an adverse employment action against, a driver to induce the driver to operate a CMV in a manner that the driver stated would violate covered regulations, or the actual withholding of business, employment, or work opportunities or taking or permitting an adverse employment action to punish a driver for refusing to operate in violation of the FMCSRs or HMRs. Coercion may be found to have taken place even if the driver is not in violation of the FMCSRs and/or HMRs.

The act of coercion only exists if:

- A motor carrier or other involved parties request a driver to perform a task that would result in the driver violating provisions of the FMCSRs, or HMRs;
- The driver informs the motor carrier or the other involved parties of the violation that would occur if the task is performed, such as driving over the HOS limits or creating unsafe driving conditions; and
- The motor carrier or the other involved parties make a threat or take action against the driver's business, employment or work opportunities.

Definition of Harassment

Harassment is action taken by a motor carrier that the carrier knew (or should have known) would result in a driver violating the HOS rules in 49 CFR part 395 or 49 CFR 392.3, which prohibit carriers from requiring drivers to drive when their ability or alertness is impaired due to fatigue, illness, or other causes that compromise safety. The carrier's action must be based on information from an ELD or other technology used in combination with an ELD. A carrier that harasses a driver through an ELD may be cited for harassment (49 CFR 390.36(b)), only if the carrier or driver is cited for the underlying violation (49 CFR 392.3 or part 395) on the investigation report.

The process of handling coercion and harassment complaints differ from some of the guidance provided in the following section. See the policy titled "Responding to Coercion and Harassment Complaints" MC-ED-2016-0004 for guidance on how to handle coercion and harassment complaints.

Types of Violations Generally are investigated from a Complaint

Substantial violations generally are investigated. These are defined as any violation of an acute or critical regulation as listed in 49 CFR Part 385, Appendix B.

Complaints alleging non-substantial violations generally are not investigated. In any event, a copy of the complaint must be placed in the motor carrier's file (EDMS) for future reference.

A Complaint of a Substantial Violation Must Contain this Information

At a minimum, a complaint of a substantial violation of the FMCSR and HMR must contain all elements required by 49 CFR Part 386.12.

A Complaint Must be signed by the Complainant

Each complaint must be signed by the complainant and must contain the following information as required by 49 CFR Part 386.12(a):

- The name, address, and telephone number of the person who files it;
- The name and address of the alleged violator and, with respect to each alleged violator, the specific provisions of the regulations that the complainant believes were violated; and
- A concise but complete statement of the facts relied upon to substantiate each allegation, including the date of each alleged violation.

Guidance for handling Non Frivolous complaints of Safety and HM

Determining if a Complaint Should be Investigated

For the purpose of determining if a complaint is non-frivolous and should be investigated under this policy, the Agency needs to determine if the allegation is of a "substantial violation," and meets the other requirements of 49 CFR 386.12(a) as discussed in the procedure section below. The regulation defines "substantial violation" as one which could reasonably lead to, or has resulted in, serious personal injury or death. A substantial violation also includes a violation of a critical or acute regulation or an out-of-service violation.

General Complaint Handling Procedures

1. Document receipt of the complaint using the National Consumer Complaint Database (NCCDB) as it is the central repository for all complaints received.
2. Determine if the complaint is non-frivolous. A non-frivolous complaint, including those that are anonymous, should contain the elements listed below.
    a. The name, address, telephone number, and signature (handwritten or electronic) of the complainant;
    b. An allegation of a substantial violation of the FMCSRs or HMRs;
    c. An allegation of a substantial violation that occurred within the previous 90 calendar days;
    d. Adequate information to clearly identify the alleged violator, such as the name, address, or USDOT number;
    e. Sufficient information to identify the specific regulation(s) that the complainant believes were violated; and
    f. A concise statement of the facts to substantiate each allegation, including the dates of each alleged violation.
3. If the complaint is determined to be frivolous, the DA has two options:
    a. Contact the complainant to obtain the missing information if, based on the Division Office's knowledge of the company's operation or complaint history, further consideration should be given to the complaint or;
    b. Close the complaint and designate it as frivolous.

Investigating the Complaint

Once the complaint is determined to be non-frivolous, the Division Administrator may proceed using one of the following methods and should document the action type (enforcement, investigation, phone call, notes, or dismissal) on the Add/Update Follow up Action screen in the NCCDB. Although follow up action is annotated in the NCCDB, all supporting documentation regarding complaints and corresponding investigations must be uploaded to Electronic Docket Management System.

1. Monitor the company. The DA may decide to monitor the company's safety performance history over a period of time before determining how to process the complaint. The DA will determine the duration of the monitoring period. The duration should be based on the nature of the complaint and need for additional data, and should not exceed six months.
2. Interview company personnel to ascertain if the alleged violations occurred or are continuing to occur. Without revealing the identity of the complainant or discussing information that might lead to identification of the complainant, the DA or designee should discuss the area that is the focus of the complainant's allegations with company personnel. The DA will determine if it is necessary to elevate the complaint investigation to another level (e.g., conduct a complaint-specific investigation).
3. Issue a Notice of Violation (NOV) or a Direct NOV, if appropriate (eFOTM, Enforcement Manual, sections 2.4.4.8 and 2.4.4.9). The DA or designee should follow the appropriate procedures currently in place for NOVs and Direct NOVs.
4. Conduct a complaint-specific investigation. A complaint-specific investigation is an investigation that focuses only on the part(s) of the regulations that are alleged in the complaint. These investigations may result in enforcement action, if the allegations are validated. The complaint-specific investigation should only be used if there are no Behavioral Analysis Safety Improvement Categories (BASICs) above thresholds. If it is feasible, a complaint-specific investigation can be conducted on- or off-site. In addition, the DA should ensure the elements of "CAIR" (Commercial Driver's License Information System, Authority, Insurance, and Red Flag Drivers), as described in the eFOTM, Compliance Manual, Section 1.2.3.4), are checked during a complaint-specific investigation.
   For example, if a complaint is received that alleges a driver is operating a commercial motor vehicle with an expired medical certificate, then the investigation should focus on reviewing the motor carrier's driver qualification (DQ) files. The investigation should use the appropriate sampling size outlined throughout the eFOTM (also summarized in eFOTM Appendix N – Record Sampling Requirements) and ensure that the alleged violator, in this case the driver, is part of the selection of DQ files to review. The investigator is not required to review any additional records (e.g., vehicle maintenance, hours of service (HOS)) during the investigation.
5. Conduct a focused investigation (eFOTM, Enforcement Manual, Section 2.4.3). The Division Office should conduct an Offsite Investigation, or Focused Investigation when the company is the subject of a complaint and has at least one BASIC Requiring Investigation (BRI) and a Comprehensive Investigation is not required. The investigation should also cover the issues specific to the complaint. This investigation could result in enforcement actions.
   For example, if a complaint is received that alleges that a motor carrier is requiring its drivers to violate the 11-hour HOS rule, and after reviewing the motor carrier's Safety Measurement System (SMS) percentiles, there are alerts in the Vehicle Maintenance and Drug and Alcohol BASICs, then an Onsite Focused investigation should be conducted. The investigation should include a review of the HOS, vehicle maintenance, and drug and alcohol regulations. Focused investigations may result in safety ratings of conditional or unsatisfactory and may result in enforcement action, if the allegations are validated.
6. Conduct a comprehensive investigation (eFOTM, Enforcement Manual, section 2.4.3).

   These investigations will result in safety ratings (satisfactory, conditional, or unsatisfactory) and may lead to an enforcement action. The Division Administrator should select this option if the data in the motor carrier's SMS profile supports a comprehensive investigation as outlined in the eFOTM, Compliance Manual, Section 1.1.4. – "Manager Determines Intervention Types for Carriers on the Risk-Based Prioritization Lists"

An example of this would be if the carrier had four or more BRIs. If the data in SMS supports the initiation of a comprehensive investigation, the Division Administrator must ensure that the elements of the complaint are also reviewed during the investigation.

Entering a Complaint

Assigned staff accesses the NCCDB by using the website at http://nccdb.fmcsa.dot.gov/. No login is required to enter the complaint.

To enter a complaint, follow the steps below.

1. Identify the type of complainant (Consumer, Driver, or Industry). Click on "File a Complaint" button.
2. Identify the type of complaint (Moving, Truck and Safety, or Bus). Click on the appropriate radio button.
3. Identify the complaint subcategory (i.e., Truck Safety, Moving Company, Bus Safety, etc.). Check all that apply. Click on "next" at the bottom of the web page.
4. Enter incident date, incident location, and incident description (mandatory field).
5. Provide the complaint details. Click "Expand All" and check all applicable allegations. Click on "next" at the bottom of the web page.
6. Enter the complainant contact information (first and last names and email address or phone number are mandatory fields). Click on "next" at the bottom of the web page.
7. Enter the company name then click "search". Click "select". Click on "next" at the bottom of the web page.
8. Upload documents. Click "choose file", enter document description, and click "add file". Click on "next" at the bottom of the web page.
9. Review information, check box for electronic signature, and click on "submit" at the bottom of the web page.
10. Summary page opens with the complaint details and Complaint ID. Provide the Complaint ID to the complainant for future reference.

Standardized Reports

Standard reports were added to the NCCDB for better tracking of complaints and for increased efficiency of data reporting. Types of reports are as follows.

- Summary of Complaint Type – Number of complaints per complaint type - Truck, or Bus) for specified period of time.
- Summary of Complaint Category – Number of complaints per complaint type and complaint category (Broker, Moving Company, Cargo Tank Facility, Deceptive Business Practice, Drug and Alcohol, Hazardous Materials, Operating Authority and Insurance, Termination for Refusal to Commit Violation, -Truck Safety, Bus Safety, and Bus Service) for specified period of time.
- Summary of Complaint Subcategory – The number of complaints per complaint type and complaint subcategory (i.e., Drug and Alcohol Regulations, HOS, Unsafe Vehicles or Equipment, etc.) for specified period of time.
- Summary by Complaint Status – Number of complaints per complaint status (Valid, Invalid, Un-reviewed, and Incomplete) for specified period of time.
- Invalid Complaints Summary – Number of invalid complaints (Closed/Withdrawn, Data Entry Error, Duplicate, Fraudulent, or Unspecified) for specified period of time.
- Summary of Complaint Source – Number of complaints per source (Phone, Email, Fax, Letter, and Website) for specified period of time.
- Summary by Carrier Domiciled State – Number of complaints per carrier domiciled state and/or Service Center per complaint type.

Commercial/Economic Complaints Should be Tracked Nationally in this Manner

Commercial/economic complaints can be viewed on ACE (https://csa.fmcsa.dot.gov/Tools/), FMCSA's website (http://nccdb.fmcsa.dot.gov) or via the Portal (https://portal.fmcsa.dot.gov). DA or designee will need to obtain a User ID and PIN # from the National Consumer Complaint Database (NCCDB) Coordinator, Office of Communications, Washington, DC.

Handling Multiple Complaints against the Same Entity

Handle multiple complaints filed against the same entity as a single action when feasible.

The Various Types of Complaints and How They Are Handled

Oral Allegations: Oral allegations of violations will generally not be investigated. Staff should refer the individual to the NCCDB and recommend that they submit their complaint directly at http://nccdb.fmcsa.dot.gov, which has been enhanced to allow for a complainant's electronic signature, a requirement under 49 CFR 386.12(a) or alternatively by mail to the Division Office. If a complaint is received by mail, the Division Administrator must ensure that the complaint is entered into the NCCDB on behalf of the complainant within 5 days of receipt. Required data fields in the NCCDB include: incident date, location, and description, first and last name of complainant, email address or phone number of the complainant, and the motor carrier's company name. FMCSA Division Offices should use the NCCDB to monitor or update complaint resolution status at least every 30 days. You should provide these individuals with the appropriate address of FMCSA in the State where the motor carrier is domiciled and the specific information necessary to process the statement as a timely, non-frivolous complaint of substantial violation. You should advise these individuals that they will not receive immunity from prosecution if they are party to a violation.

Anonymous Complaints: A complaint that does not contain the complainant's identity is an anonymous complaint. The Division should investigate anonymous complaints alleging substantial violations that are timely, non-frivolous, and jurisdictional. The Division should make all reasonable attempts to obtain the identity and signature of the complainant by informing the complainant of FMCSA's policy not to disclose his/her identity.

Telephone Hotline Complaints: Any person can report a safety, HM, and commercial violation by calling 1-888-DOT-SAFT (1-888-368-7238). Reports originating from the hotline are forwarded to the appropriate DA or designee for handling. Under this submission method, a complainant's electronic signature, as required under 49 CFR 386.12(a), is received through the customer service representative's declaration of the "certification statement" box that states, "By checking this box, I certify/understand that the statements and information I am submitting in support of this complaint (allegation) are, the best of my knowledge, true, accurate, and complete." Handle these reports in the same manner as a written complaint in accordance with the guidance, policies, and procedures in this manual.

Email Complaints: Any person can report a safety violation by email. Staff should refer the individual to the NCCDB and recommend that they submit their complaint directly at http://nccdb.fmcsa.dot.gov, which has been enhanced to allow for a complainant's electronic signature, a requirement under 49 CFR 386.12(a) or alternatively by mail to the Division Office. If a complaint is received by mail, the Division Administrator must ensure that the complaint is entered into the NCCDB on behalf of the complainant within 5 days of receipt. Required data fields in the NCCDB include: incident date, location, and description, first and last name of complainant, email address or phone number of the complainant, and the motor carrier's company name. FMCSA Division Offices should use the NCCDB to monitor or update complaint resolution status at least every 30 days.

Hotline Website Complaints: Any person can report a safety violation at FMCSA's website http://nccdb.fmcsa.dot.gov Link to website), which has been enhanced to allow for a complainant's electronic signature. Reports originating from the website are forwarded to the appropriate DA or designee for handling. If a complaint is received by mail, the Division Administrator must ensure that the complaint is entered into the NCCDB on behalf of the complainant within 5 days of receipt. Required data fields in the NCCDB include: incident date, location, and description, first and last name of complainant, email address or phone number of the complainant, and the motor carrier's company name. FMCSA Division Offices should use the NCCDB to monitor or update complaint resolution status at least every 30 days. Handle these reports in the same manner as a written complaint in accordance with the guidance, policies, and procedures in this manual.

Congressional Member Requests: If a SC, Division, or other field office receives an investigation request or jurisdictional complaint directly from a member of Congress, the investigating office must submit a copy of the request to the Office of Executive Secretary, Washington, DC for official recording and tracking.

The Division must conduct an investigation in response to an investigation request or jurisdictional complaint originating from a member of Congress as soon as practicable but no later than 90 calendar days after the date a FMCSA office received the request.

When a SC, Division, or other field office receives an investigation request or jurisdictional complaint directly from a member of Congress or when HQ forwards such a complaint, the investigating office must submit a draft written response (addressed to the Congressional member) within 14 calendar days after completion of the investigation to the Office of Executive Secretary, Washington, DC. Refer to the appropriate letter (*Illustration 11* and *Illustration 12*) when drafting your response. The Office of Policy, Plans, and Regulation will send the final written response to the Congressional member in coordination with the Office of Enforcement and Compliance, Washington, DC.

Congressional Member-forwarded Complaints: If a SC, Division, or other field office receives a CR request or jurisdictional complaint from FMCSA HQ, it must do the following:

When a member of Congress forwards FMCSA a complaint, it generally must meet the criteria for a jurisdictional non-frivolous complaint to be investigated. If these criteria are met, handle this type of complaint by executing the general complaint handling procedures. A complaint of this type alleging a non-substantial violation may be investigated if there is a strong supporting reason and available resources. If a complaint of this type is handled by conducting an investigation, the investigation must be initiated within 90 calendar days after the date a FMCSA office received the complaint;

If a complaint of this type is forwarded from HQ to a Division or other field office for handling, the field office must submit a draft written response to the Office of Executive Secretary, Washington, DC. (addressed to the Congressional member) within 14 calendar days after completion of the investigation. Refer to the appropriate letter (*Illustration 11* and *Illustration 12*) when drafting your response. The Office of Policy, Plans, and Regulation will send the final written response to the Congressional member in coordination with the Office of Enforcement and Compliance, Washington, DC.

The DA or designee must respond to the party who submitted the complaint to the Congressional member whether he/she initiates a complaint investigation or not

OIG-forwarded Complaints: A complaint sent to the OIG and forwarded to FMCSA generally meets the criteria for a jurisdictional non-frivolous complaint to be investigated. If these criteria are met, handle a complaint of this type by executing the general complaint handling procedures. The Division may investigate a complaint of this type that alleges non-substantial violations if there is a strong supporting reason and available resources. If a complaint of this type is handled by conducting an investigation, initiate the investigation within 90 calendar days after the date a FMCSA office received the complaint.

Equipment Complaints: When handling complaints alleging the operation of unsafe equipment, the Division may request assistance from the MCSAP State agency in the State where the vehicles are located. This type of complaint may be investigated solely by FMCSA or the MCSAP State agency or jointly by FMCSA and the MCSAP State agency.

Motorists' Complaints: Most motorist complaints allege unsafe driving. An investigation is generally not performed in response to a motorist complaint because this type of complaint usually addresses an isolated instance.

The DA or designee has discretion for administrative handling of a motorist complaint. At a minimum, place a copy of the motorist complaint in the motor carrier's file for future reference.

The Division may handle a motorist complaint, in the event of debris hitting a motorist's car, by advising the motorist to contact law enforcement if the event just occurred and/or their insurance carrier if the event occurred days prior to the call. In many states if the motorist initiates contact with the carrier, their insurance carrier will no longer honor their role in the insurance coverage process. If the motorist does not have insurance or does not have insurance due to no requirement per State law, providing the complainant with the address and telephone number of the motor carrier (the entity alleged to be in violation) and recommending the complainant contact the motor carrier to resolve the matter is permissible.

Complaints related to the Clearinghouse

Users that report and query the Clearinghouse might be subject to a complaint. These users are grouped into three categories:

- **Employers or C/TPAs**- These are complaint against an employer or C/TPA that, for example, did not obtain a limited consent from a driver before conducting a limited query, or did not report the driver's return-to-duty information to the Clearinghouse.
- **MROs-** These are complaints against an MRO for not entering the data into the Clearinghouse within the required number of days.
- **SAPs-** These are complaints against an SAP for not reporting driver information within the required number of days.

Complainants should be directed to file a complaint in the NCCDB. These complaints will be reviewed and investigated by MC-ECS. The Drug and Alcohol TAG and the Division Office may be required assistance if a resolution is unsuccessful at the MC-ECS level.

Service Agent Complaints: A complaint may allege any violation by motor carriers or Service Agents, which include collection sites (controlled substances or alcohol), Consortium/Third-party Administrators, Medical Review Officers, Substance Abuse Professionals, and Laboratory.

Initiating a Public Interest Exclusion (PIE) Proceeding

At the request of the DA or designee to the FMCSA Drug and Alcohol Program Manager (DAPM), a Drug and Alcohol Technical Advisory Group (TAG) member may be assigned to assist in or conduct the investigation. Service agent reviews frequently result from complaints filed with the Agency.

The Division Office should conduct an investigation and document serious service agent violations. Following Agency procedures for handling safety complaints, close complaints with service agent review, if investigation is undertaken.

If during the investigation violations are discovered identifying serious noncompliance by a service agent, the following procedures for a PIE, in accordance with Part 40 Subpart R, will apply:

- The investigator should document serious service agent Part 40 violations.
- Based upon Service Center policy, the Division Office or Service Center should issue a Notice of Corrective Action (NOCA) to the service agent.
    - If the service agent takes adequate corrective action within 60 days, PIE procedures will cease.
    - If the service agent does not take adequate corrective action within 60 days, the Service Center recommends initiation of PIE procedures and forwards all documentation and a narrative description of the investigation and the violations discovered to the DAPM in the FMCSA Office of Enforcement and Compliance.
- Once the DAPM receives and reviews the NOCA package, s/he may begin Notice of Proposed Exclusion (NOPE) proceedings.
- The DAPM will send a copy of the NOPE and PIE recommendation to the Office of Drug and Alcohol Policy and Compliance (ODAPC) in the Office of the Secretary and originating Service Center.
- The ODAPC Director (or his designee) will determine if the problems are corrected and the PIE is issued. ODAPC also determines parties included and the PIE's duration.
- Divisions may be asked to assist in the investigation of a service agent's compliance with the PIE issued by ODAPC. The PIE prohibits the service agent from participating in U.S. DOT drug and alcohol testing in accordance with the terms and duration of the PIE.

Responding to Complaints against Intermodal Equipment Providers (IEPs)

FMCSA will ensure that complaints that are filed timely, determined to be non-frivolous, jurisdictional, and allege a substantial violation of the regulations are investigated. At a minimum, as set forth in 49 CFR 386.12, complaints received must contain the following elements, as listed below:

- An allegation of a substantial violation of the FMCSR;
- The violation must have occurred within the previous 60 days;
- The name and address of the alleged violator;
- The specific regulations that the complainant believes were violated; and
- A concise statement of the facts to substantiate each allegation, including the date of each alleged violation.

FMCSA will conduct off-site investigations of complaints filed against IEPs using the NOV process. When a complaint is filed against an IEP, the DA or designee will determine whether the complaint is frivolous or non-frivolous. After a determination is made, the appropriate response letter must be prepared and mailed to the complainant.

If the complaint is determined to be non-frivolous, the DA or designee should make reasonable attempts to discuss the complaint with the complainant, in order to gather additional information and facilitate completion of the investigation.

The DA or designee will then request evidence/documentation from the IEP for each violation alleged in the complaint. When the IEP responds to the request for evidence/documentation, the DA or designee will review the evidence/documentation for sufficiency. If the IEP's response is sufficient, the DA or designee will issue a response to the IEP detailing the outcome of the evidence/documentation review. If the IEP's response is not sufficient, the DA or designee has the discretion to request additional evidence/documentation from the IEP or issue a NOV. IEPs that do not respond to the request for evidence/documentation may be issued a NOV.

Once the NOV is issued and the response is received, the DA or designee should determine if the response is sufficient. If the response is sufficient, the DA or designee should notify the IEP of his/her determination. Responses to a NOV that are not sufficient or not received may subject the IEP to a NOC.

Once the investigation into the complaint is complete, the DA or designee should inform the complainant of how the complaint was addressed and upload all appropriate correspondence related to the complaint in the NCCDB.

Click here for a flowchart outlining the complaint process for IEPs.

Safety Performance History of New Driver Complaints

Processing Complaints for Failure to Respond to Requests for Information Regarding Safety Performance of New Drivers

Only jurisdictional, non-frivolous complaints that are occurring or have occurred within the preceding 90 days will be processed. The Division in which the non-responding motor carrier is domiciled will process such complaints.

Time When FMCSA Will Intervene on Behalf of a Complainant

FMCSA will intervene after a complainant has made two attempts on different days to investigate a driver's background. Complainants who have made only one attempt will be advised to make another attempt. You may advise the complainant to make another attempt by using any form of communication (e.g., letter, fax, email) you deem appropriate.

How Complaints will be processed

If a prospective motor carrier has submitted a written complaint and has made at least two attempts on different days to investigate a driver's background and the previous employer has failed to submit the information, the Division will contact the non-responding motor carrier using one of the following options:

- Option One
  The Division may send a letter to the non-responding motor carrier and notify it of its responsibilities. The informational brochure (Safety Performance History of New Drivers) should be enclosed with the letter.

- Option Two
  The Division may call the non-responding motor carrier to explain the rule and inform the motor carrier of its responsibility to respond to the requesting motor carrier and that noncompliance with the rule may result in penalties. The brochure should be faxed to the motor carrier at the conclusion of the call.

Another letter will be sent to the complainant to acknowledge receipt of the complaint and to inform the complainant of our actions.

How the Division Will Track Complaints for Failure to Respond to Requests for Information Regarding Safety Performance of New Drivers

The Division will document the method used to contact the non-responding motor carrier in the complaint register. In order to accommodate the unique situations that may occur in your Division, it may become necessary to modify the sample letters.

The Division will log complaints into its complaint register in order to track and identify non-responding motor carriers. Notwithstanding the fact that a motor carrier may be subject to an investigation (and, if appropriate, civil penalties) at any time, an investigation will be performed and enforcement action (if appropriate) initiated against any non-responding motor carrier against which the Agency has received five or more complaints.

Americans with Disabilities Act (ADA) – Passenger Carrier Complaints: Complaints that allege a violation of the ADA or its implementing regulations by a motor carrier of passengers should be forwarded to the Commercial Passenger Carrier Safety Division (MC-ECP) within the Office of Enforcement and Compliance (Headquarters – Washington, DC) for appropriate handling.

General Procedures for Handling Safety and/or HM Complaints

To make a better informed decision whether a complaint is non-frivolous, make all reasonable attempts to discuss the complaint with the complainant. Contact the complainant by fax, phone, or email, etc. Discussion with the complainant often will provide information that will facilitate an efficient investigation.

When a complainant alleges violations of the HMR by a Federal or other government agency, the DA or designee should follow the normal complaint procedures in this manual.

Handle any timely, non-frivolous, and jurisdictional complaints alleging a substantial violation by conducting an investigation, as soon as practicable, but no later than 90 calendar days after receipt of the complaint.

If a complaint (jurisdictional, non-frivolous complaints and all Congressional requests) is received about a motor carrier that had an investigation in the previous 12 months, handle the complaint according to the following guidance based on the particular situation:

- If the type of violation alleged in the complaint was discovered during the recent investigation, and no enforcement action was taken, the DA or designee may either assign another investigation or make a note for future reference in the Agency's motor carrier file. In any case, the DA or designee must inform the complainant by telephone, email, or in writing (see *Complaint Letter Examples*) how the complaint was handled.
- If the type of violation alleged in the complaint was not investigated during the most recent Onsite Focused Investigation (i.e., the violation was not a part of the BASIC being investigated) the DA or designee should assign another investigation focusing on BASICs associated with the complaint and any Acute and/or Critical Violations from the most recent investigation. The Division does not have to "re-investigate" the Roadside-Identified BASICs, unless inspection history, since the last investigation indicates an issue. The investigation scope should focus on BASICs associated with the complaint and any Acute and/or Critical Violations from the most recent investigation. If the type of violation alleged in the complaint was not discovered during the recent investigation, conduct an investigation, as soon as practicable, but no later than 90 calendar days after receipt of the complaint.

Drivers are protected under the Whistleblowers Act

A motor carrier is prohibited from discriminating against a driver (e.g., termination of employment, demotion, undesirable reassignment, removal of seniority, elimination of personal use leave, etc.) who refused to operate an unsafe CMV, violate a safety law or regulation, or drive under conditions that may cause serious bodily injury. It is also illegal for a motor carrier to discriminate against a driver who files a complaint with us or testifies in a proceeding before the Agency. The DA or designee should advise a driver who alleges he/she is a victim of such discrimination to file a complaint with the regional office of the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA), reference 29 CFR Part 1978.

FMCSA or State MCSAP Personnel Must Do the Following to Protect the Identity of the Complainant

FMCSA or State MCSAP personnel must treat the identity and occupation of the complainant and any communication between the complainant and himself/herself with strict confidentiality. Under no circumstances must a FMCSA or State MCSAP employee reveal the name or occupation of the complainant unless the Secretary of Transportation or the Secretary's designee authorizes it. The Secretary of Transportation or designee can release this information only under specific circumstances outlined in 49 U.S.C. § 31143(b) and 49 CFR Part 386.12(c). Any release of information must be coordinated through the appropriate Assistant Chief Counsel or the Office of the Chief Counsel. State MCSAP personnel who perform complaint investigations also must follow these policies. Should written correspondence be sent to a motor carrier, the DA or designee must ensure that the information provided does not enable a motor carrier to identify the complainant. When the motor carrier has a small number of employees, personnel must take extreme care to protect the confidentiality of a complaining employee or former employee.

Disclosing the Identity of the Complainant and When to Do So

Section 212(b) of the Motor Carrier Safety Act of 1984, now codified at 49 U.S.C. 31143(b) reads: "Notwithstanding section 552 of title 5, the Secretary may disclose the identity of a complainant only if disclosure is necessary to prosecute a violation. If disclosure becomes necessary, the Secretary will take every practical means within the Secretary's authority to ensure that the complainant is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss because of the disclosure."

The Motor Carrier Should be told the Following When Conducting an Investigation as a Result of a Complaint

During discussions with motor carrier officials, personnel performing complaint investigations may explain that a reason for the investigation was the receipt of a non-frivolous complaint. Personnel must withhold this reason when its disclosure would enable the motor carrier to identify the complainant.

Precautionary Advice the DA or Designee Should Provide to the Investigator Conducting an Investigation as a Result of a Complaint

The DA or designee should advise the investigator that during a complaint investigation the investigator should conceal the identity of the complainant and any targeted area of the investigation by requesting a broad sample of documents related to multiple drivers and vehicles, which would enable an investigation of the alleged examples and types of violations.

Actions that should be taken if a Complaint Investigation is Not Initiated

If a complaint investigation is not initiated, respond to the complainant using a letter similar to *Illustration 6*. File the written complaint and the response letter in the motor carrier's file (EDMS).

Actions that should be taken if a Complaint Investigation is initiated

The Division will respond initially to the complainant using a letter similar to *Illustration 7*. Upon completing the investigation, advise the complainant of the results of the investigation by using a letter similar to *Illustrations 8*, *Illustration 9*, or *Illustration 10*. File the complaint and all letters to the complainant in the motor carrier's file (EDMS).

Procedures for Handling Commercial Complaints

Oral Complaints: Except for allegations of unregistered, uninsured, or underinsured motor carrier operations and HHG hostage freight complaints, handle oral allegations of commercial regulatory violations on the telephone by notifying the complainant that FMCSA does not provide informal dispute resolution. Advise complainants, however, they may record their complaints in the National Consumer Complaint Database by contacting 1-888-368-7238. Encourage complainants with information regarding an unregistered, uninsured, or underinsured motor carrier operation to send a written complaint to the Division Office where the motor carrier is domiciled. Refer HHG hostage freight complaints received by telephone to the Safety Violation and Commercial Complaint Hotline at 1-888-DOT-SAFT (1-888-368-7238).

Written Complaints: Refer written HHG hostage freight complaints to the Office of Enforcement and Compliance, Commercial Enforcement Division, Washington, DC. The Division where the motor carrier is domiciled will handle written complaints. If a written complaint is received by a Division in a State where the motor carrier is not domiciled, the receiving Division must forward the complaint to the appropriate Division.

Handle written complaints of violations not related to registration or insurance filing by informing the complainant in writing or by telephone that FMCSA does not provide informal dispute resolution. Do not send out an informational packet if a telephone conversation with the complainant satisfactorily closes the complaint. If the Division sends out an informational packet (*Your Rights and Responsibilities When You Move*), use the appropriate cover letter. The Division may use a cover letter similar to the example in *Illustration 14* in response to complaints received by telephone. In the case of a written complaint, send the complainant a cover letter similar to the example in *Illustration 15*. Additionally, send a copy of the cover letter and complaint to the motor carrier. If the complainant works for the motor carrier, protect the complaint's identity; do not send a copy of the complaint.

Handle written complaints that contain specific information (any dates of operation, transported commodity, origin, and destination) about a motor carrier operating without operating authority and/or filing insurance as follows:

- Verify whether the motor carrier is unregistered and/or has not filed insurance by checking the licensing and insurance (L&I) information system that is maintained by the Volpe National Transportation Systems Center.
- If L&I shows inactive or no operating authority or no insurance filing for the motor carrier, send a warning letter to the motor carrier. The Division may use a letter similar to the example in *Illustration 13* for this purpose.

After 30 working days from the motor carrier's receipt of the warning letter, check L&I again to verify the motor carrier has operating authority and/or filed insurance. If L&I shows inactive or no operating authority or no insurance filing for the motor carrier, contact the IT Operations Division (MC-RIO) or the Commercial Enforcement Division (MC-ECC), respectively, in HQ for verification. It takes approximately 30 working days to enter the receipt of an application or insurance filing into the database.

Upon verification that an application or insurance filing has not been received from the motor carrier, verify the motor carrier is still operating in interstate commerce then obtain the necessary documentation for enforcement action and submit an enforcement report. A visit to the motor carrier's office may be necessary to obtain the documentation.

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[1] The DA should adhere to the guidance in the effort when responding to anonymous complaints.

6.2.1.7.1 Complaint Letter Examples

LANGUAGE FOR LETTERS

THE LETTERS BELOW MAY BE MODIFIED AS APPROPRIATE.

Response letter to complainant upon submittal of a no frivolous complaint which will be investigated

FIGURE 1

Thank you for your (date) letter concerning the regulatory noncompliance of (name of motor carrier).

The Federal Motor Carrier Safety Administration is concerned about violations of the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations by motor carriers and their employees. We will investigate your allegations. It may be necessary to contact you for additional information during this investigation.

We will inform you of our investigation's findings. Your interest in highway safety is appreciated.

Response to complainant when an investigation will not be conducted

FIGURE 2

This document is in response to your (date) letter regarding (name of motor carrier). After careful review, we have decided not to conduct an investigation.

THE RESPONSE SHOULD INCORPORATE ONE OR MORE OF THE FOLLOWING EXPLANATIONS:

(1) From the information that you have provided, we are unable to determine whether a violation of this agency's regulations is occurring. Generally, a specific example of a substantial violation needs to be provided, including the date, location, and other pertinent information.
(2) You allege a violation occurred on (insert date). It is the policy of this agency to only investigate complaints alleging violations that have occurred within the previous 90 days.

(3) As a result of a recent compliance review or investigation of (name of motor carrier) conducted on (date), (**NOTE: MUST BE WITHIN 90 DAYS OF RECEIPT OF THE COMPLAINT**) we believe the noncompliance referred to in your letter (is not present), (was discovered and is being addressed appropriately).
(4) Your allegations do not fall within the jurisdiction of the Federal Motor Carrier Safety Administration. You may want to contact the (give name and address of jurisdictional agency).
(5) Your allegation involving the operation of defective equipment by (name and address of motor carrier) has been referred to the (give name and address of State MCSAP Agency where vehicle(s) are domiciled) for investigation. The Federal Motor Carrier Safety Administration, through its Motor Carrier Safety Assistance Program, provides funding to the States for the purpose of performing vehicle inspections to ensure the safe operation of commercial vehicles on our nation's highways.
(6) **IN THE CASE OF VEHICLE DEFECT ALLEGATIONS THAT ARE NOT OUT-OF-SERVICE DEFECTS**
Your allegations are not substantial violations of this agency's vehicle safety standards. Proper maintenance of a motor carrier's equipment is important. Certain items have been identified as critical to the operational safety of a vehicle. The absence or inoperativeness of such items is considered to be imminently hazardous.

With the dramatic increase in the number of vehicle inspections performed by the States as a result of the Motor Carrier Safety Assistance Program, the likelihood of the vehicles operated by (name of motor carrier) being examined at a roadside inspection site has increased substantially. The numerous roadside vehicle inspections conducted by the States help to ensure motor carriers properly maintain their equipment and unsafe vehicles are removed from operation.

CONCLUSION TO LETTER IF APPROPRIATE

If you can provide additional information which you think we should consider, please respond to the above address. Thank you for your interest in highway safety.

Response to complainant at conclusion of an investigation which results in enforcement

FIGURE 3

This document is in follow-up to my (date) letter sent to you as a result of information you supplied concerning (name of motor carrier).

The matter has been investigated and certain instances of noncompliance as you alleged were discovered. An enforcement action, in which civil penalties will be assessed against the carrier, is currently being prepared to address the carrier's noncompliance.

If you find that these violations continue or other violations occur, please advise us.

Thank you for your interest in highway safety.

Response to complainant when the allegations are not substantiated

FIGURE 4

This document is in follow-up to my (date) letter sent to you as a result of information you supplied about (name of motor carrier).

The matter has received careful attention; however, our investigation failed to disclose violations of the type referred to in your letter.

Please advise us if we can be of further assistance.

Response to complainant when the allegations are substantiated, but enforcement action is not being taken

FIGURE 5

This document is in follow-up to my (date) letter to you as a result of information you supplied about (name of motor carrier).

The matter has been investigated and certain instances of noncompliance as you alleged were discovered. The nature of these violations, however, did not warrant enforcement action.

If we can provide further assistance, please contact our office.

Letter to Congressional member after completion of a compliance review or investigation in response to a Congressional request

FIGURE 6

This document is in response to your (date) letter which (requested a compliance review or investigation be conducted on (name of motor carrier)), (alleged regulatory violations by (name of motor carrier)).

THE RESPONSE SHOULD INCORPORATE ONE OF THE FOLLOWING STATEMENTS:

USE PARAGRAPH (1) OR (2) WHEN A REQUEST FOR A COMPLIANCE REVIEW OR INVESTIGATION WAS MADE WITHOUT ALLEGATIONS OF SUBSTANTIAL VIOLATIONS

(1) A compliance review or an investigation on (name of motor carrier) was completed in response to your request. Regulatory violations were discovered, but their nature did not warrant enforcement action. If you would like further information about the compliance review, please call our Division Office at (telephone number).
(2) A compliance review or an investigation on (name of motor carrier) was completed in response to your request. Instances of noncompliance were discovered and an enforcement action is currently being prepared. If you would like further information about the compliance review or investigation or enforcement action, please call my office at (telephone number).

USE PARAGRAPH (3), (4), OR (5) WHEN SUBSTANTIAL VIOLATIONS ARE ALLEGED

(3) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Your allegations have received careful attention. Our investigation, however, failed to disclose violations of the type referred to in your letter. If you would like further information about the compliance review or investigation, please call our Division Office at (telephone number).

(4) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Violations of the type referred to in your letter were discovered. The nature of these violations, however, did not warrant enforcement action. If you would like further information about the compliance review or investigation, please call our Division Office at (telephone number).
(5) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Violations of the type referred to in your letter were discovered, and an enforcement action is currently being prepared. If you would like further information about the compliance review or investigation or enforcement action, please call my office at (telephone number).

Letter to Congressional member who forwarded a complaint

FIGURE 7

This is a response to your (date) letter which forwarded a complaint to us that alleged illegal activity by (name of motor carrier).

THE RESPONSE SHOULD INCORPORATE ONE OF THE FOLLOWING STATEMENTS:

(1) The forwarded complaint alleges the violation of a regulation or law which is outside the jurisdiction of the Federal Motor Carrier Safety Administration. We, therefore, cannot respond to the complaint, but we have forwarded the complaint to the (appropriate government agency). If we can provide further assistance, please call my office at (telephone number).
(2) We have concluded that the complainant's allegations are not reliable based on (the findings of a recent compliance review or an investigation conducted on the company), (our discussion with the complainant). An investigation, therefore, is not warranted at this time. The complainant will be advised of our conclusion. If you would like further information, please call my office at (telephone number).
(3) We have concluded that the severity of the alleged violations does not warrant an investigation. The complaint was placed in our file on the company for future reference. We would be interested in reviewing additional information from the complainant about the illegal activities of (name of motor carrier). The complainant will be advised of our conclusion. If we can provide further assistance, please call my office at (telephone number).
(4) We have concluded that an investigation of the alleged violations is not warranted based on the untimely nature of the allegations. It is the policy of this agency to only investigate complaints alleging violations that have occurred within the prior 90 days. We would be interested in reviewing more recent information about the illegal activities of (name of motor carrier). The complainant will be advised of our conclusion. If we can provide further assistance, please call my office at (telephone number).
(5) We have contacted the complainant and concluded that the allegations appear to be reliable. FMCSA strives to utilize its limited resources in the most effective manner to advance highway safety. The agency, therefore, checks the safety performance of any motor carrier that is the subject of a complaint to FMCSA. In keeping with our focus on performance measures, particularly accident rates, we believe onsite compliance reviews are not needed if the carrier does not possess an unsatisfactory accident rate and there is no indication of poor performance. We have no information which shows the safety performance of (name of motor carrier) to be a problem at the present time. Furthermore, we have notified the carrier about the general allegations of the complaint and requested a written response. We will inform the complainant about our handling of the complaint. If we can provide further assistance, please call my office at (telephone number).
(6) A compliance review or an investigation on (name of motor carrier) was completed in response to the forwarded complaint and its allegations have received careful attention. Our investigation, however, failed to disclose violations of the type referred to in the complaint. The complainant will be informed of our findings. If we can provide further assistance, please contact our office.
(7) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Violations of the type referred to in your letter were discovered. The nature of these violations, however, did not warrant enforcement action. The complainant will be informed of our findings. If we can provide further assistance, please contact our office.
(8) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Violations of the type referred to in your letter were discovered, and an enforcement action is currently being prepared. The complainant will be informed of our findings. If we can provide further assistance, please contact our office.

6.2.1.7.2 Complaint Letter 1

U.S. Department of Transportation

Federal Motor Carrier Safety Administration

[DATE]

[NON-RESPONDING CARRIER OFFICIAL'S NAME]

[NON-RESPONDING CARRIER'S NAME]

[NON-RESPONDING CARRIER'S ADDRESS]

[NON-RESPONDING CARRIER'S CITY, STATE, AND ZIP]

Dear Mr. or Ms. [CARRIER OFFICIAL'S NAME]:

On [DATE], we received information alleging **[NON-RESPONDING CARRIER'S NAME]** failed to respond to request for the safety performance history of a new driver.

The Federal Motor Carrier Safety Administration is concerned about violations of our regulations by motor carriers and their employees. We are asking that you give the request for the safety performance history of the new driver your full attention. Under Section 391.23(g), previous employers must:

Respond to each request for the safety performance history of new drivers within 30 days after the request is received;

- Take all necessary precautions to ensure the records are accurate;
- Provide specific contact information in case a driver wants to correct or rebut the data;
- Keep records of the request and the responses for one year; and
- Provide information for accidents that occurred after April 29, 2003.

Failure to comply with this regulation may subject you to a compliance review or an investigation and civil penalties. Enclosed is an informative brochure to help you understand what is required or you may consult your Federal Motor Carrier Safety Regulations. Should you have any questions regarding this requirement, please feel free to contact [NAME] at [PHONE NUMBER] or via email at [EMAIL ADDRESS].

Sincerely yours,

[NAME]

Division Administrator

Enclosure

6.2.1.7.3 Complaint Letter 2

U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

[DIVISION OFFICE]
[DIVISION'S ADDRESS]

[DIVISION'S CITY, STATE, AND ZIP]

[DATE]

[COMPLAINANT'S NAME]
[CARRIER'S NAME]
[CARRIER'S ADDRESS]
[CARRIER'S CITY, STATE, AND ZIP]

Dear Mr. or Ms. [COMPLAINANT'S NAME]

Thank you for your [DATE] letter concerning [CARRIER'S NAME ('s)] failure to respond to your request for the safety performance history of a new driver.

The Federal Motor Carrier Safety Administration is concerned about violations of our regulations by motor carriers and their employees. Our office will contact the motor carrier to ensure it understands what is required of a previous employer and to request your safety performance history inquiry is given its full attention.

We appreciate motor carriers like you who report carriers who do not comply with our safety regulations. It may become necessary to contact you for additional information. We will keep you informed of the findings and we appreciate your interest in highway safety.

Sincerely yours

[NAME]

Division Administrator

6.2.1.7.4 Safety Performance History of New Drivers Brochure

IMPORTANT FMCSA WEB SITES

1. The Federal Motor Carrier Safety Administration official Web site is http://www.fmcsa.dot.gov.
2. Information about Federal safety regulations and interpretations can be found at http://fmcsa.dot.gov/rulesregs.
3. Information on the transportation of Hazardous Materials can be found at http://hazmat.dot.gov.
4. Carrier profiles, safety rating, inspection and accident summary can be found at http://www.safersys.org.
5. Registration, insurance and fines can be paid at http://diy.dot.gov.
6. Statistics, analysis, and research regarding the truck and bus industry can be found at http://ai.volpe.dot.gov.
7. Change of name and address can be done at http://diy.dot.gov.
8. The "Share the Road Safely" Program can be found at http://sharetheroadsafely.org.
9. CMV Safety Belt Partnership can be found at http://www.fmcsa.dot.gov/safetybelt.
10. Information about a motor carrier, broker, or freight forwarder's application, insurance, and process agent can be found at http://fhwa.li.volpe.dot.gov.

CONTACT INFORMATION

Federal Motor Carrier Safety Administration
[DIVISION OFFICE]
[DIVISION OFFICE ADDRESS]
[DIVISION OFFICE CITY, STATE, ZIP]

[STATE MCSAP AGENCY]
[STATE DIVISION]
[STATE OFFICE ADDRESS]
[STATE OFFICE CITY, STATE, ZIP]

TO OBTAIN REGULATIONS, FORMS, AND MANUALS

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402
202-512-1800

JJ Keller and Associates, Inc.
3003 West Breezewood Lane
P. O. Box 368
Neenah, WI 54957
877-564-2333

LabelMaster
5724 North Pulaski Road
Chicago, IL 60646
800-621-5808

ArtCrest, Inc.
2003 Louisiana Street
Little Rock, AR 72206
501-374-6427

This brochure is only intended to provide general regulatory information. It is not intended to be a substitute for the Federal Motor Carrier Safety Regulations.

SAFETY PERFORMANCE HISTORY OF NEW DRIVERS

AN OVERVIEW

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

SAFETY PERFORMANCE HISTORY OF NEW DRIVERS

INTRODUCTION

The Federal Motor Carrier Safety Administration established the minimum driver safety performance history data that new or prospective employers are required to seek for applicants under consideration for employment as a commercial motor vehicle (CMV) driver.

The action enables prospective motor carrier employers to obtain and use more complete driver safety performance information in the hiring process. By using this information, employers will be able to better assess the potential safety risks of prospective new driver-employees.

WHO IS SUBJECT TO THESE REQUIREMENTS?

The rule applies to all motor carrier employers regulated by the Federal Motor Carrier Safety Regulations whose employees apply to operate a commercial motor vehicle for a motor carrier in interstate commerce.

WHICH LAWS REQUIRED THE RULES?

The Hazardous Materials Transportation Authorization Act of 1994 required, at a minimum, hiring motor carriers to investigate a driver's accident record and alcohol and controlled substances history. The Transportation Equity Act for the 21st Century protected motor carriers who either used or supplied driver safety performance history.

WHAT IS THE PURPOSE OF THESE REQUIREMENTS?

The purpose of these requirements is to enable prospective motor carriers to make sound hiring decisions of drivers to improve CMV safety on our Nation's highways.

Motor carriers who perform safety performance history investigations of drivers and use that information in the hiring process will inevitably place the safest possible drivers behind the wheel of their vehicles.

WHAT ARE THE REQUIREMENTS FOR NEW OR PROSPECTIVE MOTOR CARRIERS?

New or prospective motor carriers are required to investigate and consider, at a minimum, a driver's:

- Employment verification information;
- Accident record; and
- Drug and alcohol history.

This information must be requested from all employers the driver worked for within the previous three years before hire.

New or prospective motor carriers will be required to complete the safety performance history investigation of new drivers within 30 days of hiring the new employee, or the employer must document a good faith effort to obtain the information.

Additionally, each motor carrier must maintain records relating to the investigation into the safety performance history of a new or prospective driver in a driver investigation history file.

WHAT ARE THE REQUIREMENTS FOR PREVIOUS EMPLOYERS?

Previous employers are required to respond to each request from a new or prospective employer within 30 days after the request is received.

In addition, previous employers must ensure the information submitted to the new or prospective employer is accurate.

WHAT ARE THE RIGHTS OF DRIVERS IN THIS PROCESS?

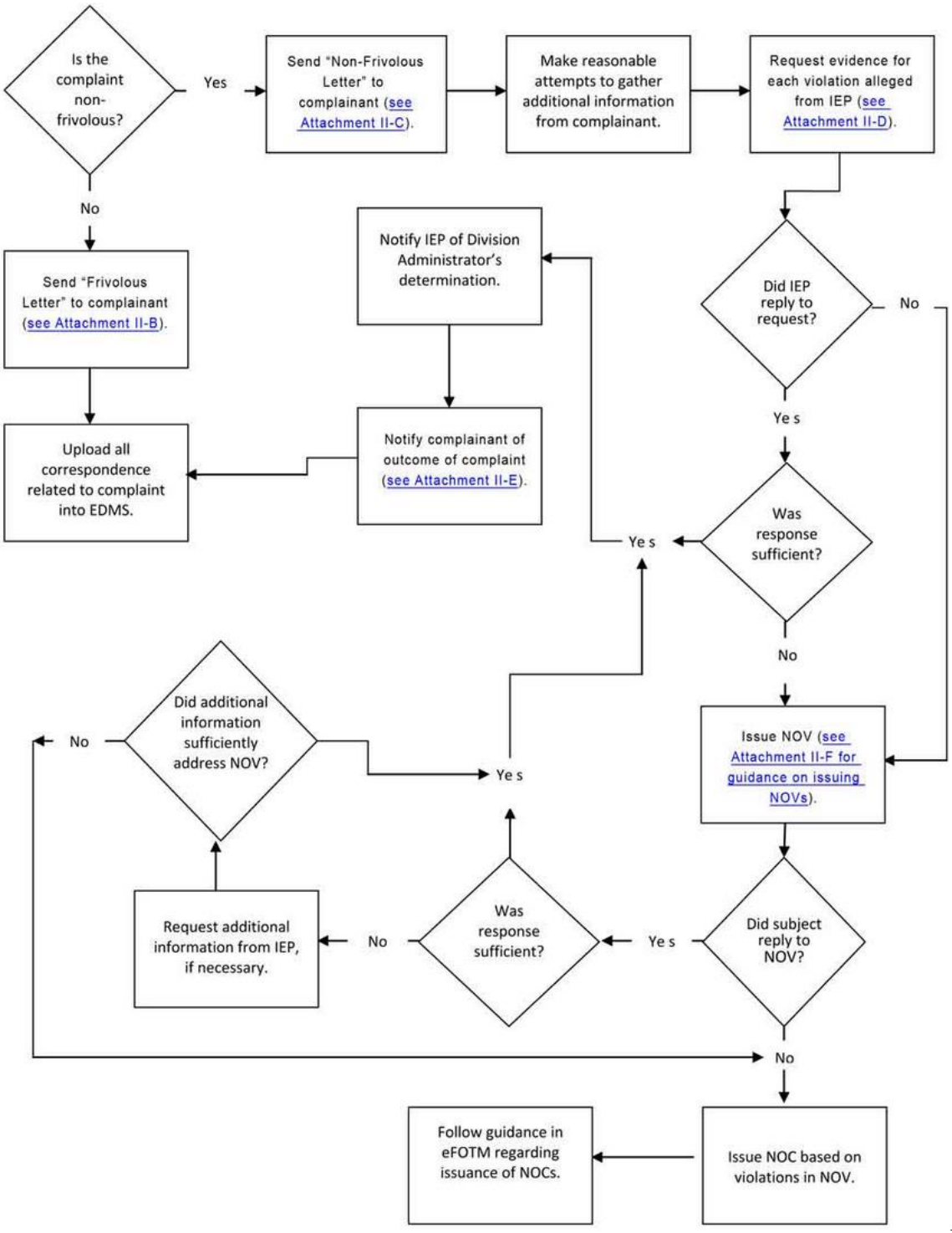
Drivers have the right to review, have errors in the information submitted by the previous employer corrected, and rebut statements to the alleged erroneous information.

WHERE CAN A MOTOR CARRIER FIND MORE INFORMATION?

Contained within this brochure is a list of important contact information and Web sites that will assist the motor carrier in complying with this requirement.

Safety Performance History of New Drivers brochure (PDF)

6.2.1.7.5 Responding To Complaints Filed Against IEPs Flowchart



Description of flowchart

6.2.1.8 Freedom of Information (FOIA)

The Freedom of Information Act (5 U.S.C. 552) [FOIA] establishes a presumption that records in the possession of agencies and departments of the Executive Branch of the U.S. Government are available to the public. FOIA sets standards for determining when Government records must be made available and which records may be withheld. FOIA also gives requesters specific legal rights and provides administrative and judicial remedies when access to records or portions of records is denied. Most importantly, the FOIA statute requires Federal agencies to provide access to, and disclosure of, information pertaining to the Government's business to the fullest extent possible.

Division Should Handle FOIA Requests in Following Manner

FOIA requests need to be forwarded to the FMCSA FOIA Team via the following methods:

- Mail
  Federal Motor Carrier Safety Administration
  Attn: FOIA Team (MC-MMI)
  1200 New Jersey Avenue, SE.
  Washington, DC 20590
- FOIA SC
  Phone: (202) 366-2960
- Fax: 877-561-2855
  Attn: FOIA Team
- Email foia2@fmcsa.dot.gov

If the request is made via telephone, please direct the requester to the FOIA SC number, listed above, or to the FMCSA FOIA website at www.fmcsa.dot.gov/foia/foia.htm. **Under no circumstances should the Division provide information that needs to undergo FOIA review.**

Types of Records Available through FOIA

1. Records on specific motor carriers or specific motor carrier files including:

- Enforcement Reports;
- Compliance Reviews or Investigations;
- Roadside Driver/Vehicle Inspection Reports;
- State Accident Reports; and
- General Correspondence.

Note: The requirement for the Motor Carrier Accident Report (MCS 50-T or 50-B) was eliminated effective March 3, 1993.

2. Copies of Agency final orders, which may include negotiated Settlement Agreements, Notices of Claim (to which a motor carrier has replied or failed to reply), and OOS Orders.
3. Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the Agency; Administrative Rulings FMCSA adopts, issued by an Administrative Law Judge (ALJ) in the adjudication of motor carrier enforcement cases; and decisions of the CSO.

Note: In accordance with the Agency's records management procedures, the required maintenance for motor carriers' files is six years.

6.2.1.9 Determining the Preventability of Crashes

Preventability in investigations, audits and the Crash Preventability Determination Program (CPDP) will continue to be determined according to the standard set forth in 49 CFR Part 385. Specifically, section 385.3 defines a "Preventable accident" as a crash (1) that involved a commercial motor vehicle (CMV), and (2) that could have been averted but for an act, or failure to act, by the motor carrier or the driver.

Appendix B, section II.B(e), provides the standard for making a preventability determination: "If a driver, who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable."

Each crash must be evaluated individually. The background surrounding the crash must be thoroughly evaluated, and decisions made based on the available facts.

FMCSA will continue to consider crash preventability during an investigation resulting in a safety rating when the rating of a motor carrier's crash factor is less than satisfactory. To have a crash removed from the calculation of its safety rating, the motor carrier must present to the Division Administrator compelling evidence that the crash was not preventable. In these cases, the Division Administrator should use the procedures below to determine if the crash was submitted to the CPDP. If the Division Administrator determines the crash(es) to be not preventable, the investigation should be updated.

During a new entrant safety audit, a carrier cannot fail solely based on the crash factor. Where Factor 6 contributes to any safety audit failure, as outlined in 49 CFR Part 385 Appendix A, the motor carriers should be advised that they may submit compelling evidence to the Division Office. In these cases, the Division Administrator should use the procedures below to determine if the crash was submitted to the CPDP. If the Division Administrator determines the crash(es) to be not preventable, the audit findings should be updated.

In addition, if a crash reviewed in an investigation or audit is not preventable and is one of the 16 eligible types in the CPDP, the motor carrier should be encouraged to submit a RDR through DataQs and should be encouraged to submit the Division Administrator's determination as a supporting document.

The Division Administrator should continue to consult the preventability guidance in the "Motor Carrier Safety Planner" on FMCSA's website at https://www.fmcsa.dot.gov/safety/carrier-safety/motor-carrier-safety-planner (see Appendix R for preventability guidelines).

Crashes are not eligible for a not preventable determination if the driver and/or carrier was legally prohibited from operating the CMV at the time of the crash because:

- A post-crash inspection identifies a driver or vehicle out-of-service violation that existed before the crash and was not attributed to the crash on the Motor Carrier Management Information System crash report or,
- Other documents reviewed as part of the determination indicate that the driver was not qualified to drive on the date of the crash.

Not Preventable determinations in the CPDP will result in the crash being removed from the SMS Crash Indicator BASIC and a notation of the not preventable determination will be made in PSP. However, preventability determinations resulting from an investigation or audit will not result in changes to SMS and PSP.

PROCEDURES

Determining the Preventability of Crashes

Before an Investigation or Audit Reviewing Crashes

1. When preparing for an investigation or audit **that includes a review of the carrier's crashes,** the investigator or auditor should review the motor carrier's profile and review the list of final determinations made by the CPDP and available on the motor carrier's SMS profile.
2. The investigator or auditor should ask the motor carrier for the RDR numbers for any crashes submitted to the CPDP that have not yet received a determination. This list should be emailed to FMCSACrashes.Preventability@dot.gov with "Expedited Review" in the subject line. The CPDP team will provide a status of the review of the crash(es) to the investigator or auditor, and will expedite review of the crash(es). In addition, a note will be added to the RDR in DataQs so the CPDP reviewer contacts the investigator or auditor before making a determination.

During the Investigation or Audit Reviewing Crashes

1. The functionality to capture preventability reviews and determination results already exists in the AIM system if the investigation scope includes the Crash Indicator BASIC or the investigation is comprehensive. When the investigator reviews the carrier's list of crashes in the Crash Section of AIM, the associated "Preventability Checked" and "Preventability Outcome" data fields should be completed to indicate the crash was reviewed and if the finding was not preventable, undecided or preventable. Only not preventable crashes are removed from the Factor 6 evaluation. See Appendix R for AIM procedures.

2. For audits, preventability reviews should be documented in Part C of the report.
3. If the Division Administrator's preventability determination differs from the CPDP final determination or if there are crashes that have not yet been reviewed by the CPDP, the Division Administrator will consult with the Office of Enforcement by sending an email to FMCSACrashes.Preventability@dot.gov. The Office of Enforcement will contact the Division Administrator within 2 business days. The CPDP will expedite the review of any RDRs not yet reviewed for the motor carrier. This coordination is to ensure there are no differences in preventability determinations.
4. If the Division Administrator determines the crash was not preventable before the investigation is closed out, the investigator will make the necessary changes to the crash rate in AIM.

After an Investigation or Audit Reviewing Crashes

1. If a motor carrier has an "unsatisfactory" recordable crash rating from an investigation or the safety audit is failed and a crash is a contributing factor, the investigator or auditor must inform the motor carrier, before the investigation or audit is closed, that it may provide evidence to the Division Administrator for a crash preventability review and possible removal of the crash from the rating, if the motor carrier believes any of the crashes were not preventable.
2. After the crash documentation is received, the Division Administrator must analyze the facts surrounding the crash, and make a determination of whether the crash was preventable, undecided, or not preventable.
3. Each crash must only have one determination so consultation and consensus is required. To ensure consistency, Division Administrators will consult with the CPDP to start a preventability review of a crash that was submitted to the CPDP. If the CPDP receives an RDR on a crash that received a final preventability determination of undecided or preventable from a closed investigation, the CPDP will close the RDR and advise the motor carrier they must make the request for review of the previous preventability determination through the 49 CFR 385.15 process.
4. If the Division Administrator determines a crash was not preventable, the safety investigator must explain the facts surrounding the change in the crash rate in the comments section of "SI Narrative" or Part C on the investigation or the audit.
5. A revised investigation or audit report must be submitted to the motor carrier, along with the determination letter. Sample determination letters are provided in Appendix R. The Division Office will upload the determination letter and relevant correspondence into the Electronic Document Management Systems.
6. For crashes that meet the 16 eligible crash types that are found to be not preventable during or after the investigation or audit, the motor carrier should be encouraged to submit RDRs to the CPDP to have the crash removed from the Crash Indicator BASIC. The motor carrier should be encouraged to provide documentation of the Division Administrator's determination on the crash as a supporting document.
7. Once the investigation or audit is closed, if a motor carrier wants crashes reviewed for preventability for the purpose of changing the rating, the motor carrier will be required to pursue an administrative review as set forth in 49 CFR section 385.15.

Red Flagged Carriers

1. Based on the contacts from the Division Offices, the CPDP will maintain a list of carriers with investigations including crash determinations.
2. If RDRs are submitted after an investigation is closed out, the CPDP will review the program's red flagged carrier's list and will close RDRs for crashes that received preventable or undecided determinations and advise the carrier they must request the changes through the 49 CFR 385.15 process.
3. The CPDP team may contact the Division Office for additional information on these crashes.

Click here to see these job aids and attachments related to Crash Preventability Determination policy and procedures:

- Sample Determination Letter
- Crash Preventability Determination Program Eligibility Guidelines
- Preventability Guidelines
- Adding Crashes to AIM
- Overview Flow Chart
- Procedures by Investigation Phase
- Procedures by Role

6.2.1.10 Procedures for Unsatisfactory Rated Motor Carriers

Division Must Do the Following When it completes an Investigation that Results in a Proposed Unsatisfactory Safety Rating

The SI should upload the investigation to MCMIS within seven calendar days. Once the investigation is uploaded, the investigation report must be scanned into EDMS and the Division should then notify the appropriate SC of the proposed unsatisfactory safety rating. At a minimum, the notification must contain the name of the motor carrier, USDOT number, and date of investigation.

49 CFR Part 385.11 states that FMCSA will issue written notification of the proposed rating no more than 30 days after the review. If an investigation with a proposed unsatisfactory rating (or any rating downgrade) is not uploaded in time to issue the official rating within 30 days of the review, the motor carrier will not be rated. In these instances, the review will still be uploaded. However, it will be entered into MCMIS as a non-ratable review. While the motor carrier will not be rated, the review findings will reside in MCMIS and will be considered by SMS for appropriate follow-up.

The Proposed Rating Becomes the Rating of Record for HM Placardable and Passenger Motor Carriers at this Time

The safety rating is effective the 46th day after service on placardable HM and passenger motor carriers. The "day of service" is considered the day on which HQ generated the notice of proposed safety rating letter (i.e., the date printed on the letter).

Note: A motor carrier is deemed to be a placardable HM motor carrier if the motor carrier has transported any placardable HM in interstate commerce within the previous 12 months.

The Proposed Rating Becomes the Rating of Record for Non-HM Placardable and Non-Passenger Motor Carriers at this Time

The rating is effective on the 61st day after service on non-HM placardable and non-passenger motor carriers.

Safety Rating Implications for Onsite Focused Investigations

An investigation should not be initiated, nor the scope of an investigation expanded, for the purpose of providing a motor carrier the requested opportunity to obtain a satisfactory safety rating. Unrated motor carriers that request FMCSA investigative resources, for the purpose of obtaining a Satisfactory safety rating, should be advised that FMCSA resources cannot be influenced by external demands, and that FMCSA concentrates investigative and enforcement resources on motor carriers with known safety performance and compliance problems to best ensure safety to the motoring public. Motor carriers with existing adverse safety ratings from prior compliance reviews, that request FMCSA investigative resources to perform an Onsite Comprehensive Investigation, or to expand the scope of an Onsite Focused Investigation for safety rating upgrade purposes, should be advised to follow the corrective action upgrade process in 49 CFR section 385.17. A 385.17 request cannot ultimately result in a satisfactory safety rating, if FMCSA has not previously performed an investigation that includes the review of all required CFR Parts.

Onsite Focused Investigations cannot result in the issuance of satisfactory safety ratings. Onsite Focused Investigations can, however, result in the issuance of proposed Conditional or Unsatisfactory safety ratings based upon investigation of as few as one regulatory Part.

The current safety rating regulations (49 CFR Part 385) are applicable to Onsite Focused Investigations. The safety rating regulations in Part 385 set forth six rating factors:

- Factor 1: General (Parts 387 and 390)
- Factor 2: Driver (Parts 382, 383, and 391)
- Factor 3: Operational (Parts 392 and 395)
- Factor 4: Vehicle (Parts 393 and 396)
- Factor 5: Hazardous Materials (Parts 397, 171, 177, and 180)
- Factor 6: Accident Factor (Recordable Rate)

Individual “factor ratings” are calculated based on the number of Acute and/or Critical violations discovered during an Onsite Focused Investigation where:

- Critical (equal to or >10%) or Acute violations = 1 point
- Critical (equal to or >10%) violations in Hours of Service = 2 points
- Individual Factors with 0 points are rated Satisfactory
- Individual Factors with 1 point are rated Conditional
- Individual Factors with 2 points are rated Unsatisfactory.

A motor carrier’s overall proposed safety rating resulting from an Onsite Focused Investigation is based on the number of factors rated Unsatisfactory or Conditional, as outlined in the table below. An overall Satisfactory rating requires a rating in all six factors, thus Onsite Focused Investigations cannot result in the issuance of a new satisfactory rating. An overall Unsatisfactory or Conditional rating does not require a rating in all six factors.

Rating Factors

INDIVIDUAL FACTORS UNSAT	INDIVIDUAL FACTORS CONDITIONAL	OVERALL CARRIER SAFETY RATING
0	2 OR FEWER	SAT
0	MORE THAN 2	CONDITIONAL
1	2 OR FEWER	CONDITIONAL
1	MORE THAN 2	UNSAT
2 OR MORE	0 OR MORE	UNSAT

The following scenarios are intended to illustrate how the existing safety rating regulations intersect with Onsite Focused Investigations:

Scenario 1

- A Motor carrier is Roadside-Identified in the HOS Compliance and Driver Fitness BASICs.
- Factors related to fatigue and driver fitness are evaluated.
- A rating of Conditional or Unsatisfactory would be issued based on Acute and/or Critical violations found during the investigation.
- If sufficient violations for a Conditional or Unsatisfactory rating were not found, then the review would be non-rated and the motor carrier would retain the rating issued prior to the Onsite Focused Investigation.

Scenario 2

- A Motor carrier is Roadside-Identified in the Driver Fitness and HM Compliance BASICs.
- During the Onsite Focused Investigation it is found that the motor carrier requires an HM safety permit.
- If the motor carrier is currently unrated, the investigation would be changed to an Onsite Comprehensive Investigation, so that it may result in the satisfactory rating required to hold a permit.
    - If the motor carrier is currently rated Satisfactory, the Onsite Focused Investigation would proceed.
    - If sufficient Acute and/or Critical violations were found, the motor carrier’s rating would be changed from Satisfactory to Conditional or Unsatisfactory.
- If sufficient Acute and/or Critical violations were not found, the motor carrier would retain the satisfactory rating that it already had and this Onsite Focused Investigation would be non-rated.

Procedures Relating to Follow-Up Investigations on Motor Carriers Rated Unsatisfactory

If a motor carrier receives a proposed Unsatisfactory rating and a follow-up investigation is conducted during the 45/60 day improvement period, investigators must ensure that the review is designated as a “follow-up review to a 45/60-day proposed/final unsatisfactory safety rating” in the Pre-investigation/Part A, Misc. Tab. This designation will ensure that the motor carrier’s 45/60-day “clock” does not restart in MCMIS in the event the follow-up investigation shows no improvement in the motor carrier’s rating.

Note: The Agency encourages the DA or designees to use the procedures for the upgrade of safety ratings of 45/60 Unsat motor carriers as outlined in *Illustration 5*.

An improvement to a proposed unsatisfactory rating resulting from a follow-up investigation is not effective until MCMIS generates an official rating letter. Generally, investigations will be rated the same day they are uploaded to MCMIS. Once the investigation is completed, the Division should then notify the appropriate SC of the proposed upgraded safety rating. At a minimum, the notification must contain the name of the motor carrier, USDOT number, date of investigation, and the new proposed rating.

Make every effort to ensure that any investigation, conducted as a follow-up to a proposed unsatisfactory rating, is uploaded before the motor carrier's 45/60 day improvement period expires.

Fax or electronically send a scanned copy of the CR to the IT Operations Division in HQ at (202) 366-3477, only when the motor carrier's 45/60-day "clock" will expire before the investigation can be uploaded, or if the investigation cannot be electronically uploaded. In those instances, contact at least one member of the IT Operations Division. In addition, to prevent the OOS Order from going into effect, the Enforcement Team should also be notified.

Procedures for Issuing OOS Orders on Motor Carriers Rated Unsatisfactory

The Unsat = Unfit OOS Order is entitled *Order to Cease All Interstate Transportation*. A SCET should serve this order within two weeks of the effective date of the OOS Order. The SCET may serve this order by personal delivery using governmental or commercial entities, U.S. mail, commercial mail delivery, or facsimile, upon prior written consent of the parties. Written consent for facsimile service must specify the facsimile number where service will be accepted. When the SCET makes service by facsimile, it also must serve a copy by any other method permitted by this section. Facsimile service occurs when transmission is complete.

On the same day, or next business day if the order is effective on a weekend or holiday, the Unsat = Unfit OOS Order is effective, the appropriate SCET must inactivate the motor carrier in MCMIS with a "UNF" designation.

Procedures for Monitoring Compliance with OOS Orders on Motor Carriers Rated Unsatisfactory

A Division should conduct onsite verification to determine compliance with the OOS Order within 10 days of the effective date of the order. The Division may summarize the verification findings in an inter-office memorandum format provided the motor carrier has ceased transportation. If onsite verification is not feasible, the Division will document and place in the motor carrier file any method used to verify the motor carrier is not operating in commerce. The Division must implement procedures to monitor motor carrier activity to maintain oversight of motor carriers that may violate the OOS Order.

Monitoring of Unsatisfactory Rated Motor Carriers – The Division office may obtain a list of motor carriers that are identified as operating after an Unsat OOS Order was effective. This list is available to the Divisions and SCETs through ACE,MCMIS, the Portal, and also GOTHAM. All Agency Division Offices and SC should make use of these reports to facilitate their monitoring efforts.

If the Division determines that the motor carrier has violated an OOS Order, the Division should initiate enforcement action. The Division should consult with the SCET to consider seeking a U.S. District Court ordered injunction for repetitive violators of an OOS Order.

6.2.1.11 Safety Rating Petitions Under 49 CFR Part 385.15 and 49 CFR Part 385.17

Possible Outcomes of an Investigation

Onsite Focused and Onsite Comprehensive Investigations can result in assigning a safety fitness rating, issuing a NOC for discovered violations, or both. Investigations conducted Offsite may result in the issuance of a NOC for discovered violations, but cannot result is an assigned safety fitness rating. Upon receiving a proposed Conditional or Unsatisfactory rating (49 CFR Part 385.11(c)) or a final safety rating (49 CFR Part 385.11(b)), a motor carrier may request either that FMCSA conduct an administrative review in accordance with 49 CFR Part 385.15 if the motor carrier believes the Agency has committed an error assigning its proposed safety rating or request an upgrade under 49 CFR Part 385.17 based on corrective action taken by the motor carrier. When an investigation results in issuing a motor carrier a proposed Conditional or Unsatisfactory safety rating, the SC should provide the motor carrier with information for making the 49 CFR Part 385.17 request based on *Illustration 4*.

FMCSA may issue one of three ratings: Satisfactory, Conditional, or Unsatisfactory. Both Satisfactory and Conditional ratings that are improvements upon a prior rating take effect immediately upon issuance from HQ (see 49 CFR Part 385.11(b)). A Conditional or Unsatisfactory rating that would be a downgrade from a currently held rating is effective on day 46/61 after a proposed rating is issued. A proposed unsatisfactory safety fitness rating has specific consequences for any motor carrier that receives such a rating.

Steps that a Motor Carrier can take if it receives a Proposed or Final Unsatisfactory Safety Rating

A motor carrier that receives a proposed or final unsatisfactory safety rating may request an administrative review under 49 CFR Part 385.15, request a rating change less than 49 CFR Part 385.17, or request a follow-up investigation within the required 46/61-day timeframe.

Steps that a Motor Carrier must take when it receives an Unsatisfactory Safety Rating

When FMCSA issues a proposed unsatisfactory safety rating to a HM or passenger motor carrier, the motor carrier has 45 days to improve the rating to Conditional or Satisfactory or it must cease operating in commerce on Day 46. For all other motor carriers issued an unsatisfactory safety rating, unless the motor carrier improves within 60 days, it must cease operating in commerce on Day 61.

A motor carrier that does not request a safety rating upgrade, or ignores the procedures outlined in Section 385.17, will have its safety rating designation made final when the appropriate timeframe expires.

Corrective Action Upgrade Implications (385.17) for Onsite Focused Investigation

Onsite Focused Investigations raise unique policy and procedural issues, associated with corrective action upgrade requests filed with FMCSA per 49 CFR 385.17, because they do not include a review of all CFR Parts necessary to issue a satisfactory rating.

These issues are mainly associated with non-rated and Conditional motor carriers receiving an Onsite Focused Investigation that subsequently file a corrective action upgrade request per 385.17. Put simply, the issues arise because the motor carrier wishes to upgrade to a Satisfactory safety rating, but the recent Onsite Focused Investigation did not examine all safety standards and factors, specified in 49 CFR 385.5 and 385.7:

- If an Onsite Focused Investigation results in a proposed Conditional or Unsatisfactory safety rating of a motor carrier with an existing safety rating from a prior Onsite Investigation or CR, the SI will advise the motor carrier that any subsequent corrective action upgrade request filed per 385.17 must address all violations from both the current Onsite Focused investigation AND the previous investigation, as well as the vehicle OOS rate and/or crash rate from each investigation, if either affected the safety rating.

- A carrier may not receive a Satisfactory safety rating, if FMCSA has not, at some point in time, examined all safety standards and factors specified in 49 CFR 385.5 and 385.7.

Given the unique policy and procedural issues, Division Offices should contact and work closely with Service Centers in handling 385.17 requests from carriers resulting from an Onsite Focused Investigation.

The table below further delineates FMCSA policy related to safety ratings and corrective action upgrade requests following Onsite Focused Investigations. The dates in the table represent the following:

Date 1 = Original safety rating date
Date 2 = Most recent Onsite Focused Investigation date
Date 3 = 385.17 upgrade request decision date
[3]Date 2+ = Date 2 + (45 or 60 days)

Safety Ratings and Corrective Action Upgrade Request

Original Safety Rating	**Recent Investigation**	**Onsite Focused Investigation Rating**	**Upgrade Request**	**Decision**	**Action**	**Public Display**	
Date 1	***Date 2***		***Date 3***			***Rating***	***Date***
SAT	Onsite Focused Investigation	COND	385.17	Grant	Upgrade	SAT	Date 3
			385.17	Deny	Denial	COND	Date 2+
		UNSAT	385.17	Grant	Upgrade	COND	Date 3
			385.17	Deny	Denial	UNSAT	Date 2+
		NON-RATED Review	**No basis for filing**				
COND	Onsite Focused Investigation	COND	385.17	Grant	Upgrade	SAT	Date 3
			385.17	Deny	Denial	COND	Date 2+
		UNSAT	385.17	Grant	Upgrade	COND	Date 3
			385.17	Deny	Denial	UNSAT	Date 2+
		NON-RATED Review	**Follow regular 385.17 for requesting upgrade to original rating**				
UNRATED	Onsite Focused Investigation	COND	385.17	Grant	Vacate, reason: 385.17	UNRATED	
			385.17	Deny	Denial	COND	Date 2+
		UNSAT	385.17	Grant	Upgrade	COND	Date 3
			385.17	Deny	Denial	UNSAT	Date 2+
		NON-RATED Review	**No basis for filing**				
UNSAT	Issued prior to 2001, Intervention Selection is Onsite Comprehensive Investigation						
	Issued post-2001, then flagged as OOS with activity and issue an NOC						

A Division Does Not Have to Conduct a Follow-Up Investigation to Determine the Safety Posture of the Motor Carrier

The FMCSA discourages the practice of conducting follow-up investigations as a means to upgrade a motor carrier's safety rating. If a motor carrier requests that its proposed or unsatisfactory safety rating be upgraded, it should submit a written request, in accordance with Section 385.17. The request will be reviewed by the Field Administrator (FA) or designee, and a determination will be made as to whether the corrective action taken warrants an upgrade. If the FA or designee believes further information is necessary, he or she should consult with the DA, or designee to determine whether a follow-up investigation should be performed.

A FA should request from the DA any additional relevant information and opinion before making a decision under the FA's authority, outlined in 49 CFR Part 385.17. This review will frequently preclude the need for a follow-up investigation, and will allow a FA to make a timely and informed decision under its authority, outlined in 49 CFR Part 385.17. A review of the motor carrier may be necessary to verify that the motor carrier took and maintained corrective action. This review need not rise to the level of an investigation.

Upgrade Request Procedures Specific to Passenger Carrier Operations

Supplemental guidance for the handling of upgrade requests for passenger carriers was provided in two policy memos dated June 26, 2013 (MC-ECE-2013-0005) and March 6, 2014 (MC-ECE-2014-0004). MC-ECE-2013-0005 added the following additional procedures to be included in the upgrade request process of any proposed or final unsatisfactory rating of a passenger carrier. MC-ECE-2014-0004 modified one component of the additional procedures required by MC-ECE-2013-0005 and is explained within the following procedures.

- Consideration should be given to limiting the scope of a carrier's operation to ensure safety and compliance before the carrier resumes full operations. The limitations may include, but are not limited to operation type; routes, equipment and drivers; and allowing intrastate operations only.
- Prior to approving an upgrade in response to a §385.17 petition, the Division Office must conduct a Pre-operational Assessment to verify that the passenger motor carrier implemented the corrective actions outlined in its safety management plan. The Pre-operational Assessment Worksheet and additional details about the process may be found in the policy MC-ECE-2014-0004. The worksheet should be used as a guide for documenting in Investigation Report/Part C of the non-ratable review done as a follow-up in the §385.17 process as described in MC-ECE-2013-0005. For carriers that are currently inactive, the Division Office must reactivate the carrier to the status they held prior to their inactivation before uploading the non-ratable review.
- When the basis for the OOS order is related to vehicle maintenance and/or vehicle condition, vehicle inspections should be conducted as a condition to upgrade.

- An additional investigation should be conducted within 60 days after the safety rating is upgraded and operating authority is restored to verify the carrier's implementation of its safety management plan and corrective actions. This time period may be extended by the FA if additional time is needed to gather operational data. (The purpose of this non-ratable review to be conducted using the investigation software for upload is to verify that the motor carrier has actually implemented the changes necessary for compliance.)

Passenger carriers that have had their Operating Authority revoked due to having received a final unsatisfactory rating will not be allowed to reinstate their authority. They must apply for new authority and, if such authority is granted they will be given a new MC number.

See MC-ECE-2013-0005 and MC-ECE-2014-0004 for additional information.

Procedures that can be followed if a Motor Carrier's Accident Rate was a Primary Determinant of the Safety Rating

During an investigation, a SI determines a motor carrier's recordable accident rate. However, 49 CFR Part 385, Appendix B, states that FMCSA " . . . will continue to consider preventability when a motor carrier contests a rating by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor." The DA or designee may review the preventability of all accidents listed in Factor 6 on the investigation before uploading. If the DA or designee determines that the accident was non-preventable, the accident may be removed from the investigation before uploading.

During an investigation, if the motor carrier makes it known to the SI that some of the accidents included in its overall accident rate were not preventable, the SI should tell the motor carrier to contact the DA or designee. The motor carrier will have seven calendar days to provide the necessary documentation to the DA or designee for review. Documentation must be limited to official police accident reports and official insurance accident investigation reports. If the motor carrier indicates that it will be challenging accidents as not preventable, the SI must not upload the investigation until close of business on the 7th day. If the investigation is completed and ready for upload before the motor carrier provides the necessary documentation or indicates that it may challenge some accidents on its investigation, the SI may upload the investigation. If during this review the DA or designee determines that any accident was not preventable, the SI must remove the accident from the calculation of the motor carrier's accident rate. If an accident is removed and the proposed rating changes as a result, the DA or designee will generate a new investigation report and send it by certified mail to the motor carrier. If the DA or designee is unable to determine whether the accident was preventable, or if in the DA's or designee's judgment the accident was preventable, the accident rate will remain unchanged on the investigation.

In making a determination whether an accident was preventable, the DA or designee should be mindful that the motor carrier must present "compelling evidence" on the issue of preventability. Police and insurance company accident reports often fall short of this standard. These reports may fail to indicate when the driver became aware of a dangerous roadway situation or how much time the driver had to react to the situation by taking effective evasive action. If there is any uncertainty in a report, as to whether the driver could have avoided the accident, the DA or designee must consider an accident as preventable. The DA or designee must remember that who "caused" the accident and whether the driver could have avoided the accident are separate issues.

The AA May Consider an Accident as Non-Preventable Under the Following Circumstances

In determining whether an accident is preventable, the AA may consider whether another vehicle ran a red light and crashed into a CMV, whether the CMV was rear-ended by another vehicle, or whether the CMV was stopped in traffic or legally parked and was struck by another vehicle.

When the accident rate on an investigation report is changed as a result of the DA's or designee's determination that an accident was non-preventable, the SI will correct the rate and ensure that the investigation report is sent via certified mail to the motor carrier. In the comments Section of Investigation Report/Part C of the investigation report, the SI must make a note explaining the facts concerning the change in the accident rate.

The DA or designee must review any accident in question before the SI uploads the investigation. The DA or designee may not change the accident rate once the investigation has been uploaded. After an investigation has been uploaded, the motor carrier may request an administrative review consistent with 49 CFR Part 385.15.

Find the Agency's Decisions Regarding 49 CFR Part 385.15 Motor Carrier Appeals Here

The Agency's decisions regarding 49 CFR Part 385.15 motor carrier appeals are available on FMCSA's website athttp://www.fmcsa.dot.gov/about/offices/cc/adjudications/adjudications.aspx.

If a Motor Carrier Disagrees with How a Review Was Conducted, and the Subsequent Proposed Safety Rating, it can Appeal the Safety Rating

A motor carrier may appeal a proposed safety rating per 49 CFR Part 385.11(c) or a final safety rating per 49 CFR 385.11(b) in a petition filed under 49 CFR Part 385.15, if it believes that the rating was issued in error and factual and procedural issues are in dispute. The carrier should appeal as soon as possible. For proposed unsatisfactory ratings, the motor carrier should appeal within 15 days of the issuance of the proposed safety rating to allow FMCSA to issue a final decision before the OOS prohibitions take effect. All appeals must be made within 90 days from the date of issuance.

If a motor carrier is appealing the denial of a request for a change in a rating under 49 CFR Part 385.17, it must file the appeal within 90 days of the date of the denial stating why the decision was in error. Petitions fewer than 49 CFR Part 385.15 must be filed with the FMCSA AA. A member of the AA's staff (or an attorney from the Chief Counsel's Office) may contact the DA or designee and appropriate SC Enforcement Program Manager advising them of the appeal and requesting the immediate forwarding of all documentation used to assign the motor carrier its proposed rating. This documentation includes, but is not limited to, a complete copy of the investigation report, legible copies of evidence, investigator notes, a motor carrier profile, and SMS information.

Ex parte communication between the AA's counsel and the DA or designee and/or SCET regarding the appeal is prohibited except to request the documentation supporting the rating.

Under 49 CFR Part 385.15, FMCSA must issue a final decision based solely upon the information submitted by the motor carrier and the DA or designee. FMCSA may ask the parties to appear before the AA for a conference to discuss the safety rating and documents submitted. If the motor carrier fails to attend the conference, FMCSA may dismiss the petition.

Issuing a Decision Regarding 49 CFR Part 385.15 Petition Requests

FMCSA must issue a decision within 30 days of receipt of a petition for review from a HM or passenger motor carrier and within 45 days of receipt of a petition from a non-HM or non-passenger motor carrier. The decision must be in writing and must outline the basis for the grant or

denial of relief. The motor carrier may appeal FMCSA's final decision, within 60 days after its entry, to the court of appeals where venue lies (28 U.S.C. 2344).

The Following Must Occur When a Safety Rating is Appealed under 49 CFR Part 385.15

Initially, a member of the AA's staff (or an attorney from the Chief Counsel's Office) will contact the DA or designee advising him or her of the appeal. The DA or designee will forward the Chief Counsel's Office, Washington, DC all documentation used to assign the motor carrier its proposed rating (including, but not limited to, a complete copy of the investigation report, legible copies of evidence, investigator notes, a motor carrier profile, SMS information, and any other information pertinent to the case).

The DA or designee or its counsel may submit a detailed explanation of the process used to assign the proposed rating and may make legal arguments for the assignment of such a rating. These arguments may address the points of contention made by the appealing motor carrier in its petition. If such arguments are made, the motor carrier must receive a copy of the reply and an opportunity to respond to the Agency's argument. After consultation with counsel, the DA or designee is responsible for serving this document on the motor carrier. Any attempt to make such arguments to the AA by bypassing the motor carrier is an improper ex parte communication which can result in granting the motor carrier's petition.

A Safety Rating Can be Upgraded Based on Corrective Actions Taken by the Motor Carrier

A motor carrier that has taken action to correct the deficiencies that resulted in a proposed or final rating of "conditional" or "unsatisfactory" may request an upgrade to its safety fitness determination at any time. It is the responsibility of FMCSA to thoroughly review the request and determine whether to grant, deny, or extend the time for determination within the timeframes set forth in 49 CFR Section 385.17. However, a request made after an unsatisfactory rating becomes final does not suspend the prohibition on operating in commerce. By regulation, a request must be made in writing to the FA for the FMCSA SC in which the motor carrier maintains its PPOB. That written document must describe the corrective action undertaken and must include other documentation that may be relied upon as a basis for the requested change to the proposed or final rating. The FA will make a final determination based upon the documentation submitted and may consider any additional investigation deemed necessary.

The FA should not take steps to upgrade a safety rating based on corrective action if a thorough review, the safety rating upgrade request, and the Safety Management Plan do not support it.

Procedures for Upgrading a Carrier with a Conditional Safety Rating

Section 385.17 sets specific time limits to upgrade unsatisfactory rated carriers; however, there is no similar schedule to upgrade conditional rated carriers.

Conditional rated motor carriers are not placed OOS, and therefore, FMCSA will allow sufficient time (e.g., 90 days, 120 days) to monitor the corrective action a motor carrier claims to have taken. FMCSA recommends the DA allow a minimum of 90 days to thoroughly review and monitor the safety rating upgrade request and Safety Management Plan of conditional rated motor carriers with critical hours of service (HOS), driver qualification (DQ), or vehicle maintenance violations, and/or crash data. For example, the DA may require the motor carrier to submit two months of logs for numerous drivers; verify the motor carrier's procedures for ensuring the accuracy of drivers' records of duty status (RODS); compare the supporting documents with the RODS; evaluate the carrier's system for monitoring and controlling HOS and verifying the accuracy of RODS.

General Procedures for Upgrading a Safety Rating Based on Corrective Action

The general procedures for upgrading a safety rating based on corrective action follows.

1. If an investigation of a motor carrier results in a proposed "conditional" or "unsatisfactory" safety rating, the SI must provide the motor carrier with a copy of the *How to Request an Upgrade of Your Safety Rating Determination Based on Corrective Action* document. Motor carriers should be informed that FMCSA will no longer accept requests for follow-up investigations in order to obtain an upgraded safety rating. All requests for safety rating upgrades must be requested in writing and based on Section 385.17.
2. A motor carrier will have the option to request an upgrade to a proposed or final safety rating based upon corrective action taken. These requests must be made in writing and may be made at any time. The request must describe the corrective action taken and include documentation of the corrective action in support of the requested change to the proposed or final safety rating. However, a request made after an unsatisfactory rating becomes final does not suspend the prohibition of operating in interstate and intrastate commerce.
3. The FA will review the request. If the FA requests the DA to evaluate the facts presented by the motor carrier and analyze the current safety performance of the motor carrier, the DA must (click here for guidance on reviewing requests for safety rating upgrades):
    a. Review the documentation supporting the motor carrier's corrective action within 15 days; and
    b. Submit an evaluation and analysis of the facts presented by the motor carrier and the current safety performance data of the motor carrier to the FA (see sample memoranda reviewing and extending a safety rating upgrade request).
4. The Division Office may consider performance indicators from internal sources, such as Safer, MCMIS, A&I, SMS, Query Central (QC), etc., to supplement the motor carrier's submission when developing their opinion. Caution should be used when recommending upgrades on motor carriers with OOS rates exceeding national averages.
    a. The FA will then make one of three decisions. The FA may:
    b. Grant the request in whole or part, and provide written notification to the motor carrier (see sample letter granting request);
    c. Deny the request and notify the motor carrier in writing of this decision (see sample letter denying request); or
    d. Extend the time in order to make a final determination [see 7/18/12 memo: *Revised Guidance on Changes to Safety Ratings Based upon Corrective Actions (Section 385.17)*].

The FA must perform his or her review of safety rating upgrades for motor carriers with a proposed or final "unsatisfactory" safety rating within 30 days of a motor carrier's request for motor carriers transporting passengers in a CMV or placardable quantities of hazardous materials, or within 45 days of a motor carrier's request for all other motor carriers. The FA may only grant a 10-day extension to the period before the proposed safety rating becomes final, if the FA determines the motor carrier is making a good faith effort (e.g., hiring a Safety Director, employing technology, reorganizing its operation, establishing monitoring programs for HOS, vehicle maintenance) to improve its safety status and requests, and receives approval from the AA Field Operations.

A final determination will be made based upon the documentation submitted, and may be based upon any additional investigation deemed necessary.

If the motor carrier's safety rating is upgraded from "unsatisfactory" to any other rating, the designation of "UNFIT" will be removed from MCMIS and the Agency will continue to monitor the motor carrier's operational safety performance.

If a motor carrier is denied an upgrade by the FA under Section 385.17, it may appeal that decision under Section 385.15 to the Chief Safety Officer (CSO) within 90 days of the denial of the request. If the designation became final, it will remain in effect during the period of administrative review unless stayed by the reviewing official.

- The FA will make all extension or upgrade designations in the MCMIS system and scan all related paperwork into the motor carrier's file in EDMS. An email of the final disposition should be transmitted back to the Division so PRISM and State MCSAP notification can be made in case of an "UNFIT" designation.
- The FA must follow the procedures outlined in Section 385.17 with regard to timeframes, notifications, and extensions.

The FA Must Complete the Reviews of Petitions Received Under 49 CFR Part 385.17 within this Time

The FA must complete a review of a HM or passenger motor carrier's request to change an unsatisfactory rating within 30 days after receipt of the request. The FA must complete a review of a request from an unsatisfactory rated non-HM or non-passenger motor carrier within 45 days after receipt of the request.

Procedures to Follow if FA is Unable to Review and Make a Final Decision within the required 30-Day Timeframe

If the request is made by a HM or passenger motor carrier within the 45-day grace period before a proposed Unsatisfactory rating becomes final and the FA determines that the motor carrier is making a good faith effort to correct the violations cited during the investigation that resulted in a proposed unsatisfactory rating and requests and receives approval from the AA for Field Operations, an FA may extend the 45 or 60-day period before the rating becomes final for up to 10 days. If the FA decides to extend the 45-day proposed rating period, he/she must inform the motor carrier and modify the effective date in MCMIS.

To expedite the process of reviewing the requests for upgrade, the motor carrier should be advised to address the request to the FA of the supporting SC and mail a complete copy to the DA or designee of the Division of domicile. At closeout, the motor carrier also should be provided with the procedures for making a 49 CFR Part 385.17 request. Once the DA or designee reviews the motor carrier's corrective actions and documentation, he/she makes a recommendation for denial or approval of upgrade to the FA.

In response to a 49 CFR Part 385.17 request, the FA may deny the request and notify the motor carrier in writing of this decision or grant the request, in whole or part, provide written notification to the motor carrier, and change the rating in MCMIS.

If the FA denies relief to a motor carrier under 49 CFR Part 385.17, the motor carrier may appeal that decision under 49 CFR Part 385.15 to the AA within 90 days of the denial of the request. If the proposed safety rating became final, the final rating will remain in effect during the period of administrative review unless stayed by the reviewing official.

[3] If the rating upgrade request is denied, the rating date that will appear for public display is the date when the Focused Investigation rating was given (Date 2) plus 45 or 60 days depending on type of motor carrier.

6.2.1.12 Follow-Up Monitoring of Carriers that Operate While OOS and/or Without/Beyond the Scope of Their Operating Authority

Procedures for identifying and initiating enforcement against carriers that operate while OOS and/or without/beyond the scope of their operating authority

The DA, or designee, has the responsibility for identifying and initiating enforcement against motor carriers that operate while OOS and/or without/beyond the scope of their operating authority.

The most common reasons that motor carriers are issued OOS orders are listed below:

OOS orders that apply to *interstate and intrastate* commerce:

- Being declared an imminent hazard (49 U.S.C. 5102(5); 49 CFR 386.72(b));
- Receiving a final unsatisfactory safety rating (49 U.S.C. 31144(c); 49 CFR 385.13(d));

OOS orders that apply to *interstate* commerce:

- Failing to pay civil penalties (49 U.S.C. 521(b)(8); 49 U.S.C. 13905(d); 49 CFR 386.83-84));
- Failing a new entrant safety audit (49 CFR 385.325);
- Failing to submit to a new entrant safety audit (49 CFR 385.337); and
- Failing to respond to a new entrant expedited action notification (49 CFR 385.308).

Operating authority is required for those carriers operating as for-hire, in *interstate commerce.*

Enforcing OOS and Operating Authority Violations Based on Available Data

Each month, the DA must review the "Carriers under Registration/OOS Sanctions with Interstate Activity" report provided by MC-F and the MCMIS report titled, "Activity in MCMIS of Companies Lacking Operating Authority in L&I" (located in the "Other" tab of the "Reports" subsection for his or her State. These reports identify those motor carriers that had inspections or a crash while being OOS or without operating authority.

The DA should initiate an enforcement case if there is sufficient evidence to document that the motor carrier operated or is operating while OOS. *Riojas* affected violations may not be enforced using an NOC. If a Division determines that an enforcement action on Riojas affected violation(s) is the best means to induce compliance, an Enforcement Analysis must be conducted following the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," MC-ECE-2020-0001 to determine what type of enforcement should be pursued. FMCSA will propose and settle civil penalties for Riojas affected violations using the procedures in that policy.

If the evidence meets the criteria below, the DA does not need to initiate an investigation in order to take enforcement. If the elements below cannot be proven, the DA may attempt to gather additional evidence from the carrier or use other enforcement tools (e.g., Notice of Violation, Order to Show Cause).

a. The evidence must demonstrate that:
   - The motor carrier was OOS at the time of the activity;
   - The motor carrier operated a commercial motor vehicle in commerce at the time of the activity the type of commerce, inter- or intrastate is based on the violation as described above;
   - The motor carrier performed transportation in a "for hire" capacity (for operating authority enforcement);
   - The motor carrier performed non-exempt transportation (i.e., the commodity was not among those listed in 49 U.S.C. 13506(a)(6) or 49 CFR 372.115, and the transportation was not otherwise exempt under 49 U.S.C. 135 (for operating authority enforcement); and
b. Sources of such evidence can include:
   - The Driver Vehicle Examination Report, completed with all relevant information;
   - Police Accident Report with Attachments (Supplemental Commercial Motor Vehicle Accident Report, Hazardous Materials Incident and Spill Report, and/or Post-Crash Investigation Report); and
   - Motor carrier statements

In addition, the DA should consult with the appropriate Service Center Enforcement Team (SCET) and consider seeking a U.S. District Court injunction against a motor carrier that operates while being OOS due to an imminent hazard or an unsatisfactory safety rating. After the DA and Service Center decides to seek an injunction, the Office of Chief Counsel should be contacted so the requisite approval from the Office of the Secretary and the Department of Justice can be obtained.

Enforcing Operating Authority Violations Based on Operating Authority Report

Each month, the DA should review the MCMIS report titled, "Activity in MCMIS of Companies Lacking Operating Authority in L&I" (located in the "Other" tab of the "Reports" subsection) for its State.

Each DA should initiate an enforcement case for operating without authority. Further investigation is not required if there is sufficient evidence to document the violation.

a. The evidence must demonstrate that:
   - The motor carrier performed transportation in a "for hire" capacity;
   - The motor carrier performed non-exempt transportation (i.e., the commodity was not among those listed in 49 USC § 13506(a)(6) or 49 CFR § 372.115, and the transportation was not otherwise exempt under 49 USC Chapter 135;
   - The transportation was in interstate commerce.
b. Sources of such evidence can include:
   - The Driver Vehicle Examination Report; and/or
   - Police Accident Report with Attachments (Supplemental Commercial Motor Vehicle Accident Report, Hazardous Materials Incident and Spill Report, and/or Post-Crash Investigation Report); and
   - Motor carrier statements.

The table below summarizes the guidance above.

Reasons Carrier is prohibited from Interstate and/or Intrastate Operations and Actions to Take

Reason	Action
• Being declared an imminent hazard • Receiving a final unsatisfactory safety rating • Failing to pay civil penalties • Failing a NE SA; or failing to submit to a NE SA	• NOC will be issued • Evidence may include the FMCSA document prohibiting interstate operations and a copy or facsimile of the inspection or crash report indicating interstate activity
Operating authority revoked by the L&I division for reason not related to one of the OOS Order types above; for example: based upon lack of insurance filing	• NOC will be issued as resources permit; • The evidence must demonstrate that: the motor carrier performed transportation in a "for hire" capacity; the motor carrier transported a non-exempt commodity [i.e., the commodity was not among those listed in 49 U.S.C. § 13506(a)(6) or 49 CFR 387.301(b), and the transportation was not otherwise exempt under 49 U.S.C. Chapter 135]; and (3) that the transportation was in interstate commerce. Sources of such evidence can include the FMCSA Revocation Decision and confirmation of interstate activity such as the Driver Vehicle Examination Report and/or the Police Accident Report with attachments (Supplemental Commercial Vehicle Motor Vehicle Accident Report, Hazardous Materials Incident and Spill Report, and/or Post-Crash Investigation Report).

PRISM

The DA should coordinate with their State vehicle registration department in States participating in **the *Performance and Registration Information Systems Management (PRISM) Program*** to invoke International Registration Plan (IRP) license plate or other PRISM sanctions. Full PRISM States have the authority to deny or suspend vehicle registrations and take actions against motor carriers that are under a Federal OOS Order. This also includes denying vehicle registration to reincarnated or suspected reincarnated motor carriers. Additionally, some PRISM States that are not fully implemented pull plates and impound vehicles.

a. In cases where the motor carrier was issued an OOS Order for being an imminent hazard or rated unsatisfactory, DAs are encouraged to:
   - Request that the State vehicle registration department impound the vehicle(s), pull plates, deny or suspend registration; or
   - Request that the State vehicle registration department send a letter to the motor carrier demanding expedited return of the license plates.

b. For those DAs that are in non-PRISM States or PRISM States that do not impound vehicle(s), pull plates, deny or suspend registration, etc., he or she is encouraged to seek license plate sanctions also. This can be done by working with the State's vehicle registration department and asking them to suspend the registration of the motor carrier. DAs should be prepared to provide the department with all required documentation (e.g., inspection reports, OOS Orders)

Click here for an example of the letter that is sent to the motor carrier by State vehicle registration departments in PRISM States. DAs should encourage those non-PRISM States to use the same letter.

The table below sets forth general PRISM guidance on IRP license plate sanctions, based on the reason the carrier is prohibited from interstate operations.

