Compliance Manual

For

Electronic Field Operations Training Manual (eFOTM)

Federal Motor Carrier Safety Administration (FMCSA)

U.S. Department of Transportation

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1.1 Stage 1-Monthly Intervention Selection & Carrier Assignment

1.1.1 Introduction

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 them with the process. For information on the investigative systems 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[1].
- Based on BASIC percentiles, intervention history, and unresolved Acute and Critical Violations 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.

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 intervention based on SMS results. The SMS evaluates the safety of individual motor carriers by considering on-road 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 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.

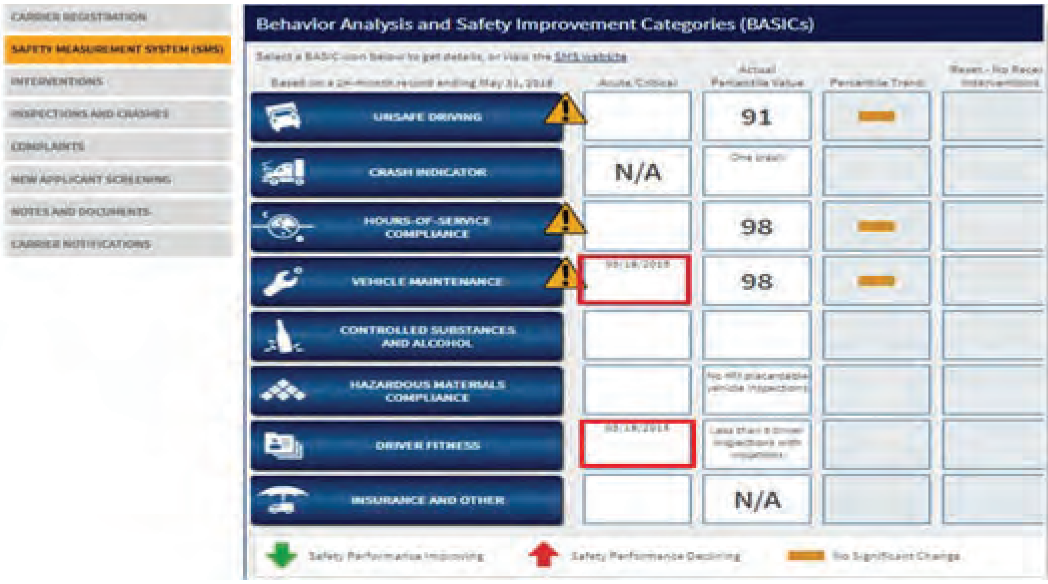
Acute and Critical Violations are defined as:

- 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 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 publicly 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 publicly 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 publicly 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.

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	Excludes High-Risk *Note:* criteria for New Entrant warning

		2. If there was a previous intervention, then no BASICs or unresolved Acute or Critical Violations in prior 12 months	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 which have been 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	1. Has had an intervention in last 12 months, or received a	Exclude the following carrier designations/types:

	Acute or Critical Violation(s)	warning letter in last 6 months OR 2. New entrant motor carrier that has had a Safety Audit or Investigation	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 at 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 intervention 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 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 publicly 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.

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.

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 motor 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.)

1.1.4.4 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/AIM Narrative. If there are multiple reasons for initiation of an investigation, record them in the 'Reason for Investigation' area in AIM.

- **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.

1.1.4.5 Additional Steps Needed for Recording Onsite Focused Investigations - (If Using AIM)

Record an Onsite Focused Investigation using the steps outlined below:

- Select "Non-Ratable Review" as the review type in the AIM application.

- Select “CSA” as the Non-Ratable Review subtype.
- When completing the Onsite Focused Investigation, select “Focused CR” in **AIM Narrative** 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, 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, complete the review as a Non-Ratable review.

The tables below summarize how to record Onsite Focused Investigations in AIM (when applicable).

Recording an Onsite Focused Investigation in AIM 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 AIM 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

[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 (HMs) 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

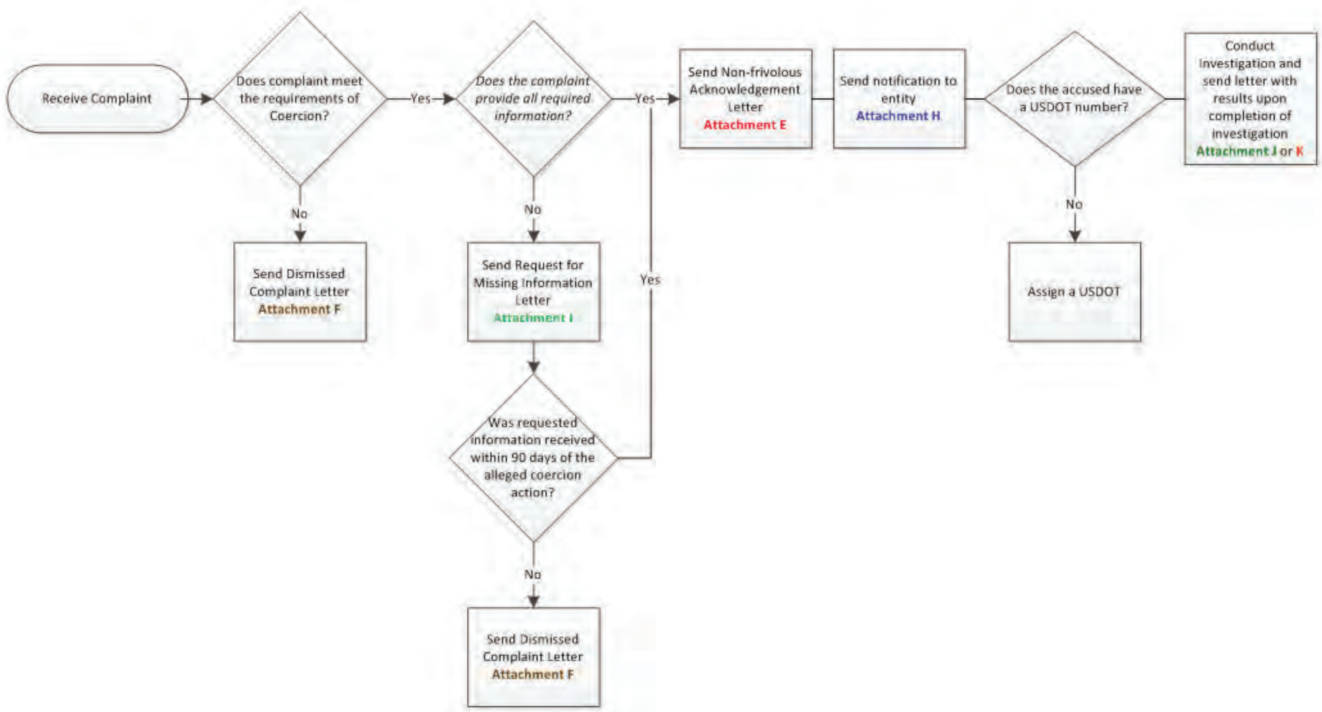
Upon receipt of a written coercion or harassment complaint, the Division Administrator should determine whether the complaint meets the definition of coercion or harassment, as defined in 49 CFR 390.5 and 390.36, respectively, and that the complaint meets the requirements in 49 CFR 386.12. The DA should 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. <u>Coercion may be found to have taken place even if the driver is not in violation of the FMCSRs, HMRs, and/or FMCCRs.</u>

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.

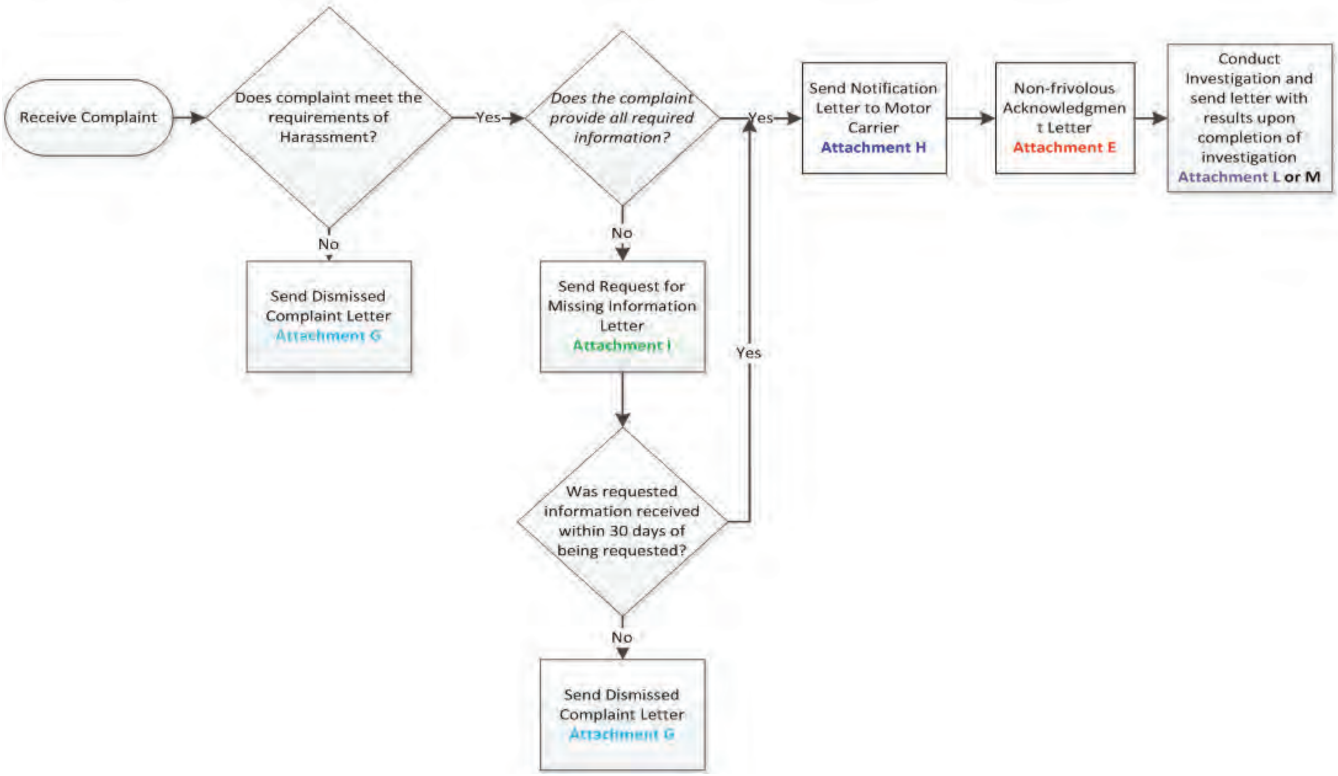
The Unified Registration System applies to some entities that are subject to the coercion rule. Entities that existed prior to December 12, 2015, are not required to apply for a USDOT until September 30, 2016. If an allegation of coercion is received alleging an entity that does not have a USDOT number,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

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 the 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 detailed messages can also be left. During normal business hours, please use 202-366-0177 and continue to email the 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 finding 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: 1-877-831-2250 or 202-366-5373. These numbers are answered 24 hours a day/7 days a week and detailed messages can also be left. During normal business hours, please call 202-366-0177 (office), [redacted] and continue to email the information to the accident/incident mailbox (AHMI). Please send all Crash/HM Incident Notification Reports to Alex.Keenan@dot.gov.

1.1.8 Manager Makes Assignments

In conducting the activities described in the 1.1.3 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 Violations 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 should be done if 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, an investigation can only be initiated 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 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

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 to be thoroughly prepared before contacting the carrier to request documentation and to set up a time for the investigation.

In this Stage, the 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 designated 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.

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*

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 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 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 to examine include, but are not limited to:

- The motor carrier's BASIC percentiles in SMS **https://ai.fmcsa.dot.gov/SMS**. By reviewing identifying data that contributed to a high BASIC percentile, 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 the sampling during the review.
    - o In general, drivers who pose the highest potential safety risk should be selected first as part of the sample.
    - o 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 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 used could return extensive results that need to be analyzed.
  - 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

AIM. 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 the pre-investigation to identify potential problem areas.

- Performance Registration Information Systems Management (PRISM)
- HM Portal (HIP)
- Review of the Company File
  - The field office file and all previous enforcement reports should be reviewed 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 the 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:
    - The XML file for the carrier should also be downloaded at the same time the company profile is obtained. Importing this XML file into AIM will ensure 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 Report/AIM Narrative) will be automatically filled in, requiring only verification of the accuracy of the data rather than manual entry.

    - 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 the choice.
        - Do not change the name of the file.
    - To import the XML data file, follow these steps in AIM:
        - Choose File, Import, Company Data from Profile (XML).
        - Select the directory where the XML file was downloaded.
        - Select OK, a list of available XML files will be shown
        - Place checks in the boxes of the carriers to import, then select OK.
    - These motor carriers will now be shown on the Manage/Review list. Simply double click on their name to start the review.
- For all investigations the Company Safety Profile should be used to:
    - The motor carrier's profile must be obtained and reviewed. 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, the investigation should be focused on the carrier's vehicle maintenance program.
- When potential violations are discovered on the company profile, identify and record the drivers and/or vehicles with the most violations. Include these in the 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 the investigation.

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/AIM Narrative 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, 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 motor carrier. The website will not allow motor 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 motor 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 and the 365-day Look Back:

Investigations conducted in AIM will have different start dates depending on the assigned investigation type:

An onsite investigation start date is the first day that the SI is physically present at a motor carrier's location.

An offsite investigation start date is the day the SI sends the Initial Contact Letter.

The start date of the investigation serves as the official reference date for the 365-day look-back used to calculate the Vehicle and Accident OOS rate under Part 385, Appendix B. The 365-day look-back shall be the period immediately preceding the investigation start date and all qualifying accident and Driver Vehicle Examination Report/OOS records within this timeframe must be used for calculations.

For example, in an investigation that begins on June 15, 2025, the 365-day look-back should be June 15, 2024, to June 14, 2025.

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 allows 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 BASIC Requiring Investigation is due to a prior Acute or Critical Violation not associated with the HOS Compliance BASIC, sampling will be on the prior Acute or Critical Violation.

- 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 will use Offsite Sampling). The samples selected would be based on Driver Safety Measurement System (DSMS) sampling for the additional BASICs requiring investigation.

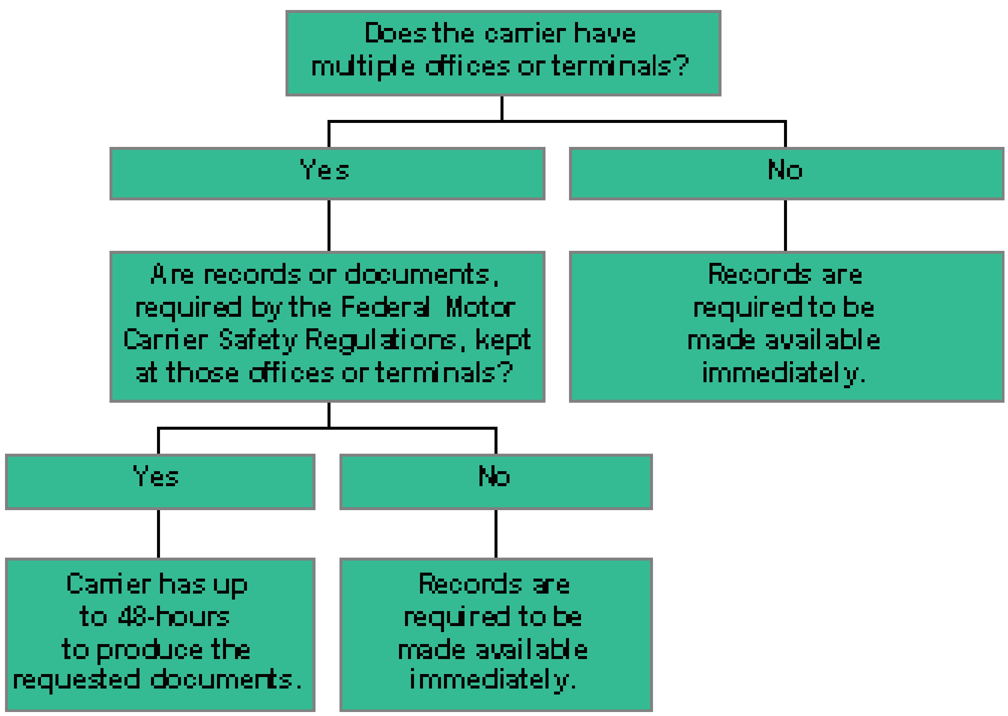
The SI has some flexibility and discretion in this selection process and should use his or her judgment. For example, if two drivers have BASIC percentiles that are very close to each other, but one has been involved in more crashes, then the SI could decide to include the driver who has been involved 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 the request. Saturday, Sunday, and Federal holidays are excluded from the computation of the 48-hour period. When requesting records 48 hours before the scheduled appointment, the motor carrier should clearly understand that this is an official request, when the 48-hour period begins and ends, and that the documents are expected to be available upon arrival, or a citation for failing to maintain the appropriate documents will be issued.



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**.
- 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**.

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, consider requesting other data before arriving at the carrier’s place of business; for example, obtaining driver lists allows 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, 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 AIM Narrative 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 have occurred in the previous 12 months. Once identified, these drivers must be examined and addressed in conjunction with the motor carrier's investigation. Validation must be performed to confirm whether the violations have been corrected and to 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 1.1.4, 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)-SIN[1]	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[1]	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)	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	392.5(a)	Driver possesses, uses, or is under influence of alcohol less than 4 hours prior to duty
Hos Comp	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. This link can be used to access the SMS when investigating the assigned motor carrier. 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.

[1]Note: SafeSpect 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 SafeSpect 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.

A Controlled Substances/Alcohol Supplemental Review will be assigned 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 violations of Part 382 during the most recent investigation;
- 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, the following should be completed:

- 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 an 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 principal place of business the following must be considered:

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 principal place of business, do not provide the carrier with a list of driver's ELD data to review until arrive at the principal 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 conduct a drive-by prior to the investigation start date.
- If at any time there is uncomfortable, leave the premises. Contact the DA and ask for State Partner law enforcement assistance.
- Ensure that the schedule is communicated with the Division Office.
- Identify escape routes: park car facing out, when inside a facility know all exits, etc.

1.2.3.11 Ensure the Most Recent Software is Available

Prior to the initiation of an Investigation, ensure that the latest versions of FMCSA software are installed on the laptop computer. The latest versions are available by logging into http://infosys.fmcsa.dot.gov or (https://portal.fmcsa.dot.gov). If an updated version of the software available, download it and update the computer with the most recent version. "Check for AIM Updates" an be used to download and install updates any time the online version of AIM is accessed.

1.3 Stage 3-Investigation

1.3.1 Introduction

Once the Risk Assessment is completed, the investigation will continue 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).
    - Legal sufficiency reviews must be thoroughly conducted for each CI with a proposed adverse rating and NOC case.

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 process

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

1. Identify yourself and the employer.
2. Display the credentials. Do not permit the credentials to be copied or to leave the 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 that discussions will be needed with the individuals responsible for compliance with safety, CDL, controlled substances and alcohol, HM, financial responsibility, and commercial regulations.

5. If unable to meet with a corporate official, explain that a meeting with this person will be needed during the closeout interview.
6. If a phone interview/questionnaire was not conducted with the motor carrier prior to the arrival, or if no appointment was made, obtain the information required to complete 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 the motor carrier and the reviewer to complete the review process most efficiently.

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. The 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 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 the 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.

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 unable to meet with a corporate official, explain that the corporate official should be present 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 after Interviewing the Motor Carrier

If the carrier completed the questionnaire as a part of the Risk Assessment prior to arrival, it should be used to complete the Pre-Investigation part of the Investigative Report. If a phone interview of the motor carrier was not conducted prior to arrival, conduct an interview with the appropriate official to obtain the following.

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 the investigation report).

If the legal name is different from what is recorded in the database, make the change in MCMIS before uploading 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." DB As are also known as operating names, as sumed 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

All revenue generated by the legal entity being reviewed must be entered, including 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/AIM Narrative. 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. 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 = <u>(12 X Miles Operated)</u> Months Operated
For this example: Annual Mileage Estimate = <u>(12 X 800,000) = 1,200,000</u> 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/AIM Narrative.

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/AIM Narrative.

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 the 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 through 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, it should be requested: "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 for the carrier, 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 skill sets 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 he/she needs 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. 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. It can be identified that the carrier might be deficient in this area, if the employees are unaware of their Roles and Responsibilities, the carrier's Policies and Procedures, and/or the employees do not have the proper skills and knowledge to complete their jobs.

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 (i.e., 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. A carrier deficient in Corrective Meaningful Action either will not have any reaction to an employee who is not performing well or will have 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 AIM Violations - Recommendation/Requirements on how to select and customize the SMP Breakdowns and Remedies.

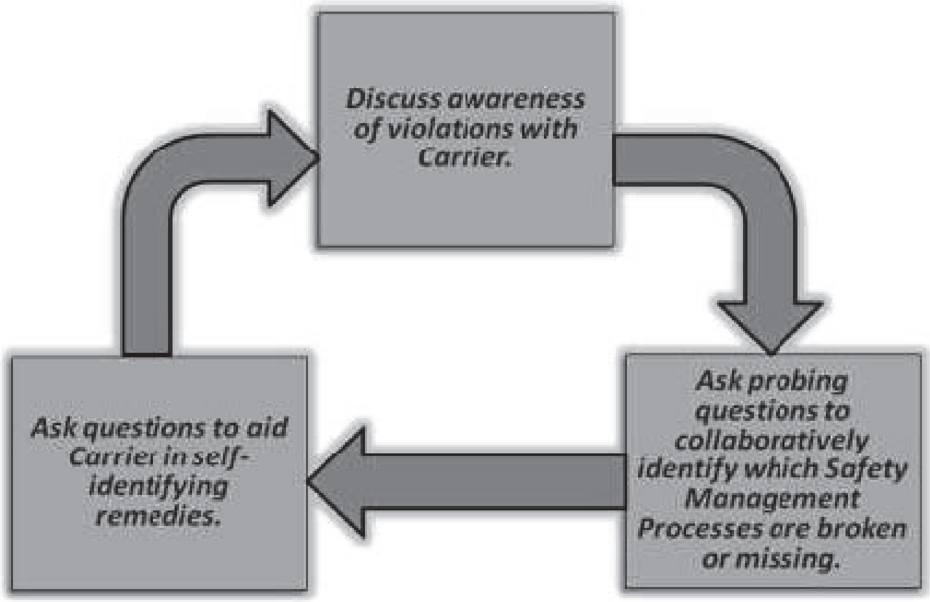
In addition to the traditional enforcement role, the SI helps the carrier to become more compliant and to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, the investigative process should be more of a collaborative process. The SI should frame the questions 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.aspx, and go to the Resources page and type "Probing Questions" in the keyword search box. Login 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 "More details can be provided?" 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.

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.

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 Violations 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.

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	Part	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)
Vehicle Maintenance	396.9(c)(2)	Operating an OOS vehicle

The Red Flag Violations 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 (i.e., 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. This link can be used 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.

Note: [2]SafeSpect 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 SafeSpect 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.

[3]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

1.3.8 SI Conducts Controlled Substances/Alcohol Supplemental Review

For guidance on how to conduct Controlled Substances/Alcohol Supplemental Review please see Controlled Substances and/Alcohol Agent Reviews.

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 AIM. 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 AIM. 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	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						

[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.

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 the business time and money. Tracking how much the business spends on non-compliance activities can help illustrate the benefits of compliance and why safety is good for business.
- **Document and Follow Through on Action Plans**: Document and follow through on action plans to ensure the actions being taken are creating improvement in safety management and compliance.

To learn more about the Mandatory Recommendations in AIM, click: AIM User guide.

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:

- Review of the company's record is encouraged at the following website: **http://ai.fmcsa.dot.gov/sms**. The PIN Number provided by FMCSA must be used.
- 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 User guide

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 the carrier should 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 assigned.

If 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 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		
CFR Part	**Full or Subpart**	**Description**
40 - Drug & Alcohol Testing	●	**Required:** Controlled Substances and Alcohol BASIC
380 - Special Training		
382 - Drug & Alcohol Testing	●	**Required:** Controlled Substances and Alcohol BASIC
383 - CDL	⊗ 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** positive tested driver.
392 - Driving of Motor Vehicles	⊗ .9a(a**)**	392.9a(a) Authority - **Required** as part of the CAIR process.
393 - Vehicle Parts and Accessories		
395 - HOS		
396 - Vehicle Maintenance		
Hazardous Materials		
CFR Part	**Full or Subpart**	**Description**
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		

CFR Part	Full of Subpart	Description
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-Controlled Substances/Alcohol Use and Testing

1.3.14.1.2.1 Part 382 – Investigative Procedures

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

Procedures to Follow During Investigation of Part 382

If assigned an Onsite Comprehensive Investigation, the 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 perform 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-employement 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 assigned an Onsite Focused or Offsite Investigation, the investigation should include an examination of the applicable parts and subparts for each BASIC that is being 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:

- 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; drivers may be found that 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. The drivers' social security number may also be requested to verify against other controlled substance and alcohol testing records (after January 6, 2020 a CDL number and state of issuance is required as identification in the chain of custody form)

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

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

Subsequent investigations - 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. Failure to register cannot be cited if the motor carrier is not required to perform any of the required actions. However, encouragement can be given to 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 drivers recently terminated by the motor carrier may need to be selected. This practice is acceptable if properly articulated in the Investigation Report/AIM Narrative.

Some flexibility and discretion exist in this selection process, and sound judgment should be used. 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 the driver who has been involved in crashes could be included regardless of which driver has the higher BASIC score. These deviations should be explained in the Investigation Report/AIM Narrative.

Record the name(s) of the driver(s) reviewed for each sample size in the Investigation Report/AIM Narrative of the investigation report; or include a notation in the Investigation Report/AIM Narrative 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 the minimum number of required documents cannot be reviewed. If this happens, explain in the Investigation Report /AIM Narrative why the sample was not met.

An explanation must also be provided in the Investigation report/AIM Narrative if the required sampling exceeds 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. 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 the 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.

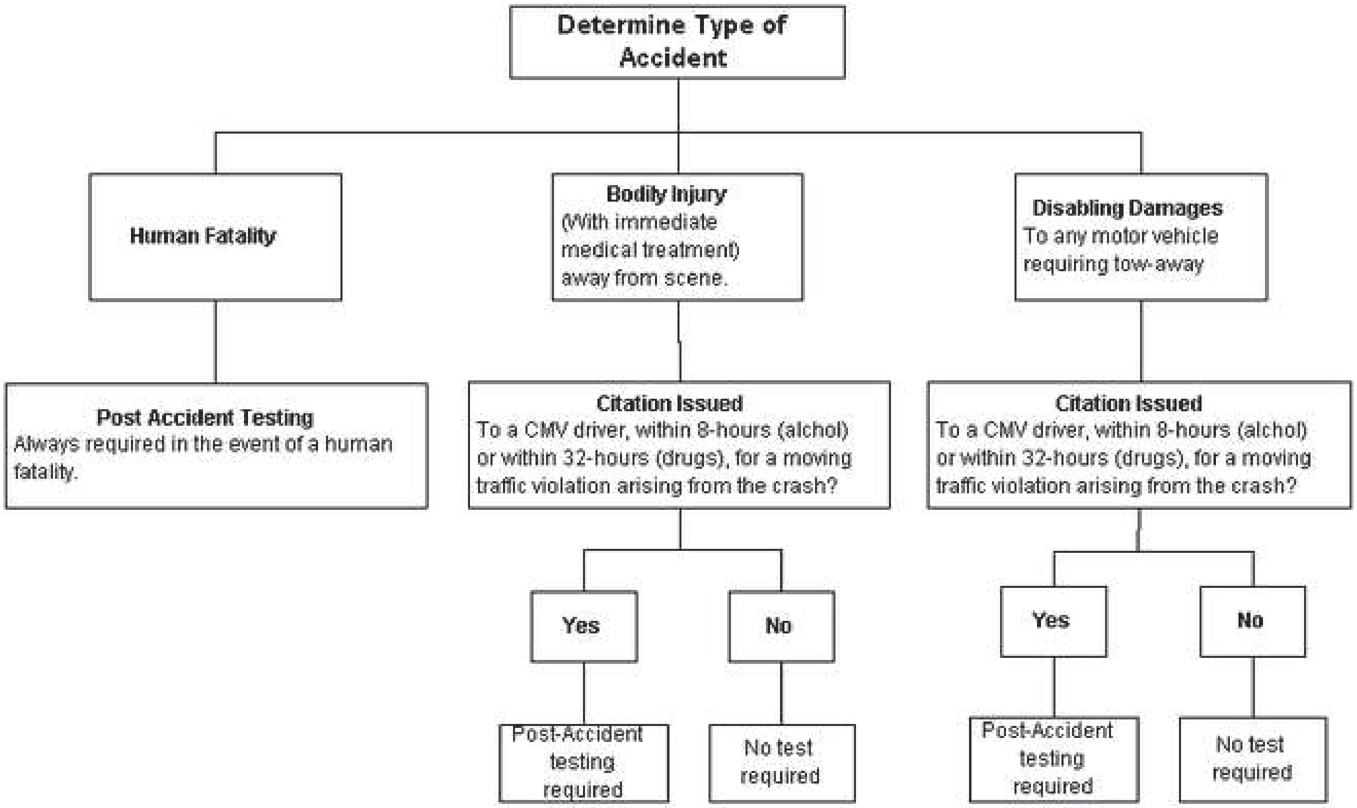
Part 382 - Post-Accident Testing

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 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 = 0.1 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 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, 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/AIM Narrative. 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

- 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 License (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 his/her non-compliance; and
- If the driver fails to notify the employer, consistent with the Departmental policy issued November 13, 2006 (Attachment A), 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 AIM Violations 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 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 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. Particular attention should be given to ensure that all required drivers 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/AIM Narrative 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, 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/AIM Narrative Remarks, the following should be indicated:

- 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 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 Violations 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 completed the investigation of compliance with 49 CFR Part 382, use the following guidelines to assist in the completion of the Violations Tab/AIM Violations.