General PRISM Guidance on IRP License Plate Sanctions

OOS Reason	Plate Registration System Set Up to Deny Plate Renewal or Account Activity?	Issue Suspension Notice?	Physically Retrieve Plates?
Final Unsatisfactory (UNSAT) Rating	Yes	Yes	When/if discovered operating at the roadside, or when OOS Order/State suspension is hand delivered
Failure to Pay Civil Penalties	Yes	When evidence exists that carrier is operating in violation of the order	When/if discovered operating at the roadside, or when OOS Order/State suspension is hand delivered
Failing A NE Audit	Yes	Yes	When/if discovered operating at the roadside, or when OOS Order/State suspension is hand delivered
Failing to Submit to a NE Audit	Yes	When evidence exists that carrier is operating in violation of the order	When/if discovered operating at the roadside, or when OOS Order/State suspension is hand delivered
Imminent Hazard	Yes	Yes	When/if discovered operating at the roadside, or when OOS Order/State suspension is hand delivered

6.2.1.13 Special Topic: VUU Table Protocol

We have designated certain fields to be required whenever a violation is entered into the VUU Table. Though other data may be captured in other fields, these required fields must always be completed. These required fields have been identified because they each play an important role in at least one of our proprietary software applications. These fields and their requirements are:

1. Primary Violation
2. Short Description of the Violation
3. Long Description of the Violation
4. Abatement Clause
5. Effective Date*
6. Rescind Date*
7. VCAT for All Safety and HM Violations (list of acronyms attached)**

*If you do not have either the effective date or the rescind date, use these default dates:

Effective date = 01/01/1901

Rescind date = 12/31/2999

VCAT for HHG and commercial violations are programmed somewhat differently. For all commercial violations (non-HHG), the VCAT is CR; for HHG violations, the VCAT is CRF. A listing of new VCAT designations is included with the attached list. These will be used for all new violations in these categories which are entered in the future. **Do not attempt to go back and enter these VCAT designations into existing violation fields that are currently in VUU which may not already have these entries.

Note: In addition to the primary violation, if there is an appropriate secondary violation, it should also be captured in VUU.

Due to VKEY issues, never delete a violation. Should you find that an error was made and the violation has already been entered and accepted into VUU, rescind the violation by entering the current date in the rescind field. Then enter a new violation with the correct data showing an effective date for the following day and a rescind date for the new violation of 12/31/2999.

In addition to these required fields, it is highly encouraged that the Guidance/Example field also be completed for each new violation entry. This field captures the information which is displayed in Case Rite and gives general instructions to the SI regarding basic evidentiary requirements for this specific violation.

Meanings for the Violation Categories

Category	Meaning
GARB	Arbitration HHG - HHG
GHTN	110% Rule - HHG
GLAD	Loss and Damages - HHG
GNRO	Other Non-Recordkeeping
GRKA	Recordkeeping - HHG
GSDL	Service Delay - HHG
GTFR	Tariff - HHG
GWHT	Weight - HHG
GUTR	Unauthorized Transportation - HHG
GOLD	Hostage Load - HHG
GBCA	Brokering HHG w/o Carrier Agreement - HHG
HMAO	Other - HM
HMRK	Recordkeeping - HM
HMRS	Roadside Inspection - HM
HMTR	Training - HM
NRFA	Financial Responsibility Medium - FMCSR
NRFB	Financial Responsibility Low - FMCSR
NRKA	Non-Recordkeeping High - FMCSR
NRKB	Non-Recordkeeping Medium - FMCSR
NRKC	Commercial Driver's License - FMCSR
NRKO	Non-Recordkeeping Low - FMCSR
RKCL	Recordkeeping - FMCSR
RKDL	Recordkeeping (Deliberate) - FMCSR
O392	392.5(c)(2) OOS - Notices/Orders
OCDL	OOS CDL - Notices/Orders
OIMM	Imminent Hazard OOS Order - Notices/Orders
ONCD	OOS Non-CDL- Notices/Orders
ONEF	OOS New Entrant Failure - Notices/Orders
ONEN	OOS New Entrant No Show/Refusal - Notices/Orders
ONOP	OOS No Pay - Notices/Orders
OUHM	OOS Unfit HM - Notices/Orders
OUNF	OOS Unfit (Property/Passenger) - Notices/Orders
EDRK	Recordkeeping - Employee
EFTC	False to Conceal - Employee
ENRA	Non-Recordkeeping - Employee
E383	CDL Part 383 - Employee
EONC	OOS Other than OOS CDL (1) & (2) - Employee (was OOS Non-CDL)
EOCA	OOS CDL (1) - Employee
EOCB	OOS CDL (2) - Employee
EDOA	Denial of Access - Employee
EHMI	HM Violation - Employee (was HM Incident)
EHTR	HM Training - Employee
NRCC	Operating Authority - Safety (Commercial Non-HHG)

Meanings for UFA Violation Categories that Can Be Entered in VUU's VCAT Field

Category	Meaning
HMAO	Other - HM
HMRK	Recordkeeping - HM
HMRS	Roadside Inspection - HM
HMTR	Training - HM
NRFA	Financial Responsibility Medium - FMCSR
NRFB	Financial Responsibility Low - FMCSR
NRKA	Non-Recordkeeping High - FMCSR
NRKB	Non-Recordkeeping Medium - FMCSR
NRKC	Commercial Driver's License - FMCSR
NRKO	Non-Recordkeeping Low - FMCSR
RKCL	Recordkeeping - FMCSR
RKDL	Recordkeeping (Deliberate) - FMCSR
O392	392.5(c)(2) OOS - Notices/Orders
OCDL	OOS CDL - Notices/Orders
OIMM	Imminent Hazard OOS Order - Notices/Orders
ONCD	OOS Non-CDL - Notices/Orders

ONEF	OOS New Entrant Failure - Notices/Orders
ONEN	OOS New Entrant No Show/Refusal - Notices/Orders
ONOP	OOS No Pay - Notices/Orders
OUHM	OOS Unfit HM - Notices/Orders
OUNF	OOS Unfit (Property/Passenger) - Notices/Orders
NRCC	Operating Authority - Safety (Commercial Non-HHG)

6.2.1.14 Special Topic: Initiating a Public Interest Exclusion (PIE) Proceeding

At the request of the DA or designee to the FMCSA DAPM, a Drug and Alcohol Technical Advisory Group (TAG) member may be assigned to assist in or conduct the investigation. Service agent reviews frequently result from complaints filed with the Agency.

The Division Office should conduct an investigation and document serious service agent violations. Following Agency procedures for handling safety complaints, close complaints with service agent review, if investigation is undertaken.

If during the investigation violations are discovered identifying serious noncompliance by a service agent, the following procedures for a PIE, in accordance with Part 40 Subpart R, will apply:

- The investigator should document serious service agent Part 40 violations.
- Based upon Service Center policy, the Division Office or Service Center should issue a Notice of Corrective Action (NOCA) to the service agent.
    - If the service agent takes adequate corrective action within 60 days, PIE procedures will cease.
    - If the service agent does not take adequate corrective action within 60 days, the Service Center recommends initiation of PIE procedures and forwards all documentation and a narrative description of the investigation and the violations discovered to the DAPM in the FMCSA Office of Enforcement and Compliance.
- Once the DAPM receives and reviews the NOCA package, s/he may begin Notice of Proposed Exclusion (NOPE) proceedings.
- The DAPM will send a copy of the NOPE and PIE recommendation to the Office of Drug and Alcohol Policy and Compliance (ODAPC) in the Office of the Secretary and originating Service Center.
- The ODAPC Director (or his designee) will determine if the problems are corrected and the PIE is issued. ODAPC also determines parties included and the PIE's duration.
- Divisions may be asked to assist in the investigation of a service agent's compliance with the PIE issued by ODAPC. The PIE prohibits the service agent from participating in U.S. DOT drug and alcohol testing in accordance with the terms and duration of the PIE.

6.2.1.15 Illustrations

6.2.1.15.1 Illustration 1: Denial of Request for A Safety Rating Pursuant to 49 CFR § 385.17

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
XXXXXXX SERVICE CENTER
Street, Suite
City, State Zip Code
(XXX) XXX-XXXX Tel
(XXX) XXX-XXXX Fax
Reply to:
MC-EF?-SV

DATE

MOTOR CARRIER'S NAME

AND ADDRESS

Re: Denial of Request for A Safety Rating Change Pursuant to 49 CFR § 385.17

Dear :

This is in response to your request of [DATE] to upgrade the safety rating of [MOTOR CARRIER'S NAME].

I have considered your request and determined that the safety rating should not be upgraded for the following reasons.

[STATE HERE WHY REQUEST WAS DENIED AND WHAT ADDITIONAL INFORMATION/DOCUMENTS WOULD BE NEEDED FOR RECONSIDERATION]

You may petition, within 90 days of this denial, for an administrative review pursuant to 49 CFR § 385.15 (see 49 CFR § 385.17(j)). If you choose to do so, your petition must be submitted in writing to the CSO, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Room W60-304, Washington, DC 20590. A copy of 49 CFR §§ 385.15 and 385.17 is enclosed.

If you have any questions, please contact Enforcement [TITLE] [NAME] at [TELEPHONE NUMBER].

Sincerely,

[NAME]

Field Administrator

Enclosures

cc: Division Administrator [NAME]

6.2.1.15.2 Illustration 2: Grant of Request for A Safety Rating Change Pursuant to 49 CFR § 385.17

U.S. DEPARTMENT OF TRANSPORTATION

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
XXXXXXX SERVICE CENTER
Street, Suite
City, State Zip Code
(XXX) XXX-XXXX Tel
(XXX) XXX-XXXX Fax

Reply to:
MC-EF?-SV

DATE
CARRIER'S NAME
AND ADDRESS

Re: Grant of Request for A Safety Rating Change Pursuant to 49 CFR § 385.17

Dear:

This will respond to your request of [DATE] to upgrade the safety rating of [CARRIER'S NAME] based on corrective actions taken by the carrier.

I have reviewed your request and determined that the safety rating be changed to [NEW RATING]. By facsimile transmission of this letter to the IT Operations Division, FMCSA is requesting that it immediately upgrade [CARRIER'S NAME] safety rating to [RATING].

If you have any questions, please contact Enforcement [TITLE] [NAME] at [TELEPHONE NUMBER].

Sincerely,
[NAME]
Field Administrator

cc: IT Operations Division
[NAME]

6.2.1.15.3 Illustration 3: Request for A Safety Rating Change Pursuant to 49 CFR § 385.17

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
XXXXXXX SERVICE CENTER
Street, Suite
City, State Zip Code
(XXX) XXX-XXXX Tel
(XXX) XXX-XXXX Fax

Reply to:
MC-EF?-SV

DATE
CARRIER'S NAME
AND ADDRESS

Re: Request for A Safety Rating Change Pursuant to 49 CFR § 385.17

Dear:

This will acknowledge receipt of your correspondence, dated [DATE], requesting that the proposed safety rating of Unsatisfactory for [CARRIER'S NAME] be upgraded based on corrective actions taken by the carrier.

FMCSA has reviewed the information provided and, in consultation with Division Administrator [NAME], concludes that [CARRIER'S NAME] has exhibited "a good faith effort to improve its safety status." However, there is insufficient information at this time to grant the request of an upgrade in the safety rating. Therefore, FMCSA is allowing [CARRIER'S NAME] to continue to operate in interstate commerce under a proposed Unsatisfactory rating for an additional [NUMBER but no more than 60] days. This extends the effective date of the proposed unsatisfactory rating to [DATE]. Prior to this date, FMCSA will conduct a follow-up compliance review and make a final determination on the request for a safety rating change. You will be notified in writing of that determination.

If you have any questions, please contact Enforcement [TITLE] [NAME] at [TELEPHONE NUMBER].

Sincerely,
[NAME]
Field Administrator

cc: IT Operations Division
Division Administrator [NAME]

6.2.1.15.4 Illustration 4: Motor Carrier Request for Rating Change Based On Corrective Action (49 CFR Part 385.17)

Motor Carrier Request for Rating Change Based On Corrective Action (49 CFR Part 385.17)

The Federal Motor Carrier Safety Administration (FMCSA),<ENTER THE SERVICE CENTER NAME>, has adopted the following procedures when a motor carrier submits a written request for a change in its safety rating as defined in 49 CFR Part 385.17. The regulations require that the motor carrier submit its request to the Field Administrator of the Federal Motor Carrier Safety Administration Service Center in which the motor carrier maintains its principal place of business. The motor carrier's request must include a written description of corrective actions taken, documentation of these corrective actions, and show that its operations meet the safety standards and factors specified in 49 CFR Part 385.9.

FMCSA<ENTER THE SERVICE CENTER NAME> will require a description of corrective action taken; *here in after referred to as the Motor Carrier's Safety Management Plan (SMP).* ***Two copies*** *of the SMP will be prepared. The SMPs* will be addressed to the Field Administrator but submitted to the Division Administrator for review: **<FA Name>, Field Administrator, Federal Motor Carrier Safety Administration, <ENTER SC ADDRESS>, and <DA Name>, Division Administrator, Federal Motor Carrier Safety Administration, <ENTER DIVISION ADDRESS>,** and must clearly indicate that it is a request for change in rating under 49 CFR Part 385.17. The SMP must include but it is not limited to the following.

1. The SMP will address each violation on the most recent Onsite Investigation that was an ***Acute and/or Critical violation*** and ***Factor Six of the investigation when the rating for Factor Six is Unsatisfactory.***
2. The SMP must identify why the violation(s) cited as acute and/or critical were permitted to occur.
3. The SMP must discuss the actions taken to correct the deficiency or deficiencies that allowed the Acute and /or Critical violation(s) to occur. ***Documentation of this corrective action must be submitted with this request. For example, documentation may include items such as new policies and procedures, training programs and sign-in list, or copies of missing drug/alcohol tests. NOTE: When a carrier is cited for a Critical violation of 49 CFR Part 395, documentation showing hours of service checks and false log checks and the results should be included in the request for the most recent 90-day period.***
4. Actions taken to ensure these Acute and/or Critical violations do not reoccur in the future.
5. If Factor Six (Crashes) is rated Unsatisfactory, an accident countermeasure program must be included as part of its SMP. The Plan must include but is not limited to defensive driving training and an accident countermeasure program.
6. If the SMP includes actions that will be conducted in the near future, such as training, reorganization of departments, purchasing of computer programs, and etc., a schedule of when that activity will commence and when it will be completed must be included.
7. Any additional documentation that relates to motor carrier safety and the prevention of crashes and hazardous materials incidents.
8. The SMP **must** include a written statement certifying that it will operate in compliance with the Federal Motor Carrier Safety Regulations, the Hazardous Material Regulations, and its SMP and the motor carrier's operation currently meets the safety standard and factors specified in 49 CFR 385.5 (*revised 11-06-97).* The statement must be signed by a corporate officer and, in the case of proprietorship, by ***all*** proprietors.

Part 385 - Safety Fitness Procedures

§ 385.13 Unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts.

(a) Generally, a motor carrier rated "unsatisfactory" is prohibited from operating a CMV. Information on motor carriers, including their most current safety rating, is available from FMCSA on the Internet at http://www.safersys.org, or by telephone at (800) 832-5660.

a(1). Motor carriers transporting hazardous materials in quantities requiring placarding, and motor carriers transporting passengers in a CMV, are prohibited from operating a CMV beginning on the 46th day after the date of the FMCSA's notice of proposed "unsatisfactory" rating.

a(2). All other motor carriers rated from reviews completed on or after November 20, 2000 are prohibited from operating a CMV beginning on the 61st day after the date of the FMCSA notice of proposed "unsatisfactory" rating. If FMCSA determines the motor carrier is making a good faith effort to improve its safety fitness, FMCSA may allow the motor carrier to operate for up to 60 additional days.

(b) A Federal agency must not use a motor carrier that holds an "unsatisfactory" rating to transport passengers in a CMV or to transport hazardous materials in quantities requiring placarding.

(c) A Federal agency must not use a motor carrier for other CMV transportation if that carrier holds an "unsatisfactory" rating which became effective on or after January 22, 2001.

(d) Penalties. If a proposed "unsatisfactory" safety rating becomes final, FMCSA will issue an order placing its interstate operations out-of-service. Any motor carrier that operates CMVs in violation of this section will be subject to the penalty provisions listed in 49 U.S.C. 521(b).

a. [56 FR 40806, Aug. 16, 1991; 62 FR 60042-60043, November 6, 1997; 65 FR 50934-50935, Aug. 22, 2000]

§ 385.15 Administrative review.

(a) A motor carrier may request FMCSA to conduct an administrative review if it believes FMCSA has committed an error in assigning its proposed l safety rating in accordance with § 385.15(c) or its final safety rating in accordance with § 385.11(b).

(b) The motor carrier's request must explain the error it believes FMCSA committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documents that support its argument.

(c) The motor carrier must submit its request in writing to the CSO, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE. Washington DC 20590.

c(1). If a motor carrier has received a notice of a proposed "unsatisfactory" safety rating, it should submit its request within 15 days from the date of the notice. This time frame will allow FMCSA to issue a written decision before the prohibitions outlined in § 385.13(a)(1) and (2) take effect. Failure to petition within this 15-day period may prevent FMCSA from issuing a final decision before such prohibitions take effect.

c(2). A motor carrier must make a request for an administrative review within 90 days of the date of the proposed safety rating issued under § 385.11(c) or a final safety rating issued under § 385.11(b), or within 90 days after denial of a request for a change in rating under § 385.17(i).

(d) The FMCSA may ask the motor carrier to submit additional data and attend a conference to discuss the safety rating. If the motor carrier does not provide the information requested, or does not attend the conference, the FMCSA may dismiss its request for review.

(e) The FMCSA will notify the motor carrier in writing of its decision following the administrative review. The FMCSA will complete its review:

e(1). Within 30 days after receiving a request from a hazardous materials or passenger motor carrier that has received a proposed or final "unsatisfactory" safety rating.

e(2). Within 45 days after receiving a request from any other motor carrier that has received a proposed or final "unsatisfactory" safety rating.

(f) The decision constitutes final agency action.

(g) Any motor carrier may request a rating change under the provisions of § 385.17.[56 FR 40806, Aug. 16, 1991; 62 FR 60043, Nov. 6, 1997; 65 FR 50935, Aug. 22, 2000]

§ 385.17 Change to safety rating based upon corrective actions.

(a) A motor carrier that has taken action to correct the deficiencies that resulted in a proposed or final rating of "conditional" or "unsatisfactory" may request a rating change at any time.

(b) A motor carrier must make this request in writing to the FMCSA Service Center for the geographic area where the carrier maintains its principal place of business. The addresses and geographical boundaries of the Service Centers are listed in § 390.27 of this chapter.

(c) The motor carrier must base its request upon evidence that it has taken corrective actions and that its operations currently meet the safety standard and factors specified in §§ 385.5 and 385.7. The request must include a written description of corrective actions taken, and other documentation the carrier wishes the FMCSA to consider.

(d) The FMCSA will make a final determination on the request for change based upon the documentation the motor carrier submits, and any additional relevant information.

(e) The FMCSA will perform reviews of requests made by motor carriers with a proposed or final "unsatisfactory" safety rating in the following time periods after the motor carrier's request:

e(1). Within 30 days for motor carriers transporting passengers in CMVs or placardable quantities of hazardous materials.

e(2). Within 45 days for all other motor carriers.

(f) The filing of a request for change to a proposed or final safety rating under this section does not stay the 45-day period specified in § 385.13(a)(1) for motor carriers transporting passengers or hazardous materials. If the motor carrier has submitted evidence that corrective actions have been taken pursuant to this section and the FMCSA cannot make a final determination within the 45-day period, the period before the proposed safety rating becomes final may be extended for up to 10 days at the discretion of the FMCSA.

(g) **The FMCSA may allow a motor carrier with a proposed rating of "unsatisfactory'' (except those transporting passengers in CMVs or placardable quantities of hazardous materials) to continue to operate in interstate commerce for up to 60 days beyond the 60 days specified in the proposed rating, if the FMCSA determines that the motor carrier is making a good faith effort to improve its safety status. This additional period would begin on the 61st day after the date of the notice of the proposed "unsatisfactory'' rating.**

(h) If the FMCSA determines that the motor carrier has taken the corrective actions required and that its operations currently meet the safety standard and factors specified in §§ 385.5 and 385.7, the agency will notify the motor carrier in writing of its upgraded safety rating.

(i) If the FMCSA determines that the motor carrier has not taken all the corrective actions required, or that its operations still fail to meet the safety standard and factors specified in §§ 385.5 and 385.7, the agency will notify the motor carrier in writing.

(j) Any motor carrier whose request for change is denied in accordance with paragraph (i) of this section may request administrative review under the procedures of § 385.15. The motor carrier must make the request within 90 days of the denial of the request for a rating change. If the proposed rating has become final, it will remain in effect during the period of any administrative review.

[56 FR 40806, Aug. 16, 1991; 62 FR 60043, November 6, 1997; 65 FR 50935, Aug. 22, 2000]

6.2.1.15.5 Illustration 5: Petition for Change in Safety Rating (49 CFR Part 385.17)

MEMORANDUM

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

Subject: Priority 45/60 Day UNSAT/UNFIT Date:
(If Applicable)
Petition for Change in Safety Rating (49 CFR Part 385.17)
<Enter Carrier Name & USDOT #>

From:

Reply Attn.:

To: <NAME OF EPC>
Enforcement Program Coordinator
<SERVICE CENTER & CITY/STATE>

Upon completion of a review of the above subject's petition for change in safety rating, the following information is being submitted. **Note: if the carrier properly sent a copy of the SMP to the MSC, you only have to electronically send this memo. Double-check via email or phone call.**

1. Date of compliance review that resulted in current rating: - - (Copy attached)
2. Date of petition for change in rating: - - (Copy attached with documentation)
3. State Director's opinion regarding the motor carrier's petition for change in safety rating:
4. Date and types of open complaints on file regarding the motor carrier's compliance with the FMCSR and HMR:
5. Current SMS BASIC Percentiles:
6. BASICs requiring an Investigation:
7. Current SMS Category (Monitor, High Risk, etc.) :
8. Safe Stat Category:
9. Copy of profile attached (optional): Yes No
10. Any additional information regarding the motor carrier's safety performance (NOTE: With the exception of 45/60-day carriers, all critical violations of 49 CFR Part 395 should include the most recent 30 days' worth of hours of service and false log check summaries as part of the SMP).
11. For 60-day UNSAT/UNFIT carriers, does the information submitted, though not enough for a recommended upgrade, warrant an extension of time? Yes No.

Attachment(s)

6.2.1.15.6 Illustration 6: Response to complainant when an investigation will not be conducted

Response to complainant when an investigation will not be conducted

This document is in response to your (date) letter regarding (name of motor carrier). After careful review, FMCSA has decided not to conduct an investigation.

THE RESPONSE SHOULD INCORPORATE ONE OR MORE OF THE FOLLOWING EXPLANATIONS:

(1) From the information that you have provided, FMCSA is unable to determine whether a violation of this Agency's regulations is occurring. Generally, a specific example of a substantial violation needs to be provided, including the date, location, and other pertinent information.

(2) You allege a violation occurred on (insert date). It is the policy of this Agency to only investigate complaints alleging violations that have occurred within the previous 90 days.

(3) As a result of a recent compliance review of (name of motor carrier) conducted on (date) (**NOTE: MUST BE WITHIN 90 DAYS OF RECEIPT OF THE COMPLAINT**), FMCSA believes the noncompliance referred to in your letter (is not present) (was discovered and is being addressed appropriately).

(4) Your allegations do not fall within the jurisdiction of the Federal Motor Carrier Safety Administration. You may want to contact the (give name and address of jurisdictional agency).

(5) Your allegation involving the operation of defective equipment by (name and address of motor carrier) has been referred to the (give name and address of State MCSAP Agency where vehicle(s) are domiciled) for investigation. The Federal Motor Carrier Safety Administration, through its Motor Carrier Safety Assistance Program, provides funding to the States for the purpose of performing vehicle inspections to ensure the safe operation of commercial vehicles on our nation's highways.

(6) **IN THE CASE OF VEHICLE DEFECT ALLEGATIONS THAT ARE NOT OUT-OF-SERVICE DEFECTS**

Your allegations are not substantial violations of this Agency's vehicle safety standards. Proper maintenance of a motor carrier's equipment is important. Certain items have been identified as critical to the operational safety of a vehicle. The absence or inoperativeness of such items is considered to be imminently hazardous.

With the dramatic increase in the number of vehicle inspections performed by the States as a result of the Motor Carrier Safety Assistance Program, the likelihood of the vehicles operated by (name of motor carrier) being examined at a roadside inspection site has increased substantially. The numerous roadside vehicle inspections conducted by the States help to ensure motor carriers properly maintain their equipment and unsafe vehicles are removed from operation.

CONCLUSION TO LETTER, IF APPROPRIATE:

If you can provide additional information which you think FMCSA should consider, please respond to the above address. Thank you for your interest in highway safety.

6.2.1.15.7 Illustration 7: Response Letter to Complainant upon Submittal of a Non-Frivolous Complaint Which will be investigated

Thank you for your (date) letter concerning the regulatory noncompliance of (name of motor carrier).

The Federal Motor Carrier Safety Administration (FMCSA) is concerned about violations of the Federal Motor Carrier Safety Regulations (FMCSR) and Hazardous Materials (HM) Regulations by motor carriers and their employees. We will investigate your allegations. It may be necessary to contact you for additional information during this investigation.

We will inform you of our investigation's findings. Your interest in highway safety is appreciated.

6.2.1.15.8 Illustration 8: Response to Complainant at Conclusion of an Investigation Which Results in Enforcement

This document is in follow-up to my (date) letter sent to you as a result of information you supplied concerning (name of motor carrier).

The matter has been investigated and certain instances of noncompliance as you alleged were discovered. An enforcement action, in which civil penalties will be assessed against the carrier, is currently being prepared to address the carrier's noncompliance.

If you find that these violations continue or other violations occur, please advise us.

Thank you for your interest in highway safety.

6.2.1.15.9 Illustration 9: Response to Complainant When Allegations are Not Substantiated

This document is in follow-up to my (date) letter sent to you as a result of information you supplied about (name of motor carrier).

The matter has received careful attention. However, our investigation failed to disclose violations of the type referred to in your letter.

Please advise us if we can be of further assistance.

6.2.1.15.10 Illustration 10: Response to Complainant When Allegations are Substantiated but Enforcement Action Not Taken

This document is in follow-up to my (date) letter to you as a result of information you supplied about (name of motor carrier).

The matter has been investigated and certain instances of noncompliance as you alleged were discovered. The nature of these violations, however, did not warrant enforcement action.

If we can provide further assistance, please contact our office.

6.2.1.15.11 Illustration 11: Letter to Congressional Member after Completion of Compliance Review or an Investigation in Response to Congressional Request

This document is in response to your (date) letter which (requested a compliance review or an investigation be conducted on (name of motor carrier)) or [alleged regulatory violations by (name of motor carrier)].

THE RESPONSE SHOULD INCORPORATE ONE OF THE FOLLOWING STATEMENTS:

USE PARAGRAPH (1) OR (2) WHEN A REQUEST FOR AN INVESTIGATION WAS MADE WITHOUT ALLEGATIONS OF SUBSTANTIAL VIOLATIONS

(1) A compliance review or an investigation on (name of motor carrier) was completed in response to your request. Regulatory violations were discovered, but their nature did not warrant enforcement action. If you would like further information about the compliance review or investigation, please call our Division Office at (telephone number).

(2) A compliance review or an investigation on (name of motor carrier) was completed in response to your request. Instances of noncompliance were discovered and an enforcement action is currently being prepared. If you would like further information about the compliance review or investigation or enforcement action, please call my office at (telephone number).

USE PARAGRAPH (3), (4), OR (5) WHEN SUBSTANTIAL VIOLATIONS ARE ALLEG

(3) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Your allegations have received careful attention. Our investigation, however, failed to disclose violations of the type referred to in your letter. If you would like further information about the compliance review or investigation, please call our Division Office at (telephone number).

(4) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Violations of the type referred to in your letter were discovered. The nature of these violations, however, did not warrant enforcement action. If you would like further information about the compliance review or investigation, please call our Division Office at (telephone number).

(5) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Violations of the type referred to in your letter were discovered and an enforcement action is currently being prepared. If you would like further information about the compliance review or investigation or enforcement action, please call my office at (telephone number).

6.2.1.15.12 Illustration 12: Letter to Congressional Member Who Forwarded a Complaint

This is a response to your (date) letter which forwarded a complaint to us that alleged illegal activity by (name of motor carrier).

THE RESPONSE SHOULD INCORPORATE ONE OF THE FOLLOWING STATEMENTS:

(1) The forwarded complaint alleges the violation of a regulation or law which is outside the jurisdiction of the Federal Motor Carrier Safety Administration (FMCSA). We, therefore, cannot respond to the complaint but we have forwarded the complaint to the (appropriate government agency). If we can provide further assistance, please call my office at (telephone number).

(2) We have concluded that the complainant's allegations are not reliable based on (the findings of a recent compliance review conducted on the company) or (our discussion with the complainant). An investigation, therefore, is not warranted at this time. The complainant will be advised of our conclusion. If you would like further information, please call my office at (telephone number).

(3) We have concluded that the severity of the alleged violations does not warrant an investigation. The complaint was placed in our file on the company for future reference. We would be interested in reviewing additional information from the complainant about the illegal activities of (name of motor carrier). The complainant will be advised of our conclusion. If we can provide further assistance, please call my office at (telephone number).

(4) We have concluded that an investigation of the alleged violations is not warranted based on the untimely nature of the allegations. It is the policy of this Agency to only investigate complaints alleging violations that have occurred within the prior 90 days. We would be interested in reviewing more recent information about the illegal activities of (name of motor carrier). The complainant will be advised of our conclusion. If we can provide further assistance, please call my office at (telephone number).

(5) We have contacted the complainant and concluded that the allegations appear to be reliable. FMCSA strives to utilize its limited resources in the most effective manner to advance highway safety. The Agency, therefore, checks the safety performance of any motor carrier that is the subject of a complaint to FMCSA. In keeping with our focus on performance measures, particularly accident rates, we believe onsite compliance reviews are not needed if the carrier does not possess an unsatisfactory accident rate and there is no indication of poor performance. We have no information which shows the safety performance of (name of motor carrier) to be a problem at the present time. Furthermore, we have notified the carrier about the general allegations of the complaint and requested a written response. We will inform the complainant about our handling of the complaint. If we can provide further assistance, please call my office at (telephone number).

(6) A compliance review or an investigation on (name of motor carrier) was completed in response to the forwarded complaint. Its allegations have received careful attention. Our investigation, however, failed to disclose violations of the type referred to in the complaint. The complainant will be informed of our findings. If we can provide further assistance, please contact our office.

(7) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Violations of the type referred to in your letter were discovered. The nature of these violations, however, did not warrant enforcement action. The complainant will be informed of our findings. If we can provide further assistance, please contact our office.

(8) A compliance review or an investigation on (name of motor carrier) was completed in response to your letter. Violations of the type referred to in your letter were discovered and an enforcement action is currently being prepared. The complainant will be informed of our findings. If we can provide further assistance, please contact our office.

6.2.1.15.13 Illustration 13: Warning Letter to Motor Carrier for Failing to Register or File Insurance

THE LETTER BELOW MAY BE MODIFIED AS APPROPRIATE.

This office has received information that (legal name of motor carrier) provided or arranged for the transportation of (commodity/passengers) in interstate or foreign commerce for compensation without having obtained authority from the Federal Motor Carrier Safety Administration (FMCSA).

Title 49, United States Code, Section 13901 provides that:

A person may provide transportation or service subject to jurisdiction under subchapter I or III of chapter 135 or be a broker for transportation subject to jurisdiction under subchapter I of that chapter, only if the person is registered under this chapter to provide the transportation or service.

Title 49, United States Code, Section 13906 provides that a motor carrier, broker, and freight forwarder must file with the Secretary of the U.S. Department of Transportation a bond, insurance policy, or other type of security and that a registration remains in effect only as long as the registrant continues to satisfy the security requirements.

Our records show that (legal name of motor carrier) does not hold a registration certificate from this Agency to perform regulated interstate transportation and does not have proof of a bond, insurance policy, or other type of security on file with FMCSA. As a result, these transportation activities violate the statutory requirements. Failure to comply with the registration and insurance requirements could subject your company to substantial civil penalties as well as court orders to compel compliance with applicable Federal law (Title 49, United States Code, Sections 14702 and 14901).

You must cease all regulated interstate operations immediately and you may not resume them until you obtain the appropriate authority and file the necessary evidence of insurance with FMCSA. This letter is a warning against continued violation of the registration and insurance requirements.

Enclosed are the necessary forms to apply for appropriate authority, together with instructions. Please acknowledge receipt of this letter in writing within 20 days of the date of this letter. Your response should include a statement of your understanding of the matters referred to and should contain a specific statement as to corrective action being taken.

6.2.1.15.14 Illustration 14: Cover Letter to Informational Packet in Response to a Compliant Received by Telephone

This is in response to your recent communication with this office. The Federal Motor Carrier Safety Administration attempts to assist individuals. It does not provide informal dispute resolution. As a result, individuals are in a better position to protect their interests by pursuing private legal action or third party arbitration. In order to be helpful, enclosed is information covering the issues presented in your complaint.

Under Section 14704 of Title 49, U.S. Code, a person is authorized to pursue private legal action to enforce an order of the Secretary of Transportation or the Surface Transportation Board and to recover damages caused by a carrier or broker operating in violation of Federal law. It authorizes private legal action to enjoin equipment leasing and equipment loading/unloading violations. It allows HHG shippers to bring either a civil action in Federal court or an administrative complaint before the U.S. Surface Transportation Board to recover tariff overcharges.

Under Section 14707 of Title 49, U.S. Code, a person injured by an unregistered and/or uninsured carrier or broker is authorized to file a civil action to enforce the registration and insurance provisions. That statute also provides for the recovery of attorney fees and court costs.

Every carrier and broker is required to have an agent for service of process in each state in which operations are conducted. A process agent is a carrier's or broker's representative upon whom court papers may be served in any proceeding brought against a carrier or broker. If you choose to bring a civil action, you may contact our office at 202-358-7000 for the name and address of the agent for service of process in your state for the subject carrier or broker.

Your complaint has been registered for statistical purposes and will be used to evaluate a future need to investigate the operations of the carrier or broker. Thank you for your information.

6.2.1.15.15 Illustration 15: Cover Letter to Informational Packet in Response to Written Complaint

This is in response to your recent communication with this office. Although the Federal Motor Carrier Safety Administration attempts to assist individuals, it does not provide informal dispute resolution. As a result, individuals are in a better position to protect their interests by pursuing private legal action or third party arbitration. In order to be helpful, enclosed is information covering the issues presented in your complaint. By copy of this letter, we are also requesting that the carrier/broker who is the subject of your communication respond directly to you about your concerns.

Under Section 14704 of Title 49, U.S. Code, a person is authorized to pursue private legal action to enforce an order of the Secretary of Transportation or the Surface Transportation Board and to recover damages caused by a carrier or broker operating in violation of Federal law. It authorizes private legal action to enjoin violations of statutes governing equipment leasing and the loading/unloading of equipment (lumper violations). It makes a carrier liable to a person for rates and charges in excess of those contained in a tariff. It establishes procedures for pursuing these remedies.

Under Section 14707 of Title 49, U.S. Code, a person injured by an unregistered and/or uninsured carrier or broker is authorized to file a civil action to enforce the registration and insurance provisions. That statute also provides for the recovery of attorney fees and court costs.

Every carrier and broker is required to have an agent for service of process in each state in which operations are conducted. A process agent is a carrier's or broker's representative upon whom court papers may be served in any proceeding brought against a carrier or broker. If you choose to bring a civil action, you may contact our office at 202-358-7000 for the name and address of the agent for service of process in your state for the subject carrier or broker.

Your complaint has been registered for statistical purposes and will be used to evaluate a future need to investigate the operations of the carrier or broker. Thank you for your information.

6.2.1.15.16 Illustration 16: Order to Cease All Interstate Transportation

BEFORE THE

UNITED STATES DEPARTMENT OF TRANSPORTATION

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

IN THE MATTER OF:

ABC TRUCKING COMPANY, INC.

17037 PINE ISLAND AVENUE

PHILADELPHIA, PA 19001

OUT- OF- SERVICE ORDER

EFFECTIVE DATE: March 10, 20XX, 12:01AM

ORDER TO CEASE ALL INTERSTATE TRANSPORTATIONABC Trucking Company, Inc. (ABC) of Philadelphia, Pennsylvania, was issued a proposed UNSATISFACTORY safety rating on January 23, 1999. ABC was notified to take certain affirmative actions within [CHOOSE 45 OR 60] days from the effective date of that proposed rating to improve its safety rating to Conditional or Satisfactory. ABC was further advised that it would be ordered to cease any and all transportation unless ABC's safety rating was improved to Conditional or Satisfactory.

WHEREAS, ABC Trucking Company, Inc. has failed to take the necessary steps required to improve its

Safety rating to Conditional or Satisfactory within the required [CHOOSE 45 OR 60] days.

THEREFORE***, IT IS ORDERED*** THAT ABC TRUCKING COMPANY, INC. OF 17037 PINE ISLAND AVENUE, PHILADELPHIA, PENNSYLVANIA, WILL CEASE ALL INTERSTATE TRANSPORTATION ON THE EFFECTIVE DATE AND TIME OF THIS ORDER UNTIL SUCH TIME AS THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION DETERMINES YOUR COMPANY IS FIT. IN ADDITION, EACH AND EVERY DEPARTMENT, AGENCY, OR INSTRUMENTALITY OF THE UNITED STATES GOVERNMENT IS PROHIBITED FROM USING ABC FOR ANY INTERSTATE TRANSPORTATION (49 U.S.C. § 31144).

ABC's continued operation in interstate commerce after the effective date and time of this ORDER will be considered a serious safety violation and will result in penalties of not more than $10,000 for each separate violation and may result in criminal prosecution leading to imprisonment for up to one (1) year or a fine of up to $25,000 or both and other actions as deemed necessary by the United States Department of Justice. (49 U.S.C. § 521(b)).

Conduct your actions accordingly,

John Paul Jones, Field Administrator
Federal Motor Carrier Safety Administration
Eastern Service Center
802 Cromwell Park Drive
Suite N
Glen Burnie, MD 21061

[Signature date]

6.2.1.15.17 Illustration 17: Certified Mail - Return Receipt Requested

John Doe, Director of Transportation

XYZ Government Agency

12345 Anywhere Lane

Washington, DC 12345

Subject: Violation of 49 CFR *.*

Mr. Doe:

Agency Notification Letter

The Federal Motor Carrier Safety Administration (FMCSA) has conducted an investigation into your Agency's compliance with the Federal Hazardous Materials Regulations. Our investigation has discovered that your agency failed to properly classify, describe, package, and label a shipment of hazardous materials (***insert description of HM***) submitted to (***insert name of the carrier***) for transportation on or about (***insert date(s)***), destined for (***insert location***).

Your agency is in violation of 49 CFR § (or §§) (***insert section number(s)***) in that you offered hazardous materials for transportation in commerce that was not properly classified, described, packaged, marked, labeled, and in condition for shipment (***insert specifics on shipment(s)***).

As a Federal agency, the (insert agency name) is subject to and must abide by the hazardous material (HM) statutes (49 U.S.C. 5101 et seq.), and the regulations promulgated there under (49 CFR Parts 100-185). Congress specifically excluded the United States Postal Service as well as a department, agency, or instrumentality of the Government from all civil and criminal penalties under the HM act. As the Agency responsible for the enforcement of the HM regulations within the transportation industry upon public highways, FMCSA is charged by Congress to assure a safe and efficient transportation system. To improve safety upon the Nation's highways, FMCSA has an elaborate compliance and enforcement program to bring about compliance by the private industry sector. FMCSA also regulates HM transportation made on behalf of and by all governmental agencies. Consequently, this letter serves as notification of the discovered violations and is a demand for corrective action on the part of your agency.

To assist your agency in improving compliance, please submit a detailed report to my attention within 30 days of receipt of this letter. Your letter must outline the methods and procedures your agency is taking to correct the violations discovered during our investigation. My staff will review your reply letter and make recommendations, if necessary, to improve your agency's compliance with the HM regulations.

If further information is needed or if you wish to schedule an interview, please call (***insert name***) at (***insert telephone number***). If we do not hear from you within 30 days from receipt of this letter, the violation information will be forwarded to the Office of Inspector General for the Department of Transportation for further action. Thank you for your understanding in this matter.

Sincerely,

(Insert Name)

cc: The employee(s) responsible for the shipment

6.2.1.15.18 Illustration 18: Ex Parte Communications

Ex parte communications are any communication between a party and the government body holding a proceeding or contemplating government action that is made outside the presence of other interested parties to the proceeding. Under FMCSA's procedures for Section 385.15 appeals, "a party" is both the appealing carrier and the Division Administrator, his staff, a member of the decision-maker's staff, or other interested FMCSA employees. Such communications include: one-sided informal telephone calls, e-mails, meetings where the carrier does not attend, and written arguments directed to the decision-maker or his staff. This includes interoffice memoranda.

The CSO, as a final Agency decision-maker, essentially takes the place of a United States District Court Judge with the full power to affirm or deny all motions. All final decisions, like those of a District Court, are appealable to a U. S. Court of Appeals. That Court will review the CSO's decision to ascertain whether it was rendered in accordance with law, whether or not the decision was arbitrary and capricious, and whether it was an impartial decision. The Court of Appeals may determine that an ex parte communication, or the mere look of an improper communication, prejudiced the decision maker. Thus, the Court could conclude that the final Agency decision was not impartial. In this situation, the Agency decision would be overturned and the carrier would be granted its requested relief. More importantly, the CSO's future decisions would be greeted by the Court with suspicion. There is an exception to the rule on ex parte communications, as outlined above: questions concerning procedure to be followed or the timing of a decision (status reports) are not prohibited.

The CSO will issue his/her formal written decision after reviewing all necessary documentation, arguments of the carrier and the Division Administrator, and consultation and approval of legal counsel. The decision may uphold the Agency action in its entirety, grant the relief requested by the carrier, or grant some alternate form of relief. Carriers have been granted relief from the proposed rating because of improper document samples, the use of violations in the safety rating process when the Agency lacked jurisdiction, the imposition of strict liability, improper ex parte communication, and the citing of violations that no longer exist or no longer are classified as acute or critical by regulation.

6.2.1.15.19 Illustration 19: Improper Sampling Techniques

The Agency has most often granted relief to motor carriers because of improper ***records selection techniques*** used during the review. Generally, the errors have occurred because the Agency investigator failed to follow the minimum sample, as outlined in the Compliance Manual, or failed to explain in the investigation report or attached follow-up reports why he/she was unable to do so [Note: On November 20, 2000, the decision-maker changed from the Director, Office of Enforcement and Compliance to the CSO, for all reviews completed on or after November 20, 2000.]

The Compliance Manual outlines, in various tables, the minimum number of documents, files, drivers, or vehicles an investigator must look at during the onsite review. The manual allows for an exception, particularly in the area of log verification: The number of records of duty status (RODS) checked for falsification will be the number of RODS verified, with supporting documentation. The investigators must adhere to the minimum number of documents outlined within the tables, or they may review less than the minimum number, for good cause shown. Such a deviation must be fully outlined in the investigative report. Failing to do so means that the exception to the general rule cannot be relied upon. No court would uphold a finding that allows a deviation from the manual without a proper explanation. These investigative errors can lead to the total granting of the carrier's petition for an upgrade in the safety rating, may lead to a partial upgrade, or may be harmless. The relief granted depends upon the facts of each case. Partial relief is generally granted where the carrier has other violations that would still require the assignment of a less than Satisfactory rating.

See *Rediehs Transportation Company*, No. 96-431218 (Final Order January 10, 1997)(Granting partial relief and changing a proposed Unsatisfactory rating to a Conditional because the sampling methodology used was inconsistent with the requirements established in the FOTM. The sample was of 42 drivers and 106 RODS, when the FOTM required a review of 17 drivers and 510 records. The report was silent as to why the review exceeded the number of drivers reviewed and fell short of the total required records); *Buchan Trucking, LLC.*, No. 98-04-153854 (Final Order June 1998)(Striking the rating assigned to the "driver" portion of the rating table and upgrading the carrier's rating to Satisfactory because the investigator only looked at 52 RODS, failing to explain within his report why the required 210 RODS were not reviewed. Additionally, noting that the 10 percent level for Critical violations might not have been met if the correct sample was taken); *Professional Transportation Services, Inc.*, No. 99-05-393273 (Final Order July 6, 1999)(Granting carrier relief because the investigator failed to review the required 210 RODS without explaining why only 62 RODS were reviewed. The Director concluded that the 13 violations discovered out of the required 210 RODS resulted in a 6.2 percent violation rate, not a 10 percent rate); *Trek Transportation, Inc.*, No. 99-02-587225 (Final Order April 15, 1999)(Upgrading carrier's rating within the "driver" category because investigator failed to explain why the FOTM's required 300 RODS were not reviewed. Investigator reviewed 46 RODS and discovered 23 violations. The violation rate is less than 10 percent when the 23 violations are compared to the 300 RODS required to be reviewed. The carrier's overall rating did not change because of other properly cited violations); *Quaker Transport, Inc.*, No. 98-07-619559 (Final Order September 2, 1998)(Upgraded carrier's rating where investigator failed to explain the deviation from the sample outlined within the FOTM. The effort required a review of 330 RODS. The investigator only reviewed 55 RODS and discovered 20 violations); *Eastern Express, Inc.*, No. 98-06-162408 (Final Order September 15, 1998)(Where the FOTM required the investigator to review 17 drivers and 510 RODS and the review only focused on eight drivers and 44 records with eight violations discovered, the rating will be upgraded because the investigator failed to explain why the sample was not properly taken); *D. M. Manufacturing Co.*, No. 98-09-243571 (Final Order September 21, 1998)(An improper sample without explanation will result in an upgrade in the carrier's safety rating); and *Gorrell Lumber, Inc.* (dba. *Jensen Sales Company*), No. 98-08-438960 (Final Order November 3, 1998)(Investigator failed to follow the eFOTM sampling requirement where he reviewed one driver and two RODS and was required to review five drivers and 150 RODS).

But see *GBT Transportation, Inc.*, No. 98-03-338204 (Final Order June 6, 1998)(Harmless error where investigator failed to follow sampling requirements, when the investigative report explains the circumstances for the failure to meet sampling targets. Here the carrier could only produce records for six drivers out of the seven required and 134 records); *Arctic Express, Inc.*, No. 98-05-193073 (Final Order June 10, 1998)(Harmless error even when the investigation fails to explain the deviation from the sampling requirements because the carrier still would have had a violation rate in excess of 10 percent when the total violations discovered are compared to the total records that should have been reviewed); *Thomas Trucking, Inc.*, No. 98-04-256504 (Final Order June 10, 1998)(Where an investigator reasonably explains why the sample could not be reached, the rating will be upheld. Investigator notes: "the motor carrier did not provide many documentation (sic) during the

investigation other than fuel receipts," "Simmons (company official) stated they throw away the ComData reports for company drivers after they have been checked," and "I was not able to check many logs for company drivers because they do not maintain this report on company drivers"); *Four Star Transport, Inc.*, No. 98-10-246333 (Final Order November 20, 1998) (Sampling error not fatal when you insert the minimum number of driver records that should have been reviewed in accordance with the manual and retain the number of violations found and that number continues to exceed 10 percent threshold for Critical violations); and *M.E.T. Trucking, Inc.*, No. 99-05-376678 (Final Order July 9, 1999)(Sampling error not fatal where the 10 percent threshold for Critical violations is still met when you compare violations discovered against proper sample. Director cautioned that FMCSA investigators are expected, and DAs should instruct each investigator, to fully comply with the FOTM, unless such compliance is impossible).

NON-JURISDICTIONAL VIOLATIONS

The Agency has granted relief to a motor carrier whose safety rating was affected by use of **non-jurisdictional** violations [wholly intrastate hours of service (HOS)].*PTG Logistics, LLC*, No. 99-02-611601 (Final Order April 15, 1999).

STRICT LIABILITY VERSUS KNEW OR SHOULD HAVE KNOWN

Generally, the discussion of **strict liability** would arise in an enforcement action where the Agency is imposing penalties for violations the carrier might claim it could not detect or control. Nonetheless, on occasion the issue of strict liability has arisen within the context of a safety rating appeal. One particular incident occurred in a review where the investigator stated he only used and examined unopened trip envelopes during his entire investigation. Consequently, the carrier claimed that it had no opportunity to review the documents submitted by its drivers for accuracy, and was subsequently was precluded from taking the necessary disciplinary action to assure future compliance. While the decision avoided discussing this issue directly, the rating was overturned on other issues. It might be worthwhile reviewing the law in this area.

FMCSA holds motor carriers responsible for the accuracy of drivers' logs with regulatory standards, interpreted and supported by judicial and administrative decisions. If an employee-driver committed a violation, the Agency has rightly held the motor carrier liable when the carrier **knew or should have known** of the violations and failed to penalize the driver or otherwise ensure the violations would not be repeated. To date, the Agency has not imposed strict liability in its adjudication and investigators must prove that a carrier knew or should have known that its drivers were violating the Federal Motor Carrier Safety Regulations (FMCSR).

Under the hazardous material regulations (HMR), FMCSA can assess a fine against a person that knowingly violates 49 U.S.C. Chapter 51, a regulation prescribed or order issued under that chapter. A person acts knowingly when: (A) the person has actual knowledge of the facts giving rise to the violation or (B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. This language is nothing more than the same "knew" (actual knowledge) or "should have known" (reasonable care) standard [**see** 49 U.S.C. §5123(a)(1)].

Consequently, the use of unopened trip envelopes, as the basis for determining violations, will not be upheld by Agency decision-makers. They knew or should have known standard was the standard used by the FHWA in In the Matter of Arctic Express Foods Distribution, Inc., No. R5-92-138 (Final Order June 16, 1994): "When information sufficient to detect violations is in the carrier's files and the carrier had the means to detect those violations by comparison with other records, the carrier is considered to have knowledge, even if there is no proof that any one person made any comparison or had access to all the records needed for comparison." Similarly, the motor carrier was deemed to have knowledge of a regulatory violation where the "means exist" to detect the violation (In the Matter of M. Van Vliet and Sons, Inc., Docket # FHWA-97-2533 (Final Order April 16, 1997)). Additionally, the DC Circuit held that it was "undisputed" that a motor carrier "should have known" of a violation of the FMCSR when the record contained substantial evidence that a similar violation had previously occurred [Used Equipment Sales, Inc. v. Department of Transportation, 54 F.3d 862, 866 (D.C. Cir. 1995)]. More recently, the DC Circuit considered the carrier's liability for false logs and discussed FMCSA interpretation of its regulations concluding that: "[T]he standard of liability thus seems to be one for negligence in allowing or failing to detect drivers' submissions of false documents." Truckers United for Safety v. Federal Highway Administration, 139 F.3d 934, 937-938, note 1 (D.C. Cir. 1998).

REGULATORY ERRORS OR CHANGES

The United States Court of Appeals for the District of Columbia Circuit struck down the FMCSA's method of assigning safety ratings in the MST Express case **See** MUST Express and Truckers United For Safety v. Department of Transportation, Federal Highway Administration, 108 F. 3d 401 (D.C. Cir. 1997). The Court concluded that the procedures for assigning safety ratings were adopted contrary to law because the Safety Rating Fitness Methodology (SRFM) used at the time that MST Express received a rating had not been adopted pursuant to notice and comment rule making. As a consequence, FMCSA proceeded with the required notice and comment rule making and issued a final rule on November 6, 1997 re-establishing a rating system. **See** 62 Fed. Reg. 60035 (November 6, 1997). A subsequent legal challenge was rejected and the validity of this new rule was upheld. **See** American Trucking Associations, Inc. et al. v. Federal Highway Administration, 166 F. 3d 374 (D.C. Cir. 1999).

The 1997 rule making officially established for the first time a list of Acute and Critical violations which directly affect a motor carrier's safety rating. That list is now codified in Appendix B to Part 385, Part VII. It is this list, and only this list, that FMCSA may use to assign a safety rating. From time to time, FMCSA issues new regulations changing or adding to the other regulatory requirements of the FMCSR PHMSA adds to the HMR. DAs must check each citation on the investigation or CR and assure that the citation and violation is correct, that the actual violation cited corresponds with the proper regulatory section, and that the anticipated rating was issued correctly.

RATING UPGRADES FOR NON-PREVENTABLE ACCIDENTS

The following are samples of Agency cases in which a carrier's rating was based upon evidence that one or more accidents of the carrier was not preventable: *Sorensen Transportation Company, Inc*., No. 99-04-058332 (Final Order May 6, 1999); *O. Stephens Trucking Company, Inc.*, No. 99-03-021808 (Final Order May 6, 1999); *First Choice Trucking & Repair, Inc.*, No. 99-03-646836 (Final Order April 15, 1999); and *H & M Specialized Carrier, Inc.*, No. 98-11-540202 (Final Order December 10, 1998).

6.2.1.16 Special Topic: SKILLS PERFORMANCE EVALUATION(SPE)

6.2.1.16.1 SKILLS PERFORMANCE EVALUATION(SPE)

6.2.1.16.1.0 Introduction to SPE

Subject to limited exceptions, a person who drives a commercial motor vehicle (CMV), as defined in 49 U.S.C. § 31132 and 49 CFR § 390.5T, in interstate commerce must meet the physical qualifications set forth in 49 CFR part 391, subpart E.

Specific to the SPE, the physical qualification standards in 49 CFR § 391.41(b)(1) and (b)(2) state:

> (b) A person is physically qualified to drive a commercial motor vehicle if that person—
>
> (1) Has no loss of a foot, a leg, a hand, or an arm, or has been granted a skill performance evaluation certificate pursuant to § 391.49;
>
> (2) Has no impairment of:
>
> (i) A hand or finger which interferes with prehension or power grasping; or
>
> (ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or has been granted a skill performance evaluation certificate pursuant to § 391.49[.]

Under 49 CFR § 391.49, a person who does not meet the physical qualification standards in 49 CFR § 391.41(b)(1) or (b)(2), or both, and who is otherwise qualified to drive a CMV, may drive a CMV in interstate commerce if FMCSA grants the person an SPE certificate. Under 49 CFR § 391.49(g), FMCSA may require a driver applying for an SPE certificate (driver applicant) to demonstrate to an agent of FMCSA the driver applicant's ability to safely operate the CMV the applicant intends to drive. The demonstration is accomplished by conducting an SPE that includes three portions: non-driving and pre-trip inspection, off-highway driving, and on-highway driving.

Accordingly, FMCSA's SPE Certificate Program allows people who have loss or impairment of a limb to demonstrate on an individual basis the ability to operate a CMV safely. An SPE certificate may be subject to terms, conditions, and limitations, including, but not limited to, use of an appropriate and properly fitted prosthesis or orthotic device, or modification of the vehicle, as FMCSA deems consistent with the public interest.

6.2.1.16.1.1 SPE Report

SPE Evaluators conducting the SPE must use the version of the SPE Report provided by the SPE Medical Program Specialist (SPE Specialist) to score and record comments related to the SPE. An SPE Specialist will provide the SPE Report to the SPE Evaluator when an SPE application is complete and an SPE is requested.

Example of SPE Report

ATTACHMENT A

SKILL PERFORMANCE EVALUATION REPORT

SPE Certification Applicant: _____

Description of Impaired Area and Zone: _____

Brief Description of Prosthesis: _____

Application Type: Date _____

of Skill Performance Evaluation: _____

Trip No. 1		Trip No. 2	
Start Time:		Start Time:	
End Time:		End Time:	
Odometer Readings:		**Odometer Readings:**	

TRIP # 1:		TRIP # 2:	
Off Highway Section:	0	Off Highway Section:	----------
On Highway Section:	0	On Highway Section:	0
General Section:	0	General Section:	0
Total Trip Points:	0	Total Trip Points:	0
Total Trip Points (1&2):	0		
Average Trip Points:	0		
[(Trip 1+2)/2 + Off Hwy]			

Critical Point Ratio: 0.00

Total Points Assigned During This Evaluation:

SPE TOTALS CALCULATIONS

EXAMPLE

Off Road/Pre-Trip + Driving Totals		Off Road/Pre-Trip+ Inspection Total	
Total SPE Pts:	Total Critical Pts:	Non Critical Points	Critical Points
0	0	0	0

Driving and General Totals			
1st Trip		2nd Trip	
Non Critical Points	Critical Ponts	Non Critical Points	Critical Points
0	0	0	0

Skill Performance Scoring

OFF HIGHWAY SECTION: **Not Complete - Explain in Comments**

	1st Trip		2nd Trip	
	Critical Points	Non Critical Points	Critical Points	Non Critical Points

1. BUS OR TRUCK PRE-TRIP INSPECTION ☐ **Not Completed**

a. Fails to make complete and systematic check of vehicle (90)
b. **Other (90)**

2. COUPLING TRACTOR TO THE TRAILER ☐ **Not Completed**

☐
a. Line up vehicles (25)
b. Secure tractor/trailer against movement (25)
c. Pull against king pin to check connection (25)
d. Connect/disconnect lines properly (25)
e. Check connection from underneath the trailer (25)
f. Make sure ground supports trailer landing gear (25)
g. Raise/lower landing gear fully (25)
h. Release fifth wheel latch (25)
i. Pull forward & stop with frame under trailer & check trailer is stable before pulling awary (25)
j. **Other (25)**

3. PARALLEL PARK/SIGHT-SIDE ☐ **Not Completed**

a. Takes too many pull-ups (50) (2 pull-ups allowed)
b. Strikes a cone or boundary encroachment (50)
c. Improper final position of vehicle (50)
d. **Lacks adequate control for completion of the maneuver (801)**
e. **Other (50)**

4. ALLEYDOCK PARKING (BACK-IN) ☐ **Not Completed**

a. Takes too many pull-ups (50) (2 pull-ups allowed)
b. Strikes a cone or boundary encroachment (50)
c. Improper final position of vehicle (50)
d. **Lacks adequate control for completion of the maneuver (801)**
e. **Other (50)** ☐

5. STRAIGHT LINE BACKING **Not Completed**

a. Maintain smooth and slow speed (rides clutch) (50)
b. Check both mirrors frequently (50)
c. Maintain directional control, over steers/zigzag (50)
d. Takes too many pull-ups (50) (1 pull-up allowed)
e. Strikes a cone or boundry encroachment (50)
f. **Lacks adequate control for completion of the maneuver (801)**
g. **Other (50)**

6. ENTRY AND EXIT ABILITY ☐ **Not Completed**

a. From the cab (25)
b. From the hook-up area back of cab (25)
c. From the cargo compartment (25)
d. **Other (25)**

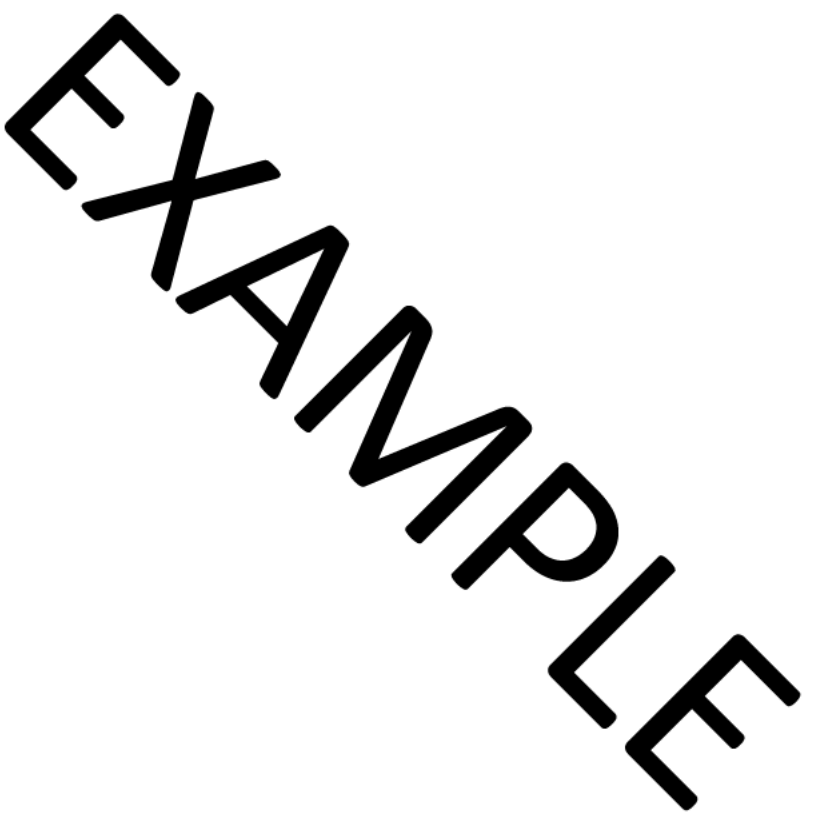
7. DRIVING PREPARATION **Not Completed**

a. Adjust seat properly (25)
b. Adjust rear view mirrors (25)
c. Secure all doors properly (25)

EXAMPLE

d. Secure/remove loose objects in cab (25)
e. Buckle seat belt (25)
f. **Other (25)** _____

☐


EXAMPLE

ON HIGHWAY SECTION

	Completed	Not Completed
TRIP 1:	☐	X
TRIP 2:	☐	X

1st Trip		2nd Trip	
Critical Points	Non Critical Points	Critical Points	Non Critical Points

8. ACCELERATING TO TRAFFIC SPEED

a. Check traffic or signal before pulling out (75)
b. Select proper gear (75)
c. Stalls engine (75)
d. Rolls back on a grade (75)
e. **Other (75)**

9. CHANGING GEARS

a. Proper use of clutch (coordination, acceleration, gears) (75)
b. Demonstrates ability to double clutch (avoids clashing gears) (75)
c. Slips clutch to hold vehicle on a grade (75)
d. Keeps clutch depressed while waiting at traffic light (75)
e. Coasts down grades, up to stop signs, and traffic signal lights (75)
f. **Other (75)**

10. DIRECTIONAL CONTROL

a. Hands in unstable positi[illegible] (< 1/3 c[illegible]between hands) (75)
b. Steers with one hand (75)
c. Steers abruptly, not smoothly (75)
d. Allows truck to wander (75)
e. **Other (75)**

11. VEHICLE POSITIONING

a. Keep right when possible (75)
b. Select proper lane (75)
c. Center vehicle in lane (75)
d. Follows vehicle ahead too closely (75)
e. Keep trailer fully in lane on curves (75)
f. Set up (judge radius) curves properly (75)
g. **Other (75)**

12. SPEED ADJUSTMENT

a. Obey all posted speed limits (75)
b. Adjust speed for road surface, weather, intersection, or traffic as needed (75)
c. Drives too slow for conditions (75)
d. Maintain constant (steady) speed (75)
e. Reduce speed prior to curves, downshifts, or apply power through curves (75)
f. Fails to reduce speed in curb lane in towns (75)
g. **Other (75)**

13. BRAKING AND STOPPING

a. Makes sudden stops (75)
b. Check mirrors for following traffic (75)
c. Goes into crosswalk or past stop sign (75)
d. Allows vehicle to drift forward or back while waiting (75)
e. Check brakes at top of downgrades (75)
f. Gear down properly for descending grades (75)
g. Uses engine brake or retarder improperly (75)
h. Uses air brakes improperly on downgrade (75)
i. **Other (75)**

EXAMPLE

14. **LEFT TURNS**

a. Get in proper lane well in advance (75)
b. Check for oncoming traffic and pedestrians (75)
c. Wait with front wheels pointed straight ahead (75)
d. Cuts corner too short (75)
e. Takes corner too wide (75)
f. Selects improper lane on completion of turn (75)
g. Both hands on wheel (unless changing gears) (75)
h. Improper speed-too fast or too slow (75)
i. Check mirrors prior, during, and after turn (75)
j. Activate/cancel turn signals properly (75)
k. **Other (75)** _____

15. **RIGHT TURNS**

a. Get in proper lane well in advance (75)
b. Check for oncoming traffic and pedestrians (75)
c. Wait with front wheels pointed straight ahead (75)
d. Cuts corner too short (75)
e. Takes corner too wide (75)
f. Selects improper lane on completion of turn (75)
g. Both hands on wheel (unless changing gears) (75)
h. Improper speed-too fast or too slow (75)
i. Check mirrors prior, during, and after turn (75)
j. Activate/cancel turn signals properly (75)
k. **Other (75)** _____

EXAMPLE

1st Trip		2nd Trip	
Critical Points	Non Critical Points	Critical Points	Non Critical Points

16. **INTERSECTIONS AND RAIL CROSSINGS**

a. Reduce speed as necessary (75)
b. Look both ways (75)
c. Yield right of way for safety (75)
d. Stops in crosswalk, intersection, or over crosswalk, stop line/sign (75)
e. Anticipate traffic signal light changes (75)
f. Makes sudden stops that could cause a rear-end collision (75)
g. Makes lane change in intersection/railroad crossing (75)
h. Makes gear change in intersection/railroad crossing (75)
i. Check for railroad signs/signals (75)
j. Check for "second track hazard" (75)
k. Open window to listen if necessary (75)
l. Stops/applies brakes on tracks **(Automatic Termination of SPE)**
m. Run through traffic on amber when able to stop (75)
n. Runs through traffic on red **(Automatic Termination of SPE)**
o. Runs through stop sign **(Automatic Termination of SPE)**
p. **Other (75)** _____

17. **PASSING AND LANE CHANGING**

a. Check mirrors before pulling out (75)
b. Activate/cancel turn signal properly (75)
c. Adequately judge speed/distance necessary to make smooth safe pass (75)
d. Improperly passes another vehicle on curves or hills with short sight distances **(Automatic Termination of SPE)**
e. Improperly passes another vehicle in intersection **(Automatic Termination of SPE)**
f. Adequately clear other vehicle before cutting back to lane (75)
g. Return to correct lane smoothly (75)
h. Tailgating while waiting to pass (75)
i. Let passing vehicle in lane (75)
j. Yield or blend smoothly at merging points (construction, lane ending, or expressway) (75)

k.	**Other (75)**			

EXAMPLE

18. **TRAFFIC CONTROLS AND SURVEILLANCE**
- a. Disobeys police officer **(Automatic Termination of SPE)**
- b. Obey yield sign (100)
- c. Obey posted weight limits (100)
- d. Check overhead clearance signs (100)
- e. Obey truck route/lane signs (100)
- f. School zones improperly observed (100)
- g. Hospital zones improperly observed (100)
- h. Construction zones improperly observed (100)
- i. **Other (100)**

19. **SECURES VEHICLE**
- a. Close all doors and windows (25)
- b. Set parking brake (25)
- c. Put transmission in lowest possible gear (25)
- d. Allow engine to cool down at idle (25)
- e. Chock wheel (if necessary) (25)
- f. **Other (25)**

GENERAL SECTION

EXAMPLE

1st Trip		2nd Trip	
Critical Points	Non Critical Points	Critical Points	Non Critical Points

20. **COMMUNICATION**
- a. Use horn when needed (25)
- b. Improper use of horn (25)
- c. Turn on lights during periods of poor visibility or darkness (50)
- d. **Other (25)**

21. **SMOOTHNESS OF OPERATION**
- a. Hold controls steadily (75)
- b. Manipulate controls rapidly (75)
- c. Manipulate controls smoothly (75)
- d. Maintain proper position on seat (75)
- e. Lacks adequate physical stamina (75)
- f. **Other (75)**

22. **DISCRETION TO TERMINATE AN SPE**
- a. Violates any local traffic law not included above as terminating an SPE.
- b. Fails to demonstrate proper use of clutch with left foot.
- c. Fails to use limb an applicant would typically use to operate controls.
- d. Fails to use modified vehicle controls.

23. OTHER CAUSES OF AUTOMATIC FAILURE AND/OR TERMINATION OF AN SPE

a. **Contact** - Have any contact with another vehicle, pedestrian, or fixed object.

b. **Dangerous Action -** Perform a dangerous action, which includes, but not limited to, a situation in which a potential crash is avoided only by the defensive action of another driver or a pedestrian, the SPE Evaluator has to aid in controlling the vehicle by taking hold of the steering wheel or applying the brakes, the applicant loses control of the steering wheel, or the applicant causes any part of the vehicle to go on the sidewalk, over a curb, or off the paved driving surface, even if there is no visible damage.

c. **Violations of Law** – Violate a traffic law that resulted in the applicant receiving a traffic citation for a moving violation during the SPE and/or provide a false driver's license.

d. **Lack of Cooperation or Refusal to Perform -** Fail to cooperate or refuse to perform required tasks as instructed by the SPE Evaluator, which includes refusing to attempt a requested maneuver, repeatedly failing to follow instructions, offering a bribe or gratuity, or issuing a threat.

e. **Precision Prehension and Power Grasp Prehension -**Fail to demonstrate precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel).

f. **Same Prosthetic Device** – Fail to wear the same prosthetic or orthotic device for the SPE worn during the medical evaluation summary.

g. **Inappropriate Prosthetic Device and Fit -** Prosthetic or orthotic device worn is not appropriate to safely operate the vehicle and/or does not fit securely.

h. **Vehicle Condition -** Vehicle has a defect or deficiency that would affect its safe operation or result in mechanical breakdown.

i. **Vehicle Modification -** Vehicle modification(s) is not appropriate and does not ensure safety of the applicant, SPE Evaluator, or public. Applicant did not demonstrate the ability to safely operate the vehicle modifications.

EXAMPLE

THE APPLICANT:

VEHICLE DESCRIPTION:

SPE DESCRIPTION:

RECOMMENDATIONS:

OTHER:

ADDITIONAL COMMENTS:

EXAMPLE

6.2.1.16.1.2 Circumstances Requiring the SPE Evaluator to Terminate the SPE

Failing to satisfy any one of the requirements listed below establishes the driver applicant is not able to safely operate the CMV and must result in the immediate termination of the SPE and the denial of the SPE application or renewal application under FMCSA's review.

1. A driver applicant must demonstrate precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) in each hand separately with or without a prosthetic or orthotic device, unless the vehicle has been modified to meet the driver applicant's specific needs. This requirement does not apply to a driver applicant who was granted a waiver, absent a prosthetic device, prior to January 6, 1986.

   To demonstrate precision prehension, a driver applicant must use the hand that typically would be used to operate the applicable vehicle controls. If the driver applicant crosses over or reaches through or around the steering wheel with the non-impaired upper limb to reach the vehicle controls, the SPE must be terminated immediately.

2. A driver applicant who wore an upper limb prosthetic or orthotic device when the medical evaluation summary required under 49 CFR § 391.49(d)(3) was completed or requires an upper limb prosthetic or orthotic device to demonstrate precision prehension or power grasp prehension, must wear the same prosthetic or orthotic device during the entire SPE and while operating a CMV with the SPE certificate.

3. Any prosthetic or orthotic device worn must be appropriate to safely operate the CMV and fit securely.

4. CMVs operated by the driver applicant must be free of any defect or deficiency that would affect their safe operation or result in mechanical breakdown. All modifications must be appropriate and ensure safety of the driver applicant, SPE Evaluator, and public. Driver applicants must demonstrate the ability to safely operate the vehicle modifications.

5. A driver applicant must not do any of the following:
   a. Violate a traffic law that resulted in the driver applicant receiving a traffic citation for a moving violation during the SPE.
   b. Stop or apply the brakes while on railroad tracks, run through a traffic light on red or a stop sign, or improperly pass another vehicle on curves or hills with short sight distances or in an intersection.
   c. Disobey a police officer.
   d. Provide a false driver's license.

6. During the driving portion of the SPE, the CMV driven by the driver applicant must not have any contact with another vehicle, pedestrian, or fixed object.

7. A driver applicant must not perform a dangerous action, which includes, but is not limited to, a situation in which a potential crash is avoided only by the defensive action of another driver or a pedestrian, the SPE Evaluator has to aid in controlling the vehicle by taking hold of the steering wheel or applying the brakes, the driver applicant loses control of the steering wheel, or the driver applicant causes any part of the vehicle to go on the sidewalk, over a curb, or off the paved driving surface, even if there is no visible damage.

8. A driver applicant must not fail to cooperate or refuse to perform required tasks as

instructed by the SPE Evaluator, which includes refusing to attempt a requested maneuver, repeatedly failing to follow instructions, offering a bribe or gratuity, or issuing a threat.

9. To proceed to the on-highway portion of the SPE the non-driving and off-highway scores must not exceed 800.

6.2.1.16.1.3 Circumstances when the SPE Evaluator has Discretion to Terminate the SPE

The SPE Evaluator, based on an individualized assessment, has discretion to terminate the SPE, resulting in a denial of the SPE application or renewal application, if the driver applicant is not able to safely operate the CMV with respect to the behaviors listed below.

1. Violating any local traffic law not included in item 5 of section B above, which includes any act for which the driver applicant could be cited or arrested.

2. Failing to demonstrate that the driver applicant can operate the clutch with the left foot, with or without a prosthetic or orthotic device as applicable to that driver applicant, and without assistance of an upper limb. Only after a driver applicant successfully demonstrates the use of a clutch, may the applicant "float" the gears (i.e., shifting without using the clutch).
3. Failing to use the lower limb a driver applicant would typically use to operate controls or failing to use modified vehicle controls to allow the applicant to operate controls on the unimpaired lower limb side. However, a driver applicant may use the left foot to operate controls typically operated with the right foot if the applicant can do so safely or if the vehicle has been modified to move the accelerator or brake or both, as necessary, to the left side of the vehicle.

6.2.1.16.1.4 Documenting the Termination of an SPE

When an SPE is terminated, the SPE Evaluator should clearly state the reason(s) the SPE was terminated and how the driver applicant failed to adequately demonstrate the ability to safely operate the CMV in the applicable section and in the "SPE Description" box on the SPE Report. The SPE Evaluator should also provide recommendations that would assist the driver applicant to safely operate the vehicle in the "Recommendations" box on the SPE Report. The SPE Evaluator will provide the completed SPE Report to the designated SPE Specialist.

6.2.1.16.1.5 Denial of an SPE Application

The SPE Specialist will use information from the SPE Report to draft a letter stating that the application for an SPE certificate or to renew an SPE certificate is denied. The letter will include the reasons the SPE was terminated and any applicable recommendations. Denial letters must be reviewed by an attorney within the Office of Chief Counsel, Enforcement and Litigation Division (MC-CCE) before issuance.

Example SPE Application Denial Letter Template

ATTACHMENT C

U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Southern Service Center
1800 Century Blvd., NE
Suite 1800
Atlanta, Georgia 30345

[DATE]

Served by: _____
Service Date: _____

[NAME]
[ADDRESS]
[ADDRESS]

RE: Final Agency Action Denying Application for Skill Performance Evaluation (SPE) Certificate

Dear **[DRIVER NAME]**:

The Federal Motor Carrier Safety Administration (FMCSA) denies your SPE certificate application received on or about **[DATE] [and the supplemental document received on or about (DATE)]** for the reasons set forth below. This notice is the final agency action on your application.

Regulatory Requirements

A person who drives a commercial motor vehicle (CMV), as defined in 49 U.S.C. § 31132 and 49 CFR § 390.5T, in interstate commerce must meet the physical qualifications set forth in 49 CFR part 391, subpart E. The CMV driver must meet physical qualifications under 49 CFR § 391.41. Under 49 CFR § 391.49, a CMV driver who does not meet the physical qualification standards in 49 CFR § 391.41(b)(1) or (b)(2), or both, and who is otherwise qualified to drive a CMV, may drive a CMV, if FMCSA grants the driver an SPE certificate.

Basis for Decision

Under § 391.49, you were required to demonstrate your ability to safely operate the CMV you intend to drive to FMCSA or its authorized state partner. On **[DATE]**, **[NAME OF PERSON CONDUCTING TEST]**, an agent authorized by FMCSA, administered an SPE under 49 CFR § 391.49(g). During the evaluation, you failed to adequately demonstrate the ability to safely operate the CMV for the following reasons:

1. **[LIST EACH OF THE REASONS IDENTIFIED IN THE SPE REPORT]**
2.
3.

Re-Application Process
If you wish to re-apply for a new SPE certificate, you may submit a new application under 49 CFR § 391.49, which must include all information and documents required in § 391.49(c) and (d). In addition, you must successfully demonstrate that you have resolved the issues identified in this denial.

FMCSA recommends that if you choose to submit a new application (1) you **[LIST THE RECOMMENDATIONS IN THE SPE REPORT UNDER RECOMMENDATIONS]; or (2).**

If you have any questions concerning this matter, please feel free to call me at **[TELEPHONE NUMBER]**. In addition, you may direct questions to **[NAME]**, SPE Medical Program Specialist, at **[TELEPHONE NUMBER]**.

Regards,

[NAME]
Service Center Director

6.2.1.16.2 SPE PROCEDURES

6.2.1.16.2.1 Skill Performance Evaluation (SPE) Report

SPE Evaluators conducting the SPE must use the version of the SPE Report provided by the SPE Medical Program Specialist (SPE Specialist) to score and record comments related to the SPE. An SPE Specialist will provide the SPE Report to the SPE Evaluator when an SPE application is complete and an SPE is requested.

6.2.1.16.2.2 Preparations in the Event an SPE is Terminated

Prior to beginning the SPE, an SPE Evaluator should ensure that the driver applicant has made arrangements for a qualified driver to retrieve the vehicle, if a termination of the SPE were to occur. Additionally, the SPE Evaluator should plan a route that would allow for the safe termination of an SPE. If the SPE Evaluator determines it is necessary to terminate the SPE during the on-highway portion of the SPE, the SPE Evaluator is to instruct the driver applicant to pull off the road at the first location where it is safe to park and terminate the SPE. The applicant shall contact a qualified driver and make the necessary arrangements for the driver to come to the site to retrieve the vehicle and return it to the original site.

6.2.1.16.2.3 Documentation of Termination of an SPE

When the SPE is terminated, the SPE Evaluator should clearly state the reason(s) the SPE was terminated and how the driver applicant failed to adequately demonstrate the ability to safely

operate the commercial motor vehicle (CMV) on the SPE Report. While there may be a primary reason the SPE was terminated, any other reasons should also be stated on the SPE Report, especially those for which critical points relating to the loss or impairment of the limb were assessed, that would make it unlikely the driver applicant would be able to demonstrate the ability to safely operate the CMV.

6.2.1.16.2.3.1 In circumstances requiring the termination of the SPE

The SPE Evaluator should indicate the automatic termination of the SPE in section 16, 17, 18, or 23 of the SPE Report if applicable. In addition, the reason(s) for the termination of the SPE and how the reason relates to the loss or impairment of the limb, if known, should be fully explained in the "SPE Description" box. If additional space is needed, the "Other" or "Additional Comments" box may be used as well.

> Example: If a driver applicant ran through a red traffic light, that may have occurred because the driver applicant did not see the light or was unable to stop due to use of a prosthesis. If the reason the driver applicant ran through a red traffic light appears to relate to the loss or impairment of the limb, the SPE Evaluator should document relevant observations such as the prosthesis slipped off the brake, the driver applicant needed to use their hand to apply additional force to the leg, the driver applicant appeared to be timing lights to avoid stopping, the driver applicant attempted to stop the vehicle but was unable to do so, etc.

6.2.1.16.2.3.2 In circumstances in which the SPE Evaluator has discretion to terminate the SPE

The SPE Evaluator should indicate the termination of the SPE in section 22 of the SPE Report if applicable. In addition, the reason(s) for the termination of the SPE and the significant factors that contributed to the determination that the driver applicant was not able to safely operate the CMV should be fully explained in the "SPE Description" box. If additional space is needed, the "Other" or "Additional Comments" box may be used as well.

> Example: If a driver applicant crossed over an impaired right leg or prothesis and used the left foot to operate the accelerator or brake in a vehicle that had not been modified, the SPE Evaluator might have determined doing so prevented this particular driver applicant from operating the CMV safely because the impaired limb or prothesis obstructed operation of the pedals, the driver applicant was positioned in the seat in a manner that prevented the seat belt from fitting properly or appropriate viewing of mirrors, the foot slipped off the pedals, only a small area of the pedals was in contact with the foot, the foot applied force to the pedals in a jerky manner that made a crash likely, the driver applicant could not move the foot quickly between the pedals, etc.

When an SPE is terminated, the SPE Evaluator should provide recommendations that would assist the driver applicant to safely operate the vehicle in the "Recommendations" box on the SPE Report. The "Other" or "Additional Comments" box may be used if additional space is needed. The recommendations should address the primary reasons the SPE was terminated. Examples of recommendations could include the following:

> • Vehicle needs modification by adding a lift for the driver applicant or moving the accelerator or brake to the left side of the vehicle;

• Vehicle needs push/pull hand controls or controls mounted on the steering wheel;
• Driver applicant needs a different prosthesis or an orthotic device to be able to demonstrate power grasp prehension;
• Driver applicant needs to operate a vehicle with an automatic transmission;
• Driver applicant needs more practice or training with a driving instructor who specializes in teaching drivers with loss or impairment of a limb; or
• Driver applicant needs a refresher on rules of the road.

If the SPE Evaluator is not aware of the specific vehicle modification that might be needed, the function that is needed should be described. For example, a recommendation might be that the driver applicant needs a way to be able to turn on and off the headlights, wipers, or turn signals without reaching through the steering wheel.

The SPE Evaluator will provide the completed SPE Report to the designated SPE Specialist.

6.2.1.16.2.4 Denial of an SPE Application

When an application for an SPE certificate or to renew an SPE certificate is denied, FMCSA's designated SPE Specialist will complete a denial letter template. The SPE Specialist will include the information provided by the SPE Evaluator on the SPE Report regarding the specific reasons the SPE was terminated and any comments associated with particular scores assessed. The letter will also include any applicable recommendations provided by the SPE Evaluator. Denial letters must be reviewed by an attorney within the Office of Chief Counsel, Enforcement and Litigation Division (MC-CCE) before issuance.

6.2.1.16.2.5 Reapplying for an SPE Certificate

Driver applicants who wish to re-apply for an SPE certificate may submit a new letter of application under 49 CFR § 391.49, which must include all information and documents required in § 391.49(c) and (d). In addition, the driver applicant must successfully demonstrate that they have resolved the reasons identified in the letter for denying the prior SPE application or renewal application.

6.2.2 Enforcement Manual

6.2.2.1 Division and Service Center Enforcement Procedures

6.2.2.1.1 Topics Covered by this Manual

This manual delineates the respective roles of the Divisions and the Service Centers in enforcement case preparation and processing. Responsibilities of Safety Investigators (SIs) in conjunction with the conduct of investigations and enforcement are covered in the SIs' Manual.

6.2.2.1.2 The Division's Role in the Enforcement Process

The Division Administrator (DA) or designee has the responsibility to:

- Ensure that the appropriate enforcement action is initiated and submitted by the Safety Investigator (SI);
- Ensure the enforcement report is signed by the investigator;
- Determine if the motor carrier's response to a Notice of Violation (NOV) adequately addresses identified safety compliance issues. (Please see the Manager Manual, Compliance Manual,

Handling the Motor Carrier Response to the Direct NOV for additional guidance on converting NOVs to investigations, if the response is inadequate.)

- Assure the quality of the enforcement case;
- Recommend the disposition and penalty assessment to be issued;
- Ensure the NOC and NOV are signed and mailed return receipt requested to the claimant; and
- Upload the NOC, NOV, and Enforcement Case Report to the Enforcement Management Information System (EMIS).

As needed, the DA or designee may consult with the Service Center Enforcement Team (SCET) to determine the best enforcement action to take. For certain types of enforcement actions, concurrence of the SCET is required, such as Section 222 cases assessing maximum civil penalties, imminent hazard proceedings, and criminal enforcement proceedings.

6.2.2.1.3 SCET's Role in the Enforcement Process

The SCET processes and prosecutes enforcement cases. In addition, the SCET:

- Consults with Division personnel to determine appropriate enforcement action;
- Provides assistance with investigations and enforcement activities;
- Provides technical assistance to the Divisions;
- Processes civil penalty assessment payments;
- Negotiates and settles enforcement cases;
- Prepares orders and agreements relating to the disposition of enforcement cases; and
- Maintains the EMIS.
    - Separation of Duties in the Civil Penalty Collection Process

The Service Center Director (SCD) of each Service Center (SC) will assign a person (can be more than one person) who will handle incoming mail. This person (Enforcement Clerk, Transportation Assistant, or other designee) will process incoming mail, and when civil penalty payments (checks) are received, this person will make copies of civil penalty check payments, and hand original checks, as well as copies of the checks to the SCD or his/her designee. The SCD or his/her designee will assign an employee to enter the civil penalty payment (checks) into EMIS. The person who enters the payments into EMIS will reconcile the checks received with copies of checks and the Record of Cash Receipts report generated from EMIS. The person who handles incoming mail will always be different (or separate) from the person who enters the payments into EMIS.

6.2.2.2 Enforcement Proceedings

6.2.2.2.1 Explanation of Enforcement Proceedings

In order to ensure that carriers operate safely, the Federal Motor Carrier Safety Administration (FMCSA) investigates and initiates enforcement proceedings for violations of the Federal Motor Carrier Safety Regulations (FMCSR), and Hazardous Materials Regulations (HMR). FMCSA uses the following enforcement tools to induce compliance:

- Investigates the safety fitness of motor carriers/operators/shippers of hazardous materials (HM);
- Places carriers/drivers OOS for unsatisfactory safety fitness performance;
- Assesses civil penalties for safety violations;
    - Assess maximum civil penalties for patterns of repeat violations;
    - Order carriers/drivers to cease operating in interstate commerce and suspend operating authority (if applicable) for non-payment of civil penalties; and
    - Enter into Settlement Agreements for disposition of civil penalty enforcement proceedings;
- Proposes and settles civil penalties for *Riojas* affected violations using a Letter of Probable Violation (LOPV). See the policy titled “Policy for Handling Riojas Affected Violations and Impacts to Existing Policies,” MC-ECE-2020-0001.

- Investigates complaints;
- Issues Notice of Investigations (NOI) and Compliance Orders;
- Pursues criminal penalties;
- Coordinates and participates in enforcement activities with federal, state, and local personnel;
- Issues Injunctions;
- Prohibits operations due to imminent hazards; and
- Issues subpoenas to aid with enforcement activities.

6.2.2.3 Types of Enforcement Actions

6.2.2.3.1 Assessing Civil Penalties

FMCSA assesses civil penalties for violations of the FMCSR and HMR. A civil penalty enforcement action can be initiated by the issuance of a NOC. See 49 C.F.R. § 386.11(b). Such action is taken when a review of a carrier's operation indicates significant noncompliance with the FMCSR and/or HMR. Generally, significant noncompliance with the FMCSR and HMR contemplates Acute and/or Critical Violations. Acute and critical regulations are listed in Appendix B of 49 C.F.R. Part 385. FMCSA proposes and settles civil penalties for Riojas affected violations using a Letter of Probable Violation (LOPV) following the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," MC-ECE-2020-0001. FMCSA may enforce an LOPV in federal court."

6.2.2.3.2 Assessing Maximum Civil Penalties

When a person is found to have committed a pattern of violations an acute and/or critical regulation, then the maximum civil penalty for each violation will be assessed. See 49 U.S.C. 521, Note Minimum and Maximum Assessments.

6.2.2.3.3 Prohibit a Motor Carrier or Operator from Operating in Interstate

A company or driver that fails to pay a FMCSA civil penalty (or negotiated installment payment) within 90 days of the date specified for payment will be barred from operating in interstate commerce and have its FMCSA registration suspended (if applicable) on the 91st day and may not resume operating until the original civil penalty amount is paid in full. See 49 C.F.R. §§ 386.83, 386.84.

6.2.2.3.4 Issuing a Settlement Agreement

A settlement agreement is a negotiated agreement between FMCSA and the subject of an enforcement proceeding. Generally, it concludes the proceeding. Because of the contractual nature of the agreement, it can commit the motor carrier to do more than is required by law. See 49 CFR § 386.22 Settlement Agreements.

When negotiations produce an agreement as to the amount or terms of payment of a civil penalty or the terms and conditions of an agreement, a settlement agreement will be drawn and signed by the respondent and the Field Administrator (FA) or his/her designee.

6.2.2.3.5 Pursuing Criminal Penalties

In those instances where knowing and willful violations can be proven, enforcement may proceed criminally. All cases proceeding in the criminal context must be handled by FMCSA counsel in cooperation with the appropriate United States Attorney's Office. Criminal prosecution may also involve the assistance of the United States Department of Transportation (USDOT) Office of the Inspector General (OIG), the FBI, the United States Postal Service, the Department of Agriculture, or United States Customs Service (USCS). See 49 U.S.C. § 521.

6.2.2.3.6 Coordinating Investigations and/or Enforcement Activities with Other Agencies

Joint investigations and/or enforcement activities may be conducted by the Division with other federal, state, or local agencies. The DA or designee should coordinate these investigations, if appropriate.

6.2.2.3.7 Seeking Injunctive Relief

FMCSA can pursue an injunction after the Division, the SCET, and the appropriate United States Attorney's Office have consulted and agreed to this action. Violations of a final order such as an out-of-service (OOS) Order or an order to cease operations are examples of matters that can be enforced by seeking injunctive relief. See 49 C.F.R. § 386.71.

6.2.2.3.8 Issuing an Operation OOS Order

When FMCSA determines the carrier, driver, or vehicle constitutes an "imminent hazard" and concludes that the continued operation in violation of the regulations would likely result in serious injury or death if not discontinued immediately. This OOS Order can only impose restrictions to the extent necessary to abate the imminent hazard. See 49 C.F.R. § 386.72.

6.2.2.3.9 Issuing Subpoenas in Aid of Enforcement

It may be necessary to issue a subpoena when a carrier fails to comply voluntarily with a request to conduct an investigation, to examine records, or to inspect equipment. See 49 U.S.C. § 502.

6.2.2.4 Civil Penalty Enforcement Proceedings

6.2.2.4.1 Procedures to Assess Civil Penalty

At the conclusion of the investigation, the investigator, in conjunction with the DA or designee, may determine that the assessment of a civil penalty is an appropriate enforcement action. A civil penalty enforcement proceeding is initiated by the preparation of an enforcement case report that is the basis for the issuance of a NOC.

Such action is taken when a review of a carrier's operation indicates significant noncompliance with the FMCSR or HMR. Generally, significant noncompliance with the FMCSR and HMR contemplates "acute" and/or "critical" violations. Acute and critical violations are listed in Appendix B of 49 C.F.R. Part 385.

FMCSA will not serve an NOC under 49 CFR part 386 when charging Riojas affected violations. If a Division determines that an enforcement action on Riojas affected violation(s) is the best means to induce compliance, an Enforcement Analysis must be conducted following the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," MC-ECE-2020-0001 to determine what type of enforcement should be pursued. FMCSA will propose and settle civil penalties for Riojas affected violations using the procedures in that policy.

6.2.2.4.2 Division's Role in Assuring the Quality of the Civil Penalty Enforcement Proceeding

An enforcement case report, prepared by a SI or Inspector, will be submitted to the Division office they are assigned to or the Division office designated by their supervisor. The DA or designee is responsible for assuring the quality of the enforcement case report. The quality of the enforcement case report should be determined by evaluating the following:

- Timeliness;
- Proper preparation of the report;
- Submission of required evidence;
- Accuracy of each violation cited;
- Appropriate penalty assessment;
- Identification of deficiencies; and
- Recommendation regarding disposition and the level of assessment or the actual penalty amount, including SBREFA considerations. See *Illustration E-1: The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)*.

The DA or designee will consider any corrective actions taken by respondent prior to the issuance of the NOC in determining the appropriate penalty assessment.

Upon receipt of an enforcement case report, the DA or designee will review the report promptly. The evidence contained within the report must support the violation described. If the report is incomplete because of insufficient evidence or is inconsistent with policies and/or procedures, it will be returned to the SI for corrective action. After the review, the reviewer will approve the transmittal of the report to the appropriate SCET designee. The Division will retain the documents supporting the Exhibit Abstracts, unless requested by counsel or SCET.

When these reports are transmitted and reviewed electronically they should remain under the direct oversight of the DA or designee to ensure that all necessary reviews are properly conducted.

6.2.2.4.3 Definition of NOC and its Components

The NOC is the official charging document used by FMCSA to initiate a civil penalty enforcement proceeding for violations of the FMCSR or HMR. The requirements for the NOC are contained in 49 C.F.R. § 386.11. The NOC must be electronically generated by the CaseRite software program. CaseRite uses information gathered by the SI during an investigation and imported, in part, from either AIM, CAPRI and UFA software programs.

The NOC informs the subject that it has violated the regulations, states the amount of the penalty assessed, provides a summary of the violations, a statement of charges, and information regarding the subject's rights and obligations to respond to the NOC.

In addition, a Table of Violations and the UFA Worksheet are to be attached to the NOC. The NOC Table of Violations must list all documented instances that were included in the determination of extent for acute violations, critical violations, and/or any other violation included on the NOC. The UFA Worksheet provides the respondent with details regarding the civil penalty calculation.

Any change in the language of the NOC, except for necessary modifications in cases against drivers, other carrier employees, joint and several liability, shippers or cargo tank facilities, must have the concurrence of the SCET. The SCET shall consult with a SC attorney on the legality of any change or modification to the language.

6.2.2.4.4 IT System Used to Generate the NOC

Case Rite electronically generates much of the content of the NOC based upon the information obtained during the investigation and transferred from either AIM,CAPRI and UFA.

This information includes:

- Name and address of respondent;
- The NOC must be prepared on SC letterhead and indicate a telephone and fax number for the SCET;
- Foundation for the claim [violations discovered during an investigation or a roadside inspection at a specified location on a certain date(s)];
- Statement of the provisions of the law alleged to have been violated;
- Amount being claimed for each violation and the maximum amount authorized to be claimed under the statute;
- Steps necessary to abate the violations (optional);
- Legal authority for FMCSA to issue the NOC;
- Directions for responding to the NOC;
- Statement of Charges (must be clear and complete description sufficient to notify the Respondent of the charges against it), and
- Certificate of Service.

6.2.2.4.5 Circumstances Under Which the DA Has Authority to Sign and Issue a NOC

The DA has the authority to all NOCs. For NOCs that are initiated outside of UFA, the DA must consult with the Service Center Director to get concurrence on the proposed penalty.

6.2.2.4.6 Issuance of the NOC

NOCs should be issued within 30 calendar days of the date of the completion of the investigation.

6.2.2.4.7 Service Procedures for the NOC

Regardless of who signs the NOC, the NOC will be prepared on SC letterhead and mailed to the respondent in an envelope which shows the SCET as the sender, i.e., the information should be in the upper left-hand corner of the envelope. This will allow return of the NOC correspondence to the SCET, if it is not delivered to the respondent, and the SCET will be able to track the status of the NOC in the docket.

The original NOC will be sent via certified mail return receipt requested to the respondent. A copy of 49 C.F.R. Part 386 will be included with the original NOC mailed to the respondent. Copies of the NOC will be mailed to every person on the Service List. Service (*Illustration E-3: Notice of Claim Service*) is complete upon mailing.

The NOC is sent to the respondent by certified mail with return receipt requested. The Division office should provide the "receipt for certified mail" to the SCET when the case is forwarded to the SC, and have the "return receipt" (green card for domestic mail or pink card for international mail) addressed so that it is returned to the SCET. Proof of delivery will be filed in the enforcement case file at the SC.

6.2.2.4.8 Documents that must be sent to the SCET if the DA signs the NOC

As soon as the NOC is mailed to the respondent, the DA or designee should upload, to the Electronic Data Management System (EDMS), copies of the following:

- Investigation Report;
- Signed NOC;
- Enforcement Report Cover Sheet; and
- UFA Report.

The DA or designee should upload the enforcement case report into EMIS via Case Rite.

6.2.2.4.9 Documents that must be sent by the Division to the SCET if the FA Signs the NOC

As soon as the enforcement case is prepared, the Division must send the entire case file to the SCET for review, including copies of the investigation report, the enforcement report cover sheet, the NOC, exhibits and exhibit abstracts, and the UFA Report.

After the NOC is mailed to the respondent by the SCET, the SCET must upload the enforcement case report into EMIS via Case Rite.

6.2.2.4.10 Procedures to Follow if the SCET Discovers Errors or Omissions in a NOC Issued by the Division

If the SCET discovers errors or omissions in a NOC that would require an amendment of the NOC, the SCET will notify the DA of those errors or omissions. If an amended NOC is required, the SCET will issue and the FA will sign the amended NOC. The SCET will serve any amended NOC.

6.2.2.4.11 Actions to be taken by the SCET Once the NOC is mailed

Once the NOC has been mailed to the respondent, the SCET takes all necessary actions to process the civil penalty enforcement case.

6.2.2.4.12 Options the Respondent has Upon Receipt of the NOC

Upon receipt of the NOC the respondent has the following options:

- Pay in full;
- Negotiate settlement;
- Request a hearing;
- File notification of intent to submit evidence;
- Request reduction in penalty based on inability to pay; and/or
- Submit evidence of corrective action for fine reduction.

Note: FMCSA announced the suspension of its informal hearing procedures because it is re-evaluating the appropriateness and effectiveness of the procedure authorized under the Agency's Rules of Practice. Although proceedings where an informal hearing has already been requested will continue to be processed under the Rules of Practice, the Agency will not entertain any new requests for informal hearings pending its re-evaluation of the procedure.

6.2.2.4.13 Time the Respondent has to reply to the NOC

A respondent must file a written reply to the NOC within 30 days of service. Refer to 49 C.F.R. § 386.14 for additional information relating to the computation of time for filing a reply to the NOC.

6.2.2.4.14 Procedures Respondent Can Use to Pay the Entire Civil Penalty

If the respondent wants to pay the entire civil penalty, it must send a certified check, cashier's check, or money order to the processing SC. If a company or personal check is received by FMCSA, it should be returned to the sender accompanied by a letter explaining why the check is being returned. Respondent can also pay via a wire transfer. The SCET will work closely with Federal Aviation Administration (FAA) Finance to arrange a wire transfer.

The respondent can also pay online by going to the *Online Fine Payment* section on the SAFER website at http://safer.fmcsa.dot.gov. The payment is automatically posted in EMIS.

Before issuing any notices or orders related to non-payment of a FMCSA penalty, the SCET must ensure that payment has not been received online.

If a subject submits an insufficient payment (i.e., less than the full penalty amount) without first negotiating resolution of case, it should be returned, unless settlement agreement can negotiated and signed within 10 business days. SCET will not accept partial payments which indicate that they are "payment in full" or language effect.

In the case of online payments, the subject's credit card account must be credited. In order to credit the subject's credit card account, a written request must be sent electronically to the online site administrator, and the entire amount of the payment must be credited. The SCET must contact the subject and let them know that the online site administrator will be contacting them to refund their payment on their credit card. The SCET will then need to forward the carrier's phone number and contact name to the online site, along with the written request for the refund.

6.2.2.4.15 Procedures to Follow if Respondent Requests a Hearing in Reply to the NOC

If the respondent files a timely written response to the NOC requesting a hearing, the SCET may contact the respondent to negotiate a settlement. If there is a question as to the sufficiency of the reply, the SCET will consult with the SC attorneys for guidance on further action. The SCET may not determine that a default has occurred, due to the insufficiency of a reply, unless it has consulted and obtained concurrence from the SCET. If negotiations do not result in a settlement of the NOC after a timely written reply has been filed, the SCET will request copies of the evidence from the Division and have them forwarded to the SC attorneys for further handling.