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 25 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 AIM Violations of the 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 with the required records requested because they either did not perform a required test or maintain the record, then additional records should not be requested to meet the minimum sample size for checking controlled substances and/or alcohol testing compliance. Cite the motor carrier in the Violations Tab/AIM Violations 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/AIM Violations 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 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, 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 AIM, see *Violations Tab/AIM Violations - Recommendation/Requirements* on how to select and customize the SMP Breakdowns and Remedies.

1.3.14.1.2.4 Part 382 – Enforcement Procedures

Once entered the violations discovered in AIM and have decided to initiate an enforcement action for the Part 382 violations, 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 AIM Violations 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 confirm that driver submitted himself/herself to an 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

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

- 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 the review of compliance with Part 383, the following guidelines should be used to assist in the investigation of motor carriers of property (including placardable HM) and passengers.

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

If assigned an Onsite Comprehensive Investigation, the 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 an accurate driver roster is available

Do not accept a carrier-provided driver roster as the only source. Names not listed on the roste rmay be found 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 may help identify additional drivers not included in the provided roster who 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 assigned an Onsite Focused Investigation, or an Offsite Investigation, investigation should include an examination of the applicable parts and subparts for each BASIC that is under investigation.

- 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 the most accurate driver history record is reviewed, the CDLIS functionality should be used to establish which State is the official SOR.

With QC, the AKA function can be used 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 available information. Once that is established, a History check can be conducted directly with that State. With http://cdlis.dot.gov, the "Current" application should always be used.

: 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, the next step should be taken:

- 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, it must be validated whether 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 an accurate driver roster is maintained. Do not accept a carrier-provided driver roster as the only source. Names not listed on the roster may be found 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, additional drivers not included in the provided roster may be identified as having 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

A driver's CDL history/status must be verified 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 the sampling of 49 CFR Part 391, Qualification of Drivers. If additional drivers are checked in CDLIS, an explanation of the reason(s) for expanding the original sample size must be provided in the Investigation Report/AIM Narrative.

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

CFR Parts - Part 383 - CDLIS Checks

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 the 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

The status of the CDL with the licensing agency in the SOR needs to be verified.

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 it is established that the motor carrier **had knowledge** of the suspension, cancellation, disqualification, or invalidation, the reason should be verified **(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 it has been 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/AIM Narrative 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 System Procedures

Once the investigation of compliance with 49 CFR Part 383 has been completed, the following guidelines should be used to assist in the completion of the Violations Tab/AIM Violations.

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. (only to be used as a driver cite)
383.3	**Acute**	Using a driver who does not possess a valid CDL.
383.37(a)	**Acute**	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. **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, Acute/Critical Violations traffic violation, multiple-moving violations, etc.
383.37(b)	**Acute**	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.
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 violations relating to Part 383 have been discovered, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes.

- To accomplish this, the SMC should be applied 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 ***AIM Violations - Recommendation/Requirements*** on how to select and customize the SMP Breakdowns and Remedies.

1.3.14.1.3.4 Part 383 – Enforcement Procedures

Once the discovered violations have been entered into the Violations Tab/AIM Violations and a decision has been made to initiate an enforcement action for the 49 CFR Part 383 violations, the following guidelines should be used 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, enforcement action should be initiated.

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

- 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 383 - Red Flag Violations

- For Red Flag Violations which were originally cited for operating while disqualified [383.51(a)-SIN, 383.51(a)-SOUT5], 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, a NOC (or NOV in the case of the two violations listed above) will normally be issued. If there already was a citation, consultation with the Manager should occur 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 the review to specific documents, as many motor carrier documents could be used to support the violation. Other documents may be utilized to prove the 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.
- 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

Note: SafeSpect 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 SafeSpect 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 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.

1.3.14.1.4 Part 387-Insurance Requirements

1.3.14.1.4.1 Part 387 – Investigative Procedure

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

Procedures to Follow During an Investigation of 49 CFR 387

Whether assigned an Onsite Comprehensive Investigation or an Onsite Focused Investigation, the 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.
- Review documentation proving the motor carrier meets its financial responsibility requirements.

BASIC	Part 387	Description
Driver Fitness		

<table>
<tr><td>Controlled Substances/Alcohol</td><td rowspan="5">Partial review of part, as applicable</td><td rowspan="5">Required as part of CAIR process as applicable to the commodity transported or motor carrier operation type.</td></tr>
<tr><td>Vehicle Maintenance</td></tr>
<tr><td>HOS Compliance</td></tr>
<tr><td>HM Compliance</td></tr>
<tr><td>Unsafe Driving</td></tr>
</table>

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, the next step should be taken:

- Cite violations;
- Identify Process Breakdowns and Remedies;
- Document counts for enforcement, as appropriate.
- If the 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 an FTA Grantee.*

Verifying the Motor Carrier's Compliance with 49 CFR 387

- **First**, if not already completed during the pre-investigation activities, the L&I website should be checked: 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**, the motor carrier's insurance policy or self-insurance authorization should be reviewed. 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, request that the motor carrier obtain a copy of its MCS-90 prior to the review so that it is available upon arrival at the motor carrier.
- **Fourth**, if the MCS-90/90B Endorsement cannot be located within the motor carrier's insurance policy, request that 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 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.*

- Insurance Requirements for Motor Carriers of Passengers
- 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*.
- There are differences in the minimum levels of insurance and passenger carriers are required to maintain an 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/AIM Violations - 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/AIM Violations - 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 Violations Tab/AIM Violations 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 an FTA Grantee.*

- Cite the motor carrier in the Violations Tab/AIM Violations - 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 the investigation has been completed 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 an 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 Systems Procedures

Once an Investigator has completed an investigation of compliance with Part 387, use the following guidelines to assist in the completion of AIM Violations - 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 proof of 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 proof of financial responsibility.**

1.3.14.1.4.3 Part 387 – Process Breakdowns/Remedies-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 the discovered violations have been entered into the Violations Tab/AIM Violations and a decision has been made 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>U.S. DOT Number Identification (§ 390.21(a)):</u>

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.

<u>CVSA Inspection Decal Requirements</u>

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

Procedures to Follow During an Investigation of 49 CFR 390

If assigned an Onsite Comprehensive Investigation, the 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 assigned an Onsite Focused or Offsite Investigation, the investigation should include an examination of the applicable parts and subparts for each BASIC that that is under investigation. 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, the next step should be taken:

- 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

The 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 requested upon making the appointment for the investigation) may also be helpful in discovering and obtaining information about the motor carrier's accidents.

Note: The motor carrier should be asked 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 how accident information is maintained.

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 reviewing 49 CFR 382, Post Accident Testing, if the driver was subject to 49 CFR 382.

Information Required on a Motor Carrier's Accident Register

it should be determined 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 one of the following is performed:

- 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) automatically. 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. A copy of the accident information should be obtained and submitted 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 AIM Violations 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, the motor carrier should be asked if it has made the required update filing, and an affirmative response should be verified. Additionally, 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, it needs to be verified 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, the following table should be used 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 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 be required, 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 the investigation of compliance with Part 390 has been completed, the following guidelines should be used to assist in the completion of the Violations Tab/AIM Violations.

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 5 maintenance records are checked and it is discovered 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 it is discovered 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. The 390.35 cite should be selected 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 violations relating to Part 390 have been discovered, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, the SMC should be applied 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 AIM see Violations Tab/AIM Violations (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 the discovered violations have been entered into AIM Violations of AIM and have decided to initiate an enforcement action for the Part 390 violations, the following guidelines should be used 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 the review to specific documents, as many motor carrier documents could be used to support a violation. Other documents may be utilized to prove a violation.

Part 390 - Enforcement Action Against Drivers

Considering an Enforcement Action Against a Driver

Enforcement action against a driver should be considered 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 the review of compliance with Part 391, the following guidelines should be used to assist in the investigation of motor carriers of both property (including placardable hazardous material) and passengers.

Procedures to Follow During an Investigation of 49 CFR 391

If assigned an Onsite Comprehensive Investigation, the investigation of Part 391 should consist of:

- Ensuring an accurate driver roster is available
- Sampling DQ files
- Selecting files
- Reviewing files.

If assigned an Onsite Focused Investigation or Offsite Investigation, the investigation should include an examination of the applicable parts and subparts for each BASIC being investigated. 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. **<u>Example:</u>** 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. **<u>Example:</u>** 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, if necessary:

- 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, drivers with Red Flag Violations (regardless of the motor carrier's BASIC status) that have occurred in the previous 12 months should be reviewed, and documents should be requested to confirm that these drivers' 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 [7]	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, it must be validated whether 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 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, a list of drivers employed in the last 12 months, and the dates they were hired and/or terminated (if applicable), should be requested. The list will need to be verified. The accuracy and completeness of the list should be verified by reviewing the company profile, payroll records, dispatch records, bills of lading, and/or other transportation or shipping documents.

Ensuring an accurate driver roster is available

Do not accept a carrier-provided driver roster as the only source. Names not listed on the roster may be found 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, additional drivers not included in the provided roster that have been used by the carrier may be identified.. 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

The sampling requirements for the minimum number of DQ files as set forth below must be followed based on the 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 drivers recently terminated by the motor carrier need to be selected. This practice is acceptable if properly articulated in the Investigation Report/AIM Narrative. 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.

There is some flexibility and discretion in this selection process, and the best judgment should be used, 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 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/AIM Narrative.

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/AIM Narrative 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 the minimum number of required documents cannot be reviewed. If the motor carrier failed to provide the requested Driver Qualification files because they either did not maintain or prepare the file, then 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/AIM Narrative.

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 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 is guidance for reviewing each DQ file document:

- **Employment Application** -The employment application should be ensured to contain all the elements required by Section 391.21(b), with all fields completed or noted as non-applicable, and the application 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 -** The motor carrier should be ensured to have contacted the driver’s/applicant’s previous employers, by means of either written document or noting employment verification by telephone, within 30 days of the 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 -** The motor carrier should be ensured to have 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 the date of hire.
- **Road Test/Certificate or Equivalent (Copy of Valid CDL) -** The motor carrier should be ensured to have 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** - Each driver's self-certification should be ensured to be 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** - The motor carrier should be ensured to have 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).

With the implementation of NRII this verification is no longer needed. However, if a Safety Investigator suspects that a medical certificate may have been fraudulently obtained, they should take steps to verify its authenticity by contacting the medical examiner to confirm the driver's medical certificate information. 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. Reference should be made to the **Violation Table found in Section 2.5.6 of the eFOTM**, to determine the appropriate enforcement action.
- **Annual Review of Driver Record Inquiry (AKA Annual Driver's License Check)** - If the driver has been employed a year or more, the motor carrier should be ensured to have 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, the motor carrier should be ensured to have 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, the motor carrier should be ensured to have performed the annual review of the driver, and to have a document reflecting that the annual review was performed.
    - **Note:** As the investigation is performed, the motor carrier may be advised 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: It must be determined whether the document was never prepared, or whether the document was prepared and not maintained, before the correct citation can be chosen.

Part 391 - DQ Problems

Steps to Take if Substantial Noncompliance is Discovered

The sampling may be expanded and additional DQ files selected to establish the degree and extent of noncompliance. This will also allow determination of whether enforcement action is appropriate for the noncompliance discovered in this Part. **If the sampling is expanded for Part 391, the reason must be explained in the Investigation Report/AIM Narrative of the investigation report.**

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[8], 391.15(a)-SOUT[8], and 391.49(i)], and verify whether the driver complied with the OOS order.

Note: SafeSpect 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 SafeSpect 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.

[8]SafeSpect 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 SafeSpect 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.

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1.3.14.1.6.2 Part 391 - Investigative System Procedures

Once the investigation of compliance with Part 391 has been completed, the following guidelines should be used to assist in the completion of the Violations Tab/AIM Violations.

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 that DQ file violations be cited under the individual document citations listed within Section 391.51(b)(1-8).**

If the motor carrier failed to provide the requested Driver Qualification files because the files were not maintained or prepared, the motor carrier should be cited in AIM Violations of the investigation report for not maintaining and/or preparing the missing required files, and the original sample size for checking Driver Qualification files should be indicated 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/AIM Violations of the investigation report based on the number of individual records required.

Recording Violations of Part 391 Acute and Critical Regulations

The number checked should be recorded 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 the violations relating to Part 391 have been discovered, the carrier should be assisted in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, the SMC should be applied 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/AIM Violations (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 User Guide

1.3.14.1.6.4 Part 391 - Enforcement Procedures

Once the violations discovered have been entered into the Violations Tab/AIM Violations and a decision has been made to initiate an enforcement action for the Part 391 violations, the following guidelines should be used 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, an NOC (or NOV in the case of the two violations listed above) will normally be issued. If there already was a citation, then consultation with the Manager should occur before initiating enforcement against the driver.

Documents that Should Be Gathered to Initiate an Enforcement Action

Documentation to initiate an enforcement action should be gathered, 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 obtaining 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 the documents existed but were not requested for production 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, is included as part of the evidence in the case.
- In addition to the foregoing precaution, 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. Obtain the driver’s signed statement, if possible. If the driver refuses to sign the prepared statement, obtain the 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, notes should be taken showing the number or approximate number of days the driver had driven for the motor carrier while in violation of Part 391.
- Occasionally, it may be impossible, 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 the driver cannot be identified on a specific movement through the use of motor carrier, shipper, or State records, the violation can still be documented 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 the investigation be conducted in accordance with the above guidelines and that a written statement be obtained, 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 the discovered violations are listed below.

- Examples of documents to support the 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 the use of specific documents, as there are many motor carrier documents that could be used to support the violation. Other documents may be utilized to prove the violation.

Part 391 - Enforcement Action Against Drivers

Considering an Enforcement Action Against a Driver

Enforcement action against a driver should be considered 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

[9] SafeSpect 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 SafeSpect 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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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, the following guidelines should be used to assist in the investigation of motor carriers of property (including placardable HM) and passengers.

1.3.14.1.7.1.1 Procedures to Follow during an Investigation of Part 392

If assigned an Onsite Comprehensive Investigation, the 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
- Operating authority requirements
- Transporting unauthorized passengers
- Prohibition against texting
- Hand-held mobile telephone useage
- Stopping at railroad crossings with certain Hazardous Materials

If assigned an Onsite Focused Investigation or Offsite Investigation, the investigation should include an examination of the applicable parts and subparts for each BASIC being investigated.

- 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:

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

1.3.14.1.7.1.2 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, drivers with Red Flag Violations (regardless of the motor carrier's BASIC status) that have occurred in the previous 12 months should be reviewed, and documents should be requested 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 Part	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, it must be validated whether 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:

- Has the Red Flag Violation been corrected, or is it continuing?
- If corrected, was the correction timely? (Did the driver operate between the time of the violation and when it was corrected)?
- 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?

1.3.14.1.7.1.3 Reviewing Compliance with Part 392

Limitations will probably be encountered during the 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.

1.3.14.1.7.1.4 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 of international loads 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 the investigation of compliance with Part 392 has been completed, the following guidelines should be used to assist in the completion of Violations Tab/AIM Violations.

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

The number checked should be recorded 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.

<u>For Unsafe Driving violations other than 392.2</u>

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-2022-005)

1.3.14.1.7.3 Part 392 – Process Breakdowns/Remedies-SMC

Once the violations relating to Part 392 have been discovered, the carrier should be helped to become more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, the SMC should be applied 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 *AIM Violations - Recommendation/Requirements* on how to select and customize the SMP Breakdowns and Remedies.

1.3.14.1.7.4 Part 392 – Enforcement Procedures

Once the violations discovered have been entered into the Violations Tab/AIM Violations of the investigative software and a decision has been made to initiate an enforcement action for the Part 392 violations, the following guidelines should be used when submitting an enforcement report for Part 392 violations.

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 (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 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 evidence is found 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 the matter should be referred by the investigator or the Manager to the Service Center (SC) to pursue driver disqualification, and an NOC should not be initiated.
- 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.

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

<u>Electronic Logging Device</u>

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 the 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 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 the use of specific documents, as there are many motor carrier documents that could be used to support the violation. Other documents may be utilized to prove the violation.

1.3.14.1.7.4.3 Part 392 - Enforcement Action Against Drivers

Considering an Enforcement Action Against a Driver

Enforcement action against a driver should be considered 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 AIM Violations 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

1.3.14.2.1 Crash Indicator BASIC

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 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 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.

<table>
<tr><th>BASICs Requiring Investigation</th><th>Investigation Type</th><th>Investigation Sampling</th></tr>
<tr><td rowspan="2">CBI only</td><td>Offsite</td><td rowspan="2">CBI Sampling</td></tr>
<tr><td>Onsite Focused</td></tr>
<tr><td rowspan="3">Crash BASIC plus additional BASICs requiring investigation</td><td>Offsite</td><td>Offsite Sampling- Only for the additional BASICs requiring investigation</td></tr>
<tr><td>Onsite Focused</td><td>Onsite Sampling- Only for the additional BASICs requiring investigation</td></tr>
<tr><td>Onsite Comprehensive</td><td>Onsite Sampling- All BASICs</td></tr>
</table>

*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 wi1l 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, an explanation of the reason(s) for expanding the original sample size should be provided in the Investigation Report/AIM Narrative of. A list of driver name(s) for each driver checked in CDLIS must be provided in the Investigation Report/AIM Narrative; or include a notation in the Investigation Report AIM Narrative 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/AIM Narrative 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	
401-500	68	
501-1,200	80	
1,201and above	125	

Additional Guidance: If the motor carrier failed to provide 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 AIM Violations 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 AIM Violations 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: Additional DVIRs should only be requested 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 was not required to be completed during the sampled period and the sample size cannot be met, additional DVIRs for the same vehicle during a different sample period must be requested.

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 because they either did not maintain or prepare the file, additional files should not be requested 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/AIM Violations 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	
150-500	17	17 x 9 = 153	
501-Over	27	27 x 9 = 243	
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 10% 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 AIM 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 not relying 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 the investigation of accidents, consideration should be given to 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. If one cannot be obtained, it should be requested 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 not already completed during pre-investigation activities, the L&I website should be checked for the motor carrier’s insurance and authority status (if applicable): http://li-public.fmcsa.dot.gov

Next, the motor carrier’s insurance policy or self-insurance authorization should be reviewed. 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 ensure it is available upon arrival at the motor carrier, a copy of its MCS-90 should be requested prior to the review.

If the MCS-90/90B Endorsement cannot be located within the motor carrier’s insurance policy, the motor carrier should be requested to contact its insurance company 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 an item closely resembling the carrier name may be found. The different suggestions should be explored, as unexpected results may appear.
- 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 the 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 the 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 be limit. 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 towing charges are found on a bill, it could indicate 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

1.3.14.2.2 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 AIM Narrative 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 are 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 AIM Narrative 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:

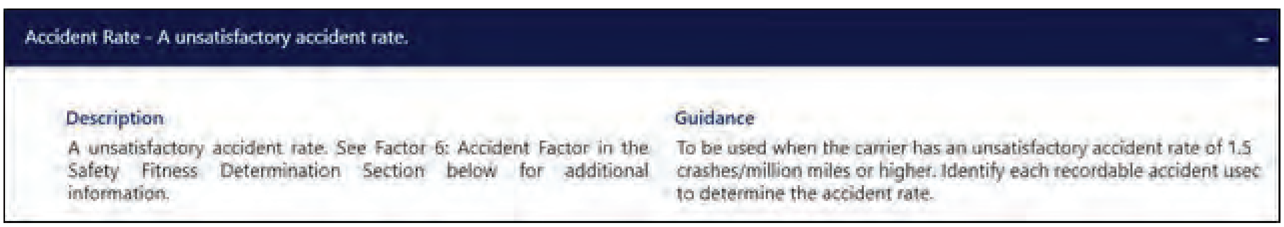
- Sample Determination Letter
- Crash Preventability Determination Program Eligibility Guidelines
- Preventability Guidelines

- Adding Crashes to AIM
- Overview Flow Chart
- Procedures by Investigation Phase
- Procedures by Role

1.3.14.2.3 Citing the High Accident Rate in AIM

Citing the High Accident Rate in AIM

The accident rate violation must be cited during a compliance investigation when the crash-per-million-miles rate is 1.5 or higher for general motor carriers, or 1.7 or higher for urban motor carriers operating exclusively within 100 air miles, and when this rate negatively impacts the motor carrier's safety rating in Factor 6. The AIM system has been updated to include a new accident rate violation with a 1 of 1 logic cite, and a template example will be provided within the software. When preparing the AIM violation example, include the crash date and driver information, and select only those crashes that were used to determine the crash rate. In the Table of Violations (TOV), the violation date should be recorded as the compliance investigation (CI) start date.



Reminders when citing the violation:

- AIM Violation Example:
  - Include: Crash Date, Driver
- Crash Selection:
  - Only include crashes used to determine crash rate
- In the TOV:
  - Violation date = CI Start date

Document Evidence

The investigative process should be documented if additional crashes were discovered 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.

1.3.14.3 Driver Fitness BASIC

1.3.14.3.1 Introduction to Driver Fitness

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

If 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 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	⊗ .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	●	**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 the 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 the review of compliance with 49 CFR Part 380, the following guidelines should be used to assist in the investigation of motor carriers of property (including placardable hazardous material) and/or passengers.

Procedures to Follow During the Investigation of Compliance with Part 380

If assigned an Onsite Focused Investigation or an Offsite Investigation, the investigation should include an examination of the applicable parts and subparts for each BASIC under investigation. 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, the next step should be taken:

- 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:** 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:** 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 the sample, the driver-instructor must provide 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

First, it must be ensured that 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 the investigation of compliance with Part 380 has been completed, the following guidelines should be used to assist in the completion of the Violation Tab/AIM Violations.

Citing a Violation if the Carrier Fails to Have its Employees Trained for Special Requirements

Section 380.113(a)(1) should be cited, if a motor carrier allows, requires, permits, or authorizes an individual to operate an LCV unless he or she is certified to do so.

Section 380.509(a) should be cited, 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 violations relating to Part 380 have been discovered, assist the carrier in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, the SMC should be applied 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/AIM Violations (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 the discovered violations have been entered into the Violations Tab/AIM Violations of the investigation software and a decision has been made to initiate an enforcement action for the Part 380 violations, the following guidelines should be used when submitting an enforcement report for Part 380 violations.

Part 380 - Documentation

Documents that Should Be Gathered to Initiate an Enforcement Action

- Documentation should be gathered 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, 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. The driver's signed statement should be obtained, if possible. Again, if the driver refuses to sign the prepared statement, that driver's oral acknowledgment of the accuracy of the statement should be obtained. 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, notes should be taken showing the number or approximate number of days the driver had driven for the motor carrier while in violation of Part 380.
- Occasionally, it 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 the driver on a specific movement cannot be identified through the use of motor carrier, shipper, or State records, the violation can still be documented 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 the investigation be conducted in accordance with the above guidelines and that a written statement be obtained, 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 the 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 AIM DQ Worksheet and have motor carrier verify lack of documents.

This list is not meant to limit the review to specific documents, as many motor carrier documents could be used to support the violation. Other documents may be utilized to prove the violation.

Part 380 - Enforcement Action against Carriers

Some Important Issues to Remember When Documenting Violations of Part 380

Enforcement may not be initiated for violations of the entry-level driver training requirements.

Best practice requires that statement(s) be obtained 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 the documents existed but were not requested for production 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

Enforcement action against a driver should be considered for the following violation:

380.401(b) - Failing to provide a copy of the Longer Combined Vehicle Driver-Training Certificate to the employer for filing in the 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, the 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, the 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, the 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, the 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 Part 387 – Investigative Procedures

As part of the Driver Fitness BASIC investigation, the 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, the 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 and Remedies - Applying the SMC Cycle

As part of the Driver Fitness BASIC investigation, the 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, the 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 Procedures

As part of the Driver Fitness BASIC investigation, the 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, the 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, the 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, the 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 Part 391 - Investigative Procedures

As part of the Driver Fitness BASIC investigation, the 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 the investigation of compliance with Part 391 has been completed, the following guidelines should be used to assist in the completion of the Violations Tab/AIM Violations 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 that DQ file violations be cited 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 an 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

The number checked should be recorded 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, the 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, the 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, the 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, the 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 and Remedies - Applying the SMC Cycle

As part of the Driver Fitness BASIC investigation, the 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, the 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 the 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 the 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 assigned.

If 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 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		
CFR Part	**Full or Subpart**	**Description**
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		
CFR Part	**Full or Subpart**	**Description**
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		
CFR Part	**Full or Subpart**	**Description**
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, the 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*

1.3.14.5.2.2 Part 380 - Investigative System Procedures

As part of the HOS Compliance BASIC Investigation, the 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, the 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, the 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 Hours of Service(HOS)BASIC investigation, the 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 Hours of Service(HOS)BASIC investigation, the 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 Hours of Service(HOS)BASIC investigation, the 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 Cycle*.

1.3.14.5.3.4 Part 383 - Enforcement Procedures

As part of the HOS Compliance BASIC Investigation, the 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

1.3.14.5.4.1 Part 387 - Investigative Procedures

As part of the HOS Compliance BASIC Investigation, the 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*

1.3.14.5.4.2 Part 387 - Investigation System Procedures

As part of the HOS Compliance BASIC Investigation, the 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 - Investigation System Procedures*

1.3.14.5.4.3 Part 387 - Process Breakdowns and Remedies - Applying the SMC

As part of the HOS Compliance BASIC Investigation, the 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*

1.3.14.5.4.4 Part 387 - Enforcement Procedures

As part of the HOS Compliance BASIC Investigation, the 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*

1.3.14.5.5 Part 390-General Requirements

1.3.14.5.5.1 Part 390 - Investigative Procedures

As part of the HOS Compliance BASIC Investigation, the 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*

1.3.14.5.5.2 Part 390 - Investigation System Procedures

As part of the HOS Compliance BASIC Investigation, the 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, the 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, the 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 Compliance BASIC Investigation, the 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 Compliance BASIC Investigation, the 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 Compliance BASIC Investigation, the 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*

1.3.14.5.6.4 Part 391 - Enforcement Procedures

As part of the HOS Compliance BASIC Investigation, the 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 Procedures

As part of the HOS Compliance BASIC Investigation, the 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 Compliance BASIC Investigation, the 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*

1.3.14.5.7.3 Part 392 - Process Breakdowns and Remedies - Applying the SMC

As part of the HOS Compliance BASIC Investigation, the 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*

1.3.14.5.7.4 Part 392 - Enforcement Procedures

As part of the HOS Compliance BASIC Investigation, the 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 the review of compliance with Part 395, the following guidelines should be used to assist in the investigation of motor carriers of property (including placardable hazardous material) and passengers.

Procedures to Follow During Investigation of Part 395

If assigned an Onsite Comprehensive Investigation or an Onsite Focused Investigation that includes the HOS Compliance BASIC, the 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, the next step should be taken:

- 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 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, Drivers with Red Flag Violations (regardless of the motor carrier's BASIC status) that occurred in the previous 12 months should be reviewed, and documents should be requested to confirm that these 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 varies, depending on the specific circumstances. See the Crash Indicator BASIC section for guidance.

Once the drivers with Red Flag Violations are identified, it must be validated whether 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 provisions 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 eligible 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 are 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.

When determining compliance with the ELD rule during investigations, the following must be completed:

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 registered with FMCSA and on the FMCSA ELD registration list by 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 self-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 is 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.

  - <u>Scenario #1</u>: 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.
  - <u>Scenario #2</u>: 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. The definition of driving in 395.2 would not be relevant. The concept behind “travel time” [395.1(j)(2)] is that the driver would not be performing any activity potentially resulting in fatigue during that time. It is intended for travel on planes, buses, trains, ferry boats, etc. Driving an automobile would not be similar in that operating any vehicle tires a person.

- **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.

- **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 timecard and must be included as part of a driver's HOS.
- Time spent collecting tickets, loading and unloading luggagemust 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 sytems 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 carriers name, drivers 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 contacting a customer for an interview, state that it is being done 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. The 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, The days that the carrier used a driver to operate in intrastate commerce must be documented.
- 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 150 RODS were checked, of which 100 were in interstate commerce and 50 in intrastate commerce, and that the violation rate was 50 percent. The 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 AIM, 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, a list of drivers employed in the last 12 months, along with their hire and/or termination dates, should be requested. The list will need to be verified. The accuracy and completeness of the list should be verified by comparing the driver list to the list of drivers prepared during the pre-investigation process, reviewing the company profile, payroll records, dispatch records, bills of lading, and/or other transportation or shipping documents.

Timeframe for Review of Drivers Time Records/RODS

The 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 called upon to conduct an investigation as a result of an accident, or as a result of a non-frivolous complaint, 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 the 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. The sampling requirements for the minimum number of interstate and intrastate commerce in its state of domicile drivers' time records/RODS to be reviewed should be followed 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 drivers recently terminated by the motor carrier need to be selected; this practice is acceptable, if properly articulated in the Investigation Report/AIM Narrative. 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.

There is some flexibility and discretion in this selection process, and sound judgment should be used; 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, the driver involved in crashes may be included regardless of which driver has the higher BASIC percentile rank. Other methods may include selecting drivers with poor CDLIS driving records, recently hired drivers, or highest-paid drivers. These deviations should be explained in the Investigation Report/AIM Narrative.