If the file is forwarded to the SC attorneys, the SCET will make a notation of the assigned attorney in EMIS.

Note: FMCSA announced the suspension of its informal hearing procedures because it is re-evaluating the appropriateness and effectiveness of the procedure authorized under the Agency's Rules of Practice. Although proceedings where an informal hearing has already been requested will continue to be processed under the Rules of Practice, the Agency will not entertain any new requests for informal hearings pending its re-evaluation of the procedure.

6.2.2.4.16 Procedures to Follow if the Respondent Files a Notice of Intent to Submit Evidence in Reply to the NOC

If the respondent files a notice of intent to submit evidence, the SCET will IMMEDIATELY notify the SC attorneys of the filing and will request copies of the evidence from the Division. The SCET may negotiate with the carrier, but should ensure that all negotiations are concluded in sufficient time to permit the SC attorneys to file a timely submission of evidence. Pursuant to 49 C.F.R. § 386.16(a), FMCSA's evidence must be served no later than 60 days following the service of the respondent's reply; therefore, it is crucial that the SC attorneys be made aware of all replies containing a notice of intent to submit evidence as soon as possible.

If the file is forwarded to the SC attorneys, the SCET will make a notation of the assigned attorney in EMIS.

6.2.2.4.17 Time When FMCSA Can Issue a Settlement Agreement

A settlement agreement is a negotiated agreement between the FMCSA and the subject of an enforcement proceeding. Generally, it concludes the proceeding. Because of the contractual nature of the agreement, it can commit the motor carrier to do more than is required by law. See 49 CFR § 386.22 Settlement Agreements.

When negotiations produce an agreement, as to the amount or terms of payment of a civil penalty, or the terms and conditions of an agreement, a settlement agreement will be drawn and signed by the respondent and the FA or his/her designee.

6.2.2.4.18 Conducting Settlement Negotiations

If the respondent wants to negotiate a reduction in the civil penalty or a payment plan, it can do so by contacting the SCET by telephone, or by sending a letter asking to negotiate or reduce the civil penalty. If the SCET receives notification that the respondent wants to negotiate a reduction in the civil penalty or a payment plan, the SCET will contact the respondent. If the respondent has not filed a written reply to the NOC, but wishes to negotiate a settlement, the SCET should ensure that the respondent is made aware that the negotiation process does not eliminate the need to file a timely written reply to the NOC.

The objective is to settle the claim in a way that is satisfactory to both FMCSA and respondent. Negotiations may be face-to-face, by telephone, with fax or mail used to exchange documents.

During the negotiation process when UFA is used, the assessed fine is presumed to be accurate and appropriate for the violations contained in the NOC. However, in certain circumstances, payment plans, reduction in the civil penalty, or other resolution of the NOC designed to achieve improvement in the respondent's safety posture may be appropriate. Examples include:

- Technology investment and/or personnel investment beyond previous financial expenditures, including a submission of a well-defined written plan of action with specific time lines; consideration may be given for reduction of the civil penalty.
- Settlement agreement that identifies the significant areas of noncompliance noted in the NOC that mandates strong measures for eliminating the areas discovered in noncompliance. Part of this settlement agreement should incorporate the well-defined written plan of action, terms of compliance, and consequences of noncompliance.

- Respondent claims that it is unable to pay the civil penalty assessed or that payment of the civil penalty would cause undue hardship. The evidence should be in the form of the last two years of federal and state income tax returns, an accountant's profit and loss statements, or other documents evidencing respondent's claims. The amount of reduction will be based on the SCET's review of the tax returns and profit and loss.
- Corrective actions submitted by respondent indicating its efforts to achieve compliance, e.g., management changes in RODS verification process.

6.2.2.4.19 Procedures for Issuing Advanced Technology Settlement Agreements

The FMCSA may consider settlement agreements incorporating technology systems in any civil penalty case where implementation of a technology would redress the violations cited in the NOC and improve regulatory compliance and safe operation. Two areas of the FMCSR that are particularly conducive to enhancing compliance with safety regulations, by the motor carrier's integration of technology into its operations, are 49 CFR Parts 390 (post-accident) and 395 (HOS).

The FA has discretion to suspend the civil penalty asserted in an NOC on any conditions redressing the violations cited in the NOC, including the implementation of intelligent technologies. In determining the amount of the civil penalty to be suspended in the settlement agreement, the FA should consider the cost of implementation of the technology, the prospects for improved compliance, the motor carrier's history of prior compliance, the motor carrier's performance history, and any other matters the FA deems relevant. The FA may consider, but is not limited to dollar for dollar suspensions (i.e., for every dollar the motor carrier invests in the agreed technology system, the FA could suspend the motor carrier's civil penalty by the same dollar amount). The FA has discretion to not suspend any of the civil penalties (0 percent) or to suspend any amount of the civil penalty up to 80 percent. This broad discretion ensures that settlement agreements incorporating technology system investments are available to any motor carrier, in appropriate circumstances, without regard to the motor carrier's size or the amount of the assessed civil penalty.

The settlement agreement will specify the technology system to be acquired and installed by the motor carrier. The settlement agreement will also specify the timeframes in which the motor carrier must acquire and complete installation of the agreed technology, and will include provisions for the motor carrier to submit documentation

6.2.2.4.20 Policy for Reducing Penalty Amounts

When reducing penalties, Service Centers to adhere to the following recommendations.

- Service Centers are encouraged to settle penalties whenever possible.
- Service Centers may reduce a penalty up to 20 percent if:
    - The carrier submits a written plan to ensure deficiencies will not recur and
    - The carrier submits evidence of corrective actions taken. Service Centers may need to consult with the Division to confirm corrective actions submitted are adequate.
- Service Centers may reduce a penalty more than 20 percent only after consultation with the Division Office and with the approval of the SCD or Enforcement Program Manager.

Note: If part of a penalty is suspended or redirected to finance safety measures as part of a Settlement Agreement, that is not considered to be a reduction.

6.2.2.4.21 Type of Document to Prepare if Case is Resolved

If you reach a resolution of the case during settlement negotiations, a document should be prepared which memorializes the agreement. The agreement must be signed by the respondent and FA before it's effective. A settlement agreement must contain the items required by 49 C.F.R. § 386.16(c) as amended from time to time.

A settlement agreement must contain the items required by 49 C.F.R. § 386.23 as amended from time to time. Any agreement may also include any term or condition which the FA deems appropriate. The agreement should state that delinquency will be subject to 49 C.F.R. Part 102 - Standards for the Administrative Collection of Claims.

Once fully executed, the settlement agreement becomes a final order of FMCSA.

6.2.2.4.22 Procedures for Signing and Documenting the Settlement Agreement

If a settlement is reached, a settlement agreement is sent to the respondent, directing when and where the penalty will be paid. A cover letter should accompany the agreement. The cover letter should advise respondent that it must sign and return the document within ten (10) days or such other period of time as the SCET deems appropriate. A follow up letter or contact shall be made to the respondent if the agreement is not received within the specified time period.

Once the signed settlement agreement is received from respondent, the FA will sign the agreement. The original document shall be retained in the case file. Copies of the agreement shall be sent to every person on the service list of the NOC.

The SCET is responsible for entering into EMIS the date of the settlement agreement and its terms. The date of the settlement agreement to be entered into EMIS will be the date that the FA signs the agreement.

6.2.2.4.23 Procedures to Follow if Respondent Does Not Return Settlement Agreement within Required Time Period

If the respondent does not return the settlement agreement within the time period specified, the SCET will take the following actions, as appropriate:

- If the time for filing a reply to the NOC has expired and respondent has not replied, the SCET will issue a Notice of Default and Final Agency Order (NDFAO); or

If respondent has filed a timely reply to the NOC, then the file will be forwarded to the SC attorneys for further handling.

6.2.2.4 24 Illustration E-1: The Small Business Regulatory Enforcement Fairness Act of 1996

Also to be considered in the assessment of penalties is the SBREFA. The SBREFA allows an agency policy or program set up to regulate the activities of a small entity to include at least the following conditions or exclusions:

(1) requiring the small entity to correct the violation within a reasonable correction period;
(2) requiring the small entity to participate in a compliance assistance or audit program operated or supported by the agency or a State;
(3) excluding from this policy a small entity that has been subject to multiple enforcement actions by the agency;
(4) excluding violations involving willful or criminal conduct;
(5) excluding violations that pose serious health, safety or environmental threats; and
(6) Excluding violations where the entity is making a good faith effort to comply with the law.

The use of the term “willful” does not authorize the reclassification of all FMCSA regulatory violations into the exclusion category, thus allowing the agency to ignore the SBREFA requirements. In fact, the term “willful” has a specific legal definition. An act or omission is “willfully” done if

(1) it is done voluntarily and intentionally and
(2) with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. A willful act may be described as one done intentionally, knowingly and

purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. A good investigation will answer these questions and allow for a more informed determination as to whether a specific violation is subject to or exempt from SBREFA requirements.

Great care must be exercised by the Division when deciding if a violation is "willful" under the law. If a determination is made not to reduce a penalty, or to ultimately issue the NOC against a small business because of a willful violation, the Division should document the full reasons for such action in the enforcement penalty assessment worksheet. SC counsel should be consulted if the Division is unclear on what violations are "willful". When considering whether the small business took corrective action in a "reasonable period of time", it should be noted that a "reasonable period of time" may vary, depending on circumstances.

The Small Business Administration (SBA) has defined a trucking company as a "small business" if its gross revenue is $25.5 million or less. A complete list of Standard Industrial Classification codes and size standards by number of employees or millions of dollars can be found in the Small Business Administration regulations at 13 CFR 121.601. The list is available on-line at http://www.sba.gov/regulations/siccodes/. These codes and size standards are also available in the current version of the "Standard Industrial Classification Manual", Office of Management and Budget (OMB), Executive Office of the President. The SBA uses this OMB guide in defining industries for size standards. Care must be exercised when reading the specific charts and tables because some figures refer to money totals and others refer to number of employees. The key to what the figure in the size chart references is whether there is a dollar sign in the first group number in the Major Group Description; if not, the table is referencing number of employees.

Currently, Major Group 42, Motor Freight Transportation and Warehousing, defines a trucking operation as a "small business" if its "annual receipts" are $25.5 million or less. Major Group 41, Local and Suburban Transit and Interurban Highway Passenger Transportation, defines a bus operation as a "small business" if its "annual receipts" are $5 million or less. An exception for Group 42 exists for "Garbage and Refuse, Collecting and Transporting, Without Disposal" at $6 million and "Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation" at $5 million.

Finally, a determination must be made as to the industry a company is "primarily engaged" and doing business in. The answer to this question determines what "Major Group" a company falls under for classification as a "small business".

The DA has the initial and primary responsibility for implementing the provisions of SBREFA. Section 232 of SBREFA allows for the award of fees and other expenses related to defending against an excessive demand by the United States when the final judgment obtained is substantially less than the original demand. As a consequence, the NOC is the "demand" that will be balanced against the final judgment for SBREFA purposes. The Enforcement Team's responsibility is secondary and would be based on information that was not available to the DA or on information that may have been inadvertently overlooked at the Division level.

Because the DA is responsible for determining the total fine considering the "nine factors of assessment considerations" and the five factors under the SBREFA, the Divisions should document consideration of these factors in the form of a penalty assessment worksheet and submit it with the case file to the Enforcement Team for consideration during the settlement phase. Divisions should re-read the agency case law dealing with the statutory factors. Particular attention should be given to two specific case decisions: In the Matter of the Exide Corporation, FHWA No. PA-93-001-561 (Final Order, November 2, 1994), and In the Matter of House of Raeford Farms, Inc., (Order of Chief Administrative Law Judge John Mathias; Order on Motion for Summary Judgment and Motion to Strike, March 10, 1995).

6.2.2.4.25 Illustration E-2: Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA)

Assessment Policy

A NOC should document violations of regulations, in as many areas as are reasonably necessary to impose an appropriate level of penalty, based upon the circumstances of the case. When a person is found to have committed a pattern of violations per Section 222 of a critical or an acute regulation, then the maximum civil penalty for each violation will be assessed. A "pattern" of violations will be defined as:

- Three cases within the past six years;
- The three cases will consist of two cases which have been closed, followed by the discovery of new violations of the same Part (e.g., 49 CFR Part 395);
- The 6 year period will be from the end of the most recent CR or investigation; and
- When cases are appealed, the time needed to process the appeal should not be included as part of the 6 year period; OR
- The discovery of two or more critical or acute violations in each of three or more different regulatory parts (i.e., a minimum of six acute and or critical violations). Thus, a "pattern of violations" does not require previous enforcement, and can be found even during a first-time Section 222-eligible investigation; OR
- When an acute violation is discovered during a Section 222-eligible investigation within six years of one previously closed case containing a violation of a critical or acute regulation in the same Part.

Applicable Penalties

The amount of the penalty will be dependent on the type of violation committed, but it will always be at the maximum level. When assessing penalties under these procedures, the nine mandatory statutory factors under 49 U.S.C. § 521(b)(2)(D) will not be considered. This applies to HM penalties under 49 CFR 100 to 185. If a case contains violations not subject to these guidelines, then those violations will be assessed according to this section. For example:

Carrier ABC Trucking is cited for violations of 49 CFR Part 395 and 49 CFR Part 382. The carrier has had two prior cases in the last six years (since the closeout date of the current investigation) for violations in 49 CFR Part 395, but only one prior case for violations of 49 CFR Part 382. The investigator must use the UFA for calculating the fine amount for the violation of 49 CFR Part 382, but the statutory maximum must be used for violations of 49 CFR Part 395.

Establishing a "Pattern of Violations"

Enforcement actions generated by a roadside inspection will not count toward establishing a "pattern of violations." The "pattern of violations" will be based on cases generated as a result of an investigation, terminal review, or any other reviews conducted at the motor carrier or shipper's place of business.

Documenting Violations

The number of violations to be documented on an enforcement report under these guidelines is every violation that is severe enough, and has sufficient documentation to warrant an enforcement action. For example:

Carrier ABC Trucking has two prior closed cases issued within the last six years (from the date of the current investigation) for violations in 49 CFR Part 395. Forty violations of 49 CFR 395.3(a)(1) are discovered. The investigator would use UFA. UFA will determine the number of counts to take based on the extent of the violation.

6.2.2.5 Notice on Default and Final Agency Order (NDFAO) and Collection Procedures

6.2.2.5.1 Definition of a Notice of Default and Final Agency Order (NDFAO)

Notice of Default and Final Agency Order (NDFAO) means the final action by FMCSA issued pursuant to Part 386. Any one of the following may constitute an NDFAO:

- Fully executed settlement agreements which become the NDFAO pursuant to 49 CFR § 386.22;
- Decisions of the ALJ, which become the NDFAO pursuant to § 386.61;

- Binding arbitration awards;
- Final agency order issued by the appropriate FA for default judgments (failure to reply to the NOC) under § 386.14; or
- Final agency order issued by the AA.

6.2.2.5.2 NOC Becomes the NDFAO

If the respondent does not file a reply to the NOC within 30 days, the NOC becomes the NDFAO, effective five days following service of the NDFAO, and the assessed penalty is due and payable immediately.

The SCET will promptly issue and mail (by certified mail, with return receipt requested) to the respondent a NDFAO. The NDFAO will be signed by the FA or designee.

The SCET is responsible for entering into EMIS the date the NDFAO is mailed.

6.2.2.5.3 Associate Administrator (AA) Issues an NDFAO

The AA issues a final agency order in instances where the respondent has submitted a reply to the NOC and the matter has been submitted to the AA for a decision. A final order issued by the AA will specify the date for payment, if any.

The SCET is responsible for entering into EMIS the date of the NDFAO and when payments are due.

6.2.2.5.4 Settlement Agreement Becomes an NDFAO

Once the settlement agreement is fully executed, it becomes an NDFAO, and specifies the date for payment.

The SCET is responsible for entering into EMIS the date of the NDFAO.

6.2.2.5.5 Respondent Fails to Pay After Being Required To Do so by an NDFAO

A respondent that fails to pay the full outstanding balance of its original civil penalty within 90 days after the date of the missed installment payment or the date specified for payment in the final agency order will be prohibited from operating in interstate commerce and, if applicable, will have its FMCSA registration suspended pursuant to 49 C.F.R. §§ 386.83 and 386.84.

Before issuing any notices or orders related to non-payment, an SCET must ensure that payment has not been received by checking pay.gov online and any other available sources.

All notices and orders relating to the failure to make a payment when due will be signed by the FA or designee.

6.2.2.5.6 Timeline of Actions in the Civil Penalty Collection Process

The progression presented below is intended to illustrate a general timeline of actions and orders that would take place from a NOC to the point that a subject would be prohibited from operating in interstate commerce and, if applicable, have its FMCSA registration suspended or revoked.

NOC (Day X)
↓
NDFAO (Day X + 30 = Day Y)
Start of the subject's 90-day "clock"
↓
NDFAO Document (Day Y + ASAP)
(Should be within 5 days of Day Y)
↓
Order to Show Cause (Day Y + 45)

↓

Order to Cease Interstate Transportation and
FMCSA Registration Suspension if Applicable (Day Y + 91)

The progression above assumes that the subject did not respond in the required manner to the NOC or the Order to Show Cause and is intended for illustrative purposes only. The start of the subject's 90-day period in which full payment must be made to avoid sanctions (i.e. Day "Y") can also be established by:

- The date specified for payment in a Settlement Agreement;
- The date of a missed installment payment established in a Settlement Agreement; or
- The date specified for payment in an AA Final Order.

6.2.2.5.6.1 Step 1: Issue Missed Payment Letter

NOTE: THIS IS APPLICABLE ONLY TO SETTLEMENT.

If a respondent fails to make a payment within five (5) days of the payment due date, submits an insufficient payment (i.e., less than the negotiated payment), or fails to comply with the terms or conditions of a settlement agreement, then the SCET will issue a missed payment letter to the respondent. The missed payment letter will be sent by certified mail return receipt requested or by fax. The missed payment letter will inform respondent that the settlement agreement is void, any reductions in payments or penalties held in abeyance are reinstated and the entire penalty (less any payments received) is due and payable immediately.

If an insufficient payment is received, the SCET will retain the payment and will send a missed payment letter as set forth above. Additionally, the missed payment letter will notify respondent that the payment is not sufficient and acceptance of the payment does not constitute satisfaction of respondent's payment obligation. Acceptance of insufficient payments indicating "full payment" or "satisfaction," or words to that effect, could constitute a waiver of the FMCSA's right to receive full payment. If any such words appear on the payment, consult with the SC attorneys regarding appropriate action to take.

The SCET is responsible for entering into EMIS information regarding the missed payment and reinstatement of penalties.

6.2.2.5.6.2 Step 2: Issue Show Cause Order

Time When Show Cause Order is issued

If the SCET has not received payment within 45 days after the date specified for payment by the final agency order, the date of a missed installment payment or the date the respondent fails to comply with any other term or condition of a settlement agreement, it will issue a Show Cause Order.

EMIS will alert the SCET to issue the Show Cause Order.

Before issuing any notices or orders related to non-payment an SCET must ensure that payment has not been received by checking pay.gov online and any other available sources.

Delivering Show Cause Order

The Show Cause Order must be delivered by certified mail return receipt requested or commercial express service.

If the respondent's principal place of business (PPOB) is in a foreign country, the notice will be delivered to the respondent and the respondent's designated process agent.

Show Cause Order Must Contain the Following

The Show Cause Order will include a warning that failure to pay the entire penalty within 90 days after payment was due, will result in a prohibition of operating in interstate commerce and, if applicable, suspension of the subject's FMCSA registration.

The Show Cause Order notifies the respondent that it must show cause why it should not be prohibited from operating in interstate commerce, and, if applicable, why it should not have its registration suspended, on the 91st day after the date specified for payment.

The SCET is responsible for entering into EMIS the date the Show Cause Order is mailed to the respondent.

Respondent Must Submit the Following in Response to Show Cause Order

The prohibition and suspension, if applicable, can only be avoided by submitting to the AA the:

- Evidence that the subject has paid the entire amount due; or
- Evidence that the subject has filed for bankruptcy.

Although the regulations refer only to the filing of Chapter 11 bankruptcy, the FMCSA will consider bankruptcies in which a person is a debtor under any chapter of the Bankruptcy Code. Subjects in bankruptcy must also supply:

- The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed;
- The bankruptcy case number;
- The court in which the bankruptcy proceeding was filed; and
- Any other information requested by the agency to determine a debtor's bankruptcy status.

Serious sanctions apply to any agency that proceeds with certain aspects of enforcement of a case after a motor carrier has filed for bankruptcy. Therefore, it is important to consult with your SC attorney for guidance. Do not issue any documents once it becomes apparent that a carrier or individual has filed for bankruptcy, unless specifically advised to do so by counsel. If a respondent submits information in response to the Show Cause, the SCET will immediately consult with its SC attorneys to determine whether the response is sufficient to avoid the prohibition and suspension.

The SCET will also notify the Division of any response it receives in response to a Show Cause Order.

The SCET is responsible for entering into EMIS the information regarding the respondent's response.

6.2.2.5.6.3 Step 3: Issue and Serve the Order to Cease Operations (OCO) Interstate Transportation and/or Suspension of Registration

Time When the OCO is issued

If respondent does not pay the civil penalty or submit evidence of bankruptcy filing after issuance of the Show Cause Order, the SCET will issue and serve an OCO of Interstate Transportation and/or Registration Suspension (registration suspension only applicable to respondents with operating authority). The SCET is responsible for preparing the appropriate OCO given the nature of respondent's operations.

Before issuing any notices or orders related to non-payment, the SCET must ensure that payment has not been received by checking pay.gov online and any other available sources.

The OCO is issued only if:

- Respondent has failed to pay its civil penalty;
- Respondent has not submitted evidence that it has paid the entire amount due or that it is subject to bankruptcy proceedings as directed in the Show Cause Order; and
- No stay has been granted by the AA or any judge having jurisdiction over the proceedings.

The OCO Must Contain the Following

The identity:

- Name and address of respondent;
- Case number which gave rise to the issuance of the OCO; and
- DOT number and MC/MX number if applicable.

Notify respondent that:

- It will be prohibited from operating in interstate commerce and its registration will be suspended (if applicable) on the 91st day after the date specified for payment in the final order or the date of the missed payment or breach of agreement or order.

Contain:

- A certificate of service.

Prohibit Operation and Suspend Registration:

- No earlier than 91days after the date specified for payment. While EMIS normally calculates when the OCO should be effective, it is the SCET's responsibility to verify that the OCO date is correct.

The OCO may contain such other information the FA deems appropriate

Delivering the OCO

OCOs may be served by any United States Postal Service mail service with a return receipt requested. See *Illustration 3: Notice of Claim Service*. Although this permits Express Mail or Certified Mail, Express Mail is preferred in order to ensure prompt service. Additionally, when United States Postal Service is used to serve an OCO, the Order should be mailed at least five (5) business days before the effective date of the Order.

If the OCO is hand delivered, it should be delivered to the respondent at least three (3) business days before the effective date in the OCO. This ensures that respondent will have sufficient time prior to the effective date of the OCO to get its commercial motor vehicles to a safe and secure location prior to the prohibition on operations in interstate commerce.

The person effecting delivery is responsible for completing the Certificate of Service. The SCET is responsible for delivering copies of the OCO to all parties on the Certificate of Service.

6.2.2.5.6.4 Step 4: Notification

Note: The Division is responsible for notifying the appropriate state partners.

Once the OCO has been issued, the SCET is responsible for notifying Licensing and Insurance (L&I), and making the Motor Carrier Management Information System (MCMIS) and EMIS entries.

If Respondent Files a Petition for Reconsideration of the NDFAO or Files an Appeal While OCO Proceedings are pending

If a respondent files a timely petition for reconsideration of an NDFAO, it does not stay the effect of the final agency order unless the AA issues a stay of the proceedings. Thus, the filing of a petition for reconsideration will not necessarily stay the issuance or effect an OCO unless a stay is requested and the request for a stay is granted. Similarly, the filing of an appeal with appellate court will not stay the proceedings unless a stay has been requested and granted by the court. The SCET will immediately notify the SC attorneys upon receipt of a petition for reconsideration or appeal so that a determination can be made as to the effect of the proceedings on the OCO proceedings.

The SCET will enter into EMIS the Petition for Reconsideration or Appeal.

Division Does the Following to ensure that Carrier or Driver Does Not Operate after the OCO is Effective

The Division notifies State enforcement personnel on the day that any OCO of interstate transportation goes into effect.

State enforcement personnel may contact the toll-free number for the DOT Safety Hotline (1-888-DOT-SAFT) to obtain real-time verification that a Federal Order prohibiting interstate transportation is still in effect when conducting roadside enforcement activities. State enforcement personnel may also obtain real time information via QC.

Note: This procedure underscores the importance of ensuring that a subject's operational status is correctly reflected in MCMIS.

The Division must have procedures in place to monitor whether a carrier is operating in violation of an OCO. This may include, but is not limited to:

- Onsite verification conducted within 10 days of the effective date of the order;
- Monitor automated MCMIS activity reports;
- State roadside inspection activities; and/or
- Other methods of determining interstate transportation.

Division Does the Following When a Carrier is Found Operating after an OCO is Effective

The Division should document the violations of the Order and work with the SCET to initiate proceedings for an immediate court-ordered injunction. In such situations, an injunction is a Court Order from a judge ordering the carrier to comply with the Imminent Hazard OOS Order until such time as the hazard is abated.

Penalty Collection Procedures Followed by the SCET

Each SC is responsible for implementing collection procedures to ensure the timely processing of payments and collection of funds. The FAA currently handles the collection of funds for FMCSA. To facilitate proper handling of receipts, offices involved in receiving funds should establish procedures for controlling and safeguarding such funds in accordance with DOT Order 2770.55, dated September 17, 1979.

For the proper calculation of civil penalties and associated late payment penalties, administrative fees and interest, the SC will ensure that all dates associated with civil penalty collection matter are promptly entered into the Enforcement Management Information System (EMIS) in accordance with the electronic Field Operations Training Manual.

These dates include the dates of the Notice of Claim, Notice of Default and Final Agency Order (NDFAO), Order to Show Cause, Order to Cease All Interstate Operations and Registration Suspension, Settlement Agreement, Settlement Agreement Breach letter and/or Final Agency Order, and any updates or amendments to these documents.

The SC will send an email to the FAA ESC Accounts Receivable Team representative, at fmcsaacctrec@dot.gov, regarding any changes to the Final Agency Order that affect the amount of the debt or the 90-day payment start date (e.g., a timely Petition for Reconsideration, a Settlement Agreement following a previous Final Agency Order, withdrawal of a Final Agency Order (e.g., when a NDFAO is rescinded), or a Settlement Agreement has been breached. The email should include the following:

- Enforcement case number
- Name of motor carrier or regulated entity
- Changes to the Final Agency Order
- Explanation for changes (including whether the enforcement case was dismissed)

If the debtor contacts the SC for payment verification or debt balance, the Service Center should refer to "Civil Fines/Penalties" dashboard in the Resource Management Tool (https://rmt.fmcsa.dot.gov/index.htm) to verify the current debt balance. The Service Center should inform respondents of possible accrual of fees and penalties at this time.

In addition, the SC may send a payment verification or debt balance inquiry email to the FAA-ESC Accounts Receivable Team representative at fmcsaacctrec@dot.gov, with the following information.

- Enforcement Case Number
- Name of motor carrier or other regulated entity

As soon as possible, FAA-ESC will respond to the Service Center with the current debt balance information as of the date of the inquiry and include the date when the unpaid balance will increase.

Once the debt is transferred to Treasury, FMCSA may not provide payment information to representative at fmcsaacctrec@dot.gov, with the following information:

- Enforcement Case Number
- Name of motor carrier or other regulated entity

The Treasury will work with the debtor for payment of the debt or to enter into a settlement agreement. Only after FMCSA has been informed that the debt is paid may the Service Center rescind the Out-of-Service Order and notify the Registration, Licensing & Insurance Division to reinstate operating authority (if applicable). The Service Centers should seek guidance any time a debtor demonstrates that it has paid its debt to Treasury but official notification of payment of the debt is delayed.

Additionally, upon request, the SC will promptly review the lists of debts over 6 years old provided by the Finance Office and identify those cases which are still subject to pending litigation, such as open cases with the FMCSA Assistant Administrator, Administrative Law Judge, bankruptcy or some other type of legal action.

Debt that was closed out, and for which Treasury issued a 1099-C Form, may not be used as a basis to deny reinstatement or to take additional enforcement action.

Civil penalty enforcement matters may be settled after the issuance of a Final Agency Order. If the matter is currently open before a decision-maker because a petition for reconsideration or other post-Final Agency Order pleading has been filed or the time for filing such a pleading has not yet expired, the Regional Field Administrator (RFA) and regulated entity may execute a settlement agreement and file it with the decision-maker for review and approval under 49 CFR § 386.22. If the Final Agency Order has been issued and the period for seeking further administrative review has expired, the authority to settle the matter reverts to the RFA, who may then settle without decision-maker approval, provided the debt is with FMCSA and has not been transferred to Treasury.

A post-Final Agency Order settlement agreement must specifically identify any changes being made to the terms of the Final Agency Order and address the waiver or collection of any interest, penalties and fees that may have accrued.

Processing of Payments

Payments received by the SCET will be forwarded to the collection clerk. The FAA will designate an individual along with an alternate to act as the collection clerk. All payments received by the SCET collection clerk will be handled as follows:

On a daily basis, the collection clerk will enter all payment information into EMIS.

For each payment, the collection clerk also prepares a transmittal memorandum. See *Illustration E-6: Transmittal Memorandum.* If a payment is the final payment pursuant to a Settlement Agreement payment in full, the collection clerk notifies the Division of the payment by email and places a copy of the email into the enforcement file.

The collection clerk then prepares a Record of Cash Receipts Form printed from EMIS.

The Record of Cash Receipts Form will be completed with the date payment received, the name of the entity/person making the payment, case number, the check number, the amount paid, bill or other reference (206 or non-206) and the appropriations or fund symbol and cost codes. EMIS generates the appropriate fund symbol based on the violations.

The collection clerk faxes copies of the Record of Cash Receipts to Jacqueline Murphy, FAA, Oklahoma City, OK. The original Record of Cash Receipts, Checks, and Transmittal Memos are sent by Federal Express next day delivery to:

Bank of America

FMCSA Lock Box 409934

6000 Feldwood Road

College Park, GA 30349

Procedures for Collection in Instances Where the Respondent Fails to Pay a Civil Penalty

If a respondent does not pay the civil penalty when assessed and has not entered into a settlement agreement for payment of the civil penalty, the SCET is responsible for ensuring collection of the civil penalty. A respondent is prohibited from operating in interstate commerce and will have its operating

authority suspended (if applicable) if it fails to pay a civil penalty in full within 90 days of the date specified for payment. If the respondent does not pay the civil penalty within 90 days and the SCET has issued the OCO, the SCET will forward the case to FAA for further collection proceedings.

The collection clerk will forward by electronic mail a copy of the NOC, NDFAO, Settlement Agreement, AA Order, or ALJ Order), the OCO, and the FAA Finance Memorandum directly to FAA Finance:
See *Illustration E-6: Transmittal Memorandum*.

DOT/FAA/MMAC

FMCSA/AMZ-300

6500 S MacArthur Blvd

Oklahoma City, OK 73169

The collection clerk notifies the Division by email that the case has been referred to Finance.

The collection clerk is responsible for entering the transmittal of the case to Finance into EMIS.

If the Respondent Files for Bankruptcy after the Case Has Been Referred for Collection

If the SCET or Division receives notification that the respondent has filed for bankruptcy and the case has been sent to Finance, the collection clerk will consult with SC attorneys on the appropriate procedures to follow. Generally, the collection clerk will notify Finance of the bankruptcy filing by email and fax a copy of the filings to Finance.

6.2.2.5.7 Illustration E-3: Notice of Claim

Notice of Claim

HEADING

[NOTICE OF CLAIM]

Certified Mail number

Date

Address

NOTICE OF CLAIM[1] -- Violation
CIVIL PENALTY: $$
Case Number: ID-20XX-XXXX- US0???
Dear _____:

A compliance review was conducted at in ___, __ on _____, 20XX. The purpose of this review was to determine your compliance with the Federal Motor Carrier Safety Regulations (FMCSR), and the Federal Hazardous Materials Regulations (HMR).

As a result of this review, violations were discovered. This letter constitutes a Notice of Claim by the United States Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) against _____ for the amount of $_____.

Unless settled or otherwise resolved in a manner set forth below, FMCSA can recover these penalties, with interest and costs, in a civil action brought in a United States District Court. Additional collection efforts may include, but are not limited to: Internal Revenue Service offsets against tax refunds, and the referral to and the use of collection agencies to collect penalties. **Also, under 49 Code of Federal Regulations (CFR) §§ 386.83 and 386.84, once a final order has been issued, FMCSA may prohibit _____ from operating in interstate commerce until the civil penalty is paid in full and, if applicable, your FMCSA registration will be suspended.**

Summary of Violations

Your company is charged with:

1. One (1) violation of:

A copy of the documentary evidence collected during the investigation is available from this office. Upon request, FMCSA will forward a copy of this evidence within a reasonable period of time. For additional details see the attached "Statement of Charges."

Notice of Abatement

This letter also constitutes a Notice of Abatement of all violations. In order to ensure that these violations cease, your company must take the following actions.

1. (Abatement is violation-specific.)

Failure to Abate Cited Violations

Failure to abate the cited violations could cause penalties to be increased in future enforcement actions.

(The following is also included in Section 222 cases.)

Under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), recurring violations of the same or related acute or critical regulations (violations of the same Part in Title 49 of the Code of Federal Regulations) that result in three or more enforcement actions within a 6-year period will cause the maximum penalties allowed by law to be assessed for the third and subsequent enforcement actions. Any violations with a check mark in the "§ 222 Applied" column in the penalty table below are subject to the "Section 222" provision and the maximum penalties have been assessed. See 49 U.S.C. § 521 note, 49 U.S.C. § 521(b), 49 U.S.C. § 5123, 49 U.S.C. Chapter 149, and 49 CFR Part 386, Appendix A.

Penalty

Penalty Factors for Violations of Safety and Hazardous Materials Regulations

In accordance with 49 U.S.C. §§ 521(b)(2)(D) and 5123(c), FMCSA must, before proposing or claiming a civil penalty, take into consideration the nature, circumstances, extent, and gravity of the violation committed and with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. The civil penalty proposed will be calculated to induce compliance. These factors will not be considered, however, for violations subject to the Section 222 provision described above.

Penalty Factors for Violations of Commercial Regulations

In the case of violations of the commercial regulations FMCSA also is not required by statute to consider the Section 521 factors. However, before proposing penalties for violations of the commercial regulations (more specifically the transportation of household goods), 49 U.S.C. § 14901(c) requires FMCSA to take into consideration the degree of culpability, any prior history of such conduct, the degree of harm to shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately

compensated before institution of the civil penalty proceeding, and such other matters as fairness may require.

Discovered Versus Charged Violations

Violations of either safety or hazardous materials regulations discovered during the course of the [compliance review, safety audit, roadside inspection], but not proposed for penalty in this Notice of Claim, may have increased the civil penalty claimed for the violations charged in this Notice of Claim. The violations found in Table 1, as attached to this Notice of Claim, detail the violations discovered during our review/inspection.

Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA)

A pattern of and/or repeated violations of the same or related acute or critical regulations will result in the maximum penalties allowed by law to be assessed under Section 222 of MCSIA. A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during an investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period. Any violations with a check mark in the "§ 222 Applied" column in the penalty table below are subject to the "Section 222" provision and maximum penalties have been assessed pursuant to statute. See 49 USC § 521 note, 49 USC § 521(b), 49 USC § 5123, 49 USC Chapter 149, and 49 CFR Part 386, Appendix A.

A listing of the statutes governing maximum and minimum penalties for violations of specific regulations is enclosed.

Given the statutorily mandated items listed above, FMCSA is proposing a civil penalty as follows:

TYPE OF VIOLATION	NUMBER OF VIOLATION [2]	COUNTS	ASSESSMENT PER COUNT	§ 222 APPLIED	TOTAL
**********	**********	**********	********	******	

Accordingly, the total amount proposed by the Federal Government as the result of these violations is $_____.

How to Reply to the Notice of Claim

Under 49 CFR Part 386, "Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings," you have specific rights with respect to this Notice of Claim. You are advised to carefully read Part 386 and follow the course of action appropriate for you in this case. A copy of Part 386 is attached to this Notice of Claim for your information. You may wish to seek legal counsel for answers to any questions in reference to this Notice of Claim or procedures under Part 386. DO NOT call the FMCSA SC or the Chief Counsel's office for advice or assistance in your defense. You may pursue the following courses of action:

(1) **PAYMENT OF PENALTY:** Within 30 days of service of this Notice of Claim: (a) Pay the assessed penalty in full, or (b) Establish a monthly payment plan by contacting an Enforcement Specialist (NOTE: A payment plan may be available for respondents who demonstrate financial difficulty), or (c) Contact an Enforcement Specialist outlining in writing compelling reasons why the assessed penalty should be reduced and discuss potential settlement. You may be required to submit a current, certified balance sheet or other evidence of assets and liabilities. An Enforcement Specialist can be reached at XXX-XXX-XXXX. If you pay the full penalty within

thirty (30) days of service of this Notice of Claim, you do not need to file a written Reply to the Notice of Claim.

You may pay the fine electronically through our SAFER website at <http://safer.fmcsa.dot.gov> by selecting "Online Fine Payment."

Alternatively, you may pay by cashier's check, certified check, or money order made payable to the FMCSA and mailed to:

United States Department of Transportation
Federal Motor Carrier Safety Administration
_____ Service Center
ADDRESS
CITY, ST ZIP CODE
Personal or company checks will not be accepted and will be returned.

Payment of the penalty will constitute admission of the violation(s) set forth in the Notice Claim and these violations will constitute prior offenses under either 49 USC § 521(b)(2)(D) (for violations of the Federal Motor Carrier Safety Regulations), 49 USC § 14901(c) (for violations of the Federal Motor Carrier Commercial Regulations involving transportation of household goods) or 49 USC § 5123(c) (for violations of the Hazardous Materials Regulations) unless you proceed under the provisions of 49 C.F.R. § 386.18(c). These offenses may lead to higher penalties in future enforcement actions.

(2) **REQUEST FOR ADMINISTRATIVE ADJUDICATION:** You may contest the claim and request Administrative adjudication. If you choose this course of action, you must carefully follow the provisions within 49 CFR § 386.14, including filing a written Reply within thirty (30) days after service of this Notice of Claim. Your Reply must be in writing, and clearly state the grounds for contesting the Notice of Claim, and must state any affirmative defenses you intend to assert. You must separately admit or deny each violation alleged in this Notice of Claim. Any allegations in the Notice of Claim not specifically denied in the Reply will be deemed admitted. A general denial of the claim is insufficient and may result in a default being entered by the Assistant Administrator. Your Reply must include a statement selecting one of the options for administrative adjudication available under 49 CFR § 386.14(d)(1) (iii). Once you select an adjudication option, you are bound by that selection. You must serve your reply on all persons listed in the Certificate of Service attached to this Notice of Claim and in accordance with the requirements of 49 CFR § 386.6.

(3) **REQUEST FOR BINDING ARBITRATION:** If you dispute only the amount of the civil penalty and/or the length of time to pay, you can select to have the civil penalty amount adjudicated through FMCSA's binding arbitration program. You should notify the FMCSA of your request in writing when you submit your Reply. The Assistant Administrator will determine if your case is appropriate for binding arbitration. You will be notified in writing of the Assistant Administrator's decision regarding your request. You may choose binding arbitration if the only issues that you dispute are the amount of the civil penalty and/or the length of time to pay. FMCSA's guidance on the use of binding arbitration is available through the following link: <http://www.fmcsa.dot.gov/>. You can also request a copy of the guidelines from the SC.

YOU MUST CERTIFY THAT YOUR REPLY HAS BEEN SERVED IN ACCORDANCE WITH THE REQUIREMENTS CONTAINED WITHIN 49 CFR § 386.6. THE SPECIFIC RIGHTS PROVIDED FOR IN 49 CFR § 386.14 MAY BE WAIVED IF YOU FAIL TO SUBMIT A WRITTEN REPLY WITHIN THIRTY (30) DAYS AFTER THE SERVICE OF THIS NOTICE OF CLAIM.

FAILURE TO REPLY TO THE NOTICE OF CLAIM IN THE EXACT MANNER SPECIFIED IN 49 CFR § 386.14 MAY BE TREATED AS IF NO REPLY HAS BEEN FILED. UNDER 49 CFR § 386.14(c), A FAILURE TO REPLY MAY CAUSE THE FMCSA TO ISSUE A NOTICE OF DEFAULT

AND FINAL AGENCY ORDER THIRTY (30) DAYS AFTER THIS NOTICE OF CLAIM IS SERVED. THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER WILL DECLARE YOU TO BE IN DEFAULT AND DECLARE THE NOTICE OF CLAIM, INCLUDING

THE CIVIL PENALTY PROPOSED IN THE NOTICE OF CLAIM, TO BE THE FINAL AGENCY ORDER IN THE PROCEEDINGS. THE FINAL AGENCY ORDER WILL BECOME EFFECTIVE FIVE (5) DAYS AFTER THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER IS SERVED. THE DEFAULT WILL CONSTITUTE AN ADMISSION OF ALL FACTS ALLEGED IN THE NOTICE OF CLAIM AND A WAIVER OF YOUR OPPORTUNITY TO CONTEST THE CLAIM.

A GENERAL DENIAL DOES NOT MEET THE REQUIREMENTS OF 49 CFR § 386.14(d)(1). UNLESS YOUR REPLY COMPLIES WITH THE REQUIREMENTS OF 49 CFR § 386.14(d)(1), THE ASSISTANT ADMINISTRATOR MAY ENTER A DEFAULT AGAINST YOU.

IF YOU DO NOT UNDERSTAND OR ARE CONFUSED ABOUT YOUR RIGHTS AND OBLIGATIONS AS OUTLINED WITHIN THIS NOTICE OF CLAIM, YOU MAY WISH TO SEEK LEGAL ADVICE.

Copies of the procedural regulations, applicable statutes and the Service List are enclosed.

Sincerely,
??????????
Division Administrator
Federal Motor Carrier Safety Administration

Enclosures

APPLICABLE STATUTES

Section 521(b)(2)(A) of 49 U.S.C. provides that any person who is determined to have committed an act that is a violation of regulations issued under subchapter III of chapter 311 (49 U.S.C. §§ 31131 et seq.)(except sections 31138 and 31139) or 49 U.S.C. §§ 31301 and 31306, or Section 31502 of 49 U.S.C., will be liable for a civil penalty in an amount not to exceed $11,000 for each offense. No civil penalty will be assessed under this section against an employee for a violation in an amount exceeding $2,750 (49 U.S.C. § 521(b)(2)(A) and 68 Fed. Reg. 15381 (March 31, 2003)). Section 5123(a) of 49 U.S.C. provides that any person who is determined to have committed an act that is a violation of regulations issued under chapter 51 will be liable for a civil penalty in an amount not to exceed $32,500 for each offense. (49 U.S.C. § 5123(a) and 68 Fed. Reg. 15381 (March 31, 2003)).

Table 1: Violations Discovered During Review/Inspection

NUMBER	VIOLATION	IDENTIFYING INFORMATION: DRIVER EQUIPMENT COMMODITY	DATE OF VIOLATION
1	49 C.F.R. § _____	Interstate transport of _____ by Driver (insert driver name)	XX/XX/20XX
2	49 C.F.R.§ _____	Driver (insert driver name)	XX/XX/20XX
3	49 C.F.R.§ _____	Driver (insert driver name)	XX/XX/20XX
4	49 C.F.R. § _____	Driver (insert driver name)	XX/XX/20XX

5	49 C.F.R. § _____	Driver (insert driver name)	XX/XX/20XX

6.2.2.5.8 Illustration E-4: Notice of Claim Service

Background

The Motor Carrier Safety Administration (FMCSA) is charged with administering and enforcing the Federal Motor Carrier Safety Regulations (FMCSR). When significant violations of the FMCSR are discovered, enforcement action may be initiated. The enforcement process involves serving the Notice of Claim (NOC) on a respondent. A respondent may be a company, corporation, or an individual. In some instances these respondents may be difficult to find and serve. This will be an effort to identify our legal obligations as they pertain to serving the NOC on the respondent, and identifying possible options.

The procedures in this paper apply to Notices of Claim (NOC), NDFAO, Orders to Show Cause (OSC), and Missed Payment Letters.

Legal Requirements

49 CFR § 386.14(a): This regulation sets the time for the carrier to reply to a NOC. This regulation specifically states "The respondent must reply within 30 days after a Notice of Claim Letter is served. In addition, 49 CFR § 386.32(c) adds 5 days onto those days for mail delivery, unless we have other proof of when the NOC is received.

49 CFR § 386.6: This section of the regulations deals with "service" and outlines the process and definition of "service."

Discussion: This regulation does not appear to need interpretation. It is rather simple in terminology as it provides that "mailing" will be considered "service". This would denote that proof of mailing, e.g., certified receipt from Postal Service office, would meet this requirement. Due process requires that the agency take reasonable steps to ensure that the respondent receives notice of the claim. This requires that the method of service be one that is likely to reach the respondent.

Service is a growing issue with small carriers and drivers. Many carriers and drivers are refusing delivery of a NOC thinking this will preclude them from paying any penalties. Because of this growing practice, a review of the regulations and improvement of our current procedures will help reduce instances of no service and ensure our enforcement program has the desired effect. It is unreasonable to unduly prosecute a person or company without due notification and it is unreasonable to allow a person or company to avoid prosecution by merely failing to accept delivery of a mailing.

New delivery methods need to be considered that would augment our efforts. In this process we must insure that any method considered would meet all of the requirements and satisfy all of the issues presented above, and be cost efficient. On the surface there would appear to be numerous options available to us with a wide range of costs. The following are some options:

Methods of Service

Category A: Methods of Service

Personal Service (Regulatory): More expensive but may be the only way to effect service when dealing with evasive carriers or a higher degree of reliability of service is needed. This is the most reliable form of service.

FMCSA Personnel delivery: May be completed by Safety Specialist conducting other duties in the same vicinity. This method is effective since the Safety Specialist physically sees the individual served and completes a Certificate of Service at the time of delivery attesting to the personal service. The problem with this method is that often the respondent could be hostile, and we may be placing our staff in harm's way.

Private Process Server delivery: This is the same as using a Safety Specialist except may be less of a safety issue since the server is not employed by the FMCSA and would not have that emotional tie for the carrier. Depending on where the respondent resides, this service could be more expensive. Private process servers will work with us to provide whatever documentation we need to prove service.

Law Enforcement delivery: This method relies on local law enforcement personnel to hand deliver the NOC and obtain proof of delivery. This is the same as using a private process server except they are armed. This method may be more effective on companies with mixed results on individuals. Individuals, normally drivers, are often away from home. The cost may vary by locality and the Division should find out the total charge before making a decision. Most include a minimum number of attempts in the one charge so be sure and know what you are paying for. This may be less expensive than a private process server since the local law enforcement officers are typically within the same county.

Certified Mail (Regulatory): Because the term "mail" in the regulations is defined by the courts to be by the United States Postal Service, Certified Mail is our current primary method of delivery. It is cost efficient and, when delivery is complete, affords us a signed document proving delivery. Problems arise when the respondent, often knowing it is coming, either refuses delivery or fails to pick it up. This may be more of a problem on individuals rather than companies, however, some companies have used this tactic in the past.

Priority Mail or First Class Parcel plus Delivery Confirmation (Regulatory): Currently First Class Mail over ¾" thick and Priority Mail can be shipped with Delivery Confirmation that you can track over the Internet and, if everything goes well, will tell you the address where the letter was received. If the address matches the address we have on record, consider it served.

Regular U.S. Mail (Regulatory): This method, while complying with the regulatory requirements, does not provide proof of delivery. Therefore, if a carrier or driver argues that they did not receive the NOC, the agency doesn't have evidence to defend its service. This method, however, should always be used in conjunction with Fed Ex or other non-United States Post Office delivery service.

UPS (Not Regulatory): Most individuals and companies accept United Parcel Service (UPS) deliveries. Costs associated with this mode could be prohibitive, if used exclusively. This method can be used as a backup, to show that delivery was made, in cases where the driver or carrier is attempting to evade service. This may be used as a primary method, if it is anticipated that the driver or carrier will attempt to evade service. This method should be followed by regular mail service (mailed on the same day). Since this method is not yet in the regulations (Part 386) as an acceptable form of service, it could be challenged.

Category B: Additional Evidence of Notice

Motor Carrier Delivery (Not Regulatory): This method may be considered as an additional method of delivery in addition to a Category a service when the respondent is a driver. If the NOC comes back "unclaimed" the NOC could be given to the driver's employing motor carrier for delivery to the driver. The carrier would then FAX us a receipt signed by the driver. We could also ask the carrier to route the driver through to the carrier's terminal for FMCSA staff to hand deliver the document. The signed receipt and "unclaimed" NOC would be proof of service.

FAX (Not Regulatory): This may be a viable alternative for most companies as most have FAX capabilities. Investigator should be advised to insure we have an accurate FAX number for the company. A FAX confirmation and acknowledgement of receipt FAX to us by the respondent will suffice as proof of delivery. This method should only be used as a backup to other service methods.

Internet (Not Regulatory): Here is one we have not used to date. This method may be used if both parties, the FMCSA and respondents (both individuals and companies), agree in writing that email will be used as a form of service. Proof of delivery would be when the person or company opens the email, and a delivery receipt is generated, or by acknowledgement of receipt from the respondent. This method should only be used as a backup to Category A service methods.

NOC Service Procedures

Purpose: The recommended practice below is based on the following:

The Division is responsible for issuing the NOC and making sure it is properly served. The Division should use the methods of service in Category A that ensures service of the NOC to the respondent. If all attempts of service are circumvented by the Respondent, the Division should contact the SCET enforcement specialists or attorney to determine if the Division actions constitute service. All attempts to serve must be documented. You should use the attached checklist to document service attempts. Once service is confirmed, the Division must contact the Enforcement Program Technician via email with service date and any changes to the original address in the NOC. If service is not made after repeated attempts, the Division should consult with the Enforcement Team and decide whether the case should be closed without enforcement or considered served.

Procedure:

Service of Agency claims and/or Notices must comply with the regulatory guidelines. Therefore the initial attempt at service should always be a method listed under Category A. If service is completed and proof of service (e.g. certified mail green card, personal delivery receipt, law enforcement certificate of service, etc…) is obtained, the NOC should be considered served. If UPS is the primary method of service, the Division should document the reason why UPS was used instead of another service. Also send the NOC by regular mail just so you can say we complied with the minimum requirements of the regulation.

Note: If the first attempt at service on a for-hire motor carrier is unsuccessful, serve the NOC on the Process Agent of record from the L&I site. This will then constitute service of for-hire carriers.

In the case of certified mail to the carrier, driver, or registered agent, if the NOC or Notice is returned "refused" or "unclaimed", the NOC should be sent by regular mail. A delivery method from Category B may be selected as an additional method of ensuring the driver actually receives the NOC. Providing notification using one of these methods does not take the place of service under Category A, but provides evidence that the carrier or driver received adequate notification of the claim, and therefore received due process. Once a secondary method of delivery is used, the claim should be considered served.

In the case of personal delivery by FMCSA or process server (private or law enforcement personnel), if the NOC is refused by the driver or company official, the certificate of service should document the refusal (including the name and/or description of the person who refused service). The NOC should be shoved under the door if possible or firmly attached to the door (i.e., duct tape) then be sent by regular mail, and upon mailing, should be considered served. A secondary method of delivery can be selected from Category B to establish additional evidence that the carrier or driver received adequate due process notification of the claim.

In the case of service to a carrier that is returned with a bad address, agency records should be checked to ensure that no other addresses are available. If no other address can be obtained, service should be made on the carrier's process agent always using a Category A method.

In the case of service to a driver that is returned with a bad address, agency records should be checked to ensure that another address is not available. The last known employer should be contacted to determine if they have another viable address, and/or to verify the address listed on the driver's CDL. Also, contact the SC Paralegal for assistance in determining the latest address of the driver through the LEXIS/NEXIS system.

NOC Service Responsibility: The Division office is responsible for generating the Notice of Claim and attempting to make service on the respondent. It is reasonable that if a Division office availed themselves of all of the options listed above, service should be completed. The problem arises when different attempts at service are not completed (i.e., the NOC comes back in the mail).

Each Division is obligated to document service efforts to ensure challenges regarding late delivery can be upheld at later dates. It is anticipated that some respondents, and possibly an attorney, may challenge our service at later dates. This process will insure we can defend any accusations of late service on a respondent.

If all efforts at service fail, the Division will contact the Enforcement Team specialists or the SC Attorneys to determine further action. Counsel will help the Division determine if all reasonable efforts were made by the Division, constituting service, or that all attempts have failed resulting in the Division recommending the case be closed without enforcement.

UNSAT/UNFIT and No-Pay OOS Order Service

Background: There is a variety of opinions on whether Out-of-Service Orders and Orders to Cease Operations should be served by "Personal Service" or some form of mail or delivery service. Many of the DA's would prefer some form of mail or delivery service or at least be given the latitude to choose which one is best for each circumstance to include personal service. Currently the FOTM Volume II, chapter 9, Para 5e and Volume III, chapter 8, Para 2c(5) requires that both Unsat = Unfit OOS Orders and the No-Pay OCO "except in the most extreme circumstances, be hand delivered." The SC Attorneys believe that the Unsat= Unfit OOS Orders should be personally served since that is the best form of service coupled with the extreme nature of the action of placing a carrier out-of-business for safety reasons. Because of the frequent occurrence of the No-Pay OCO and the fact that many are driver cases, extreme circumstances may arise more often than with the Unsat = Unfit.

Recommended Procedure

UNSAT=UNFIT OOS Order SERVICE

All Unsat = Unfit OOS Order may be served by UPS, Law Enforcement Delivery or Personal Service. See "Methods of Service" for the options available to you.

For the safety of FMCSA staff, DA's should arrange escort by armed MCSAP enforcement officers or local law enforcement if available. Local law enforcement (i.e., County Sheriff) officials should also be considered as an alternate resource for service. If personal service is not feasible (e.g., distance) and an alternate method of service is needed, the DA should take additional action to ensure that the carrier does acknowledge that service was made (i.e., documented phone call with top official). The attached checklist should be used to document the specific method of service and follow-up actions.

Order to Cease Operations (OCO)

OCOs may be served by any United States Postal Service mail service with a return receipt. Although this permits Express Mail or Certified Mail, Express Mail is preferred in order to ensure prompt service. Additionally, when USPS is used to serve an OCO, the Order should be served within five business days of the effective date of the Order.

If a Division is contacted by a MCSAP agency or other means where a driver is stopped for violation of the Order and the driver claims no knowledge of the Order, the Division will immediately take measures to have the Order personally served by the MCSAP officer.

Service Checklist

Download PDF Form: Service Checklist

NOC, NDFAO, OSC, AND MPL

CARRIER/DRIVER:	
ENFORCEMENT CASE #:	
PRIMARY SERVICE METHOD:	
☐ CERTIFIED MAIL	

Date Received	
☐ Unclaimed	☐ Other
☐ Refused	☐ Not Deliverable as Addressed
Proof: Green Card with Name and Date	
☐ PERSONAL SERVICE (See attached Certificate of Service)	
Date Delivered	
Proof: Certificate of Service	
☐ PRIORITY MAIL OR FIRST CLASS PARCEL WITH DELIVERY CONFIRMATION	
Date of Delivery	
Proof: Delivery Confirmation Stub and Copy of Delivery Address from USPS Internet site.	
☐ REGULAR U.S. MAIL	
Date Mailed	
Returned? Reason	
☐ UPS	
Date of Delivery	
Proof: UPS delivery receipt.	
ADDITIONAL ACTION:	
☐ FAX:	FAX #
Date/Time	
Person	
Attach Faxed Receipt from Respondent	
☐ EMAIL:	Email Address _____
Date Mailed	
Person	
Company	
Attach e-mail acknowledgement from Respondent.	
☐ ADDITIONAL CONFIRMATION	
☐ Phone Call:	Name _____
	Position
	Date/Time
Other Facts of Service:	

6.2.2.6 Criminal Penalties

6.2.2.6.1 The Time to Pursue Criminal Prosecution

When knowing and willful violations of the regulations occur, FMCSA may pursue criminal prosecution through the United States Attorney's Office. These actions require the close working

relationship of FMCSA's SC attorneys, the United States Attorney's Office, and the Division. These investigations may involve the assistance of the OIG and/or the FBI.

Once a case is referred to the United States Attorney's Office for prosecution, the Assistant United States Attorney handling the case has control of the case. The standard of proof in criminal cases is beyond a reasonable doubt. All charges must be documented accordingly. Criminal prosecution may involve months of investigation and preparation.

6.2.2.7 Coordination With Other Law Enforcement Agencies

6.2.2.7.1 Actions to Take if SI Discovers Violations of the Law within the Jurisdiction of Other Federal, State or Local Laws

The SI will forward the information through the DA to the appropriate agency officials.

The DA will consult with the SC attorneys before forwarding the information.

6.2.2.7.2 Time for SI to Share the Results of Investigation with Other Agencies

Generally, when joint assignments and investigations are being conducted by the SI and employees of another agency, information may be freely and informally exchanged. Similarly, information should be freely exchanged between Divisions, if necessary, to conduct an investigation. SIs will limit their activities to matters within the FMCSA's jurisdiction.

By law (49 U.S.C. § 31143), the identity of a complainant may be disclosed only if disclosure is necessary to prosecute a violation. If disclosure becomes necessary, every practical means will be taken to ensure that the complainant is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss because of the disclosure. Release of such information must be coordinated with the SC attorneys.

6.2.2.7.3 Types of Partnerships the Divisions May Enter Into

The Divisions may establish written agreements; such as Memorandum of Understanding or Memorandum of Agreement as appropriate with State and local agencies regarding working relationships.

The DA will consult with the SC attorneys when preparing these written agreements.

6.2.2.8 Injunctions

6.2.2.8.1 Time to Pursue an Injunction

An injunction is pursued in those situations, as determined necessary by the SC attorneys, on a case by case basis. The SC attorney may ask the United States Attorney to bring an injunction, in the appropriate United States district court, seeking such relief as necessary such as mandatory and prohibitive injunctive relief, interim equitable relief, and punitive damages. Violations of a final compliance order, consent order, OCO, or OOS Order can be enforced in the United States district courts by seeking an injunction.

The Division will consult with SC attorneys and SCET to determine whether injunctive relief is appropriate.

6.2.2.8.2 Time When an Injunction should not be pursued

Seeking injunctive relief is resource intensive. Multiple hearings may be required in order to obtain relief. FMCSA and SC attorneys have no control over the length of the injunctive relief process. Therefore, careful consideration should be given to the pursuit of any type of injunctive relief.

6.2.2.9 Imminent Hazard

6.2.2.9.1 Responsibility for Issuing an Imminent Hazard (IHOOS) Order

The Regional Field Administrator, the Field Administrator and/or the Director of Enforcement and Compliance are responsible for issuing an Imminent Hazard Out-of-Service (IHOOS) Order.

6.2.2.9.2 Division's Responsibility in Determining an Imminent Hazard and Presenting that Information to the FA

If, while conducting an investigation, the SI finds that an Imminent Hazard OOS Order may be warranted, the investigation process should be temporarily suspended *(Illustration E-7: Imminent Hazard Guidelines).* The SI should contact the DA to relate the critical details, discuss the merits of the findings, and express an opinion regarding the need for such an Order. If the DA agrees with the SI, then a discussion of the appropriateness of issuing an IHOOS Order is required. This discussion must include the DA, the SI, the FA, HQs and Enforcement Program Manager for the appropriate SC and the assigned SC Attorney and cover the alleged Imminent Hazard and the associated evidence. The parties should agree on the course of action to be taken and assignments regarding activities should be made. Once a decision to proceed with an IHOOS Order is made, the SI should resume the investigation, gathering all necessary documents.

6.2.2.9.3 Provide the Following to the SCET before an Imminent Hazard

Copies of all evidence, supporting documents, etc., upon which the proposed Imminent Hazard OOS Order is based, must be provided to the SC attorneys in a timely manner prior to issuance of the Imminent Hazard OOS Order. Imminent Hazard OOS Orders will not be issued without prior coordination with the SC attorneys.

This material should include, but is not limited to:

- A copy of the carrier's current proposed investigation report, including all supporting documents obtained in the course of the investigation, to support the Acute and/or Critical Violations and conditions creating an Imminent Hazard
- If used, clear, sharp photographs, with details of who took the photos, the date, time and place
- With respect to all witnesses who provide a statement, a copy of the signed statement, signed under penalty of perjury, including the correct spelling of the witness's name, his/her work and home addresses and telephone numbers, and a statement that "the information provided herein was given voluntarily, and no threats or promises were made"
- If the MCMIS roadside inspection data, SMS information, or any other data in a DOT system of records is to be relied upon as evidence for an IHOOS Order (e.g., high driver/vehicle OOS rates and/or accident rates), this information must be verified by appropriate agency personnel before it is used. Actual "hard copies" of some roadside inspections may be necessary depending on their intended use to support the OOS action. These inspections usually deal with history or patterns of noncompliance, not real time (present). The reports to be relied upon should clearly show that "interstate" and not "intrastate" violations are involved, unless the intrastate violations are jurisdictional, i.e., parts 382 and 383.

6.2.2.9.4 Preparing the IHOOS Order

Once all of the evidence is submitted to the SCET, the SCET will prepare the OOS Order for the FA's signature. Examples of language and mandatory actions to include in an IHOOS Order are contained in the Appendix.

Illustration E-6: Sample Language for IHOOS Order

6.2.2.9.5 Serving the IHOOS Order

Due to the extreme consequences of the IHOOS Order, the DA should serve the OOS Order on the carrier. The OOS Order must be served by personal service. The DA should be accompanied by an armed MCSAP Officer.

6.2.2.9.6 Actions the Carrier Can Take Once an IHOOS Order is issued

Once an IHOOS Order is issued, the carrier can:

- Contest the Order pursuant to 49 U.S.C. § 521 within 10 days of issuance of the Order; or

- Take corrective action to eliminate the Imminent Hazard to the satisfaction of the FA.

6.2.2.9.7 FMCSA Must be Prepared To Do the Following Once IHOOS Order is Issued

It should be assumed that the carrier will contest the IHOOS Order. Once an IHOOS Order is issued to a carrier, the carrier may challenge that Order within 10 days of issuance. The entire process from issuance of the IHOOS Order to a final decision on review must take place within 10 days (pursuant to 49 U.S.C. § 521). The agency must be ready, willing, and able to proceed to conclusion. See *Illustration E-5: Guidance on Steps to Take When Consider an IHOOS Order* for additional guidance and roles on steps to take when considering the issuance of an IHOOS Order.

6.2.2.9.8 Divisions must be prepared to do the Following Once IHOOS Order is issued

The SI, DA, SC Attorney, and such other persons as the attorney may identify, including support staff, should be available continuously on short notice (with appropriate telephone numbers, pager numbers, etc., provided to the attorney) for a ten (10) day period following the service of the IHOOS Order. Divisions should notify all appropriate State agencies of the IHOOS Order.

See *Illustration E-6: Sample Language for IHOOS Order*.

6.2.2.9.9 SCET Must Be Prepared To Do the Following When the IHOOS Order is issued

The SC Attorney must be available on short notice to prepare pleadings in response to a challenge to the IHOOS Order. The SCET will conduct all dialogue with the carrier once the OOS Order is issued.

6.2.2.9.10 If Carrier Operates in Violation of IHOOS Order, Do the Following

The SI should document violations of the IHOOS Order and the DA should a NOC for those violations

6.2.2.9.11 Penalty for Operating in Violation of the IHOOS Order

The penalty for violating an IHOOS Order by failure to cease all or part of the CMV operation is a maximum of $11,000 per day after the effective date and time of the order to cease.

6.2.2.9.12 Division Should Do the Following if a Carrier Continues to Violate the IHOOS Order after Having Been Issued an NOC for Violating the Order

The Division should document the violations of the Order and work with the SCET to initiate proceedings for an immediate court-ordered injunction. In such situations, an injunction is a Court Order from a judge ordering the carrier to comply with the IHOOS Order, until such time as the hazard is abated.

6.2.2.9.13 Consequences if the Carrier Violates the Court Order

A Court Order brings with it the threat of jail time if the motor carrier continues to operate in violation of the administrative order and the Court's Order. If the carrier still does not cease that portion of its operation which is subject to the IHOOS Order and continues to operate in violation of the Court Order, the judge can hold the carrier in contempt of court and place the carrier (usually the president) in jail.

6.2.2.9.14 Illustration E-5: Guidance on Steps to Take When Considering an IHOOS Order

ROLES AND RESPONSIBILITIES FOLLOWING SERVICE OF IMMINENT HAZARD OUT OF SERVICE (IHOOS) ORDER

Immediately after service of an IHOOS Order the following actions must be completed:

Internal Notifications:

Division Office

Send summary/background information to Service Center. Include:

- Vehicle identification number (VIN) listing, driver listing, and photos of vehicles, if available.
- Information on carrier principals, phone numbers, addresses, etc.
- Any information on attempts to evade the IHOOS Order.

Service Center

- Distribute summary/background to the following offices in Headquarters: Director, Office of Enforcement and Compliance
- Assistant Chief Counsel for Enforcement and Litigation
- Associate Administrator (AA) for Field Operations

Forward briefing packet with the summary and background information to the other Regional Field Administrators and Field Administrators. Provide directions to Division Offices to contact State and local law enforcement partners, the IRP/PRISM registration office, and other relevant State agencies.

MC-CCE

Notify Office of General Counsel, Office of Litigation (C-30)

IT Systems Updates and Confirmations:

Division Office

Ensure investigation, IHOOS Order, IHOOS Order documentation of service, and above summary/background information are placed into EDMS.

Service Center

Enter OOS status is entered into MCMIS and inactivate the USDOT number (Service Center Enforcement Team).

(Service Center Enforcement Team)

Revoke operating authority, if appropriate, in the Licensing and Insurance System

Send notification to AA, Office of Research and Information Technology (MC-R) and to the Director of the Office of Registration and Safety Information (MC-RS) informing them about the actions taken (revoking operating authority, inactivating USDOT number) and if needed, to request a manual update of SaferSys, Query Central, and other status websites. SaferSys and other systems update information from MCMIS nightly; however, an immediate update is required.

(Service Center Enforcement Team).

Enter IHOOS Order into EMIS

Service Center and Division Office

Confirm the OOS status; the revocation of operating authority and the suspension of safety registration have been updated on appropriate FMCSA websites.

External Communications

Office of Communications

The FA should notify the Office of Communications (MC-CM) and provide all the information needed for press releases. MC-CM will issue a press release to national and local media outlets. The press release will be distributed to state consumer protection distribution list for regions served by the carrier.

Division Offices

Notify local consumer groups, State and local consumer's affairs offices, State licensing and registration agencies, local media, and local industry association contacts: utilize press release generated by the Office of Communications.

Follow-up Actions

Division Office

Obtain from OOS carrier a written record of the whereabouts and disposition of all vehicles and drivers. Update periodically during the duration of the OOS status.

Monitor motor carrier's activities to verify adherence to OOS conditions.

Conduct checks of known pickup or delivery locations for evidence of continuing activity in violation of OOS order.

Send periodic status updates to HQ and SC personnel.

Where circumstances suggest that the carrier may attempt to evade the IHOOS order by operating as or through another entity, provide detailed carrier, vehicle, driver, and corporate structure and personnel information to HQ Vetting Team.

Alert persons overseeing and conducting new entrant safety audits to be on the aware of any potential reincarnated or affiliated carrier operations and/or attempts to reincarnate.

6.2.2.9.15 Illustration E-6: Sample Language for IHOOS Orders

Violations

383.23(a) OPERATING A MOTOR VEHICLE WITHOUT A VALID COMMERCIAL DRIVER'S LICENSE--missing passenger endorsement.

Facts: Special Agent name discovered that Carrier driver operated a commercial motor vehicle in interstate commerce without a valid CDL in violation of 49 C.F.R. § 383.23(a). Driver possesses a Class B CDL that allows her to operate a commercial motor vehicle in excess of 26,000 pounds. She does not have the required passenger endorsement that would allow her to transport passengers.

Evidence that driver does not have a valid CDL is established by _____. Evidence of driver's operation of a commercial motor vehicle in interstate commerce for Carrier is established by _____.

Imminent Hazard: Operating a commercial motor vehicle in interstate commerce without a commercial driver's license with the proper endorsement means that driver has not demonstrated that she has the special knowledge, skill, and ability to operate a motor coach. Thus, Carrier cannot insure the safe transport of passengers. Driver's failure to demonstrate the special knowledge, skills and abilities substantially increases the likelihood that this driver could inflict serious injury or death to herself, her passengers, and/or the motoring public.

§ 383.37(a) ALLOWING, REQUIRING, PERMITTING, OR AUTHORIZING A DRIVER TO OPERATE A CMV WHO THE EMPLOYER KNEW OR SHOULD REASONABLY HAVE KNOWN DOES NOT HAVE A CURRENT CLP OR CDL, DOES NOT HAVE A CLP OR CDL WITH THE PROPER CLASS OR ENDORSEMENTS, OR OPERATES A CMV IN VIOLATION OF ANY RESTRICTION ON THE CLP OR CDL.

Facts: Special Agent name discovered during the investigation that Carrier knowingly allowed, required, permitted, or authorized an employee with a Commercial Driver's License that was suspended, revoked or canceled by a state or who is disqualified to operate a commercial motor vehicle in interstate commerce in violation of 49 C.F.R. § 383.37(a). Driver name's driving privileges were _____ on date for _____. This violation is supported by _____. Evidence of operating in interstate commerce as a driver of a commercial motor vehicle in interstate commerce for Carrier is evidenced by _____.

§ 395.8(e)(1) FALSE RECORDS OF DUTY STATUS.

Facts: During the investigation, Special Agent name reviewed records of duty status for ## carrier drivers; a total of ## records of duty were reviewed for accuracy. Special Agent name discovered that ## of the ## drivers had submitted false records of duty status, for a total of ## false records of duty status, in violation of 49 C.F.R. § 395.8(e)(1). Evidence to support the ## violations consists of____. Each violation is listed in Exhibit _____.

Imminent Hazard: The Assistant Administrator has held that each carrier must effectively monitor compliance with the FMCSR, especially those aimed at driver fatigue, a "major safety concern." In the Matter of National Retail Transportation, Final Order: Decision on Review, Docket No. RI-92-03, Sept. 12, 1996, at 7. The discovery of the violations shows that Carrier does not have an effective monitoring system.

Without effectively monitoring Carrier driver records of duty status, there is no way to deter a driver from exceeding allowable driving hours. Consequently, Carrier's failure to insure that its drivers are not exceeding the maximum allowable driving hours and Carrier's further failure to insure that its drivers are completing their mandatory off-duty hours as required by the FMCSR, substantially increases the likelihood that a Carrier driver will be involved in an accident with resulting serious injury or death. A driver operating over hours has been held to be an imminent hazard. Over hours violations are "safety violations imposing an imminent risk of serious injury or death." In the Matter of Jerry J. Kobs, Inc., Order of ALJ, Docket No. FHWA-97-2869-10, Sept. 26, 1997 at 6, footnote 14.

§ 396.11(c) FAILING TO CORRECT OUT-OF-SERVICE DEFECTS LISTED BY DRIVER IN A DRIVER VEHICLE INSPECTION REPORT BEFORE THE COMMERCIAL MOTOR VEHICLE IS OPERATED AGAIN.

Facts: During the investigation, Special Agent name reviewed ## driver vehicle inspection reports (DVIR) that reported defects which would be likely to affect the safety of the operation of the commercial motor vehicle. Carrier continued to use these vehicles in interstate commerce without correcting the various defects in violation of 49 C.F.R. §396.11(c). The defects identified in these reports consist of the following: These commercial motor vehicles were not repaired prior to the next dispatch. Evidence to support these ## violations is listed in Exhibit _____. Exhibit _____ identifies each vehicle, provides a copy of the driver vehicle inspection report which lists the defects, repair records for each commercial motor vehicle which do not indicate that the defects were corrected prior to the next dispatch, and trip reports which evidence an interstate trip.

Imminent Hazard: Not only would the defects be likely to affect the safety of operation of the vehicle, but are also types of out-of-service defects that when discovered on the roadside by Federal or State officials applying the CVSA Out-of-Service Criteria require immediate corrective action before the vehicle can proceed due to the serious nature of the defect(s). &to operate a commercial motor vehicle with these defects substantially increases the likelihood of serious injury or death to Carrier's driver, carrier's passengers, and the motoring public.

Examples of Mandatory Corrective Actions

- CARRIER will immediately comply with the FMCSR, including, but not limited to the regulations violated as determined by the investigation date. Compliance with the terms of this Out-of-Service Order will not excuse any failure to comply with the requirements of the FMCSR. CARRIER will not permit or require any commercial motor vehicle to be operated, or any driver to drive, in violation of the FMCSR and will take the following measures to assure such compliance:
- CARRIER must ensure that its personnel are adequately trained in the requirements of the FMCSR (Controlled Substances and Alcohol Use and Testing, Commercial Driver's License Standard, Minimum Levels of Financial Responsibility, Qualification of Drivers, Driving of Commercial Motor Vehicles, Parts and Accessories Necessary for Safe Operation, Hours of Service of Drivers and Inspection, Repair and Maintenance) and that personnel are able to conduct motor carrier operations consistent with those regulations.
- CARRIER must implement a system whereby no driver will be dispatched on any trip unless and until CARRIER certifies in writing that the estimated driving time necessary for completion of the trip will not result in a violation of 49 C.F.R. Part 395. Any driver who is properly dispatched but whose continued service will subsequently exceed maximum permissible driving time (49 C.F.R. §§ 395.3(a) and 395.3(b)), will be ordered by CARRIER to cease driving and to accumulate, and the driver will accumulate, adequate off-duty rest time before continuing.
- CARRIER will dispatch no driver whose on-duty time equals or exceeds the maximum permitted hours of service (49 C.F.R. § 395.3).

- CARRIER must insure that drivers accurately complete their daily records of duty status and that drivers submit their daily records of duty status to CARRIER within 13 days of their completion (49 C.F.R. § 395.8(i)).
- CARRIER must maintain drivers' records of duty status and all supporting documents for a minimum period of 6 months. CARRIER must insure that all records of duty status are accurate by using all means available to CARRIER and by comparing each record of duty status with all supporting documentation.
- CARRIER must cease using any driver to operate a commercial motor vehicle whose license is revoked, suspended or canceled by a state or who is disqualified to operate a commercial motor vehicle, as required by 49 C.F.R. § 383.37(a) and 49 C.F.R. § 383.51(a)/391.15(a).
- CARRIER must cease using any driver that does not possess a valid commercial driver's license as required by 49 C.F.R. § 383.23. CARRIER will not dispatch any driver who does not possess a valid commercial driver's license with the appropriate endorsement.
- CARRIER must establish procedures to conduct pre-employment controlled substances testing of all driver applicants, in accord with 49 C.F.R. § 382.301.
- CARRIER must establish a random controlled substances and alcohol testing program consistent with 49 C.F.R. § 382.305. CARRIER will not utilize drivers who are not subject to the random program.
- CARRIER must comply with all controlled substance pre-employment, post-accident, random, reasonable suspicion, return-to-duty, and follow-up testing requirements as required by 49 C.F.R. §§ 382.301, 382.303, 382.305, 382.307, 382.309, and 382.11. CARRIER must also comply with all requirements relating to random alcohol testing, post-accident alcohol testing, reasonable suspicion, return-to-duty, and follow-up alcohol testing.
- CARRIER must establish procedures which will insure that drivers' qualification files are maintained in accordance with 49 C.F.R. Part 391, and that only drivers who are qualified to drive are dispatched by CARRIER. CARRIER will not dispatch any driver who is not properly qualified in accordance with 49 C.F.R. Part 391.
- CARRIER will establish and maintain a system to properly inspect, repair, and maintain equipment in accordance with 49 C.F.R. §§ 396.3 and 396.17.
- CARRIER will not dispatch any commercial motor vehicle that has not met the standards for parts and accessories necessary for safe operation of a commercial motor vehicle. 49 C.F.R. Parts 393.

Transmittal Memorandum Illustration

Memorandum

U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Subject: Motor Carrier Safety Enforcement Date:

Settlement AR #

Reply to

From: Field Administrator Attn. of: MC-EFX-XX

XXXXXX Service Center

City, State

To: Chief, Finance Division (HFS-22)

Washington, D.C.

This memo transmits the settlement agreement for the following enforcement action.

TYPE: Settlement Agreement
INVESTIGATION #: XX-01-XXX-USXXX
RESPONDENT'S NAME:
MAILING ADDRESS:
CITY: STATE: ZIP:
IRS #: CARRIER PHONE NO:

POINT OF CONTACT: Enforcement Program Technician

Portion attributable to GENERAL FUND (HM/387) violations: $AMOUNT
If you have any questions regarding this information, please advise.

/Original signed by/
Name of Field Administrator

---

[1] Or other division equivalent

[2] Safety Management Plan

6.2.2.9.16 Illustration E-7: Imminent Hazard Guidelines

A motor carrier with a proposed unsatisfactory rating should be evaluated against the criteria below. . However a motor carrier with a conditional or even a satisfactory rating could be subject to an imminent hazard. A motor carrier poses an imminent hazard to the motoring public when it meets the following criteria:

(1) An evaluation of the BASICs with the highest correlation of future crash risk in SMS (Unsafe Driving, HOS Compliance, Vehicle Maintenance, and the Crash Indicator) identifies at least one of the following:
   a. A motor carrier of property with a percentile of 85 or higher in 3 or more of the 4 crash-correlated BASICs.
   b. A motor carrier of passengers or a motor carrier subject to the Hazardous Materials threshold with a percentile of 75 or higher in two or more of the four crash-correlated BASICs.
   c. Notwithstanding the above, any single crash-correlated BASIC or combination of crash-correlated BASICS significantly exceeding the percentiles described above may meet these initial criteria when found in conjunction with the criteria listed in items 2-7 below.

(2) The findings of an investigation that reveal at least 3 unsatisfactory rating factors, including Factors 2 and 3, and also
   a. Factor 2 (Parts 382, 383, 391) is unsatisfactory based on drivers still operating after testing positive for controlled substances or alcohol use, or drivers still operating on

suspended licenses when the licenses have been suspended or revoked for safety-related reasons; or

b. Factor 3 (Parts 392 and 395) is unsatisfactory based on a high violation rate and excess hours by drivers currently employed by the motor carrier.

(3) Recent dispatch of vehicle(s) known by the carrier to be unsafe combined with evidence of an ineffective or nonexistent vehicle maintenance program.

(4) Recent crash (es) caused by driver fatigue or lack of maintenance, combined with evidence of ongoing failure or refusal by the motor carrier to monitor vehicle repairs and maintenance and/or driver hours.

(5) Ongoing pattern and practice of requiring or permitting drivers to falsify records of duty status or exceed maximum HOS limitations, combined with evidence showing a blatant disregard for safety and lack of knowledge of Federal Motor Carrier Safety Regulations.

(6) Evasion of an OOS order, combined with evidence of ongoing failure or refusal to comply with driver and vehicle safety regulations. In these situations, the Agency may concurrently pursue injunctive relief, and/or an OOS or record consolidation order under 49 CFR § 386.73.

(7) Evidence reveals a regulatory violation that is not described above, where the motor carrier's actions are so egregious (shocking the conscience) that the Agency would be negligent in its responsibility to protect the public, if it failed to take immediate steps to reduce the risk.

Additionally, if one or more of these circumstances exists and, in the course of an investigation, related ongoing violations are discovered, an imminent hazard situation may exist. When FMCSA declares a motor carrier with operating authority registration an imminent hazard, in addition to the Order, FMCSA will simultaneously serve a Revocation Order notifying the motor carrier that its operating authority registration is revoked

A Revocation Order must include notification to the regulated entity that it must re-apply for operating authority registration and demonstrate during the application process that the entity is fit, willing, and able to comply with appropriate regulations and statutes. A Revocation Order must be served using a delivery method that can be tracked and confirmed. (**SEE IMMINENT HAZARD POLICY.**)

6.2.2.10 Revocation of Operating Authority

The revocation (13905) policy applies to any entity required to maintain operating authority registration that demonstrates an unwillingness or inability to comply with applicable statutes and regulations and operates in a manner that shows a blatant and sustained disregard for, or an inability to meet regulatory requirements.

Revocation of operating authority registration forces a regulated entity to cease the elements of their operations that require registration.

- Revocation follows a 30-day notice (Order to Show Cause) that provides an opportunity to respond.
- This remedy should be considered only when there is evidence of continued willful noncompliance that has not been deterred through use of other enforcement measures.
- The Agency will exercise its authority to revoke operating authority registration in cases where a there is conduct that demonstrates willful disregard for applicable requirements.
- Inadvertent, isolated, or sporadic violations of applicable requirements generally should not result in revocation.

It is important to note the section 13905 revocation process is separate and distinct from the Agency's imminent hazard authority.

Factors to be considering before Initiating a Revocation Proceeding

(1) The nature and extent of existing or past violations;

(2) The degree to which existing or past violations will affect, or have affected, the safety of operations, taking into account any crashes, deaths, or injuries associated with the violations;

(3) Whether existing or past regulatory or statutory violations are the result a willful failure to comply with applicable requirements;

(4) The existence and nature of pending and closed enforcement actions;

(5) Whether adequate safety management controls exist to ensure acceptable compliance with applicable requirements; and

(6) The existence of corrective action, if any.

When evaluating a possible revocation order, it is critical to look into the compliance and enforcement history from the motor carrier within the past 6 years. See attachment: *New Application Letter*.

Coordination

The Office of Field Operations (MC-F) must coordinate all revocation actions with MC-EC and the Assistant Chief Counsel for Enforcement and Litigation. Documentation must include the basis for the order and legally sufficient evidence of the ongoing violations.

A Revocation Order must include notification to the regulated entity that it must re-apply for operating authority registration and demonstrate during the application process that they are fit, willing, and able to comply with appropriate regulations and statutes. A Revocation Order must be served using a delivery method that can be tracked and confirmed.

The Regional Field Administrator (RFA)/ Field Administrator (FA) must email the Registration, Licensing, and Insurance Division (MC-RSI) all final dispositions on a motor carriers operating authority, i.e. suspensions or revocations, rescinded suspensions/revocations. The request must be submitted prior to the effective suspension/revocation/rescinded date and include the following information:

- Motor carrier's DOT;
- Motor carrier's MC Number;
- Company name;
- Reason for the suspension/revocation; and
- The effective date of the suspension/revocation

The request must be sent to the following recipients:

- Registration, Licensing, and Insurance (MC-RSI) Division Team Leader;
- MC-RSI Division Chief;
- MC-RSI Deputy Division Chief;
- MC-RSI mailbox ecc.comments@dot.gov; and

The Office of Enforcement and Compliance (MC-EC) mailbox should be copied on the email enforcementprogramdelivery@dot.gov

It is recommended that a phone call also be made to the MC-RSI Team Leader to confirm receipt of the email. On the date of suspension, the RFA/FA should verify that the suspension/revocation status is properly displayed on the Agency's L&I System and the QC Database. If the suspension/revocation does not appear in the Agency's information technology systems on the next business day after the suspension/revocation/lift is effective, the RFA/FA should follow up with the MC-RSI Division Chief, and should advise the Enforcement (MC-ECE) Division Chief.

6.2.2.11 Procedures for Investigating Potential Reincarnated/Chameleon and Affiliated Motor Carriers

When an investigation discloses an apparent continuity of operations between the motor carrier assigned for investigation and another motor carrier, the first step is to determine the FMCSA operational status of the suspected predecessor motor carrier. *Appendix K* is an investigative reference tool listing key analysis factors that the investigator should consider when reincarnation/affiliation is suspected. If the predecessor motor carrier is subject to an OOS Order, or has a negative safety history, investigators should follow the August 29, 2012 policy: *Procedures for Investigating Potential Reincarnated/Chameleon and Affiliated Motor Carriers*, and work closely with the Division Administrator (DA), Service Center Enforcement Team (SCET), and Field Attorneys to gather and organize the evidence in order to bring a case against a suspected reincarnating carrier.

- Coordination: Experience has shown that coordination between two or more DAs may be needed, as attempts to reincarnate sometimes include incorporating in another State, to avoid detection. The investigator should begin collecting preliminary information and documents to establish the status of both the predecessor entity and the new entity. Coordination with field counsel is also recommended. Counsel can be a valuable resource in ensuring that the investigator is able to obtain sufficient information and documentation to support action under part 386.
- Evidence Collection: Reincarnation investigations require investigator analysis and documentation that differs slightly from the usual documentation needed to support typical violations discovered during routine investigations. Appendix K: Reincarnated/Affiliated Carrier Analysis Factors and Checklist provides a guide to the types of evidence that should be sought in a reincarnation/affiliation investigation. The checklist is intended to enable the investigator to take notes and comment on the availability of evidence, and otherwise describe the investigation as needed. For example, Attachment K refers to tax documents to be collected as part of the investigation. These types of tax documents may not be available for the three year period mentioned, or may not be available at all. If that is the case, investigators should describe the available evidence and document any information that is still needed. In some instances, subpoenas to third parties may be necessary to obtain documents that the motor carrier is not required to maintain, but may be available from the motor carrier's business contacts, such as an accountant, insurance agent, representative, or bank. Accordingly, when the carrier is unable to produce these important documents, the investigator should obtain the names and necessary identifying information for company accountants, insurers, banks, and other third parties.
- Summary: Investigators should prepare a brief summary of the evidence collected that led the investigator to first suspect reincarnation, identifying the suspected reason the motor carrier reincarnated (e.g., OOS Order of the previous entity) and providing a timeline, or chronology, of events and motor carrier actions. This summary should be provided via a separate Word document to the DA or in the manner (such as an email) directed by the DA.
- Submission of evidence: To the extent practicable, follow established procedures and time frames for Agency enforcement actions regarding submission of evidence to the DA. This information should be provided as soon as it is complete. The Division office should be working with the SCET and field counsel to ensure that necessary and sufficient evidence has been obtained.
- Closeout: Compliance review/investigation should not be closed out until all evidence supporting the reincarnation has been collected and reviewed by the SCET and a decision to conclude the investigation has been made by the Service Center Director or Service Center Enforcement Program Coordinator, in consultation with the Field counsel. A compliance review that involves a chameleon/affiliate investigation should not result in a safety rating prior to a determination on the evidence supporting enforcement action under § 386.73.

Division Administrator:

As soon as practicable, the DA should notify the SCET and appropriate Field Attorney upon discovery of information that requires a chameleon/affiliate investigation. The DA may choose to have the investigator contact the SCET directly. The SCET and Field Attorney can provide advice and guidance on the applicable law and evidence to collect.

The DA should forward to the SCET and appropriate Field Attorney the investigator's summary, key analysis factors, document checklist and associated evidence. When Field Counsel in coordination with the DA and the SCET agree that further action is warranted, the next step is for counsel to prepare an out-of-service order, as appropriate, and consolidation of record order under § 386.73.

Service Center Enforcement Team (SCET) and Field Administrator or Director:

The SCET will review the information submitted and forward to the appropriate Field Attorney for counsel review. The SCET, in consultation with Field counsel, will make a recommendation and the Field Administrator or Service Center Director will decide whether to proceed with issuing a Notice of Claim (NOC), Notice of Violation (NOV), an OOS Order (OOSO) under 386.73, a record consolidation order under 386.73, or both an OOSO and record consolidation order under 386.73, or other action, as appropriate. Sample language of an OOSO and record consolidation order is attached to this policy as *Attachment C*. Note that FMCSA will not serve NOC under 49 CFR part 386 when charging Riojas affected violations. If a Division determines that an enforcement action on Riojas affected violation(s) is the best means to induce compliance, an Enforcement Analysis must be conducted following the policy titled "Policy for Handling Riojas Affected Violations and Impacts to Existing Policies," MC-ECE-2020-0001 to determine what type of enforcement should be pursued. FMCSA will propose and settle civil penalties for Riojas affected violations using the procedures in that policy.

This section does not supersede existing policies related to charging FMCSR violations but rather supplements the tools available to FMCSA. For example, issuing an OOSO/record consolidation order does not necessarily preclude issuing a NOC charging safety or hazardous materials violations that may have been discovered during the course of the investigation/compliance review.

Section 386.73 Operations Out-of-Service and Record Consolidation Order:

Section 386.73 authorizes FMCSA to issue out-of-service orders to motor carriers, intermodal equipment providers, brokers, and, freight forwarders determined to be reincarnated or operating as affiliates to avoid enforcement action or a negative compliance history and provides a mechanism for administrative review of such orders. The rule also establishes procedures to consolidate the compliance records of reincarnated or affiliated entities. These procedures more fully implement the Agency's current authority to prohibit unsafe entities from operating while, at the same time, providing due process for companies that seek to challenge a finding that they are reincarnated/affiliated. These new procedures provide a straightforward means to identify and expeditiously address reincarnated/affiliate carriers. The standard for determining that an entity is reincarnated is set out in section 386.73(c). The § 386.73(c) factors are incorporated in the outline in *Appendix K*.

Past experience has often shown a need to link multiple entity histories to the current carrier; the evidence to link the records of multiple entities to the current motor carrier is the same as the evidence needed to link two motor carriers.

The Service Center Enforcement Program Coordinator will link the carriers in MCMIS.

Suggested Language for § 386.73 Notice of Claim in Reincarnated Carrier Cases/Record Consolidation Cases

There are certain sections of law and language that would be common to most reincarnated carrier Notices of Claim (NOC) and there is other language that can be selected when applicable.

Phrases normally used in the address (addresses), for example:

[NAME] jointly and severally liable with

[NAME] jointly and severally liable with

[COMPANY NAME] jointly and severally liable with

[COMPANY NAME]

These are examples of language that can be used in the opening paragraph of the NOC:

On or about [DATE], an investigation into the operations of [CARRIER NAME] and [CARRIER NAME] was begun. The purpose of the investigation was to determine whether [CARRIER NAME] continues to operate in commerce after the effective date of Orders to Cease operations, and after FMCSA suspended or revoked its registration; whether [CARRIER NAME] is a successor entity and/or alter ego of [CARRIER NAME] and/or its principals; whether [CARRIER NAME] has established its motor carrier operations to evade FMCSA regulations; and whether [CARRIER NAME] and/or [CARRIER NAME] are operating in compliance with Federal statutes and regulations, including the Federal Motor Carrier Safety Regulations (FMCSRs), 49 C.F.R. §§ 350-399 and registration requirements. The [NON-RATABLE] review was conducted at [CARRIER ADDRESS] and concluded on or about [DATE].

As a result of FMCSA's investigation, violations were discovered. This letter constitutes a Notice of Claim by the United States Department of Transportation (USDOT), FMCSA, against **[NAME]**, an individual, jointly and severally liable with **[NAME]**, an individual, jointly and severally liable with **[COMPANY NAME]**, jointly and severally liable with **[COMPANY NAME]** (referred to collectively herein as "You," or "Your") for a total asserted civil penalty in the amount of [$ AMOUNT].

Unless settled or otherwise resolved in a manner set forth below, FMCSA can recover these penalties, with interest and costs, in a civil action brought in a United States District Court. Additional collection efforts may include, but are not limited to: Internal Revenue Service offsets against tax refunds, and the referral to and the use of collection agencies to collect penalties.

Pursuant to 49 C.F.R. §§ 386.83 and 386.84, once a final order has been issued, FMCSA may prohibit you from operating in interstate commerce, or in operations affecting interstate commerce, until the civil penalty is paid in full and, your FMCSA operating authority/registration will be revoked suspended, if applicable.

Examples of violations that could be alleged are included here. Not all will apply in every case and the SCET should act in concert with Service Center Counsel in selecting violations.

SUMMARY OF VIOLATIONS

You are charged with:

There are potential violations listed in a separate attachment to this policy.

A copy of the documentary evidence collected during the investigation is available from this office. Upon request, FMCSA will forward a copy of this evidence within a reasonable period of time. For additional details see the attached "Statement of Charges."

Some examples of Statement of Charges language are included here.

STATEMENT OF CHARGES

Violation 1: 49 U.S.C. § 14906 – Evasion of regulation by motor carrier

CHARGE #1: [NAME] and [NAME] applied for a USDOT number and operating authority/registration for [COMPANY NAME] (USDOT XXXX) - hereinafter referred to as ["NAME"] - to evade FMCSA regulations, provided under Part B of Title 49 United States Code for motor carriers, and to avoid the consequences of the performance, compliance, and enforcement history of [COMPANY NAME] (USDOT XXXX), including FMCSA Orders to Cease, unsatisfactory safety rating, and registration suspension and revocation, in order to continue motor carrier operations transporting property or passengers in interstate commerce. There is substantial continuity between the [COMPANY NAME]

motor carrier operation and [COMPANY NAME]. [COMPANY NAME] is a mere continuation of [COMPANY NAME].

Alternatively, in the final sentence, substitute:

[Company NAME] is a substantial continuation and/or a mere continuation of the [COMPANY NAME].

Describe background of Out of Service Order, timing, and evidence of de facto merger or consolidation or mere continuation. The Service Center Enforcement Team should act in concert with the Service Center Counsel to determine whether to use de facto merger or consolidation, or mere continuity. Evidence can include reference to such items as operating out of the same office, with the same insurance policy, using many of the same drivers and vehicles, and with significant commonality of management, management officials, and functions.

Violation 2: 49 C.F.R. § 385.13(a)(1) – Operating a commercial motor vehicle after the effective date of an "unsatisfactory" rating.

CHARGE #1: On or about [DATE], the [COMPANY NAME] (USDOT XXXX) / [COMPANY NAME] (USDOT XXXX), [ADRESSEE NAME], and [ADDRESSEE NAME, if applicable] motor carrier operation operated a commercial motor vehicle in interstate commerce from [LOCATION] to [LOCATION]. On [DATE], an Out of Service Order was served on [COMPANY NAME], and effective [DATE], [COMPANY NAME] safety rating was "unsatisfactory." [ADRESSEE NAME] and ADDRESSEE NAME] evaded [COMPANY NAME] enforcement history, and orders to cease transportation, through the use of [COMPANY NAME] to acquire operating authority/registration. There is substantial continuity between the [COMPANY NAME] motor carrier operation and [COMPANY NAME]. [COMPANY NAME] is a mere continuation of [COMPANY NAME].

Alternatively, in the final sentence, substitute:

[Company NAME] is a substantial continuation and/or a mere continuation of the [COMPANY NAME].

Violation 3: 49 C.F.R. § 386.83(a)(1)/386.84(a)(1) – Operating a commercial motor vehicle in interstate commerce during a period when prohibited from operating for failure to pay a civil penalty.

CHARGE #1: On or about [DATE], the [COMPANY NAME (USDOT XXXX) / COMPANY NAME (USDOT XXXX)], [PRINCIPAL NAME], and [ADRESSEE NAME, if applicable] motor carrier operation operated a commercial motor vehicle in interstate commerce from [LOCATION] to [LOCATION]. The carrier failed to pay a civil penalty in full within 90 days after the date specified by FMCSA's final agency order. On [DATE], an Out of Service Order for failure to pay civil penalty, effective [DATE], was served on the carrier. [ADDRESSEE NAME] and [ADDRESSEE NAME, if applicable] evaded [COMPANY NAME] enforcement history, and orders to cease transportation, through the use of [COMPANY NAME] to acquire operating authority/registration. There is substantial continuity between [COMPANY NAME] motor carrier operation and [COMPANY NAME]. [COMPANY NAME] is a mere continuation of [COMPANY NAME].

Alternatively, in the final sentence, substitute:

[Company NAME] is a substantial continuation and/or a mere continuation of the [COMPANY NAME].

Violation 4: 49 C.F.R. § 386.82(a)(3) – Violating a Final Order

CHARGE #1: On or about [DATE], the [COMPANY NAME (USDOT XXXX) / COMPANY NAME (USDOT XXXX), [ADRESSEE], and [ADDRESSEE, if applicable] motor carrier operation operated a commercial motor vehicle in interstate commerce from [LOCATION] to [LOCATION] in violation of an [DATE] Final Order to cease all interstate transportation and registration suspension, effective [DATE], for failure to pay a civil penalty. [ADDRESSEE] and [ADRESSEE, if applicable] evaded [COMPANY NAME] enforcement history, and orders to cease transportation, through the use of [COMPANY NAME] to acquire operating authority/registration. There is substantial continuity between [COMPANY NAME]

motor carrier operation and [COMPANY NAME]. [COMPANY NAME] is a mere continuation of [COMPANY NAME].

Alternatively, in the final sentence, substitute:

[Company NAME] is a substantial continuation and/or a mere continuation of the [COMPANY NAME].

Violation 5: 49 C.F.R. § 390.21(b) – Failing to mark a commercial motor vehicle with the legal name or a single trade name and/or the USDOT identification number.

CHARGE #1: On or about [DATE], the [COMPANY NAME (USDOT XXXX) / COMPANY NAME (USDOT XXXX), [ADRESSEE], and [ADRESSEE, if applicable] motor carrier operation operated a commercial motor vehicle in interstate commerce after failing to mark the commercial motor vehicle with the legal name or a single trade name and/or the USDOT identification number. [ADDRESSEE] and [ADRESSEE, if applicable] evaded [COMPANY NAME] enforcement history, and orders to cease transportation, through the use of [COMPANY NAME] to acquire operating authority/registration. There is substantial continuity between [COMPANY NAME] motor carrier operation and [COMPANY NAME]. [COMPANY NAME] is a mere continuation of [COMPANY NAME].

Alternatively, in the final sentence, substitute:

[Company NAME] is a substantial continuation and/or a mere continuation of the [COMPANY NAME].

---

[1] Order to Cease for Unsatisfactory Safety Rating, Case No. [CASE NUMBER] Unfit [(DATE)]; Order to Cease for Failure to Pay [$ AMOUNT] civil penalty, Case No. [CASE NUMBER] [(DATE)].

6.2.2.11.1 Revocation of operating authority in reincarnation/affiliation cases Pattern of Safety Violations (PoSV) by Motor Carrier Management

Although the PoSV final rule authorizes both suspension and revocation proceedings, the Agency will generally pursue revocation of operating authority in reincarnation/affiliation cases, as opposed to suspensions using the procedures below, in addition to pursuing civil penalties. As stated in section 385.1011, in order to proceed with a revocation of operating authority, the FMCSA must determine under 49 CFR 385.1007 that there was a violation and that the carrier willfully violated an order directing compliance for a period of at least 30 days.