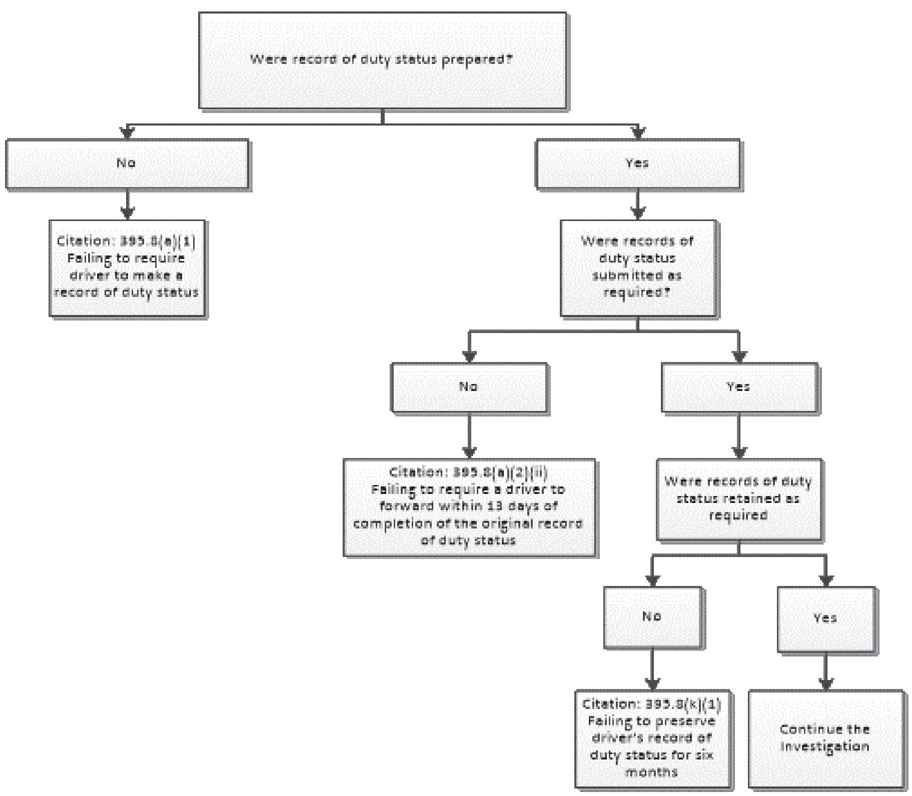
Note: Drivers with Red Flag Violations may not have poor DSMS percentile ranks. Therefore, a driver with Red Flag Violations may not necessarily be selected for sampling related to the BASIC under investigation. Regardless of whether the driver is selected for sampling during a motor carrier investigation, 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. Additional RODS should only be requested from a motor carrier if, in the original sample period, RODS requested for a driver were <u>not</u> 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, additional RODS must be requested 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 Unable to Determine the Driver for a Particular Shipment

Occasionally, it may be impossible, 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 the driver cannot be identified on a specific movement through the use of motor carrier, shipper, or State records, the violation can still be documented 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 breaks 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 least 7 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.
    - **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 the 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

Those RODS that show the driver was off-duty for the entire 24-hour period should be included. 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, the number of days of missing RODS should be excluded in order to determine the number of the 7/8-day periods checked. The HOS worksheet in AIM 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, the first 3 days must be excluded from the calculation of the 1st set of the 8-day period. The first 8-day period would begin being calculated as of the 4th day sampled. Excluding the first 3 days will give a default sample size of 20 8-day periods checked. Any violations discovered are based on the actual number of the 8-day periods checked.

If any missing or false RODS are discovered 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). The day of a missing or false RODS may not be excluded 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. All supporting documents must be requested 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 documents discovered missing in the Violation Tab/AIM Violations. 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. How the numbers checked for supporting documents were determined must be explained in the Investigation Report/AIM Narrative. 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, Qualcomm, 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 the 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. Additional records may need to be checked to reach the sample size. If the sample size cannot be reached, the reason will need to be documented in the Investigation Report/AIM Narrative.

Example: If 3 months, or 90 days, of RODS are checked but supporting documents are available to verify accuracy for only sixty-eight days, an additional twenty-two RODS would need to be checked that can be verified for accuracy with supporting documents to reach the sample size. If seven false RODS are discovered, the proper citation would be seven found and ninety records checked.

RODS within the sample size that reflect an off-duty day must be counted as a day checked for falsification if there is no supporting document showing the driver was actually working on that day. I 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, the on-duty/driving or on-duty/not driving RODS would be counted 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 the 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 AIM in calculating the motor carrier's safety rating. However, both critical false and non-critical false RODS violations should still be entered 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 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 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. If a driver shows he is off duty for [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 assigned an Onsite Comprehensive Investigation or an Onsite Focused Investigation that includes the HOS Compliance BASIC, and the motor carrier operates with an AOBRD, the 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 a 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 beside 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.

<u>Reviewing AOBRD RODS.</u> 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 Soaftware 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 http://www.fmcsa.dot.gov/elds.

Reviewing ELD RODS

When checking HOS compliance for drivers and motor carriers 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 the investigation of compliance with Part 395 has been completed, the following guidelines should be used to assist in the completion of Violations Tab/AIM Violations.

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 a RODS containing false entries to conceal HOS is discovered, it would be included with the citation 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, **information about each of these violations that are counted should be able to be provided in a "number found" field** of the investigation report. Most of the information required on the number of violations found can be recorded on the AIM worksheets. 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 should be able to be identified.

Recording Violations of Part 395 Critical Regulations (Except Alaska)

Part 395 - Critical Regulations Alaska

Recording Violations of Part 395 Critical Regulations (Except Alaska)

The violations should be recorded 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, <u>including off-duty days</u>.**
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, <u>including off-duty days</u>.**
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, <u>including off-duty days</u>.**
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, <u>including off-duty days</u>.**
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, <u>including off-duty days</u>.**
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 number 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 <u>only</u> 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 the violations relating to Part 395 have been discovered, the carrier should be assisted in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, the SMC should be applied 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/AIM Violations (Recommendation/Requirements)* on how to select and customize the SMP Breakdowns and Remedies.

1.3.14.5.8.4 Part 395 Enforcement Procedures

Once the violations discovered have been entered into the Violation Tab/AIM Violations and a decision has been made to initiate an enforcement action for the Part 395 violations, the following guidelines should be used 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, an NOC will normally be issued.

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 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 enforcement is being planned, 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."
- Timecards, 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 en 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.
- Failure to show the driver's locations at each change of duty status prevents comparison of the RODS for accuracy against time-stamped supporting documents.

Part 395 - Documentation

Documents that Should Be Gathered to Initiate an Enforcement Action

The documentation to initiate an enforcement action should be gathered, 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 discovered violations are listed below.

- Statement from motor carrier official, driver, or other person responsible for compliance with Part 395. Statements from the drivers should be taken, 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 the use of specific documents; there are many motor carrier documents that could be used to support a violation. Other documents may be utilized to prove the violation (e.g., shipper/customer). Documents, or State Ports of Entry records, that the carrier could have used to verify the accuracy of the drivers' logs may also be used, 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 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. It should be shown 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 that the driver 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 AIM, 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. The violation should be cited on the CR, but such violations should not be documented on the enforcement report unless those instances are included in 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, it may be impossible 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, a count can still be prepared 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), it should first be demonstrated 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 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. This documentation should be submitted for enforcement, along with 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 [redacted]), Electronic Data Guidance.]
- Falsification of RODS typically follows one or more of the following patterns:
    - o <u>Showing "off-duty" for a whole calendar day</u> 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 serve as alerts: 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) - 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, the 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, the 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, the 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, the 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 assigned.

If 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 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		
CFR Part	**Full or Subpart**	**Description**
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		
CFR Part	**Full or Subpart**	**Description**
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		

CFR Part	Full or Subpart	Description
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, the 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, the 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

As part of the Unsafe Driving BASIC Investigation, the 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 the violations discovered have been entered into the Violation Tab/AIM Violations and a decision has been made to initiate an enforcement action for the Part 380 violations, the following guidelines should be used when submitting an enforcement report for Part 380 violations.

Part 380 - Documentation

Documents that Should Be Gathered to Initiate an Enforcement Action

Documentation to initiate an enforcement action should be gathered, 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, to the extent possible, the drivers whose LCV driver-training certificates are not in the carrier's files should be interviewed to determine whether they have been trained and, if so, when, where, and by whom. The driver’s signed statement should be obtained, if possible. If the driver refuses to sign the prepared statement, the driver’s oral acknowledgment of the accuracy of the statement should be obtained. 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, notes should be taken showing the number or approximate number of days the driver had driven for the motor carrier while in violation of Part 380.
- Occasionally, it may be impossible, 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 the driver cannot be identified on a specific movement through the use of motor carrier, shipper, or State records, the violation can still be documented 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 the investigation be

conducted in accordance with the above guidelines and that a written statement be obtained, 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 the 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 AIM DQ Worksheet and have motor carrier verify lack of documents.

This list is not meant to limit the use of specific documents, as there are many motor carrier documents that could be used to support the violation. Other documents may be utilized to prove the violation.

Part 380 – Enforcement Action Against Carriers

Some Important Issues to Remember When Documenting Violations of Part 380

Enforcement may not be initiated for violations of the entry-level driver training requirements.

Best practice requires that statement(s) be obtained 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 they were not requested from the motor carrier 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

Enforcement action against a driver should be considered for the following violation:

380.401(b) – Failing to provide a copy of the Longer Combined Vehicle Driver-Training Certificate to the employer to be filed in the 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, the 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, the 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, the 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, the 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, the 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 - Investigative System Procedures

As part of the Unsafe Driving BASIC Investigation, the 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, the 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, the 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, the 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, the 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, the 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*

1.3.14.7.5.4 Part 390 - Enforcement Procedures

As part of the Unsafe Driving BASIC Investigation, the 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, the 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, the 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, the 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, the 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, the 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, the 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 and Remedies - Applying the SMC

As part of the Unsafe Driving BASIC Investigation, the 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, the 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

1.3.14.7.8.1 Part 397 - Investigative Procedures

There are a number of checklists and guidance documents in Appendix F to assist with HM investigations.

If assigned an Onsite Comprehensive Investigation, the 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 HM parking and attendance regulations
- 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 assigned an Onsite Focused Investigation or an Offsite Investigation, the investigation should include an examination of the applicable parts and subparts for each BASIC being investigated.

- 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 placardable:** 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 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 Part 397 Regulations Should Be Enforced

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 the HMS or HMPM

1.3.14.7.8.2 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/AIM Narrative 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).**

1.3.14.7.8.3 Part 397 - Process Breakdowns and Remedies - Applying the SMC

Once the violations relating to Part 397 have been discovered, the carrier should be assisted in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, the SMC should be applied 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 *the Violation Tab/AIM Violations - 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.

1.3.14.7.8.4 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 an SDS.
- The quantity must also be able to be proven. An 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, the 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, the 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*

1.3.14.7.9.3 Part 177 - Process Breakdowns and Remedies - Applying the SMC

As part of the Unsafe Driving BASIC Investigation, the 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*

1.3.14.7.9.4 Part 177 - Enforcement Procedures

As part of the Unsafe Driving BASIC Investigation, the 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 assigned.

If 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 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		

Safety		
CFR Part	**Full of Subpart**	**Description**
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** Crash BASIC Investigation is performed. 390.21 - Ensure vehicles 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 - **Required if** state or local routing laws are applicable to the motor carrier under investigation. 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 “1of 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 (HM)		
CFR Part	**Full or Subpart**	**Description**
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		
CFR Part	**Full or Subpart**	**Description**
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, the 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, the 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, the 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, the 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, the 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, the 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/Remedies-SMC

As part of the Vehicle Maintenance BASIC investigation, the 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/Remedies-SMC*

1.3.14.8.3.4 Part 387 – Enforcement Procedures

As part of the Vehicle Maintenance BASIC investigation, the 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, the 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*

1.3.14.8.4.2 Part 390 - Investigative System Procedures

As part of the Vehicle Maintenance BASIC investigation, the 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*

1.3.14.8.4.3 Part 390 -Process Breakdowns/Remedies-SMC

As part of the Vehicle Maintenance BASIC investigation, the 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/Remedies-SMC*

1.3.14.8.4.4 Part 390 – Enforcement Procedures

As part of the Vehicle Maintenance BASIC investigation, the 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, the 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, the 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/Remedies-SMC

As part of the Vehicle Maintenance BASIC investigation, the 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*

1.3.14.8.5.4 Part 391 – Enforcement Procedures

As part of the Vehicle Maintenance BASIC investigation, the 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, the 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, the 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/Remedies-SMC

As part of the Vehicle Maintenance BASIC investigation, the 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*

1.3.14.8.6.4 Part 392 – Enforcement Procedures

As part of the Vehicle Maintenance BASIC investigation, the 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 393/396 - Parts, Accessories, Repair & Maintenance

1.3.14.8.7.1 Part 393 & 396 - Investigative Procedures

In the review of compliance with Parts 393 and 396, the following guidelines should be used to assist in the investigation of motor carriers of both 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 assigned an Onsite Comprehensive Investigation, the investigation of Part 396 should consist of:

- Determining if Level V inspections should be conducted during the 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 assigned an Onsite Focused Investigation, the investigation should include an examination of the applicable parts and subparts for each BASIC being investigated. 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, 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, drivers with Red Flag Violations (regardless of the motor carrier’s BASIC status) that have occurred in the previous 12 months should be reviewed, and documents should be requested to confirm that these drivers' Red Flag Violations have been corrected. A complete list of the Red Flag Violations can be found in *Appendix A*. 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, it must be validated whether 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, level V inspections are required to be conducted during the 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 (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 one of the following is performed:

- 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, only inspection data that occurred after the investigation will be used. 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, as many Level 1, 2, or 5 inspections as possible should be used, 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 this minimum requirement cannot be met, the OOS rate will be unable to be calculated, and the reason should be explained in the Investigation Report/AIM Narrative.

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 Techniquies (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.

Citing the Vehicle OOS Rate

- The Vehicle OOS rate must be cited during the compliance investigation when it is at 34% or higher, as it can negatively impact Factor 4 of the motor carrier’s safety rating.

- It must be cited as 1 discovered of 1 checked.
- In the AIM violation example, SIs must list all inspections used in the calculation, indicate which had qualifying vehicle OOS violations and which did not, and include dates and report numbers.
- If all vehicle OOS violations on a DVER were caused by a crash, the SI must list the inspection with the other inspections that did not contribute to the OOS rate and add: "Vehicle OOS violations caused by the crash."
- In the TOV, the date used is the investigation start date, and identifying information summarizes the rate (e.g., OOS rate: 3/5 or 60%).
- **Documentation:** SIs must document OOS rate information in the compliance investigation report, including inspection dates, report numbers, sufficient detail to explain how the rate was determined, and explanations if the sample size could not be met.

Vehicle OOS Rate - A Vehicle OOS rate of 34% or higher.

Description	Guidance
A Vehicle OOS rate of 34% or higher. See Factor 4: Vehicle in the Safety Fitness Determination Section below for additional information.	To be used when the carrier has a failed Vehicle OOS rate. Identify eac roadside inspection with a VM OOS in Parts 393 and/or 396 and those without a VM OOS.

In the Table of Violations (TOV), the violation will also use the 1-of-1 logic and the date shall be the start date of the compliance investigation, and the identifying information must summarize the Vehicle OOS rate (for example: OOS rate: 3/5 or 60%).

Table 1: Violations Discovered During Review/Inspection

Violation	Date	Identifying Information	Description
Vehicle OOS Rate - A Vehicle OOS rate of 34% or higher.			
1	CI Date	OOS Rate: 3/5 or 60%	

SIs must document in the investigation report all relevant OOS rate information, including inspection dates, report numbers, and sufficient detail to explain how the rate was calculated and whether the required sample size was met. The SI must also have evidence of at least one interstate trip by the carrier within the last year; this trip evidence need not be one of the inspections used in computing the OOS rate.

Example*

The following inspections had VM OOS violations:
1. Date: Report number

The following inspections did not contain VM OOS violations that contributed to the OOS rate:
1. Date: Report number

Enforcement

When an NOC, NOV or LOPV is initiated due to the OOS rate for vehicles under a motor carrier's control exceeds 34.0% (Factor 4 of the safety fitness rating methodology is impacted), the SI shall cite 49 CFR 396.3(a): "Failing to ensure that all vehicles under a motor carrier's control are systematically inspected, repaired, and maintained."

If the SI is not seeking to issue an NOC, NOV or LOPV the violation of 49 CFR 396.3(a) should not be cited in 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 the minimum number of required vehicle inspections cannot be completed. If this happens, the reason the minimum sample was not met must be explained in the Investigation Report/AIM Narrative. It must also be explained in the Investigation Report/AIM Narrative if the required sampling is exceeded beyond the number set forth in the chart above.

Vehicles to Select for Inspection for OOS Rate for the Factor 4 Rating

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 should be selected.

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. It will need to be verified whether 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

These inspections must not be included 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

The vehicle inspections should be conducted using the North American Standard Inspection. However, before conducting the vehicle inspections, the assistance of a driver, mechanic, or other individual capable of operating the controls of the vehicle should be requested. When conducting 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, An explanation will need to be provided in the Investigation Report /AIM Narrative 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 the 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 OOS violations are discovered during the vehicle inspections, the appropriate motor carrier official must be informed. The individual will need to be advised that the vehicle(s) cannot be legally operated until the necessary repairs are made. The OOS Order (Form MCSA-64) must be placed on the OOS vehicle.

After Conducting the Vehicle Inspections

A SafeSpect report will need to be generated for each inspection conducted during an investigation. The inspection report should be uploaded through SAFETYNET into MCMIS. If violations are found during the inspections and noted on the SafeSpect report, those violations cannot be included on the Violation Tab/AIM Violations.

Steps to Take if Unable to Meet the Minimum Sample Sizes for Part 396

There will be instances where the minimum number of required documents and/or vehicles cannot be reviewed. If this happens, the reason the sample was not met must be explained in the Investigation Report/AIM Narrative. It must also be explained in the Investigation Report/AIM Narrative if the required sampling is exceeded 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:

- The carrier operates motorcoaches;

- 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
- 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 Division Administrator 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, the reasons must be fully explained in the Investigation Report/AIM Narrative.

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 the minimum number of required vehicle inspections cannot be conducted. If this happens, the reason the minimum sample was not met must be explained in the Investigation Report/AIM Narrative. It must also be explained in the Investigation Report/AIM Narrative if the required sampling is exceeded 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 manufacturers 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 instpections, 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 carriers 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, a visit to the facility may have to be conducted. 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 was involvement with motorcoaches established?
- Is any specialized training held in motorcoach or commercial vehicle maintenance?
- Does the program account for the type of service provided (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 Motor 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 esperience. 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 A. Questions should include:

- How was inspector status attained?
- What previous experience is held in inspecting motorcoaches?
- What reference materials are used when conducting an inspection?
- Is familiarity with Appendix A established?
- Ask questions specific to Appendix A.
- Review maintenance records.
- What specialized training or certification is held relating to inspecting motorcoaches?
- Have documentation demonstrating the training as an inspector been provided to the employer?

The following would serve as proof of a periodic inspection:

- A copy of the inspection and results conducted under **Appendix A** 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

The 12-month period prior to the investigation or the period since the last investigation needs to be covered.

Determining which Maintenance Files to Review

Maintenance files will need to be selected 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

The sampling requirements for the minimum number of maintenance files to review should be followed as set forth in the sampling table found in the link 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 factors to consider while reviewing maintenance documentation;

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [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. p>

<u>See FR Vol.79, No. 243 / Thursday, December 18, 2014 / 75449</u>

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.

Additional DVIRs should only be requested 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, additional DVIRs for the vehicle must be requested 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. The number of DVIRs containing a defect to be reviewed should be selected by following the 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 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 Unable to Determine the Vehicle for a Particular Shipment or Movement

Occasionally, it may be impossible, 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 if the vehicle cannot be identified on a specific movement through the use of motor carrier, shipper, or State records, the violation can still be documented 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 System Procedures

Once the investigation of compliance with Part 396 has been completed, the following guidelines should be used to assist in the completion of the Violation Tab/AIM Violations.

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), it should be confirmed 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, new violations may be discovered, but in most cases, available data will be examined and the roadside violations that led to the deficiency will be reviewed. In those cases in which the carrier meets or exceeds the SMS threshold and no new violations are identified 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 Violation Tab/AIM Violations 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. The appropriate 392.2 option must be selected in alignment with the BASIC; for example, the “392.2 Operating a vehicle in violation of local/State laws - Unsafe Driving” option must be selected when recording violations associated with the Unsafe Driving BASIC. If there are 392.2 violations related to multiple BASICs, only one instance of 392.2 must be recorded for the BASIC in which the most significant process breakdown was identified. The other 392.2 “1 of 1” eligible violations should then be addressed 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, it is found 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, it is determined 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. Record 392.2 operating a vehicle in violation of local/State laws- Unsafe Driving - “1 of 1” - in the Violation Tab/AIM Violations . However, both process breakdowns could be addressed in the recommendations.

1.3.14.8.7.3 Part 393 & 396 - Process Breakdowns and Remedies – SMC

Once the violations relating to Parts 393 and 396 have been discovered, the carrier should be assisted in becoming more compliant to reduce the risk of violations becoming bad habits that contribute to crashes. To accomplish this, the SMC should be applied 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/AIM Violations (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 the violations discovered have been entered into the Violation Tab/AIM Violations and a decision has been made to initiate an enforcement action for the Part 396 violations, the following guidelines should be used 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, an NOC will normally be issued.

Parts 393 & 396 - Documentation

Documenting an Enforcement Case for Part 396

The documentation to initiate an enforcement action should be obtained. 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 the discovered violations are listed below.

- Corresponding shipping papers

- RODS
- Daily vehicle inspection reports
- Vehicle registration.

This list is not meant to limit the use of specific documents, as there are many motor carrier documents that could be used to support the violation; therefore, other documents may be used to prove the 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 “OOS” until all repairs required by the “OOS Notice” have been satisfactorily completed.
- 396.9(c)(2) - Operating an "OOS" 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 Evidence Collection and Retention Requirements

Evidence must be collected and retained to support all violations cited in an NOC, NOV, or LOPV, as well as any violations or calculated rates that adversely impact a regulated entity’s proposed safety rating or SMS scores. This includes:

- All acute violations
- Critical violations discovered at a 10% rate (violations discovered equal to at least 10 percent of documents checked).
- For critical violations exceeding the 10% threshold, SIs must document 1 or 2 additional instances to ensure the pattern is well-supported.
- Any Vehicle Out-of-Service (OOS) rate1 calculated at 34% or higher that contributes to a proposed or final adverse safety rating.
- The Accident Factor, where the rate (using recordable accidents not determined to be non-preventable) results in an Unsatisfactory Factor 6 rating for any investigation resulting in an adverse safety rating.

Enforcement Action Retention and Upload

As soon as practical after the investigation close-out, the Division office must upload enforcement action documentation to the Enforcement Document Management System (EDMS).

- If the compliance investigation report is emailed or mailed to the regulated entity, proof of delivery must be uploaded to EDMS.
  - An example of "proof of delivery" is a download of a United Parcel Service (UPS) tracking, confirming delivery to a motor carrier's principal place of business.

All enforcement-related documentation must be uploaded, including (but not limited to) evidence, legal sufficiency checklists, and the final NOC, NOV, or LOPV served.

1.3.16 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

An investigation resulting in a proposed adverse rating should be thoroughly reviewed for legal sufficiency by using the following

1.3.16.1 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.

When is it used? An NOC should be issued when any of the following are evident:

- Persistent or pattern of violations discovered during any type of investigation and warrant formal civil penalty action.

- The motor carrier has neither corrected the violations nor met the other terms of a prior NOV.

Note: A LOPV 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 LOPV. 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 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.
- If a motor carrier took corrective action in response to a planned investigation or has note effectively improved compliance.
- An NOC, NOV or LOPV may also be warranted for violations of non-Acute or Critical regulations, or Critical violations with less than 10% frequency, if an SI determines the action will correct noncompliance or deter future violations that could contribute to a crash.

What else do I need to know?

- The SI should refer to the current e-FOTM for process steps on NOC development and issuance.

1.3.16.2 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 motor carrier has a history of not sustaining the correction of violations.
- The motor carrier has previously been cited for the same violations in the previous six years.
- The motor carrier was the subject of prior enforcement action for the same violation in the previous six years.
- The violation(s) involve falsifications.
- The motor carrier has a proposed or final Unsatisfactory Safety Rating.
- The motor 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 the investigation close-out, the SI provides the motor carrier with the results of the investigation, discusses any cited violations and reviews the motor carrier's Process Breakdowns and Remedies to effectively help improve the motor carrier's safety posture. The closeout is also 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 motor 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 SIs engage the motor carrier in discussing what he/she thinks the issues and potential solutions are to ensure motor carrier buy-in and commitment to lasting sustainable compliance. If the investigation was conducted offsite, the SI should conduct the close out offsite, though in some cases if deemed necessary or 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 motor carrier.

After the investigation report has been reviewed for quality and legal sufficiency by the Division Office and any other required reviewers (e.g. Service Center), SIs may conduct the closeout with the motor carrier representative(s) in-person at the motor carrier's place of business DA exercise discretion on conducting off-site closeouts based on extenuating circumstances such as difficult travel considerations and/or time constraints. Investigators will complete the closeout discussion with the motor carrier representatives by sending a copy of the full investigative report (including investigation narrative) by trackable mail, no signature required, to the motor carrier or by alternate method (fax or email - upload confirmation receipt to AIM or EDMS).

The closeout should be conducted with the highest-ranking carrier official available either in-person or virtually depending on the scope of the investigation. The highest-ranking carrier official must be aware of the closeout and send a copy if they are not present.

1.4.2 Overview of the Investigation Closeout

Compliance Investigation Report Details SIs must provide the regulated entity with the full compliance investigation report at the investigation closeout, which includes the SI narrative. The report must establish the facts of the investigation and specific details while excluding certain sensitive, pre-decisional, or identifying information.

- **Required Inclusions:** The report must contain factual details about the overall investigation, a description of each required sample selection (e.g., drivers, vehicles), and an explanation of any deviation from the requisite sampling numbers. It must also include violation details such as the identified process breakdown, statements made by the regulated entity, discussions about potential (reincarnated carrier) affiliations, and a list of evidence and documents provided at the investigation close-out.
- **Strict Exclusions:** The report should not contain complainant identification information, personally identifiable information (PII)3 (not already provided by the regulated entity), or potential reincarnation investigation information. It must also exclude descriptions of legal advice from an FMCSA attorney, pre-decisional discussions about enforcement discretion, comments intended for future investigators, and opinions.
- **Accident Preventability:** SIs must explain in the report if any recordable accidents were removed from the Accident rate calculation due to a finding of "not preventable" by the DA or designee. SIs should independently assess accident preventability rather than accepting only the Crash Preventability Determination Program's (CPDP) determination. If there is a different determination from CPDP, the Division office must notify the CPDP team by email at FMCSAcrashes.preventability@dot.gov.
- **Accident Documentation:** For each included accident, SIs must document the date, driver, crash type, and details including tow, citation, preventability assessment, and other relevant facts. Sufficient detail must be included to establish that each accident counted

meets the definition of a recordable accident (e.g., explaining whether a tow was required due to disabling damage per 49 CFR 390.5T).

Compliance Investigation Notes Information that is excluded from being placed in the compliance investigation report must instead be documented in the “Notes and Documents” section of the Activity Center for Enforcement (ACE). These entries must be linked to the primary DOT record, not the assignment record.

- SIs should review the “Notes and Documents” section in ACE during pre-investigation preparation.
- The FPS, FOS, and DA must always check this section as part of the compliance investigation review process.
- ACE notes must not be provided to the regulated entity at the investigation close-out.
- Because these notes might be disclosed through a Freedom of Information Act (FOIA) request or in litigation, all entries must remain organized and professional.

Upon completion of an investigation, document the following for acute or critical violations, regardless of whether enforcement action was taken:

The decision to take or not take enforcement must be clearly explained in the investigation report.

Compliance Investigation and Enforcement Action Approval Process SIs must not close out any compliance investigation until it has been reviewed and approved by all required reviewers.

- **Adverse Safety Ratings or Planned NOC/NOV/LOPV:** If the compliance investigation results in a proposed or final adverse safety rating or NOC, NOV, or LOPV, it must be reviewed and approved or released by the Service Center enforcement staff in accordance with the 10% legal sufficiency review sampling requirement.

Compliance Investigation Timeframes To ensure investigations are completed within a reasonable timeframe and planned enforcement actions commence as soon as possible, specific timeframes apply from either the date identified on the high-risk list, investigation start, or investigation close-out.

- For motor carriers identified as “high risk” in SMS, the total process from identification on the list to the close-out of an investigation must not exceed 90 days.
- For all other types of investigations, absent unusual circumstances, the total process should not exceed 120 days from the compliance investigation start date.
- For all other types of investigations, absent unusual circumstances, the total process should not exceed 120 days from the compliance investigation start date.
- Division-level reviewers must submit proposed enforcement actions to the Service Center through CATS as soon as possible to meet these timeframes.
- For State SIs, the Division office must facilitate any feedback or revisions with the Service Center.

- Once the Service Center or attorneys have approved or released the enforcement action, the Division office must issue the final enforcement action and close out the investigation within 30 days.
- The Regional Field Administrator (RFA) or Field Administrator (FA) may implement joint procedures for borderless investigations or neighboring reviews to manage workload. If timeframes are not met, the Division should consult with the Service Center.
- During the Service Center review period, any violations that occur should not be included in the investigation but addressed in a subsequent intervention, unless a significant crash occurs requiring consultation with enforcement staff.

Compliance Investigation Closeout At closeout, SIs must provide the motor carrier with the compliance investigation report, including the SI narrative. Certain forms of evidence must be disclosed, while specific agency documents and identifying information must be withheld.

Documents to Provide: SIs must provide Witness Statements (unless subject to exclusions), Records of Oral Interviews, and evidence used to support a violation that the motor carrier did not provide or have access to (e.g., medical review officer notes, positive drug or alcohol tests, driver vehicle examination reports with inspector notes).

PII Redactions: SIs must consult with the Service Center (or State attorneys, for States) about redactions for PII before the investigation close-out.

Documents to Exclude: SIs must not provide ACE or SI Notes, exhibit cover sheets, checklists, the Evidence Retention Template, the NOC continuation page, or Hours-of-Service worksheets.

Conditional Exclusions: Medical long forms must not be provided unless discussed with a Service Center attorney. The name or contact information of any employee who filed a complaint in the National Consumer Complaint Database, or provided information supporting a violation, must be withheld unless discussed with an attorney or the employee provided written consent.