Designating the Authority to Revoke

The Director, Office of Enforcement and Compliance (MC-EC), is the Agency Official authorized to revoke the operating authority of any for-hire motor carrier that he or she determines has reincarnated or affiliated to avoid regulatory compliance or mask or otherwise conceal regulatory noncompliance, or a history of noncompliance. Under 49 CFR 385.1003, MC-EC may designate one or more individuals to act on his behalf. For purposes of this policy, the Director designates the Regional Field Administrator or the Field Administrator ("Designated Agency Official" or "DAO"), the authority to issue orders to revoke the operating authority of reincarnated/affiliated carriers and to rescind those orders. This authority may not be designated further. This designation is distinct from the delegation of authority to issue out-of-service and/or Record Consolidation Orders pursuant to 49 CFR 386.73.

Using Appropriate Enforcement Options

The FMCSA has several tools available to it to address carriers that reincarnate. The DAO has the discretion to pursue the most appropriate course of action, depending on the circumstances surrounding the reincarnation. The PoSV Order to Show Cause (OSC) should be issued in addition to the Orders issued in numbers two and three below. It is beneficial to issues these Orders together because the Records Consolidation Order functions to consolidate records, while the PoSV OSC will potentially revoke the authority. The following are examples of the options; however, other situations may exist.

- ***Issue a Record Consolidation Order.*** This should be considered if the carrier has several U.S. Department of Transportation (DOT) numbers or the motor carrier requests that its records be consolidated, for example.
- ***Issue a Record Consolidation Order and a PoSV OSC.*** This should be considered if the carrier reincarnates to avoid poor safety performance history.
- ***Issue a Record Consolidation Order, Out-of-Service (OOS) Order, and a PoSV OSC.*** This series of actions may be appropriate when a carrier reincarnates to avoid, for example, an Imminent Hazard (IH) and/or Unfit OOS Order, a Willful Noncompliance (13905) Revocation Order (as outlined in the "Revocation of Operating Authority for Willful Non-Compliance" policy (MC-ECE-2013-0003) that was issued on March 28, 2013, an Order revoking new entrant safety audit authority, or an Order to Cease Operations for failing to pay a fine.

The OSC must include the requirements found in 49 CFR 385.913 - Revocation Proceedings. See example of a PoSV OSC.

Determining the Appropriate Course of Action

If the motor carrier responds to the OSC, the DAO may either determine that the motor carrier's registration should not be revoked and issue an order terminating the proceeding(s) or that motor carrier's registration should be revoked and issue a revocation order or determine

Coordination

Prior to issuing an OSC or revocation order for a PoSV, the DAO, or its designee, must coordinate with MC-EC and MC-CCE.

Rescission

A motor carrier that has had its operating authority revoked under these proceedings must petition the DAO to rescind the revocation order and may not resume operations until the petition has been granted, the motor carrier reapplies for operating authority, and FMCSA grants operating authority. MC-EC reserves the right to determine whether these carriers are willing and able to comply with applicable requirements as part of the operating authority registration process.

Initiating Enforcement against Reincarnated and Affiliated Motor Carriers

Enforcement should be initiated against for-hire motor carriers that were placed out of service or had their operating authority revoked for improper reincarnation or affiliation. It may be advisable to initiate enforcement after the revocation order is final. This is being recommended because if the revocation order is not sustained during the Administrative Review process, the pending Notice of Claim (NOC) could be affected. Accordingly, the best practice is to issue the NOC once the revocation order is final. If there are additional violations found as a result of an investigation, it is advisable to issue a separate enforcement case for those violations and issue a separate NOC for the 49 CFR 385.1005 violation, once the revocation order becomes final.

Field staff should bring enforcement for a reincarnation or affiliation violation as shown below. This is a non-recordkeeping violation, which has a statutory maximum civil penalty of $11,000.

Violation Citation	**Violation Description**
385.1005	Operating as a reincarnated or affiliated motor carrier to avoid regulatory compliance, or to mask or conceal regulatory noncompliance or a history of noncompliance.

FMCSA may not include a violation of 392.2a(a)(1) in an NOC as it is a *Riojas* affected violation. If a Division determines that an enforcement action on Riojas affected violation(s) is the best means to induce compliance, an Enforcement Analysis must be conducted following the policy titled “Policy for Handling

Riojas Affected Violations and Impacts to Existing Policies," MC-ECE-2020-0001 to determine what type of enforcement should be pursued. FMCSA will propose and settle civil penalties for Riojas affected violations using the procedures in that policy.

6.2.2.12 Denial of Access to Records (DOA)

When investigators encounter motor carriers who deny access they will consult with their DA to consider pursuing the DOA procedures as outlined in the policy titled, "Enforcement Procedures for Denial of Access to Records, Equipment, Lands, Buildings, and Other Property" (MC-ECE-2016-007). Further information on this process is found in the Enforcement Manual and in the DOA Policy. This may include placing OOS for-hire motor carriers. The corresponding Field Administrator or Regional Field Administrator may suspend a motor carrier's operating authority registration after having been placed OOS based on the carrier's continued non-compliance with the demand letter, generally after 10 business days of continued noncompliance. A suspension of operating authority registration does not require evidence that a motor carrier placed OOS for denying access continues to operate. The corresponding Field Administrator or Regional Field Administrator may initiate a show cause proceeding to revoke a motor carrier's operating authority registration based on evidence that the carrier operated in violation of the OOS order. The Order to Show Cause will provide the motor carrier with 30 days to respond. Revocation orders require concurrence from the Office of Enforcement and Compliance and the Office of Chief Counsel, Enforcement & Lititgation.

The DA is responsible for the issuance of demands in coordination with the corresponding service center enforcement and legal staff for the service of a Demand either in person or by mail in circumstances that necessitate mail service. Separate demand samples for use with both private and for-hire motor carriers are provided as guides for the development of an appropriate demand. Demands issued to for-hire motor carriers must include the langage about the administrative review process as they can potentially be placed OOS for failure to comply with the requirements of the demand. All demands must be reviewed by MC-CCE or a designee prior to service. When the motor carrier fails to grant access as per the demand, the Regional Field Administrator or Field Administrator is responsible for the issuance of an OOS Order. The Division Office will prepare the associated NOC for the enforcement of civil penalties either as a standalone NOC when the daily assessed penalties for non-compliance with the Demand reach the maximum penalty amount. When a motor carrier complies with the requirements of the demand prior to reaching the maximum civil penalty, the violations will be charged together in one single NOC with violations to be enforced as discovered during the completed investigation.

Service center enforcement staff is responsible for ensuring that motor carriers placed OOS for DOA are designated as OOS in the MCMIS system and that the OOS is removed if the motor carrier later complies with the demand. The guidance in the policy titled "Enforcement Procedures for Denial of Access to Records, Equipment, Lands, Buildings, and Other Property" has changed. The policy indicated the need for the use of a workaround by the use of the "90-day Failure to Pay" code in MCMIS. This has been changed and now MCMIS has a code titled, "Denial of Access" as a reason code for placing a motor carrier OOS. This is the code that should now be used in all instances of placing a motor carrier OOS for denial of access.

Persons engaged in an enforcement role or who advise those engaged in enforcement roles and persons who act as the final decision maker or advise the final decisionmaker may not act in both capacities. Therefore any person involved with issuing an Order to Show Cause to suspend or revoke a certificate of registration or operating authority registration, or to inactivate a USDOT number under the policies listed above, may not be involved with reviewing the carrier's request for administrative review and issuing the response or orders issued after a request for administrative review. Any person involved with issuing a demand letter under the Denial of Access Policy will not be involved with reviewing the carrier's request for administrative review and issuing a response or order after a request for administrative review.

6.2.2.12.1 Improper Designation of a Principal Place of Business

When investigators encounter motor carriers who designatied PPOB hinders the Agency's ablity to complete an investigation i.e., the motor carrier failed to file, or furnished misleading information, or made false statements on their registration, the Division Office should issue a Notice of Claim or initiate a proceeding to suspend operating authority, or both, using the procedures provided in section 2.4.4.22 Noncompliance Principal Place of Business Requirements. A proceeding to suspend operating authority requires evidence that the carrier's designation of a false or misleading PPOB was willful. Division Offices will not take enforcement if the investigation was completed and the only evidence that the PPOB is false or misleading is that the PPOB does not comply with the regulatory guidance.

6.2.2.12.F - Denial of Access to Records (DOA) – Foreign Motor Carriers

When investigators encounter foreign motor carriers who deny access they will consult with their DA to consider pursuing the DOA procedures as outlined in the policy titled, "Enforcement Procedures for Denial of Access to Records, Equipment, Lands, Buildings, and Other Property of Foreign Motor Carriers" (MC-ESB-2019-0004). Further information on this process is found in the Enforcement Manual and in the Foreign Motor Carrier DOA Policy. This may include the assessment of civil penalties against both for-hire and private foreign motor carriers.

For-hire and private foreign motor carriers may be issued:

- Suspension of Certificate of Registration or Operating Authority Registration under 49 CFR § 385.111(e).
- Suspension of Certificate of Registration or Operating Authority Registration under 49 CFR § U.S.C. 13905 for willful failure to comply.
- Inactivation of USDOT number under 49 U.S.C. § 31134(c).
- The Regional Field Administator or Field Administrator may initiate a show cause proceeding to revoke a motor carrier's certificate of registration or operating authority registration based on evidence that the carrier operated in violation of the order suspending its certificate of registration or operating authority registration. The Order to Show Cause will provide the motor carrier with 30 days to respond.
- All Out-of-Service Orders for denial of access, Orders to Show Cause, Suspension Orders, Revocation Orders and Orders Inactivating USDOT numbers will be drafted by Service Center Attorneys for issuance by the RFA, FA or MC-EC, and reviewed by MC-CCE, or designee.

The issuance of suspensions of certificate of registration, operating authority registration or inactivation of USDOT numbers are only by decision of the appropriate Regional Field Administrator or Field Administrator and the Assistant Counsel for Enforcement & Litigation or their designees.

The DA is responsible for the issuance of demands to foreign motor carriers by letter in coordination with the Service Center Attorney. Separate samples of demand letters for use with both for-hire and private foreign motor carriers are provided as guides below:

- Demand Letter – For-hire motor foreign motor carriers, For-hire and private Mexico-domiciled motor carriers, Mexico-domiciled property motor carriers operating under OP-2 Certificates of Registration
- Demand Letter – Private foreign motor carrier, for-hire or private Mexico-domiciled passenger carriers operating in the commercial zone

The following orders may be issued for non-compliance with demands by the appropriate the Regional Field Administrator or Field Administrator and Assistant Counsel for Enforcement & Litigation or their designees. Separate samples of orders for use with both for-hire and private foreign motor carriers are provided as guides below:

- Order to Show Cause for Revocation of Certificate of Registration or Operating Authority Registration
- Order to Show Cause for Inactivation USDOT number
- Order Terminating Show Cause Proceeding for Suspension of Operating Authority Registration
- Order Terminating Show Cause Proceeding for Inactivation of USDOT number
- Order Suspending Certificate of Registration or Operating Authority Registration
- Order Inactivating USDOT Number
- Order Rescinding Order Suspending Certificate of Registration or Operating Authority Registration
- Order Rescinding Inactivation of USDOT Number

The Division Office should consult with the Regional Field Administrator or Field Administrator and Service Center attorney when there is a need to conduct an investigations at locations other than the PPOB. New Entrant Canadian motor carriers that refuse to permit a safety audit will be subject to 49 CFR § 385.337. Mexico-domiciled motor carriers that fail to provide necessary documents for a safety audit or compliance investigation upon reasonable requires will be subject to suspension procedures outlined 49 CFR 385.111(e). The Foreign Motor Carrier DOA policy includes sample letters to notify a Mexico-domiciled motor carrier subject to safety monitoring system under subpart B of 49 CFR part 385 that fails to submit to a safety audit may result in suspension of the carrier's provisional certificate of registration and/or suspension of the motor carriers provisional operating authority registration. FMCSA staff should follow the Denial of Access guidance (MC-ECE-2016-007) issued August 25, 2016 when assigned an Enterprise carrier that refuses or fails to make records necessary to complete a compliance investigation available.

When a foreign motor carrier's order suspending operating authority or order inactivating USDOT number is served and effective, Service Center enforcement staff is responsible for providing notice to FMCSA Registration Office senior management to request the foreign motor carrier's operating authority registration be suspended or USDOT number be inactivated. All suspension/inactivation requests should also be submitted by email to mc-ecc.comments@dot.gov. Service Center enforcement staff should verify the foreign motor carrier's status is accurately reflected in FMCSA systems.

6.2.2.12.1.F Improper Designation of a Principal Place of Business

If a foreign carrier or a U.S.-domiciled carrier owned or controlled by Persons of Mexico ("Enterprise carrier") has provided false or misleading information in the designation of its PPOB, the Safety Auditor/Investigator will contact their supervisor and gather documentation to support an enforcement action in coordination with the Regional Field Administrator or Field Administrator or designee and the Borders Attorney in the Western Service Center. If a foreign carrier claims a U.S. PPOB or an Enterprise carrier provides false and misleading information in its designation of PPOB and does not, in fact, have a PPOB in the United States, the Investigator, in coordination with their supervisor and the Regional Field Administrator or Field Administrator or designee and the Borders Attorney in the Western Service Center, should gather documentation to support a proceeding for suspension of operating authority.

The Division Administrator or designee will consult with the North American Borders Division, the Regional Field Administrator or Field Administrator or designee, and the Borders Attorney in the Western Service Center prior to issuing a Notice of Claim or initiating a suspension proceeding against a foreign or Enterprise carrier.

6.2.2.13 Phase II Patterns of Safety Violations (Egregious Disregard for Safety)

If a motor carrier engages or has engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance with the safety regulations, FMCSA may suspend or revoke the motor carrier's operating authority. For more information see the policy titled, "Oct 20, 2015, Phase II Patterns of Safety Violations by Motor Carrier Management" A pattern refers to conduct that is widespread, continuing over time, and involves more than isolated violations. The finding of a pattern does not require a specific number of violations. A practice is an organization's policy, whether written or not, that informs its conduct and operational management; the practice could be evidenced by one or more instances of conduct.

Phase II *PoSV Discovery Process*

When an investigator has discovered such a motor carrier, they will consult with their DA about their findings. The Division Office will consult with a designated Service Center representative, a Field Attorney, and the designated Enforcement Division representative to discuss the case. This group of individuals will work as a team to discuss and evaluate the factors listed in 49 CFR 385.909 that must be considered to determine whether to pursue revocation of the motor carrier's authority. The team will use the worksheet found as Attachment C to the policy titled, "Oct 20, 2015, Phase II Patterns of Safety Violations by Motor Carrier Management" to assess the evaluation factors. If it is determined that revocation should be pursued, it is discussed with the Agency Official (Director of the Office of Compliance and Enforcement).

Decision to Pursue a Phase II PoSV Revocation

It is the Agency Official who will make the decision whether to pursue revocation. If so, it is the Service Center's responsibility to prepare an Order to Show Cause (OSC) that will be served by a representative of the Enforcement Division. A sample of the OSC is found in Attachment D to the policy titled, "Oct 20, 2015, Phase II Patterns of Safety Violations by Motor Carrier Management." If the motor carrier responds to the OSC within 30 days the Service Center representative assigned to the case must review it in consultation with other group members to make a recommendation to the Agency Official who must make a final determination w/in 10 days of the receipt of the response. If the motor carrier fails to respond within 30 days and/or if the Agency Official makes a determination that the motor carrier's operating authority should be revoked then the Service Center should prepare a revocation order like that found in the template in in Attachment F to the policy titled, "Oct 20, 2015, Phase II Patterns of Safety Violations by Motor Carrier Management." The revocation order will signed by the Agency Official and served to the carrier by the Enforcement Division representative who will also ensure that the revocation is done in FMCSA information systems.

Termination of Phase II PoSV Proceedings

If the Agency Official makes a final determination that the proceeding should be terminated, an order terminating the proceeding as found in Attachment E to the policy titled, "Oct 20, 2015, Phase II Patterns of Safety Violations by Motor Carrier Management" will be prepared for the Agency Official's signature by the Service Center in consultation with the Office of Chief Counsel. The Enforcement Division will ensure that the Termination Order is signed and served on the motor carrier.

Motor Carrier Request for Administrative Review of a Phase II PoSV Revocation

After the issuance of a Revocation Order, the motor carrier may petition for administrative review or may petition for rescission of the Order based on evidence of corrective action. Within 15 days following receipt of a petition for administrative review, the Agency Official must serve a response, which the Service Center, in consultation with the Office of Chief Counsel, will draft. Within 14 days after a motor carrier serves a petition for rescission, the Service Center representative in consultation with other group members, if needed must review the documentation submitted and meet with the Agency Official to outline the facts and make a recommendation whether the petition should be granted or denied. The Agency Official will make a final decision, taking into account the group's recommendation. Within 30 days of service of the petition, the Service Center, the Office of Chief Counsel, will prepare the written decision to the motor carrier's petition for the Agency Official's signature. If the petition is granted, the Agency Official's written decision will become the Final Agency Order. If the petition is denied the motor carrier may petition the Assistant Administrator for review of the denial.

6.2.2.14 Subpoenas

6.2.2.14.1 The Time When FMCSA Issues Subpoenas

The DAs have the authority to issue administrative subpoenas when a respondent refuses or fails to provide access to records or permit requested inspections pursuant to FMCSA's authority. The DA signs the administrative subpoena. The Division is responsible for service of the subpoena.

Prior to issuing the subpoena the DA must consult with SC attorneys for exact language. Copies of the proposed subpoena must be provided to the SC attorneys.

Notes regarding all efforts made to obtain documentation or inspection without subpoena should be maintained in the carrier file. These notes will be necessary if the carrier refuses to comply with the subpoena.

6.2.2.14.2 Action to Take if Carrier Does Not Comply with the Subpoena

If the carrier does not comply, enforcement of the subpoena may be sought in the appropriate United States district court.

The DA, or designee, will consult with the SC attorneys to determine the appropriate enforcement action.

When seeking enforcement of a subpoena, it is important to document all contact(s) with the carrier.

6.2.2.15 Border Enforcement Process

6.2.2.15.1 Definition of the Border Enforcement Process

FMCSA has implemented a safety monitoring system and compliance initiative to help determine whether Mexico-domiciled carriers conducting operations in the United States border commercial zones and beyond comply with applicable safety regulations and conduct safe operations. A major element of this safety monitoring system is the use of an expedited action warning letter process to alert Mexico-domiciled carriers to safety problems.

6.2.2.15.2 Types of Enforcement Actions that are Initiated Against Mexico-domiciled Motor Carriers

Mexico-domiciled motor carriers that commit certain violations, discovered as part of a roadside inspection or other means, may be subject to one of the following:

- An expedited safety audit (SA);
- An expedited investigation; or
- Issuance of an expedited action warning letter that identifies the violations.

6.2.2.15.3 Types of Violations that May Generate an Expedited Action Letter

The following violations may generate an expedited action letter:

- Using drivers not possessing, or operating without, a valid CDL or Licensee Federal de Conductor;
- Operating vehicles that have been placed OOS for CVSA OOS violations, without making required repairs;
- Involvement in, due to carrier act or omission, a hazardous materials incident within the United States involving highway route controlled quantity of certain Hazardous Materials;
- Involvement in, due to carrier act or omission, two or more hazardous materials incidents within the United States;
- Using a driver who tests positive for drugs or alcohol or who refuses to submit to required drug or alcohol tests;
- Operating within the United States a motor vehicle that is not insured, as required by 49 CFR Part 387; or
- Having a driver or vehicle OOS rate of at least 50 percent based upon three inspections within a consecutive 90-day period.

6.2.2.15.5 Mexico-domiciled Carrier is Subject to Expedited Action Procedures at this Time

The expedited action procedures apply only during a Mexico-domiciled carrier's first 18 months of operation.

6.2.2.15.6 Procedures Used by FMCSA to Identify Mexico-Domiciled Motor Carriers Subject to Expedited Action Proceedings

FMCSA will "review" its database on a monthly basis looking for regulatory violation cites that match the seven expedited actions in 49 CFR § 385.105.

The "review" will look at all Mexico-domiciled motor carriers with provisional authority or provisional certificates of registration.

6.2.2.15.7 When a Violation is discovered by FMCSA during its Review of Records

When a violation that matches one of the seven expedited actions is discovered, the system will then look to see if the Mexico-domiciled carrier has had a SA or an investigation.

If the Mexico-domiciled motor carrier has not had either a SA or an investigation, then they will be highlighted, as requiring an expedited SA/investigation. These carriers will be automatically moved to the top of the priority list.

For Mexico-domiciled carriers with provisional certificates of registration (commercial zone carriers), a SA should be scheduled within five days of the carrier being identified as having committed an expedited action; and

For Mexico-domiciled carriers with provisional operating authority ("long haul" carriers), an investigation should be scheduled within five days of the carrier being identified as having committed an expedited action.

6.2.2.16 Special Topic: VUU Table Protocol

We have designated certain fields to be required fields whenever a violation is entered into the VUU Table. Though other data may be captured in other fields, these required fields must always be completed. These required fields have been identified because they each play an important role in at least one of our proprietary software applications. These fields and their requirements are:

1. Primary Violation
2. Short Description of the Violation
3. Long Description of the Violation

4. Abatement Clause
5. Effective Date*
6. Rescind Date*
7. VCAT for All Safety and HM Violations (list of acronyms attached)**

*If you do not have either the effective date or the rescind date, use these default dates:

Effective date = 01/01/1901

Rescind date = 12/31/2999

VCAT for HHG and commercial violations are programmed somewhat differently. For all commercial violations (non-HHG), the VCAT is CR; for HHG violations, the VCAT is CRF. A listing of new VCAT designations is included with the attached list. These will be used for all new violations in these categories which are entered in the future. **Do not attempt to go back and enter these VCAT designations into existing violation fields that are currently in VUU which may not already have these entries.

Note: In addition to the primary violation, if there is an appropriate secondary violation, it should also be captured in VUU.

Due to VKEY issues, never delete a violation. Should you find that an error was made and the violation has already been entered and accepted into VUU, rescind the violation by entering the current date in the rescind field. Then enter a new violation with the correct data showing an effective date for the following day and a rescind date for the new violation of 12/31/2999.

In addition to these required fields, it is highly encouraged that the Guidance/Example field also be completed for each new violation entry. This field captures the information which is displayed in Case Rite and gives general instructions to the SI regarding basic evidentiary requirements for this specific violation.

Meanings for the Violation Categories

Category	Meaning
GARB	Arbitration HHG - HHG
GHTN	110% Rule - HHG
GLAD	Loss and Damages - HHG
GNRO	Other Non-Recordkeeping
GRKA	Recordkeeping - HHG
GSDL	Service Delay - HHG
GTFR	Tariff - HHG
GWHT	Weight - HHG
GUTR	Unauthorized Transportation - HHG
GOLD	Hostage Load - HHG
GBCA	Brokering HHG w/o Carrier Agreement - HHG
HMAO	Other - HM
HMRK	Recordkeeping - HM
HMRS	Roadside Inspection - HM
HMTR	Training - HM
NRFA	Financial Responsibility Medium - FMCSR
NRFB	Financial Responsibility Low - FMCSR

NRKA	Non-Recordkeeping High - FMCSR
NRKB	Non-Recordkeeping Medium - FMCSR
NRKC	Commercial Driver's License - FMCSR
NRKO	Non-Recordkeeping Low - FMCSR
RKCL	Recordkeeping - FMCSR
RKDL	Recordkeeping (Deliberate) - FMCSR
O392	392.5(c)(2) OOS - Notices/Orders
OCDL	OOS CDL - Notices/Orders
OIMM	Imminent Hazard OOS Order - Notices/Orders
ONCD	OOS Non-CDL- Notices/Orders
ONEF	OOS New Entrant Failure - Notices/Orders
ONEN	OOS New Entrant No Show/Refusal - Notices/Orders
ONOP	OOS No Pay - Notices/Orders
OUHM	OOS Unfit HM - Notices/Orders
OUNF	OOS Unfit (Property/Passenger) - Notices/Orders
EDRK	Recordkeeping - Employee
EFTC	False to Conceal - Employee
ENRA	Non-Recordkeeping - Employee
E383	CDL Part 383 - Employee
EONC	OOS Other than OOS CDL (1) & (2) - Employee (was OOS Non-CDL)
EOCA	OOS CDL (1) - Employee
EOCB	OOS CDL (2) - Employee
EDOA	Denial of Access - Employee
EHMI	HM Violation - Employee (was HM Incident)
EHTR	HM Training - Employee
NRCC	Operating Authority - Safety (Commercial Non-HHG)

Meanings for UFA Violation Categories that Can Be Entered in VUU's VCAT Field

Category	**Meaning**
HMAO	Other - HM
HMRK	Recordkeeping - HM
HMRS	Roadside Inspection - HM
HMTR	Training - HM
NRFA	Financial Responsibility Medium - FMCSR
NRFB	Financial Responsibility Low - FMCSR

NRKA	Non-Recordkeeping High - FMCSR
NRKB	Non-Recordkeeping Medium - FMCSR
NRKC	Commercial Driver's License - FMCSR
NRKO	Non-Recordkeeping Low - FMCSR
RKCL	Recordkeeping - FMCSR
RKDL	Recordkeeping (Deliberate) - FMCSR
O392	392.5(c)(2) OOS - Notices/Orders
OCDL	OOS CDL - Notices/Orders
OIMM	Imminent Hazard OOS Order - Notices/Orders
ONCD	OOS Non-CDL - Notices/Orders
ONEF	OOS New Entrant Failure - Notices/Orders
ONEN	OOS New Entrant No Show/Refusal - Notices/Orders
ONOP	OOS No Pay - Notices/Orders
OUHM	OOS Unfit HM - Notices/Orders
OUNF	OOS Unfit (Property/Passenger) - Notices/Orders
NRCC	Operating Authority - Safety (Commercial Non-HHG)

Administration Manual

For

eFOTM Redevelopment

Federal Motor Carrier Safety Administration (FMCSA)

U.S. Department of Transportation

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6.3 Administration Manual

6.3.1 Providing Security Information

6.3.1.1 Requests for Security Information or Assistance from the Media Be Forwarded

You should forward requests for information or assistance from the media to the Office of Communications at (202) 366-8810.

6.3.1.2 FMCSA's Policy on Providing Security Information or Assistance to Other Governmental Agencies

You must refer requests from other governmental agencies including, but not limited to the FBI, DHS, TSA or a State, for security information or assistance related to ongoing security threats to an FMCSA employee who is a supervisor or is acting in a supervisory capacity, or an FMCSA emergency Point of Contact (POC).

FMCSA supervisors, acting supervisors, or emergency POCs receiving a request from another governmental agency, including those referred by subordinate staff, must immediately contact the FMCSA Security Officer.

- Contact Alex Keenan.
- Phone: 202-366-0177
- Email: Alex.Keenan@dot.gov
- Contact the DOT Crisis Management Center (CMC).
- Phone: 202-366-1863
- Email: CMC-01@phmsa.dot.gov

Note: If you notify the CMC, make note of the name of the specific staff member taking the report.

- Inform them who you are, who you work for, where you are calling from, and why you care calling.
- Send an email to the same person, referencing the phone conversation.
- Make sure to carbon copy (CC) Alex Keenan at FMCSA headquarters.
- Notify FMCSA leadership through normal protocol.

6.3.2 FOIA

The Freedom of Information Act (5 U.S.C. 552) [FOIA] establishes a presumption that records in the possession of agencies and departments of the Executive Branch of the U.S. Government are available to the public. FOIA sets standards for determining when Government records must be made available and which records may be withheld. FOIA also gives requesters specific legal rights and provides administrative and judicial remedies when access to records or portions of records is denied. Most importantly, the FOIA statute requires Federal agencies to provide access to, and disclosure of, information pertaining to the Government's business to the fullest extent possible.

Division Should Handle FOIA Requests in Following Manner

FOIA requests need to be forwarded to the FMCSA FOIA Team via the following methods:

1. Mail

   Federal Motor Carrier Safety Administration

Attn: FOIA Team (MC-MMI)

1200 New Jersey Avenue, SE.

Washington, DC 20590

2. FOIA SC

Phone: (202) 366-2960

3. Fax: (202) 385-2335

Attn: FOIA Team

4. Email foia@fmcsa.dot.gov

If the request is made via telephone, please direct the requester to the FOIA SC number, listed above, or to the FMCSA FOIA website at www.fmcsa.dot.gov/foia/foia.htm. **Under no circumstances should the Division provide information that needs to undergo FOIA review.**

Types of Records Available through FOIA

- Records on specific motor carriers or specific motor carrier files including:
  - Enforcement Reports;
  - Compliance Reviews or Investigations;
  - Roadside Driver/Vehicle Inspection Reports;
  - State Accident Reports; and
  - General Correspondence.

Note: The requirement for the Motor Carrier Accident Report (MCS 50-T or 50-B) was eliminated effective March 3, 1993.

- Copies of Agency final orders, which may include negotiated Settlement Agreements, Notices of Claim (to which a motor carrier has replied or failed to reply), and OOS Orders.
- Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the Agency; Administrative Rulings FMCSA adopts, issued by an Administrative Law Judge (ALJ) in the adjudication of motor carrier enforcement cases; and decisions of the CSO.

Note: In accordance with the Agency's records management procedures, the required maintenance for motor carriers' files is six years.

6.3.3 Ex parte communication

Ex parte communications are any communication between a party and the government body holding a proceeding or contemplating government action that is made outside the presence of other interested parties to the proceeding. Under FMCSA's procedures for Section 385.15 appeals, "a party" is both the appealing carrier and the Division Administrator/State Director, his staff, a member of the decision-makers staff, or other interested FMCSA employees. Such communications include: one-sided informal telephone calls, e-mails, meetings where the carrier does not attend, and written arguments directed to the decision-maker or his staff. This includes interoffice memoranda.

The CSO, as a final Agency decision-maker, essentially takes the place of a United States District Court Judge with the full power to affirm or deny all motions. All final decisions, like those of a District Court, are appealable to a U. S. Court of Appeals. That Court will review the CSO's decision to ascertain whether it was rendered in accordance with law, whether or not the decision was arbitrary and capricious, and whether it was an impartial decision. The Court of Appeals may determine that an ex parte communication, or the mere look of an improper communication, prejudiced the decision

maker. Thus, the Court could conclude that the final Agency decision was not impartial. In this situation, the Agency decision would be overturned and the carrier would be granted its requested relief. More importantly, the CSO's future decisions would be greeted by the Court with suspicion. There is an exception to the rule on ex parte communications, as outlined above: questions concerning procedure to be followed or the timing of a decision (status reports) are not prohibited.

The CSO will issue his/her formal written decision after reviewing all necessary documentation, arguments of the carrier and the Division Administrator/State Director, and consultation and approval of legal counsel. The decision may uphold the Agency action in its entirety, grant the relief requested by the carrier, or grant some alternate form of relief. Carriers have been granted relief from the proposed rating because of improper document samples, the use of violations in the safety rating process when the Agency lacked jurisdiction, the imposition of strict liability, improper ex parte communication, and the citing of violations that no longer exist or no longer are classified as acute or critical by regulation.

6.3.4 On boarding new FMCSA employees

6.3.4.1 Background

Introduction

Effectively orienting new employees to the organization and to their positions is critical to establishing successful, productive working relationships and ensuring long-term agency success. The employee's first interactions with the Agency should create a positive impression of the organization and the office in which the individual is being hired. The time spent planning for the new employee's first days and weeks on the job will greatly increase the chance for a successful start and enhance the agency's overall success.

An effective employee orientation plan will:

- Foster an understanding of the organization's culture, its values, and its diversity,
- Help the new employee make a successful adjustment to the new job,
- Help the new employee understand their role and how he/she fits into the overall organization,
- Help the new employee achieve objectives and shorten the learning curve, and
- Help the new employee develop a positive working relationship by building a foundation of knowledge about Agency's mission, objectives, policies, organizational structure, and functions.

What this SOP manual covers and who it is designed for:

This Standard Operating Procedures (SOP) Manual provides a valuable resource guide for Federal Motor Carrier Safety Administration (FMCSA) supervisors and coaches to follow during the first year of the new safety investigators' and inspectors' tenure with the agency, from the post-offer/acceptance period (but prior to the first day of employment) through the end of the first six months (for Safety Inspectors) or the first year of employment (for Safety Investigators). Periods covered during the first year include the following:

- The pre-academy onboarding period within the division office, which is designed for a minimum of 60 days, for both inspector and safety investigator trainees, prior to reporting to the Academy;
- The Academy, which runs between six weeks (for inspector trainees) and 10 weeks (for investigator trainees); and
- The post-academy onboarding period, which encompasses six months (for inspectors) or one year (for investigators) of on-the-job training (OJT) and post-academy formal training courses. There may be instances when the OJT period could be shorter or longer.

This SOP, developed by the FMCSA Onboarding-Mentoring Program Team, also helps to ensure uniformity of the onboarding experience for new inspectors and safety investigators, and serves as a useful reference for them, their coaches, and their supervisors, to ensure all elements of the first-year onboarding plan are fulfilled. The FMCSA Onboarding/Mentoring has also developed a SharePoint Site, with valuable resources for supervisors, coaches, and trainees participating in the first-year FMCSA Onboarding Program. Interested parties may access the Onboarding Programs site at: http://our.dot.gov/office/fmcsa.mc-f/MCF-OMT/SitePages/Home.aspx

6.3.4.2 On-boarding Requirements: Pre-Academy Period

The FMCSA's goal is to have newly-hired safety investigators and inspectors (henceforth referred to as "trainees") onboard and in place within their FMCSA Division Office for at least 60 days prior to attending the FMCSA Safety Investigator and Inspector Training Academies. The purpose of this minimum 60-day pre-academy on-boarding period is to ensure that the trainee gains a familiarity of FMCSA's field administrative and enforcement policies and procedures, becomes acquainted with the agency's many safety programs and information systems, and understands its mission and culture, prior to arriving at the Academy. Such exposure has a two-fold benefit: (1) less time is required to be spent on such issues at the Academy, and (2) such an approach has been shown, through experience, to increase the likelihood that the trainee will successfully graduate from the Academy. Discussed below are the core elements of the pre-Academy onboarding process.

Planning for the employee's arrival

The new employee orientation process begins before the employee arrives at work. Planning ahead for your new employee's arrival will allow you to spend productive time on that first day. So, before the employee arrives you should:

- Notify everyone in your unit that a new person is starting and what that person's job will be. Ask the other staff members to welcome the new employee and encourage their support of the new hire.
- Prepare interesting tasks for the employee's first day and throughout the first month, making sure to address all of the items in the pre-academy checklist (discussed later in this guide).
- Make a copy of the position description, the Agency organization chart, as well as contact information for your office.
- Review the safety investigator or inspector performance plan and determine what will need to be updated and/or customized for the employee, once onboard.
- Prepare to enroll the employee in all systems and accounts the safety investigator will need, in preparation for the FMCSA academy as well as the post-academy period.
- Make sure the employee's work location is available, clean, and organized.
- Make sure a copy of the appropriate personnel policy manuals, regulations, and forms are available for the employee.
- Have a benefits information package available.
- Identify a staff member to act as an orientation liaison for the first week; it could be the trainee's coach (more on coaches later in this guide) or another division staff person if the coach is not available.
- Put together a list of key people the employee should meet or interview to get a broader understanding of their roles, as part of the pre-academy requirements.
- Arrange for a building pass, parking pass, and IDs where necessary.
- Draft a training plan for the new employee's first 6- or 12-months, using as a template the core training plan presented later in this guide.

Selecting a Coach

Each supervisor is required to select and assign a coach to each new trainee. A coach is ideally selected from within the same division office, preferably with the same duty station. However, when that is not possible, a coach should be selected from within the division, but with a different duty station. In some cases, division administrators have selected coaches from another division office (whether inside or outside of one's service center), based upon the availability of experienced coaches at the time the trainee comes onboard, and/or on the specific qualities of the potential coaches at that time. In many instances, trainees will be assigned a primary coach, but have several secondary coaches with whom they train periodically, whether within the same division office or a different division office. In selecting a coach, the supervisor is asked to consider the following factors:

- Desire to be a Coach
    - Please do not simply assign a coach without considering the person's desire to be a coach, as well as other factors outlined below. Remember: not every good safety investigator or inspector necessarily makes a good coach and many past coaches have informed the FMCSA Onboarding Team that they were simply "volun-told." As such, when possible, please make sure the incoming coach has the desire, as it will result in a more beneficial experience for all involved.
- Professionalism
    - Does the coach represent the agency well?
- Excellent Coaching Skills
    - Communication (Written/Verbal)
    - Flexibility
    - Patience
- Experience/Training
    - Prior coaching experience and/or training is desired. Sending prospective coaches to the "Fundamentals of Coaching" training is required and it is suggested enrolling them in one of several on-line courses available through the Training Management System (TMS) discussed later in this guide;
- Other
    - Consider the workload of the incoming coach (an overwhelmed SI generally won't make a good coach)
    - Consider schedule and location of trainee in relation to coach
    - Evaluate on a case-by-case basis.
    - o Consideration given to potential coaches outside of the division, when an ideal candidate is not available within the division

Each supervisor must have the coach selected and available on the trainee's day of arrival.

Also, the supervisor is required to include a performance element into the coach's performance plan for that performance period. For safety investigator coaches, template language has already been included in Performance Element #4 ("Special Projects") of the SMART Safety Investigator Plan that was updated in June 2014.

For safety inspector coaches, the supervisor may use the template language included on the Onboarding-Mentoring Team SharePoint (accessed via the link provided earlier in this document), or the below language. It should be noted that the supervisor has discretion to customize the below language (or via the SharePoint link) to best meet the specific needs of their coach. However, if the supervisor has any questions regarding this language, they are encouraged to coordinate with the Office of Field Operations, FMCSA Headquarters, and the Employee and Labor Relations Division, FMCSA Headquarters.

Draft Performance Plan Element for Coaches: Serve as a Coach to a new Safety Inspector with primary responsibility to facilitate on-the-job learning after the Safety Academy. Coaching includes cross-training

on all Safety Inspector skills, coordinating assignments with the 1st line Supervisor and Field Operations Supervisor/Division Administrator. Assess skill development and provide recommendations for additional training as needed.

For supervisors of inspector coaches, please see Appendix A of this document for a specific listing of performance evaluation criteria for inspector coaches, which the supervisor may use as guidance during the performance evaluation.

Training a Coach

Each new coach is required to attend an instructor-led training course titled, "FMCSA Fundamentals of Coaching for Success," presently available once or twice per fiscal year and tracked through the National Training Center's Training Management System (TMS). The course is generally offered prior to the start of the next Academy, with the goal to ensure that every new coach is trained prior to the trainees' graduation from the Academy. Note that coaches are only required to attend the training once, so if they later serve as a coach again, they are not required to attend the coaching course again, unless assigned by their supervisor.

Additionally, NTC has made several additional on-line courses available in TMS (pending continued availability) to prospective coaches to further assist them with preparing to become a coach.

Webinar Training - Coaching and Mentoring for New Safety Investigators (Current as of April 2014)

TMS On-line Courses

Course Name	Course Number	Summary	Duration
The Art of Effective Coaching	TMS_pc_bi_lsbi018	5 steps of effective coaching	6 minutes
Delegating Appropriate Tasks	TMS_pc_bi_mgbi007	Consider the readiness of employee challenge vs frustrate	4 minutes
How High is your EQ?	TMS_pc_bi_pfbi009	Introduction to Emotional Intelligence	4 minutes
Business Coaching	mgmt_09_a01_bs_enus	Basics of coaching in the business environment	2.5 hours
Coaching Performance	TMS_lead_01_a06_bs_enus	Scenario and tips for coaching and on-the-job training	2 hours
Interpersonal Communications: The Process	comm_02_a01_bs_enus	Prime causes of poor communication, and the skills required to	3 hours

		minimize their impact	

The First Day on the Job

A new employee may be anxious on the first day. Try to create a comfortable environment and remember not to overwhelm the new employee with too much information on the first day.

Orientation is a continuing process, so there will be plenty of time to give the employee all the necessary information. This not all-inclusive list of suggestions could be beneficial:

- Introduce the employee to their coach, and other division staff members.
- Arrange to have lunch with the new employee.
- Show the new employee around the office.
- Review the job description and organizational charts with the employee.
- Discuss your plan for the first days and weeks.
- Explain ridesharing and transportation services, where available.
- Review telephone, fax, e-mail, and Internet use.
- Discuss what the probationary period is all about and explain how and when the employee's performance will be appraised during the probationary period.

During the initial onboarding period, schedule periodic meetings with the employee to discuss the following:

- Employee's overall impressions. Find out how the employee perceives our organization so far. If there are any problems or concerns, address them.
- Organization of the Agency. Spend time explaining the Department's and Agency's structure. Talk about where you and he/she fit in and how it relates to other offices.
- Mission. Discuss the agency's mission and how the goals and objectives of your office, and the trainee's performance plan, help to support that mission.
- Performance evaluation process. Explain the performance evaluation process, the timing of appraisals and the methods you'll use to measure progress.
- Agency/Office work rules. Review your work rules and any agency, service center or division standard operating procedures (SOP) policies or manuals with the new employee. Discuss attendance guidelines, call-in procedures, and requests for time off.
- Controlled substances. Explain that the Agency does not tolerate the use of illegal substances or abuse of legal substances on the premises or reporting to work in an unsafe condition and the random drug testing program.
- Security. Discuss the Agency and your office guidelines on security, such as keeping doors, cabinets, and file drawers locked and privacy information/data secured.
- Safety. Review the Agency's policies and your office policies on safety in the workplace with your new employee. Evacuation procedures, emergency preparedness guidelines, and the escort service should be included in this review.
- Injuries on the job. Discuss procedures for handling injuries on the job. Tell the employee to report all job-related injuries to you, regardless of how minor.
- Training plan. Discuss our first-year training program and plan with the employee. Consider incorporating any changes the employee suggests. Implement any changes that you both agree upon. And use the required monthly reports and quarterly skills self-assessment questionnaire (or bimonthly, for inspectors) to identify relative strengths and weaknesses and as a guide to suggested follow-up training.
- Employee Services. Describe the roles of your staff, Regional/service center staff and HQ points of contact, including the Employee Assistance Program.

- Monitor the completion of the Pre-Academy requirements and walk through the items at a high level (remembering that orientation is an ongoing process, but that it is imperative that trainees be well prepared for the Academy), but noting that as a team, the supervisor, coach and trainee must complete required Pre-Academy tasks before the trainee departs for the Academy.

6.3.4.3 The Post-Academy Period

Overview

This Training Plan provides guidelines for on-the-job training for Safety Investigators and Inspectors after they complete formal coursework at the FMCSA Safety Investigator/Inspector Academy.

The guidelines listed on the following pages are offered as a training framework, recognizing that the needs of the new Safety Investigator and Inspector trainee will vary depending on grade level, prior State and/or industry experience, etc. Specific needs in the Division may also impact the timing of when cross-training can be provided (industry meetings, Road Check, etc.). Coaches should refer to the Self-Assessment Tool completed by the Trainee and customize training components appropriately.

Requirements for Safety Investigator Trainees

The Coach will provide overall program guidance to the Trainee, to include a review of FMCSA/Division policies (eFOTM/CSA) and procedures, and ensure the Trainee has all necessary tools.

Coaches and Trainees are responsible for monitoring progress towards accomplishing the training goals recommended for each period. The focus is on providing feedback on the development of required skills for Safety Investigators and Inspectors. Divisions may have separate requirements for status or productivity reporting.

Monthly Reporting Requirement

Monthly progress reports must be completed for each Safety Investigator Trainee. Sample templates for the monthly reports are provided in the appendix to this document. Divisions have the option of using an alternate format for monthly reports provided that they meet the following criteria:

- Reports are completed on a monthly basis, in writing.
- Report contains feedback to the Trainee on strengths and development areas.
- Trainee also provides input to the report.
- Report is shared with the Trainee, Coach, and Supervisor and sent to the Field Administrator or Regional Field Administrator in the service center.

Duration of Monthly Report Requirement

- General guideline - complete monthly reports for one year after the Academy
- Criteria for “cutting loose”: decision is by the Division Administrator. Recommendation: Level 4 on most items on the Skills Assessment and performing at an acceptable level.
    - Depends on experience and grade level of the trainee.
    - Some more experienced employees may be less than one year.
    - Send an email to the same person, referencing the phone conversation.
    - Some less experienced employees may be more than one year.
    - Coach may be less involved later in the year - less direct observation but still reviewing the Trainee’s reports.

Months 1, 2, and 3 Program/Training Goals

- The Trainee shall assist Coach in conducting small carrier investigations (CR's) (Full & Focused), emphasizing policy requirements for pre-investigative activities, conducting the investigation and post investigation requirements.
- The Trainee shall continue to become efficient in accessing the FMCSA Portal and utilizing all applications contained therein.
- The Trainee shall assist in documenting for enforcement as needed.
- Assist in roadside inspection(s).
- Exposure to Division office policies/procedures as appropriate.
    - Administrative: Communication/Chain of Command, Travel, Leave, TMS, Emergency Procedures
    - Special circumstances: Telework, Telecommute, Alternate Work Schedules
    - Federal Programs Procedures
        - CR Submission
        - Enforcement case handling
    - State Programs
        - Contact information
        - Chain of Command
- Monitor TMS for required/mandatory training.

Months 4, 5, and 6 Program/Training Goals

- The Trainee shall assist coaches in conducting investigations (Full & Focused).
- The Trainee shall demonstrate efficiency in accessing the FMCSA Portal and utilizing all applications contained therein.
- The Trainee shall take a more active role and assume more responsibility in all aspects of the investigation (pre-planning, contacting the carrier, review of documents, opening/closeout).
- The Trainee shall take the lead in conducting investigations.
- The Trainee shall be introduced to investigations involving (HM, HM SHIPPERS, SCR, SSV, PIP, HHG, 382/383 investigations, Passenger).
- The Trainee shall assist in documenting for enforcement as needed and become more involved in case preparation (UFA, CaseRite).
- Assist in roadside inspection(s).
- The Trainee shall observe an outreach presentation (Division Staff Meeting, Industry Association).
- Monitor TMS for required/mandatory training.

Months 7, 8, and 9 Program/Training Goals

- The Trainee shall demonstrate efficiency in accessing the FMCSA Portal and utilizing all applications contained therein.
- The Trainee shall independently conduct basic investigations and shall demonstrate acceptable compliance with FMCSA/Division Policies.
- The Trainee shall take the lead on more complex investigations (larger carriers, HM carriers, Passenger carriers).
- The Trainee shall continue to assist in investigations involving (HM, HM Shippers, PIP, HHG, 382/383 investigations, Passenger)
- The Trainee shall independently prepare enforcement cases when warranted and shall demonstrate acceptable compliance with FMCSA/Division Policies.
- Conduct roadside inspection(s).

- The Trainee shall assist in an outreach presentation (Division Staff Meeting, Industry Association)
- Monitor TMS for required/mandatory training.

Months 10, 11 and 12 Program/Training Goals

- The Trainee shall demonstrate efficiency in all aspects of independently conducting investigations, including FMCSA Portal applications, pre-planning activities, discovering violations, enforcement determination/documentation, CR submission and case preparation.
- The Trainee shall take the lead on more complex investigations (larger carriers, HM carriers, passenger carriers).
- The Trainee shall take the lead in investigations involving (HM, HM Shippers, HHG, 382/383 investigations, passenger).
- Conduct roadside inspection(s).
- The Trainee shall independently conduct an outreach presentation (Division Staff Meeting, Industry Association).
- Monitor TMS for required/mandatory training.

During the entire first year, trainees are required to fill out quarterly self-assessments regarding their self-reported skill levels in various areas and meet with coaches and supervisors to discuss these items. A sample quarterly skills assessment form is included in the appendices to this document.

Requirements for Safety Inspector Trainees

The Coach will provide overall program guidance to the Trainee, to include a review of FMCSA/Division policies (eFOTM/CSA) and procedures.

Coaches and Trainees are responsible for monitoring progress towards accomplishing the training goals recommended for each 2-month period. The focus is on providing feedback on the development of required skills for Border Inspectors. Divisions may have separate requirements for status or productivity reporting.

Monthly Reporting Requirement

Monthly progress reports should be completed for each Safety Inspector Trainee. Sample templates for the monthly reports are provided in the Coaching Toolkit. Divisions have the option of using an alternate format for monthly reports provided that they meet the following criteria:

- Reports are completed on a monthly basis, in writing.
- Report contains feedback to the Trainee on strengths and development/improvement areas.
- Trainee also provides input to the report.
- Report is shared with the Trainee, Coach, and Supervisor.

Duration of Monthly Report Requirement

The general guideline is to complete monthly reports for six months after the Academy graduation, for six total reports. The criteria for “cutting loose” the trainee is a decision made by the Division Administrator and/or the first line Supervisor, although the recommendation is that the trainee be rated “Level 4” on most items of the Skills Assessment and is performing at an acceptable level. Of course, it will depend on the experience level and grade level of the trainee, as some more experienced inspector trainees may require less than six months, while other, less experienced inspector trainees may require more than six months. And the coach may be less involved in the latter months of the six-month period, with less direct observation but still reviewing the trainee’s reports.

Months 1 and 2 Program/Training Goals

- The Trainee shall assist Coach in conducting inspections, emphasizing policy requirements for pre-inspection activities, conducting the inspection and post inspection requirements.
- The Trainee shall continue to become efficient in accessing the FMCSA Portal and utilizing all applications contained therein.
- The Trainee shall assist in documenting violations and enforcement as needed.
- Exposure to Division office policies/procedures as appropriate. Administrative: Communication/Chain of Command, Travel, Leave, TMS, Emergency Procedures (COOP).
- Special circumstances: Alternate Work Schedules (where allowed), Details.
- Federal Programs Procedures.
- Enforcement case handling.
- Monitor TMS for required/mandatory training.

Months 3 and 4 Program/Training Goals

- The Trainee shall assist coaches in conducting inspections.
- The Trainee shall demonstrate efficiency in accessing the FMCSA Portal and utilizing all applications contained therein.
- The Trainee shall take a more active role and assume more responsibility in all aspects of the inspection (pre-planning, review of documents, driver interview, and opening/closeout).
- The Trainee shall take the lead in conducting inspections.
- The Trainee shall be introduced to inspections involving (HM, HM Shippers and passenger carrier inspections).
- The Trainee shall assist in documenting for enforcement as needed and become more involved in case preparation (UFA, CaseRite).
- Monitor TMS for required/mandatory training/webinars.

Months 5 and 6 Program/Training Goals

The Trainee shall demonstrate efficiency in all aspects of independently conducting inspections, including FMCSA Portal applications, pre-planning activities, discovering violations, enforcement documentation and case preparation when appropriate.

- The Trainee shall take the lead on more complex inspections (HM inspections, Passenger carriers).
- The Trainee shall take the lead on inspections resulting in enforcement action.
- The Trainee shall independently conduct an outreach presentation (Industry Association).
- Monitor TMS for required/mandatory training/webinar.

Appendix A: Performance Plan Element & Evaluation Criteria for coaches (for Performance Year 2013-14)

Strategic Goal

ONE FMCSA: Improve the strategic management of programs and human capital within FMCSA to build and sustain a workforce to lead the innovative solutions to the CMV safety, security, and transportation challenges of tomorrow.

Section 2-A Job Element

- Critical - Yes

- Weight - minimum 15% (avg. 24 hours/month)
- Adjust expected metrics for other Job Elements to account for additional duty

Primary Work Responsibility:

Serve as a Coach to a new Safety Inspector with primary responsibility to facilitate on-the-job learning after the Safety Academy. Provide cross-training on all Safety Inspector skills, coordinating assignments with the 1st line Supervisor and Field Operations Supervisor/Division Administrator. Assess skill development and provide recommendations for additional training as needed.

Section 2-B Element Performance Standards

Outstanding Level:

- Identify opportunities to improve coaching and mentoring processes during the pilot and recommend strategies to implement (NOTES)
- Contribute to training development activities to improve coaching skills for employees
- Provide feedback on the Onboarding Pilot program as input for future programs
- Research and initiate self-development on best practices for coaches (training options TBD)

Achieved Results Level:

- Participate in briefing sessions and/or training to learn about expectations from Coaches
- Work with the new BI to assess skills and areas for development
- Identify assignments for the new BI to observe and practice new skills, including with other personnel in the Division or other Divisions
- Use provided templates for the pilot, working with the Division Administrator and Service Center mentors to adjust as needed
- Provide on-the-job training opportunities to facilitate learning skills through increased levels of responsibility (BI progresses from observation, lead with coaching assistance, lead independently)
- Prepare monthly reports on progress of new BI , review with Division Administrator

Provide feedback to the new Safety Inspector's Mentor as appropriate

Appendix B: Pre-Academy Checklist

Please access the Onboarding SharePoint site http://our.dot.gov/office/fmcsa.mc-f/MCF-OMT/SIBI%20Onboarding/Forms/AllItems.aspx

Appendix C: Safety Investigator Skills-Assessment Tool

Please access the Onboarding SharePoint site http://our.dot.gov/office/fmcsa.mc-f/MCF-OMT/SIBI%20Onboarding/Forms/AllItems.aspx

Appendix D: Safety Investigator Trainee Monthly Report Template

Please access the Onboarding SharePoint site http://our.dot.gov/office/fmcsa.mc-f/MCF-OMT/SIBI%20Onboarding/Forms/AllItems.aspx

Appendix E: Inspector Skills Self-Assessment Tool

Please access the Onboarding SharePoint site http://our.dot.gov/office/fmcsa.mc-f/MCF-OMT/SIBI%20Onboarding/Forms/AllItems.aspx

Appendix F: Inspector Trainee Monthly Report Template

Please access the Onboarding SharePoint site http://our.dot.gov/office/fmcsa.mc-f/MCF-OMT/SIBI%20Onboarding/Forms/AllItems.aspx

6.3.5 General Guidelines for Administration of the FMCSR and HMR

6.3.5.1 FMCSA's Policy on the Administration of the FMCSR and HMR

Our Agency's intent is to save lives by reducing commercial motor vehicle (CMV) crashes and decreasing injuries by increasing compliance with the FMCSR and HMR. Our strategy focuses on education, compliance, enforcement, risk assessment, and technological development activities. Our policy is to administer and implement the FMCSR and HMR. We will develop operating procedures and guidelines to ensure maximum consistency and uniformity of all regulations. We will also interpret and enforce the regulations at all levels of the organization.

6.3.5.2 Roles and Program Responsibilities of Headquarters Personnel

Headquarters carries out the legislative mandates of Congress, as delegated by the Secretary of Transportation. In this capacity, Headquarters is responsible for promulgating regulations; developing policies and procedures; providing uniform direction, assistance, and interpretation for the full and effective administration and monitoring all FMCSA programs.

Headquarters has the following program responsibilities:

- Developing National Program Plans specific to CMV safety and hazardous materials;
- Developing policies and programs to promote safe transportation;
- Promoting safety initiatives among States;
- Increasing compliance with the HMR and raising awareness of security issues through education, compliance, enforcement, risk/threat assessment, and technological development activities;
- Developing policies and programs to promote the secure transportation of hazardous materials;
- Coordinating FMCSA Programs among the Division office, States, and other Department of Transportation (DOT) modal administrations, including planning and conducting FMCSA strike force activities;
- Providing input into all training programs for Federal and State enforcement personnel;
- Developing and producing outreach materials promoting safe transportation of all commodities;
- Working with other DOT modal administrations and government agencies on program issues, rule makings, and regulatory interpretations;
- Improving data quality and promoting safety and hazardous materials risk management;
- Identifying and promoting new technology to enhance safety; and
- Coordinating our Agency's research initiatives.

6.3.5.3 Roles and Program Responsibilities of the FA and SC Managers

The Field Administrator (FA) and Service Center (SC) Managers ensure proper administration of all regulations in their respective SC areas. The administration of the regulations should be consistent with all established policies, procedures, and guidelines. The FA or his or her designee has signatory authority for approval/disapproval of all program areas, as delegated by the Office of the Administrator. The FA and SC Managers ensure proper program administration in accordance with all legislative and regulatory requirements and applicable directives, policies, and procedures in an effective, efficient, and innovative manner.

The FA and SC Manager's program responsibilities include:

- Coordinating and communicating the national safety and hazardous materials program to the Division offices within the SC area;
- Serving as advisors to Division Administrator (DA) and State Directors (SDs);
- Providing technical assistance during complex safety and hazardous materials investigations;
- Serving as a safety and hazardous materials training resource;
- Ensuring various SC specialists carry out their responsibilities in support of National and Division goals;
- Providing oversight of the security program for the States within their SC area.
- Providing program feedback to Headquarters; and
- Serving as a co-chair of all Technical Advisory Groups (TAGs). The program responsibilities for TAGs include:
    - Providing technical assistance to Division offices during complex safety and hazardous materials investigations;
    - Providing program feedback to Headquarters upon request;
    - Recommending and facilitating changes to technical manuals, FMCSA software, and all FMCSA training;
    - Serving as technical and training experts as needed;
    - Reviewing, analyzing, and commenting on rule making actions;
    - Participating in strike force activities;
    - Providing liaison with industry associations and special groups to identify common problems and share informational resources;
    - Providing technology transfer to our Agency's field staff, State enforcement personnel, and the regulated industry; and
    - Maintaining a high level of FMCSA expertise and safety program reference materials.
    - Vetting language in Violation Update Utility (VUU) forms for appropriateness and accuracy and forwarding forms to VUU@dot.gov.

6.3.5.4 Roles and Program Responsibilities of the DAs/SDs

DAs/SDs is required to follow the guidance below when responding the significant crashes or HM incidents.

- Each division is responsible for establishing a network with State agencies and local law enforcement agencies for prompt identification and reporting of significant crashes and incidents. The method of communication should be documented in Division operational plans to ensure any member of the staff can obtain time sensitive information.

- The Division will gather vital information on the significant crash or police report as promptly as possible, to include, but not limited to, a synopsis of the crash event, the general location, a status of actual/possible fatalities/injuries and the motor carrier(s) involved.
- Vital information will be immediately emailed to the Automated Hazardous Material Incident (AHMI) email box, Alex Keenan, Chief, Emergency Preparedness and Security, at alex.keenan@dot.gov; and the appropriate FA. The initial email should contain, at a minimum, the date, time, location and a narrative of preliminary information. A Crash/HM Incident Notification Report should be prepared as soon as more details are known. Mr. Keenan and the FA should be notified by telephone. Mr. Keenan can be reached by cell phone at [redacted] Mr. Keenan or the FA will make a decision as to whether to contact the Associate Administrator (AA) for Field Operations or the Administrator by phone immediately. If the AA for Field Operations is unreachable, you should contact the alternate, the Director of Field Operations. The Administrator's alternate is the Deputy Administrator and/or the Chief Safety Officer (CSO).
- If the involved motor carrier(s) is domiciled in a State other than the State in which the crash/incident occurred, the DA of the motor carrier's State of domicile must be sent the significant crash/incident report when completed. Copies of the crash/incident report must also be forwarded to AHMI and your respective FA when the report has been completed. Please use the following number to report crashes and other significant events after normal business hours: 202-366-5373. This number is answered 24 hours/7 days a week, and you are also able to leave detailed messages. During normal business hours, please use 202-366-0177 and continue to email your information to the crash/incident mailbox (AHMI). Also, please send all Crash/Hazardous Material incidents reports to alex.keenan@dot.gov.

Contact information for Field Administrator

Email Address	Office Phone Number	Mobile Phone Number
william.paden@dot.gov	303-957-8644	[redacted]
darrell.ruban@dot.gov	404-895-8402	
curtis.thomas@dot.gov	443-891-2708	
john.mulcare@dot.gov	708-283-3573	

6.3.5.5 Roles and Program Responsibilities of Various Program Managers within FMCSA Divisions

The various Program Managers at the Division level administer and implement their respective programs at the Division level. Program Managers execute planned activities to accomplish the Division and National program objectives. The Program Manager should serve as a training and information resource.

The Program Manager's responsibilities include:

- Providing assignments and monitoring of investigators and ensuring investigations are completed in accordance with the SI, electronic Field Operations Training Manual (effort) policy, procedures, and guidance;
- Monitoring and ensuring the efforts of the SIs are in support of the Division Safety Plan;
- Executing planned security activities to help accomplish the security program activities;
- Reporting to the Division Administrators/State Directors (DAs/SDs) on the investigator's progress and accomplishments as they relate to the Division Safety Plan;

- Working in partnership with State counterparts to monitor Motor Carrier Safety Assistance Program (MCSAP) programs and ensure that MCSAP program efforts are conducted in accordance with Part 350 requirements (if applicable); and
- Providing direction, guidance, and assistance to Division employees, State counterparts, and the motor carrier industry.

6.3.5.6 Certification for Employees who perform Inspections, Investigations, and Safety Audits

As required by Section 211 of the Motor Carrier Safety Improvement Act (MCSIA) of 1999, certification is required for all motor carrier safety auditors, including private contractors, who conduct safety inspection audits and reviews. In addition, as required by Section 5202 of the Fixing America's Surface Transportation (FAST) Act of 2015, the roadside inspectors certification standards, as developed and maintained by the Commercial Vehicle Safety Alliance (CVSA) Operational Policy 4 - Inspector Training and Certification were also adopted by the Agency.
Certification Policy for Employees Who Perform Inspections, Investigations and Safety Audits (MC-ECS-2016-003)
Question and Answer Document

General Certification Requirements
Procedures detailed in in this section must be followed for the Initial Certification Period, Maintenance of Certification Period, and the Decertification and Recertification processes of Safety Inspectors, Safety Investigators, New Entrant Safety Auditors, Commercial Enforcement Specialists, Safety Investigators who perform Cargo Tank Facility Reviews, and other employees who maintain certification.

Any individual conducting a roadside inspection that will be uploaded into the Motor Carrier Management Information System (MCMIS) must meet the requirements of CVSA's Operational Policy 4 - *Inspector Training and Certification; However, until such time as FMCSA establishes annual in-service training, as required by CVSA's Operational Policy 4 - Inspector Training and Certification, or until June 1, 2018, whichever occurs first, FMCSA inspectors are excepted from this provision*

FMCSA Employees
For FMCSA employees, certification is a mandatory condition of continued employment for Safety Inspectors, Safety Investigators, and Safety Auditors. The certification cycle aligns with the employee performance appraisal cycle - June 1 through May 31 each year.

Supervisors of FMCSA Safety Inspectors, Safety Investigators, and Safety Auditors must document the employee's Initial Certification Period, Maintenance of Certification Period, and the Decertification and Recertification processes using the Employee Certification Status Forms**:**

- Acknowledgement of Initial Certification Completion and Maintenance Requirement
- Employee Certification Status

Non-FMCSA Employees
For MCSAP or other State or local government employees, the initial certification and the maintenance of annual certification, decertification, and recertification are managed by the Lead MCSAP agency.

For agencies under Memoranda of Agreement (MOA) for consumer protection reviews, the initial certification, maintenance of annual certification, decertification, and recertification requirements must comply with the MOA.

Non-FMCSA employees are also required to meet these requirements for initial and maintenance of certification, decertification, and recertification. The performance cycle for these employees must be consistent within the respective State or local agency (i.e., non-FMCSA agencies may base their certification on their fiscal, performance, or calendar year, but may not vary by employee).

MCSAP agencies must certify in their Commercial Vehicle Safety Plans (CVSP) or other grant application that their employees and sub grantees conducting driver/vehicle inspections, investigations, or safety audits meet the certification requirements.

Non-FMCSA supervisors will continue to use documentation for these certification processes established by their respective agency.

Contractors

Requirements for contractors who conduct an activity that requires certification will be addressed in the individual contract and in accordance with this policy. Contractors must certify, in the company's Annual Summary Report that contract employees conducting driver/vehicle inspections, investigations, and/or safety audits meet the certification requirements. The contractor is responsible for maintaining records documenting compliance with certification requirements.

6.3.5.7 Certification for Coducting CRs, SAs, and Level I ans/or VI Inspections

I. Initial Certification

Personnel subject to certification must complete the requirements for initial certification within 12 months including, as applicable:

1) Graduation from the FMCSA Academy; OR
2) Completion of the FMCSA North American Standard Level I, General Hazardous Materials, and Investigative Safety Analysis courses; OR
3) Completion of the classroom portion of a training session specific to the certification(s) sought

Completing the initial requirements could bridge performance years. Initial certification requirements completed after the beginning of the performance year would also count towards that year's requirement for maintenance of certification.

For example: A FMCSA employee graduates from the Safety Investigator Academy on April 1, 2017. The employee has 12 months from that date, or until March 31, 2018, to fulfill the field portion of the certification. Inspections and/or investigations conducted during the time period of June 1, 2017 through March 31, 2018, will count for both, initial certification and the recertification inspections and investigations for that performance year that would conclude on May 31, 2018.

Specialized certifications are only required for certain FMCSA employees, designated at the discretion of the supervisor, and based on the safety concerns and needs of the Division Office. Specialized proficiency driver/vehicle inspection certifications in the Commercial Vehicle Safety Alliance's (CVSA) Operational Policy 4 - Inspector Training and Certification *(Attachment A*) include: Advanced Level I, Hazardous Materials/Transportation of Dangerous Goods, Cargo Tank, Other Bulk Packaging, Passenger Vehicle, North American Standard Level VI, and Performance-Based Brake Testing (PBBT) Inspections. Specialized investigation and audit certifications addressed in this attachment also include: Safety Investigators, New Entrant Safety Auditors, Commercial Enforcement Specialists, and Safety

Investigators who perform Cargo Tank Facility Reviews. For specialized activities not described in this policy, the Regional Field Administrator will determine certification requirements.

II. Maintenance of Certification

To maintain certification, each person must meet the maintenance requirements annually.

For FMCSA employees, supervisors must document, in conjunction with the end-of-cycle performance appraisal process, the completion of the certification requirements. Supervisors will use *Attachments C – Acknowledgement of Initial Certification Completion and Maintenance Requirement, and D – Employee Certification Status to document certification*. Supervisors are advised to routinely monitor Gotham and other activity tracking systems to ensure that the minimum employee performance requirements are met. In addition, to encourage consistent data quality and skill maintenance, it is suggested that supervisors promote the completion of assignments evenly throughout the performance year.

Non-FMCSA entities must follow their agency's policies and procedures for documentation of certification requirements.

III. Documentation of Certification

Once initial certification is successfully completed, the individual has through the end of the employee performance appraisal cycle to complete all necessary requirements to maintain certifications.

Any initial certification activity conducted during a performance year counts toward the annual maintenance certification.

IV. Certification Processes

A. Certification to Conduct Level I, II, III, IV or V Driver/Vehicle Inspections

FMCSA employees are certified to conduct Level I driver/vehicle inspections. This certifies employees to also conduct Level II, III, IV, and V driver/vehicle inspections.

Initial Certification: The employee must meet the certification requirements specified in the CVSA Operational Policy 4 - Inspector Training and Certification (See Attachment A) except:

- FMCSA employees may not challenge the test to meet any of the initial certification requirements;
- FMCSA employees must successfully complete and pass academy curriculum established by the National Training Center (NTC).
- Successfully complete at least 32 North American Standard Level I Inspections with a certified inspector, field-training officer, or coach who will evaluate the inspector for knowledge of the regulations and proficiency in the inspection process. These inspections should be completed as soon as practicable, but no later than six months after passing the written exam(s).

Maintenance of Certification: To maintain certification, employees must meet the certification requirements specified in the CVSA Operational Policy 4 - Inspector Training and Certification (See Attachment A) except:

- Until such time as FMCSA establishes annual in-service training, as required by CVSA Operational Policy 4, or until June 1, 2018, whichever occurs first, FMCSA inspectors are excepted from this provision.

B. Certification to Conduct Specialized Proficiency Driver/Vehicle Inspections

Initial Certification: The inspector must meet the certification requirements specified in the CVSA Operational Policy 4 - Inspector Training and Certification (See Attachment A), except:

- FMCSA employees obtaining the Passenger Vehicle Inspection certification must conduct at least 4 of the 8 North American Standard Level I passenger vehicle inspections on motorcoaches.

Maintenance of Certifications: To maintain each of the specialized inspection certifications, inspectors must meet the certification requirements specified in the CVSA Operational Policy 4 Inspector Training and Certification (See Attachment A), except:

- FMCSA employees maintaining Passenger Vehicle Inspection certification must conduct at least 4 of the 8 North American Standard Level I and/or Level V passenger vehicle inspections on motorcoaches.

C. Certification to Conduct Safety Audits

Initial Certification:

- Either be currently certified to conduct investigations; or successfully complete North American Standard Part A and Part B, General Hazardous Materials, and the New Entrant Safety Auditor course, including any pre- and/or post-training requirements;
- Successfully complete a minimum of 24 safety audits, with a person certified to conduct safety audits; and
- Be certified to conduct Level I driver/vehicle inspections.
    - **For non-FMCSA employees, be certified to conduct driver/vehicle inspections to the highest level required by the employing entity.**

Maintenance of Certification:

- Successfully complete any required in-service or refresher training;
- Either successfully complete a minimum of 24 safety audits of which a minimum of 6 must be onsite safety audits; or must meet the certification standards to conduct comprehensive investigations; and
- Maintain Level 1 driver/vehicle inspection certification.
    - **For non-FMCSA employees, be certified to conduct driver/vehicle inspections to the highest level required by the employing entity.**

D. Certification to Conduct Investigations

The certification to conduct investigations includes the certification to conduct comprehensive investigations, onsite focused investigations, and offsite investigations.

Initial Certification:

- Successfully complete the FMCSA Safety Investigator Academy, including any pre- and/or post-Academy training requirements; or for non-FMCSA employees successfully complete the North American Standard Part A and Part B, General Hazardous Materials; and, Investigative Safety Analysis courses, including any pre- and/or post training requirements;
- Successfully complete a minimum of 6 comprehensive investigations with a person certified to conduct compliance investigations; and
- Be certified to conduct Level I driver/vehicle inspections.
    - **For non-FMCSA employees, be certified to conduct driver/vehicle inspections to the highest level required by the employing entity.**

Maintenance of Certification:

- Successfully complete any required in-service or other training;
- Successfully complete a minimum of 6 investigations of which 3 may be focused; and
- Maintain Level I Inspection certification.
    - **For non-FMCSA employees, be certified to conduct driver/vehicle inspections to the highest level required by the employing entity.**

E. Certification to Conduct Cargo Tank Facility Reviews

Initial Certification:

- Successfully complete the NTC Cargo Tank Facility Review Course;
- Successfully complete a minimum of 3 cargo tank facility reviews with a person who is certified to conduct cargo tank facility reviews;
- Be certified to conduct investigations; and
- Be certified to conduct Cargo Tank and HM driver/vehicle inspections.

Maintenance of Certification:

- Conduct a minimum of 3 cargo tank facility reviews;
- Maintain Cargo Tank and HM driver/vehicle inspection certification; and
- Maintain investigation certification.

V. Decertification Process

Inspectors, Investigators, and Auditors who are certified in accordance with this policy will be decertified if he or she fails to meet any of the established requirements for maintenance of certification within the applicable time period. For example, except in cases where initial certifications span more than one certification year, if a FMCSA employee certified to conduct investigations fails to conduct the required minimum of 6 investigations by May 31, he or she is decertified to conduct investigations on June 1.

However, a person who is decertified from any one certification area may continue to perform functions of the remaining certification areas, if that person meets the certification requirements for those areas. For example, a person certified to conduct investigations fails to conduct the required 6 investigations, but completes 24 safety audits during the 12-month performance appraisal period, this individual would lose certification to conduct investigations, but retain certification to conduct safety audits. Decertification for driver/vehicle inspections will follow the procedures specified in CVSA's Operational Policy 4 - Inspector Training and Certification (See Attachment A).

An FMCSA employee who becomes decertified and whose position requires certification will be provided no more than 180 days, from the date of decertification, to obtain recertification, unless the appropriate training course(s) are not available or the employee obtains a waiver, as described below in VI: Temporary Waiver Process. Employees, whose position descriptions require certification, but who fail to obtain recertification within 180 days from the date of decertification, and who are not reassigned to another position, are subject at the discretion of the Agency to demotion, removal, and/or termination.

FMCSA employees who become decertified, but whose position does not require certification may request recertification at any time.

VI. Temporary Waiver Process

FMCSA Employees:
At the discretion of the Agency, a waiver will only be granted to a person who was previously certified and subsequently became decertified due to reasons beyond his or her control.

For example, an employee who was certified to conduct Level I driver/vehicle inspections, but failed to complete the required minimum of 32 Level I driver/vehicle inspections due to a management-directed temporary assignment, medical condition, or National Guard or Military Reserves duty is eligible to apply for a waiver. A person who was certified, but failed to maintain certification because of an employee-related disciplinary action, is not eligible for a waiver.

Waiver applications should be done in advance of becoming decertified. Generally, a waiver may be granted for up to 12 months. Except in extraordinary cases, and at the discretion of the Agency, no waiver shall be granted in excess of the period of time needed to meet the certification requirements.

If an employee wishes to request additional time beyond the approved waiver period, he or she must reapply prior to the expiration of the waiver period.

Waiver requests must be made in writing by the employee's supervisor. The Associate Administrator for Field Operations is the Deciding Official in all field certification waiver requests.

Any request for a waiver under this policy that is based on medical issues must include original copies of documentation from a medical or healthcare practitioner, signed in ink and on the medical practitioner's letterhead, providing the following information:

1) Employee's name;
2) The medical condition that precludes the employee from conducting certification requirements;
3) How the above medical condition precludes the employee from conducting certification requirements;
4) Beginning and ending dates of the above medical condition and prognosis for recovery;
5) The date(s) the employee was treated or examined for the above medical condition; and
6) The physician's or medical practitioner's name, address, and phone number.

The documentation must be sufficient in detail so that:

1) The supervisor and Deciding Official can understand the medical basis for the request, and, if necessary, the information can be provided to a physician for his or her advice; and
2) The information can be used to determine whether any reasonable accommodation can be taken to facilitate the completion certification requirements.

The supervisor or Deciding Official may request additional medical or other documentation (e.g., National Guard or Military Reserve Duty orders). The Deciding Official will advise the employee, in writing, of the decision on the waiver request.

If, however, a waiver is not granted or the waiver period expires, the FMCSA employee must meet the recertification requirements within 180 days of the initial date of decertification.

The supervisors of FMCSA Safety Inspectors, Safety Investigators, New Entrant Safety Auditors, Commercial Enforcement Specialists, and Safety Investigators who perform Cargo Tank Facility Reviews and other employees who maintain certifications must document the employee's Initial Certification Period, Maintenance of Certification Period, and the Decertification and Recertification processes using the Employee Certification Status Forms**.** (Refer to Attachments C and D)

Non-FMCSA Employees:
Non-FMCSA employees may apply for an extension of time to achieve driver/vehicle inspection certification as specified in the CVSA Operational Policy 4 - Inspector Training and Certification Policy (See Attachment A). The waiver request must be made to the State's MCSAP Lead Agency Head, or designee.

Non-FMCSA employees may request a waiver from all other certifications through FMCSA by following the same steps listed above for FMCSA employees. The request for waiver should be submitted to the Division Administrator or his/her designee of the State in which the Non-FMCSA employee is employed. In these cases, the DA or designee is the Deciding Official.

VII. Recertification Process

An FMCSA employee who is decertified may request recertification. The request must be made to the employee's supervisor. Before granting a recertification request, it is the responsibility of the supervisor to determine that the employee has satisfactorily completed the recertification requirements. Recertification is only necessary in the functional area in which the employee was decertified. For example, if an employee was decertified in conducting investigations because he or she did not complete the required minimum of 6 investigations, but the employee did successfully complete the requirements to maintain Level 1 driver/vehicle inspection certification, the employee would only be required to be recertified to conduct investigations.

Non-FMCSA employees funded through MCSAP and/or who upload data into FMCSA systems, must make the request for recertification to the State MCSAP Lead Agency Head, or designee.

In order for a person to be recertified in driver/vehicle inspections or specialized proficiency driver/vehicle inspections they must meet the recertification requirements specified in the CVSA Operational Policy 4 - Inspector Training and Certification Policy (See Attachment A) except:

- FMCSA Safety Auditors and Safety Investigators may count Level V inspections toward the 32 Level I inspections required for recertification when the Level V inspections are conducted during an audit or investigation; and
- FMCSA employees seeking Passenger Vehicle Inspection recertification must conduct at least 4 of the 8 North American Standard Level I and/or Level V passenger vehicle inspections on motorcoaches.

In order for a person to be recertified in the following functions, that person must:

A. **Safety Audits:**
   - Either complete the recertification requirements to conduct comprehensive investigations; or
   - Successfully complete the FMCSA New Entrant Safety Auditor and General Hazardous Materials courses, including any pre- and/or post-training requirements; or successfully "pass the course final examinations (test) with a minimum score of 80% without taking the class;
   - Successfully complete a minimum of 24 safety audits, with a person certified to conduct

safety audits; and
- Be certified to conduct Level I driver/vehicle inspections.

B. **Investigations:**
- Successfully complete the FMCSA Investigative Safety Analysis, North American Standard Parts A and Part B, and General Hazardous Materials courses, including any pre- and/or post-training requirements; **or** successfully pass the course final examinations with a minimum score of 80% without taking the class;
- Successfully complete a minimum of 6 investigations with a person certified to conduct investigations; and
- Be certified to conduct Level I driver/vehicle inspections.

C. **Cargo Tank Facility Reviews:**
- Successfully complete the FMCSA Cargo Tank Facility Review course, including any pre- or post-training requirements; **or** successfully pass the course final examination with a minimum score of 80% without taking the class;
- Conduct a minimum of 3 cargo tank facility reviews with a person certified to conduct cargo tank facility reviews;
- Be certified to conduct Cargo Tank driver/vehicle inspections; and
- Be certified to conduct Hazardous Materials driver/vehicle inspections.

D. **Commercial Enforcement Investigations**
- Successfully complete the Household Goods/Commercial Enforcement Basic Course; and
- Conduct a minimum of 3 commercial enforcement investigations with a person certified to conduct commercial enforcement investigations.

6.3.5.8 Programs, Information Systems, Databases, and Networks Used by FMCSA Headquarters, Service Center, and Division Personnel while Conducting Safety & HM Investigations

We use the following programs and systems to assist in the furtherance of the Vision, Mission, Values, and Goals set forth by our Agency. We developed these programs in an on-going effort to support the Agency's strategic direction. We will use these programs for the improvement of commercial vehicle operations, thus ensuring safe and efficient movement of goods on our Nation's highways.

Programs, Information Systems, Databases, and Networks

- **ASPEN** – This driver/vehicle inspection software runs on laptops. Our Agency, as well as most States, uses ASPEN to collect inspection details and print the inspection report. The software includes communication features that transfer inspections electronically to Safety and Fitness Electronic Records (SAFER) and SAFETYNET.
- **Compliance Analysis & Performance Review Information (CAPRI)** - This software helps us prepare investigations, as well as specialized cargo tank facility reviews (CTFRs), HM shipper reviews, and safety audits, including safety audits otherwise known as PASAs for Mexico-domiciled long-haul carriers. CAPRI includes worksheets for collecting (1) hours of service (HOS) data, (2) driver qualification (DQ) data, and (3) drug and alcohol compliance data. The software also creates the preliminary carrier safety fitness rating and various reports to motor carriers.
- **Case Rite** - Used in conjunction with CAPRI or ASPEN, Case Rite allows creation of legal enforcement cases for Federal prosecution of FMCSR and HMR violations. The current version of Case Rite is optimized for Federal prosecutions.

- **CDLIS Access** - This software retrieves driver status reports from the Commercial Driver License Information System (CDLIS). It is coupled with ASPEN and CAPRI but can be operated as standalone software.
- **Commercial Vehicle Information Systems and Networks (CVISN)** - Refers to the collection of information systems and communications networks that support commercial vehicle operations (CVOs). These include information systems owned and operated by governments, motor carriers, and other stakeholders. The CVISN program is not trying to create a new information system, but rather to create a way for existing and newly designed systems to exchange information using standards and available communication infrastructure.
    - The CVISN program provides a framework or "architecture" that will enable government agencies, the motor carrier industry, and other parties engaged in CVO safety assurance and regulation to exchange information and conduct business transactions electronically. The goal of the CVISN program is to improve the safety and efficiency of commercial vehicle operations.
    - The CVISN Architecture is the CVO part of the National Intelligent Transportation Systems (ITS) Architecture. It includes standards for communications technologies, such as electronic data interchange (EDO) and dedicated short range communications (DSRC). These standards are being developed to promote interoperability and efficiency. The Transportation Equity Act for the 21st Century (TEA-21) requires that ITS projects funded from the Highway Trust Fund must be consistent with the National ITS Architecture and applicable standards.
    - The current, primary objective of the CVISN program is to develop and deploy information systems that will support new capabilities in three areas: Safety Information Exchange; credentials administration; and electronic screening. The CVISN program uses an approach based on open architecture and standards so that these capabilities may be deployed in a manner that is interoperable from State-to-State from a motor carrier's perspective.
- **Inspection Selection System (ISS)** - The primary tool used on the roadside to screen motor carrier vehicles and determine the usefulness of conducting an inspection. ISS returns the carrier snapshot that includes many critical safety performance indicators. ISS is linked to ASPEN to auto-populate name and address data fields and initiate the inspection. ISS uses a local database that is refreshed weekly via SAFER. It can also operate as an online query tool.
- **Motor Carrier Management Information System (MCMIS)** - The National data warehouse and information system that captures State-level data from SAFETYNET and other sources. MCMIS currently runs on Oracle servers with web front-end access.
- **Motor Carrier Safety Assistance Program (MCSAP)** - A Federal grant program that provides financial assistance to States to reduce the number and severity of accidents and hazardous material incidents involving commercial motor vehicles (CMVs). MCSAP gives the States 80 percent of the cost to run their enforcement programs, with the States picking up the remaining 20 percent of the costs. The goal of MCSAP is to reduce CMV-involved accidents, fatalities, and injuries through consistent, uniform, and effective CMV safety programs. Investing grant monies in appropriate safety programs will increase the likelihood that safety defects, driver deficiencies, and unsafe motor carrier practices will be detected and corrected before they become contributing factors to accidents. Some States use MCSAP monies to perform investigations on interstate carriers.
    - MCSAP also sets forth the conditions for participation by States and local jurisdictions and promotes the adoption and uniform enforcement of safety rules, regulations, and standards compatible with the FMCSR and Federal HMR for both interstate and intrastate motor carriers.
- **PC*MILER** - A highway routing and mileage calculation package commercial software from ALK Associates. It has been the standard used by FMCSA and most States for many years.

Contact: ALK Associates, 1000 Herron town Rd., Princeton, NJ 08540, 800 377-6453 or 609 683-0220. http://www.alk.com.

- **Past Inspection Query (PIQ)** - Accesses a national database of recent inspection reports (those done within the last 60 days), and retrieves copies and summaries. It allows checking for unrepaired defects and driver hours of service problems.
- **Performance and Registration Information Systems Management (PRISM)** - This began as a mandate by Congress to explore the potential of linking the commercial vehicle registration process to motor carrier safety. The intent was to link the motor carrier safety information network system of the DOT and similar State systems with the motor vehicle registration and licensing systems of the States. The PRISM program serves two vital functions. First, it establishes a system of accountability by ensuring that no vehicle is plated without identifying the carrier responsible for the safety of the vehicle during the registration year. Second, the use of registration sanctions (denial, suspension and revocation) serves as a powerful incentive for unsafe carriers to improve their safety performance. This program causes the carrier to improve its safety performance through an improvement process and, where necessary, the application of registration sanctions. PRISM also gives States the ability to pull the registration and license plates of motor carriers.
- The second core process comprising PRISM is the Motor Carrier Safety Improvement Process (MCSIP). MCSIP is the means by which carrier safety is systematically tracked and improved. The process improves the safety performance of carriers with demonstrated poor safety performance through accurate identification, performance monitoring, and treatment. MCSIP carriers that do not improve their safety performance face progressively more stringent penalties that may culminate in a Federal imminent hazard determination and possible suspension of vehicle registrations by the State.
- **Provo** - A viewer which allows Federal, State, and private industry users to electronically analyze standard motor carrier profile reports available from FMCSA. This application displays nearly every data element found on the hard-copy version of the carrier profile in an easy-to-understand format that users can sort, filter, and optimize.
- **Safety Fitness Electronic Records (SAFER)** - The SAFER system makes it possible to offer carrier safety data to industry and the public via an electronic medium. Limited SAFER functions are now provided free of charge over the Internet. SAFER includes access to carrier snapshots. A carrier snapshot is a concise electronic record of a carrier's identification, size, commodity information, and safety record, including the safety rating (if any), a roadside out-of-service (OOS) inspection summary, and crash information. Presently, SAFER consists of interstate carrier data and several States' intrastate data. Operations data such as inspections and crashes are generally only presented for interstate carriers, but plans are to include them for the intrastate carriers at a later time.
    - The SAFER system is a component of the Intelligent Transportation System (ITS), being designed to increase roadway safety, reduce motorist delays and air pollution, and improve the overall productivity of commercial vehicle operations using advanced technology. We are currently testing and evaluating ITS technologies to enhance intrastate and interstate commercial vehicle operations. The focus is on creating transparent borders for interstate commercial vehicles and improving the safety of commercial vehicle operations.
    - The SAFER system is now being expanded to include the capability to provide carrier, vehicle, and driver safety and credential information to fixed and mobile roadside inspection stations. This information will allow the roadside inspector to select vehicles and/or drivers for inspection based on the number of prior carrier inspections, as well as carrier, vehicle, and driver safety and credential historical information.
- **Safety Measurement System (SMS)** (http://ai.fmcsa.dot.gov/sms) - Quantifies the on-road safety performance of individual carriers and drivers to:

    - Identify entities for interventions
    - Determine the specific safety problems exhibited by an entity
    - Monitor whether safety problems are improving or worsening
    - FMCSA uses the SMS to measure the safety of motor carriers and commercial motor vehicle (CMV) drivers. As such, SMS uses carrier and driver data from roadside inspections; State-reported crashes; and the Federal motor carrier census to quantify performance in the following Behavior Analysis and Safety Improvement Categories (BASICs):
- Unsafe Driving — Operation of CMVs in a dangerous or careless manner. Example violations: speeding, reckless driving, improper lane change, and inattention. (FMCSR Parts 392 and 397).
- Hours-of-Service (HOS) Compliance — Operation of CMVs by drivers who are ill, fatigued, or in noncompliance with the HOS regulations. This BASIC includes violations of regulations pertaining to records of duty status (RODS) as they relate to HOS requirements and the management of CMV driver fatigue. Instances related to the HOS Compliance BASIC are distinguished from incidents where driver impairment is brought about by the use of alcohol, drugs, or other controlled substances. Example violations: HOS, RODS, and operating a CMV while ill or fatigued. (FMCSR Parts 392 and 395).
- Driver Fitness — Operation of CMVs by drivers who are unfit to operate a CMV due to lack of training, experience, or medical qualifications. Example violations: failure to have a valid and appropriate Commercial Driver's License (CDL) and being medically unqualified to operate a CMV. (FMCSR Parts 383 and 391).
- Controlled Substances/Alcohol — Operation of CMVs by drivers who are impaired due to alcohol, illegal drugs, and misuse of prescription or over-the-counter medications. Example violations: use or possession of controlled substances/alcohol. (FMCSR Part 382 and 392).
- Vehicle Maintenance — Failure to properly maintain a CMV and/or failure to properly prevent shifting loads and spilled or dropped cargo. Example violations: brakes, lights, and other mechanical defects, failure to make required repairs, improper load sacrament, and cargo retention. (FMCSR Parts 392, 393 and 396).
- Hazardous Materials (HM) Compliance — Unsafe handling of HM on a CMV. Example violations: Release of HM package, no shipping papers (carriers), and no placards/markers when required. (FMCSR Part 397 and Hazardous Materials Regulation Parts 171, 172, 173, 177, 178, 179, and 180).
- Crash Indicator — Histories or patterns of high crash involvement, including frequency and severity. It is based on information from State-reported crashes.
    - Along with the seven BASICs, there is an Insurance/Other Indicator. This indicator was created to hold motor carriers accountable for compliance with registration and insurance requirements. The Insurance/Other Indicator will display if the motor carrier has been cited for violations related to registration and/or insurance requirements from a previous investigation. This Insurance/Other Indicator is not based on on-road safety performance data.
    - The detailed SMS Methodology can be downloaded using the following link: http://csa.fmcsa.dot.gov/Documents/SMSMethodology.pdf.
- **SAFETYNET** - A major database management system that allows entry and access of data from driver/vehicle inspections, crashes, investigations, CRs, assignments, complaints, enforcement cases, etc. State safety agencies and Federal Divisions use this system that includes links to SAFER, MCMIS, etc. SAFETYNET-2000 is an Oracle-based client/server system.
- **Sentry (formerly known as the Mobile Client Application)** - Represents the next major step in the COMPASS program (the Agency's IT modernization initiative). Sentry will ultimately combine the functionality from all of FMCSA's legacy Field systems and streamline the Agency's existing workflow processes. By combining roadside inspection, investigative, and

enforcement functions into a single interface, Sentry will provide Enforcement and Field users with easier access to carrier and driver information and will help in their efforts to target unsafe carriers and drivers and keep them off our roadways. Eventually, all of the legacy Field systems will be retired and replaced by Sentry.

- **Uniform Fine Assessment (UFA)** - The purpose of the UFA software is to assist FMCSA in calculating uniform proposed civil penalties for violations of the Federal Motor Carrier Safety Regulations (FMCSRs), Hazardous Materials Regulations (HMRs), Federal Household Goods Regulations (HHGs) minimum financial responsibility regulations, registration regulations, and all other statutes and regulations enforced by FMCSA. The software is designed to ensure that statutory, regulatory, and administrative policies are considered in determining each penalty assessment, to promote uniformity in assessments throughout FMCSA, and to create transparent and easily understood assessments. FMCSA has used UFA to calculate penalties since the mid-1990's. Under a long line of administrative decisions, starting with Alfred Chew & Martha Chew, dba Alfred & Martha Chew Trucking, FHWA-1996-5323 (Final Order, Feb. 7 1996), FMCSA and its predecessor agency have held that UFA is presumed to properly consider the statutory penalty factors under 49 U.S.C. §521 (b)(2)(D) and 49 U.S.C. 5123(c).

Refer to the UFA Policy (signed PDF; Word version), User's Manual and Calculations Guide regarding use of the software and questions about the selections to be made in the system.

6.3.5.9 General Guidelines for the Administrative Adjudication for the SA and the Corrective Action Submittal

Administrative Adjudication

A new entrant (NE) motor carrier may request administrative review of a determination of a failed SA. A NE motor carrier may also request administrative review of a determination by the Service Center Director (SCD) that its submitted corrective action, after a failed SA, is insufficient, and its safety management controls remain inadequate. Any request by a NE motor carrier for administrative review must be made to the FA of the FMCSA SC for the geographic area of the new entrant's principal place of business (PPOB). The NE motor carrier's request for administrative review must explain the error the NE motor carrier believes FMCSA committed and include a list of all factual and procedural issues it wishes to raise.

If a NE motor carrier believes FMCSA committed an error in its determination of a failed SA, the carrier may request that FMCSA conduct an administrative review of the determination that the NE's safety management controls are inadequate. If the NE motor carrier does not submit its corrective action plan in response to FMCSA's notice of the failed SA, the carrier must request administrative review of the determination of a failed SA within 90 days of the service date of the notice***. Submittal of a request for administrative review will not put on hold the USDOT number registration revocation and OOS provisions of the regulations***. The NE should submit its request for administrative review within 15 days of the notice of failed SA, to ensure that the FA will be able to review the request and issue a decision before the NE's USDOT number registration is revoked, and its operations placed OOS. If the NE motor carrier fails to submit the request within 15 days of the notice of failed SA, its NE registration may be revoked and its operations placed OOS, before completion of the administrative review.

If a NE motor carrier submits its corrective action plan after a failed SA, and the SCD determines that the corrective action plan is insufficient, the NE motor carrier may request administrative review of the SCD's determination that its safety management controls remain inadequate. The NE motor carrier must submit its request for administrative review within 90 days of FMCSA's notice that the corrective action plan submitted is inadequate.

The FA will complete his/her review and notify the NE motor carrier in writing of the decision during the administrative review proceeding. The FA's written decision will be issued within 30 days after receiving the request from a motor carrier required to submit its corrective action plan within 45 days of notice of a

failed SA, and within 45 days after receiving the request for administrative review from a motor carrier required to submit its corrective action plan with 60 days of notice of the failed SA.

The Decision of the FA becomes the final Agency action in the administrative review proceeding. Only in Federal court, may the NE motor carrier appeal the Field Administrator's determination that no error was made in the failed SA or denial of a NE motor carrier's corrective action. The regulations do not provide for a review of the Field Administrator's decision to the Assistant Administrator or any other agency official. The Decision of the FA in a request for administrative review becomes the final agency action in the matter, and any appeal of that decision must be made to the United States Court of Appeals.

In the NE Safety Assurance Program, the FA is the decision-maker for administrative review proceedings for failed SAs and denied corrective action plan submittals that result from failed safety audits. In order to ensure the neutrality and independence of the administrative review process, the FA, and any counsel and staff designated to assist the FA in administrative review determinations, must be separated from FMCSA personnel making determinations regarding SAs and corrective action plan submittals. Other than in the context of administrative adjudication, the FA may not have any involvement in conducting and reviewing SAs, corrective action plan submittals, or determining the adequacy of corrective action submittals. The FMCSA and State personnel, including the SCD, Division Administrators, NE Coordinators, and corrective action plan submittal reviewers responsible for conducting and reviewing SAs and reviewing corrective action plans, may not, in any administrative review proceeding or a factually related matter, discuss or communicate the facts or issues involved with the proceeding to the FA (and Counsel and staff assigned to assist the FA in administrative review determinations) except during conferences or written submittals during the administrative review proceeding.

Because of the need to ensure the separation of functions between the Field Administrator's adjudicatory role and the oversight responsibilities of the SCD for SAs and corrective action plan determinations, the FA may assign his/her decision making functions under the NE rule only to another FA.

6.3.6 General Guidelines for Personnel Protection

6.3.6.1 Definitions that Apply to FMCSA's Policy for Protecting Personnel

The following definitions apply to our policy for protecting personnel:

- **Field Activities** - The term (as used in this manual includes), but is not limited to, the inspection of motor vehicles, investigations, safety audits, crash investigations, and the investigation of hazardous materials incidents.
- **Assault** – Includes, but is not limited to, any willful attempt or threat to inflict injury upon the person of another, when coupled with an apparent present ability to do so, and any intentional display of force, such as would give the victim reason to fear or expect immediate bodily harm. Notice that an assault may be committed without actual touching, or striking, or doing bodily harm, to some other person.
- **Battery** - The intentional and wrongful physical contact with a person without his or her consent that entails some injury or offensive touching. Battery includes a contact with another. Notice that some injury must occur or an offensive touching occurs. Offensive touching is based on a "reasonable person" determination, not an individual person determination. For example, if you think our accidental touching was offensive, but society would think otherwise, it is not a battery.
- **Assault and Battery** - Any unlawful touching of another that is without justification or excuse.

6.3.6.2 FMCSA's Policy for Protecting Personnel

We are responsible for ensuring our employees apply their skill, knowledge, and techniques in any work situation that will ensure health and safety of themselves and others. Employees must notify their supervisor of any potential hazardous work situation and make suggestions for corrective measures.

FMCSA's policy requires you to:

(1). Furnish personnel with appropriate safety equipment to assure the protection of employees during the performance of certain field activity assignments or tasks;

(2). Prohibit FMCSA employees from having a firearm in their possession, on their person, or in a Government Owned Vehicle (GOV), while in the performance of their official job duties. Should any FMCSA employee have a firearm in his or her possession, on his or her person, or in a GOV, severe disciplinary action up to and including termination will result;

(3). Ensure FMCSA special agents or special investigators are protected while performing official duties delegated by the Transportation Secretary;

(4). Ensure any FMCSA person(s) who encounters a hostile environment or becomes a victim of assault and/or battery, while performing his or her official job duties, is aware that he or she should immediately leave the environment and contact his or her first line supervisor for further direction (first line supervisor must immediately contact Chief Counsel);

(5). Provide ethics training and advise FMCSA employees on the consequences of accepting a bribe from any regulated entity and/or person in connection with the performance of the job duties. Any person(s) offered a bribe by any regulated entity and/or person should immediately contact his or her supervisor. The employees' supervisor must immediately contact the FMCSA Chief Counsel, first line supervisor, and the Regional Office of the Department of Transportation's Inspector General;

6.3.6.3 Safety Protection Equipment FMCSA Personnel Must Use While Conducting Driver/Vehicle Inspections

Personnel must be attired in safety equipment that is designed to provide protection against limited hazards that may be encountered while conducting vehicle inspections. The safety protection equipment will include the following:

- Uniforms or coveralls
- Hard hats
- Safety shoes (steel toe) with non-slip type soles for personnel who conduct ultrasonic testing of cargo tanks (i.e., cork sole)
- Safety goggles
- Chock blocks

6.3.6.4 Procedures for Using Wheel Blocks While Conducting Driver/Vehicle Inspections

Personnel should abide by the following wheel blocking procedures when conducting driver/vehicle inspections:

- Use chocking blocks for wheel blocking of vehicle being examined.
- Secure the power unit of a combination motor vehicle, or a straight truck, by placing chock blocks at the front and rear of a drive axle wheel.

6.3.6.5 Procedures FMCSA Should Follow to Protect its Personnel during a HM Incident

It is imperative that FMCSA personnel DO NOT enter a hazardous material incident spill zone until experts at the scene have established that the hazard level is no longer present.

In the event that an FMCSA employee encounters an ongoing hazardous material incident, the FMCSA employee will immediately evacuate the area and contact the appropriate Federal, State, or local authorities.

6.3.7 General Guidelines for Office Management

Listing of Agency administrative orders and memoranda providing policy guidance for Agency employees.

http://one10.dot.gov/office/fmcsa/PlansPolicy/Orders/Pages/OrdersAndMemos.aspx

6.3.7.14 FMCSA's Policy for Exiting Employees

All Field personnel exiting FMCSA must present the Clearance of Employment Accountability form (MCSA -126), along with all credentials, government information cards, and the government travel/purchase card to their immediate supervisor, DA or Administrative Officer in accordance with their established organization procedures. The recipient of the card must notify the Headquarters points of contact identified below of the departure. Additionally, the recipient must forward (via FedEx) the MCSA-126 and credentials/ID cards/travel cards/purchase cards to the following address:

Department Of Transportation -- Federal Motor Carrier Safety Administration

MC -- MHR Employee Relations Office

1200 New Jersey Ave. S.E. West Wing 6th floor

Washington, DC 20590

- Present Government credentials and identification cards to the Agency Security Officer located in the Office of Human Resources (MC-MHR) for completion of Section II - Security Office Clearance, items 1, 2 and 3.
- Present the Government Travel Card to the Agency/Organization Program Coordinator (A/OPC) located in the Finance Office (MC-BF) for completion of Sections V -Finance and Management Services Clearance, items 1 and 2.
- Present Government Purchase Card to the Agency/Organization Program Coordinator (A/OPC) located in the Office of Acquisitions Management (MC-MA) for completion of Section V-Finance and Management Services, item 4.

6.3.8 General Guidelines for Administration of CDL Regulations

6.3.8.1 Definitions that Apply to FMCSA's Policy for Administration of the CDL Regulations

In addition to the definitions contained in 49 CFR Parts 383 and 384, the following words and phrases, as used in this chapter, mean:

- **The Act** - The Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570, 49 U.S.C. 31301 et seq.), as amended.
- **State Compliance Monitoring** - The process whereby States certify their compliance with the Act and its amendments. There is currently having 29 compliance requirements. We require a State to meet all 29 requirements in order to be considered in substantial compliance. You can find these requirements in 49 CFR Part 384.
- **Annual Self-Certification** - The written declaration by the State regarding its compliance with 49 CFR Part 384. The annual certification requirements are contained in 49 CFR 384.305.
- **Program Review of State Compliance** - The onsite evaluation of all the requirements contained in 49 CFR Part 384. The review includes both the State's procedures for issuing Commercial Drivers Licenses (CDLs) to qualified individuals and the State's procedures for disqualifying drivers convicted of specified moving violations while operating a CMV. The review also includes the State's data processing procedures in regard to transmitting and receiving driver history information (convictions and disqualifications) between States and the updating of the driver history records of its own drivers.

- **Alternate Certification** - The certification used by the States that have active compliance findings, but the State and FMCSA have determined that the State is still in substantial compliance with 49 CFR Part 384, because an action plan has been submitted and accepted.
- **CDL Legal Indicator** - The matrix form completed by the State prior to the State CR to document its statutory compliance with the requirements of the Act.
- **Annual Program Review** - The follow-up review of the State's CDL program to evaluate the State's progress toward, or completion of, previously agreed-to remedies. These remedies are in regard to one or more outstanding issues, identified during a previous State CR, in order to determine whether the State's CDL program is in substantial compliance with 49 CFR Part 384.
- **State Process Review** - The follow-up review of the State's CDL program to evaluate the State's progress toward, or completion of, previously agreed-to remedies. These remedies are in regard to one or more outstanding issues identified during a previous State CR in order to determine whether the State's CDL program is in substantial compliance with 49 CFR Part 384.
- **State CR Team** - The individuals responsible for conducting the State review to determine if the CDL program is in substantial compliance with the Federal requirements. The team will be led by the DA in that State and may consist of other members of the Division Office, SC, and Headquarters, as well as the contractors hired by FMCSA to conduct the review.
- **Foreign Convictions and Withdrawal Database (FCWD)** – A central database of all conviction and withdrawal information pertaining to foreign-domiciled (Mexico-, Canada-, and other foreign-) domiciled drivers reported by States through the Commercial Driver's License Information System (CDLIS) or by mail.
    a. **FCWD Quality Control Process** – The quality control process will ensure that States report to the FCWD all convictions, occurring within their jurisdiction, of foreign-domiciled CMV drivers, regardless of the type of license held by the driver, including convictions of drivers found operating with proper licenses or with possession of their license.

    All States are to submit all convictions received on the following drivers:

- All Licencia Federal de Conductor holders operating a CMV or non-CMV,
- All Mexico-, Canada-, or other foreign-domiciled drivers operating a CMV with an operator license,
- All Mexico-, Canada-, or other foreign-domiciled drivers operating a CMV without a license in their possession.
    - **FCWD Systematic Error** – A systematic error is the transmission of erroneous or incomplete conviction data as a result of a widespread information system or procedural deficiency. A systematic error includes a failure to transmit conviction records as a result of a widespread information system or procedural deficiency.

6.3.8.2 Roles and Program Responsibilities of Headquarters Personnel

Headquarters is responsible for carrying out the legislative mandates of Congress as delegated by the Secretary of Transportation. In this capacity, Headquarters has the following roles:

- Promulgating regulations;
- Developing regulatory guidance, policy, procedures, and methodologies;
- Providing direction, resources, and technical expertise;
- Reviewing and monitoring the program management provided by the Division offices and the technical assistance provided by the Service Centers; and
- Providing necessary assistance and training for full and effective administration of the program.

- **The FCWD Quality Control Process**

6.3.8.3 Roles and Program Responsibilities of the FA and SC Managers

The FA provides technical assistance and guidance to the DAs in the administration of the CDL program in their respective States. The guidance must be in accordance with all legislative and regulatory requirements and consistent with all the established policies, directives, procedures, and guidelines. The FA also provides assistance to Headquarters by promoting and carrying out the CDL program's National goals and objectives. The FA may delegate responsibilities to the State Programs Manager (SPM) or other personnel in the SC as appropriate.

6.3.8.4 Roles and Program Responsibilities of the DA

The DA administers the CDL program in his or her respective State in accordance with all legislative and regulatory requirements and consistent with all the established policies, directives, procedures, and guidelines.

- Program responsibilities include:
- Providing information, guidance, and assistance to his or her respective State;
- First level review of all grant applications and reimbursement vouchers; and
- Program monitoring, evaluation, and formal State CDL CRs in accordance with the Program Management section of this chapter.

The DA may delegate responsibilities to the Safety Program Manager, State Programs Specialist (SPS), or SI, as appropriate.

The FCWD Quality Control Process

The DA or his/her designee will:

1. Distribute the quarterly summaries, detailed State reports and quarterly State trend charts to the State Reporting Agency.
2. Communicate with the States to ensure that the information provided quarterly is complete and accurate with respect to:
    a. The number of Mexico-domiciled driver convictions submitted to the FCWD; and
    b. The accuracy of the conviction data.
1. Report the results of the Division Office's communication with the State to MC-ESB and provide a copy to the Service Centers.
2. Ask the State to submit a corrective action plan to the DA if the State agency determines the inaccuracy is the result of a systematic error.
3. Provides copies of State Reporting Agency's corrective action plan for systematic errors to the FMCSA Service Centers, if such plan is required.
4. Monitor the status of the State Reporting Agency's corrective action plan on a quarterly basis. Division Offices will report to MC-ESB and the Service Centers when such corrective action plan is completed.

6.3.8.5 Roles and Program Responsibilities of the Various Program Manager/Specialists within FMCSA Divisions

The DA or the Program Manager/Specialist is responsible for oversight of the CDL Program in his or her respective State.

The DA or Program Manager/Specialist must perform the following activities:

a. Conduct ongoing monitoring of the State's CDL program, including proposed legislative actions, implementation of new requirements, and the enforcement of current requirements. This includes monitoring State progress in addressing open compliance findings listed in the Automated Compliance Review System (ACRS).
b. Conduct periodic site visits to State and third-party examination facilities to observe testing and licensing procedures and compliance with Federal CDL requirements.
c. Review yearly State Certification for accuracy and load into the ACRS.

6.3.8.6 Document State Must Submit Annually to Ensure Compliance with 49 CFR Part 384

A State must submit a CDL Yearly State Self-Certification according to the following guidelines:

Prior to January 1 of each year, each DA or Program Manager/Specialist must receive a written certification from the State on the status of its compliance with 49 CFR Part 384. The original signed certification will be submitted with two copies to the DA or Program Manager/Specialist located in that State.

The DA or Program Manager/Specialist must keep the signed original of the State certification on file and send a scanned copy via email to the State Programs Division, Office of Safety Programs at FMCSA Headquarters and the appropriate FA.

If the State determines that it is in substantial compliance with 49 CFR Part 384, it will submit a certification consisting of a statement signed by the Governor of the State, or by an official designated by the Governor in accordance with 49 CFR 384.305.

ALTERNATE CERTIFICATION: This certification is to be used only if the State has open findings identified during a CR, but is still in substantial compliance with 49 CFR Part 384 because its action plan to address the findings has been accepted by FMCSA.

The State will submit an (Alternate) certification consisting of a statement signed by the Governor of the State, or by an official designated by the Governor, and reading as follows: "I (name of certifying official), (position title), of the State (Commonwealth) of _____, do hereby certify that the State (Commonwealth) has continuously been in substantial compliance with all requirements of 49 U.S.C. 31311(a), as defined in 49 CFR 384.301, since [the first day of the current Federal fiscal year], except as noted below and contemplates no changes in statutes, regulations, or administrative procedures, or in the enforcement thereof except as noted below, which would affect such substantial compliance through [the last date of the current Federal fiscal year]."

If the State fails to submit a written certification to the DA or Program Manager/Specialist by January 1, the State will be determined not to be in substantial compliance, as required by 49 CFR 384.309. The DA or Program Manager/Specialist will notify the CDL Division in Headquarters of the situation. The Administrator may, in coordination with the Federal Highway Administrator, take sanctions against the State, in accordance with 49 CFR Part 384, Subpart D. If sanctioning action is taken, the Administrator will inform the State in writing of the decision.

The Roles and Responsibilities for the Divisions, Service Centers, and the CDL Division are defined in the policy memo MC-ESL-2013-001, dated May 16, 2013. The effective date of the policy is July 1, 2013. The excerpts, listed below, designate roles as defined within The Roles and Responsibilities Memo:

POLICY

The Agency will ensure that the CDL program is operated, in accordance with existing statutes and regulations by fulfilling the responsibilities defined in this policy. In addition, required reviews will be completed in accordance with the procedures prescribed in this document.

This policy establishes minimum requirements and standards. Additional monitoring and program management is acceptable.

Organizations within FMCSA will complete the duties required to successfully support the CDL program, as described in this document.

RESPONSIBILITIES

CDL Division: The CDL Division will:

- Serve as a resource for Service Center and Division Office personnel, as they oversee the CDL programs in their respective States;
- Communicate the impact of regulations and legislation, relating to CDL, to the Agency;
- Analyze prior years' data and reports to evaluate each State's resolution of findings and resolve persistent compliance issues to ensure that the State is meeting the stipulations within its corrective action plan (CAP);
- Monitor the status of each State's action plan and coordinate with the State, Division Office, and Service Center to facilitate resolution of findings;
- In consultation with the Service Center and Division Offices, conduct on-site focused CDL program reviews, as needed, to determine if a State is in substantial compliance with the regulations, as required by 49 CFR §384.301. The determination of which States to review will be made by the CDL Division, using available data, findings, and information. The reviews will be coordinated and performed with the assistance of the Service Center and Division Office
- Establish schedule and deadlines for future State CDL program reviews;
- Coordinate the collection of State CDL transaction data, legislative and statutory data, and operational data, in preparation for State CDL program reviews with the Division Office;
- Perform analysis of State CDL transaction data to ensure compliance;
- Perform analysis of State CDL operational procedures to ensure compliance;
- Identify findings, program improvements, and fraud vulnerabilities for each State;
- Coordinate, oversee, and monitor use of ACRS;
- Review all findings and State corrective action plans, for adequacy;
- Prepare memoranda of acceptance of corrective action plans, as appropriate;
- Address State challenges to and questions about findings and other program review results;
- Evaluate State requests for reconsideration of findings;
- Coordinate with Office of Chief Counsel, to obtain legal interpretations and guidance concerning statutory and regulatory issues, to resolve State challenges to findings and other review results;
- Prepare briefing and reports for the Office of the Inspector General (OIG) and other entities, as requested;
- Prepare letters of final determination of noncompliance, as appropriate;
- Provide task management tools for Division Office and Service Center personnel;
- Conduct CDL program training for Division Office, Service Center personnel, and other stakeholders;
- Conduct training for States that will be subject to all program reviews;
- Compare the relative levels of compliance by States with the requirements of Parts 383 and 384, and make the results of the comparison available to the public;

- Identify upcoming regulations and requirements that affect the CDL program;
- Approve or disapprove requests for extensions to corrective action plans beyond 180 days;
- Enter new findings into ACRS;
- Ensure that AAMVA provides requested CDLIS data and provide to the Division Offices and Service Centers, as needed; and
- Confirm that AAMVA performs testing to ensure State compliance with CDLIS specifications.

Service Center CDL Program Manager: Service Centers provide management oversight and technical assistance to the Division Offices. The Service Center will designate a CDL Program Manager, who is tasked with providing the Division Offices with guidance and support for the CDL program. This CDL Program Manager will:

a. Assist Division Offices with program compliance reviews, as necessary, including participation in and facilitating meetings and monitoring to resolve outstanding issues with the States.
b. Attend and participate in reviews, as necessary.
c. Review compliance findings and State corrective action plans, for adequacy.
d. Track compliance issues across States within the Service Center and report trends, systematic problems, delays, or other concerns to the CDL Division.

Division Office: The Division Office will meet and communicate with the SDLA, to review ongoing compliance efforts. The roles listed below are considered minimum requirements. Division Offices may, at the discretion of the Division Administrator, perform additional monitoring of a State's CDL program and activities. The Division Office will:

a. Observe the CDL issuance process and identify fraud vulnerabilities on an ongoing basis.
b. Communicate with the CDL Division regarding potential non-compliance findings identified during the Division Office's monitoring.
c. Review and monitor the action plan developed by the State to ensure compliance. Verify that the State correctly resolved findings when the action plan is marked as completed in ACRS.
d. Participate in meetings with the State, and coordinate with Service Center CDL Program Manager, to ensure that FMCSA perspective is provided.
e. Monitor new State legislation, regulations, and policy to ensure continuous compliance with Federal regulations, and notify the CDL Division of any potential non-compliance issues;
f. Communicate with the SDLA to ensure the State is aware of upcoming requirements and is working towards continuous compliance.
g. Review AAMVA management reports to monitor the State's data quality, reviewing the data accuracy tabs in the monthly AAMVA Timeliness and Accuracy Summary and Detail Reports, and bringing deficiencies to the State's attention.
h. Monitor the State's convictions and withdrawals, on a quarterly basis, by utilizing AAMVA report CD90.4.1 Out of State Transaction Report. Review at least five major convictions, to determine if the proper disqualification was taken by the State. In addition, review at least one conviction in each of the other report categories.
i. Assist the State in conducting internal reviews and self-reporting on the State's CDL statutory, operational, and data activities.
j. Ensure that the State submits information regarding its CDL activities to FMCSA annually, including transaction data, legislative and operational information, using checklists and other tools to be developed by the CDL Division for this purpose.
k. Ensure that the State submits the State's certification of compliance, annually to FMCSA, prior to January 1 of each year, as required by 384.305.
l. Provide assistance to the State, when required, to develop and implement an action plan, to correct any deficiencies in its CDL activities.

m. Conduct Annual Program Reviews and Skills Test Reviews, per the procedures in this policy.

6.3.8.7 Structure of a State CR Report

a. Reports will include, at a minimum, the information contained in this section in the following format:
    a. Introduction,
    b. Purpose and Scope,
    c. Compliance Items,
    d. Findings and Resolutions, and
    e. Additional Comments
b. The Introductory section of the report will contain the following:
    a. Reasons for the State CR;
    b. Review dates;
    c. The names, title, telephone number, and the agency or governmental unit responsible for the administration of the CDL program. Email addresses are optional;
    d. The names, title, telephone number, and agency of all State persons present during all or parts of the review; and
    e. The names, title, telephone number, and agency of review team members.
c. The Purpose and Scope section of the report will contain a brief statement describing the following actions that are performed as part of the review process:
    a. State laws, regulations, and administrative procedures and practices are reviewed for compliance with the provisions of the Commercial Motor Vehicle Safety Act of 1986, as amended, and the implementing regulations in 49 CFR Parts 383 and 384.
    b. Recommendations are made to the State on any issues or problems discovered during the review that may affect the State's effective management of the CDL program.
    c. All administrative and operational procedures and practices are observed, including the administration of knowledge and skills tests to ensure that they are in compliance with 49 CFR Parts 383 and 384.
    d. The computer and system are reviewed to ensure that driver history records are properly maintained, and the conviction data are transmitted, received, and posted to a driver's record in a timely manner and are accurate and complete.
d. The Compliance Items section of the report will contain the following:
    a. A general discussion of the actions the State is taking to comply with each of the minimum standards described in 49 CFR Part 384, §§ 201 through 222.
    b. The discussion of the State's compliance with the standards should include any actions, procedures, or other documentation that were observed or discovered that support the conclusions made in this section.
e. The Findings and Resolutions section of the report will contain the following for each finding:
    a. Subject/CFR - reference appropriate regulation, order, policy, etc.;
    b. Findings - should consist of a brief, positive or negative statement of existing conditions;
    c. Recommendation - describe recommendations made to the State for correction of the finding;

d. Resolution - This is the State's response to the findings and resolution; and

e. Resolution Date - the date that the State effects the correction or anticipates correction will be implemented. If the resolution involves legislative action, the State should take into account in its response the time periods the legislature will be in session.

f. Overall finding - should consist of a statement that the State is or is not in substantial compliance with 49 CFR Part 384. FMCSA requires a State to meet all requirements in order to be considered in substantial compliance.

f. The Additional Comments section of the report is provided for reporting general information or a summary of the report.

6.3.8.8 Time to Submit the Initial CDL CR Report be Submitted

a). The draft State CR report should be completed by the DA/SD or Program Manager/Specialist as soon as possible, but not later than 30 days following the review. If a computer and system review was also conducted as part of the State CR, the results of this review will be reviewed by the DA/SD and incorporated into the report along with any addition compliance issues that the DA/SD identifies from the computer and system review results. The DA/SD will sign the draft report.

b). The DA/SD or Program Manager/Specialist will submit the draft State CR report to the State Programs Division, Office of Safety Programs, FMCSA, Washington, D.C. for Headquarters concurrence of the finding(s) contained in the report along with copies of the completed CDL Compliance Indicator and all supporting documentation referenced on the Indicator. This process will be followed regardless of whether the DA/SD or Program Manager/Specialist has determined that the State is or is not in substantial compliance with all requirements found in 49 CFR Part 384, Subpart B.

c). Upon receipt of the State CR report from the DA/SD or Program Manager/Specialist, the State Programs Division, Office of Safety Programs, FMCSA, Washington, D. C. will review the report. The Division will also verify that the State has submitted the latest required fiscal year compliance certification.

6.3.8.9 Follow-up Procedures Headquarters Will Follow upon Receipt of a State CDL CR

a). If the State Programs Division determines that the State has submitted the required certification and concurs with the DA's/SD's or Program Manager/Specialist's finding that the State is in substantial compliance with all of the 49 CFR Part 384 requirements, the State Programs Division will write a memorandum to the DA/SD or Program Manager/Specialist. The memorandum will state the Headquarters concurrence with the finding that the State is in substantial compliance with all 49 CFR Part 384 requirements. The DA/SD or Program Manager/Specialist will write a letter to the head of the State driver-licensing agency advising him or her that the State is in substantial compliance with all 49 CFR Part 384 requirements.

b). If the State Programs Division determines that the State has submitted the required certification and concurs with the DA's/SD's or Program Manager/Specialist's finding that the State has one or more outstanding issues that affect its substantial compliance with 49 CFR Part 384, the State Programs Division will write a memorandum to the DA/SD or Program Manager/Specialist requesting the DA/SD or Program Manager/Specialist to write a letter to the head of the State driver-licensing agency. The DA/SD or Program Manager/Specialist will advise the State that it has one or more outstanding issues that affect its substantial compliance with 49 CFR Part 384. The DA/SD or Program Manager/Specialist will enumerate these issues and ask the State to submit an action plan to the DA/SD or Program Manager/Specialist detailing both how the State will correct the issue(s) and when the State will submit information documenting implemented changes which will bring it into compliance with 49 CFR Part 384.

c). The State will have 30 days to respond to the preliminary determination.

d). If the DA/SD or Program Manager/Specialist advises the State that it has one or more outstanding issues that affect its substantial compliance with 49 CFR Part 384, the State may request, at any time, an informal conference to help resolve the issue(s).

e). The DA/SD or Program Manager/Specialist will review the State response and make a written finding whether the action plan is acceptable.

f). The DA/SD or Program Manager/Specialist will submit an updated draft State CR report that incorporates the State's response and the DA's/SD's or Program Manager/Specialist's finding to the State Programs Division, Office of Safety Programs, FMCSA, Washington, D.C., for Headquarters concurrence within 2 weeks of receipt of the State's response.

g). If the State Programs Division concurs with the DA/SD or Program Manager/Specialist that the State has submitted an acceptable action plan to remedy the one or more outstanding issues, the State Programs Division will write a memorandum to the DA/SD or Program Manager/Specialist. If Headquarters does not accept the State's action plan, Headquarters will so advise the DA/SD or Program Manager/Specialist along with the reason for not accepting it.

h). If the State fails to submit an action plan or fails to provide an acceptable action plan to correct noted compliance issues, the State will be determined not to be in substantial compliance as required by 49 CFR 384.309. The DA/SD or Program Manager/Specialist will notify the State Programs Division in Headquarters of the situation. The Administrator may in coordination with the Federal Highway Administrator take sanctions against the State in accordance with 49 CFR Part 384, Subpart D. If sanctioning action is taken, the Administrator will inform the State in writing of the decision.

i). The DA/SD or Program Manager/Specialist must schedule a State process review within one year after the State CR if the State was required to submit an action plan to either:

   a. Verify the changes that the State has made to bring it into compliance with 49 CFR Part 384; or

   b. Document the progress made in coming into compliance if the approved action plan has provided for a period longer than one year to complete the needed changes.

   The format for the State process review is the same as the format for the State CR. The Administrator may request a State process review in less than one year in unusual circumstances. The review team is to review only the previous issues that affect the State's substantial compliance with 49 CFR Part 384.

j). The DA/SD or Program Manager/Specialist must review, sign, and submit the State process review to the State Programs Division, Office of Safety Programs, FMCSA, Washington, DC, for Headquarters concurrence of the finding(s) contained in the report.

k). If Headquarters concurs that the State is in substantial compliance, the DA/SD or Program Manager/Specialist will write a letter to the head of the driver-licensing agency stating that the State process review shows that the State is in substantial compliance with 49 CFR Part 384.

l). If Headquarters determines the State is not in substantial compliance, another process review must be conducted by the review team at least yearly until the State is in substantial compliance.

m). If the Administrator determines, based on the results of the process review, that the State is not in substantial compliance within the agreed time period in the action plan, the Administrator may in coordination with the Federal Highway Administrator take sanctions against the State in accordance with 49 CFR Part 384, Subpart D. If sanctioning action is taken, the Administrator will inform the State in writing of the decision.

n). Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. chapter 7.

6.3.8.10 CDL System Review

FMCSA has temporarily suspended comprehensive CRs. However, Division should continue to actively monitor their State's progress towards addressing open findings as indicated in the Automated Compliance Review System (ACRS). The CDL Division at FMCSA Headquarters is preparing a formal policy memorandum that will address the various roles and responsibilities for management of the CDL oversight process in each State. The CDL Division, in coordination with the Eastern SC, is preparing a CDL training course for all Field offices that will assist in the responsibilities established in the policy memorandum.

6.3.8.11 Process of Review of Proposed State CDL Legislation

1). The DA or Program Manager/Specialist will review proposed legislation, make comments and recommendations for proposed changes, if the proposed legislation hinders the State's CDL program compliance or places a significant burden on either the State, CDL holders, CDL applicants, motor carriers, training schools, etc.

2). The DA or Program Manager/Specialist will forward the proposed legislation along with the DA's/SD's or Program Manager/Specialist's comments and recommendations to the CDL Division, Office of Safety Programs, FMCSA, Washington, DC.

3). The CDL Division will review the proposed legislation and the DAs/SDs or Program Manager/Specialist's comments and recommendations and propose draft changes where necessary. The CDL Division will forward the proposed legislation to Chief Counsel's Office for further review and final approval.

6.3.8.12 Requirement for Maintaining Correspondence Involved in the State CDL Review Process

The DA or Program Manager/Specialist will verify that all required documents related to the State compliance have been uploaded to the ACRS.

If the DA or Program Manager/Specialist determines that the State is not in substantial compliance with all requirements of 49 CFR Part 384, the DA Director will send a copy of all correspondence sent to, and received from, the State to the CDL Division, Office of Safety Programs, FMCSA Headquarters and the appropriate FA.

6.3.9 General Guidelines for Administration of Crash/HM incident Reporting

6.3.9.1 Explaining the Requirement to Report a Significant Crash and HM Incident

Uniform inquiry and reporting guidelines result in timely notification to the Secretary of Transportation and the Administrator of FMCSA of significant CMV crashes and/or significant HM incidents of local, regional, or national significance.

6.3.9.2 Definitions that Apply to Significant Crash and HM Incidents

Significant Crash - A significant crash is a crash involving a CMV with multiple fatalities (three or more), an unusually high number of injuries, or a combination thereof and/or crashes involving a CMV which are likely to result in heightened interest and of which detailed knowledge would be beneficial, including any incident in which the National Transportation Safety Board (NTSB) sends investigators, an incident involving a Mexican commercial vehicle, or an incident including extensive national media coverage would be a significant crash.

Significant HM Incident - A significant HM incident is defined as: a person is killed; a person has received injuries requiring his or her hospitalization; estimated motor carrier or other property damage exceeds $50,000; evacuation of the general public occurs lasting one or more hours; one or more major

transportation arteries or facilities are closed or shut down for one hour or more; fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material; fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; release of a marine pollutant in a quantity exceeding 450 liters (l) [119 gallons (gal)] for liquids or 400 kilograms (kg) [882 pounds (lb.)] for solids; or a situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the incident) that in the judgment of the Division, it should be reported.

6.3.9.3 Roles and Program Responsibilities of the DAs/SDs

DAs/SDs is required to:

- Establish a network with State agencies for prompt identification and reporting of significant crashes and HM incidents.
- Gather vital information on the significant crash and/or HM incident as promptly as possible.
- Forward initial vital information to Headquarters (HQ) by email, fax, or telephone. If the involved motor carrier is domiciled in a State other than the State in which the accident/incident occurred, the DA/SD of the motor carrier's State of domicile should be notified of the preliminary information simultaneously with HQ. Copy the respective State's FHWA DA and the FMCSA SC on all written communications regarding significant crashes. Service Centers will ensure that appropriate communications with other model offices is accomplished.
- All accident notification must be sent via email to "AHMI" address on Outlook, as well as a copy to the FA in your SC, the DA of the State of domicile for the motor carrier involved (if out-of-State) and the Emergency Preparedness Coordinator in the Emergency Preparedness office in HQ.
- Develop your State network and collaborate with other Federal and State agencies to improve the reporting process for the crash and/or HM incident information and timely updating to HQ.
- Provide timely updates to HQ concerning sensitive issues arising from the significant crash.

6.3.9.4 Conducting a Preliminary Crash Investigation (PCI)

A PCI of a significant crash will be conducted by personnel identified by each DA when:

1). The actions of the CMV driver may have been a contributing factor to the cause of the crash;

2). Preliminary finding from officers investigation at the scene or post-crash inspection reveal possible violations of the FMCSR or HMR that existed prior to or at the time of the crash; or

3). Other factors indicate that further investigation is warranted (e.g., unknown motor carrier, Mexico-domiciled motor carrier).

6.3.9.5 Components of a PCI

Any PCI activity performed at the crash site will be coordinated with the lead State officer investigating the crash. Cooperation with National Transportation Safety Board investigation activities is mandatory whether FMCSA is present at the scene or not. Additional PCI activity should be conducted at the motor carrier's PPOB or alternate location if necessary. A PCI will consist of the following for the driver and vehicle involved in the crash:

- A review of the driver's Qualification File, including CDLIS report, and compliance with the controlled substance testing regulations and
- A review of the driver's hours of service (HOS) during the 8-day period prior to and at the time of the crash; and
- An inspection of the CMV(s) involved in the crash if no State inspection is conducted or a review of the vehicle inspection or investigative report prepared by a State agency; and

- A review of the Inspection and Maintenance Records for that vehicle, which are required by Part 396 of the FMCSR.

Violations discovered during the PCI should be documented and, if warranted, an enforcement case prepared. Care should be taken to coordinate enforcement case preparation with any enforcement actions contemplated by other Federal, State, or local jurisdictions to avoid duplicating enforcement for the same violations.

The DA has primary responsibility for ensuring that all elements of the PCI and/or investigation are completed. After careful review of the PCI and other relevant information (i.e., Carrier history, L&I compliance, current rating, date of last investigation, etc.), the DA will determine if further action is appropriate (i.e., an Onsite Investigation, enforcement or referral to another agency).

6.3.9.6 Circumstances Under Which an Onsite Investigation is required after the Motor Carrier was involved in a Significant Crash

An Onsite Investigation will be conducted after a significant crash for the following carrier groups:

- High-risk carriers without an Onsite Investigation in the past nine months;
- Unrated passenger carriers;
- All carriers with less than satisfactory ratings without an Onsite Investigation in nine months;
- Carriers that meet or exceed the BASIC Intervention Thresholds and driver or vehicle violations discovered during the PCI. An Onsite Investigation may be conducted in other situations when the DA, in the exercise of his or her discretion, determines that a significant crash merits an Onsite Investigation. Where guidance is required, the DA will consult with their FA to determine the best course of action.

6.3.9.7 Responsibilities of the DA/SD after the Crash Occurs

The DA/SD has primary responsibility for ensuring that all elements of the PCI and/or investigation are completed. Possible sources for assistance or information include his or her staff, the Service Centers, and/or State and local agencies.

6.3.9.8 Form that Significant Crashes and HM Incidents Should be Reported On

All significant crashes and HM incidents must be reported on the form in Appendix A of this section.

6.3.9.9 Appendix A: Crash/HM Incident Notification Report

Download PDF Form: Crash/HM Incident Notification Report

WHY IS THIS A SIGNIFICANT CRASH/HM INCIDENT?

TYPE OF CRASH/HM INCIDENT (Passenger, HM, Railroad Grade Crossing, Work Zone, etc.):

LOCATION OF CRASH/HM INCIDENT (State/City/County/Route/Milepost/ Railroad, etc.):

DATE AND TIME OF CRASH/HM INCIDENT:

NUMBER OF INJURIES/FATALITIES:

DESCRIPTION OF CRASH/HM INCIDENT:

WEATHER AND ROAD CONDITIONS:

CARRIER(S) INVOLVED (Name, Address, City, State, Telephone #, DOT #, Current Rating, date of last contact and any additional information that the Division Administrator deems appropriate):

VEHICLE(S) INVOLVED (By number and type of configuration, e.g., Tractor & Trailer, Tractor & Cargo Tank, Straight Truck, etc.):

DRIVER INFORMATION (Include driving record and additional information which the Division Administrator deems appropriate):

HM INVOLVED (Type and Extent):

INVESTIGATING AGENCIES (Federal, State, Local, NTSB, etc.):

REPORTING OR ASSIGNED DIVISION ADMINISTRATOR (Name, Telephone #, name of on-site investigator, and cell phone #):

STATUS OF INVESTIGATION (Keep headquarters advised of the situation):

CARRIER OPERATION (Interstate vs. Intrastate):

Please use the following numbers to report crashes and other significant events after normal business hours: 1-866-875-4447 or 202-366-5373. These numbers are answered 24 hours a day/7 days a week and you are able to leave detailed messages. During normal business hours, please call 202-366-0177 (office), [redacted](cell), and continue to e-mail your information to the accident/incident mailbox (AHMI). Please send all Crash/HM Incident Notification Reports to alex.keenan@dot.gov

6.3.10 General Guidelines for Emergency Relief

6.3.10.1 FMCSA's Policy on Emergency Relief

In accordance with 49 CFR 390.23 certain motor carriers are exempt from 49 CFR parts 390 through 399 if an emergency, as defined in 49 CFR 390.5, is declared by FMCSA or a governmental jurisdiction. Please note that a fuel shortage due to high demand and other economic issues does not generally constitute an emergency without extenuating circumstances, such as a winter storm that interrupts deliveries and/or evidence that human life is threatened.

The authority within FMCSA to issue emergency exemptions pursuant to 49 CFR 390.23 rests with the Field Administrators in the four Service Centers. Field Administrators should consult with the appropriate Division Administrators(s) or State Director(s) prior to issuing emergency exemptions.

Field Administrators (FAs) and DAs/SDs should establish a communication system with appropriate State agencies in their respective SC areas/States to validate the existence of an emergency and determine the best course of action.

Once it is determined that an emergency exists, every effort should be made by the FA or DA/SD to encourage the appropriate State agency to seek an emergency or disaster declaration from the Governor (or designated representative).

If the Governor (or designated representative) issues a disaster or emergency declaration under § 390.23, motor carriers providing emergency relief are automatically exempt from 49 CFR parts 390 through 399 pursuant to 49 CFR 390.23. In this case, FMCSA should not issue an emergency exemption.

If the Governor (or designated representative) does not issue an emergency declaration, the FA may issue an emergency exemption in accordance with these instructions.

If an emergency is declared under § 390.23 by FMCSA or a State, the emergency exemption extends to all interstate motor carriers/drivers that are providing direct assistance in supporting the emergency relief effort even when operating outside the State or area in which the emergency exists. Emergencies declared under § 390.23 provide no exemptions for intrastate motor carriers. Exemptions for intrastate motor carriers must be issued by the appropriate State agency.

6.3.10.2 FMCSA's Definition of an Emergency

FMCSA defines an emergency as any hurricane, tornado, storm (e.g., thunderstorm, snowstorm, ice storm, blizzard, sandstorm), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mudslide, drought, forest fire, explosion, blackout, or other occurrence, natural or manmade, which interrupts the delivery of essential services (such as electricity, medical care, sewer, water,

telecommunications, and telecommunication transmissions) or essential supplies (such as food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in:

1. A declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the FMCSA FA for the geographical area in which the occurrence happens; or by the Federal, State, or local government officials having authority to declare emergencies, or
2. A request by a police officer for tow trucks to move wrecked or disabled motor vehicles.

6.3.10.3 The Two Types of Emergency Exemptions

There are two types of emergency exemptions:

a. Regional Emergencies - This category includes State emergencies or disasters declared by the Governor (or designated representative); single- or multiple-State emergencies declared by the President of the United States; and single- or multiple-State emergencies declared by FMCSA. Exemptions issued for "regional" or State emergencies are good for a maximum of 30 days (unless extended).

b. Local Emergencies - This category includes emergencies declared by Federal, State, or local government officials having the authority to declare an emergency; or by FMCSA determining that a local emergency exists (e.g., extensive tornado damage within a localized area). Exemptions issued for local emergencies are good for a maximum of 5 days from the date of issue or effective date of emergency declaration by the State or local official, or the duration of the motor carrier's direct assistance in providing emergency relief.

6.3.10.4 Emergency Exemption Procedures for Governor- or State-Declared Emergencies

Once a Governor (or designated representative) has issued a disaster or emergency declaration under 49 CFR 390.23, the FA should send an email message to all Divisions, Service Centers, and FMCSA Headquarters informing them of the emergency declaration. Reference the applicable official State declaration.

6.3.10.5 Emergency Exemption Procedures for FMCSA-Declared Emergencies

Requests for emergency exemptions must be in writing. They may be received via mail, fax, or electronic mail. Once an initial request is received, the FA involved should make every effort to confirm the existence of an emergency situation by contacting the appropriate DA/SD, State agencies, and other organizations.

If the State or local jurisdiction does not issue an emergency or disaster declaration, the FA must make a decision whether to issue an emergency exemption.

The decision to issue an exemption should be based on the best available information obtained from motor carriers, motor carrier associations, weather services, State agencies, and industry representatives (e.g., Propane Gas Assn.). Factors should include weather and road conditions that interrupt the delivery of essential services or essential supplies or otherwise immediately threaten human life or public welfare and safety. Severe cold weather and/or economic concerns alone do not necessitate the declaration of an emergency. The FA should maintain documentation (e.g., records of telephone conversations) supporting his or her decision to grant or deny the request(s).

Once it is determined that an emergency exists and there is a need for an emergency exemption, the FA will issue an emergency exemption similar to the examples in Illustrations 8-1 and 8-2. Time periods may be different depending on the type of emergency exemption (regional or local). If it is determined that an emergency does not exist, the FA should notify the applicant in writing.

Motor carriers should be notified that a copy of the exemption should be, to the extent possible, carried in each vehicle operating pursuant to the exemption. Although this is not required, it can avoid problems with roadside inspectors and State enforcement personnel and is to the motor carrier's benefit.

Emergency exemptions may not be issued to or used by motor carriers that are under an Operations OOS Order, including passenger carriers under an HM/Passenger OOS Order.

If an extension of the emergency exemption is necessary the FA may issue one similar to Illustration 8-3. Extensions are only allowed for "regional" exemptions pursuant to 49 CFR 390.25.

The FA should send a copy of the exemption to all Divisions, Service Centers, and FMCSA Headquarters. Divisions should in turn provide a copy to the MCSAP agency.

6.3.10.6 The Motor Carrier's Responsibility as it Relates to Emergency Exemptions

The exemption pursuant to 49 CFR 390.23 only applies when the motor carrier is providing direct assistance to the emergency relief effort. Direct assistance terminates when a driver or CMV is used in interstate commerce to transport cargo not destined for the emergency relief effort or when the motor carrier dispatches such driver to another location to begin operations in commerce. Upon termination of support for this emergency, a motor carrier may not permit a driver to drive until he/she has met the requirements of § 395.3(a) and the driver has had at least 34 consecutive hours off duty when the driver has been on duty more than 60 hours in the previous 7 days or more than 70 hours in the previous 8 days.

6.3.10.7 Procedures for Investigations on Motor Carriers Who Participate in Emergency Relief Efforts

If an investigation is conducted on a motor carrier as a result of the FMCSA selection process, and it is suspected that the motor carrier may have operated pursuant to an emergency exemption, the investigator should ask the motor carrier for a list of drivers operating under the exemption and ensure that the exemption was not used for operations other than in direct support of the emergency assistance. The investigator must not cite the carrier or driver for what would have otherwise been a violation of the regulations for those drivers operating under the exemption.

6.3.10.8 Declaration of Emergency Notice

Please see the current Declaration of Emergency Notice.

6.3.11 Procedures for Capturing Outreach Efforts for IEPs

FMCSA will continue to provide education and outreach to the intermodal industry and will familiarize itself with the industry as a whole. The industry is dynamic and is dependent upon interdependencies among IEPs and motor carriers and involves various entities including port authorities, public and private terminal operators, steamship lines, railroads, and third-party service providers. As such, our education and outreach efforts will be geared toward educating IEPs on the rules. We will capture information on our outreach efforts so that we may document the extent of our efforts to Congress and oversight agencies.

Educating IEPs on the New Requirements of the Rule

FMCSA has been and will continue to be called upon to provide information on the requirements of the IEP rule to interested parties. The DAs/SD or designees are asked to continue to present the regulatory information to the industry using the presentation in the memorandum titled "Information: New Entrant Safety Assurance Process and Requirements for Intermodal Providers and for Motor Carriers and Drivers Operating Intermodal Equipment Final Rules." The presentation should help IEPs better understand their responsibility to comply with the applicable regulations.

IEPs, motor carriers, and drivers may visit http://www.fmcsa.dot.gov/rules-regulations/topics/IEP/index.htm to retrieve updated information on the IEP rule.

The Maritime Administration (MARAD) produces a glossary of shipping terms that may prove helpful in your understanding of the intermodal industry. The glossary of shipping terms can be found on MARAD's website (http://www.marad.dot.gov/documents/Glossary_final.pdf).

Capturing Our Outreach Efforts

In an effort to provide interested parties with an update on FMCSA's IEP outreach efforts, the number of contacts (e.g., presentations, workshops, seminars, brochure dissemination) and the number of persons in attendance or affected will be reported. With this information, FMCSA will be able to report how many individuals have been educated on the new IEP rule.

All previous and future contact details should be entered in GOTHAM located on the FMCSA Portal. Personnel entering the contacts must have "GOTHAM Roster Data Entry" rights to access the data entry tool. Staff who does not currently have these rights should request them. Future contacts should be placed in the systems as contacts are completed. To access the Portal, you should follow these steps:

1. Go to the FMCSA Portal (https://portal.fmcsa.dot.gov).
2. Click on "A&I."
3. Under "FMCSA Tools," click on "GOTHAM Reports."
4. In the bottom left of the screen, click on "Data Input Forms."
5. Click on "Outreach Efforts."
6. Complete the data entry field.

Mexico-Domiciled Motor Carrier Manual

For

eFOTM Redevelopment

Federal Motor Carrier Safety Administration (FMCSA)
U.S. Department of Transportation

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7.0 Mexico-Domiciled Motor Carrier Manual

7.1 Procedures for Mexico-Domiciled Long-Haul Carriers

The procedures contained in this Manual currently address Mexico-domiciled long-haul carrier activities only, and only as the procedures differ from standard procedures found in current eFOTM manuals. The Manual does NOT seek to replace or repeat content in the eFOTM Safety Audit Manual, Compliance Review Manual, Inspection Manual, Enforcement Manual, or Managers Manual. Rather, the content refers the reader back to the relevant eFOTM manuals and their provisions when standard procedures are to be followed.

Safety Auditors and others should follow the procedures contained in this section and the documents/forms constructed for Mexico-domiciled long-haul carriers as noted throughout the manual unless directed to refer to the eFOTM.

7.1.1 Applicable Definitions

7.1.1.1 Operating Authority

Mexico-domiciled motor carriers seeking long-haul operating authority first obtain "**provisional motor carrier operating authority**." That provisional operating authority lasts a minimum of 18 months. Toward the end of that 18-month period (preferably at the 16th month), the Mexico-domiciled motor carrier undergoes a compliance review before receiving "**standard motor carrier operating authority**."

The compliance review must result in a SATISFACTORY rating. If the compliance review results in a CONDITIONAL or UNSATISFACTORY rating, FMCSA initiates a proceeding to revoke or suspend the Mexico-domiciled motor carrier's authority. The Mexico-domiciled motor carrier must satisfactorily complete a CAP that results in an upgrade to a SAT rating before obtaining standard operating authority.

Note that an applicant for Mexico-domiciled motor carrier long-haul authority may be either a Mexico-domiciled carrier with existing commercial zone authority or a newly formed carrier with no operational history.

7.1.1.2 Limitations on Operating Authority

Mexico-domiciled long-haul carriers have the following limitations specified in their authority certificates:

1. Domestic point-to-point transportation is prohibited;
2. Transportation of Hazardous Materials (HM) or contracting any transportation of HM requiring placarding beyond the U.S.-Mexico border commercial zones is prohibited;
3. Passengers carrying vehicles are prohibited;
4. Transportation of Household Goods (HHG) is prohibited unless granted specific authority to transport HHG;

See Special Compliance Activities if a Mexico-domiciled motor carrier with long-haul operating authority is found to be operating beyond the municipalities and commercial zones along the southern border in violation of any of the prohibitions.

The appropriate enforcement action should be considered when a motor carrier is discovered to be operating in the United States beyond the scope of its operating authority.

7.2 Mexico-Domiciled Long-Haul Carrier Vetting Procedures

7.2.0 Introduction

FMCSA conducts reviews of the Mexico-domiciled applicant carrier in advance of conducting the Pre-Authorization Safety Audits (PASAs). This is done to ensure that the Mexico-domiciled motor carriers applying for long-haul operating authority are neither a security nor a safety risk.

7.2.1 Mexico-Domiciled Long-Haul Safety and Security Vetting Conducted Prior to PASA

The motor carrier safety vetting will primarily be conducted by the Western Service Center (WSC) designee and Division Office following the procedures below. The WSC safety vetting will not conclude until the staff from the Office of Registration, Licensing and Insurance division (MC-RSI) completes the registration vetting through the Utility for Risk Based Screening and Assessment (URSA)[1] tool and the Commercial Enforcement and Investigations Division (MC-ECC) has completed the security vetting processes. Staff from MC-RSI will notify the WSC designee of the application availability in Electronic Document Management System (EDMS).

The Office of Enforcement and Compliance, Commercial Enforcement and Investigations Division (MC-ECC) conducts the security vetting. MC-ECC works with the Department of Homeland Security, Customs and Border Patrol (CBP) to identify any security risks with the applicant motor carriers. CBP may recommend that a motor carrier not be permitted to receive long-haul operating authority for the following reasons:

- Conviction of any criminal offense or pending criminal charges or outstanding warrants;
- Violation of any customs, immigration or agriculture regulations or laws;
- The carrier or driver is the subject of an ongoing investigation by any Federal, State or local law enforcement agency;
- The motor carrier or driver is inadmissible to the United States under immigration regulations, including applicants with approved waivers of inadmissibility or parole documentation;
- The DHS is not satisfied concerning the motor carrier's or driver's low-risk status;
- The DHS cannot determine an applicant's criminal, residence or employment history; or
- The motor carrier or driver is subject to National Security Entry Exit Registration System or other special registration programs.

7.2.2 Mexico-Domiciled Long-Haul Carrier Security Vetting Procedures

MC-ECC initiates the security review once MC-RSI has a completed application. The Western Service Center (WSC) designee and Division Office conduct the safety vetting. These processes can occur concurrently.

- MC-RSI notifies MC-ECC of the availability of a completed OP-1(MX) application posted to and available in EDMS.
    - MC-RSI notifies via email, with the email including the motor carrier name and U.S. Department of Transportation number to ensure MC-ECC can locate the applicant motor carrier's record in EDMS.
- MC-ECC requests information about the applicant motor carrier from CBP and queries available information systems for any further relevant information on the applicant.
- Upon receipt of the query results from CBP, MC-ECC advises the Western Service Center (WSC) by email, copying the North American Borders Division (MC-ESB) on the communication.
    - MC-ECC adds a copy of the response from CBP to the motor carrier's file in EDMS.
- If the applicant is NOT a Customs-Trade Partnership Against Terrorism participant, MC-ECC will electronically query CBP's Treasury Enforcement Communications System (TECS).

[1] FMCSA conducts registration vetting through URSA for applications from all motor carriers that operate within the United States. URSA is a tool used to identify possible reincarnated motor carriers.

- If there is a history in TECS of violations or criminal activity reported by carrier name, carrier number, or carrier address that meets CBP's standards for prohibition, MC-RSW dismisses the motor carrier's application for long-haul operating authority.
- If there is no record on file with CBP or TECS, the carrier security vetting is considered complete and the WSC may start safety vetting.

- For each applicant motor carrier that passes the security vetting, MC-ECC will initiate the safety assessment process to determine the viability for the assigned FMCSA staff to perform the PASA at the motor carrier's principal place of business in Mexico.

MC-ECC completes the security vetting and notifies the Western Service Center of the application availability in the Electronic Document Management System (EDMS).

7.2.3 Safety Vetting of Mexico-Domiciled Long-Haul Carrier Applicant

The WSC designee reviews the following information concerning the applicant motor carrier:

1) The OP-1(MX) application and FMCSA systems to verify the status of the motor carrier's U.S. Department of Transportation (US DOT) number and Motor Carrier Docket Number (operating authority), if applicable.

2) The Motor Carrier Management Information System (MCMIS) and Licensing and Insurance (L&I) systems to identify previous or pending problems or issues with the motor carrier.

3) The information and certifications provided in the application to verify that the information is accurate and matches the motor carrier's current MCMIS record or current operating authority, including any previous certificate of registration, for motor carriers holding a US DOT number and/or OP-2 operating authority.

4) The applicant's Safety Measurement System (SMS) Behavior Analysis Safety Improvement Categories (BASICs) to determine if the motor carrier is classified as high-risk. To determine high-risk:
   a) Log on to Compliance, Safety, Accountability Outreach through the Portal which brings you to the Activity Center for Enforcement (ACE);
   b) Enter the carrier's US DOT number;
   c) Scroll down to the "Assignments/Alerts" section of the Carrier Registration tab to determine if the carrier is on the "High-Risk" prioritization list.

5) The applicant's SMS BASICs to determine its safety performance relative to other motor carriers with similar levels of exposure or inspection activity. A comprehensive compliance review (CR) should be initiated per the electronic Field Operations Training Manual (eFOTM) if the motor carrier:
   a) Is involved in a significant crash;
   b) Is the subject of a non-frivolous complaint;
   c) Is involved in a Hazardous Material (HM) incident; or
   d) Meets the High-Risk definition.

   If a CR is warranted, the Safety Investigator should:

   a) Perform the investigation simultaneously with the PASA;
   b) Conduct the safety audit and investigation on-site at the motor carrier's principal place of business (PPOB) or off-site; and

c) Follow the sampling criteria for drivers and vehicles as required in the eFOTM Compliance Manual.

6) Results from any previous safety audit, CR or investigation, including the applicant's safety rating, if one exists. If rated, the applicant must have a satisfactory safety rating to be considered for long-haul operating authority. If the applicant has a conditional or unsatisfactory safety rating, staff from MC-RSI should reject the application and notify the applicant of the following:
   a) Its application was rejected due to the applicant currently having a US DOT issued conditional or unsatisfactory safety rating, and
   b) Its application fee will not be refunded.

7) The applicant's record in MCMIS, the Enforcement Management Information System (EMIS), and EDMS systems to identify any pending, open, or adjudicated enforcement actions involving the applicant, including Unsatisfactory = Unfit, Imminent Hazard, Notice of Claim, or Notice of Violation actions that are either pending, open, settled or closed during the prior six years.

8) Any applicable URSA vetting issues or changes in the applicant's status discovered after MC-RSI completes the registration vetting process.

If during the document reviews outlined above, any statutory or regulatory violations are discovered, the WSC designee should follow the guidance below:

Vetting Issue	Process
Operating beyond the scope of the Carrier's OP-2 Authority, if applicable.	If the violation occurred after the OP-1(MX) application was submitted, recommend dismissal of the application to the MC-ESB Division Chief. If the violation occurred before the OP-1(MX) application was submitted, consider enforcement action consistent with eFOTM guidance.
Unpaid delinquent penalties or enforcement activity	If the motor carrier is not out-of-service (OOS) for failure to pay FMCSA penalties, forward the applicant's information to the appropriate Division Office to proceed with the PASA. If the motor carrier passes the PASA, consult with the WSC enforcement team to ensure that the applicant has resolved the unpaid penalty before operating authority is issued.
URSA vetting issue discovered or changes in the applicant's status discovered after MC-RSI completes the registration vetting process.	The WSC designee should contact MC-ESB Division Chief and the MC-RSI Division Chief to discuss newly discovered URSA vetting issue or change in applicant's status. Rejection of application should be discussed and a determination on whether to reject the application or allow the applicant to respond to newly identified issue(s) should be documented.

7.2.3.1 Results of Safety Vetting of Mexico-Domiciled Long-Haul Carrier Applicant

The WSC designee makes a recommendation to the WSC management on whether a PASA, and a CR or other investigation if appropriate, should be scheduled, or the application be rejected after reviewing and

documenting the information collected through the processes listed in items 1 through 8 on Attachment 1 (Safety Vetting Verification).

The recommendation should be sent to the WSC Service Center Director and the appropriate Division Office, with a courtesy copy to the MC-ESB Division Chief. The WSC designee will upload the Attachment 1 into EDMS.

Upon approval of a PASA, and a CR or other investigation if appropriate, the WSC will forward the applicant's information to the appropriate Division Office for assignment.

Safety Auditors should follow the PASA procedures contained in this memorandum and its attachments unless directed to refer to the eFOTM.

Safety Auditors should follow the PASA procedures contained in this section and the documents/forms in the Appendix unless directed to refer to the eFOTM.

7.3 Safety Audit on Mexico-Domiciled Long-Haul Applicant: The Pre-Authorization Safety Audit

7.3.1 Introduction

OP-1(MX) applicants for long-haul authority that pass the safety vetting must undergo a PASA, even if the carrier previously had a New Entrant Safety Audit, CR or other investigation.

The PASA is required and must be a timely review of the motor carrier's compliance with the Federal Motor Carrier Safety Regulations (FMCSRs), and is conducted through an extensive review of the motor carrier's records, interviews with motor carrier officials, and inspection of the motor carrier's commercial motor vehicles (CMVs).

7.3.2 PASA Process – Initial Procedures/Contact and Scheduling

PASA Assignment/Location

The location of the PASA depends on two distinct factors: (1) the safety and security of the FMCSA personnel, and (2) the congressional requirement that 50 percent of PASAs be conducted onsite at the carrier's place of business in Mexico. The safety and security of FMCSA personnel will always be the overriding and determining factor in determining the PASA location. The WSC designee should email MC-ECC to request a security review of the OP-1(MX) applicant and the proposed PASA location in Mexico. If travel to the OP-1(MX) applicant's principal place of business (PPOB) in Mexico is deemed safe, the WSC designee should discuss the PASA location with the Division Administrator and WSC management in order to meet the statutory requirement to complete 50 percent of the PASAs in Mexico for motor carriers with four or more CMVs.

If MC-ECC advised that the State Department recommends against travel to the area, upload documentation of the safety advisement to the motor carrier's file in EDMS and reference the advisory as a basis for conducting the PASA at a location in the United States. The WSC designee will make the final decision on the location of the PASA after consulting with MC-ECC and WSC management. The

WSC designee will keep a spreadsheet listing the PASA and investigations conducted in Mexico and in the United States, including whether the carrier operates three or fewer CMVs.[2] [i]

Scheduling the PASA and Contact with the Motor Carrier

The assigned Safety Auditor will become familiar with the motor carrier's operations and any potential safety or compliance problems through review of a current MCMIS company safety profile, the information in the Safety Vetting Verification form, the applicant's enforcement history (if any) and the identity of any red-flag drivers.

The Safety Auditor contacts the motor carrier via telephone, if possible, and should ask to speak with the company's owner or highest ranking official, identifying him or herself by position title and agency, and explaining the PASA purpose and process. The Safety Auditor should document all contact efforts on Attachment 2 (PASA Contact and Scheduling Documentation form) of this policy. The Safety Auditor should work with the motor carrier to establish the date, time, and location of the PASA. Advise the company official that he/she should be present during the PASA to ensure that FMCSA obtains accurate information, and if the motor carrier owner or highest ranking official is not able to be present, the official must provide FMCSA with a written designation of an alternate company representative, who is familiar with the motor carrier's day-to-day operations.

If unable to make initial contact with the motor carrier by telephone, the Safety Auditor may contact the carrier via regular mail, email, or facsimile communication. All correspondence must be addressed to the company's owner and/or highest ranking official listed by the motor carrier on its OP-1(MX) application. Correspondence to the motor carrier must be sent to both the motor carrier and its process agent (if one has already been designated) in the United States. If unable to contact the motor carrier after three attempts by any of the above-listed means, the Safety Auditor should advise his/her supervisor. The supervisor will coordinate with the WSC for additional assistance on contacting the motor carrier. The Safety Auditor must document the contact attempts on Attachment 2 and upload it into EDMS. Copies of written correspondence, including printouts of email or facsimiles (including the facsimile log/transmission report) should also be uploaded to the EDMS motor carrier record.

When advising the motor carrier of the PASA process, the Safety Auditor must inform the carrier that the process includes, but is not limited to, verification of the following:

a) a controlled substance and alcohol testing program has been or will be implemented in accordance with 49 CFR Parts 40 and 382;
b) the requirement for the driver(s) intended to be used in the United States to comply with the hours of service (HOS) requirements of 49 CFR Part 395, including record keeping and retention of records;
c) the motor carrier's ability to obtain financial responsibility as required by 49 CFR Part 387, including the ability to obtain insurance in the United States;
d) the implementation of the motor carrier's safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections on CMVs it intends to use in the United States, as required by 49 CFR Part 396; and
e) Each driver's qualifications, including confirmation of the validity of the Licencia Federal de Conductor (LF) of each driver, as required by 49 CFR Parts 383 and 391 respectively.

[2] Section 350 of the DOT and Related Agencies Appropriations Act, 2002, provides that Mexican motor carriers with three or fewer commercial vehicles need not undergo on-site safety examination; however, 50 percent of all safety examinations of all Mexican motor carriers shall be conducted on-site and such on-site inspections shall cover at least 50 percent of all truck traffic in any year.

In addition, the Safety Auditor must advise the motor carrier that it will request, review and may make copies of documentation during the PASA process. Pursuant to the regulations in 49 CFR Part 365, Appendix A, Subpart I(b), all records and documents must be made available for examination within 48 hours (excluding Saturday, Sunday and Federal holidays) of a request by the Safety Auditor. Therefore, the Safety Auditor must ensure that the motor carrier is clearly advised of all the documents needed for review during the PASA, allowing for the requisite 48 hours.

The Safety Auditor should advise the motor carrier that all CMVs weighing 10,001 or more pounds Gross Vehicle Weight Rating (GVWR) operated in the United States, including those that will be used solely within the commercial zone, must have a current Commercial Vehicle Safety Alliance (CVSA) safety decal while operating under provisional authority and for three years after receiving standard operating authority.

The Safety Auditor should inform the motor carrier to be prepared to discuss and explain high SMS scores, previous enforcement actions, insurance lapses, suspected affiliated/reincarnation, and/or suspected operating authority violations, and any corrective actions the motor carrier has taken.

The assigned Safety Auditor is responsible for ensuring that the PASA documentation in EDMS is current and up-to-date. EDMS documentation should include, but is not limited to; the OP-1(MX) application, completed Attachments 1 and 2, including documents supporting the information listed in those forms, such as MCMIS reports and carrier letters or emails.

Motor carriers operating vehicles weighing 10,000 pounds or less GVWR - FMCSA is accepting authority applications from motor carriers operating vehicles that do not meet the definition commercial motor vehicle in 49 CFR Part 390. The PASA will be limited to a review of 49 CFR Part 387 to verify compliance with the applicable financial responsibility requirements.

The Safety Auditor should advise the motor carrier of the applicable FMCSRs and compliance requirements if it begins operating CMVs weighing 10,001 pounds or more GVWR. The Safety Auditor should document notifying the motor carrier of this advisement on Attachment 3 (Advisement on the Operation of Vehicles that do not meet the definition of a Commercial Motor Vehicle and Obligation to Comply with Additional Regulations if the Motor Carrier Operations to Include Operations of CMVs) of the PASA, including the name of the motor carrier official(s) who received the advisement.

The Safety Auditor should educate the motor carrier on the broader requirements of the FMCSRs that are **not currently applicable** to its operations:

- Part 382 - Controlled Substance and Alcohol testing,
- Part 390 - Federal Motor Carrier Safety Regulations; General
- Part 391 - Driver Qualifications and Longer Combination Vehicle Driver Instructors,
- Part 392 - Driving of Commercial Motor Vehicles
- Part 395 - Hours of Service and
- Part 396 - Inspection, Repair and Maintenance
- Part 172 - Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information and Training Requirements
- Part 177 - Carriage by Highway

After the Safety Auditor reviews the advisement, Safety Auditors should request that the motor carrier sign the Attachment 3 acknowledging the review. The motor carrier official is not required to sign Attachment 3; however, the Safety Auditor must note in Part C that the advisement was reviewed with the motor carrier official, and identify the official(s) present during the review of the advisement. The Safety Auditor should also note on the advisement if the motor carrier official refused to sign. The Safety Auditor should make a copy of the advisement (signed or unsigned) and provide a copy to the motor carrier official and upload the copy to EDMS.

Obtaining the Company Safety Profile

The Safety Auditor must download a company safety profile from MCMIS no sooner than 7 days before the PASA to ensure that the Safety Auditor has the most recent information available. When conducting the PASA, the Safety Auditor will use the information in the company safety profile for the interviews and inspections during the PASA.

Special Procedures for Failing to Keep a PASA Appointment

If a motor carrier fails to keep a confirmed appointment, the motor carrier may be allowed to reschedule if the motor carrier contacts FMCSA within one week of the missed appointment. . If the PASA is rescheduled at a later date, the Safety Auditor should ensure that the company safety profile is still less than 7 days old at the time of the PASA.

If a carrier fails to keep an appointment, and several attempts have been made to conduct the PASA, the situation should be considered a refusal to permit a PASA to be performed on the OP-1(MX) applicant's operations. It is required that documentation be maintained on Attachment 2 for all contact attempts. The documentation will be used if refusal becomes an issue. During the final contact attempt(s), the Safety Auditor should communicate, if possible, by voice mail, email or fax, that this is FMCSA's final contact attempt and that the motor carrier must notify FMCSA within 5 business days or its application will be dismissed.

Conducting the PASA Using CAPRI

The PASA process results in either a Pass or Fail outcome.

To pass, the PASA must verify that the motor carrier has satisfied each of the five mandatory elements described in 49 CFR Part 365, Appendix A, Section I (d) and that the motor has adequate basic safety management controls.

The Safety Auditor confirms compliance with the five mandatory elements and determines whether basic safety management controls exist through the following process:

1. The verification procedures for each mandatory element outlined below; and
2. Answering the PASA Part B questions in accordance with the guidance in the PASA-CAPRI Question and Answer Guidance (Attachment 4).

Attachment 4 will assist Safety Auditors when answering the CAPRI questions based on the following two types of motor carrier operations:

1. Commercial Zone Motor Carriers Applying for Long-Haul Authority; and
2. New Applicants for Long-Haul Authority – Not Operating Yet

The Safety Auditor completes the PASA by reviewing the motor carrier's performance data and regulatory compliance, and recording the results using the CAPRI software based on whether the applicant motor carrier is currently operating in the commercial zones or the motor carrier is a new applicant and does not yet operate in the United States. Through this process, the Safety Auditor will

evaluate the motor carrier's safety management controls and any available written safety oversight policies and practices, as required by 49 CFR Part 365, Appendix A.

7.3.3 PASA Process – Completing Part A of the Audit

The Safety Auditor should complete Part A following the guidance below:

Mileage - Hyperlink to Mileage section of Compliance Manual

Gross Revenue - Hyperlink to Gross Revenue section of Compliance Manual

Equipment – Hyperlink to Equipment section of Compliance Manual

Drivers – Hyperlink to Driver section of Compliance Manual

Accidents – Hyperlink to Computation of the Motor Carrier's Interstate/Intrastate Recordable Accident Rate section of Compliance Manual

Vehicle Inspections – Follow the eFOTM Safety Audit Manual's "*Completing Part A of the Audit*" guidance when entering the number of vehicles inspected and the number of vehicles placed out-of-service (OOS) while operated by the motor carrier during the previous 12 months, to calculate the motor carrier's OOS rate. The Safety Auditor should be aware that additional vehicle inspections may be required to verify PASA Element IV – Vehicle Inspection, Maintenance and Repair (see Element IV, Vehicle Inspection, Repair and Maintenance, of this policy).

For motor carriers that are not yet operating in the United States, the Safety Auditor must ensure that inspections of available CMVs to be used in the United States for long-haul operations are performed in order to calculate the OOS rate. For motor carriers currently operating in the United States, if the motor carrier does not have the minimum sample of 3 vehicles for inspections on its company profile, the Safety Auditor is required to ensure Level V inspections are conducted in order to calculate the OOS rate.

Household Goods (HHG) motor carriers - The Safety Auditor should follow the guidance in the policy titled, "Implementation of Consumer Protection Standards Review (MC-ECC-2016-001)" dated June 16, 2016, when conducting a PASA using CAPRI for an applicant that is currently authorized to transport HHG within the U.S.-Mexico border commercial zones. If the applicant has not yet begun operations in the United States, all of the HHG questions in Part B of CAPRI should be marked "N/A".

If a Consumer Protection Standards Review (CPSR) follow-up investigation is warranted based on the answers to the applicable PASA questions (and similar CPSR questions), the Safety Auditor should contact their supervisor who in turn should notify the WSC designee. The WSC designee will coordinate with the WSC Field Administrator and Service Center to ensure a CPSR is conducted by a HHG Specialist in accordance with the eFOTM Commercial Enforcement and Household Goods Manual.

The Safety Auditor should verify that the motor carrier has the ability to comply with the requirement of publishing tariffs to include rates, rules, regulations, classifications or other provisions related to the motor carrier's transportation services by following the guidance in the eFOTM HHG/Commercial Enforcement Manual. The Safety Auditor should also advise the motor carrier that it should utilize a weigh scale if the motor carrier's intent is to offer non-binding estimates. And finally, the Safety Auditor should advise the motor carrier to seek insurance that will offer loss/damaged shipment coverage while operating in the United States.

Hazardous Materials (HM) motor carriers - The Safety Auditor should follow the Safety Audit Procedures for Hazardous Materials Carriers within the eFOTM Safety Audit Manual when conducting a PASA for an applicant that is currently transporting HM within the U.S.-Mexico border commercial zones or seeking to transport non-placardable amounts of HM beyond the U.S.-Mexico border commercial zones.

The Safety Auditor must advise the motor carrier that transportation of HM in amounts that require placards or contracting to perform any **transportation of HM in amounts requiring placards beyond the U.S.-Mexico border commercial zones is strictly prohibited and would be considered a violation of the carrier's operating authority registration**.

7.3.4 PASA Process – Verification of the Five Mandatory Elements and Completing Part B in CAPRI

7.3.4.0 Introduction

The Safety Auditor must confirm the five mandatory elements and determine that basic safety management controls are in place by:

1. Following the verification procedures for each element outlined below; and
2. Answering the PASA Part B questions following the guidance in Attachment 4 and based on whether the applicant is or is not currently operating in the United States.

To ensure the five mandatory elements are met, the Safety Auditor will follow the CAPRI procedures, as outlined in the most current version of CAPRI, and the *eFOTM instructions* for conducting a PASA, **except** as outlined below or in Attachment 4. However, **disregard** CAPRI or eFOTM guidance concerning circumstances that require the Safety Auditor to stop the safety audit and conduct a CR. Instead, the Safety Auditor should continue the PASA and bring the issue to the attention of his/her supervisor.

7.3.4.1 PASA Process – Mandatory Element I – Controlled Substance and Alcohol Testing

Section 350 – Mandatory Element Question: *Does the motor carrier have a controlled substance and alcohol testing program consistent with 49 CFR Part 40?* Determine the answer to this question by filling out the CAPRI PASA questions, following the sampling guidance in Part 382 of the eFOTM Safety Audit Manual and using the following guidance.

The applicability of controlled substance and alcohol testing for motor carriers that operate or will operate in the United States is based on the CMV definition in 49 CFR Part 383.5.

If the motor carrier has not yet operated into the United States but will be using drivers who will be subject to controlled substance and alcohol testing, answer Driver Question #6, (*Has the carrier implemented an alcohol and/or controlled substances testing program?*), as Yes, after reviewing the six items listed below, and finding adequate proof of implementation.

1. Motor carrier's written policy containing the minimum requirements under sections 382.601(b)(1-11);
2. Name, address and telephone number of U.S. or Mexico-based consortium and collection facility, along with a written agreement or contract; and

3. Name, address and telephone number of U.S.-certified testing laboratory along with a written agreement or contract.[3]
4. With respect to the written agreements and contracts referenced above:
    a. With a consortium/third-party administrator (C/TPA) , the letter or contract should have an account number or other information identifying the motor carrier and should be verified by calling the C/TPA; or
    b. With a collection site, the letter or contract should be verified by calling the site.

For motor carriers that have operated in the United States, in addition to the items outlined above, the Safety Auditor should check all drivers who have been or will be operating CMVs in the United States (including commercial zone) and are subject to controlled substance and alcohol testing, to determine whether it is currently enrolled in the company's random controlled substance and alcohol testing program. If not, advise the motor carrier that it must enroll all drivers who have been or will be operating in the United States into the random testing program.

If the motor carrier provides written documentation demonstrating compliance (*e.g.*, a copy of a contract with a C/TPA, lab testing site, etc.) and this information cannot be confirmed due to the lack of an available communication system for contacting the subject facility (*i.e.*, no telephone, facsimile or computer availability/service), mark this element as pending on Attachment 5 (e PASA - Five Mandatory Element Verification checklist) and advise the motor carrier that it will be notified at a later date if any deficiencies are discovered.

7.3.4.2 PASA Process – Mandatory Element II - Hours-of-Service (HOS)

Section 350 – Mandatory Element Question: *Does the motor carrier have an adequate system of compliance with hours-of-service rules, including maintaining hours-of-service records?*

Determine the answer to this question by filling out the CAPRI PASA questions and following Part 395 of the eFOTM Safety Audit Manual and using the following guidance.

Inform the motor carrier, in advance, that it will need to provide information describing the motor carrier's system of compliance with HOS requirements. This includes recordkeeping and retention, and how the motor carrier will ensure its drivers comply with HOS requirements for hours on duty in both Mexico and the United States. This information may be provided to the Safety Auditor during an oral interview and/or by written documentation. The carrier must adequately describe the motor carrier's system (policy or procedures) for complying with the HOS requirements. A board where drivers sign in and out is not sufficient. In addition to the information describing the motor carrier's system, documentation establishing current or planned use of the following HOS tracking systems is acceptable:

1) Time card system used or to be used by the motor carrier (if applicable); or
2) Electronic logging device (ELD), automatic on-board recording device (AOBRD) or other advanced technology device with log tracking software used or to be used; or
3) Record of duty status (RODS) system used or to be used.

If a motor carrier is currently operating in the United States and uses drivers who:

- Meet the 100/150 Air-Mile Radius Exemption:

[3] See list of authorized laboratories on the dot.gov website under Business Services, then Drug and Alcohol, then Drug Testing Laboratory, then Current List of Certified Laboratories.

  - Each condition of the 100/150 air-mile radius exemption in § 395.1(e) must be satisfied in order for a driver to be exempt from preparing a RODS.

  Failure to satisfy any condition of the exemption results in the requirement for the driver to prepare a RODS.
- Prepare RODS:
  - Review 30 days of RODS per driver following the sampling criteria guidance in Part 395 section of the eFOTM Safety Audit Manual.

For a motor carrier without operations in the United States, the Safety Auditor must verify the motor carrier has at least one of the following source materials:

1) A copy of a log book or RODS for use by all drivers the motor carrier intends to use to operate CMVs in the United States;
2) A company policy or other information demonstrating adoption of this requirement; or
3) Training material provided to the drivers.

7.3.4.3 PASA Process – Mandatory Element III – Insurance

Section 350 – Mandatory Element Question: *Does the carrier have proof of insurance?*

Determine the answer to this question by filling out the CAPRI PASA questions and following the sampling criteria guidance in Part 387 of the eFOTM Safety Audit Manual and using the following guidance.

The Safety Auditor should advise motor carriers operating vehicles weighing 10,000 pounds or less GVWR that may or may not transport HM in amounts that do not require placards, of the requirement to obtain that insurance at required minimum State Levels of Public Liability for the States in which they are operating.

The Safety Auditor must verify that the motor carrier has the ability to obtain the required level of financial responsibility. A motor carrier that already has an adequate level of term insurance, along with an MCS-90 "Endorsement(s) for Motor Carrier policies of Insurance for public liability under Sections 29 and 30 of the Motor Carrier Act of 1980," an insurance identification card, binder, or policy is acceptable.

Acceptable proof of adequate financial responsibility must be on file with FMCSA[4] after the motor carrier satisfactorily completes the entire PASA and a notice of the motor carrier's application for provisional authority is posted in the FMCSA Register. The Safety Auditor should mark this element as pending on the PASA - Five Mandatory Element Verification checklist (Attachment 5) until it can be verified. If approved for operating authority registration, the motor carrier's insurance company must file Form BMC-91 or BMC-91X and BOC-3 with a blanket company for process agents before the motor carrier begins operating in the United States.

[4] The insurance filing will be required after the motor carrier satisfactorily completes the entire PASA and a notice of the motor carrier's application for provisional authority is posted in the FMCSA Register. Staff from the Office of Registration, Licensing and Insurance division (MC-RSI) in headquarters will verify the appropriate insurance filing is submitted and accepted before the motor carrier will be granted provisional operating authority registration.

For motor carriers currently operating within the commercial zones, verify the applicant motor carrier has complied with the requirements of 49 CFR § 387.303(b)(4) when reviewing the motor carrier's operations in the United States. Further verify that the motor carrier had adequate levels of financial responsibility in effect, and proof of such financial responsibility at the time of transportation.

If the motor carrier has trips in the United States within the past 12 months and does not have evidence available of annual or trip insurance information and MCS-90 endorsement, this should be cited as a violation when answering the questions in Part B (Part 387 – Question 2 – (*Does the carrier have required evidence of financial responsibility?)* and noted as an issue in Part C of the PASA.

7.3.4.4 PASA Process – Mandatory Element IV - Vehicle Inspection, Maintenance, and Repair

Section 350 – Mandatory Element Question: *Does the carrier have adequate vehicle safety inspection, maintenance, and repair facilities or management systems, and does it have records of periodic vehicle inspections*? Determine the answer to this question by filling out the CAPRI PASA questions and the following the sampling criteria guidance in Part 396 of the eFOTM Safety Audit Manual where indicated and using the following guidance:

Remind the motor carrier that all vehicles operating in the United States, including those that will be used solely within the commercial zone, must have a current CVSA safety decal while operating under provisional operating authority registration and for three years after receiving standard operating authority registration. Safety Auditors should keep in mind that motor carriers operating vehicles weighing 10,000 pounds or less GVWR are not subject to the requirement to display a CVSA safety decal.

Verification of this element, during the PASA, must include an inspection of available CMVs to be used in the United States for long-haul operations that do not have current CVSA safety decals. Coordination with Border Inspector Supervisor may be necessary to complete inspections of available CMVs. The motor carrier must establish which of its vehicles the motor carrier will use in the United States for long-haul operations. Include vehicle information by Vehicle Identification Number (VIN) number, plate number, and make and model. The vehicle information provided by the motor carrier must be uploaded into EDMS.

If the motor carrier does not have the minimum sample of 3 vehicles for inspections on its company safety profile, the Safety Auditor is required to ensure Level V inspections are conducted on all available CMVs weighing 10,001 pounds or more GVWR that do not have a current CVSA safety decal and that the motor carrier intends to use in the United States for long-haul operations. The inspection report should note the vehicle type, make, year, and license plate number, state that issued the license plate, VIN and whether or not the vehicle displays a current CVSA safety decal. The vehicle information, in conjunction with the CAPRI information, should be used to evaluate the motor carrier's CMV safety inspection and maintenance management systems, including verification of vehicle periodic inspection (PI) records and calculating its OOS rate.

Review at least one of the following documents for each CMV to be used in the United States in long-haul operations in accordance with the eFOTM:

1) A copy of the report for a periodic annual inspection performed in accordance with 49 CFR § 396.17 by a qualified mechanic as defined by 49 CFR § 396.19;
2) A sticker or decal that meets the requirements of 49 CFR § 396.17(c)(2)(i-iv); or
3) A Norma Oficial Mexicana (NOM)-068 inspection sticker/decal and a copy of the PI report performed by a Mexico's Secretaria de Communicaciones y Transporte (SCT) inspection facility.

All vehicle inspections must be conducted using the ASPEN inspection software. The vehicle inspection report must include:

1) The proper level of inspection (must be Level V if conducted at motor carrier's PPOB or Level I if conducted at a Port of Entry) and designation of "PASA Inspection" in the Special Check field on the Start tab; and
2) The "Existing CVSA Decal Status" and "CVSA Decal Issued" information must be recorded. If the power unit displays a current or expired CVSA decal, designate whether it is current, expired or removed and record the CVSA decal number in the "Existing CVSA Number" field.

If the motor carrier currently operates in the commercial zones, verify that the motor carrier is using the "Z" suffix after the USDOT number. Further, the Safety Auditor should explain that if the commercial zone motor carrier is granted provisional long-haul operating authority registration, the markings must be changed to remove the "Z" suffix and reflect the "**X" suffix on all its vehicles operating in the United States**, including those the carrier intends to use only within the commercial zone.

If an OOS violation is observed during the vehicle inspections, advise the applicant that the vehicle may not be operated in the United States until the necessary repairs are made and the vehicle safety defects are successfully repaired to qualify for a CVSA safety decal.

A copy of the signed inspection report must be provided to the applicant motor carrier. Upload the PASA vehicle inspections conducted **into EDMS, but not into SAFER**.

Use the sampling criteria guidance in Part 396 of the eFOTM Safety Audit Manual to answer the following questions:

a) **CAPRI Maintenance Question #1**- *Can the carrier produce maintenance files for requested vehicle(s)?*
b) **CAPRI Maintenance Question # 3** - *Does the motor carrier require driver(s) to complete Driver Vehicle Inspection Reports (DVIR)?* When reviewing DVIRs, please remember that no DVIR is required for days where the driver discovered no defect.

7.3.4.5 PASA Process – Mandatory Element V - Drivers' Qualifications

Section 350 – Mandatory Element Question: *Does the carrier use qualified drivers and can FMCSA verify the validity of the LF of each driver that the carrier uses or intends to use in the United States?*

Determine the answer to this question by filling out the CAPRI PASA questions and using the following guidance:

Verify the qualification (including a valid LF) for each driver the motor carrier has used or will use in the United States. The motor carrier must establish which of its drivers the motor carrier has used or intends to use in the United States (whether long-haul or in the commercial zone). The written document must include the driver's full name, date of birth, driver license number(s), and state or jurisdiction of license issuance. Upload the driver information into EDMS.

The Safety Auditor must disregard the sampling criteria guidance in Parts 383 and 391 of the eFOTM Safety Audit Manual.

For each driver, the motor carrier has used or intends to use in the United States, the Safety Auditor should review Commercial Driver's License Information System (CDLIS) record for each driver to determine if the driver has offenses that would disqualify him/her from operating in the United States for the period of time defined in the 49 CFR Part 383.51 disqualification tables.

CAPRI Driver Question # 4 – *Is the carrier using any disqualified drivers?* If the carrier **is using** LF drivers in the United States and one or more of those drivers has a disqualifying offense on his/her record that would preclude him/her from operating a CMV in the United States (see 49 CFR § 383.51), answer the question with a "yes." If the carrier **plans to use** an LF driver in the United States who has an offense on his/her record that would disqualify him/her from driving a CMV in the United States, answer the question "no" but advise the carrier that it may not use that driver in the United States, while that disqualifying offense is on his/her record.

CAPRI Driver Question # 5 – *Does the carrier maintain driver and employment history inquiry data in the Driver Qualification (DQ) file?* The Safety Auditor should determine whether the motor carrier has obtained driving records from Mexico's SCT (and the Mexico State of licensure, if applicable). Any available results should be reviewed. If the motor carrier is unable to obtain driving records for its drivers, the Safety Auditor should answer the question with a "No," and note this in Part C. Be aware that for LF drivers, a copy of the LF in the driver qualification file is proof of a medical examiner's certification. Medical examination reports from SCT are not required.

If the motor carrier uses or intends to use a driver in the United States who has repeatedly been cited with violations of 49 CFR § 391.11(b)(2), (*e.g.*, Lack of English Proficiency), the Safety Auditor should advise the motor carrier of the necessary level of English Language Proficiency, as outlined in 391.11(b)(2), required for driving a CMV in the United States.

For motor carriers with existing operations that employ a driver as a multiple-employer driver (as defined by 49 CFR 390.5), the applicant may be permitted to use the multiple-employer driver exemption under 49 CFR 391.63. This should be documented with a signed statement from the motor carrier.

For motor carriers who use or plan to use drivers who operate in the United States with a Mexican state license rather than an LF or CDL,[5] request the motor carrier identify: (1) drivers who will be operating vehicles between 10,001 and 26,000 pounds GVWR; and (2) drivers who will be operating vehicles 26,001 pounds or more GVWR. Further advise the motor carrier that driver's operating vehicles over 26,000 pounds GVWR must possess an LF.

Safety Auditors must be knowledgeable of the exceptions for possessing an LF based policy titled: *Licencia de Federal de Conductor Enforcement Policy dated June 9, 2008* and the following items:

- GVWR of the CMVs operated,
- Private or For- Hire operations;
- Corporation or Sole-Proprietor ownership,
- Cargo capacity and
- Seating capacity of the CMV.

Ensure that the motor carrier driver files are maintained in accordance with 49 CFR § 391.51 with special attention given to the following items:

[5] See Mexican Licencia Federal Enforcement Policy dated June 9, 2008, plus Mexican for guidance. The June 9, 2008 Licencia Federal de Conductor Enforcement Policy sets forth guidance on the requirements and exemption verification process for drivers of CMVs with a GVWR less than 26,001 pounds but having a cargo capacity greater than 8,000 pounds or passenger vehicles with a seating capacity of nine or more passengers, excluding the driver.

1) The minimum 21 years old age requirement; and
2) Medical Examiner's Certificate. For LF drivers, a copy of a current LF in the driver qualification file is proof of a medical examiner's certification. Separate medical examination reports from SCT are not required. However, motor carriers using drivers with a Mexican state-granted license in the United States are required to have a Medical Examiner's Certificate from a qualified physician for those drivers.

If unable to verify the drivers' licenses at the time of the PASA due to communications errors or systems unavailability, the Safety Auditor should mark this element as pending on the PASA - Five Mandatory Element Verification checklist (Attachment 5) until it can be verified. The Safety Auditor should advise the motor carrier that it will be notified at a later date if any deficiencies are noted.

The Safety Auditor should examine the company safety profile to determine whether drivers that the motor carrier uses or intends to use in the United States have prior Part 392 violations. If such safety-related violations exist for these drivers, thoroughly review Part 392 procedures with the motor carrier, paying special attention to the safety violation(s) discovered. Ensure the motor carrier understands the importance of compliance with this part.

Discovery of violations of 49 CFR § 392.9a(a): If one or more violations of 49 CFR 392.9a(a) are discovered during review of the motor carrier's records, the Safety Auditor must document the evidence establishing the violation(s) and notify his/her supervisor and the WSC designee.

7.3.4.6 PASA Process – Advisement of Obligation to Comply with Statutes, Regulations and Requirements to operate in the United States

The Safety Auditor must review with the motor carrier the Advisement of Obligation to Comply with Statutes, Regulations and Requirements to operate in the United States (Attachment 6). This document provides additional notice to the motor carrier of its continuing and ongoing duty and responsibility to comply with applicable statutes and regulations including the FMCSRs, and particularly the following:

- Domestic Point-to-Point transportation is prohibited;
- Transportation of Hazardous Materials requiring placarding beyond the U.S.-Mexico border commercial zone is prohibited;
- Passenger carrying vehicles are prohibited;
- Transportation of HHG is prohibited unless granted specific authority to transport HHG;
- All vehicles must be marked with the US DOT number followed by an "X";
- If granted provisional operating authority, the motor carrier will be subject to an investigation on its entire U.S. operations within 18 months of being granted provisional operating authority;
- If granted provisional operating authority, all power units operating in the United States must display a current CVSA inspection decal at all times;
- FMCSA will provide reciprocal recognition of restrictions for certain Mexican motor carrier operations seeking provisional operating authority for operations in the United States, i.e.:
    - Package and/or courier services.
- Further, the motor carrier is advised that it is responsible for determining the applicable Federal, State, local and tribal statutes and regulations for each jurisdiction in which it operates or intends to operate and complying with them.

The Safety Auditor should inform the motor carrier that violating any of the long-haul authority restrictions outlined in the first four bullets above (e.g. Domestic Point-to-Point, Transportation of HM requiring placarding, Passenger carrying vehicles and Transportation of HHG) may result in the motor

carrier being subject to enforcement action, including suspension or revocation of its authority to operate in the United States.

After the Safety Auditor reviews these advisements and consequences for operating in violation of the noted prohibitions with the motor carrier official, Safety Auditors should request that the motor carrier sign the Attachment 6 acknowledging the review. The motor carrier official is not required to sign Attachment 6; however, the Safety Auditor must note in Part C that the advisement was reviewed with the motor carrier official, and identify the official(s) present during the review of the advisement. The Safety Auditor should also note on the advisement if the motor carrier official refused to sign. The Safety Auditor should make a copy of the advisement (signed or unsigned) and provide a copy to the motor carrier official and upload the copy to EDMS.

7.3.4.7 PASA Process – Protest of Application for Granting Provisional Operating Authority

The Safety Auditor should provide the motor carrier with a copy of Attachment 7 (Protested Application Process Flowchart) and explain the post-PASA process to the motor carrier. Attachment 7 briefly illustrates the process followed if a protest is received to an OP-1(MX) application. Specifically, that upon successfully completion of the PASA, FMCSA will publish a summary of its application in the FMCSA Register providing public notice as required in 49 CFR § 365.109(b). Interested persons have 10 days from the date of FMCSA Register publication to file a protest opposing the application. If any protests are filed, the motor carrier may file a reply statement within 20 days from the date of publication of the preliminary grant of authority. The Safety Auditor must document in Part C that the motor carrier was provided a copy of Attachment 7, and that the Protest Application Process Flowchart was discussed with the motor carrier.

7.3.4.8 PASA Process – Program Description and Contact Information for International Registration Plan (IRP) and International Fuel Tax Association (IFTA) Registration Requirements, Heavy Vehicle Use Tax and Unified Carrier Registration System

The Safety Auditor should provide a copy of Attachment 8 (Program Description and Contact Information for IRP/IFTA Registration Requirements, Heavy Vehicle Use Tax and Unified Carrier Registration System) and review it with the motor carrier. Safety Auditors should advise the applicant that as a motor carrier operating in the United States, it may be required to comply with IRP/IFTA registration requirements. Advise that the states of California, Arizona, New Mexico, and Texas have agreed to be host states for Mexico-domiciled motor carriers operating in the United States seeking to register for the IRP/IFTA programs. Contact information for the IRP/IFTA agencies within the four southern Border States is outlined in Attachment 8. Safety Auditors should document in Part C that the information for IRP/IFTA was provided to and discussed with the motor carrier.

7.3.4.9 PASA Process – Reciprocal Recognition of Restrictions for Certain Mexican Motor Carrier Operations Seeking Provisional Operating Authority to operate beyond the Border Commercial Zones

Advise the motor carrier that FMCSA will reciprocally recognize the restrictions issued by the Government of Mexico on certain motor carrier transportation services seeking operating authority to operate beyond the border commercial zones. Mexico's rules include certain operations as being unable to obtain authority to operate into Mexico because they are not classified as freight operations in Mexico and receive separate authority from motor carriers of freight. These operations include packaging and courier services. Mexico is allowing U.S. carriers of freight to operate into Mexico. While the United States does not distinguish between these types of freight operations, in order to comply with reciprocity

requirements, the United States will not issue authority for Mexico-domiciled motor carriers to engage in packaging and courier services in long-haul transportation. U.S. motor carriers are restricted from performing similar transportation services restricted for operations within Mexico.

7.3.4.10 PASA Process - Compliance Reviews conducted in conjunction with the PASA

The Safety Investigator should follow the guidance in the eFOTM Compliance Manual when conducting a compliance review.

If the safety rating is anticipated to be conditional or unsatisfactory, the motor carrier's application will be dismissed. The following actions should take place:

- The Safety Investigator must notify their supervisor of the anticipated safety rating;
  - The supervisor must notify the WSC designee who will:
    - Notify the MC-ESB Division Chief of the anticipated safety rating and
    - Notify MC-RSI to request the application be dismissed.

7.3.4.11 PASA Process – Concluding the PASA

Upon completion of the PASA in CAPRI, the Safety Auditor will ensure that Attachment 5 (PASA Five Mandatory Element Verification checklist) was completed based on the answers to the Part B questions and the results of the element verification procedures outlined herein. If the Safety Auditor cannot verify all required information provided by the motor carrier during the PASA (*e.g.*, insurance company confirmation of policy, CDL information, etc.), the Safety Auditor will complete the audit to the extent possible, and notify the motor carrier that successful completion of the audit is contingent upon subsequent verification of information. In these cases, the verification checklist answer should be marked "Pending". Do not provide the motor carrier with the PASA documents if elements are marked "Pending."

Upon confirmation that all the questions on Attachment 5 are answered "Yes", the Safety Auditor will indicate that the applicant successfully passed the PASA. The Safety Auditor should provide the motor carrier with Parts A and B, Part-B Recommendations and the proposed results. Official notification of the PASA results will be sent to the motor carrier from the Division Office after the Safety Auditor's supervisor and WSC designee complete their review of the PASA to ensure adherence with this policy memorandum and FMCSA policies and statutory and regulatory requirements of Section 350 and 49 CFR Part 365.

The Safety Auditor must verify any information provided by the motor carrier and marked as "Pending" on the Attachment 5 upon return to his or her office, *e.g.*, calling the insurance company, accessing CDLIS, etc.

If information submitted by the motor carrier cannot be confirmed **within 30 days**, the Safety Auditor should follow the following procedures:

Pending Verification Element	Safety Auditor Actions	PASA Result
Verification element cannot be verified within 30 days	Update Attachment 5 to reflect "No" for element previously marked pending	**Fail**

Verification Element is verified within 30 days	1. Coordinate follow-up with applicant and verify compliance with element previously marked "Pending". 2. Confirm no changes in compliance with all other elements previously marked "Yes" 3. Update Attachment 5 to reflect "Yes" for element previously marked "Pending"	**Pass**

If any of the questions on Attachment 5 are answered "No", do not leave a copy of the PASA documents. The negative answers will result in proposed failure of the PASA. The Safety Auditor should advise the motor carrier that official notification of the PASA results will be sent to the motor carrier from the Division Office. This will occur after the Safety Auditor's supervisor and WSC designee completes their review of the PASA to ensure adherence to the PASA memorandum and FMCSA policies and guidance.

If the motor carrier's official refuses to sign or accept a copy of the above listed items, the Safety Auditor should note the refusal in Part C and send a certified copy of the above items (excluding Part C) to the motor carrier and the motor carrier's process agent by certified mail or United Parcel Service.

Applicants that fail the PASA must reapply for long-haul operating authority after correcting the deficiencies, pay any necessary fees for reapplication and submit to a new PASA. The Safety Auditor should advise the motor carrier that an authorized commercial zone applicant that fails the PASA may continue to operate within the commercial zone unless it is subject to enforcement or other action resulting in a suspension, revocation, or order to cease commercial zone operations.

The Safety Auditor must use the Part C template (see Attachment 9) to

7.3.4.12 PASA Process – Additional Information to be included in Part C

Answers to the following questions should be noted in Part C:

1. Where was the PASA conducted?
2. What dates did the PASA start and end?
3. Is the motor carrier currently operating within the United States municipalities and commercial zones along the U.S.-Mexico border?
    a. If yes, is the motor carrier operating as an enterprise motor carrier?
4. How many total power units is the motor carrier currently operating within the United States?
5. When did the motor carrier receive a certificate of registration to operate within the United States southern border commercial zones? When did it receive any other operating authority?
6. If the motor carrier is currently operating within the United States, discuss any prior expedited action letters, New Entrant Safety Audit results, investigation results, inspections, deficiencies/ violations observed and corrective actions taken by the motor carrier.
7. Does the motor carrier have any parent companies or subsidiaries?
8. Does the motor carrier have any affiliation or association with any motor carrier from any country of domicile currently or previously operating in the United States including companies with which it shares vehicles, employees, facilities, ownership?

9. Was the Advisement of Obligation on the Operation of Vehicles that do not meet the definition of a Commercial Motor Vehicle and Obligation to Comply with Additional Regulations if the Motor Carrier Operations to Include Operations of CMVs discussed with the motor carrier officials and provided to the motor carrier?
10. Was the Advisement of Obligation to Comply with Statutes and Regulations discussed with the motor carrier's officials and provided to the motor carrier?
11. Who were the motor carrier's officials present during the discussion of the advisements?
12. Was the Application Protest Process discussed and provided to the motor carrier?
13. Was the IRP/IFTA Program Registration discussed and provided to the motor carrier?
14. Was the advisement of reciprocal recognition of restrictions for certain Mexican motor carrier operations seeking provisional operating authority to operate beyond the border commercial zones reviewed with the motor carrier?

7.3.4.13 PASA Process – Review, Approval and Uploading of the PASA

To ensure expeditious processing of the motor carrier's application for provisional operating authority registration, the PASA, supervisor approval, and upload/final approval of the PASA with a pass result should be completed within 7 business days of the completion of the PASA.

Samples of the PASA pass/fail letters can be found in Attachment 10 to this memo. The Safety Auditor's supervisor should review the PASA and the PASA Five Mandatory Element Verification checklist for accuracy and to ensure that the information about the motor carrier provides a full picture of the applicant's compliance history. After supervisor's approval, the PASA will be forwarded to the WSC designee.

Only PASAs that are projected to result in a pass, based upon the results of PASA Five Mandatory Element Verification checklist (Attachment 5), should be uploaded into MCMIS and EDMS. **PASAs with a result of fail based on PASA Five Mandatory Element Verification checklist (**Attachment 5), **should be uploaded into EDMS, but not uploaded into MCMIS.**

When approving the PASA, WSC designee should review the PASA and Attachment 5 to determine that it was conducted in accordance with PASA policy and is complete and well-written. After the WSC designee approves the PASA with a pass result, it should be uploaded to MCMIS and EDMS along with completed attachments 2, 3, 5 and 6 (if they were not already uploaded). PASAs with a result of fail should be uploaded into EDMS along with completed attachments 2, 3, 5 and 6 (if they were not already uploaded).

The WSC designee will follow established procedures once the PASA result is determined. This includes providing the required notifications of the PASA results to MC-ESB and MC-RSI. MC-RSI will prepare and issue the passed PASA letter to the motor carrier and subsequent provisional authority documentation after the protest period has lapsed if the motor carrier passes the PASA.

If the PASA proposed result is to fail, MC-RSI will prepare and send the failed PASA letter to the Division office, who will inform the motor carrier that it has not successfully completed the PASA.

7.4 Comprehensive Compliance Review Conducted for Mexico-Domiciled Long-Haul Carrier with Provisional Authority and Prior to Standard Authority

This section provides guidance to FMCSA personnel for prioritizing the completion of a comprehensive compliance review (CR) of Mexico-domiciled long-haul motor carriers that have received **provisional long haul operating authority**.

FMCSA must conduct a comprehensive CR of a Mexico-domiciled carrier within 18 months after FMCSA issues the carrier provisional operating authority for long-haul operations under 49 CFR Part 365. If, at the end of the 18-month safety monitoring period, the carrier's most recent safety rating is SATISFACTORY and no additional enforcement or safety improvement actions are pending, the Mexico-domiciled carrier's provisional operating authority becomes standard operating authority.

Prioritization of the CRs of Mexico-domiciled motor carriers with long-haul authority is based on the date that the motor carrier was granted provisional operating authority. These CRs should be completed within 18 months of the provisional authority issuance date. It is recommended that the CR be conducted in the 16th month.

- Conduct each CR in accordance with current Agency guidelines and procedures outlined in the eFOTM Compliance Review Manual and issued a safety rating in accordance with 49 CFR Part 385, Subpart B - Safety Monitoring System for Mexico-domiciled carriers and Section 385.109.
- Each CR of a Mexico-domiciled motor carrier with provisional authority to operate in long-haul transportation must include a review of all motor carrier, driver and vehicle requirements for its entire operations, including both commercial zone and long-haul operations, to ensure proper safety management controls are in place before a motor carrier is granted standard operating authority.
- Ensure that any required inspections are performed based on the sampling criteria specified in the eFOTM Parts 393 & 396 – Investigative Procedures.
    - That can include FMCSA Inspectors coordinating with investigators to complete the required inspections.

7.4.1 Location of CRs

Federal law requires FMCSA to meet certain requirements for the siting of a CR.

- Mexico-domiciled long-haul motor carriers with three or fewer commercial motor vehicles (CMVs) operating in the United States are not required to undergo an onsite CR.
    - However, 50 percent of all compliance reviews are required to be conducted onsite at the motor carrier's principal place of business.
- Furthermore, any Mexican motor carrier with four or more CMVs operating in the United States that did not undergo an onsite PASA must have an onsite CR.
- Division office staff responsible to complete CRs coordinate with the WSC Mexico Program Specialist to determine if an onsite CR should be conducted.

In advance of any travel into Mexico, the Division Office contacts the Commercial Enforcement and Investigations Division (MC-ECC) to request an advisement on the safety of the travel.

- If, based on State Department direction, it is unsafe to travel into Mexico at that time:
    - Retain the MC-ECC advisement in the motor carrier's file in EDMS, and
    - Conduct the CR in the United States in accordance with current Agency guidelines and procedures outlined in the eFOTM.

Samples of the conditional and unsatisfactory safety rating letters and out-of-service orders can be found in Appendix MX.

7.4.2 Inspection of Vehicles during a CR

The eFOTM states that if a motor carrier does not have the minimum sample for vehicle inspections on its company safety profile, CVSA Level V inspections are required when CMVs are available. More stringent vehicle inspection requirements are required for motorcoach operators, motor carriers above the intervention threshold in the vehicle maintenance BASIC, and motor carriers with indicators from the Enhanced Investigation Techniques process (Compliance Manual, Parts 393 and 396 Investigative Procedures).

FMCSA may conduct compliance reviews upon the Mexico-domiciled motor carrier at one or more of its facilities outside the U.S. To avoid civil penalties or being placed out of service, a carrier must consent to inspection of its lands, buildings, and equipment.

Special agents of FMCSA, including certified safety investigators, safety auditors, and inspectors, are authorized to enter upon and perform inspections of motor carriers' vehicles. No U.S. or Mexican prohibitions prevent FMCSA staff from conducting CMV inspections during investigations.

FMCSA staff assigned to complete an investigation is responsible to ensure that CMV inspections are completed when required. The Level V inspection may be performed by a certified FMCSA staff person or performed by a CVSA certified foreign officer/inspector during an investigation of the foreign motor carrier.

Cite all violations discovered, annotating on inspection reports whether violations meet OOS conditions, and upload the completed inspections into FMCSA data systems in accordance with the eFOTM.[6]

- If an out-of-service (OOS) violation is observed during the vehicle inspections, advise the applicant that the vehicle may not be operated in the United States until the necessary repairs are made.
    - Do not place vehicles OOS in Mexico. Instead, make the Mexico-domiciled motor carrier aware of all violations discovered, including those deemed OOS.
    - Advise the motor carrier of the requirement to repair the violations prior to dispatching the vehicle for a trip to the U.S.
    - Include vehicle inspections that reveal OOS violations when determining the Mexico-domiciled motor carrier's OOS rates and safety rating results in accordance with the eFOTM for the Safety Rating Methodology.