Even though excluded at the investigation close-out, any documents prepared by FMCSA personnel might be disclosed through litigation or FOIA, so they must be organized and professional.

Table of Violations The TOV, also referred to as Table 1 in a compliance investigation and Table 2 in an NOC or NOV, lists violations that affect a motor carrier's safety rating and identifies discovered instances of Acute and Critical violations and any other violation where enforcement is being initiated. The evidence package submitted with the enforcement action must include documentation for every violation listed in Table 1 and Table 2.

- During the compliance investigation closeout, Table 1 must be attached to the investigation report, if applicable.
- Table 1 must list and identify: Acute violations, Critical violations, any discovered deficiencies affecting a motor carrier's safety rating, and any other violations for which an NOC/NOV is being initiated.
- As part of the NOC/NOV process, a separate Table 2 must be created and attached.

- Table 2 must list and identify all violations resulting in a civil penalty and all violations relied on to support the extent calculation for any violation charged.

Enforcement Action Retention and Upload As soon as practical after the investigation close-out, the Division office must upload enforcement action documentation to the Enforcement Document Management System (EDMS).

- If the compliance investigation report is emailed or mailed to the regulated entity, proof of delivery4 must be uploaded to EDMS.
- All enforcement-related documentation must be uploaded, including (but not limited to) evidence, legal sufficiency checklists, and the final NOC, NOV, or LOPV served.

The SI must review the findings and recommendations in the closeout with the motor carrier:

- Acknowledge what the motor 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 motor 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 motor carrier's specific process breakdowns and the reason why the SMP is failing.
- Discuss potential remedies. Confirm that the motor carrier understands the potential remedies to the process breakdowns identified.
- SIPs customized to the carrier: Discuss with the motor 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 motor carrier view compliance as possible. The Mandatory Recommendations should be discussed with the carrier.
- Describe any documents/evidence provided to the motor carrier at close-out in the SI narrative.

Upon completion of the closeout with the motor carrier, the SI finalizes the investigation report to include a narrative summary of findings and recommendations. Following authorization by the FPS, FOS or DA, this report is automatically uploaded to MCMIS if the investigation was conducted using AIM. 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 final investigation report and/or enforcement action is approved, the SI should contact the motor carrier official (the highest-ranking motor carrier/shipper official in the session) and schedule the investigation closeout. The delivery method of the investigation report and/or enforcement action should be pre-determined based on whether it was an on-site or off-site investigation. The investigation report can be provided to the motor 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 motor 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 of the investigation 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.

When performing an Offsite Investigation, some motor 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/AIM Narrative 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 Motor 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.

1.4.5 Compliance Investigation Closeout

The investigation should be conducted with the highest-ranking company official. If the motor carrier engages a consultant, SI may not conduct the closeout solely with the consultant. When a consultant is included in the closeout meeting at the motor carrier's request, the investigation report must be provided directly to the company official.

For Offsite Investigations, the SI should closeout offsite.

For Onsite Investigations, the SI should conduct the closeout meeting with the highest-ranking motor carrier representative(s) in person at the motor carriers' PPOB. However, the SI may, with the approval of the DA or designee, conduct the closeout off-site based on extenuating circumstances such as travel or time constraints.

1.4.5.1 Completion of AIM Narrative After Closing Out the Investigation

Legal Sufficiency Checklists and Document Organization.

To ensure efficient reviews and approvals at the Division and Service Center level, SIs should complete the most current legal sufficiency checklist and prepare enforcement actions in accordance with the Document Organization Guide under the following circumstances:

- Adverse Safety Ratings: When a compliance investigation results in a proposed or final adverse safety rating, the checklist verifies the evidence sufficiency of each element impacting the rating. The completed checklist should be submitted for Division and Service Center-level review and approval before the investigation close-out, along with the investigation report and evidence.
- Federal SIs use **Federal Compliance Investigation with Adverse Safety Rating and Evidence Retention Checklist**; State SIs use **State Federal Notice of Claim Checklist and State Evidence Retention Template**.
- Planned NOC/ NOV/LOPV: When planning an enforcement case, the checklist verifies the evidence sufficiency of each element of each violation. The checklist should be submitted for review and approval before close-out, alongside the enforcement case, investigation report, evidence, and Uniform Fine Assessment (UFA) report.
- Federal SIs use **Federal Notice of Claim and Evidence Retention Checklist**; State SIs use **State Evidence Retention Template and State Notice of Claim Checklist**.

The Document Organization Guide establishes a national standard for organizing these documents to enhance consistency, uniformity, and efficiency.

Note: The checklist only provides examples of evidence that might be used to prove the required elements for each violation; SIs may need to identify other supporting evidence to support the violation. If an SI cannot obtain all evidence needed to support each element of the violation, they should complete either a Written Statement or Record of Oral Interview form detailing the steps taken to obtain missing evidence and motor carrier responses. This statement may also support the issuance of a Demand Letter. See page 12 of this policy for more information on using Written Statements and Record of Oral Interview forms.

File Submissions and Naming Convention

If submitting as a single file (PDF or ZIP), the name of the files should follow:

DOT# - Carrier Name - CI (proposed rating) and/or Case number - Date of submission or update (mm-dd-yy)

e.g. 123456 – ABC Inc – CI Conditional – 11-05-2025

123456 – ABC Inc – CI Conditional – IL-2025-1000-US0999 – 11-05-2025

For each file contained within a zip file or if submitting files / exhibits separately, the name of the files should follow:

DOT# - Carrier Name – Name of Document – Date of submission or update (mm-dd-yy)

e.g. 123456 - ABC Inc – Numbered Exhibits – 10-12-25

123456 - ABC Inc – Exhibit 1-1 – 10-29-25

e.g. USDOT number. motor carrier name_CI – Date (submission or update)

USDOT number. motor carrier name_NOC - Date

USDOT number. motor carrier name_CI evidence - Date

USDOT number. motor carrier name_enforcement case - Date

USDOT number. motor carrier name_UFA - Date

Note, CATS will be used as a temporary work-around until this process can be integrated into FMCSA IT systems.

1.4.5.2 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.

1.4.6 Investigation Report Final Reviews

Review Roles and Responsibilities

1. Division-Level Review and Approval
   - Division-level reviewers (FPS, FOS, and DA) must conduct a legal sufficiency review of compliance investigations resulting in adverse ratings, critical/acute violations, or any NOC, NOV, or LOPV.
   - Reviewers must use the appropriate checklist or follow the evidence collection and retention standards in this policy to verify evidence supports each element of each violation.
   - A quality review of all compliance investigations must be conducted before close-out.
   - Upon approval, the DA (or approved designee) must upload the enforcement action to CATS.
2. Service Center-Level Review and Approval

- Service Center enforcement staff (Enforcement Program Specialist, Manager, or Director) must review enforcement actions using the appropriate checklist or the evidence collection and retention standards in this policy.
- Staff will sample up to 10% of compliance investigations resulting in adverse ratings and NOCs/NOVs/LOPVs for legal sufficiency.
- Separately, the Chief Counsel's Office (CCE) will ensure at least 10% of all agency enforcement actions are reviewed by an attorney. These percentages may be subject to change based on resources, performance, or needs to review additional enforcement actions types.

Enforcement Actions Returned for Correction

- Substantial Corrections: Actions that require re-review by the Service Center or CCE to receive final approval (e.g., inaccurate UFA calculations, insufficient evidence for a violation element, missing file components, or non-factual descriptions). The Division office must complete all corrections before resubmitting the enforcement action to the Service Center for approval.
- Minor Corrections: Actions that may not need re-review (e.g., spelling/grammar errors, address discrepancies explained in the narrative, or removing subjective opinions). The Service Center may approve the action with the expectation that the Division will complete the corrections prior to issuing the enforcement action and investigation close-out.

Correction Timeframes

Initial Service Center review should be completed in 3 working days from the date it is submitted into CATS.

- If returned to the Division office, corrections must be specified in writing.
- The SI or Division-level reviewers should complete corrections within 5 working days from the date of return and resubmit.
- The re-review should be completed in 3 working days from the date of CATS resubmission.
- For State SIs, the Division office must facilitate all corrections and re-reviews with the Service Centers.

1.5 Stage 5-Post Investigation Intervention (Enforcement Manual)

Post-Discovery Tools (**2.0 Enforcement Manual**)

Enforcement Manual

For

Electronic Field Operations Training Manual (eFOTM)

Federal Motor Carrier Safety Administration (FMCSA)

U.S. Department of Transportation

2.1 Introduction

Once the Federal or State Safety Investigator has completed the investigation or inspection and has entered any discovered violations into the appropriate investigative or inspection system, they should determine whether an enforcement action is warranted to address the motor carrier's noncompliance. The decision to initiate an enforcement action through a civil forfeiture proceeding is one of the most serious elements used by FMCSA to induce compliance by a motor carrier. The decision to take an enforcement action should be well founded and justified by evidence obtained during the investigation.

When Enforcement Actions Should be Considered

Enforcement guidance has been removed from procedures to give SIs greater discretion to focus enforcement where performance data reflects that violations could contribute to a crash. SIs must use their best judgment to target enforcement actions in areas with the greatest impact on safety and should focus enforcement in all Parts where Acute or Critical violations are found.

Additionally,

- Acute and Critical violations discovered within an investigation's scope must be cited on an investigation report and documented, regardless of whether the motor carrier took corrective action.
- An Notice of Claim (NOC), Notice of Violation (NOV), or Letter of Probable Violation (LOPV) should be pursued unless the motor carrier demonstrates sustained or substantial corrective action that improved compliance, based on roadside inspections or crash data (e.g., safety measurement scores (SMS) or crashes are declining because of that specific action).
- Even if a motor carrier has taken corrective action, an NOC, NOV, or LOPV may still be warranted if the action was taken in response to a planned investigation or has not effectively improved compliance.
- An NOC, NOV, or LOPV may also be warranted for violations of non-Acute or Critical regulations, or Critical violations with less than 10% frequency, if an SI determines the action will correct noncompliance or deter future violations that could contribute to a crash.

2.1.1 Duty to Review for Legal Sufficiency

In accordance with the 2025 OGC Enforcement Memo, FMCSA enforcement actions must be reviewed for legal sufficiency under applicable statutes, regulations, judicial decisions, and appropriate authorities.

- Evidence must support the assertion of violation(s) before FMCSA can proceed with an enforcement action.
- If evidence is insufficient, the action must be returned for additional investigation/evidence collection, or modified/amended to bring the charges in line with the evidence.

- While it may not be feasible or necessary to consult FMCSA attorneys before initiating every enforcement action, SIs, Federal Program Specialists (FPSs), Field Office Supervisors (FOSs), Division Administrators (DAs), and Service Center enforcement staff have a duty to ensure the basis for an enforcement action is legally sufficient.
- FMCSA attorneys will continue to provide legal input, training, and review of Division Office and Service Center work products as needed, and in accordance with the 2025 Enforcement OGC memo, will review for legal sufficiency and decide whether to continue to prosecute an enforcement action issued without FMCSA attorney review.

2.1.2 Duty to Disclose Exculpatory Evidence

The 2025 OGC Enforcement Memo states that all DOT operating administrations must adopt the principle from Brady v. Maryland, in which the Supreme Court held that the Due Process Clause of the Fifth Amendment requires the government to disclose exculpatory evidence to a defendant. While the decision in Brady only applies to criminal cases, DOT is requiring that this principle apply to all enforcement actions.

- FMCSA must proactively disclose any exculpatory evidence in its possession to the motor carrier without requiring a request.
- Exculpatory evidence is defined as information known by or in the possession of an SI or other agency personnel suggesting that a motor carrier did not commit a violation, should not be charged, or that the penalty should be reduced or eliminated.
- While exculpatory evidence might benefit the motor carrier, its existence does not necessarily mean a violation cannot be charged. It is simply a piece of evidence considered by a Decisionmaker alongside all other evidence. Some examples of evidence that should be disclosed because it might be considered exculpatory include:
- MRO notes showing inability to reach a driver to notify them of a positive drug test, when taking enforcement against the driver for performing safety-sensitive duties after testing positive.
- Notes or statements that a motor carrier made claiming records of duty status (RODS) “are in Mexico,” when cited for failing to retain RODS.
- Conflicting roadside inspections for the same commercial motor vehicle, where some show a combined gross vehicle weight rating (GVWR) of 26,001 or more pounds and others show less than 26,000 pounds.
- An electronic logic device (ELD) provider telling an SI that the motor carrier reported a malfunctioning ELD, when taking enforcement for failing to prepare RODS using the appropriate method.

- Evidence of corrective action, such as a consortium informing the SI during the investigation that the motor carrier has enrolled in drug and alcohol testing program.

FMCSA meets its obligation to provide potentially exculpatory evidence to a motor carrier by providing all evidence not obtained from or possessed by the motor carrier at the close-out of the investigation, and with any issued NOC, NOV, LOPV, or investigation report.

2.2 Enforcement Process

2.2.1 Initiating an Enforcement Action

2.2.1.1 Individuals who Can Initiate an Enforcement Action

SIs can initiate an enforcement action based on an investigation and roadside inspection. 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 IT 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 an investigation and roadside inspection , 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. Consider what enforcement action will induce sustained correct noncompliance or deter future violations that could contribute to a crash.

Enforcement actions through a civil forfeiture proceeding is more effective in inducing 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 or has demonstrated sustained or substantial corrective action that improved compliance, based on roadside inspections or crash data (e.g., SMS or crashes are declining because of that specific action).

2.2.1.4 The Following Can Be Subject to Enforcement Action

Enforcement actions can be initiated against any regulated entity subject to the FMCSRs such as 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*

Enforcement action should be pursued for serious violations such as Acute and Critical Violations. If enforcement is not taken, consultation must be made with a Federal Program Specialist or Field Office Supervisor or Division Administrator before closing the investigation and provide an explanation in the investigation report.

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 Behavioral Analysis Safety Improvement Categories (BASIC) requiring an investigation.
- Violations of **Critical** regulations are those which relate directly to the motor carrier's management and/or operational controls and are indicative of breakdowns in a motor 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*

- An NOC, NOV, or LOPV should be pursued unless the motor carrier demonstrates sustained or substantial corrective action that improved compliance, based on roadside inspections or crash data (e.g., safety measurement scores (SMS) or crashes are declining because of that specific action).
- Even if a motor carrier has taken corrective action, an NOC, NOV, or LOPV may still be warranted if the action was taken in response to a planned investigation or has not effectively improved compliance.
- An NOC, NOV, or LOPV may also be warranted for violations of non-Acute or Critical regulations, or Critical violations with less than 10% frequency, if an SI determines the action will correct noncompliance or deter future violations that could contribute to a crash.
- If still unsure, ask Division Administrator (DA) or designee.

2.2.1.8 *Initiating an Enforcement Action Against a Driver*

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) consider when opting 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 unsure, ask 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 does 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 SI, 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, consult with 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. 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 Division Administrators.

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 whether the cause is related to the violations noted on the review. These should be considered the 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 the 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 the 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.

2.2.1.18 Indicating Corrective Action

If the regulated entity provides corrective action for a violation cited in an NOC, SIs must properly log the timing and details within the UFA system. SIs must give regulated entities credit for any corrective action taken, even if it only partially addresses a violation or does not address all violations cited in an NOC.

- SIs must select the appropriate option from the corrective action taken options in UFA: 1) before the investigation start date, or 2) after investigation start date, but before NOC served.

The submitted corrective action must be annotated in the memo section of the UFA report.

2.2.2 Understanding the Evidence

2.2.2.1 Evidence Collection and Retention Requirements

Evidence must be collected and retained to support all violations cited in an NOC, NOV, or LOPV, as well as any violations or calculated rates that adversely impact a motor carrier's proposed safety rating or SMS scores. This includes:

- All Acute violations.
- Critical violations discovered at a 10% rate (violations discovered equal to at least 10 percent of documents checked).
- For critical violations exceeding the 10% threshold, SIs must document 1 or 2 additional instances to ensure the pattern is well-supported.
- Any Vehicle Out-of-Service (OOS) rate calculated at 34% or higher that contributes to a proposed or final adverse safety rating.
- The Accident Factor, where the rate (using recordable accidents not determined to be non-preventable) results in an Unsatisfactory Factor 6 rating for any compliance investigation resulting in an adverse safety rating.

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, 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 it would need to show it was not coerced, and the facts of the confession must be corroborated. 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, circumstantial evidence should be viewed as links in a chain, which are used to establish a particular fact or violation. If one of the links is missing, it may be impossible to sustain the penalty. Since many cases will be built on circumstantial evidence, it is necessary to ensure that the links are securely fastened.

Exculpatory Evidence - A fact or facts that tend to excuse, justify, or absolve the alleged fault or guilt. It is evidence that is favorable to the driver or motor carrier and can help demonstrate that the individual did not commit the crime they are charged with. Due Process Clause of the Fifth Amendment requires disclosure of exculpatory evidence "material to guilt or punishment" known to the government but unknown to the defendant in criminal cases. Disclosures of exculpatory evidence in all enforcement actions will contribute to the Department's goal of open and fair investigations and administrative enforcement proceedings. These affirmative disclosures should include any material evidence known to the Department's adversarial personnel that may be favorable to the regulated entity in the enforcement action-including evidence that tends to negate or diminish the party's responsibility for a violation or that could be relied upon to reduce the potential fine or other penalties. The regulated entity need not request such favorable information; it should be disclosed as a matter of course.

2.2.2.1.2 The Different Forms of 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 ALJ will decide at trial whether the 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, ALJ 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 the role as an investigator, the following rules for admissibility related to authentication, hearsay, and proof must be met:

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, 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 the 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 the 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, a statement has been taken from 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 and the SI at hearing 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.

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 E-3). 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 from seeking out information that is contrary to already-established train of thought. An open mind will allows to assimilate information more readily and explore alternative theories. There is nothing wrong with having a theory of the case based on the 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 describe a certain event or situation. Never generalize about the subject matter--be specific.

- **Example:** “Describe the accident on June 14, 1999, involving the truck being driven 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:** "It was stated earlier that a grinding noise was heard while braking. Were any defects noticed 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 the 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:** "It was stated that drivers were never required or permitted to falsify their logs, yet no one was checking logs for accuracy and no drivers were disciplined for submitting false logs. Can this be explained?" (Ask a follow-up question after the witness responds).

Helpful Tips - It is always recommended to 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 the interviewer 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 is being stated?" 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 from asking important follow-up questions.

Whether the witness writes out the statement and signs it, the statement is written out and signed by the witness, or a written form of the interview is submitted, is a matter of preference. It is strongly recommended to use a Division/SC approved form that contains information on perjury. Also, it is recommended to 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 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 agency catalog and with local vendors for courses that will allow to gain a more thorough understanding of this subject.

2.2.4.2 Precautions that should be Taken When Preparing a Written Statement for Motor Carriers that Fail to Have Appropriate Records

A statement is a written document recording a witness’s account of facts and events relevant to an enforcement action, serving as official evidence that can be used in legal proceedings under certain circumstances. See attached Written Statement template.

- The statement should be written in the witness’s own words.
- If that is not practicable, the SI can draft the written statement using the witness’s oral account for them to sign, ensuring it is clear, factual, and consistent with their verbal statements.
- The **Written Statement Form** may be used when conducting any enforcement activity.

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, 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. Obtain the driver’s statements, if possible. Again, if the driver refuses to sign the prepared statement, get the 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, take the notes showing the number or approximate number of days the driver had driven for the motor carrier while in violation of Part 391.
- Occasionally, it may be impossible to determine the driver who moved a particular shipment. When the motor carrier has none of the required Part 391 documents and certificates, and cannot identify the driver on a specific movement through the use of motor carrier, shipper or State records, the violation can still be documented 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. Motor carriers have also been known to backdate records. Therefore, it is imperative that the investigation be conducted in accordance with the above guidelines and obtain a written statement, as shown in ***Illustration E-2***.

Oral Interview

An oral interview is a written account of facts that may be used to record SI notes and recollections about statements made by a witness or other interviewees. The Oral Interview form is attached.

- This method should be used when it is impracticable to obtain a signed statement.
- The Oral Interview form may be used when conducting any enforcement activity.

2.2.5 Legal Sufficiency Checklists and Document Organization Guide

To ensure efficient reviews and approvals at the Division and Service Center level, SIs should complete the most current legal sufficiency checklist and prepare enforcement actions in accordance with the Document Organization Guide under the following circumstances:

- **Adverse Safety Ratings:** When a compliance investigation results in a proposed or final adverse safety rating, the checklist verifies the evidence sufficiency of each element impacting the rating. The completed checklist should be submitted for

Division and Service Center-level review and approval before the investigation close-out, along with the investigation report and evidence. Attached are the **Federal** and **State** Compliance Investigation Checklists.

- **Planned NOC/ NOV/LOPV:** When planning an enforcement case, the checklist verifies the evidence sufficiency of each element of each violation. The checklist should be submitted for review and approval before close-out, alongside the enforcement case, investigation report, evidence, and Uniform Fine Assessment (UFA) report. Attached are the **Federal** and **State** NOC Checklists.

The Document Organization Guide attached establishes a national standard for organizing these documents to enhance consistency, uniformity, and efficiency.

Note: The checklist only provides examples of evidence that might be used to prove the required elements for each violation; SIs may need to identify other supporting evidence to support the violation. If an SI cannot obtain all evidence needed to support each element of the violation, they should complete either a Written Statement or Record of Oral Interview form detailing the steps taken to obtain missing evidence and motor carrier responses. This statement may also support the issuance of a Demand Letter. See page 12 of this policy for more information on using Written Statements and Record of Oral Interview forms.

File Submissions and Naming Convention

Upon Division-level approval, the FPS, FOS, or DA must upload the required documents to the Central Action Tracking System (CATS) for review using the following naming conventions: (Note: CATS is a temporary IT solution until integration into FMCSA IT systems is complete.) 7

- **Single File Submissions (PDF or ZIP):** DOT# - Carrier Name - CI (proposed rating) or Case number - Date of submission or update (mm-dd-yy)
  - Example: 123456 - ABC Inc - CI Conditional - 11-05-25
- **Individual Files (Within ZIP or Separate):** DOT# - Carrier Name - Name of Document - Date of submission or update (mm-dd-yy)
  - Example: 123456 - ABC Inc - Exhibit 1-1 - 10-29-25
  - Alternative Formats: USDOTnumber.motor carrier name_CI - Date, USDOTnumber.motor carrier name_UFA - Date, etc.

2.2.5.1 Legal Sufficiency Review Roles and Responsibilities

1. Division-Level Review and Approval
   - Division-level reviewers FPS, FOS, and DA must conduct a legal sufficiency review of compliance investigations resulting in adverse ratings, critical/acute violations, or any NOC, NOV, or LOPV.

- Reviewers must use the appropriate checklist or follow the evidence collection and retention standards in this policy to verify evidence supports each element of each violation.
- A quality review of all compliance investigations must be conducted before close-out.
- Upon approval, the DA (or approved designee) must upload the enforcement action to CATS.

2. Service Center-Level Review and Approval
    - Service Center enforcement staff (Enforcement Program Specialist, Manager, or Director) must review enforcement actions using the appropriate checklist or the evidence collection and retention standards in this policy.
    - Staff will sample up to 10% of compliance investigations resulting in adverse ratings and NOCs/NOVs/LOPVs for legal sufficiency.
    - Separately, the Chief Counsel's Office (CCE) will ensure at least 10% of all agency enforcement actions are reviewed by an attorney.

These percentages may be subject to change based on resources, performance, or needs to review additional enforcement action types.

Enforcement Actions Returned for Correction

- **Substantial Corrections:** Actions that require re-review by the Service Center or CCE to receive final approval (e.g., inaccurate UFA calculations, insufficient evidence for a violation element, missing file components, or non-factual descriptions). The Division office must complete all corrections before resubmitting the enforcement action to the Service Center for approval.
- **Minor Corrections:** Actions that may not need re-review (e.g., spelling/grammar errors, address discrepancies explained in the narrative, or removing subjective opinions). The Service Center may approve the action with the expectation that the Division will complete the corrections prior to issuing the enforcement action and investigation close-out.
- **Correction Timeframes:** * Initial Service Center review should be completed in 3 working days from the date it is submitted into CATS.
    - If returned to the Division office, corrections must be specified in writing.
    - The SI or Division-level reviewers should complete corrections within 5 working days from the date of return and resubmit.
    - The re-review should be completed in 3 working days from the date of CATS resubmission.
    - For State SIs, the Division office must facilitate all corrections and re-reviews with the Service Centers.

2.2.5.2 Investigation Closeout

At closeout, SIs must provide the regulated entity with the compliance investigation report, including the SI narrative. Certain forms of evidence must be disclosed, while specific agency documents and identifying information must be withheld.

- **Documents to Provide:** SIs must provide Witness Statements (unless subject to exclusions), Records of Oral Interviews, and evidence used to support a violation that the regulated entity did not provide or have access to (e.g., medical review officer notes, positive drug or alcohol tests, driver vehicle examination reports with inspector notes).
- **PII Redactions:** SIs must consult with the Service Center (or State attorneys, for States) about redactions for PII before the investigation close-out.
- **Documents to Exclude:** SIs must not provide ACE or SI Notes, exhibit cover sheets, checklists, the **Evidence Retention Template**, the NOC continuation page, or Hours-of-Service worksheets.
- **Conditional Exclusions:** Medical long forms must not be provided unless discussed with a Service Center attorney. The name or contact information of any employee who filed a complaint in the National Consumer Complaint Database, or provided information supporting a violation, must be withheld unless discussed with an attorney or the employee provided written consent. o Even though excluded at investigation close-out, any documents prepared by FMCSA personnel might be disclosed through litigation or FOIA, so they must be organized and professional.

Table of Violations

The TOV, also referred to as Table 1 in a compliance investigation and Table 2 in an NOC or NOV, lists violations that affect a motor carrier's safety rating and identifies discovered instances of Acute and Critical violations and any other violation where enforcement is being initiated. The evidence package submitted with the enforcement action must include documentation for every violation listed in Table 1 and Table 2.

- During the compliance investigation closeout, Table 1 must be attached to the investigation report, if applicable.
- Table 1 must list and identify: Acute violations, Critical violations, any discovered deficiencies affecting a motor carrier's safety rating, and any other violations for which an NOC/NOV is being initiated.
- As part of the NOC/NOV process, a separate Table 2 must be created and attached.
- Table 2 must list and identify all violations resulting in a civil penalty and all violations relied on to support the extent calculation for any violation charged.

Enforcement Action Retention and Upload

As soon as practical after the investigation close-out, the Division office must upload enforcement action documentation to the Enforcement Document Management System (EDMS).

- If the compliance investigation report is emailed or mailed to the regulated entity, proof of delivery4 must be uploaded to EDMS.
- All enforcement-related documentation must be uploaded, including (but not limited to) evidence, legal sufficiency checklists, and the final NOC, NOV, or LOPV served.

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/AIM Violations Recommendations of the Investigation

The following recommendations must be added:

Please note: The violations discovered during this investigation may affect the civil penalty proposed in any subsequent NOC. In addition, to the 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 the 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. The signature is not an admission of the violations identified.

[For cases in which enforcement will be taken]

Attached to this report is 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 during the closeout of the investigation.

2.2.5.3 Preparation of the Enforcement Report

The Following Must Be Remembered About the Computer Software Before Writing the Enforcement Report.

FMCSA software UFA and CaseRite will generally be used to prepare the enforcement report. For best results with data transfer from AIM to UFA and CaseRite, complete all parts of AIM (e.g., Pre-investigation/A, Violation Tab/B and Investigation Report/AIM Narrative) to ensure all data is transferred to the appropriate software application. Ensure, prior to the initiation of the enforcement action, that the latest versions of FMCSA software on the laptop computer. The latest available versions available may be verified 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 AIM, UFA, or CaseRite until contact the system administrator and ensure no data will be lost. After checking with the system administrator, and backing up the files, update the software and restore the files to the computer.**

It is recommended to 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 effectively address the motor carrier’s lack of safety management controls.

2.2.5.4 Violation Table

Violation Table - change to Violation Elements Chart

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/AIM Violations, the enforcement decision is based on the extent of **INTRASTATE** and **INTERSTATE** violations combined. For Example:
    - o **INTERSTATE** violations = 5 discovered of 100 checked (5%)
    - o **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 Controlled Substances/Alcohol Use Testing

Once entered the violations discovered into Violation Tab/AIM Violations and have decided to initiate an enforcement action for the Part 382 violations, 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/AIM Violations 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 confirm that driver submitted himself/herself to an 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

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 violations 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

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.