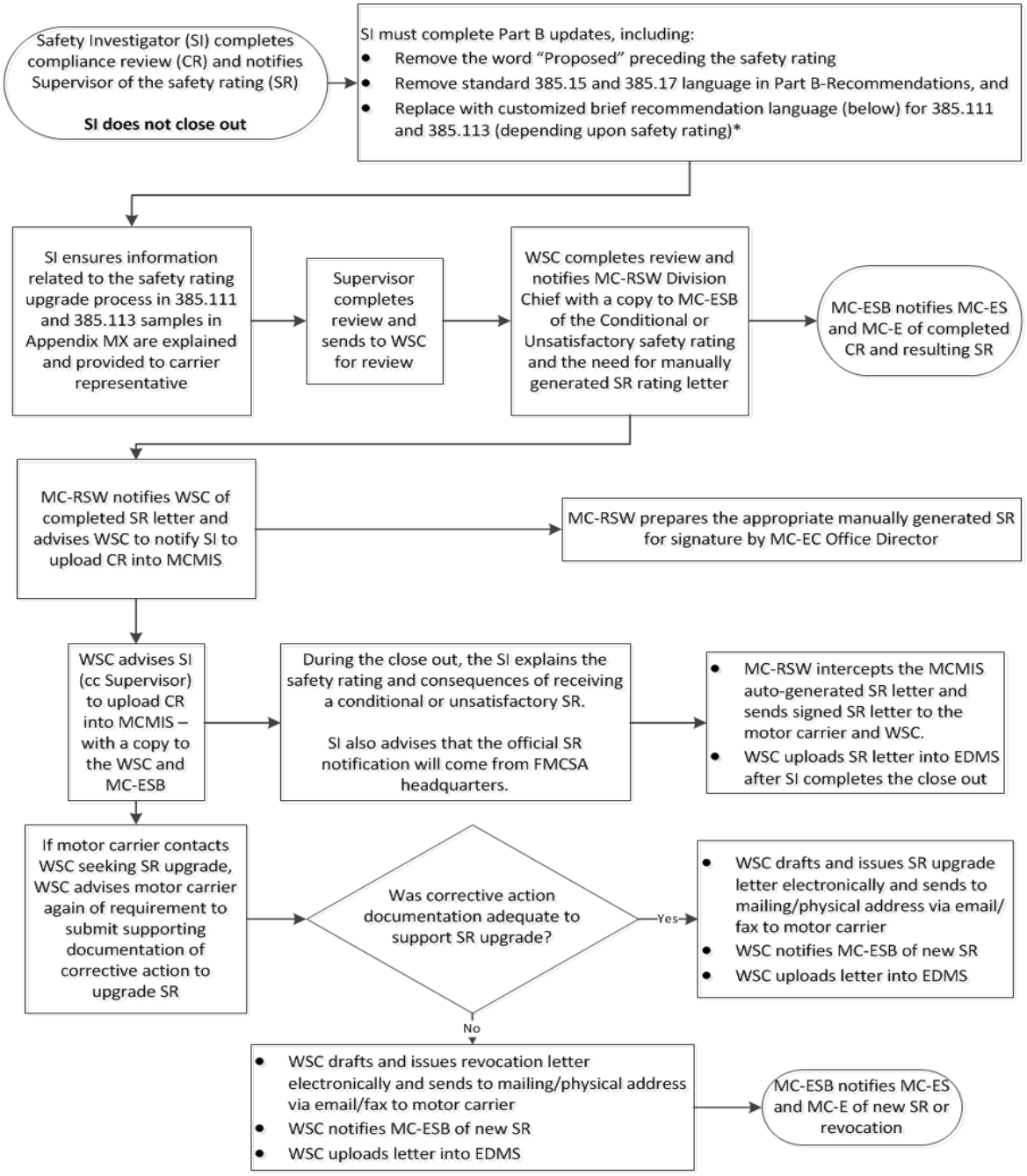
7.4.3 Requirements for Uploading Investigations Involving Mexico-Domiciled Long-Haul Carriers

The following decision/process flowchart describes the Interim Safety Rating Issuance Process for safety investigators and the WSC Mexico Program Specialist to follow. The flowchart provides guidance for uploading the completed CR to ensure the appropriate safety rating letter is issued. Sample instructions to the Mexico-domiciled long-haul carrier to request an upgrade to the COND and UNSAT safety ratings based on corrective action may be found in Appendix MX, as are samples of the conditional and unsatisfactory safety rating letters and out-of-service orders.

NOTE: This manual process is in place until Motor Carrier Management Information System (MCMIS) changes are implemented that recognize the unique requirements applicable to Mexico-domiciled long-haul carriers. [The eFOTM guidance will be updated based on MCMIS programming changes replacing manual interventions.]

[6] Uploading the completed vehicle inspection into FMCSA data systems does NOT apply to those vehicle inspections performed by FMCSA staff while conducting the PASA. Upload the inspection(s) into EDMS for storage, but not into SAFER.

Interim Process for Conditional or Unsatisfactory Safety Rating letter issuance until MCMIS programming is completed



*Substitute *the* following recommendation language, depending upon safety rating result:

CONDITIONAL

385.111 – Suspension and revocation of Mexico-domiciled carrier registration

The Federal Motor Carrier Safety Administration (FMCSA) will revoke the Provisional Operating Authority of a Mexico-domiciled carrier assigned a CONDITIONAL safety rating following a compliance review unless you demonstrate the compliance review contained a material error or submit adequate evidence of necessary corrective actions. (Part 385.111 copy provided and explained to motor carrier official)

UNSATISFACTORY

385.111 – Suspension and revocation of Mexico-domiciled carrier registration

The FMCSA will suspend and then revoke the Provisional Operating Authority of a Mexico domiciled carrier assigned an UNSATISFACTORY safety rating following a compliance review unless you demonstrate the compliance review contained a material error or submit adequate evidence of necessary corrective actions. (Part 385.111 copy provided and explained to motor carrier official)

385.113 – Administrative review

If you believe the final rating is in error and there are factual and procedural issues in dispute, Part 385.113 (copy provided) outlines procedures for petitioning the Federal Motor Carrier Safety Administration for an administrative review of these findings.

7.5 Special Roadside Inspection Requirements for Mexico-Domiciled Long-Haul Carriers

7.5.1 Introduction

Since the conclusion of the U.S.-Mexico Cross-Border Long-Haul Trucking Pilot Program, Mexico-domiciled motor carriers with long-haul operating authority may use any vehicles and drivers for long-haul transportation, as long as the vehicles and drivers are in compliance with all Agency regulations.

- The State or Federal inspector conducting an inspection at a POE, on the roadside, or at an inspection site away from the border must record the results of each North American Standard Inspection by preparing an inspection report.
- No notations are required in the special study fields during routine inspections.

If a Mexico-domiciled motor carrier with long-haul operating authority is found to be operating beyond the municipalities and commercial zones along the southern border in violation of any of these prohibitions, it must be deemed to be operating beyond the scope of its operating authority, cited for a violation of 49 CFR §392.9a(a)(2), and placed out of service. The appropriate enforcement action should be considered when a motor carrier is discovered to be operating in the United States beyond the scope of its operating authority.

7.5.2 USDOT Number Identification

When FMCSA grants operating authority to a Mexico-domiciled motor carrier to operate beyond the U.S. southern border municipalities and commercial zones, the motor carrier is directed to include the suffix "X" at the end of its assigned U.S.DOT number on all power units operating in the United States, even if they are operating solely within the commercial zones.

- Cite for a violation of 49 CFR §390.21(a) on the inspection report.
- Consider citing the appropriate enforcement action when a power unit of a Mexico-domiciled motor carrier with long-haul authority is discovered to be operating in the United States without a U.S. DOT number with an "X" suffix.

7.5.3 CVSA Decal Procedures at Time of Inspection

7.5.3.1 Introduction - CVSA Decal Procedures at Time of Inspection

A Mexico domiciled motor carrier with authority to operate beyond the commercial zones is required to ensure that each power unit operated in the US displays a current CVSA inspection decal during the provisional operating authority period and then an additional 36 consecutive months after receiving standard operating authority (post-Pilot operations). This includes power units used solely within the commercial zones. Non-CMVs are not required to display CVSA decals to operate in the US.

Motor carriers must report for an inspection at the Port of Entry (POE) if the power unit requires a CVSA decal and there is not one or it is expired, to remain in compliance with this requirement. These inspections should be accommodated.

- The State or Federal inspector conducting an inspection at a POE, on the roadside, or at an inspection site away from the border, must record the results of each North American Standard Inspection by preparing an inspection report. No notations are required in the special study fields during routine inspections.
- Record the "Existing CVSA Decal Status" and "CVSA Decal Issued" information in the inspection report for all inspections of Mexico domiciled motor carriers with long-haul authority to operate beyond the commercial zones. If the power unit displays a current or expired CVSA inspection decal, designate whether it is current, expired or removed in the report and record the CVSA inspection decal number in the "Existing CVSA Decal Number" field in the inspection report.
- If a power unit at a U.S.-Mexico POE does not display a required current CVSA inspection, the inspector should follow the inspection and enforcement guidance in the table below:

No Critical Vehicle Inspection Violations Discovered:	**Critical or OOS Vehicle Violations Discovered:**
DO NOT cite the Out-of-Service (OOS) violation for failing to display a current CVSA inspection decal. Affix a CVSA inspection decal and record the decal number in the "CVSA Decal Issued" field of the inspection report. Follow established policies, guidelines and protocols for electronic upload of driver/vehicle inspection reports.	Cite the appropriate OOS violation for failing to display a current CVSA inspection decal. Record the vehicle violations and place the vehicle out-of-service for failing to have a current CVSA decal and for any out-of-service vehicle violations found. Affix an OOS sticker on the power unit, inform the driver of the critical defect(s), the requirement for the power unit to display a current CVSA inspection decal, and that he/she may not continue to operate the vehicle within the United States until the deficiencies are corrected and the vehicle receives a CVSA inspection decal. Follow established policies, guidelines and protocols for electronic upload of driver/vehicle inspection reports. Refer to re-inspection guidance.

If a power unit operating beyond the U.S.-Mexico POE does not display the required current CVSA inspection decal, follow the inspection and enforcement guidance in the table below:

No Critical Vehicle Inspection Violations Discovered	**Critical or OOS Vehicle Inspection Violations Discovered:**
Cite and place the vehicle OOS for failing to display a current CVSA inspection decal as required Affix a CVSA inspection decal and record the decal number in the "CVSA Decal Issued" field of the inspection report Follow established policies, guidelines and protocols for electronic upload of driver/vehicle inspection reports.	Cite and place the vehicle OOS for failing to display a current CVSA inspection decal as required Record the critical or OOS vehicle inspection item(s) and any other vehicle defect(s) discovered. Follow established policies, guidelines and protocols for electronic upload of driver/vehicle inspection reports. Refer to re-inspection guidance

7.5.3.2 Enforcement of Decal Requirement

- For a carrier discovered to be operating in the United States, beyond the POE without the required CVSA inspection decal or fails to pass an inspection for CVSA decal within the POE, cite as follows:
    - During provisional operating authority, cite 49 CFR 385.103(c) Failure to display a current CVSA decal: Mexico-domiciled carrier with Provisional Operating Authority.
    - State Inspectors in States not permitted to cite 49 CFR 385.103(c) may cite 49 CFR §390.3(e)(1) Mexico-domiciled carrier failing to display a current CVSA decal as required by 385.103(c).
    - During the first 36 months of standard operating authority, cite 49 CFR §365.511 Failure to display a current CVSA decal: Mexico-domiciled carrier with Standard Operating Authority.
    - State Inspectors in States not permitted to cite 49 CFR §365.511 may cite 49 CFR §390.3(e)(1) Mexico-domiciled carrier failing to display a current CVSA decal as required by 365.511.
- Consider the appropriate enforcement action when a power unit of a Mexico-domiciled motor carrier with long-haul authority is discovered to be operating in the United States without a CVSA inspection decal during the period of provisional operating authority or during the first 36 months of standard operating authority.

7.5.3.3 Re-inspection Guidance for Vehicles Not Displaying a Current CVSA Inspection Decal

- If the inspector who performed the initial inspection is available for re-inspection of the vehicle(s);
    a. Verify that the defect(s) has been repaired.
    b. Annotate in the inspection report the verification of the repairs.
    c. Issue a CVSA inspection decal.
    d. Allow the vehicle to proceed out of the inspection area.
- If the same inspector is not available, the subsequent inspector must:
    a. Complete a Level I inspection.
    b. Note the previous OOS item(s) and verification of the repair in the notes field in the inspection report.
    c. Issue a CVSA inspection decal.
    d. Allow the vehicle to proceed out of the inspection area.
- When critical safety defects cannot be repaired onsite:
    a. Do not apply the CVSA inspection decal
    b. The vehicle must be either towed to a repair facility or returned to Mexico.
    c. The vehicle may not proceed from the inspection site to the United States under its own power without a CVSA inspection decal.

7.5.4 Hours-of-Service Enforcement for Mexico-Domiciled Long-Haul Motor Carriers

Mexico-domiciled motor carriers and drivers operating CMVs in the U.S. are required to comply with the FMCSRs only while operating in the U.S. FMCSA has no authority over a motor carrier when operating in Mexico. Mexico-domiciled motor carriers may use the 100-air-mile exemption found in 49 CFR § 395.1(e). However, once a carrier operates in the U.S., it is subject to all applicable FMCSRs and HMRs, and is, for example, required to produce the previous 7 days' records of duty status.

7.5.4.1 Enforcement of HOS Requirements at Roadside

Ensure that motor carriers and their drivers:

1. Do not exceed allowable number of driving hours prescribed in the FMCSRs;
2. Have the hours available to drive; and

3. Have in their possession the previous 7 days of RODS regardless of whether they operated in the U.S. or Mexico during that timeframe.

Drivers who fail to comply with these requirements are in violation and subject to civil penalties and/or out-of-service orders. Follow the North American Standards Out-of-Service Criteria when placing out of service.

7.6 Special Compliance Activities for Mexico-Domiciled Long-Haul Motor Carriers

7.6.1 Parts 365, 366, 387, & 392 - Licensing & Insurance (L&I) Registration Enforcement Requirements - Mexico-domiciled Long-Haul Carriers

Mexico domiciled motor carriers receive either standard operating authority or provisional operating authority under circumstances and limitations outlined in their authority documents. As normalized operations develop, additional policy related enforcement activities affecting Mexico domiciled long-haul carriers will be incorporated.

Mexico domiciled motor carriers that operate in international commerce (beyond the commercial zone, and with limitations of pickups in Mexico for delivery in the US, or vice-versa) are subject to:

- Obtaining operating authority
- Maintaining active operating authority at all times
- Filing and updating (as needed) the required insurance and process agent (Form BOC-3) to FMCSA's Commercial Enforcement Division

Begin by reviewing the L&I Database for authority history, insurance history, and revocation history. Note what type of operating authority was granted.

7.6.1.1 Certificates of Operating Authority

Certificates of operating authority issued to Mexico domiciled motor carriers for long-haul transportation prohibit:

1. Point-to-point transportation services, including express delivery services, within the US for goods other than international cargo;
2. Transportation of hazardous materials, as defined in 49 CFR § 171.8, in placardable amounts in accordance with 49 CFR Part 172, in the US beyond the US-Mexico border commercial zones;
3. Transportation of passengers in the US; and
4. Transportation of express packages and courier services.

Citing a Violation of the Operating Authority Requirement

If a Mexico domiciled motor carrier with long-haul operating authority is found to be operating beyond the municipalities and commercial zones along the southern border in violation of any of these prohibitions, it must be deemed to be operating beyond the scope of its operating authority, cited for a violation of 49 CFR § 392.9a(a)(2), and placed out of service. The appropriate enforcement action should be considered when a motor carrier is discovered to be operating in the US beyond the scope of its operating authority.

7.6.1.2 Proof of Financial Responsibility (Insurance)

To operate in the US, a Mexico-domiciled long-haul carrier with either provisional or standard operating authority must have its surety or insurance provider file proof of financial responsibility in the form of certificates of insurance, surety bonds, and endorsements, as required by § 387.301. The Mexico-domiciled long-haul carrier must maintain required levels on a continuous basis; no option exists for trip insurance, like what is available to Mexican commercial-zone carriers.

Citing a Violation of the Insurance Requirement

Follow provisions found in eFOTM Compliance Manual Insurance/Other subsection entitled Part 387 Financial Responsibility.

7.6.1.3 Process Agent (Part 366)

Mexico domiciled carriers are required to obtain process agent representation (BOC-3). Review L&I for the appropriate filing and representative state(s). Note that for Mexico domiciled motor carriers with commercial zone authority (OP-2), the BOC-3 will have only one state. However, for those Mexico domiciled motor carriers with long-haul authority (OP-1MX), their BOC-3 should have representatives in each US state.

Citing a Violation of the Process Agent Requirement

No specific violation exists for not meeting the requirement or maintaining the process agent. However, this may be considered a violation of the operating authority requirement and cited as such.

7.6.1.4 USDOT Number Identification (§390.21(a))

When FMCSA grants operating authority to a Mexico domiciled motor carrier to operate within the U.S. southern border municipalities and commercial zones, the motor carrier is directed to include the suffix "Z" at the end of its assigned USDOT number on all power units operating in the US. For those Mexico domiciled motor carriers operating beyond the US southern border municipalities and commercial zones, the motor carrier is directed to include the suffix "X" at the end of its assigned USDOT number on all power units, even if any one or more units operate solely within the commercial zones.

Citing a Violation of the Identification Requirement

Mexico domiciled motor carriers that are not in compliance with the marking requirement should be cited for a violation of 49 CFR § 390.21(a). The appropriate enforcement action should be considered when a power unit of a Mexico domiciled motor carrier is discovered to be operating in the US without a USDOT number with the appropriate suffix.

7.6.2 Compliance with Periodic (Annual) Inspection Requirements

On March 16, 2016, FMCSA published a Federal Register (FR) notice titled, "Inspection, Repair, and Maintenance; Periodic Inspection of Commercial Motor Vehicles; Acceptance of Mexico's NOM-068-SCT-2-2014 Inspection Program." The FR notice announced FMCSA's formal acceptance of the Norma Oficial Mexicana (NOM) or Official Mexican Standard as equivalent to the PI of CMVs required by 49 CFR § 396.17. Prior to issuing the FR notice, the Agency reviewed the NOM-068-SCT-2-2014 (NOM-068) program and determined that it is comparable to, or as effective as, the PI requirements contained in the Federal Motor Carrier Safety Regulations - Appendix G.

POLICY: FMCSA staff should continue to verify that a Mexico-domiciled motor carrier's vehicle is in compliance with the PI requirements of 49 CFR § 396.17 during vehicle inspections, investigations, or safety audits.

The acceptable documentation, when operating in the United States, to verify compliance with 49 CFR § 396.17 is based, in part, on the applicability of Mexico's NOM-068 rule. Inspectors, investigators and auditors should use the procedures noted below and on Attachment 1 to determine the applicability of the NOM-068 rule on the Mexican carrier's vehicles and to determine the appropriate documentation for PI verification. Inspectors and Investigators also should use the procedures in Attachment 2 to determine the validity of the NOM-068 decal and documentation.

7.6.2.1 Compliance with PI Requirements during Roadside Inspections

Documentation of a PI must be maintained on the vehicle in accordance with

49 CFR § 396.17(c) and verified by Inspectors during an inspection as outlined in the following procedures. [7]

If a Mexico-domiciled motor carrier's SCT-registered CMV is up to 4 years old based on the vehicle's manufacture date, the acceptable documentation may consist of:

- A copy of the periodic annual inspection report performed in accordance with 49 CFR § 396.17 by a qualified mechanic as defined by 49 CFR § 396.19;
- A sticker or decal that meets the requirements of 49 CFR § 396.17(c) (2)(i-iv); or
- A NOM-068 inspection sticker/decal and a copy of the PI report performed by a SCT inspection facility**.**

If a Mexico-domiciled motor carrier's SCT-registered CMV is CMVs 5 years and older **based on the vehicle's manufacture date,** the only acceptable documentation is the NOM-068 inspection sticker/decal and a copy of the PI report performed by a SCT inspection facility**.**

Attachment 3 illustrates the proper location and content of the NOM-068 inspection sticker/decal, depending on the type of vehicle, and provides examples of the SCT NOM-068 inspection reports.

The appropriate violation citation for failing to have evidence of the PI continues to be:

- 49 CFR § 396.17(c) – Operating a CMV without proof of annual periodic inspection

7.6.2.2 Compliance with PI Requirements during Investigation or Safety Audit

Safety Investigators and Safety Auditors must confirm during an investigation or SA whether a Mexico-domiciled motor carrier who operates CMVs in the United States has those vehicles periodically inspected and that the motor carrier maintains proof of the PI in the vehicles' maintenance files and on the vehicles.

Safety Investigators and Safety Auditors should cite the following violation if it is discovered that a motor carrier has operated a CMV in the United States without being periodically inspected:

- 49 CFR § 396.17(a) – Using a CMV not periodically inspected (Critical).[8]

Safety Investigators and Safety Auditors should cite the following violation if it is discovered that a motor carrier has operated a CMV in the United States and the vehicle was inspected within the previous 12 months, but the motor carrier's vehicle maintenance file does not reflect proof of the PI:

- 49 CFR § 396.17(c) – Using a commercial motor vehicle not periodically inspected in accordance with minimum standards.

Attachment 4 was added to incorporate the NOM-068 Policy Clarification questions and guidance that were issued on May 12, 2017, into this updated policy.

[7] On July 22, 2016, FMCSA published a final rule titled, "Parts and Accessories Necessary for Safe Operation; Inspection, Repair, and Maintenance; General Amendments." The final rule amends the periodic inspection rules to eliminate the option for a motor carrier to satisfy the annual inspection requirement through a violation–free roadside inspection. Therefore, a violation-free roadside inspection performed after July 22, 2016, may not be used to satisfy the annual inspection requirements of 49 CFR § 396.17.

[8] This is a critical violation and the eFOTM sampling guidance should be followed.

7.6.3 Part 376 – Lease and Interchange Rules

As of November 22, 2016, Mexico-domiciled long-haul carriers are allowed to lease their equipment to U.S. carriers for transportation of property beyond the U.S.-Mexico border municipalities and commercial zones.

When an authorized U.S. motor carrier leases equipment from a Mexico-domiciled motor carrier to transport property in the U.S., both parties are required to comply with Part 376. Part 376 generally requires that the carrier acquiring and operating the equipment (the lessee, or U.S.-domiciled motor carrier, in these cases) assumes control and responsibility for the operation of the equipment for the duration of the lease and/or while the equipment is in the U.S. carrier's possession. Documentation of the relationship between the U.S. motor carrier and the Mexico-domiciled motor carrier's equipment must be carried on the vehicle.

7.7 Expedited Actions for Mexico-Domiciled Long-Haul Carriers

As of January 29, 2016, FMCSA has suspended enforcement of expedited action procedures, and will no longer issue EA notification letters or require Mexico-domiciled motor carriers to submit an acceptable corrective action plan (CAP) for such violations. This suspension of enforcement action harmonizes actions involving Mexico-domiciled motor carriers with previously implemented policies to suspend enforcement for U.S. and Canadian carriers.

- For Mexico-domiciled motor carriers that have not yet been subjected to a Pre-Authorization Safety Audit (PASA), SA or rated CR and that commit the violations described in 49 CFR § 385.105(a), FMCSA will schedule and perform the PASA, an SA or rated CR, as soon as practicable.
- For Mexico-domiciled long-haul motor carriers that have already received a PASA, SA, or rated CR, FMCSA will develop alternative methods and provide future guidance on how to monitor and/or prioritize these Mexico-domiciled motor carriers for enforcement.

In lieu of the previous suspension action, Mexico-domiciled long-haul carriers will receive a MCMIS-generated warning letter in one of two versions: A pre-safety audit or pre-PASA version designed to help the motor carrier prepare for its upcoming safety audit or PASA, and a post-safety audit/post-PASA version to notify the motor carrier of an EA violation after completing an SA or PASA. No action is required by the carrier or the Office of Field Operations as a result of these letters. The following table describes the criteria to trigger an EA warning letter.

	Expedited Action Warning Letter
Safety-Based Criteria	Generated if one of the seven EAs listed in 49 CFR §§ 385.105 and 385.705 is discovered during an inspection.
Warning Letter Text	Customized based on the EA violation cited.
Pre-Safety Audit Letter	Only one letter is generated in the pre-safety audit period. For example, prior to the SA, a Mexico-domiciled commercial zone (CZ) motor carrier (having applied for long-haul authority) is cited for a violation of 49 CFR § 385.105(a)(6), operating without required levels of financial responsibility. The Mexico-domiciled CZ motor carrier will not receive any further EA warning letters until after the SA or PASA is conducted. This letter does not impact the requirement of an expedited SA. If a Mexico-domiciled CZ motor carrier triggers an EA violation prior to receiving an SA or PASA, the motor carrier will continue to be placed on the expedited SA list.

Post-Safety Audit/PASA Letter	Generated every time a new, distinct EA violation is cited. The post-safety audit (for a CZ motor carrier applying for long-haul authority) or post-PASA EA warning letter will only be generated once for each new EA violation type discovered. Multiple violations of the same EA violation type generate a single letter for the first instance only.

[Note: The policy memo [MC-ESB-2016-0005] associated with this information contains examples of the MCMIS-generated letters, and may be found in the Documents section (year 2016) of the eFOTM.]

FMCSA managers are to follow current Agency guidelines and procedures outlined in the eFOTM Managers' Manual, Federal Programs Manual, Enforcement Manual Border Enforcement Process to determine if the motor carrier has committed one of the seven expedited-action violations.

7.8 Denial of Access – Foreign Motor Carriers

The policy and procedures for handling a denial of access by a foreign private and for-hire motor carrier should be followed in accordance with the policy titled *"Enforcement Procedures for Denial of Access to Records, Equipment, Lands, Buildings, and Other Property of Foreign Motor Carriers (MC-ESB-2019-0004) issued 28June2019".* This memorandum and guidance do note create an independent basis for any enforcement action. Authority for taking enforcement action against a regulated foreign entity for Denial of Access is based on the Agency's authority set forth in 49 U.S.C. §§ 504(c), 521(b)(2)(E), 5121(c), 13906, 14701, 14122(b), 31133(a), 31134(c) and 31144.

Motor carriers that do not have multiple offices or terminals must, upon reasonable request and presentation of credentials by authorized FMCSA personnel, promptly provide access to records. Under the Federal Motor Carrier Safety Regulations (FMCSRs), a motor carrier with multiple offices or terminals may maintain required records at various locations, specifically, the motor carrier's principal place of business (PPOB), a regional office, or a driver work-reporting location. Pursuant to 49 CFR 390.29, a motor carrier with multiple locations has up to 48 hours (Saturdays, Sundays, and Federal holidays excluded) to make requested records available for inspection at its PPOB.

Applicable Regulations and Statutes
In accordance with 49 CFR § 390.5, operating authority means the registration required by 49 U.S.C. § 13902, 49 CFR parts 365, 368 and 49 CFR § 392.9a.

Suspension of Certificate of Registration or Operating Authority Registration under 49 CFR § 385.111(e)

In accordance with 49 CFR § 385.111(e), if a Mexico-domiciled motor carrier subject to the enhanced monitoring requirements of 49 CFR part 385, subpart B, fails to provide the necessary documents for a safety audit or investigation, upon reasonable request, FMCSA will provide the carrier with written notice, as soon as practicable, that its registration will be suspended 15 days from the service date of the notice unless it provides all necessary documents or information. The suspension will remain in effect until the necessary documents or information are produced, and (1) a safety audit determines that the carrier exercises basic safety management controls necessary for safety operations; or (2) the carrier is rated Satisfactory or Conditional after an investigation.

A Mexico-domiciled motor carrier holding either a provisional certificate of registration to operate in the border commercial zones or provisional operating authority registration for long-haul operations is subject to the enhanced monitoring requirements of 49 CFR part 385, subpart B.

Suspension of Certificate of Registration or Operating Authority Registration under 49 U.S.C. § 13905 for willful failure to comply

Pursuant to 49 U.S.C. § 13905(d), FMCSA may suspend, amend, or revoke any part of the registration of a motor carrier, foreign motor carrier, foreign motor private carrier, broker, or freight forwarder for willful failure to comply with any applicable regulation or order.

FMCSA may suspend the operating authority registration of foreign motor carriers holding any form of operating authority for failure to comply with an Order to Show Cause issued requiring compliance with a demand compelling the carrier to provide access to records, buildings, land, or equipment.

Examples of foreign carriers holding operating authority include: (a) for-hire foreign motor carriers; and (b) private and for-hire Mexico-domiciled property motor carriers.

Inactivation of USDOT Number

Under 49 U.S.C. § 31134(c), FMCSA may inactivate a USDOT number if it determines that the carrier has knowingly failed to comply with a requirement in 49 U.S.C. Chapter 311 subchapter III, the FMCSRs or the Hazardous Material Regulations.

FMCSA may inactivate the USDOT number of a private foreign motor carrier or other foreign motor carrier that does not hold any form of operating authority for failure to comply with a demand requiring production of records or property made under 49 U.S.C. § 31133(a).

Examples of foreign carriers operating under a USDOT number include: (a) private Canadian-domiciled carriers; (b) private Non-North American carriers; and (c) Mexico-domiciled passenger motor carriers operating solely within the border commercial zones.

DEFINITION

For the purposes of the foreign motor carrier denial of access policy, a foreign motor carrier is any motor carrier not domiciled in the United States.

GUIDANCE

If a private or for-hire foreign motor carrier refuses to produce its records for inspection, FMCSA will use the denial of access authorities outlined in policy "*Enforcement Procedures for Denial of Access to Records, Equipment, Lands, Buildings, and Other Property of Foreign Motor Carriers (MC-ESB-2019-0004) issued 28June2019".*

FMCSA agents exercising their authority to inspect and copy records or inspect and examine equipment, lands, buildings, and other property should exercise reasonable discretion in their approach to requesting documents throughout the investigative process. A denial of access occurs when the motor carrier fails to allow access to those things that are reasonably necessary to conduct the investigation. Although other records, not required to be maintained by the FMCSRs, may be helpful to an investigation and may be requested, the ability to take enforcement for denial of access only applies to those items requested over which FMCSA has jurisdiction.

7.8.1 Demands

Division Administrators (DA) are responsible for the issuing of demands for access to records, facilities or equipment. Demands will generally be issued to a foreign motor carrier by letter. Demands to foreign carriers must be reviewed by a Service Center Attorney.

Compliance with the requirements of a demand is considered complete if the motor carrier provides access to all records, equipment, lands, buildings, and other property identified for review in the demand letter. If the motor carrier does not produce access to some or all records, the Safety Investigator should question the motor carrier about the records, their location and whether the motor carrier maintains those records. If the motor carrier states that any of the items identified in the demand have not been retained or do not exist, failure to provide those items does not constitute noncompliance with the demand. Instead, the failure to maintain required records should be documented and the carrier cited for the appropriate violation for failure to maintain the missing record(s).

In the absence of such a statement, if the motor carrier does not provide access to all items identified in the demand letter that are necessary for the completion of the investigation, it will be considered a failure to comply with the requirements of the demand and a denial of access.

Orders to Show Cause and Orders Suspending Certificates of Registration or Operating Authority Registration and Orders to Show Cause and Orders Inactivating USDOT Number may be issued for non-compliance with demands by the appropriate Regional Field Administrator (RFA) or Field Administrator (FA) and the Assistant Counsel for Enforcement and Litigation (MC-CCE), or their designees.

Subpoenas

Subpoenas will not be used to communicate the demand for access and record for a foreign motor carriers except in exceptional circumstances, which must be approved by the appropriate RFA or FA. Subpoenas must be reviewed by a Service Center Attorney and coordinated with MC-CCE and MC-EC.

Civil Penalties

The Agency may seek civil penalties against for-hire and private foreign motor carriers that deny access to required safety records, property or equipment.

Investigations at Locations other than the PPOB

In determining where the carrier will be asked to produce records, the Division will consult with the RFA/FA and Service Center Attorney taking into consideration the location of the foreign carrier's PPOB, its operations in the United States, and issues involved in travel to that location, including known security risks as well as available alternative locations such as an FMCSA Division Office or port-of-entry where the foreign motor carrier normally crosses into the United States. If a motor carrier contacts FMCSA after a demand requiring production of records, FMCSA agents and the motor carrier may arrange to conduct the investigation at a mutually agreeable location. If a foreign motor carrier fails to comply with a demand to produce records at location other than the carrier's PPOB, the Division will consult with the RFA/FA and Service Center Attorney.

New Entrant Carriers (U.S. and Canadian motor carriers)

Under 49 CFR 385.307(c), all records and documents required for a new entrant safety audit must be made available for inspection upon request by an individual certified by FMCSA to perform safety audits. New Entrant (U.S. and Canadian) motor carriers that deny authorized personnel prompt access to inspect

and copy any record or inspect and examine equipment, lands, buildings, and other property necessary to complete the safety audit are considered to have refused to permit a safety audit under 49 CFR 385.337. In those instances, Safety Auditors should follow the procedures established for refusing to submit to a safety audit under § 385.337. (Refer to eFOTM Safety Audit Manual section 3.1.2 Special Procedures for SA's.)

Mexico-Domiciled Carriers

A Mexico-domiciled motor carrier subject to FMCSA's safety monitoring system under subpart B of 49 CFR part 385 that fails to provide the necessary documents for a safety audit or compliance investigation upon reasonable request will be subject to the suspension procedures outlined in 49 CFR section 385.111(e). Safety Auditors and Safety Investigators attempting to conduct a safety audit or investigation of a Mexico-domiciled carrier subject to subpart B of 49 CFR part 385 should contact the Western Service Center Mexico Specialist and Service Center Attorney. Additional guidance will be forthcoming to formalize the safety audit procedures for Mexico-Domiciled motor carriers that operate solely within the U.S.-Mexico border commercial zones and municipalities. In the interim, the following attachments should be used for Mexico-domiciled motor carrier subject to the safety monitoring system under subpart B of 49 CFR part 385.

- The sample letter in Attachment A1 notifies a Mexico-domiciled motor carrier subject to the safety monitoring system under subpart B of 49 CFR part 385 of repeated attempts by FMCSA to contact the motor carrier to schedule a required Safety Audit. The letter serves as FMCSA's 3rd and final request to the Mexico-domiciled motor carrier to schedule a Safety Audit and provides notice that failure to provide the documents necessary for FMCSA to complete a Safety Audit may result in the suspension of the carrier's provisional certificate of registration.

- The sample letter in Attachment A2 notifies a Mexico-domiciled motor carrier subject to the safety monitoring system under subpart B of 49 CFR part 385 that its failure to provide necessary documents for a safety audit or compliance investigation will result in the suspension of the motor carrier's provisional operating authority registration or certificate of registration 15 days from the date of the letter.

Enterprise Carriers

If an Enterprise carrier refuses or fails to make records necessary to complete a compliance investigation available, FMCSA will follow the Denial of Access guidance (MC-ECE-2016-007) issued August 25, 2016. If an investigation reveals that an Enterprise carrier is domiciled in Mexico rather than the United States, the "Revised Principal Place of Business Requirements policy" (MC-ECS-2017-0002) issued on July 19, 2017 should be followed.

PROCEDURES

Investigation Scheduling

The Safety Investigator should document the dates and means of contact attempts and indicate the carrier's response, failure to respond, or other actions in response to the scheduling efforts. If the Safety Investigator documents more than one attempt to contact and investigate a motor carrier, the Safety Investigator must use the following procedures outlined below to seek access to the records. (Refer also to Attachment B: Foreign Motor Carrier Denial of Access Flowchart). See Attachment C for a chart showing the enforcement tools available for foreign motor carriers.

Written Demands

1. Contents: The written demand must identify the records to be produced, the date, time and location for production of the records, and potential consequences for failing to comply. Until further notice, all demands must be reviewed by MC-CCE or a designee, prior to service.

    a. Records to be Produced. The demand, request, notice must sufficiently identify the records, equipment, lands, buildings, or other property to which access is requested. The demand will only identify those records, equipment, lands, buildings, and other property that are reasonably necessary to conduct the investigation. If during the investigation additional documents are required and access to those additional records is denied by the foreign motor carrier, the DA may serve additional demands as needed.

    b. Consequences for Failure to Comply with Demand. Inform the motor carrier that if it fails to comply with the demand, its operating authority registration may be suspended and/or its USDOT number inactivated. The demand letter will also inform foreign motor carriers that they may be subject to civil penalties for failure to comply.

    c. Compliance Date. The Safety Investigator should consult with his or her DA and/or designee to determine the due date and time for the foreign motor carrier to comply with the demand. The deadline for compliance must be reasonable based on the facts of the case, including the scope of the demand. In many cases, because a request for access to the records has previously been denied, the expectation is that access to records should be granted as soon as practicable and reasonable, generally 48 hours. Demands generally should exclude compliance on Saturdays, Sundays, and Federal holidays. Circumstances that may warrant a shorter time to respond or compliance on weekends or holidays, include a fatal crash investigation, potential imminent hazard, or other investigation involving an urgent safety threat to the public.

- The sample letter in Attachment D1 notifies the following foreign motor carriers that failure to comply with the demand may result in the suspension of its certificate of registration or operating authority registration:
    - For-hire foreign motor carriers;
    - For-hire and Private Mexico-domiciled property motor carriers (including commercial zone and long-haul carriers); and
    - Foreign motor carriers operating under OP-2 Certificates of Registration (commercial zone, exempt commodities and specific points beyond the border zones).

- The sample letter in Attachment D2 notifies the following foreign motor carriers having a USDOT number, but not holding any form of operating authority, that failure to comply with the demand may result in inactivation of its USDOT number:
    - Private Canadian-domiciled motor carriers;
    - Private Non-North American motor carriers; and
    - Mexico-domiciled passenger motor carriers operating solely with the U.S.-Mexico border commercial zones.

2. Service: Demands may be served during an investigation where the motor carrier refuses to produce some or all required records. A representative from the Division Office will serve the motor carrier with a written Demand to Inspect and Copy Records and/or Demand to Inspect and Examine Equipment, Lands, Buildings, or Other Property, signed by the DA.

    If a Safety Investigator is unable to contact a motor carrier or arrange a date for an investigation, the Safety Investigator should document all contact attempts and the results of those attempts, and advise his or her DA. The DA, in consultation with the Service Center Director or their designees

and Service Center Attorney, will consider service of the demand by certified mail or express delivery service (i.e., FedEx, United Parcel Service, U.S. Postal Service, etc.), requiring receipt of delivery for expediency of delivery and verification of service.

The inability to produce the records in the required timeframes without unreasonable expense or effort is a defense to a demand. If the motor carrier contacts the Safety Investigator or DA claiming that it is unable to produce the demanded records, or unable to produce them in the required timeframe, without unreasonable expense or effort, the DA will contact the RFA/FA and Service Center Attorney. The foreign motor carrier should clearly explain why compliance would impose unreasonable expense or effort. Although the demanded records are required to be maintained, and requests for access may have already been denied, the RFA/FA may extend the timeframe to comply with the demand or make other adjustments to the demand as appropriate.

The RFA/FA should consider any other defenses the foreign motor carrier raises.

Requests for Extensions of Time

Because the demand is not the first request for access to the records, and previous requests have not resulted in access to the records, the expectation is that the deadline for compliance should not impose unreasonable expense or effort on the foreign motor carrier. However, the RFA/FA should consider reasonable requests for extensions of time to comply with the demand.

A denial of a request for an extension of time will be issued in writing by the RFA/FA and will include a finding that the foreign motor carrier did not establish that the deadline imposed unreasonable expense or effort on the foreign motor carrier.

7.8.2 Order to Show Cause

If a foreign motor carrier does not comply with a demand, and has not been granted an extension of time to comply with the demand, the RFA/FA may proceed to issue an Order to Show Cause using the procedures below.

Except for Mexico-domiciled motor carrier subject to the safety monitoring system under subpart B of 49 CFR part 385, to initiate an action to suspend a foreign motor carrier's certificate of registration or, operating authority registration, or inactivate a foreign carrier's USDOT number, the RFA or FA may issue an Order to Show Cause (OSC) to the motor carrier. The OSC is prepared by a Service Center Attorney for the RFA/FA's signature, and must be coordinated with MC-CCE. The OSC sets forth FMCSA's legal authority, explains the facts establishing the carrier's failure to comply with the Demand, and notifies the carrier that it must show good cause why it should not have its certificate of registration/operating authority registration suspended or its USDOT number inactivated. The OSC also notifies the carrier how it can achieve compliance, explains how to submit a written response with supporting documentation and states that failure to respond and/or demonstrate compliance by providing access to the demanded records within a specified time period will result in the suspension of the motor carrier's certificate of registration, operating authority registration or inactivation of its USDOT number. The OSC must include a timeframe for the motor carrier to respond. The period for response should consider the specific facts of the case including the carrier's PPOB and known service issues or delays. Circumstances that may warrant a shorter time to respond include a fatal crash investigation, potential imminent hazard, or other investigation involving an urgent safety threat to the public.

OSCs must be served to the motor carrier using a method that provides tracking and proof of delivery (i.e., FedEx, United Parcel Service, U.S. Postal Service, etc.). In most cases, the OSC should also be served to the motor carrier's process agent and/or registered agent.

- See Attachment E1 for a sample OSC for initiating an action to suspend a foreign motor carrier's certificate of registration or operating authority registration.
- See Attachment E2 for a sample OSC for initiating an action to inactivate the USDOT number of a foreign motor carrier.

Compliance with the Order to Show Cause
If the foreign motor carrier complies with the OSC and provides access to the demanded records, the RFA/FA should terminate the show cause proceeding.

- See Attachment F1 for a sample Order Terminating Show Cause Proceeding for terminating an action to suspend the operating authority registration of a foreign carrier.
- See Attachment F2 for a sample Order Terminating Show Cause Proceeding for terminating an action to inactivate the USDOT number of a foreign carrier.

Orders to Show Cause Response Process
The OSC provides the carrier with an opportunity to submit a written response to the OSC if it disputes the order. The RFA/FA is the decision-maker on responses to an OSC. Upon receipt of a response to an OSC, the RFA/FA will consult with MC-CCE regarding the appropriate disposition.

Defenses
The non-existence of the records at the time of FMCSA's demand is a defense for failing to comply with a demand. If the foreign motor carrier admits that a record required to be maintained does not exist or has not been maintained, it should be cited for failing to prepare and/or maintain the required record.

The inability to produce the records in the required timeframes without unreasonable expense or effort is a defense to a demand. If the motor carrier contacts the Safety Investigator or DA claiming that it is unable to produce the demanded records, or unable to produce them in the required timeframe, without unreasonable expense or effort, the DA will contact the RFA/FA and Service Center Attorney. The foreign motor carrier should clearly explain why compliance would impose unreasonable expense or effort. Although the demanded records are required to be maintained, and requests for access may have already been denied, the RFA/FA may extend the timeframe to comply with the demand or make other adjustments to the demand as appropriate.

The RFA/FA should consider any other defenses the foreign motor carrier raises.

Requests for Extensions of Time
The RFA/FA should consider reasonable requests for extensions of time to comply with the Demand and/or respond to the OSC.

A denial of a request for an extension of time will be issued in writing by the RFA/FA and will include a finding that the foreign motor carrier did not establish that the deadline imposed unreasonable expense or effort on the foreign motor carrier and that the motor carrier did not show good cause why it could not comply with the Demand or OSC.

Review of Response to Order to Show Cause
The RFA/FA will issue a written decision in response to a motor carrier's response to the OSC based on the documents and evidence submitted by the foreign motor carrier and response from the DA, if any. The RFA/FA may, in consultation with MC-CCE:

a. Determine that additional information is required to decide the issues presented. The RFA/FA may order the foreign motor carrier and/or the DA to submit additional information or may schedule a telephone conference with the foreign motor carrier and the DA. The RFA/FA may also issue an order continuing the OSC with further instructions on evidence and documentation

to be submitted. Any evidence submitted by the motor carrier and DA will be submitted in writing and will become part of the administrative record. If the RFA/FA conducts a telephone conference, the RFA/FA will ensure that written notes are taken during the conference to document what was said and such notes will become part of the administrative record.

b. Determine that the foreign motor carrier has shown good cause why it did not comply with the demand. These defenses include that the records do not exist, or that the terms of the demand are not reasonable. The RFA/FA may issue an order amending or rescinding the demand, or an order terminating the show cause proceeding.

Response to OSC – Determination that the foreign motor carrier's response does not establish good cause for failing to comply with the demand.

The RFA/FA may, upon such determination, issue an order suspending the carrier's certificate of registration or operating authority registration or inactivating its USDOT number. The order will describe the evidence submitted by the foreign motor carrier and the DA, if any, and state the factual and legal basis for the decision. The order, along with any written submissions and notes of a conference, if any, will become part of the administrative record.

7.8.3 Orders Suspending Certificate of Registration, Operating Authority Registration and Order Inactivating USDOT number

If the foreign motor carrier fails to respond to the OSC requiring production of records, and/or fails to comply with the Order and provide FMCSA access to the demanded records, the RFA or FA may issue an Order suspending the foreign motor carrier's certificate of registration, operating authority registration or an Order inactivating the foreign carrier's USDOT number. The Order is prepared by a Service Center Attorney for the RFA/FA's signature, and must be coordinated with MC-CCE.

Orders suspending certificates of registration, operating authority registration or orders inactivating USDOT numbers must be served to the motor carrier using a method that provides tracking and proof of delivery (i.e., FedEx, United Parcel Service, U.S. Postal Service, etc.). In most cases, the Orders should also be served to the motor carrier's process agent and/or registered agent.

- See Attachment G1 for a sample Order Suspending Certificate of Registration or Operating Authority Registration.
- See Attachment G2 for a sample Order Inactivating USDOT Number.

Ensuring notice to FMCSA Registration Office and verifying status in FMCSA systems

When an Order Suspending Operating Authority or Order Inactivating USDOT number has been served and is effective, the Service Center should notify the Chief, Registration, Licensing and Insurance Division, Office of Registration and Safety Information, Deputy Chief, Registration and Licensing and Insurance Division, Office of Registration and Safety Information, Lead, Registration and Licensing Team, Registration, Licensing and Insurance Division, Office of Registration and Safety Information, Lead, Insurance Team, Registration, Licensing and Insurance Division, Office of Registration and Safety Information to request that the carrier's operating authority registration be suspended. All requests should also be submitted by email to mc-ecc.comments@dot.gov.

On the effective date of operating authority suspension, the Service Center should verify that the suspension is properly displayed in the Agency's Licensing & Insurance (L&I) system and Query Central database. If the suspension does not appear in the L&I system on the next business day after it is effective, the Service Center should follow up with the Chief, Registration, Licensing, and Insurance

Division, Office of Registration and Safety Information, and should advise the Enforcement Division Chief.

On the date the inactivation of the carrier's USDOT Number is effective, the Service Center should verify that the inactivation status is properly displayed on the Agency's Motor Carrier Management Information System (MCMIS) Web site and the Query Central database. If the inactivation does not appear in our information technology systems on the next business day after the inactivation is effective, the Service Center should follow up with the Chief, Registration, Licensing and Insurance Division, Office of Registration and Safety Information, and should advise the Enforcement Division Chief.

7.8.4 Closing Actions

Initiation of Enforcement Action (For-Hire and Private Foreign Motor Carriers)

If a foreign motor carrier does not comply with a demand, Safety Investigators should contact the RFA/FA and Service Center Attorney to discuss initiation of a civil penalty case.

Documentation for a civil penalty case for Denial of Access

The documentation must at minimum, include:

- Evidence of jurisdiction – documentation that the foreign motor carrier is or was subject to 49 U.S.C. Chapter 51 and/or Part B of subtitle VI.
- Copies of the demand letter and Certificate of Service or other documentation that the demand letter was received, such as a delivery confirmation receipt (i.e., FedEx, United Parcel Service, U.S. Postal Service, etc.).
- Written statement of the Safety Investigator detailing what was demanded, what was produced, and any statements of the foreign motor carrier's official regarding the demand, whether the records exist, where the records are located, reason(s) for denial of access, etc.

7.8.5 Rescission of the Order Suspending Operating Authority Registration or Order Inactivating USDOT number

A foreign motor carrier that fails to comply with the Order to comply with the demand whose certificate of registration or operating authority registration or USDOT registration has been suspended or its USDOT number has been inactivated will not be able to reinstate its registration until it has complied with the demand and allowed sufficient access for FMCSA to complete its investigation. The Orders Suspending Certificate of Registration, Operating Authority Registration or Inactivating USDOT number inform the foreign motor carrier that if it believes it has complied with the demand and the Order Suspending Certificates of Registration, Operating Authority Registration or Inactivating USDOT number has not been rescinded, or the foreign motor carrier can otherwise establish good cause why the Order should be rescinded, the foreign motor carrier may request rescission of the Order. The RFA/FA will respond to any requests for rescissions for Orders Suspending Certificate of Registration, Operating Authority Registration or Inactivating USDOT number in writing, after consultation with MC-CCE. If the Order is rescinded, the Service Center must notify the Chief, Registration, Licensing and Insurance Division, Office of Registration and Safety Information, Deputy Chief, Registration and Licensing and Insurance Division, Office of Registration and Safety Information, Lead, Registration and Licensing Team, Registration, Licensing and Insurance Division, Office of Registration and Safety Information, Lead, Insurance Team, Registration, Licensing and Insurance Division, Office of Registration and Safety Information to request rescission of the

order suspending the carrier's certificate of registration, operating authority registration or order inactivating the carrier's USDOT number. All requests should also be submitted by email to mc-ecc.comments@dot.gov.

- See Attachment H1 for sample Order Rescinding Order Suspending Certificate of Registration or Operating Authority Registration.
- See Attachment H2 for sample Order Rescinding Order Inactivating USDOT number.

FMCSA personnel should advise foreign motor carriers who have been issued an Order rescinding the Order suspending their registration or Order inactivating their USDOT number that they must contact the FMCSA Customer Service and Vetting Division, Office of Registration and Safety Information to determine what is required to reinstate their certificate of registration, operating authority registration or USDOT registration and reactivate their USDOT number.

7.9 Prioritization of Pre-Authorization Safety Audits and Safety Audits for Mexico-domiciled Motor Carriers

PURPOSE:
The purpose of this policy is to provide guidance on the prioritization of Pre-Authorization Safety Audits (PASAs) of Mexico-domiciled carriers applying for long-haul authority to operate beyond the border commercial zones and safety audits of Mexico-domiciled motor carriers operating solely within the border commercial zones under provisional certificates of registration.

BACKGROUND:
On March 19, 2002, the Federal Motor Carrier Safety Administration (FMCSA) published two Interim Final Rules (IFRs). The first, "Application by Certain Mexico-Domiciled Motor Carriers to Operate Beyond United States Municipalities and Commercial Zones on the United States-Mexico Border" created the requirement for Mexico-domiciled carriers applying for long-haul operating authority to successfully complete a PASA as part of the application process. The second, "Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States" modified 49 CFR Part 385 and established the safety monitoring system, including the requirement for a safety audit, for OP-2 commercial zone motor carriers.

POLICY:
The four FMCSA Southern Border Division Offices (i.e., Arizona, California, New Mexico and Texas) responsible for conducting PASAs and safety audits of Mexico-domiciled motor carriers should prioritize assigning these to Safety Auditors before assigning new entrant safety audits of U.S. or Canada-domiciled motor carriers.

1. Safety Auditor Supervisors should make assignments to Safety Auditors in the following priority order: PASAs for OP-1(MX) long-haul motor carrier applicants;

2. Safety audits of provisional OP-2 commercial zone motor carriers with the following risk characteristics:
    - Included on a Safety Measurement System (SMS) risk-based prioritization list; or
    - The safety audit is overdue and the carrier has shown operational activity within the last 12 months.

3. Safety audits of provisional OP-2 commercial zone motor carriers with safety audits due within the next 180 days and operational activity within the last 12 months.

4. Other Agency safety audit responsibilities including: o Safety audits of OP-2 commercial zone motor carriers with overdue safety audits with no activity;
    - Onsite or offsite safety audits of U.S. new entrant motor carriers; or
    - Onsite or offsite Safety Audits of Canadian* new entrant motor carriers.

IMPLEMENTATION DATE:
This policy is effective immediately. For more information about this policy, please contact Marcelo Perez at marcelo.perez@dot.gov or Jose Rivas at jose.rivas@dot.gov .

* Travel for Canadian new entrant safety audits by FMCSA safety auditors must be approved by the Associate Administrator for Field Operations or his/her designee

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7.10 Safety Audits for Mexico-domiciled Carriers Operating in the Border Commercial Zones under Provisional Certificates of Registration

PURPOSE:
The purpose of this policy is to provide guidance for assigning Safety Audits to Mexico-domiciled carriers operating in the border commercial zones (CZ) under provisional certificates of registration using new tools from GOTHAM and data regularly requested by the Western Service Center (WSC). This policy also provides guidance on documenting contact attempts and follow-up actions for suspending the provisional certificate of registration of OP-2 CZ motor carriers that do not provide records necessary to complete the required Safety Audits and revoking the provisional certificate of registration of OP-2 CZ motor carriers that continue to operate after suspension of their registration.

BACKGROUND:
On March 19, 2002, the Federal Motor Carrier Safety Administration (FMCSA) published the Interim Final Rule (IFR) titled, “Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States.” The IFR, effective May 3, 2002, modified 49 CFR Part 385 and established the safety monitoring system, including the requirement for a Safety Audit, for OP-2 CZ motor carriers operating under provisional certificates of registration (provisional OP-2 CZ motor carriers).

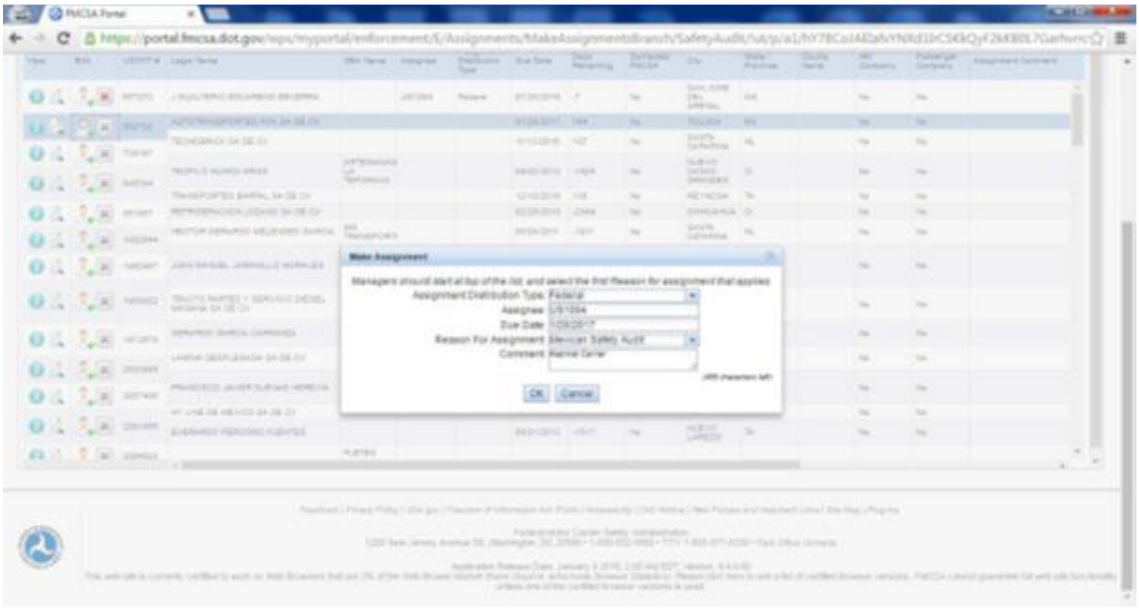
The WSC and Southern Border Division Offices are responsible for management of provisional OP-2 CZ motor carriers. Historically, the WSC designee, the Mexico Program Specialist, and Southern Border Division Offices have used various reports from the FMCSA Portal and Motor Carrier Management Information System (MCMIS) to prioritize, document contact, and schedule Safety Audits for these motor carriers. Additionally, the WSC Mexico Program Specialist uses a Data Analysis and Report Team report to manually prepare and provide the Safety Auditor Supervisors with a monthly supplemental spreadsheet of provisional OP-2 CZ motor carriers to make assignments. Recently, GOTHAM was updated to produce a report that reduces the need to pull data from other sources and will improve consistency in audit prioritization.

This memorandum formalizes the current practices utilized by the WSC and Southern Border division offices for the safety management of provisional OP-2 CZ motor carriers requiring Safety Audits. This policy also outlines the use of FMCSA’s new GOTHAM report titled “Mexican Provisional Carrier Inventory Status Report” as a tool, in addition to the WSC monthly supplemental spreadsheet, to prioritize provisional OP-2 CZ motor carriers that are due for a Safety Audit.

MODIFICATIONS:
This guidance modifies FMCSA policy titled "Enforcement Procedures for Denial of Access to Records, Equipment, Lands, Buildings, and Other Property of Foreign Motor Carriers" (MC-ESB-2019-0004) issued on June 28, 2019, and eFOTM-Enforcement manual section 2.4.4.3.F as to procedures related to Safety Audits of provisional OP-2 CZ motor carriers, and cancels sample templates D-1 (Sample Request Letter to Schedule Safety Audit-3rd Contact Attempt) and D-2 (Sample Notice Letter of Proposed Suspension in 15 days).

POLICY:
As assigned by the WSC, the Mexico Program Specialist and/or Border Safety Auditor Supervisors (the assigner(s)) will review the new Mexican Provisional Motor Carrier Inventory (Report titled "MX Provisional MV") status report within the New Entrant Reports section of GOTHAM and the WSC monthly supplemental spreadsheet to prioritize provisional OP-2 CZ motor carriers that are due for a Safety Audit. The assigner(s) should make Safety Audit assignments for OP-2 CZ motor carriers in accordance with FMCSA's Electronic Field Training Manual (eFOTM) Mexican-Domiciled Motor Carrier manual section 7.9. This section outlines FMCSA policy titled "Prioritization of Pre-Authorization Safety Audits and Safety Audits and Mexico-domiciled Motor Carriers" (MC-ESB-2020-001) signed August 19, 2020.

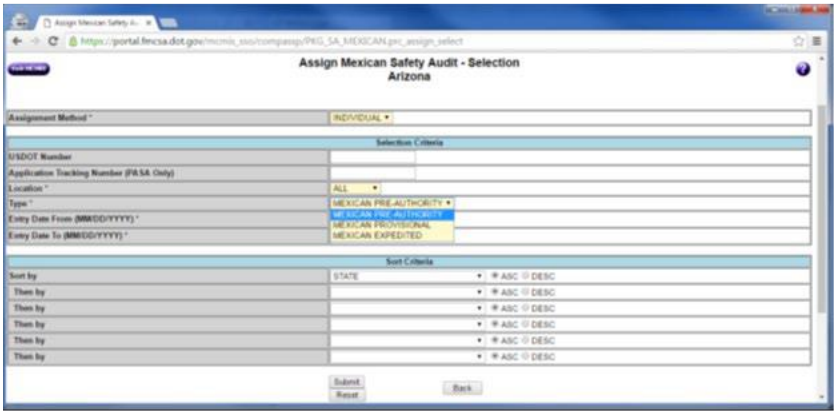
PROCEDURES:
The procedures below are set forth in sequential order to address the Safety Audit assignment process, documentation of contact attempts and associated correspondence after assignment, and the potential suspension or revocation of an OP-2 CZ motor carrier's provisional certificate of registration. The assigner(s) will use the assignment functionality in the FMCSA Portal by choosing "Assignments," then "Make Assignment," then "Safety Audit."



Some OP-2 CZ motor carriers that are due for a Safety Audit as indicated on the GOTHAM Mexican Provisional Motor Carrier Inventory status report or the WSC monthly supplemental spreadsheet may not be available for assignment in the FMCSA Portal because the Portal fails to identify all OP-2 CZ carriers due for a required safety audit that are noted in MCMIS. The Portal also displays an error message noting the carrier is not a new entrant when a manual attempt is made to assign a safety audit to an OP-2 CZ motor

carrier. For these OP-2 CZ motor carriers, the assigner(s) will use MCMIS to manually make those assignments.
Under the "Monitoring" option of MCMIS, the assigner(s) will select the option, "Assign Mexican Safety Audit" as illustrated in the screen shot below. The assigner(s) will notify the Safety Auditor and/or the Safety Auditor Supervisor of the assignment via email.

Any additional or ongoing Portal or MCMIS assignment issues should be brought to the attention of the WSC Mexico Program Specialist for resolution.



OP-2 CZ motor carriers that show no activity and are past the 18-month monitoring period will also be assigned so that Safety Auditors can contact the motor carrier and determine if an inactivation should be processed. The goal is to clear an assigned OP-2 CZ motor carrier within 75 days through completion of a Safety Audit, inactivation, or other action as appropriate.

7.10.1 Scheduling the Safety Audit for OP-2 Commercial Zone Motor Carriers, Contact Attempts, and Follow-up Actions

Normally, the Safety Auditor is expected to make and document contact attempts with the goal to complete contact attempts within a 10-day period of being assigned the Safety Audit. The Safety Auditor will ensure copies of all contact attempts are uploaded into the OP-2 CZ motor carrier's Electronic Document Management System (EDMS) file.

7.10.1.1 Scheduling the Safety Audit – 1st and 2nd Contact Attempts

When the first contact attempt is made, the Safety Auditor will call each phone number listed in FMCSA systems, such as MCMIS, FMCSA's Analysis and Information (A&I) system and Driver Information Resource (DIR) until they contact a carrier official. If there is no answer or a carrier official is not available, the Safety Auditor should attempt to leave a message or voice mail stating that FMCSA is attempting to schedule the provisional OP-2 CZ motor carrier for a required Safety Audit, request contact from the motor carrier official, and provide contact information for reaching the Safety Auditor.

If contact with the provisional OP-2 CZ motor carrier official is not successful on the first contact attempt, the Safety Auditor will make a second contact attempt. When the second contact attempt is made, the Safety Auditor will email and fax the provisional OP-2 CZ motor carrier a notice indicating that FMCSA is attempting to schedule a required Safety Audit, requesting contact from the motor carrier official, and providing contact information for reaching the Safety Auditor. The Safety Auditor should use all available email addresses and fax numbers listed in FMCSA systems, such as MCMIS, A&I and DIR.

Given the difficulty of contacting provisional OP-2 CZ motor carriers, it is recommended that Safety Auditors also attempt alternate methods of contact such as contacting shippers, using internet search engines to look for company websites or advertising, and/or using Commercial Driver's License Information System to identify additional persons who might have good contact information for the provisional OP-2 CZ motor carrier.

Safety Auditors will record the first two contact attempts in MCMIS and summarize the contact attempts on the Contact Record sheet found in Attachment 1. The Safety Auditor will upload the Contact Record sheet into the provisional OP-2 CZ motor carrier's file in EDMS.

7.10.1.2 Demand Letter to Produce Records for a Safety Audit – 3rd Contact Attempt

If after 30 days, the provisional OP-2 CZ motor carrier has not responded to the contact attempts, or has failed to provide records after indicating that it would, for the third contact attempt, the Safety Auditor will coordinate with the WSC Mexico Program Specialist. After the WSC Mexico Program Specialist concurs two contact attempts were properly made, the Safety Auditor will upload the Contact Record Sheet (Attachment 1) into the provisional OP-2 CZ motor carrier's file in EDMS, and then request the WSC to manually generate a Demand letter. After consulting with the WSC Borders Attorney, the WSC or WSC Mexico Program Specialist will issue the third contact attempt letter using a Demand to provide records to FMCSA for safety audit (Demand). Once approved, the Demand letter is to be signed by the Division Administrator (DA) or WSC Field Administrator (FA) (or designee) and sent to the provisional OP-2 CZ motor carrier's official mailing and physical addresses and the BOC-3 process agent using trackable means (e.g., UPS or certified/registered mail). A courtesy copy of the Demand should also be sent to the provisional OP-2 CZ motor carrier's official email address, if available.

The WSC Mexico Program Specialist, DA, or their designee will upload a copy of the Demand along with tracking documentation into the provisional OP-2 CZ motor carrier's EDMS file. The WSC Mexico Programs Specialist will update the WSC's spreadsheet in the WSC SharePoint drive with the date the Demand is served as documentation a third contact attempt has been made. **The date the Demand was served (third contact attempt) should not be entered in MCMIS** because MCMIS will delete the two prior contact attempt dates entered by the Safety Auditor. If the provisional OP-2 CZ motor carrier contacts or sends correspondence to the Safety Auditor regarding the Demand, the Safety Auditor will immediately contact the WSC Mexico Program Specialist and WSC Borders Attorney. If a provisional OP-2 CZ motor carrier provides some, but not all, records necessary for a safety audit, the Safety Auditor and/or Division Office should consult with the WSC Mexico Program Specialist for additional guidance. The WSC Mexico Program Specialist will consult as necessary with the WSC Service Center Director (SCD) and WSC Borders Attorney.

7.10.1.3 Failure to Produce Records Necessary for Safety Audit

If, after being served with the Demand, the provisional OP-2 CZ motor carrier fails to produce the records necessary for a safety audit, the WSC Mexico Programs Specialist, after verifying with the Safety Auditor that the Division Office has also not received the records from the provisional OP-2 CZ motor carrier, will update the contact attempts summary sheet, including any contact or correspondence from the carrier, and upload it into the carrier's file in EDMS. The WSC Mexico Program Specialist will notify the WSC SCD and WSC Borders Attorney of the failure of the provisional OP-2 CZ motor carrier to provide the records necessary for the safety audit. The WSC Mexico Program Specialist will ensure that the tracking documentation showing service of the Demand is uploaded into the carrier's EDMS file.

7.10.1.4 Notice of Proposed Suspension of Certificate of Registration and Order to Show Cause (OSC)

If, in response to a Demand, the provisional OP-2 CZ motor carrier does not timely provide the documents necessary for FMCSA to complete a Safety Audit, the FA may proceed to issue a Notice of Proposed Suspension of Certificate of Registration (Notice). The WSC Mexico Program Specialist will notify the WSC SCD and WSC Borders Attorney. As appropriate, the WSC Borders Attorney will manually draft a Notice for issuance by the WSC FA. The Notice will be sent to the provisional OP-2 CZ motor carrier's official mailing and physical addresses and the BOC-3 process agent using trackable means (e.g., UPS or certified/registered mail). A courtesy copy of the Notice should also be sent to the provisional OP-2 CZ motor carrier's official email address, if available. In accordance with 49 CFR § 385.111(e), the Notice will inform the provisional OP-2 CZ motor carrier that its provisional certificate of registration will be suspended 15 days from the service date of the Notice unless it provides all necessary documents or information. The Notice will also notify the carrier that if its certificate of registration is suspended, the suspension will remain in effect until it provides to FMCSA the necessary documents or information and either (1) a safety audit determines that the carrier exercises basic safety management controls necessary for safe operations; or (2) the carrier is rated Satisfactory or Conditional after a compliance review. The WSC will ensure that a copy of the Notice, and all documentation showing tracking and service of the Notice and OSC is uploaded into the provisional OP-2 CZ motor carrier's file in EDMS.

7.10.1.5 Requests for Extensions of Time

The FA should consider reasonable requests for extensions of time to comply with the Demand and/or respond to the Notice and OSC.

7.10.1.6 Compliance with the Notice and OSC

If the provisional OP-2 CZ motor carrier complies with the Notice and OSC and timely provides to FMCSA the documents necessary to complete the Safety Audit, the FA should terminate proposed suspension proceeding.

7.10.1.7 Order Suspending Provisional Certificate of Registration

If, after service of a Notice the provisional OP-2 CZ carrier does not respond or provide the documents necessary to complete a Safety Audit as required, the WSC Mexico Program Specialist will notify the WSC SCD and WSC Borders Attorney. As appropriate, the WSC Borders Attorney will manually draft an Order suspending the carrier's provisional certificate of registration for issuance by the WSC FA. The Order will be sent to the provisional OP-2 CZ motor carrier's official mailing and physical addresses and the BOC-3 process agent using trackable means (e.g., UPS or certified/registered mail). A courtesy copy of the Order should also be sent to the provisional OP-2 CZ motor carrier's official email address, if available. In accordance with 49 CFR § 385.111(e), the Order will inform the provisional OP-2 CZ motor carrier that its provisional certificate of registration is suspended, and that the suspension will remain in effect until the carrier provides the necessary documents or information to FMCSA and either (1) a Safety Audit is completed and determines that the carrier exercises basic safetymanagement controls necessary for safe operations; or (2) a Compliance Review is completed that results in a Satisfactory or Conditional safety rating. The WSC will ensure that a copy of the Order suspending the provisional certificate of registration, and all documentation showing tracking and service of the Order is uploaded into the provisional OP-2 CZ motor carrier's file in EDMS.

7.10.1.8 Rescission of Order Suspending Certificate of Registration

A Provisional OP-2 CZ motor carrier that fails to provide to FMCSA documents necessary for a safety audit and whose provisional certificate of registration has been suspended will not be able to reinstate its

provisional registration until it until it has provided to FMCSA the necessary documents or information and either (1) a safety audit determines that the carrier exercises basic safety management controls necessary for safe operations; or (2) the carrier is rated Satisfactory or Conditional after a compliance review. The FA will respond to any requests for rescission for Orders suspending a provisional certificate of registration after consultation with the WSC Borders Attorney.

7.10.1.9 Continued Operations after Order Suspending Certificate of Registration

The WSC Mexico Program Specialist and Division Office will monitor FMCSA data systems to check for inspection or crash activity while the provisional OP-2 CZ motor carrier's provisional certificate of registration is suspended. In the event inspections or crashes are discovered while operating in the United States when the carrier's provisional Certificate of Registration has been suspended, the WSC Mexico Program Specialist will send documentation of the operation in the United States to the WSC FA, or designee, and the WSC Borders Attorney and recommend action to revoke the carrier's Provisional Certificate of Registration in accordance with
49 CFR § 385.111(g) be considered. The WSC will ensure that all documents served on the motor carrier and supporting documentation are uploaded into the provisional OP-2 CZ motor carrier's file in EDMS.

7.10.1.10 Ensuring notice to FMCSA Registration Office and verifying status in FMCSA systems

After service of an Order suspending or revoking the provisional certificate of registration of a provisional OP-2 CZ motor carrier or an Order rescinding a suspension or revocation, the WSC Mexico Program Specialist should notify FMCSA's Office of Registration and Safety Information: (1) Chief, Registration, Licensing and Insurance Division; (2) Deputy Chief, Registration and Licensing and Insurance Division; and (3) Lead, Registration and Licensing Team, to request that the carrier's provisional certificate of registration be suspended or revoked as appropriate. All requests should also be submitted by email to mc-ecc.comments@dot.gov.

On the effective date of the suspension or revocation of the provisional certificate of registration, the WSC Mexico Program Specialist should verify that the suspension or revocation is properly displayed in the Agency's Licensing and Insurance (L&I) system and Query Central database. If the suspension or revocation does not appear in the L&I system on the next business day after it is effective, the WSC should follow up with the Chief, Registration, Licensing, and Insurance Division, Office of Registration and Safety Information.

Appendix F – Hazardous Materials Checklists

For

eFOTM Redevelopment

Federal Motor Carrier Safety Administration (FMCSA)
U.S. Department of Transportation

These documents are provided as a resource for investigators. Many of these documents are copyrighted by the association that authored them, so they are not to be released to the public.

HM Enforcement Guide

HM Packages PowerPoint

PHMSA Special Permit Review Standard Operating Procedures

General Hazardous Materials Investigation Checklist

- Suggested Items to Include in an HM Investigation Request

HMSP Procedures

- FMCSA Notice: Domestic Transportation of Anhydrous Ammonia

Severe Level I and II Violation List

CARGO TANKS

- CTMV Section Cites

CTMV Motor Carrier

- Cargo Tank Motor Carrier Investigation Checklist
- Common Cargo Tank Issues
- MC338 CTMVs
- NFPA Standard 58, 2001 (only applicable to Section 173.315(k))
- TTMA RP 61-98; 81-97; and 107 (1998)
- Road Clearance Guide
- Rear End Protection Device Guide
- Venting Capacity Guide
- MC300 - MC312 specifications
- MC330 specification
- MC331 specification pre 2004
- MC338 specification pre 2004
- Manhole Certifications
- Pads Guidance

CT Test/Inspection Facilities

- CTFR Investigation Checklist
- Cargo Tank Retest-Reinspection Letter
- CTFR Part C Template
- Person Responsible for Compliance Interview
- RI Interview

- Violations that Require CT Retesting
- WFMPE Procedures
- CGA C-6, 1993
- CGA TB-2, 1980
- EPA Method 27 Procedure
- Surface Area Calculation Spreadsheet
- Recertification Flowcharts
- PRD Pressures Chart for Bench Testing
- Method 27 Appendix A

Repair (R Stamp) Facilities

- NBIC Checklist
- NBIC QCS Checklist
- NBIC QCS Guide
- Repair R Stamp Checklist
- NBIC, 1992

Manufacturer (U Stamp) Facilities

- 1996 FMCSA Structural Evaluation Guide
- AI Responsibilities
- ASME QCS Guide
- How to Complete the ASME U-1A Form
- Manufacturers Checklist
- Manufacturers Duties
- 2015 edition of the ASME Code
    - Section V
    - Section VIII, Division 1
    - Section IX

Packages

- Package Section Cites

Cylinders

- Cylinder Checklist
- PHMSA Cylinder Brochure

General Packaging

- UN Performance Package Codes Brochure
- Package Cites Spreadsheet

Other Bulk Packages

- IBC Checklist
- Portable Tank Checklist
- DOT 51 tanks
- DOT 56 and 57 tanks

Specific Hazardous Materials

- Special Provisions and Segregation Reminders

Explosives

- Explosives Checklist
- APA 87-1, 2001
- IME Standard No. 22, 2007
- IME Standard No. 23, 2011

Radioactive Materials

- Radioactive Materials Checklist

Hazardous Substances and Wastes

- Hazardous Substances and Wastes Checklist

Materials of Trade

- MOTs Brochure

HM Communication

- HM Shipping Paper Checklist
- Non-Bulk Marking Checklist
- Bulk Marking Checklist
- Labeling Checklist
- Placarding Checklist

Training

- HM Training Checklist
- Guide to Developing a HM Training Program

Security Plans

- Security Talking Points
- Security Plan Checklist
- Suspicious Activity Report
- Security Assessment Worksheet
- Handling and Safeguarding Security Plans

Removal of Hazardous Materials Safety Permit

- Policy (MC-SEH-2024-001)
- Attachment A: Hazardous Materials Safety Permit Declination Statement
- Attachment B: Communication Channels
- Attachment C: Procedures for Issuing a Notice of Removal from the HMSP Program
- Attachment D: Template - Notice of Removal from the Hazardous Materials Safety Permit Program

Hazardous Materials Manual

For

eFOTM Redevelopment

Federal Motor Carrier Safety Administration (FMCSA)
U.S. Department of Transportation

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8.1 HM Compliance

8.1.1 HM Compliance

The safe transportation of hazardous materials is a primary goal of the U.S. Department of Transportation. Hazardous materials transportation presents a low-probability, high-risk scenario. Most hazardous materials incidents are handled quickly, but contain a very large risk to the general public and first responders.

The HMR is a very complicated set of regulations. It is vital that investigators have a good working knowledge of the organization of the HMR.

PHMSA's Online CFR (OCFR):
https://portal.phmsa.dot.gov/ecfr/faces/pages/ecfr.jspx?_afrLoop=404505854314632&_afrWindowMode=0&_adf.ctrl-state=vnt7wxpd7_4

Includes current HMR, interpretations, approvals, special permits, rulemakings, etc.

PHMSA Training Modules: https://www.phmsa.dot.gov/training/hazmat/training-modules

PHMSA Publications: https://hazmatonline.phmsa.dot.gov/services/Pub_Free.aspx

Interpretations from PHMSA: https://www.phmsa.dot.gov/regulations/title49/b/2/1

How to Use the HMR:
https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/training/hazmat/28426/phh50-0047-0205howtousethehmr.pdf

HMR websites:

https://www.ecfr.gov

Federal Register:

http://www.heinonline.org/HOL/Index?collection=fedreg

https://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2011&page.go=Go

https://www.federalregister.gov/

8.1.2 Introduction to HMR

The HMR is written for the shipper, or offeror – the person who offers the HM into transportation. The entire regulatory system is dependent upon the shipper to properly classify, describe, communicate, and package the hazard. The entire HMR can be broken into two major concepts: Communication and Packaging.

The HMR apply to all transportation in commerce – intrastate, interstate, and international, including storage incidental to transportation. PHMSA is the Competent Authority for all hazardous materials transportation in, out, and through the USA. Section 171.1 and Section 171.2 contain concise language regarding the applicability of the HMR. In addition, PHMSA has issued formal and informal interpretations on various applicability issues. It is possible for a motor carrier to perform the duties of a shipper and it is possible to have multiple shippers for one HM shipment.

Communication

The communication standards are written for the first responder, not the general public. All the communication regulations are focused on providing concise information regarding the hazards of the material during an incident. Communication includes:

- Shipping papers, which must be done in a certain format with certain information

- Marking of packages and vehicles (e.g., shipping names, identification numbers, etc.)
- Labeling of packages
- Placarding of certain packages and vehicles
- Training of all employees who have any function related to hazardous materials transportation or testing or certification of packages used for hazardous materials transportation
- Security plans, to ensure that hazardous materials are protected from use by terrorists

Packaging

A "packaging" is a container for HM without its contents. A "package" is the container with the contents.

A specification package (UN or USDOT) is a packaging built to a specific standard, or a packaging that has been tested and certified for use in hazardous materials transportation.

Package requirements include general leakproofness (Part 173 Subpart B); package specifications (Part 178), and Continuing Qualification and Maintenance (Part 180).

The HMR, unlike international standards, differentiates between "non-bulk" packages and "bulk" packages (See Section 171.8). The communication standards are separated largely along the line of these definitions.

Non-bulk packages include boxes, drums, pails, almost all cylinders, and other similar packages.

Bulk packages include cargo tanks, some cylinders, intermediate bulk containers (IBCs), portable tanks, and other similar packages. See the *HM Packages* power point for an overview of the various terms.

8.1.3 Parts 100-185 (Shippers and Motor Carriers only)

8.1.3.0 Parts 100-185 (Shippers and Motor Carriers only)

The HMR have extensive individualized requirements for some materials, or groups of materials, making a complete listing of violations for which enforcement should be considered difficult or impossible.

It is important to remember that government officials cannot take on the duty of classification. Classification is the sole responsibility of the shipper (see Section 173.22).

The scope of the investigation depends on the type of investigation you are assigned.

If you are assigned an Onsite Comprehensive Investigation, all BASICs and related FMCSR and HMR Parts are investigated. See all BASIC sections for specific guidance on how to investigate the BASIC requiring investigation.

If you are assigned an Onsite Focused Investigation, the Parts by BASIC table for the HM Compliance BASIC below provides guidance for selecting the appropriate CFR Part (Full or Subpart) that should be examined. Following the table, guidance is provided for each of the CFR Part related to the HM Compliance BASIC.

● full review of part
⊗ review of specific regulations within a part (relevant subpart is indicated by the number below the symbol).
****Note**: Parts 40, 325, 380, 382, 390, 391, 393, 395, 396, 398, and 399 are not examined during a focused investigation of the HM Compliance BASIC and therefore are not included in this table.

Safety		
CFR	**Full or Subpart**	**Description**
383 - CDL	⊗ Part of CAIR	**Required** as part of the CAIR process. Perform CDLIS checks in accordance with policy memo.

392 - Driving of Motor Vehicles	⊗ .2, .7, .10	392.2 - Applicable Operating Rules – **Required if** state or local routing laws are applicable to the motor carrier under investigation. Use "1 of 1" violation citation logic. 392.7 – Emergency Equipment – **Required** 392.10 – Railroad Crossing - **Required**
Hazardous Materials		
CFR	**Full or Subpart**	**Description**
107 - HM Program Procedures (Registration)	⊗ .101 - .405 .501 - .504 .601 - .620	107.101 - 107.405, **required if** carrier/shipper is a party to a special permit. 107.501 - 107.504, **required if** carrier meets any Cargo Tank registration requirements. 107.601 - 107.620, **required if** person meets any of the HM registration criteria found in 107.601.
171 - HM General	⊗ .1, .2, .15, .16	171.1 - Applicability of Hazardous Materials Regulations (HMR) - **Required** to verify applicability of regulations. 171.2 - General requirements – **Required** 171.15 - Immediate notice of certain hazardous material incidents - **Required if** carrier/shipper was involved in an incident that required immediate notice. Refer to criteria in 171.15(b). 171.16 - Detailed hazardous material incident reports - **Required if** carrier has incidents meeting detailed reporting criteria.
172 - HM Table/ Communication	⊗ .200 - .205 .300 -.338 .400 -.450 .500 -.560 .600 -.606 .700 -.704 .800 -.822	172.200 - 172.205, Shipping Paper Requirements - **Required** as applicable to each proper shipping name or class/division of hazardous material transported or shipped. 172.300 - 172.338, Marking Requirements - **Required** for each proper shipping name or class/division of non-bulk and bulk packages requiring marking in accordance with Subpart D or Part 172. 172.400 - 172.450, Labeling Requirements - **Required** as applicable to each proper shipping name or class/division of hazardous material being transported or shipped requiring labels in accordance with Subpart E of Part 172. 172.500 - 172.560, Placarding Requirements - **Required** for each proper shipping name or class/division of hazardous material being transported or shipped requiring Placarding in accordance with Subpart F of Part 172. 172.600 - 172.606, Emergency Response Requirements - **Required** for each proper shipping name or class/division of hazardous material required to have emergency response information.

		172.700 - 172.704, Training Requirements - **Required** for hazardous material employees as defined by Subpart H of Part 172, check all requirements in Subpart H. 172.800 - 172.822, Security Plan Requirements - **Required** for hazardous material transporters and shippers that are required to have a security plan in accordance with Subpart I or Part 172.
173 - Shipper Requirements	●	**Required** for each proper shipping name or class/division of hazardous materials transported or shipped in accordance with Part 173.
177 - Carriage by Highway	● As applicable	177.800 - 177.823, General information and regulations - **As applicable** to the hazardous materials being transported. 177.834 - 177.843, Loading and unloading - **As applicable** to the hazardous materials listed in Subpart B of Part 177. 177.848, Segregation and Separation of Hazardous Materials - **Required if** carrier transports Class 1 materials or a combination of hazardous materials requiring separation or materials are forbidden to be transported in the same transport vehicle in accordance with Subpart C of Part 177. 177.854, Vehicles and shipments in transit - **As applicable** and investigative evidence reveals. 177.870, Regulations applying to hazardous material on motor vehicles carrying passengers for-hire - **Required if** for-hire passenger. Carrier also transports hazardous material for each proper shipping name or class/division of hazardous material transported by a for-hire passenger carrier.
178 - Package Specifications		As applicable to the hazardous material packaging - **Required if** motor carrier is also a package manufacturer, cargo tank manufacturer or cargo tank owner.
180 - Package Quality and Maintenance		Qualification and Maintenance of packaging - Cylinders, IBCs and Cargo Tanks. **Required if** motor carrier is a cargo tank or IBC owner, tester, inspector or manufacturer.
385 - Safety Fitness Procedures	⊗ .401 - .423	385.401 - 385.423, Hazardous Materials Safety Permits - **As applicable** to carriers transporting designated quantities of hazardous materials per 385.403.
397 - HM Driving and Parking	●	Driving and Parking rules - as applicable to the hazardous material investigation.
Other		
CFR	**Full or Subpart**	**Description**
387 - Financial Responsibility	⊗ As applicable	**Required** as part of CAIR process as applicable to the commodity transported or motor carrier operation type.

8.1.3.1 Part 107 Registration of Persons Who Offer or Transport HM

Investigative Procedures

Regardless of the type of investigation you are assigned, your investigation of Part 107 consists of determining if the HM carrier and/or shipper is properly registered with PHMSA in accordance with 49 CFR Part 107, Subpart G. Review Sections 107.601 and 107.606 to determine if the carrier or shipper transports of offers HM in quantities that are subject to registration. Remember that there are some HM that require registration even though placarding is not required (e.g., Class 9 over 3,500 gallons). Violations are cited under Section 107.608.

The HM motor carrier and/or shipper registration(s) can be validated by using PHMSA's website: https://hazmatonline.phmsa.dot.gov/Services/companylookup.aspx

A motor carrier and/or shipper may have a HM Certificate of Registration that expires in one, two or three years. All registrations expire on June 30th of any given year. Check the following information on the HM Certificate:

- Registration Year(s)
- Certification Statement
- Registrant and the address
- Registration Number
- Issue and Expiration Date(s).

You also need to determine if the motor carrier or shipper is utilizing any Special Permits (SP). If so, obtain a copy of the Special Permit from the motor carrier or shipper and review it closely. Ask the motor carrier or shipper how they comply with the individual provisions of the SP. Violations of the SP may be cited under Section 173.22a, or the particular regulation that is being violated. If you have any questions, contact your HM Specialist (HMS) or HM Program Manager (HMPM).

You can search for SPs at this web site: http://www.phmsa.dot.gov/hazmat/regs/sp-a/special-permits/search

Certain HM or packages require an Approval from PHMSA (e.g., explosives, cylinder requalification, IM/UN portable tank testing). These requirements are discussed later.

● full review of part
⊗ partial review of part (relevant subpart is indicated by the number below the symbol)

BASIC	Part 107	Description
HM Compliance	⊗ .101 - .127 .601 - .620	107.101 - 107.127, **required if** carrier/shipper is a party to a special permit 107.601 - 107.620, **required if** person meets any of the HM Registration criteria found in 107.601

HM Carrier and/or Shipper that is not Registered with PHMSA

If the HM carrier and/or shipper is NOT currently registered with the PHMSA, inform a high-level company official that they MUST register immediately for each HM Registration year in which they transported hazardous materials in commerce covered by the HM Registration.

If the HM motor carrier and/or shipper submit complete and accurate proof of HM Registration within 10 working days after closeout of the investigation, enforcement action should NOT be initiated; but, if the HM motor carrier and/or shipper failed to register within the 10 working days, enforcement action should be initiated.

Acute, Critical, and Severe Regulations

Below are the violations that should be considered for enforcement action when discovered for a HM carrier and/or shipper when it is not registered to transport or ship hazardous materials in commerce. Refer to Section 8.2.5 for a discussion of Severe violations.

Acute, Critical, and Severe Regulations for Part 107

Citation	Type	Description
107.502(b)	**Severe Level I**	Failing to properly register before engaging in the manufacture, assembly, certification, inspection or repair of a specification cargo tank or cargo tank motor vehicle.
107.608(b)	**Severe Level II**	Offering a hazardous material for transportation without having registered with the Department of Transportation, under Subpart G of Part 107.

Evidence that is Required to Prosecute a Violation

To prosecute a violation of Part 107, Subpart G, you must show that:

- A hazardous material in a quantity subject to Subpart G was offered or transported in commerce.
- The offeror or motor carrier was not registered in accordance with Subpart G of Part 107.
- Knowledge and willfulness were established.

See Section 8.2.5 (Documenting Violations Initiating Enforcement) for more details on how to document violations.

8.1.3.2 Part 109 Hazardous Materials Enhanced Enforcement Procedures

Purpose

The purpose of Part 109 is to provide authority for Special Agents to issue Emergency Orders and take other actions when enforcing the Hazardous Materials Regulations. Special Agents shall follow the procedures in the Hazardous Materials Enhanced Enforcement Procedure Manual when applying the provisions of Part 109.

SPECIAL AGENTS ARE NOT AUTHORIZED TO USE THE PROVISIONS OF SECTION 109.5 RELATED TO THE OPENING OF HM PACKAGES IN TRANSPORTATION.

Background

On March 2, 2011, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a Final Rule creating Part 109 to Title 49 CFR. Part 109 establishes procedures for enhanced authority for Special Agents of the U.S. Department of Transportation. Part 109 Enhanced Authority does not apply to State or local enforcement personnel. This authority, including its limitation to Federal Agents, was established through passage and implementation of the Hazardous Materials Transportation Safety and Security Re-authorization Act of 2005, and is now codified in the Hazardous Materials Transportation Law at 49 U.S.C. 5121. The PHMSA, in conjunction with the various modal administrations, developed the Joint Operations Manual for 49 CFR Part 109 Enforcement and Administrative Authorities, which applies to all modes of transportation. The FMCSA, through this policy, is providing guidance specific to the duties of FMCSA personnel, including its Administrator, Chief Counsel, Special Agents, and others designated by the Administrator to carry out the provisions of 49 CFR Part 109.

When to Utilize Part 109

The authorities granted to FMCSA Special Agents in 49 CFR Part 109 are utilized only at times when all other means of enforcement are exhausted and the imminent hazard causing the action has not been immediately discontinued. It is, therefore, essential that the enhanced authorities be carried out in a uniform manner. The Hazardous Materials Enhanced Enforcement Procedure Manual provides operational procedures and guidance for implementing the Part 109 authorities, enforcing HMRs, and protecting Special Agents, the general public, and the environment.

The regulations in 49 CFR Part 109 are applicable to **Federal personnel only**, and grants special agents of the Federal government additional authorities in carrying out their duties to ensure the safe transportation of HM. These authorities consist of:

- Stopping and Removing Packages from Transportation: The ability to stop and remove a package(s) from transportation when an agent has an "objectively reasonable and articulable belief" that the package(s) contains HM; the package does not otherwise comply with the HMRs; and the package may pose an imminent hazard, defined in Part 109 as the existence of a condition relating to HM that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.
- Opening Packages: The regulations in Part 109 provides Federal agents the ability to stop and open packages suspected of containing HM during transportation, when the package is not otherwise compliant with the HMR, such as in the case of suspected undeclared or improperly packaged or identified HM. However, until such time as FMCSA personnel are properly trained in this activity, FMCSA's policy is that **no Special Agent or other FMCSA employee is to open, or cause to be opened, any package suspected of containing HM during the course of transportation.**
- Transport for Analysis: When a Special Agent determines that further examination of a package is necessary or that an analysis of the material itself is required, after having exhausted all other means of investigation, the Special Agent may direct a person to transport the package to a test facility capable of performing the required task. The reasons for using this authority may include any of the following situations:
    - Conflicting information exists concerning the package contents;
    - Additional investigation is not possible on the immediate premises; or,
    - Immediate need exists to otherwise determine that the package is in compliance.
- Assistance from Qualified Personnel: When a Special Agent is unable to perform a function, or when safety might otherwise be compromised by a Special Agent's performance of an essential function, the Special Agent may authorize properly qualified personnel, such as a person employed by the entity in control of the hazardous material, to assist in the activities. Although a Special Agent may request assistance of such person, that person, or his or her employer, has the right to refuse the request.
- Closing a Package and reintroducing into Transportation: At this time, FMCSA is not exercising its authority under § 109.5 to permit Special Agents to open packages to determine compliance. Therefore, instructions on closing and reintroduction of a package into commerce are not required at the present time. When FMCSA determines that it will begin exercising this authority, a policy will be developed and proper training provided. Until such policy is issued and training provided, FMCSA Special Agents shall not open a packaging containing or believed to contain HM at any time.
- Emergency Orders: Emergency Orders under Part 109 may be in the form of an emergency restriction or prohibition, recall, or out-of-service order (OOS), and may be issued for any unsafe practice or condition posing an imminent hazard.
- Imminent Hazard: The Administrator or designee may issue emergency orders to stop a package or vehicle containing HM, when the HM may pose an imminent hazard as defined in 49 CFR Part 109. As part of this authority, FMCSA is adopting the Commercial Vehicle Safety Alliance's (CVSA) *North American Standard Out-of-Service Criteria* (NAS-OOSC), Part III Hazardous Materials for use by its Special Agents during the conduct of inspections of commercial motor vehicles (CMV) and will use the NAS-OOSC as the standards for determining whether an imminent hazard exists and justifies the exercise of Part 109 enhanced authorities.

Other considerations:

- Prohibition of Handling Certain materials: Unless otherwise permitted in Section 2.8 "Specific Materials" of the Manual, no Special Agent may stop and remove from transportation as outlined above, a package containing a:
  - Perishable HM;
  - Radioactive material;
  - HM with a primary or subsidiary classification of Poison-Inhalation Hazard, or,
  - Select Agent or Toxin.

- Custody of Packages: In order to provide for consistency regarding custody of packages during an enhanced enforcement procedure, Section 2.9, titled "Custody of packages" includes a chart which breaks down each sub-paragraph under §§ 109.5 - 109.13 and sets forth the person having custody during each potential stage of the inspection process.

8.1.3.3 Part 130 Oil Spill Prevention and Response Plans

Part 130 of the HMR requires motor carriers that transport petroleum oil, as defined in Section 130.5, to develop and maintain an oil spill prevention and response plan. Review Section 130.2 for applicability.

Investigative Procedures

Regardless of the type of investigation you are assigned, your investigation of Part 130 consists of determining if the motor carrier is subject to Part 130 and a review of their written plan. Specifically, review the plan for compliance with:

- The communication requirements in Section 130.11;
- The packaging requirements in Section 130.21;
- The plan requirements in Section 130.31; and
- The implementation requirements in Section 130.41.

Acute, Critical, and Severe Regulations

There are no Acute, Critical, or Severe cites for Part 130.

Evidence that is Required to Prosecute a Violation

To prosecute a violation of Part 130 you must show that:

- A hazardous material in a quantity subject to Part 130 was offered or transported in commerce.
- The motor carrier violated the specific section of Part 130 you have discovered.
- Knowledge and willfulness were established.

See Section 8.2.5 (Documenting Violations Initiating Enforcement) for more details on how to document violations.

8.1.3.4 Part 171 HM Incident Reporting and International Standards

Investigative Procedures

Regardless of the type of investigation, you are conducting, an investigation of Part 171 consists of determining if the motor carrier or shipper has had any HM incidents that requires reporting or is utilizing any of the international hazardous materials regulations.

International Standards

There are several international standards that a motor carrier or shipper may utilize for international transportation, the continuation of an international shipment, or by modes other than highway. For example a motor carrier or shipper may use the International Maritime Dangerous Goods (IMDG) Code for domestic water transportation.

These standards are too complex to discuss here. SIs should use caution when enforcing the HMR on shipments that may be eligible for one of the international standards. Contact your HMS or HMPM with questions.

Determining if Violations of HM Incident Reporting Requirements Exists

- Review the exceptions in Section 171.16(d).
- Examine the accident reports, records, and files related to all crashes, which occurred during the previous 12 months, for the occurrence of HM incidents.
- Examine over, short and damaged (OS&D) records and cargo/freight claim files, from the previous 12 months, for the occurrence of any HM incidents and/or releases.
- Examine the OSHA injury reports and workman's compensation claim records for injuries occurring from cargo handling (HM spills).
- Examine records of all instances of unintentional release(s) of HM.
- Tour the motor carrier's loading docks to identify damaged HM packages that could indicate HM spills.
- Review the incident reports from the previous 12 months. Determine compliance with the HM incident reporting requirements under Sections 171.15 and 171.16.
- If an incident meets the requirements Section 171.15(b), the motor carrier must provide a telephone notification to the National Response Center (NRC) at 800-424-8802 (toll free) or 202-267-2675 (toll call) or online at http:// www.nrc.uscg.mil
    - **Note:** While an incident may meet the criteria for telephone reporting, if that information was not available during the time of the incident (e.g., a person was hospitalized 2 days later after continuing to have respiratory problems), there is no violation.
- **Note:** Verify HM incidents by visiting the NRC and PHMSA websites to verify that an HM incident was reported, by viewing HMIS incident reporting information on PHMSA's portal. You must create an account. It works best when on VPN. https://portal.phmsa.dot.gov/PHMSAPortal2/
- Determine whether incident reports are being filed and maintained for two years, as required by Section 171.16.
- Review the incident reports for accuracy. If there are major discrepancies between the report and the facts of the incident (e.g., a truck was destroyed and 9,000 gallons of gasoline spilled, but the incident was reported as having $0 in property damage), have the carrier file an updated report as required by Section 171.16(c).

● full review of part
⊗ partial review of part (relevant subpart is indicated by the number below the symbol.)

BASIC	Part 171	Description
HM Compliance	⊗ .15, .16	171.15 – Immediate notice of certain hazardous material incidents – **Required if** carrier/shipper was involved in an incident that required immediate notice. Refer to criteria in 171.15(b). 171.16 – Detailed hazardous material incident reports – **Required if** carrier has incidents meetings detailed reporting criteria 171.2 - General requirements - **Required**

Acute, Critical, and Severe Regulations

The violations listed below should be considered for enforcement action when discovered for a motor carrier and/or shipper when it has failed to report an incident as required. Refer to Section 8.2.5 for a discussion of Severe violations.

Acute, Critical, and Severe Regulations for Part 171

Citation	Type	Description
171.15	**Critical**	Failing to give immediate telephone notice of an incident involving hazardous materials. **Number Checked: The number of hazardous materials incidents checked which required immediate telephone notice.**
171.16	**Critical**	Failing to make a written report of an incident involving hazardous materials. **Number Checked: The number of hazardous materials incidents checked which required a written report.**

Evidence Required to Prosecute a Violation

To prosecute a violation of Part 171 you must show that:

- A hazardous material was offered or transported in commerce.
- There was an incident that required reporting.
- That the motor carrier or shipper did not report the incident.
- Knowledge and willfulness were established.
- Ensure the HM was "in transportation" when the incident occurred.
- Validate who had possession of the hazardous material when the incident occurred.

See Section 8.2.5 (Documenting Violations Initiating Enforcement) for more details on how to document violations.

8.1.3.5 Part 172 HM Communication; Training; and Security Plans

Shipping Papers (Subpart C) and Emergency Response Information (Subpart G)
Marking, Labeling and Placarding (Subparts D, E, and F)
Security Plans (Subpart G)
Training (Subpart H)

Guides and checklists for various HM topics are found in the HM Resource Library, ***Appendix F***.

Investigative Procedures

Regardless of the type of investigation you are conducting, your investigation should include an investigation of all of Part 172, as applicable. The table below identifies each BASIC by Part 172 and includes guidance on whether the investigation should include a review of the full part or subpart. The table also includes guidance on when each is required or should be considered based on investigative findings.

● full review of part
⊗ partial review of part (relevant subpart is indicated by the number below the symbol.)

BASIC	Part 172	Description
Driver Fitness	⊗ .704	172.704 - Training Records -**Required if HM Carrier**
HM Compliance	⊗ .200 – .205 .300 –.338 .400 –.450 .500 –.560 .600 –.606	172.200 - 172.205, Shipping Paper Requirements – **Required** as applicable to each proper shipping name or class/division of hazardous material transported or shipped.

	.700 –.704 .800 –.822	172.300 - 172.338, Marking Requirements –**Required** for each proper shipping name or class/division of non-bulk and bulk packages requiring marking in accordance with Subpart D or Part 172. 172.400 - 172.450, Labeling Requirements –**Required** as applicable to each proper shipping name or class/division of hazardous material being transported or shipped requiring labels in accordance with Subpart E of Part 172. 172.500 - 172.560, Placarding Requirements –**Required** for each proper shipping name or class/division of hazardous material being transported or shipped requiring Placarding in accordance with Subpart F of Part 172. 172.600 - 172.606, Emergency Response Requirements – **Required** for each proper shipping name or class/division of hazardous material required to have emergency response information. 172.700 - 172.704, Training Requirements –**Required** for hazardous material employees as defined by Subpart H of Part 172, check all requirements in Subpart H. 172.800 - 172.822, Security Plan Requirements – **Required** for hazardous material transporters and shippers that are required to have a security plan in accordance with Subpart I of Part 172.

Investigative Procedures for Shipping Papers (Part 172 Subpart C) and Emergency Response Information (Part 172 Subpart G)

- Tour the hazardous materials shipper's or motor carrier's facility and review the Safety Data Sheets (SDS) to become familiar with all of the shipped/carried HM.
- Look for the presence of any vehicles or packages designed to ship/transport HM, as well as any placards, markings or labels available for employees to utilize.
- If only pre-printed forms are used for shipping papers, determine whether there is an appropriate form for each proper shipping name of the HM being shipped or transported.
- Verify that the hazardous materials shipper/carrier has a sufficient system to ensure that these forms are used as complete and accurate shipping papers.
- Examine shipping papers given to local and over-the-road drivers as they arrive at the dock.
    - This is a good opportunity to validate the HM training and determine whether drivers and dock personnel are familiar with the HMR.
- Ask the motor carrier or shipper if they utilize different shipping papers for different operations (e.g., contract vs. common, customer pick up).
- See Shipping Paper Checklist.

Retention of Shipping Papers

- If permanent shipping papers are utilized, ensure information is maintained by the motor carrier documenting each trip the shipping paper was used.
- Hazardous waste shipping papers (the hazardous waste manifest) must be retained for three (3) years after the shipment is accepted by the initial carrier.
- Shippers must retain their shipping papers for two (2) years after the shipment is accepted by the initial carrier.

- Motor carriers must retain shipping papers for one year after acceptance by the carrier.
- Each shipping paper copy must include the date of acceptance by the initial carrier. This requirement is found in Section 172.201(e) and Section 177.817(f).
- Shipping papers may be retained electronically.

The Number of Shipping Paper Documents that Should be Examined for Compliance

<table>
<tr><th colspan="4">CFR Parts – 172 - Shipping Papers</th></tr>
<tr><th colspan="2">Onsite</th><th colspan="2">[100% States] Offsite</th><th>CBI</th></tr>
<tr><th>Variable</th><th># of Documents to Review</th><th>Variable</th><th># of Documents to Review</th><td rowspan="2">One shipping paper, at a minimum, shall be examined for each proper shipping name or class/division of HM offered for those involved in recordable crashes.</td></tr>
<tr><td colspan="2">One shipping paper, at a minimum, shall be examined for each proper shipping name or class/division of HM offered or transported.</td><td colspan="2">Same as Onsite.</td></tr>
</table>

- Ensure the document being reviewed for compliance with the HMR is the one that was actually used for transportation.
- Sample shipping papers from the previous 12 months for completeness, content, and accuracy.
- If substantial noncompliance is discovered from the minimum number of reviewed shipping papers, additional shipping papers should be examined to better determine the extent of noncompliance. Document in Part C why the sampling was expanded.
- When performing an investigation on a for-hire motor carrier of HM, document violations by shippers which provided improperly prepared shipping papers. Discuss the appropriate handling of these violations with your FPM.
- See Shipping Paper Checklist.

Emergency Response Information (Part 172 Subpart G)

- Verify that emergency response information is available during transportation, as required by Section 172.600.
- Check the shipping papers for the emergency response telephone number, in accordance with Section 172.604. Calling the phone number is highly recommended. Pagers and answering machines are not acceptable.
- If the offeror uses a third party provider for this function, the name of the third party and the contract number, or the shipper's name, must be on the shipping paper.
- Verify that the offeror has a valid contract with the provider and that the phone number provided is valid.

Acute, Critical, and Severe Regulations

Except for Part 172 Subpart C (Shipping Papers), the regulatory text in Part 172 places the burden of compliance on both the motor carrier and the shipper. However, most Part 172 cites are not identified as acute or critical. To apply an acute or critical violation to a motor carrier, show the Part 177 cite as the primary violation, with a secondary cite of the appropriate Part 172 section. In most cases, it is appropriate to cite the motor carrier with the acute or critical violation, however there may be circumstances where the violation does not rise to the level of an acute or critical cite. In that case, it is appropriate to use a Part 172 cite on a motor carrier investigation. If you are unsure of which cite to use, contact your FPM. Refer to Section 8.2.5 for a discussion of Severe violations.

Acute, Critical and Severe Regulations for Shipping Papers and ERI

Citation	Type	Description
172.200(a)	**Severe Level I**	Offering a hazardous material without preparing a shipping paper. (Use for nothing prepared).
172.201(e)	**Severe Level II**	Offeror fails to maintain a copy of the HM shipping paper as prescribed for 375 days after the date accepted by the motor carrier.
172.202(a)	**Severe Level II**	Failing to enter the proper description of a hazardous material on a shipping paper. (Use for incorrect or incomplete shipping papers or to consolidate multiple shipping paper violations).
172.203	**Severe Level II**	All the additional description requirements of Section 172.203 are Severe Level II violations.
172.205(a)	**Severe Level I**	Offering a hazardous waste without a hazardous waste manifest
172.205(a)	**Severe Level II**	Failing to properly prepare a hazardous waste manifest. (Use for an incorrect or incomplete hazardous waste manifest).
172.600(c)	**Severe Level II**	Failing to provide emergency response information.
172.604(a)(1)-(3)	**Severe Level II**	Failing to provide an emergency response telephone number as required by this paragraph, including all subparagraphs.
172.604(b)	**Severe Level II**	Failing to enter the name of the person offering the HM for transportation OR failing to enter the name or contract number of the person/company registered with the ERIP.

Primary Citation	Secondary Citation	TYPE	Description
177.817(a)	**Part 172 Subpart C or G**	**Critical**	Transporting a HM without a properly prepared shipping paper, including emergency response information

Investigative Procedures for Marking, Labeling and Placarding (Part 172 Subparts D, E, and F)

Tour the dock or warehouse to determine the compliance of shipments ready to enter transportation. Activities should include:

- At a minimum, attempt to examine one package for each proper shipping name or class/division of HM offered or transported.
- Inspecting HM shipments on the dock. Inspect shipping papers (if available), marking, and labeling.
- Determining whether placards, labels, and markings are properly provided and/or affixed to those vehicles and packages that require them.
- Determining who is performing loading functions:
    - Ensure the HM is properly loaded, blocked, and braced on vehicles.
    - Ensure the proper separation and segregation of HM is followed.
    - Observe shipments of poisons to determine whether they are loaded with foodstuffs (exceptions).
- Inspecting vehicles on the "ready line" for placarding, marking, labeling, and shipping paper violations, and if there are shipments ready for transportation
- See Part 178 Section for packaging requirements.

Acute, Critical, and Severe Regulations

Except for Part 172 Subpart C (Shipping Papers), the regulatory text in Part 172 places the burden of compliance on both the carrier and the shipper. However, most Part 172 cites are not identified as acute or critical. To apply an acute or critical violation to a motor carrier, show the Part 177 cite as the primary violation, with a secondary cite of the appropriate Part 172 section. In most cases, it is appropriate to cite the motor carrier with the acute or critical violation, however there may be circumstances where the violation does not rise to the level of an acute or critical cite. In that case, it is appropriate to use a Part 172

cite on a motor carrier investigation. If you are unsure of which cite to use, contact your FPM. Refer to Section 8.2.5 for a discussion of Severe violations.

Acute, Critical and Severe Regulations for Marking, Labeling, and Placarding

Citation	Type	Description
172.301(a)(1)	**Severe Level II**	Failing to properly mark a non-bulk package of hazardous material with the proper shipping name and identification number.
172.301(a)(3)	**Severe Level II**	Failing to properly mark the transport vehicle with the identification number for large quantities of non-bulk packages
172.302(a)	**Severe Level II**	Failing to properly mark bulk packages with the identification number.
172.313(a)	**ACUTE**	Failing to mark a package of hazardous materials with the words "Inhalation Hazard" when required.
172.320(a)	**Severe Level II**	Failing to mark a package containing Class 1 material with the appropriate EX-number. (Check for applicable exceptions before citing).
172.326(a)	**Severe Level II**	Failing to properly mark a portable tank of hazardous materials with the proper shipping name and identification number.
172.328(a)(1) or (3)	**Severe Level II**	Offering a cargo tank containing hazardous material that has not been marked with the required identification number.
172.331(a)	**Severe Level II**	Failing to properly mark a bulk package other than a cargo tank or portable tank.
172.332(a)	**Severe Level II**	Failing to properly display identification numbers as required.
172.400(a)	**Severe Level II**	Failing to properly label a package of hazardous materials.
172.506(a)	**Severe Level II**	Failing to provide the required placards to a motor carrier.

Primary Citation	Secondary Citation	TYPE	Description
177.823(a)	**Part 172 Subpart D or F**	**Critical**	Moving a transport vehicle containing hazardous material that is not properly marked or placarded

Investigative Procedures for Training (Part 172 Subpart H)

Regardless of the type of investigation you are assigned, your investigation of the training requirements consists of determining if the motor carrier or shipper has:

- Trained;
- Tested; and
- Certified (see Section 172.704(d));
- All their HM Employees (see Section 171.8);
- In each required category (see Section 172.704(a)).

Remember that the training regulations don't just apply to drivers. Anyone who has any job responsibility that is covered under the HMR is subject to the training requirements.

During your investigation, you should:

1. Interview employees engaged in HM activities.
    - Assess the employees' knowledge of the HM regulations related to their job function.
    - Review internal procedures for handling and preparing HM packages for transportation that may differ from published company policy and the HMR.
    - Determine whether the employee received appropriate training.

2. Make note of all interviewed employees who are not familiar with the HMR applicable to their responsibilities. This lack of knowledge is an indication of an ineffective training program for hazmat employees.
3. Determine whether hazmat employees are trained and the related documentation is maintained.
    - Pay particular attention to the requirement to provide function specific training 49 CFR § 172.704(a)(2).
    - Does the function-specific training cover all aspects of the employees' HM duties, including requirements with applicable Special Permits, package closure, etc.?
4. Review the training materials to verify whether all required categories are covered (Section 172.704(a)).
5. Remember that the In-Depth Security Training category is only required for companies that are required to have a security plan (Section 172.800). The In-Depth Security Training must be specific to the company's security plan. It is the only category of training that a company cannot accept from a previous employer.
    - See HM Training Checklist

Take detailed notes on the responses of company officials to your questions regarding training. Ask to see all their training materials. Ask broad questions, such as "How do you provide training for each category specified in the HMR?" Make copies of safety meeting notes and all other training material to the extent possible. If the entity doesn't keep safety meeting notes, document that statement.

Remember there is no requirement to retain copies of a test, although the test may be used in lieu of the certification specified in Section 172.704(d).

Acute, Critical, and Severe Regulations

Except for Part 172 Subpart C (Shipping Papers), the regulatory text in Part 172 places the burden of compliance on both the carrier and the shipper. However, most Part 172 cites are not identified as acute or critical. To apply an acute or critical violation to a motor carrier, show the Part 177 cite as the primary violation, with a secondary cite of the appropriate Part 172 section. In most cases, it is appropriate to cite the motor carrier with the acute or critical violation, however there may be circumstances where the violation does not rise to the level of an acute or critical cite. In that case, it is appropriate to use a Part 172 cite on a motor carrier investigation. If you are unsure of which cite to use, contact your FPM. Refer to Section 8.2.5 for a discussion of Severe violations.

Acute, Critical and Severe Regulations for HM Training

Citation	Type	Description
172.704(a)	**Severe Level II**	Failing to train hazmat employees in any of the required categories. Includes all subparagraphs of (a) except (4) and (5) which are critical violations for motor carriers.
172.704(a)(4)	**Critical**	Failing to provide security awareness training.
172.704(a)(5)	**Critical**	Failing to provide in-depth security awareness training

Primary Citation	Secondary Citation	TYPE	Description
177.800(c)	**Part 172 Subpart H**	**Critical**	Failing to instruct haz mat employee(s) in the any of the required categories.

Evidence that is Required to Prosecute a Training Violation

To prosecute a violation of the training requirements you must show that:

- A hazardous material was offered or transported in commerce.

- The motor carrier or shipper failed to train the HM employee in a specific category.
- Knowledge and willfulness were established.

Note that there is a difference between "fail to train" and "fail to document." If a company does regular safety meetings, but failed to properly document them, it is more likely a violation of "fail to document" than "fail to train." You must show that the company failed to provide any training in a particular category.

See Section 8.2.5 Documenting Violations and Initiating Enforcement for more details on how to document violations.

Investigative Procedures for Security Plans (Part 172 Subpart I)

All on-site investigations must include an investigation of the motor carrier's or shipper's security plan, when a security plan is required. This portion of your investigation is referred to as a Security Assessment.

First determine if the motor carrier or shipper is subject to the security plan requirements by reviewing the HM and quantities of Section 172.800(b). Note the definition of "large bulk quantity" requires the actual quantity (not package capacity) to be shipped or transported for Subpart I to apply.

Request to review the company's security plan. Many companies are regulated by other government agencies and may be reluctant to show you their plan. Explain that you do have the authority to review it. They may want to stay in the room with the plan, which you should permit.

Do not make a copy of the security plan unless you anticipate an enforcement case. Copy **all** documents that they offer you for their security plan to avoid allegations that you failed to review something later.

There are several documents in the HM Resource Library (Appendix F) to assist you in your review of the security plan, and to provide guidance on how to secure the security plan should you need to retain a copy.

- *Security Plan Checklist*
- *HM Training Checklist*
- *Security Talking Points*
- *Security Assessment Worksheet*
- *Guide to Handling and Safeguarding Security Plans*

Each facility that stores, ships, or transports HM must have a site-specific written risk assessment (Section 172.802(a)).

Department of Homeland Security Training

USDOT and DHS share responsibility for ensuring the security of hazardous materials in transportation. DHS manages the Chemical Facility Anti-Terrorism Standards (CFATS) program, which identifies and regulates high-risk chemical facilities to ensure they have security measures in place.

There have been instances where motor carriers and shippers have resisted providing security plans and related information to FMCSA investigators due to DHS standards. Should this occur, remind the company representative that both DOT and DHS regulations authorize FMCSA Investigators access to security plans and related information.

If the chemical facility has a Security Vulnerability Assessment (SVA) and holds a Site Security Plan (SSP) under CFATS, FMCSA Investigators make complete a 20 minute web-based DHS training program. At the end of the program, the student is emailed a certificate, which is valid indefinitely. Investigators may present this certificate to the chemical facility for unlimited access to the security plan and related information. The training program is at www.dhs.gov/chemicalsecurity.

Acute, Critical, and Severe Regulations

Refer to Section 8.2.5 for a discussion of Severe violations.

Acute, Critical and Severe Regulations for Security Plans

Citation	Type	Description
172.800(b)	**Acute**	Transporting HM without a security plan that conforms to the subpart requirements
172.800(b)	**Acute**	Transporting HM without a security plan
172.800(b)	**Acute**	Failure to adhere to a required security plan
172.802(a)	**Severe Level I**	Security plan does not include a site-specific written risk assessment or fails to provide measures to address Personnel Security, Unauthorized Access, or Enroute Security. Does not include (a)(1)-(3) when cited individually.
172.802(b)	**Critical**	Failure to make copies of security plan available to HM employees NOTE: This violation is now found in 172.802(c). A federal register correction is being developed.
172.802(b)	**Severe Level I**	Failure to include the specified elements in the security plan, including all subparagraphs.
172.802(c)	**Severe Level I**	Failure to revise and update the security plan at least annually
172.802(c)	**Severe Level II**	Failure to conform all copies of the security plan to the latest revision
172.802(d)	**Severe Level I**	Failure to retain a copy of the security plan

See the HMSP Investigations section for security plan violations discovered during a HMSP review.

Evidence Required to Successfully Prosecute a Security Plan Violation

You must have a copy of the security plan to initiate an enforcement case. See the Guide to Handling and Safeguarding Security Plans for instructions on how to handle security plans.

To successfully prosecute a violation of Part 172 Subpart I, establish the following facts:

- That the carrier transported or shipper offered a hazardous material in commerce in the amount required for a security plan.
- That the security plan was not prepared in accordance with the requirements of Part 172 Subpart I.
- That knowledge and willfulness was established.

Security Sensitivity Visit (SSV) Process)

Security Sensitivity Visits are to be conducted as directed by the agency due to national security concerns. Specific company security policies or information shall not be included in Part C. Ensure Part A of the CR shows the company to be a HM carrier and/or shipper.

- During the investigation, the SI discusses security issues.
- No additional sampling specific to security is required, unless suspicious activity is discovered.
- Look for security lapses and suspicious activity during normal sampling of safety records and inspection of facilities.
- Ensure employer has verified citizenship and maintains a record of this activity, i.e. I-9 form.
- Provide a copy of the Security Talking Points.

- Suspicious activity should be reported to the DA using the Suspicious Activity Report (SAR).
- Part C narrative should include a statement indicating that the Security Talking Points were reviewed.

Operations that May be Subject to SSVs

- SSVs may be conducted with truck leasing facilities, terminals or other transportation facilities that transport, or cause to be transported, HM in less-than placardable quantities.
- The determination of when an SSV on other than carriers or shippers will be completed must be made by the DA.

8.1.3.6 Part 177 Highway Transportation

Regardless of the type of investigation you are assigned, your investigation of Part 177 consists of determining if the motor carrier is in compliance with the various highway-specific regulations:

- Compliance with Part 172, including specialized driver training;
- Loading and unloading; and
- Segregation;

Note that Part 177 does not apply to shippers or to cargo tank facilities.

The table below identifies each BASIC by Part 177 and includes guidance on whether the investigation should include a review of the full part or subpart. The table also includes additional guidance on when each is required or should be considered based on investigative findings.

● full review of part
⊗ partial review of part (relevant subpart is indicated by the number below the symbol).

BASIC	Part 177	Description
Driver Fitness	⊗ .816	177.816 – Training Requirements – **Required if HM or CTMV Motor Carrier**
HM Compliance	●	177.800 - 177.823, general information and regulations – **As applicable** to the hazardous materials being transported. 177.834 – 177.843, loading and unloading – **As applicable** to the hazardous materials listed in Subpart B of Part 177. 177.848, Segregation and Separation of hazardous Materials – **Required** if carrier transports Class 1 materials or a combination of hazardous materials requiring separation or HM are forbidden to be transported in the same transport vehicle. 177.854, Vehicles and shipments in transit – **As applicable** and investigative evidence reveals. 177.870, Regulations applying to hazardous material on motor vehicles carrying passengers for-hire – **Required if** for-hire passenger carrier that transports HM.
Unsafe Driving	⊗ .810, .816, .823	177.810 – Vehicular Tunnels – **Required if carrier transports quantities of HM that are prohibited from being transported through tunnels by the State or local jurisdiction.** 177.823 – Movement of Motor Vehicles in Emergency Situations – **Required if HM or CTMV Motor Carrier** 177.816 Training Requirements – **Required if HM or CTMV Motor Carrier**

Investigative Procedures – Shipping Papers

- Examine shipping papers given to local and over-the-road drivers as they arrive at the dock. Verify the accessibility of the shipping papers in the CMV.
    - This is a good opportunity to determine whether drivers and dock personnel are familiar with the HMR and what training they have received.
- Verify that emergency response information is available during transportation as required by Section 172.600.
- Check the shipping papers for the emergency response telephone number.
- Verify compliance with the shipping paper retention requirements of Section 177.817(f).
- See Investigative Procedures for Shipping Papers (Part 172 Subpart C) and Emergency Response Information (Part 172 Subpart G)
- See Shipping Paper Checklist.

Investigative Procedures – Loading and Unloading

If the motor carrier is performing loading and unloading, functions, review Part 177 Subpart B for the requirements specific to the various classes and divisions that they transport.

- Determine whether HM is properly loaded, blocked, and braced on vehicles. HM is not allowed to shift at all (Section 177.834).
- Determine whether the proper separation and segregation of HM is followed.
- Observe shipments of poisons to determine whether they are loaded with foodstuffs; however, be careful of the exception in Section 177.841(e).

Investigative Procedures – Segregation

- Examine shipping papers to determine whether proper segregation of HM is followed in accordance with Section 177.848. Be sure to check the various exceptions found in Special Provisions and Part 177 Subpart B.
- Remember that the subsidiary hazard may be more restrictive than the primary hazard.
- The Segregation Table applies to the labels or placards that are required to be on the package.
- Check the Compatibility Table for explosives. See the Resource Library (Appendix F) for explosives guidance or contact your HMS.

Investigative Procedures – Driver Training Requirements

Review Section 177.816 and ask the motor carrier for documentation that complies with Section 172.704(d). Note that Section 177.816(a) applies to all HM drivers. Specifically, check for:

- Training in pre-trip inspections, use of vehicle controls, operation of the vehicle, maneuvering, railroad crossings, loading and unloading, compatibility of mixed loads, load securement and package handling.
- Special training for cargo tank drivers, Section 177.816(b) (See CTMV Motor Carriers).
- Can be satisfied with current CDL with the appropriate endorsements (Section 177.816(c)).
    - Frequency of training requirements may not meet the CDL update requirements. While the training is required every 3 years; CDLs usually renewed at 5 year intervals. Verify the drivers have had their CDL renewed in the last 3 years. If it has been more than 3 years, then the motor carrier must provide the training.
- See HM Training Checklist.

Acute, Critical, and Severe Regulations

Except for Part 172 Subpart C (Shipping Papers), the regulatory text in Part 172 places the burden of compliance on both the carrier and the shipper. However, most Part 172 cites are not identified as acute or critical. To apply an acute or critical violation to a motor carrier, show the Part 177 cite as the primary violation, with a secondary cite of the appropriate Part 172 section. In most cases, it is appropriate to cite the motor carrier with the acute or critical violation, however there may be circumstances where the

violation does not rise to the level of an acute or critical cite. In that case, it is appropriate to use a Part 172 cite on a motor carrier investigation. If you are unsure of which cite to use, contact your FPM. Refer to Section 8.2.5 for a discussion of Severe violations.

The violations listed below should be considered for enforcement action, when discovered. Refer to Section 2.5 for a discussion of Severe violations.

Acute, Critical, and Severe Regulations for Part 177

Primary Citation	Secondary Citation	Type	Description
171.2(f), (g), (i), (m)		**Severe Level I**	There are some circumstances that may require a broader violation to encompass numerous issues. Contact your FPM for guidance.
177.800(c)	**Part 172 Subpart H**	**Critical**	Failing to instruct a category of employee(s) in any of the required categories.
177.801		**Acute**	Transporting a forbidden material.
177.816		**Severe Level II**	Motor carrier fails to provide driver training on operation of commercial vehicles; loading and unloading; and/or specialized training for cargo tank and portable tank driver
177.817(a)	**Part 172 Subpart C or G**	**Critical**	Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper, including emergency response information and telephone number violations.
177.817(e)		**Critical**	Failing to maintain proper accessibility of shipping papers.
177.817(f)		**Severe Level II**	Motor carrier fails to maintain shipping papers as required by this section
177.823(a)		**Critical**	Moving a transport vehicle containing hazardous material that is not properly marked or placarded.
177.834(a)		**Severe Level II**	Failing to brace containers of hazardous materials to prevent relative motion between containers.
177.834(h)		**Severe Level I**	Discharging hazardous materials from a package while still on vehicle.
177.834(i)		**Severe Level I**	Failing to attend a cargo tank during loading (or unloading).
177.834(j)		**Severe Level I**	Transporting a Hazardous material in a cargo tank while failing to have all manhole closures closed and secured (all valves and other closures in the liquid discharge system closed and free of leaks).
177.834(n)		**Severe Level I**	Stacking DOT portable tanks on each other or under other freight.
177.834(o)		**Severe Level I**	Improper unloading of IM or UN portable tanks.
177.835(a)		**Acute**	Loading into or on, or unloading a Class 1 (explosive) material from a motor vehicle with the engine running.

177.835(c)		**Acute**	Accepting for transportation or transporting Division 1.1, 1.2, or 1.3 (explosive) materials in a motor vehicle or combination of vehicles that is not permitted.
177.835(j)		**Acute**	Transferring Division 1.1, 1.2, or 1.3 (explosive) materials between containers or motor vehicles when not permitted.
177.835(d)		**Severe Level I**	Improper transportation of a Multipurpose Bulk Truck
177.840(a)(1)		**Severe Level I**	Improper securement of cylinders
177.841(e)		**Acute**	Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals unless an exception in § 177.841(e)(i) or (ii) is met.
177.848(d)		**Severe Level I**	Transporting, loading or storing hazardous materials not in accordance with the segregation table.
177.848(f)		**Severe Level I**	Transporting, loading or storing Class 1 materials not in accordance with the compatibility table.

8.1.3.7 Non-Bulk Packaging

Generally speaking, the shipper is responsible for ensuring the proper packaging is utilized for the HM being shipped. There are times that the motor carrier may take on this responsibility for the shipper (e.g., cargo tank motor vehicles, or the motor carrier loads the CMV).

Even if the shipper did select the packaging, the motor carrier is still in violation for transporting improperly packaged HM (e.g., open, damaged or leaking packages). However, keep in mind that Section 171.2(f) states that the motor carrier may rely on information provided by the shipper. Therefore you will need to show that the motor carrier knew the packaging was improper.

Packaging means just the receptacle without the contents. Package means the packaging plus the contents.

Regardless of the type of investigation you are assigned, your investigation of non-bulk packaging consists of determining if the hazardous material is packaged in accordance with the HMR. Specifically, you should review:

- Column 8a, 8b, and Special Provisions of the HM Table;
- Part 173 requirements; and
- Part 178 requirements.

As your investigation progresses, ask yourself:

- Are there any applicable exceptions?
- Is the packaging authorized for the HM?
- Does the packaging meet the integrity and specification requirements?
- If the shipper or motor carrier is doing final closure (including reclosing packages), do they have a copy of and are the following the package manufacturer's closure instructions? Have the appropriate personnel been trained on the closure instructions?

Packages may be shipped under a DOT Special Permit (formerly known as exemptions), which are identified as DOT-SP (or DOT-E, if issued prior to October 1, 2007). You must review the SP to ensure it is

valid and the shipment complies with the provisions of the SP. You can check DOT-SP numbers using the PHMSA website: https://www.phmsa.dot.gov/approvals-and-permits/hazmat/special-permits-search

If you are unsure whether the package is authorized or not, contact your HMS or HMPM.

● full review of part
⊗ partial review of part (relevant subpart is indicated by the number below the symbol).

BASIC	Parts 173 & 178	Description
HM Compliance	●	**Required** for each proper shipping name or class/division of hazardous materials transported or shipped in accordance with Parts 173 and 178.

Acute, Critical, and Severe Regulations

The violations listed below should be considered for enforcement action, when discovered. Refer to Section 8.2.5 for a discussion of Severe violations.

Acute, Critical, and Severe Regulations for Packaging (General)

Citation	Type	Description
171.2(f), (g), (i), (m)	**Severe Level I**	There are some circumstances that may require a broader violation to encompass numerous issues. Contact your FPM for guidance.
173.21(a)	**Severe Level I**	Offering a forbidden material for transportation.
173.21(e)	**Severe Level I**	Offering for transportation materials, which if combined, would likely cause a dangerous evolution of heat, flammable or poisonous gas or vapor, or a corrosive material.
173.22(a)(2)	**Severe Level I**	Offering a hazardous material in an unauthorized package.
173.24(b)(1)	**Acute**	Transporting hazardous materials in a package that has an identifiable release of hazardous materials to the environment.
173.24(b)(2)	**Severe Level I**	Offering for transportation a hazardous material in a package that resulted in the effectiveness of the package being substantially reduced.
173.24b(d)(2)	**Severe Level I**	Load or transport a bulk package that exceeds the maximum weight of lading marked on the specification plate
173.30/177.848(d)	**Severe Level I**	Loading hazardous materials not in accordance with the segregation table. (Shipper)
173.30/177.834(g)	**Severe Level I**	Failing to brace containers of hazardous materials to prevent relative motion between containers. (Shipper)
Part 178	**Severe Level I**	Contact your HMPM for assistance in determining what Part 178 cites should be used and when enforcement should be conducted.
180.3(a)	**Severe Level I**	(Representing, marking, certifying, selling or offering) a package or container as meeting (a requirement of 49 CFR

		Part 180 or a DOT exemption issued under 49 CFR Part 107), when it was not (marked, maintained, reconditioned, repaired, or retested) in accordance with Part 180.

Acute, Critical, and Severe Regulations for Cylinders

173.40(d)	**Severe Level I**	Offering a cylinder charged/filled with a poisonous material without providing additional protection as required.
173.301(d)	**Severe Level I**	Offering a cylinder capable of combining chemically with the contents or the material of construction.
173.301(g)	**Severe Level I**	Offering manifolded (interconnected) cylinders except as authorized.
173.301(h)	**Severe Level I**	Offering a charged/filled cylinder with flammable, corrosive, or noxious gases without a prescribed valve protection device.
173.301(i)	**Severe Level I**	Offering a tube trailer not in conformance with this section.
173.301(j)	**Severe Level I**	Offering a charged/filled cylinder that was manufactured outside the United States not in accordance with the HMR.
173.312	**Severe Level I**	Offering or transporting a MEGC not in conformance with this section.
180.205	**Severe Level I**	Offering or transporting DOT specification cylinders that have not been requalified as required.
180.207	**Severe Level I**	Offering or transporting UN specification pressure vessels that have not been requalified as required.
180.217	**Severe Level I**	Offering or transporting MEGCs that have not been requalified as required.

Acute, Critical, and Severe Regulations for Radioactive Materials

173.413	**Severe Level I**	Using a Type B package not designed and constructed in accordance with all applicable requirements contained in 10 CFR 71.
173.421	**Severe Level II**	Offering a radioactive material for transportation as a limited quantity that does not meet one or more of the conditions in this section.
173.421(a)	**Acute**	Accepting for transportation or transporting a Class 7 (radioactive) material described, marked, and packaged as a limited quantity when the radiation level on the surface of the package exceeds 0.005mSv/hour (0.5 mrem/hour)
173.422	**Severe Level II**	Offering a radioactive material for transportation not in proper condition for shipment. (Applies to radioactive instruments and articles that do not meet one or more of the conditions in § 173.422).
173.431(a)	**Severe Level I**	Offering for transportation in a type A package a quantity greater than that authorized.

173.431(a)	**Acute**	Accepting for transportation or transporting in a Type A packaging a greater quantity of Class 7 (radioactive) material than authorized.
173.431(b)	**Severe Level I**	Offering for transportation in a type B package a quantity greater than that authorized.
173.431(b)	**Acute**	Accepting for transportation or transporting in a Type B packaging a greater quantity of Class 7 (radioactive) material than authorized.
173.441(a)	**Severe Level I**	Offering a package of radioactive material that exceeds allowable external radiation levels.
173.441(a)	**Acute**	Accepting for transportation or transporting a package containing Class 7 (radioactive) material with external radiation exceeding allowable limits.
173.442(b)	**Acute**	Accepting for transportation or transporting a package containing Class 7 (radioactive) material when the temperature of the accessible external surface of the loaded package exceeds 50° C (122° F) in other than an exclusive use shipment, or 85° C (185° F) in an exclusive use shipment.
173.442(b)(1)	**Severe Level II**	Offering a package of radioactive material exceeding 122 degrees Fahrenheit on the external surface of the package. (Non-exclusive use)
173.442(b)(2)	**Severe Level II**	Offering a package of radioactive material exceeding 185 degrees Fahrenheit on the external surface of the package. (Exclusive use)
173.443(a)	**Severe Level II**	Offering a package of radioactive material with removable contamination on the external surfaces of the package in excess permissible limits
173.443(a)	**Acute**	Accepting for transportation or transporting a package containing Class 7 (radioactive) material with removable contamination on the external surfaces of the package in excess of permissible limits.
173.443(b)	**Severe Level II**	Offering a package of radioactive material as exclusive use with removable contamination on the external surfaces of the package in excess permissible limits.

8.1.3.8 Other Bulk Packaging

Generally speaking, the shipper is responsible for ensuring the proper packaging is utilized for the HM being shipped. There are times that the motor carrier may take on this responsibility for the shipper (e.g., cargo tank motor vehicles, or the motor carrier loads the CMV).

Even if the shipper did select the packaging, the motor carrier is still in violation for transporting improperly packaged HM (e.g., open, damaged or leaking packages). However, keep in mind that Section 171.2(f) states that the motor carrier may rely on information provided by the shipper. Therefore you will need to show that the motor carrier knew the packaging was improper.

Packaging means just the receptacle without the contents. Package means the packaging plus the contents.

Regardless of the type of investigation you are assigned, your investigation of Other Bulk Package (OBP) consists of determining if the hazardous material is packaged in accordance with the HMR. Specifically, you should review:

- Column 8a, 8c, and Special Provisions of the HM Table;
- Part 173 requirements;
- Part 178 requirements; and
- Part 180 requirements.

As your investigation progresses, ask yourself:

- Are there any applicable exceptions?
- Is the packaging authorized for the HM?
- Does the packaging meet the integrity and specification requirements?
- If the shipper or motor carrier is doing final closure (including reclosing packages), do they have a copy of and are the following the package manufacturer's closure instructions? Have the appropriate personnel been trained on the closure instructions?

Packages may be shipped under a DOT Special Permit (formerly known as exemptions), which are identified as DOT-SP (or DOT-E, if issued prior to October 1, 2007). You must review the SP to ensure it is valid and the shipment complies with the provisions of the SP. You can check DOT-SP numbers using the PHMSA website: https://www.phmsa.dot.gov/approvals-and-permits/hazmat/special-permits-search

See Section 173.32 for portable tanks. See Section 173.35 for IBCs. See the Resource Library (Appendix F) for guidance on various OBPs.

If you are unsure whether the package is authorized or not, contact your HMS or HMPM.

- ● full review of part
- ⊗ partial review of part (relevant subpart is indicated by the number below the symbol).

BASIC	Parts 173 & 178	Description
HM Compliance	●	**Required** for each proper shipping name or class/division of hazardous materials transported or shipped in accordance with Parts 173 and 178.

Acute, Critical, and Severe Regulations

The violations listed below should be considered for enforcement action, when discovered. Refer to Section 8.2.5 for a discussion of Severe violations.

Acute, Critical, and Severe Regulations for Other Bulk Packages

Citation	Type	Description
171.2(f), (g), (i), (m)	**Severe Level I**	There are some circumstances that may require a broader violation to encompass numerous issues. Contact your FPM for guidance.
173.21(a)	**Severe Level I**	Offering a forbidden material for transportation.

173.21(e)	**Severe Level I**	Offering for transportation materials, which if combined, would likely cause a dangerous evolution of heat, flammable or poisonous gas or vapor, or a corrosive material.
173.22(a)(2)	**Severe Level I**	Offering a hazardous material in an unauthorized package.
173.24(b)(1)	**Acute**	Transporting hazardous materials in a package that has an identifiable release of hazardous materials to the environment.
173.24(b)(2)	**Severe Level I**	Offering for transportation a hazardous material in a package that resulted in the effectiveness of the package being substantially reduced.
173.24b(d)(2)	**Severe Level I**	Load or transport a bulk package that exceeds the maximum weight of lading marked on the specification plate
173.30/177.848(d)	**Severe Level I**	Loading hazardous materials not in accordance with the segregation table. (Shipper)
173.30/177.834(g)	**Severe Level I**	Failing to brace containers of hazardous materials to prevent relative motion between containers. (Shipper)
Part 178	**Severe Level I**	Contact your HMPM for assistance in determining what Part 178 cites should be used and when enforcement should be conducted.
180.3(a)	**Severe Level I**	(Representing, marking, certifying, selling or offering) a package or container as meeting (a requirement of 49 CFR Part 180 or a DOT exemption issued under 49 CFR Part 107), when it was not (marked, maintained, reconditioned, repaired, or retested) in accordance with Part 180.
180.352(a)	**Severe Level I**	Offering or transporting IBCs that have not been tested or are out of test.
180.605	**Severe Level I**	Offering or transporting portable tanks that have not been tested or are out of test.

8.1.3.9 Cargo Tank Motor Vehicle (CTMV) Motor Carriers

Regardless of the type of investigation you are assigned, your investigation of a cargo tank motor vehicle (CTMV) motor carrier consists of determining if the motor carrier is in compliance with the DOT specification cargo tank qualification and maintenance requirements. Specifically, your review will include the following:

- Proper training of cargo tank motor vehicle drivers, per Section 177.816;
- Cargo tank rollover crash analysis;
- Retention of required paperwork, Section 180.417;
- Qualification of DOT specification cargo tanks, including Sections 173.33, 180.405, and Part 178; and
- Proper maintenance and repair of DOT specification cargo tanks, including Sections 180.407 and 180.413.

There are a number of guidance documents in the Resource Library (Appendix F) to assist you in your investigation.

See the FMCSA public web site for all the cargo tank safety advisories.

- ● full review of part
- ⊗ partial review of part (relevant subpart is indicated by the number below the symbol)
- ⊗

BASIC	Part 180	Description
HM Compliance	●	Qualification and Maintenance of packaging – cylinders, IBCs and Cargo Tanks. Required if motor carrier provides any of these packages

Investigative Procedures – CTMV Drivers

Driver Training is required by Section 177.816. Paragraph (a) requires training on the FMCSRs; vehicle handling training; operations in tunnels, bridges, and railroad crossings; vehicle attendance, parking, smoking, routing, and incident reporting; segregation of cargo; loading and unloading, load securement; and paragraph (b) requires specialized training for cargo tank and portable tank operations.

Ask the motor carrier for documentation of their specialized cargo tank or portable tank training. Verify that it complies with Section 172.404(d) and includes the following:

- Operation of emergency control features of the cargo tank or portable tank;
- Special vehicle handling characteristics, including: high center of gravity, fluid-load subject to surge, effects of fluid-load surge on braking, characteristic differences in stability among baffled, unbaffled, and multi-compartmented tanks; and effects of partial loads on vehicle stability;
- Loading and unloading procedures;
- The properties and hazards of the material transported; and
- Retest and inspection requirements for cargo tanks.

Note that Section 177.816(b) is only applicable to 1) cargo tanks; and 2) portable tanks with a capacity of 1,000 gallons or more.

The CDL testing requirements may be used for compliance with this portion of the training for person with a hazardous materials or tank vehicle endorsement. In the preamble to the rulemaking allowing this, PHMSA was very clear that the employer must determine to what extent the CDL endorsement suffices for the training requirement. The CDL endorsement is not a blanket exception to driver training. For example, the CDL endorsement is not specific to the unloading/loading procedures for all cargo tanks or for all shipper or receiver facilities. It is the responsibility of the employer to ensure their HM employees are properly trained for each function they perform.

If the CDL has a renewal date of greater than 3 years, the carrier must provide this training at the appropriate intervals. For example, if a driver has a CDL that expires in 6 years, the carrier must provide the Section 177.816(b) training within 3 years after the CDL was issued. Investigators should check the last issue date of the CDL/HM endorsement.

Investigative Procedures – Cargo Tank Rollover Analysis

Cargo tank motor vehicle rollovers represent a serious hazard to the general public. Ask the motor carrier for copies of their crash and/or incident reports where a cargo tank rolled over. For each rollover:

- Verify the driver was compliant with Section 177.816(b).
- Verify the driver had a valid HM and Tank endorsement.

- Verify the CTMV involved had current Part 180 tests and inspection reports.
- Ascertain the general factors causing the crash.

Below are various websites for the motor carrier to reduce CTMV rollovers:

- https://www.fmcsa.dot.gov/regulations/hazardous-materials/cargo-tank-safety
- www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Cargo_Tank_Rollover_Fact_Sheet_508.pdf
- http://www.trb.org/main/blurbs/167519.aspx
- https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Cargo%20Tank%20Roll%20Stability%20Study%20Final%20Report%20April%202007.pdf
- http://atri-online.org/2012/05/09/safety-impacts-of-roadway-geometric-design-standards-mapping-rollovers-and-designing-a-driver-information-delivery-system-2/

Investigative Procedures – CTMV Paperwork

CTMV owners and motor carriers that lease CTMVs more than 30 days must maintain the following documents (Section 180.417):

- Current tests and inspection reports (see next section for details);
- CTMV Manufacturer's Certificate of Compliance (COC, or birth certificate);
- ASME U-1A form, if it is an ASME certified (U Stamp) vessel;
- All repair (welding on the cargo tank wall) or modification records for the life of the CT;

MC330/MC331 cargo tank motor vehicles must have the following additional documents:

- Certification of emergency discharge control (see Section 173.315(n)).
- Delivery hose tests for newly assembled or repaired hoses (see Section 180.416(f)(3)).
- Monthly inspections for delivery hoses and emergency control devices (see Section 180.416(d)(5)).
- Documentation of annual non-permanent delivery hose leakage test (usually done with the cargo tank leakage test, but not always, see Section 180.416(e)).
- Emergency shutdown procedures that must be in each cargo tank (see Section 177.840(l)).

Investigative Procedures – CTMV Qualification and Maintenance

Motor carriers that operate cargo tanks are responsible for ensuring that their cargo tanks are tested and inspected as required by Part 180. Contact your HMS or HMPM if you have any questions.

To verify that a DOT Specification CTMV is qualified and is maintained as required:

- Review the Manufacturer's Certificates of Compliance (COC) and ASME U-1A form (if applicable);
- Ensure the tests and inspections required for the types of cargo tanks operated by the motor carrier are conducted within the appropriate time frames required by Section 180.407(c).
- If the tests and inspections are not completed in a timely manner, verify that the cargo tank was not filled and/or used after the tests and inspections expired (Sections 180.3 and 180.407(a)).
- Review the cargo tank test and inspection records for compliance with the requirements of Section 180.417(b).
- Verify that the cargo tank facility that conducted the tests/inspections is registered with FMCSA (MCMIS).
- Verify that any repairs were conducted by a cargo tank facility that is registered with FMCSA and holds a valid NBIC R Stamp (See Section 180.413). Contact your HMS or HMPM for assistance.

If a third-party facility conducted the tests and inspections and violations are discovered in the test and inspection or repair documentation, collect the evidence and forward it to the Division Administrator (DA) of the state where the third-party facility is located to conduct a future CTFR.

Investigative Procedures – CTMV Yard Check

During your investigation, it is very important to go out on the yard and look at the motor carrier's CTMVs. When doing so, be sure to verify with the motor carrier what CTMVs are on the ready line and are in service. Look at:

- Specification plates
- Test/Inspection Markings
- Various specification components

Acute, Critical, and Severe Regulations

This section is applicable to motor carriers that are utilizing cargo tank motor vehicles in transportation. If the motor carrier is also performing functions of a cargo tank facility, those violations, if any, should not be included on the motor carrier investigation report.

Generally speaking, violations for failing to follow proper test/inspection procedures should be cited to the cargo tank facility that performed the tests/inspections. However, the HMR holds the cargo tank motor vehicle owner responsible for the maintenance of their cargo tanks. Therefore, it may be appropriate to cite a motor carrier for failing to have the tests conducted properly, failing to use a registered facility, or failing to ensure repairs were done as required.

Whenever it is discovered that a cargo tank motor carrier is found to be performing tests, inspections, repairs, or any other function covered by 49 CFR, Part 180, a CTFR should be completed. **A CTFR must be conducted by specially trained personnel.** If you are not CTFR trained, notify your supervisor so that the appropriate personnel can be assigned to conduct the CTFR and review only the motor carrier operations.

The violations listed below should be considered for enforcement action, when discovered. Refer to Section 8.2.5 for a discussion of Severe violations.

Acute, Critical, and Severe Regulations for CTMV Motor Carriers

Citation	Type	Description
173.33(a)(1)	**Severe Level I**	Offering or accepting for transportation a hazardous material in an unauthorized cargo tank motor vehicle.
173.33(a)(2)	**Severe Level I**	Offering or accepting a cargo tank with hazardous materials that creates an unsafe condition, such as an explosion, fire, excessive increase in pressure or heat, or the release of toxic vapors.
173.33(b)	**Severe Level I**	Offering or accepting a cargo tank with hazardous materials that causes a dangerous reaction or affects the integrity of the cargo tank.
173.33(c)(5)	**Severe Level I**	Loading a division 6.1 material in a cargo tank having a maximum allowable working pressure of less than 25 psig.
173.33(e)	**Severe Level I**	Transporting (Division 6.1 material, oxidizer liquid, liquid organic peroxide, or corrosive liquid) in cargo tank piping without bottom damage protection devices meeting the requirements of § 178.337-10 or § 178.345-8(b).

173.315(j)(1)-(2)	**Severe Level II**	Transporting a storage container charged with LPG not in compliance with this subsection. (Same as transporting HM in an unauthorized package, which is an acute violation)
173.315(m)	**Severe Level I**	Transporting an anhydrous ammonia nurse tank not in compliance with this paragraph.
173.315(n)(2), (3), and (4)	**Severe Level I**	Operating a cargo tank motor vehicle without emergency discharge control when required.
Part 178	**Severe Level I**	Contact your HMPM for assistance in determining what Part 178 cites should be used and when enforcement should be conducted.
180.3(a)	**Severe Level I**	(Representing, marking, certifying, selling or offering) a package or container as meeting (a requirement of 49 CFR Part 180 or a DOT exemption issued under 49 CFR Part 107), when it was not (marked, maintained, reconditioned, repaired, or retested) in accordance with Part 180.
180.405(a)	**Severe Level I**	Using a cargo tank that is not an authorized package.
180.405(b)	**Severe Level I**	Using a cargo tank that is not authorized by this paragraph.
180.405(c)	**Severe Level I**	Using a cargo tank that was constructed after the date listed in the table.
180.405(g)	**Severe Level I**	Failing to equip a cargo tank with manhole assemblies conforming to § 178.345-5. **Note: Ensure the assembly does not meet an exception.**
180.405(h)	**Severe Level II**	Failing to replace a reclosing pressure relief valve with a valve meeting the requirements of § 178.345-10. **Note: Only applicable when valve is being replaced. There is no retrofit requirement.**
180.407(a) Includes (1)-(5)	**Critical**	Using a specification cargo tank that has not been inspected or retested in accordance with § 180.407. Includes any of the conditions specified in subparagraphs (a)(1)-(5). **Number checked is the number of instances checked for compliance with § 180.407(a)**.
180.407(b)	**Severe Level I**	Failing to test and inspect a cargo tank when required for any of the conditions specified in (b)(1)-(5).
180.407(c)	**Critical**	Failing to periodically test and inspect a cargo tank. Number checked is the number of cargo tanks checked for compliance with periodic test and inspection requirements.
180.413(a)(1)(i)	**Severe Level I**	Performing a repair or modification of a non-ASME Code stamped cargo tank while failing to hold a valid ASME Certificate of Authorization for the use of the "U" stamp or a National Board Certificate of Authorization for use of the "R" stamp.
180.413(a)(1)	**Severe Level I**	Performing a repair or modification of an ASME Code U stamped cargo tank while failing to hold a valid National Board Certificate of Authorization for the use of the R stamp. **Note: ASME tanks only.**

180.413(a)(1)	**Severe Level I**	Failing to perform a repair of an ASME Code U stamped cargo tank in accordance with the National Board Inspection Code. **Note: ASME tanks only.**
180.413(b)	**Severe Level I**	Failing to verify the suitability of a repair affecting the structural integrity of the cargo tank by testing as prescribed in the applicable specification or in § 180.407(g)(1)(iv).
180.413(c)	**Severe Level I**	Failing to leak test repairs done to piping or valves.
180.413(d)(1)	**Severe Level I**	Failing to have a (stretching, modification, or re-barreling) of a cargo tank certified by a Design Certifying Engineer (DCE).
180.413(d)(2)	**Severe Level I**	Failing to performing a (stretching, modification, or re-barreling) of a cargo tank to the applicable specification.
180.413(e)	**Severe Level I**	Failing to mount a cargo tank as specified in this section.
180.413(f)	**Severe Level I**	Failing to retain records of repair, modification, stretching, or re-barreling made to each tank, as required.
180.415	**Critical**	Failing to mark a cargo tank motor vehicle as required.
180.416(d)	**Severe Level II**	Fail to conduct monthly tests or fail to maintain reports of monthly tests on emergency discharge control equipment.
180.416(f)	**Severe Level I**	Failing to properly test a new or repaired delivery hose assembly at a minimum of 120 percent of the hose maximum working pressure.
180.416(f)(2)	**Severe Level I**	Failing to permanently mark a new or repaired delivery hose assembly with the month and year of the pressure test.
180.417(a)(1)	**Critical**	Failing to retain cargo tank manufacturer's data report or certificate and related papers, as required. **Number checked is the number of cargo tanks checked for compliance with § 180.417(a)(1).**
180.417(a)(2)	**Critical**	Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required. **Number checked is the number of cargo tanks checked for compliance with § 180.417(a)(2).**
180.417(b)(3)	**Severe Level II**	Failing to retain a copy of test and inspection reports as required.
180.417(c)(2)	**Severe Level II**	Failing to retain a copy of the wet florescent magnetic particle exam report.

8.1.4 FMCSR HM

8.1.4.0 Introduction

While PHMSA writes the HMR for all modes of transportation, FMCSA has the authority to issue regulations specific to hazardous materials transportation by highway. It is important to note that while FMCSA and PHMSA may use the same terms, they don't always have the same meaning.

This section of the eFOTM discusses only the HM portions of the various parts listed.

8.1.4.1 Part 383 CDLs

There are two CDL endorsements related to HM: the HM endorsement and the Tank endorsement.

The HM endorsement is required for any size vehicle that is used to transport hazardous materials in a quantity that requires placarding. This applies whether or not the vehicle is actually placarded. Note also that it does not apply if the motor carrier chooses to placard voluntarily. It does not apply to any HM that is excepted from placarding.

The Tank endorsement is not limited to HM. Any vehicle that meets the definition of a CMV and meets the definition of a tank vehicle (Section 383.5) is subject, regardless of what liquid or gas is being transported:

"*Tank vehicle* means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle."

So a Tank endorsement is required:

- For any liquid or gas;
- Any single tank with a capacity of 1,000 gallons or more;
- Any combination of tanks with an aggregate capacity of 1,000 gallons or more, provided each tank has an individual capacity of more than 119 gallons.

It does not apply to empty tanks.

For guidance on how to cite and initiate enforcement for Part 383, see the Part 383 section in the General eFOTM.

8.1.4.2 Part 387 Insurance

The table in Section 387.9 is less than user friendly, so below is a breakdown of the requirements in a different format.

Intrastate Motor Carrier

Must be in a vehicle with a GVWR of 10,000 lbs. or more.

$5 Million

- Hazardous Substances in cargo tanks, portable tanks, or hopper-type vehicle with a capacity of more than 3,500 gallons;
- Any quantity of Division 1.1, 1.2, or 1.3 explosives;
- Any quantity of Division 2.3 Hazard Zone A or Division 6.1 Hazard Zone A;
- A HRCQ Class 7 shipment.

$1 Million

- Any hazardous material (including wastes and substances) not mentioned above in a package with a capacity of more than 3,500 gallons.

Interstate Motor Carrier

Must be in a vehicle with a GVWR of 10,000 lbs. or more except as noted.

$5 Million

- Hazardous Substances in cargo tanks, portable tanks, or hopper-type vehicle with a capacity of more than 3,500 gallons;
- Any quantity of Division 1.1, 1.2, or 1.3 explosives (Any GVWR);
- Any quantity of Division 2.3 Hazard Zone A or Division 6.1 Hazard Zone A (Any GVWR);

- A HRCQ Class 7 shipment (Any GVWR).

$1 Million

- Any hazardous material (including wastes and substances) not mentioned above.

The insurance must be documented on a MCS-90 signed by the underwriter. Multiple MCS-90s are permitted as long as the total meets the required amount.

If none of the above criteria are met, then the motor carrier must comply with the applicable state insurance laws.

For guidance on how to cite and initiate enforcement for Part 387, see the Part 387 section in the General eFOTM.

8.1.4.3 Part 392 Driving of CMVs

During your investigation of HM motor carriers, you should verify compliance with the HM regulations of Part 392:

- Section 392.10, Stopping at railroad crossings;
- Section 392.25, Prohibition from flame producing emergency signals; and
- Section 392.8, Fire extinguisher of proper size as specified in Section 393.95.

For guidance on how to cite and initiate enforcement for Part 392, see the Part 392 section in the General eFOTM.

8.1.4.4 Part 397 HM Driving and Parking

Regardless of the type of investigation you are assigned, your investigation of Part 397 consists of the following:

- Verifying compliance with the HM driving and parking regulations in Part 397 Subpart A;
- Verifying compliance with the HM routing regulations in Part 397 Subpart C or D.

There are guidance documents in the Resource Library (Appendix F) to assist you in your investigation.

As Part 397 is in the FMCSR, it is only applicable to motor carriers. Part 397 applies to all vehicles that are required to be marked or placarded.

- ● full review of part
- ⊗ partial review of part (relevant subpart is indicated by the number below the symbol).

BASIC	Part 397	Description
HM Compliance	●	Driving and Parking rules – As applicable to the hazardous material investigation.
Unsafe Driving	⊗ .2, .3, .5, .19, .67	A review of the 397.2, and .3 are **required if the carrier transports HM that requires markings or placards:** 397.2 – Compliance with the Federal Motor Carrier Safety Regulations 397.3 – State and Local laws, ordinances and regulations

		A review of 397.5, 397.7, and 397.19 are **required** if the motor carrier transports 1.1 1.2, or 1.3 Explosives 397.5 – Attendance and surveillance of motor vehicles 397.7 -- Parking 397.19 – Instructions and Documents 397.67 – Motor carrier responsibility for routing – **Required** if motor carrier operates marked or placarded non-RAM HM 397.101 – Motor carrier responsibility for routing – **Required** if motor carrier operates placarded RAM 397.101(e)(1) – HRCQ RAM drivers must comply with 172.704 every two years 397.101(e)(2) – HRCQ RAM drivers must have a training certificate on their person when operating a CMV with HRCQ RAM

Investigative Procedures – Other than Class 1 or 7

During your investigation, review inspection reports for the violations related to the sections below. Also be alert to these types of violations when inspecting docks, warehouses, yards, etc.
Violations for the regulations related to fires, fueling, tire checks, parking, and smoking are difficult, if not impossible, to enforce during an investigation without being present to witness the violation. Investigators should review the CSA data to identify specific drivers that have inspections with these violations and discuss company policies and training procedures with company officials.

- 397.5(c), attendance and surveillance;
- 397.7(b), parking;
- 397.11, fires;
- 397.13, smoking;
- 397.15, fueling; and
- 397.17, tires.

Hazardous materials other than Class 1 or Class 7 are not required to have written route plans; however, they must comply with state routing restrictions. During your investigation:

- Review inspection reports for routing violations (Section 397.67);
- Review the routing restriction lists for the states the motor carrier utilizes most often, look for possible route violations. The most current list is here: https://www.fmcsa.dot.gov/regulations/hazardous-materials/national-hazardous-materials-route-registry

Investigative Procedures – Class 1

SIs who are assigned reviews of a motor carrier that transports explosives should contact their HMS or HMPM for guidance and assistance. Generally, these carriers should be assigned to HMS.

During your investigation, review inspection reports for the violations related to the sections below. Also be alert to these types of violations when inspecting docks, warehouses, yards, etc.

- 397.5(a) and (b), attendance and surveillance;
- 397.7(a), parking;
- 397.11, fires;
- 397.13, smoking;
- 397.15, fueling;
- 397.17, tires; and
- 397.19, instructions and documents.
    - Note: There is no requirement to retain copies of the route plan, but many companies do.
    - Note: The receipt for Part 397 only has to be retained for one year.

If route plans are available, compare them to the state route restrictions list and look for violations. During your investigation:

- Review inspection reports for routing violations (Section 397.67);
- Review the routing restriction lists for the states the motor carrier utilizes most often, look for possible route violations. The most current list is here: https://www.fmcsa.dot.gov/regulations/hazardous-materials/national-hazardous-materials-route-registry

Also, obtain a list of all the EX numbers (or FC numbers for fireworks) from the motor carrier. Check as many EX/FC numbers as possible on PHMSA's website, https://hazmatonline.phmsa.dot.gov/ApprovalsSearch/Search.aspx. Not all EX#s are on their website, some require manual lookup. Contact your HMPM for assistance.

Investigative Procedures – Class 7

During your investigation, check for the following:

- All placardable RAM shipments must follow the routing requirements of Section 397.101;
- HRCQ RAM shipments must have written route plans. Again, like explosives, there is no requirement to retain copies of the route plans, but some companies do;
- HRCQ RAM drivers must comply with 172.704 every **two** years (Section 397.101(e)(1));
- HRCQ RAM drivers must have a training certificate on their person when operating a CMV with HRCQ RAM (Section 397.101(e)(2)).

If route plans are available, compare them to the state route restrictions list and look for violations. During your investigation:

- Review inspection reports for routing violations (Section 397.101);
- Review the routing restriction lists for the states the motor carrier utilizes most often, look for possible route violations. The most current list is here: https://www.fmcsa.dot.gov/regulations/hazardous-materials/national-hazardous-materials-route-registry

Acute, Critical, and Severe Regulations

The violations listed below should be considered for enforcement action, when discovered. Refer to Section 8.2.5 for a discussion of Severe violations.

Acute, Critical, and Severe Violations for Part 397

Citation	Type	Description

397.5(a)	**Acute**	Failing to ensure a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material is attended at all times by its driver or a qualified representative. **Number checked is the number of instances checked for compliance with § 397.5(a).**
397.7(a)(1)	**Critical**	Parking a motor vehicle containing Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway. **Number checked is the number of instances checked for compliance with § 397.7(a) (1).**
397.7(b)	**Critical**	Parking a motor vehicle containing hazardous material(s) other than Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street. **Number checked is the number of instances checked for compliance with § 397.7(b).**
397.13(a)	**Critical**	Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 25 feet of a motor vehicle containing Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2. **Number checked is the number of instances checked for compliance with § 397.13(a).**
397.19(a)	**Critical**	Failing to furnish a driver of motor vehicle transporting Division 1.1, 1.2, or 1.3 (explosive) materials with a copy of the rules of Part 397 and/or emergency response instructions. **Number checked is the number of instances checked for compliance with § 397.19(a).**
397.67(d)	**Critical**	Requiring or permitting the operation of a motor vehicle containing explosives in Division 1.1, 1.2, or 1.3 that is not accompanied by a written route plan. **Number checked is the number of instances checked for compliance with § 397.67(d).**

8.1.4.5 Emergency Exemptions

Section 390.23 provides relief from the FMCSR for emergency declarations by Federal, State, or Local government officials. Investigators should be careful to note emergency declarations when investigating motor carriers that were engaged in such activities.

The HMR has no such corresponding section providing emergency relief. There is a provision in Section 107.117 that allows for emergency special permit processing. So unless a Federal Presidential emergency declaration has specifically exempted compliance with the HMR, or a Special Permit has been issued, compliance with the HMR is required in all circumstances. FMCSA does not have the regulatory authority to issue emergency declarations from the HMR.

An additional exemption for HM transportation from the FMCSR is found in Section 390.3(f)(7):

"Either a driver of a commercial motor vehicle used primarily in the transportation of propane winter heating fuel or a driver of a motor vehicle used to respond to a pipeline emergency, if such regulations would prevent the driver from responding to an emergency condition requiring immediate response as defined in Section 390.5."

Section 390.5

"Emergency condition requiring immediate response means any condition that, if left unattended, is reasonably likely to result in immediate serious bodily harm, death, or substantial damage to property. In the case of transportation of propane winter heating fuel, such conditions shall include (but are not limited to) the detection of gas odor, the activation of carbon monoxide alarms, the detection of carbon monoxide poisoning, and any real or suspected damage to a propane gas system following a severe storm or flooding. An "emergency condition requiring immediate response" does not include requests to refill empty gas tanks. In the case of a pipeline emergency, such conditions include (but are not limited to) indication of an abnormal pressure event, leak, release or rupture."

The exemption does not require specific documentation to demonstrate that a driver was operating under the exemption. However, a Safety Investigator (SI) should attempt to demonstrate that the driver does or does not meet the conditions of the exemption.

Examples of evidence to support the proper use of the exemption are through carrier/shipper documents, carrier interviews, driver interviews, documents found in the vehicle, contacting state or local officials, contacting fuel/propane associations, or interviewing persons affected by the emergency condition.

When it is determined that the driver did not meet all the conditions of the exemption, the driver must comply with all applicable FMCSR. During an investigation, when it is discovered that a driver claiming the exemption does not meet the conditions of the exemption, the SI must cite all violations of the FMCSR for sections where violations occurred. An explanation should be included in Part C of the investigation report explaining why the exemption does not apply

Investigators should contact their Division office before initiating enforcement action against a driver who claims an exemption under this provision.

8.1.5 HM Supplemental Investigations

FMCSA incorporated the HM Supplemental Review into its investigative process to allow the Agency to continue its focus on examining motor carriers that transport HM. A motor carrier is not subject to an HM Supplemental Review if the HM BASIC is investigated. For all other motor carriers that transport HM, an HM Supplemental Review is **required** if the motor carrier has not had an investigation that examined HM compliance (as determined by reviewing Part C of the investigation) within the last 24 months.

The HM Supplemental Review is essentially a shortened version of the HM Compliance BASIC investigation. The idea is to check a few samples of key HM documentations to determine if further investigation is warranted.

To conduct an HM Supplemental Review, the SI needs to check the following items:

- Remember to check the CAIR elements.
- Shipping papers: **Check one HM shipping paper per Class/Division**, up to a **maximum of three different classes/divisions** of HM transported, including emergency response information and phone numbers.
- Training records: Check that HM Training Materials and Records are in compliance with Part 172, Subpart H for **three HM employees**. (Note: All employees should be checked if the motor carrier has fewer than three HM employees.)
- Security plans: The SI should review the company's security plan and complete a Security Assessment when conducting an on-site investigation.
- Cargo tank testing and inspection records (if applicable): Check **one cargo tank** test and inspection report, up to a **maximum of three different cargo tank types**. Ensure the CT facility has a valid

registration with FMCSA; the tests/inspections are within the required time frames (Section 180.407(c)); and the reports contain all the required information (Section 180.417).
- HM incident reporting: Inquire about HM incidents that occurred in the previous 12 months and verify that these were properly reported as required by Sections 171.15 and 16.

If violations are discovered during the HM Supplemental Review, these violations should be recorded in CAPRI. If Acute and/or Critical violations are discovered during the HM Supplemental Review, a full investigation of the HM Compliance BASIC should be conducted. The discovery of other violations does not require the expansion of the supplemental review. Based on the specific circumstances, the DA may require a full investigation of the HM Compliance BASIC. Enforcement should be taken for any Acute, Critical, or Severe violations discovered.

8.1.6 HMSP Investigations

An HMSP Investigation is a full compliance investigation of a motor carrier's operation, including the HM transportation that requires a HM Safety Permit.

There are two circumstances when a HMSP investigation is required:
- When a motor carrier submits a HMSP application and receives a temporary HMSP. The motor carrier may operate on the temporary HMSP until a safety rating is issued; and
- When a motor carrier is placed on the Enhanced Oversight HMSP list.

Part 385 Subpart E outlines the requirements for the HMSP. Section 385.403 specifies what quantities and types of HM require a HMSP. Important points regarding Section 385.403:

- The quantity for explosives is the net explosive mass, the same standard as PHMSA requires on shipping papers.
- Subsidiary hazards apply to the HMSP in the same manner as primary hazards.
- Domestic anhydrous ammonia does not require a HMSP when transported under the proper shipping description of UN1005, ammonia, anhydrous, 2.2, Inhalation Hazard. See FMCSA Notice: Domestic Transportation of Anhydrous Ammonia.

For a discussion on how the HMSP process works, see the Resource Library (Appendix F).
General HMSP information can be found at:
- https://www.fmcsa.dot.gov/regulations/hazardous-materials/hazardous-materials-safety-permit-program-hmsp;
- Or by contacting your HMS, HMPM, or the HM Division.

For HMSP investigations on motor carriers based in Canada or in Mexico, contact your HMPM for guidance.

Verify the motor carrier transports HMSP materials

Before scheduling the review, verify that the motor carrier actually transports HM that requires a HMSP. FMCSA does not issue HMSPs to motor carriers that do not transport HMSP materials but want one "just in case." If a motor carrier does not currently transport HMSP materials, the HMSP application should be deleted in MCMIS. Contact your HMPM for assistance.

Timelines for HMSP investigation completion

A HMSP review must be completed within 180 days of the motor carrier submitting the application.

An Enhanced Oversight HMSP investigation must be completed within 180 days of appearing on the Enhanced Oversight list.

Failing to submit to an HMSP Investigation
If the only reason for conducting the investigation is for the HMSP application, and the motor carrier refuses to submit to the investigation, the investigator should notify the DA and the HMPM immediately. The HMPM will deny the HMSP and the motor carrier will have to reapply for an HMSP.

If there are additional reasons for the investigation, or it is believed the motor carrier is transporting HMSP quantities without a valid HMSP, then the normal processes for denial of access should be followed.

New Entrant Program motor carriers
If a motor carrier is in the New Entrant Program and applies for a HMSP, and a Safety Audit (SA) has not yet been conducted, then the SA is stopped and a comprehensive investigation is conducted instead. If a SA has already been conducted, a comprehensive investigation is still required.

If the HMSP is denied before a comprehensive review is conducted, then the HMSP must be deleted from MCMIS by the HMS or HMPM so the motor carrier drops back into the SA list. If the HMSP is not deleted, the motor carrier will not return to the SA list.

Carriers that have an HMSP but are not subject to HMSP requirements
If FMCSA determines that a motor carrier holds an HMSP or Temporary HMSP (T-HMSP) and has not used the HMSP during the previous 365 days or the T-HMSP during the previous 240 days from the date of discovery, the Agency will remove the HMSP or T-HMSP from the motor carrier's registration in the Motor Carrier Management Information System (MCMIS), in accordance with the Removal of Hazardous Materials Safety Permit policy (MC-SEH-2024-001).

Removal from the HMSP program does not apply to an HM motor carrier that has an HM load, for which an HMSP is required, scheduled within 30 days from the date of discovery. A motor carrier that has not used its HMSP within the prior 365 days or T-HMSP within the prior 240 days but claims to have an HM load that requires a permit scheduled within 30 days must present documentary evidence showing the load is scheduled. Failure to provide such evidence will result in FMCSA initiating proceedings to remove the HMSP or T-HMSP from the HM motor carrier's registration in MCMIS.

In addition, removal from the HMSP program also does not apply to HM motor carriers who are required by contract to hold an HMSP or T-HMSP by DOD or DOE. For this exception to apply to an HM motor carrier contracted to DOD or DOE, the HM motor carrier must provide acceptable documentary evidence, as defined in the Definitions section of this policy. Failure to provide such evidence will result in FMCSA initiating proceedings to remove the HMSP or T-HMSP from the HM motor carrier's registration in MCMIS.

PROCEDURES:

The below procedures were taken from policy MC-SEH-2024-001. All attachments mentioned are available in the eFOTM HM Appendix F.

I. Motor Carrier Voluntary Removal from the HMSP Program

Subject to the exceptions set forth above, the SI must verify that the motor carrier has not transported materials requiring an HMSP during the previous 365 days or requiring a T-HMSP during the previous 240 days from the date of discovery. The SI will provide the HM motor carrier with the declination statement (**Attachment A – Hazardous Materials Safety Permit Declination Statement**) that the motor carrier can use to voluntarily request removal from the HMSP program. If the motor carrier completes and signs the declination statement, consistent with the communication channels, set forth in **Attachment B (Communication Channels)**, the SI must submit the form to the respective Division

Administrator (DA) and Federal Program Specialist (FPS) by e-mail. The DA must forward the form to the Service Center's Hazardous Materials Program Manager (HMPM), Service Center Director and Field Administrator. FMCSA's HM Division (MC-SEH) or the respective Service Center's HMPM will be responsible for removing the motor carrier from the HMSP program and uploading a copy of the declination statement to EDMS. When the Service Center's HMPM removes the motor carrier from the HMSP program an email should be sent to FMCSA.HMSP@dot.gov informing MC-SEH of that action.

If the motor carrier does not voluntarily remove itself from the HMSP program, the SI must follow the procedures set forth in Section II, titled "FMCSA Initiates Removal from the HMSP Program."

II. *FMCSA Initiates Removal from the HMSP Program*

If the motor carrier does not voluntarily remove itself from the HMSP program, as outlined in Section I, the following procedures must be followed:

1. The SI must notify the motor carrier that FMCSA may initiate proceedings to remove the motor carrier from the HMSP program, and if so, that the motor carrier will receive written notice. The SI must notify the motor carrier in writing, preferably by e-mail, stating the following language:

"During this inquiry, FMCSA has become aware that [**HM motor carrier name**] has not transported any hazardous materials requiring a Hazardous Materials Safety Permit (HMSP) within the prior 365 days or temporary HMSP (T-HMSP) within the prior 240 days. Therefore, [**HM motor carrier name]** is notified that FMCSA may initiate proceedings to remove it from the HMSP program."

2. Consistent with the communication channels, set forth in **Attachment B (Communication Channels)**, the SI must notify the respective DA and FPS by e-mail that the motor carrier has not transported any HM requiring an HMSP within the prior 365 days or T-HMSP within the prior 240 days from the date of discovery. The email should contain the date of discovery, the company official and title declaring that the motor carrier declined to remove itself from the HMSP program, the timeframe the motor carrier held the HMSP or T-HMSP, and the email sent to the motor carrier notifying of proceedings to remove from the HMSP program.
3. As soon as practicable, the DA must forward the e-mail correspondence to the Service Center's Field Administrator, Service Center Director, and the HMPM. The DA must also ensure that a copy of the email sent to the motor carrier notifying of proceedings to remove from the HMSP program is uploaded to EDMS.
4. As soon as practicable, the HMPM will forward the e-mail correspondence to MC-SEH at FMCSA.HMSP@dot.gov.
5. Upon receiving the e-mail correspondence from the HMPM, MC-SEH may issue the written notice (**Attachment D - Template - Notice of Removal from the Hazardous Materials Safety Permit Program**) as soon as practicable to the motor carrier stating that FMCSA intends to remove the motor carrier from the HMSP program using the Procedures for Issuing a Notice of Removal from the HMSP Program attached to this policy as (**Attachment C - Procedures for Issuing a Notice of Removal from the HMSP Program*)*.**

Investigative Procedures – General

An HMSP investigation is always a comprehensive Onsite investigation. The investigation consists of:

- Verifying the motor carrier is subject to Part 385 Subpart E.
- Verifying that the motor carrier holds a valid HMSP.
- Reviewing compliance with Part 385 Subpart E including:
    - A security plan that is in accordance with Part 172 Subpart I;
    - Minimum financial responsibility in accordance with Part 387;
    - PHMSA HM Registration Certificate (Section 107.601);
    - The motor carrier has not falsified their HMSP permit application;

- Documents required by Section 385.415(a);
- A Communications Plan in compliance Section 385.415(c); and,
- If applicable, all HRCQ shipments have NAS Level VI inspections at point of origin.

● full review of part
⊗ partial review of part (relevant subpart is indicated by the number below the symbol).

BASIC	Part 385	Description
HM Compliance	⊗ .401-.423	385.401 – 385.423, Hazardous Materials Safety Permits – **As applicable** to carriers transporting designated quantities of hazardous materials per 385.403

Investigative Procedures – No HMSP When Required

During an investigation if you find that a motor carrier has been transporting HMSP quantities and does not hold a valid HMSP, take the following actions:

- Indicate on Part A of the investigation that a permit is required;
- Cite the motor carrier for a violation of 385.403;
- Include a recommendation for the motor carrier to not transport HMSP quantities until a HMSP is obtained; and
- Enforcement action should be taken for this violation.

Every HMSP quantity shipment is a violation and should be counted on the review.

If the violations are discovered during an investigation of a for-hire motor carrier, refer the information to the appropriate Division for investigation of the shipper of the HMSP materials.

Investigative Procedures – Shipper Duties

If a shipper is offering HM that requires an HMSP, the shipper must verify that the carrier has a currently valid HMSP. When reviewing shippers, ensure that they validate the carrier's HMSP prior to shipping, per Section 173.22(b).

Investigative Procedures – Security Plan

A Security Assessment is required for all comprehensive investigations where a SAT rating is required to obtain or maintain a HMSP.

HMSP motor carriers must have a satisfactory security plan to maintain their HMSP. When applying for a HMSP or renewing a HMSP, the motor carrier must certify they have a satisfactory security plan. HMSP motor carriers found to not have a security plan or have an insufficient security plan will lose (suspension or revocation) their HMSP once the investigation report is uploaded.

Follow the guidance documents in the Resource Library (Appendix F) to review security plans and complete a Security Assessment.

If the motor carrier does not have a security plan, cite the motor carrier with the Acute violation of Section 172.800(b). Once uploaded, this violation will automatically begin the HMSP suspension process. Also cite the motor carrier for a violation of Section 390.35 for falsification of their HMSP application.

If the motor carrier has a security plan but the plan is insufficient, you have two options:

- If the security plan violations are not serious enough to warrant triggering proceedings to suspend or revoke an HMSP, use a non-Acute cite such as Section 172.802.

OR,

- If the security plan violations are serious enough to warrant triggering proceedings to suspend or revoke an HMSP, use the Acute cite of Section 172.800(b). Citing this code will trigger MCMIS to begin HMSP suspension proceedings. Once uploaded, this violation will automatically begin the HMSP suspension process. Also cite the motor carrier for a violation of Section 390.35 for falsification of their HMSP application.

Processing HMSP Suspensions

When Section 172.800(b) violations are cited against a HMSP motor carrier and uploaded during an investigation, MCMIS will issue a "Notice of Noncompliance" letter. The "Notice of Noncompliance" letter instructs the motor carrier to submit corrective actions to the appropriate FMCSA Division office within 15 days of the issuance date of the letter.

- The Division Office will have a total of 30 days from the issuance date of the "Notice of Noncompliance" letter in which to enter corrective action into MCMIS, thereby stopping the suspension process.
- DAs, HM Program Specialists, and HM Program Managers are authorized to access the HMSP corrective action section of MCMIS.
- If corrective action is not entered within 30 days of the issuance of the "Notice of Noncompliance" letter, the motor carrier is issued a "Notice of Intent to Suspend HMSP" letter. All responses to this letter must be directed to FMCSA's CSO.

Investigative Procedures – Communications Plan and Log

Section 385.407(b)(2) requires HMSP motor carriers to create a communications plan to provide for communication between the driver and the company during HMSP materials transportation.

The communication may be made by telephone, radio, or electronic GPS systems. The driver must contact with the carrier at the beginning and end of each duty tour and at the pickup and delivery of each HMSP shipment.

Section 385.415(c)(1) requires the motor carrier to maintain a communications log for 6 months of all HMSP materials transportation. The log may be a separate document, or it may be contained in other records the motor carrier maintains, such as GPS systems. If using a GPS system, it must have a function of notifying the motor carrier when the driver is off route, has failed to check in, or has failed to arrive for loading/unloading.

The record must include:

1. The name of the driver
2. Identification of the vehicle
3. Permitted material(s) being transported
4. Date, location, and time of each contact.

Owner/operators transporting under their own authority, or if the only phone number for the motor carrier is the driver's cell phone number, are not required to maintain a communications plan or log. Team drivers are not required to contact the motor carrier each time the drivers switch.

Investigative Procedures – Additional Requirements

Section 385.415(a) has additional requirements for HMSP transportation:

All HMSP Materials:

- A copy of the safety permit or another document showing the permit number that clearly indicates the number is the FMCSA HMSP number.
- The telephone number, including area code or country code, of an employee of the motor carrier or representative of the motor carrier that is familiar with the routing of the permitted materials.

Explosives

In addition to the documents listed above (All HMSP Materials):

- Carriers that transport Division 1.1, 1.2, or 1.3 materials are required to carry a written route plan that meets the requirements of Section 397.67. While motor carriers are not required to maintain copies of their route plans, many do. Should you encounter route plan violations, they should be cited under Section 397.67(d), not Section 385.415(a)(2), to ensure their rating is affected appropriately.
- See Section 1.4.4 for more guidance on explosives investigations.

Radioactive Materials

In addition to the documents listed above (All HMSP Materials):

- Motor carriers that transport highway route-controlled quantities (HRCQ) of radioactive materials (Class 7) are required to carry a written route plan that meets the requirements of Section 397.101. While motor carriers are not required to maintain copies of their route plans, many do. Should you encounter route plan violations, they should be cited under Section 397.101, not Section 385.415(a)(2), to ensure their rating is affected appropriately.
- CMVs transporting highway route-controlled quantities (HRCQ) of radioactive materials (Class 7) are required to have a pre-trip inspection in accordance with the North American Standard Level VI inspection criteria (Section 385.415(b)(1)).

Investigative Procedures – Intrastate HMSP Motor Carriers

- In addition, compliance with state equivalent regulations will be checked for intrastate trips transporting permitted materials and safety ratings issued to intrastate carriers that hold an HMSP.

Investigative Procedures -- Enhanced Oversight HMSP Motor Carriers

- On a monthly basis, each Division must run a report of the HMSP enhanced oversight carriers and assign those carriers to be investigated by Safety Investigators.
- The onsite comprehensive investigations must take place within 6 months of the carrier appearing on the list.
- Follow the normal procedures for conducting a HMSP investigation.
- If at any time before the investigation the carrier no longer meets any of the enhanced oversight conditions, then the carrier may be removed from the enhanced oversight list at the DA's discretion and the investigation cancelled.
- After an enhanced oversight HMSP carrier is investigated and receives a final satisfactory rating that carrier will not be placed on the enhanced oversight list for 24 months.

The Enhanced Oversight conditions are any of these 3 conditions:

- The motor carrier has the HM Compliance Basic equal to or greater than the HM threshold for the past 2 consecutive months;

AND/OR

- The motor carrier has any 2 or more BASICs, other than the HM Compliance Basic, equal to or greater than their HM thresholds for the past 2 consecutive months (the carrier may have any 2 of unsafe driving, HOS compliance, crash indicator, driver fitness, controlled substances and alcohol, or vehicle maintenance);

OR

- The motor carrier has insufficient data which is defined as not enough data to calculate a percentile in SMS during any month of the current 48-month period and in addition to this, the carrier has a safety rating over 4years old.

Acute, Critical, and Severe Regulations for Part 385

The violations listed below should be considered for enforcement action, when discovered. Refer to Section 8.2.5 for a discussion of Severe violations.

Acute, Critical, and Severe Regulations for Part 385

Citation	Type	Description
385.403	**Severe Level I**	Transporting hazardous materials requiring a hazardous materials safety permit in commerce when the carrier does not hold an HMSP.
385.415(c)(1)	**Severe Level II**	Transporting a hazardous material requiring a safety permit and failing to follow the communication plan as required.
385.415(c)(1)	**Severe Level II**	Transporting a permitted material without maintaining a record of communication for six months as required.
390.35	**Acute**	Making false entries on an MCS-150B.

Note: *The HMR has extensive individualized requirements, making a complete listing of violations for which enforcement should be considered difficult or impossible. If you discover a violation that is not on this list, but believe it warrants enforcement, seek additional guidance from your supervisor, HM Specialist or HMPM.*

8.1.7 HM Shipper Investigations

A HM Shipper investigation can be an investigation of a shipper's complete operations or it can be an investigation of a single shipper terminal. HM Shipper investigations are only reviewing compliance with the HMR. None of the FMCSR is applicable to a HM Shipper.

If the shipper's PPOB is in another state, notify the DA/SD of that Division when conducting a shipper terminal review. Be sure to check the "terminal" box when conducting a HM Shipper investigation of only a single terminal.

Due to limited resources, FMCSA is limiting its HM Shipper investigations to those shippers that offer HM solely by highway. Multimodal shipper violations should be referred to PHMSA. FMCSA does not currently have a HM Shipper investigation goal for each division. HM Shipper investigations should be conducted upon receipt of a complaint, roadside inspection data, or a HM incident.

If a HM shipper is also a motor carrier, a motor carrier investigation is not recommended unless the motor carrier has a less than satisfactory rating, a complaint, indicators of serious non-compliance, or BASIC thresholds have been exceeded.

By definition, a private HM motor carrier is also a shipper. A HM Shipper investigation should be conducted during any investigation of a private HM motor carrier. All violations and recommendations should normally be cited on the motor carrier investigation report, and have a single recommendation on the

shipper investigation report to refer to the motor carrier investigation report, to ensure the motor carrier's rating and enforcement history is affected appropriately. Violations cited on the motor carrier investigation report should not be repeated on the shipper investigation report unless they are substantially different circumstances.

HM Shipper investigations are conducted in the same manner as any other HM investigation. Even when conducting shipper terminal investigations, normally the investigating division will issue the case number, prepare, the NOC, and process the case, but the PPOB Division should be notified of the status of any actions taken.

Ensure shipper and motor carrier violations are distinct, using the word "transporting" for motor carriers and "offering" for shippers.

It is generally recommended to upload HM shipper reviews separately from and prior to the motor carrier review to ensure accurate accounting of activities.

Issuing USDOT Numbers to HM Shippers

Shippers are not required to obtain a USDOT#. However, the agency may issue a USDOT# to a shipper for administrative purposes. When conducting a stand-along shipper review, conduct a search in MCMIS to determine whether the entity has already been issued a USDOT#. If the shipper has not already been issued a USDOT#, contact your Division or HMPM for assistance in issuing a USDOT#.

Investigative Procedures

During a HM Shipper Investigation, you should review the following for compliance:

- Part 107, Registration
- Part 107 and Section 171.22a, Special Permits
- Part 171, Incident Reporting and International Shipments
- Part 172, HM Communications
  - Shipping Papers and ERI; Marking; Labeling; Placarding (packages) and Offering Placards; Training; Security Plans.
- Part 173, Shippers – General Requirements
  - Classification; Packaging
- Part 178, Packaging
  - Use of specification packaging; packaging closure instructions.
- Part 180, Continuing Qualification of Packagings
  - Portable Tanks, IBCs, Cylinders

Shipper Responsibility to Verify HMSP

If a shipper is offering HM that requires an HMSP, the shipper must verify that the carrier has a currently valid HMSP. When reviewing shippers, ensure that they validate the carrier's HMSP prior to shipping, per Section 173.22(b).

If, during a review of a motor carrier, it is discovered that the carrier required an HMSP and a shipper loaded the carrier with HM materials requiring an HMSP, collect evidence regarding the shipper and provide it to the DA/SD of the State in which the Shipper has its PPOB.

Acute, Critical, and Severe Regulations

There are no Acute or Critical violations for HM Shippers; however, all the Severe Level I and II violations apply. Refer to the appropriate section of the HM eFOTM for the list of Severe Level I and II violations applicable to each Part of the HMR.

Evidence that is Required to Prosecute a Violation

The evidence required for HM Shipper violations is the same as that of a motor carrier, except that you do not have to show a trip. You have to show that HM was offered, and show the evidence for that particular violation. Refer to the appropriate section of the HM eFOTM applicable to each Part of the HMR for guidance.

8.1.8 Cargo Tank Facility Reviews (CTFRs)

8.1.8.0 Introduction

A cargo tank facility review (CTFR) is an in depth review to verify compliance of facilities that are engaged in the inspection and testing, assembly, certification, manufacture, and/or repair of a DOT specification cargo tank, a cargo tank operating under the terms of a special permit, or a non-specification cargo tank required to be tested under 49 CFR Part 180.

Anyone who performs a function subject to Part 180 Subpart E is required to register as a cargo tank facility and is subject to a CTFR whether or not they are registered.

CTFRs are to be conducted only by personnel who have successfully completed the CTFR Course and have maintained their CTFR certification.

See the FMCSA public web site for all the cargo tank safety advisories.

There are three types of CTFRs, each with specific personnel requirements:

Facility Type	Personnel Required
Test/Inspection Facility	Any CTFR Certified SI
Repair (R Stamp) Facility	Only with a HMS or HMPM present
Manufacturer (U Stamp) Facility	Only with a HMPM present

CT Facilities should be chosen for review based on the following:

1. Valid complaints;
2. Violations discovered during reviews of a cargo tank motor carrier or shipper;
3. Facilities that have never been reviewed;
4. Facilities with an R Stamp (HMSs only); or,
5. Prior compliance/enforcement history including complaints and roadside inspections.

Cargo tank facilities are not incorporated into the CSA algorithm and do not receive a safety rating.

If, during a CTFR, it is discovered that a CT facility is also operating as a motor carrier or HM shipper, then an Onsite Comprehensive Review of the motor carrier and/or shipper operations should be completed.

CTFR Complaint Procedures

Regardless of the type of violation, documentation connecting an alleged violation to a hazardous material spill is sufficient information for the complaint to be investigated.

Complaints against cargo tank facilities should be handled in accordance with the general complaint procedures.

Complaints against cargo tank facilities performing a function that requires a Design Certifying Engineer (DCE) Certification, including complaints on cargo tank manufacturers, should be forwarded to the Service Center's HMPM.

HMS Issued Equipment

All the HM Specialists have been issued equipment to utilize during CTFRs. It is vital that this equipment be properly maintained and calibrated as required. Questions about calibration or maintenance should be directed to your HMPM.

All electronic equipment should be stored with the batteries removed.

Cyngus Thickness tester	Annual manufacturer calibration
Ludlum Radiological meter	Annual manufacturer calibration

Additional issued equipment:
Rigid Borescope
Fenix Flashlight
Newman Tools Weld Gauge (V-WAC and adjustable fillet)
Digital Pit Gauge
Camera

8.1.8.1 Test/Inspection Facilities

Investigative Procedures

During your CTFR, you should review the following for compliance:

- Part 107, Registration
  - Is the CT Facility registered for all the functions they perform?
  - Is the registration information up to date?
  - Are any third-party facilities identified on their registration statement?
- Part 172, Training
  - Are all personnel trained for all the functions they perform?

- Part 178, Cargo Tank Specifications
  - Do they verify the CTMV meets all the specification requirements for all the functions they perform?
- Part 180 Subpart E, Cargo Tank Functions
  - Do all personnel meet the qualifications required by the HMR?
  - Do they perform all the tests/inspections properly?
  - Do they perform all other functions (repairs, assembly, etc.) properly?

Preparation Prior to the CTFR

- Review FMCSA's MCMIS profile for the CT facility: Identify the Person Responsible for Compliance, the number or Registered Inspectors (RIs) and/or DCEs; the types of tests performed, and, the types of cargo tanks that tests are performed on.
- If necessary, contact HM Division for cargo tank registration letters and other documents.
- When possible, review roadside inspection violations from motor carriers known to be utilizing the facility.
- Review PHMSA's Hazmat Intelligence Portal (HIP) database for previous reviews, enforcement actions, and other information (contact your HMPM for access to PHMSA's HIP database).
- Check with any state agencies that may require this facility to register.

Opening Interview Procedures

The CTFR is primarily an oral interview process. Compared to a motor carrier review, there is very little documentation to examine during a CTFR.

Your primary focus is on interviewing the RIs of the facility and determining whether they have the necessary qualifications and experience and are conducting the tests and inspections in accordance with the HMR.

Strong interviewing skills are a must. Experience has demonstrated that the process of one-on-one interviews with the "Person Responsible for Compliance" and each Registered Inspector (RI) is a critical element to the successful completion of a CTFR.

These interviews contrast significantly from the typical opening interviews with motor carrier executive-level management personnel.

Your opening interview should be conducted with the Person Responsible for Compliance and should address the questions in the *Person Responsible for Compliance Interview* in the Resource Library (Appendix F)

If the entity is NOT currently registered with the FMCSA, inform the person responsible for compliance and/or a company official that they MUST register immediately in accordance with 49 CFR Part 107, Subpart F.

Registered Inspector (RI) Interviews

Investigators should conduct private interviews with individuals who actually perform Part 180 inspections and tests with no participation by any other facility personnel, whenever possible.

The purpose of the private interview is to gain sufficient information to determine if the inspector/tester meets the qualification requirements for a Registered Inspector, is properly trained in the use of inspection and testing equipment, and is conducting the inspections and tests in accordance with the cargo tank re-qualification and maintenance requirements in Part 180.

Normally the RI interviews will take place in conjunction with the facility shop assessment, which is the next topic addressed in this document.

- Whenever possible, have the RI(s) demonstrate an actual test and/or inspection.
- Even if a demonstration is not possible, have the RI(s) walk through the procedure they use for each test/inspection they conduct.
- Use any available cargo tank motor vehicle as a prop to demonstrate their procedures.
- Pay close attention to details on the process.

For a list of questions to ask for each type of test/inspection, see *CTFR Checklist* in the Resource Library. (Appendix F).

For a list of questions to determine if an RI is qualified, see *RI Interview* in the Resource Library (Appendix F).

For a list of issues related to cargo tank specifications, see *Common Cargo Tank Issues* in the Resource Library (Appendix F).

CT Facility Shop Assessment

During the CTFR, the Investigator should request to tour the shop area with the Person Responsible for Compliance or the RI. Generally this is done after the opening interview and either after or at the same time as the RI interview(s).

The purpose of this assessment is to determine if the facility has the proper equipment necessary to conduct the various tests and inspections and whether the RIs have the knowledge and experience to properly utilize this equipment.

It is strongly recommended that the Investigator have the RI(s) demonstrate the use of their testing equipment, even if a cargo tank is not available for demonstration purposes.

- Of particular importance is the demonstration by the RI of the bench testing equipment used to test the pressure relief devices.
- Take photographs of equipment and demonstrations when possible and appropriate.
    - Note that photographs may be necessary for enforcement cases on some violations.

Normally it is best to discuss a particular piece of equipment while interviewing the RI on the test/inspection for which that piece of equipment is utilized.

The various equipment required for specific tests/inspections is discussed in the list of questions for each test/inspection (CTFR Checklist).

Below is a list of general questions that apply to all equipment:

1. What condition is their equipment in?
    a. Is it covered in dust, other tools, junk and appears it is rarely if ever used?
2. Can the RI adequately explain how a particular piece of equipment is used?
    a. Does the RI appear to be unsure or unfamiliar with the equipment?
3. Does the shop follow the manufacturer's recommended practices for use, maintenance, and calibration (gauges, thickness testers, spark testers, etc.)?
    a. Is the owner's manual available for review? (Most spark testers and some thickness testers must be calibrated by the manufacturer annually and should be marked with the record of calibration.)
4. While not required by the HMR, ask about their knowledge of and compliance with OHSA's Confined Space Entry rules and other OHSA safety requirements. This will provide the Investigator with insight on their attitude towards safety compliance in general.
5. Are their pressure gauges periodically calibrated (required for tests/inspections on U Stamped CTs), or do they have a system of verifying the gauge is accurate?
    a. Does the gauge show evidence of damage?
    b. How often do they replace them?
    c. Do they keep records of calibration?
6. If they are a mobile tester, how do they transport all the required equipment for the various tests/inspections they conduct?
    a. Does their transport unit put them in the FMCSR as a motor carrier?
    b. Is their air compressor (pressure, leakage tests) large enough?
    c. How do they bench test PRDs? Where do they obtain water for the hydrostatic pressure test?
    d. What do they do if a CT needs a repair?

Assembly Functions

Assembly, the function of putting a cargo tank on a vehicle chassis, is addressed in Section 180.413(e). Provided none of the following are involved, the assembly may be done by a RI:

- If welding to the cargo tank wall is involved, an R Stamp facility is required.
- A DCE is required if:
    - There is any change or replacement in the method of attachment.
    - There is any change or replacement of the rear end protection device.
    - There is any change in the piping design.

The HMR is silent regarding tests/inspections that are required after assembly, but Section 180.413(c) requires a leakage test after any replacement of valves, fittings or piping.

There is no requirement to install a supplemental specification plate when performing assembly. However, if the cargo tank is modified in any way, then Section 180.413(d) applies.

Wet Florescent Magnetic Particle Exam (WFMPE)

The WFMPE, or black light test, is required during the pressure test for MC330/331/173.315(k) cargo tank motor vehicles that transport certain HM. The WFMPE requires qualified and trained personnel and specialized equipment. Investigators should ensure they carefully review the WFMPE procedures of CT facilities that conduct the Exam.

A checklist for the *WFMPE Procedure* is found in the Resource Library (Appendix F).

Reviewing Cargo Tanks Recently Tested/Inspected

One key method to determine the quality of a RI's tests and inspections is to conduct "walk-around inspections" of cargo tanks the RI has recently tested/inspected. Investigators should conduct as many of these "walk-around inspections" as possible.

While "walk-around inspections" are necessarily limited by geographic location, attempt to look at cargo tanks that the facility has recently completed a repair on; any FRP cargo tanks that the facility has tested/inspected; any cargo tanks that the facility has recently conducted a thickness test or lining inspection, if applicable; or, recent pressure tests.

If the cargo tank facility is also a motor carrier, obtain copies of roadside inspections reports and the carrier's accident register for cargo tanks that may be good candidates for "walk-around inspections".

Identify customers within a 50 air-mile radius of the facility location, if possible, where the facility has performed tests and inspections on their customers' cargo tanks.

- Usually, it is best to have the facility contact the motor carrier and arrange the appointment; but, verify the work that was performed (tests/inspections, repairs) matches the documentation that the facility provided by having the motor carrier provide copies of reports, invoices, etc.

"Walk-Around Inspections" of CTs Recently Tested/Inspected

Number of Cargo Tanks Tested/Inspected Annually	Number of Cargo Tanks to Review
1-5	3
6-25	5
26-50	8
50-200	10
200+	15

If the minimum number of cargo tanks cannot be inspected, the reason should be explained in Part C. If you find a high level of non-compliance, increase your sample size and explain why in Part C.

These "walk-around inspections" are not true inspections unless a complete vehicle inspection is conducted in accordance with agency policy.

Your "inspection" should focus on items that are specifically required to be inspected during a Part 180 test/inspection and should include:

1. Specification plate and American Society of Mechanical Engineers (ASME) name plate, as applicable.
2. Test/inspection markings and all other required markings.
3. Improper test/inspection indicators, such as: dents, digs, or gouges that are not documented; signs of leakage; poor welds, weld cracks; missing bolts, nuts, or fusible links; inoperative remote closure

devices; inadequate venting capacity; PRDs with torn gaskets or inoperative; upper couplers that have not been removed when required; insufficient REPDs; etc.

Reviewing Cargo Tank Test and Inspection Records

While there is no regulatory requirement for CT facilities to maintain copies of the test/inspection reports they produce, the vast majority of them do maintain detailed records.

If the facility is maintaining these records, they are considered a business record and must be made available on request. If the facility does not maintain these records, they will have to be obtained from the motor carriers that use the facility for tests/inspections.

If the CT facility is also a motor carrier, remember that violations involving failure to retain certificates of compliance, test/inspection reports, or repair records are not appropriate cites for a CTFR. These violations should only appear on a motor carrier compliance review.

Review a minimum sample number of cargo tank testing records as noted in the chart below. When reviewing these records, select a broad sample of records that include all the various tests/inspections and different DOT specifications the facility conducts.

Minimum Sample for Cargo Tank Test Reports

Number of Tests/Inspections Performed Annually	Number of Cargo Tank Test Reports
1-10	All
11-100	20
101-500	30
501 and up	40

Things to look for include:

- Test/inspection reports for Special Permit CTs or specification CTs not included on the facility's registration statement. Review as many of these test reports as possible.
- Reports for tests/inspections not included on the facility's registration statement.
- Notes on reports that indicate repairs that may require an R stamp. Ask for invoices, as these often detail welding work.
- Reports on cargo tanks that were involved in crashes or HM incidents.
- Reports from third-party facilities, such as facilities that perform the Wet Florescent Magnetic Particle Exam.
- Reports on cargo tanks that were cited for violations during roadside inspections.
- Reports on cargo tanks that you were able to conduct an assessment on, particularly if you found potential violations.

If the test/inspection report indicates the pressure relief device (PRD) was replaced instead of tested and reinstalled, ask for the invoice or purchase order showing purchase by the facility and the invoice or purchase order showing the charge to the cargo tank owner.

If the facility is utilizing a state EPA form for the EPA Method 27 Test, ensure all the information required by Section 180.417 is present on the state form. If not, the facility must complete a supplemental form that complies with Section 180.417.

Compare the facility test/inspection report to the requirements in Section 180.417(b) and (c) as applicable.

- Does the report contain all the required information?

- Are the reports signed by the RI? Test and inspection reports must be signed and dated by the person performing the inspection or test and this person must be a RI. Owner's signatures are not required on the facility's copy of the test report.
- Obtain copies of test reports as evidence when violations are discovered (evidence requirements are discussed later).
- Note that "Return to Service" is not sufficient for test/inspection reports under Section 180.417(b), which requires a more definitive statement that the cargo tank is qualified as a DOT specification cargo tank. "Return to Service" is a separate requirement for the wet florescent magnetic particle exam report form under Section 180.417(c).

For test report violations, each report in violation counts as one, even though there may be several missing or inaccurate items on each report form.

For combination tests/inspections (such as the external visual and internal visual inspections when completed with the pressure test), each test/inspection is counted as a separate report.

Reviewing Hazmat Employee Training Records

Identify all individuals employed by the facility that meet the definition of a hazmat employee. Review the training records for **all** employees that perform a function subject to Part 180 Subpart E.

The training record must comply with Section 172.704(d) and must include general awareness, function-specific, and security awareness training.

- Note the exception for safety training in Section 172.704(e)(1).
- In-depth security training is required only for motor carriers and shippers and should be cited only during a motor carrier or HM shipper compliance review, not on a CTFR.

Ensure the function specific training includes training on all types of tests/inspections performed; all DOT specification cargo tanks that the facility conducts tests/inspections on; Special Permit cargo tanks, if applicable; and, all equipment required for the tests/inspections that the facility conducts.

If violations are discovered, collect all test/inspection reports signed by the RI(s) that are in violation.

CTFR Closeout

The closeout session is conducted in the same manner as a motor carrier compliance review. The Person Responsible for Compliance and when possible, the owner, should be present.

- The Investigator shall require the facility to update their Cargo Tank facility Registration as soon as it is discovered that a facility is performing functions where registration is required, or update their registration statement to reflect current operations.
- The Investigator should have complete notes regarding the cargo tanks found in violation and cited on the report.
- If violations have been discovered that require cargo tanks to be retested/re-inspected, contact your HMPM prior to closing out the CTFR.
    - Include custom recommendations that will be provided by your HMPM.
    - Make copies of all test/inspection reports of the affected cargo tanks prior to leaving the facility.
    - Obtain complete contact information and addresses for the cargo tank owners affected by the retests/re-inspections.

See the section *Cargo Tank Retest/Reinspection Procedures* for the procedures and the list of the violations that require cargo tanks to be retested/re-inspected.

Completing the CTFR Report

There is a CTFR Part C template in the Resource Library (Appendix F).
There are some differences, but in general, the information requested is self-explanatory. In addition, you can select help from the help menu to get additional information.

- All facilities or their parent companies will have a U.S.DOT number.
- Each facility will be assigned a separate CT number if more than one facility is owned by the company.

The address tab under Part A gives you options for both physical and mailing addresses for both the Corporation and the facility address.

There are two different physical addresses shown on the General page.

- The first physical address is for the Corporation Main office, along with the mailing address for the Corporation.
    - Note: These could all be the same, or in some instances be totally different.
- The second physical address and mailing address are for the address of the registered facility (CT number) location that you are reviewing.

Completing the CTFR Section of CAPRI

Under the Start Tab, enter the CT number and effective date (date of the latest update or renewal of their CT#). Also enter the R Stamp and U Stamp information, if applicable. Then complete the information for the various functions the facility performs.