2.3.1.2 Part 383 Commercial Driver's License (CDL) Standards

Once entered the violations discovered into 49 CFR the Violation Tab/AIM Violations of the Investigation System and have decided to initiate an enforcement action for the 49 CFR Part 383 violations, 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, 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

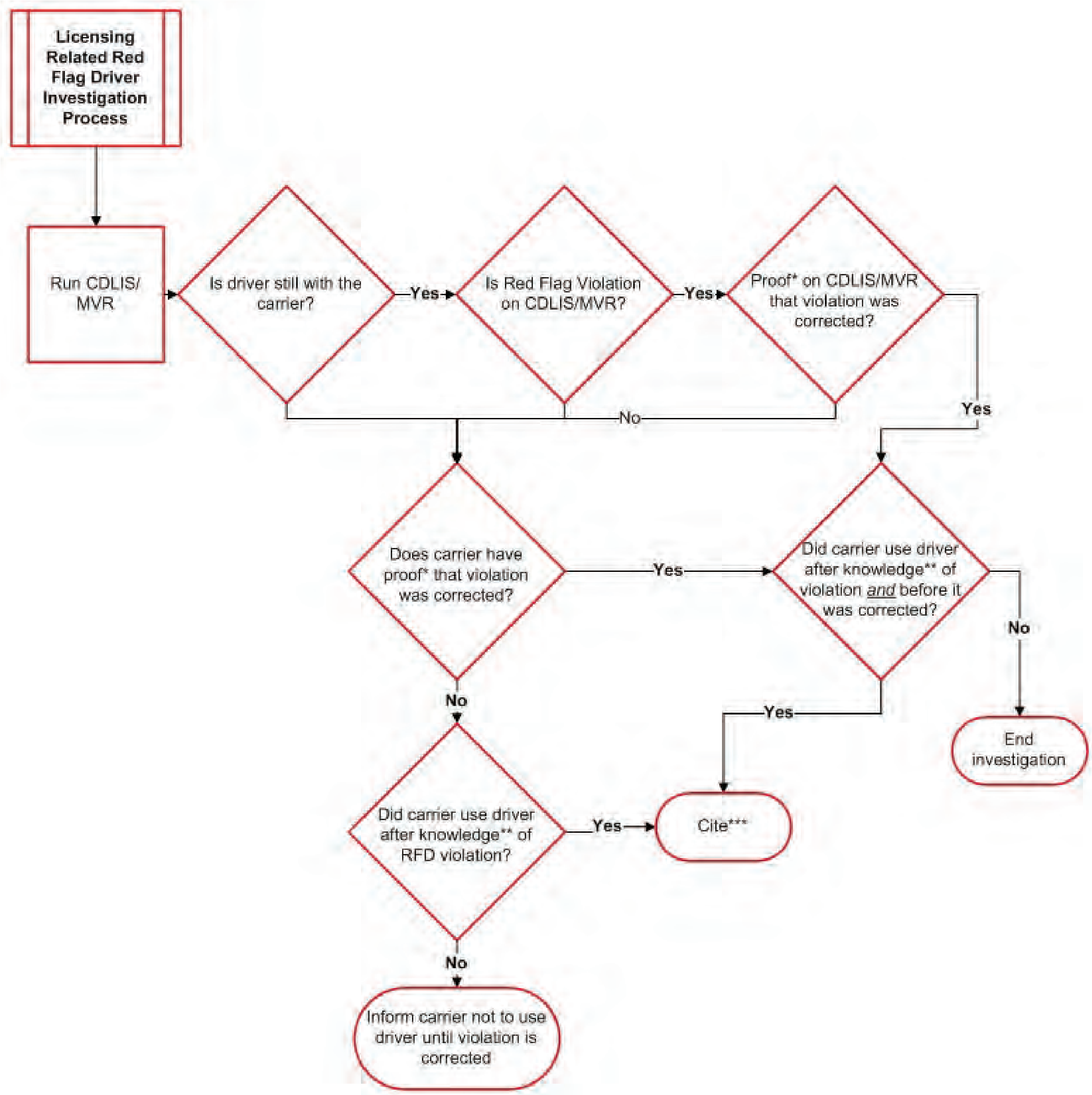
- The Manager should be consulted before pursuing enforcement against the driver, if either a citation had been issued roadside, or the driver is not currently employed by the carrier.
- Enforcement against the carrier:
  - Considered in cases where there is proof that the violation was repeated when 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 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, normally issue a NOC (or NOV in the case of the two violations listed above). If there already was a citation, then 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

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 the use specific documents, as there are many motor carrier documents that could be used to support violation. Other documents may also be utilized to prove 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

[5] **Note:** SafeSpect 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 SafeSpect 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.

[6] **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 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 the use of specific documents as there are many motor carrier documents that could be used to support a violation. Other documents may also be utilize to prove the violation.

2.3.1.4 Part 390 General Requirements

Once entered the violations discovered into Violation Tab/AIM Violations of the Investigation System and have decided to initiate an enforcement action for the Part 390 violations, 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 or 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 the use of specific documents, as there are many motor carrier documents that could be used to support the violation. Other documents may also be utilized to prove the 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 warranted 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

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**

2.3.1.5 Part 391 Driver Qualification

Once entered the violations discovered into Violation Tab/AIM Violations of the Investigation System and have decided to initiate an enforcement action for the Part 391 violations, 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, normally issue an NOC (or NOV in the case of the two violations listed above). If there already was a citation, then consult with the manager before initiating enforcement against the driver.

Part 391 - Documentation

Documents that Should be Gathered to Initiate an Enforcement Action

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 to 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 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 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. Obtain the driver’s signed statement, if possible. Again, if the driver refuses to sign the prepared statement, get 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, take the notes showing the number or approximate number of days the driver had driven for the motor carrier while in violation of Part 391.

- Occasionally, it may be impossible, 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 cannot identify the driver on a specific movement through the use of motor carrier, shipper or State records, 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 to conduct the 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 the 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 AIM 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 the use of specific documents, as there are many motor carrier documents that could be used to support the violation. Other documents may also be utilized to prove the violation.

Part 391 - Enforcement Action Against Drivers

Considering an Enforcement Action Against a Driver

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] SafeSpect 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 SafeSpect 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] SafeSpect 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 SafeSpect 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 Driving Motor Vehicles

Once entered the violations discovered into AIM Violations of AIM 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.

2.3.1.6.1 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 evidence is found 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 the matter should be referred by investigator or manager 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.

2.3.1.6.2 Part 392 - Documentation

Documents that Should be Gathered in Order to Initiate an Enforcement Action

Gather documentation that establishes the following:

- The vehicle used falls within the jurisdiction of Part 392.
- The driver was 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 392 occurred.

Some Important Issues to Remember when Documenting Violations of Part 392

- Speeding must be documented from more than just the RODS. In most cases, a falsified RODS will contain false times and locations in order to avoid the hours limitations. This falsification may simply give only the appearance of driving over the posted speed limit. Thus, it is more likely that the driver backed up his/her RODS to hide driving hours rather than actually driving in excess of speed limits, over a period of three consecutive hours.
- Ensure that the calculated mileage between points A and B of the scheduled run is accurate, and that the run cannot be made without exceeding the speed limits of the local jurisdictions.
- An additional difficulty with documenting Part 392 violations is the fact that we seldom discover a sufficient number of violations to warrant enforcement action. Important considerations:
  - How serious was the violation?
  - What remedial action has the carrier taken to address similar prior violations?
  - What action will be most effective in preventing future violations?

Some Examples of Documents that May be Used to Prove Violations of Part 392

Examples of documents to support the 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.).
- 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 the use of specific documents, as there are many motor carrier documents that could be used to support the violation. Other documents may also be utilized to prove the violation.

2.3.1.6.3 Part 392 - Enforcement Action Against Drivers

Considering an Enforcement Action Against a Driver

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 AIM Violations 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 unafe 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 a 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

<u>Section 222</u>

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.

<u>Recording Unsafe Driving Violation in CaseRite (Federal Enforcement Process)</u>

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 entered the violations discovered into the Violation Tab/AIM Violations of the Investigation System and have decided to initiate an enforcement action for the Part 380 violations, 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

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, 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. Obtain the driver's signed statement, if possible. Again, if the driver refuses to sign the prepared statement, get the 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, take the notes showing the

number or approximate number of days the driver had driven for the motor carrier while in violation of Part 380.

- Occasionally, it may be impossible, 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 cannot identify the driver on a specific movement through the use of motor carrier, shipper or State records, 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 to conduct the 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 the 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 or 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 AIM DQ Worksheet and have motor carrier verify lack of documents.

This list is not meant to limit the use of specific documents, as there are many motor carrier documents that could be used to support the violation. Other documents may also be utilized to prove the violation.

Part 380 - Enforcement Action Against Carriers

Some Important Issues to Remember When Documenting Violations of Part 380

May not initiate enforcement for violations of the entry-level driver training requirements.

Best practice requires to 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 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

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 the employer to be filed in the Driver Qualification file.

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

As part of the Driver Fitness BASIC investigation, the 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, the 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, the 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-Qualification of Drivers

As part of the Driver Fitness BASIC investigation, the 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, the 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 BASIC

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, the 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, the 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, the 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, the 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, the 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, the 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 entered the violations discovered into Violation Tab/AIM Violations of the Investigation System and have decided to initiate an enforcement action for the Part 395 violations, 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, 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 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 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."
- Timecards, 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 en 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 from comparing the RODS for accuracy against time- stamped supporting documents.

Part 395 - Documentation

Documents that Should be Gathered to Initiate an Enforcement Action

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 the discovered violations are listed below.

- Statement from motor carrier official, driver, or other person responsible for compliance with Part 395. 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 to specific documents; there are many motor carrier documents that could be used to support a violation. Other documents may be utilized to prove the violation (i.e., shipper/customer). Documents or State Ports of Entry records may also be used, 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. The 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.

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. 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, it may be impossible 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, a count can still be prepared 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), 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) 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. 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 ([redacted], Electronic Data Guidance.]
- Falsification of RODS typically follows one or more of the following patterns:
  - <u>Showing "off-duty" for a whole calendar day</u> 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.
  - <u>Showing “off-duty” for an 8/10-hour period</u> 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: 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 BASIC

2.3.6.1 Part 387 Financial Responsibility

As part of the Insurance/Other BASIC investigation, the 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 BASIC

2.3.7.1 Part 177-HM Carriage by Public Highway

As part of the Unsafe Driving BASIC investigation, the 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, the 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, the 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, the 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, the 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, the 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, the 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, the 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 BASIC

2.3.8.1 Part 383 - Commercial Driver’s License (CDL) Standards

As part of the Vehicle Maintenance BASIC investigation, the 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, the 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, the 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, the 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, the 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 393/396 - Parts, Accessories, Inspection, Repair & Maintenance

Once entered the violations discovered into AIM Violations of AIM and have decided to initiate an enforcement action for the Part 396 violations, 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, normally issue an NOC.

Part 393/396 - Documentation

Documenting an Enforcement Case for Part 396

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 the discovered violations are listed below.

- Corresponding shipping papers
- RODS
- Daily vehicle inspection reports
- Vehicle registration.

This list is not meant to limit the use of specific documents, as there are many motor carrier documents that could be used to support the violation. Other documents may also be utilized to prove the violation.

A statement from a motor carrier official, driver, or other person responsible for compliance with Part 396. See *Illustration E-2*.

Part 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 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 - 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), 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 SafeSpect, AIM 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 SafeSpect. 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.

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 household goods (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 Clearinghouse 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 motorcoach 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 hours of service (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 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.

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 - 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 information technology (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 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, which is used non-CSA investigations like specialized cargo tank facility reviews (CTFRs). AIM 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, 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.
     - 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 to use while questioning carrier officials and staff, to help diagnose the breakdown in the 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 publicly 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 effect 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.

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 SafeSpect, 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- the Commercial Vehicle Registration Process and the 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 approval is made by the Division Office and released by the Service Center. These tools 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 Deocument 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

2.4.4.2 Denial of Access

Denial of Access refers to circumstances where a motor carrie, 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. Subpoenas are not to be used for the purpose of a demand. There are very rare situations where the use of a Subpoena 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 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 designate 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 Administrator (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 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 CaseRite

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*, AIM, SafeSpect, 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 AIM database which resides on the SI's laptop. The SI then uses AIM 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, complete all parts of AIM, AIM, SafeSpect, and complete the UFA Penalty Assessment. If a change is made to the number checked, number discovered, or penalty amount after the AIM and UFA data has already been transferred into CaseRite, manually update the number fields to reflect the new information. If an enforcement action is initiated from anything other than AIM or SafeSpect, 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 the enforcement case writing process. CaseRite expedites 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 AIM and UFA. It also produces the NOC, NOV, and all other related documents.

2.4.4.3.4 When to Use CaseRite

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-SE.

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.

<u>Requests for Extensions of Time</u>

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.

<u>Review of Response to Order to Show Cause</u>

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.

<u>Response to OSC - Determination that the foreign motor carrier's response does not establish good cause for failing to comply with the demand.</u>

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 AIM Violations 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 Recission of the Order Suspending Operating Authority Registration and 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 completing the documentation process of the enforcement action, 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. 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, 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/AIM Narrative

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 closeout 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.

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 have 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 discretion 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 Preparing the NOC

The Notice of Claim Checklist must be completed and used when preparing and reviewing a NOC to verify the evidence sufficiency of each critical element of each violation.

CaseRite automatically generates the NOC based on additional information gathered from the investigation, and the UFA program, if used.

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 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 maintaind 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

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 an 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 Subpoenas

Subpoenas 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. Subpoenas 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 <u>can be found even during a first-time Section 222-eligible investigation</u>. FMCSA is also establishing a "two-strikes" policy. Two-strikes does differ somewhat from the existing three-strikes policy. Maximum fines will be applied in cases where an <u>acute</u> violation is discovered during a Section 222-eligible investigation within six years of <u>one</u> 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 AIM 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=UnfitOOS 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-SE, 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-S 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 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-SE 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.

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 a Principal 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*)	

<u>Enforcement Documentation</u>

When initiating an enforcement action, the 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.

<u>Service</u>

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

A photographic declaration is a standardized document used to record the details of photographs taken during a compliance investigation. The photographic declaration form is a method by which the SI can attest to the image for the legal sufficiency analysis and any potential legal proceedings.

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

A statement is a written document that records a witness's account of facts and events relevant to an enforcement action. It serves as their official evidence, which when signed, can be used in court or other legal proceedings. The statement should be written in the witness' own words. If that is not practicable, the SI can draft the written statement for the witness using the witness' oral account of facts and events to sign, but must ensure it is clear, factual, and consistent with the witness' verbal statements. A statement may be used when conducting any enforcement activity.

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

An oral interview is a written account of facts that may be used to record SI notes and recollections about statements made by a witness or other interviewees, when it is impracticable to obtain a signed statement. An oral interview form may be used when conducting any enforcement activity.

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

<u>Post-IHOOS Issuance Responsibilities and Considerations</u>

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 approproprite 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

<u>Division Office</u>

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 Violations Elements Chart

FMCSA MC-CCE developed a chart listing each element of every acute and critical violation. See Violation Elements Chart. This chart should be used to guide an investigation and as a reference document when compiling an enforcement action and related documentation.

Safety Audit Manual

For

Electronic Field Operations Training Manual (eFOTM)

Federal Motor Carrier Safety Administration (FMCSA)

U.S. Department of Transportation

3.1 Stage 1-Introduction

3.1.1 Safety Audit General

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 New Entrant 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 AIM 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 warning letters also 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 Materials (HM) Compliance only have their separate customized letters.	Customized based on the EA violations cited.
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) attachments.

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 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 NE Safety Audit (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 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 AIM Narrative 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.

Portal Procedures for Removing the SA Exemption

- 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.
- **AIM Violations** - 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.
- **AIM Narrative** - 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 undergo 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 SA's

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, in particular, 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 to the carrier to ensure that the carrier receives this information in a timely fashion; it is preferred that the letter be faxed to the carrier. The confirmation letter is used to inform the carrier of the place, time, and date of the SA. Refer to *Illustration SA-1* for a sample of a confirmation letter.

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 additional 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 of Principal 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 AIM Narrative 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 FMCSA within 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 principal 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 carrier's 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 carrier's 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 to voluntarily revoke their authority and amend their company operations type by submitting the appropriate forms (OCE-46 and MCS-150, respectively) to FMCSA located
https://www.fmcsa.dot.gov/registration/registration-forms to
https://www.fmcsa.dot.gov/registration/ask-fmcsa

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://www.fmcsa.dot.gov/registration/ask-fmcsa**

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 principal 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 AIM Narrative. If the figure provided is less than 12 months, document this amount in the audit and notate this information in AIM Narrative.

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 = $\dfrac{\textbf{(12 X Miles Operated)}}{\textbf{Months Operated}}$
For this example: **Annual Mileage Estimate =** $\dfrac{\textbf{(12X800,000)}}{\textbf{8}}$ **= 1,200,000**

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 Passengers

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?

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.

Indirect Compensation

An entity that is nonbusiness, nonprofit, or not-for-profit, is nevertheless engaged in for-hire passenger transportation when it receives compensation for such transportation. Compensation may come in many forms including donations, gifts, gas money, offerings, etc. received for transportation.

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 include churches, civic organizations, scout groups, and other charitable organizations that operate buses for the transportation of their respective groups. **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.

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 Organized, Sponsored and Paid for by the School	Extracurricular School Trips 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)**[1] which is also known as a motorcoach.

BACKGROUND: New applicants for interstate operating authority who want to provide passenger transportation services must certify[2] 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)

[1]An OTRB is a bus characterized by an elevated passenger deck over a baggage compartment.

[2]The certification is found in Section V of the Application For Operating Authority [Form OP-1(P)].

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://portal.phmsa.dot.gov/HazmatRegistrationSearch/**

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 AIM Narrative 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 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 Traning 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 AIM Narrative 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.

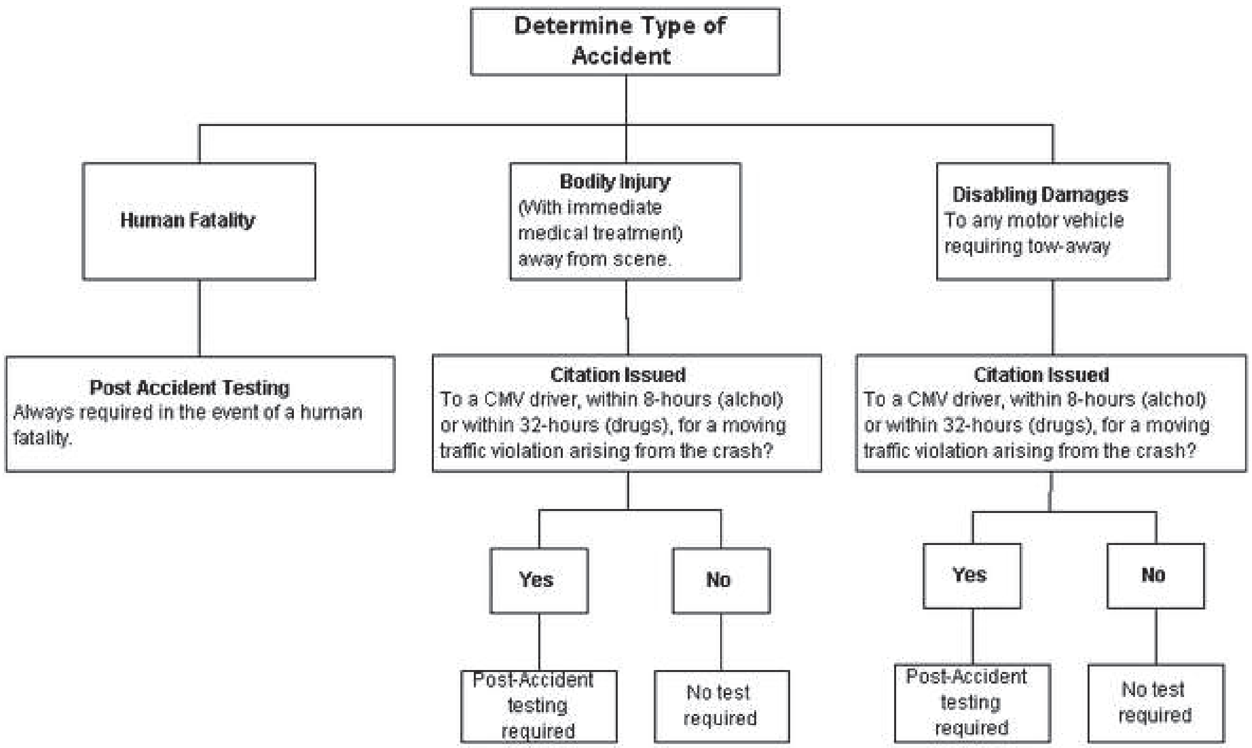
SA Part 382 - Post-Accident Testing

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 proated 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 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

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 = <u>10 Drivers</u> 350 Drivers	Quarter 1 = 10 Drivers Quarter 2 = 30 Drivers Quarter 3 = 300 Drivers Quarter 4 = <u>10 Drivers</u> 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	How many drivers have to be tested in order to meet the 10 percent Alcohol rate for the

the year? The answer is 44, which must be reasonably spread throughout the year.	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 previous 12 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 with a negative result prior to performing a safety-sensitive function.
- 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 AIM Narrative 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
7. 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.	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. 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. 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. 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. 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 decisionmaker 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 decisionmaking 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. 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

- **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.

When reviewing the form MCS-90/90B, 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 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 Manual

If 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)/New Entrant Web System (NEWS) 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 AIM Narrative of the SA why you did not meet your sample. You must also explain in AIM Narrative 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 operator's 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.

As of the National Registry II Final Rule compliance date of June 23, 2025, a paper copy of either a MEC or MER, absent a waiver or exemption, would not be valid evidence of the driver's medical certification.

- **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 certification.
- **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/**AIM Narrative** 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, an 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 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.

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-2017-0004 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 AIM Narrative 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 SafeSpect codes are

	appropriate for reflecting the results in AIM Narrative)

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 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 a New Entrant Safety Audit.

- **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, 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 AIM Narrative 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 inspection 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 inspection report, you **cannot** include those violations on AIM Violations 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 AIM Narrative of the SA.

SA Parts 393 & 396 - Calculating the OOS Rate

Calculating the OOS Rate

[***Change in Ver 10***]

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 all 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). If there are more than three interstate inspections, you should enter all 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

[***Change in Ver 10***]

If all efforts fail to achieve the desired number of Level 1, 2, or 5 inspections, you **should not** calculate the OOS rate, however, you should enter the inspections into the safety audit software. In instances where there are less than three inspections, the safety audit software will not calculate the OOS rate if less than 3 inspections are entered. **If this situation occurs, explain why the OOS rate was not calculated in AIM Narrative 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 AIM Narrative 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 A 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)

Determining the Number of DVIR to be Reviewed During a SA

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.

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, paper RODS.

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.

- ***Electronic Logging Device (ELD) Exemptions*** Under 49 CFR 395.1, drivers who operate using a time record exception (i.e., 100/150 air-mile radius short haul exemption) are not required to keep RODS, and , therefore, are not required to use ELDs.
- Drivers who are required to keep RODS for no more than 8 days during any 30-day period;
- Drivers who conductdriveaway-towaway operations, where the vehicle being driven is the commodity being delivered;
- Drivers in a driveaway-towaway operation in whichthe vehicle being transported is a motor homeor recreational vehicle trailer; or
- Vehicles manufactured befor model year 2000.

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 requirements 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 AIM Narrative, 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 AIM Narrative of the SA why you did not meet your sample. You must also explain in AIM Narrative 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 consumer 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 AIM Narrative 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 AIM Narrative. 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 AIM Narrative.

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 AIM Narrative. In addition, when the copy was mailed, to whom and the tracking number must be recorded on AIM Narrative. Also, if the company phone number is different than the number in MCMIS, the new number should be recorded in AIM Narrative.

3.5 Stage 5-Conclusion of Safety Audit and Completion of AIM Narrative

Illustration SACN-1: AIM Narrative - Comments

Completing AIM Narrative After You've Closed Out the SA

AIM Narrative 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 AIM Narrative (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 AIM Violations),
- For HM carriers/shippers the number of employees required to have HM training (if not already addressee as a violation in AIM Violations),
- 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 approved and uploaded to MCMIS within seven days.

Illustration SACN-1: AIM Narrative - 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 the 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.

SUGGESTED

1. List recordable accidents. Include date, name, tow/injury/fatal, preventable/non-preventable, and brief description of occurrence (lane change, rear end, etc.).
2. Note why motor company profile was NOT obtained.
3. Explain how mileage was determined. Note if mileage was extrapolated because company has been in business less than 12 months.
4. List all partners not listed on Part A, where applicable.
5. Note whether motor carrier was involved in emergency relief efforts or operating under an exemption or waiver.
6. Note statements made by officials relative to correcting the violations or safety system breakdowns discovered during the investigation.
7. Note the subject's attitude toward compliance.
8. List the educational materials provided TO the carrier, and any materials the carrier had on hand.
9. Describe anything that is atypical about the subject's operation.

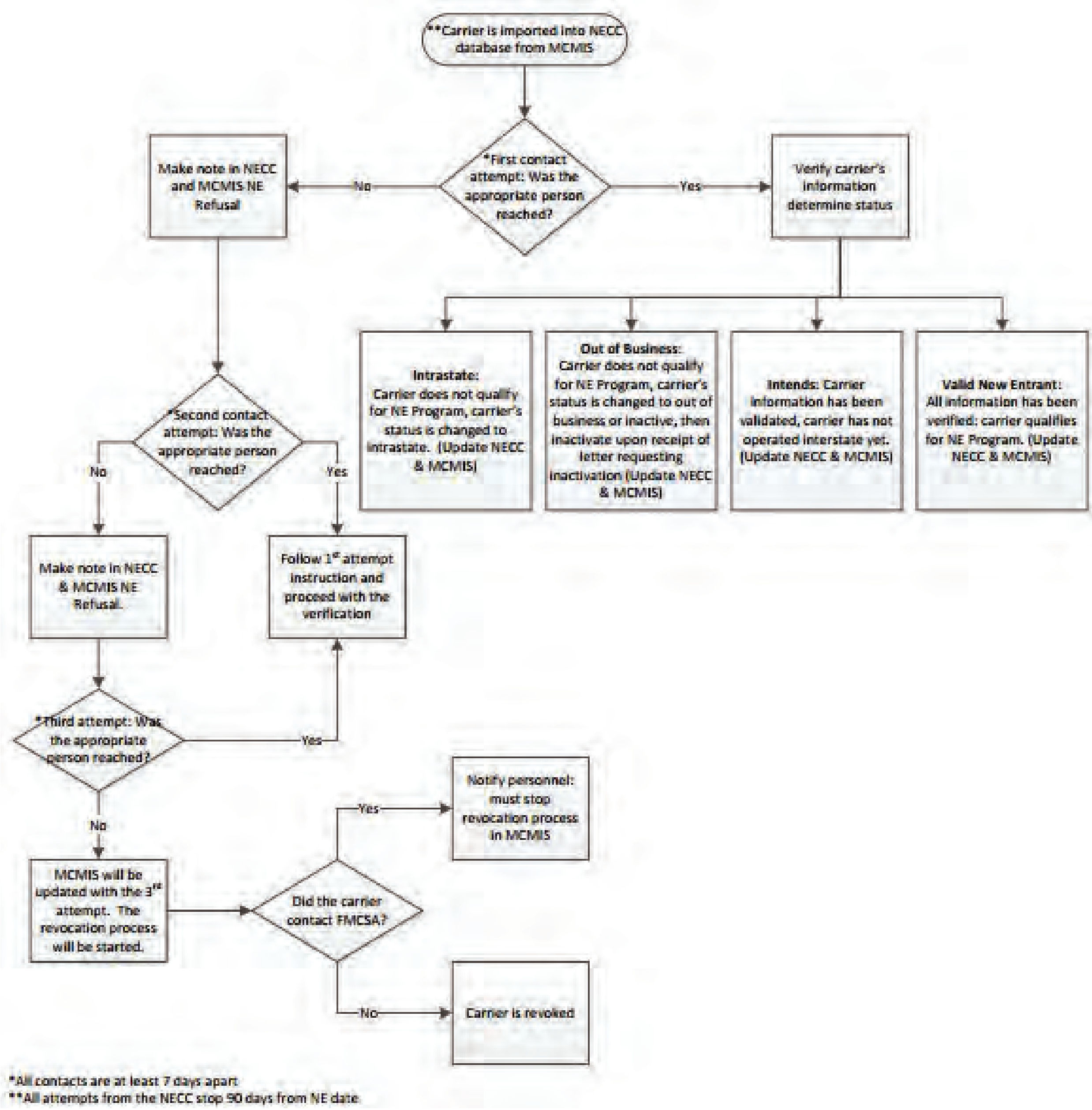
10. Provide the extent and nature of any divisions or business locations of the subject (also see guidance on “Terminals”).
11. Describe the financial condition of the subject and list major assets such as buildings, land, airplanes, other companies, etc.
12. Note the names and titles of any relevant company official or employee who were interviewed, but were not listed on Part A of the Safety Audit.
13. 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.
14. List the names and locations of any relevant documents.

Document L&I, CDLIS, etc. checks when appropriate.

3.6 Illustrations

3.6.1 Illustrations

3.6.1.1 New Entrant Call Center Process



Description of flowchart

3.6.1.2 Illustration SA-1-Confirmation Letter

Download Word document: Safety Audit Confirmation Letter

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 review As applicable, have the following available at time of review.
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 20__ (if applicable). Have available for review a copy of the annual calendar year summary for year 20__ (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 & Household Goods (HHGs) Manual

For

Electronic Field Operations Training Manual (eFOTM)

Federal Motor Carrier Safety Administration (FMCSA)

U.S. Department of Transportation

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 Duty to Review for Legal Sufficiency

Enforcement actions initiated by FMCSA must satisfy the principles of due process, remain lawful and reasonable and must be conducted in a manner that is fair and free of bias. FMCSA has a duty to ensure that enforcement actions are reviewed for legal sufficiency under applicable statutes, regulations, judicial decisions, and appropriate authorities. Evidence must support the assertion of violation(s) before you can proceed with an enforcement action. If evidence is not sufficient to support a proposed enforcement action 1) the action should be returned for additional investigation and/or collection of evidence or 2) the action can be modified, or charges can be amended to bring the enforcement action in line with the evidence.

4.1.3 Duty to Disclose Exculpatory Evidence

In accordance with the Office of General Counsel's Procedural Requirements to DOT Enforcement Actions Memo issued on March 11, 2025, FMCSA has an obligation to provide motor carriers with all potentially exculpatory evidence discovered during a compliance investigation that the motor carrier does not have in its possession. FMCSA will meet this obligation by providing to the motor carrier at the close-out of the compliance investigation and with all evidence not obtained from the motor carrier and the full compliance investigation report.

Exculpatory evidence is information that is known by or in the possession of an SI or other agency personnel that suggests that a regulated entity did not commit a violation or that they should not be charged, or the penalty should be reduced or eliminated. Exculpatory evidence might benefit the regulated entity in an enforcement action.

The existence of potentially exculpatory evidence does not necessarily mean that a violation cannot be charged. It is simply one piece of evidence that a Decisionmaker will consider along with all the other evidence.

FMCSA has an obligation to provide the regulated entity with all potentially exculpatory evidence discovered during a compliance investigation that the regulated entity does not have in its possession. FMCSA will meet this obligation by providing to the regulated entity at the close-out of the compliance investigation and with any issued LOPV all evidence not obtained from the regulated entity and the full compliance investigation report.

4.1.4 FMCSA's Jurisdiction Over Interstate Transportation of HHG

The HHG regulations in 49 CFR Part 375 of the FMCSR 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 Requirments 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.

4.1.5 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. 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(a) and 14901(d)(3) -** Unauthorized brokering.
- **49 U.S.C. 14916 –** Unlawful Brokerage Activities.

4.1.6 FMCSA's Jurisdiction Over Freight Forwarders Operating in Interstate Commerce

FMCSA regulates freight forwarders operating in Interstate Commerce. Freight forwarders subject to FMCSA jurisdiction also come in 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

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 direct resources to address the noncompliance. A tool in the analysis is the Top 100 List found in the NCCDB in the 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 (FMC) 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 Commercial Enforcement Specialists team strategically located nationwide.

4.2.2 Some Reasons to Conduct HHG Investigations

An investigation may be conducted for several reasons to include, but are not 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 might come from other agencies, consumer protection organizations, or referrals from other parts of the Agency must be filed in the NCCDB to ensure those are properly tracked and when resources are available 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.

When 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 State Agencies, 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 may be taking place, you should notify the FMCSA DA, 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 you should be aware of include substantiated evidence of serious and intentional patterns of defrauding consumers by:

1. Using a fraudulent bill of lading, such as making, altering, copying, publishing, or negotiating a 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 load);
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 terms defined in 49 CFR 375.103 and 49 U.S.C. 13102 when you conduct CRs or enforcement actions on HHG motor carriers or brokers. Other terms are defined in various statutes and regulations including, but not limited to:

Advertisement - 49 CFR 375.103 defines advertisement as 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.

Bill of Lading - 49 CFR 375.103 defines a bill of lading as both the receipt and the contract for the transportation of a shipper's HHG. The bill of lading must comply with the provisions of 49 CFR 375.505. It must include 17 items specified in the regulation. A copy of the bill of lading and its attachments must be signed and dated prior to loading. A copy must be provided to the shipper at origin and destination. 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 371.2 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.

Cashier's Check - This term is defined in 49 CFR 375.103. It is 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 - As defined in 49 CFR 375.103, a certified scale is 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 - This term is also defined at 49 CFR 375.102 as 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 - Subpart A of 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 - 49 CFR 375.401 and 49 U.S.C. 14104(b)(1)(C) allow 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 and indicates the shipper and mover are bound by the charges (“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). Final charges are based on actual weight or volume.

All estimates provided to shippers must be in writing and must comply with 49 CFR 375.401, 403, 405, and 49 U.S.C. 14104(b).

Freight Forwarder - This term is defined in 49 CFR 387.401 as 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.

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 tenders payment of 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. Relevant definitions can be found in 49 CFR 403(a)(10), 375.407, and 49 USC 14915. 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 - This term is defined in 49 CFR 375.103 as 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
    - 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.
    - 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 - This term is also defined in 49 CFR 375.103. 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.

Operating Authority - Motor carriers that transport HHG for-hire in interstate commerce are required to register with FMCSA and obtain the appropriate operating authority as required by 49 CFR 392.9a(a)(1) and 49 U.S.C. 13902(a). HHG brokers that have unauthorized broker operations are in violation of 13901(a)/14901(d)(3).

Physical Survey - This term is defined in 49 CFR 375.103. 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 - Reasonable dispatch is defined in 49 CFR 375.103 as the performance of transportation on the dates, or during the period, agreed upon by the shipper and carrier and shown on the bill of lading. For example, 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.

Tariff - Tariff is defined in 49 CFR 375.103 as an issuance (in whole or in part) containing rates, rules, regulations, classifications or other provisions related to a motor carrier's transportation services. The Surface Transportation Board requires a tariff contain specific items under § 1310.3(a) of this title. These specific items include an accurate description of the services offered to the public and the specific applicable rates (or the basis for calculating the specific applicable rates) and service terms. A tariff must be arranged in a way that allows for the determination of the exact rate(s) and service terms applicable to any given shipment. 49 CFR 1310.3 provides for the contents of the tariff for HHG carriers.

4.2.6 General CR (Compliance Review) 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(a)(1) 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 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 Division Administrator (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) or has had any gaps in its authorization;
- 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 may 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. Obtain relevant documents from the complainants. If possible, obtain written

statements from those complainants. In the absence of written statements, you may obtain emails from the complainants or use the oral interview forms (Illustration E-6).

- 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, email, 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, intake or investigation reports.
- Review business records on file with the Secretary of State or other state corporate/business 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 from the Motor Carrier Management Information System (MCMIS).
    - 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. For enforcement, 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. Take screenshots of all webpages needed for enforcement, ensuring the date of the screenshot is available.

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, as they do not operate motor vehicles or employ drivers but are recognized by many segments of the trucking industry as necessary participant 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 and with whom the broker does business.

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, obtain written statements, and copies of any documentation they have available regarding the broker;
- Check with the state attorney general and/or other consumer protection organizations for complaints filed against the broker 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, including determining the principals of the broker;
- 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. Take screenshots of all webpages needed for enforcement, ensuring the date of the screenshot is available.

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 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(s) in effect at the time of the moves that are being reviewed, to ensure the HHG motor carrier is charging consumers and providing services exactly as stated in that document, obtain copies;
- 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 three types:

- **Severe Level I Violations -** These are violations within the FMCCR and statutes that demand immediate corrective actions by the HHG motor carrier or broker. Enforcement action is strongly recommended when a violation is discovered during the review that is identified as a Severe Level I in the following table. In all cases, when enforcement action is not initiated, you should provide an explanation in AIM Narrative 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 or broker 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 AIM Narrative of the CR report.

General Violations - When a violation is not classified as either a Severe Level I or Severe Level II violation under the Uniform Fine Assessment (UFA) system, the violation will be classified as a General Violation.

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 AIM Narrative, enter "HHG" under Special Studies.

If the commercial review is being reported as a Focused Review, you must include, in your AIM Narrative narrative, that it is a Focused Review, and the reason that the investigation is focused. Consider using the AIM Narrative template for complaints when the focus of the NRCR is to substantiate a complaint

4.4.1.1 Compliance Investigation Report Details

SIs must provide the regulated entity with the full compliance investigation report at the investigation closeout.

The report should not contain any of the following information.

1. Complainant identification information

2. Personally identifiable[1] information
3. Potential reincarnation investigation information obtained through other investigation resources and techniques, which may support a potential record consolidation order
4. Description of legal advice by an FMCSA attorney
5. Pre-decisional discussions and recommendations about enforcement discretion
6. Comments intended for future investigators (i.e. safety concerns and investigation techniques)
7. Opinions

The AIM Narrative Report must contain the following information, at a minimum:

- Factual details about the overall investigation
- A description of each required sample selection (e.g., drivers, vehicles)
- Explanation of any deviation from the requisite sampling in the numbers checked
- Violation details
- Statements made by the regulated entity
- Discussions with the regulated entity about any potential affiliations

Evidence and documents to be provided to the regulated entity at the investigation close-out.

[1] Personal Identifiable Information is personal or professional information that can be used to distinguish or trace an individual's identity, such as the individual's name, Social Security number (SSN), biometric records, etc., alone or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.

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 are 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)

You should 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. Obtain relevant documentation regarding notice (letters) provided by L&I of the revocation to the HHG motor carrier or broker for enforcement purposes.

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 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. (General 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. (General violation)

HHG 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.) (General 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. (General 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. (General 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. (General violation)
- Section 14916(a)(2) - Any broker knowingly failing to have the required surety bond or trust fund in effect for $75,000. (General violation)
- **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 366.2 - Failing to have on file Designation of Agent for Service of Process (Form BOC-3) with the Federal Motor Carrier Safety Administration.

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.

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) & Chapters 139 and 149 Statutes

CITATION	TYPE	DESCRIPTION
366.2	**Severe Level II**	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 of one; Subsequent Compliance Reviews - one each instance in which it transported for-hire interstate shipments in violation of Section 366.2.**

387.7(a)	**General**	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 II**	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 II**	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)	**General**	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)	**General**	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)	**General**	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.**
14916(a)(2)/13906	**General**	Unlawful Brokerage Activities (Intentional) - any broker knowingly failing to have a surety bond or trust fund in effect for $75,000
392.9a(a)(1)/14901(d)(3)	**General**	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)(2)/14901(d)(3)	**General**	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.
13901/14901(a)(4)	**General**	Operating without Broker Authority (Property). **Number discovered: One for each transaction.**
13901(a)/14901(d)(3)	**General**	Unauthorized HHG broker operation (Operating without authority).
14916(a)(1)/13904	**General**	Unlawful Brokerage Activities (Intentional) - knowingly providing brokerage services without active authority.

4.4.2.2 Part 370 - Commercial Enforcement - Principles & Practices for the Investigation Disposition of Loss & Damage Claims

4.4.2.2.1 Investigative Procedures

FMCSA's Jurisdiction Regarding 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 CFR 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 49 CFR 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 49 CFR 386.12(c)**

Records to Review for the Applicable Time Period

When reviewing HHG motor 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
11-300	10
301 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.) (Severe Level II violation).
- Section 370.9(a) - Failing to promptly and thoroughly investigate each claim within 120 days or within extension period. (General violation).

Section 379.13 - Failing to retain loss and damage claim records up to one year after settlement. (General 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)	**General**	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	**General**	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 Regarding 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 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, 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(a) - Notification to individual shippers of motor carriers used by HHG brokers.

Section 371.109(b) - Providing a statement to shippers that broker is not a HHG motor carrier.

Section 371. 111(a) - 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 must be maintained before providing written estimates on behalf of the carrier.

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 “MC numbers” only but will be issued USDOT numbers as part of the Unified Registration System (URS) rulemaking.

Procedures to follow to determine if a Broker is in Compliance with Section 371.3

Brokers are required to keep a record of each transaction. These records could be 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. (General violation)

Procedures to follow to determine if a Broker is in Compliance with Section 371.7

49 CFR 371.7 states that a broker shall not perform, or offer to perform, any brokerage service (including 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. For enforcement, 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 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. (General violation).

Section 371.7(b) - Broker representing its operations to be that of a carrier. (General violation).

Procedures to follow in determining if a Broker is in Compliance with 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 Operating without Authorization

You should cite the broker for the violation of:

Section 14916(a)(1) - Unlawful brokerage activities, unauthorized broker operation (operating without authority). (General violation).

Procedures to follow when a HHG Broker is Not Registered with FMCSA and is an Operating without Authorization

You should cite the broker for the violation of:

Section 13901(a)(primary)/**14901(d)(3)**(secondary) - Unauthorized broker operation (operating without authority). (General violation).

Section 14916(a)(1) - Unlawful Brokerage Activities (Intentional) - Unauthorized broker operation (knowingly operating without authority). (General violation).

Note: Enforcement for unauthorized HHG brokering results in a mandatory $25,000 penalty before inflationary adjustment. Citing Unlawful Brokerage Activities (Intentional) is a discretionary option, because enforcement of this section results in a mandatory $10,000 penalty before inflationary adjustment. When deciding which section to cite, consider the extent of noncompliance of the errant broker and whether the evidence supports a knowing violation.

Subpart B of Part 371 only applies to HHG Brokers.

Procedures to Follow to Determine if an HHG Broker is in Compliance with 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 if a HHG Broker is in Compliance with 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 (371.107(a));
- The US DOT number MC license number issued to the HHG brokerage by FMCSA (371.107(b));
- Their status as a HHG broker that arranges transportation of HHG by an authorized HHG motor carrier, and that the broker will not transport the HHG (371.107(c));
- Estimates from the HHG broker are based on rates in HHG motor carrier's tariff and that the HHG motor carrier is required to makes its tariff available for public inspection upon reasonable request (371.107(d)); and
- Only include names or logos of HHG motor carriers with whom the broker has written agreements pursuant to 371.115 (371.107(e)).

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. The cite should be specific to the subpart in violation. 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

< violation the for broker HHG cite should>

Section 371.107 (a) - (e) - HHG broker failing to prominently display the required information on all advertisements including the homepage of its Internet website. (General violation).

Procedures to Follow to Determine if a HHG Broker is in Compliance with 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(a) - HHG broker failing to provide to potential individual shippers a list of all authorized HHG motor carriers the broker uses, including their DOT and MC numbers (General violation).

Section 371.109(b) - HHG broker failing to provide to potential individual shippers a statement indicating the broker is not a motor carrier authorized to transport the HHG and is only arranging for the transport of HHG by an authorized HHG motor carrier (General 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(a) - Failing to provide each shipper with federal consumer protection information (General violation).

Section 371.111(b) - Failing to include a clear and concise statement on the estimate (General violation).

Section 371.111(c) - Failing to obtain a signed and dated receipt for consumer information (General violation).

Section 371.111(d) - Failing to retain a signed and dated receipt for consumer 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 if a HHG Broker is in Compliance with 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 carrier. The 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 arranges 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, 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(a) - Failed to provide written estimate per 49 CFR 371.115 (General violation).

Section 371.113(a) - Providing a written estimate not based on survey (General violation).

Section 371.113(b) - Failing to base the written estimate based upon the motor carrier's published tariff (General violation).

Section 371.113(d) - Failing to retain broker estimate records for 3 years (General violation).

Procedures to Follow to Determine if a HHG Broker is in Compliance with 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 49 CFR 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(a) - Providing an estimate without a written agreement (General violation).

Section 371.115(a)(1) - Failing to include broker information in your written agreement (General violation).

Section 371.115(a)(2) - Failing to include motor carrier information in your written agreement (General violation).

Section 371.115(a)(3) - Failing to include Part 371.115(a)(3) factors in written agreement (General violation).

Section 371.115(a)(4) - Failing to include broker official's signature and/or date in written agreement (General violation).

Section 371.115(a)(5) - Failing to include the motor carrier official's signature and/or date (General violation).

Section 371.115(c) - Failing to retain a copy of all agreements required under 49 CFR 371.115 (General 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(a)	**General**	Failing to keep records of each transaction. **Number discovered: One for each transaction.**
371.7(a)	**General**	Broker service or offer for service under a name other than its registered name. **Number discovered: One for each transaction.**
371.7(b)	**General**	Broker representing its operations to be that of a carrier. **Number discovered: One for each transaction.**
371.13	**General**	Failing to maintain separate revenue and expense account for its brokerage.

		Number discovered: One for each transaction.
14916(a)(1)/13904	**General**	Providing interstate brokerage services without being registered (broker). **Number discovered: One for the One for each transaction.**
14916(a)(2)/13906	**General**	Providing interstate brokerage services without financial security (broker). **Number discovered: One for each transaction.**
13901(a)/14901(d)(3)	**General**	Unauthorized HHG broker operation (operating without authority). **Number discovered: One for each occurrence.**
371.105	**Severe Level II**	Failure to arrange transportation with authorized carrier. **Number discovered: One for each transaction.**
371.107(a)	**General**	Failing to display the physical business address in advertisements and websites. **Number discovered: One for each transaction.**
371.107(b)	**General**	Failing to display DOT number and MC number in advertisements and websites. **Number discovered: One for each transaction.**
371.107(c)	**General**	Failing to prominently display the status as a household goods broker. **Number discovered: One for each transaction.**
371.107(d)	**General**	Failed to display on Website that estimates must be based on carrier tariffs. **Number discovered: One for each transaction.**
371.107(e)	**General**	Including names and logos of authorized carriers without agreement. **Number discovered: One for each transaction.**
371.109(a)	**General**	Failing to provide a list of authorized household goods motor carriers used. **Number discovered: One for each transaction.**

371.109(b)	**General**	Failure to provide a statement that the HHG broker is not a motor carrier. **Number discovered: One for each transaction.**
371.111(a)	**General**	Failure to provide each shipper with Federal consumer protection information. **Number discovered: One for each transaction.**
371.111(b)	**General**	Failing to include a clear and concise statement on the estimate. **Number discovered: One for each transaction.**
371.111(c)	**General**	Failing to obtain a signed and dated receipt for consumer information. **Number discovered: One for each transaction.**
371.111(d)	**General**	Failing to retain a signed and dated receipt for consumer information. **Number discovered: One for each transaction.**
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 occurrence.**
371.113(a)	**General**	Failed to provide written estimate per 49 CFR 371.115. **Number discovered: One for each transaction.**
371.113(a)	**General**	Providing a written estimate not based on survey. **Number discovered: One for each transaction.**
371.113(b)	**General**	Failure to provide a written estimate based on the motor carrier’s published tariff. **Number discovered: One for each transaction.**
371.113(d)	**General**	Failing to retain broker estimate records for 3 years. **Number discovered: One for each transaction..**

371.115(a)	**General**	Providing an estimate without a written agreement. **Number discovered: One for each transaction.**
371.115(a)(1)	**General**	Failing to include broker information in your written agreement. **Number discovered: One for each transaction.**
371.115(a)(2)	**General**	Failing to include motor carrier information in your written agreement. **Number discovered: One for each transaction.**
371.115(a)(3)	**General**	Failing to include Part 371.115(a)(3) factors in written agreement. **Number discovered: One for each written agreement.**
371.115(a)(4)	**General**	Failing to include broker official's signature and/or date in written agreement. **Number discovered: One for each transaction.**
371.115(a)(5)	**General**	Failing to include the motor carrier official's signature and/or date. **Number discovered: One for each transaction.**
371.115(c)	**General**	Failing to retain a copy of all agreements required under 49 CFR 371.115. **Number discovered: One for each transaction.**
371.117(a)	**Severe Level II**	Failure to display cancellation, deposit, and refund policies. **Number discovered: One for each transaction.**
371.117(b)	**Severe Level II**	Failure to maintain records of canceled shipments and refunds. **Number discovered: One for each transaction.**

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 AIM Narrative, 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 AIM Narrative, enter above the AIM Narrative 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 an 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

Investigative Procedures

FMCSA's Jurisdiction Regarding 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 be registered and have submitted the proper filings. HHG motor carriers who operate for-hire in interstate commerce (beyond their commercial zone) transporting HHG are required to comply with Part 375.

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. You should ask the carrier for any liability insurance policies it has issued and waivers of liability it has obtained from shippers.

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:

- 49 U.S.C. 14706(f)(2) - Failing to offer the shipper an amount equal to the replacement value of the household goods subject to a maximum amount equal to the declared value of such goods that are lost, damaged, destroyed or otherwise not delivered. (General violation)

Reviewing Agent Agreements

What are Agents?

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.

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 HHG Advertisements

Definition of an Advertisement and its Requirements

An advertisement is defined in 49 CFR 375.103 as 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. However, Yellow Pages advertising is included in the definition.

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. (General violation)
- **Section 375.207(b)-** Failing to include and/or not requiring agents to include in all advertisements for all services (including accessorial services incidental to or part of interstate household goods transportation) required information (General violation). Identify the appropriate secondary cite as 375.201(b)(1) or (b)(2).

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. 14903(a) provides for a civil penalty of not more than $100,000.00 per violation, and possible criminal action for willful violations, 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(s) for all periods relevant to your investigation. If the motor carrier informs you that they have an electronic tariff (contained in software), then they must provide a published tariff that can be examined which includes all rates, related rules and practices. 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 published tariff which includes all rates, related rules and practices, it is in violation of 49 U.S.C. 13702(C)(1).

Areas to Review When Confirming Tariff Compliance

FMCSA's primary concerns regarding HHG tariff compliance is to determine if:

- The carrier has a tariff at all.
- 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.
  - The rates can be based on weight, mileage, hourly rate, or volume (e.g., cubic feet), provided it’s identified in the carrier’s tariff. If the estimate is based on volume that will later be converted to a weight-based rate, the motor carrier must provide the shipper an explanation in writing of the formula used to calculate the conversion to weight. **Note:** You should compare the rates and charges identified on the estimates 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) -** Failing to have a tariff in effect(HHG). (Severe Level II 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) -** Failing to maintain or make available a published tariff (HHG). (Severe Level II 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:

- **49 U.S.C. Section 13702(a)(2) -** Charging or receiving a different rate than in tariff. (Severe Level II violation).
- **Section 375.215** - 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

You should cite the HHG motor carrier for violation of:

- **Section 13702(a)(2) -**Failing to have a tariff in effect. (Severe Level II violation).
- **Section 13702(c)(1)** - Failing to maintain or make available a published tariff. (Severe Level II violation).
- **Section 375.221(a)** - Refusing to accept credit for payment if tariff identifies credit as acceptable. (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. (General violation).
- **Section 375.303(c)(6)** - Failing to provide a provision in the tariff for selling, offering to sell, or procuring liability insurance coverage. (General 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 49 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)** - Failing to participate in an arbitration program. (Severe Level I violation).
- **Section 375.211(a) (naming the appropriate section)** - Using an arbitration program that does not meet the requirements of Section 375.211. Identify the appropriate secondary violation ((a)(1)-(11)). (Severe Level II violation).
- **Section 375.211(b)** - Failing to produce a concise easy to read, accurate summary of your arbitration program. (General violation).
- **Section 375.213(b)(3)** - Failing to furnish shippers with a concise summary of arbitration program (General violation).

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”. (General violation).

"Your Rights and Responsibilities When You Move" Booklet

All motor carriers are required to provide the individual shipper with a copy of the "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.

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)** - Failing to include required items as part of its complaint handling. (Identify appropriate secondary cite as 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).

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 AIM Narrative 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
11-300	10
301 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/AIM Narrative.

Note: A complete shipping file should have the estimate (binding or non-binding), inventory, bill of lading, payment records, 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 (and brokers) 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 49 U.S.C. 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 if a HHG Carrier is Complying with the Physical Survey Requirements

- **Section 375.401(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. (General violation).
- **Section 375.401(a)(3)**- Failing to retain waiver as an addendum to bill of lading (General violation).

Types of Estimates HHG Motor Carriers are Allowed to Offer Shippers

Section 375.401(b)/14104(b) allow 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 as shown by the quantities and services shown in the estimate. Must indicate that the HHG motor carrier and shipper are bound by the charges ("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 requested. Final charges are based upon actual weight and tariff provisions in effect.

Note: Section 375.401 define both binding and non-binding estimates. Section 375.403 and 49 U.S.C. 14104(b)(1)(C)(ii) describe the requirements for providing binding estimates. Section 375.405 and 49 U.S.C. 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 estimates prepared after the initial estimate labeled such as "Revised Estimate" "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.

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.
- **49 U.S.C. 14104(b)(1)(C)** - Failing to provide a proper written binding or nonbinding estimate of charges (HHG). (General violation).
- **Section 375.401(h)**- Failing to provide shippers with a signed and dated written estimate. (NOTE: Estimates provided via the Internet must be signed.) (General violation).
- **Section 375.403(a)** - Failing to prepare a binding estimate in the form and manner prescribed. (Identify appropriate secondary cite as 375.403(a)(1)(2)(3)(4)(5) and/or (8)).
  - **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)** - Failing to provide a written estimate of the total charges and indicate the type of estimate before executing the bill of lading. (Severe Level II 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 provide shippers with a signed and dated written estimate.

- **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)** - Failing to prepare the non-binding estimate in the form and manner prescribed. (Identify appropriate secondary cite as 375.405(b)(1)(2)(3)(4)(5)(6)) (General violation).
    - **Note**: DO NOT USE THIS CITE FOR 375.405(b)(7) OR 375.405(b)(8).
- **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 II 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

Definition of HHG Inventory and its Requirements

An inventory is a detailed list of all household goods showing the quantity and condition of each item. Section 375.503(a) requires that all HHG motor carriers prepare a written, itemized inventory for each shipment of HHG it transports. The inventory must identify every carton and every uncartoned item that is included in the shipment and a corresponding identification number must be placed on each article that is included in the shipment. 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(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. (Recordkeeping 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. (Recordkeeping 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 if 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)** - Failing to prepare a bill of lading for each move performed. (General violation).
- **Section 375.505(b)** - Failing to prepare a bill of lading in the form and manner prescribed. (Identify the appropriate cite as secondary 375.505(b)(1)(2)(3)(4)...(17)). (General violation).
- **Section 375.505(c)** - Failing to ensure the bill of lading accompanies 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 is 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. A motor carrier must not refuse to allow a shipper 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 weighings 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 re-weigh shipment, weighed at origin, upon demand of individual shipper or charge based on re-weigh. (General violation).
- **Section 375.519(a)** - Failing to prepare a weight ticket in the form and manner prescribed. (Identify the appropriate cite as secondary 375.519(a)(1)(2)(3)...(6)) (General 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 Ibs then determine if the driver had the appropriate class of license in compliance of Part 383.

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 load 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.

Determining Whether 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 failed 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 to deliver the HHG at the destination; 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.

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:

- **49 U.S.C. 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. (General violation)

IMPORTANT: Each day a HHG motor carrier fails to relinquish possession of a HHG shipment constitutes a separate violation of Section 14915. If the facts surrounding a particular violation suggest the carrier should be penalized for more than one violation, contact your DA for further guidance.

Alternatives to citing a violation of 14915 include:

- **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. (General 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 failed 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 (and obtain proof of the same) 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).

Evidence to prove the elements of a violation of 49 U.S.C. § 14915 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).

4.4.2.4.2 CAPRI Procedures

Once you have completed your investigation, you should ask yourself, "Can I prove each discovered violation?" If you can answer "Yes" to this question, the following guidelines have been established to assist in completing AIM 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	**General**	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.**

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.

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 (AIM Narrative) 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.

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
375.205(b)	**General**	Failing to have a written and signed agreement with your agent(s). **Number discovered: One for each agency agreement required.**
375.205(c)	**General**	Failing to retain agent agreement(s), including terminated agent agreement(s). **Number discovered: One for each agency agreement not retained on file at the carrier's principal place of business.**
375.207(a)	**General**	Providing false, misleading, or dishonest information in advertisements. **Number checked: One violation for each advertisement in violation.**
375.207(b)	**General**	Failing to include and/or not requiring agents to include in all advertisements for all services (including accessorial services incidental to or part of interstate household goods transportation) required information.

		Number discovered: One for each advertisement that does not include the prescribed information.
375.209(a)	**General**	Failing to have a complaint & inquiry-handling program. **Number discovered: One program. (One of one.)**
375.209(b)	**General**	Failing to include required items as part of complaint and handling procedures. **Number discovered: One program summary. (One of one.) Describe the required contents not provided.**
375.209(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)	**General**	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)	**Severe Level I**	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)	**General**	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)	**General**	Failing to furnish shippers with a concise summary of complaint procedures. **Number discovered: One for each program summary not provided to shippers.**
13702(a)(2)	**Severe Level II**	Failing to have a tariff in effect (HHG). **Number discovered:** One for each shipment transported without a tariff.
375.215	**Severe Level I**	Failing to charge applicable tariff rate. **Number discovered: One for each shipment using a rate not contained in tariff.**
375.221(a)	**Severe Level II**	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)	**Severe Level II**	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)(1)	**Severe Level II**	Failing to furnish proof of insurance coverage.

		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)	**General**	Failing to include in the tariff for selling, offering to sell, or procuring liability insurance coverage; base transportation charge, and assumption of full liability. **Number discovered: One tariff reference. (One of one.)**
375.211(a)	**Severe Level I**	Failing to participate in an arbitration program. **Number discovered: One program. (One of one.)**
375.211(a)	**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)	**General**	Failing to produce a concise, easy to read, accurate summary of your arbitration program. **Number discovered: One program summary. (One of one.)**
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)	**General**	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)	**General**	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(d)	**General**	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(h)	**General**	Failing to provide shippers with a signed and dated written estimate. **One for each binding estimate not signed by the company representative and/or shipper. Use for binding & non-binding estimates not signed.** **Note:** Estimates provided via the Internet must be signed.
375.403(a)	**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.** (Identify appropriate secondary cite as 375.403(a)(1)(2)(3)(4)(5) and/or (8)). **Note:** DO NOT USE THIS CITE FOR 375.403(a)(5); 375.403(a)(6) or 375.403(a)(9).
375.403(a)(6)	**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. **Note:** all estimates must be in writing.

375.403(a)(7)	**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)	**Severe Level II**	Failing to retain a copy of the binding estimate for each move performed for one year as an integral part of the bill of lading. **Number discovered: One for each shipment binding estimate was not retained.**
375.401(b)	**General**	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 occurence.**
375.405(b)	**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. (Identify appropriate secondary cite as 375.403(b)(1)(2)(3)(4)(5)(6)).** **Note:** DO NOT USE THIS CITE FOR 375.405(b)(7) or 375.405(b)(8).
375.405(b)(7)	**Severe Level II**	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)	**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)	**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)	**Severe Level II**	Failing to retain a copy of the non-binding estimate for each move performed for one year 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)	**Severe Level II**	Failing to prepare a written inventory for each shipment of household goods transported. **Number discovered: One for each shipment reviewed that does not include a written inventory.**
375.503(a)	**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(c)	**General**	Failing to provide shipper with a signed copy of the inventory and bill of lading before/at loading. **Number discovered: One for each inventory not signed.**
375.503(e)	**Severe Level II**	Failing to retain a copy of an inventory for each move performed for one year as an integral part of the bill of lading. **Number discovered: One for each inventory not retained.**
375.505(a)	**General**	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)	**General**	Failing to prepare a bill of lading in the form and manner prescribed. (Identify the appropriate cite as secondary 375.505(b)(1)(2)(3)(4)…(17)) **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 accompanies 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)	**Severe Level II**	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)	**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.
375.507(a)	**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	**Severe Level I**	Refusing to allow shippers to observe the weighing of their shipment. **Number discovered: One for each shipment a shipper was not allowed to view the re-weigh.**
375.515(b)	**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	**General**	Failing to re-weigh shipment, weighed at origin, upon demand of individual shipper or charge based on re-weigh. **Number discovered: One for each violations discovered.**
375.519(a)	**Severe Level I**	Failing to prepare a weight ticket in the form and manner prescribed. (Identify the appropriate cite as secondary 375.519(a)(1)(2)(3)…(6)). **Number discovered: One for each weight ticket not prepared in the form and manner prescribed.**
375.519(a)/375.519(b)	**General**	Failing to obtain a separate weight ticket for each weighing. **Number discovered: One for each separate weight ticket not obtained when required.**
375.519(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	**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)	**General**	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)	**General**	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
375.403(a)(10)	**General**	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)	**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)	**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

4.4.2.2.1 Investigative Procedures

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

The following terms are defined in Section 376.2:

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) to whom title to equipment has been issued, or (2) who, without title, has the right to exclusive use of equipment, or (3) who has lawful possession 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 - In a lease, the party granting the use of equipment, with or without driver, to another.