Size	Number of Cargo Tanks Tested Annually
Small	1-20
Medium	21-100
Large	Over 100

Under the General Tab, the engineering information should be left blank. CTFRs involving engineering information require involvement by your SC's HMPM.

- The remaining blocks should be completed as appropriate.
- Many facilities now update their information on-line, but it is a good practice to review the original letter submitted when possible.

Under the Personnel Tab, enter the information for all RIs, Authorized Inspectors (AIs), DCEs, and other personnel that are employed or contracted by the facility.

- These tabs will only be available depending upon the functions selected under the Start Tab.
- When completing the pop up box for individuals, only check the "Qualified" box when you have determined the individual is qualified.

Under the Inspections/Testing Part 1 Tab, select the appropriate check boxes for functions the facility is registered for and those it actually conducts.

- For test report violations, each report in violation counts as one, even though there may be several missing or inaccurate items on each report.
- For combination tests/inspections (such as the external visual inspection and the internal visual inspection when completed with the pressure test) are counted as separate reports.

You will need to observe their actual operation or their equipment room to answer the check blocks for equipment.

- A hint list will appear as you scroll through the selections.
- These hints are not all inclusive, but designed as an aid to assist you during this entry.

Under the Inspections/Testing Part 2 Tab, select the appropriate check boxes for the tests/inspections the facility conducts.

Acute, Critical, and Severe Regulations

CT facilities do not receive a safety rating. The violations listed below should be considered for enforcement action, when discovered. If enforcement action is not taken, it must be documented in Part C of the investigation to explain why enforcement was not initiated.

Acute, Critical, and Severe Citations for Part 180

Citation	Type	Description
107.502(b)	**Severe Level I**	Manufacturing, assembling, certifying, inspecting, or repairing) a cargo tank or cargo tank motor vehicle manufactured to a DOT specification, without registering.
107.504(c)	**Severe Level I**	Failing to renew registration every six years, or within 30 days of renewal of an ASME or National Board Certification.
Part 178	**Severe Level I**	Contact your HMPM for assistance in determining what Part 178 cites should be used and when enforcement should be conducted.
180.3(a)	**Severe Level I**	(Representing, marking, certifying, selling or offering) a package or container as meeting (a requirement of 49 CFR Part 180 or a DOT exemption issued under 49 CFR Part 107), when it was not (marked, maintained, reconditioned, repaired, or retested) in accordance with Part 180.
180.405(g)	**Severe Level I**	Failing to equip a cargo tank with manhole assemblies conforming to Section 178.345-5. **Note: Ensure the assembly does not meet an exception.**
180.405(h)	**Severe Level II**	Failing to replace a reclosing pressure relief valve with a valve meeting the requirements of Section 178.345-10. **Note: Only applicable when valve is being replaced. There is no retrofit requirement.**
180.407(a)(2)	**Severe Level I**	Subjecting a cargo tank to a pressure greater than its design pressure or maximum allowable working pressure (MAWP). **Note: Except during a pressure test, loading, or unloading.**
180.407(a)(3)	**Severe Level I**	Performing or witnessing a test or inspection on a cargo tank without meeting the minimum qualifications prescribed in Section 180.409.
180.407(a)(4)	**Severe Level I**	Failing to evaluate cargo tank with criteria in Section 180.411.
180.407(a)(5)	**Severe Level I**	Failing to mark a cargo tank in accordance with Section 180.415.
180.407(d)	**Severe Level I**	Failing to perform an external visual inspection as prescribed. Includes subsections (3) and (5). **For failing to bench test PRDs, the number checked is the number of cargo tank motor vehicles checked, not the number of PRDs.**
180.407(e)	**Severe Level I**	Failing to perform an internal visual inspection as prescribed. Includes subsection (e)(3).

180.407(f)	**Severe Level I**	Failing to perform a lining inspection as prescribed.
180.407(g)	**Severe Level I**	Failing to perform a pressure retest as prescribed. Includes subsection (g)(1). **For failing to bench test PRDs, the number checked is the number of cargo tank motor vehicles checked, not the number of PRDs.**
180.407(g)(3)	**Severe Level I**	Failing to perform a wet fluorescent magnetic particle test on an MC330/331 cargo tanks.
180.407(h)	**Severe Level I**	Failing to perform a leakage test as prescribed. Includes subsection (h)(4).
180.407(i)	**Severe Level I**	Failing to perform a thickness test as prescribed.
180.407(j)	**Severe Level II**	Failing to properly conduct a bench test of the pressure relief devices when required. Note: If they failed to do the bench test at all, then the appropriate violation is 180.407(d) or 180.407(g), as appropriate. Use this cite when they failed to use the correct pressures or were otherwise doing an improper bench test.
180.413(a)(1)	**Severe Level I**	Performing a repair or a modification of an ASME Code U stamped cargo tank while failing to hold a valid National Board Certificate of Authorization for the use of the R stamp. **Note: ASME certified cargo tanks only.**
180.413(a)(1)	**Severe Level I**	Failing to perform a repair of a DOT specification cargo tank in accordance with the National Board Inspection Code.
180.413(a)(1)(i)	**Severe Level I**	Performing a repair or a modification of a non-ASME Code stamped cargo tank while failing to hold a valid ASME Certificate of Authorization for the use of the "U" stamp or a National Board Certificate of Authorization for use of the "R" stamp. **Note: Non-ASME certified cargo tanks only.**
180.413(b)	**Severe Level I**	Failing to verify the suitability of a repair affecting the structural integrity of the cargo tank by testing as prescribed in the applicable specification or in Section 180.407(g)(1)(iv).
180.413(c)	**Severe Level I**	Failing to leak test repairs done to piping or valves.
180.413(d)(1)	**Severe Level I**	Failing to have a (stretching, modification, or re-barreling) of a cargo tank certified by a Design Certifying Engineer (DCE).
180.413(d)(2)	**Severe Level I**	Failing to performing a (stretching, modification, or re-barreling) of a cargo tank to the applicable specification.
180.413(d)(3)(iv)	**Severe Level I**	Failing to verify the suitability of a modification affecting the structural integrity of the cargo tank with respect to pressure by testing as prescribed in the applicable specification or in Section 180.407(g)(1)(iv). (Use for an inspection facility).
180.413(d)(1)	**Severe Level I**	Failing to have a modification certified by a DCE.
180.413(d)(4)	**Severe Level I**	Failing to issue a supplemental certificate of compliance after performing a modification.
180.413(e)	**Severe Level I**	Failing to mount a cargo tank as specified in this section.

180.415	**Critical**	Failing to mark a cargo tank that passed an inspection or test required by Section 180.407. **Number checked is the number of cargo tanks checked for test markings.**
180.416(f)	**Severe Level I**	Failing to properly test a new or repaired delivery hose assembly at a minimum of 120 percent of the hose maximum working pressure.
180.416(f)(2)	**Severe Level I**	Failing to permanently mark a new or repaired delivery hose assembly with the month and year of the pressure test.
180.417(b)	**Severe Level II**	Failing to include all required information on test or inspection report.
180.417(c)	**Severe Level II**	Failing to include all required information on wet florescent magnetic particle exam report.

Evidence Required for Enforcement Cases

Regardless of the type of violation, you must show that:

1) The cargo tank motor vehicle is subject to Part 180; and
2) The RI failed to perform a particular function properly, or
3) The RI performed a function and was not qualified, trained, or registered.

Because normally Investigators will not actually witness the test/inspection for a violation, the case will rest primarily on a written statement. Therefore it is important to produce a strong, clear written statement that addresses all the elements. For this reason, it is generally best for the Investigator to provide the RI with a written statement to sign, rather than allowing the RI to write out their own statement.

- If the RI refuses to sign a written statement, then an oral statement can be prepared.
- As noted earlier, strong interviewing skills are important and will assist the Investigator in developing a written or oral statement.

For any enforcement case during a CTFR, the Investigator must obtain:

- A certificate of compliance or a picture of the DOT specification plate of the cargo tank(s) in violation.
    a. For Special Permit cargo tanks, also obtain a copy of the Special Permit.
- Copy or copies of the test/inspection report(s) signed by the RI. Be sure to obtain copies as clear as possible.
- For most CTFR violations, it is also important to obtain pictures of the test/inspection markings; pictures of the front, sides, and back of the cargo tank; and, as applicable, pictures of specific violations on the cargo tank.
    a. Pictures of shop equipment can also be useful.
- Invoices, work orders, shop notes and other supporting material are also useful, particularly in repair, assembly, and manufacturing violations.
- A copy of the MCMIS profile and copies of the registration letters required to be maintained by the CT facility are important to obtain for registration violations.
    a. These documents are also useful for Knowledge and Willfulness documentation.

Ensure that the documents reference one another. For instance, a work order documenting repairs including welding on a cargo tank wall should have sufficient identifying information to connect it to the manufacturer's certificate of compliance or a picture of the specification plate.

Do not include evidence showing HM transportation for CTFR enforcement cases, since the facility does not have to be in transportation to be subject to the FHMR. If the cargo tank is subject to Part 180, then the

tests/inspections must be performed in accordance with Part 180, regardless of what commodity the cargo tank is used for. Adding an additional element can actually create more difficulties.

If you believe that HM transportation may be a component that is necessary to be included, contact your HMPM for guidance.

Examples of how to compile a CTFR case are available from your HMS or HMPM.

Cargo Tank Retest/Reinspection Procedures

Special Agents have the authority under two separate provisions of the HMR to require corrective action on DOT specification cargo tanks.

Part 109

While conducting a CTFR, a Special Agent may discover an imminent hazard that requires immediate action. Under Part 109, a FMCSA Special Agent will be able to submit a request and obtain an order to stop the unauthorized testing of cargo tanks. Part 109 also contains provisions for Emergency Recalls, which have to be coordinated with U.S.DOT/PHMSA.

Refer to the "Hazardous Materials Enhanced Enforcement Manual" for guidance on how to request an Imminent Hazard or Emergency Recall. Also contact your HMPM for assistance.

Cargo Tank Retest/Reinspection Procedures

Section 180.407(b)(5) provides FMCSA with the authority to require cargo tanks to be retested/re-inspected.

- FMCSA has developed a list of violations that, when discovered, constitute probable cause that an unsafe condition exists and those cargo tanks should be retested/re-inspected. The decision to proceed with this process should be made by the Investigator, the DA, Division and the SC HMPM.
- When the decision has been made to require cargo tanks to be retested, enforcement action shall be initiated against the test and inspection facility for failure to perform tests and inspections of cargo tanks in accordance with the HMR.
- The Agency shall require all affected cargo tanks tested and inspected by this facility to be retested by a facility registered with the Department to perform the retesting functions.
    - In some cases, the facility found to be in violation may not have the equipment, training, and/or qualifications to continue conducting the test(s)/inspection(s) found to be conducted improperly.
- For all tests/inspections violations except those involving the pressure test, the Investigator shall go back 1 year from the date of the CTFR and require all the cargo tanks tested/inspected by that facility (and affected by the discovered violation) to be retested/re-inspected. For pressure test violations, the Investigators will go back 5 years from the date of the CTFR.
- The list of violations requiring retest/reinspection is found in the Resource Library (Appendix F).
- The template for the Cargo Tank Retest/Reinspection letter is found in the Resource Library (Appendix F).
    - Obtain proof of delivery
    - Track responses and follow up on non-responses.

8.1.8.2 Repair (R Stamp) Facilities

The HMR define repair as any welding done to the cargo tank wall. However, an R Stamp facility may be involved in a number of functions:

- Welding repairs (pinholes, cracks, etc.)
- Assembly involving welding to the cargo tank wall
- Modifications (changing the number of compartments, etc.)

- Stretching (adding length, width, or diameter to the tank)
- Rebarrelling (replacing more than 50% of the cargo tank wall)

All of these are defined in Section 180.403 except assembly, which is defined in Section 107.502.

Repair Functions

Who Can Perform a CTFR on an R Stamp Facility?

CTFRs on NBIC R Stamp facilities are to be conducted only by or in coordination and oversight with HM Specialists or HM Program Managers.

What is an R Stamp Facility?

The National Board Inspection Code (NBIC) has also been adopted by reference into the HMR (1992 edition) and is for continued service/repair. The NBIC is issued by the National Board of Boiler and Pressure Vessel Inspectors, which issues the R Stamp. Access to the NBIC is available through your HM Program Manager.

Refer to the *Repair (R Stamp) Checklist*, the *NBIC Checklist*, and the *NBIC QCS Checklist* in the Resource Library (Appendix F).

Assembly Functions

Assembly, the function of putting a cargo tank on a vehicle chassis, is addressed in Section 180.413(e). Provided none of the following are involved, the assembly may be done by a RI:

- If welding to the cargo tank wall is involved, an R Stamp facility is required.
- A DCE is required if:
  - There is any change or replacement in the method of attachment.
  - There is any change or replacement of the rear end protection device or any accident damage protection device.
  - There is any change in the piping design.

The HMR is silent regarding tests/inspections that are required after assembly, but Section 180.413(c) requires a leakage test after any replacement of valves, fittings or piping.

There is no requirement to install a supplemental specification plate when performing assembly. However, if the cargo tank is modified in any way, then Section 180.413(d) applies.

Assemblers must have design certifications, repair records and test and inspection reports just like a manufacturer. If they purchase a certified rear end protection device from another manufacturer, they have to obtain all the required documents from that manufacturer.

Required Documentation for Assemblers when a DCE or R Stamp is Required

- Must have DCE certification of design type
- Load/stress calculations for structures
- Accident damage protection calculations
- Rear end protection calculations
- Principal stress calculations
- Drawings

Modifications, Stretching, and Rebarrelling

The investigation for a CT facility that performs modifications, stretching or rebarrelling includes all the investigation components for that of an R Stamp facility, but also includes:

- All designs must be certified by a DCE.
- All new materials must be used.
- All work must conform to the current applicable specification.
- Once completed, the cargo tank motor vehicle must be pressure tested.
- Any changes to the information on the original specification plate must be documented on a supplemental specification plate.
- A RI must certify the cargo tank motor vehicle conforms to Section 180.413(d) and the applicable specification by issuing a supplemental certificate of compliance.

8.1.8.3 Manufacturer (U Stamp) Facilities

Who Can Perform a CTFR on a U Stamp Facility?
CTFRs on ASME U Stamp facilities are to be conducted only by or in coordination and oversight with HM Program Managers. CTFRs on ASME U Stamp facilities must be coordinated through the HMPM and the HM Division.

What is a U Stamp Facility?
The American Society of Manufacturing Engineers (ASME) Code has been adopted by reference in the HMR and is for new construction. ASME issues the U Stamp. Access to the ASME Code is available through your HM Program Manager.

Refer to the *Manufacturers Checklist*, the *Manufacturers Duties*, the *ASME QCS Guide*, and other manufacturer documents in the Resource Library (Appendix F).

DCE Certifications
If the facility performs a function that requires certification by a Design Certifying Engineer (DCE) there are additional procedures for conducting a CTFR on the cargo tank facility. These reviews should be conducted by or in conjunction with the SC HMPM.

When a CTFR is conducted on a facility that performs functions requiring a DCE certification, engineering assistance is available from the HM Division to verify the certifications made by the DCE. Requests for a review of a DCE's certification should be made through the SC HMPM.

Such functions include:

- Manufacturing a CT or CTMV;
- Assembly that includes new accident damage protection, attachment to the chassis, or new piping design; and
- Repair functions that include stretching, modification, and rebarrelling.

8.1.9 Special Permit Reviews

FMCSA has entered into an agreement with PHMSA to conduct reviews on motor carriers that have applied for or are renewing a HM Special Permit. PHMSA submits a request to FMCSA/HM Division, which coordinates with the Service Center HMPM, who coordinates with the appropriate Division. These reviews should be assigned to Safety Investigators who are well versed in the HMR.

There are two types of PHMSA requests:

- PHMSA requests that FMCSA review the motor carrier's safety fitness and ability to carry out the terms of the Special Permit, in addition to verifying the motor carrier is in compliance with the provisions of the Special Permit and the HMR. There is a 60-day requested timeframe on these reviews.; or

- PHMSA requests FMCSA provide a recommendation for acceptance or denial of the Safety Permit based soley on whether the Special Permit would be in violation of any FMCSA regulation, rule, or policy. These requests have a 30-day requested timeframe and are handled by the FMCSA/HM Division.

In certain circumstances, PHMSA may issue an Emergency Special Permit. There is a 15-day requested timeframe for the review of these Permits.

For more information, see Special Permit and Approval Standard Operating Procedures and Evaluation Process in Appendix F.

Contact your HMPM should you have any questions.

8.2. General Procedures

8.2.0 Introduction

This section of the HM Manual provides guidance on how to make assignments, prepare for your investigation, document your investigation, and develop your enforcement case.

Counting of Reviews

Each review (HM Shipper, CTFR, and CI) should be uploaded separately. For performance considerations, each entity investigated counts as one investigation regardless of the number of reviews conducted.

8.2.1 Assignment of HM Investigations

Generally, HM investigations should be assigned following the agency's general policies and procedures. When making the assignment, consideration should be given to the individual investigator's knowledge and expertise in the HMR. Complex HM investigations should be reserved for HMS or have a HMS or HMPM support the investigator through the investigation.

Complex HM investigations include:

- HMSP Investigations
- Explosives
- Radioactive Materials
- R Stamp CTFRs

8.2.2 Pre-Investigation Resources

Pre-Investigation is a critical stage of the investigative process. An investigator should always have a good background of the company and what they do. For a HM investigation, there are additional resources available to you to find out more about the company's operation.

Some additional resources for HM investigations you should consider:

- Google/Bing: Search for the company name and company officials on the Internet. Look for lawsuits, news releases, news stories of HM incidents, etc.
- DOD Audit Reports: DOD conducts audits on motor carriers that are hired to transport military personnel through a contractor. Military contractors are reviewed by DOD every 2 years and are scored 1-5, 1 being the highest level of compliance.
- PHMSA's HM Portal (HIP): Contact your HMPM for access.
- PHMSA's public website: Special Permits, Approvals, HM Incident Reports, Interpretations, etc.

8.2.3 General Investigation Guidance

Regardless of the type of investigation or the type of entity being investigated, there are some practices you should consistently engage in to further your investigation:

- Ensure you have requested all applicable HM related documents that should be reviewed. Review shipping papers, invoices, insurance paperwork, SDSs, and OS&D reports, etc.; walk around the premises looking for stored HM; ask questions about how the company repairs, packages, cleans, etc., which may involve HM, and how the HM is obtained.
- Tour the facility, whether it is a loading dock, warehouse, etc. Take note of posted materials, related to the carrier's knowledge and compliance with the regulations, and how the general day-to-day operations work. During the tour, look for the presence of HM, especially in the areas where products and goods are fabricated, cleaned, stored, or shipped. Some motor carriers and shippers may not know that they are shipping and/or transporting HM. Often HM is discovered during the tour of the overage, shortage, and damaged (OS&D) area of the carrier's operation.

Investigative Authority

Under the FMCSR and Part 109 of the HMR, Investigators have all the requisite authority to conduct HM investigations and inspections, including entering vehicles, opening trailers, etc. FMCSA has adopted the CVSA North American Standard Out-of-Service Criteria for vehicle, driver, and HM inspections.

Leaking HM Packagings

Should you encounter a leaking HM packaging during an inspection or investigation, take the following actions:

- Contact the appropriate local enforcement official and make arrangements to park vehicle, in suitable location, until disposition of the matter is resolved. The vehicle or package is to be placed OOS for violating Section 173.24(c).
- Contact the motor carrier and have them obtain remediation services. Do not engage remediation services directly as the agency may become financial responsible for the cleanup.
- Ensure the shipper or motor carrier complies with Sections 171.15 and/or 171.16 as appropriate.

Governmental HM Operations

When a government agency offers HM to a commercial motor carrier, the government agency is in commerce and is subject to the HMR. When an Investigator discovers the government agency has committed violations, the Division should try to resolve the violations before taking enforcement action.

- The Division should send a letter to the government agency documenting the violations and requesting a corrective action plan.
- The Division should work with the government agency to develop a corrective action plan that is sufficient to prevent future violations.
- Should the government agency fail to respond or the Division finds the response inadequate, the Division should forward documentation of the violations to the OIG.

Superseded HM Regulations

There are certain packages in the HMR that are authorized for continued use, but are no longer authorized to be manufactured. The specifications of these packages are no longer found in the HMR. Therefore, the cite authorizing the continued use is the primary cite, with a secondary cite of the appropriate specification regulation. Both Capri and Aspen include the primary cites for the packages affected. Superseded packages include:

- MC300 specification cargo tanks through MC312 specification cargo tanks, use Section 180.405(b) as the primary cite.

- IM101, IM102, or DOT-51 specification portable tanks, use Section 173.32(c)(1) as the primary cite.
- DOT-56 or DOT-57 specification portable tanks, use Section 173.32(c)(2) as the primary cite.

Process Breakdowns

When you discover violations, assist the hazardous materials motor carrier and /or shipper in becoming more compliant with hazardous materials regulation, to reduce the risk of violations becoming bad habits that contribute to crashes. Apply the SMC to begin the dialogue with the hazardous materials motor carrier and/or shipper to lead them through the self-discovery process to improve safety compliance.

The SMC is used to discover what breakdowns in the motor carrier's processes are occurring, why they are occurring, and identify remedies that will lead to a path of safety compliance. For additional information on the SMC, go to the General Guidelines for Using the Safety Management Cycle (SMC) to Help Diagnose a Breakdown in Safety during an Investigation.

8.2.4 HM Recommendations

Capri has the current standard HM recommendations. Contact your HMPM for HM recommendations for specific circumstances.

8.2.5 Documenting Violations and Initiating Enforcement

When documenting HM violations, ensure that each element is verified to exist, even if not initiating enforcement. The HMR is complicated and an exception may exist. Many shippers, motor carriers, and CT facilities are unfamiliar with the HMR and rely on our agency to provide accurate technical guidance.

Regardless of the Part of the HMR you are documenting or initiating enforcement on, you will need to prove the following:

- That the shipper, motor carrier, or CT facility was in commerce;
- That the shipment was HM;
    - Not required for CT facility functions
    - Not required for CTMV specification violations
    - The shipping paper is evidence that the shipper believed or had confirmed the material was subject to the HMR (See Section 171.2(b), (e), (i), (j), and (k), and Section 173.22).
    - If the classification is called into question, the investigator should obtain a copy of the Safety Data Sheet (SDS) from the manufacturer that produced that particular product. Many chemicals have similar trade names, and many industries use the same slang names for very different HM. SDS found on the web site should not be utilized unless there is a direct connection with the actual manufacturer of the product in question.
- Documentation of the particular violation;
    - Many HMR requirements identify a specific quantity or package capacity, so your evidence will need to clearly include that information.
    - Often you are "proving a negative," meaning that you have to prove something didn't happen. While written statements are helpful in this circumstance, they are not admissible at hearings, so gather whatever evidence you can to help your case. For example, if a company doesn't have a PHMSA registration, include a print out of a PHMSA website search showing they aren't registered.
- Documentation of the trip;
    - Not required for HM shipper investigations or CT facility investigations.
- Ensure shipper and carrier violations are distinct, using the word "transporting" for carriers and "offering" for shippers

- For packaging related violations, you will need a copy of the specification marking or specification plate, and/or the packaging test certificate or the certificate of compliance (COC).
- Make copies of Special Permits or Approvals as necessary.

Many HM shippers and motor carriers are small businesses and will have limited documentation of trips, drivers, and vehicles. As much as possible, ensure that the document cross references each other. For instance:

- If the shipping order number indicates a trailer number or driver's signature, the log and/or the trip manifest should support this information.
- Where a pro number has been stamped on the shipping order and a freight bill has been cut, the pro number should appear on the trip manifest; the manifest should have the trailer number; and, is the driver name the same, etc.
- The tracking number used on the pro/bill of lading is often found on the package or pallet, and can be used to tie a package to a hazardous material shipping paper or manifest.

You may need the company official to hand write notes about drivers or vehicles on shipping documents to tie shipments together.

Severe Level I and II Violations

Acute and Critical violations impact a motor carrier's safety rating, while Severe Level I and II violations do not. Acute and critical violations are found in Appendix B of Part 385, and require a rulemaking for revisions. The Agency established the Severe Violation list to provide guidance for enforcement for certain violations that were not included in Appendix B of Part 385.

Severe Level I violations are treated the same as Acute violations for enforcement, meaning that any documented violation requires enforcement. Severe Level II violations are treated the same as Critical violations for enforcement, meaning that enforcement action should be taken when the violations meet or exceed 10% of the records or vehicles checked. If enforcement action is not taken, it must be documented in Part C of the investigation to explain why enforcement was not initiated.

The Severe Level I and II violation list is maintained by the HMPMs with concurrence by the HM Division. The current complete Severe violation list is found in the Resource Library (Appendix F).

Pyramiding or Double Dipping

For any given violation, there are usually multiple options for cites in the HMR. It is always best to use the most specific citation available. Broad cites may be appropriate when there are multiple issues that can be combined or when a specific cite doesn't contain the appropriate language.

Investigators should carefully review their investigation reports and cases to ensure they are not issuing multiple cites for what is essentially the same violation. Also, be careful not to cite the same violation to an entity as a shipper for offering and then again as a motor carrier for transporting.

Sealed Trailers

Section 171.2(f) states that a person may not accept or transport HM in commerce that is not in compliance with the HMR. However, it also states that "Each carrier who transports a hazardous material in commerce may rely on information provided by the offeror of the hazardous material or a prior carrier, unless the carrier knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the offeror or prior carrier is incorrect."

PHMSA has reinforced this statement in a number of interpretations, both formal (posted in the Federal Register) and informal, by stating that a motor carrier may accept a sealed trailer that the driver has not visually inspected unless there is clear evidence that there may be a violation.

Therefore, certain violations (e.g., securement, package markings, package labels, package authorizations) discovered in a sealed trailer that the driver did not have access to must be cited to the HM shipper (Section 173.30).

FMCSA Investigators have the authority to open any sealed trailer without the owner's or motor carrier's permission. Caution should be exercised with shipments by DOD, USPS, perishable HM, or HM with stability issues (e.g., temperature controlled).

FMCSA Investigators are required to apply a replacement seal whenever a seal is broken. Both the broken seal number and the replacement seal number shall be recorded on the inspection report or other document. HM Specialists have been issued high security seals for trailers that are secured with such seals.

Taking Photographs

Photographs are essential evidence for many HM violations. It is important to follow these guidelines to ensure useful evidence:

- In focus
- Date/Time stamp
- Be mindful of shading/lighting issues
- Broad view of package, then move to close up
- Be sure to tie the picture to a specific package
- Take pictures in a logical order to avoid mix ups
- Keep your originals (back up your files)
- Cell phones used to take pictures are subject to disposition
- Take pictures of all sides, including the top and bottom
- Cargo tanks: clear picture of the specification plate, unit number, test markings, company name
- Use sticky notes to number slides, provide dates if your camera can't, list violations, provide serial numbers or unit numbers for tracking, etc.
- When taking pictures involving the use of equipment (e.g., pit gauges, thickness testers), ensure that it is the correct equipment, properly used, clear image of gauge measurement, etc.

8.2.6 Part C

Generally, the Part C is the same as for non-HM investigations, but there are some specific HM items you should note:

- Document how they obtain their HM; whether they are engaged in classification efforts;
- Document the systems and procedures they have in place (or don't) to ensure compliance with the communication standards of Part 172;
- Document who is responsible for HM compliance at the company level and what his/her training/qualifications are;
- Document how serious the company is about security – is a daily topic or a once a year review of their plan?
- Document the company's systems and procedures to ensure packagings are authorized and qualified, how they verify their packaging qualification vendors (cargo tank facilities, package testers, etc.).
- Document their HM training – canned program or company-specific? Detailed to their specific operations, or generic communication training?

Americans with Disabilities Act Review Manual

For

The eFOTM Redevelopment

Federal Motor Carrier Safety Administration (FMCSA)
U.S. Department of Transportation

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9.1 – Introduction

Purpose

The purpose of this manual is to (1) provide information about the Agency's program to review the Americans with Disabilities Act (ADA) regulatory compliance of over-the-road bus (OTRB) operators; and (2) provide procedures, guidelines, and techniques for investigating such compliance and reporting the related compliance data.

Background

On September 18, 1998, the Secretary of Transportation published the ADA regulations for private sector entities that operate OTRBs in fixed route, demand responsive, and mixed service operations. These ADA regulations apply to entities that are primarily in the business of transporting people and whose operations affect commerce. Other types of bus and passenger transportation operations (large buses without a below-deck baggage compartment, mini-buses, vans, etc.) are not subject to these regulations. The ADA regulations for OTRB operators are found in 49 CFR part 37, subpart H of the Department of Transportation's (DOT) regulations. In general, DOT's ADA regulations require accessible, timely OTRB service for passengers with disabilities, including wheelchair users.

On July 30, 2008, the Over-the-Road Bus Transportation Accessibility Act of 2007 became law. The law established compliance with the DOT's ADA regulations concerning accessible OTRB transportation as a condition to be granted and retain an active operating authority registration. In March 2009, the Federal Motor Carrier Safety Administration (FMCSA) started conducting ADA reviews on OTRB operators to investigate their compliance with the ADA regulations in 49 CFR part 37, subpart H. The Commercial Passenger Carrier Safety Division in Headquarters manages the Agency's ADA program. With this origin of program management, FMCSA's ADA Review Program is managed differently than the Agency's other compliance and enforcement programs involving on-site investigations and safety audits. FMCSA has the authority to revoke the operating authority registration of an OTRB operator for certain circumstances involving ADA regulatory violations. The FMCSA has a memorandum of understanding with the U.S. Department of Justice (USDOJ) which established a formal coordination relationship between the two Agencies involving exchanging ADA regulatory compliance information and related enforcement. While the FMCSA does not have the authority to impose monetary penalties for ADA regulatory violations, the USDOJ has this authority.

Definitions

Accessible OTRB.
An accessible OTRB is a bus characterized by an elevated passenger deck over a baggage compartment equipped with a lift, other device, and/or configuration for boarding

passengers onto a bus, two or more specific locations for securing wheelchairs and other features to ease travel for passengers with disabilities.

Demand Responsive Service.
Demand responsive service is transportation to individuals via an OTRB through a charter system.

Equivalent Service.
Equivalent service is service provided to passengers with disabilities that is as good as the type of service provided to passengers without disabilities (e.g., a different accessible vehicle is used to provide service to the same traveling points for the same cost within the same time frame as a regularly scheduled OTRB). Equivalent service requires that passengers be allowed to travel in their own wheelchairs.

Fixed Route Service.
Fixed route service is transportation in an OTRB operated along a prescribed route according to a fixed schedule.

Large OTRB Operator.
A large OTRB operator is a Class I motor carrier that operates OTRBs, is primarily in the business of transporting people, and is not a public entity. To determine whether an OTRB operator has sufficient annual gross transportation operating revenues, from all transportation service types, to be a Class I motor carrier, its revenues are combined with those of any other OTRB operator with which it is affiliated. This annual revenue threshold is adjusted annually for inflation with Bureau of Labor Statistics data. The current annual revenue threshold for being a Class I motor carrier is located on FMCSA's webpage titled "ADA Guidelines for Over-The-Road Bus Companies."

Mixed Service.
Mixed service is providing both fixed route and demand responsive service. Under DOT's regulatory definition, a small mixed service operator has 25% or less of its OTRB fleet used in fixed route service.

Small OTRB Operator.
A small OTRB operator is a motor carrier that operates OTRBs, is primarily in the business of transporting people, and is neither a Class I motor carrier nor a public entity. To determine whether an OTRB operator has sufficient annual gross transportation operating revenues, from all transportation service types, to be a Class I motor carrier, its revenues are combined with those of any other OTRB operator with which it is affiliated. This annual revenue threshold is adjusted annually for inflation with Bureau of Labor Statistics data. The current annual revenue threshold for being a Class I motor carrier is located on FMCSA's webpage titled "ADA Guidelines for Over-The-Road Bus Companies."

OTRB.
An OTRB is a bus characterized by an elevated passenger deck over a baggage compartment.

Overview of Program

As implementation of the Over-the-Road Bus Transportation Accessibility Act of 2007, the Agency investigates the ADA regulatory compliance of OTRB operators. The discovery of certain ADA regulatory violations such as repeated failures to provide accessible OTRB service on a 48-hour advance notice basis can result in the initiation of the operating authority revocation process.

9.2 – Investigator Preparation for ADA Review

Review the OTRB operator's EDMS folder to see whether an ADA review was previously conducted. Review previously completed ADA review reports and investigator notes to become familiar with the OTRB operator's size and type of operation and ADA regulatory compliance history. Contact the previous investigator or the Commercial Passenger Carrier Safety Division in Headquarters if you have a question about a previous ADA review.

If the OTRB operator is domiciled outside the United States, it is important to determine whether the OTRB operator has any initial passenger boarding in the United States. The ADA OTRB regulations do apply to a foreign country domiciled OTRB operator that has passengers initially boarding its OTRBs in the United States. However, these regulations would not apply to an OTRB operator domiciled outside the United States which picks up no passengers in the United States. As stated earlier in this manual, ADA review trained staff must contact the Commercial Passenger Carrier Safety Division by e-mail at mc-ecp@dot.gov before beginning an ADA review on foreign country domiciled OTRB operator.

Examine the most current information in MCMIS about the OTRB operator's vehicle fleet. A previously conducted on-site investigation/compliance review report will likely contain an annual gross revenue amount from the past.

To estimate an OTRB operator's annual revenue based upon OTRB fleet size, use an annual revenue generation of approximately $200,000 to $300,000 per OTRB. Use a revenue figure in the low side of this range if the OTRB operator only provides demand responsive service. Use a revenue figure in the high side of this range if the OTRB operator only provides fixed route service. For example, an ADA review is being conducted on an operator with 40 OTRBs, 2 minibuses, and 2 vans in its fleet. The OTRB operator provides some fixed route service, but the OTRBs are mainly operated in demand responsive service. Therefore, an average annual revenue generation of $225,000 per OTRB is used to estimate a total annual revenue of $9 million for the OTRBs ($225,000 X 40). If the OTRB operator in this case claims to have had

approximately $6 million in revenue during the most recent fiscal year, questions should be asked about why the OTRB operator's revenue is so low. The OTRB generated revenue should be approximately $9 million based upon typical industry benchmarks plus there was also revenue generated by the non-OTRB vehicles. It is most important to make an annual revenue estimate based upon OTRB fleet size when the OTRB operator is close to the large operator threshold and provides fixed route service. An OTRB operator, that claims to be small, may actually be large to avoid the more burdensome regulatory requirements that are applicable to a large operator that provides fixed route service.

Based upon current vehicle fleet size and make-up, determine whether the OTRB operator's size is likely large, small, or borderline.

Review the OTRB operator's online information such as its website, Facebook page, etc. to become more familiar with the operation. Read the on-line information about the various passenger transportation services offered. Look for any scheduled transportation services because some or all of them may be fixed route service.

The ADA review is designed to be conducted on an OTRB operator that is (1) primarily in the business of transporting people, and (2) has transportation services which are available to the public at large. There are specialized OTRB operators that target a narrow customer population such as touring entertainers. These OTRB operators often operate customized OTRBs with luxury amenities such as beds, showers, eating and lounge areas, etc. Although the ADA regulations apply to these specialized OTRB operators, most of the ADA regulations were not created with this type of operator in mind. If an ADA review trained investigator is doing an on-site investigation on one of these specialized OTRB operators because of a required safety rating update for example, such investigator should do an ADA review on this OTRB operator too. It is possible that an ADA review could be conducted on one of these specialized OTRB operators to investigate an ADA complaint. However, it is not recommended to make any extraordinary effort to conduct an ADA review on these specialized OTRB operators.

As a first step to get clarity about whether the OTRB motor carrier is affiliated, use the NAS search tool with the motor carrier name and/or USDOT number to help identify a possible sibling company and/or parent company.
As stated earlier in this manual, ADA review trained staff must contact the Commercial Passenger Carrier Safety Division by e-mail at mc-ecp@dot.gov before beginning an ADA review on an OTRB operator is not primarily in the business of transporting people. Such staff must also contact the Commercial Passenger Carrier Safety Division before conducting an ADA review on a private motor carrier of passengers.

An appointment should be made for an ADA review by telephone or e-mail communication. An appointment will help ensure that the necessary equipment, personnel, and records will be available upon your arrival at the place of business. When an appointment is made, explain the purpose of the visit to an owner or employee who has knowledge of the entire operation (e.g., President, Vice President, General Manager,

Operations Manager, etc.). If the OTRB operator's size is not obvious, inquire about whether the gross annual transportation revenues are greater or less than the large operator threshold. If there is any uncertainty about whether one or more OTRBs are currently being operated, get this matter clarified when making an appointment. You want to avoid showing up for an ADA review and discovering no OTRBs are being operated because an ADA review cannot be done under these circumstances.

Send the list of requested information, records, and equipment via e-mail to the owner or manager whom you made the appointment for the ADA review. Making a written request will better ensure that the OTRB operator will be prepared for the start of the ADA review. See Appendix A for a sample list and letter that can be used when sending the written request via e-mail.

Request the OTRB operator to have as many accessible OTRBs available for assessment as feasible during the ADA review. It is acceptable for some accessible OTRBs to be unavailable if such vehicles must be operated for prearranged or scheduled service. Strive to make an ADA review appointment when most accessible OTRBs will be available for assessment. If some accessible OTRBs will not be available for assessment, request the OTRB operator to provide records which substantiate the accessible status of the unavailable OTRBs such as final vehicle records, bills of sale or lease contracts, etc.

Prior to the start of the ADA review, verify the OTRB operator has active passenger carrier operating authority registration.

9.3 – Start of the ADA Review

Soon after your arrival at the OTRB operator's office for the ADA review, display your FMCSA Special Agent credentials to the owner or manager. Start the introductory interview to obtain a general understanding about the transportation operation by asking questions about provided services, identity and types of customers, how service requests are handled administratively, accessible and inaccessible OTRBs in the vehicle fleet, how ADA related employee training is conducted, lift maintenance program if accessible OTRBs are operated, any subcontracting arrangements with other OTRB operators with accessible service capacity, the frequency of accessible service requests and lift usage, etc. Determine whether the OTRB operator provides any fixed route service. Most scheduled OTRB services will meet the definition of fixed route service. A tour service could also meet the definition of fixed route service depending upon the specific circumstances. Get clarity to any questions or uncertainties that came up during your preparation for the ADA review.

An OTRB operator provides fixed route service if the OTRB is operated along a prescribed route according to a fixed schedule. The definition of demand responsive service includes all transportation services that are not fixed route service. For example, an OTRB operator that transports passengers along a prescribed route, but not according to a fixed schedule is providing demand responsive service, not fixed route service.

Some tour services will have these circumstances. In addition, an OTRB operator that does not transport passengers along a prescribed route, but does so accordingly to a fixed schedule is providing demand responsive service, not fixed route service. Ironically, the OTRB operator may not be responding to a service request even though this OTRB transportation meets the definition of demand responsive service. During ADA reviews, keep in mind that a tour service can be either a fixed route or demand responsive service depending upon the specific circumstances.

The beginning of the ADA review is an ideal time to ascertain whether the OTRB operator is affiliated with another transportation entity that is either a sibling or parent entity. An OTRB operator could be considered large through affiliation when its singular annual transportation revenue is below the large threshold. Ask questions to a company owner or corporate officer especially if there is an indication that the OTRB operator has a parent or sibling company. A lower-level company employee may not fully understand these business relationships. If you think you have encountered an affiliation situation, contact the Commercial Passenger Carrier Safety Division by e-mail at mc-ecp@dot.gov for guidance. A group of small companies owned or controlled in common by a holding company or conglomerate can be viewed as affiliates. The revenues will be added together to determine a small or large operator for purposes of the ADA regulations. All appropriate factors must be considered, but the most relevant factors are (1) whether an entity has the power to control the other entity, (2) whether a third party has the power to control multiple entities, or (3) whether there is an identity of interest or common ownership among or between the parties. The standard is whether an entity has the power to control, not necessarily whether the power is being exercised at any given time. Ownership alone is not the sole determining factor with clarifying affiliation, but ownership must be taken into account when determining whether affiliation exists.

After the introductory interview with the owner(s), manager(s), and/or employee(s) of the OTRB operator, it is vital that you correctly determine the OTRB operator size and type.

The OTRB operator's size is not difficult to determine if you are provided with a reliable record that clearly indicates the most recent gross annual transportation revenue amount. An Internal Revenue Service tax record or an income statement prepared by a certified public accountant are two of the most reliable records to obtain the most recent gross annual transportation revenue amount. OTRB operator size is either large or small.

Gross annual transportation revenue is used to determine an OTRB operator's size. Revenue generated by transporting passengers in non-OTRB vehicles such as school buses and mini-buses is included. Transportation revenue beyond only OTRB related revenue is relevant and included for size determination. Revenue that is clearly not transportation related is not considered with determining OTRB operator size. With total package fees for payment of transportation and other services, include all such revenue to determine OTRB operator size.

OTRB operator type is either demand responsive service, fixed route service, or mixed service.

If an OTRB operator is small and a part of its operations is fixed route service. It is important that you determine the percentage of the operator's OTRB fleet that is used in fixed route service. There is a special regulatory provision in 49 CFR section 37.191 for a small mixed service operator that does not use more than 25% of its OTRBs in fixed route service. To utilize this provision, a small mixed service OTRB operator must have a segregated 25% or less portion of its OTRB fleet that is used in fixed route service. For example, a small OTRB operator has 8 OTRBs in its fleet. This operator claims that only 2 specific OTRBs out of the 8 OTRBs are ever operated in fixed route service. This OTRB operator has a 25% portion of its fleet (2 out of 8) that is used in fixed route service. Therefore, this OTRB operator could utilize the special regulatory provision in 49 CFR section 37.191. A claim like this one by an OTRB operator should be verified by reviewing records of duty status/electronic logging device data and/or dispatch records. If this small OTRB operator did not have a segregated fleet and all or most of its OTRBs were used in fixed route service occasionally, the special regulatory provision in 49 CFR section 37.191 cannot be utilized.

Your focus while doing an ADA review is only on OTRBs with one exception. You should not be counting vehicles other than OTRBs in the OTRB numbers entered on the ADA review report. The one exception is when you are doing an ADA review on a small fixed route OTRB operator. An accessible vehicle that is not an OTRB could possibly be used by a small fixed route OTRB operator to provide equivalent service. Accessible non-OTRB vehicles need to be considered in your equivalent service assessment, but such vehicles are not counted as OTRBs on the ADA review report.

The ADA regulations only allow a small fixed route OTRB operator to provide equivalent service as an equipment and compliance option. The most common general example of equivalent service is operation of an accessible vehicle that is not an OTRB to provide accessible transportation. One specific example of equivalent service is when an entire travelling passenger group can be transported on an accessible non-OTRB vehicle with no passengers with disabilities travelling apart from other passengers. Another specific example is when an accessible non-OTRB vehicle is operated to transport an individual with disabilities, who is not travelling within a group, to the same traveling points for the same cost within the same time frame as offered with an OTRB in fixed route service. Many other ways of providing accessible transportation can fall under equivalent service such as (1) purchasing or leasing a used accessible OTRB to transport passengers with disabilities, (2) providing accessible OTRB service through a subcontractor that operates accessible OTRBs, (3) trip leasing an accessible OTRB when necessary to meet an accessible OTRB transportation request, and (4) having a sufficient quantity of accessible OTRBs in the fleet which can meet all requests for accessible OTRB transportation.

9.4 – Review of ADA Regulatory Compliance

Accessible OTRB Service Capacity and History

Determine whether the OTRB operator owns and/or term leases any accessible OTRBs. A compliant accessible OTRB has at least two securement locations for a wheelchair or other mobility device, and securement devices, as required by 49 CFR section 38.159(a).

All OTRB Operators

Regardless of the type(s) of service provided by the OTRB operator, the most effective way to verify whether a specific OTRB is accessible is a visual assessment to verify the presence of a lift, other device, and/or configuration for boarding passengers with disabilities. A visual assessment of all OTRBs or all OTRBs in a sample may not be feasible with some OTRBs needing to be in service during the ADA review. A sample, if used, should be broader than only OTRBs available for visual assessment. The OTRB operator should be able to provide documentation that verifies all OTRBs, that are claimed to be accessible, are indeed accessible. Ask for and review accessibility documentation for the OTRBs being checked for accessibility, that are not available for visual assessment. Accessibility documents may include purchase or lease receipts with equipment specifications, manufacturer technical specification records, retrofit documentation, etc.

When doing a visual assessment of OTRBs to verify their accessibility, request an owner, manager, or employee of the OTRB operator to cycle the lifts of some or all of the OTRBs undergoing visual assessment for accessibility to verify lifts are operative.

Review the accessibility of all new OTRBs purchased and term leased during the previous full 12 months. For example, if you are doing an ADA review on October 22, you should go back to the entire month of October during the previous calendar year. If the OTRB operator is large and provides fixed route service, the purpose of this review is to verify all new OTRBs purchased or term leased and subsequently used in fixed route service are accessible. The purchase or lease of an inaccessible OTRB by a demand responsive, small fixed route, or small mixed service OTRB operator is not a regulatory violation. However, such action makes the OTRB operator more culpable if it has no means to provide accessible OTRB service and it has failed to provide requested accessible OTRB service. Request the OTRB operator to identify new OTRBs in their fleet which were purchased or term leased in the previous 12 months. Review insurance policies, vehicle registration documentation, vehicle files, final vehicle records, bills of sale, and/or lease contracts to verify the accuracy of the provided information. Identify and note those new OTRBs that are inaccessible, were purchased or term leased within the previous 12 months, and subsequently used in fixed route service.

An OTRB must not have been previously operated in passenger transportation before purchase or term lease to be included in this review. Used OTRBs, that are purchased, term leased, or trip leased by the operator, are excluded from this review. If you do not,

or are unable to, determine the accessibility of all purchased and/or term leased new OTRBs during the previous 12 months, document the reason(s) in the investigator remarks section of the ADA review report.

Possible Violations of a Small Fixed Route Operator

A small fixed route operator has violated 49 CFR sections 37.183(b)(2) and 37.193(a) if such operator (1) has no accessible OTRBs in its fleet, (2) has no service arrangement with another operator of accessible OTRBs, (3) has no means to provide equivalent service, and (4) has purchased or term leased a new (not previously operated), inaccessible OTRB and subsequently used such OTRB in fixed route service in the previous 12 months. Such violation is serious and the following regulatory violation should be used:

> 37.183(b)(2) / 37.193(a) – Failure to have the ability to provide accessible over-the-road bus service and equivalent service to an individual with a disability.

A small fixed route operator has violated 49 CFR section 37.183(b) if such operator (1) has at least one accessible OTRB in its fleet, (2) has no means to provide equivalent service, (3) purchased or term leased new inaccessible OTRB, (4) has operated this inaccessible OTRB in fixed route service, and (5) has an insufficient quantity of accessible OTRBs in its fleet to meet all requests for accessible OTRB transportation. Unlike the above violation, a violation of only section 37.183(b) is not serious. The following regulatory violation should be used:

> 37.183(b) – Failure to ensure a purchased or term leased new over-the-road bus for fixed route service is accessible when equivalent service cannot be provided to individuals with disabilities.

Possible Violation of a Large Operator that Provides Fixed Route Service

A large fixed route operator or large mixed service operator has violated 49 CFR 37.183(a) if such operator purchased or term leased a new inaccessible OTRB in the previous 12 months and operated it in fixed route service. Such violation is serious and the following regulatory violation should be used:

> 37.183(a) – Failure to ensure a purchased or term leased new over-the-road bus for fixed route service is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Large OTRB Operators that Provide Fixed Route Service

All OTRBs used by a large operator to provide fixed route service must be accessible. The number of OTRBs used in fixed route service that should be checked for accessibility is based upon the chart below. For example, if a large OTRB operator uses 80 OTRBs in fixed route service, a random selection of 13 OTRBs of the 80 OTRBs used in fixed route service should be checked for accessibility. It may be difficult to determine the usage of each OTRB by a large company that provides both fixed route and demand responsive services. If you encounter this situation, you may base your sample size on the concept that OTRBs with unclear usage, are used in fixed route service while not counting those OTRBs that are verified to be used exclusively in demand responsive service. If you cannot check the minimum number of OTRBs, document the reason(s) in the investigator remarks section of the ADA review report. The sample sizes in the table are minimal quantities. You may expand sampling if you find a violation in your initial sample or have another valid reason for an expanded sampling. If you expand sampling, document the reason(s) in the investigator remarks section of the ADA review report.

A mixed service OTRB operator provides both fixed route and demand responsive services. An owner, manager, or employee of a mixed service OTRB operator may claim that certain, inaccessible OTRBs are never used in the fixed route system. Verify the accuracy of such claims. Doing so will help ensure you have completely identified the OTRBs used in fixed route service.

Sampling Chart for a Large OTRB Operator

Number of OTRBs Used in Fixed Route Service	Minimum Number of OTRBs to Check for Accessibility
1-5	All
6-25	5
26-50	8
51-90	13
91-150	20
151-280	32
281-400	50
401-500	68
501-1,200	80
1,201-3,200	125
3,201-10,000	200
10,001-35,000	315
35,001-150,000	500

Possible Violation of a Large Operator that Provides Fixed Route Service

A large fixed route operator or large mixed service operator has violated 49 CFR 37.185(b) if less than 100% of its OTRB fleet used in fixed route service is accessible. Such violation is serious and the following regulatory violation should be used:

37.185(b) – Failure to ensure that 100% of the over-the-road buses in the fleet that are used to provide fixed route service are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

OTRB Operators that Provide Demand Service and OTRB Operators that Provide Fixed Route Service Without a 100% Accessible OTRB Fleet

A demand responsive OTRB operator of any size is not subject to any OTRB fleet accessibility requirement. Demand responsive OTRB operators are subject to a performance based standard in which service in an accessible OTRB must be provided to a passenger with a disability on a 48-hour advance notice basis. However, an OTRB operator is not required to fundamentally alter its normal reservation policies that apply to everyone. Demand responsive OTRB operators are required to have the means to provide accessible OTRB service to passengers with disabilities on a 48-hour advance notice basis.

Small mixed service OTRB operators can comply with the accessible OTRB service requirements for both fixed route and demand responsive service by providing 48-hour advance notice accessible OTRB service for all of its OTRB services.

Small fixed route OTRB operators are not subject to a 100% accessibility requirement for their OTRBs operated in fixed route service. Small fixed route OTRB operators must either (1) ensure each purchased or leased new OTRB is accessible, or (2) provide equivalent service to passengers with disabilities. Until the fleet of a small fixed route OTRB operator becomes fully accessible, it must provide accessible OTRB service to passengers with disabilities on a 48-hour advance notice basis, or otherwise provide equivalent service. However, a small fixed route OTRB operator is not required to fundamentally alter its normal reservation policies that apply to everyone or displace a passenger who has reserved a seat on an OTRB to accommodate a passenger with a disability.

If any type of small OTRB operator operates one or more accessible OTRBs, and it would not be overly time consuming to verify the accessibility of all accessible OTRBs through visual assessment and/or review of accessibility records, do a complete verification of all claimed accessible OTRBs. If the small OTRB operator claims to operate more than five accessible OTRBs, a sample of such OTRBs may be checked for accessibility, but the sample size should be at least five to ten OTRBs.

<u>Accessible Service Requests and Recordkeeping</u>

There are two primary objectives of this portion of the ADA review. The first objective is to determine whether the operator provides requested accessible OTRB service in a compliant manner (also equivalent service in the case of a small fixed route OTRB company). The second objective is to determine whether the OTRB operator is fully documenting each service request and keeping these records for five years. Review of compliance about whether the OTRB operator is forwarding completed Service Request

Forms to accessible service requesting individuals must be done during an ADA complaint investigation when the complaint alleges a violation of the OTRB operator forwarding requirement.

Ask an owner or manager how an accessible OTRB service request is handled and whether any such received requests in the past could not be satisfied. For an OTRB operator that provides demand responsive service and/or fixed route service without a 100% accessible OTRB fleet, review their accessible service requests and related records from the previous 12 months. Review the OTRB operator's service request records, complaint records, and/or passenger lists to identify denials of accessible OTRB service or individuals with disabilities who were refused accessible OTRB service. If an ORTB operator receives a simple inquiry whether it has any accessible OTRBs in its fleet, this contact is not considered an accessible service request unless such service is specifically requested.

When reviewing accessible service requests and related records, you should use the table below to do a random sampling and review an appropriate number of requests. The sample sizes in the table are minimal quantities. If any unsatisfied accessible OTRB service request is discovered through examination of the sample, the sample size may be expanded. If you do so, document the reason(s) in the investigator remarks section of the ADA review report. If you cannot review the minimum number of accessible service requests, document the reason(s) in the investigator remarks section of the ADA review report.

Sampling Chart for Accessible Service Requests

Number of Accessible Service Requests during the Previous 12 Months	Minimum Number of Requests Reviewed for Provision of Accessible Service
1-10	All
11-300	10
More than 300	15

Note: Accessible OTRB service request records are required for a large or small OTRB company that only provides fixed route service and has less than a 100% accessible OTRB fleet. Accessible OTRB service request records are not required for a large or small OTRB company that only provides fixed route service and has a 100% accessible OTRB fleet.

For each accessible OTRB service request in the sample, determine whether each request was properly documented and satisfied. If there is no indication that the OTRB operator has received any requests for accessible OTRB service, the focus of the ADA review should be on determining whether the OTRB operator has the means to provide 48-hour advance notice accessible OTRB service. An investigation of an ADA complaint or other circumstances may require reviewing accessible service requests that occurred prior to 12

months ago. If this occurs, document the reason(s) in the investigator remarks section of the ADA review report.

Pursuant to 49 CFR section 37.213, all OTRB operators are required to document all individual requests for accessible service they receive. These documents must be maintained for five years. Each request must be documented in a manner that records the following information:

1. Company's name
2. Company's address
3. Company's telephone number
4. Passenger's name
5. Passenger's address
6. Passenger's telephone number
7. Scheduled date(s) and time(s) of trip(s)
8. Date and time of request
9. Location(s) of need for accessible bus or equivalent service, as applicable
10. Was accessible bus or equivalent service, as applicable, provided for trip(s)? Yes/No
11. Was there a basis recognized by U.S. Department of Transportation regulations for not providing an accessible bus or equivalent service, as applicable, for the trip(s)? Yes/No If yes, explain

Review these documents to verify the OTRB operator is recording and maintaining all required information. In discovered cases when accessible OTRB service was not provided when requested, review and note the OTRB operator's written explanation or lack thereof. Determine whether the OTRB operator has failed in the previous 12 months to provide accessible OTRB service to an individual with a disability who requested such service on a 48-hour advance notice basis. Any such failure when the OTRB operator could provide inaccessible service on the same day would be a violation.

All OTRB operators are also required by regulation to provide a copy of the completed Service Request Form to the passenger by postal mail, telephone, e-mail, or facsimile transmission. In some cases, the passenger with a disability is not the individual requesting the accessible service and the name of the passenger with a disability is not provided to the OTRB operator. In these cases, the OTRB operator should forward the completed Service Request Form copy to the person requesting the accessible OTRB service.

Because the Paperwork Reduction Act (PRA) approvals underlying the recordkeeping porting requirements in 49 CFR section 37.213 for OTRB operators have expired, do not cite the OTRB operator for failure to properly record a request for accessible OTRB service or failure to transmit a copy of the service request form to the individual who requested accessible OTRB service no later than the end of the next business day following the receipt of the request. The regulations in 49 CFR section 37.213 remain in effect, but FMCSA will not be citing recordkeeping violations until the PRA approvals have been renewed.

Possible Violation of Failure by a Demand Responsive Operator to Provide Requested Accessible Service

> 37.189(b) / 37.189(c) – Failure to provide requested accessible over-the-road bus service on a 48-hour advance notice basis to an individual with a disability.
>
> 37.189(d) – Failure to make a reasonable effort to provide requested accessible over-the-road bus service to an individual with a disability who did not provide required advance notice.

Possible Violation of Failure by a Small Fixed Route Operator to Provide Accessible and Equivalent Service

> 37.183(b)(2) / 37.193(a)(1)(i) – Failure to provide requested accessible over-the-road bus service and equivalent service on a 48-hour advance notice basis to an individual with a disability.
>
> 37.183(b)(2) / 37.193(a)(1)(ii) – Failure to make a reasonable effort to provide accessible over-the-road bus service and equivalent service to an individual with a disability who did not provide required advance notice.

Possible Arrangement(s) with Other OTRB Operators with Accessible Service Capacity

Determine whether the OTRB operator has made an arrangement with another operator that operates accessible OTRBs. Such arrangement could be the means how the operator provides accessible OTRB service to passengers with disabilities on a 48-hour advance notice basis through subcontracting, trip leasing, etc. The arrangement may be verbal or written. If such arrangement is written, review this document for reasonable terms which would result in accessible OTRB service being provided to passengers with disabilities on a 48-hour advance notice request basis. If an arrangement or arrangements exist, note the names of the OTRB operators that are involved in an arrangement on the ADA review report. An OTRB operator with no accessible OTRBs in its fleet (and no accessible vehicles in the case of a small fixed route operator) and no arrangement with another OTRB operator with accessible service capacity would be in violation of the ADA regulations because such operator has not taken adequate action to obtain accessible OTRB service capacity. See Appendix B for more information about the following three violations which can be serious depending upon the circumstances.

Possible Accessible Service Capacity Violation of a Demand Responsive Operator

> 37.189(b) – Failure to have the ability to provide demand-responsive accessible over-the-road bus service to an individual with a disability.

Possible Accessible Service Capacity Violation of a Small Mixed Service Operator

> 37.189(b) / 37.191(b) – Failure to have the ability to provide accessible over-the-road bus service to an individual with a disability.

Possible Accessible Service Capacity Violation of a Small Fixed Route Service Operator (this violation is also mentioned on page 10)

> 37.183(b)(2) / 37.193(a) – Failure to have the ability to provide accessible over-the-road bus service and equivalent service to an individual with a disability.

Annual Reports

The ADA regulations require OTRB operators to create reports annually by the last Monday of every October. Each annual report covers the time period from October 1 of the prior calendar year through September 30 of the current calendar year (same as the fiscal year of the Federal government). The following describes the three annual reports:

1. Annual Summary Report of Individual Accessible Service Requests and Responses/Service Provided – a summary of all accessible service requests during the 12-month period. This annual summary report contains the following information: operator's name; operator's address; operator's telephone number; contact person name for the operator; the number of requests for accessible service made during the 12-month period; and the number of times that a request for an accessible OTRB was satisfied.

2. OTRB Company's Annual Lift Use Summary – a summary about the number of times when a lift was used during the 12-month period. OTRB operators that only provide demand responsive service are not required to do this annual report.

3. Annual Report of OTRBs Purchased/Leased and Overall Fleet Data – a summary of acquisition and lease information during the 12-month period. This annual report contains the following information: operator's name; operator's address; operator's telephone number; contact person name for the operator; total number of OTRBs in the operator's fleet; the number of new and used OTRBs purchased or leased during the 12-month period; number of new accessible OTRBs purchased during the 12-month period; number of used accessible OTRBs purchased during the 12-month period; number of new accessible OTRBs leased during the 12-month period; and number of used accessible OTRBs leased during the 12-month period.

Because the Paperwork Reduction Act (PRA) approvals underlying the reporting requirements in 49 CFR section 37.213 for OTRB operators have expired, operators are not currently required to submit the annual reports required under this regulation to FMCSA. However, the regulations in 49 CFR section 37.213 remain in effect. Until the PRA approvals for 49 CFR section 37.213 have been renewed, OTRB operators are not

required to submit the reports required by these regulations. FMCSA recommends OTRB operators create the annual reports and maintain these records at a business office, but not submit the annual reports to the Agency. However, do not cite the OTRB operator for failure to create, maintain, or submit these annual reports on the ADA review report. Some industry associations have created annual report forms. If a set of these forms is compliant with the ADA regulations, you may provide them to the OTRB operator during the ADA review.

OTRB Lift Maintenance

If the OTRB operator owns or term leases a lift equipped OTRB, determine whether a system of regular and frequent maintenance checks of lifts has been established that is sufficient to determine if they are operative. There is no required specific regularity to the maintenance checks of lifts. However, the lift maintenance system is inadequate if the lifts become inoperative excessively.

Discuss the lift maintenance program and lift failure reporting with managers, drivers, maintenance staff, etc. If the lift maintenance program/lift failure reporting system is documented, review such documentation for adequacy. Review driver vehicle inspection reports, routine inspection records, vehicle repair and maintenance records, etc. to verify that inoperable lifts are being reported and repaired in a timely manner. Review dispatch records and/or records of duty status to verify that accessible OTRBs with inoperable lifts are being properly taken out of service as required by 49 CFR section 37.203.

The number of OTRBs that should be checked for adequate lift maintenance is based upon the total number of lift equipped OTRBs in the operator's fleet according to the table below. For example, if an operator operates 30 lift equipped OTRBs, 8 of these OTRBs should be reviewed for adequate lift maintenance. The sample sizes in the table are minimal quantities. You may expand sampling if warranted. If you do so, document the reason(s) in the investigator remarks section of the ADA review report. If you cannot check the minimum number of OTRBs, document the reason(s) in the investigator remarks section of the ADA review report.

Although the ADA regulations for OTRB operators do not require any records or documentation of lift checks, inspections, or maintenance, the operator should be able to explain how they have established a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative. The OTRB operator should be able to provide some evidence of conducted lift maintenance. However, a lack of lift check, inspection, and maintenance records does not constitute a violation. If lift maintenance records exist, use them in your investigation to determine whether the OTRB operator's lift maintenance system is adequate. An OTRB operator, that has frequent lift breakage or lifts which remain inoperable for longer than 5 days, does not have an adequate lift maintenance system. If no or little lift maintenance records exist, interview vehicle maintenance staff, drivers, and other employees to determine how the lifts are checked, inspected, and maintained as well as frequency of inoperable lifts.

Sampling Chart for Lift Maintenance

Number of Lift Equipped OTRBs	Minimum Number of OTRBs Checked for Adequate Lift Maintenance
1-5	All
6-25	5
26-50	8
51-90	13
91-150	20
151-280	32
281-400	50
401-500	68
501-1,200	80
1,201-3,200	125
3,201-10,000	200
10,001-35,000	315
35,001-150,000	500

Possible Lift Maintenance Violations for All Types of OTRB Operators:

37.203(a) – Failure to establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative.

37.203(b) – Failure to ensure that an over-the-road bus driver reports to his/her employing motor carrier, by the most immediate means available, any failure of a lift to operate in service.

37.203(c) – Failure to take an over-the-road bus (OTRB) out of service when the lift is discovered to be inoperative before the beginning of the OTRB's next trip and repair of the lift.

Employee Training

Pursuant to 49 CFR sections 37.173 and 37.209, OTRB operators must ensure that their employed personnel including drivers, reservation and other office employees, trip guides, managers, and vehicle maintenance staff are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly treat individuals with disabilities in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities. If an OTRB company employee could potentially interact with an individual with a disability in the course of his/her duties, such employee must be trained to proficiency. Vehicle maintenance staff usually do not interact with an OTRB operator's customers, but training to proficiency for these employees would include lift maintenance training if one of these employees has this responsibility. Training to proficiency includes the following topics depending upon a particular employee's duties:

1. training in proper operation and maintenance of accessibility features and equipment,
2. boarding assistance,
3. securement of mobility aids,
4. sensitive and appropriate interaction with persons with disabilities,
5. handling and storage of mobility devices, and
6. familiarity with the ADA regulations for over-the-road bus operators.

OTRB operators are required to provide refresher training to personnel as needed to maintain proficiency. The ADA regulations do not specify how often refresher training must occur. These regulations also do not specify a required time length for the initial or refresher employee training. In addition, there are no required records related to the employee training. However, an OTRB operator should be able to demonstrate how the required employee training is conducted by showing training materials and/or documentation.

Even if an OTRB operator does not own or term lease an accessible OTRB and/or has not received an accessible OTRB service request, such operator must still provide proficiency training to its employees as appropriate for their duties. The employees must be adequately familiar with the requirements of the ADA regulations. For example, an employee who would receive an accessible ORTB service request or interact with individuals with disabilities must be trained in respectful, sensitive, and appropriate interaction with individuals with disabilities including proper attention to the difference among individuals with disabilities.

Determine whether the OTRB company's employees are trained to proficiency as appropriate to their duties according to the referenced and other requirements in 49 CFR section 37.209. When investigating compliance with the employee training regulations, examine the OTRB operator's ADA training manual, videos, course materials, evidence of completed initial and refresher training, etc. to verify that company personnel are trained to proficiency as appropriate to their respective duties. Although the ADA regulations do not require any records or documentation of employee proficiency training, an OTRB operator should be able to explain how they comply with the training requirements and provide some evidence of completed training. However, a lack of training records does not constitute a violation. If training records exist, use them in your investigation to determine whether checked employees were trained to proficiency. If no or little training records exist, interview the employees to determine if they were trained to proficiency as appropriate to their duties.

The employees included in the compliance review of an OTRB operator's employee training program goes beyond only drivers. Your review should include receptionists and sales staff who would receive an accessible service request, mechanics who perform lift inspections and maintenance, operation managers who would investigate an accessible service complaint, etc. For example, if a motor carrier has 10 drivers, 2 salespersons, 1 mechanic, and 2 managers who have a disability related work responsibility, the review of employee training is based upon 15 employees. Review a sample of employees across

various jobs for adequate training. Your sample size should be based upon the number of employees who could interact with an individual with a disability or who have a disability related work responsibility, according to the chart below. If you cannot review the minimum number of employees for adequate training, document the reason(s) in the investigator remarks section of the ADA review.

Resources that can be used for training include the ADA Motorcoach Operator's Pocket Guide and the Americans with Disabilities Act Training Program for Motorcoach Companies. Both resources are downloadable from the National Aging and Disability Transportation Center website without a fee. There are also ADA training materials created by insurance companies and other organizations.

Sampling Chart for Employee Training

Number of Employees Who Must Receive ADA Related Training	Number of Employees Checked for Adequate Training
1-5	All
6-25	5
26-50	8
51-90	13
91-150	20
151-280	32
281-400	50
401-500	68
501-1,200	80
1,201-3,200	125
3,201-10,000	200
10,001-35,000	315
35,001-150,000	500

Possible Employee Training Violation for All Types of OTRB Operators:

> 37.209 – Failure to provide appropriate ADA related training to establish required employee proficiency or to provide refresher training to personnel as needed to maintain proficiency

Designation of responsible employee and adoption of complaint procedures.

49 CFR section 37.17 requires at least one employee be designated to coordinate efforts to comply with the ADA regulations. This regulatory section also requires every OTRB operator to adopt procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by the ADA regulations. The process for filing a complaint, including the name, address, telephone number, and e-mail address of the employee designated to

coordinate ADA regulatory compliance, must be sufficiently advertised to the public such as on the entity's Web site. The OTRB operator must promptly communicate its response to the complaint allegations, including its reasons for the response, to the complainant and must document this response. Do not cite a violation of this regulation during your ADA review because FMCSA does not have authority to enforce this violation. However, every OTRB operator should be aware of this regulatory requirement.

9.5 – Documentation of Violations, Closeout, and Post Closeout Procedures

Documentation of Violations

If a serious violation is discovered, obtain documentation of these violations which includes requesting a signed statement from an owner, partner, or corporate officer, or possibly a manager if appropriate. See Appendix B for a list of serious ADA regulatory violations.

Overview of the Closeout

The following is a guide to items that should be covered during the closeout with the OTRB motor carrier:

- After completion of your ADA review, preparation of the ADA review report, and collection of copies of any necessary documents and/or statements, ensure that the OTRB motor carrier has received pages 1, 2, and 3 of the ADA review report.
- Review the findings and recommendations in the closeout with the carrier:
    - Acknowledge what the carrier is doing well if possible. This should be part of the feedback process and helps to ensure that the carrier is primed to receive the recommendations for improvement.
    - Describe the violations discovered. Detail the carrier's specific process breakdowns if possible.
    - Discuss potential remedies. You should confirm that the carrier understands the potential remedies to the violations and process breakdowns identified.
    - Discuss with the carrier how to go about implementing any necessary practices, and the carrier should be engaged in thinking through the implementation effort in order to help the carrier view compliance as possible.

Upon completion of the closeout with the OTRB motor carrier, the investigator finalizes the all pages of the ADA review report including the investigator remarks page.

Notification and Delivery of ADA Review Report

Once the ADA review report is prepared and ready for review with the OTRB motor carrier, the investigator should contact the carrier official (the highest ranking OTRB

motor carrier official in the session) and notify him or her that the report is ready. The delivery method should be pre-determined based on the initial contacts and the start of the ADA review based on prior agreement with the carrier. The ADA review report can be provided to the OTRB motor carrier through the SMS system, fax, email, or postal mail. The investigator should record the method used to deliver the report. The OTRB motor carrier official or designated representative's signature is not required.

When a closeout session takes place with only the designated representative of the OTRB motor carrier, provide a copy of the ADA review report to the designated representative and mail another copy to the highest ranking OTRB motor carrier official.

The investigator should retain notes on any differences in names, titles, OTRB motor carrier name, date, and telephone number, if different from the information in MCMIS, as well as the names and mailing addresses, where appropriate, of the individuals to whom the ADA review report was provided. This information is included in the Investigator Remarks page of the ADA review report which is not provided to the OTRB motor carrier.

If the OTRB motor carrier official, or designated representative, refuses to accept a copy of the ADA review report, the investigator must send a printed copy to the highest ranking OTRB motor carrier official using a mailing method that allows tracking and delivery confirmation. Note in the Investigation Remarks section of the ADA review report about the refusal to accept the copy, when the investigator mailed the copy, to whom the copy was mailed, and a tracking number for ensuring delivery and receipt.

Investigator Discusses Potential Follow-up Actions with OTRB Motor Carrier

During the closeout, the investigator should, if appropriate based on the violations of the ADA review, discuss the potential follow-up actions with the OTRB motor carrier such as an order to show cause or a referral to the U.S. Department of Justice. If a serious ADA violation was discovered, the investigator should ensure all copied records and evidence are appropriate and accurate. The SI should discuss the potential follow-up actions with the highest-ranking OTRB motor carrier official (sole proprietor, partner, or corporate officer) and explain the potential consequences to the official.

Post Closeout Procedures

Execute the following procedures after the closeout:

- Upload the ADA review report to the motor carrier's EDMS records,
- Use the Submit Report feature on the Adobe Acrobat to send the ADA review report by e-mail to adar@dot.gov, and
- Update the FITT report with your completed ADA review information.

9.6 – ADA Review Policies and Related Guidance

The following questions and answers establish the policies and procedures that must be followed when Federal Motor Carrier Safety Administration (FMCSA) staff conduct an Americans with Disabilities Act (ADA) review to determine ADA regulatory compliance of an over-the-road bus (OTRB) motor carrier:

Question 1 – Who can conduct an ADA review?
Answer 1 – Only FMCSA staff who have completed the specialized training are authorized to conduct ADA reviews. The format of this specialized training is a combination of classroom instruction and on-the-job training with coaching. This specialized training is provided under the direction of the Commercial Passenger Carrier Safety Division.

Question 2 – How many ADA reviews must the trained staff conduct to maintain his/her authorization to conduct ADA reviews?
Answer 2 – ADA review trained staff must conduct at least three ADA reviews within his/her employee performance plan period (June 1 to May 31) to retain authorization to conduct ADA reviews. Conducting three or more ADA reviews during the performance plan period should be an element performance standard within the performance appraisal plans of FMCSA employees who are trained and active with conducting ADA reviews. FMCSA staff who do not meet this standard must either complete the specialized training again or receive special approval from the Commercial Passenger Carrier Safety Division to resume conducting ADA reviews.

Question 3 – When is an ADA review conducted?
Answer 3 – An ADA review is conducted as a stand-alone investigation or in conjunction with a safety related investigation depending upon the circumstances. Although the Commercial Passenger Carrier Safety Division does not routinely assign FMCSA staff to conduct ADA reviews, an ADA review must be done in the following three situations:

1. **If an ADA review trained staff person** is assigned to conduct an investigation on an OTRB motor carrier, such as when updating a carrier's safety rating every 3 years as required by the Moving Ahead for Progress in the 21st Century Act, an ADA review must be conducted in conjunction with this investigation unless the motor carrier has an open ADA enforcement action from a previous ADA review.
2. FMCSA receives ADA complaints via the National Consumer Complaint Database (NCCDB). The Commercial Passenger Carrier Safety Division may request an ADA review trained staff person to conduct an ADA review on a specific OTRB motor carrier in response to the complaint.
3. During special projects and initiatives, such as a Division Office passenger carrier operation, or during a national/regional activity such as the annual Passenger Safety Initiative, by ADA review trained staff.

Question 4 – When must ADA regulatory violations discovered during an ADA review be documented for possible enforcement action?

Answer 4 – When an investigator discovers any of the following ADA regulatory violations, he/she must contact the Commercial Passenger Carrier Safety Division by e-mail at mc-ecp@dot.gov for guidance. An investigator will be advised about documenting the discovered violations. Documentation of such violations may be used by FMCSA to take an enforcement action and/or used to support subsequent investigations conducted by DOJ.

1. Failure of a large fixed route OTRB motor carrier to have 100% accessibility of its OTRB fleet that is used in fixed route service (49 CFR section 37.185(b))
2. The purchase or term lease of a new (not previously operated), inaccessible OTRB by a large fixed route OTRB motor carrier or large mixed service OTRB motor carrier and subsequent use of such OTRB in fixed route service (49 CFR section 37.183(a))
3. Repeated failures of a for-hire OTRB motor carrier to make reasonable efforts to provide accessible OTRB service (and equivalent service in the case of a small fixed route OTRB motor carrier) with 48-hour advance notice (49 CFR section 37.189(d))
4. Single failure of a small fixed route OTRB motor carrier to make a reasonable effort to provide requested accessible OTRB service and equivalent service when such motor carrier –
    a. has no accessible OTRBs in its fleet,
    b. has no arrangement with another motor carrier that operates accessible OTRBs, and
    c. has purchased or term leased a new (not previously operated), inaccessible OTRB and subsequently used such OTRB in fixed route service in the previous 12 months.

    A verified denial of requested accessible OTRB service and equivalent service by the OTRB motor carrier would make this violation more severe. (49 CFR sections 37.183(b)(2) and 37.193(a))
5. Any violation of the ADA regulations for OTRB motor carriers in 49 CFR part 37 subpart H when committed in a willful or repeated manner.

Question 5 – Do ADA review trained staff need to contact the Commercial Passenger Carrier Safety Division before beginning an ADA review?
Answer 5 – ADA review trained staff should contact the Commercial Passenger Carrier Safety Division by e-mail at mc-ecp@dot.gov, before beginning an ADA review when one of the following situations are discovered because of the related complexities:

1. the OTRB motor carrier is suspected to be large based upon available information or the motor carrier's OTRB fleet size,
2. the OTRB motor carrier's Electronic Document Management System (EDMS) folder contains documentation of a FMCSA referral regarding non-compliance to DOJ and/or an Order to Show Cause issued by FMCSA pursuant to 49 U.S.C. 13905 for violations of 49 CFR part 37, subpart H, and the folder contains no settlement agreement related to the referral or Order,
3. the ADA review is being conducted in response to a complaint,

4. the OTRB motor carrier has a specialized operation that focuses upon a narrow customer population such as touring entertainers or campaigning political candidates,
5. the OTRB motor carrier is domiciled outside the United States, but operates OTRBs in the United States,
6. the FMCSA staff person has questions about the OTRB motor carrier after completing pre-investigation tasks such as reviewing past ADA review reports and the motor carrier's ADA regulatory compliance history,
7. there are indications that the OTRB motor carrier is affiliated with another OTRB motor carrier,
8. the OTRB motor carrier is not primarily in the business of transporting people,
9. a special request is made to conduct an ADA review.

For the above circumstances, the ADA review trained staff should contact the Commercial Passenger Carrier Safety Division by e-mail at mc-ecp@dot.gov at least 5 business days before starting the ADA review. Contact should still occur before the investigation, even if it is less than 5 business days. If contact does not occur before starting the ADA review, contact should be made before close-out to ensure appropriate enforcement tools were used.

Question 6 – Can ADA regulatory violations be cited in CAPRI by an FMCSA staff person?
Answer 6 – No. ADA regulatory violations cannot be cited in CAPRI. In the future, ADA regulatory violations will be included in the ACE Intervention Management software.

Question 7 – How should FMCSA staff, who are not trained to conduct ADA reviews, handle a situation when he/she becomes aware of an OTRB motor carrier in violation of the ADA regulations?
Answer 7 – The FMCSA staff should contact the Commercial Passenger Carrier Safety Division by e-mail at mc-ecp@dot.gov.

Question 8 – How are ADA complaints handled?
Answer 8 – ADA complaint handling decisions, such as whether an ADA review is conducted in response to a complaint, are made by the Commercial Passenger Carrier Safety Division. All ADA complaints are subject to this policy including those ADA complaints that are filed through the NCCDB website or hotline. When an organization or individual sends an ADA complaint directly to an FMCSA Division or other field office, the complaint(s) should be entered into the NCCDB for consideration and appropriate handling.

Question 9 – What is ADA review trained staff required to do after completing an ADA review?
Answer 9 – The ADA review trained staff complete the following tasks after completing an ADA review:

1. Create a single electronic pdf file of scanned records related to the ADA review including the ADA review report.
2. Name the file using the protocol of "OTRB Motor Carrier Name ADA Review Month Year." For example, if Ultra Luxury Bus Company had an ADA review on July 6, 2020, the file name should be "Ultra Luxury ADA Review July 2020."
3. Upload the electronic pdf file into the OTRB motor carrier's EDMS folder.
4. Send an e-mail with the electronic pdf file as an attachment to ADAR@DOT.GOV within 3 weeks of completing the ADA review.
5. Update the Field Interventions Tracking Tool (FITT) report with the completed ADA review information. It should be noted that the ADA review trained staff may not have direct access to FITT. Therefore, they should provide the completed ADA review information to a staff member who has access.

Question 10 – Does an ADA review trained staff member have additional duties outside of conducting ADA reviews?
Answer 10 – Yes. To establish an effective ADA Review Program, webinars, telephone conferences, and trainings are held at various times. It is the responsibility of the ADA review trained staff to attend these events to remain proficient with the newest guidance and materials. All training recordings and materials will be dispersed to the ADA review trained staff. It is the ADA review trained staff's responsibility to participate and review all disseminated information.

Question 11 – Can FMCSA issue a warning notice to an OTRB motor carrier that is found to be in violation of the ADA regulations in 49 CFR part 37 subpart H?
Answer 11 – Yes. It is possible for FMCSA to issue a warning notice to an OTRB motor carrier under certain circumstances involving violations to the ADA regulations in 49 CFR part 37 subpart H. The decision to issue a warning notice is made collaboratively by the Commercial Passenger Carrier Safety Division, the Division Office, and the Office of the Chief Counsel.

Question 12 – Are ADA regulatory compliance questions asked during a new entrant safety audit? If yes, what type of motor carriers are asked these questions?
Answer 12 – Yes, the two-part ADA regulatory compliance question during a new entrant safety audit is only applicable to for-hire passenger carriers that operate one or more OTRBs. The Commercial Passenger Carrier Safety Division sends ADA regulatory awareness letters to OTRB motor carriers that answer "no" to both parts of this ADA regulatory compliance question indicating no means to provide accessible OTRB service. These letters are uploaded to each OTRB motor carrier's EDMS folder.

Question 13 – What type of OTRB transportation occurs when an entity, such as bus broker, creates an intercity transportation schedule, accepts payment from customers who buy tickets, and hires an OTRB motor carrier to transport the passengers according to the schedule?
Answer 13 – If the hired OTRB motor carrier is transporting passengers along a prescribed route according to a fixed schedule, the transportation is fixed route service. It

is not required for the OTRB motor carrier to design the passenger transportation schedule that it executes for the transportation to be fixed route service.

Question 14 – What type of OTRB transportation occurs when an OTRB motor carrier uses a higher than usual volume of OTRBs to provide passenger transportation along a prescribed route according to a fixed schedule during a time period of high demand for such services such as the days around the Thanksgiving holiday?
Answer 14 – Such OTRB transportation is fixed route service. It is along a prescribed route according to a fixed schedule. Higher than usual customer demand does not change the type of OTRB transportation.

Question 15 – How does FMCSA determine affiliation between two or more OTRB motor carriers?
Answer 15 – FMCSA primarily relies upon how the Small Business Administration determines affiliation as codified in 13 CFR section 121.103. OTRB motor carriers are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists. Factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, are considered in determining whether affiliation exists.

Appendix A ADA Review Manual

This appendix contains two documents. The first document is a record and preparation request letter for an over-the-road bus operator that is being scheduled for an ADA review. The second document is a sample list of requested records and equipment for an ADA review. An ADA review trained investigator can use either document. Both documents serve the same purpose. The first document is more conducive with sending a letter. The second document is more conducive to use in the body of an email.

U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Dear Motor Carrier:

On July 30, 2008, the Over-the-Road Bus Transportation Accessibility Act of 2007 became law.

The Act authorizes the Federal Motor Carrier Safety Administration (FMCSA) to revoke existing operating authority based on willful noncompliance with the Americans with Disabilities Act (ADA) regulations for over-the-road bus companies, contained in 49 CFR part 37, subpart H. The applicability of various regulatory requirements depends on your company's size and the type of bus service provided (fixed route, demand responsive, or mixed).

Per our telephone conversation, an FMCSA employee will be conducting an ADA review of your company on [insert date]. Please have the following documents available at that time:

1. A vehicle roster including the manufacturer and the VIN numbers for each over-the-road bus (motorcoach);
2. List of over-the-road buses purchased or leased in the previous 12 months;
3. Information pertaining to fixed route service which the company may conduct including locations (stops), schedule information, and vehicles used for each route;
4. All paperwork relating to retrofitting buses with wheelchair lifts (if any);
5. Maintenance files for the accessible over-the-road buses;
6. Documentation of your lift maintenance program;
7. All required documentation for "Requests for Accessible Service" for the preceding 12 months;
8. Documents and records related to your ADA training program;
9. Copy of most recent annual summary reports related to accessible service, lift use, and equipment; and
10. A record indicating gross annual transportation revenue for most recent fiscal year.

If you own or lease one or more accessible over-the-road buses, please have these vehicles available for a visual check if it would not hinder your operations. You may be requested to cycle a lift operation for one of your accessible over-the-road buses. For information about the ADA regulations, see the following Web link: http://www.fmcsa.dot.gov/rules-regulations/bus/company/ada-guidelines.htm

Requested records and equipment for an ADA review:

1. Income Statement from most recently completed fiscal year which shows gross annual transportation revenues
2. To the extent that it does not overly hinder your operations, please have motorcoaches available for inspection. You may be requested to cycle a lift operation for some motorcoaches.
3. Bills of sale and lease contracts for motorcoaches that were purchased or leased within the previous 12 months and records that provide specification information for such motorcoaches
4. A roster of all vehicles which includes basic information such as date of acquisition or lease, and the company identification number
5. A roster of all drivers which includes date of hire
6. Information pertaining to fixed route service which your company may conduct including locations (stops), schedule information, and vehicles used for each route
7. Any records related to retrofitting motorcoaches with wheelchair lifts
8. Lift maintenance records for the lift equipped motorcoaches
9. All accessible service request records for the previous 12 months
10. Copies of annual summary reports related to accessible service, lift use, and equipment

11. ADA related employee training records

Appendix B ADA Review Manual

Serious Violations of the Americans with Disabilities Act (ADA) Regulations for Over-The-Road Bus (OTRB) Companies

Any of the following violations will generally result in enforcement action:

1. Failure to ensure a purchased or term leased new over-the-road bus for fixed route service is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. (49 CFR section 37.183(a) – citable for a large fixed route or large mixed service operator)

   Number discovered: number of purchased or term leased new, inaccessible OTRBs operated in fixed route service
   Number checked: number of new OTRBs purchased or term leased during the previous 12 months (or expanded sampling time period) and operated in fixed route service

2. Failure to ensure that 100% of the over-the-road buses in the fleet that are used to provide fixed route service are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. (49 CFR section 37.185(b) – citable for a large fixed route or large mixed service operator)

   Number discovered: number of inaccessible OTRBs operated in fixed route service
   Number checked: number of OTRBs operated in fixed route service during the previous 12 months (or expanded sampling time period)

3. Failure to have the ability to provide demand-responsive accessible over-the-road bus service to an individual with a disability. (49 CFR section 37.189(b) – citable for a demand responsive operator)

   Note: Repeated failures to provide requested accessible service with a steadfast inability to provide accessible service makes this violation serious. There is a minor version of this violation when there are no discovered failures to provide requested accessible service.

   Number discovered: number of failures to provide requested accessible service
   Number checked: number of checked requests to provide accessible service

4. Failure to have the ability to provide accessible over-the-road bus service to an individual with a disability. (49 CFR section 37.189(b) / 37.191(b) – citable for a small mixed service operator)

   Note: Repeated failures to provide requested accessible service with a steadfast inability to provide accessible service makes this violation serious. There is a minor version of this violation when there are no discovered failures to provide requested accessible service.

   Number discovered: number of failures to provide requested accessible service
   Number checked: number of checked requests to provide accessible service

5. Failure to have the ability to provide accessible over-the-road bus service and equivalent service to an individual with a disability. (49 CFR sections 37.183(b)(2) / 37.193(a) – citable for a small fixed route operator)

   Note: This violation is cited when a small fixed route OTRB motor carrier has (1) no accessible OTRBs in its fleet, (2) has no service arrangement with another operator of accessible OTRBs, (3) has no means to provide equivalent service, and (4) has purchased or term leased a new (not previously operated), inaccessible OTRB and subsequently used such OTRB in fixed route service in the previous 12 months. A verified denial of requested accessible OTRB service and equivalent service makes this violation more severe.

   There are multiple valid numbering methodologies for this serious violation depending upon the circumstances. If there are no verified denials of requested accessible OTRB service and equivalent service, a discovered number of one (1) and a checked number of one (1) should be used. If there are one or more verified denials of requested accessible OTRB service and equivalent service, the number discovered should be the number of failures to provide accessible service and equivalent service, and the number checked should be the number of checked instances when accessible service or equivalent service was required to be provided.

<u>Minor Violations of the ADA Regulations for OTRB Companies</u>

The following violations should not be considered insignificant. All of the following violations can result in enforcement action when committed in a willful or repeated manner.

1. Failure to ensure a purchased or term leased new over-the-road bus for fixed route service is accessible when equivalent service cannot be provided to individuals with disabilities. (49 CFR section 37.183(b) – citable for a small fixed route operator)

Note: This violation is cited when a small fixed route OTRB operator (1) has at least one accessible OTRB in its fleet, (2) has no means to provide equivalent service, (3) purchased or term leased new inaccessible OTRB, (4) has operated this inaccessible OTRB in fixed route service, and (5) has an insufficient quantity of accessible OTRBs in its fleet to meet all requests for accessible OTRB transportation.

Number discovered: number of purchased or term leased new, inaccessible OTRBs operated in fixed route service
Number checked: number of new OTRBs purchased or term leased during the previous 12 months (or expanded sampling time period) and operated in fixed route service

2. Failure to provide requested accessible over-the-road bus service and equivalent service on a 48-hour advance notice basis to an individual with a disability. (49 CFR section 37.183(b)(2) / 37.193(a)(1)(i) – citable for a small fixed route operator)

   Note: This violation is cited when a small fixed route OTRB operator has capacity to provide accessible service or equivalent service, but fails to do both in some instances when 48-hour advance notice was provided.

   Number discovered: number of failures to provide accessible service and equivalent service
   Number checked: number of checked instances when accessible service or equivalent service was required to be provided

3. Failure to make a reasonable effort to provide accessible over-the-road bus service and equivalent service to an individual with a disability who did not provide required advance notice. (49 CFR section 37.183(b)(2) / 37.193(a)(1)(ii) – citable for a small fixed route operator)

   Note: This violation is cited when a small fixed route OTRB operator has capacity to provide accessible service or equivalent service, but fails to make a reasonable effort to do both in one or more instances when 48-hour advance notice was not provided.

   Number discovered: number of failures to make a reasonable effort to provide accessible service and equivalent service
   Number checked: number of checked instances when an individual with a disability did not provide required advance notice for accessible service or equivalent service

4. Failure to have the ability to provide demand-responsive accessible over-the-road bus service to an individual with a disability. (49 CFR section 37.189(b) – citable for a demand responsive operator)

Note: This violation should be cited when a demand responsive operator has no accessible OTRBs and no accessible service arrangement with another OTRB operator, but there is no discovery of a specific incident of failing to provide requested accessible service. There is a serious version of this violation when there are discovered failures to provide requested accessible service.

Number discovered: the number 1 should be used to cover the overall operation
Number checked: the number 1 should be used to cover the overall operation

5. Failure to have the ability to provide accessible over-the-road bus service to an individual with a disability. (49 CFR section 37.189(b) / 37.191(b) – citable for a small mixed service operator)

   Note: This violation should be cited when a small mixed service operator has no accessible OTRBs and no accessible service arrangement with another OTRB operator, but there is no discovery of a specific incident of failing to provide requested accessible service. There is a serious version of this violation when there are discovered failures to provide requested accessible service.

   Number discovered: the number 1 should be used to cover the overall operation
   Number checked: the number 1 should be used to cover the overall operation

6. Failure to provide requested accessible over-the-road bus service on a 48-hour advance notice basis to an individual with a disability. (49 CFR section 37.189(b) / 37.189(c) – citable for a demand responsive operator)

   Note: This citation is for when a demand responsive OTRB operator has capacity to provide accessible service, but fails to do so in some instances when 48-hour advance notice was provided.

   Number discovered: number of failures to provide accessible service
   Number checked: number of checked instances when accessible service was requested with 48-hour advance notice

7. Failure to make a reasonable effort to provide requested accessible over-the-road bus service to an individual with a disability who did not provide required advance notice. (49 CFR section 37.189(d) – citable for a demand responsive operator)

   Note: This citation is for when a demand responsive OTRB operator has capacity to provide accessible service, but fails to make a reasonable effort to do so in one or more instances when 48-hour advance notice was not provided.

   Number discovered: number of failures to make a reasonable effort to provide accessible service

Number checked: number of checked instances when an individual with a disability did not provide required advance notice for accessible service

8. Failure to establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative. (49 CFR section 37.203(a) – citable for any type of operator of an accessible OTRB)

   Note: This violation is cited when the OTRB operator has no lift maintenance program or when the lift maintenance checks are too infrequent.

   Number discovered: number of accessible OTRBs that are not subject to a system of regular and frequent lift maintenance checks
   Number checked: total number of owned and term leased accessible OTRBs

9. Failure to ensure that an over-the-road bus driver reports to his/her employing motor carrier, by the most immediate means available, any failure of a lift to operate in service. (49 CFR section 37.203(b) – citable for any type of operator of an accessible OTRB)

   Note: This violation is cited when it discovered that a lift was discovered to be inoperative, but repair of the lift was unnecessarily delayed because the driver did not timely or effectively report the lift failure to his/her employing motor carrier. With no lift inspection recordkeeping requirements, this violation may be difficult to find.

   Number discovered: number of instances when the repair of a lift was unnecessarily delayed because the driver did not timely or effectively report the lift failure to his/her employing motor carrier
   Number checked: total number of lift failures, that required repair, during the previous 12 months (or expanded sampling time period)

10. Failure to take an over-the-road bus (OTRB) out of service when the lift is discovered to be inoperative before the beginning of the OTRB's next trip and repair of the lift. (49 CFR section 37.203(c) – citable for any type of operator of an accessible OTRB)

    Note: This violation is cited when a lift becomes inoperative and the OTRB operator does not repair the lift and fails to take the OTRB out of service before the beginning of the OTRB's next trip. If there is no other vehicle available to take the place of an OTRB with an inoperable lift, such that taking the OTRB out of service before its next trip will reduce the transportation service that operator can provide, the OTRB operator may keep the OTRB with the inoperable lift in service without violation for no more than five days from the day on which the lift is discovered to be inoperative. This violation can be cited when an OTRB operator is clearly discovered to operating an OTRB with an inoperative lift over an excessive period of time (well over one week). With no lift inspection

recordkeeping requirements, it may be difficult to determine exactly when the inoperative lift was discovered. Egregious violations of this regulatory requirement are feasible for citation.

Number discovered: number of instances when a lift failure was not timely repaired and the OTRB was subsequently operated in violation
Number checked: total number of lift failures, that required repair, during the previous 12 months (or expanded sampling time period)

11. Failure to provide appropriate ADA related training to establish required employee proficiency or to provide refresher training to personnel as needed to maintain proficiency. (49 CFR section 37.209 – citable for any type of operator)

    Note: This is a catch-all violation citation for an OTRB operator that has no ADA training program, no refresher ADA training program, or a missing required element in its ADA training for employees.

    Number discovered: number of employees who received no or inadequate initial ADA related training, or who received no or inadequate refresher training
    Number checked: total number of employees during the previous 12 months (or expanded sampling time period) who were subject to ADA training program

Note: All of the serious and minor violations are prohibited actions or failures to take required action by an OTRB operator/motor carrier. These violations do not cover violations committed exclusively by an employee such as the driver. In many cases, an employee committed violation is an indication of an inadequate company training program. Employee committed violations of the ADA and its implementing regulations are handled on a case-by-case basis taking into consideration the severity and circumstances of the specific violation.

Appendix C ADA Review Manual

ADA Review Violation Guide			
Category	**Violation Cite**	**Violation Description**	**Type of Operator**
Equipment	**37.183(a)**	Failure to ensure a purchased or term leased new over-the-road bus for fixed route service is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.	**Large Fixed Route or Large Mixed Service**
Equipment	**37.183(b)**	Failure to ensure a purchased or term leased new over-the-road bus for fixed route service is accessible when equivalent service	**Small Fixed Route**

		cannot be provided to individuals with disabilities.	
Service	**37.183(b)(2) / 37.193(a)**	Failure to have the ability to provide accessible over-the-road bus service and equivalent service to an individual with a disability.	**Small Fixed Route**
Service	**37.183(b)(2) / 37.193(a)(1)(i)**	Failure to provide requested accessible over-the-road bus service and equivalent service on a 48-hour advance notice basis to an individual with a disability.	**Small Fixed Route**
Service	**37.183(b)(2) / 37.193(a)(1)(ii)**	Failure to make a reasonable effort to provide accessible over-the- road bus service and equivalent service to an individual with a disability who did not provide required advance notice.	**Small Fixed Route**
Equipment	**37.185(b)**	Failure to ensure that 100% of the over-the-road buses in the fleet that are used to provide fixed route service are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.	**Large Fixed Route or Large Mixed Service**
Service	**37.189(b)**	Failure to have the ability to provide demand-responsive accessible over-the-road bus service to an individual with a disability.	**Demand Responsive**
Service	**37.189(b) / 37.189(c)**	Failure to provide requested accessible over-the-road bus service on a 48-hour advance notice basis to an individual with a disability.	**Demand Responsive**
Service	**37.189(b) / 37.191(b)**	Failure to have the ability to provide accessible over-the-road bus service to an individual with a disability.	**Small Mixed Service**
Service	**37.189(d)**	Failure to make a reasonable effort to provide requested accessible over-the-road bus service to an individual with a disability who did not provide required advance notice.	**Demand Responsive**
Maintenance	**37.203(a)**	Failure to establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative.	**Any Operator**
Maintenance	**37.203(b)**	Failure to ensure that an over-the-road bus driver reports to his/her employing motor	**Any Operator**

		carrier, by the most immediate means available, any failure of a lift to operate in service.	
Maintenance	**37.203(c)**	Failure to take an over-the-road bus (OTRB) out of service when the lift is discovered to be inoperative before the beginning of the OTRB's next trip and repair of the lift.	**Any Operator**
Training	**37.209**	Failure to provide appropriate ADA related training to establish required employee proficiency or to provide refresher training to personnel as needed to maintain proficiency.	**Any Operator**

Appendix D ADA Review Manual

Frequently Asked Questions

Question 1 – Can a demand responsive or small mixed service OTRB operator refuse to provide accessible service if the request is not made 48 hours in advance?

Answer 1 – The OTRB operator must make a reasonable effort to provide the accessible service, but the OTRB operator is not required to fundamentally alter their normal reservation policies or displace another passenger who has a reserved seat.

Question 2 – Can an OTRB operator charge a higher rate in order to provide accessible service to a passenger with a disability requiring an accessible OTRB?

Answer 2 – 49 CFR section 37.5 addresses this question: Nondiscrimination – an entity shall not impose special charges, not authorized by this part, on individuals with disabilities, including individuals who use wheelchairs, for providing services required by this part or otherwise necessary to accommodate them.

Question 3 – OTRB operator A has an arrangement with operator B that owns and operates accessible OTRBs to use them as a subcontractor to provide accessible service if there is an accessible service request. The cost to use operator B as a subcontractor exceeds the usual fee charged by operator A to provide inaccessible OTRB service. May operator A pass the subcontracting cost of using operator B and charge a higher fee for accessible OTRB service than the usual fee for providing inaccessible OTRB service?

Answer 3 – No. An OTRB operator cannot impose special charges, not authorized in the ADA regulations, on individuals with disabilities, including individuals who use wheelchairs, for providing services required by such regulations or otherwise necessary to accommodate them.

Question 4 – How should an OTRB operator handle the situation when a requestor of accessible OTRB service refuses to provide all information on a service request form?

Answer 4 – The OTRB operator should note "declined" for the refused information on the service request form.

Appendix E ADA Review Manual

ADA Review Process Overview

1. **Select Over-The-Road Bus (OTRB) operator for review.**
    a. Operator/motor carrier must operate at least one (1) OTRB.
    b. Can be a stand-alone ADA review or in conjunction with a safety investigation.
2. **Any ADA Review of a Large Operator or Complaint requires communication with the Commercial Passenger Carrier Safety Division via e-mail at mc-ecp@dot.gov**
3. **Use a blank copy of the most up-to-date version of the ADA Review Report in Adobe**
4. **Conduct the ADA Review** *(refer to the ADA Review Manual)*
5. **Complete pages 1 to 3 of your ADA Review Report**
6. **Click the Print Report found at the bottom right corner of Page 3 "Review Recommendations," and select ONLY pages 1 to 3 which should be provided to the operator (carrier) at the closeout meeting.**
7. **Save the Adobe pdf file as: "OTRB Operator Name ADA Review Month Year"** Example: If Ultra Luxury Bus Company had an ADA review on July 6, 2021, the file name should be "Ultra Luxury ADA Review July 2021."
8. **After the closeout meeting and completing your ADA Review Remarks (last page of the ADA Review Report), select Submit Report and submit to the ADAR@DOT.GOV in original PDF Format.**
9. **Upload pdf file into the OTRB operator's EDMS folder**

Update the FITT report with your completed ADA Review information