Lessee - In a lease, the party 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 carrier - A person, other than a motor carrier, transporting property by motor vehicle in interstate or foreign commerce when (1) the person is the owner, lessee, or bailee of the property being transported; and (2) the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise.

Shipper - A person who sends or receives property which is transported in interstate or foreign 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 license 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.

4.4.2.5.1 Investigation Procedures

Sections of Part 376 to Review

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 regarding how the leases are written.

Section 376.11 - General Leasing Requirements

The general leasing requirements are stated in Section 376.11 (subject to exemptions in subpart C and excluding interchange of equipment as set forth in Section 376.11):

- There must be a written lease (Section 376.12) granting use of the equipment by the authorized carrier;
- There must be receipts provided by the authorized carrier to the owner for the equipment identifying the equipment to be leased, date and time the equipment is transferred (upon possession and end of possession);
- 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 - Lease Requirements

The requirements for written leases (subject to exemptions in subpart C), are enumerated in Section 376.12:

- The lease must be made between the authorized carrier and the owner of the equipment and signed by the parties or their authorized representatives;
- The lease must specify the time and date when the lease begins and ends or the circumstances upon which the lease begins and ends;
- The lease must specify that the authorized carrier has exclusive possession, control, and use of the leased equipment and is responsible for it;
- The lease may have an option allowing the authorized carrier to sublease the equipment;
- If an authorized HHG carrier leases equipment, the lease may provide for exclusive control of and responsibility for the leased equipment only during the time the leased equipment is operated;

- The lease must clearly state the amount paid by the authorized carrier to lease the equipment;
- The lease must specify who is responsible for removal of identification devices at the termination of the lease, how those devices will be returned to the carrier.
- If a receipt is required by the lease, the lease must specify the manner in which the owner provides the authorized carrier with upon repossession.
- The lease must state who is responsible for miscellaneous expenses and costs of loading/unloading the property onto and from the motor vehicle;
- The lease must specify that payment to the lessor shall be made within 15 days after submission of necessary delivery documents to the authorized carrier concerning a trip in the service of an 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);
- When the lessor's revenue is based on a percentage of the gross revenue of the shipment, the lease must specify that the authorized carrier will give the lessor before or at the time of settlement, a copy of the rated freight bill, or in the case of contract carriers, documents used for the shipment that would contain the same information as the rated freight bill (also refers to leases of owner-operators);
- The lease must state items that will be initially paid by the authorized carrier but deducted from the payment to the lessor of the leased equipment;
- The lease shall state that the owner of the leased equipment is not required to purchase or rent any products, equipment, or services from the authorized carrier;
- The lease shall clearly state the legal obligation that the authorized carrier is responsible for insuring the leased equipment pursuant to 49 U.S.C. 13906, and further specify who is responsible for any other insurance coverage, including charge-backs;
- The lease must specify the conditions under which deductions for cargo or property damage may be made from the lessor's settlements and that the authorized carrier must provide the lessor with a written explanation and itemization of any deduction.
- If escrow funds are required, the least must specify (a) 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, (b) that while the escrow fund is under the control of the authorized carrier, the carrier shall provide an accounting to the lessor, (c) the right of the lessor to demand an accounting at any time, while the escrow fund is under the control of the authorized carrier, (d) that the carrier shall pay interest on at least a quarterly basis, and (d) the conditions the lessor must fulfill to have the escrow fund returned, not later than 45 days from termination; and

- The lease must state 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 allows authorized and private carriers under common ownership to 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 addresses 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 and you should request a copy.

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. Ensure the receipt includes all required elements.

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 if a Motor Carrier is in Compliance with Section 376.11(c)

A motor carrier that leases equipment must properly identify the equipment in accordance with the requirements in 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 if 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. (General 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. (General 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

The written lease agreement is required to have specific items as stated in Section 376.12(a)-(k). Lease agreements should 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 -** Using a lease that does not meet the requirements of Part 376.12. (Identify the appropriate cite as secondary 376.12(a)(b)(c)...(k)). (General violation).

Procedures to Follow to Determine if a Motor Carrier is in Compliance with Section 376.12(l)

The motor carrier leasing the 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 if 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 violations 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.
- Obtain 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 percentage 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. marked. **Number discovered: One for each commercial motor vehicle leased not properly marked.**
376.11(c)/390.21(e)(iii)	**General**	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)	**General**	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 vehiclewithout 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	**General**	Using a lease that does not meet the requirements of Part 376.12.

		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.**

4.5 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 AIM Violations - 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). The official should be asked to sign and date the compliance review, to receive a copy. You should keep signed copies of all documents.

4.5.2 Compliance Investigation and Enforcement Action Approval Process

SIs must not close out any investigation until it has been reviewed and approved by all required reviewers as stated above.

If the Compliance Investigation results in a LOPV, it must also be reviewed and approved or released by the Service Center enforcement staff and attorneys.

Once the Service Center and/or MC-CCE has approved or released the enforcement action, the Division office must issue the final enforcement action within 30-days of the close-out of the compliance investigation, in accordance with the "2025 OGC Enforcement Memo."

The Service Center Regional Field Administrators (RFA) or Field Administrators (FA) may impose additional timeframes for their Service Center enforcement staff and Division offices within the 90 and 120-day timeframes to effectively manage and meet this policy requirement. Additionally, the RFA or FA may implement joint procedures for Division offices conducting borderless investigations or who are reviewing investigations and enforcement actions for neighboring Division Offices to account for resource limitations and effectively manage workload. If these timeframes are not met, the Division should consult with the Service Center on how to proceed.

During the period of Service Center review

Any violations that occur after the Division office has submitted the enforcement action to the Service Center for review, should not be included in the investigation, but may be addressed in a subsequent intervention, except if a significant crash occurs, in which case the SI should consult with their Service Center enforcement staff on whether to continue the investigation.

4.5.3 Compliance Investigation Closeout

SIs must provide the regulated entity with the compliance investigation report (including the narrative) and the following documentation at the investigation closeout, if applicable:

- Witness Statement(s) (unless subject to exclusions below)
- Records of Oral Interview(s)
- Evidence used to support a violation that the regulated entity did not provide or have access to
  - e.g., medical review officer notes, positive drug or alcohol test, driver vehicle examination reports with inspector notes, etc.

If there is PII contained in the evidence used to support a violation that is being provided to the regulated entity, consult with the Service Center about redactions before the investigation close-out. States should consult with their State attorneys about PII redactions.

An SI must not provide the regulated entity with the following information at the investigation close-out.

- ACE or SI Notes
- Exhibit cover sheets
- Checklists
- Evidence Retention Template
- NOC continuation page
- Hours-of-Service worksheet
- Medical long form, unless discussed with a Service Center attorney
- The name or contact information of any employee who provided information and/or filed a complaint in the National Consumer Complaint Database.

- The name or contact information of any employee or former employee who provided information supporting a violation including a statement, unless discussed with a Service Center attorney or the employee has provided written consent that the information may be disclosed.

4.5.4 Table of Violations

The Tables of Violations (TOV) list violations that affect a motor carrier's safety rating and identify discovered instances of acute and critical violations and any other violation where enforcement is being initiated.

During the compliance investigation closeout, Table 1 must be attached to the investigation report, if applicable. The TOV must list and identify:

- Severe Level I
- Severe Level II
- Any discovered deficiencies that affect a motor carrier's safety rating
- Any other violations for which an LOPV is being initiated

As part of the LOPV process, a separate Table 2 must be created and attached. Table 2 must list and identify all violations resulting in a civil penalty and must include the extent examples for those listed violations.

The evidence package submitted with the enforcement action must include documentation for every violation listed on Table 1 and Table 2.

4.6 Stage 5 Post Investigation Intervention - Enforcement Actions

4.6.1 Enforcement Action Retention and Upload

If the compliance investigation report was emailed or mailed to the regulated entity, the Division Office must upload documentation of proof of delivery to the Electronic Document Management System (EDMS). Additionally, the Division office must upload to EDMS all enforcement related documentation to include, but not limited to, evidence, legal sufficiency checklist and final LOPV served, as soon as practical after the investigation close-out.

4.6.1.1 HHG Parts 366, 370, 371 & 375 - Enforcement Procedures

After you have entered violations discovered in the FMCCR (i.e., parts 366, 371 and 375) or statutes of the Interstate Commerce Commission Termination Act of 1995 (ICCTA), into AIM Violations 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.

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 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 estimates and 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 by shippers.

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 or that authority had lapsed or was revoked;
- 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;
- 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 and broker 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. As another option,

Enforcement of Riojas Affected Violations

- Each count taken for Riojas Affected Violations should contain the minimum penalty fine amount as indicated by the HHG violations with minimum penalties field job aid.

Note: For severe level I & II violations, refer to the Uniformed Fine Assessment 4.0 Calculation Explanation, effective August 12, 2013.

The investigator shall utilize the following chart when enforcing Riojas Affected Violations.	**Percentage of violations discovered to be charged**

Violation Severity	
General	10% of violations discovered if the investigator determines enforcement is necessary
Severe Level II	50% of violations discovered
Severe Level I	75% of violations discovered
Pattern of monetary impact to Shipper (Pattern is defined as 50% or more of the sample size)	100% of violations discovered

Enforcement Examples
• The investigator discovered 2 Severe Level I violations out of 10 checked. There is no pattern of monetary harm to the shipper. Enforcement will be taken on 75% of the violations discovered. 75% of 2 = 1.5. Enforcement is taken on 2 counts of the discovered violations after rounding up from 1.5. • The investigator discovered 8 Severe Level I violations out of 15 checked. There is a pattern of monetary harm to the shipper. Enforcement will be taken on 100% of the violations discovered. • The investigator discovered 7 Severe Level I violations out of 15 checked. There is harm to the shipper. Although there is harm to the shipper, there was less than 50% discovered (no pattern). Enforcement will be taken on 75% of the violations discovered. 75% of 7 = 5.25. Enforcement will be taken on 6 counts of the discovered violations. • The investigator discovered 8 Severe Level II violations out of 10 checked. There is no pattern of monetary harm to the shipper. Enforcement will be taken on 50% of the violations discovered. 50% of 8 = 4. Enforcement is taken on 4 counts of the discovered violations. • The investigator discovered 8 General Level violations out of 10 checked. There is no pattern of monetary harm to the shipper. It is the investigator's discretion if enforcement will be taken. If Enforcement is taken; it will be on 10% of the violations discovered. 10% of 8 = 0.8. Enforcement is taken on 1 count of the discovered violations.

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. 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.

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.

4.7.2 Illustration HHG-2: AIM Narrative Template for Focused NRCRs

AIM Narrative 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 AIM Narrative. Those noted as [SUGGESTED] are suggested items for AIM Narrative.

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] Note why the carrier's company profile was NOT obtained, if applicable.

[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 AIM Violations, 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 Statements

A statement is a written document that records a witness's account of facts and events relevant to an enforcement action. It serves as their official evidence, which when signed, can be used in court or other legal proceedings. The statement should be written in the witness' own words. If that is not practicable, the SI can draft the written statement for the witness using the witness' oral account of facts and events to sign, but must ensure it is clear, factual, and consistent with the witness' verbal statements. A statement may be used when conducting any enforcement activity.

4.7.5 Oral Interviews

An oral interview is a written account of facts that may be used to record SI notes and recollections about statements made by a witness or other interviewees, when it is impracticable to obtain a signed statement. An oral interview form may be used when conducting any enforcement activity. See Oral Interviews

4.7.6 Photographic Declaration

A photographic declaration is a standardized document used to record the details of photographs taken during a compliance investigation. The photographic declaration form is a method by which the SI can attest to the image for the legal sufficiency analysis and any potential legal proceedings. See Photographic Declaration

Inspection Manual

For

Electronic Field Operations Training Manual (eFOTM)

Federal Motor Carrier Safety Administration (FMCSA)

U.S. Department of Transportation

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 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.

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.

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.

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 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 [SafeSpect, 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.
- Ensure that you have the proper reference material including Guard and the latest version of the Out-of-Service criteria.
- 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 a 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 inspecitons, 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 SafeSpect, 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.

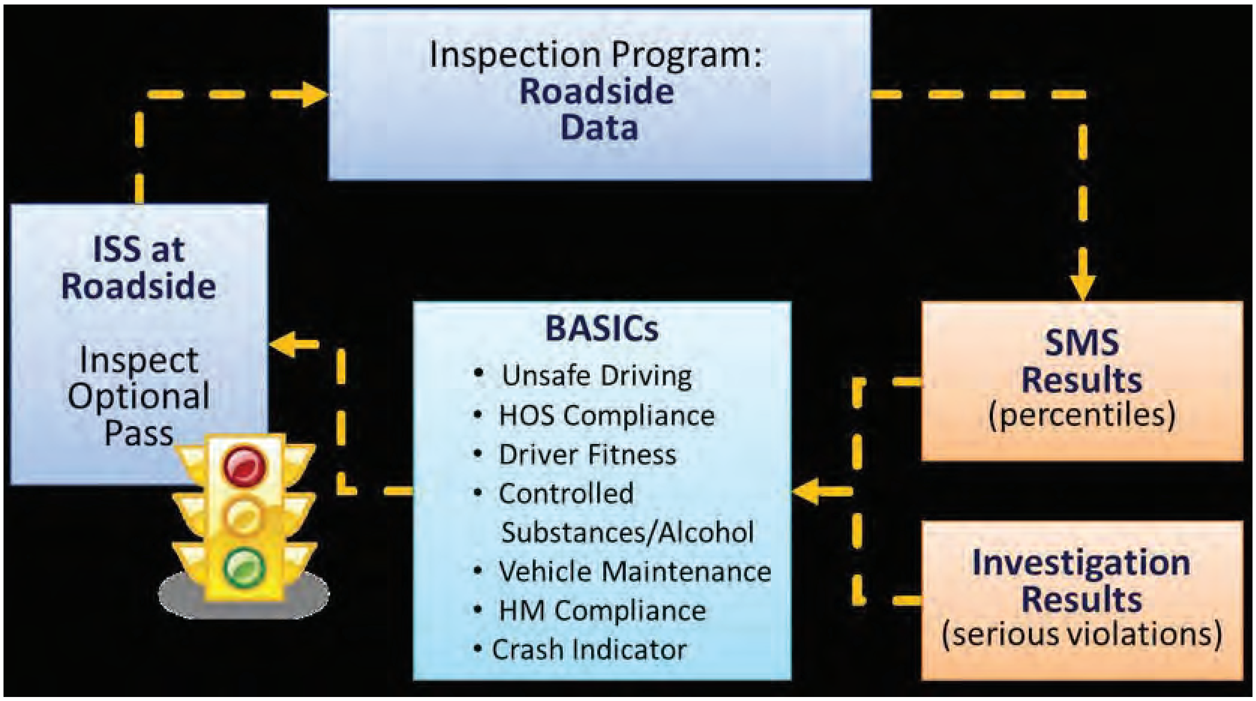


Figure: Foundational Data for ISS

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 AIM Narrative 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
  - Non-business
- 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

1. When determining compliance with the ELD rule during inspections, inspectors must: 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 SafeSpect Procedures

Once You Have Inspected the Vehicle and Began Interviewing the Driver, Use the SafeSpect Software to Document the Information

You should begin completing SafeSpect, 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 SafeSpect 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 Cargo Seal 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 SafeSpect. 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). [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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).

If the driver is unable to respond sufficiently to official inquiries as outlined in Step 1, the inspector should not proceed to Step 2 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

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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).

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. The inspector should also place the driver immediately OOS, unless the U.S.-Mexico border commercial zones exception applies. When warranted, FMCSA may also initiate an action to disqualify the driver from operating CMVs in interstate commerce.

When conducting inspections within a U.S.-Mexico border commercial zone (i.e., a commercial zone designated in 49 CFR part 372, subpart B, along the U.S.-Mexico border), FMCSA enforcement personnel should determine the scope of the driver's current trip before applying the OOS criteria:

1. Movements Outside the U.S.-Mexico Border Commercial Zones (OOS Required): If the driver's current trip (as evidenced by bills of lading, dispatch records, equipment interchange receipts, driver statements, or other related shipping documents) involved, or would involve, transportation in the U.S. that would take the driver outside of the U.S.-Mexico border commercial zones:
    - Action: If the driver fails the ELP assessment, the inspector should cite the driver for violating 49 CFR § 391.11(b)(2) and place the driver OOS.
    - Examples: A driver picking up a load at a Laredo, TX warehouse (inside the zone) for delivery to Detroit, MI (outside the zone); a driver picking up a load in Detroit, MI (outside the zone) for delivery to a warehouse in Laredo, TX (inside the zone); a driver entering the U.S. from Nuevo Laredo, Mexico (outside the U.S.) with a load for delivery to San Antonio, TX (outside the zone); or a driver delivering a load from San Antonio, TX (outside the zone) to a delivery point in Mexico (outside the U.S.).
2. Movements Within the Border Commercial Zones Only (No OOS): If the driver's current trip would not involve transportation in the U.S. that would take the driver outside of the U.S.-Mexico border commercial zones (even if the cargo itself is ultimately destined for a U.S. location outside of a border commercial zone via a different driver):
    - Action: If the driver fails the ELP assessment, the inspector should cite the driver for violating 49 CFR § 391.11(b)(2), but not place the driver OOS.
    - Example: A driver transporting a shipment from Nuevo Laredo, Tamaulipas (Mexico), to a local trans-load facility or warehouse within the Laredo, TX commercial zone.

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]

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-2017-0004 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 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).

[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, or a Class 5 from Prince Edward Island with an endorsement code M, as medical certification is required to obtain these endorsements.

[3] The driver’s explanation may be in any language, provided the inspector is able to understand the driver’s explanation.

[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)

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)(2)
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 Investigative Procedures by Part

5.3.8.1 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.

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 - SafeSpect 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 SafeSpect.

Recording Operating Authority Violation for a Mexico-Domiciled Carrier

A Mexico-domiciled long-haul motor carrier granted standard operating authority must have its vehicles inspectors 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
392.9(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

Enforcement Procedures

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 - SafeSpect 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 SafeSpect 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

Enforcement Procedures

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

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 SafeSpect 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	Driver and his/her company subject to 49 CFR 382 and 383

Maryland to Ohio in a CMV greater than 26,000 lbs.	
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 a vehicle greater than 26,000 lbs. and the driver drives the vehicle from Maryland to Ohio.	Person making the move and the driver subject to 49 CFR 382, 383, and the FMCSR

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 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.

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 - SafeSpect 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 SafeSpect 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 either 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

Enforcement Procedures

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 SafeSpect inspection report. SafeSpect 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 SafeSpect 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).

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 - SafeSpect 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 SafeSpect 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

Enforcement Procedures

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 - SafeSpect 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 SafeSpect 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


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

CARRIER SUMMARY

Driver Vehicle Carrier Help Home

Carrier Summary Carrier Detail Violation History 55 Past Inspection(s) PRISM Summary Report

ALERT: Carrier is currently under a Federal OOS			
OOS Date: 11/21/2011	State:	Reason: 90 DAY FAILURE TO PAY FINE	Rescinded Date:
OOS Date: 09/07/2011	State:	Reason: 90 DAY FAILURE TO PAY FINE	Rescinded Date:
OOS Date: 05/31/2011	State:	Reason: UNSATISFACTORY = UNFIT	Rescinded Date:
For further information, please contact the appropriate FMCSA Service Center			
Click here to review a reference to the applicable section of 49 CFR			

Motor Carrier Identification & Safety Data

Please Note: You can now access L&I detail by clicking on the MC/MX number(s).

Legal Name:	SKY EXPRESS INC	USDOT#:	1361588
DBA Name:		MC/MX#:	521652
Physical Address:	7207 HUNTERS SPRING DR CHARLOTTE, NC 28269	Phone#:	(704)763-6964
Country of Domicile:	UNITED STATES	Fax#:	(704)992-0322
Mailing Address:	7207 HUNTERS SPRING DR CHARLOTTE, NC 28269	Status of USDOT#:	ACTIVE
		Entity:	CARRIER

Inspection Value: 98 - INSPECT
Inspection Value is based on Safety data.

Visit the SAFER Website for additional information.

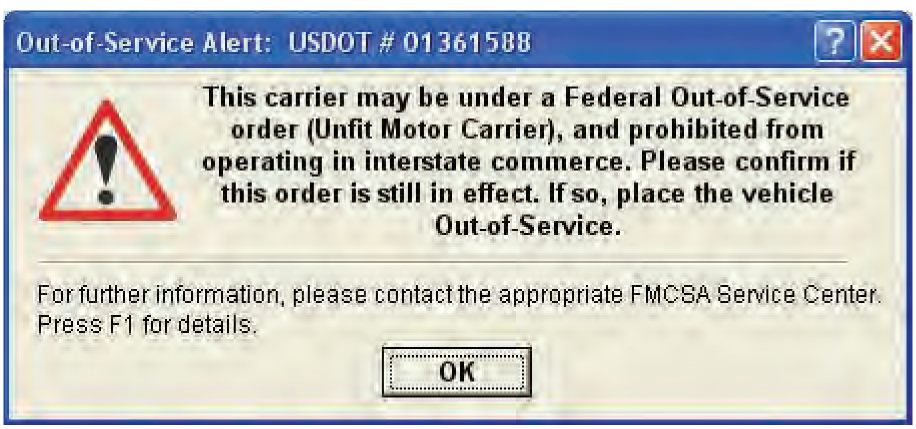
Click here for UCR information regarding this carrier.

Feedback | Privacy Policy | USA.gov | Freedom of Information Act (FOIA) | Accessibility | OIG Hotline
Web Policies and Important Links | Plug-ins

Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE, Washington, DC 20590 • 1-800-832-5660 • TTY: 1-800-877-8339

Done Trusted sites | Protected Mode: Off 100%

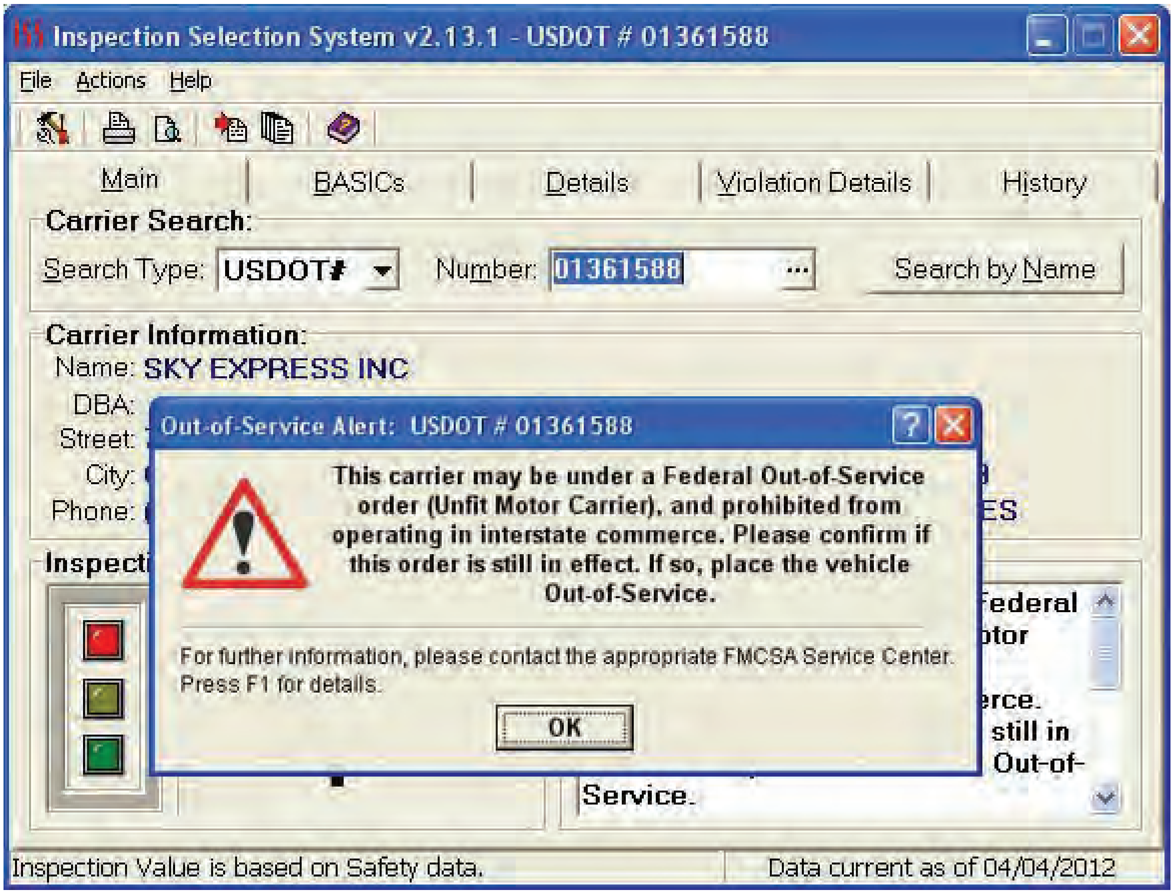
Screenshot of an OOS Alert in ISS


Out-of-Service Alert: USDOT # 01361588

This carrier may be under a Federal Out-of-Service order (Unfit Motor Carrier), and prohibited from operating in interstate commerce. Please confirm if this order is still in effect. If so, place the vehicle Out-of-Service.

For further information, please contact the appropriate FMCSA Service Center. Press F1 for details.

OK



5.3.8.5.3 Part 386 - Enforcement Procedures

Enforcement Procedures

5.3.8.6 Part 387 – Minimum Levels of Financial Responsibility for Motor Carriers

Enforcement Procedures

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 HM) 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 - SafeSpect 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 SafeSpect.

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

Enforcement Procedures

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 the inspector's check indicates that no medical information is on file, 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.

As of the National Registry II Final Rule compliance date of June 23, 2025, a paper copy of either a MEC or MER, absent a waiver or exemption, would not be valid evidence of the driver's medical certification.

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 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 - SafeSpect 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 SafeSpect 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

Enforcement Procedures

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 remains 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 - SafeSpect Procedures

Part 392 - SafeSpect 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 SafeSpect 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

Enforcement Procedures

5.3.8.10 Part 393/396 – Parts, Accessories, Inspection, Repair & Maintenance

5.3.8.10.1 Part 393/396 - Investigative Procedures

Part 393/396 - Conducting Inspections

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;
- Television located out of the driver s view;
- 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)
- The vehicle is equipped with the required number and type of emergency windows, doors and/or hatches and are fully operative (the driver must demonstrate if the window is not designed for one time use); 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 DVIR at 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, concerning vehicle equipment and components.	Vehicles usually display either an FMVSS certification label OR a CMVSS certification label.	VIN that meets NHTSA rule for VINs is acceptable. VIN that 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 - SafeSpect Procedures

Passenger Vehicle types within SafeSpect.

The following vehicle configurations should be used to designate the vehicle type in the SafeSpect 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 SafeSpect 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

Enforcement Procedures

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

Inspectors have 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 Software 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 SafeSpect, 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. HOS Restart Policy MC-ECS-2014-0002

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 breaks 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. A driver should only use paper logs (or electronic logging software, or an AOBRD being used as electronic logging software) if the ELD malfunction hinders the accurate recording of the driver's hours-of-service data (i.e., drive time). Detecting False RODS with an 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 not 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:

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	Hours of Service for Commercial Motor Vehicle Drivers; Regulatory Guidance Concerning Records of Duty Status Generated by Logging Software Programs (79 FR 39342).

	to print current and prior seven days RODs at roadside.	
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).

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:

- 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 - SafeSpect 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

Enforcement Procedures

5.3.8.12 Part 397 – Transportation of Hazardous Materials; Driving and Parking Rules

Enforcement Procedures

5.4 Stage 4-Inspection Feedback and Closeout SafeSpect Procedure

5.4.1 Conclusion of the Roadside Inspection

Roadside inspections should be completed using SafeSpect. The inspection report is divided into five 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 the appropriate code within SafeSpect. Violations will be cited using the selections that already exist in SafeSpect.

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

Inspections are automatically loaded into MCMIS once the inspection is approved.

Certification of Federal Inspections

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 /SafeSpect 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 SafeSpect 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 SafeSpect and the vehicle will be placed OOS. The two new codes that inspectors can cite in SafeSpect 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 SafeSpect 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.

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 SafeSpect 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 SafeSpect 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 SafeSpect 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 SafeSpect 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.
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

Part 385 - Enforcement Procedures

Once you have entered the violations discovered into the SafeSpect 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, 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 "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 SafeSpect 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)

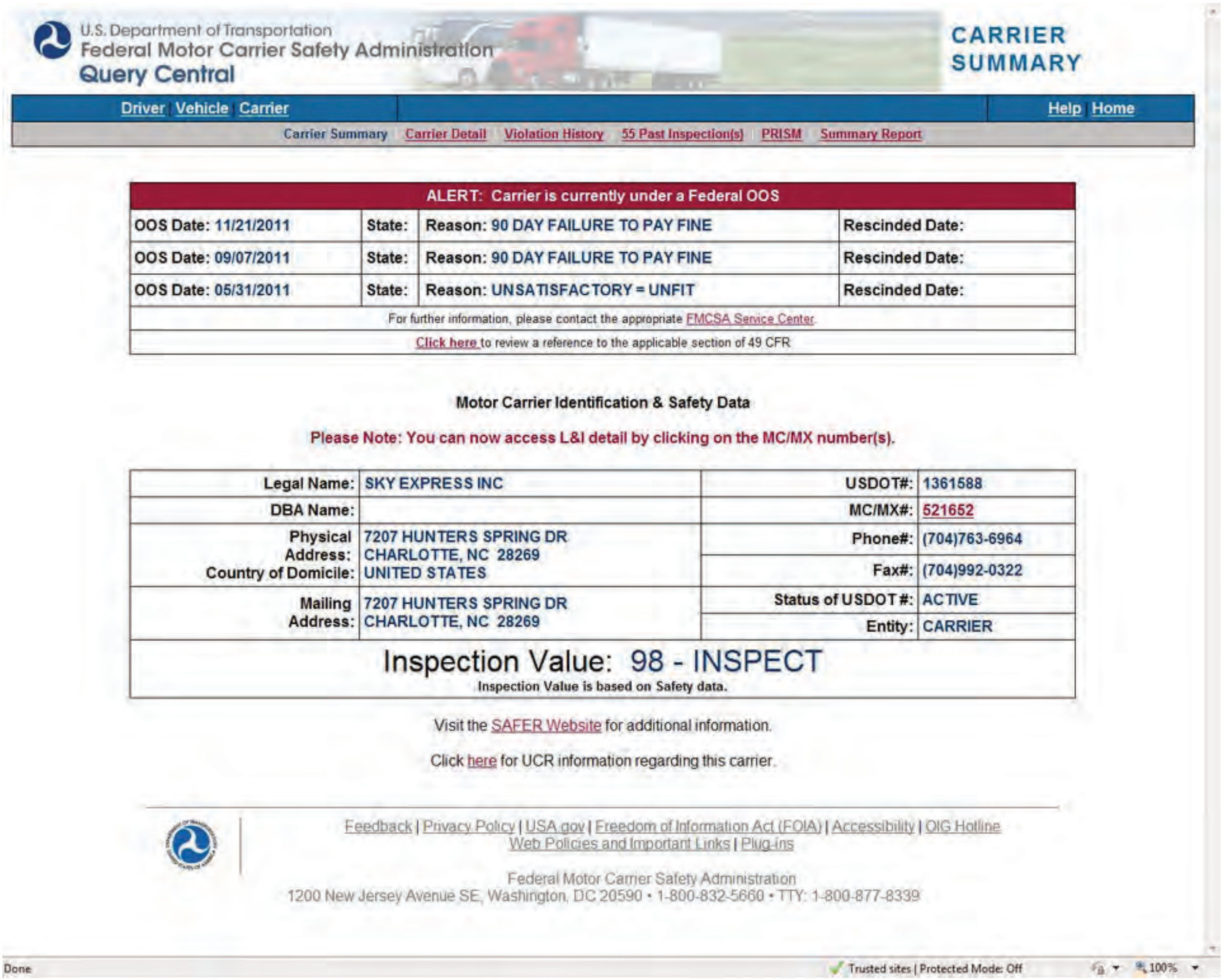
General rule: A CMV owner or operator that fails to pay a civil penalty in full within 90 days after the date specified for payment by the FMCSA's final agency order is prohibited from operating in interstate commerce starting on the next (i.e., the 91st) day. The prohibition continues until FMCSA has 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


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

CARRIER SUMMARY

Driver Vehicle Carrier Help Home

Carrier Summary Carrier Detail Violation History 55 Past Inspection(s) PRISM Summary Report

ALERT: Carrier is currently under a Federal OOS			
OOS Date: 11/21/2011	State:	Reason: 90 DAY FAILURE TO PAY FINE	Rescinded Date:
OOS Date: 09/07/2011	State:	Reason: 90 DAY FAILURE TO PAY FINE	Rescinded Date:
OOS Date: 05/31/2011	State:	Reason: UNSATISFACTORY = UNFIT	Rescinded Date:

For further information, please contact the appropriate FMCSA Service Center.

Click here to review a reference to the applicable section of 49 CFR

Motor Carrier Identification & Safety Data

Please Note: You can now access L&I detail by clicking on the MC/MX number(s).

Legal Name:	SKY EXPRESS INC	USDOT#:	1361588
DBA Name:		MC/MX#:	521652
Physical Address: Country of Domicile:	7207 HUNTERS SPRING DR CHARLOTTE, NC 28269 UNITED STATES	Phone#:	(704)763-6964
		Fax#:	(704)992-0322
Mailing Address:	7207 HUNTERS SPRING DR CHARLOTTE, NC 28269	Status of USDOT#:	ACTIVE
		Entity:	CARRIER

Inspection Value: 98 - INSPECT
Inspection Value is based on Safety data.

Visit the SAFER Website for additional information.

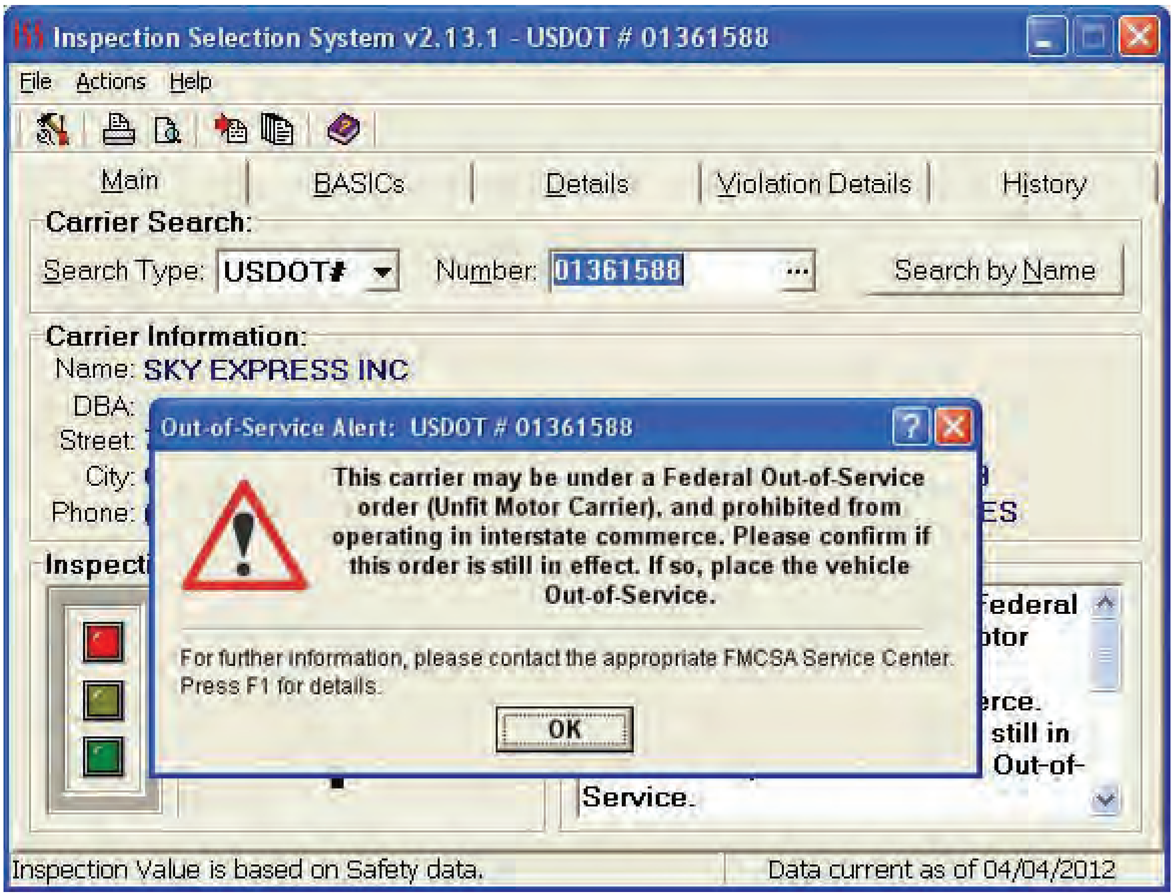
Click here for UCR information regarding this carrier.

Feedback | Privacy Policy | USA.gov | Freedom of Information Act (FOIA) | Accessibility | OIG Hotline
Web Policies and Important Links | Plug-ins

Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE, Washington, DC 20590 • 1-800-832-5660 • TTY: 1-800-877-8339

Done Trusted sites | Protected Mode: Off 100%

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 SafeSpect 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

Part 390 - Enforcement Procedures

Once you have entered the violations discovered into the Violation tabs in the SafeSpect software and have decided to initiate enforcement action for Part 390 violations , use the following guidelines when submitting an enforcement report for Part 390 violations.

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 SafeSpect 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 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). .

5.5.10 Part 392 - Driving of Motor Vehicle

Part 392 - Enforcement Procedures

Once you have entered the violations discovered into the Violation tabs in the SafeSpect 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 393/396 - Enforcement Procedures

Once you have entered the violations discovered into the violations tab of the SafeSpect 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.

5.5.12 Part 395 - Hours-of-Service (HOS)

Part 395 - Enforcement Procedures

Once you have entered the violations discovered into the Violation tabs in the SafeSpect 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 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**

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 Illustrations

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-SEH).

Mexico-Domiciled Motor Carrier Manual

For

Electronic Field Operations Training Manual (eFOTM)

Federal Motor Carrier Safety Administration (FMCSA)

U.S. Department of Transportation

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;
5. Package and/or courier services is prohibited.

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.

[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.

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).
    - 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:

   e. Perform the investigation simultaneously with the PASA;
   f. Conduct the safety audit and investigation on-site at the motor carrier's principal place of business (PPOB) or off-site; and
   g. 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]

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.

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 AIM Narrative 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 AIM

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 AIM Violations questions in accordance with the guidance in the **PASA-AIM Question and Answer Guidance (Attachment 4)**.

Attachment 4 will assist Safety Auditors when answering the AIM 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 AIM 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.

[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.

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 AIM 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 AIM Violations of AIM 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 AIM Violations in AIM

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 AIM Violations 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 AIM procedures, as outlined in the most current version of AIM, and the eFOTM instructions for conducting a PASA, **except** as outlined below or in Attachment 4. However, **disregard** AIM 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 AIM 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 §§ 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.[4]
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.

[4]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.

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 AIM 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:
    - 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

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 AIM 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[6] 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.

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 AIM Violations (Part 387 - Question 2 - (*Does the carrier have required evidence of financial responsibility?*) and noted as an issue in AIM Narrative of the PASA.

[6] 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.

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 AIM 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 AIM 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 Official 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 SafeSpect 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. **AIM Maintenance Question #1**- *Can the carrier produce maintenance files for requested vehicle(s)?*

AIM 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 AIM 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.

AIM 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.

AIM 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 AIM Narrative. 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,[8] 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:

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.

[8] 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.

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 AIM Narrative 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. <u>The Safety Auditor must document in AIM Narrative that the motor carrier was provided a copy of Attachment 7, and that the Protest Application Process Flowchart was discussed with the motor carrier.</u>

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 AIM Narrative that the information for IRP/IFTA was provided to and discussed with the motor carrier.

7.3.4.9 PASA Process - Reciprocal Recongnition 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 AIM, the Safety Auditor will ensure that Attachment 5 (PASA Five Mandatory Element Verification checklist) was completed based on the answers to the AIM Violations 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	Verification element cannot be verified within 30 days	**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 AIM Narrative and send a certified copy of the above items (excluding AIM Narrative) 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 AIM Narrative template (see Attachment 9) to

7.3.4.12 PASA Process - Additional Information to be included in AIM Narrative

Answers to the following questions should be noted in AIM Narrative:

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 recommended 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.

and out-of-service orders can be found in the following link **MC-ESB-2024-0001**.

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.[7]

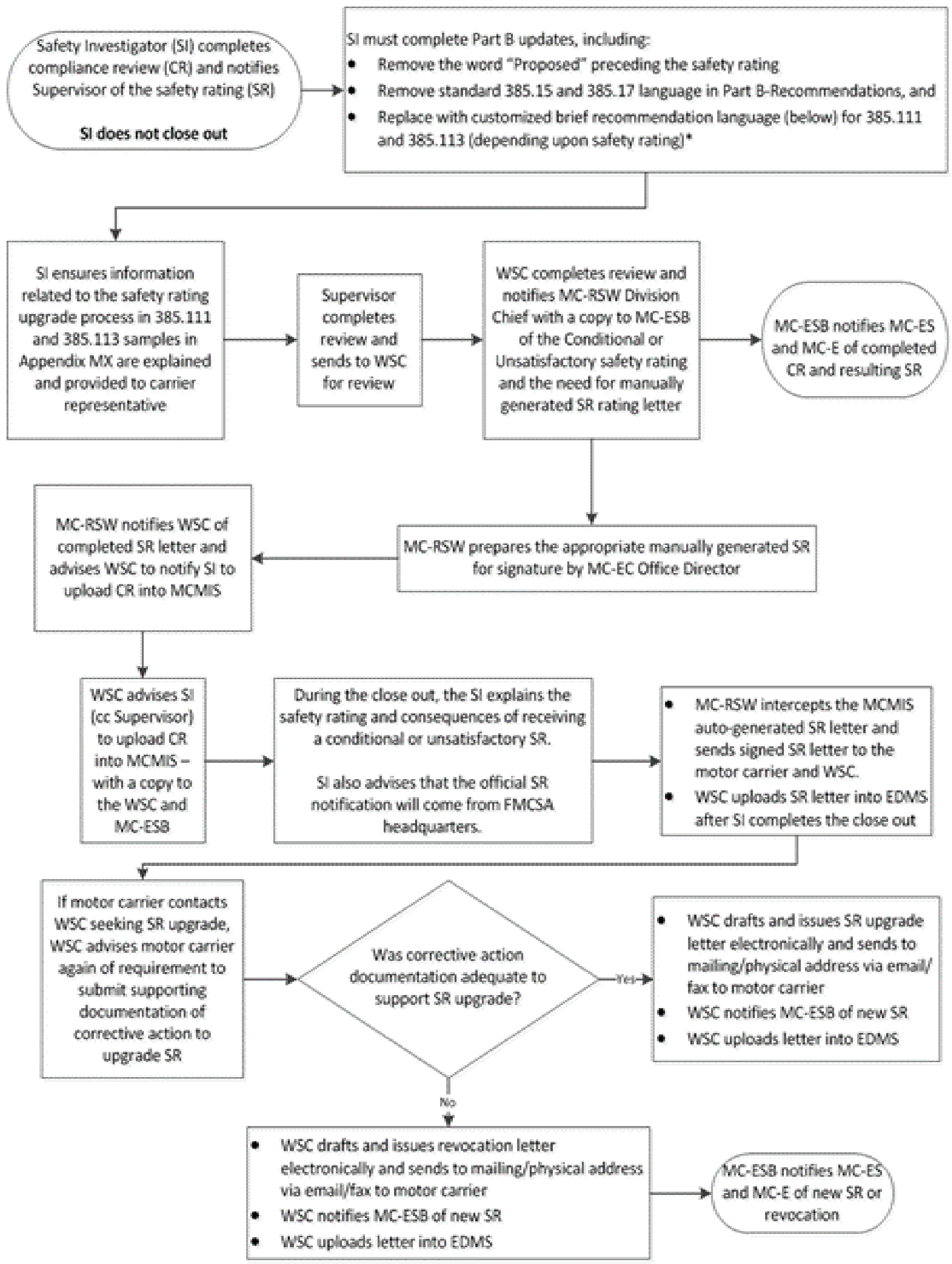
- If an out-of-service (OOS) violation is observed during the vehicle inspections, advise the applicant that the vehicle may not be operated in the United States until the necessary repairs are made.
  - Do not place vehicles OOS in Mexico. Instead, make the Mexico-domiciled motor carrier aware of all 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 Flowchart for Cond and Unsat - Safety Rating Issurance Process, 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].

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] 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.

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	Cite the appropriate OOS violation for failing to display a current CVSA inspection decal.

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.	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:
  - <u>During provisional operating authority, cite</u> 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 Official 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.[10]

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)[11] .

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.

[10] 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.

[11] 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 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

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 28 June 2019". 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 28 June 2019".

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 AIM Violations 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:
    - o Included on a Safety Measurement System (SMS) risk-based prioritization list; or
    - o 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;
    - o Onsite or offsite safety audits of U.S. new entrant motor carriers; or
    - o 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

7.10 Safety Audits for Mexico-Domiciled Carriers Operating in the Border Commercial Zones under Provisional Certificates of Registration

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:

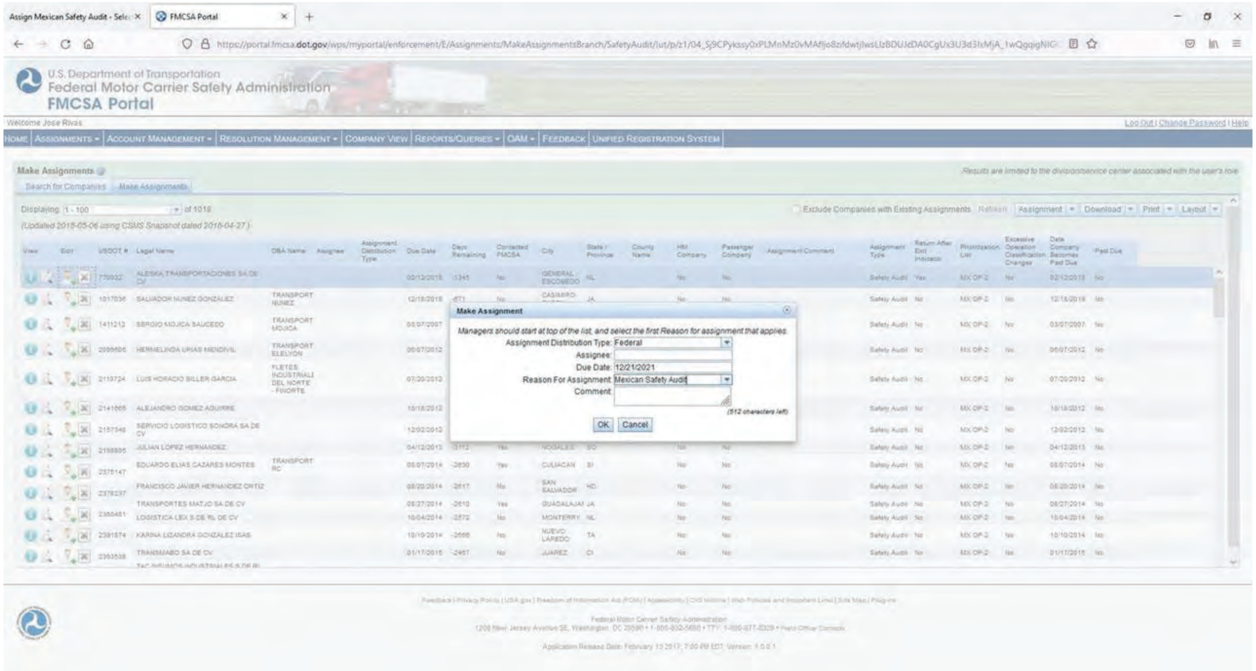
This guidance modifies FMCSA policy titled “Enforcement Procedures for Denial of Access to Records, Equipment, Lands, Buildings, and Other Property of Foreign Motor Carriers” (MC-ESB-2019-0004) issued on June 28, 2019, and eFOTM-Enforcement manual section 2.4.4.3.F as to procedures related to Safety 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:

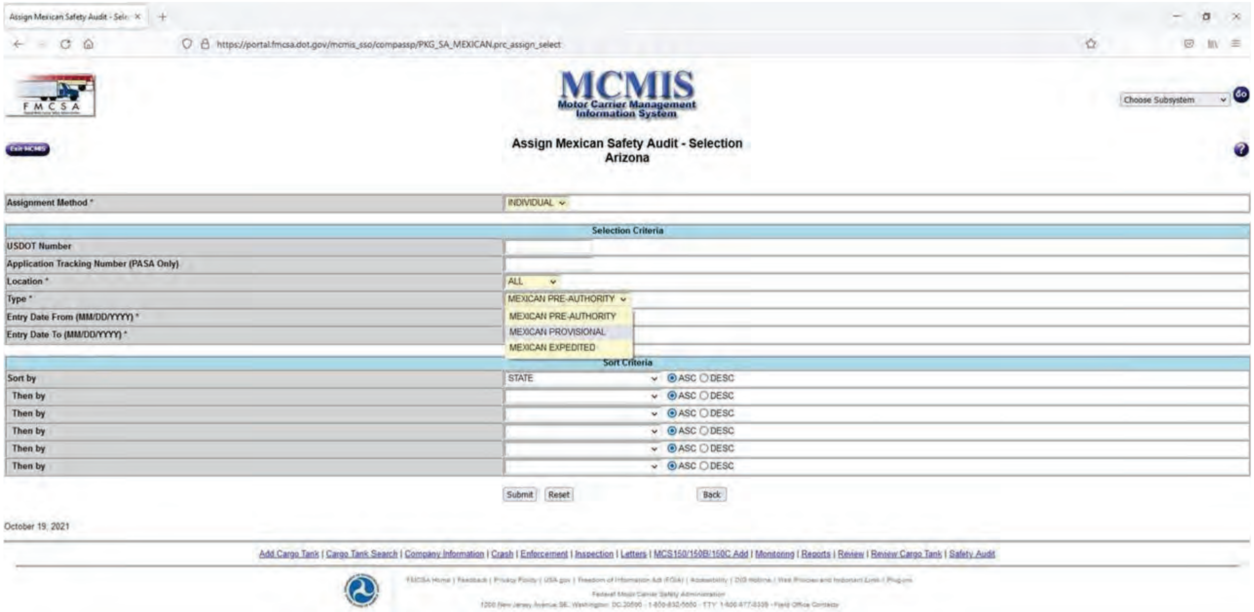
The procedures below are set forth in sequential order to address the Safety Audit assignment process, documentation of contact attempts and associated correspondence after assignment, and the potential suspension or revocation of an OP-2 CZ motor carrier’s provisional certificate of registration. The 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

7.10.1.0 Introduction

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 safety management 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.

Hazardous Material Manual

For

Electronic Field Operations Training Manual (eFOTM)

Federal Motor Carrier Safety Administration (FMCSA)

U.S. Department of Transportation

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 leak proofness (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 Part	**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 Part	**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 Part	**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
⊗review of specific regulations within a part (relevant subpart is indicated by the number below the symbol).

Safety		
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 and 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 **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 at **https://hazmatonline.phmsa.dot.gov/IncidentReportsSearch/Welcome.aspx** and the alternative: **https://www.phmsa.dot.gov/hazmat-program-management-data-and-statistics/data-operations/incident-statistics**.
- 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
⊗review of specific regulations within a 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 and Initiating Enforcement) for more details on how to document violations.

8.1.3.5 Part 172 HM Communication; Training; and Security Plans

Guides and checklists for various HM topics are found in 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 .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.

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

HM Shipping Papers
CFR Parts 177 - 172 - Shipping Papers
Considerations - Select shipping papers with violations cited during roadside inspections or shipping papers tied to loads with other HM violations roadside, when applicable. Ensure that the sample includes shipping papers with different Hazard Classes/Divisions and different ID Numbers (IDs) and /or Proper Shipping Names (PSNs) whenever possible, and that shipping papers are sampled from different shippers (if applicable). Shipping papers should be sampled from loads offered or transported within the year prior to the investigation.

Onsite (full HM BASIC investigation)		Offsite (full HM BASIC investigation) OR HM Supplemental Investigation (onsite or offsite)		Crash BASIC Only
# of Hazard Classes/Divisions Offered or Transported	**Minimum # of HM Shipping Papers to Review**	**# of Hazard Classes/Divisions Offered or Transported**	**# of HM Shipping Papers to Review**	NA
1-2	6	1	1	
3-4	12	2	2	
5-6	18	≥3	3	
7-8	24			
≥9	30			

- 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. S.A.

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 PlansPlans***

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 https://www.dhs.gov/topic/chemical-security.

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 En route 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 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, e.g., .21, .23, etc.)

BASIC	**Part 177**	**Description**
Driver Fitness	⊗ .816	177.816 - Training Requirements - **Required if HM Carrier or CTMV Motor Carrier**
Controlled Substances/Alcohol		
Vehicle Maintenance		
HOS Compliance		
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 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 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 8.2.5 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, e.g., .21, .23, etc.)

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 & 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 Part 173 & 178

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 charged/filled cylinder that was manufactured outside the United States, not in accordance with prescribed DOT specifications.
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 contaminationon 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 & 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 Carrier

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	Parts 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**
- **www.trb.org/main/blurbs/167519.aspx**
- **https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Cargo_Tank_Roll_Stability_Study_Final_Report_April_2007_508CLN.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 psi.
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 subparagrahs (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 <u>requires</u> 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 Carriers

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, e.g., .21, .23, etc.)

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 placardable:** 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://www.phmsa.dot.gov/approvals-and-permits/hazmat/approvals-search. 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 AIM Narrative 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 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, HM training, security plan, 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.

To conduct an HM Supplemental Investigation, the SI must review all of the following items that **are applicable to the investigation being conducted:**

- CAIR: For the HM BASIC, this includes Pipeline and Hazardous Materials Safety Administration (PHMSA) registration and Hazardous Materials Safety Permit (HMSP) requirements.
- Shipping papers: Check one HM shipping paper per Class/Division, up to a maximum of three (3) different classes/divisions of HM transported, including emergency response information and phone numbers.
- Training records: Check that HM Training Materials and Records comply with Part 172, Subpart H for three (3) HM employees. Records for all HM employees should be checked if the motor carrier has fewer than three.
- Security plan: When conducting an on-site investigation, review the company's security plan and complete a Security Assessment.

- Cargo tank testing and inspection records: Check all tests and inspection reports for three (3) specification (or otherwise subject) cargo tanks. All tests and inspection reports should be reviewed if the motor carrier has fewer than three subject cargo tanks. If a carrier utilizes different types of cargo tanks (DOT 406, MC 306, DOT 407, certain nurse tanks, etc.), ensure that the sample includes a variety of tank types. Verify that the CT facility that conducted the tests/inspections has a valid registration with FMCSA; the tests/inspections are within the required time frames (49 CFR 180.407(c)); and the reports contain all the required information (49 CFR 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 49 CFR 171.15 and 171.16.

If violations are discovered during the HM Supplemental Investigation, these violations should be recorded in AIM. If Acute, Critical, and/or Severe violations are discovered during the HM Supplemental Investigation, the SI should consult with a manager to discuss whether the scope should be expanded to a full HM BASIC investigation.

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	Parts 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:

<u>All HMSP Materials:</u>

- 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.

<u>Explosives</u>

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.

<u>Radioactive Materials</u>

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:

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?

- o 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 AIM Narrative. If you find a high level of non-compliance, increase your sample size and explain why in AIM Narrative.

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

Cargo Tank Test/Inspection Reports - for CTFR		
49 CFR Part 180 - Tests and Inspections of Specification Cargo Tanks		
Considerations: When a facility tests/inspects multiple specification types (DOT 406, MC 331, etc.), ensure that your sampling includes at least one of each specification type tested/inspected by the facility.		
Number of Specification Cargo Tanks Tested/Inspected Annually	**Number of Specification Cargo Tanks to Review**	**Minimum # of Test/Inspection Reports to Review**
1-5	All	Review all of the current
6-25	5	

26-50	8	test/inspection reports for each tank. Generally, this will include: Pressure (P), Leakage (K), External Visual (V), and Internal Visual (I), but may also include Lining (L) and Thickness (T) tests/inspections if applicable.
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 and above	500	
Additional Guidance: Current test/inspection reports may be dated up to 10 years prior to the date of the investigation, depending on the type of test. It is permissible (and is, in fact, required) to review test/inspection reports created more than one year prior to the investigation. Since CT test/inspection facilities are not required by regulation to maintain these documents, it may be necessary to obtain a customer list and contact the CTF's customers to obtain copies of the required reports.		

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 AIM Narrative 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 § 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)(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 § 180.409.
180.407(a)(4)	Severe Level I	Failing to evaluate cargo tank with criteria in §180.411.
180.407(a)(5)	Severe Level I	Failing to mark a cargo tank in accordance with §180.415.

180.407(d)	Severe Level I	Failing to perform an external visual inspection as prescribed. Includes subsections (3) and (5). Includes subsections (3) and (5).
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).
180.407(g)(3)	Severe Level I	Failing to perform a wet fluorescent magnetic particle test on an MC-330/331 cargo tank.
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. 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 tanks only.**
180.413(a)(1)	Severe Level I	Failing to perform a repair of an 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 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 § 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 § 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 § 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)
- Rebarreling (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 Rebarreling

The investigation for a CT facility that performs modifications, stretching or rebarreling 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 rebarreling.

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 solely 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 an 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 Packaging

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 SafeSpect 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 AIM Narrative 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 packaging 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?

American with Disabilities Act Review Manual

For

Electronic Field Operations Training Manual (eFOTM)

Federal Motor Carrier Safety Administration (FMCSA)

U.S. Department of Transportation

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-sep@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-sep@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-sep@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.

Accessible Service Requests and Recordkeeping

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.

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 at this time.

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 address how OTRB operators should 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.

OTRB operators are not currently required to submit annual reports to FMCSA. At this time, 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 the forms are compliant with the ADA regulations and do not discuss report submittal, 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-sep@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-sep@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-sep@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 AIM by an FMCSA staff person?

Answer 6 - No. ADA regulatory violations cannot be cited in AIM. 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-sep@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

ADA related employee training records

Appendix B ADA Review Manual

Enforcement and Violation Citation Guidelines

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 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

3. 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

4. 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

5. 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

6. 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

7. 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)

8. 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)

9. 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	**Large Fixed Route or**

		usable by individuals with disabilities, including individuals who use wheelchairs.	**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 cannot be provided to individuals with disabilities.	**Small Fixed Route**
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 carrier, by the most immediate means available, any failure of a lift to operate in service.	**Any Operator**
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-sep@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**

10. **Update the FITT report with your completed ADA Review information**